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SRIKANT ROY & ORS.

v.

STATE OF JHARKHAND & ORS.

(Civil Appeal No. 10874 of 2016)

B

NOVEMBER 16, 2016

**[T. S. THAKUR, CJI, A. M. KHANWILKAR AND
DR. D. Y. CHANDRACHUD, JJ.]**

C

Judicial Service – Higher Judicial Service – Selection process – Selection for the posts of Additional District Judges – Jharkhand Superior Judicial Services (Recruitment, Appointment and Conditions of Services) Rules, 2001 – rr. 5 and 8 – Bifurcation of posts as per roster system pursuant to amended rules – In terms whereof, 50% of the posts to be filled up by promotees on the basis of merit-cum-seniority – Remaining 50% posts to be bifurcated

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equally, i.e. 25% by way of selection through Limited Competitive Examination and 25% by direct recruitment from the Bar – Selection process initiated in August 2008 for filling up posts of ADJs by promotion through Limited Competitive Examination – Challenge to – High Court held that since 50% of the posts were already filled up by promotees on merit-cum-seniority basis, the left over 50% vacancies should be filled by promotion through Limited Competitive Examination and by the direct recruits in equal proportion – On appeal, held: Amended Rules providing for the ratio to be maintained between the promotees and direct recruits became effective on 20th August 2004 and had prospective application – In

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terms of the consistent stand of the State Government and the affidavit filed by High Court (Administrative Side), it is clear that the notification for filling up posts of ADJ by promotion issued in 2008 was on the basis that no vacancy against the posts of direct recruit quota was available – High Court committed manifest error in not considering these relevant facts as to vacant posts in relation

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to direct recruit quota – Distinction between “post” and “vacancy” overlooked by High Court – Once it is found that no vacancy against the quota of direct recruitment was available at the relevant time, private respondents who were eligible to participate in the selection process through direct recruitment alone and not by promotion, had

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to direct recruit quota – Distinction between “post” and “vacancy” overlooked by High Court – Once it is found that no vacancy against the quota of direct recruitment was available at the relevant time, private respondents who were eligible to participate in the selection process through direct recruitment alone and not by promotion, had

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no locus to challenge the 2008 selection process – Resultantly, 2008 selection process held to be proper and final – Judiciary. A

Allowing the leading Civil Appeal and dismissing the three connected writ petitions, the Court

HELD: 1.1 When the amended Rules providing for the ratio to be maintained between the promotees and direct recruits became effective on 20th August 2004 and had prospective application, the factual position as obtained on 20th August 2004 would become relevant. [Para 12] [70-G-H] B

1.2 In view of Rules 4 and 5 read with Rule 8, as it existed prior to the amendment of 20.08.2004 appointments made prior to 2004 were governed by the Rules as applicable at the relevant time. As per that dispensation, the direct recruits quota was 33% of the total posts. That was obviously in excess of 25% now specified in the amended Rules (as amended on 20.08.2004). Notably, the State of Jharkhand had filed an affidavit in C.A.No.1867/2006 before this Court stating that no vacancy against 25% quota for direct recruitment existed in the State of Jharkhand at that time. This affidavit was filed on 26th August 2008 after the amended Rules were notified and came into force w.e.f. 20th August 2004. Thus, notification for filling up of 34 posts of Additional District Judge through Limited Competitive Examination from amongst the members of Jharkhand Subordinate Judges was issued in 2008 on the basis that no vacancy against the posts of direct recruit quota was available. That stand is reiterated even now in the affidavit filed by the High Court. The High Court in the impugned judgment committed manifest error in not considering these relevant facts about the vacant posts for direct recruits as on 20.08.2004, before recording a finding against the High Court and the State Government and to reject their stand that no vacancy against the quota of direct recruit was available as on 30.04.2008. [Paras 13, 14] [71-A; 72-C-F] C D E F G

1.3 Once it is found that no post against the quota of direct recruitment was available as on 30th April, 2008, no fault can be found with the selection process commenced by the High Court for appointment in the cadre of Jharkhand Superior Judicial Service by promotion on the basis of merit through Limited H

A **Competitive Examination.** The High Court in the impugned judgment glossed over the effect of filling up the vacancies in the ratio of 25:25, which inevitably would exceed the quota of posts for direct recruits as on 30.04.2008. That would disturb the roster point and was impermissible in terms of Rule 8 as amended. [Para 16] [76-A-B]

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 1.4 Considering the fact that no vacancy existed in the quota of direct recruit as on 30th August 2008, the writ petitioners (respondents 4 to 11 in the leading appeal), who could participate in the selection process for direct recruit alone and not by way of promotion through Limited Competitive Examination, had no locus to challenge the selection process of 2008. [Para 18] [78-A-B]

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 2. The High Court overlooked the distinction between “post” and “vacancy”. If the requisite posts were already exhausted by the direct recruits against the earmarked quota for direct recruitment, merely because some vacancies occur, it would not be open to the aspiring candidates against the direct recruit quota to challenge the selection process commenced for the in service judicial officers by promotion through Limited Competitive Examination. [Para 19] [78-B-C]

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All India Judges' Association & Ors. v. Union of India & Ors. (2002) 4 SCC 247 : 2002 (2) SCR 712; *Rakhi Ray & Ors. v. High Court of Delhi and Ors.* (2010) 2 SCC 637 : 2010 (2) SCR 239 – referred to.

Case Law Reference

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|---|------------------|-------------|---------|
| F | 2002 (2) SCR 712 | referred to | Para 15 |
| | 2010 (2) SCR 239 | referred to | Para 21 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10874 of 2016.

G From the Judgment and Order dated 29.08.2008 of the High Court of Jharkhand at Ranchi in WPS No. 4159 of 2008

WITH

W. P. (C) No. 300 of 2013

W. P. (C) Nos. 27 and 325 of 2014.

H Nidhesh Gupta, Amrendra Sharan, Ajit Kumar Sinha, Mahabir

Singh, Sr. Advs. Raunak Singh, Amit Kumar, Shaurya, Puneet Varshney, Rajeev Sharma, Sumit Kumar, Dr. Kailash Chand, Ambhoj Kumar Sinha, Krishnanand Pandeya, Himanshu Shekhar, Jamnesh Kumar, Devashish Bharuka, Ms. Madhusmita Bora, Pawan Kishore Singh, Ms. Madhur Dadlani, Jayesh Gaurav, Anil K. Jha, Tapesh Kumar Singh, Mohd. Waquas, Aditya Pratap Singh, Shiv Ram Sharma, Ms. Asha Gopalan Nair, Advs. for the appearing parties. A B

The Judgment of the Court was delivered by

A. M. KHANWILKAR, J. 1. Leave granted.

2. This common judgment will dispose all the four petitions. C

3. The leading Civil Appeal arising out of Special Leave Petition (Civil) No.9883/2009, is directed against the judgment of the Division Bench of the High Court of Jharkhand at Ranchi in W.P.(S) No.4159/2008 dated 29th August 2008. By the said Writ Petition, the writ petitioners (respondents 4 to 11 herein) had challenged the selection process for filling up of 34 posts of Additional District Judges through Limited Competitive Examination scheduled on 31st August 2008; and also 18 posts of Additional District Judges from the promotee officers on the basis of merit-cum-seniority scheduled on 23rd August 2008. The writ petitioners (respondents 4 to 11 herein) were appointed purely against temporary and ex-cadre posts on ad-hoc basis, as Presiding Officer, Fast Track Courts in the rank of Additional District & Sessions Judge in the year 2002. According to the said writ petitioners, the impugned selection process was improper and not in conformity with the mandate of the amended Rules requiring ratio of 50:25:25 - by promotion from amongst the Sub-Judges on the basis of merit-cum-seniority and passing of a suitability test; by promotion (by way of selection) strictly on the basis of merit through a Limited Competitive Examination of Sub-Judges having not less than 5 years service; and by direct recruitment from the Bar on the basis of written test and viva-voce conducted by the High Court, respectively. The said writ petitioners asserted that if the impugned selection process was allowed to be taken forward, it would be in breach of the relevant Recruitment Rules and also infringe the mandate of adhering to the roster as per Rule 8 of the amended Rules. The main contention of the said writ petitioners was that the High Court was erroneously linking the ratio of posts to fill up the vacancies by giving retrospective effect to the amended Rules, which has come into force w.e.f. 20th August 2004. The challenge before the High Court in the writ D E F G H

A petition, as has been noted in the opening para 1 of the impugned judgment was limited to the quota assigned for the Limited Competitive Examination from amongst the (Subordinate Judge/Civil Judge (Senior Division) scheduled to be held on 31st August 2008. The High Court in paragraph 4 of the impugned judgment has noted that the challenge is only to the extent of 42 posts of Additional District Judges which had to be filled up by following the roster system in the ratio of 25:25. Those posts were required to be bifurcated equally between the promotees from the rank of Subordinate Judges by conducting Limited Competitive Examination and direct recruits from the Bar in the ratio of 25:25. In paragraph 10 onwards of the impugned judgment, the High Court upheld the plea of the said writ petitioners and issued directions to the High Court to fill up the vacancies, as directed. The relevant portion of the impugned judgment reads thus:

“10. Having heard the counsel for the parties at some length in the light of the explanation in regard to the bifurcation of the posts as per roster system to be followed in pursuance to the Jharkhand Superior Judicial Service Rules, which was amended in view of the directions of the Supreme Court, we are of the view that 50% of the posts having already been filled up by the promotees on the basis of the merit-cum-seniority due to which 41 posts were filled up, the left over 42 posts have to be bifurcated into 25% and 25% meaning thereby 21 posts will have to be assigned to be filled up by promotion from the Subordinate Judges/Civil Judge (Senior Division) on the basis of Limited Competitive Examination and left over 21 posts which constitute 25% of the available posts will have to be filled up by the direct recruits as that is the clear mandate of the Supreme Court in the case referred to hereinbefore in pursuance to which the Jharkhand Superior Judicial Service Rules, was also amended in 2001 and became effective in 2004. In fact, the petitioners have informed this Court that the respondents have not only invited the applications for all the 42 posts to be filled up by the Subordinate Judges on the basis of Limited Competitive Examination, but even the posts that might be available in the year 2009 have also been included in the advertisement, which is clearly not in consonance with the direction of the Supreme Court and is also contrary to the Jharkhand

Superior Judicial Service Rules, 2001.

11. Hence, this court is left with no option, than to set aside the examination process, which is scheduled to be held on 31.08.2008 and further direct the respondents to bifurcate the left over posts into the ratio of half and half, i.e. 25% and 25% equally and thereafter issued a fresh advertisement for filling up 21 posts by the Subordinate Judges on the basis of Limited Competitive Examination and the rest 21 posts will have to be filled up by direct recruits for which exercise will have to be undertaken in future by the respondents.

12. As no other point has been pressed in this writ petition and the only dispute that has been raised is in record to bifurcation of posts contrary to the roster principle, referred hereinbefore, and the same having been found to be correct, the notification issued on the internet for filling up the posts of Additional District Judges is quashed and set aside. Consequently, the process of examination to be held on 31.8.2008 is also set aside. The writ petition, accordingly, is allowed, but without any order as to costs."

4. The appellants, who were working as Subordinate Judges at the relevant time and were otherwise eligible to appear in the Limited Competitive Examination for filling up the notified vacancies by way of promotion, have approached this Court to question the aforesaid decision.

5. The cognate Writ Petitions involve overlapping issues. The petitioners in these Writ Petitions, however, participated in the selection process of 2010 commenced on the basis of an advertisement No. 1/2010 for the post of Additional District Judge from the Bar. These petitioners did not succeed in getting appointed, as the first 8 candidates in the merit list exhausted the 8 vacancies notified for the relevant period. The said writ petitioners were, however, placed at serial No.9 onwards in the merit list. According to these petitioners, some more posts were available for direct recruits from the Bar. That contention, essentially, is dependent on the outcome of Civil Appeal arising out of Special Leave Petition (Civil) No.9883/2009 wherein the selection process of 2008 is the subject matter. According to these writ petitioners, the High Court had failed to notify the correct number of vacancies for 2010. The correct number of vacancies in 2010 to be filled up by direct recruitment ought to be 13.

A Indeed, the writ petitioners have made their own assumption to arrive at this number of vacancies, as is spelt out from the averments in the Writ Petition.

B 6. The Registrar General of the High Court has filed reply affidavits. The stand of the High Court (Administration Side) was that no vacancy for direct recruit from the Bar existed as on 20.04.2008. It is stated that in the year 2008, the actual vacancy as on 30th April, 2008 and anticipated vacancy till 31st March 2009 were notified on the official Website of the High Court. The said Notification reads thus:

| Actual Vacancy as on 30.04.2008 | | Anticipated Vacancy till 31.03.2009 |
|--|---|--|
| By Promotion from Sub-Judges on basis of merit-cum-seniority | Promotion (by way of Selection) through limited competitive examination | By promotion from Sub-Judges on basis of merit-cum-seniority |
| 18 | 34 | 11 |

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E Note: In the event of issuance of notification by the State Government regarding induction of 10 Adhoc A.D.Js. of the Fast Track Courts in the Jharkhand Superior Judicial Service on regular basis, in view of the recommendation of the Court made vide letter Nos.6949/Apptt. Dated 3rd November 2007 and 2819/Apptt. Dated 11.04.2008, the actual vacancies as on 30.04.2009 in the Promotee Quota shall be reduced to 08.”

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G After initiation of the impugned selection process for 2008, a Writ Petition No.4159/2008 was filed in the High Court in which directions were issued to the High Court to fill up 21 vacancies out of 42 vacancies by promotion of Subordinate Judges on the basis of Limited Competitive Examination and the rest of 21 vacancies by direct recruitment. The matter was, therefore, referred to the selection committee. In the meantime, however, the Judicial Officers challenged the decision of the High Court by way of present S.L.P. (Civil) No. 9883/2009 in which interim stay of operation of the directions issued by the High Court was granted on 9th April, 2009. The said interim order was later modified on 24th September 2010, in the following terms:

“List alongwith the batch of T.C.22 of 2001.

H Since the matter has been pending at the stage of advertisement of 2008, we modify the order passed by the

previous Bench dated 9.4.2009 by directing the process, pursuant to the advertisement of 2008, to continue pending the hearing and final disposal of this Special Leave Petition. However, on completion of the exercise, vacancies will not be filled till further orders."

Pursuant to the modification of the interim order, the High Court completed the selection process of filling up of the notified vacancies of 2008 by way of promotion. On a further application filed, this Court on 5th August 2011 permitted the High Court to make appointments concerning the said selection process of 2008. The said order reads thus:

"In modification of our order dated 24th September 2010, the High Court is free to make appointments subject to the result of the special leave petition.

The Interlocutory Application is, accordingly, allowed."

Pursuant to the liberty given by this Court, the High Court submitted recommendations to the State Government for promotion of 31 Officers of Sub-Judge Cadre as per the advertisement issued in 2008 to fill up the vacancies in terms of Rule 4(b) and 4(c). The High Court submitted another recommendation to the State Government for promotion of 17 more Officers.

7. It is then asserted by the High Court that when the selection process of 2008 was commenced and completed, there was no vacancy for direct recruit quota. The affidavit also refers to the fact that 8 vacancies of direct quota were notified in the year 2010 vide High Court memorandum dated 4th November 2010 for the relevant period, which reads thus:

"Actual vacancies in the Jharkhand Superior Judicial Service accrued during the period from 18.07.2008 till date

| By Promotion from Sub-Judges on basis of merit-cum-seniority | Promotion (by way of Selection) through limited competitive Examination | By direct recruitment from Bar | Total Vacancies |
|--|---|--------------------------------|-----------------|
| 28 | 08 or 09 | 07 or 08 | 44 |

*Memo 7671/Apptt. Dated Ranchi the 4th November, 2010
 Copy forwarded to Scientist (D), N.I.C., Jharkhand High Court Ranchi.*

A *He is requested to put the aforesaid vacancies in the official website of the Jharkhand High Court, Ranchi."*

The High Court with a view to fill up those vacancies, commenced the process vide advertisement No.01/2010. Pursuant to the said advertisement, the writ petitioners in the connected writ petitions appeared in the preliminary examination held on 29th September 2011 and the main examination held on 27th November 2011 along with other candidates. Only 32 candidates could qualify the main examination, who were called for viva-voce held on 3rd February 2012. Out of those candidates, only 15 candidates including the writ petitioners in the connected writ petitions successfully qualified all the three rounds. However, as per the merit wise rank of successful candidates, the names of the said writ petitioners were placed at lower position. Thus, the first 8 meritorious candidates were recommended for appointment against the vacant posts to be filled by the process of direct recruitment. It is also mentioned in the affidavit that the appointment of the candidates made against the selection process for 2008, the candidates were made aware that their appointment was subject to the final decision of this Court in SLP (Civil) No. 9883/2009.

8. It is asserted by the High Court that the writ petitioners in connected writ petitions, who participated in the subsequent selection process cannot get any advantage qua the selection process of 2008. For, they participated in the selection process commenced on the basis of advertisement No.1 of 2010. Similarly, they cannot claim any relief in respect of fresh vacancy which was notified in the year 2012, vide Notification dated 22nd March, 2012. That notification reads thus:

“JHARKHAND HIGH COURT, RANCHI
NOTIFICATION

F *No. 102/A. The Vacancies of the Jharkhand Superior Judicial Service including the future vacancies till 31.12.2012 are hereby notified in the following manner:-*

| | By promotion from Civil Judge (Sr. Division) on the basis of merit-cum-seniority (65%)- under Rule 4(b) of Rules, 2001 | Promotion (by way of selection) through limited competitive Examination (10%)- under Rule 4(c) of Rules, 2001 | By direct recruitment from Bar (25%)- under Rule 4(a) of Rules, 2001 |
|---|--|---|--|
| G | | | |
| H | 57+7=64 | Nil | 5 (+8*) |

It is made clear that appointment over the aforesaid 69 notified vacancies will also be subject to final decision of the Hon'ble Supreme Court in the Special Leave to Appeal (Civil) No. 9883/2009. A

Also, all the earlier advertised vacancies are hereby recalled and restructured in the above manner. B

**Note:- The recommendation for filling up of 08 vacancies of Direct Recruit Quota has already been made to the State Government for issuance of necessary Notification vide Letter No. 1959/Appnt. Dated 10.02.2012 and thus the vacancy under this Quota till 31.12.2012 remains 05(five).* C

Dated: 22nd March, 2012

*By Order,
 Registrar General"*

The vacancy position as on 31st December 2012 was revised and duly notified vide Notification dated 19th September 2012, which reads thus: D

"JHARKHAND HIGH COURT, RANCHI

NOTIFICATION

No.275/A The Vacancies position of the Jharkhand Superior Judicial Service till 31.12.2012 as notified vide Notification No.102/A dated 22nd March 2012 is revised and notified in the following manner:- E

| By promotion from Civil Judge (Sr.Division) on the basis of merit-cum-seniority (65%) – under Rule 4 (b) of rules, 2001 | Promotion (by way of selection) through limited competitive examination (10%)- under Rule 4(c) of rules, 2001 | By direct recruitment from Bar (25%)- under Rule 4(a) of rules 2001 |
|---|---|---|
| 68* | Nil | 08 |
| | | |

It is made clear that appointment over the aforesaid notified vacancies will subject to final decision of the Hon'ble Supreme Court in the Special Leave to Appeal (Civil) No.9883/2009. H

A *Note: In the event of the issuance of Notification by the State*
 B *Govt. regarding Promotion of 28 Officers of the rank of Civil*
Judge (Sr.Division) in the Jharkhand Superior Judicial
Service in view of recommendation of the Court as made
vide letter no.9593/Apptt. Dated 17th July 2012, the actual
vacancy as on 31.12.2012 under this quota [i.e. under Rule
4(b)] shall be reduced to 40.

By Order
 Sd/-

Registrar General

C *Dated: 19th September, 2012"*

9. It is stated that the vacancy position as on 31st December 2012 was notified on the basis of the sanctioned strength of 174 at the relevant time. That sanctioned strength was later on increased to 191 on creation of 17 permanent posts of Superior Officers @ 10% of existing strength. In paragraph 20 of the reply affidavit, the vacancy position as calculated on the basis of amended Rules (as amended on 14th December 2011) has been mentioned as follows:

| Sanctioned strength | By promotion from Civil Judge (Sr. Div.) on the basis of merit-cum-seniority (65%)-Rule 4(b) | Promotion (by way of selection through limited competitive examination (10%)-Rule 4(C) | By direct recruitment from Bar (25%)-Rule 4(a) |
|------------------------------|--|--|--|
| Sanctioned Strength-191 | 124 | 19 | 48 |
| Present working strength-124 | 68 | 20(-1*) | 36 |
| Present vacancies | 56-1*=55 (*excess adjusted) | Nil | 12 |

10. It is then stated that pursuant to the decision of this Court in Civil Appeal Nos.6647-6649/2012 (filed by officers posted as Additional District Judges, Fast Track Courts), vide letter dated 20th February 2013 the State Government was requested to create 13 permanent posts to accommodate the 22 appellants in the said Civil Appeals on condition that in the event of non qualifying of any of the appellants in the selection process to be conducted in terms of the direction given by this Court in the said decision, the equal number of such created posts of District Judge will be abolished. After due consideration, the vacancy position of

the Jharkhand Superior Judicial Service was notified vide Notification A
dated 22nd February 2013 which reads thus:

“HIGH COURT OF JHARKHAND, RANCHI
NOTIFICATION

No.45/A. The Vacancies position of the Jharkhand Superior Judicial B
Service as notified earlier vide Notification No.275/A dated 19th
September, 2012 is hereby recalled and further revised till date in
the following manner:-

| | | |
|--|--|---|
| By promotion from Civil Judge (Sr. Division) on the basis of merit-cum-seniority (65%)-under Rule 4(b) of rules, 2001 | Promotion (by way of selection) through limited competitive examination (10%)-under Rule 4(c) of Rules, 2001 | By direct recruitment from Bar (25%)-under Rule 4(a) of rules, 2001 |
| 55 | Nil | 22*+03^=25 |

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It is made clear that appointment over the aforesaid notified D
vacancies will be subject to final decision of the Hon'ble
Supreme Court in the Special Leave Petition (Civil) No.9883/
2009.

Note:- 1* 22 Vacancies for the appellants of Civil Appeal E
Nos.6647,6648 & 6649 of 2012.

2.^03 Vacancies for Direct Recruitment from Bar.

3. Taking into account the 13 posts likely to be created from
the end of the State Government.

By Order
Sd/-A.K.Choudhary F
Registrar General I/C

Dated: 22nd February, 2013

Memo No.1644/Apptt.Dated Ranchi, the 22nd February, 2013

Copy forwarded to the I/c NIC Cell, High Court of G
Jharkhand, Ranchi for uploading the above notification in
the official website of the Jharkhand High Court, Ranchi
immediately.

Sd/-22.02.2013
Registrar General I/c”

- A 11. It is also pointed out that the Standing Committee of the High Court vide minutes dated 18th February 2014 assessed the vacancy position as on 20th February 2014 as under:

| B | Sl. No | | Sanctioned Strength | Working Strength as on 20.02.2014 | Vacancy as on 20.02.2014 |
|---|--------|---|---------------------|-----------------------------------|---------------------------------------|
| | 1 | By promotion from Civil Judge 9Sr.Division) on the basis of merit-cum-seniority (65%-under Rule 4(b) of rules, 2001 | 134 | 60 | 74* (74-4*)=70 |
| C | 2 | Promotion(by way of selection)through limited competitive examination(10%-under Rule 4(c) of Rules, 2001 | 21 | 17 | 4 |
| D | 3 | By direct recruitment from Bar (25%-under Rule 4(a) of Rules,2001 | 51 | 55 | Excess 4* (excess may be adjusted) |

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In other affidavits filed on behalf of the High Court by the Registrar General, the above factual position has been reiterated.

- F 12. We have heard the learned counsel for the parties at length. The leading appeal concerns the selection process commenced in 2008. The High Court has set aside the said selection process on the finding that 50% of the posts have already been filled up by the promotees on the basis of merit-cum-seniority and as a result of which the left over 42 vacancies should be filled by promotion from the subordinate Judge/Civil Judge (Senior Division) on the basis of Limited Competitive Examination and by the direct recruits in equal proportion. There can be no difficulty in accepting the argument that the amended Rules providing for the ratio to be maintained between the promotees and direct recruits became effective on 20th August 2004 and had prospective application. Thus, the factual position as obtained on 20th August 2004 would become relevant.

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13. Rules 4 and 5 read with Rule 8, as it existed prior to the amendment of 20.08.2004 read thus: A

Rule -4: - *Appointment to the service- Appointment to the service, which shall in the first instance ordinarily be to the post of additional district judge, shall be made by the governor, in consultation with High Court:-* B

(a) *By direct recruitment of persons as recommended by the High Court for such appointment under clause (2) of Article 233 of the Constitution of India; and* C

(b) *By promotion on merit-cum-seniority basis from amongst the officers belonging to the Jharkhand service provided that where the merit of the officers is equal in all respects, seniority shall prevail and be given weightage.* D

Rule-5: *Of the total posts in the cadre of the service 67% shall be filled in by promotion and 33% by direct recruitment:*

Provided that the State Government may, in consultation with the High Court, from time to time deviate from the aforesaid percentage in either direction. E

Rule 8:- 8. **Seniority:**

(a) *Seniority inter se of direct recruits shall be determined in accordance with the dates of their respective appointments to the service.* F

(b) *Seniority inter se of promoted officers shall be determined on the basis of their seniority as existing in the Jharkhand Judicial service immediately prior to his appointment under these rules.* G

(c) *If at any time more than one direct recruit is appointed in the service, the inter se seniority of such appointees will be determined in accordance* H

A *with the order of merit as obtaining in the select list at the time of his appointment.*

(d) *Seniority of direct recruits vis-à-vis promoted officers shall be determined with reference to the dates on which his appointments actually are made:*

B

Provided, however, when a direct recruit and a promoted officer are appointed on the same date, the promoted officer shall rank senior to the direct recruit."

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14. Resultantly, appointments made prior to 2004 were governed by the Rules as applicable at the relevant time. As per that dispensation, the direct recruits quota was 33% of the total posts. That was obviously in excess of 25% now specified in the amended Rules (as amended on 20.08.2004 pursuant to the decision of this Court). Notably, the State of Jharkhand had filed an affidavit in C.A.No.1867/2006 before this Court in which it has been stated that no vacancy against 25% quota for direct recruitment existed in the State of Jharkhand at that time. This affidavit was filed on 26th August 2008 after the amended Rules were notified and came into force w.e.f. 20th August 2004. Thus, notification for filling up of 34 posts of Additional District Judge through Limited Competitive Examination from amongst the members of Jharkhand Subordinate Judges having more than 5 years of experience and 18 posts from merit-cum-seniority basis amongst the Civil Judge (Senior Division), was issued in 2008 on the basis that no vacancy against the posts of direct recruit quota was available. That stand is reiterated even now in the affidavit filed by the High Court. The High Court in the impugned judgment has committed manifest error in not considering these relevant facts about the vacant posts for direct recruits as on 20.08.2004 - before recording a finding against the High Court and the State Government and to reject their stand that no vacancy against the quota of direct recruit was available as on 30.04.2008.

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15. Indeed, the High Court in the impugned judgment has adverted to the decision of this Court in *All India Judges' Association & Ors. Vs Union of India & Ors.*¹ which has enunciated the principle of roster and the ratio to be followed for the post of Additional District Judge. Indisputably, pursuant to the decision of this Court the Rules were

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¹(2002) 4 SCC 247

amended, which came into effect from 20th August 2004. In paragraph 27 to 29 of the said decision, this Court has considered the question regarding the method of recruitment to the post in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. The same reads thus:

“27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary that the judicial officers, hard-working as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a Judicial Academy, which is very necessary. 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 Judges 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 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, 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

A *expect that the calibre of the members of the Higher Judicial*
Service will further improve. In order to 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
B *should be two methods as far as appointment by promotion*
is concerned: 50 per cent of 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
C *to assess their continued efficiency with adequate knowledge*
of case-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
D *High Courts will have to frame a rule in this regard.*

28. 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:

E *(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;

F *(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

G *(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.

H *(2) Appropriate rules shall be framed as above by the High*
Courts as early as possible.

29. Experience has shown that there has been a constant
discontentment amongst the members of the Higher Judicial
Service in regard to their seniority in service. For over three
decades a large number of cases have been instituted in

order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to the Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle "merit-cum-seniority", 25 per cent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, insofar as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in R.K. Sabharwal v. State of Punjab². One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in R.K. Sabharwal case³ as early as possible. We hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31-3-2003."

(emphasis supplied)

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A 16. Once it is found that no post against the quota of direct
 recruitment was available as on 30th April, 2008, no fault can be found
 with the selection process commenced by the High Court for appointment
 in the cadre of Jharkhand Superior Judicial Service by promotion on the
 basis of merit through Limited Competitive Examination. The High Court
 B in the impugned judgment has glossed over the effect of filling up the
 vacancies in the ratio of 25:25, which inevitably will exceed the quota of
 posts for direct recruits as on 30.04.2008. That would disturb the roster
 point and is impermissible in terms of Rule 8 as amended. The notification
 dated 20.08.2004 amending Rule 5 and 8 reads thus:

C *"Government of Jharkhand*
Department of Personnel, Administrative Reforms and
Rajbhasha
 NOTIFICATION

Ranchi Date 20.08.2004

D *No. 6/Estab Jud 610/2001 Perso. 4544/after repealing*
existing Rule 5 7 8 (d) of Jharkhand Superior Judicial
Services (recruitment, Appointment and conditions of
Services) Rules 2001 of Departmental Notification No. 1246
dated 08.05.2001, Rule 5 and 8(d) are substituted as
follows:-

E *Rule 5: Of the total post in the cadre of service.*

(i) 50% shall be filled by promotion from amongst the Sub
Judges on the basis of merit-cum-seniority and passing a
suitability test as may from time to time be prescribed by the
High Court.

F *(ii) 25% shall be filled in by promotion (by way of selection)*
strictly on the basis of merit through a limited competitive
examination of Sub Judges having not less than 5 years
service and also having due regard to his service record in
the past.

G *(iii) 25% shall be filled in by direct recruitment from the Bar*
on the basis of test and viva-voce conducted by the High
Court.

H *8(d) The following roster shall be maintained after*
appointment/promotion to fix the seniority of the direct
recruits vis-à-vis promote officer. The roster shall be as
follows for every unit of 100 posts.

(i) For promote officers from the service-

1, 2, 5, 6, 9, 10, 13, 14, 17, 18, 21, 22, 25, 26, 29, 30, 33, 34, 37, 38, 41, 42, 45, 46, 49, 50, 53, 54, 57, 58, 61, 62, 65, 66, 69, 70, 73, 74, 77, 78, 81, 82, 85, 86, 89, 90, 93, 94, 97, 98.

(ii) For promote officers form the limited competitive examination of Sub Judge,

3, 7, 11, 15, 19, 23, 27, 31, 35, 39, 43, 47, 51, 55, 63, 67, 71, 75, 79, 83, 87, 91, 95, 99.

(iii) For direct recruits-

4, 8, 12, 16, 20, 24, 28, 32, 36, 40, 44, 48, 52, 56, 60, 64, 68, 72, 76, 80, 88, 92, 96, 100.

By order of Governor
 (Shri Nitya Shankar Mukhopaddya)
 Deputy Secretary of State

No. 6/Estab Jud 610/2001 Perso. 4544/after Ranchi Date
 20.08.2004

Copy to- Superintendent, Government press, Doranda
 Ranchi, with request that be published in next edition of
 Jharkhand official Gazette.

Deputy Secretary of Govt,"

17. The position as it stood as on 30th April 2008, is stated in paragraph 4 of the affidavit filed by the High Court dated 30th March, 2016, which reads thus:

“That it is stated that as on 30.04.2008, the sanctioned strength of the Jharkhand Superior Judicial Service was 145 and working strength was 93, which is shown herein below:-

| By Promotion from Sub-Judges on the basis of merit-cum-seniority (50%) | Promotion (By way of selection) through limited competitive Examination (25%) | By direct recruitment from Bar (25%) |
|--|---|--------------------------------------|
| Sanctioned Strength - 145 | | |
| 73 | 36 | 36 |
| Working strength = 93 | | |
| 55 | 00 | 38 |
| Vacancies = 52 | | |
| 18 | 36-2=34 | 02 (surplus) |

A 18. Considering the fact that no vacancy existed in the quota of direct recruit as on 30th August 2008, the writ petitioners (respondents 4 to 11 in the leading appeal), who could participate in the selection process for direct recruit alone and not by way of promotion through Limited Competitive Examination, had no locus to challenge the selection process of 2008.

B 19. The High Court has overlooked the distinction between “post” and “vacancy”. If the requisite posts were already exhausted by the direct recruits against the earmarked quota for direct recruitment, merely because some vacancies occur, it would not be open to the aspiring candidates against the direct recruit quota to challenge the selection process commenced for the in service judicial officers by promotion through Limited Competitive Examination. The cadre strength is always measured by the number of posts comprising the cadre. The right to be considered for appointment can only be claimed in respect of a post in the given cadre. The percentage of quota has to be worked out in relation to number of posts which form the cadre and has no relevance to the vacancy that would occur. This aspect has been glossed over by the High Court in the impugned judgment. Suffice it to observe that as no post for direct recruits existed as on 30th April, 2008, the challenge to the selection process to fill up the vacancy by promotion through Limited Competitive Examination, at the instance of aspiring candidates by direct recruitment cannot be countenanced. The Writ Petition filed by such aspiring candidates (WP(S) No. 4159/2008), therefore, ought to have been dismissed by the High Court.

F 20. Having said this, it must follow that the selection process of 2008 which has been completed pursuant to the liberty given by this Court by way of interim order is proper and has become final. On this finding, the challenge in the companion Writ Petitions to the selection process commenced for the year 2010 does not merit interference. In that, the vacancy position as on the date of the notification (i.e. 4th November, 2010), for commencing selection process in 2010, were only upto 8 vacancies for appointment by direct recruitment from the Bar. None of the writ petitioners before this Court claim to be within the first 8 merit list candidates. The petitioners were placed at serial No.9 onwards. The first 8 candidates having been appointed, the selection process for 2010 would get exhausted and considered as complete. Merely because the names of the writ petitioners appear in the selection

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list, they do not acquire any indefeasible right in getting appointed. The vacancies have to be filled up in conformity with the extant Regulations. The selection process in which the writ petitioners participated, was commenced on the basis of the stated notification for 8 notified vacancies and appointments have been made of the meritorious candidates. That selection process must be treated as having come to an end. The fact that the notifications for subsequent selection process (commenced after 2010), issued by the High Court notifying different or higher number of posts for direct recruitment, can be of no avail to the selection process of 2010. That changed position is ascribable to subsequent period on the basis of availability of posts for direct recruits. Not for selection process of 2010. Similarly, the fact that one candidate amongst the appointed eight candidates after due selection subsequently resigned, no right can accrue to the Writ Petitioner(s) on completion of the selection process of 2010. Reliance placed on Rule 21 which requires preparation of select list and to notify the same or to remain valid for one year from the date of being notified, is also inapposite. That is not a Rule mandating preparation of a wait list of the selected candidates. No express provision for retaining the select list as wait list for one year has been brought to our notice. On the other hand, the effect of Rule 22 is that once the names of candidates from the notified select list are recommended to the Government proportionate to the vacancies available for appointment; and recommended candidates are so appointed or on expiry of one year from notifying the select list whichever is earlier, the select list would become ineffective qua the subject selection process. For, that selection process is concluded. None of the writ petitioners can, therefore, succeed in getting the relief claimed by them.

21. The decision in the case of *Rakhi Ray & Ors. Vs. High Court of Delhi and Ors.*² will be of no avail to the writ petitioners and would instead support the view we have already taken. The writ petitioners cannot be heard to claim relief on the basis of the subsequent selection process commenced pursuant to the notification dated 22nd February 2013. The High Court was not expected to fill the vacancies over and above the vacancies advertised for selection process of 2010. Moreover, since the writ petitioners have participated in the earlier selection process of 2010 and not in the subsequent selection process conducted on the basis of Notification dated 22nd February 2013 for the year 2012, they cannot be given any relief.

² (2010) 2 SCC 637

- A 22. Considering the above, the Civil Appeal must succeed and is allowed. The impugned judgment and order of the High Court of Jharkhand at Ranchi in WP(S) No.4159/2008 dated 29th August 2008 is set aside and consequently the WP(S) No.4159/2008 stands dismissed. Even the three connected Writ Petitions bearing Nos.300/2013,27/2014 and 325/2014 deserve to be dismissed and are dismissed. Accompanying, B I.As are disposed of in the same terms.

23. We order accordingly. No order as to costs.

Divya Pandey

Matters disposed of.