

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1867 OF 2006

MALIK MAZHAR SULTAN AND ANR.

Appellant (s)

VERSUS

U.P. PUBLIC SERVICE COMMISSION & ORS

Respondent(s)

(With office report)

Date: 13/01/2009 This Appeal was called on for hearing today.

CORAM :

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 Appellant(s) Mr. Ejaz Maqbool, Adv.

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For Respondent(s) Mr. Lakshmi Raman Singh, Adv.

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Mr. Ashok K. Srivastava ,Adv

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Mr. Arun K. Sinha ,Adv

Ms. Asha Jain Madan ,Adv

Mr. Ashok Mathur ,Adv

Mr. S. Mehndi Imam, Adv.
Mr. Tabrex Ahmad, Adv.
For Mr. Anis Suhrawardy ,Adv

Mr. B.B. Singh ,Adv

Ms. Bina Gupta ,Adv

Mr. Bharat Sangal ,Adv

Ms. Binu Tamta ,Adv

Mr. Dharam Bir Raj Vohra ,Adv

Mr. Jaideep Gupta, Sr. Adv.

Mr. G.S. Chatterjee ,Adv

Mr. Raja Chatterjee, Adv.

Mr. Sachin Das, Adv.

Ms. Priyanka Sharma, Adv.

Mr. G. Prakash ,Adv

Ms. Hemantika Wahi ,Adv

Mr. Janaranjan Das ,Adv

Mr. Swetaketu Mishra, Adv.

Mr. P.P. Nayak, Adv.

Mr. K.K. Mohan ,Adv

Ms. Kamini Jaiswal ,Adv

Mr. Naresh K. Sharma ,Adv

Mr. Pradeep Misra ,Adv

Mr. K.N. Madhusoodhanan, Adv.

Mr. R. Sathish ,Adv

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Mr. Sunil Kumar Jain ,Adv

Mr. Yunus Malik, Adv.

Ms. Sunita Gautam, Adv.

Mr. Shrish Kumar Misra ,Adv

Mr. T.G. Narayanan Nair ,Adv

Mr. C.N. Sreekumar, Adv.

Mr. K.N. Madhusoodanan, Adv.

Mr. T.V. Ratnam ,Adv

Mr. Ugra Shankar Prasad ,Adv

M/S Arputham, Aruna & Co. ,Adv

Mr. S. Wasim A. Qadri, Adv.

Mrs. Sunita Sharma, Adv.

Mrs. Rekha Pandey, Adv.

For Mr. D.S. Mahra ,Adv

Mr. Ranjan Mukherjee ,Adv

Ms. S. Janani ,Adv

Mr. V.G. Pragasam ,Adv

Mr. S.J. Aristotle, Adv.

Mr. Prabu Rama Subramanian, Adv.

Mr. Sumeet Bhatia, Adv.

Mr. Gaurav Sharma, Adv.

Ms. Surbhi Mehta, Adv.

Mr. Ankit Gupta, Adv.

For Mr. Maninder Singh ,Adv

Mrs.D. Bharathi Reddy ,Adv

Mr.Khwairakpam Nobin Singh ,Adv

Mr. Radha Shyam Jena ,Adv

Mr. Amit Kr. Chawla, Adv.

Mr. A. Rohen Singh, Adv.

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For Mr. Sanjay R. Hegde ,Adv

Mr. P.I. Jose ,Adv

Mr. Anupam Mishra, Adv.

Mr. B.K. Mishra, Adv.

Mr. Vivek Kandari, Adv.

Mr. Y. Raja Gopala Rao ,Adv

Mr. Shail Kumar Dwivedi ,AAG, UP

Mr. Bharat Ram, Adv.

Ms. Vandana Mishra, Adv.

Mr. R. Nedumaran ,Adv

Mr. Kamal Mohan Gupta ,Adv

Mr. Naresh Kumar ,Adv

Mr. V.N. Raghupathy ,Adv

Ms. Rachana Srivastava ,Adv

Mr. Mohd. Noorullah, Adv.

Mr. Riku Sharma, Adv.

M/s. M. Dutta, Adv.

For M/S Corporate Law Group ,Adv

Mr. Rajesh Srivastava ,Adv

Mr. C.D. Singh ,Adv

Mr. Sunny Chowdhary, Adv.

Mr. Vairagya Vardhan Dubey, Adv.

Mr. Aditya Singh, Adv.

Ms. Upasana Nath, Adv.

Mr. Jatinder Kumar Bhatia ,Adv

Mr. Kamlendra Mishra ,Adv

Mr. P.H. Parekh, Sr. Adv.

Mr. Ajay Kr. Jha, Adv.

Mr. Narendra Prasad Singh, Registrar General,

Patna High Court (in-person)

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Ms. Divya Sinha, Adv.

Ms. Pallavi Srivastva, Adv.

For M/S. Parekh & Co. ,Adv.

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Ms. Sumita Hazarika ,Adv

Mr. Aniruddha P. Mayee ,Adv

Mr. Siddhartha Chowdhury ,Adv

Mr. Vishnu Sharma ,Adv

Ms. Anupama Sharma, adv.

Mr. Manjit Singh, Adv.
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Mr.Sunil Kumar Verma ,Adv

Mr. Anuvrat Sharma ,Adv

Mr. S.Balaji ,Adv

Mr. Ajay Pal ,Adv

Mr. S. Chandra Shekhar,Adv.

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Mr. Rituraj Biswas, Adv.

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Mr. R. Nedumaran, Adv.

Mr. P. Soma Sundaram, Adv.

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Mr. Atul Jha, Adv.

Mr. D.K. Sinha, Adv.

For Intervenor

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Mr. R.S. Sharma, Adv.

Mr. Rajan Dwivedi, Adv.

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Mr. Gopal Singh, Adv.

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Mr. Rituraj Biswas, Adv.

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Mr. Manish Kumar, Adv.

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Ms. Neelam Sharma, Adv.

State of Chhatisgarh Ms. Suparna Srivastava, Adv.

Mr. Aditya Shankar Prasad, Adv.

Mr. Ram Swarup Sharma, Adv./

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Mr. B.S. Banthia, Adv.

State of Arunachal Pradesh Mr. Anil Srivastava. Adv.

For Intervenor

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Mr. Subhasish Bhowmick, Adv.

Mr. S.C. Patel, Adv.

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Mr. Sanjay V. Kharde, Adv.

Ms. Asha Gopalan Nair, Adv.

H.C. of J& K.

Mr. Bharat Sangal, Adv.

Mr. Gaurav Pachunda, Adv.

Mr. V. Tomar, Adv.

Mr. Prasanjit D, Adv.

UPON hearing counsel the Court made the following
ORDER

In the State of Bihar, 60 vacancies were available for promotion of

Civil Judges (senior division) under the 25% limited competitive examination. The affidavit filed by the High Court shows that they could fill up only two vacancies out of the above 60 vacancies under this 25% limited competitive examination. Thus 58 such posts of District Judges remained vacant. The High

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Court may fill up these posts by promotion of Civil Judges (senior division) based on seniority-cum-merit. In future also whenever candidates are not available for being promoted to the category of District Judges for the limited competitive examination, such posts may be filled up by promotion from among the candidates available from Civil Judge (senior division) based on seniority-cum-merit. The High Court may take urgent steps to fill up these vacancies.

We are also told that there were 72 vacancies of District Judges to be filled up by promotion from amongst the Civil Judge (senior division). It is stated that there are only 39 Civil Judge (senior division) found suitable for promoted as District Judge. On 24 th December, 2008, the panel of the candidates was sent to the Government for appointment. We see large number of vacancies of District Judges are lying vacant as the promotion of these posts are not being done timely by the High Court. Considering the large number of vacant posts of District Judges, the High Court should take timely action to fill up these vacancies keeping in mind the principle of seniority-cum-merit. The High Court may deny promotion to Civil Judge (senior division) only in case he/she is not suitable for being promoted and the seniority should always have a predominant Role in giving promotion to the Civil Judge (senior division) to the post of District Judge. If the posts of District Judges are not filled up in time it is likely that sessions cases may not have timely trial, thereby delaying the whole procedure of justice delivery system. We request the High Court to be practical in the matter of promotion and filling up the posts of the District Judges. It is also brought to our

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notice that as the promotion policy itself is not working properly, a large number of Civil Judge (junior division) are continuing in the same post, causing stagnation from about 15 to 18 years. This is because the timely promotion is not being taken care of by the High Court and this should be corrected at the earliest.

Now we are told that a total number of 217 posts have been

advertised for appointment of Civil Judge (junior division) and 12 posts of District Judges (direct). Learned counsel appearing for the State pointed out that the State want to amend the rules relating to reservation in appointments and the proposed amended rules have already been sent to the High Court as part of the consultation envisaged under the Constitution. It is stated by learned counsel for the State that as the High Court has not given consent, the State Government is not in a position to notify the rules. If there was any consultation with the High Court, the State can take further steps in this regard.

The presence of Secretary of Department of Personnel and the Registrar are not required in the Court on the next date of hearing.

The matter be posted along with the other connected matters.

I.A.NO.62

The I.A. is dismissed as withdrawn with liberty to pursue the matter in the High Court.

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(R.K. Dhawan) (Veera Verma)
Court Master Court Master