

ITEM NO.13

COURT NO.1

SECTION III-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1867/2006

MALIK MAZHAR SULTAN & ANR.

Appellant(s)

VERSUS

U.P. PUBLIC SERVICE COMMISSION
THROUGH ITS SECRETARY & ORS.

Respondent(s)

(Counsel for the High Courts/States- Gujarat- Mr. Nipa Rawal, Ms. Swati Ghildiyal, Himachal Pradesh- Mr. Ashok Mathur, Mr. Abhimanyu Jhamba, Jammu and Kashmir- Mr. Achal Sethi, Mr. SN Terdal, Mr. Shailesh Mediyal, Jharkhand- Mr. Krishanand Pandeya, Ms. Tulika Mukherjee, Karnataka- Mr. V. Raghupati, Kerala- Mr. T.N.G. Nair, Mr. Nishe Rajan and Mr. K V Vishwanathan (A.C.) require to appear on 09-02-2023

(IA No. 152/2016 - APPLICATION FOR DIRECTIONS IA No. 71428/2020 - APPLICATION FOR PERMISSION IA No. 153/2017 - APPLICATION FOR PERMISSION FOR VARIATION IN TIME IA No. 110757/2020 - APPROPRIATE ORDERS/DIRECTIONS IA No. 177295/2018 - APPROPRIATE ORDERS/DIRECTIONS IA No. 6328/2020 - APPROPRIATE ORDERS/DIRECTIONS IA No. 143127/2021 - APPROPRIATE ORDERS/DIRECTIONS IA No. 26866/2023 - APPROPRIATE ORDERS/DIRECTIONS IA No. 108508/2020 - APPROPRIATE ORDERS/DIRECTIONS IA No. 103233/2020 - APPROPRIATE ORDERS/DIRECTIONS IA No. 53466/2022 - APPROPRIATE ORDERS/DIRECTIONS IA No. 117790/2017 - APPROPRIATE ORDERS/DIRECTIONS IA No. 99519/2020 - APPROPRIATE ORDERS/DIRECTIONS IA No. 134427/2020 - APPROPRIATE ORDERS/DIRECTIONS IA No. 35106/2022 - APPROPRIATE ORDERS/DIRECTIONS IA No. 108486/2019 - CLARIFICATION/DIRECTION IA No. 23882/2020 - CLARIFICATION/DIRECTION IA No. 157310/2021 - CLARIFICATION/DIRECTION IA No. 148352/2019 - CLARIFICATION/DIRECTION IA No. 139131/2019 - CLARIFICATION/DIRECTION IA No. 26524/2023 - CLARIFICATION/DIRECTION IA No. 126264/2019 - CLARIFICATION/DIRECTION IA No. 186742/2019 - CLARIFICATION/DIRECTION IA No. 124030/2020 - CLARIFICATION/DIRECTION IA No. 4970/2022 - CLARIFICATION/DIRECTION IA No. 190483/2022 - EXEMPTION FROM FILING AFFIDAVIT IA No. 97891/2019 - EXEMPTION FROM FILING O.T. IA No. 139136/2019 - EXEMPTION FROM FILING O.T. IA No. 31928/2019 - EXEMPTION FROM FILING O.T. IA No. 139037/2019 - EXEMPTION FROM FILING O.T. IA No. 31/2019 - EXEMPTION FROM FILING O.T. IA No. 153897/2019 - EXTENSION OF TIME IA No. 200525/2022 - EXTENSION OF TIME IA No. 13841/2020 - EXTENSION OF TIME IA No. 148502/2021 - EXTENSION OF TIME IA No. 190482/2022 - EXTENSION OF TIME IA No. 70330/2018 - EXTENSION OF TIME IA No. 81776/2019 - EXTENSION OF TIME IA No. 70324/2018 - EXTENSION OF TIME IA No. 135200/2020 - EXTENSION OF TIME IA No. 29839/2019 - EXTENSION OF TIME IA No. 187810/2019 - EXTENSION OF TIME IA No. 99499/2020 - EXTENSION OF

TIME IA No. 183142/2018 - INTERVENTION APPLICATION IA
No.178581/2018 - INTERVENTION APPLICATION IA No. 108485/2019 -
INTERVENTION APPLICATION IA No. 37616/2021 - INTERVENTION
APPLICATION IA No. 26516/2023 - INTERVENTION APPLICATION IA
No.6643/2022 - INTERVENTION APPLICATION IA No. 26101/2023 -
INTERVENTION APPLICATION IA No. 186082/2018 - INTERVENTION
APPLICATION IA No. 113777/2019 - INTERVENTION APPLICATION IA
No.24700/2023 - INTERVENTION APPLICATION IA No. 124029/2020 -
INTERVENTION/IMPLEADMENT IA No. 6324/2020 - INTERVENTION/
IMPLEADMENT IA No. 139035/2019 - INTERVENTION/IMPLEADMENT IA
No.134414/2020 - INTERVENTION/IMPLEADMENT IA No. 186736/2019 -
INTERVENTION/IMPLEADMENT IA No. 109148/2020 - MODIFICATION IA
No.190106/2019 - MODIFICATION OF COURT ORDER IA No. 81229/2022 -
PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SMW (C) No. 2/2018 (PIL-W)
 (IA No. 54188/2020 - APPROPRIATE ORDERS/DIRECTIONS IA No.46287/2020
 - APPROPRIATE ORDERS/DIRECTIONS IA No. 135297/2020 - APPROPRIATE
 ORDERS/DIRECTIONS IA No. 118504/2020 - APPROPRIATE ORDERS/
 DIRECTIONS IA No. 46288/2020 - EXEMPTION FROM FILING O.T. IA
 No.111743/2019 - EXEMPTION FROM FILING O.T. IA No. 65608/2019 -
 EXEMPTION FROM FILING O.T. IA No. 6713/2019 - EXEMPTION FROM FILING
 O.T. IA No. 65607/2019 - EXTENSION OF TIME IA No. 77659/2019 -
 INTERVENTION APPLICATION)

SMW (C) No. 1/2017 (PIL-W)
 (MR. ARVIND DATAR, SR. ADV (A.C.))

Date : 08-02-2023 These matters were called on for hearing today.

CORAM : HON'BLE THE CHIEF JUSTICE
 HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
 HON'BLE MR. JUSTICE J.B. PARDIWALA

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**UPON hearing the counsel the Court made the following
O R D E R**

- 1 The Amicus Curiae has submitted a note after circulating it to all concerned parties including the State of Bihar.
- 2 The statement which is tendered in the compilation of documents furnished by the Union of India indicates the grants released under the Centrally Sponsored Scheme for creating infrastrucutral facilities for the judiciary in the case of six States and two Union Territories.
- 3 As regards the State of Bihar, there has been no release of funds in 2021-2022 and 2022-23. Ms Aishwarya Bhati, Additional Solicitor General, states that the problem has occurred because of the failure of the State of Bihar to submit utilisation certificates.

- 4 A total of 25 schemes envisaging the construction of 163 Court Halls and 199 residential quarters are being implemented in the State under the CSS scheme. These schemes are likely to be completed by March 2023. A sum of Rs 128.83 crores including the Central and State share has been made available of which an amount of Rs 63.34 crores has been utilised. An amount of Rs 75 crores was tentatively allotted to the State of Bihar for financial year 2022-23. Though the State of Bihar was required to submit utilisation certificates representing at least 75% of Rs 128.83 crores which works out to Rs 96 crores approximately, the utilisation certificates were not submitted. Out of the amount of Rs. 96 crores, an amount of Rs 63.34 crores has been expended whereas requisition for an additional amount of Rs 19 crores has been received by the Building Construction Department. The State of Bihar has indicated that it would make every endeavour to submit utilisation certificates for an amount representing 75% of Rs 128 crores by 20 March 2023.
- 4 The Infrastructure Committee of the Patna High Court has approved 32 new schemes valued at approximately Rs 300 crores under the Centrally Sponsored Scheme which would result in addition of 98 court halls and 205 residential units. Similarly, there is a new project under the State Sector Scheme valued at Rs 19.21 crores which would result in five additional court rooms and 60 residential quarters. The State has approved the project outlay of Rs 36.15 crores for 2023-24 for the State Sponsored Schemes.

Having regard to the above factual position, the following directions are issued :

- (i) The State of Bihar shall ensure that all time lines are met for the construction of Court Halls/residential quarters. The Law Secretary shall conduct a review meeting on or before 18 March 2023 and furnish a report to the Amicus Curiae in regard to the progress of work by 20 March 2023;

- (ii) The State of Bihar shall submit the utilisation certificates in respect of the work which is carried out until 18 March 2023 latest by 20 March 2023;
- (iii) The Union of India shall, upon submission of the utilisation certificates, consider the request of the State of Bihar for allocation of the remainder within the tentatively allocated amount of Rs 75 crores in order to ensure that work can begin without any further delay. This exercise shall be carried out before the end of the financial year and the allocable amount shall be transferred to the SNA account.
- (iv) The State of Bihar shall take steps for expeditious award of tenders in relation to the 32 new projects under the CSS Scheme. Immediately after the finalisation of tender, a status report shall be furnished to the Amicus Curiae by 20 March 2023. The State of Bihar shall also submit a status report regarding the ongoing schemes under the State Sector Schemes by taking all steps for pursuing tenders and commencement of work in the financial year 2023-24;
- (v) The non-release of funds to the State of Bihar for 2021-22 and 2022-23 is a consequence of the failure to submit utilisation certificates. The State of Bihar shall, before the end of the financial year, take stock of the reasons why such a situation came to pass and an SOP shall be drawn up in consultation with the Law Secretary and the Registrar General of the High Court as well as the Finance Secretary so as to ensure that in future the utilisation certificates are submitted on time to meet the requirements of the Centrally Sponsored Schemes. A copy of the SOP shall be made available to the Amicus Curiae and shall be placed on the record of these proceedings.

Land Requirements

5 The land requirements for the State Judiciary at seven locations in five districts of Bihar have been highlighted. In order to facilitate the allocation of lands, it is directed that the progress regarding availability of NoCs or, as the case may be, identification of new lands shall be explored in the five districts. The tabular chart in the note which has been tendered by the Amicus Curiae is set out below:

"Sl. No	District/Sub Division	Requirement	Status as of 16.01.2023	Decision taken on 04.02.2023
1	Samastipur/Rosera	3 acres of land for residential accommodation for Judicial Officers	NOC is required from BCD	NOC would be granted by BCD by Monday i.e. 06.02.2023
2	Buxar/Dumraon	6 acres of land required for court complex/residential complex	NOC required from Animal Husbandry Department	Entire land records along with proposal of 10 acres of fresh land be forwarded to the Addl. Chief Secretary for pursuing the matter at the highest level.
3	Begusari/Teghra	6 acres of land required for court complex/residential complex	The land identified is not suitable. Fresh land would have to be identified.	Proposal of fresh 6 acres of land stands forwarded, but proposal of another 50 decimals of land also be sent within 3 days for Lawyers Hall.
4	Begusarai/Balia	6 acres of land required for court complex/residential complex	Land has to be identified.	Proposal of fresh 6 acres of land stands forwarded, but proposal of another 50 decimals of

				land also be sent within 3 days for Lawyers Hall.
5	West Champaran/ Narkatiyaganj	3 acres of land required for court complex	NOC of Rural Development Department is awaited	NOC would be granted by Rural Development Department within the next 10 days.
6	Newadah	2 acres of land required for expansion of civil court building	NOC of Bihar Road Transport Corporation is required.	Land records to the Law Secretary, Transport Secretary and Addl. Chief Secretary within 15 days.
7	Newadah/ Rajauli	6 acres of land required for court complex/residential complex	NOC of Water Resources Development Department is required.	Matter for inter-departmental transfer of 6.5 acres of land would be pursued at the level of Addl. Chief Secretary (Revenue and Land Reforms) and NOC would be obtained from the WRD department as soon as possible."

- 6 The progress regarding the availability of NoCs or identification of new land be explored in the five districts. The updated position shall be furnished to the Amicus Curiae by the Law Secretary to the State of Bihar by 20 March 2023.

Staff of the District Judiciary

- 7 The Patna High Court has made a request to the State Government for creation of fresh posts, namely :

"Sr. No.	Name of post	No. of proposed post for creation	Present working strength	Request to create required post vide court's letter
1	Data Entry Operator	1643	340	49531 Dt 20.08.2022
2	Computer Assitant cum System Officer	197	32	25188 Dt 27.04.2022
3	Programmer	80	00	
4	Assitant Programmer	154	00	
5	Programme Officer cum Senior Programmer	37	00	
6	Driver	369	171	71506 Dt 29.11.2022"

- 8 The State Government shall expedite the examination of the request made by the High Court for the creation of new posts and intimate the Amicus Curiae and this Court of the decision which was taken by 20 March 2023.

Ongoing recruitment for the posts of judicial officers

- 9 As against a sanctioned strength of 420 posts in the Civil Judge (Senior Division) Cadre, there are 187 vacancies. Though 220 vacancies were notified for 2020-21, 81 officers are eligible for consideration. The matter is pending before the Selection and Appointment Committee of the High Court which has called for certain details. The Registrar General of the High Court has stated that the entire process shall be completed within a period of one month. We request the High Court to conclude the exercise within the stipulated time.

Promotion quota of District Judges

- 10 As against the sanctioned strength of 462 vacancies there are 168 vacancies. 70 vacancies were advertised for 2020-21 but only 50 officers were eligible for consideration out of whom four have either retired or have been compulsorily

retired. The matter is pending before the Selection and Appointment Committee of the High Court which has resolved to call 46 candidates within the zone of consideration in an interview. The Acting Chief Justice of the High Court may conveniently constitute the interview board as early as possible for conducting the *viva voce* for the eligible candidates so that the process can be completed and necessary orders for promotion can be passed within a period of one month.

District Judge (Limited Competitive Examination)

- 11 As against the sanctioned strength of 71 posts there are 16 vacancies. 18 vacancies were notified for 2020-21 and three officers were successful in the limited competitive examination. Their names are still to be recommended to the State Government. This exercise shall be completed within a period of two weeks. The State Government shall thereafter process the recommendation and complete the process on or before 15 March, 2023.

District Judge (Direct Recruitment Quota)

- 12 As against a sanctioned strength of 178 posts, there are 44 vacancies. On 8 December 2021, 18 vacancies as on 31 March 2021 were advertised. Though a preliminary and main examination was held, it appears that there was an error in the model answers for one question in the preliminary examination. On its judicial side, the Patna High Court passed an order dated 31 January 2023 to take a fresh examination for 28 persons who became eligible to take the main written test. The written test is scheduled for 19 March 2023. The rest of the process consequent thereto shall be completed within a period of three months after the holding of the written test.

Fresh Recruitment of Judicial Officers

- 13 155 vacancies for the post of Civil Judge (Junior Division) as on 31 March 2021, clubbed with the vacancies as on 31 March 2022, have been identified including seven carried forward vacancies. The Patna High Court requested the Bihar Public Service Commission¹ to issue an advertisement. The BPSC, by letter dated 1 February 2023, requested the General Administration Department to approve the draft advertisement under intimation to the Patna High Court. It appears that the BPSC has proposed certain amendments.
- 14 The General Administration Department of the State Government and the Patna High Court shall examine the suggestions made by the BPSC and take a final decision within two weeks. Thereafter, the BPSC shall proceed with the advertisement based on the decision taken by the General Administration Department and the Patna High Court on the administrative side within two weeks.
- 15 One of the suggestions which has emanated from Mr Gaurav Agarwal, amicus curiae is that the vacancies as on 31 March 2022 and 31 March 2023 can be clubbed together so that they can be filled up in one and the same process. The vacancies as on 31 March 2022 have been provisionally determined to be as follows :

Sr No	Cadre	Vacancies as on 31.03.2022
1	District Judge (Entry Level), Direct from Bar	3
2	District Judge (Entry Level), through Limited Competitive Examination	16
3	District Judge (Entry Level) by promotion	57
4	Civil Judge (Senior Division)	200

- 16 The above table indicates that the vacancies in the District Judges cadre for
1 “BPSC”

2021-22 are limited. Hence the High Court may consider the feasibility of determining the vacancies for 2022-23 and subject to obtaining the approval of the Standing Committee and the Selection and Appointment Committee, the vacancies for 2021-22 and 2022-23 may be clubbed for which the process of recruitment may be commenced. The High Court shall consider this aspect within two weeks and a report may be submitted to this Court on 20 March 2023.

- 17 The pendency of these proceedings shall not restrain the High Court from commencing the recruitment process.
- 18 List the Appeal and the Petitions on 9 February 2023.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(SAROJ KUMARI GAUR)
ASSISTANT REGISTRAR