

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)

(For considering the case of High Court and the State of Bihar vide this Hon'ble Court's order dt. 23.9.2008 with office report) With

I.A. Nos. 59 & 600 Appln. for intervention/directions and modification of Court's order dated 11.5.2007)

CIVIL APPEAL NO. 1868 OF 2006

(With Office report)

CIVIL APPEAL NO. 1869 OF 2006

(With office report)

CIVIL APPEAL NO. 1870 OF 2006

(With office report)

CIVIL APPEAL NO. 1871 OF 2006

(With office report)

CIVIL APPEAL NO. 1872 OF 2006

(With office report)

Date: 04/11/2008 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE C.K. THAKKER

HON'BLE MR. JUSTICE AFTAB ALAM

Mr. Vijay Hansaria, Sr. Adv. (A.C.)

Ms. Sneha, Adv.

For Appellant(s) Mr. Ezaj Maqbool, Adv.

For Applicant(s): Ms. Soumya Chakraborty, Adv.

Mr. DB Vohra, Adv.

In I.A. 59 Mr. P.P. Rao, Sr. Adv.

Dr. Sumant Bhardwaj, Adv.

Mr. S.S. Ram, Adv.

Ms. Mridula Bhardwaj, Adv.

Mr. Ankur Saigal, Adv.

Ms. Bina Gupta, adv.

Mr. Gaurav Singh, Adv.

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

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C.A. 1867/2006Etc....Contd...(It. 1 Ct.6, Dt. 04/11/2008)

:2:

Mr. Atul Jha, Adv.

Mr.Dharmendra Kumar Sinha, Adv.

For intervenor Mr. Arvind Kr. Tiwary, Adv.

Mr. Rannjan Dwivedi, Adv.

H.Court of Patna Mr. Pravin H. Parekh, Sr.Adv.

Mr. Ajay Kr. Jha, Adv.

Ms. Mary Mitry, Adv.

Ms. Divya Sinha, Adv.

for M/s P.H. Parekh & Co.

Mr. K.K. Mohan, Adv.
Mr. Prakash Kumar Singh, Adv.

M.P. High Court
Mr. C.D. Singh, Adv.
Mr. Sunny Choudhary, Adv.
Mr. Vairagya Vardhan, Adv.
Mr. Aditya Singh, Adv.
Ms. Upasana Nath, Adv.

Mr. Kamlendra Mishra, Adv.

Allahabad H.Court
Mr. Ashok K Srivastava, Adv.
Mr. Saurabh Trivedi, Adv.
Mr. Indrajeet Das, Adv.

Mr. Debasis Misra, Adv.

For UOI:
Mr. Navin Prakash, Adv.
Ms. Rekha Pandey, Adv.
Ms. Sushma Suri, Adv.

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

Orissa High Court
Mr. Janaranjan Das, Adv.
Mr. Swetaketu Mishra, Adv.

For Maharashtra
Mr. Sanjay V. Kharde, Adv.
Ms. Asha G. Nair, Adv.

For Bombay H Court
Mr. Aniruddha P Mayee, Adv.
Mr. Sanjeev Kumar Choudhary, Adv.
Mr. Sanjay Visen, Adv.
Ms. Rucha A Mayee, Adv.

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

..3/-

C.A. 1867/2006Etc....Contd...(It. 1 Ct.6, Dt. 04/11/2008)

:3:

For Tripura
Mr. Gopal Singh, Adv.
Mr. Rituraj Biswas, Adv.

For West Bengal
Ms. Tara Chandra Sharma, Adv.
Ms. Neelam Sharma, Adv.

For Arunachal Pradesh
Mr. Anil Shrivastav, Adv.
Mr. Ritu Raj, Adv.

For U.P.
Mr. Yunus Malik, Adv.
Mr. Shrish Kumar Mishra, Adv.
Ms. Sunita Gautam, Adv.
Mr. G.V. Rao, Adv.

Mr. P.I. Jose, Adv.
Mr. Vivek Kandari, Adv.

Mr. Pradeep Misra, Adv.

Mr. Radha Shyam Jena, Adv.

Mr. Ashok Mathur, Adv.

For H.C/Uttarakhand Ms. Rachana Srivastava, Adv.
Mr. Mohd. Noorullah, Adv.

For Karnataka Mr. Sanjay R Hegde, Adv.
Mr. A Rohen Singh, Adv.
Mr. Amit Kr. Chawla, Adv.

For Manipur Mr. KH Nobin Singh, Adv.

For Delhi H Court Ms. Jyoti Singh, Adv.
Mr. A Mariarputham, Adv.
Mrs. Aruna Mathur, Adv.
For M/s Arputham Aruna & Co., Advs.

For Tamil Nadu Mr. A Mariarputham, Adv.
Ms. Aruna Mathur, Adv.
for M/s Arputham Aruna & Co., Advs.

For Sikkim &
Sikkim H Court Mr. A Mariarputham, Adv.
Ms. Aruna Mathur, Adv.
For M/s Arputham Aruna & Co., Advs.

..4/-

C.A. 1867/2006Etc....Contd...(It. 1,Ct.6, Dt. 04/11/2008)

:4:

Mr. Vishnu Sharma, Adv.
Mr. Anupam Sharma, Adv.

For M.P. Mr. Vikas Upadhyay, Adv.
Mr. B.S. Banthia, Adv.

For Chhattisgarh Ms. Suparna Srivastava, Adv.
Mr. Neeraj Srivastava, Adv.
Mr. Rajesh Srivastava, Adv.

For Rajasthan Mr. Jatinder Kumar Bhatia, Adv.
Mr. B.N. Jha, Adv.

Rajasthan H Court Mr. Sunil Kr. Jain, Adv.
Mr. Aneesh Mittal, Adv.

For Nagaland Mr. Edward Belho, Adv.
Mr. A. Panmei, Adv.

For Haryana Mr. Manjit Singh, Addl. Adv. Gen.
Mr.T.V. George, Adv.

For Goa Ms. A Subhashini, Adv.

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

For U.T.
(Pondicherry) Mr. V.G. Pragasam, Adv.
Mr.S.J. Aristotle, Adv.
Mr. Prabu Rama Subramanian, Adv.

H.Court of Tamil Mr. R. Nadumaran, Adv.
Nadu

Calcutta High Court Mr. G.S. Chatterjee, Adv.
Mr. Raja Chatterjee, Adv.
Mr. Sachin Das, Adv.

For Chandigarh High Court Mr. Nidhesh Gupta, Adv.
Mr. Tarun Gupta, Adv.
Ms. S Janani, Adv.

For Patna High Court Mr. P.H. Pareksh, Sr. Adv.
Mr. Ajay Kumar Jha, Adv.
Ms. Divya Sinha, Adv.
for M/s P.H. Parekh & Co., Advs.

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C.A. 1867/2006Etc....Contd...(It. 1,Ct.6, Dt. 04/11/2008)

:5:

For NCT Delhi Ms. Sunita Sharma, Adv.
Ms. Asha G Nair, Adv.
Mr. D.S. Mahra, Adv.

Mr. R Mohan, ASG
Mr. S Wasim A Qadri, Adv.
Mr. D.S. Mahra, Adv.

Ms. Kamini Jaiswal, Adv.
Mr. Saurav Datta, Adv.

Mr. Ejaz Maqbool, Adv.

Mr. Binay Kumar Panta, Adv.
Mr. Subhasish Howmick, Adv.
Mr. S.C. Patel, Adv.

Ms. S. Janani, Adv.
Mr. Deepak Goel, Adv.

For Assam Mr. Riku Sarma, Adv.
Mr. Ranjan Mazumdar, Adv.
for M/s Corporate Law Group, Advs.

For Kerala Mr. G Prakash, Adv.

For Punjab Mrs. Jay Shree Anand, Addl. Adv. Gen.
Mr. K.K. Mahalik, Adv.
Mr. Ajay Pal, Adv.
Mr. Kuldip Singh, Adv. (NP)
Mr. Arun K Sinha, Adv. (NP)

For State of HP Mr. Naresh K. Sharma, Adv.

For UPPSC Ms. Binu Tamta, Adv.

Mr. T Mahipal, Adv.

For Chhattisgarh Mr. Atul Jha, Adv.
Mr. D.K. Sinha, Adv.

For Jharkhand Ms. Suparna Srivastava, Adv.
Mr. Rajesh Patnak, Adv.

For Meghalaya Mr. Ranjan Mukherjee, Adv.
Mr. S.C. Gosh, Adv.

For J & K Mr. Anis Suharawardy, Adv.
Mr. S Mehdi Imam, Adv.

Mr. Tabraz Ahmed, Adv.
Ms. Samridhi, Adv.

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C.A. 1867/2006Etc....Contd...(It. 1,Ct.6, Dt. 04/112008)
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For Gujarat
Ms. Hemantika Wahi, Adv.
Mr. Somnath, Adv.
Ms. K Enatahi Sema, Adv.

Mr. Y Rajagopala Rao, Adv.
Mr. Y Ramesh, Adv.
Mr. Y Vismai, Adv.

Mrs. D Bharathi Reddy, Adv.

Mr. Kamal Mohan Gupta, Adv.

Mr. Prashant Chaudhary, Adv.
Mr. Bharat Ram, Adv.
Mr. Shrish Kumar Misra, Adv.
Mr. Pushkin, Adv.

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

For U.P.P.S.C. Mr. Shail Kumar Dwivedi, Adv.
Ms. Vandana Mishra, Adv.

UPON hearing counsel the Court made the following
ORDER

List on 13th January, 2009 for the State of Bihar and High Court
of Patna.

I.A.No.59 & SLP(C)Nos.14852-14854/2008:

Issue notice on I.A.No.59/2008 returnable on 2nd December,
2008.

At the oral request of the learned counsel these SLPs raising
the same issue, have been taken on board.

Issue notice returnable on 2nd December, 2008.

IA.No.60/2008:

Issue notice returnable on 2nd December, 2008.

It is stated at the Bar that all the IAs. are being filed in
CA.No.1867/2006 only and C.A.No.1868 to 1872/2006 are already
disposed of by order dated April 3, 2006. Hence, the Registry need
not show C.A.Nos.1868 to 1872 of 2008 in the cause list.

(Usha Bhardwaj)
Court Master

(Vinod Kulvi)
Court Master

Signed order is placed on the file.
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1867 OF 2006

Malik Mazhar Sultan & Anr.

.....Appellants

Versus

U.P. Public Service Commission & Ors.

....Respondents

ORDER

State of Bihar/High Court of Patna:

We have heard learned counsel for the parties.

On September 23, 2008, the Court passed an order 'keeping in view the controversy' between the High Court of Patna and State of Bihar. Certain directions were thereafter issued. The matter was adjourned to Nov 04, 2008 i.e. today. Accordingly, the matter has appeared on board.

We have heard learned counsel for the parties. The learned Amicus Curiae has stated that 'no effective steps' have been taken by the State of Bihar and hence appropriate directions may be issued to the State so that the process for appointment of Judges may be expedited and appointments in the Cadre of Civil Judge (Junior Division) as also District Judge may be made.

Our attention has been invited by the learned counsel for the High Court of Patna to the affidavit dated October 25, 2008, filed by the Registrar (Vigilance)

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presently officiating as Registrar General of the High Court. Bare reading of the said affidavit makes it clear that so far as the appointment to the Cadre of Civil Judge (Junior Division) is concerned, upto March 31, 2009 total vacancies including anticipated vacancies would come to 217. A letter has been addressed to the Secretary to the Government of Bihar, Department of Personnel and Administrative Reforms, Patna on October 20, 2008 wherein the said fact has been reflected. In spite of this, according to the deponent, no steps have been taken by the State Government.

So far as the appointment to the post of District Judge from 25% quota from limited competitive examination is concerned, it was stated that the process has been completed and two officers have been

selected for appointment to the post of District Judge and the State is required to take appropriate action, in accordance with law.

With regard to 50% promotion in the Cadre of District Judge, it is stated;

"Steps Taken:- So far appointment to the post of 50% vacancies in the cadre of District Judge (Entry Level) by way of promotion is concerned, 56 posts have been identified earlier and processes for filing up these posts have been initiated. In course of the exercise for recalculating the vacancies, the vacancies now stand to 72 including the earlier 56 vacancies.

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That names of 160 officers are under consideration and 5 judgment has been called for from those officers and their judgments have been placed before Hon'ble Evaluation Committee in its meeting dated 17.10.2008 and the Hon'ble Evaluation Committee has resolved that the Registry should prepare a disposal chart of each of the officers under consideration, at least for last 5 years, in order to enable the Committee to appraise their performance while considering their ACRs. The Registry has also been directed to furnish complete ACRs. of at least last 5 years of each officers. The Committee is scheduled to meet on 10th November, 2008."

It is thus clear that the process may take some time. In our opinion, it would be appropriate if we grant four weeks' time so that by that time the Evaluation Committee which is scheduled to meet on November 10, 2008 may take appropriate action. We hope that by that time the Registry will complete the process and furnish complete ACRs. as required and put before the said Committee.

It was also stated in the affidavit that so far as 25% quota of the District Judge from Bar by direct recruitment is concerned, the High Court has intimated the State Government vide its letter, dated October 24, 2008 but the State Government has not taken any step.

The learned counsel for the State submitted that an affidavit has been prepared which is to be sworn in by the Under Secretary, Department of Personnel and Administrative Reforms. In the said affidavit, it is stated that as per

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the earlier communication by the High Court, there were 84 existing

vacancies of Civil Judge (Junior Division). It was further stated that the Bihar Public Service Commission was instructed to initiate process for making appointment and appropriate steps will be taken immediately.

We may state that in view of the fact that there are 217 vacancies 'including anticipated vacancies', steps which are required to be taken by the State would be in respect of all the vacancies.

The State of Bihar is, therefore, directed to inform Bihar Public Service for commencing process for appointment for those vacancies i.e. 217 vacancies. Let requisition be made by the State Government within a period of 10 days from today. An advertisement may be issued and published within three weeks from the receipt of requisition by the Public Service Commission.

The State will also undertake the process in regard to 25% vacancies i.e. 12 vacancies of the Cadre of District Judge (direct recruitment). Similar process will be undertaken in with regard to Civil Judge (Junior Division). The requisition will be made by the State Government to the Bihar Public Service Commission within 10 days and will be issued and published within a period of three weeks from the date of the receipt of the requisition.

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In our opinion, it would be appropriate if on the next date the Secretary to the Department of Personnel and Administrative Reforms as also the Registrar General (Officiating) (if Registrar General is not there), will remain personally present in the Court.

Let further affidavit with full details and latest status report be filed by the Secretary so far as the State of Bihar is concerned.

List on January 13, 2009.

State of U.P.:

We have heard learned Amicus Curiae as also learned counsel for the State. Nobody is present on behalf of the High Court.

Our attention is invited to the subsequent development and the latest report from which it appears that both the functionaries, i.e. the High Court as well as the State through Public Service Commission have taken appropriate steps.

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It is stated at the Bar that all the IAs. are being filed in CA.No.1867/2006 only and C.A.No.1868 to 1872/2006 are already disposed of by order dated April 3, 2006. Hence, the Registry need not show C.A.Nos.1868 to 1872 of 2008 in the cause list.

.....J.
[C.K. THAKKER]

.....J.

[AFTAB ALAM]
NEW DELHI,
NOVEMBER 04, 2008.