

ITEM NO.1

COURT NO.1

SECTION III-A/PIL-W

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)

(FOR THE STATES OF KARNATAKA, KERALA, RAJASTHAN, SIKKIM, TELANGANA,
ANDHRA PRADESH, TRIPURA AND UTTARAKHAND.)

WITH

SMW(C) NO. 1/2017 (PIL-W)

SMW(C) NO. 2/2018 (PIL-W)

(MR. SHYAM DIVAN, SR. ADV., MR. K.V. VISHWANATHAN, SR. ADV., MR.
VIJAY HANSARIA, SR. ADV. AND MR. GAURAV AGRAWAL, ADV. RESPECTIVELY
HAVE BEEN APPOINTED AS AMICUS CURIAE IN THE INSTANT MATTER)

Date : 19-02-2019 This case(s) was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE L. NAGESWARA RAO
HON'BLE MR. JUSTICE SANJIV KHANNA

AMICUS CURIAE

State Of U.P.,
Maharashtra, Goa W.B.
Chhattisgarh, Delhi
N.E.States (excluding
Tripura)

Mr. Shyam Divan, Sr. Adv.
Mr. Udayaditya Banerjee, Adv.

Gujarat, H.P.,
J&K, Jharkhand,
Karnataka, Kerala

Mr. K.V. Vishwanathan, Sr. Adv.
Mr. Ravi Raghunath, Adv.

M.P., Odisha, Patna,
Punjab & Haryana

Mr. Vijay Hansaria, Sr. Adv.
Ms. Sneha Kalita, Adv.
Mr. Avnish Pandey, Adv.

Rajasthan, Sikkim,
Telangana, A.P.,
Tripura, Uttarakhand

Mr. Gaurav Agrawal, Adv.

SMW© 1/17

Mr. Arvind P. Datar, Sr. Adv.(AC)[N/P]
Ms. Remya Raj, Adv.

For Parties :
TNPSC

Ms. Purbitaa Mitra, Adv.
Mr. K.V. Vijayakumar, AOR

State of Karnataka &
HC of Karnataka

Mr. V.N. Raghupathy, AOR
with
Mr. N.C. Srinivasa, Prl. Law Secy.
Mr. V. Srishananda, Reg.Gen. (HC)

High Court of Kerala

Mr. P.N. Ravindran, Sr. Adv.
Mr. T.G. Narayanan. Nair, Adv.
With
Shri K. Haripal, Registrar General

State of Kerala

Mr. G. Prakash, Adv.
Mr. Jishnu M.L., Adv.
Ms. Priyanka Prakash, Adv.
Ms. Beena Prakash, Adv.

KPSC

Mr. Vipin Nair, Adv.
Mr. P.B. Suresh, Adv.
Mr. Karthik Jayashankar, Adv.

State of Kerala

Mr. C.K. Sasi, AOR

Rajasthan High Court

Mr. Sunil K. Jain, AOR
Mr. Punya Garg, Adv.
Mr. Abhishek Jain, Adv.
Ms. Anusha Agarwal, Adv.

State of Rajasthan

Dr. Manish Singhvi, AAG
Mr. Rohit K Singh, AOR
Mr. Satyendra Kumar, Adv.
Mr. Shailja Nanda Mishra, Adv.

State of Sikkim & HC of Sikkim	Mr. A. Mariarputham, Adv. Gen., Sikkim Ms. Aruna Mathur, Adv. Mr. Avneesh Arputham, Adv. Ms. Anuradha Arputham, Adv. Ms. Geetanjali, Adv. M/S. Arputham Aruna And Co, AOR WITH Pema Lhaden Lama, J.S.
Sikkim HC	Nima Gyalpo Sherpa, Reg. Gen. (HC)
State of Telangana	Mr. S. Udaya Kumar Sagar, Adv. Mr. Mritunjai Singh, Adv.
Telangana HC	Ms. Anitha Shenoy, AOR Ms. Srishti Agnihotri, Adv. with Mr. A. Venkateshwara Reddy, Reg. Gen.(HC) Mr. D. Nagarjun, Reg.(Admn)
A.P. HC	Ms. Anitha Shenoy, AOR Ms. Srishti Agnihotri, Adv. with Ch. Manavendranath Roy, Reg. Gen.(HC) Mr. T. Venugopal, Reg.(Admn)
State of A.P.	Mr. Guntur Prabhakar, AOR Ms. Purna Singh, Adv.
State of Tripura	Mr. Shuvodeep Roy, AOR Mr. Rijuk Sarkar, Adv. Mr. Kabir Shankar Bose, Adv. With Mr. Data Mohan Jamatia, Pr. Secy. Mr. Ngurchawikunga Darlong, Secy. Mr. Suithuifru Mog, Secy. TPSC Mr. Dipak Chandra Das, Chief Eng. (PWD) Mr. Rohul Roy, ALC & US (LAW DEPT.)
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State of Uttarakhand	Ms. Rachana Srivastava, AOR Mr. Aviral Saxena, Adv. with Mr. Om Prakash, Addl. Chief Secy. Mr. Pradeep Pant, Reg. Gen. (HC) Mr. Ritesh Shrivastava (Addl.Secy.)

State of Gujarat	Ms. Hemantika Wahi, AOR Ms. Puja Singh, Adv. Ms. Vishakha, Adv. Ms. Parul Luthra, Adv.
HC Gujarat	Mr. A.P. Mayee, AOR
State of H.P.	Mr. Vikas Mahajan, AAG Mr. vinod Sharma, AOR Mr. Anil Kumar, Adv.
H.P. High Court	Mr. Ashok Mathur, AOR
J&K High Court	Mr. Bharat Sangal, AOR
State of J&K	Mr. M. Shoeb Alam, AOR
Jharkhand High Court	Mr. Krishnanand Pandey, AOR
Jharkhand PSC	Mr. Himanshu Shekhar, AOR
State of Jharkhand	Mr. Jayesh Gaurav, Mr. Gopal Prasad, AOR.
State of Jharkhand	Mr. Anil K. Jha, AOR
State of Jharkhand	Mr. Tapesk Kumar Singh, Adv. Mr. Aditya Pratap Singh, Adv.
State of W.B.	Mr. Suhaan Mukerji, Adv. Ms. Astha Sharma, Adv. Mr. Harsh Hiroo Gursahani, Adv. Mr. Amit Verma, Adv. Mr. Abhishek Manchnda, Adv. Ms. Dimple Nagpal, Adv. M/s. P.L.R. Chamber & Co., AOR
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Gauhati High Court	Mr. Vijay Hansaria, Sr. Adv. Ms. Sneha Kalita, AOR
M.P.	Mr. Arjun Garg, AOR Mr. Devansh Srivastava, Adv. Mr. Ankur Yadav, AOR

**M/o Law & Justice &
GNCT of Delhi**

Mr. Tushar Mehta, SG
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Ms. Binu Tamta, Adv.
Ms. Swarupama Chaturvedi, Adv.
Ms. Aishwarya Bhati, Adv.
Mr. A.K. Sharma, AOR
Mr. B.V. Balaram Das, AOR

Mr. Vivek Singh, AOR

For M/s. Parekh & Co., AOR

Mr. T.V. George, AOR.

State of Goa

Mr. Jai Dehadrai, Adv.
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Manipur High Court

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Orissa High Court

Mr. Sibho Sankar Mishra, AOR
Mr. M.K. Pandey, Adv.

State of U.P.

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Meghalaya High Court

Mr. Sanjai Kumar Pathak, AOR
Ms. Shashi Pathak, Adv.
Mr. Arvind Kumar Tripathi, Adv.

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U.T. of Andaman & Nicobar Admn.	Mr. K.V. Jagdishvaran, Adv. Ms. G. Indira, AOR
State of Haryana	Dr. Monika Gusain, AOR

Guhati High Court	Ms. P.S. Chandralekha, Adv. Mr. P.I. Jose, AOR
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State of Arunachal Pradesh	Mr. Anil Shrivastav, AOR Mr. Satyendra Kumar Srivastav, Adv.
State of Rajastahan	Mr. Amit Sharma, Adv. Mr. Ankit Raj, Adv. Ms. Ruchi Kohli, AOR
State of Arunachal Pradesh	Mr. Riju Mani Talukdar, Adv. Mr. A. Tewari, Adv. Ms. Eliza bar, Adv. Mr. Shreepal Singh, AOR.
Govt. of Puducherry	Mr. V.G. Pragasam, AOR. Mr. S.Prabu Ramasubramanian, Adv. Mr. S. Manuraj, Adv.
State of Bihar	Ms. Abha R. Sharma, AOR
State of Chhatisgarh	Mr. Aniruddha P. Mayee, AOR Mr. Chirag Jain, Adv.
HC of Bombay	Mr. Aniruddha P. Mayee, AOR
Allahabad High Court	Mr. Ashok K. Srivastava, AOR Mr. P.V. Yogeswaran, AOR
State of Mizoram	Mr. Siddhesh Kotwal, Adv. Ms. Bansuri Swaraj, Adv. Mr. Raghunatha Sethupathy, Adv. Mr. Gagan Narang, Adv. Ms. Arshiya Ghose, Adv. Ms. Astha Sharma, AOR Mr. Ejaz Maqbool, AOR Mr. Debasis Misra, AOR

Mr. Lakshmi Raman Singh, AOR
Mr. Y. Raja Gopala Rao, AOR
Mr. Ugra Shankar Prasad, AOR
Mr. Tara Chandra Sharma, AOR
Mr. T.V. Ratnam, AOR
Mr. T. Mahipal, AOR
Mr. Suwendu Suvasis Dash, AOR
Mr. Sunny Choudhary, AOR
Mr. Sunil Kumar Verma, AOR
Mr. Sunil Kumar Jain, AOR
Ms. Sumita Hazarika, AOR
Mr. Siddhartha Chowdhury, AOR
Mr. Shail Kumar Dwivedi, AOR
Ms. Sarla Chandra, AOR
Ms. S. Janani, AOR
Mr. S.C. Patel, AOR
Mr. Rana Ranjit Singh, AOR
Mr. Rajesh Srivastava, AOR
Mr. Radha Shyam Jena, AOR
Mr. R. Sathish, AOR
Mr. R. Nedumaran, AOR
Mr. Prakash Kumar Singh, AOR
Mr. Pradeep Misra, AOR
Mr. Parijat Sinha, AOR

State of MP

Mr. Naresh Kumar, AOR
Mr. Naresh K. Sharma, AOR
Ms. Naresh Bakshi, AOR
Mr. Milind Kumar, AOR
Mr. Merusagar Samantaray, AOR
Mr. M.R. Shamshad, AOR
Mr. Krishnayan Sen, AOR
Mr. Mukesh Kumar Maroria, AOR
Mr. Shree Pal Singh, AOR
Mr. Gopal Singh, AOR
Ms. Manisha Ambwani, AOR

State of H.P. Mr. Vikas Mahajan, AAG
Mr. Anil Kumar, Adv.
Mr. Akash Varma, Adv.
Mr. Vinod Sharma, AOR

HC of M.P. Mr. Mishra Saurabh, AOR

State of Mah. Ms. Deepa M. Kulkarni, Adv.
Mr. Nishant Ramaantrao Katneshwarkar, AOR

State of Odisha Mr. Som Raj Choudhury, AOR
Mr. Shreekant N. Terdal, AOR
Mr. Arun K. Sinha, AOR
Mr. K. K. Mohan, AOR
Mr. Jagjit Singh Chhabra, AOR
Mr. R. Sathish, AOR
Mr. Kamlendra Mishra, AOR
Ms. A. Subhashini, AOR

Mr. Avijit Bhattacharjee, AOR
Mr. B. S. Banthia, AOR
Mr. Ajay Pal, AOR
Ms. Asha Jain Madan, AOR
Mr. Kamal Mohan Gupta, AOR
Mr. Kamini Jaiswal, AOR
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Mrs. D. Bharathi Reddy, AOR
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Ms. Asha Gopalan Nair, AOR
Mr. B. Balaji, AOR
Mr. Abhijit Sengupta, AOR
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Mr. Kaushal Yadav, AOR
Mr. Ashwani Kumar, AOR
Mr. Ardhendumauli Kumar Prasad, AOR
Ms. Manju Jetley, AOR
Ms. Ranjeeta Rohatgi, AOR
Mr. Naveen R. Nath, AOR
Mr. Ashok Arora, Adv.
Mr. Yadav Narender Singh, AOR
Mr. Anandan A., Adv.
Mr. Gaichangpou Gangmei, AOR
Mr. Ashok Kumar Singh, AOR
Mr. Anandh Kannan N., AOR

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

Re: State of Karnataka (High Court of Karnataka) and State of Kerala (High Court of Kerala).

By order dated 22nd January, 2019 we had fixed the case for today i.e. 19th February, 2019 with regard to the States of Karnataka and Kerala (High Court of Karnataka and High Court of Kerala respectively) .

The order dated 22nd January, 2019 insofar as the aforesaid two States and High Courts (i.e. Karnataka and Kerala) are concerned reads as follows:

"Re: State of Karnataka (High Court of Karnataka)

Insofar as the State of Karnataka is concerned, the Court would like the Registrar General of the High Court of Karnataka to clarify as to whether the reservations for women, physically challenged, etc. have been treated as vertical reservation.

Re: State of Kerala (High Court of Kerala)

Insofar as the State of Kerala is concerned, there appears to be little controversy between the High Court of Kerala and the State Government as to whether 85 court halls stated to be already constructed are part of the 91 court halls or are over and above the same. The State of Kerala to clarify the position.

List both the matter on 19th February, 2019."

Insofar as the State of Karnataka (High Court of Karnataka) is concerned we are informed that the reservations for women, physically challenged, etc. are 'horizontal reservation' and not 'vertical reservation' and the picture that led the Court to make the aforesaid query was on account of filling up of backlog vacancies.

We accept the said statement made on behalf of the High Court of Karnataka.

Insofar as the State of Kerala (High Court of Kerala) is concerned, a clarificatory affidavit has been filed on behalf of the State of Kerala dated 18th February, 2019 to the effect that the 91 court halls mentioned in the earlier affidavit filed on behalf of the State of Kerala dated 21st January, 2019 are over and above the 85 court halls recently constructed. This figure of 91 court halls is needed to accommodate the courts working in government buildings/rented buildings/rent free buildings. Further, number of court halls that would be required in immediate future is required to be assessed.

The details of new court halls that would be available have been indicated in the affidavit dated 18th February, 2019 wherefrom it appears that insofar as 68

court halls are concerned land is yet to be made available. For 10 court halls estimates are under preparation. Further, no time schedule by which the court halls (91 in number) would be available has been indicated.

In these circumstances, we direct the State of Kerala and request the Hon'ble Chief Justice of the Kerala High Court to work out and finalize a suitable time frame within which the 91 court halls be made available to house and assess the need for future court halls, as may be.

Re: State of Rajasthan (High Court of Rajasthan)

Re: Vacancies in the cadre of District Judge, Additional District Judge, Senior Civil Judge and Civil Judge

We have perused the note prepared by Shri Gaurav Agarwal, learned Amicus Curiae on the basis of the affidavit(s) filed on behalf of the State of Rajasthan as well as the High Court of Rajasthan.

As per the said note, the process/processes of filling up of vacancies in all cadres is/are going on and different dates in the month of March, April and July, 2019 have been indicated by which time the recruitment/promotion, etc. is expected to be complete.

Having taken note of the statements appearing in the note prepared by the learned Amicus Curiae we direct that the recruitment process including promotion for the post(s) indicated be proceeded with in the right earnest. All efforts be made to complete the same within the time schedule indicated.

Re: Infrastructure

The status of infrastructure available in the State of Rajasthan (i.e. court halls and residential units/accommodation) as indicated in the note of the learned Amicus Curiae is grossly unsatisfactory.

Without going into the details of the requirement of number of court halls and residential accommodation, all that the Court would insist for the present is completion of 234 court buildings as per the schedule indicated and further clearance of proposals for 104 court buildings/halls and proposals for 244 residential accommodation within three months from today. Construction work thereafter will be undertaken and completed at the earliest.

The report of the action taken be filed after three months.

Re: Vacancies of Supporting Staff

Out of total number of 14910 sanctioned posts of supporting staff, 4122 posts in different grades/cadres like Ministerial, Stenographer, Driver, Class-IV, etc. are vacant.

A statement has been made in the note prepared by the learned Amicus Curiae on the basis of the affidavits filed by the High court that the selection process for vacant posts will commence and conclude so as to synchronize with the fresh appointment of Judicial Officers and Judges at different levels.

The Registrar General of the High Court of Rajasthan is directed to take necessary action in terms of the above.

Re: State of Sikkim (High Court of Sikkim)

We have perused the note prepared by the learned Amicus Curiae on the basis of the affidavit(s) filed on behalf of the Competent Authority of the State of Sikkim and the High Court of Sikkim. We have taken note of the contents thereof.

The only point at which the Court would like to issue directions is with regard to release of central funds which appears to have been inadequate.

The funding pattern in the State of Sikkim is in the ratio of 90:10 (i.e. 90% by the Central and 10% by the State). The figures available in the report/note of the learned Amicus Curiae would suggest that there is gross deficiency in release of funds by the Center.

The said note also indicates that correspondences have been exchanged by and between the State of Sikkim and the Central Government in this regard.

In the above facts, we direct the Secretary, Department of Justice, Government of India to look into the matter and ensure that necessary steps are taken so that the requisite funds are made available to the State of Sikkim for construction of court halls, residential units, etc.

A copy of this order be sent to the Secretary, Department of Justice, Government of India forthwith.

Re: State of Telangana

We have taken note of the details with regard to the vacancies, infrastructure and support staff mentioned in the note of the learned Amicus Curiae prepared on the basis of the interaction that the learned Amicus Curiae has had with the Registrar General of the High Court of Telangana and the representatives of the State Government.

In the said note, the steps taken for filling up of the vacancies and the stage of construction of the court halls (33 in number), residential accommodation (2 in number) as well as the actual requirement of court halls and residential accommodation has been mentioned. In the said note, the number of vacant posts (2250 in number) in different cadres who constitute the support staff has also been indicated.

The aforesaid note of the learned Amicus Curiae shall form part of the record of the case.

The State of Telangana and the High Court of Telangana acting in conjunction are directed to complete the recruitment process within the time schedule as indicated and also speedily undertake the construction work and finalize the proposals pending for Government sanction.

The vacancies in the cadre of support staff be also filled up so that the requisite support staff be made available as and when the additional courts start functioning.

The matter will be monitored at the end of three months from today by which time fresh status report of the action taken will be submitted/filed.

The State of Telangana shall also consider as to whether in place of the present policy of reimbursing rent upto the percentage of the Basic Pay should be modified by payment of actual rent that is paid by a Judicial Officer for his residential accommodation. Response in this regard be submitted before the Court along with the Status Report.

Re: State of Andhra Pradesh

We have perused the report/note of the learned Amicus Curiae insofar as status of vacancies of Judicial Officers, infrastructure and vacancies in the different cadre of the supporting staff in the State of Andhra Pradesh is concerned.

We direct the State of Andhra Pradesh to issue necessary notification(s) encadring the newly created posts in the cadre of District Judge, Additional District Judge, Civil Judge Senior Division and Civil Judge Junior Division. We further direct the High Court of Andhra Pradesh to undertake steps to fill up the said posts at the earliest once the same are encadred.

Insofar as 38 notified vacancies in the cadre of Civil Judge Junior Division is concerned, we direct the High Court to complete the selection process within the time frame indicated.

From the note of the learned Amicus Curiae we have noticed the position with regard to the available infrastructure. We direct the constructions under progress be completed at the earliest and proposals pending for administrative sanction, etc. insofar as court rooms as well as residential accommodation are concerned should be finalized at the earliest.

The vacant posts in different cadres of support staff should be filled up well in time to ensure that adequate support staff is available to the Hon'ble Judges once they start functioning.

The position will be monitored at the end of three months from today when further/fresh status report will be submitted.

The State of Andhra Pradesh shall also consider as to whether in place of the present policy of reimbursing rent upto the percentage of the Basic Pay should be modified by payment of actual rent that is paid by a Judicial Officer for his residential accommodation. The report in this regard be submitted before the Court along with the Status Report.

Re: State of Tripura

In the State of Tripura, 11 out of 35 posts in the cadre of District Judge/Additional District Judge are presently vacant.

The process of direct recruitment for three (03) posts has been initiated and is expected to be completed by the end of March, 2019.

While no officer is eligible for consideration for appointment on the basis of the Limited Competitive Examination (3 posts), it is stated that, apart from one officer who is eligible for promotion presently, five (05) more persons/officers will become eligible by the end of August, 2019.

Insofar as the cadre of Civil Judge Senior Division is concerned, though there is no eligible officer presently, it is stated that 12 officers will become eligible for consideration for promotion by the end of August, 2019.

We request the High Court of Tripura and direct the State of Tripura to complete the process of direct recruitment and undertake the process of promotion to the

cadre of District Judge/Additional District Judge and Civil Judge Senior Division as and when suitable and eligible officers are available.

Insofar as the vacant posts in the cadre of Civil Judge Junior Division are concerned, we direct that on-going selection process be completed by/on the date suggested i.e. 31st July, 2019

Insofar as infrastructure is concerned, we have taken note of the existing buildings/infrastructure and the buildings/infrastructure presently under construction and the time schedule indicated for completion thereof.

We have also taken note of the position with regard to the availability of residential accommodation as well as vacancies of support staff.

The infrastructure i.e. court buildings and residential accommodation under construction and process of filling up of vacant posts in different cadres of support staff be expedited and completed within the time schedule indicated. Status report be filed.

List after three months.

Re: State of Uttarakhand

Re: Vacancies

This aspect of the matter will be considered after three months.

Re: Infrastructure

We have taken note of the statements made in the note/report of the learned Amicus Curiae.

While directing that the on-going process be completed, we specifically direct the State of Uttarakhand to furnish to the Competent Authority in the Union of India, Utilization Certificate for the past grants to enable further release of funds for completion of the Court Complex at Dehradun which has been approved for Rs.206.78 crores out of which Rs.65.46 crores is stated to have been released, the share of the Central Government being Rs.44.79 crores.

No sooner the Utilization Certificate(s) is made available the process for release of further grants/funds will be initiated insofar as the Dehradun project is concerned.

List the matter after three months.

Re: Note by Mr. Vijay Hansaria, Sr. Adv., Amicus Curiae regarding funding for infrastructure of subordinate judiciary by the Central Government and the State Governments.

The aspect of the matter will be considered on Tuesday next i.e. 26th February, 2019.

[VINOD LAKHINA]

AR-cum-PS

[ANAND PRAKASH]

BRANCH OFFICER