

ITEM NO.1

COURT NO.1

SECTION XI

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 1867 OF 2006

MALIK MAZHAR SULTAN AND ANR.

Appellant (s)

VERSUS

U.P. PUBLIC SERVICE COMMISSION & ORS

Respondent(s)

(With appln(s) for intervention/directions in I.A.NO.34 and clarification of court's order dt.4.1.2007 and directions and modification of order dt.11.05.2007 and permission to file appln.for directions and office report)

WITH

W.P.(C)..../2008 CC NOS.14852-14854

(with appln.(s) for permission to file SLP and with prayer for interim relief and office report)

AND SLP(C)No.28488/2008

(With prayer for interim relief and office report)

WITH SLP(C)NO.27978/2008

(With appln.(s) for permission to place addl.documents on record and with prayer for interim relief and office report)

Date: 12/02/2009 These Appeals/petitions were called on for hearing today.

CORAM :

2

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE P. SATHASIVAM

HON'BLE MR. JUSTICE J.M. PANCHAL

Mr.Vijay Hansaria, Sr.Adv.(A.C.)
Ms.Sneha Kalita, Adv.

For petitioner

Mr.Ranjit Kumar, Sr.Adv.
Mr.V.N.Raghupathy, Adv.

In W.P.40/09

Mr.Raju Ramachandran, Sr.Adv.
Mr.Jasbir Singh Malik, Adv.
For Mr.S.K.Sabharwal, Adv.

In W.P.39/09

Mr.Dushyant Dave, Sr.Adv.
Mr.Jasbir Singh Malik, Adv.
For Mr.S.K.Sabharwal, Adv.

Mr.Pardeep Gupta, Adv.
Mr.Suresh Bharti, Adv.
Mr.K.K.Mohan, Adv.

Mr.Ejaz Maqbool, Adv.

For Rajasthan High Court Mr.Sunil Kr.Jain,Adv.
Mr.Ajay Bhatia, Adv.
Mr.Aneesh Mittal,Adv.

State of U.P

Mr.Yunus Malik, Adv.
Ms.Sunita Gautam, Adv.
3

Mr.Shrish Kr.Misra, Adv.

High Court of Kerala

Mr.T.L.V.Iyer, Sr.Adv.
Mr.T.G.N.Nair, Adv.

Mizoram

Mr.K.N.Madhusoodhanan, Adv.
Mr.R.Sathish, Adv.

Calcutta High CourtMr.G.S.Chatterjee, Adv.

Mr.Raja Chatterjee, Adv.
Mr.Sachin Das, Adv.

Mr.T.S.Doabia, Sr.Adv.
Mrs.Sunita Sharma, Adv.
For Mr.D.S.Mahra, Adv.

Puducherry

Mr.V.G.Pragasam, Adv.
Mr.S.J.Aristotle, Adv.
Mr.Prabu Ramasubramanian, Adv.

Tamil Nadu

Mr.R.Shanmugasundaram, Sr.Adv.
Mr.T.Harish Kumar, Adv.
Mr.V.Vasudevan, Adv.

Goa

Ms.A.Subhashini,Adv.

Chhattisgarh

Mr.Adesh Sharma, Adv.
Mr.Ram Swarup Sharma, Adv.

Haryana

Mr.Manjit Singh, AAG
For Mr.T.V.George, Adv.

I.A.Nos.47&48

Mr.Krishnan Venugopal, Sr.Adv.
Mr.Binay Kr.Panda,Adv.

Mr.Subhasish Bhowmick, Adv.
Mr.S.C.Patel, Adv.

I.A.No.44 Mr.Soumya Chakraborty,Adv.
 For Mr.D.B.Vohra, Adv.

Gujarat Mrs.Hemantika Wahi, Adv.
 Miss Pinky Behra, Adv.

I.A.No.59 Mr.P.P.Rao, Sr.Adv.
 Dr.Sumant Bhardwaj, Adv.
 Mr.S.S.Ray,Adv.
 Ms.Mridula Ray Bhardwaj, Adv.
 Ms.Bina Gupta, Adv.

I.A.Nos.49-50 Mr.A.K.Ganguly, Sr.Adv.
 Mr.Siddhartha Chowdhury,Adv.

M.P. Mr.B.S.Banthia,Adv.

Orissa H.C. Mr.Janaranjan Das, Adv.
 Mr.Swetaketu Mishra, Adv.
 Mr.P.P.Nayak, Adv.

Nagaland Mr.S.Balaji,Adv.

R.No.25 Mr.Atul Jha,Adv.
 Mr.D.K.Sinha, Adv.

I.A.No.65 Mr.A.Mariarputham, Sr.Adv.
 Mr.Nishe Rajen Shonker, Adv.

Jammu & Kashmir H.C. Mr.Bharat Sangal, Adv.
 Mr.Gaurav Pachnanda, Adv.
 Ms.Vernika Tomar, Adv.
 Mr.Chetan Gupta,Adv.

Govt.of Delhi Mr.S.W.A.Qadri, Adv.
 Mrs.Rekha Pandey, Adv.
 Mrs.Anil Katiyar, Adv.

Punjab & Haryana H.C. Mr.J.L.Gupta, Sr.Adv.
 Ms.Asha Jain Madan, Adv.
 Mr.Mukesh Jain, Adv.

Manipur Mr.Kh.Nobin Singh,Adv.

Assam Mr.Riku Sarma, Adv.
 Mr.Ranjan Mazumdar, Adv.

For M/s.Corporate Law Group, Adv.

West Bengal

Mr.Tara Chandra Sharma, Adv.
Ms.Neelam Sharma, Adv.

Uttarakhand H.C.

Ms.Rachana Srivastava, Adv.
Mr.Mohd.Noorullah, Adv.
Ms.Himani Jadoun, Adv.

I.A.Nos.63&64

Mr.M.N.Rao, Sr.Adv.
Mr.T.N..Rao, Adv.
Ms.Manjeet Kirpal, Adv.

For UPPSC

Mr.Shail Kr.Dwivedi, AAG
Mr.Manoj Kr.Dwivedi, Adv.

6

Bihar/Tripura

Mr.Manish Kumar, Adv.
For Mr.Gopal Singh, Adv.

High Court of A.P. Mr.T.V.Ratnam, Adv.

Mr.M.Chandrashekhar, Adv.

Sikkim

Mrs.Aruna Mathur, Adv.
For M/s.Arputham Aruna & Co., Advs.

Mr.Lakshmi Raman Singh, Adv.

I.A.No.57

Mr.Manish Mohan, Adv.
Mr.Umang Shankar, Adv.
Mrs.Anita Mohan, Adv.

Mr.Sanjay Kharde, Adv.
Mrs.Asha G.Nair, Adv.

Mr.Arvind Kr.Tiwary, Adv.
Mr.R.S.Sharma, Adv.
Mr.Ranjan Dwivedi, Adv.

H.C.of M.P.

Mr.C.D.Singh, Adv.
Mr.Sunny Chaudhary, Adv.
Mr.Aditya Singh, Adv.
Ms.Upasana Nath, Adv.

R.No.45

Mr.Gaurav Sharma, Adv.
Mr.Sumeet Bhatia, Adv.
Ms.Surbhi Mehta, Adv.
Mr.Ankit Gupta, Adv.
For Mr.Maninder Singh, Adv.

7

Mr.Kamlendra Mishra, Adv.

Mr.Ashok K.Srivastava, Adv.

Mr.Debasis Misra, Adv.

Mr.Aniruddha P.Mayee, Adv.

Mr.Anil Shrivastav, Adv.

Mr.P.I.Jose, Adv.

Mr.Pradeep Misra, Adv.

Mr.Radha Shyam Jena, Adv.

Mr.Ashok Mathur, Adv.

Mr.Arun K.Sinha, Adv.

Mr.Sanjay R.Hegde, Adv.

Mr.Rajesh Srivastava, Adv.

Mr.Jatinder Kr.Bhatia, Adv.

Mr.Vishnu Sharma, Adv.

8

Ms.S.Janani, Adv.

Mr.B.B.Singh, Adv.

M/s.Parekh & Co., Adv.

Mr.Ranjan Mukherjee, Adv.

Ms.Kamini Jaiswal, Adv.

Mrs.D.Bharathi Reddy, Adv.

Mr.Ajay Pal, Adv.

Mr.Kamal Mohan Gupta, Adv.

Mr.T.Mahipal, Adv.

Mr.Prakash Kumar Singh, Adv.

Mr.Y.Raja Gopala Rao, Adv.

Mr.G.Prakash, Adv.

Mr.Naresh K.Sharma, Adv.

Mr.Anuvrat Sharma, Adv.

Mr.R.Nedumaran, Adv.

Ms.Sumita Hazarika, Adv.

Mr.Siddhartha Chaudhary, Adv.

9

Mr.Sunil Kr.Verma, Adv.

Mr.T.G.N.Nair, Adv.

Mr.Ugra Shankar Prasad, Adv.

Mr.S.Chandra Shekhar, Adv.

Mr.T.N.Rao, Adv.

Mr.Naresh Kumar, Adv.

UPON hearing counsel the Court made the following
ORDER

I.A. No. 44/2008

This application has been filed by the West Bengal Judicial Service Association.

It is stated that there are large number of vacancies of Civil Judge (Sr. Division) and the promotions are not being effected by the High Court. Counsel appearing for the High Court of Calcutta states that the rules for promotion to the post are to be amended and the amendment rules are already forwarded to the State Government for notification and the same has not yet returned/approved resulting the delay delay in giving promotions to the

eligible officers.

10

The High Court is directed to take decision regarding promotions as per the existing rules subject to any revision that may be passed.

I.A. No.44 is disposed of.

I.A. Nos. 47 & 48

Applicants are permitted to withdraw the I.As with liberty to approach the High Court for appropriate relief.

I.A. Nos. 47 & 48 are dismissed as withdrawn.

I.A. Nos. 49-50:

Applicants are permitted to withdraw the I.As with liberty to approach the High Court for appropriate relief.

I.A. Nos. 49-50 are dismissed as withdrawn.

I.A. No.56

11

Issue notice to all the States and the High Courts.

Counter affidavit to be filed within four weeks.

I.A. No. 52

Applicant alleges that there are large number of vacancies in the cadre of District Judges including Fast Track Courts and Civil Judge (Sr. Division).

We request the High Court to fill up the vacancies of Civil Judge (Sr. Division) as well as the vacancies in the cadre of District Judges within reasonable time.

I.A. is disposed of.

I.A.Nos.63 & 64:

Issue notice.

I.A.NO.57:

Issue notice.

I.A.NO.60 & W.P.(C)Nos.39 & 40/2009:

The Public Service Commission had initiated steps to fill up 78 vacancies
12
of Civil Judge (Jr.Division) pursuant to the request made by the High Court of Punjab &
Haryana and on 14th September, 2008 a notification was issued by the Haryana Public
Service Commission. There were about 6,000 candidates appeared for the preliminary
examination which was held on 16.11.2008 and the result was also published by the Public
Service Commission and the

13

candidates have to appear for final selection. Meanwhile, the High Court after consultations
with the Government of Haryana and the Public Service Commission decided that further
process of selection would be held at the instance of the High Court and the Public Service
Commission jointly. The High Court has now constituted a Committee and the Committee will
set up the question papers which will be valued and thereafter followed by interview wherein
three Judges are nominated by the Chief Justice of the Punjab & Haryana and three

members of the Public Service Commission would participate.

In the Writ Petition(C) Nos.39 and 40/2009, the petitioners allege that the process of recruitment had already been initiated by the Public Service Commission as per Article 235 of the Constitution of India and as per the Punjab Civil Service (Judicial Branch) Rules, 1951 (as applicable to State of Haryana) and it is submitted that the recruitment had already been started on the basis of the rules. The same can be continued under the said rules and any deviation would be against the decision of this Court in Hemen Malhotra Vs. High Court of Delhi, reported in (2008) 7 SCC p.11 and other cases and the writ petitioners pray that Haryana Public Service Commission alone has got the authority to continue the further selection process.

We are not inclined to interfere with the process of selection as the Public Service Commission is also involved in the process of selection. The final recruitment would take place on the basis of the joint consultation with the High Court of Punjab & Haryana, representatives of the State and the Haryana Public Service Commission as per the decision of December 22, 2008. As large number of posts are still lying vacant, we request the High Court as well as

14

the Haryana Public Service Commission and the State Government to complete the process of selection at the earliest. The order of 11.5.2007 is modified to the extent indicated above .

15

The application as well as the writ petitions are disposed of accordingly.

I.A.No.65:

Issue notice.

Three weeks time is granted for filing reply on behalf of the State of Kerala and the High Court.

Registrar Generals/Registrars of the High Courts of Andhra Pradesh, Jharkhand, Delhi and Kerala or any officer in-charge of the selection/appointment of judicial officers shall be present with relevant records of the concerned High Court on the next date of hearing.

List on 18.3.2009.

(G.V.Ramana) (Ravi P.Verma)
Court Master Court Master

(Veera Verma)
Court Master