

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)

[FOR CONSIDERING THE CASES OF HIGH COURTS AND THE STATES
OF KERALA AND JAMMU & KASHMIR VIDE COURT'S ORDER DT.
23.9.2008]

WITH

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: 21/10/2008 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE D.K. JAIN

HON'BLE MR. JUSTICE V.S. SIRPURKAR

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

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

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

Mr. Siddhartha Chaudhary, Adv.

Mr. Pijush K Roy, Adv.
Mr. Sunil Kumar Verma, Adv.

Mr. U.S. Prasad, Adv.

Mr. A.K. Sangal, Adv.

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

..2/-

C.A. 1867/2006Etc....Contd...(It. 1 Ct.9, Dt. 21/10/2008)
: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.

for Mr. Ajay Kr. Jha, Adv.
Ms. Mary Mitry, Adv.
Ms. Divya Sinha, Adv.
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. Kamendra 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. Rituraj Biswas, Adv.

..3/-

C.A. 1867/2006Etc....Contd...(It. 1 Ct.9, Dt. 21/10/2008)

:3:

For Tripura

Mr. Gopal Singh, Adv.
Mr. Rituraj Biswas, Adv.
Mr. Manish Kumar, 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. Pushkin, 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 Uttarakhand Ms. Alka Sinha, Adv.
Mr. Anuvrat Sharma, Adv.
Ms. Rachana Srivastava, Adv.
For Karnataka Mr. Sanjay R Hegde, Adv.
Mr. Amit Kr. Chawla, Adv.
Mr. A Rohen Singh, 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.
Mr. Vishnu Sharma, Adv.
Mr. Anupam Sharma, Adv.
For M/s Arputham Aruna & Co., Advs.

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C.A. 1867/2006Etc....Contd...(It. 1,Ct.9, Dt. 21/10/2008)

:4:

For M.P. Mr. B.S. Banthia, Adv.
Mr. Vikas Upadhyay, 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 K. Jain, Adv.
Mr. Ajay K Bhatia, Adv.
For Nagaland Mr. Ritu Raj Biswas, Adv.
Mr. S Balaji, Adv.
Mr. A.P. Mukundan, 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. Mr.T.L.V. Iyer, Sr. Adv.
(Puducherry) 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 Mr. Tarun Gupta, Adv.
High Court Ms. S Janani, Adv.

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

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C.A. 1867/2006Etc....Contd...(It. 1,Ct.9, Dt. 21/10/2008)

:5:

For NCT Delhi Ms. Sunita Sharma, Adv.
Mr. W.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 Ms. Riku Sarma, Adv.
for M/s Corporate Law Group, Adv.

For Kerala Mr. G Prakash, Adv.

For H.Court of Mr. T.L.Viswanatha Iyer, Sr. Adv.
Kerala Mr. T.G.N. Nair, 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.9, Dt. 21/10/2008)

:6:

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.

Punjab& H.High
Court

Ms. Asha Jain Madan, Adv.
Mr. Mukesh Jain, Adv.

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

Ms. Vandana Mishra, Adv.
Ms. Vibha Dwivedi, Adv.

UPON hearing counsel the Court made the following
ORDER

High Court of Kerala :

List on December 02, 2008.

Personal appearance of the Registrar General of the High
Court of Kerala is dispensed with for the time being.

State of Jammu & Kashmir :

The affidavit be filed within four weeks.

I.A. No. 51 :

The application for impleadment on behalf of the State of
Andhra Pradesh is allowed.

I.A. No. 52 :

Issue notice.

Mr. Y. Raja Gopala Rao, learned advocate appears and
waives service of notice on behalf of the High Court of Andhra
Pradesh and seeks time to file reply affidavit. Let the needful be
done within four weeks.

I.A...../2008 (State of Haryana)

I.A. is allowed.

[Charanjeet Kaur] [Usha Bhardwaj] [Vinod Kulvi]
Court Master Court Master 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 And Anr.

.. Appellant(s)

Versus

U.P. Public Service Commission & Ors.

.. Respondent(s)

ORDER

High Court of Kerala

Mr. S.S. Satheesachandran, Registrar General of the High

Court of Kerala is present in Court.

Pursuant to our order dated September 23, 2008, an affidavit

has been filed on behalf of the High Court of Kerala.

As per the

affidavit, so far as the cadre of District Judge (Direct) is concerned, for

the year 2007, there were six vacancies; the written test to fill up the

said vacancies was held in October, 2007 and after evaluation the result

was announced on September 23, 2008.

It is stated that efforts are

being made to complete the oral examination at the earliest. As regards

the promotion by limited competitive examination (25%), it is stated

that no candidate from the feeder cadre of Civil Judge (Senior Division)

is eligible for consideration against the said quota.

Regarding

promotee quota (50%) in the said cadre, it

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C.A. No. 1867/2006..Cond...

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is stated that for the year 2007, there were six vacancies and the said

vacancies have been filled up. For the year, 2008 there are 16 vacancies

and the process to fill up the said vacancies is on. However, there is no

indication as to what steps have so far been taken in this regard.

In the cadre of Civil Judge (Senior Division), for the year 2007

all the vacancies are stated to have been filled up. For the year 2008,

no details in regard to the vacancy position have been given in the

affidavit. In the cadre of Civil Judge (Junior Division), it is stated that

as on March 31, 2007, there were 36 vacancies. However, taking into

account the period of training that the selected Munsiff Magistrates
(Civil Judges, Junior Division) may be required to undergo, 85

vacancies were anticipated and notification was issued on February 15,

2007 accordingly. It is further stated that preliminary examination was conducted on June 17, 2007 and after the written examination and the process of evaluation of the answer sheets, the results were finally published on March 11, 2008 when 212 candidates were selected in terms of Rules 14 to 17 of the KS&SSR, 1958, which are stated to be applicable in the case of recruitment of Munsiff Magistrates. It is further stated that 85 vacancies have since been notified, taking into account the vacancies that

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C.A. No. 1867/2006..Cond...

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are existing and the vacancies that are likely to arise in the near future. The High Court has, however, forwarded the list of 212 candidates to the Government to avoid the risk of resorting to special recruitment, keeping the vacancies unfilled in the event of non-availability of the candidates from different communities eligible for appointment under Rules 14 to 17 of KS&SSR, 1958.

We have heard Mr. T.L.V. Iyer, learned senior counsel appearing for the High Court. We are of the view that the affidavit has given rise to certain doubts which need to be clarified by the High Court. For instance no information is forthcoming regarding the cadre strength at difference levels of the subordinate judiciary. It is also not clear as to what criteria is adopted to determine the future vacancies, particularly, in the cadre of Civil Judge (Junior Division).

Under the circumstances, we direct the High Court to file a further affidavit and furnish information regarding the cadre strength of the subordinate judiciary; when was the cadre strength determined and on what basis, as also the cut-off dates for filling up of all the vacancies. Steps taken for filling up of the existing vacancies in the cadre of District Judges as well as the Civil Judge (Senior Division) for the year 2008 shall also be indicated in the

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affidavit. Let the requisite affidavit be filed within five weeks. A copy of the relevant Rules shall also be filed with the affidavit.

List on December 02, 2008.

Personal appearance of the Registrar General of the High Court of Kerala is dispensed with for the time being.

State of Jammu & Kashmir:

Pursuant to our order dated 29th September, 2008 an affidavit on behalf of the High Court of Jammu and Kashmir has been handed over in Court, wherein it is stated that on 11th October, 2008, the Full Court of the High Court has approved the draft of the Jammu and Kashmir Higher Judicial Service Rules and the said draft Rules have been forwarded to the State Government for approval on 11th October, 2008. A copy of the draft Rules has also been annexed with the affidavit.

In so far as the vacancy position at different levels of the Subordinate Judiciary is concerned, it appears that no effective steps have so far been taken to fill up six posts of District Judges by direct recruitment. Perhaps the High Court was awaiting the amendment of the Rules, which has now been done. The

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existing vacancies in this Cadre for the year 2008 are now stated to be nine. Since the Rules have now been amended, let the State Government accord its approval as expeditiously as possible and in any case not later than four months from today. We have no doubt that on issue of Notification of the said rules, the High Court will take steps to fill up the vacancies expeditiously. As regards the recruitment of Civil Judge (Junior Division), it is stated that for the year 2008 by now there are 35 vacancies for which the High Court has already sent requisition to the Jammu

and Kashmir Public Service Commission for recruitment. Let the State file an affidavit indicating the steps taken for filling up the said vacancies. The affidavit shall be filed within four weeks from today.

I.A.No.51:

The application for impleadment on behalf of the State of Andhra Pradesh is allowed.

I.A.No.52:

Issue notice.

Mr. Y. Raja Gopala Rao, learned advocate appears and waives service of notice on behalf of the High Court

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C.A. No. 1867/2006..Cond...

:6:

of Andhra Pradesh and seeks time to file reply affidavit. Let the needful be done within four weeks.

I.A...../2008 (State of Haryana):

I.A. is allowed.

.....J
[D.K. JAIN]

.....J
[V.S. SIRPURKAR]

NEW DELHI,
OCTOBER 21, 2008.