Chandra Mohan

Vs

State of Uttar Pradesh & Ors.

Civil Appeals Nos. 1136 and 1638 of 1966

(S. M. Sikri, J. M. Hidayatullah, J. M. Shelat JJ)

08.08.1966

JUDGMENT

SUBBA RAO, C.J.

These appeals - the former by certificate and the latter by special leave - raise the question of the scope of the field of recruitment to the cadre of District Judges.

The facts may be briefly stated. During the years 1961 and 1962, the Registrar of the Allahabad High Court called for applications for recruitment to ten vacancies in the Uttar Pradesh Higher Judicial Service from Barristers, Advocates, Vakils and Pleaders of more than seven years' standing and from "judicial officers". The expression "judicial officers" is a euphemism for the members of the Executive department who discharge some revenue and magisterial duties. The Selection Committee constituted under the U.P. Higher Judicial Service Rules, hereinafter called the Rules, in accordance with the provisions of the said Rules, selected six candidates from the said applicants as persons suitable for appointment to the said service. Respondents 2 to 7 are the candidates so selected by the said Committee. Respondents 2, 3 and 4 were Advocates and respondents 5, 6 and 7 were "Judicial officers". The Selection Committee sent two lists, one comprising the names of the three Advocates and the other comprising the names of the three "judicial officers" to the High Court. On September 4, 1964, the Registrar of the Allahabad High Court sent a copy of the report of the Selection Committee to the Secretary to the Government, Uttar Pradesh, Lucknow, wherein he mentioned that the Court had approved of the selection of the said candidates. Thereafter, the appellant, who belongs to the U.P. Civil Services (Judicial Branch) and who was at that time acting as a District Judge, and others, who were similarly situated as the appellant, filed petitions in the High Court at Allahabad under Art. 226 of the Constitution for an appropriate writ directing the Government not to make the appointments to the U.P. Higher Judicial Service pursuant to the said selection.

The said petitions were heard by a Division Bench of the Allahabad High Court. The learned Judges, Mathur and Takru, JJ. agreed on all points except on one : while they agreed that the selection from the Bar was good, J.N. Takru, J. expressed the view that, as no notification was issued under Art. 237 of the Constitution, the selection from the cadre of "Judicial Officers" was bad. The question on which there was difference of opinion was referred to Oak, J., and the said learned Judge agreed with the view of Mathur, J. that the recruitment from both the sources was good, with the result the writ petitions were dismissed. The appellant filed an application before the High Court for a certificate of fitness to appeal to this Court. The learned Judges, in the course of their order, observed that in regard to the case of the Advocates as well as of the "Judicial Officers" no certificate could be granted under Art. 133(1)(a) of the Constitution inasmuch as no money value

could be given to the subject-matter of the dispute, that the certificate could be issued only under Art. 132(1) or Art. 133(1)(c) of the Constitution if the terms of the said articles were complied with, that the case of the Advocates did not raise any substantial question of law as to the interpretation of the Constitution or any question of public importance as to attract either of the said two articles and that the case of the judicial officers raised such a question as to attract the said provisions. Having made those observations, the court allowed the application and gave the requisite certificate under Art. 132(1) and Art. 133(1)(c) of the Constitution. Pursuant to that order the High Court issued a certificate in general terms, which reads :

> "It is certified that the case is a fit one for appeal under Articles 132(1) and 133(1)(c) of the Constitution of India."

Pursuant to that certificate, on March 4, 1966, the appellant filed a petition to appeal in this Court impleading all the six candidates belonging to both the groups as respondents. Subsequently, on March 10, 1966, he filed another petition in this Court alleging that the High Court had no jurisdiction to restrict the scope of the certificate and that the appellant would be entitled to canvass all the grounds agitated before the High Court; alternatively, he prayed that he might be allowed to raise the additional grounds enumerated therein against the order of High Court.

Mr. Bishan Narain, learned counsel for the Advocates, contended that there was no appeal before this Court is so far as the order of the High Court related to the Advocates and that, therefore, the appellant could not canvass the correctness of the order in so far as it related to them.

There is justification for this contention; but we are satisfied that the appellant was misled by the certificate issued by the High Court in general terms. If the certificate alone was looked into, it would appear that it covered the entire case that was before the High Court. But if it was read along with the order passed by the High Court in the application for certificate, it would support the argument that the High Court intended only to restrict the certificate to that part of the case relating to the "judicial officers". But so long as the certificate remained as it was framed, the appellant was certainly justified in assuming that the certificate covered the entire case. If the appellant went wrong in not scrutinising the order closely to appreciate the scope of the certificate, the respondents were equally negligent in not getting the certificate amended so as to bring it in conformity with the order. In the said circumstances, we give special leave to the appellant to appeal to this Court against the order of the High Court in so far as it related to the Advocates, after excusing the delay in filing the same.

The arguments of the learned counsel for the appellant may be placed conveniently under the following five heads : (1) While under Art. 233(1) of the Constitution the Governor has to make appointments of persons to be, and the posting and promotions of, district judges in consultation with the High Court concerned, under the Rules made by the Governor under Art. 309 of the Constitution he has to consult, before making such appointments, a selection committee constituted thereunder and, therefore, the appointments made in consultation with two authorities instead of one as provided by the Constitution, were illegal. (2) On a fair reading of the provisions of the Rules, it is manifest that the High Court is a transmitting authority while the selection committee is made the real consultative body, that is to say, the Governor has to make the appointments not in consultation with the High Court as it should be under the Constitution but in consultation with the committee constituted under the Rules. (3) The Governor has no power to appoint district judges from judicial officers as they are not members of the judicial service. (4) The exclusion of the members of the judicial service in the matter of direct recruitment offends Arts. 14 and 16 of the Constitution; or,

alternatively, the exclusion of the members of the judicial service in the matter of direct recruitment to the post of district judges while permitting "judicial officers" to be so recruited offends the said articles. And (5) the recruitment is to the post of "Civil and Sessions Judges" and they are not "District Judges" as defined by Art. 236 of the Constitution and, therefore, the recruitment to those posts in terms of Art. 233 is bad.

The first question turns upon the provisions of Art. 233 of the Constitution. Article 233(1) reads :

> "Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State."

we are assuming for the purpose of these appeals that the "Governor" under Art. 233 shall act on the advice of the Ministers. So, the expression "Governor" used in the judgment means Governor acting on the advice of the Ministers. The constitutional mandate is clear. The exercise of the power of appointment by the Governor is conditioned by his consultation with the High Court, that is to say, he can only appoint a person to the post of district judge in consultation with the High Court. The object of consultation is apparent. The High Court is expected to know better than the Governor in regard to the suitability or otherwise of a person, belonging either to the "judicial service" or to the Bar, to be appointed as a district judge. Therefore, a duty is enjoined on the Governor to make the appointment in consultation with a body which is the appropriate authority to give advice to him. This mandate can be disobeyed by the Governor in two ways, namely, (i) by not consulting the High Court at all, and (ii) by consulting the High Court and also other persons. In one case he directly infringes the mandate of the Constitution and in the other he indirectly does so, for his mind may be influenced by other persons not entitled to advise him. That this constitutional mandate has both a negative and positive significance is made clear by the other provisions of the Constitution. Wherever the Constitution intended to provide more than one consultant, it has said so : see Arts. 124(2) and 217(1). Wherever the Constitution provided for consultation of a single body or individual it said so : see Art. 222. Art. 124(2) goes further and makes a distinction between persons who shall be consulted and persons who may be consulted. These provisions indicate that the duty to consult is so integrated with the exercise of the power that the power can be exercised only in consultation with the person or persons designated therein. To state it differently, if A is empowered to appoint B in consultation with C, he will not be exercising the power in the manner prescribed if he appoints B in consultation with C and D.

We would, therefore, hold that if the Rules empower the Governor to appoint a person as district judge in consultation with a person or authority other than the High Court, the said appointment will not be in accordance with the provisions of Art. 233(1) of the Constitution.

In this context, the Rules whereunder the selections in question were made are relevant. The relevant rules may be read :

> "Rule 8. Number of appointments to be made. - (1) The Governor shall decide the number of recruits to be taken at each selection from each of the two sources of recruitment specified in rule 5. Rules 9 to 12 prescribe the qualifications for the candidates for appointment to the higher judicial service of the State.
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> Rule 13. Recruitment by promotion. - The following procedure for selection by promotion under rule 5(i) shall be observed :

(c) The selection shall be made by a Committee consisting of two Judges of the High Court and the Judicial Secretary to Government.

Rule 14. Direct Recruitment. - (1) Applications for direct recruitment to the service shall be called for by the High Court and shall be made in the prescribed form which may be obtained from the Registrar of the Court.

(2) The applications by barristers, advocates, vakils or pleaders, should be submitted through the District Judge concerned, and must be accompanied by certificates of age, character, nationality and domicile, standing as a legal practitioner, and such other documents as may be prescribed in this behalf by the Court. Applications from Judicial Officers should be submitted in accordance with the rules referred to in clause 2(b) of rule 5 of these Rules. The District Judge or other officer through whom the application is submitted shall sent to the Court, along with the application, his own estimate of the applicant's character and fitness for appointment to the service.

Rule 15. Interview. - (1) The Selection Committee shall scrutinise the application received by the Court, and require such candidates as seem best qualified for appointment to the service under these Rules, to appear before the committee for interview. Candidates from among legal practitioners shall be required to defray their own expenses for the interview.

(2) In assessing the merits of a candidate the Selection Committee, shall have due regard for his professional ability, character, personality, physique and general suitability for appointment to the service as indicated by his record and interview.

Rule 17. Waiting list of candidates. - (1) The Selection Committee shall draw up a list of the candidates selected for direct recruitment in order of merit; provided that in case this list includes two or more candidates from among Judicial Officers, their names shall be so arranged as to be in accord with their inter se seniority as Judicial Officers. The number of selected candidates to be included in the list shall correspond to the number of vacancies for direct recruitment as decided by the Governor on each occasion in accordance with rule 8, with a supplementary list prepared as aforesaid for, meeting unforseen vacancies.

(2) The Court shall submit to the Governor the two lists of candidates considered suitable for appointment to the service from the two sources of recruitment as prepared in accordance with rule 13, and clause (1) of this rule.

Rule 19. Appointment. - (1) The Governor shall, on receipt from the Court of the waiting lists prepared under rules 13 and 17, make appointments to the service on the occurrence of substantive vacancies, by taking candidates from those lists in the order in which they stand in the respective lists, subject, in the case of the waiting list for direct recruitment, to the provisions of rules 7 and 18, and provided that the Governor is satisfied that they are duly qualified for appointment to the service."

It will be seen from the said Rules that the Governor decides on the number of candidates to be selected, that the qualifications of the candidates are prescribed by the Rules, that the Court calls for

applications for direct recruitment, that the Selection Committee appointed under the Rules screens the applications, gives interviews only to persons who it thinks have the necessary qualifications and selects from among them suitable persons for appointment to the service on the basis of the record and the interview, that the Selection Committee sends two lists to the High Court, one main list and the other a supplementary list, arranged in the order of merit and that the High Court submits to the Governor the names of candidates considered suitable for appointment to the service from the lists prepared under r. 17(1), and that thereafter the Governor makes the appointments from the said lists if he is satisfied that they are duly qualified for appointment in all respects. It is clear from the Rules that the High Court is practically reduced to the position of a transmitting authority of the lists of suitable candidates for appointment prepared by the Selection Committee. The only discretion left to it is to refuse to recommend for appointment all or some of the persons included in the lists sent to it by the Selection Committee. It cannot scrutinise the other applications which were screened by the Selection Committee. It cannot recommend for appointment persons not found in the lists.

The learned Attorney-General argued that the High Court can, under the Rules, refuse to recommend any of the names found in the list and go on doing so every time a new list is sent to it till the names it finds suitable are found in the list. This suggestion of obstructive tactics on the part of the High Court to achieve its objective may indicate a loophole in the Rules but it clearly demonstrates that the Rules are intended to tie down the hands of the High Court in the matter of consultation. Apart from the fact that a High Court cannot be expected to resort to such obstructive tactics, the Governor can easily prevent such a situation, as he may appoint persons recommended by the Selection Committee on the ground that the refusal by the High Court to send their names complied with the constitutional requirement of consultation. While the constitutional provisions say that the Governor can appoint District Judges from the service in consultation with the High Court, these rules say that the Governor can appoint in consultation with the Selection Committee, subject to a kind of veto by the High Court which can be accepted or ignored by the Governor.

The position in the case of district judges recruited directly from the Bar is worse. Under Art. 233(2) of the Constitution, the Governor can only appoint advocates recommended by the High Court to the said service. But under the Rules, the High Court can either endorse the recommendations of the Committee or create a deadlock. The relevant rules, therefore, clearly contravene the constitutional mandates of Arts. 233(1) and (2) of the Constitution and are, therefore, illegal.

The discussion on the first question, to some extent, covers the second question also. The two questions overlap. On the assumption that it is open to the Governor to make a provision under Art. 309 for consultation with bodies other than the High Court, even so he cannot avoid consultation with the High Court directly or indirectly. As we have noticed earlier, under the Rules the consultation with the High Court is an empty formality. The Governor prescribes the qualifications, the Selection Committee appointed by him selects the candidates and the High Court has to recommend from the lists prepared by the said Committee. This is a travesty of the constitutional provision. The Governor, in effect and substance, does neither consult the High Court nor acts on its recommendations, but only consults the Selection Committee or acts on its recommendations. In that view also, the relevant rules are illegal and the appointments made thereunder are bad.

The third point raised is one of far-reaching importance. Can the Governor, after the Constitution, directly appoint persons from a service other than the judicial service as district judges in consultation with the High Court ? Can he appoint "judicial officers" as district judges ? The expression "judicial officers" is a misleading one. It is common case that they belong to the

executive branch of the Government, though they perform certain revenue and magisterial functions. The relevant article on which both the parties rely upon in support of their respective contentions is Art. 233. It reads :

> "(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.
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> (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed as district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment."

While the learned counsel for the appellant contends that the said Article must be read along with the group of articles embodied in Ch. VI of Part VI of the Constitution and also in the background of the history of said provisions and that, if so read, it would be clear that the Governor can only appoint district judges either from the judicial service or from the Bar, the learned counsel for the respondents, on the other hand, argues that Art. 233 is expressed in general terms and that there is no warrant to restrict the scope of the said article by construction or otherwise.

Before construing the said provisions, it should be remembered that the fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of Parliament, namely, that the court will have to find out the expressed intention from the words of the Constitution or the Act, as the case may be. But, "if, however, two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory." The Indian Constitution, though it does not accept the strict doctrine of separation of powers, provides for an independent judiciary in the States; it constitutes a High Court for each State, prescribes the institutional conditions of service of the Judges thereof, confers extensive jurisdiction on it to issue writs to keep all tribunals, including in appropriate cases the Governments, within bounds and gives to it the power of superintendence over all courts and tribunals in the territory over which it has jurisdiction. But the makers of the Constitution also realised that "it is the Subordinate Judiciary in India who are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior Judges." Presumably to secure the independence of the judiciary from the executive, the Constitution introduced a group of articles in Ch. VI of Part VI under the heading "Subordinate Courts". But at the time the Constitution was made, in most of the States the magistracy was under the direct control of the executive. Indeed it is common knowledge that in pre-independent India there was a strong agitation that the judiciary should be separated from the executive and that the agitation was based upon the assumption that unless they were separated, the independence of the judiciary at the lower levels would be a mockery. So article 50 of the Directive Principles of Policy states that the State shall take steps to separate the judiciary from the executive in the public services of the States. Simply stated, it means that there shall be a separate judicial service free from the executive control.

With this background, if the following provisions of the Constitution are looked at, the meaning of the debated expressions therein would be made clear :

> We have already extracted Art. 233.

Article 234. - Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

Article 235. - The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this Article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

Article 236. In this Chapter -

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge :

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.

Article 237. The Governor may be public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.

The gist of the said provisions may be stated thus : Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State. There are two sources of recruitment, namely, (i) service of the Union or of the State, and (ii) members of the Bar. The said judges from the first source are appointed in consultation with the High Court and those from the second sources are appointed on the recommendation of the High Court. But in the case of appointments of persons to the judicial service other than as district judges, they will be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the over all district courts and courts subordinate thereto, subject to certain prescribed limitations.

So far there is no dispute. But the real conflict rests on the question whether the Governor can appoint as district judges persons from services other than the judicial service; that is to say, can he appoint a person who is in the police, excise, revenue or such other service as a district judge ? The acceptance of this position would take us back to the pre-independence days and that too to the conditions prevailing in the Princely States. In the Princely States one used to come across appointments to the judicial service from police and other departments. This would also cut across the well-knit scheme of the Constitution and the principle underlying it, namely, the judiciary shall

be an independent service. Doubtless, if Art. 233(1) stood alone, it may be argued that the Governor may appoint any person as a district judge, whether legally qualified or not, if he belongs to any service under the State. But Art. 233(1) is nothing more than a declaration of the general power of the Governor in the matter of appointment of district judges. It does not lay down the qualifications of the candidates to be appointed or denote the sources from which the recruitment has to be made. But the sources of recruitment are indicated in cl. (2) thereof. Under cl. (2) of Art. 233 two sources are given, namely, (i) persons in the service of the Union or of the State, and (ii) advocate or pleader. Can it be said that in the context of Ch. VI of Part VI of the Constitution "the service of the Union or of the State" means any service of the Union or of the State or does it mean the judicial service of the Union or of the State ? The setting, viz., the chapter dealing with subordinate courts, in which the expression "the service" appears indicates that the service mentioned therein is the service pertaining to courts. That apart, Art. 236(b) defines the expression "judicial service" to mean a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge. If this definition, instead of appearing in Art. 236, is placed as a clause before Art. 233(2), there cannot be any dispute that "the service" in Art. 233(2) can only mean the judicial service. The circumstance that the definition of "judicial service" finds a place in a subsequent Article does not necessarily lead to a contrary conclusion. The fact that in Art. 233(2) the expression "the service" is used whereas in Arts. 234 and 235 the expression "judicial service" is found is not decisive of the question whether the expression "the service" in Art. 233(2) must be something other than the judicial service, for, the entire chapter is dealing with the judicial service. The definition is exhaustive of the service. Two expressions in the definition bring out the idea that the judicial service consists of hierarchy of judicial officers starting from the lowest and ending with district judges. The expressions "exclusively" and "intended" emphasise the fact that the judicial service consists only of persons intended to fill up the posts of district judges and other civil judicial posts and that is the exclusive service of judicial officers. Having defined "judicial service" in exclusive terms, having provided for appointments to that service and having entrusted the control of the said service to the care of the High Court, the makers of the world Constitution not have conferred a blanket power on the Governor to appoint any person from any service as a district judge.

Reliance is placed upon the decision of this court in Rameshwar Dayal v. State of Punjab ((1961) 2 S.C.R. 874.) in support of the contention that "the service" in Art. 233(2) means any service under the State. The question in that case was, whether a person whose name was on the roll of advocates of the East Punjab High Court could be appointed as a district judge. In the course of the judgment S.K. Das, J., speaking for the Court, observed :

> "Article 233 is a self contained provision regarding the appointment of District Judges. As to a person who is already in the service of the Union or of the State, no special qualifications are laid down and under cl. (1) the Governor can appoint such a person as a district judge in consultation with the relevant High Court. As to a person not already in service, a qualification is laid down in cl. (2) and all that is required is that he should be an advocate or pleader of seven years' standing."

This passage is nothing more than a summary of the relevant provisions. The question whether "the service" in Art, 233(2) is any service of the Union or of the State did not arise for consideration in that case nor did the Court express any opinion thereon.

We, therefore, construe the expression "the service" in cl. (2) of Art. 233 as the judicial service.

But, it is said that this construction ignores Art. 237 of the Constitution. We do not see how Art. 237 helps the construction of Art. 233(2). Art. 237 enables the Governor to implement the separation of the judiciary from the executive. Under this Article, the Governor may notify that Arts. 233, 234, 235 and 236 of the Constitution will apply to magistrates subject to certain modifications or exceptions; for instance, if the Governor so notifies, the said magistrates will become members of the judicial service, they will have to be appointed in the manner prescribed in Art. 234, they will be under the control of the High Court under Art. 235 and they can be appointed as District Judges by the Governor under Art. 233(1). To state it differently, they will then be integrated in the judicial service which is one of the sources of recruitment to the post of district judges. Indeed, Art. 237 emphasises the fact that till such an integration is brought about, the magistrates are outside the scope of the said provisions. The said view accords with the constitutional theme of independent judiciary and the contrary view accepts a retrograde step.

The history of the said provisions also supports the said conclusion. Originally the posts of district and sessions judges and additional sessions judges were filled by persons from the Indian Civil Service. In 1922 the Governor-General-in-Council issued a notification empowering the local government to make appointments to the said service from the members of the Provincial Civil Service (Judicial Branch) or from the members of the Bar. In exercise of the powers conferred under s. 246(1) and s. 251 of the Government of India Act, 1935, the Secretary of State for India framed rules styled Reserved Posts (Indian Civil Service) Rules, 1938. Under those Rules, the Governor was given the power to appoint to a district post a member of the judicial service of the Province or a member of the Bar. Though s. 254(1) of the said Act was couched in general terms similar to those contained in Art. 233(1) of the Constitution, the said rules did not empower him to appoint to the reserved post of district judge a person belonging to a service other than the judicial service. Till India attained independence, the position was that district judges were appointed by the Governor from three sources, namely, (i) the Indian Civil Service, (ii) the Provincial Judicial Service, and (iii) the Bar. But after India attained independence in 1947, recruitment to the Indian Civil Service was discontinued and the Government of India decided that the members of the newly created Indian Administrative Service would not be given judicial posts. Thereafter district judges have been recruited only from either the judicial service or from the Bar. There was no case of a member of the executive having been promoted as a district judge. If that was the factual position at the time the Constitution came into force, it is unreasonable to attribute to the makers of the Constitution, who had so carefully provided for the independence of the judiciary, an intention to destroy the same by an indirect method. What can be more deleterious to the good name of the judiciary than to permit at the level of district judges, recruitment from the executive departments? Therefore, the history of the services also supports our construction that the expression "the service" in Art. 233(2) can only mean the judicial service.

For the aforesaid reasons, we hold that the Rules framed by the Governor empowering him to recruit district judges from the "judicial officers" are unconstitutional and, therefore, for that reason also the appointment of respondents 5, 6 and 7 was bad.

In this view, it is not necessary to express our view on the last two questions.

In the result, we hold that the U.P. Higher Judicial Service Rules providing for the recruitment of district judges are constitutionally void and, therefore, the appointments made thereunder were illegal. We set aside the order of the High Court and issue a writ of mandamus to the 1st respondent not to make any appointment by direct recruitment to the U.P. Higher Judicial Service in pursuance of the selections made under the said Rules. The 1st respondent will pay the costs of the appellant.

The other respondents will bear their own costs.

V.P.S.

Appeal allowed.

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