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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION(CIVIL) NO. 3353/2010**

Reserved on: 22nd August, 2013

Date of decision: 6th September, 2013

DELHI JUDICIAL SERVICE ASSOCIATION THR. ITS
PRESIDENT VINOD KUMAR DHJS & ANR.

..... Petitioners

Through Mr. Rakesh Tiku, Sr. Advocate with
Mr. Vivek Ojha, Advocate.

versus

HIGH COURT OF DELHI THROUGH ITS REGISTRAR
GENERAL & ORS.

..... Respondents

Through Mr. Viraj R. Datar, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

SANJIV KHANNA, J.:

Delhi Judicial Service Association, petitioner No. 1 has invoked extraordinary jurisdiction of this Court under Article 226 of the Constitution of India for quashing advertisement dated 7th September, 2009 issued by the High Court of Delhi, respondent No. 1 herein for appointments to 10 posts of Additional District and Sessions Judge by direct recruitment from the Bar. The petitioner has also prayed for

quashing of the communication dated 8th April, 2010 by which representation made by the petitioner herein dated 16th November, 2009 was rejected. Appropriate relief as deemed fit and proper is the residuary and last prayer.

2. The grievance of the petitioner is premised on the decision of the Supreme Court in *All India Judges' Association and Others versus Union of India and Others*, (2002) 4 SCC 247 decided on 21st March, 2002. In the said decision, the Supreme Court considered Justice Shetty Commission's recommendations in respect of pay scales, recruitment, etc. and had directed as under:-

“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 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 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 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 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:

(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;

(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

(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.

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

3. On the date when the judgment was pronounced, i.e, 21st March, 2002, applicable Delhi Higher Judicial Service Rules, 1970 postulated as under:-

“7. Regular Recruitment- Recruitment after the initial recruitment shall be made-

(a) By promotion on the basis of selection from members of the Delhi Judicial Service, who have completed not less than 10 years of service in the Delhi Judicial Service;

(b) By direct recruitment from the Bar.

Provided that no more than 1/3rd of the posts in the service shall be held by direct recruits.

Provided further that where a member of the Delhi Judicial Service is considered for such appointment under clause (a), all persons senior to him in the service shall also be considered, irrespective of the fact whether or not they fulfil the requirement as to the minimum of 10 years service.”

4. Thus, as per the then existing Rules, there were two methods/channels of recruitment to Delhi Higher Judicial Service. The first being selection from members of Delhi Judicial Service, who had completed more than ten years of service in Delhi Judicial Service and the second being direct recruitment from the Bar. One-third of the posts in Delhi Higher Judicial Service were to be filled up by direct recruitment and the balance posts, i.e., two-third posts were to be filled up by promotion from members of the Delhi Judicial Service fulfilling the eligibility criteria.

5. The judgment of the Supreme Court in *All India Judges Association* (supra) necessitated and required amendment of the Rules. Full Court of High Court of Delhi pursuant to the said directions prepared and approved draft Delhi Higher Judicial Service (Amendment) Rules, 2005 and these were sent to the Government of NCT of Delhi by Demi Official Letter dated 11th May, 2004 with the request that approval of the Administrator, Delhi to the amended Rules

be obtained and necessary notification should be issued at an early date. However, the Government of NCT of Delhi took its own time and amended Rule 7 was notified on 22nd October, 2008. The amended Rule reads as under:-

“7. Regular recruitment-(1) Recruitment to the posts in the cadre of District Judge at Entry level shall be as under:-

- (a) 50 per cent by promotion from amongst the Civil Judges (Senior Division), having a minimum ten years service in the cadre of Delhi Judicial Service, on the basis of principle of merit-cum-seniority and passing a suitability test.
- (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
- (c) 25 per cent of the posts shall be filled by direct recruitment from amongst the persons eligible as per rule 7C on the basis of the written and viva voce test, conducted by the High Court.

(2)The first and second posts will go to category (a) (by promotion on the basis of seniority-cum-suitability), the third post will go to category (c) (direct recruitment from the Bar), and the fourth post will go to category (b) (by limited competitive examination) under this rule, and so on.”

6. In the meanwhile, applications were filed before the Supreme Court in *All India Judges Association* case (supra) and these were decided by a detailed order dated 20th April, 2010. The Supreme Court

noticed that after the decision dated 21st March, 2002, High Courts had amended the service rules and 25% of the posts of District Judges were being filled up by Limited Departmental Competitive Examinations but many High Courts found it difficult to fill up 25% of the posts through the said process. It was noticed that in many States, posts had remained vacant and there was no alternative method by which these 25% posts could be filled up. The Supreme Court also observed that in some States like Bihar, U.P. and Kerala there were adequate rules to fill up such posts by regular promotion, but in many States there were no such rule to fill up these 25% vacancies by alternative ways. It was further noticed that in some cases unfilled vacancies were filled up by ad hoc promotion or temporary promotions but this had created difficulty/uncertainty and was not desirable. The Supreme Court emphasized that in some cases sufficient number of candidates were not available for being promoted as the particular category Civil Judge (Senior Division) in normal course were being promoted before completion of five years of service. Recording the aforesaid position, the Supreme Court issued the following directions:-

“Having regard to various strategies available, we are of the considered view that suitable amendment is to be made for this 25 per cent quota of Limited Departmental competitive Examination. We are also of the view, with the past experience, that it is desirable that 25 per cent quota be reduced to 10 per cent. We feel

so as the required result, which was sought to be achieved by this process could not be achieved, thus it calls for modification.

Thus, we direct that henceforth only 10 per cent of the cadre strength of District Judges be filled up by Limited Departmental Competitive Examination with those candidates who have qualified service of five years as Civil Judge (Sr. Divn.). Every year vacancies are to be ascertained and the process of selection shall be taken care of by the High Courts. If any of the post is not filled up under 10 per cent quota, the same shall be filled up by regular promotion.

In some of the High Courts, process of selection of these 25 per cent quota by holding Limited Departmental Competitive Examination is in progress, such process can be continued and the unfilled seats, if meritorious candidates are available, should be filled up. But if for some reason the seats are not filled up, they may be filled up by regular promotion and apply the usual mode of promotion process. Thus we pass the following order:-

Hereinafter, there shall be 25 per cent of seats for Direct Recruitment from the Bar, 65 per cent of seats are to be filled up by regular promotion of Civil Judge (Sr. Divn.) and 10 per cent seats are to be filled up by Limited Departmental Competitive Examination. If candidates are not available for 10 per cent seats, or are not able to qualify in the Examination then vacant posts are to be filled up by regular promotion in accordance with the Service Rules applicable.”

7. After recording the aforesaid, the Supreme Court further directed that all High Courts should take steps to see that the existing service rules are amended positively with effect from 1st January, 2011 and in case the rules were not suitably amended, the order passed by the Supreme Court will prevail and further recruitment from 1st January, 2011 shall be in terms of the said order and the directions given therein would prevail. It was further directed that all vacancies to be filled up in that particular year and there shall not be any carry forward of unfilled posts.

8. The Supreme Court thereafter specifically noticed the position in Delhi and had observed as under:-

“In re: Delhi:

There are about 1216 vacant post of Civil Judge (Jr. Divn.), out of which 64 posts have already been advertised and the remaining posts could not be advertised as there is paucity of court accommodation and other infrastructure. Mrs. Anil Katiyar, learned counsel appearing for the Delhi Government stated that urgent steps will be taken to create all infrastructural facilities for courts and the same is recorded. Steps may be taken at at(sic) earliest and this Court to be apprised about it within a period of six months.”

9. Earlier, the High Court of Delhi through the Registrar General on 7th September, 2009 had advertised and asked for applications for filling up 10 posts in the Delhi Higher Judicial Service through direct

recruitment from the Bar through written examination and interview/viva voce.

10. The petitioner association on 15th October, 2009 filed Writ Petition (Civil) No. 12680/2009 with the prayer to quash the said advertisement for appointment through direct recruitment for 10 posts. Copy of the said writ petition has been produced before us. The petitioner association specifically relied upon the order dated 21st March, 2002 passed in *All India Judges Association* case (supra) and reference was made to directions therein. The contention of the petitioner association in the said writ petition was that the direct recruits in the Delhi Higher Judicial Service exceeded 25% quota, which had been fixed by the Supreme Court in terms of order dated 21st March, 2002 in *All India Judges Association* case (supra).

11. By an interim order dated 11th December, 2009, a Division Bench of this Court hearing the writ petition passed an order that the written examination, which was to take place on 13th December, 2009 may be held but the results shall not be declared and in any event the examination would be subject to the outcome of the writ petition.

12. The writ petition remained pending till application dated 16th December, 2009 was filed by the petitioner association stating that the said petitioner did not want to proceed with the writ petition and it would be just and expedient and in the interest of justice that the

petitioner should be allowed to withdraw the writ petition.

13. In view of the application made, the writ petition was dismissed as withdrawn vide order dated 16th December, 2009 and the interim orders were vacated.

14. The selection process pursuant to the advertisement dated 7th September, 2009 continued and selection list was published on 5th June, 2010. Subsequently, appointment letters were issued and 7 appointees joined on 16th August, 2010. A few days before the selection list was published, on or about 14th May, 2010, the present writ petition came to be filed along with an application CM No. 6742/2010 for stay of declaration of the results. On the said application only notice was issued. Thereupon, the petitioner herein filed CM No. 7298/2010 praying, inter alia, that some interim protection was required and necessary. This application was to direct that the selection/appointment, if any, should be made subject to the outcome of the final decision. The said application was specifically dismissed vide order dated 25th May, 2010 recording that no interim protections were required to be passed. This order dated 25th May, 2010 was made subject matter of challenge before the Supreme Court in Special Leave to Appeal (Civil) Nos. 16709-10/2010. The SLP was dismissed on 8th June, 2010 recording as under:-

“Learned counsel for the petitioners sought

permission to withdraw these petitions in view of the result of the Delhi Higher Judicial Service Exams declared on 5th June, 2010. Permission granted. The special leave petitions are dismissed as withdrawn.”

15. Counsel for the petitioner has submitted that the prayers made in the writ petition, which have been noticed one paragraph above, should be granted. He argues that there has been extraordinary delay in implementing order of the Supreme Court in *All India Judges Association* case (supra) dated 21st March, 2002 as Rule 7 for the Delhi Higher Judicial Service were not amended till 2008, i.e., for a period of six years. He further submits that this has adversely affected the promotion prospects of the members of the Delhi Judicial Service. It is submitted that in terms of the order dated 21st March, 2002, 75% of the posts in Delhi Higher Judicial Service have been filled up by promotion from members of the Delhi Judicial Service and only 25% of the posts can be filled up by direct recruitment from the Bar. It is pointed out that as on 7th September, 2009, number of direct recruits, who were working in Delhi Higher Judicial Service exceeded their quota of 25%, and in numerical terms 51 direct recruits were in position. With the recruitment of the 10 new members from the Bar to the Delhi Higher Judicial Service their number would go upto 61 and, thus, creating an imbalance and this would be contrary to the directions of the Supreme Court.

16. The stand and the contention of the respondent High Court of Delhi is that the past recruitments and the quota of posts filled up by members from the Bar in the Delhi Higher Judicial Service cannot be the determinative and the relevant factor. They submit that the change and reduction in the posts from one-third to one-fourth would be applicable only to new recruitments, otherwise it will lead to anomalies and difficulties as all vacant posts would be filled up only by Limited Departmental Competitive Examination. It is highlighted and pointed out to us that the promotees from Delhi Judicial Service were also exceeding their 50% quota as stipulated in order dated 21st March, 2002 in *All India Judges Association* case (supra). It is further highlighted that Delhi Judicial Service did not have any category or posts designated as Civil Judges (Senior Division) and the said post/category was created for the first time by the amendment made to Delhi Judicial Service Rules on 7th October, 2008. Thus, it would have taken at least five years before the officers of the Delhi Judicial Service working as Civil Judges (Senior Division) would have qualified and would have become eligible for filling up 25% posts in terms of the order passed by the Supreme Court in *All India Judges Association* case (supra) dated 21st March, 2002. They submit that as requisite number of candidates were not available in the feeder post, it was, therefore, deemed appropriate to fill up seats through direct

recruitment rather than leave the posts in the Delhi Higher Judicial Service vacant for a period of nearly five years. Further, seven members of the Delhi Judicial Service were also promoted to Delhi Higher Judicial Service under the seniority-cum-merit quota though they were in excess 50% and not through Limited Departmental Examination. It is also pointed out that ultimately only seven persons got selected in the recruitment process, which was initiated vide advertisement dated 7th September, 2009 and three posts have remained vacant. Learned counsel for the respondents has submitted that general principles of res judicata or at least constructive res judicata are clearly applicable as the petitioner association had unconditionally and without any reservations or precondition withdrawn their earlier Writ Petition (Civil) No. 12680/2009, but the association subsequently got re-activated when the selection results were about to be declared.

17. We shall deal with the last contention separately and independently in detail towards the end. At the very outset, we notice that the delay in amendment of the Delhi Higher Judicial Service Rules has resulted in difficulties and problems. As per the High Court of Delhi, the delay was occasioned as the file had remained pending with the Government of NCT of Delhi though they had sent the draft amended rule vide Demi Official Letter dated 11th April, 2005. The

amended rules were only notified after more than three years on 22nd October, 2008. Faced with the aforesaid position, we have to examine the contention of the petitioner and decide whether or not the recruitment process initiated vide advertisement dated 7th September, 2009 is invalid and bad in law. We have already quoted above the order of the Supreme Court dated 10th April, 2010 wherein it was noticed that the 25% quota as prescribed in order dated 21st March, 2002 had not been filled up and difficulties and problems were being faced in filling up the said quota. Accordingly, the Supreme Court had directed that henceforth only 10% of the cadre strength of District Judges would be filled up by Limited Departmental Examination. It was further directed that 65% of the seats shall be filled up by regular promotion. In case candidates were not available in 10% quota, i.e., the seats to be filled up by Limited Departmental Competitive Examination, the vacant posts have to be filled up by regular promotion in accordance with the applicable service rules. However, these directions were to come into force with effect from 1st January, 2011. These directions are not relevant when we examine the validity of the earlier advertisement dated 7th September, 2009. Nevertheless, the fact that the Supreme Court modified their earlier directions in order dated 21st March, 2002 shows that they were aware and conscious of the problems and difficulties in implementation of their

earlier order.

18. In *Malik Mazhar Sultan and Another versus U.P. Public Service Commission and Others*, 2007 (2) SCALE 159, the Supreme Court while dealing with the question of delay in appointments in district judiciary had issued directions with regard to filling up of the vacancies. In the said order, it is also observed that the 25% of the vacancies were to be filled up by direct recruitment from the Bar and 25% of the posts were to be filled up by promotion through Limited Competitive Examination of Civil Judges (Senior Division) having not less than five years of qualifying service. Chief Justice of each High Court was requested to constitute a committee of two or three Judges to monitor at the time of selection appointment of the judicial officers as per the schedule mentioned in the order.

19. The petitioner has relied upon decision of the Supreme Court in Writ Petition (Civil) No. 576/2003 titled *Rajasthan Judicial Service Officers' Association versus State of Rajasthan and Another* dated 7th July, 2009. In the said case, notification dated 20th October, 2003 issued for filling up 19 posts by direct recruitment to the Rajasthan Higher Judicial Service was set aside. The 19 posts included 8 posts shown as backlog vacancies and 11 current vacancies. Appointments had not been made pursuant to the impugned notification. The Supreme Court referred to an earlier SLP filed by one Veena Verma,

which was disposed of by an order on the same date, wherein strength of service mentioned in Schedule I of the Rajasthan Higher Judicial Service Rules was held to be binding. Thus, the cadre strength could not have been increased from 150 to 240 unless the Schedule was amended. Further Rule 9 of the applicable rules, it was held, had fixed only an upper limit for direct recruits but there was no lower limit. Thereafter, reference was made to *All India Judges Association* case (supra) decided on 21st March, 2002. Reference was made to the total cadre strength, number of direct recruits working and the requirement being undertaken. It was held that only 25% of the posts could be filled by direct recruitment and the rest should be filled by promotion. In the said case, the extant Rules, as interpreted justified immediate implementation of the order dated 21st March, 2002 in *All India Judges Association* case (supra).

20. There are varied and good reasons why we feel no relief can be granted to the petitioners in the present writ petition. These can be now enlisted and set out. It was not possible and practicable to immediately apply the directions of the Supreme Court given in order dated 21st March, 2002 for the following reasons:

(i) Both Delhi Higher Judicial Service Rules as well as Delhi Judicial Service Rules had to be amended. We have already noted draft as amended Delhi Higher Judicial Service Rules, 1970 were sent to

Government of NCT of Delhi by the High Court vide Demi Official letter dated 11th May, 2004. The new amended Rule 7 was notified only on 25th February, 2008. On the date of enforcement of the new rules, i.e., 22nd October, 2008, out of 191 sanctioned posts, 95 posts were in the promotee quota and 48 posts each were in the direct recruitment quota and Limited Competitive Examination quota. As on the said date, i.e., 22nd October, 2008, 127 promotee officers and 51 direct recruits were already in position. Therefore, in case 25% Limited Competitive Examination quota of 48 posts was implemented with reference to the said data, then for a considerable time (or at least till order dated 20th April, 2010), appointments to the Delhi Higher Judicial Service would have been only through one mode Limited Competitive Examination. No promotion or direct recruitment to Delhi Higher Judicial Service could have been possible for a long time.

(ii) By notification dated 27th February, 2009, the Government of NCT of Delhi amended the Schedule to the Delhi Higher Judicial Service Rules, 1970 and the cadre strength was increased from 191 posts to 203 posts, i.e., 12 new posts were created. These 12 new posts, as per the petitioner, again would have gone to Limited Competitive Examination quota as on the date of the advertisement, i.e., 7th September, 2009.

(iii) The effect of the new Rule 7 was that quota of promotee officers

from Delhi Judicial Service reduced from 66.66% to 50% and the direct recruit quota was reduced from 33% to 25%. A new quota of 25% of officers working in Delhi Judicial Service and had completed five years as Civil Judge (Senior Division) was created. If the existing appointments to the post in the Delhi Judicial Higher Service were taken into consideration it could have led to difficult as all vacant posts and newly created posts would have fallen in the category of promotion under limited competitive examination quota. This would have led to incongruous and unforeseen or unacceptable situation. These aspects were taken into consideration by the Committee appointed on the administrative side and by the Full Court who upon deliberation have directed that ratio of 2:1:1 should apply in future and vacancies which would have occurred on or after 22nd October, 2008.

(iv) If the claim of the petitioner association is to be accepted it would adversely affect promotions which would have been granted to officers from Delhi Judicial Service under the 66.66% quota (reduced by the Supreme Court to 50% vide decision dated 21st March, 2002 in *All India Judges Association's case* (supra)).

(v) Delhi Judicial Service did not have any post of Civil Judge (Senior Division). This required amendment of the rules, but which came into operation only with effect from 22nd October, 2008. It is only after the said amendment that it was possible to fill up 25%

Limited Departmental Promotion quota posts. It would have taken some time for the officers in Delhi Judicial Service to be eligible.

(vi) During the course of hearing before us, the High Court has filed list of officers of Delhi Judicial Service, who have been promoted to Delhi Higher Judicial Service since 2002 till date. The said chart indicates that several promotions were made on 8th September, 2008 from the promotion quota. These include promotion of officers, with about 11 years of experience in Delhi Judicial Service, though one officer had 10 years and 8 months experience and 3 officers had 15 years and 7 or 10 months experience. As per the petitioner association, these promotions should not have been made in view of order dated 21st March, 2008.

(vii) The next promotion of 3 officers from the promotion quota was made on 27th November, 2009. The 3 officers had more than 16 years experience but their promotion to Delhi Higher Judicial Service was delayed because of external reasons and not because of lack of vacancies in Delhi Higher Judicial Service from the promotion quota. These 3 officers were appointed in 1992 but their juniors, including those appointed on 6th September, 1997 or 3rd January, 1998, were promoted earlier on 8th September, 2008. Subsequently, 6 officers were promoted from Delhi Judicial Service to Delhi Higher Judicial Service on 27th July, 2010 on completing ten years service in Delhi

Judicial Service. There have been number of promotions since thereafter till 10th July, 2012 from Delhi Judicial Service to Delhi Higher Judicial Service of officers, who had just completed about 10 years service in Delhi Judicial Service. It is, therefore, clear and apparent that officers from Delhi Judicial Service were/are being promoted to Delhi Higher Judicial Service immediately or shortly upon completion of 10 years of minimum qualifying service, during the period before, and on, or after September, 2008.

(viii) Thus, having 25% Limited Examination quota for promotion from Delhi Judicial Service to Delhi Higher Judicial Service would have led to anomaly and was rather difficult to implement as the minimum requirement even as per *All India Judge Association case* (supra) decided on 21st March, 2002 is 10 years service in Delhi Judicial Service including 5 years of qualifying service as Civil Judge (Senior Division).

21. It was in these circumstances that a Committee appointed on the 'Administrative Side' in its report dated 18th March, 2009 had made recommendations that the amended rules in the ratio of 2:1:1 would take considerable time in achieving the quota on merit promotion through Limited Competitive Examination and bring about adequate representation in the said category. An amendment to the rules was proposed and sent to the Government of NCT of Delhi. It was

suggested that all future vacancies would be filled up in the ratio of 2:1:1 as per Rule 7(1). Thereupon, on 27th March, 2009 the Full Court accepted the recommendation that all existing vacancies and vacancies/posts arising after the cut off date, i.e., 22nd October, 2008 shall be filled up or distributed in the ratio of 2:1:1 under Rule 7(1) of the Delhi Higher Judicial Service Rules. In other words, the ratio of 2:1:1 would apply to future and vacancies on 22nd October, 2008 and the existing ratio or posts would not be taken into consideration. Thus, the number of posts against promotion quota or against direct recruitment as per working strength would not be the determining factor, but the ratio of 2:1:1 would be applicable to posts falling vacant on or after 22nd October, 2008. Date 22nd October, 2008 was fixed as post of Civil Judge (Senior Division) was created on the said date. In all there were 24 vacancies at that time and accordingly 10 vacancies fell to the share of 50% promotion quota, 7 to the share of 25% direct recruitment quota and 7 to the share of 25% Limited Competitive Examination quota. At that time 3 more vacancies were anticipated, out of which 2 vacancies would have fallen in 50% promotion quota and one vacancy in the share of 25% direct recruitment quota. Thus, advertisement was issued for 10 direct recruitment vacancies on 7th September, 2009. Actual number of vacancies filled up is only 7.

22. We also note that the Committee appointed on the 'Administrative Side' in their report dated 18th March, 2009 has referred to '100 Point Post Based Roster' and has given break-up of the posts in different categories; unreserved and reserved SC and ST categories. It is also clear that in terms of the Full Court decision, promotes officers have also benefitted as number of officers have been promoted from Delhi Judicial Service to Delhi Higher Judicial Service on 8th September, 2008 and 27th November, 2009. (Subsequently, promotion on 27th July, 2010 and 10th July, 2012 would be covered and proper as mandated by order dated 20th April, 2010.) In case the ratio 2:1:1 had been applied with retrospective effect by taking into consideration the working strength, promotions from Delhi Judicial Service would not have been possible as the number of officers from Delhi Judicial Service in the promotion quota exceeded their share of 50% throughout or even on 7th September, 2009, when the advertisement was published till modification/change in terms of order dated 20th April, 2010.

23. In case 25% posts had been reserved for Limited Departmental Examination quota, it would have resulted in a large number of vacant posts and entire selection process to Delhi Higher Judicial Service by way of promotion or by way of direct recruitment could have come to standstill. It is noticeable that because of lack of officers meeting the

eligibility criteria of 5 years service as Civil Judge (Senior Division), no posts have been filled up till today from the said quota.

24. Reliance placed upon order dated 20th October, 2010 passed by the Supreme Court whereby the Limited Competitive Examination quota was restricted or reduced to 10% from 25% and promotion quota was increased from 50% to 65% is not relevant and material as in the present case the Full Court decision was taken on 27th March, 2009 and the advertisement was published on 7th September, 2009, which is before the decision dated 20th April, 2010. The said decision cannot be, therefore, applied and given effect to while we examine the appointments made pursuant to advertisement dated 7th September, 2009. We further record that there has been no further appointment by direct recruitment through the Bar since 2009.

25. On the question of res judicata or constructive res judicata, we have referred to the facts. It does appear that the petitioner association had unconditionally and without any demur withdrawn their writ petition vide application CM No. 15820/2009. The withdrawal application does not refer to any condition or reason why the said Writ Petition (Civil) No. 12680/2009 was being withdrawn. The said writ petition was for identical reliefs and based on the same cause of action. We may, at this stage, notice that some of the judicial officers, including petitioner No. 2 belonging to Delhi Judicial Service had

independently filed a writ petition before the Supreme Court, which was registered as Writ Petition (Civil) No. 556/2005 titled *Anil Kumar and Others versus Lt. Governor of Delhi and Another*. This writ petition was dismissed as withdrawn with liberty to move to the High Court vide order dated 17th December, 2009. Petitioner No. 2 herein was one of the petitioners before the Supreme Court. Petitioner No. 1 association, therefore, should not be permitted and allowed to file the present writ petition. But petitioner No. 2 can certainly approach this Court in view of the liberty granted by the Supreme Court in its order dated 17th December, 2009 in Writ Petition (Civil) No. 556/2009. The contention raised on behalf of the petitioner No. 1 that they had made a representation and, therefore, they had moved an application for withdrawal of the Writ Petition (Civil) No. 12680/2009 is not borne out from the application CM No. 15820/2009.

26. In view of the aforesaid discussion, we do not find any merit in the present writ petition and the same is dismissed. No costs.

(SANJIV KHANNA)
JUDGE

(SANJEEV SACHDEVA)
JUDGE

SEPTEMBER 6th, 2013
VKR