

ITEM NO.8

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.1867/2006

MALIK MAZHAR SULTAN & ANR.

Appellant(s)

VERSUS

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

Respondent(s)

(With 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.6328/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.108508/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.53466/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No.103233/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.134427/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.35106/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No.177295/2018 - APPROPRIATE ORDERS/DIRECTIONS, IA No.99519/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.117790/2017 - APPROPRIATE ORDERS/DIRECTIONS, IA No.110757/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.143127/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No.108486/2019 - CLARIFICATION/DIRECTION, IA No.148352/2019 - CLARIFICATION/DIRECTION, IA No.139131/2019 - CLARIFICATION/DIRECTION, IA No.124030/2020 - CLARIFICATION/DIRECTION, IA No.4970/2022 - CLARIFICATION/DIRECTION, IA No.186742/2019 - CLARIFICATION/DIRECTION, IA No.157310/2021 - CLARIFICATION/DIRECTION, IA No.126264/2019 - CLARIFICATION/DIRECTION, IA No.23882/2020 - CLARIFICATION/DIRECTION, IA No.110342/2020 - CLARIFICATION/DIRECTION, IA No.190483/2022 - EXEMPTION FROM FILING AFFIDAVIT, IA No.139136/2019 - EXEMPTION FROM FILING O.T., IA No.97891/2019 - EXEMPTION FROM FILING O.T., IA No.139037/2019 - EXEMPTION FROM FILING O.T., IA No.31928/2019 - EXEMPTION FROM FILING O.T., IA No. 31/2019 - EXEMPTION FROM FILING O.T., IA No.153897/2019 - EXTENSION OF TIME, IA No.13841/2020 - EXTENSION OF TIME, IA No.135200/2020 - EXTENSION OF TIME, IA No.70330/2018 - EXTENSION OF TIME, IA No.81776/2019 - EXTENSION OF TIME, IA No.187810/2019 - EXTENSION OF TIME, IA No. 99499/2020 - EXTENSION OF TIME, IA No.70324/2018 - EXTENSION OF TIME, IA

No.200525/2022 - EXTENSION OF TIME, IA No.29839/2019 - EXTENSION OF TIME, IA No.148502/2021 - EXTENSION OF TIME, IA No.190482/2022 - EXTENSION OF TIME, IA No.37616/2021 - INTERVENTION APPLICATION, IA No.183142/2018 - INTERVENTION APPLICATION, IA No.178581/2018 - INTERVENTION APPLICATION, IA No.108485/2019 - INTERVENTION APPLICATION, IA No.6643/2022 - INTERVENTION APPLICATION, IA No.77756/2017 - INTERVENTION APPLICATION, IA No.186082/2018 - INTERVENTION APPLICATION, IA No.113777/2019 - INTERVENTION APPLICATION, IA No.6324/2020 - INTERVENTION/IMPLEADMENT, IA No.134414/2020 - INTERVENTION/IMPLEADMENT, IA No.124029/2020 - INTERVENTION/IMPLEADMENT, IA No.139035/2019 - 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, IA No.170253/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.39017/2020 - PERMISSION TO FILE APPLICATION FOR DIRECTION)

WITH S.M.W.(C) No.2/2018 (PIL-W)

(With IA No.118504/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.54188/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 46287/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.135297/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.6713/2019 - EXEMPTION FROM FILING O.T., 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.65607/2019 - EXTENSION OF TIME and IA No.77659/2019 - INTERVENTION APPLICATION)

S.M.W.(C) No.1/2017 (PIL-W)

Date : 19-01-2023 These matters were called on for hearing today.

CORAM :

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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 These proceedings have been listed for the first time after the dislocation which was caused due to the Covid-19 pandemic.
- 2 Mr Vijay Hansaria, senior counsel has filed a status report dated 17 January 2023 on behalf of the High Courts, namely, the High Courts of Orissa, Madhya Pradesh, Patna, Madras and Punjab & Haryana.
- 3 In order to facilitate monitoring by this Court of (i) the process of filling up of vacancies in the district judiciary across the States and the Union Territories; and (ii) the upgradation of infrastructure including all aspects relating to manpower and the disbursement and utilization of funds by the High Courts, we issue the following procedural directions:
 - (i) Mr Vijay Hansaria, *Amicus Curiae* is requested to address this Court on 2 February 2023 with reference to the High Courts of Odisha, Madhya Pradesh, Patna, Madras and Punjab & Haryana;
 - (ii) Mr K V Viswanathan, *Amicus Curiae* is requested to address this Court on 9 February 2023, with reference to the High Courts of Gujarat, Himachal Pradesh, Jammu & Kashmir, Jharkhand, Karnataka and Kerala;

- (iii) Mr Shyam Divan, *Amicus Curiae* is requested to address this Court on 17 February 2023 at 2 pm, with reference to the High Courts of Uttar Pradesh, Maharashtra, Goa, West Bengal, Chhattisgarh, Delhi and the North-Eastern States;
- (iv) Mr Gaurav Agrawal, *Amicus Curiae* is requested to address this Court on 24 February 2023 at 2 pm, with reference to the High Courts of Rajasthan, Sikkim, Telangana, Andhra Pradesh, Tripura and Uttarakhand.
- (v) This Court will consider the position in regard to the filling up of vacancies and the infrastructure, including manpower in the district judiciary within the administrative supervision of the above High Courts on the respective dates;
- (vi) The Registrars General of the above High Courts and the Law Secretaries of the above States shall, within a period of two weeks, furnish to the counsel assisting the *Amicus Curiae* an updated position in respect of both, the vacancies in the district judiciary, the steps which have been initiated to fill up the vacancies and the status of the recruitment process as well as the position in regard to infrastructure projects and manpower. The Registrars General and the Law Secretaries shall ensure compliance by furnishing the requisitioned information within the aforesaid period as of 31 December 2022;
- (vii) The Registrars General and the Law Secretaries shall remain present during the course of the proceedings through the video conferencing platform. The link for that purpose shall be made available to the Registrars General and the Law Secretaries;
- (viii) Within a period of one week, the Registrars General of the High

Courts and the Law Secretaries of the concerned States shall have an interaction among themselves so that a comprehensive position is made available to the *Amicus Curiae* and the Court; and

- (ix) The Standing Counsel appearing on behalf of the respective States shall remain present in the Court when the position in relation to those States is taken up by the respective *Amicus Curiae*.
- 4 Mr Vikramjit Banerjee, Additional Solicitor General shall be ready with his instructions on diverse facets to be debated upon during the course of the hearings. A senior representative of the Department of Justice is requested to remain present in the Court to assist the Additional Solicitor General.
- 5 Mr K Parameswar, counsel is requested to prepare a concept note for the setting up a web portal on which information can be updated by the High Courts and by the Law Secretaries of the States, both on the position of judicial appointments in the district judiciary and on infrastructure including manpower on the real time basis. The concept note may be prepared within a week and a copy be handed over to the Secretary General of the Supreme Court.
- 6 List the matters on 2 February 2023.

IA Nos 77756/2017, 39017/2020 and 170253/2019 In Civil Appeal No 1867 of 2006

- 1 The applicant appeared for the UP Higher Judicial Service Examination for recruitment year 2012. Both in terms of Rule 12 of the UP Higher Judicial Services Rules 1975 and the advertisement for recruitment, a candidate was required to be below the age of 45 years as on 1 January 2013. The applicant had crossed the prescribed age on the cut off date.

- 2 The validity of the cut off date stands upheld in the decision of this Court in ***Hirandra Kumar vs High Court of Judicature at Allahabad and Another*** [(2020) 17 SCC 401].
- 3 The grievance which has been set forth before the Court by Dr Menaka Guruswamy, senior counsel is that no examination was held for recruitment years 2010-2011. Hence, senior counsel urged that the applicant should not be made to suffer as a consequence of having crossed the age bar on the cut off date of 1 January 2013 which is applicable to recruitment year 2012.
- 4 Ms Preetika Dwivedi, counsel appearing on behalf of the High Court on the other hand has submitted that the vacancies for 2010 were reckoned when the recruitment was conducted for 2009.
- 5 As for the year 2011, Ms Dwivedi submits that the State government had banned recruitment, as a result of which the High Court had moved this Court for lifting the ban imposed by the State government. Hence, it has been submitted that it was as a result of the above backdrop that no recruitment took place in 2011.
- 6 Nearly ten years have elapsed since the year of recruitment in question. The persons who were recruited in the selection process for that recruitment year have already been in service for close to a decade. The applicant has crossed the age of 55 years as on date. Hence, apart from the fact that the applicant was not eligible in terms of the cut off date, it would not be possible to direct that he should be taken into service at this point of time.
- 7 For the above reasons, we decline to entertain the Interlocutory Applications, there being no error in the judgment of the Allahabad High Court.
- 8 The Interlocutory Applications are accordingly dismissed.

IA No 110342/2020 In Civil Appeal No 1867 of 2006

- 1 The High Court of Judicature at Allahabad has filed the Interlocutory Application for exempting it from the time schedule indicated in the order dated 4 January 2007 in **Malik Mazhar Sultan and Another vs UP Public Service Commission and Others** for recruitment of judicial officers in Uttar Pradesh for recruitment year 2020.
- 2 Ms Preetika Dwivedi, counsel appearing on behalf of the High Court states that (i) the recruitment could not be held on time in view of the onset of the Covid-19 pandemic; and (ii) the recruitment process has since been completed.
- 3 In view of the above development, the IA is substantially rendered infructuous.
- 4 However, for the propose of the record, an extension of time stands granted to the High Court in terms as prayed.
- 5 The Interlocutory Application is accordingly disposed of.

(CHETAN KUMAR)
A.R. - cum - P.S.

(KAMLESH RAWAT)
Court Master