

SUPREME COURT OF INDIA

Malik Mazhar Sultan

Vs.

U.P. Public Service Commission & Ors.

C.A.Nos.1867, 1868, 1869, 1870, 1871 and 1872 of 2006

(Y.K.Sabharwal,C.J., C.K.Thakker,J.,)

04.01.2007

ORDER

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

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

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

to give suggestions regarding the time schedule to be fixed so that every year vacancies that may occur are filled. This Court also requested Mr. Vijay Hansaria, senior advocate, to assist the Court.

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

5. Mr. Vijay Hansaria as made additional submission having regard to the responses received from the State Governments, Union Territories and the High Courts pursuant to the order dated 27th November, 2006. Before we issue general directions and the time schedule to be adhered to for filling vacancies that may arise in subordinate Courts and district Courts, it is necessary to note that selections are required to be conducted by the concerned authorities as per the existing Judicial Service Rules in the respective States/ Union Territories. We may, however, note that, progressively, the concerned authorities would consider, discuss and eventually may arrive at a consensus that the selection process be conducted by the High Court itself or by Public Service Commission under the control and supervision of the High Court. In this regard, considerable progress has already been made. Reference can be made to the decision taken in a Conference held between the Chief Justices and Chief Ministers, minutes whereof show that in some of the States, selection of subordinate judicial officers at all levels of civil judges is already being made by the High Courts. Some States, where selection is still being made by the Public Service Commission, were agreeable to entrust the selection to the High Courts whereas Chief Ministers/Ministers of Himachal Pradesh, West Bengal, Punjab and Kerala were of the view that the present system may continue but the decision taken jointly was that in the said States [Himachal Pradesh, West Bengal, Punjab and Kerala] setting up of question papers and evaluation of answer sheets be entrusted to the High Court. Further decision taken was that in other States where selection of subordinate judicial officers is not being done by the High Courts, such selection be entrusted to the High Courts by amending relevant Rules. In this connection, with the affidavit filed on behalf of the Calcutta High Court, a copy of the letter dated 15th September, 2006, addressed by the Registrar General of the said Court to the Secretary, Judicial Department, Government of West Bengal, has also been annexed. That letter refers to the aforesaid decision taken in the Conference of Chief Ministers and Chief Justices held on 11th March, 2006 requesting the State Government for effecting suitable amendment in the recruitment rules in terms of the decision in the Conference above-referred. At this stage, however, these are not the issues for our consideration. As already indicated, the selection is to be conducted by authorities empowered to do so as per the existing Rules.

6. Though no submission was made by any learned Counsel appearing for any State Government that the constitution of selection committee by the Chief Justice of the High Court to monitor the timely appointment of judges at subordinate/district level would amount

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

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

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

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

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

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

	questions with multiple choice which can be scrutinized by the computer, and b) subjective/narrative	
7.	Declaration of result of written examination a) Result may be put on the website and also published in the newspaper b) The ratio of 1:3 of the available vacancies to the successful candidates be maintained.	16th August
8.	Viva Voce	1st to 7th September
9.	Declaration of final select list and communicated to the appointing authority a) Result may be put on the website and also published in the newspaper b) Select list be published in order of merit and should be double the number of vacancies notified, c) Select list shall be valid till the next select list is published.	15th September
10.	Issue of appointment letter by the competent authority for all existing vacant posts as on date	30th September
11.	Last date for joining	30th October

B. For filling of vacancies in the cadre of District Judge in respect of fifty per cent vacancies to be filled by promotion.

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

3.	Receipt of judgments from the eligible officers	30th May
4.	Viva Voce Criteria a) ACR for last five years; b) Evaluation of judgments furnished; and c) Performance in the oral interview	15th to 31st July
5.	Declaration of final select list and communication to the appointing authority a) Result may be put on the website and also published in the newspaper b) Select list be published in order of merit and should be double the number of vacancies notified.	31st August
6.	Issue of appointment letter by the competent authority for all existing vacant posts as on date.	30th September
7.	Last date for joining	31st October

C. For filling of vacancies in the cadre of Civil Judge (Senior Division) to be filled by promotion.

S. No.	Description	Date
1.	Number of vacancies to be notified by the High Court. Vacancies to be calculated including a) existing vacancies b) future vacancies that may arise within one year due to retirement, c) future vacancies that may arise due to promotion, death or otherwise, say ten per cent of the number of posts.	31st March
2.	Publication of list of eligible officers a) The list may be put on the website b) Zone of consideration should be 1:3 of the number of vacancies	15th May
3.	Receipt of judgments from the eligible officers	30th May
4.	Viva Voce Criteria a) ACR for last five years; b) Evaluation of judgments furnished; and c) Performance in the oral interview	1st to August
5.	Declaration of final select list and	15th

	communication to the appointing authority a) Result may be put on the website and also published in the newspaper b) Select list be published in order of merit and should be double the number of vacancies notified.	September
6.	Issue of appointment letter by the competent authority for all existing vacant posts as on date	30th September
7.	Last date for joining	31st October

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

S. No.	Description	Date
1.	Number of vacancies to be notified by the High Court. Vacancies to be calculated including a) existing vacancies b) future vacancies that may arise within one year due to retirement, c) future vacancies that may arise due to promotion, death or otherwise, say ten per cent of the number of posts.	15th January
2.	Advertisement inviting applications from eligible candidates	1st February
3.	Last date for receipt of application	1st March
4.	Publication of list of eligible applicants. The list may be put on the website	2nd April
5.	Despatch/issue of admit cards to the eligible applicants	2nd to April
6.	Preliminary written examination objective questions with	15th May
7.	Declaration of result of preliminary written examination a) Result may be put on the website and also published in the Newspaper, b) The ratio of 1:10 of the available vacancies to the successful candidates be maintained.	15th June
8.	Final Written examination Subjective/narrative	15th July
9.	Declaration of result of final written examination a) Result may be put on the website and also published in the	30th August

	Newspaper, b) The ratio of 1:3 of the available vacancies to the successful candidates be maintained, c) Dates of interview of the successful candidates may be put on the internet which can be printed by the candidates and no separate intimation of the date of interview need be sent.	
10.	Viva Voce	1st to 15th October
11.	Declaration of final select list and communication to the appointing authority a)Result may be put on the website and also published in the newspaper, b) Select list be published in order of merit and should be double the number of vacancies notified	1st November
12.	Issue of appointment letter by the competent authority for all existing vacant posts as on date	1st December
13.	Last date of joining	2nd January of the following year

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

9. We request the Chief Justice of each High Court to constitute a committee of two or three judges to monitor and oversee that timely selection and appointment of judicial officers is made. The Chief Justice is further requested to constitute a special cell in the name of 'Selection and Appointment' in the High Court or under such other name as the learned Chief Justice may be consider proper with an officer of the rank of Registrar for assisting the Committee and the Chief Justice for complying with the aforesaid time schedule.

10. The Registrar of the aforesaid selection and appointment committee shall send to the Registrar General of this Court by 31st January every year report as regards the filling up of vacancies with copies to Minister for Law and Justice in the Central Government and the Law Minister of the concerned State. The Registrar would also bring it to the notice of the Committee and the Chief Justice any deviation from the time schedule.

11. Insofar as the State of Bihar is concerned the Patna High Court has suggested that due to feasibility of floods, the time schedule between June and November is not feasible and that

the time schedule of one year may be modified so as to complete the selection process from December to June in the said State. Learned Counsel for the State Government and the Public Service Commission has supported the view-point of the High Court. Accordingly, the High Court can suitably, after consulting with the Public Service Commission and the State Government, amend the aforesaid time schedule. The amended time schedule be filed in this Court.

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

13. The appointment letters shall be issued by the State Government within one month of receipt of the recommendations from the respective High Court/State Public Service Commission.

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

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

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

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

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

19. For further directions, list the matter after four months.