

Mr. Joginder Sukhija, Advocate for
respondent Nos. 2 and 3.

WRIT PETITION (CIVIL) NO. 3428/2013

MANEESH KUMAR SHUKLA

..... Petitioner

Through Mr. R.K. Kapoor, Ms. Shweta
Kapoor, Ms. Rekha Giri & Mr. Rajat Kapoor,
Advocates.

versus

THE HIGH COURT OF DELHI & ORS.

..... Respondents

Through Mr. Chetan Lokur & Mr. Karan
Mehta, Advocates for Mr. Viraj R. Datar,
Advocate for respondent-DHC.

WRIT PETITION (CIVIL) NO. 3737/2013

JYOTI GROVER

..... Petitioner

Through Mr. Kamlesh Bhuchar, Mr. Atul
Bhuchar & Mr. Ajay Khanna, Advocates.

versus

THE HIGH COURT OF DELHI AND ORS

..... Respondents

Through Mr. Chetan Lokur & Mr. Karan
Mehta, Advocates for Mr. Viraj R. Datar,
Advocate for respondent-DHC.
Ms. Ferida Satarawala, Advocate for
respondent No. 3-GNCTD.

WRIT PETITION (CIVIL) NO. 4152/2013

ETI SOLANKI

..... Petitioner

Through Mr. Abhinav Raghuvanshi,
Advocate.

versus

THE HIGH COURT OF DLEHI & ORS.

..... Respondents

Through Mr. Chetan Lokur & Mr. Karan
Mehta, Advocates for Mr. Viraj R. Datar,
Advocate for respondent-DHC.

Mr. Amrit Pal Singh, CGSC for respondent
No. 3-UOI.

Ms. Anjana Gosain & Mr. Pradeep Desodya,
Advocates for GNCTD.

WRIT PETITION (CIVIL) NO. 6263/2013

LEGHA DEEPAK RANJIT SINGH

..... Petitioner

Through Mr. Ajay Khanna, Advocate.

versus

THE HIGH COURT OF DELHI AND ORS.

..... Respondents

Through Mr. Chetan Lokur & Mr. Karan
Mehta, Advocates for Mr. Viraj R. Datar,
Advocate for respondent-DHC.

Mr. B.V. Niren & Mr. Prasouk Jain,
Advocates for respondent No. 2-UOI.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE G.P. MITTAL

SANJIV KHANNA, J.:

The aforesaid six writ petitions raise common issues and submission is that the petitioners should be considered for appointment in Delhi Judicial Service by increasing the number of seats or posts advertised and for which selection were made by 22nd Judicial Service Examination, 2011.

2. On 19th November, 2011, High Court of Delhi issued advertisement for filling up 50 posts of Delhi Judicial Service by way of 22nd Delhi Judicial Service Examination, 2011. Of the 50 posts advertised, 23 posts were for general category and 27 posts were for reserved categories.

3. The petitioners herein, who belong to general category, appeared in preliminary examination and subsequently in the main examination including viva voce and have secured the following ranks:

Case No.	Name	Rank Secured
W.P. (C) 3426/2013	Salil Maheshwari	56
W.P. (C) 3392/2013	Nidhi Mutreja	39
W.P. (C) 3428/2013	Maneesh Kumar Shukla	45
W.P. (C) 3737/2013	Jyoti Grover	28
W.P. (C) 4152/2013	Eti Solanki	47

W.P. (C) 6263/2013	Legha Deepak Ranjeet Singh	35
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4. First 23 candidates in the merit list of the general category were issued appointment letters, and as the petitioners are lower in rank, appointment letters have not been issued to them.

5. Contentions of the petitioners are as under:-

- (i) The High Court of Delhi had erred in issuing advertisement for only 50 posts, when there were 100 existing vacancies in the Delhi Judicial Service. The petitioners accordingly have been denied their chance of selection/appointment in the 22nd Delhi Judicial Service Examination, 2011.
- (ii) By curtailing the number of posts from 100 to 50, the respondents have violated directions of the Supreme Court in the case of *Malik Mazhar Sultan and Another versus Uttar Pradesh Public Service Commission and Others*, (2008) 17 SCC 703 and subsequent order dated 24th March, 2009 in the same Civil Appeal/Writ Petition reported in (2009) 17 SCC 24. Reference was drawn to the following paragraph in the order dated 24th March, 2009:-

“3. In supersession of the order passed by this Court on 4-1-2007 [*Malik Mazhar Sultan (3) v. U.P. Public Service Commission*, (2008) 17 SCC 703 : (2010) 1 SCC (L&S) 942], this Court directs 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.”

- (iii) Failure to fill up vacant posts for want of infrastructure in form of court rooms is factually incorrect and contrary to the details made available to the petitioners under the Right to Information Act, 2005 and as per the survey undertaken by them. Our attention is drawn to the rejoinder affidavit.
- (iv) The respondents have misunderstood the ratio of the decision of the Supreme Court in ***Rakhi Ray and Others versus High Court of Delhi and Others***, (2010) 2 SCC 637 as the said decision only dealt with filling up of future vacancies and not with existing or anticipated vacancies. Thus, number of posts specified in the advertisement can be enhanced, when there are existing vacancies and anticipated vacancies, but not to fill up future vacancies. Enhancement of posts would not violate Articles 14 and 16 of the Constitution and in fact will be in conformity with the directions issued by the Supreme Court in ***Malik Mazhar Sultan and Another*** (supra). In alternative, it is submitted that in ***Rakhi Ray and Others*** (supra), the Supreme Court has accepted that in rare and exceptional circumstances and in emergent situation, the rule that number of appointments cannot

exceed the number of posts advertised, can be deviated after adopting a rational policy decision. In the present case, deviation is necessary for emergent situation, which is apparent as the Delhi High Court had requested Government of National Capital Territory of Delhi for enhancement of posts in the Delhi Judicial Service with immediate effect by their letter dated 3rd January, 2013. Enhancement of 142 posts was sought. Government of National Capital Territory of Delhi by their communication dated 29th January, 2013 has sanctioned 100 new posts in the Delhi Judicial Service. Thus, there is a dire need for judicial officers and the posts are lying vacant, while the petitioners, who have been selected on merits and meet the required parameters, are being denied appointment. This is contrary to the constitutional mandate and is arbitrary. Reliance is placed on observations in *Malik Mazhar Sultan and Another* (supra) and *Brij Mohan Lal versus Union of India and Others*, (2012) 6 SCC 502. Reference is also made to *Sandeep Singh versus State of Haryana and Another*, (2002) 10 SCC 549 wherein it has been observed that on first principle it commends to the Bench that vacancies available in any particular service, till the date of interview, atleast should be filled up from the same examination, unless there is a statutory embargo.

(v) Reliance is placed upon decision of a Division Bench of this Court in Writ Petition (C) No. 8365/2008, ***Jay Thareja and Another versus Lieutenant Governor and Another*** and other connected cases decided on 15th April, 2009 wherein after referring and relying upon orders passed in ***Malik Mazhar Sultan and Another*** (supra) it was directed that the candidates on the waiting list should have been appointed as the High Court was required to make a provision for future vacancies and a panel should have been kept for appointment. It is highlighted that in the said case, vacancies which arose by December, 2007, which were 5 in number, were directed to be filled up from the list of selected candidates, who had participated in the main examination on 8th and 9th September, 2007. Thus, posts in excess and beyond the posts for which advertisement had been called were filled up. Contention of the respondents relying upon doctrine of inordinate delay, laches and acquiescence was rejected as the petitioners therein were seeking implementation of the existing directions of the Supreme Court in ***Malik Mazhar Sultan and Another*** (supra).

6. The respondents, including Delhi High Court have contested the said submissions. We find merit in the submissions made by the respondents and would be referring to them when we delineate and

elucidate our reasons for dismissing the present writ petitions. To avoid prolixity, we are not at this stage, referring to the said submissions.

7. Contention Nos. (i), (ii), (iv) and (v) legally and even on facts substantially stand concluded against the petitioners by a Full Bench decision of this Court in Writ Petition (C) No. 1435/2011, *Sanjeet Singh versus High Court of Delhi and Another* and other connected matters, decided on 12th December, 2011. Four questions were referred to the Full Bench for decision and the same read:-

“(1) In Rakhi Ray, the Court was concerned with anticipated vacancies whereas in the present case vacancies existed even on the date of advertisement but all the vacancies not notified. Whether Rakhi Ray would cover this aspect?

(2) At the same time, it is held in Rakhi Ray that it is not permissible to fill up more vacancies than advertised. However, that has to be reconcile with Malik Mazhar Sultan.

(3) It is noted in Rakhi Ray that Rules provided for advertisement of vacancies after being determined. The question is as to whether the determined vacancies are more, whether lesser vacancies could advertised?

(4) What would be effect of order dated 20.4.2010 passed in All India Judges Association Case. As per which the Court was apprised that it was advertising lesser number of vacancies than available for want of proper court accommodation and infrastructure. Whether that would amount to approval of the action taken by the Court which is precisely the subject matter of the challenge?”

8. The Full Bench considered the judgment of the Supreme Court in *All India Judges Association versus Union of India and Others*, (2002) 4 SCC 247, different orders passed by the Supreme Court in *Malik Mazhar Sultan and Another* (supra), decision of the Supreme Court in *Rakhi Ray and Others* (supra) and other decisions, on whether it was permissible to make appointments beyond the number of vacancies advertised and whether excess appointments would violate Articles 14 and 16(1) of the Constitution. Whether there was any conflict between the directions issued in the case of *Malik Mazhar Sultan and Another* (supra) and ratio propounded in *Rakhi Ray and Others* (supra) was also considered and answered by the Full Bench in categorical terms. The Full Bench has held that the respondents cannot and should not appoint candidates in excess of the vacancies notified notwithstanding the number of existing or anticipated vacancies on the date when the vacancies were notified. The reason given was that appointments in excess of the notified vacancies would violate Articles 14 and 16(1) of the Constitution, as the selection process envisaged screening test followed by a final test. The number of candidates selected for the final test could not exceed five (or ten) times the number of vacancies to be filled up. Therefore, number of candidates, who had qualified for the final examination, was

dependent upon or proportionate to the vacancies notified or the number of posts advertised. If the figure of notified vacancies was deviated and additional or more posts than the ones notified were filled up, it would deny and violate rights of other candidates, who would have been entitled to appear for the final examination. This was impermissible. Reference was made to the decision of the Supreme Court in *Shankarsan Dash versus Union of India*, (1991) 3 SCC 47 and *K. Jayamohan versus State of Kerala and Others*, (1997) 5 SCC 170. It was observed that there was no need for reconciliation between the ratio in *Rakhi Ray and Others* (supra) and *Malik Mazhar Sultan and Another* (supra), as in the latter case the Supreme Court had exercised their powers under Article 142 of the Constitution and had passed general directions relating to determination and filling up of vacancies, but did not propound or lay down any special jurisprudence relating to service matters applicable to judiciary in India. In *Malik Mazhar Sultan and Another* (supra), the Supreme Court had issued directions to fill up judicial posts in view docket explosion and delays in effectuating judicial appointments. At the same time, the Supreme Court was conscious that the directions might require exceptions. Difference or exception was carved out and accepted for Sikkim and National Capital Territory of Delhi. Thus, the Supreme Court felt that when exigencies and situations so demand, exceptions could be carved

out, but the intent and purport of the directions issued by the Supreme Court in *Malik Mazhar Sultan and Another* (supra) should be followed.

9. In *Sanjeet Singh* (supra), candidates, who had appeared in the 21st Delhi Judicial Service Examination, 2010 pursuant to notification dated 26th October, 2009 had protested against non-appointment in spite of selection because only 60 posts were notified, though 113 posts were vacant and existing on the date of the advertisement. This, it was submitted, violated the constitutional mandate and directions issued by the Supreme Court in *Malik Mazhar Sultan and Another* (supra) and *All India Judges Association* case (supra). The Full Bench did not agree with the identical and same contention raised by the petitioners therein, observing that only 60 posts had been notified keeping in view the paucity of court rooms and, therefore, for remaining existing posts no selection process had been initiated. The Division Bench specially referred to the affidavits filed by the Delhi High Court before the Supreme Court explaining the reason why they had not advertised for the entire existing 113 posts or anticipated vacancies, but restricted the number to 60. The Supreme Court was conscious and made aware of the said position by filing of an affidavit, but did not consider it right to interfere and no direction was issued compelling the High Court to advertise and fill up all vacant posts,

including the anticipated posts. Referring to the decisions of the Supreme Court in *Shankarsan Dash* (supra) and *K. Jayamohan* (supra), it was observed that the courts have accepted that if the exigencies of the situation do demands, all vacant posts need not be filled up. No right vests in a person to compel the employer to fill up all existing vacancies and it is legally permissible not to fill up all existing vacancies. However, there should not be lack of bona fides and arbitrariness. This principle of law equally governs appointment to the District Judiciary. The Full Bench added that the said situation should not arise as the Government cannot plead lack of resources and should make available adequate infrastructure so that existing posts do not remain unfilled and the District Judiciary should function with its entire cadre strength. However, where in spite of best efforts and without lack of bona fides, situations were encountered of the kind where a rational prudent view could be taken, the High Court might be justified in not advertising all existing vacancies.

10. The aforesaid ratio is binding and equally applicable to the present case, which are almost identical in terms of the legal submission and even on facts. In respect of the 22nd Delhi Judicial Service Examination, 2011, Delhi High Court has filed two affidavits before the Supreme Court in March, 2012 and 23rd November, 2012, inter alia, stating that advertisement dated 19th September, 2011 has

been issued for 50 vacancies in the Delhi Judicial Service, though the actual existing vacancies were 100, due to paucity of court rooms. Decision of the Examination-cum-Judicial Education and Training Programme Committee justifying and stating why only 50 posts should be advertised and notified were enclosed. The Supreme Court has not adversely commented on these affidavits and no directions have been issued to fill up more posts, rejecting the said affidavits filed in ***Malik Mazhar Sultan and Another*** (supra).

11. We may note here that Full Bench decision in the case of ***Sanjeet Singh*** (supra) was made subject matter of challenge before the Supreme Court, but SLP (C) No. 3727/2012 has been dismissed by order dated 10th February, 2012. Following the order in the case of ***Sanjeet Singh*** (supra), another Division Bench in Writ Petition (C) No. 997/2011 ***Babita Pathak and Others versus High Court of Delhi and Others***, decided on 22nd February, 2013, rejected the prayer of the petitioners therein to enhance number of posts notified for general candidates and make appointments from the selected list, as 5 vacancies reserved for physically handicapped persons (blind/low vision) in 21st Delhi Judicial Service Examination, 2010 could not be filled up and had remained vacant. As noticed above, in the said examination the number of total posts were restricted to 60 (27 vacancies were for general category), though the number of existing

vacancies was 113, due to paucity of court rooms. The Division Bench rejected the argument to increase the number of general category posts due to non-availability of reserved candidates as the number of posts notified were restricted and the restriction was for want of court rooms, sighting the following reasons:-

“37. We shall also examine the question from the angle as suggested in Sanjeet Singh (supra). The syllabus for the competitive examination for recruitment to the Delhi Judicial Service is provided in the appendix to the Delhi Judicial Service Rules, 1970. Rule 15 of the said Rules stipulates that the syllabus for the examination and fee payable shall be as detailed in the Appendix to the said Rules. As per the syllabus contained in the said Appendix, the Delhi Judicial Service Examination is to be held in two successive stages: (i) The Delhi Judicial Service Preliminary Examination (Objective type with 25% negative marking) for selection for the main examination) and (ii) Delhi Judicial Service Main Examination (Written) for selection of candidates for calling for viva-voce. The syllabus further stipulates as under:-

“XXXX XXXX XXXX XXXX XXXX

The Preliminary Examination will be a screening test and will consist of one paper of multiple objective type questions carrying maximum of 200 marks. In the preliminary examination questions on general knowledge and aptitude of the candidate, candidate's power of expression, flair in English, knowledge of objective type legal problems and their solutions covering Constitution of India, Code of Civil Procedure, Code of Criminal Procedure, Indian Penal Code, Contract Act, Partnership Act, Principles governing

Arbitration Law, Evidence Act, Specific Relief Act and Limitation Act will be included.

Minimum qualifying marks in the preliminary examination shall be 60% for general and 55% for reserved categories i.e. Scheduled Castes, Scheduled Tribes and Physically Handicapped (Blind / Low Vision) (mobility not to be restricted) / Orthopaedically. However, the number of candidates to be admitted to the main examination (written) will not be more than ten times the total number of vacancies of each category advertised.

The marks obtained in the preliminary examination by the candidates who are declared qualified for admission to the Main Examination (Written) will not be counted for determining their final order or merit.

xxxx xxxx xxxx xxxx xxxx”
(Underlining added)

38. From the above, it is clear that the number of candidates to be admitted to the Main Examination (Written) cannot be more than 10 times the total number of vacancies of “each category advertised”. Insofar as the present case is concerned, the position of vacancies advertised was as under:-

Category	No. of posts	Remarks
General	27	
SC	14	
ST	14	
Physically Handicapped (Blind/Low Vision)	05	01 vacancy carried forward and advertised for the fifth time 01 vacancy carried forward and advertised for the

		third time. 02 vacancy carried forward and advertised for the second time. 01 vacancy being advertised for the first time.
Total	60	

39. Ten times the number of General candidates were to be called for the Main Examination and that prescribed the cut-off marks. It is also clear that if the last point of cut-off included several persons, then all of them would have to be called for the Main Examination and it is only in that way that the number of persons called for the Main Examination could exceed 10 times the number of vacancies. In the present case, the number of persons which ought to have been called for interview using the multiplier of 10 based on the number of vacancies advertised would be as under:-

Category	Number of posts	Multiplied by 10	Actual Number of candidates called for the Main Examination
General	27	270	274
SC	14	140	52
ST	14	140	4
PH	5	50	Gen-6, SC-3
Total			339

40. The number of persons called for the Main Examination belonging to the General Category was 274 which was 4 in excess of the permissible 270 (using the multiplier of 10). This was because several persons had obtained the same last cut-off mark. As regards the SC and ST candidates, the numbers called for the main examination were far below the numbers that could have been called using the multiplier of 10 because there were not

enough candidates in those categories. The same is the position with the category of physically handicapped candidates. The present petitioners all belong to the General category. All the petitioners, except Deepti had made the cut-off and were included in the said figure of 274 persons. Insofar as Deepti is concerned, she was placed at Rank No.278 and had not made the cut-off, but by virtue of an interim order of this court, she was permitted to take the main examination.

41. If the contentions of the petitioners are to be accepted, it would lead to grave injustice. This is so because they want a diversion of four vacancies reserved for the physically handicapped candidates to the General category which would mean that the vacancies for the General candidates would increase from 27 to 31. This, in turn, would entail that the cut-off marks would have been lower inasmuch as $31 \times 10 = 310$ candidates belonging to the General category would have had to be called for the Main Examination. By not doing so at the initial stage, 36 candidates in the list (excluding Deepti) would have had an opportunity to participate in the Main Examination, but have been denied that chance. It is quite possible that those 36 candidates could well have appeared in the Main (Written) Examination and the viva-voce and might even have been selected. A case in point is that of Deepti herself who did not make the initial cut-off and was ranked 4th after the cut-off, but she participated, with the aid of an interim order of this court, in the Main (Written) Examination and did reasonably well so as to be ranked 32nd in the final order of merit, just 5 positions away from the last successful candidate. Therefore, following the Full Bench decision in Sanjeet Singh (supra), we cannot permit the diversion of vacancies reserved for the physically handicapped candidates to the General category as that would amount to grave injustice to the persons who could have been in the reckoning as a larger number of persons would have been entitled to be called for the Main

(Written) Examination.”

12. For the same reasons, the contention of the petitioners that number of posts for general candidates should be enhanced as reserved posts have not been filled up has to be rejected, as it would violate Articles 14 and 16(1) of the Constitution. The view taken by the Full Bench in *Sanjeet Singh* (supra) and Division Bench in *Babita Pathak and Others* (supra) is at variance with the ratio of the earlier decision of the Division Bench of this Court in *Jay Thareja and Another* (supra). In fact the decision in the case of *Jay Thareja and Another* (supra) is dated 15th April, 2009 and the said Bench did not and could not have considered ratio and mandate of the Supreme Court in *Rakhi Ray and Others* (supra), which was pronounced on 1st January, 2010. *Rakhi Ray and Others* (supra) is a decision of three Judges. The *Rakhi Ray and Others* case (supra) was followed in *State of Orissa and Another versus Rajkishore Nanda and Others*, (2010) 6 SCC 777 wherein it was observed:-

“11. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as “the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution”, of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible

nor desirable, for the reason, that it amounts to “improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational”, otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide *State of Bihar v. Secretariat Asstt. Successful Examinees Union* 1986[(1994) 1 SCC 126 : 1994 SCC (L&S) 274 : (1994) 26 ATC 500 : AIR 1994 SC 736] , *Prem Singh v. Haryana SEB* [(1996) 4 SCC 319 : 1996 SCC (L&S) 934] , *Ashok Kumar v. Banking Service Recruitment Board* [(1996) 1 SCC 283 : 1996 SCC (L&S) 298 : (1996) 32 ATC 235 : AIR 1996 SC 976] , *Surinder Singh v. State of Punjab* [(1997) 8 SCC 488 : 1998 SCC (L&S) 65 : AIR 1998 SC 18] and *Rakhi Ray v. High Court of Delhi* [(2010) 2 SCC 637 : (2010) 1 SCC (L&S) 652 : AIR 2010 SC 932] .)

12. In *State of Punjab v. Raghubir Chand Sharma* [(2002) 1 SCC 113 : 2002 SCC (L&S) 104 : AIR 2001 SC 2900] this Court examined the case where only one post was advertised and the candidate whose name appeared at Serial No. 1 in the select list joined the post, but subsequently resigned. The Court rejected the contention that the post can be filled up offering the appointment to the next candidate in the select list observing as under: (SCC p. 115, para 4)

“4. ... With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select panel prepared, the panel ceased to exist and has outlived its utility and, at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person

appointed from the panel or any other vacancies arising subsequently.”

13. In *Mukul Saikia v. State of Assam* [(2009) 1 SCC 386 : (2009) 1 SCC (L&S) 186 : AIR 2009 SC 747] this Court dealt with a similar issue and held that “if the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised”. The select list “got exhausted when all the 27 posts were filled”. Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The “currency of select list had expired as soon as the number of posts advertised were filled up, therefore, appointments beyond the number of posts advertised would amount to filling up future vacancies”

14. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for the purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate.

15. A Constitution Bench of this Court in *Shankarsan Dash v. Union of India* [(1991) 3 SCC 47 : 1991 SCC (L&S) 800 : (1991) 17 ATC 95 : AIR 1991 SC 1612] held that *appearance of the name of a candidate in the select list does not give him a right of appointment*. Mere inclusion of the candidate's name in the select list does not confer any right to be selected, even if some of the vacancies remain unfilled. The candidate concerned cannot claim that he has been given a hostile discrimination. (See also *Asha Kaul v. State of J&K* [(1993) 2 SCC 573 : 1993 SCC (L&S) 637 : (1993) 24 ATC 576] , *Union of India v. S.S.*

Uppal [(1996) 2 SCC 168 : 1996 SCC (L&S) 438 : (1996) 32 ATC 668 : AIR 1996 SC 2340] , *Bihar Public Service Commission v. State of Bihar* [(1997) 3 SCC 198 : 1997 SCC (L&S) 775 : AIR 1997 SC 2280] , *Simanchal Panda v. State of Orissa* [(2002) 2 SCC 669 : 2002 SCC (L&S) 369] , *Punjab SEBv. Malkiat Singh* [(2005) 9 SCC 22 : 2006 SCC (L&S) 235] , *Union of India v. Kali Dass Batish* [(2006) 1 SCC 779 : 2006 SCC (L&S) 225 : AIR 2006 SC 789] , *Divisional Forest Officer v. M. Ramalinga Reddy* [(2007) 9 SCC 286 : (2007) 2 SCC (L&S) 410 : AIR 2007 SC 2226] , *Subha B. Nair v. State of Kerala* [(2008) 7 SCC 210 : (2008) 2 SCC (L&S) 409] , *Mukul Saikia v. State of Assam* [(2009) 1 SCC 386 : (2009) 1 SCC (L&S) 186 : AIR 2009 SC 747] and *S.S. Balu v. State of Kerala* [(2009) 2 SCC 479 : (2009) 1 SCC (L&S) 388] .)

16. A select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required. It is the settled legal proposition that no relief can be granted to the candidate if he approaches the court after the expiry of the select list. If the selection process is over, select list has expired and appointments had been made, no relief can be granted by the court at a belated stage. (Vide *J. Ashok Kumar v. State of A.P.* [(1996) 3 SCC 320 : 1996 SCC (L&S) 707] , *State of Biharv. Mohd. Kalimuddin* [(1996) 2 SCC 7 : 1996 SCC (L&S) 389 : (1996) 32 ATC 821 : AIR 1996 SC 1145] , *State of U.P. v. Harish Chandra* [(1996) 9 SCC 309 : 1996 SCC (L&S) 1240 : AIR 1996 SC 2173] , *Sushma Suri v. Govt. of NCT of Delhi* [(1999) 1 SCC 330 : 1999 SCC (L&S) 208] , *State of U.P. v. Ram Swarup Saroj* [(2000) 3 SCC 699] , *K. Thulaseedharan v. Kerala State Public Service Commission* [(2007) 6 SCC 190 : (2007) 2 SCC (L&S) 427] , *Deepa Keyes v. Kerala SEB* [(2007) 6 SCC 194 : (2007) 2 SCC (L&S) 430] and *Subha B. Nair* [(2008) 7 SCC 210 : (2008) 2 SCC (L&S)

409] .)”

13. Reference can be also made to *Public Service Commission, Uttaranchal versus Mamta Bisht and Others*, (2010) 12 SCC 204 and decision of the Supreme Court dated 27th February, 2012 in Civil Appeal No. 2511/2012 *Smt. K. Lakshmi versus State of Kerala and Others* and *Arup Das and Others versus State of Assam and Others*, (2012) 5 SCC 559. In the last decision, issue raised was whether the employer could be directed to fill up posts if they were vacant, beyond the number of posts advertised. The contention was rejected observing that it was well settled that an authority cannot make selection/appointment beyond the number of posts advertised, even if there were more posts available than those advertised as this would be entirely arbitrary and violate Articles 14 and 16.

14. Contention of the petitioners that court rooms were available and, therefore, instead of 50 posts more seats should have been advertised must fail for several reasons. The number of court rooms available and the posts advertised has to be decided by the administration and unless the decision of the respondents was clearly arbitrary or manifestly perverse, the same cannot be interfered and dismissed. The petitioners have tried to highlight that more courts can be made available by conversion of portions or parts of buildings used

for other purposes etc. Some new building can be put to use. The petitioners are adopting the simplistic approach as every court room requires infrastructure in form of storage space, chambers, Ahlmad's room etc. Each court room has to be of a given size, properly ventilated and have appropriate access. The decision as to the number of posts, which should be notified/advertised was taken way back in August, 2011 keeping in mind the then prevailing situation, number of court rooms available or were likely to be available. The said decision was fair, and objective, taking in view reports received as to vacant court rooms, vacancies etc. The respondents in the statement of facts filed on 21st August, 2013 have stated:-

“22ND DJS EXAM, 2011

- (vi) In order to examine the possibility of conducting of the next Delhi Judicial Service Exam. 2011, the details of vacancy position as on that date and the number of court rooms available for sitting those selected candidates was obtained from Gazette Branch and General Branch respectively. The Gazette Branch furnished the following information with regard to status of existing 100 vacancies as well as the availability of court rooms in all court complexes as under:-

Status of existing 100 vacancies:

	General	Scheduled Castes	Scheduled Tribes	Physically Handicapped		Total
				Blind/LV	Locomotor Disabled	

Break-up of total posts	64 (All fresh vacancies)	13 (including 2 backlog vacancies)	17 (including 13 backlog vacancies)	5 (All backlog vacancies)	1 (fresh vacancy)	100
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Availability of court rooms in all complexes as under:-

Name of court complex	Total number of court rooms available	Total number of court rooms occupied by judicial officers	Total number of court rooms occupied for other purposes	Number of vacant court rooms available
Tis Hazari	126	119	2	5
Patiala House	35	27	1	7
Saket	65	61	3	1
Karkardooma	81	65	12	4
Rohini	60	51	9	Nil
Dwarka	79	52	5	22
Total	446	375	32	39

- (vii) The Saket Court Complex is slated to have a total of 80 court rooms, and therefore, 15 more court rooms are likely to be made available at Saket Court Complex. As such availability of total vacant rooms comes to 54 as on date. But to post the officers on return from long leave and on completion of training of DJS officers in February 2012, around 47 court rooms were required. Besides the 7 available court rooms, 8 more court rooms were likely to be made available on shifting of Family Courts from Karkardooma Court Complex, Delhi.
- (viii) On the basis of information supplied by the Gazette Branch and General Branch, the matter was laid before the Examination-cum-Judicial Education and Training Programme Committee in its meeting held on 30.8.2011 where the following decision was taken:-

“Considered. The Committee was

apprised that as of today, 15 Court Rooms are available and by the time the process of selection is completed, approx. 10 more Court Rooms' are likely to be available. Some more Court Rooms may become available upon shifting of Delhi Judicial Academy from Karkardooma Court Complex/Family Court from some of the court complexes. Keeping in view of this, the Committee decided to advertise for only 50 vacancies in Delhi Judicial Service, out of 100 vacant posts, owing to the paucity of court rooms and infrastructure. Accordingly, the Committee resolved as under:-

- (i) That the selection process for Delhi Judicial Service will be for filling up of 50 vacancies which include 23 unreserved, 06 SC including 02 backlog vacancies, 15 ST including 13 backlog vacancies and 06 physically handicapped (05-Blind/Low Vision, all backlog vacancies and 01- Locomotor disabled). The vacancy position and consequent selection/appointments, if any, will be subject to outcome of WP(C) No. 256/2010 and 2828/2010 pending before Hon'ble Supreme Court and WP(C) Nos. 3251/2010, 7878/2010, 997/2011, 1435/2011, 1701/2011, 1702/2011, 2156/2011 and 2317/2011 pending before Delhi High Court.
- (ii) That the 22nd Delhi Judicial Service Examination be held at Delhi as prescribed in Delhi Judicial Service Rules, 1970 as amended and on the same mode and pattern of the previous 21st Delhi Judicial Service Examination per schedule indicated in Annexure-'A'. The Administrator be informed about the dates and place of examination under Rule 13 of Delhi Judicial Service Rules, 1970."

The aforesaid decision was approved by Hon'ble the Chief Justice on 30.08.2011.

- (ix) Accordingly, an advertisement was published on 19.09.2011 for filling up of 50 vacant posts in Delhi Judicial Service. The break-up of 50 vacant posts is as under:-

Category	No. of posts	Remarks
General	23	
SC	06	02 backlog vacancies.
ST	15	13 backlog vacancies
Physically handicapped (Blind/Low Vision)	05	All backlog vacancies
Physically handicapped (Orthopaedically)	01	
Total	50	

- (x) A compliance affidavit to this effect was also filed by the Answering Respondent in Hon'ble Supreme Court of India in the matter of Civil Appeal No. 1867/2006 (Malik Mazhar Sultan & Anr. Vs. U.P. Public Service Commission & Ors.) in March, 2012 wherein it was mentioned that due to paucity of court accommodation, out of 100 vacant posts, only 50 posts were advertised on 19.09.2011.

- (xi) A true copy of the said Affidavit filed by the Answering Respondent in March, 2012, before the Hon'ble Supreme Court of India is annexed hereto and marked as **ANNEXURE-C.**

- (xii) One more compliance affidavit was filed by the Answering Respondent before the Hon'ble Supreme Court of India in the matter of Civil Appeal No. 1867/2006 (Malik Mazhar Sultan &

Anr. Vs. U.P. Public Service Commission & Ors.) on 23.11.2012 wherein it was again mentioned that due to paucity of court accommodation, out of 100 vacant posts, only 50 posts were advertised on 19.09.2011.

A true copy of the said Affidavit dated 23.11.2012 filed by the Answering Respondent before the Hon'ble Supreme Court of India is annexed hereto and marked as **ANNEXURE-D.**

15. With regard to the position of court rooms as on 5th August, 2013, it has been clarified as under:-

“4. That the below mentioned status of availability of Court Rooms in various District Court complexes in Delhi shows that the total number of vacant Court Rooms as on 05.08.2013 are only 22.

Availability of court rooms in various Court Complexes as on 05.08.2013

Name of the Court Complex	Total number of court rooms in the Court Complex	Number of Court Rooms Occupied	Number of vacant court rooms
Tis Hazari	133	131	2
Karkardooma	81 (80+1 E-Court)	80 (including E-Court)	1
Patiala House	37	35	2
Dwarka	79	64+5 (Family Court) =69	10
Rohini	60	55+4 (Family Court) =59	1
Saket	81	75	6
Total	471	449	22

It is pertinent to mention that names of 32 candidates have been recommended to Government of NCT of Delhi for appointment to

the cadre of Delhi Judicial Service after completion of DJS Examination 2011. The aforesaid 32 candidates are likely to complete their training sometime in May-June 2014 after which court rooms will be allotted to them.”

16. On creation of additional 100 posts sanctioned vide letter of the Government of National Capital Territory of Delhi dated 29th January, 2013, it would be appropriate to note that till date additional infrastructure in form of building or court rooms have not been made available. It is unfortunate but true, that infrastructure is normally made available after the posts have been sanctioned and not before. The contentions of the petitioners on the aspect of court room etc. are mere surmises and conjectures based upon their own calculations and cannot form the basis of a judicial decision to accept the writ petitions. It is interesting to note that the petitioners herein have challenged and questioned the number of posts notified/advertised only after final results were declared and not before, when they participated in the selection process. The petitioners may have claimed that they did not have knowledge of the existing vacant posts but they could have ascertained the said factual position. Possibly many of them have been aware, but have chosen to file the writ petitions only after participation, taking chance, but when they did not get selected. This and such conduct has been adversely commented upon in ***Babita Pathak and***

Others (supra).

17. In view of the aforesaid discussion, we find no merit in the present writ petitions and the same are dismissed. However, in view of the facts of the present case, there will be no order as to costs.

-sd-
(SANJIV KHANNA)
JUDGE

-sd-
(G.P. MITTAL)
JUDGE

JANUARY 30, 2014
VKR/NA