

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1867 OF 2006

MALIK MAZHAR SULTAN AND ANR.
VERSUS

Appellant (s)

U.P. PUBLIC SERVICE COMMISSION & ORS

Respondent(s)

(With appln. for clarification of Court's order dated 4.1.2007 and extension of time schedule and modification of orders dated 4.1.2007 and 3.3.2008 and directions and with appln. for exemption from filing time schedule on behalf of High Court of Himachal Pradesh and office report)
[FOR FURTHER DIRECTIONS]

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)

SLP(C) NO. 14424 OF 2008
(With prayer for interim relief and office report)

Date: 24/07/2008 These matters were called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE C.K. THAKKER
HON'BLE MR. JUSTICE D.K.JAIN

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

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

in SLP.14424/08 Mr. Pratap Venugopal, Adv.
Ms. Surekha Raman, Adv.
Ms. Deepti, Adv.
Mr. Dileep P., Adv.
for M/s KJ John & Co.

..2/-

C.A. 1867/2006Etc....Contd...(It. 2, Ct.8, Dt. 24/7/2008)

:2:

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

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

For intervenor Mr. Arvind Kr. Tiwary, Adv.
Mr. Manish Kumar, Adv.

Mr. Mukesh Kuamr Tripathi, Adv.
Mr. Ranjan Dwivedi, Adv.

Mr. P.H. Parekh, Sr.Adv.
Mr. Ajay Kr. Jha, Adv.
Ms. Mary Mithy, Adv.
Ms. Diksha Rai, 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.

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. A. Sharan, ASG
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.
Mr. Sanjay V. Kharde, Adv.
Mr. Arun Pednekar, Adv.
Ms. Asha G. Nair, Adv.

For Maharashtra

..3/-

C.A. 1867/2006Etc....Contd...(It. 2, Ct.8, Dt. 24/7/2008)

:3:

Mr. Swetaketu Mishra, Adv.
Mrs.S.R. Mahanty, Adv.

For Bombay H Court Mr. Aniruddha P Mayee, Adv.

For Bihar

Mr. Rakesh Dwivedi, Sr. Adv.
Mr.Gopal Singh, Adv.
Mr. Manish Kumar, Adv.
Ms. Vimla Sinha, Adv.

For Tripura

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

For West Bengal

Mr. Bhaskar Gupta, Sr. Adv.
Ms. Tara Chandra Sharma, Adv.
Ms. Neelam Sharma, Adv.

For Arunachal Mr. Anil Shrivastav, Adv.
Pradesh Mr. Rituraj, Adv.

For U.P. Mr. Yunus Malik, Adv.
Mr. Shrish Kumar Mishra, Adv.
Mr. G.V. Rao, Adv. (NP)

Mr. P.I. Jose, Adv.
Mr. Anupam Mishra, Adv.

Mr. Pradeep Misra, Adv.

Mr. Radha Shyam Jena, Adv.

Mr. Ashok Mathur, Adv.

For Uttaranchal Mr. Abhay Prakash Sahay, Adv.
Ms. Rachana Srivastava, Adv.

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

For Manipur Mr. KH Nobin Singh, Adv.
Mr. David Rao, Adv.
Mr. S Biswajit Meitei, Adv.
Mr. Vijay Prakash, Adv.

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

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C.A. 1867/2006Etc....Contd...(It. 2, Ct.8, Dt. 24/7/2008)

:4:

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

Mr. Vishnu Sharma, Adv.
Mr. Anupama Sharma, Adv.

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

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

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

For Nagaland Mr. U Hazarika, Adv.
Mr. Satya Mitra, Adv.
Ms. Sumita Hazarika, Adv.

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

For Goa Ms. A Subhashini, Adv.

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

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

Calcutta High Court Mr. Jaideep Gupta, Sr.Adv.
Mr. G.S. Chatterjee, Adv.
Mr. Raja Chatterjee, Adv.
Mr. Sachin Das, Adv.
For Chandigarh Mr. Nidhesh Gupta, Adv.
High Court Mr. Tarun Gupta, Adv.
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., Advs.
For NCT Delhi Mr. Wasim A Qadri, Adv.
Mr. D.S. Mahra, Adv.

..5/-

C.A. 1867/2006Etc....Contd...(It. 2, Ct.8, Dt. 24/7/2008)

:5:

Ms. Kamini Jaiswal, Adv.
Mr. Saurav Datta, Adv.
Mr. Ejaz Maqbool, Adv.
for Respondent: Ms. S. Janani, Adv.
Mr. Deepak Goel, Adv.
For Assam Mr. Riku Sarma, Adv.
for M/s Corporate Law Group, Advs.
For Kerala Mr. G Prakash, Adv.
For Punjab 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.
For Uttar Pradesh Dr. R.G. Padia, Sr. Adv.
Mr. Pradeep Misra, Adv.
Mr. T Mahipal, Adv.
For Chhattisgarh Mr. Atul Jha, Adv.
Mr. D.K. Sinha, Adv.
For Jharkhand Mr. B.B. Singh, Adv.
Mr. Rajesh Patnak, Adv.
For Meghalaya Mr. Ranjan Mukherjee, Adv.
Mr. S.C. Ghosh, Adv.
For J & K Mr. Anis Suharawardy, Adv.
For Gujarat Ms. Hemantika Wahi, Adv.
Ms. Pinky Behra, Adv.
Ms. Jesal, Adv.
Ms. K Enatoli Sema, Adv.
For Uttarakhand Ms. Rachna Srivastava.
Mr.Noorullaha, Adv.

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

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C.A. 1867/2006Etc....Contd...(It. 2, Ct.8, Dt. 24/7/2008)

:6:

Mrs. D Bharathi Reddy, Adv.

Mr. Kamal Mohan Gupta, Adv.

Mr. Prashant Chaudhary, Adv.

UPON hearing counsel the Court made the following
ORDER

I.A. Nos. 35, 22, 37 & 38, IAs. Nos..../2008-applications
for intervention/directions, 36, 33, are disposed of in terms of
the signed order.

SLP(C) Nos. 14424/2008 :

Issue notice.

Let reply affidavit be filed within a period of four weeks.

This special leave petition be delinked and listed
thereafter.

List Rest of the matter on September 1, 2008.

If the affidavits are not filed either by any of the High
Courts or by the States, the Registrar General of such High Court
and Secretary (Law) of the concerned State remain present at the
next date of hearing along with the relevant record. We would
request all the Chief Justices to personally look into the matter
and ensure that the order is complied with.

[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

I.A.No.35 :

We have heard Mr. Vijay Hansaria, learned amicus curiae and learned counsel for some of the States and the High Courts.

By a detailed order dated January 4, 2007, certain directions were issued by this court for filling up the vacancies in the Cadre of the District Judges and Civil Judges (Senior Division and Junior Division).

In order to ensure that timely selection and appointments are made, Chief Justice of each High Court was requested to constitute a Committee of Judges to monitor the selection process. It was also observed that a special Cell in the name of "selection and appointment" shall be constituted in the High Court and the Registrar will assist the said Committee. It was further directed that the Registrar of the said Committee shall send to the Registrar General of this Court by 31st January every year report as regards the filling up of vacancies with copies to Minister for Law and Justice in the Central Government and the Law Minister of the concerned State.

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We are constrained to observe that most of the High Courts have failed to send the reports.

So far as the High Court of Allahabad is concerned, unfortunately till today no such report has been filed. We are also not aware whether as per the abovesaid order the Minister for Law and Justice of the concerned State has been informed about the progress in the selections or not. Let the requisite information be filed on affidavit within a period of four weeks from today.

I.A.No.35 has been filed by the Allahabad High Court seeking extension of time schedule for declaration of final select list. In paragraphs 12 and 13 it is stated that written examinations for the Uttar Pradesh Higher Judicial Service Recruitment, 2007 and 25% direct recruitment was held on 23 rd, 24th and 25th November, 2007 and the suitability test for promotion under 50% quota (promotion) was held on 10th February, 2008. It is further pointed out that as per the orders of this Court examinations have already been held and the administrative committee in its meeting has resolved that the result may be placed before the Full Court.

Let further action in the matter be taken within a period of four weeks.

I.A. No. 35 is accordingly disposed of.

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IA.No.22:

Our order dated January 4, 2008 is clear and no further orders are necessary. Application is disposed of.

SLP(C)No.14424/08:

Issue notice.

Let reply affidavit be filed within a period of four weeks.

This special leave petition be delinked and listed thereafter separately.

State/Bombay High Court :

It appears that adequate steps have been taken by the High Court with regard to vacancies in the State of Maharashtra as also State of Goa. It may, however, be noted that affidavit on behalf of the State of Goa has been filed by an Under Secretary, (Establishment), Law Department. When attention of learned counsel for the State is invited on this aspect, it is stated that for quite some time, the Secretary-cum-Remembrancer of Legal Affairs was not there. The learned counsel assures that a fresh affidavit with requisite information would be filed by the Secretary-cum-Remembrancer of Legal Affairs. Let such affidavit be filed within four weeks.

I.A. NO. 34 :

This I.A. is filed by the State of West Bengal. Notice therein was issued on May 14, 2008 by making it returnable

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in the first week of September, 2008. Let on the returnable date, interim application be taken on Board for further hearing.

It is stated that a select list of 96 candidates has already been prepared by the Public Service Commission and forwarded to the High Court. However, the High Court has requested the State to fill up only 80 vacancies because of paucity of Court Rooms. Let all the 96 selected candidates be appointed within a period of four weeks, on completion of other necessary formalities.

I.A. Nos. 37 & 38 &

I.A. Nos...../2008 (for intervention directions)

Liberty is granted to the applicants to approach the High Court for appropriate relief, particularly, in the light of the order dated March 14, 2008 passed in W.P. 21558 (W) of 2007. I.A Nos. 37 & 38 are disposed of accordingly.

I.A Nos...../2008 (Applications for intervention/directions) are disposed of in view of order passed in I.A. Nos. 37 & 38.

State/Delhi High Court :

No report in terms of orders dated 4th January, 2007 and 3rd March, 2008 has been filed. Learned counsel for the High Court, however, states that amendments to the Delhi Judicial Service and Delhi Higher Judicial Service Rules were forwarded to the State Government in the years 2003 and 2005 respectively but these have not been gazetted so far. No response is filed by the State Government.

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Let appropriate action be taken by the State of Delhi. Affidavits be filed by both the High Court as also by the State within two weeks in regard to the aforementioned recruitments.

State/High Court of Gujarat :

An affidavit in reply is filed by the Registrar General of the High Court of Gujarat wherein it is stated that the process is almost complete for all existing vacancies. Let final exercise be undertaken as early as possible, preferably within a period of four weeks. Further affidavit be filed within that period.

State/High Court of Guwahati :

We have heard learned counsel for the High Court of Guwahati as also for the State Governments of Seven States.

Learned counsel for some of the States in the region submitted that delay in recruitment was on account of on going exercise in regard to separation of Judiciary from Executive. Since the issue is being looked into by another bench, we express no opinion in the present proceedings. But at the same time, it is expected that those vacancies which are yet to be filled must be filled in immediately. Let appropriate steps be taken within four weeks.

I.A. No. 36 :

Prayer (a) is granted. Time Schedule is extended upto September 30, 2008. I.A. is disposed of accordingly.

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I.A. No. 40 :

List after four weeks.

State/High Court of Madhya Pradesh:

We have been taken through I.A.No..../08 in Writ Petition © No.289/07. It was, however, stated that now the stay which had been granted on June 4, 2007 has been vacated. It is, therefore, stated that an appropriate action for filling up vacancies in the Cadre of District Judges will be taken immediately. We find that in the lower judiciary, out of 240 vacancies of Civil Judge (Junior Division) 190 vacancies only have been filled. Let further affidavit be filed within a period of four weeks by the High Court as well as by the State, stating, the future course of action in this behalf.

I.A.No.33 filed by State of Patna:

We have perused the averments made in I.A.33 filed by the State Government. Our attention has also been invited to a letter dated January 31, 2008 by the Registrar (General) of the High Court of Judicature at Patna to the Registrar General of this Court. In our opinion, it would be proper and in the interest of

the institution if the State Government and the High Court of Patna resolve the controversy, sought to be raised in this I.A., by mutual discussion at the earliest and take steps for filing up the vacancies in all Cadres. Let affidavits be filed within four weeks by the High Court as well as by the State Government.

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I.A.No.33 is disposed of.

State/High Court of Punjab and Haryana:

It is stated that the affidavits showing the latest status will be filed within a period of four weeks. Ordered accordingly.

State/High Court of Orissa:

Let affidavits be filed within a period of four weeks by the State of Orissa as well as by the High Court.

As noted above some of the High Courts have not filed progress reports at all. Similarly some of the States have also not filed affidavits stating whether any matter pertaining to the recruitments is pending with them and if so what steps are being taken to expedite the filling up of all existing vacancies. We deem it appropriate to direct all the High Courts as well as the State Governments to place on record the requisite information in pursuance of our order dated January 4, 2007 and subsequent orders on affidavit, in the following format:

IN THE SUPREME COURT OF INDIA
CIVIL APPEAL NO. 1867 OF 2006

Malik Mazhar Sultan Vs. UP Public Service Commission
Status regarding filling of vacancies in Sub-ordinate Judiciary
pursuant order dated 4.1.2007

Name of High Court _____

Name of State _____

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District Judge

Vacancy : (mention number of vacant posts as on 31.3.2007 calculated in terms of order dated 4.1.2007)

(i) Direct recruitment

Selection : (mention number of persons selected as on

-25% posts

15.9.2007 or on any subsequent date. If selection for all posts not made, reason thereof)

Appointment: (mention number of persons appointed as on 30.9.2007 or on any subsequent date. If appointment for all vacant posts not made, reason thereof)

Vacancy remained unfilled: (mention number of posts remained vacant and reason thereof)

Vacancy: (mention number of vacant pots as on 31.3.2008 and steps taken for filing the same so far)

District Judge

Vacancy : (mention number of vacant posts as on 31.3.2007 calculated in terms of order dated 4.1.2007)

(ii) Limited Competitive Examination -25% posts

Selection : (mention number of persons selected as on 15.9.2007 or on any subsequent date. If selection for all posts not made, reason thereof)
Appointment: (mention number of persons appointed as on 30.9.2007 or on any subsequent date. If appointment for all vacant posts not made, reason thereof)
Vacancy remained unfilled: (mention number of posts remained vacant and reason thereof)
Vacancy: (mention number of vacant pots as on 31.3.2008 and steps taken for filing the same so far)

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: 9:

District Judge

Vacancy : (mention number of vacant posts as on 31.3.2007 calculated in terms of order dated 4.1.2007)

(iii) Promotion -50% posts

Selection : (mention number of persons selected as on 31.8.2007 or on any subsequent date. If selection for all posts not made, reason thereof)
Appointment: (mention number of persons appointed as on 30.9.2007 or on any subsequent date. If appointment for all vacant posts not made, reason thereof)
Vacancy remained unfilled: (mention number of posts remained vacant and reason thereof)
Vacancy: (mention number of vacant pots as on 31.3.2008 and steps taken for filing the same so far)

Civil Judge (Sr.Div)

Vacancy : (mention number of vacant posts as on 31.3.2007 calculated in terms of order dated 4.1.2007)
Selection : (mention number of persons selected as on 15.9.2007 or on any subsequent date. If selection for all posts not made, reason thereof)
Appointment: (mention number of persons appointed as on 30.9.2007 or on any subsequent date. If appointment for all vacant posts not made, reason thereof)
Vacancy remained unfilled: (mention number of posts remained vacant and reason thereof)
Vacancy: (mention number of vacant pots as on 31.3.2008 and steps taken for filing the same so far)

Civil Judge (Jr.Div)

Vacancy : (mention number of vacant posts as on 31.3.2007 calculated in terms of order dated 4.1.2007)
Selection : (mention number of persons selected as on 1.11.2007 or on any subsequent date. If selection for all posts not made, reason thereof)
Appointment: (mention number of persons appointed as on 1.12.2007 or on any subsequent date. If appointment for all vacant posts not made, reason thereof)
Vacancy remained unfilled: (mention number of posts remained vacant and reason thereof)
Vacancy: (mention number of vacant pots as on 15.1.2008 and steps taken for filing the same so far)

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If the affidavits are not filed either by any of the High Courts or by the States, the Registrar General of such High Court and Secretary (Law) of the concerned State remain present at the next date of hearing along with the relevant record. We would request all the Chief Justices to personally look into the matter

and ensure that the order is complied with.

List on September 1, 2008.

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

.....J
[D.K. JAIN]
NEW DELHI,
JULY 24, 2008.