

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5236 of 2015 (O&M)

Date of Decision: 07.11.2016

Ranjit Kumar Jain

... Petitioner

VS.

Punjab & Haryana High Court, Chandigarh & Anr.

... Respondents

CORAM: HON'BLE MR.JUSTICE SURYA KANT

HON'BLE MR.JUSTICE SUDIP AHLUWALIA

1. *Whether Speaking?*

Yes

2. *Whether Reportable?*

Yes

3. *Whether Reporters of local papers may be allowed to see the judgment?*

Yes

4. *To be referred to the Reporters or not?*

Yes

5. *Whether the judgment should be reported in the Digest?*

Yes / No

Present: Mr. JR Mittal, Senior Advocate with
Mr. KS Chahal, Advocate for the petitioner

Mr. Kanwaljit Singh, Senior Advocate with
Ms. Jaswinder Kaur, Advocate for respondent No.1

Mr. Rajesh Bhardwaj, Addl. AG Punjab

SURYA KANT, J.

(1) The petitioner is a member of Punjab Superior Judicial Service and is presently posted as Additional District & Sessions Judge at Chandigarh. He seeks quashing of the communications dated 28.07.2009 (P4) and dated 30.06.2014 (P7), vide which his representations dated 24.02.2009 and 01.05.2014 seeking retrospective promotion as Additional District & Sessions Judge from the year 2008, against out-of-turn promotion quota, have been declined by the High Court. A consequential direction for such retrospective promotion on the strength of the decision of Hon'ble Supreme Court in **Malik Mazhar Sultan & Anr. vs. UP Public Service Commission & Ors. (2008) 17 SCC 703** is also sought.

(2) Facts may be noticed briefly.

(3) The petitioner was appointed to Punjab Civil Service (Judicial Branch) as a Sub Judge on 14.12.1994. He was promoted as Additional Civil Judge (Sr.Divn.) in September, 2001. Appointment to Punjab Superior Judicial Service is regulated under the Rules known as “Punjab Superior Judicial Service Rules, 2007” (in short, ‘the 2007 Rules’). Rule 2(c) of these Rules defines ‘direct appointees’ to mean the officers appointed to the Service under Clause (c) of sub-Rule (3) of Rule 7. Rule 2(f) defines ‘out-of-turn promotee officers’ to mean the officers promoted under Clause (b) of sub-Rule (3) of Rule 7 and according to Rule 2(g), ‘promotee officers’ means the officers appointed under Clause (a) of sub-Rule (3) of Rule 7 of these Rules.

(4) Rule 7(3) of 2007 Rules describes the quota for different sources of appointment to the Service and it reads as follows:-

“(3) Appointment to the Service shall be made in the following manner :-

(a) fifty per cent by promotion from amongst the Civil Judges (Senior Division), on the basis of merit-cum-seniority and passing of a suitability test ;

(b) twenty-five per cent by promotion on the basis of merit through departmental competitive examination of Civil Judges (Senior Division)

having not less than five years qualifying Service as Civil Judge (Senior Division); and

(c) twenty-five per cent of the posts shall be filled by direct appointment from amongst the eligible advocates on the basis of the written test and viva-voce, as conducted by the High Court.

Explanation. – For the purposes of clauses (a) and (b), it is clarified that the qualifying service for promotion should be either on the post of Civil Judge (Senior Division) or Chief Judicial Magistrate or Additional Civil Judge (Senior Division) separately or by clubbing the service on any of the said posts.”

(5) For the purpose of deciding this case, it is not necessary to refer to other provisions of 2007 Rules except the following Rule 12 which deals with ‘Seniority’:-

*“12. **Seniority.** —*

(1) The original seniority of the promotee officers promoted from amongst the members of the Punjab Civil Services (Judicial Branch), shall not be disturbed.

(2) The inter se seniority of the out-of-turn promoted officers shall be in the order of merit as is determined by the High Court.

(3) The inter se seniority of the direct appointees shall be on the basis of merit as is determined by the High Court:

Provided further that an officer, who is promoted on ad hoc basis on a vacant post, belonging to the out-of-turn promotee officers or direct appointees, as the case may be, shall not have any right on the said post and such officer shall not be allowed to claim addition of the period of such ad hoc service towards the Service for the purpose of seniority.”

(6) The High Court vide memo dated 25.04.2008 circulated eight vacancies of Additional District & Sessions Judges which were to be filled in under Rule 7(3)(b) of 2007 Rules, namely, “out-of-turn promotions” on the basis of merit through departmental competitive examination of Civil Judges (Sr.Divn.) having not less than five years’ qualifying service.

(7) The petitioner also applied and competed for the above-stated eight posts. On the basis of his overall performance, he was placed at Sr.No.9 in order of merit. As there were eight vacancies only, the petitioner’s turn did not come as all the vacant posts stood filled up by appointing officers who were placed higher in merit to him.

(8) The petitioner came to know through information obtained under the Right to Information Act that between April, 2008 to April, 2009, three posts of Additional District Judge fell vacant, out of which one was against 25% quota prescribed under Rule 7(3)(b), namely, ‘out-of-turn promotion quota’. The petitioner though obtained such information in the year 2013 but it appears that he came to know *re:* availability of that additional post much earlier and staked his claim for promotion through

representation dated 24.02.2009 against the said subsequent vacancy. The High Court rejected the petitioner's claim vide memo dated 28.07.2009.

(9) The petitioner thereafter formally applied and got the information under the Right to Information Act on 30.10.2013 and submitted a fresh representation which was also declined on 30.06.2014.

(10) It may be noticed at this stage that the petitioner was subsequently promoted under Rule 7(3)(a) of the 2007 Rules under 50% quota in May, 2011. Nonetheless, he claims his entitlement to such promotion under Rule 7(3)(b) since the year 2008 or so when an additional vacancy became available.

(11) The above-mentioned claim of the petitioner rests solely upon para-7 of the judgment of Hon'ble Supreme Court in **Malik Mazhar Sultan's** case (supra) where the annual schedule for filling up the vacancies in the cadre of District Judges is laid down. The petitioner harps upon the fact that as per the cited *dictum*, the High Court is obliged to calculate the vacancies to be filled up by promotion by including -

(a) existing vacancies;

(b) future vacancies that may arise within one year due to retirement; and

(c) future vacancies that may arise due to elevation to the High Court, death or otherwise, say 10% of the number of posts.

(12) Further, the cited judgment also contemplates preparation of waiting list over and above the select list for actual vacancies and such list shall remain valid "*till the next select list is published*".

(13) The petitioner thus alleges that the High Court made wholesome violations of the directions contained in the cited case as it circulated eight actual vacancies only on 25.04.2008 without any addition of the anticipated vacancies which were to occur within one year. Similarly, the select list was prepared enlisting eight candidates only and no waiting list was prepared. Had the High Court included the anticipated vacancies or prepared a waiting list which was to remain operative till the preparation of the next select list, the petitioner who was the immediate next candidate in order of merit would have been promoted.

(14) The High Court as well as State of Punjab through their respective written statements have opposed the petitioner's claim. A preliminary objection of inordinate delay and laches has also been taken. It is further explained that after the selection process of 2008, three more vacancies of Additional District & Sessions Judges were decided to be filled up under Rule 7(3)(b) in the 25% out-of-turn promotion quota. The petitioner participated in that selection process but could not qualify the examination. On the basis of the said selection process, three officers, Ms. Priya Sood, Mr. Raj Kumar Garg and Mrs. Navjot Sohal were promoted who joined in the month of August, 2010. It is further explained that there was no practice of counting anticipated vacancies in the year 2008 and the petitioner cannot claim appointment against future vacancy as a matter of right.

(15) Having heard learned counsel for the parties at a considerable length, we do not find any merit in this writ petition which is liable to be dismissed for more than one reason.

(16) Firstly, the petitioner's claim for promotion against the anticipated vacancy was rejected by the High Court in July, 2009. The writ petition filed in the year 2015 challenging the said decision thus suffers from inordinate delay and laches. The fact that the petitioner officially obtained information under RTI in 2013 or submitted a fresh representation which was also rejected in the year 2014 neither amounts to accrual of a fresh cause of action nor does it revive the old one. It is well settled that submission of repeated representations on the same issue would not lead to revival of the cause of action.

(17) Secondly, the writ petition is bad for non-joinder of necessary parties. It could not be denied during the course of hearing that various appointments in the cadre of Additional District & Sessions Judges have been made by way of (i) direct recruitment under Rule 7(3)(c) on 28.11.2008; (ii) promotion against 50% quota under Rule 7(3)(a) on 19.02.2008; and (iii) out-of-turn promotion under 25% quota made in 14.08.2008. Accepting the petitioner's claim would mean placing him on top of all those officers in order of seniority. None of them is a party respondent. No order prejudicial to their interest can be passed behind their backs.

(18) Thirdly, the petitioner is estopped by his act and conduct for claiming retrospective promotion after taking Departmental Competitive

Examination of Civil Judge (Sr.Divn.) held in the year 2009-10 and not being successful in it. Vide this selection process, three vacancies of Additional District & Sessions Judges were filled up under Rule 7(3)(b), which obviously included the vacancy being claimed by the petitioner. Since the said vacancy has already been filled up by way of a fresh selection process in which the petitioner could not qualify, he cannot take a somersault and claim appointment on the premise that he should be deemed to be considered in the 'waiting list' of the year 2008.

(19) The time schedule prescribed by the Hon'ble Supreme Court in **Malik Mazhar Sultan** along with the mode of calculating vacancies to be notified by a High Court, has to be appreciated in the context in which the directions were issued. The Hon'ble Supreme Court has shown its serious concern against backlog of vacancies in the Superior and Subordinate Judicial Services due to factors like lack of coordination between State Governments and the High Courts. In this regard, suffice it is to observe that the respondent-High Court has made an endeavour in full cooperation with the State Governments to fill up the vacancies on regular basis and there is a continuing effort to make annual selections in both the cadres. Since the year 2013, the anticipated vacancies are also duly taken into account while issuing advertisement/circulating the posts.

(20) The petitioner cannot compel the High Court to put the clock back and add the anticipated vacancy in the selection process of 2008 so as to accommodate him against such vacancy out of the non-existent waiting list. While claiming so, he appears to have overlooked the fact that once one

more post is added, the zone of selection also drastically changes and so would be the number of candidates, who, on the basis of their performance in the written examination, were to be called for viva voce. This entire exercise cannot be undertaken at this juncture. There is thus no merit in this over-ambitious claim of the petitioner.

(21) In the light of the above discussion, we do not find any merit in this writ petition which is accordingly dismissed.

(Surya Kant)
Judge

07.11.2016
vishal shonkar

(Sudip Ahluwalia)
Judge