

A V.K. SRIVASTAVA & ORS.
v.
GOVT. OF U.P. & ANR.
(Writ Petition (Civil) No. 206 of 2007)

B SEPTEMBER 4, 2008
[K.G. BALAKRISHNAN, CJI, P. SATHASIVAM AND J.M.
PANCHAL, JJ]

C *Uttar Pradesh Higher Judicial Service Rules, 1953:*
Appointment to Higher Judicial Service – Selections
made in 2008 – Rules as amended in 2007* prescribing 50%
posts to be filled up by Civil Judge (Sr. Division) on merit-
cum-seniority, 25% on basis of limited competitive examina-
D tion amongst eligible Civil Judges (Sr. Division) and 25% by
direct recruitment from eligible members of Bar through com-
petitive examination – HELD: Recruitments of the year 2008
have been made complying with the Rules – As regards va-
E cancies prior to 2002, the same were rightly filled up as per
unamended Rules – So far as remaining vacancies were con-
cerned, selection lists have been prepared complying with the
amended Rules – Petitions disposed of accordingly.

*All India Judges' Association & Ors. vs. Union of India &
Ors. vs. Union of India & Ors. 2002 (2) SCR 712 =(2002) 4
SCC 247 – referred to.

F Case Law Reference

2002 (2) SCR 712 referred to para 3

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.
206 of 2007

G (Under Article 32 of the constitution of India)

WITH

W.P. (C) NOs. 36 of 2008, 236, 295 of 2007 and I.A. No.
1/07 In I.A. No. 204/07 in W.P. (C) No. 1022/89

Shail Kumar Dwivedi, A.A.G., Dinesh Dwivedi, S.R. Singh, A
Ajay Kumar Misra, Kavin Gulati, Avnish Pandey (for T. Mahipal),
T.N. Singh, V.K. Singh, D.N. Dube, Abhisht Kumar, Rachana,
Ravi Prakash Mehrotra, Garvesh Kabra, Deepti R. Mehrotra,
Vijay Pratap Singh, Vandana Mishra, B.P. Singh, Vibha B
Dwivedi, Anil Kumar Jha, Anuradha Dubey Mishra, Vikram and
P. Narasimhan for the appearing parties.

The Judgment of the Court was delivered by

W.P.(C)No.36/2008:

1. Learned senior counsel for the petitioners seeks per- C
mission to withdraw the writ petition. Permission sought for is
granted. The writ petition is dismissed as withdrawn without
prejudice to the rights of the petitioners to seek other appropri-
ate remedies with regard to their seniority.

*W.P.(C)Nos.206/2007, 236/2007, 295/2007 & I.A.NO.1 in D
I.A.NO.204/2007:*

2. The petitioners in these writ petitions and Interim appli- E
cations are members of the Uttar Pradesh Judicial Service. Writ
Petition No.236/2007 and I.A.No.1/07 in I.A.No.204/2007 are
filed by the U.P.Judicial Officers Association.

3. In *All India Judges' Association & Ors. Vs. Union of In- F
dia & Ors.*, (2002) 4 SCC p.247, this Court has directed that
promotion to the cadre of Higher Judicial Service should be
streamlined based on the recommendations of Justice Shetty
Commission. Prior to the directions given by this Court for fill-
ing up the vacancies in the cadre of Higher Judicial Service
there were only two sources i.e. one by promotion from the cadre
of Civil Judge (Senior Division) i.e. the members of the Subor- G
dinate Judicial Service and the other by direct recruitment as
per Article 233 of the Constitution of India from the members of
the Bar. This Court felt that the members of the subordinate
judiciary should also be given a fast track promotion and those
who are more meritorious in service should be given an oppor- H
tunity to compete for the posts of higher judicial services apart

A from the ordinary channel of promotion on seniority. To give
opportunity to the subordinate judicial officers from getting early
promotion to the Higher Judicial Service, this Court has directed
that 25% of the vacancies of Higher Judicial Service shall be
filled up by a competitive examination and the Civil Judge (Se-
nior Division) who are in the feeder category shall be given an
B opportunity to get such promotions. Keeping in view, the follow-
ing direction was given by this Court :

C ".....At the same time, we are of the opinion that there has
to be certain minimum standard, objectively adjudged, for
officers who are to enter the Higher Judicial Service as
Additional District Judge and District Judges. While we
agree with the Shetty Commission that the recruitment to
the Higher Judicial Service i.e. the District Judge cadre
from amongst the advocates should be 25 per cent and
D the process of recruitment is to be by a competitive
examination, both written and *viva voce*, we are of the
opinion that there should be an objective method of testing
the suitability of the subordinate judicial officers for
promotion to the Higher Judicial Service. Furthermore,
E there should also be an incentive amongst the relatively
junior and other officers to improve and to compete with
each other so as to excel and get quicker promotion. In
this way, we expect that the calibre of the members of the
Higher Judicial Service will further improve. In order to
F achieve this, while the ratio of 75 per cent appointment by
promotion and 25 per cent by direct recruitment to the
Higher Judicial Service is maintained, we are, however,
of the opinion that there should be two methods as far as
appointment by promotion is concerned : 50 per cent of
G the total posts in the Higher Judicial Service must be filled
by promotion on the basis of principle of merit-cum-
seniority. For this purpose, the High Courts should devise
and evolve a test in order to ascertain and examine the
legal knowledge of those candidates and to assess their
continued efficiency with adequate knowledge of case-
H

law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.

As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be :

1(a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;

(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts;

(2) Appropriate rules shall be framed as above by the High Court as early as possible."

4. This Court has stated that the quota for promotion to the Higher Judicial Service is 50 per cent from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and 25 per cent strictly on the basis of merit through limited competitive examination and 25 per cent by direct recruitment.

5. Subsequent to this decision, the Government of Uttar Pradesh, in consultation with the High Court, has amended the U.P. Higher Judicial Service Rules on 9th January, 2007. Prior to the amended rules, for filling up the vacancies of Higher Judicial Service there were only two sources i.e. 85 per cent of

A the posts would be filled up by promotion based on the principle of seniority-cum-merit and 15 per cent of the vacancies were to be filled up by direct recruitment from the members of the Bar. After the judgment of this Court in All India Judges' Association Case (supra), rules were framed to make it in accordance with the directions given by this Court. Thus, there were three sources of recruitment i.e. (i) 50 per cent of the vacancies are to be filled up by promotion from Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test; (ii) 25 per cent by promotion strictly on the basis of merit through a limited competitive examination of Civil Judges (Senior Division) having not less than five years qualifying service; and (iii) by direct recruitment from amongst the advocates of not less than seven years experience. Though these rules were notified on 9th January, 2007 it was specifically stated that the amended rules would come into effect from 21.3.2002. It may be noted that the judgment of this Court in All India Judges' Case (supra) was pronounced on 21.3.2002.

6. The grievance of these petitioners is that these rules which have been published on 9th January, 2007 should not have been given retrospective effect and since retrospective effect had been given to these rules, it has seriously prejudiced the rights of the petitioners. According to these petitioners, the vacancies of District Judges which had arisen prior to 21.3.2002 should have been filled up on the basis of unamended rules and the recruitment which had taken place based on the amended rules has affected the vested rights of the petitioners. It is argued that had these vacancies been filled up on the basis of the unamended rules, at least some of the petitioners would have got promotion as of right and not based on the principle of merit-cum-seniority which is incorporated in the amended rules. It was also argued that prior to the commencement of these rules 85 per cent of the vacancies could have been filled up by promotion from the cadre of Civil Judges (Senior Division) to the post of District Judges whereas as per the amended rules only 75 per cent of the Civil Judges (Senior Division) would get

an opportunity to get promotion to the Higher Judicial Service. It was further argued that when service rules for selection for appointment were amended it would always take place prospectively and retrospective effect shall not be given so as to prejudice the vested rights of the candidates.

7. We do not find much force in the contention advanced by the petitioners especially in view of the information furnished by the High Court as regards the recruitment that had taken place in the year 2008. Prior to 20.3.2002, there were 22 posts of District Judges that could be filled up and out of these 22 posts of District Judges if the 85 per cent was taken as per the then existing rules, 19 posts had to be filled up by promotion from the cadre of Civil Judges (Senior Division) and three posts had to be filled up by recruitment from the Bar. Also there were 328 vacancies to be filled up and we are told that the selection process had already been over and the High Court has recommended for appointment of 245 candidates. The break-up of the candidates as per the selection, which is mentioned by the High Court is as follows :

170 candidates had to be given promotion based on the principle of "merit-cum-seniority" from the Civil Judges (Senior Division) to fill up 50 per cent of vacancies and all the 170 vacancies had been proposed to be filled up and for the 25 per cent of promotion of Civil Judges (Senior Division) based on merit none was found suitable and these 76 posts also were added to the 50 per cent and the total number of 245 candidates in the cadre of Civil Judges (Senior Division) had been now proposed to be promoted to the cadre of District Judges and 82 direct recruits of District Judges have been selected from the bar and that also is proposed to be appointed and a total of 286 candidates have been included in the list of candidates who are to be promoted.

8. Learned senior counsel appearing for the petitioners had also contended that prior to the amendment of these rules, the promotion to the cadre of District Judges was based on the

A principle of “seniority-cum-merit” and now as per the amended rules, pursuant to the directions of this Court, the principle has now been changed to “merit-cum-seniority” and this has seriously affected the rights of the members of the Civil Judges (Senior Division). However, learned senior counsel appearing for the State of Uttar Pradesh has contended that in the process of promotion, merit alone was not being given importance. Even if the principle of merit-cum-seniority has to be applied the principle is that if the candidates are eligible for promotion to the cadre of District Judges the seniority in the feeder category has to be maintained as regards 50 per cent of the promotions are concerned. Of course, in the case of 25 per cent promotions, the test must be rigorous as held by this Court and the promotion under the 25 per cent category of Civil Judges (Senior Division) to the category of District Judges be strictly on merit and that too subject to the rigorous selection and such candidate may supersede some of their colleagues in the feeder category i.e. Civil Judges (Senior Division). Going by the information submitted by the High Court regarding the 2008 selection, we are satisfied that the rules have been complied with. Of course, as regards other objections, if any, we are not expressing anything on merits as the recommendation itself is not under challenge before us. Resultantly, we do not find any merit in these writ petitions and the applications and the same are disposed of accordingly.

F R.P.

Writ Petitions and Interlocutory
Applications disposed of.