

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 02.04.2009
Date of decision: 15.04.2009

+ **WP (C) No.8365 of 2008**

JAY THAREJA & ANR. ...PETITIONERS
Through: Mr. C. Hari Shankar, Mr. Sunil S.,
Mr. G.P. Thareja & Mr. V. Rao,
Advocates.

Versus

LIEUTENANT GOVERNOR & ANR. ...RESPONDENTS
Through: Ms. Sonia Sharma, Advocate
for R-1.

MR. Viraj R. Datar &
Ms. Bandana Shukla, Advocates
for R-2.

+ **WP (C) No.8366 of 2008**

HARJYOT SINGH BHALLA & ANR. ...PETITIONERS
Through: Mr. A.S. Gambhir, Advocate.

Versus

LIEUTENANT GOVERNOR & ANR. ...RESPONDENTS
Through: Ms. Sonia Sharma, Advocate
for R-1.

Mr. Viraj R. Datar &
Ms. Bandana Shukla, Advocates
for R-2.

+

WP (C) No.8364 of 2008

MANISH SHARMA

...PETITIONER

Through: Mr. Aman Lekhi, Sr. Advocate
with Mr. Rajan K. Chaurasia, Mr.
Jaspreet S. Rai, Mr. Rakesh
Kumar, Mr. Rohit Nagpal & Mr.
Vaibhav Vats, Advocates.

Versus

LIEUTENANT GOVERNOR & ANR.

...RESPONDENTS

Through: Ms. Sonia Sharma, Advocate
for R-1.

Mr. Viraj R. Datar &
Ms. Bandana Shukla, Advocates
for R-2.

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WP (C) No.8565 of 2008

ANU AGGARWAL

...PETITIONER

Through: Mr. Yashraj Singh Deora,
Advocate.

Versus

LIEUTENANT GOVERNOR & ANR.

...RESPONDENTS

Through: Ms. Sonia Sharma, Advocate
for R-1.

Mr. Viraj R. Datar &
Ms. Bandana Shukla, Advocates
for R-2.

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WP (C) No. 9098 of 2008

RUCHI AGGARWAL

...PETITIONER

Through: Dr. Renu Aggarwal, Advocate
with Petitioner in person.

Versus

LIEUTENANT GOVERNOR & ANR.

...RESPONDENTS

Through: Ms. Sonia Sharma, Advocate
for R-1.

Mr. Viraj R. Datar &
Ms. Bandana Shukla, Advocates
for R-2.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

SANJAY KISHAN KAUL, J.

1. A notification was issued on 18.4.2007 by the High Court of Delhi for holding the Delhi Judicial Service Examination in two stages – Preliminary Examination and Main Examination to be followed by the Viva-Voce. The advertisement provided that the number of vacancies likely to be filled in was thirty-seven (37) (all permanent) out of which one (1) vacancy was reserved for Scheduled Caste, nine (9) for Scheduled Tribe; three (3) for blind/low vision and four (4)

for orthopaedically handicapped. The petitioners are all candidates who applied in pursuance to the advertisement and participated in the exam.

2. The Preliminary Examination was held on 24.6.2007 followed by the Main Examination on 8th & 9th September 2007. The Viva-Voce of the qualified candidates was conducted from 23.4.2008 to 6.5.2008. The merit list of the candidates for this examination was published on 28.5.2008 and the select list on 2.6.2008. The select list consists of 28 persons out of which 20 candidates were of the General category. All the petitioners belong to the General category.
3. The grievance of the petitioners is that the select list should have consisted of a larger number of candidates in view of the directions of the Supreme Court in Malik Mazhar Sultan & Anr. Vs. UP Public Service Commission & Ors. 2007 (2) SCALE 159.
4. We may note that the notification in respect of the examination for the year 2008 was issued on 25.8.2008 and the appointments in pursuance to the 2007 examination were made in September 2008. The directions contained in Malik Mazhar Sultan & Anr. case (supra) arose on account of the anxiety of the Supreme Court to ensure that vacancies both at the subordinate judiciary level and higher judiciary do not remain unfilled putting further burden on the already overburdened judicial system. It is in this context that certain schedules were laid down by the Supreme Court.

5. We may also note that the effect of these directions insofar as the Higher Judicial Services is concerned was examined in WP (C) No.2688/2008 titled Ajay Kumar Jain Vs. Lieutenant Governor & Anr. and connected matters on 3.10.2008 by a Division Bench of this Court and now we are concerned with the filling up of the vacancies of the Delhi Judicial Service. The schedule and the methodology for filling up of vacancies in respect of both Higher Judicial Service and Subordinate Judicial Service have been set out in paragraph 7 of the Malik Mazhar Sultan & Anr. case (supra). The relevant portion insofar as the present matter is concerned is as under:

D. For appointment to the post 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.	15 th January
2.	Advertisement inviting applications from eligible candidates	1 st February
3.	Last date for receipt of application	1 st March
4.	Publication of list of eligible applicants The list may be put on the website	2 nd April
5.	Despatch/issue of admit cards to the eligible applicants	2 nd to 30 th April
6.	Preliminary written examination Objective questions with multiple choice which can be scrutinized by computer	15 th 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	15 th June
8.	Final Written examination Subjective/narrative	15 th July
9.	Declaration of result of final 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 be successful candidates be maintained. C] Dates of interview of the successful candidates may be put on the internet which can be printed by the	30 th August

	candidates and no separate intimation of the date of interview need be sent.	
10.	Viva Voce	1 st to 15 th 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 vacancies notified.	1 st November
12.	Issue of appointment letter by the competent authority for all existing vacant posts as on date	1st December
13.	Last date for joining	2 nd January of the follower year

6. The aforesaid schedule required the number of vacancies to be notified by the High Court as on 15th January of the year concerned and the vacancies were to include: (a): existing vacancies; (b): future vacancies that may arise within one year due to retirement; and (c): future vacancies that may arise due to promotion, death or otherwise, say ten per cent of the number of posts.
7. The examination schedule provided for declaration of final select list and communication to the appointing authority by 1st November of the year concerned and the appointment letters were to be issued by the competent authority for existing vacant posts as on the date of 1st December of that year. In column 11 it was provided that while declaring the final select list “select list to be published in order of merit and should be double the number of vacancies notified”.
8. Another relevant aspect is the observations made in para 12 of Malik Mazhar Sultan & Anr. case (supra), which are as under:

“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."

9. It was submitted by learned counsels for the petitioners that thus the aforesaid schedule in column 1 provided for not only the existing vacancies but also an estimation of future vacancies to arise within a year as also future vacancies in other eventualities as set out to be about 10 per cent of number of posts. It was, thus, submitted that say if ten (10) vacancies existed, there were two (2) future vacancies and a further provision of 10 per cent of the posts was made for future vacancies on account of other eventualities then there would be in total thirteen (13) vacancies for which the provision had to be made. Since as per column 10 the select list had to be published in order of merit and double the number of posts notified the select list in such a case would be for 26 posts and as per column 12 for all existing vacancies as on the date of issuance of appointment letters had to be filled up. It was, thus, submitted that contrary to this mandate only the existing vacancies as on the date of the notification of the examination had been taken care of.
10. Learned counsels for the petitioners also relied upon the observations made in Ajay Kumar Jain case (supra) which dealt with the Higher Judicial Service.
11. Learned counsels further referred to the judgement of the Supreme Court in Prem Prakash Vs. UOI & Ors. 1984 (Supp.)

SCC 687 and R.S. Mittal Vs. UOI 1995 Supp (2) SCC 230.

We may note at this stage itself that we are unable to appreciate the relevance of these judgements to the controversy in question. In Prem Prakash case (supra) candidates who were selected earlier but were wrongly denied appointments were sought to be appointed against vacancies declared in subsequent year for fresh appointments resulting in denial of appointment to newly selected candidates in order to make room for the already selected candidates. Such an act was held not to be fair and justified. We may notice that this is also a case of Delhi Judicial Service. In R.S. Mittal case (supra) a panel of selected candidates was prepared and it was held that where there is a vacancy which can be offered to a selected candidate on the basis of his merit position, denial of appointment to him without proper reason was unjustified.

12. The stand of the Delhi High Court is that the petitioners cannot challenge the examination process for the year 2007 at a belated stage especially when the process for the examination for the year 2008 had also begun. This is apart from the fact that the petitioners had acquiesced the acts of the respondent/High Court by participating in the Delhi Judicial Service Examination of the year 2008.
13. Learned counsel for the High Court emphasized that in the affidavit filed by the High Court before the Hon'ble Supreme Court in Malik Mazhar Sultan & Anr. case (supra) it was specifically stated that the Delhi High Court be permitted to make selections as per the existing procedures and time

schedules; viz. twice a year instead of a mandatory annual selection only. It was in this context that the observations were made in para 12 which have been extracted aforesaid and the effect of this is that the directions in Malik Mazhar Sultan & Anr. case (supra) would not apply to the Delhi High Court. The philosophy behind holding examination twice a year is stated to be an endeavour to get the best possible candidates to fill up the vacant posts at the earliest. The advertisement for the next examination was published on 25.8.2008 for thirty-six (36) posts indicating a further fifty (50) additional posts which were likely to be created. It is, thus, contended that since Delhi High Court was holding regular examination and keeping in mind the objective of the best possible candidates being permitted to compete for future vacancies, the directions should not apply as this object would be defeated if a panel is prepared to the extent of double the number of vacancies.

14. Insofar as the factual matrix is concerned Annexure A to the counter affidavit sets out the vacancies which had arisen after the notification for the examination issued for the year 2007. There were, in fact, five (5) such vacancies which arose by 21.6.2007. The next set of vacancies have arisen only on 4.4.2008 when promotions were made from the Subordinate Judicial Service to the Higher Judicial Service. It may be noticed that thereafter also certain vacancies have arisen.
15. We have examined the submissions of the learned counsels for the parties.

16. An important aspect to be taken note of is the objective with which the directions were passed in Malik Mazhar Sultan & Anr. case (supra). The objective was clearly to fill up vacancies expeditiously and not to have vacancies existing over a long period of time affecting the efficacy of the judicial system. It is in this context that schedules were laid down.
17. Insofar as the Subordinate Judicial Service is concerned, the stand of the Delhi High Court was that it was holding examinations twice a year. It is in this context that observations were made in para 12 of the judgement in Malik Mazhar Sultan & Anr. case (supra) leaving it open for the Delhi High Court to set forth a schedule which would facilitate filling up of vacancies earlier than the schedule fixed by the Supreme Court. The fact, however, remains that other than one year when two exams were held there has been no other year when such a situation has arisen. The examination for the year 2007 instead of being notified in January 2007 came to be only notified in April 2007. The process of completing the examination and declaration of result went up to May 2008 while the directions of the Supreme Court in Malik Mazhar Sultan & Anr. case (supra) envisaged such process to be completed by the November of the year concerned, i.e. should have been November 2007. Not only that the appointment letters were issued as late as September 2008, thus, taking almost one and a half years. Thus, the very substratum of the leave sought by the High Court in para 12 of the judgement of the Supreme

Court in Malik Mazhar Sultan & Anr. case (supra) does not exist. The intent of the directions of the Supreme Court was not that the Delhi High Court could make appointments in a more delayed manner but that the High Court could fill in the vacancies more expeditiously by holding examinations more frequently.

18. We may note that we had negated the contention of the High Court in Ajay Kumar Jain case (supra) to the effect that the directions would apply only when the amended rules came into force which judgement has been accepted by the High Court. We have clearly noticed that the directions have been made on the premise that selections were being made as per the existing rules and had concluded so in para 9 of Ajay Kumar Jain case (supra).

19. We are informed by learned counsel for the High Court that on 24.3.2009 certain directions have been passed by the Supreme Court in respect of Malik Mazhar Sultan & Anr. case (supra) to the following effect:

“In supersession of the order passed by this Court on 4.1.2007, this Court direct that in future the High Courts/PSCs shall notify the existing number of vacancies plus the anticipated vacancies for the next one year and some candidates also be included in the wait list. To this extent earlier order is modified.”

20. The aforesaid directions are prospective but in a sense guide us about the intent of the directions passed by the Supreme Court that it is not an indefinite period of time for which the merit list is open but for a period of a year in the context of the schedule laid down for each of the examinations and in the context of the Subordinate Judicial Service would be the relevant calendar year.

21. We do not find force in the contention of the learned counsel for the respondent/Delhi High Court that there has been any inordinate delay or laches or acquiescence as would defeat the rights of the petitioners. The select list itself was published in May 2008 and before even the appointment letters were issued the process of the fresh examination was started in August 2008. The petitioners made representations and have thereafter approached the Court. Thus, the delay in the present facts of the case is not such to defeat the rights of the petitioners especially taking into consideration the fact that all the petitioners are seeking are implementation of the existing directions of the Supreme Court in Malik Mazhar Sultan & Anr. case (supra).
22. We are, thus, of the view that the directions in Malik Mazhar Sultan & Anr. case (supra) would apply to the Delhi High Court even insofar as the examination for the Delhi Judicial Services is concerned but in case the High Court was to make recruitments by holding the examination more frequently, say twice a year, it would be open to the High Court to lay down its own schedule. In the given facts of the present controversy, this is not so.
23. The effect of this is that the High Court was required to make provision for future vacancies and a panel should have been kept from which appointments could have been made. In this context the next question which arises for consideration is that vacancies up to which date have to be taken into account? We are unable to read the directions of the Supreme Court in the manner as canvassed by learned

counsels for the petitioners. We cannot lose sight of the fact that issuance of directions in the “description” portion, have to be read in the context of the relevant dates given in the column against such a “description”. Column 1, 11 & 12 have to be read together to give a purposeful construction to them and cannot be read in isolation. The schedule envisages vacancies to be notified by 15th January of the year concerned and the process for issuance of appointment letters to start from 1st December of the year concerned. This in turn would require that vacancies are again to be notified on 15th January of the subsequent year. If what the learned counsels for the petitioners contend was to be accepted as per the example given by them after filling up of the vacancies envisaged as per para (a), (b) & (c) equal number of vacancies would be in the select list being double the number while simultaneously the subsequent examination would be on the anvil. The requirement of keeping available double the number of vacancies as contained in Column 11 and the requirement of filling up of all existing vacancies as per Column 12 has to be read in the context of Column 1 which prescribes the vacancies and in the given schedule of one year being the calendar year in question.

24. If the directions are to be read in the aforesaid manner, when we consider the facts of the present case, we find that the advertisement which ought to have been issued on 1.2.2007 has actually been issued only on 18.4.2007. The completion of the examination process has taken almost

one and a half years. However, this does not cause any prejudice to the candidates as such, so long as the vacancies existing in the relevant calendar year are taken into account for filling up the vacancies. If the examination had been held in time even then vacancies only up to December 2007 would have been filled in pursuance to the examination for the year 2007.

25. We are conscious of the fact that expeditious filling up of vacancies is an objective which should not be lost sight of and has been repeatedly emphasized by the Supreme Court. Simultaneously the stand of the High Court that the best talent should be recruited is a significant factor. The pool of talent increases as time passes as more eligible candidates come into the zone of consideration. A realistic view has, thus, to be taken keeping in mind the directions made by the Supreme Court under Article 141 of the Constitution of India in Malik Mazhar Sultan & Anr. case (supra).
26. We are, thus, of the considered view that taking into consideration the significance of the dates given, it is only such of the vacancies which arose by December 2007 could have been taken into account for being filled up as per the examination result declared of the year 2007. The factual data given by the High Court shows that five (5) more vacancies had arisen after exam was notified and thus, these five (5) vacancies are liable to be filled up in pursuance to the examination of the year 2007. We may note that some of the persons who came in the select list

did not join and thus offers were further made to the other persons as per merit. Some other persons who have not joined have been given time till 1.5.2009 to join. This would be a separate exercise to be carried out as per the merit list but apart from this five (5) other vacancies having arisen in the calendar year 2007 are also liable to be so filled up in pursuance to the examination of the year 2007. The petitioners before us have different merit positions but we are not required to examine them as a general direction can be made.

27. A writ of mandamus is issued directing the respondents to process the filling up of five (5) posts which fell vacant after notification of the examination but by December 2007 in terms of the directions aforesaid and the necessary exercise be carried out within a period of one (1) month from today.
28. The petition stands disposed of in terms of the aforesaid leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

APRIL 15, 2009
b'nesh

SUDERSHAN KUMAR MISRA, J.