

PRATAP SINGH

v.

STATE OF U.P. & ANR.

(CIVIL APPEAL NO. 2307 OF 2011)

NOVEMBER 15, 2011

[R.M. LODHA AND JAGDISH SINGH KHEHAR, JJ.]

*Judicial Service – Uttar Pradesh Higher Judicial Service Rules, 1975 – Rule 22 – Appellant, a judicial officer not promoted in the substantive vacancy to Uttar Pradesh Higher Judicial Service (UPHJS) and, reverted as Civil Judge (Senior Division) – On basis of remarks given by the District Judge in the ACR of appellant that he was most irresponsible and indisciplined officer – Legality of – Held: Documentary evidence on record made it clear that the remarks of the District Judge that the appellant was, 'irresponsible and indisciplined officer who has no regard for superiors or truth' had been expunged/substituted by the Inspecting Judge – The effect of such expunction/substitution was that the appellant could not be considered an irresponsible or indisciplined officer on the basis of remarks recorded by the District Judge – Due to consideration of the remarks recorded by the District Judge and not taking into consideration that such remarks were expunged/substituted as communicated to the appellant, the very consideration of the appellant's case for promotion in the substantive vacancy in UPHJS under the 1975 Rules by the selection committee and by the full court got seriously and vitally affected – The matter for appellant's promotion in the substantive vacancy in UPHJS thus needed re-consideration in accordance with law.*

**The appellant, a judicial officer, was not promoted in the substantive vacancy to Uttar Pradesh Higher Judicial Service (UPHJS) and, as a result, was reverted as Civil Judge (Senior Division).**

A The Selection committee did not recommend the  
appellant's name for promotion under Rule 22(1) of the  
Uttar Pradesh Higher Judicial Service Rules, 1975 in view  
of the remarks given by the District Judge in the ACR of  
the appellant. The committee referred to the remarks of  
B the District Judge that the appellant was most  
irresponsible and indisciplined officer. The report of the  
committee was considered by the full court in its meeting  
and the name of the appellant was accordingly not  
approved for appointment in UPHJS under Rule 22 (1) of  
C the 1975 Rules.

The question which arose for consideration in the  
instant appeal was whether non-approval of the appellant  
for promotion in the substantive vacancy in UPHJS under  
D Rule 22(1) of the 1975 Rules suffered from any illegality.

Allowing the appeal, the Court

HELD: 1. It is not in dispute that the remarks recorded  
by the District Judge, Lalitpur in the ACR for 1996-97  
E (June 12, 1996 to March 31, 1997) formed the basis of non-  
approval of the appellant's name for promotion in the  
substantive vacancy in the UPHJS. That the District  
Judge, Lalitpur rated the appellant in the ACR recorded  
for the above period as an 'irresponsible and indisciplined  
F officer' is borne out from the record. Against the remarks  
made by the District Judge, the appellant made a  
comprehensive representation to the Registrar on June  
28, 1997. The representation made by the appellant was  
considered by the Inspecting Judge of Lalitpur District.  
Vide communication dated October 21, 1997, the  
G appellant was informed that the adverse remarks  
recorded by the District Judge in column No. 1 (e)(iii) –  
'disposal of old cases : not satisfactory" and the adverse  
remarks in column no. 1 (e)(iv) –"progress and disposal  
of execution cases: there were three execution cases of  
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1996 but no case was disposed of” had been expunged. In the above communication, the appellant was also informed that column no. 2—“overall assessment of the merit of the officer – outstanding, very good, good, fair, poor : Poor. Irresponsible and indisciplined officer who has no regard for his superiors or truth. Details mentioned in column no. 3 below” has been substituted by “overall assessment – just average”. A careful reading of the communication dated October 21, 1997 leaves no manner of doubt that the adverse remarks given by the District Judge, Lalitpur in column no. 2 that appellant was irresponsible and indisciplined officer for the facts stated in column no. 3 no longer remained as it is and were substituted by “just average”. The consideration of the remarks recorded by the District Judge, Lalitpur by the selection committee as well as by the full court in its meeting held on July 11, 1998 was, thus, not proper. [Paras 14, 15] [838-G-H; 829-A-G]

2. A judicial officer has to be disciplined and must behave as a responsible officer. Indiscipline in the judiciary cannot be tolerated. However, the remarks of the District Judge that the appellant was, ‘irresponsible and indisciplined officer who has no regard for superiors or truth’ have been expunged/substituted by the Inspecting Judge. The effect of such expunction/substitution is that the appellant cannot be considered an irresponsible or indisciplined officer on the basis of remarks recorded by the District Judge. The gravity of what has been recorded is, thus, lost. Moreover, the root of the problem between the two senior judicial officers appears to be clash of ego. The observation noted in column (3), ‘He never came to me in the chamber or at the residence to discuss any problem relating to Nazarat’ indicates that the District Judge was not happy with the appellant for having not given due importance to him. [Para 17] [841-D-G]

A 3. Due to consideration of the remarks recorded by  
the District Judge and not taking into consideration that  
such remarks were expunged/substituted as  
communicated to the appellant vide communication  
dated October 21, 1997, the very consideration of the  
B appellant's case for promotion in the substantive  
vacancy in UPHJS under the 1975 Rules by the selection  
committee in its meeting dated May 18, 1998 and by the  
full court in its meeting held on July 11, 1998 gets  
seriously and vitally affected. [Para 18] [841-H; 842-A-B]

C 4. The matter for the appellant's promotion in the  
substantive vacancy in UPHJS which was considered by  
the selection committee on May 18, 1998 and by the full  
court on July 11, 1998 needs to be reconsidered in  
accordance with law. Since the appellant is likely to  
D superannuate shortly, the High Court on its  
administrative side is expected to complete this exercise  
as early as possible and preferably within one month  
from the date of the communication of this order. [Para  
21] [842-F-G]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No.  
2307 of 2011.

F From the Judgment & dated 21.12.2009 of the High Court  
of Judicature at Allahabad, Lucknow Bench at Lucknow in Civil  
Misc. Writ No. 8 [S/B] Now D.B. of 1999.

Dinesh Dwivedi, P.N. Gupta, Manish Shankar Srivastava,  
Varun Chaudhary, Prateek Dwivedi for the Appellant.

G Ravi Prakash Mehrotra, Vibhu Tiwari for the Respondents.

The Judgment of the Court was delivered by

H R.M. LODHA, J. 1. The appellant – a judicial officer –  
having not been promoted in the substantive vacancy to Uttar  
Pradesh Higher Judicial Service (for short, 'UPHJS') and, as

[R.M. LODHA, J.]

a result of which, was reverted as Civil Judge (Senior Division) is in appeal, by special leave. A

2. The appellant, after due selection, joined judicial service in Uttar Pradesh as Munsiff on May 16, 1977 and was confirmed as such on August 30, 1982. He became Additional Civil Judge on January 4, 1986 and got selection grade of Rs. 3700 – 5000 with effect from April 1, 1990. He then became Civil Judge (Senior Division). B

3. The Allahabad High Court, on the administrative side, in its full court meeting held on November 18, 1995, approved promotion of the appellant in officiating capacity under Rule 22(3) of Uttar Pradesh Higher Judicial Service Rules, 1975 (for short, '1975 Rules'). Pursuant to the above decision taken by the full court, a notification was issued on June 7, 1996 promoting and posting the appellant as Additional District and Sessions Judge, Lalitpur. C D

4. While the appellant was posted as Additional District and Sessions Judge, Lalitpur, Shri Mukteshwar Prasad happened to be District Judge, Lalitpur. The appellant was made Officer in-charge, Nazarat by the District Judge with effect from September 10, 1996. The appellant continued as such until March, 1997 or so. It so happened that in the intervening night of January 30/31, 1997, some thieves entered the residence of the appellant and tried to break open the doors. The appellant suspected the involvement of class-IV employees of Lalitpur Judgeship. On that day, the District Judge was on leave and the appellant handed over an application to the Senior Administrative Officer wherein he alleged the support of the District Judge to class IV employees suspected to have entered the house of the appellant for theft. The application made by the appellant to the Senior Administrative Officer was kept in an open envelope. The District Judge, Lalitpur sought explanation from the appellant with regard to the allegations made by him in his application and also gave information of the incident to the Registrar of the High Court as well as the E F G H

A inspecting Judge of Lalitpur Judgeship on February 19, 1997.

5. In the appellant's annual confidential report (ACR) of the year 1996-97 (June 12, 1996 to March 31, 1997), the District Judge (Shri Mukteshwar Prasad) made the following remarks:

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“(a) Integrity of the officer whether beyond doubt, doubtful or positively lacking. Beyond doubt. No complaint received.

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(b) If he is fair and impartial in dealing with the public and bar. No specific complaint was made to me.

(c) If he is cool-mind and does not lose temper in court. Yes

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(d) His private character, if such as to lower him in the estimation of the public and adversely affects the discharge of his official duties. No complaint received against his private character.

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(e) Control over the file in the matter of-

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(i) Proper fixation of cause list. Not proper. On an Average, he fixed 22-23 cases.

(ii) Avoidance of unnecessary adjournments Satisfactory

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(iii) Disposal of old cases. Not satisfactory. Disposed of one S.T. of 1991, 2 of 1992 and 6 of 1993

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	out of 7 of 1991, 32 of 1992 and 36 of 1993.	A
(iv) Progress and disposal of execution cases.	There were 3 execution cases of 1996 but no case was disposed of. One case is stayed by the Hon'ble High Court.	B
(v) Interim orders, injunctions Being granted, refused to retained for sufficient reasons.	Yes.	C
(vi) Are cases remanded on substantial grounds?	No appeal was remanded.	D
(f) Whether judgments on facts and law are on the whole sound, well reasoned and expressed in good language.	Judgments of average quality.	E
(g) Whether disposal of work is adequate (give percentage & reasons for short disposal).	Out-turn being 132% is above the standard. As per statement received as against 133 working days, he gave work for 175.88.	F
(h) Control over the office and administrative capacity and tact.	Proper.	G
(i) Relation with members of the bar [mention incidents, if any]	Normal	
(j) Behaviour in relation to	Normal	H

A brother Officers [mention incidents, if any]

(k) Whether the officer has made Regular inspections of his court and Offices in his charge during the year and whether such inspections were full and effective. YES

(l) His punctuality in sitting in the court Punctual.

(m) Whether amenable to advice of District Judge and other superior Officers. He is not amenable at all to the advice of the District Judge. Reasons given below in column no. 3.

2. Overall assessment of the merit of the officer-out-standing, very good, good, fair, poor. Poor. Irresponsible and indisciplined officer who has no regard for his super-iors or truth. Details mentioned in column no. 3 below.

3. Other Remarks, if any.

After taking over charge by me in this district, the officer was appointed Officer-in-Charge, Nazarat w.e.f. 10.9.1996. He being the next senior most officer in the Judgeship and only Addl. District Judge at that time, was expected to extend his full cooperation and assistance in the affairs of the Judgeship. Since very beginning, I found that his attitude was not cooperative and in fact he took no interest at all for improvement in working of Nazarat. He never came to me in the chamber or at the residence to discuss any problem relating to Nazarat. In the month of November, 1996, he made a request in writing for



relieving him from the post of Officer-in-charge, Nazarat. I summoned him and persuaded to continue as Officer-in-charge, Nazarat. With reluctance, he agreed to continue. Again he sent an application on 22.1.97 for removing him from the post of Officer-in-charge, Nazarat on the ground that Sri Shanker Lal, a Class IV employee was not transferred by me on his oral and written request. It is noteworthy that Sri Shanker Lal was transferred and in his place Sri Manik Chand was posted in his court vide order dated 30.1.97. Sri Singh was highly interested in a Class IV employee [Sri Swand Singh] and wanted his posting in his court but he was not transferred there for some administrative reasons. He joined the service in August, 1996.

He always complained of non-cooperation of Central Nazir and other officials working in the Nazarat and passed an order also on 23.12.96 to the effect that the Central Nazir never took round of the courts and never checked Chowkidars. In pursuance of this order, Central Nazir Sri Shamsheer Bahadur Srivastava took a surprise round of the Civil Court building on 12.1.97 at about 3.35 a.m. and checked both Chowkidars at 3.50 a.m. Both Chowkidars, namely, Sarvasri Swank Singh and Gulab Chand Saroj were found sleeping. He submitted his report to the Officer-in-charge, Nazarat to call explanation of the Chowkidars. Sri Singh took no action against the Chowkidars and warned them to be vigilant in future.

Sri Singh always found shirking from work and never rendered any assistance to me in dealing with various problems of the Judgeship. Before posting of Sri Jai Singh, a newly promoted Addl. District Judge in the district in the month of March, 1997, he was senior most Addl. District Judge in the Judgeship. He, however, did not play his role properly for the simple reason that a Class IV employee of his choice was not posted by me in his court.

- A 2. Sri Singh levelled totally false and baseless allegation against me in writing on 31.1.1997 when I was out of station and had gone to Gwalior. In my absence he handed over an application to Senior Administrative Officer and did not even keep the application in an envelope.
- B Consequently, the contents of the letter were well-known to all the officials and officers working under me before my arrival at the headquarters. He levelled accusation against me that some thieves tried to break open the doors of his residence in the night intervening 30/31.1.1997. He suspected the involvement of some Class IV employees of the judgeship. According to him the thieves were Class IV employees of the judgeship and I was supporting them.
- C After having gone through the contents of the letter, I was stunned. I sent a letter to Sri Singh and sought his reply on a few questions. In his reply dated 6.2.97, he tried to twist his letter dated 31.1.97. Thus the officer tried to tarnish my image in the eyes of other officers and officials of the Judgeship and committed an act of gross indiscipline.
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- E I have already communicated these facts to the Registrar of the Hon'ble High Court of Judicature at Allahabad as well as Hon'ble the Inspecting Judge of Lalitpur through my D.O. letters No. 4 and 5/P.A./1997 dated 19.2.1997.
- F For all the above reasons, I have rated the officer to be most irresponsible and indisciplined."

6. The above adverse remarks recorded by the District Judge, Lalitpur were communicated to the appellant on May 30, 1997. On receipt of the communication, the appellant made representation to the Registrar on June 28, 1997 and prayed that the adverse remarks recorded by the District Judge be expunged.
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7. On October 21, 1997, the appellant was communicated by the Joint Registrar that after consideration of his
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representation, the remarks recorded by the District Judge in Column No. 1(e)(iii), 1(e)(iv) for the year 1996-97 have been expunged and Column No. 2 has been substituted by the court as – ‘overall assessment – just average’.

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8. It is the appellant's case that on July 11, 1998, he came to know that the full court in its meeting held on that day did not approve the appellant's name for his appointment in the substantive vacancy in UPHJS. The appellant submitted a representation to the High Court on administrative side on August 19, 1998 to reconsider the decision taken on July 11, 1998. The representation of the appellant was not favourably considered and on December 5, 1998 a notification was issued on the basis of the decision taken by the full court on July 11, 1998 reverting the appellant to the judicial service, i.e. Civil Judge (Senior Division).

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9. The appellant challenged the notification dated December 5, 1998 in a writ petition before the Allahabad High Court at Lucknow Bench and prayed for quashing the same. He prayed that report of the selection committee dated May 18, 1998 and record of the decision of the full court taken on July 11, 1998 insofar as appellant was concerned be called for and a writ of mandamus be issued commanding the respondents to treat the appellant having been promoted to the UPHJS and ignore the remarks made by the District Judge in the ACR for the year 1996-97.

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10. The above writ petition was contested by the respondents.

11. The Division Bench of the High Court, after hearing the parties, by its order dated December 21, 2009 dismissed the writ petition.

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12. We heard Mr. Dinesh Dwivedi, learned senior counsel for the appellant and Mr. Ravi Prakash Mehrotra, learned counsel for the respondent no. 2.

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A 13. From the counter affidavit filed before this Court on  
 behalf of respondent No. 2 – High Court of Judicature at  
 Allahabad – it transpires that the matter for promotion of the  
 appellant in UPHJS under Rule 22 (3) of the 1975 Rules was  
 considered by the HJS Selection Committee of three-Judges  
 B in its meeting held on November 10, 1995 and the name of the  
 appellant was recommended for promotion to UPHJS in ad-  
 hoc capacity. The report of the selection committee was  
 considered by the full court in its meeting held on November  
 18, 1995 and the appellant's name was approved for promotion  
 C to UPHJS in ad-hoc capacity. The appellant was accordingly  
 promoted to UPHJS and given posting at Lalitpur as Additional  
 District and Sessions Judge. Thereafter appellant's matter for  
 promotion in the substantive vacancy in UPHJS was  
 considered by the selection committee comprising of three-  
 D Judges on May 18, 1998. The committee, however, did not  
 recommend the appellant's name for promotion under Rule  
 22(1) of the 1975 Rules in view of the remarks given by the  
 District Judge in the ACR for the year 1996-97. The committee  
 referred to the remarks of the District Judge made in column 3  
 E that he was most irresponsible and indisciplined officer. The  
 report of the above committee was considered by the full court  
 in its meeting held on July 11, 1998 and his name was not  
 approved for appointment in UPHJS under Rule 22 (1) of the  
 1975 Rules. The question before us is : whether non-approval  
 F of the appellant for promotion in the substantive vacancy in  
 UPHJS under Rule 22(1) of the 1975 Rules suffers from any  
 illegality.

14. It is not in dispute that the remarks recorded by the  
 District Judge, Lalitpur in the ACR for 1996-97 (June 12, 1996  
 G to March 31, 1997) formed the basis of non-approval of the  
 appellant's name for promotion in the substantive vacancy in  
 the UPHJS. That the District Judge, Lalitpur rated the appellant  
 in the ACR recorded for the above period as an 'irresponsible  
 and indisciplined officer' is borne out from the record. Against  
 H the remarks made by the District Judge, the appellant made a

comprehensive representation to the Registrar on June 28, 1997. It is not necessary to refer to the representation made by the appellant in detail. Suffice it to say that the appellant did highlight that his integrity has been found to be beyond doubt and that in about 20 years of his judicial service, he has been posted with 24 District Judges and except the adverse remarks made by Shri Mukteshwar Prasad, District Judge, Lalitpur for the above period at no point of time any District Judge recorded any adverse remark about his conduct, integrity or performance. The appellant emphatically denied the observations of the District Judge, Lalitpur, recorded in the ACR and explained the entire episode.

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15. The representation made by the appellant was considered by the Inspecting Judge of Lalitpur District. Vide communication dated October 21, 1997, the appellant was informed that the adverse remarks recorded by the District Judge in column No. 1 (e)(iii) – ‘disposal of old cases : not satisfactory’ and the adverse remarks in column no. 1 (e)(iv) – “progress and disposal of execution cases: there were three execution cases of 1996 but no case was disposed of” had been expunged. In the above communication, the appellant was also informed that column no. 2—“overall assessment of the merit of the officer – outstanding, very good, good, fair, poor : Poor. Irresponsible and indisciplined officer who has no regard for his superiors or truth. Details mentioned in column no. 3 below” has been substituted by “overall assessment – just average”. A careful reading of the communication dated October 21, 1997 leaves no manner of doubt that the adverse remarks given by the District Judge, Lalitpur in column no. 2 that appellant was irresponsible and indisciplined officer for the facts stated in column no. 3 no longer remained as it is and were substituted by “just average”. The consideration of the remarks recorded by the District Judge, Lalitpur by the selection committee as well as by the full court in its meeting held on July 11, 1998 was, thus, not proper.

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16. However, in the counter affidavit filed on behalf of

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A respondent No. 2 before this Court, in paragraph 'C', the complete text of the order passed by the Inspecting Judge on August 6, 1997 on the representation of the appellant has been re-produced which reads as follows :

B "I have gone through the adverse remarks given by the District Judge, Sri Mukteshwar Prasad in para – 1 (e)(i), 1(e)(iii), 1(e)(iv), 1(f) and 1(m) as well as in column no. 2 relating to "over all assessment" and column no. 3 relating to "other remarks, if any", I have also gone through the representation preferred by the officer concerned. Looking to the representation made by the officer concerned, I feel that the conclusions arrived at by the District Judge in para 1(e)(i) and 1(f) do not deserve to be expunged while the conclusions arrived at under column 1(e)(iii) and 1(e)(iv) deserve to be expunged.

D The details given by the District Judge in remarks column no. 3 do go to indicate that Sri Pratap Singh—II is not amenable to the advice of the former, i.e. District Judge. As far as the over-all assessment taken to be 'poor' by the District Judge is concerned, I do not agree with the conclusions arrived at by him. Instead, looking to the reasons given by the Judicial Officer, Sri Pratap Singh-II in this regard, I find logic in them; since his integrity has been described by the District Judge to be beyond doubt and his work out-turn has been described to be above standard then, obviously, the over all assessment could not be 'poor'. Thus, it deserves to be expunged, and, instead, keeping in mind the complete A.C.R. and the remarks given by the District Judge, overall assessment can be rated as "just average".

G Further, since remarks given by the District Judge, Sri Mukteshwar Prasad are based on factual aspects which had also been communicated to the Registrar of the High Court as well as to me, the Inspecting Judge, at the opportune time, hence, they do not deserve to be

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expunged, and the representation made by the Judicial Officer, Sri Pratap Singh-II in this regard deserves to be rejected.” A

17. On October 11, 2011, in course of hearing, Mr. Ravi Prakash Mehrotra, learned counsel for respondent No. 2 made a request for adjournment to enable him to seek instructions as to whether or not along with the communication dated October 21, 1997, copy of the decision of the Inspecting Judge, as reproduced above, was sent to the appellant. We acceded to the request of the counsel and kept the matter for October 18, 2011. On October 18, 2011, Mr. Ravi Prakash Mehrotra, fairly stated that the copy of the decision of the Inspecting Judge was not sent to the appellant and he was informed of what was contained in the communication dated October 21, 1997 only. In our view, in the above circumstances the text of the decision of the Inspecting Judge dated August 6, 1997 cannot be used against the appellant. It needs no emphasis that a judicial officer has to be disciplined and must behave as a responsible officer. Indiscipline in the judiciary cannot be tolerated. However, as noted above, the remarks of the District Judge that the appellant was, 'irresponsible and indisciplined officer who has no regard for superiors or truth' have been expunged/substituted by the Inspecting Judge. The effect of such expunction/substitution is that the appellant cannot be considered an irresponsible or indisciplined officer on the basis of remarks recorded by the District Judge. The gravity of what has been recorded in column (3) is, thus, lost. Moreover, the root of the problem between the two senior judicial officers appears to be clash of ego. In the words of Samuel Johnson, every man is of importance to himself. The observation noted in column (3), 'He never came to me in the chamber or at the residence to discuss any problem relating to Nazarat' indicates that the District Judge was not happy with the appellant for having not given due importance to him. B  
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18. Be that as it may, due to consideration of the remarks recorded by the District Judge and not taking into consideration H

A that such remarks were expunged/substituted as  
communicated to the appellant vide communication dated  
October 21, 1997, the very consideration of the appellant's  
case for promotion in the substantive vacancy in UPHJS under  
the 1975 Rules by the selection committee in its meeting dated  
B May 18, 1998 and by the full court in its meeting held on July  
11, 1998 gets seriously and vitally affected.

19. It is important to notice that in the counter affidavit filed  
on behalf of respondent no. 2, it has been stated that  
appellant's matter for promotion in the substantive vacancy in  
C UPHJS was again considered by the selection committee on  
November 24, 2004 but in view of the matter being *sub judice*,  
it was resolved that appellant's name could not be considered  
for regular appointment under Rule 22(1) of the 1975 Rules and  
the above report of the selection committee was accepted by  
D the full court in its meeting held on February 5, 2005.

20. In what we have discussed above, it is not necessary  
to consider the submissions of the learned senior counsel for  
the appellant that under Chapter III, Rule 4(B)(3) and Rule  
4(C)(16) of the Allahabad High Court Rules (Rules of the Court),  
E 1952 framed under Article 225 of the Constitution of India, the  
District Judge had no competence to make any remark with  
regard to the appellant.

21. In our view, the matter for the appellant's promotion in  
the substantive vacancy in UPHJS which was considered by  
F the selection committee on May 18, 1998 and by the full court  
on July 11, 1998 needs to be reconsidered in light of the  
discussion made above and in accordance with law. Since the  
appellant is likely to superannuate shortly, we expect the High  
Court on its administrative side to complete this exercise as  
G early as possible and preferably within one month from the date  
of the communication of this order.

22. The appeal is allowed, as indicated above, with no  
order as to costs.

H B.B.B.

Appeal allowed.