

\$~5

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

Date of decision: 4th April, 2014

+ **W.P. (C) 2172/2014**

MURARI GUPTA Petitioner

Through: Mr. R.K. Saini, Advocate

versus

HIGH COURT OF DELHI THROUGH ITS REGISTRAR

GENERAL AND ANR Respondents

Through: Mr. Rajiv Bansal, Standing
Counsel for DHC.

Ms. Vibha Mahajan, Advocate for
R-2.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE G.P. MITTAL

J U D G M E N T

SANJIV KHANNA J. (ORAL)

1. Respondents have filed status report.
2. In order to enable the learned counsel for the petitioner to go through the same, the matter was passed over and has been taken up for hearing in the second round.
3. The grievance of the petitioner is that no Delhi Higher Judicial Services (DHJS) Examination for direct recruits were held in the years 2010, 2011 and 2012 and this fact has not been noticed in the

Notification dated 29.12.2013. It is accordingly submitted that the petitioner who had appeared in DHJS Examination for direct recruits in 2009, has suffered because of inaction of the Respondents in spite of the directions of the Supreme Court in *Malik Mazhar Sultan and Anr. v. U.P. Public Service Commission & Ors.*, JT 2007 (3) SC 352. Reliance is also placed on a decision of the Jharkhand High Court dated 16.01.2014 in W.P.(S) No.7526/2013 titled *Bhola Nath Rajak & Ors. v. The State of Jharkhand & Ors.*

4. In order to ascertain correct factual position and noticing urgency in the matter as examination under the Notification dated 29.12.2013 are scheduled to be held on 06.04.2014, by order dated 02.04.2014 the Respondents were asked to file status report ascertaining and stating the factual position relating to vacancies under direct recruitment quota in DHJS. Reference was made to contention of the petitioner that sanctioned strength in DHJS was increased by 03 posts vide letter dated 12.11.2010.
5. As per the status report, DHJS Examination for direct recruits was held on 13.12.2009 for filling up nine existing and one anticipated vacancy. Seven officers joined thereafter, but two vacancies of

Scheduled Tribe candidates could not be filled up for want of suitable candidates.

6. Govt. of National Capital Territory of Delhi had sanctioned three and fifteen additional posts in DHJS on 12.11.2010 and 05.03.2011 respectively. In the meanwhile, the direct recruitment quota in DHJS underwent change and was decreased from 35% to 25% pursuant to the decision of the Supreme Court in *Malik Mazhar Sultan* (supra) vide order dated 04.01.2007, in which it was observed that in the cadre of District Judges, 25% of the vacancies/posts should be filled up by direct recruitment from the Bar; 25% by way of promotion through limited competitive examination of Civil Judges (Senior Division) not having less than five years of qualifying service and 50% should be filled up by promotion from the Judicial Service. The position underwent modification when order dated 20.04.2010 was passed in *All India Judges Association* case, wherein directions were issued to the High Courts to amend the existing rules for appointment in the Higher Judicial Service in the ratio of 65%, 10% and 25% by promotion, limited departmental examination and direct recruitment, respectively. In terms of the said directions, Govt. of

NCT of Delhi was requested to amend Rule 7 of the Delhi Higher Judicial Services Rules w.e.f. 01.01.2011, which was amended by Notification dated 22.12.2011. At that time, category wise sanctioned and working strength in DHJS was as under:-

Particulars	Total	Seniority Quota (65%)	Direct Rectt. Quota (25%)	Limited Deptt. Exam Quota (10%)
Sanctioned Strength	221	144	55 (Gen 43 + SC 8 + ST 4)	22
Working Strength	186	130	56 (Gen 45 + SC 9 + ST 2)	0
Vacancies	35	14	(-1)	22

7. It is clear from the aforesaid table that the numbers of direct recruits in the DHJS were in excess of their quota of 25%.
8. In these circumstances and to ensure that 10% quota relating to limited departmental examination in the DHJS should be filled up, the matter was examined on the administrative side. It was decided that officers from Delhi Judicial Service should get requisite representation in the DHJS to the extent of 65%/75%. Accordingly, the Examination cum Judicial Education and Training Programme Committee in their meeting held on 30.08.2011 recommended that 22 existing vacancies be allotted to the category

of limited departmental examination quota and 11 vacancies should be filled up from the promotion quota. Two vacancies of the Scheduled Tribes category in the direct recruitment quota were directed to be preserved. It was observed that the direct recruits in the General Category already had excess of two posts and the Scheduled Caste Category had excess of one post. The Committee therefore recommended that excess representation of the direct recruits, i.e., beyond 25% quota, necessitated that existing vacancies be allocated to the category of limited departmental examination and promotion quota to ensure and make up representation of 65%/10% of the cadre strength. There would not be new appointments of direct recruits for the time being. The aforesaid recommendations were accepted by the Full Court on 08.11.2011.

9. Thereafter, the Govt. of NCT of Delhi sanctioned 05 (five) and 50 (fifty) posts in the DHJS on 09.10.2012 and 29.01.2013. Though, five posts were sanctioned by Govt. of NCT of Delhi on 09.10.2012, no examination to DHJS conducted in the year 2012. As noted above, the direct recruits in the DHJS were in excess of one post i.e they exceeded their 25% quota at that time.

10. On sanction of 50 posts on 29.01.2013, the following position emerged:-

S. No.	Source	Percentage	Posts as per quota	Working Strength	Vacancy Position
1.	Promotion	65	180	180	0
2.	Direct Recruitment	25	69	55	14
3.	Ltd. Comp. Exam	10	27	0	27
TOTAL		100	276	235	41

11. Distribution of 69 posts in the direct recruit quota of 25%, is as under:-

S. No.	Source	Share of Posts	Number of Posts filled	Number of Posts Vacant
1.	Scheduled Castes	10	09	01
2.	Scheduled Tribes	05	02	03
3.	General	54	44	10
TOTAL		69	54/55	14

12. In view of the aforesaid position, we do not think that the petitioner can object and challenge the age criteria stipulated for filling up 14 vacancies in the DHJS. In the Notification issued on 29.12.2013, the age requirement as stipulated is that the applicant should have attained the age of 35 years but should not have attained the age of

45 years as on 01.01.2013. Cut off age i.e. 45 years as on 01.01.2013 is as per Rule 9(3), of the Delhi Higher Judicial Service Rules, 1970 which stipulates as under:-

“9. The qualification for direct recruits shall be as follows:

(1).....

(2).....

(3) Must have attained the age of 35 years and have not attained the age of 45 years on the 1st day of January of the year in which the applications for appointment are invited.”

13. The date of birth of the petitioner is 24.04.1967. The petitioner became 45 years of age on 25.04.2012.
14. The decision of the High Court of Jharkhand in *Bhola Nath Rajak & Ors.* (supra) is distinguishable for the reason that in the present case there were good ground and justification for not holding examination for direct recruits for DHJS after the last examination in the year 2009. There were no vacancies in the direct recruitment quota, till sanction of 50 new posts on 29.01.2013.
15. As noticed above, there was change in the direct recruitment quota in the DHJS which came down from 35% to 25% in terms of the directions issued by the Supreme Court in *Malik Mazhar Sultan and Anr* (supra) and *All India Judges' Association* (supra). As a result of the said directions and the change in the recruitment rules,

the DHJS examination for direct recruits was not required to be held. It could only be held in 2013, as vacancies arose in the said 25% direct recruitment quota upon sanction of 50 new posts.

16. In these circumstances, we cannot grant any relief to the petitioner.

The writ petition is accordingly dismissed.

17. CMA. No.4522/2014 also stands disposed of.

(SANJIV KHANNA)
JUDGE

(G.P. MITTAL)
JUDGE

APRIL 04, 2014

vk