

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

RECORD OF PROCEEDINGS

CIVIL APPEAL NO.1867 OF 2006

MALIK MAZHAR SULTAN AND ANR.

Appellant (s)

VERSUS

U.P. PUBLIC SERVICE COMMISSION & ORS.

Respondent(s)

(With appln(s) for exemption from filing O.T., clarification of court's order dated 03/04/2006 and office report)

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)

[For Final Directions]

Date: 04/01/2007 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE C.K. THAKKER

For Appellant(s)

In CA 1867/2006:

Mr. Ejaz Maqbool,Adv.

Mr. Vikash Singh,Adv.

Ms. Taruna Singh,Adv.

Mr. Abhijeet Sinha,Adv.

In CA 1872/2006:

Mr. Shail Kumar Dwivedi,Adv.

In CA 1868-71/2006:

Mr. C.D. Singh,Adv.

Mr. Merusagar Samantaray,Adv.

Mr. M.K. Singh,Adv.

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

Mr. Debasis Misra,Adv.

Mr. Dharmendra Kumar Sinha,Adv.

...2/-

- 2 -

Mr. Arvind Kumar Tiwary,Adv.

Mr. Ranjan Dwivedi,Adv.

For Allahabad High

Mr. Ashok K. Srivastava,Adv.

Court:

Mr. Shaiwal Srivastava,Adv.

Mr. K.K. Mohan,Adv.

For M.P. High Court: Mr. C.D. Singh, Adv.
Mr. Merusagar Samantaray, Adv.

For Uttar Pradesh: Dr. R.G. Padia, Sr. Adv.
Mr. Pradeep Misra, Adv.
Mr. T. Mahipal, Adv.

Mr. Kamendra Mishra, Adv.

Mr. Prakash Kumar Singh, Adv.

Mr. S. Chandra Shekhar, Adv.

For High Court of Mr. Janaranjan Das, Adv.

Orissa: Mr. Swetaketu Mishra, Adv.

For Bombay High Court: Mr. Aniruddha P. Mayee, Adv.
Mr. Sanjeev Kumar Choudhary, Adv.
Mr. Sanjay Visen, Adv.

For Gujarat: Ms. Hemantika Wahi, Adv.
Ms. Pinky Behera, Adv.

For Tripura: Mr. Gopal Singh, Adv.
Mr. Rituraj Biswas, Adv.
Mr. Nishakant Pandey, Adv.

For Bihar: Mr. Gopal Singh, Adv.
Mr. Nishakant Pandey, Adv.

For West Bengal: Mr. Bhaskar P. Gupta, Sr. Adv.
Mr. Tara Chandra Sharma, Adv.
Ms. Neelam Sharma, Adv.

For Himachal Pradesh: Mr. J.S. Attri, AAG.
Mr. Vivek Singh, Adv.

For Arunachal Pradesh: Mr. Anil Shrivastav, Adv.
Ms. Smita Shankar, Adv.

For Assam: Mr. Riku Sarma, Adv.
for M/s. Corporate Law Group, Adv.

For Gauhati High Court: Mr. Vijay Hansaria, Sr. Adv.
Mr. P.I. Jose, Adv.
Mr. Anupam Mishra, Adv.
Ms. Sneha Kalita, Adv.
Ms. Deepti, Adv.

...3/-

- 3 -

For Tamil Nadu and Pondicherry: Mr. V.G. Pragasam, Adv.
Mr. S. Vallinayagam, Adv.

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

For Goa: Ms. A. Subhashini, Adv.

For Manipur: Mr. Kh. Nobin Singh, Adv.
Mr. S. Biswajit Meitei, Adv.
Mr. David Rao, Adv.
Mr. Prashant Chaudhary, Adv.

For Jammu & Kashmir: Mr. Altaf H. Naiyak, AG
Mr. Anis Suhrawardy, Adv.

For Chhattisgarh: Mr. Rajesh Srivastava, Adv.

Ms. Suparna Srivastava, Ad.

Ms. Pooja Matlani, Adv.

For Rajasthan High
Court:

Mr. Sunil K. Jain, Adv.

Mr. S. Borthakur, Adv.

For Punjab:

Ms. Avneet Toor, Adv.

Mr. Sanjay Jain, Adv.

for Mr. Arun Kumar Sinha, Adv.

For Rajasthan:

Mr. Aruneshwar Gupta, AAG.

Mr. Naveen Kumar Singh, Adv.

Mr. Mukul Sood, Adv.

Mr. Shashwat Gupta, Adv.

Ms. Shikha Tandon, Adv.

Mr. J.K. Bhatia, Adv.

Mr. R.S. Jena, Adv.

Mr. Siddharth Panda, Adv.

For Sikkim and

Mr. A. Mariarputham, Adv.

Delhi High Court: Ms. Aruna Mathur, Adv.

for Arputham, Aruna & Co., Advs.

For Meghalaya:

Mr. Ranjan Mukherjee, Adv.

Mr. S.C. Ghosh, Adv.

For Uttaranchal:

Ms. Rachana Srivastava, AAG.

For Karnataka:

Mr. Sanjay R. Hegde, Adv.

Mr. Anil K. Mishra, Adv.

Mr. Vikrant Yadav, Adv.

Mr. Sashidhar, Adv.

For Kerala: Mr. G. Prakash, Adv.
Ms. Beena Prakash, Adv.

For Nagaland: Mr. U. Hazarika, Adv.
Mr. Satya Mitra, Adv.

Ms. Sumita Hazarika, Adv.

...4/-

- 4 -

For Madhya Pradesh: Mr. Vikrant Singh Bais, Adv.
Mr. B.S. Banthia, Adv.

For N.C.T. of Delhi: Mr. R. Mohan, ASG.
Mr. S.W.A. Qadri, Adv.
Mr. R.C. Kathia, Adv.
Mr. D.S. Mahra, Adv.

For U.Ts.: Mr. R. Mohan, ASG.
Mr. S.W.A. Qadri, Adv.
Ms. Vandana Bhandari Gugnani, Adv.
Mr. D.S. Mahra, Adv.

For Maharashtra: Mr. S.S. Shinde, Adv.
Mr. V.N. Raghupathy, Adv.

For M/o Law & Justice: Mr. S.W.A. Qadri, Adv.
Mr. P. Parmeswaran, Adv.

For State of Haryana: Mr. Manjit Singh, Adv.
Mr. Harikesh Singh, Adv.
Mr. T.V. George, Adv.

For Punjab & Haryana Mr. Nidhesh Gupta, Adv.

High Court : Mr. Vinod Shukla, Adv.
Mr. Deepak Goel, Adv.
Ms. S. Janani, Adv.

For Sikkim High Court : Mr. Vishnu Sharma, Adv.

For Andhra Pradesh : Ms. D. Bharathi Reddy, Adv.
Mr. P. Vinay Kumar, Adv.
Ms. Sneha Bhaskaran, Adv.

Mr. P.H. Parekh, Adv.
Mr. Sameer Parekh, Adv.
Mr. Ajay K. Jha, Adv.
Ms. Sonali Basu Parekh, Adv.
Mr. Deeksha Rai, Adv.

For Calcutta High Court : Mr. Jaideep Gupta, Sr. Adv.
Mr. Raja Chatterjee, Adv.
Mr. Sachin Das, Adv.
Mr. G.S. Chatterjee, Adv.

For Himachal Pradesh : Mr. J.S. Attri, Addl. Adv. Genl.
Mr. Vivek Singh Attri, Adv.

Mr. B.S. Jain, Adv.
Mr. Ajay Veer Singh, Adv.
Dr. (Mrs.) Vipin Gupta, Adv.

Mr. Sandeep S. Tiwari, Adv.

...5/-

UPON hearing counsel the Court made the following

O R D E R

all

It was about five years' back that this Court directed that existing vacancies in the subordinate courts, at all levels, should be filled, if possible, latest by 31st March, 2003, in the States. This direction is contained in the judgement reported in All India Judges Association vs. Union of India (2002 (4) S.C.C. 247). It has been noticed that an independent and efficient judicial system is one of the basic structure of our Constitution. If sufficient number of judges are not appointed, justice would not be available to the people thereby undermining the basic structure. The judicial system has been facing the problem arising out of delay in dispensation of justice for which one of the major cause is insufficient number of judges when compared to either the large number of cases pending or in relation to the average judge-population ratio going by the number of judges available in various other democracies in the world. In this light, it becomes all the more necessary to take all possible steps to ensure that vacancies in the courts are timely filled.

Mr. Vijay Hansaria, learned amicus curiae, in the

written submission, has pointed out that according to the figures given by the News Letter issued by this Court for the period January-March, 2006, there were 2730 posts vacant in the subordinate judiciary in the country as only 11,682 judges actually were serving out of the approved strength of 14,402 judges, i.e., on an average, about twenty per cent existing posts were lying vacant.

- 6 -

In this matter, by judgement and order dated 3rd April, 2006, it was observed that it is absolutely necessary to evolve a mechanism to speedily determine and fill vacancies of judges at all levels. For this purpose, timely steps are required to be taken for determination of vacancies, issue of advertisement, conducting examinations, interviews, declaration of final results and issue of order of appointment. It was further directed that for all these above and other steps, it is necessary to provide to fix time schedule so that the system works automatically and there is no delay in filling up of the vacancies. The dates for taking up these steps can be provided for on the pattern similar to filling of vacancies in some other services. Adherence to strict time schedule can help in ensuring timely filling of vacancies. In this view, all the State

Governments, Union Territories and/or High Courts were directed to give suggestions regarding the time schedule to be fixed so that every year vacancies that may occur are filled. This Court also requested Mr. Vijay Hansaria, senior advocate, to assist the court.

Considering the suggestions that have been given by the State Governments, the learned amicus curiae submitted written submissions, which were considered by this Court on 27th November, 2006. On the said date of hearing, it was directed that the written submissions of the learned amicus curiae along with the proposed suggestion as to time schedule be sent to the State Governments/Union Territories and High Courts so that their response/suggestions can also be taken into consideration. Some of the State Governments and High Courts have responded to the directions dated 27th November, 2006. Mr. Vijay Hansaria has made additional submission having regard to the responses received from the State Governments, Union Territories and the High Courts pursuant to the order dated 27th November, 2006.

- 7 -

Before we issue general directions and the time schedule to be adhered to for filling vacancies that may arise in subordinate courts and district courts, it is necessary to note

that selections are required to be conducted by the concerned authorities as per the existing Judicial Service Rules in the respective States/Union Territories. We may, however, note that, progressively, the concerned authorities would consider, discuss and eventually may arrive at a consensus that the selection process be conducted by the High Court itself or by Public Service Commission under the control and supervision of the High Court. In this regard, considerable progress has already been made. Reference can be made to the decision taken in a Conference held between the Chief Justices and Chief Ministers, minutes whereof show that in some of the States, selection of subordinate judicial officers at all levels of civil judges is already being made by the High Courts. Some States, where selection is still being made by the Public Service Commission, were agreeable to entrust the selection to the High Courts whereas Chief Ministers/Ministers of Himachal Pradesh, West Bengal, Punjab and Kerala were of the view that the present system may continue but the decision taken jointly was that in the said States [Himachal Pradesh, West Bengal, Punjab and Kerala] setting up of question papers and evaluation of answer sheets be entrusted to the High Court. Further decision taken was that in other States where selection of subordinate judicial officers is not being done by the High

Courts, such selection be entrusted to the High Courts by amending relevant Rules. In this connection, with the affidavit filed on behalf of the Calcutta High Court, a copy of the letter dated 15th September, 2006, addressed by the Registrar General of the said Court to the Secretary,

- 8 -

Judicial Department, Government of West Bengal, has also been annexed. That letter refers to the aforesaid decision taken in the Conference of Chief Ministers and Chief Justices held on 11th March, 2006 requesting the State Government for effecting suitable amendment in the recruitment rules in terms of the decision in the Conference above-referred. At this stage, however, these are not the issues for our consideration. As already indicated, the selection is to be conducted by authorities empowered to do so as per the existing Rules.

Though no submission was made by any learned counsel appearing for any State Government that the constitution of selection committee by the Chief Justice of the High Court to monitor the timely appointment of judges at subordinate/district level would amount to interference with the independent functioning of the State Public Service Commission, but some State Governments in their responses

have indicated so. In view of what we have already noted about the appointments to be made in accordance with the respective Judicial Services Rules in the States, the apprehension of interference seems to be wholly misplaced. A Committee constituted by the Chief Justice of the High Court to ensure that the vacancies are timely filled and the problem of delay in dispensation of justice is tackled to some extent under no circumstances be said to be interference with the independent functioning of the authorities under the Rules or of independent functioning of the State Public Service Commission.

For filling up of vacancies in the cadre of District Judges, accepting the proposal to which none has objected, except in the manner hereinafter noticed, we direct as under:

- 9 -

A. For filling of vacancies in the cadre of District Judge

in respect of

(a) twenty five per cent vacancies to be filled by direct recruitment from the Bar; and

(b) twenty five per cent by promotion through limited competitive examination of Civil Judges (Senior Division) not having less than five years of qualifying service.

S.	Description	Date
No.		
1.	Number of vacancies to be notified by the High Court.	31st March
	Vacancies to be calculated including	
	a] existing vacancies	
	b] future vacancies that may arise within one year due to retirement.	
	c] future vacancies that may arise due to elevation to the High Court, death or otherwise, say ten per cent of the number of posts.	
	d] Vacancies arising due to deputation of judicial officers to other department may be considered as temporary vacancy.	
2.	Advertisement inviting applications from eligible candidates	15th April
3.	Last date for receipt of application	30th April
4.	Publication of list of eligible applicants	15th May
	List may be put on the website	
5.	Despatch/issue of admit cards to the eligible applicants	16th May to 15th June
6.	Written Examination	30th June
	Written examination may be	
	a] objective questions with multiple choice which can be scrutinized by the computer; and	
	b] subjective/narrative	

S.	Description	Date
No.		
7.	Declaration of result of written examination	16th August
	a) Result may be put on the website and also published in the newspaper	
	b) The ratio of 1 : 3 of the available vacancies to the successful candidates be maintained.	
8.	Viva Voce	1st to 7th September
9.	Declaration of final select list and communication to the appointing authority	15th September
	a) Result may be put on the website and also published in the newspaper	
	b) Select list be published in order of merit and should be double the number of vacancies notified.	
	c) Select list shall be valid till the next select list is published.	
10.	Issue of appointment letter by the competent authority for all existing vacant posts as on date	30th September
11.	Last date for joining	31st October
B.	For filling of vacancies in the cadre of District Judge	
	in respect of fifty per cent vacancies to be filled by promotion.	

S.	Description	Date
No.		
1.	Number of vacancies to be notified by the High Court.	31st March
	Vacancies to be calculated including	
	a) existing vacancies	
	b) future vacancies that may arise within one year due to retirement.	
	c) future vacancies that may arise due to elevation to the High Court, death or otherwise, say ten per cent of the number of posts.	

2.	Publication of list of eligible officers	15th May
	a) The list may be put on the website	
	b) Zone of consideration should be 1 : 3 of the number of vacancies	

S.	Description	Date
No.		
3.	Receipt of judgments from eligible officers	30th May
4.	Viva Voce Criteria	15th to 31st July
	a) ACR for last five years;	
	b) Evaluation of judgments furnished; and	
	c) Performance in the oral interview	
5.	Declaration of final select list and communication to the appointing	31st August

authority

a] Result may be put on the website
and also published in the newspaper

b] Select list be published in order of
merit and should be double the
number of vacancies notified.

6. Issue of appointment letter by the 30th September
competent authority for all existing
vacant posts as on date

7. Last date for joining 31st October

C. For filling of vacancies in the cadre of Civil Judge

(Senior Division) to be filled by promotion.

S. No.	Description	Date
1.	Number of vacancies to be notified by the High Court. Vacancies to be calculated including a] existing vacancies b] future vacancies that may arise within one year due to retirement. c] future vacancies that may arise due to promotion, death or otherwise, say ten per cent of the number of posts.	31st March
2.	Publication of list of eligible officers a] The list may be put on the website b] Zone of consideration should be 1 : 3 of the number of vacancies	15th May

3. Receipt of judgments from the 30th May
eligible officers

S.	Description	Date
No.		
4.	Viva Voce	1st to 16th August

Criteria

a] ACR for last five years;

b] Evaluation of Judgments
furnished; and

c] Performance in the oral interview

5. Declaration of final select list and 15th September
communication to the appointing
authority

a] Result may be put on the website
and also published in the newspaper

b] Select list be published in order of
merit and should be double the
number of vacancies notified.

6. Issue of appointment letter by the 30th September
competent authority for all existing
vacant posts as on date

7. Last date for joining 31st October

D. For appointment to the posts of Civil Judge (Junior
Division) by direct recruitment.

S.	Description	Date
No.		

1. Number of vacancies to be notified by 15th January
the High Court.

Vacancies to be calculated including

a] existing vacancies

b] future vacancies that may arise
within one year due to retirement.

c] future vacancies that may arise due
to promotion, death or otherwise, say
ten per cent of the number of posts.

2. Advertisement inviting applications 1st February
from eligible candidates

3. Last date for receipt of application 1st March

4. Publication of list of eligible 2nd April
applicants

The list may be put on the website

5. Despatch/issue of admit cards to the 2nd to 30th April
eligible applicants

S.	Description	Date
----	-------------	------

No.

6.	Preliminary written examination	15th May
----	---------------------------------	----------

Objective questions with multiple
choice which can be scrutinized by
computer

7. Declaration of result of preliminary 15th June
written examination

a] Result may be put on the website
and also published in the Newspaper

b] The ratio of 1 : 10 of the available
vacancies to the successful candidates

be maintained

8. Final Written examination 15th July

Subjective/narrative

9. Declaration of result of final written 30th August examination

a] Result may be put on the website and also published in the Newspaper

b] The ratio of 1 : 3 of the available vacancies to the successful candidates be maintained

c] Dates of interview of the successful candidates may be put on the internet which can be printed by the candidates and no separate intimation of the date of interview need be sent.

10. Viva Voce 1st to 15th October

11. Declaration of final select list and 1st November communication to the appointing authority

a] Result may be put on the website and also published in the newspaper

b] Select list be published in order of merit and should be double the number of vacancies notified.

12. Issue of appointment letter by the 1st December competent authority for all existing vacant posts as on date

13. Last date for joining 2nd January of the following year

These directions would not be applicable to the judiciary in the Sikkim High Court in view of a very small cadre of judiciary in that State.

We request the Chief Justice of each High Court to constitute a committee of two or three judges to monitor and oversee that timely selection and appointment of judicial officers is made. The Chief Justice is further requested to constitute a special

- 15 -

cell in the name of 'Selection and Appointment' in the High Court or under such other name as the learned Chief Justice may be consider proper with an officer of the rank of Registrar for assisting the Committee and the Chief Justice for complying with the aforesaid time schedule.

The Registrar of the aforesaid selection and appointment 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. The Registrar would also bring it to the notice of the Committee and the Chief Justice any deviation

from the time schedule.

Insofar as the State of Bihar is concerned, the Patna

High Court has suggested that due to feasibility of floods, the time schedule between June and November is not feasible and that the time schedule of one year may be modified so as to complete the selection process from December to June in the said State. Learned counsel for the State Government and the Public Service Commission has supported the view-point of the High Court. Accordingly, the High Court can suitably, after consulting with the Public Service Commission and the State Government, amend the aforesaid time schedule. The amended time schedule be filed in this Court.

Insofar as Delhi is concerned, it has been stated that

entire selection process is conducted by the High Court and examination is held twice in a year for the Delhi Judicial Service. The High Court may, accordingly, amend the aforesaid time schedule so as to conduct the selection process twice in a year and the revised time schedule shall be placed on the record of this case. For the present, the Delhi High Court is permitted three months' time for publication of final result after the written examination.

The appointment letters shall be issued by the State

Government within one month of receipt of the recommendations from the respective High Court/State Public Service Commission.

The select list prepared for all categories of officials shall be valid till the next select list is published.

We further direct that ten per cent of unforeseen vacancies would be in respect of sanctioned posts and not vacancies occurring in a particular year.

List of candidates eligible to appear in the examination and final list shall also be published in the local newspaper and be personally intimated to the officers, in addition to the same being placed on the website.

The High Courts/State Governments/Union Territories shall be at liberty to apply to this Court for variation in the time schedule in case of any difficulty having regard to the peculiar geographical and climatic conditions in the State or other relevant consideration. However, till such time a different time schedule is permitted, the aforesaid time schedule shall be adhered to and appointments made accordingly.

We place on record our appreciation for the assistance rendered by Mr. Vijay Hansaria, learned amicus curiae.

For further directions, list the matter after four

months.

[T.I. Rajput]

A.R.-cum-P.S.

[V.P. Tyagi]

Assistant Registrar