

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.W.P. No. 1056 of 2016 (O&M)
Date of decision: March 03, 2017

Kanwaljit Singh Bajwa and others

.. Petitioners

v.

State of Punjab and others

.. Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Argued by: Mr. Anupam Gupta, Senior Advocate with
Mr. Ashok Sharma, Mr. Siddharth Sharma,
Mr. Gautam Pathania, Mr. Rohit Samhotra and
Mr. Kamaal Singh Dhillon, Advocates for the petitioners
in CWP No. 21544 of 2016 and for respondents No. 21, 22 and
24 in CWP No. 1056, 1057 and 1209 of 2016.

Mr. D. S. Patwalia, Senior Advocate with
Mr. Sehaj Bir Singh and Mr. Kannan Malik, Advocates
for the petitioners in (CWP No. 1056 of 2016).

Mr. Puneet Gupta, Mr. Anil Rana and
Mr. Ravinder Singh, Advocates for the petitioners
(in CWP No. 2335 of 2016) and for respondents
No. 18 and 19 (in CWP Nos. 1056, 1057, 1209, 1983
of 2016).

Mr. Karanvir Singh Khehar and Mr. Ishan Kaushal, Advocates
for the petitioners in CWP No. 1057 of 2016.

Mr. S. S. Swaich, Ms. Monu Khan and
Ms. Deepika Roy, Advocates for the petitioners
in CWP No. 1209 of 2016.

Mr. R. K. Chopra, Senior Advocate with
Ms. Gagandeep Kaur and Ms. Ektaa Arora, Advocates
for the petitioners in CWP No. 1983 of 2016.
Ms. Munisha Gandhi, Addl. Advocate General, Punjab with

Mr. Jagmohan Bansal, Addl. Advocate General, Punjab,
Mr. Piyush Bansal, Deputy Advocate General, Punjab and
Ms. Harleen Kaur, Assistant Advocate General, Punjab.

Mr. Sanjeev Sharma, Senior Advocate with
Mr. Vikas Chatrath, Mr. Khushkaran Kumar,
Mr. Jatinder Pal Singh and Mr. Pranav Grover, Advocates,
for respondent No. 2-High Court.

Mr. Sartej Singh Narula, Mr. Sidharth Grover and
Mr. Kanwardeep S. Sodhi, Advocates
for respondent No. 8 (in CWP Nos. 1056 and 1057 of 2016).

Mr. Sumeet Mahajan, Senior Advocate with
Mr. Amit Kohar and Ms. Ramneeq Kaur, Advocates
for respondents No. 6 and 10
in CWP Nos. 1056 and 21544 of 2016,
for respondents No. 2 and 5 in CWP No. 2335 of 2016.

Mr. Rajiv Atma Ram, Senior Advocate with
Mr. Ranjit Singh Kalra, Mr. Jaitej P. Mittal and
Ms. Damanpreet Kaur, Advocates for
respondent-Mr. Amrinder Singh Grewal in all the writ
petitions.

Ms. Akanksha Nayyar, Ms. Ankita Bajaj and
Ms. Rashmi Gosain, Advocates for
Mr. Amar Vivek, Advocate for respondents No. 16 and 17.

Mr. Tarunveer Vashist, Mr. K. K. Saini and
Ms. Charu Verma, Ms. Tanya Malik and
Mr. Akshay Bansal, Advocates for respondent No. 23
in CWP No. 1056 of 2016 for respondent No. 16
in CWP No. 2335 of 2016 for respondent No. 32
in CWP No. 21544 of 2016.

Mr. Bhuwan Vats, Mr. Ishaan Bhardwaj,
Mr. Saurabh Gulia, Mr. Saroj Malakar and
Mr. Vijay Pal, Advocates
for respondents No. 5, 11 and 15 in CWP Nos. 1056, 1057
and 21544 of 2016 for respondents No. 6, 9 and 12
in CWP No. 2335 of 2016.

Mr. Raj Kumar, Advocate for respondent No. 20
(in CWP No. 1056 of 2016) and for respondent No. 13
(in CWP No. 2335 of 2016).

Mr. S. S. Rangi and Mr. H. S. Tuli, Advocates
for respondents No. 16 and 17
in CWP nos. 1056, 1057, 1209 and 1983 of 2016 and
for respondents No. 10 and 11 in CWP No. 2335 of 2016.

Rajesh Bindal J.

1. This order will dispose of a bunch of petitions bearing CWP Nos. 1056, 1057, 1209, 1983, 2335 and 21544 of 2016.
2. The dispute pertains to inter-se seniority of members of the Punjab Superior Judicial Service. The impugned seniority list was circulated on 24.12.2015 (Annexure P-1).

Arguments of the petitioners

CWP No. 1056 of 2016

3. Mr. D. S. Patwalia, learned senior counsel for the petitioners submitted that the petitioners herein were appointed against the posts meant for direct recruitment quota. Advertisement for recruitment was issued on 2.2.2008. Written test was held on 18.5.2008. After interviews, the petitioners were found to be meritorious. The Selection Committee in its meeting held on 25.7.2008 approved their names for appointment as Additional District & Sessions Judges in the State of Punjab. It was followed by letter of recommendation dated 29.7.2008 from the Registrar General of this Court to the State. On 28.11.2008, appointment letters were issued to the petitioners. After medical examination, the petitioners were issued posting orders on 8.12.2008.
4. Respondents No. 3 to 15 were regularly promoted on the basis of their seniority. They were appointed on promotion on 18.2.2008 and joined as such on 23.2.2008.
5. Respondents No. 16 and 17 are the officers, who were earlier working in Fast Track Courts and have been selected in the same competitive examination in which the petitioners appeared and were

appointed vide letter dated 20.6.2008 against the vacancies meant for direct recruitment quota. They joined at their place of posting on 28.7.2008.

6. Respondents No. 18 to 25 are the officers, who were promoted in terms of Rule 7(3)(b) of the Punjab Superior Judicial Service Rules, 2007 (hereinafter described as 'the 2007 Punjab Rules') by way of a limited departmental competitive examination. Their names were recommended by the High Court to the State along with the petitioners on 29.7.2008, however, they managed to get their names cleared and were issued appointment letters on 11.8.2008 and were posted on 22.10.2008. In the meeting of the Recruitment/Promotion Committee (Superior Judicial Services) (hereinafter referred to as 'the Committee') held on 15.9.2014, it was decided to circulate tentative seniority list of the officers of the Superior Judicial Service, Punjab for inviting objections. Needful was done as the tentative seniority list was circulated to all the officers vide letter dated 25.9.2014 by the Registrar Vigilance of this Court, to which various objections were filed. After hearing, the Committee vide its report dated 11.8.2015 opined that the objections were not sustainable, hence, it was recommended that the tentative seniority list already circulated does not require any alteration or modification and the same be finalised as such. The objections filed by the petitioners and other officers were rejected. The aforesaid report of the Committee was circulated, on which one of the Hon'ble Judge of this Court offered his comments on 16.9.2015, in terms of which the matter required re-consideration. Thereafter, the matter was put up in the Full Court meeting held on 22.12.2015. The report of the Committee was accepted, and the final seniority list was circulated, which has been impugned in the present petitions.

7. Learned senior counsel for the petitioners further submitted that the service is governed by the 2007 Punjab Rules, which were notified on 3.9.2007. The service of the Haryana Superior Judicial Service is governed by the Haryana Superior Judicial Service Rules, 2007 (hereinafter described as 'the 2007 Haryana Rules'), which were notified on 10.1.2007. Rule 2 of the 2007 Punjab Rules provides for definitions, whereas Rule 7 provides for method of appointment with three sources, namely, by promotion from amongst the Civil Judges (Senior Division) on the basis of merit-cum-seniority and passing of a suitability test (50% quota); by promotion on the basis of merit through limited departmental competitive examination for which Civil Judges (Senior Division) having not less than five years service as Civil Judge (Senior Division) are eligible (25% quota) and 25% of the posts can be filled up by way of direct recruitment from amongst the eligible candidates on the basis of written test and viva-voce. The posts are to be filled up in accordance with roster attached as Appendix-B. Rule 12 of the 2007 Punjab Rules deals with seniority. Rule 23 thereof provides that in respect of the matters, which are not specifically provided in the Rules, members of the service shall be governed by Punjab Civil Services (General and Common Conditions of Service) Rules, 1994 (hereinafter described as 'the 1994 Punjab Rules'). Rule 8 thereof provides that inter-se seniority of the persons appointed to a post shall be determined by continuous length of service on such post in the cadre. Note thereto provides that seniority of persons appointed on purely provisional basis or on ad hoc basis shall be determined as and when they are regularly appointed keeping in view of the dates of such regular appointment. The officers promoted on the basis of seniority under Rule 7(3)(a) of the 2007 Punjab Rules were in excess of

their quota, hence, for the purpose of seniority, they cannot be treated to be members of the service. Rule 20 of the 1994 Punjab Rules gives these rules over-riding effect.

8. Referring to the roster, he submitted that prior to the 2007 Punjab Rules, members of the service were governed by the Punjab Superior Judicial Service Rules, 1963 (hereinafter described as 'the 1963 Punjab Rules'). Rule 8 therein provided for recruitment to service. 75% of the posts could be filled by way of promotion, whereas 25% by way of direct recruitment. The promotion was on the basis of seniority. Shetty Commission appointed to go into the working conditions of the Judicial Officers made certain recommendations on 11.11.1999, which were considered by Hon'ble the Supreme Court in All India Judges Association v. Union of India, (2002) 4 SCC 247 [hereinafter described as 'All India Judges Association 3rd case']. To encourage efficient officers, amendment in the service rules governing the post was directed. 50% of the posts were now to be filled up by way of promotion from amongst the Civil Judges (Senior Division) on the basis of merit-cum-seniority and passing of a suitability test, 25% by promotion on the basis of merit through limited departmental competitive examination for which Civil Judges (Senior Division) having not less than 5 years of service are eligible and 25% were to be filled up by way of direct recruitment. The High Courts were directed to frame appropriate rules in terms of the directions of Hon'ble the Supreme Court. It was further directed that to avoid litigation with reference to seniority, roster as specified be provided. Though the judgment was delivered on 21.3.2002, the amendment in the 1963 Punjab Rules, with reference to quota for recruitment, was made only on 15.1.2004. The matter

regarding inter-se seniority was not taken care of. Thereafter the 2007 Punjab Rules were framed, which were notified on 3.9.2007 providing for three sources of recruitment to the post strictly in terms of the directions issued by Hon'ble the Supreme Court.

9. It was further contended that as some of the States were facing difficulty in filling up 25% posts to be filled up by holding limited departmental competitive examination, Hon'ble the Supreme Court in All India Judges Association & Ors. v. Union of India and others, (2010) 15 SCC 170 [hereinafter described as 'All India Judges Association 4th case'] opined that quota be reduced from 25% to 10%. The High Courts were directed to take steps to amend the rules in terms of the directions. It was further directed that if the rules are not amended suitably, the order shall prevail w.e.f. 1.1.2011 and further recruitments shall be made strictly as per the directions by Hon'ble the Supreme Court. In pursuance of the directions, required amendment was made in the 2007 Haryana Rules on 6.6.2012, whereas the 2007 Punjab Rules were amended on 29.4.2013.

10. As regards the factual position, which according to learned counsel for the petitioners is not in dispute, the cadre strength as on 3.9.2007, when the 2007 Punjab Rules were notified, was 89, which increased to 107 on 10.11.2007. As per the quota fixed for three different sources of recruitment, 53 posts will go to the regular promotion quota against which 58 officers were already in position as on 10.11.2007. 15 officers were recommended to be promoted on 29.11.2007, who had joined on 19.2.2008. It was submitted that admittedly in the quota meant for promotion on the basis of merit-cum-seniority, five persons were already working in excess, hence, no further post could be given to the officers

coming from that quota and the vacant posts of other quota were to be filled. They could be given placement in the seniority list only after a post in their quota becomes available. Even if the seniority is to be determined on the basis of continuous length of service, still the quota is relevant as any person appointed/promoted beyond his quota is not to be treated as a member of service. Unless a person is member of service, he cannot claim seniority. In fact, the Committee has also noticed this legal position and recorded a finding in para (3)(i) specifically stating that if promotions have been made in excess to the prescribed quota, the promotees who are in excess to the quota are liable to be pushed down to a date when vacancy within their quota becomes available. In support of this plea, reliance was placed upon Keshav Chandra Joshi and others v. Union of India and others, AIR 1992 SC 284; A. N. Sehgal v. Raja Ram Sheoran, (1992) (Suppl) SCC 304; C. K. Antony etc. v. B. Muraleedharan, (1998) 6 SCC 630 and Ashok Pal Singh and others v. U. P. Judicial Services Association and others, (2010) 12 SCC 635.

11. Learned counsel, while referring to the judgment of Hon'ble the Supreme Court in All India Judges Association 3rd case (supra), submitted that though the judgment was delivered on 21.3.2002 and immediately the rules were to be amended, however, the needful was not done. The judgment clearly provided that to avoid even litigation with reference to seniority, the roster be prepared. Though in the 2007 Haryana Rules, which were notified prior to the 2007 Punjab Rules, Rule 10 clearly provide manner to determine inter-se seniority of the members of service coming from three different sources of recruitment. In the 2007 Punjab Rules, this word is missing in roster, however, the roster is same, as has been provided

for recruitment purpose. It is in line with judgment of Hon'ble the Supreme Court.

12. He further argued that in the 2007 Haryana Rules, seniority has been de-linked from continuous length of service and is applicable only from the roster point. It further clarifies that if in any cadre any person is beyond quota, then it is treated as ad-hoc. He cannot claim seniority till roster point for that source is available.

13. Referring to the judgment of Hon'ble the Supreme Court in All India Judges Association 3rd case (supra) and the 2007 Punjab Rules, it was argued that regular promotion for which 50% posts were ear-marked clearly provided that it has to be on the basis of merit-cum-seniority and passing of a suitability test, however no suitability test was held. It was submitted that such a test was prescribed by Hon'ble the Supreme Court in All India Judges Association 3rd case (supra), which was made part of the 1963 Punjab Rules, vide amendment dated 15.1.2004 and is part of the 2007 Punjab Rules. Admittedly, respondents No. 3 to 15 had not passed the suitability test. The Committee observed that only their ACRs were seen, as the Selection Committee at that time understood that no test was to be held. The High Court interpreted the rules in that manner. Even the recommendations made to the Governor were accepted. Even after the promotions in question and for subsequent promotions also, no suitability test was held. The submission is that once the judgment of Hon'ble the Supreme Court provides for passing of a suitability test for regular promotion, which is even part of the 2007 Punjab Rules, administrative instructions or decisions cannot over-ride the same. In fact, this issue has been considered appropriately by one Hon'ble Judge of this court in his comments in the

report of the Committee. On the issue that any practice or administrative instructions, which run contrary to the rules are bad, reliance was placed upon in K.Kuppusamy and another v. State of T. N. and ors., (1998) 8 SCC 469 and Yogesh Kumar and Ors. v. Government of NTC Delhi and Ors., (2003) 3 SCC 548. The respondents promoted under Rule 7(3)(a) of the 2007 Punjab Rules by not passing the suitability test, their promotion cannot be termed as regular. They have no right to the post. They have to be pushed down. They are to be considered as members of the cadre only after they pass the suitability test. The mere fact that the High Court had not conducted any test will not endure to the benefit of this category as the rules have to be adhered to strictly.

14. Learned counsel further submitted that the view expressed by the Committee in shifting unfilled posts from limited departmental competitive examination quota to regular promotion quota is erroneous as the judgment of Hon'ble the Supreme Court in All India Judges Association 4th case (supra) was not appreciated properly. There was a cut-off date, namely, 1.1.2011 as provided for in the judgment itself. Shifting of the unfilled vacancies was permissible only from that date. The judgment was delivered on 20.4.2010. In the present case, the selections pertain to the year 2008, much prior to the date of judgment and the cut-off date provided in All India Judges Association 4th case (supra). Paragraph of the judgment in which the cut-off date was provided missed attention of the Committee. Merely because the seniority is being finalised now will not mean that the later judgment can be applied from a back date. On a date when the promotions were made under Rule 7(3)(a), the posts from Rule 7(3)(b) of the 2007 Punjab Rules could not be shifted.

15. With reference to the promotion of the officers through limited departmental competitive examination, it was submitted that in the case of direct recruits, advertisement was issued on 2.2.2008. For limited departmental competitive examination, circular was issued on 23.4.2008. Written test was held on the same day. The recommendations were made by this court to the State for appointment on the same day. It is because in the case of direct recruits, more formalities are to be completed and promoted officers were able to pursue their case more effectively that they were issued appointment letters earlier. It was delayed in the case of the petitioners. The submission is that the date on which recommendations were made by this court for appointment should be considered as the relevant date for the purpose of determination of seniority. In support, reliance was placed upon the instructions issued by the State on 15.3.1962 (Annexure P-24).

16. It was argued that seniority list has to be set aside merely on the ground that it is based on mis-interpretation of the rules. Rule 23 of the 2007 Punjab Rules clearly provides that the 1994 Punjab Rules shall not affect Rules 7 and 12. Rule 12 provides for seniority, hence, to invoke the 1994 Punjab Rules for determination of seniority is totally illegal. Otherwise also, the 1994 Punjab Rules are general in nature, whereas the 2007 Punjab Rules are specific to the service, hence, being special will have precedence over the general rule. Even if there is nothing in the 2007 Punjab Rules regarding seniority, still Rule 23 of the 2007 Punjab Rules specifically excludes application of the 1994 Punjab Rules for that purpose. In that situation, the dictum of Hon'ble the Supreme Court in All India Judges Association 3rd case (supra) has to be read, in terms of which the rules were required to be framed. In support of the plea that special will

over-ride the general, reliance was placed upon J. K. Cotton Spinning and Weaving Mills Co. Ltd. v. State of U. P. and others, (1986) 4 SCC 90 and Commercial Tax Officer, Rajasthan v. M/s Binani Cements Ltd. and another, (2014) 8 SCC 319. If the judgment of Hon'ble the Supreme Court is not followed, that would mean committing contempt.

CWP No. 2335 of 2016

17. Mr. Puneet Gupta, learned counsel appearing for the petitioners (in CWP No. 2335 of 2016) promoted through limited departmental competitive examination, while adopting the arguments raised by Mr. D. S. Patwalia, senior counsel, submitted that ever since the judgment was delivered by Hon'ble the Supreme Court in All India Judges Association 3rd case (supra), amendment of the 1963 Punjab Rules or framing of the 2007 Punjab Rules, no written test was conducted for promotion through limited departmental competitive examination. First test was conducted on 18.5.2008. The principle of continuous length of service has rightly been applied. The judgment in All India Judges Association 3rd case (supra) was delivered by Hon'ble the Supreme Court on 21.3.2002 and there are reasons assigned as to why the roster was not framed for the purpose of determination of inter-se seniority of the officers coming from three different sources. In fact, third source, i.e., promotion through limited departmental competitive examination, was created in terms of the directions issued by Hon'ble the Supreme Court.

18. The judgments of Hon'ble the Supreme Court are binding. It was a mandate, hence, have to be read along with the rules. He further submitted that in the 2007 Punjab Rules, which replaced the 1963 Punjab

Rules, word 'recruitment' has been used but that would take in its fold even the roster for determination of inter-se seniority, as the roster provided for recruitment, in fact, provides as to which of the post should be filled in from which quota. He further submitted that Rule 23 of the 2007 Punjab Rules firstly provides that the 1994 Punjab Rules will be applicable on the issues not dealt within the 2007 Punjab Rules. However, in the proviso to that rule, it is provided that the 1994 Punjab Rules will not have any affect on Rules 7 and 12 of the 2007 Punjab Rules. Meaning thereby the rule-making authority was conscious of the fact that even if there is nothing specifically provided in the 2007 Punjab Rules regarding determination of inter-se seniority of the officers coming from three different sources, still application of the 1994 Punjab Rules on that issue was excluded, as the issue regarding inter-se seniority has to be dealt with in terms of the judgment of Hon'ble the Supreme Court in All India Judges Association 3rd case (supra).

19. Learned counsel further referred to second proviso to Rule 23 of the 2007 Punjab Rules, which provides that condition of service, as provided by National Judicial Pay Commission (hereinafter referred to as 'Shetty Commission'), will have over-riding effect. He further referred to communication dated 21.7.2006 from this court to the State of Punjab while sending the rules for notification, in which it was clearly mentioned that the rules have been framed as per judgment of Hon'ble the Supreme Court in All India Judges Association 3rd case (supra) and the recommendations of the Shetty Commission. It also establishes the fact that the rule-making authority was conscious of the directions issued by Hon'ble the Supreme Court. Seniority is a condition of service. The Committee in its report had

wrongly rejected the argument that seniority is to be read into the roster. Even Hon'ble the Supreme Court directed for preparing a roster for the purpose of inter-se seniority.

20. He further submitted that direct recruits cannot be placed above the officers promoted by way of limited departmental competitive examination, as they were appointed and had joined service later in time. When the petitioners herein were promoted, the posts meant for their quota were also available.

CWP No.21544 of 2016

21. Mr. Anupam Gupta, learned senior counsel appearing for the officers, who were promoted through limited departmental competitive examination, sought to raise two issues. He defended the report of the Committee placing the direct recruits below the officers promoted through limited departmental competitive examination, however, he challenged placement of regular promotees above the officers promoted through limited departmental competitive examination.

22. Elaborating the arguments, Mr. Gupta, learned senior counsel, submitted that in the 2007 Punjab Rules, there are three sources of recruitment, direct recruitment, regular promotion and promotion by way of limited departmental competitive examination. Regular promotions are made in terms of Rule 7(3)(a) of the 2007 Punjab Rules. As regular promotions have been made in violation of the rules, the officers concerned have no right to usurp the posts meant for other quota, however, their appointment is not under challenge. In any case, they have to be placed at the bottom of seniority. As there is fundamental defect in their appointment, the benenfit of seniority is not admissible to them. They were otherwise

also beyond the quota meant for them, hence, to that extent their promotion cannot be treated as regular.

23. He fairly submitted that to the extent that the Committee had given hearing to all the concerned officers, he has no grievance. Only the legality of the report is under challenge. This court is bound by the law laid down by Hon'ble the Supreme Court, but here the same has been violated. There are certain fundamental defects in the report. Competence of the members of the service is not being disputed. Judicial Service is an important service considering the fact that it is one of the very few services, which finds mention in the Constitution itself. Its history relates back to even Government of India Act, 1935 (for short, 'the 1935 Act'). The provisions were made in the 1935 Act as well as the Constitution of India with regard to the judicial service with paramount object to maintain its independence, which is the basic structure of the Constitution of India. Sections 253 to 255 were relevant sections in the 1935 Act, which now are Articles 233 to 235 in the Constitution of India. The only change made in the Constitution of India with reference to the provisions contained in the 1935 Act is that now consultation with the High Court is required. Earlier, opinion of the Governor was final.

24. Raising general issue regarding the 2007 Punjab Rules, though may not be directly relevant with the issues raised in the writ petition, he submitted that Appendix 'B', attached to the said Rules, for both major and minor punishments, appellate authority is the Governor. If independence of judiciary is to be considered, the Governor cannot be the appellate authority over and above the Full Court of the High Court. Appointment of any Judicial Officer is issued in the name of the Governor and so is the order of

removal. No non-judicial authority can be an appellate authority above the High Court in Judicial Officers' matter. It is in breach of first principles of the Constitution of India. He further submitted that Rule 25 of the 2007 Punjab Rules provides that if any question arises as to the interpretation of the Rules, the Government in consultation with the High Court shall decide the same. This power cannot be delegated to the executive. It should have been vested with the High Court only. The 1994 Punjab Rules, which have been adopted for certain issues, not dealt with in the 2007 Punjab Rules, in terms of Rule 23, provide that any question regarding interpretation of the 1994 Punjab Rules rests with the Government. Meaning thereby this court had abdicated its power to administer control over the judicial service, which is impermissible.

25. He further submitted that Articles 245 and 309 of the Constitution of India are subject to other provisions of the Constitution or the law made by the Parliament, whereas Articles 233 to 235 are not subject to any other provision of the Constitution of India. These Articles deal with judicial service. Meaning thereby supremacy of judicial system is accepted. There are similar provisions pertaining to Secretariat of Parliament in Article 98 and pertaining to Secretariat of State Assembly under Article 187 of the Constitution of India. More importance is attached to the cadres, which are to be dealt with in terms of the constitutional provisions and the scheme. The executive having failed to take care of the judicial service, Hon'ble the Supreme Court had to intervene in All India Judges' Association v. Union of India and others, (1992) 1 SCC 119 [hereinafter described as 'All India Judges' Association 1st case'] and All India Judges' Association 3rd case (supra) followed by subsequent judgments/orders.

26. He further submitted that even Rule 16 of the 2007 Punjab Rules pertaining to reservation of posts is contrary to the law laid down by Hon'ble the Supreme Court in State of Bihar and another v. Bal Mukund Sah and others, (2000) 4 SCC 640. The High Court as such has no rule-making power, however, it has to be got done through the State. The High Court is the custodian of subordinate judiciary. In case the High Court does not control the lower judiciary, it may collapse as a pack of cards. With regard to independence of judicial system and administrative control of the High Court, reference was also made to the Constitutional debates.

27. On the issue raised by the direct recruits that their date of recommendations by the High Court to the State for appointment should be treated as the date of their appointment and consequent assignment of seniority, Mr. Gupta submitted that even if the recommendations made by the High Court are binding, the date of recommendations cannot be treated as the date of appointment. The role of executive is not completely ousted. The power is to be exercised by the executive on the recommendations made by the High Court, which though are binding on the State, but still it can always point out if any glaring issue comes before them in the process of antecedents verification. Any order of appointment or even of dismissal/removal takes effect only on the date when it is passed in the name of the Governor, as the power of appointment vests in the Governor, which is to be exercised in consultation with the High Court. In support of the plea, reference was made to State of Assam and another v. Kuseswar Saikia and others, (1969) 3 SCC 505; Samsher Singh v. State of Punjab and another, (1974) 2 SCC 831; Registrar, High Court of Madras v. R. Rajiah, (1988) 3 SCC 211; M. M. Gupta and others v. State of Jammu &

Kashmir and others, (1982) 3 SCC 412; State of Kerala v. Smt. A. Lakshmikutty and others, (1986) 4 SCC 632; Registrar (Admn.), High Court of Orissa, Cuttack v. Sisir Kanta Satapathy (dead) by LRs. and another, (1999) 7 SCC 725 and Supreme Court Advocates-on-Record Association and another v. Union of India, (2016) 5 SCC 1 [hereinafter described as Supreme Court Advocates-on-Record Association's 2nd case].

Departure from this rule, which is envisaged in the constitutional scheme, regarding appointment by the Governor in consultation with the High Court, will be in violation thereof. Direct recruits, being not members of the service, as compared to the candidates who are to be promoted, some period is required between recommendation and actual appointment for the reason that their character verification is required, which is quite important. The importance thereof was recognised by Hon'ble the Supreme Court in Union of India and others v. Kalidass Batish and another, (2006) 1 SCC 779 and K. Vijaya Lakshmi v. State of Andhra Pradesh and another, (2013) 5 SCC 489.

28. He further referred to the minutes of the Full Court meeting, vide which recommendations were made to the State for appointment of the direct recruits as well as the officers promoted through limited departmental competitive examination. In the aforesaid minutes, it was specifically provided that report of character verification of the direct recruits be sent to the High Court and appointment letters are to be issued only after the same is accepted by this court, hence, there was no direction for issuing appointments. Judicial Officers are not members of an ordinary cadre. They are not strictly Government employees. Their service partakes the character of sovereignty. They sit in judgment over the decisions by other sections,

hence, the plea that direct recruits should be given seniority from the date of recommendation made by this Court is totally misconceived, hence, deserves to be rejected.

29. Regarding the constitutional scheme with reference to judicial service and framing of rules, reference was made to judgments of Hon'ble the Supreme Court in B. S. Yadav and others v. State of Haryana and others, (1980) Supp. SCC 524 and Bal Mukund Sah's case (supra).

30. Mr. Gupta referred to Entries 77 and 78 in List-I of Seventh Schedule, Entry 3 in List II and Entry 11A in List III of the Constitution of India. There was amendment made in Entry 3 of List II vide 42nd Constitutional amendment. New Entry 11-A was added in List III. Article 312 of the Constitution of India was also amended at the same time envisaging All India Judicial Service in addition to other All India Services. Though this amendment was carried out way back in the year 1976, however, no efforts were made to create All India Judicial Service. He further submitted that Article 312 of the Constitution of India starts with a non-obstante clause. It has over-riding effect with reference to anything contained in Chapter VI of Part VI or Part XI, which deal with Articles 233 to 237 of the Constitution of India. All India Judicial Service was coined keeping in view Pan India approach for judicial system. The recommendations made by Law Commission in its 14th report were accepted. Presently, the judicial system is integrated as far as judicial part is concerned. For administration, all States are independent.

31. The 2007 Punjab Rules were framed by the Governor in exercise of the powers conferred under Article 309 of the Constitution of India, which provides for recruitment and conditions of service. These were

framed in consultation with the High Court.

32. With reference to the judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), it was submitted that the directions issued by Hon'ble the Supreme Court are binding on all concerned under Articles 141 and 144 of the Constitution of India. Hon'ble the Supreme Court had to intervene as the executive failed to discharge its duty. Any violation of the directions issued by Hon'ble the Supreme Court can either be directly by acting in defiance or by omission as well, by failing to comply. Both are serious and may amount to contempt as well. In any case, it is serious impropriety. In judicial parameters, the lower judiciary is at the base, whereas Hon'ble the Supreme Court is at the top. The base cannot ignore any direction by the top. Base has to be made strong. In fact, the effort of Hon'ble the Supreme Court in taking up the issues of Judicial Officers pertaining to conditions of their service and even the pay scales was a step to strengthen the judicial system and keep it independent and make it strong. When the directions issued by the top are not followed, the base may become weak and the system may collapse. In any case, the High Court cannot be expected to plead ignorance or ignore the judgment of Hon'ble the Supreme Court. He further submitted that this court is one of the unique court, which controls cadres of two States, namely, Punjab and Haryana. The judgment of Hon'ble the Supreme Court in All India Judges Association 3rd case (supra) was binding on all the States and the High Courts. There were certain directions issued. Though directions were complied with as far as the officers of the Haryana State cadre are concerned but were ignored with reference to Punjab State.

33. He further submitted that any direction by Hon'ble the Supreme

Court is above the rules. It is law above the law. Whatever has been stated by Hon'ble the Supreme Court is binding on all concerned and not what is stated in any Act or Rules with reference to which any direction has been issued by Hon'ble the Supreme Court. On interpretation of any law, the opinion of Hon'ble the Supreme Court is final. If any State or High Court had any reservation about any direction issued by Hon'ble the Supreme Court, there were two options, either to file application on judicial side or represent on administrative side, otherwise the directions were binding. It could be pointed out before Hon'ble the Supreme Court if any State or High Court had experience different than what is sought to be envisaged by Hon'ble the Supreme Court. It does not matter whether the law was enacted first and Hon'ble the Supreme Court interpreted it later on or the direction by Hon'ble the Supreme Court is first and the law is framed later on. The final word in both the cases is of Hon'ble the Supreme Court. It is the part of basic structure.

34. Prayer in the writ petition filed by All India Judges' Association 1st case (supra) before Hon'ble the Supreme Court was for a direction to constitute All India Judicial Service and for bringing about uniform conditions of service for the subordinate judiciary throughout the country. Prior to the amendment of Article 312 of the Constitution of India, vide 42nd constitutional amendment, there was no enabling provision. The matter was examined by Hon'ble the Supreme Court with its rich experience and certain directions were given, which included direction to the Union of India to take steps to constitute All India Judicial Service; increase age of retirement of Judicial Officers from 58 to 60 years; residential accommodation; sumptuary allowance; setting up of Judicial Academies, provision of car etc.

As some of the States faced some difficulty in implementing the judgment raising pleas of diversity, financial resources and other legal issues regarding competence, review applications were filed. The matter was considered threadbare by Hon'ble the Supreme Court in All India Judges' Association and others v. Union of India and others, (1993) 4 SCC 288 [hereinafter described as 'All India Judges' Association 2nd case']. Some of the directions already issued in All India Judges' Association 1st case (supra) were reiterated, whereas some were modified, besides that certain fresh directions issued. The sole object of Hon'ble the Supreme Court in doing that exercise was keeping in mind independence of judicial system. Hon'ble the Supreme Court and the High Courts clearly know, with rich experience, the requirement of Judges, with reference to the duty to be discharged and the appropriate working conditions required. It was an era of judicial reforms.

35. He further submitted that while increasing retirement age from 58 to 60 years, as directed in All India Judges' Association 1st case (supra), stress was laid on merit. The record of the officer was to be reviewed and only if the officer is found to be of utility to the judicial system, he was to be allowed to continue till the age of 60 years. In fact, this had laid the foundation for merit in the judicial system over and above seniority only. Appraisal was on actual performance. Finally, Hon'ble the Supreme Court directed that three years' legal practice be made mandatory as one of the essential qualification for recruitment to the post of a Judicial Officer at entry level. Wherever recruitment was made through Public Service Commission, a representative of the High Court was to be associated whose advice was to prevail, unless there were strong and cogent

reasons for not accepting it. All concerned were directed to amend recruitment rules accordingly. Certain other directions were also issued.

36. The rules are framed under Article 309 of the Constitution of India. There is no power vested with the High Court to frame rules. The Legislature can frame rules under Article 309 of the Constitution of India.

37. He further submitted that the judgment of Hon'ble the Supreme Court is statement of law binding on all concerned. All civil and judicial authorities are to work in aid of Hon'ble the Supreme Court in terms of Article 144 of the Constitution of India. Against any law framed by the State Legislature or the Parliament, there is a remedy of judicial review, however, in the case in hand, there being direction by Hon'ble the Supreme Court for framing of rules in a particular manner, even that remedy was not available to any one. The only passage left open was of seeking clarification. If the Government or the executive do not act in terms of the judgment of Hon'ble the Supreme Court, there is remedy available, however, High Court should not have slept over the matter or acted differently than what was specifically directed. What cannot be done directly cannot be allowed to be done indirectly. In fact, the High Court on the administrative side has failed to act in aid of Hon'ble the Supreme Court by violating the judgment. There cannot be any excuse for not complying with the judgment. If the time granted was to expire, extension could be sought. It is actionable defiance showing lack of respect to Hon'ble the Supreme Court.

38. He further submitted that in a follow up action of All India Judges' Association 2nd case (supra), Hon'ble the Supreme Court in All India Judges' Association and others v. Union of India and others, (1998) 9 SCC

245 (order dated 10.4.1995) [hereinafter described as 'All India Judges' Association 5th case'] impressed upon the States to take effective steps to comply with the directions. The Chief Secretaries of the States concerned were held responsible to ensure compliance. In a subsequent order dated 29.9.1997, reported as All India Judges' Assn. and others v. Union of India and others, (1997) 8 SCC 520 [hereinafter described as 'All India Judges' Association 6th case'], the State Governments were required to file comprehensive status reports regarding implementation of the directions given in All India Judges' Association 2nd case (supra). The Advocates Generals of all the States were required to be personally present in court on the next date of hearing. Vide order dated 17.12.1997, reported as All India Judges' Assn. and others v. Union of India and others, (1998) 2 SCC 204 [hereinafter described as 'All India Judges' Association 7th case'], noticing the fact that Government of India agreed to enlarge the terms of reference of Shetty Commission, to even make interim recommendations, Hon'ble the Supreme Court sought response on the issue as to whether the matter regarding conditions of service of the staff of subordinate judiciary can also be referred to Shetty Commission. This shows the seriousness with which Hon'ble the Supreme Court was considering the matter as even the staff is also part of the judicial system. The High Courts were requested to furnish status reports.

39. Thereafter, the matter was considered by Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra). Earlier condition of three years' practice for new entrants in a judicial service at the entry level was dispensed with. It was a remarkable exercise by Hon'ble the Apex Court. It shows how Hon'ble the Supreme Court dealt with issue pertaining

to judicial officers with its vast practical experience. The fact that after All India Judges' Association 2nd case (supra), the matter was pursued by Hon'ble the Supreme Court to ensure compliance shows the seriousness with which it was being taken. It was a judicial exercise for codification. Wherever directions were issued by Hon'ble the Supreme Court, these were final and conclusive. There are three sources of laws – first is customary law; second is legislation and third is judicial precedents. The kind of codification in the case in hand was judicial legislation. Codification is essentially the subject of legislature. Because it had failed to take appropriate steps, Hon'ble the Supreme Court had to intervene. In the laws framed by the legislature, the courts only interpret. The interpretation may come on case to case basis. There are lot of instances where in the areas of vacuum, Hon'ble the Supreme Court had to intervene. It was codification with experience; creative and purposeful. It is the best piece. The judgment should have been followed in letter and spirit. If not complied with, it would make the judgment redundant.

40. It was further argued that in series of judgments/orders pertaining to working conditions of the subordinate judges, Hon'ble the Supreme Court exercised its power of judicial review and judicial interpretation, which was both interpretive and legislative. It was a kind of judicial legislation. The underlying object is to be seen for which mammoth exercise was done by Hon'ble the Supreme Court. It was to enure independence of judiciary by making it more effective and impartial in the administration of justice. Error as committed by this court on the administrative side is the failure to implement the judgment in its true spirit.

It is error of law. Constitutional principles have been violated. It is none

else than neglect or breach of the directions issued by Hon'ble the Supreme Court. For sustaining a large building, foundation has to be made strong. All the laws or actions of any organs of the State are subject to the basic structure theory. The exercise carried out by Hon'ble the Supreme Court was not one sided, namely, to increase emoluments or the facilities to be provided to the judges, rather, it was a balancing act, where merit was given more importance, hence, it was to be taken as a package. Only beneficial part was not to be adopted. Even the duties enshrined therein were also to be taken along.

41. It was further submitted that the promotions made merely on the basis of seniority, which are in violation of the law laid down by Hon'ble the Supreme Court, though may be promotion, but were in violation of law. Giving example of recruitment of the judicial officers at the grass root level, he submitted that in case three years pre-condition of practice as one of the eligibility conditions is not adhered to, that would be violation apparent on the face of it. Same principles are applied by the court while examining action of the executive or of the judiciary on the administrative side. This establishes the fact that judiciary is independent.

42. He further submitted that though this Court administratively supervises functioning of the officers in two States, but procedure followed in the State of Haryana was strictly as per the judgment of Hon'ble the Supreme Court, whereas in the State of Punjab, it was different. If the suitability test for promotion could be held in the State of Haryana, it cannot be accepted that the judgment was not properly understood. Same system should have been followed in the State of Punjab. There is nothing in the report of the Committee as to why the judgment of Hon'ble the Supreme

Court was not complied with. No reasons have been assigned. In fact, there could not be any reason as the directions issued by Hon'ble the Supreme Court were and are binding.

43. The plea raised by the promotees that they were not given chance to appear in limited departmental competitive examination as they had already been promoted or did not avail of that, is merely to be noticed and rejected. There is no estoppel against law. Once as per judgment of Hon'ble the Supreme Court and the 2007 Punjab Rules, examination was one of the condition for promotion and the merit was to be given priority over seniority, any action in violation will not confer any right on the persons taking the benefit thereof.

44. Mr. Anupam Gupta, learned senior counsel further referred to a judgment of Hon'ble the Supreme Court in M. Nagaraj and others v. Union of India and others, (2006) 8 SCC 212, where validity, interpretation and implementation of constitutional 77th, 81st, 82nd and 85th amendments were in question. He submitted that the constitutional scheme was expounded in the aforesaid Constitution Bench judgment of Hon'ble the Supreme Court while stating that it does not embody a set of legal rules, rather, it sets out principles for an expanding future to endure for ages to come. Part-III of the Constitution does not confer fundamental rights, rather, it confirms their existence and gives them protection. A right becomes a fundamental right because it has foundational value. Fundamental rights are important, as they possess intrinsic value. The final word on the content of the right is that of Hon'ble the Supreme Court. There are systematic principles underlying and connecting the provisions of the Constitution, which give coherence to the Constitution and make it an organic whole. These principles are part of the

constitutional law, even if these are not expressly stated in the form of rules. Some of the principles may be so important and fundamental as to qualify as “essential features” or part of the “basic structure” of the Constitution, which are not open to amendment. The basic structure concepts limit the power of amending the Constitution. Judicial review is an essential feature of our Constitution. Constitutional adjudication is like no other decision-making. There is a moral dimension to every major constitutional case and our Constitution works because of the good sense of Judges when interpreting it. It is that informed freedom of action of the Judges that helps to preserve and protect our basic document of governance. Hon'ble the Supreme Court has already opined that judiciary is part of the basic structure of the Constitution.

45. The Judicial Officers working at the entry level go to the foundation of the judicial system, on which the entire edifice is based. In exercise of power of judicial review in All India Judges' Association 1st, 2nd, 3rd and 4th cases (supra), certain directions were given, which resulted in constitutional adjudication or codification. Keeping in view the paramount object of the judiciary being independent and responsive, separation of powers and considering the need to insulate it from other forces. Non-exercise of power is also a kind of arbitrary exercise of power, which has resulted in arbitrariness in-action. While not prescribing and holding suitability test in the case of regular promotion, the High Court on the administrative side has failed to exercise the power in compliance to the directions issued by Hon'ble the Supreme Court. It had failed to discharge its constitutional obligation. Even in M. Nagaraj's case (supra), Hon'ble the Supreme Court, while holding that Articles 16(4)(a) and 16(4)(b) of the

Constitution are not ultra vires, it was opined that any action of the State has to be examined on its own facts, in terms of the law laid down by Hon'ble the Supreme Court. Theory of guided power was coined as certain principles were laid down and guide-lines were given in the judgment, in terms of which enabling power could be exercised.

46. The consequence of non-holding of test for regular promotion despite directions by Hon'ble the Supreme Court is invalidation of the entire exercise. This may have to be examined even in the light of the fact that a competitive examination has been provided even for limited departmental competitive examination. Had that test not been held, where out-of-turn promotions are made, could it be said to be valid. Merely because this entire exercise was done by the High Court, different principles cannot be applied, in the sense that any action of any of the department of the State in this situation would have certainly been commented upon by the High Court, being in violation of the directions issued by Hon'ble the Supreme Court, which are binding on one and all, if read in view of Articles 141, 144 and 129 of the Constitution of India. Any law, if violates the judgment of Hon'ble the Supreme Court, is bad. Non-framing of Rules strictly in terms of the judgment of Hon'ble the Supreme Court and non-holding of test, in fact, amounts to self-abdication on the part of the High Court. The petitioners in the present set of petitions, as such, are not challenging promotion of the candidates in the regular promotion quota, however, their appointment being illegal, they cannot be placed above the petitioners in the seniority list. At the most, they can be placed at the bottom. Whatever time is taken in the process is irrelevant. Though this court had amended the Rules providing for quotas for three different sources for recruitment in the

Superior Judicial Service in terms of the judgment of Hon'ble the Supreme Court granting all the benefits, however, failed to appreciate the underlying object of giving more preference to merit. The conditions attached were forgotten. In fact, the directions were not followed only for one source of recruitment, which is major share-holder, i.e., regular promotion.

47. In terms of Article 141 of the Constitution of India, judgments of Hon'ble the Supreme Court are binding on all courts. It will be totally inappropriate to argue that binding theory is only on the judicial side, especially in case of High Courts and not on the administrative side. The High Court, being a constitutional court and custodian of law, is required to adhere to the constitutional principles to maintain rule of law. Even for argument's sake, the High Court cannot be permitted to state that the judgment of Hon'ble the Supreme Court is not binding on the High Court on the administrative side. Even Hon'ble the Supreme Court on administrative side is bound by the judgments rendered by the Supreme Court. Any judgment delivered is binding on the authorities and the public at large, whosoever is concerned, from the date it is delivered. The time taken in communication thereof may be a relevant factor to consider as to whether there was a wilful defiance or not.

48. Scope of Article 144 of the Constitution of India and the constitutional status of Hon'ble the Supreme Court and the High Courts was explained, while referring to the judgment of Hon'ble the Supreme Court in Tirupati Balaji Developers (P) Ltd. and others v. State of Bihar and others, (2004) 5 SCC 1.

49. In fact, the High Court on the administrative side had correctly appreciated the spirit behind the judgment of Hon'ble the Supreme Court

and the directions given therein. It is evident from the minutes of the meeting of the Committee of the High Court dated 14.10.2004, whereby it was decided that four vacancies available in the Punjab Superior Judicial Service be filled by promotion as per the criteria of merit-cum-seniority subject to passing of suitability test. Similar recommendation was made with regard to Haryana Superior Judicial Service for filling up one post. The Committee further recommended that the vacancies which became available prior to 25.11.2003 (Haryana Superior Judicial Service) and 15.1.2004 (Punjab Superior Judicial Service) be filled up as per un-amended rules and the vacancies, which became available, after the aforesaid dates, be filled as per the amended rules in the prescribed quota. This action was prior to even notification of the 2007 Punjab Rules. If the High Court can be permitted to claim immunity from any direction given by Hon'ble the Supreme Court that would mean that no person is permitted to file a petition against the High Court, but the position is otherwise.

50. Constitution Bench judgment of Hon'ble the Supreme Court in Sahara India Real Estate Corporation Limited and others v. Securities and Exchange Board of India and another, (2012) 10 SCC 603 was referred to on the principle of judicial law making. The issue being considered was finding an acceptable constitutional balance between free press and administration of justice in the legal system. It has reference to the postponement of publicity orders with reference to the cases being tried in court. It was opined that the High Court and Hon'ble the Supreme Court (being courts of record) can pass postponement orders under their inherent jurisdiction, which will fall within "reasonable restrictions" under Article 19 (2) of the Constitution of India. The Court further held that precedents of

Hon'ble the Supreme Court under Article 141 of the Constitution of India and the comparative constitutional law help the courts to understand the provisions of the Constitution. The shadow of the law of contempt hangs over our jurisprudence. Such judicial law making was held to be part of the judicial process. Keeping in view the right of fair trial, Hon'ble the Supreme Court created a remedy to safeguard that right. Keeping in view assault by media in mind, the exercise undertaken by Hon'ble the Supreme Court in the aforesaid judgment was an exercise to define constitutional limitations under Article 141 read with Articles 129/215 and the interpretation as given to Articles 19(1)(a), 19(2), 21, 129 and 215 of the Constitution of India and the law of contempt by Hon'ble the Supreme Court. Any authority daring to disobey the judgment of Hon'ble the Supreme Court may invite action under Article 129 of the Constitution of India.

51. The judgment of Hon'ble the Supreme Court in Supreme Court Bar Association and others v. B. D. Kaushik, (2012) 6 SCC 152 was cited on the issue of binding nature of judgments of Hon'ble the Supreme Court. It was a case pertaining to Supreme Court Bar Association, where the Bar Association refused to abide by the judgment. Hon'ble the Supreme Court observed that it being a leading Bar Association, should have acted in aid of the judgments of the courts instead of passing a resolution not to abide by it. The action was an affront to the majesty and dignity of Hon'ble the Supreme Court. It was outrightly contumacious. It was against normal rules of decorum. The Court further opined that in order to enforce its orders and directions, the Supreme Court can take recourse to the power vested in it under Article 142 of the Constitution of India to do complete justice. When a judgment is delivered by Hon'ble the Supreme Court, it is the obligation of

all citizens to act in aid thereof and obey the decision and directions contained therein, unless the same is modified or re-called. If the High Court on the administrative side says that it will not implement the judgment, it will be travesty of justice.

52. While referring to the judgment of Hon'ble the Supreme Court in Madras Bar Association v. Union of India and another, (2014) 10 SCC 1, in which constitution of the National Tax Tribunal was under challenge, wherein powers of the High Court were transferred to the Tribunal, Mr. Anupam Gupta, learned senior counsel submitted that even the ordinary laws can be challenged on the principle of basic structure theory. In case, they violate that theory, these can be struck down. In the case in hand, independence of judiciary was held to be the basic structure. While framing the 2007 Punjab Rules, this Court had violated the judgment of Hon'ble the Supreme Court, hence, in a way violated the basic structure theory. If any error was committed at the first stage, namely, framing of the 2007 Punjab Rules, the same should have been corrected at the second stage, when the Committee was considering the issue. If there were certain limitations in the power to be exercised by the committee, this court on the judicial side should correct the error. In the aforesaid judgment, while dealing with the independence of judicial process, transfer of powers for dealing with the cases which were earlier being dealt with by the High Court, was held to be bad as the Tribunal was not found to be having semblance with court. Judicial review was held to be part of the basic structure. It is standing as a guard to our Constitution. Rule of law, separation of power and judicial review have been held to be part of the basic structure of the Constitution of India. Rule of law will be maintained if this court meticulously follows the

judgment of Hon'ble the Supreme Court in its true letter and spirit by giving more weightage to merit in recruitment of officers from different sources at different levels. Any law would not mean the bare Act, but as interpreted by the court. As a result, the judicial pronouncements gain importance of which upto date knowledge is required as law is to be implemented in terms of the final interpretation by Hon'ble the Supreme Court.

53. Further reference was made to a Constitution Bench judgment of Hon'ble the Supreme Court in Supreme Court Advocates-on-Record Association's 2nd case (supra). Challenge in the aforesaid judgment was to the National Judicial Appointments Commission Act, 2014. Independence of judiciary was opined to be part of the basic structure. The Court opined that sometimes it is not possible to deduce the “basic structure” concerned from a plain reading of the provisions of the Constitution and effort has to be made to find out the same from all important silences hidden within those articles. “Primacy of judiciary” was found to be a constituent of the “independence of the judiciary”, which is the basic structure of the Constitution of India. In the case in hand, while framing the 2007 Punjab Rules and interpreting those in the manner, which runs contrary to the judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), this court on the administrative side had violated the basic structure theory. Though Hon'ble the Supreme Court opined that regular promotions have to be made on the principle of merit-cum-seniority and passing of a suitability test, whereas this court, while ignoring the principles, had made promotions merely on the basis of seniority-cum-merit and without holding any suitability test. In fact, what is laid down by

Hon'ble the Supreme Court is required to be followed and has to be read in the Rules, least any one can opine that even the High Court has no respect for judgment of Hon'ble the Supreme Court. The High Court while not acting as per the directions given by Hon'ble the Supreme Court will be setting a wrong example. It is the time to take corrective steps in the process of judicial review. Even the plea, if any raised, that whatever has happened has happened, should not be accepted. By following this method, in fact, this court had failed to achieve the objectives and the principles laid down by Hon'ble the Supreme Court wherein merit was being given primacy and to ensure independence of judiciary.

54. On the principle of rota and quota, Mr. Anupam Gupta, learned senior counsel relied upon N. K. Chauhan and others v. State of Gujarat and others, (1977) 1 SCC 308; Narender Singh Rao v. State of Haryana and others, AIR 1978 P&H 234 (FB) and B.S. Yadav and others' case (supra).

55. He further submitted that in fact, there are fundamental errors/ discrepancies in the 2007 Punjab Rules, which have not been framed strictly in terms of the directions issued by Hon'ble the Supreme Court. Though Appendix 'B' has reference to Rule 7, however, the language used therein is different than what is used in the 2007 Punjab Rules. Though the 2007 Punjab Rules use words “merit-cum-seniority” and passing of a suitability test, Appendix 'B', with reference to Rule 7(4) of the 2007 Punjab Rules providing for the roster to fill up the posts, mentions seniority-cum-suitability for the officers, who are regularly promoted. There is substantial difference between the concepts of “merit-cum-seniority” and “seniority-cum-merit”. The distinction between seniority-cum-merit and merit-cum-seniority was sought to be explained while referring to judgments of

Hon'ble the Supreme Court in K. Samantaray v. National Insurance Co. Ltd., (2004) 9 SCC 286; State of U. P. v. Jalal Uddin and others, (2005) 1 SCC 169; Rajendra Kumar Srivastava and others v. Samyut Kshetriya Gramin Bank and others, (2010) 1 SCC 335; Haryana State Warehousing Corporation and others v. Jagat Ram and another, (2011) 3 SCC 422 and Balbir Singh Bedi v. State of Punjab and others, (2013) 11 SCC 746.

56. In the case in hand, as directed by Hon'ble the Supreme Court, even merit-cum-seniority was not enough as it was followed by a suitability test, which was completely lost sight of by this court on the administrative side not only while framing the 2007 Punjab Rules, but even at the stage of implementation thereof. In fact, the judgment of Hon'ble the Supreme Court was over-ruled on the administrative side as the word “and”, mentioned in between 'merit-cum-seniority' and 'suitability test' was replaced with “or”. Both had their independent meaning and import. These had been subdued to one. While drafting Rule 7 of the 2007 Punjab Rules, suitability test is part of the Rules, whereas in implementation, it was ignored.

57. In fact, Rule 8 of the 2007 Punjab Rules reverses the same position as was there in the 1963 Punjab Rules. Premium is given continuously to mediocrity in service.

58. It was further argued that any promotion made in excess of the quota meant for that source has to be considered as ad-hoc. It is by legal fiction. In the eyes of law, such a promotion is *non-est*. They cannot be given double benefit. No plea of hardship can be accepted. They have no right to usurp the posts meant for other quotas. They have to be placed at the bottom of seniority. In the case in hand, the regular promotees were not only in excess of their quota but they had even been promoted in violation

of the judgment of Hon'ble the Supreme Court. In support of the arguments, reliance was placed upon S. G. Jaisinghani v. Union of India and others, AIR 1967 SC 1427; Ajit Singh and others (II) v. State of Punjab and others, (1999) 7 SCC 209; Suraj Parkash Gupta and others v. State of J&K and others, (2000) 7 SCC 561; D. Ganesh Rao Patnaik and others v. State of Jharkhand and others, (2005) 8 SCC 454 and Uttaranchal Forest Rangers' Assn. (Direct Recruit) and others v. State of U. P. and others, (2006) 10 SCC 346.

59. In support of the plea that there is fundamental difference between recruitment and appointment, reference was made to Jagdish Ch. Patnaik and others v. State of Orissa and others, (1998) 4 SCC 456; State of Uttaranchal and another v. Dinesh Kumar Sharma, (2007) 1 SCC 683 and State of Jammu and Kashmir and others v. Javed Iqbal Balwan and others, (2009) 4 SCC 529. Reference was made to Batiarani Gramiya Bank v. Pallab Kumar and others, (2004) 9 SCC 100 and Kulwinder Pal Singh and another v. State of Punjab and others, (2016) 6 SCC 532 on the plea that no mandamus can be issued for appointment, even if some one had been selected, as selection does not confer any right of appointment.

60. It was further contended that Rule 12 of the 2007 Punjab Rules does not deal with issue regarding inter-se seniority from three sources of recruitment, namely, regular promotion, promotion by limited departmental competitive examination and direct recruitment. In terms of Rule 23 thereof, in the absence of any provision in the 2007 Punjab Rules, the 1994 Punjab Rules shall be applicable, which provide for determination of seniority on the basis of continuous length of service, however, in case some posts have been filled in excess of the quota, any period of that service will not count

towards seniority.

61. Assailing the report of the Committee, Mr. Anupam Gupta submitted that the Committee had wrongly opined that judgment of All India Judges Association 4th case (supra) had retrospective effect which, in fact, it did not have, as there is a specific date given. Had it not been specified in the judgment, one could raise an argument about its retrospectivity. Though that was also debatable in the facts of the case, however, the directions being in clear terms and there being no ambiguity, there is no scope for having different opinion. Shifting of un-filled vacancies from limited departmental competitive examination quota to the regular promotion quota had to be from the cut-off date as provided. It was specifically clarified by Hon'ble the Supreme Court that in case the Rules are not amended upto the date fixed, the judgment will be applicable. Meaning thereby the quota of accelerated promotion through limited departmental competitive examination will stand reduced from 25% to 10% from that date onwards and any unfilled vacancy therein will be added in the regular promotion quota from that date onwards and not from any date prior thereto. Reduction in quota is not retrospective.

62. It was further submitted that in compliance to the directions of Hon'ble the Supreme Court, this court had specially held the test for an officer, namely, Roshan Lal Ahuja, though there was error in that case in pointing out complete facts before Hon'ble the Supreme Court and the test was not required to be held.

63. He further submitted that justice is not only done but seen to have been done. In case, the High Court on the administrative side will not follow the judgment of Hon'ble the Supreme Court or the directions given

therein explicitly, what message will be given to others. In fact, the Committee has tried to justify a wrong act done earlier while referring to a subsequent judgment of Hon'ble the Supreme Court which, in fact, does not come to its rescue.

64. Mr. S. S. Swaich, learned counsel appearing for the petitioners representing direct recruits, while adopting the arguments raised by Mr. Anupam Gupta, learned senior counsel, with reference to the appointment of regular promotees in excess of their quota being not as per the Rules, raised an argument that seniority of direct recruits should be taken from the date of recommendation by this court. He argued that in the constitutional scheme, High Court is the last word and role of the State is formal. It is limited to the extent of issuing appointment letters. Verification of antecedents is a ministerial act and not substantive. Even after verification, the report was to be sent to this court. The Committee examined the issue only with reference to normal service where recommendation made by the selecting agency is not final. Here High Court is not merely the selecting agency. In judicial service, its recommendation is binding, which cannot be changed by the State. These are appointments under Article 233 of the Constitution of India.

65. He further referred to the minutes of meeting dated 25.7.2008, vide which recommendations were made to the Government for appointment. In those minutes also, keeping in view the Rules applicable, first recommendation was for appointment of direct recruits and thereafter of the promotees from the quota through limited departmental competitive examination. In this manner only, appointments should have been made.

This recommendation was binding on the Governor. Even if any of the

person gets appointment letter earlier, his seniority will not be affected by this process as the same has to be reckoned from the date of recommendation. In case, the verification had been fast and the direct recruits had joined earlier, they would have been ranked senior to the promotees. In the process of verification, it is only the executive which caused the delay and the consequence was that direct recruits, who otherwise should have been ranked senior to the promotees, have been made junior. The power which is not vested in executive with reference to judicial service directly has been exercised indirectly. Things cannot be left as such. In seniority, an important aspect is appointment.

66. He further argued that the recommendations are not be read in isolation. If we see the steps even prior thereto, the process for direct recruitment started much before the process for promotion through limited departmental competitive examination started. For direct recruits, the advertisement was issued on 2.2.2008, whereas for promotion through limited departmental competitive examination, circular was issued on 23.4.2008. The examination for direct recruits as well as for promotion through limited departmental competitive examination was held on the same day, i.e., 18.5.2008. He further referred to the letters sent by the High Court to the Government. Though both the letters are of even date, namely, 29.7.2008, however, for the recommendation made in the case of direct recruits, letter number is 628, whereas for promotion through limited departmental competitive examination, letter number is 629. He submitted that persons, who are already in service have ways and means to get their files cleared early. That cannot be the sole criteria for ranking them senior to the direct recruits. The appointment letters were issued to the promotees

through limited departmental competitive examination on 11.8.2008, whereas to the direct recruits, the same were issued on 28.11.2008.

67. With reference to the recommendation of the High Court being binding, Mr. Swaich, learned counsel contended that the recommendation and appointment with reference to the judicial service is such an integrated process that these cannot be separated from each, which has source of power under Article 233 of the Constitution of India. In none of the cases cited before this court, recruitment at the same time was made from two different sources. These were the cases where merely on selection, right of appointment was being sought and there was huge delay in appointment. In the case in hand, there is not much delay. Authority in the case of judicial officers is vested with the Full Court and not the Chief Justice of the High Court alone. In support of the argument regarding the recommendation of the High Court being binding and the process of selection and appointment being extricable, reliance was placed upon Supreme Court Advocates-on-Record Association and another v. Union of India, (1993) 4 SCC 441 [hereinafter described as 'Supreme Court Advocates-on-Record Association's 1st case'] and President of India's Special Reference No. 1 of 1998, 1998(4) SCT 696.

68. Referring to the judgment of Hon'ble the Supreme Court in Supreme Court Advocates-on-Record Association's 2nd case (supra)], he submitted that Hon'ble the Supreme Court opined therein that if the appointments in judiciary are left to the executive, it will breach independence of judiciary. Judicial system has been held to be the basic structure of the Constitution. The recommendations made by the High Court are binding on the Governor. The appointment of Judges is not an executive

function, rather, it is participatory. Changing order of appointment will amount to interference in the basic structure of the Constitution. The role of the Governor is formal. Reference was made to Bal Mukand Sah's case (supra). The promotees cannot be allowed to steal march over the direct recruits if the process was same. Reference was made to Arvinder Singh Bains v. State of Punjab and others, (2006) 6 SCC 673. He further relied upon judgment of Hon'ble the Supreme Court in Union of India and others v. N. R. Parmar and others, (2012) 13 SCC 340 to contend that roster as given in Appendix 'B' can be considered for framing the seniority as the same is strictly as per the directions issued by Hon'ble the Supreme Court. Reliance was placed upon Chandra Mohan v. State of U. P. and others, AIR 1966 SC 1987 and Chief Information Commr. and another v. State of Manipur and another, 2012 (1) RCR (Civil) 374 to contend that if a manner has been prescribed to do something, it has to be strictly followed. As direct recruits had been recommended to be appointed first, they had to be given appointment first. Reliance was also placed upon instructions dated 15.3.1962 (Annexure P-24) issued by the State, which clearly provide that seniority of the candidates should be treated with reference to the date of recommendation.

69. He further submitted that there is no weight in the argument sought to be raised by the regular promotees that they were not given a chance to participate in the limited departmental competitive examination as this dispute is not with the direct recruits. They are within their own quota.

70. Mr. R. K. Chopra, learned senior counsel appearing for some of the petitioners, who are direct recruits, referred to the judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra)

and submitted that once Hon'ble the Supreme Court had laid down the law and the principles to be followed especially while framing the Rules, those have to be adhered to. Seniority has to be fixed accordingly. The direction was to prepare a roster for determining seniority. The 2007 Punjab Rules have to be read with the judgment of Hon'ble the Supreme Court and not in violation thereof.

71. Mr. Karanvir Singh Khehar, learned counsel appearing for the direct recruits, while referring to Rule 8 of the 1994 Punjab Rules, submitted that direct recruits are to be placed above the promotees. Article 233 of the Constitution of India deals with a situation, which is prior to the appointment of judicial officers, whereas Article 235 deals with after the appointment. He further submitted that the Committee committed an error in noticing the fact that there are only two sources of recruitment to the superior judicial service, namely, promotion and direct recruitment. Even Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra) opined that there are three sources of recruitment, hence, the consequence will automatically change. The decision of the Committee is largely based on this fact that there are only two sources of recruitment. He further distinguished the judgments cited by Mr. Anupam Gupta, learned senior counsel, by contending that these deal with the issue regarding right of appointment on selection and not with reference to the seniority. These are two different concepts.

Arguments on behalf of the High Court

72. Mr. Sanjeev Sharma, learned senior counsel appearing for the High Court, submitted that the process for framing the Rules was started in

terms of the judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), however, as the same was being delayed, to take care of minimum requirements and to comply with the direction of Hon'ble the Supreme Court, amendment was made in the 1963 Punjab Rules providing for three sources of recruitment to the superior judicial service, which was notified on 15.1.2004. He further submitted that the High Court had finalised the same set of draft Rules applicable to the officers in both the States, namely, Punjab and Haryana and sent them for notifying in the official gazette. The State of Haryana notified the Rules after carrying out cosmetic changes without effecting the substance thereof, that too with/without consultation of the High Court, whereas in the case of State of Punjab, without there being any consultation with the High Court, completely changed Rules were notified. Learned counsel appearing for the State of Punjab at this stage, on verification, with reference to the notification of the 2007 Punjab Rules, submitted that from the record it is evident that the Rules were changed at the level of the State Government in Legal Remembrancer's office without any consultation with the High Court of the proposed change. Though in the files, there is a note that the Legal Remembrancer had a meeting with K. S. Grewal, J., who was heading the Rules Committee at that time, but no minutes of meeting are available with them or even in the High Court record.

73. Mr. Sharma, learned senior counsel further submitted that from January 2004 to August, 2007, no suitability test for regular promotions was held either in the State of Punjab or Haryana, however, thereafter the same was held in the State of Haryana, as the 2007 Haryana Rules provided for that, whereas there being no such provision notified in the 2007 Punjab

Rules, it was not held. First selection process after the 2007 Punjab Rules were notified was held in the year 2008. There is no challenge to the Rules either prior to the filing of bunch of petitions or in the present set of petitions.

74. He further submitted that in Malik Mazhar Sultan (3) and another v. Uttar Pradesh Public Service Commission and others, (2008) 17 SCC 703, Hon'ble the Supreme Court provided for annual schedule for carrying out the selection process for recruitment to the Superior Judicial Service from all three sources.

75. He further referred to the observations made by Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra) that in case there is any issue pertaining to the directions issued by Hon'ble the Supreme Court in the aforesaid judgment, application could be filed only before Hon'ble the Supreme Court. As the petitioners in the present petitions are seeking implementation of the directions issued by Hon'ble the Supreme Court, the present set of petitions are not maintainable in this court. He further submitted that in Vitusah Oberoi and others v. Court of Its Own Motion, AIR 2017 SC 225, Hon'ble the Supreme Court opined that for any order passed by Hon'ble the Supreme Court, contempt does not lie in High Court, hence, the petitioners cannot even claim that any action/in-action of this court is contemptuous.

76. Controverting the contentions raised by learned counsel for the petitioners that even if the Rules are silent on any issue, with reference to which Hon'ble the Supreme Court had given directions in All India Judges' Association 3rd and 4th cases (supra), then the law laid down by Hon'ble the Supreme Court is to be followed, it was submitted that once the statutory

the judgment. In support, reliance was placed upon Syed T. A. Naqshbandi and others v. State of Jammu & Kashmir and others, (2003) 9 SCC 592 and Sasidhar Reddy Sura v. State of Andhra Pradesh and others, (2014) 2 SCC 158.

77. As regards seniority, the submission of learned senior counsel for the High Court is that the same has been determined strictly as per the 2007 Punjab Rules which, read with the 1994 Punjab Rules, which provide that continuous length of service is the criteria for determination of seniority. Referring to various Rules in the 2007 Punjab Rules, he submitted that Rule 7(3)(a) is to be read with Rule 8. Rule 7(3)(b) is to be read with Rule 9 and Rule 7(3)(c) is to be read with Rules 10 and 11 thereof. The aforesaid Rules pertain to appointment/promotion to the Superior Judicial Service from different sources. Rule 12 of the 2007 Punjab Rules, which deals with seniority, is to be read with Rule 23 thereof along with Rule 8 of the 1994 Punjab Rules.

78. Regarding suitability test, as envisaged in Rule 7(3)(a) of the 2007 Punjab Rules, it was submitted that Rule 7(3)(a) providing for 50% quota for regular promotion, which was later on increased to 65%, is to be read with Rule 8 thereof. No doubt, Rule 7(3)(a) provides for promotion on the basis of merit-cum-seniority and passing of a suitability test, Rule 8 provides how the merit is to be assessed and suitability is to be tested. The Rule may be bad or not happily worded, but as long as it stays, it has to be adhered to. Suitability test will not mean written test only.

79. Mr. Sanjeev Sharma, learned senior counsel, was not able to refer from any material on record to show how merit was assessed and suitability was tested with reference to any bench-mark fixed. He could

refer to only the minutes of the meeting of the Recruitment Committee held on 29.11.2007, which recommended promotion of the officers from the feeder cadre in order of their seniority, except those who could not be considered eligible as per the Rules itself or who were under suspension. In the criteria framed for Haryana Officers, viva-voce was also prescribed. Nothing was referred from the record to show that any viva-voce was conducted. He further submitted that the Committee had followed the criteria laid down by the Full Court in its meeting held on 30.10.2007 for promotion of the members of Haryana Civil Services (Judicial Branch) to Haryana Superior Judicial Service under the 2007 Haryana Rules, where also the criteria for promotion is merit-cum- seniority and suitability test. However, he was not able to explain that there was substantial difference in Punjab and Haryana Rules, as the 2007 Haryana Rules are strictly as per the directions given by Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), whereas the 2007 Punjab Rules are substantially different. The Full Court in its meeting held on 30.10.2007 provided that officers in the zone of consideration, who are having three B (Plus) 'good reports' out of preceding five years and who are not having any integrity doubtful report in any of the last 5 years, should be called for assessing and testing the merit and suitability for promotion under 50% quota. The aforesaid criteria laid down for Haryana Officers was followed in Punjab. It was further provided therein that viva-voce test was conducted by the Judges consisting of Administrative Committee, i.e., Hon'ble the Chief Justice and four senior most Judges.

80. It was further contended that regular promotions against 50% quota (which was later on increased to 65%) was made way back in the year

2008, hence, any challenge to the same at this stage is highly belated. Promotion and seniority are two different concepts. If the members of service from other sources were aggrieved of the promotion of the aforesaid officers, they should have raised objection immediately after they entered service. The objection was made only when tentative seniority list was circulated. In any case, a member joining service later on, cannot raise issue with reference to seniority, as seniority is to be determined on the basis of continuous length of service and the promotees being already in service have to be ranked senior.

81. Mr. Sharma, learned senior counsel, referred to the report of the Committee, which determined inter-se seniority of the members of the cadre. He submitted that the report is quite exhaustive, where after hearing number of counsels representing three different groups and considering their submissions, the Committee had framed eight issues in para No. 38 thereof. While dealing with different issues, the Committee opined that holding of suitability test for regular promotion was not provided in the Rules, i.e., either in the 1963 Punjab Rules after these were amended on 15.1.2004 or the 2007 Punjab Rules. The Selection Committee understood the criteria of 'merit-cum-seniority' and 'suitability test' as contained in Rule 8(a) of the 1963 Punjab Rules in a particular manner and recommended promotions without holding any 'suitability test'. These recommendations were approved by the Full Court. In the subsequent meeting of the Selection Committee held on 29.11.2007 also, somewhat similar criteria was adopted without any written test, hence, the persons appointed cannot be held to be irregular or ad-hoc. Once the Rules did not provide for holding of written test, there was no obligation to hold one.

82. He further submitted that there are only two sources of recruitment to Superior Judicial Service, namely, promotion and direct recruitment. Promotion has been sub-divided into two parts, namely, regular promotion and accelerated promotion by way of limited departmental competitive examination, hence, the vacancies have to be calculated in that manner. In All India Judges' Association 3rd case (supra), Hon'ble the Supreme Court directed that out of regular promotion quota of 75%, 25% be diverted to limited departmental competitive examination quota. As these vacancies could not be filled for years together in different States, in All India Judges' Association 4th case (supra), it was opined that percentage be reduced from 25% to 10% and the vacancies be diverted back to the regular promotion quota, hence, there is no error in calculation of vacancies and there is no merit in the contention raised by learned counsel for the petitioners that promotions are in excess of quota.

83. The cadre strength as on 19.2.2008 when promotions were made was 107. Different posts available in each cadre were 53 for regular promotion [Rule 7(3)(a)], 27 for promotion through limited departmental competitive examination [Rule 7(3)(b)] and 27 for direct recruitment [Rule 7(3)(c)]. Though the 2007 Punjab Rules were amended on 15.1.2004 providing for 25% quota for limited departmental competitive examination, but no recruitment was made in this category upto the year 2008. Actual working strength as on 10.2.2008 in promotion category [Rule 7(3)(a)] was 58, whereas in direct recruitment quota, it was 6 [Rule 7(3)(c)]. The total vacancies available in promotion category taking both the sources together as on 19.2.2008 was $[53+27]-58=22$. These vacancies were divided into 50% and 25%, ie., 15+7 under Rule 7(3)(a) and Rule 7(3)(b) of the 2007

Punjab Rules, respectively and appointments were made accordingly. There is nothing wrong in that as the earlier cadre was to be protected considering the fact that change in quota was effected only after 15.1.2004 amendment in the 1963 Punjab Rules. Same system for recruitment was to continue, till such time by way of retirement, elevation or otherwise, cadre strength in the promotion category [Rule 7(3)(a)] was reduced to 50%.

84. He further submitted that there is no merit in the contention raised by learned counsel for the direct recruits to claim that the date of recommendation made by the High Court to the State be treated as their date of appointment, as the selection does not confer any right of appointment. The Rules define appointing authority as the Governor. Unless the appointment letter is issued, there is no right to join service. Number of formalities are to be completed after the recommendation and before appointment. Giving date of recommendation as the date of appointment will be putting the cart before the horse.

85. As regards holding of written test for regular promotion subsequently, Mr. Sharma, learned senior counsel appearing for the High Court, submitted that in the meeting of the Recruitment Committee held on 24.2.2011, it was recommended that in view of the judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), test is required to be conducted for promotion. In the meeting of the Committee held on 11.3.2011, criteria for test was proposed, which was approved by the Full Court on 29.3.2011. Prior to that, in Punjab, no test was held for regular promotion to determine the suitability. He further submitted that the Rules Committee in its meeting held on 19.11.2012 recommended for amendment in Rule 8 of the 2007 Punjab Rules for including the written

test and viva-voce for regular promotion. These were approved on 29.1.2013 by the Full Court and sent to the Government on 2.3.2013, which are still pending for notification. Learned counsel for the State at this stage pointed out that these have been approved, however, are to be placed before the Cabinet after Assembly elections in the State.

86. The judgment of Hon'ble the Supreme Court in Maharashtra State Judges Association and others v. Registrar General, High Court of Judicature at Bombay and another, (2009) 1 SCC 569 was cited in support of the argument that whatever was the seniority position upto 31.3.2003 was to be protected in terms of the judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra).

87. Learned counsel was further candid in stating that if the officers working in any category are more than their sanctioned strength in the cadre, then no recruitment in their quota is to be made. If they are excess, they will come at the bottom of the seniority list. Regarding roster-point provided in Appendix 'B' for the purpose of recruitment, it was submitted that the same is to be followed seeing the cadre strength. If in any cadre the officers in position are more, then no recruitment is to be made from that category. In case, quotas in Rule 7(3)(a), 7(3)(b) and 7(3)(c) in the cadre are taken separately, there was no vacancy in the quota, as provided in Rule 7(3)(a) (regular promotion quota) as on 14.2.2008, as 58 officers were already working against the quota of 53.

88. With reference to the seniority assigned to the Judges of Fast Track Court recruits in the regular cadre, it was submitted that needful was done in terms of the judgment of Hon'ble the Supreme Court in Brij Mohan

Lal v. Union of India, (2012) 6 SCC 502. The circular for limited departmental competitive examination was issued on 25.1.2008 and even the test was conducted on 4.2.2008, much prior to the process for recruitment of direct recruits. They had joined earlier in time.

89. Argument was also addressed regarding delay and laches in filing the petitions. It was submitted that promotion beyond quota, if any, as is sought to be argued by the members of other two sources, namely, direct recruits and limited departmental competitive examination deserves to be rejected at this stage, as it is highly belated. When the promotions were made, none represented to contend that these were beyond quota.

Arguments on behalf of private respondents-regularly promoted

90. Mr. Sumeet Mahajan, learned senior counsel appearing for respondent Nos. 6 and 10 in CWP No. 1056 of 2016 and for same respondents in the other writ petitions, who are regularly promoted officers, adopted the arguments raised by Mr. Anupam Gupta, and Mr. Sanjeev Sharma, learned senior counsels, except regarding operation of roster for the purpose of seniority or that promotions were beyond quota. He further submitted that learned senior counsel Mr. Anupam Gupta had rightly pointed out that seniority of the officers directly recruited has to be counted from the date of appointment and not from the date of recommendations. He further submitted that the officers being represented by him are of 1992 batch of Punjab Civil Services (Judicial Branch) batch. Respondent Nos. 18 and 22 to 24 are also of 1992 batch, however, they were below in the merit list, hence, in the seniority. Respondent Nos. 19 to 21 and 25 are of 1994 and 1995 Batches, respectively. Both respondent Nos. 6 and 10 were designated as Senior Sub-Judges on 16.12.1996. They completed their five

years as Senior Sub-Judge on 2.1.2002 and 4.1.2003, respectively. Though as per the 1963 Punjab Rules, they were eligible to appear in the limited competitive test, however, were not given any opportunity as no test was held. After the judgment in All India Judges' Association 3rd case (supra), amendment was carried out in the 1963 Punjab Rules on 15.1.2004 providing for quotas for promotion and direct recruitment as directed by Hon'ble the Supreme Court. Thereafter, on 23.3.2005, regular promotions were made, however, no suitability test was held. No limited competitive test was held though the rules provided for it. On 31.8.2007, the 2007 Punjab Rules were notified superseding the 1963 Punjab Rules. On 18.2.2008, regular promotions were made, however, without holding any suitability test. No test was held even for limited competitive examination. Had the test been held either for regular promotion or for limited competitive examination, the respondents, represented by him, would have certainly appeared in that test. On 23.4.2008, the High Court issued a circular for limited competitive test. It was forwarded only to the Senior Sub-Judges and not to the officers, who were already promoted. In fact, there was no need for them to appear as they had already been promoted as Additional District & Sessions Judges. On 29.5.2009, regular promotions were made following the same procedure, namely, without holding any suitability test. On 24.8.2008, all the Judges working in Fast Track Courts were absorbed while holding a limited competitive test for them against the direct recruitment quota posts. On 18.5.2008 for the first time after the amendment of 2004 in 1963 Punjab Rules or promulgation of the 2007 Punjab Rules, test was held for limited competitive examination. 8 officers were appointed out of this quota on 14.8.2008. Directly recruited officers

were appointed on 28.11.2008.

91. It was contended that the petitioners herein have only challenged the seniority list and not the report of the committee. The Rules have also not been challenged. The promotion of the respondents made way back in the year 2008 is also not under challenge, even though much stress was laid by learned counsel for the petitioners on the issue that the promotions were made in violation of the judgment of Hon'ble the Supreme Court without holding the suitability test. The Committee has rightly followed the principle of continuous length of service for the purpose of determination of seniority as this is the method provided for in the 2007 Punjab Rules. Though the 2007 Punjab Rules referred to the recommendations made by the Shetty Commission, however, this would not apply here. The Rules are silent about this. Even Shetty Commission recommended that continuous length of service should be taken as the principle for determination of seniority. While referring to All India Judges' Association 3rd case (supra), it was argued that Hon'ble the Supreme Court gave directions for amendment of the Rules and for providing roster for determination of seniority in the Rules itself. As argued by learned senior counsel Mr. Sanjeev Sharma appearing for the High Court, he submitted that after the Rules have been promulgated, these are applicable and not the judgment. There is no direction by Hon'ble the Supreme Court that after the cut off date, provided for amendment of the Rules, the judgment will apply if the Rules are not amended. There is no roster provided for in the Rules for determination of seniority. The contention of learned counsel for the petitioner that in view of the judgment of Hon'ble the Supreme Court roster should be made applicable, is totally misconceived. The Rules are

prospective in nature. Once principle of continuous length of service is applied for determining inter-se seniority of officers from different sources then the quota loses its significance.

92. The judgment of Hon'ble the Supreme Court in P.V. George and others v. State of Kerala and others, (2007) 3 SCC 557 was cited in support of the argument that settled issues should not be un-settled and a judgment of the court can either be prospective or retrospective. Even if for argument's sake, three quotas are taken, still as per the Rules applicable, seniority has to be determined on the principle of continuous length of service. The roster provided for appointment in Appendix 'B' annexed with the 2007 Punjab Rules has not been followed. Even in All India Judges' Association 3rd case (supra), Hon'ble the Supreme Court had opined that to give effect to the directions given in the judgment, the Rules are required to be amended. Till such time, the Rules are amended in consonance with the judgment, as per the existing Rules, continuous length of service is to be applied for determination of seniority.

93. It was further argued that the contention regarding violation of basic structure theory is totally mis-conceived. Hon'ble the Supreme Court had clearly provided that there had to be written test for direct recruitment as well as for limited departmental competitive examination, however, for the purpose of promotion, it provided that there has to be suitability test, which was not necessarily to be written. Objectivity is tested only when there is no *viva-voce* and only record is seen. In the present case, the promotions were made after perusal of record, hence, there was complete objectivity. In case, the stand of the petitioners is that judgment of Hon'ble the Supreme Court has been violated, then the remedy lies before Hon'ble

the Supreme Court. Even after 2007, when the Rules were framed in the States of Punjab and Haryana, these can be different for both the States. Regarding application of any bench-mark for the purpose of consideration of candidates for promotion on the basis of merit-cum-seniority, it was submitted that once the exercise has been done by this court on the administrative side, we must presume that it was strictly in accordance with the Rules. If the promotions have not been challenged, the promotees will get all consequential benefits. If the promotions have been made strictly following the Rules and are even beyond quota, they are not to be pushed down in the seniority. In support, reliance was placed upon Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others, (1990) 2 SCC 715 and Rudra Kumar Sain and others v. Union of India and others, (2000) 8 SCC 25.

94. With reference to the quota, it was submitted that promotions made prior to 15.1.2004 in the 1963 Punjab Rules should be treated as filled up in the ratio of 50 and 25 in the promotion quota and the vacancies should be worked out accordingly. Raising the issue of quota, it was submitted that regularly promoted officers were not at fault. As they had already been promoted, they were not given a chance to appear in limited departmental competitive examination. In this process, the persons who were far junior to the regularly promoted officers have been given march over them.

95. Another contention raised by Mr. Sumeet Mahajan, learned senior counsel is that the Rules are to be given its true meaning with no addition or deletion of words. The judgments are not to be seen over and

above the Rules. In support, reliance was placed upon Syed T.A. Naqshbandi's case (supra); Rakhi Ray and others v. High Court of Delhi and others, (2010) 2 SCC 637 and Rohitash Kumar and others v. Om Prakash Sharma and others, (2013) 11 SCC 451. He distinguished the judgment referred to by learned counsel for the petitioners in Arvinder Singh Bains' case (supra) on the plea that roster provided by Appendix 'B' should be read even for the purpose of determination of seniority, while submitting that seniority is to be fixed as per the Rules, which provide for continuous length of service. The judgment of Hon'ble the Supreme Court in Bhupinderpal Singh and others v. State of Punjab and others, (2000) 5 SCC 262 was cited in support of the plea that if a wrong practice was being followed bonafidely, no adverse action should be taken, however, this case pertains to the manner of appointment and not regarding seniority.

96. Summing up his arguments, Mr. Mahajan, learned senior counsel submitted that direct recruits have no cause of action against the regularly promoted officers as their quota had not been violated. Only out-of-turn promotees could raise the issue. Even their contention is also misconceived.

97. Mr. Rajiv Atma Ram, learned senior counsel appearing for respondent-Amrinder Singh Grewal submitted that all the findings recorded by the Committee are strictly as per law and he adopts the same. He further submitted that once the 1963 Punjab Rules were repealed and the 2007 Punjab Rules were promulgated, new posts are deemed to be sanctioned and the quota will start afresh in 2007 Punjab Rules. On the issue of effect of repealed service rules with enactment of new rules, reliance was placed upon State of Punjab and others v. Arun Kumar Aggarwal and others,

(2007) 3 SCT 136. The vacancies filled prior thereto will become a dying cadre. All appointments are to be made as per roster even if the quotas, as mentioned in Rule 7(3) of the 2007 Punjab Rules, are violated. For Rule 7(3)(a) and (b) of the 2007 Punjab Rules, quotas have not been mentioned with reference to the posts in the cadre, which is there in case of Rule 7(3)(c). He submitted that in fact the 2007 Punjab Rules are anomalous, however, they have to be followed as it is, as the vires is not under challenge. Though Appendix 'B' provides for a roster for recruitment on posts from three different sources, however, at any given point of time, the recruitments will not be made from all three sources simultaneously, hence, the roster at Appendix 'B' can be said to be directory as it is not possible to adhere to the same. It was further submitted that if the roster is applied for determination of seniority, then from any one source the person may be given seniority from a date when he was not even born in the cadre.

98. With reference to second proviso to Rule 23 of the 2007 Punjab Rules, it was submitted that a plain reading of the language used therein shows that the recommendations made by Shetty Commission will override. That would mean the recommendations as such, irrespective of the fact as to whether these were approved or dis-approved by Hon'ble the Supreme Court. If the recommendations of Shetty Commission are considered, even the appointments made by way of direct recruitment are also in violation thereof.

99. It was further argued that quota of promotion before 15.1.2004 was 75%. Even if at the time of making promotions at any stage the High Court had violated the quota, the officers cannot be said to be at fault. There

is a long drawn procedure. None at any stage pointed out that promotions were being made beyond quota.

100. Mr. Ishaan Bhardwaj and Mr. Bhuwan Vats, Advocates appearing for respondents No. 5, 11 and 15 in CWP Nos. 1056, 1057, 21544 of 2016 and respondents No. 6, 9 and 12 in CWP No. 2335 of 2016 adopted all the arguments raised by Mr. Sumeet Mahajan, Senior Advocate.

101. Heard learned counsel for the parties and perused the relevant record, which was perused with the assistance of learned counsel for the parties.

Discussions

Facts

102. The case pertains to inter-se seniority of the officers in the cadre of Superior Judicial Service in the State of Punjab. Initially the cadre was governed by the 1963 Punjab Rules, which were amended on 15.1.2004 in terms of the judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra) and subsequently replaced by the 2007 Punjab Rules. The contest for inter-se seniority finalised for the year 2008 is amongst the officers, who are regularly promoted, directly recruited and promoted through limited departmental competitive examination. Regular promotions are made in terms of Rule 7(3)(a); accelerated promotions are made in terms of Rule 7(3)(b) and direct recruitments are made in terms of Rule 7(3)(c) of the 2007 Punjab Rules. Prior to finalisation of the seniority list, a tentative seniority list was prepared and circulated to all the officers on 25.9.2014. Objections were invited. Oral hearing was granted to all the officers, who were even represented by senior counsels. The Committee considered the objections and opined that no change was required in the

tentative seniority list circulated, hence, finalised on 11.8.2015. None of the parties or their counsels have any grievance about the fair hearing afforded to them by the Committee. The report of the Committee was circulated. One of the Hon'ble Judge submitted his comments on the report, which were placed before the Full Court. Finally, the report of the Committee was accepted in Full Court meeting held on 22.12.2015 and thereafter, the impugned seniority list was circulated on 24.12.2015.

The Committee framed eight issues, which are extracted below:

“(1) Whether the promotions dated 19.2.2008 made under Rule 7(3)(a) are liable to be termed as irregular or 'ad-hoc', and if so, to what effect ?

(2) Whether the posts meant for the 'out-of-turn promotion' under Rule 7(3)(b) which remained unfilled as no competitive examination took place from the year 2004 to 2008, can be included in 'promotion quota' under Rule 7(3)(a), and if not, to which quota such posts shall stand diverted ?

(3) Whether promotions made on 19.2.2008 under Rule 7(3)(a) were in excess to the 'promotion quota", and if so, what is the effect on seniority of such excess promotions ?

(4) Whether promoted officers [irrespective of Rule 7(3)(a) or (b) are entitled to the 'weightage' of their service rendered in PCS (Judicial Branch) towards seniority in Superior Judicial Service in view of second proviso to Rule 23 of 2007 Rules ?

(5) Whether the direct recruits under Rule 7(3)(c) could be assigned seniority from the date their names were recommended by the High Court for appointment ?

(6) Whether officers absorbed from Fast Track Courts are liable to be treated as 'ex gratia appointees', and if so, what is the effect in law and what would be their 'deemed date of appointment'?

(7) Whether Roster (Appendix 'B') can be read into and applied to the Rule of seniority?

(8) Whether Mr. Arunvir Vashista is entitled to be absorbed as ADJ w.e.f. 24.6.2008 or he be placed at Sr. No. 1 amongst the out-of-turn promotees in view of para 146(13) of the judgment in ***Brij Mohan Lal-II*** ?”

Findings of the Committee

103. The committee opined that promotion of the officers promoted under Rule 7(3)(a) of the 2007 Punjab Rules was regular for all intents and purposes. The promotions made on 19.2.2008 under Rule 7(3)(a) were held to be not in excess of quota. The posts, which remained vacant out of the quota meant for limited departmental competitive examination [Rule 7(3)(b)] have to be diverted back to the regular promotion quota under Rule 7(3)(a) from the very beginning. The direct recruits were not held entitled to claim seniority from the date of their recommendation made by the High Court for appointment. Roster, as provided in Appendix 'B' to the 2007 Punjab Rules cannot be applied for determination of inter-se seniority of members of the cadre recruited from three different sources. The seniority was determined on the basis of continuous length of service, as provided under Rule 8 of the 1994 Punjab Rules, applicable in terms of Rule 23 of the 2007 Punjab Rules. The tentative seniority list was approved.

104. The points on which arguments were addressed in the present

bunch of petitions are related to the issues mentioned at Sr. Nos. 1 to 3, 5 and 7.

Dates when circulars/advertisements were issued for recruitment from three different sources and dates of appointments

Direct recruitment

2.2.2008	Date of advertisement
18.5.2008 to 20.5.2008	Written test
10.7.2008	Report by the Committee
25.7.2008	Approval by the Full Court
29.7.2008	Letter from the Registrar General to the State recommending appointment.
28.11.2008	Date of appointment letter
8.12.2008	Date of posting

Regular promotion

10.1.2008	Report by the Committee
25.1.2008	Approval by the Full Court
29.1.2008	Letter from the Registrar General to the State recommending appointment.
19.2.2008	Orders issued by the Government
23.2.2008	Date of posting

For Presiding Officers of Fast track courts

25.1.2008	Date of Circular
4.2.2008 to 18.3.2008	Written test
18.3.2008	Report by the Committee
10.4.2008	Approval by the Full Court
24.6.2008	Orders issued by the Govt.
28.7.2008	Posting orders

Promotion through limited departmental competitive examination

23.4.2008	Date of Circular
18.5.2008 to 20.5.2008	Written test
29.7.2008	Letter from the Registrar General to the State recommending appointment
11.8.2008	Orders issued by the Government
22.10.2008	Date of posting

GENERAL ISSUES

105. As counsels for the petitioners have raised many issues regarding judicial system with reference to the constitutional scheme, it being part of basic structure of the Constitution of India, we deem it appropriate to notice the same before dealing with other issues.

Judicial system-- the Basic structure, Article 233 of the Constitution of India

106. In Madras Bar Association's case (supra), issue under consideration before the Constitution Bench of Hon'ble the Supreme Court was the validity of the National Tax Tribunal Act, 2005 (for short, 'NTT Act'), vide which National Tax Tribunal (for short, 'the Tribunal') was constituted, which was to take over jurisdiction of the High Courts for dealing with appeals under different direct and indirect taxes statutes. While considering the issue as to whether NTT Act violates the basic structure of the Constitution, answer was in positive. The scope of judicial review was examined. Concepts of “rule of law”, “separation of power” and “judicial review” were held to be part of basic structure of the Constitution. These were held to be essential ingredients of adjudicatory process. Finding

that power of judicial review vested in the High Court under Articles

226/227 of the Constitution remained intact, National Tax Tribunal was deemed to be held to be discharging a supplemental role, rather, than substitutional role. The plea raised by the Attorney General that the law having been enacted within the competence of the Parliament has to be tested on that touch-stone and none else, was not accepted. The NTT Act was also found to be violating the basic structure theory as it was not found to be as independent an institution as the High Courts are, powers from which were sought to be transferred.

107. It was opined that though transfer of jurisdiction is permissible, but in effecting such transfer, the court to which power of adjudication is transferred, must be endured with salient characteristics, which were possessed by the court from which the adjudicatory power has been transferred. All conventions/customs/ practices of the court sought to be replaced have to be incorporated in the court/tribunal created. Finding that the Tribunal constituted under the NTT Act was lacking in that, the same was struck down. The plea of the Chartered Accountants and the Company Secretaries to allow them to appear before the Tribunal was declined, as intricate questions of law and fact were to be decided. This was held to be part of independence of judicial process. The interference of the Government in the entire process was found to be impinging upon the independence and fairness of the Members of the Tribunal. If the Tribunal was to substitute the High Court, the manner of appointment of a Chairperson/Member thereof will have to be same as prevalent for appointment of a Judge of the High Court and so the security of service. In the process of final determination, Hon'ble the Supreme Court placed reliance upon a judgment of Privy Council in Hinds v. R., 1977 AC 195.

Finally, the opinion expressed in para Nos. 134 to 139 striking down the NTT Act are extracted below:

“134. (i) The Parliament has the power to enact legislation, and to vest adjudicatory functions, earlier vested in the High Court, with an alternative court/tribunal. Exercise of such power by the Parliament would not per se violate the “basic structure” of the Constitution.

135. (ii) Recognized constitutional conventions pertaining to the Westminster model, do not debar the legislating authority from enacting legislation to vest adjudicatory functions, earlier vested in a superior court, with an alternative court/tribunal. Exercise of such power by the Parliament would per se not violate any constitutional convention.

136. (iii) The “basic structure” of the Constitution will stand violated, if while enacting legislation pertaining to transfer of judicial power, Parliament does not ensure, that the newly created court/tribunal, conforms with the salient characteristics and standards, of the court sought to be substituted.

137. (iv) Constitutional conventions, pertaining to the constitutions styled on the Westminster model, will also stand breached, if while enacting legislation, pertaining to transfer of judicial power, conventions and salient characteristics of the court sought to be replaced, are not incorporated in the court/tribunal sought to be created.

138. (v) The prayer made in Writ Petition (C) No.621 of 2007 is declined. Company Secretaries are held ineligible, for

representing a party to an appeal before the NTT.

139. (vi) Examined on the touchstone of conclusions (iii) and (iv) above, Sections 5, 6, 7, 8 and 13 of the NTT Act (to the extent indicated hereinabove), are held to be unconstitutional. Since the aforesaid provisions, constitute the edifice of the NTT Act, and without these provisions the remaining provisions are rendered ineffective and inconsequential, the entire enactment is declared unconstitutional.”

108. In Supreme Court Advocates-on-Record Association's 2nd case (supra), a Constitution Bench of Hon'ble the Supreme Court reiterated its earlier view that though Governor of the State is appointing authority including promotion, however, recommendations made by the High Court in the consultative process, as envisaged under Article 233 of the Constitution of India, are binding on the Governor. Paragraph 133 thereof is extracted below:

“133. In continuation with the conclusions drawn in the foregoing analysis, the matter can be examined from another perspective as well. The term “consultation” (in connection with, appointments of Judges to the higher judiciary) has also been adopted in Article 233 on the subject of appointment of District Judges. Under Article 233, the power of appointment is vested with the Governor of the State concerned, who is empowered to make appointments (including promotions) of District Judges. This Court,

through a five-Judge Bench, in Registrar (Admn.), High Court of Orissa, Cuttack v. Sisir Kanta Satapathy, has held, that recommendations made by the High Court in the consultative process envisaged under Article 233 are binding on the Governor. In the face of the aforestated binding precedent, on a controversy, which is startlingly similar to the one in hand, and has never been questioned, it is quite understandable how the Union of India, desires to persuade this Court, to now examine the term “consultation” differently with reference to Articles 124 and 217, without assailing the meaning given to the aforesaid term, with reference to a matter also governing the judiciary.”

109. In M. M. Gupta's case (supra), Hon'ble the Supreme Court opined that the appointing authority of District Judges is the Governor and not the High Court.

110. In Registrar (Admn.), High Court of Orissa, Cuttack's case (supra), a Constitution Bench of Hon'ble the Supreme Court was seized of an issue regarding scope and extent of control of the High Court over the subordinate judiciary to the exclusion of executive for maintenance of its independence. It was opined that the High Courts are vested with disciplinary control as well as administrative control over the members of the judicial service exclusively. The High Courts alone are entitled to initiate, to hold enquiry and take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed by the State Government on the recommendations of the High Court. Relevant paragraph 15 thereof is

extracted below:

“15. On going through the judgments of this Court right from *Shyamlal v. State of U. P.*, AIR 1954 SC 369 down to *High Court of Judicature for Rajasthan v. Ramesh Chand Paliwal*, (1998) 3 SCC 72, one cannot but reach one conclusion regarding the power of the High Court in the matter of ordering compulsory retirement. That conclusion is that the High Courts are vested with the disciplinary control as well as administrative control over the members of the judicial service exclusively, but that does not mean that they can also pass orders of dismissal, removal, reduction in rank or termination from service while exercising administrative and disciplinary control over the members of the judicial service. Undoubtedly, the High Courts alone are entitled to initiate, to hold enquiry and to take a decision in respect of dismissal, removal, reduction in rank or termination from service, but the formal order to give effect to such a decision has to be passed only by the State Governor on the recommendation of the High Court. It is well settled again by a catena of decisions of this Court that the recommendation of the High Court is binding on the State Government/Governor (vide para 18 in *State of Haryana v. Inder Prakash Anand*, (1976) 2 SCC 977).”

111. In Registrar, High Court of Madras' case (supra), Hon'ble the Supreme Court opined that even if the role of the Governor is formal and the recommendations made by the High Court are binding, the order of

compulsory retirement of any member of judicial service will take effect only when order is passed by the Governor.

112. In Smt. A. Lakshmikutty and others' case (supra), Hon'ble the Supreme Court opined that writ of mandamus cannot be issued to the State to appoint the persons recommended to be appointed as District Judges, rather, direction was issued to the State Government requiring it to communicate its views to the High Court to elicit its opinion and if necessary make a fresh effort to find a suitable candidate, if required.

113. In Kali Dass Batish and another's case (supra), the issue under consideration before Hon'ble the Supreme Court was the scope of judicial review with reference to appointment of a Member of the Central Administrative Tribunal. Names were recommended for appointment. Thereafter, antecedents were to be verified. After receiving the reports, the matter was referred to Hon'ble the Chief Justice of India for concurrence. The proposal was accepted. Though the appointments were notified, but the names of the respondent and another candidate in the aforesaid case were not notified as there were some adverse reports. One of the candidates filed writ petition in Jharkhand High Court challenging his non-appointment. The writ petition was dismissed. Another candidate filed writ petition in Himachal Pradesh High Court impugning the decision of the Central Government not to appoint him as Judicial Member. The High Court directed for re-consideration of his case. The judgment of Jharkhand High Court was upheld, whereas that of Himachal Pradesh High Court was reversed by Hon'ble the Supreme Court. Verification of antecedents was found to be an important exercise, which is done before a decision is taken by the appointing authority to appoint a candidate to a sensitive post.

On selection right of appointment

114. In Batiarani Gramiya Bank's case (supra), Hon'ble the Supreme Court opined that a person selected has no right of appointment, when the appointing authority has good reasons not to fill up the vacancies. The relevant part thereof is extracted below:

“29. In our view, the respondent-writ petitioners had not acquired any indefeasible right to be appointed to the post in question, when the Bank had taken a decision not to fill up all the vacancies which is based on sound bona fides and appropriate reasons. The Bank is also under no obligation or legal duty to fill up any or all of the vacancies and that the basis indicated by the appellant Bank for pruning down the indents cannot at all be characterized to be mala fide or unreasonable.....”

115. In Suraj Parkash Gupta and others' case (supra), Hon'ble the Supreme Court opined that a direct recruit can claim seniority only from the date of his regular appointment and not from a date when he was not born in the cadre.

116. Same view was expressed in Uttaranchal Forest Rangers' Assn. (Direct Recruit) and others' case (supra).

117. From the law, as referred to above, it is clear that recommendations of the High Court in the consultative process are binding on the Governor, but in any case, appointing authority is the Governor. Either appointment or removal from service cannot take place in the absence of an order passed by the Governor, hence, to claim that direct recruits should be treated to be members of the service from the date prior to the

date of their appointment and from the date of their recommendation by the High Court is totally mis-conceived, hence, rejected.

Supreme Court judgments/orders in All India Judges' Association cases

118. The intervention of Hon'ble the Supreme Court with an object to strengthen judicial system at the grass root level started in All India Judges' Association 1st case (supra). It was a writ petition filed by All India Judges' Association with a prayer for constitution of All India Judicial Service, enabling provision for which was made in the Constitution of India with amendment of Article 312 by 42nd amendment. Further prayer was for providing uniform conditions of service for members of the subordinate judiciary throughout the country. In broader head of uniform conditions of service throughout the country, the relief was claimed on following counts:

- “(1) Uniformity in the Judicial cadres in the different States and Union Territories;
- (2) An appropriate enhanced uniform age of retirement for the Judicial Officers throughout the country;
- (3) Uniform pay scales as far as possible to be fixed;
- (4) Residential accommodation to be provided to every Judicial Officer.
- (5) Transport facility to be made available and conveyance allowance provided.
- (6) Adequate perks by way of Library Allowance, Residential Office Allowance, and Sumptuary Allowance to be provided.
- (7) Provision for in service training to be made.”

The prayer for setting up of an All India Judicial Service was

not seriously pressed. 14th report of the Law Commission of India submitted in the year 1958 was referred to with reference to requirement of practice at bar before recruitment as Judicial Officer, training after induction in service, designation, age for retirement, pay scales, allowances, residences and other facilities. While noticing various aspects with reference to the duties performed by the Judges, it was observed that Judges do not have an easy job. They repeatedly do what rest of us seek to avoid; make decisions. It was further observed that nature of work of a Judicial Officer being different, the Government can always prescribe a higher pay scale for a Judicial Officer. It was also noticed that Law Commission report was submitted way back in the year 1958, but the Government slept over that for 33 long years. It was the reason for Hon'ble the Supreme Court to intervene. The observations made regarding kind of life, lived by a Judge, are extracted below:

“45. These prescription for a Judicial Officer, therefore, results in a restricted life. Austerity is a quality to be practised by every Judge- personally as also in his public functioning. This necessarily gives rise to a situation where the Judge must have patience, perseverance and painstaking habits. In order that a Judge may be able to put in these aspects into his public functioning it is absolutely necessary that the Judge enjoys freedom from personal worries. A reasonable salary, appropriate allowances and manageable living conditions are, therefore, required to be provided.”

120. Finally, directions in the judgment were summed up in para No. 63 thereof, which are extracted below:

“63. We would now briefly indicate the directions we have given in the judgment:

- (i) An All India Judicial Service should be set up and the Union of India should take appropriate steps in this regard.
- (ii) Steps should be taken to bring about uniformity in designation of officers both in civil and the criminal side by March 31, 1993.
- (iii) Retirement age of Judicial Officers be raised to 60 years and appropriate steps are to be taken by December 31, 1992.
- (iv) As and when the Pay Commissions/Committees are set up in the States and Union territories, the question of appropriate pay scales of judicial officers be specifically referred and considered.
- (v) A working library at the residence of every judicial officer has to be provided by June 30, 1992. Provision for sumptuary allowance as stated has to be made.
- (vi) Residential accommodation to every judicial officer has to be provided and until State accommodation is available, government should provide requisitioned accommodation for them in the manner indicated by December 31, 1992. In providing residential accommodation, availability of an office room should be kept in view.

- (vii) Every District Judge and Chief Judicial Magistrate should have a State vehicle, judicial officers in sets of five should have a pool vehicle and others would be entitled to suitable loans to acquire two wheeler automobiles within different time limits as specified.
- (viii) In service Institute should be set up within one year at the Central and State or Union Territory level.”

121. The aforesaid directions clearly established the kind of pain Hon'ble the Supreme Court had taken to go into every minute aspect of the Judicial Officers' working at the grass root level. And for the judiciary to be independent, what kind of bare minimum facilities were required to be given to them so that they do not look for that anywhere else. The directions by Hon'ble the Supreme Court were required to be complied with, for which dates were specified.

122. Thereafter, the matter was taken up in All India Judges' Association 2nd case (supra). It was a bunch of Review Petitions, Special Leave Petitions and even a Writ Petition. The review petitions were filed by Union of India and various States raising objections to the specific directions given in All India Judges' Association 1st case (supra) to improve service conditions of the members of subordinate judiciary in the country. Legal objections were raised by the States referring to Articles 233 and 234 of the Constitution of India claiming that determination of service conditions of the Judges is in the purview of State Legislature/Government, but power has been whittled down with specific directions given by Hon'ble

the Supreme Court. The directions resulted in change of administrative policy, which may entail heavy financial burden. Some of the States may not be able to bear that. Pay Commissions are set up by the States from time to time. Specific objections were raised to various directions given in All India Judges' Association 1st case (supra).

123. Hon'ble the Supreme Court in the aforesaid judgment strongly observed that failure to realise the distinction between judicial service and other services is at the bottom of the hostility displayed by the review petitioners to the directions given in the judgment. The judicial service is not service in the sense of 'employment'. The Judges are not employees. As members of the judiciary, they exercise sovereign judicial power of the State. The Judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of the other services. The members of other services, therefore, cannot be placed at par with members of the judiciary, either constitutionally or functionally. Judicial independence cannot be secured by making mere solemn proclamation about it. It has to be secured both in substance and in practice. Those who are in want cannot be free. Self-reliance is the foundation of independence. Under the Constitution, judiciary is above the administrative executive and any attempt to place it at a par with the administrative executive has to be discouraged.

124. With reference to Article 309 of the Constitution of India, it was observed that merely because that Article gives power to the executive and the legislature to prescribe service conditions of the judiciary, does not mean that the judiciary should have no say in the matter. It would be against the spirit of the Constitution to deny any role to the judiciary in that behalf,

for theoretically it would not be impossible for the executive or the legislature to turn and twist the tail of the judiciary by using the said power. Such a consequence would be against one of the seminal mandates of the Constitution, namely, to maintain independence of the judiciary. It was with this reference that idea of an independent Commission exclusively constituted for judicial service was coined. Hon'ble the Supreme Court had to intervene where the authorities failed to discharge their duties for decades. The directions were explained to mean that these are essentially for evolvement of an appropriate national policy by the Government with regard to judiciary's condition. The directions are merely aids and incidental to, which are both reasonable and necessary. All the issues were evaluated in detail and finally the directions were summed up in para No. 52 thereof, which is extracted below:

“52. To sum up, we hold as follows:

(a) The legal practice of three years should be made one of the essential qualifications for recruitment to the judicial posts at the lowest rung in the judicial hierarchy.

Further, wherever the recruitment of the judicial officers at the lowest rung is made through the Public Service Commission, a representative of the High Court should be associated with the selection process and his advice should prevail unless there are strong and cogent reasons for not accepting it, which reasons should be recorded in writing.

The rules for recruitment of the judicial officers should be amended forthwith to incorporate the above directions.

(b) The direction with regard to the enhancement of the superannuation age is modified as follows:

While the superannuation age of every subordinate judicial officer shall stand extended upto 60 years, the respective High Courts should, as stated above, assess and evaluate the record of the judicial officer for his continued utility well within time before he attains the age of 58 years by following the procedure for the compulsory retirement under the Service rules applicable to him and give him the benefit of the extended superannuation age from 58 to 60 years only if he is found fit and eligible to continue in service. In case he is not found fit and eligible, he should be compulsorily retired on his attaining the age of 58 years.

The assessment in question should be done before the attainment of the age of 58 years even in cases where the earlier superannuation age was less than 58 years.

The assessment directed here is for evaluating the eligibility to continue in service beyond 58 years of age and is in addition to and independent of the assessment for compulsory retirement that may have to be undertaken under the relevant Service rules, at the earlier stages.

Since the service conditions with regard to superannuation age of the existing judicial officers is hereby changed, those judicial officers who are not desirous of availing of the benefit of the enhanced superannuation age with the condition for compulsory retirement at the age of 58 years, have

the option to retire at the age of 58 years. They should exercise this option in writing before they attain the age of 57 years. Those who do not exercise the said option before they attain the age of 57 years, would be deemed to have opted for continuing in service till the enhanced superannuation age of 60 years with the liability to compulsory retirement at the age of 58 years.

Those who have crossed the age of 57 years and those who cross the age of 58 years soon after the date of this decision will exercise their option within one month from the date of this decision. If they do not do so, they will be deemed to have opted for continuing in service till the age of 60 years. In that case, they will also be subjected to the review for compulsory retirement, if any, notwithstanding the fact that there was not enough time to undertake such review before they attained the age of 58 years. However in their case, the review should be undertaken within two months from the date of the expiry of the period given to them above for exercising their option, and if found unfit, they should be retired compulsorily according to the procedure for compulsory retirement under the Rules.

Those judicial officers who have already crossed the age of 58 years, will not be subjected to the review for compulsory retirement and will continue in service up to the extended superannuation age of 60 years since they have had no opportunity to exercise their option and no review for compulsory retirement could be undertaken in their case before

they reached the age of 58 years.

(c) The direction for granting sumptuary allowance to the District Judges and Chief Judicial Magistrates stands withdrawn for the reasons given earlier.

(d) The direction with regard to the grant of residence-cum-library allowance will cease to operate when the respective State Governments/Union Territory Administrations start providing the courts, as directed above, with the necessary law books and journals in consultation with the respective High Courts.

(e) The direction with regard to the conveyance to be provided to the District Judges and that with regard to the establishment of the training institutes for the Judges have been clarified by us in paragraphs 7(vii) and (viii) respectively. It is the Principal District Judge at each district headquarter or the metropolitan town as the case may be, who will be entitled to an independent vehicle. This will equally apply to the Chief Judicial Magistrate and the Chief Metropolitan Magistrate. The rest of the Judges and Magistrates will be entitled to pool-vehicles-- one for every five Judges for transport from residence to court and back – and when needed, loans for two wheeler automobiles and conveyance allowance. The State Governments/Union Territory Administrations are directed to provide adequate quantity of free petrol for the vehicles not exceeding 100 litres per month in consultation with the High Court.

(f) In view of the establishment of the National Judicial

Academy, it is optional for the States to have their independent or joint training judicial institutes.

(g) The rest of the directions given in the judgment under review are maintained.

(h) In view of the pendency of these review petitions,

(i) the time to comply with the directions for bringing about uniformity in hierarchy, designations and jurisdictions of judicial officers on both civil and criminal sides is extended upto March 31, 1994.

(ii) the time to comply with the directions to provide law books and law journals to all courts is extended upto December 31, 1993 failing which the library allowance should be paid to every judicial officer with effect from January 1, 1994 if it is not paid already;

(iii) the time to provide suitable residential accommodation, requisitioned or Government, to every judicial officer is extended upto March 31, 1994;

(iv) the time to comply with the rest of the directions is maintained as it was directed by the judgment under review.”

125. It was specifically clarified in para No. 56 of the judgment that for any clarification of direction, application shall be maintainable only before Hon'ble the Supreme Court.

126. In the follow up action of All India Judges' Association 2nd case

(supra), vide order dated 10.4.1995, in All India Judges' Association 5th case (supra), Hon'ble the Supreme Court impressed upon the State Governments to comply with the directions at the earliest, least the court may be compelled to initiate drastic action.

127. In All India Judges' Association 6th case (supra), vide order dated 29.9.1997, Hon'ble the Supreme Court noticed the submission made by the State counsel for enlargement of terms of reference of Justice Shetty Commission to include therein even the revision of pay scales and other conditions of service of staff in the subordinate courts. It was found to be appropriate for proper and effective functioning of the subordinate courts. Final decision taken by the State Governments in this regard was to be reported to the court. Hon'ble the Supreme Court also considered it necessary to require all the States to file comprehensive status reports of action taken by them to implement the directions given in All India Judges' Association 1st and 2nd cases (supra). The Advocates General of the State concerned were also requested to appear in court on the next hearing and ensure proper attention of the Governments on the issues raised by the court.

128. In All India Judges' Association 7th case (supra), vide order dated 17.12.1997, Hon'ble the Supreme Court noticed resolution dated 16.12.1997 of the Government of India, Ministry of Law and Justice showing enlargement of terms of reference of Justice Shetty Commission to enable it to make recommendation even in the nature of interim relief. While noticing disinclination of the States and Union Territories, with reference to the staff of subordinate courts, it was noticed that service conditions of the staff of subordinate courts is a significant factor having

relevance in the functioning of subordinate courts. It is directly connected with administration of justice and thereby with rule of law, hence, the matter requires examination in exercise of power under Article 32 of the Constitution of India. In case need be, Article 142 of the Constitution of India can also be invoked. All India Judicial Employees' Confederation District & Sessions Court were permitted to intervene. The High Courts were requested to furnish detailed status reports regarding compliance of the previous order passed.

129. Thereafter, the matter was considered by Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), which was a writ petition filed under Article 32 of the Constitution of India. Even the judgment notices that this is third round before the Supreme Court. The directions given in All India Judges' Association 1st case (supra) were noticed and also the fact that number of them had been implemented. The judgment also refers to All India Judges' Association 2nd case (supra) and the directions given therein. Various recommendations made by Shetty Commission were noticed, which included appointments to higher judicial service and inter-se seniority amongst the promoted and directly recruited officers. In para No. 27 of the judgment, the recommendations made by Shetty Commission with regard to method of recruitment were considered.

130. One of the important aspect considered therein was regarding method of recruitment in the cadre of higher judicial service, i.e., District Judges and the Additional District Judges. Noticing that at present there were two sources of recruitment, namely, by promotion and direct recruitment and the subordinate judiciary is the foundation of the edifice of judicial system, it was opined that like any other foundation, it should

become as strong as possible. The weight of the judicial system essentially rests on the subordinate judiciary. Hon'ble the Supreme Court was conscious of the fact that keeping in view the independence of judicial system, they had directed for constitution of an independent pay commission and to examine other facilities to be provided to the judicial officers. At the same time, it was required that judicial officers, hardworking as they are, become more efficient. They are up-date in knowledge of law. Establishment of judicial academies was also recommended by Justice Shetty Commission.

131. Hon'ble the Supreme Court was of the opinion that there have to be certain minimum standards, objectively adjudged, for officers who are to enter higher judicial service as Additional District Judges and District Judges. While agreeing with the recommendation made by Justice Shetty Commission that 25% of the posts of the higher judicial service be filled up by way of direct recruitment after holding a competitive examination, both written and viva-voce. Regarding objective method of testing suitability of the subordinate judicial officer for promotion to the higher judicial service, Hon'ble the Supreme Court opined that some incentive needs to be given to relatively junior and other officers to improve and to compete with each other, so as to excel and get quicker promotion. This will result in improvement in calibre of the members of judicial service. Out of 75% posts meant for promotion quota, it was directed that 50% of the total posts shall be filled in by promotion on the principle of merit-cum-seniority. For this purpose, the High Courts were required to devise and evolve a test in order to ascertain and examine legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case law. The

remaining 25% of the posts are to be filled up by promotion strictly on the basis of merit through a limited departmental competitive examination, for which Civil Judges (Senior Division), with at least 5 years of service are to be eligible. The High Courts were directed to frame the rules in this regard. After discussion, the directions as given by Hon'ble the Supreme Court are extracted below:

The relevant parts thereof are extracted below:

“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 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 scale 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 standards, 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 advocate 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 voca test conducted by respective High Courts.

[2] Appropriate rules shall be framed as above by the High Courts as early as possible.” *[Emphasis supplied]*

132. The judgment was delivered on 21.3.2002. Hon'ble the Supreme Court observed that appropriate Rules be framed by the High Courts as early as possible.

133. Another important issue considered by Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra) was with reference to

inter-se seniority of the officers of superior judicial service. It was noticed that there had been constant discontentment amongst the officers with regard to their seniority.

134. Noticing the fact that there is lot of litigation amongst the officers regarding inter-se seniority and with experience that there is least amount of litigation where the roster system is followed and one of the methods to avoid litigation and bring about certainty is by specifying quotas in relation to posts and not in relation to vacancies. A direction was issued to all High Courts to suitably amend the seniority Rules on the basis of roster principle as approved by Hon'ble the Supreme Court in R. K. Sabharwal and others v. State of Punjab and others, (1995) 2 SCC 745, as early as possible, in any case by 31.3.2003. The recommendation for giving any weightage of service rendered in subordinate judiciary after promotion to higher judicial service in determination of their seniority vis-a-vis the direct recruits was dis-approved. The relevant paras of the judgment dealing with the issue are extracted below:

29. Experience has shown that there has been a constant discontentment amongst the members of the Higher Judicial Service in regard to their seniority in service. For over three decades large number of cases have been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle "merit-cum- seniority", 25 per cent

strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, in so far as seniority is concerned, is where a roster system is followed. For example, there is, as per the Rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the Service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in ***R. K. Sabharwal and Ors., v. State of Punjab reported in [1995] 2 SCC 745.*** One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40 point roster works. We direct the High Courts to suitably amend and promulgate Seniority Rules on the basis of the roster principle as approved by this Court in R.K. Sabharwal 's case (supra) as early as possible. We hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant Rules seniority is to be determined on the basis of

quota and rotational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31st March, 2003.

29. We disapprove the recommendation of giving any weightage to the members of the Subordinate Judicial Service in their promotion to the Higher Judicial Service in determining seniority vis-a-vis direct recruits and the promotees. The roster system will ensure fair play to all while improving efficiency in the service.” *[Emphasis supplied]*

135. Thereafter, the matter was considered in All India Judges' Association 4th case (supra), in interim application filed in earlier decided matter. Different High Courts shared their experience as to why they were not able to fill up 25% of the posts in Superior Judicial Service cadre, which were ear-marked to be filled by way of limited departmental competitive examination. It was either on account of non-holding of test or non-availability of candidates or for other reasons. Some of the High Courts pointed out that there was no provision in the Rules to fill up the posts so remaining vacant by way of regular promotion or otherwise. Some of the States were in favour of reducing the quota of 25% of limited departmental competitive examination, whereas opinion of some of the States was that quota should be allowed to continue and in case any posts remained vacant in that quota, it could be filled up by way of regular promotion. In some of

the States, Civil Judges (Senior Division) were being promoted before even completion of five years of service, hence, the posts meant for limited departmental competitive examination, remained vacant. Again with experience and inputs from different High Courts, Hon'ble the Supreme Court opined that suitable amendment be made in the Rules to reduce the quota of limited departmental competitive examination from 25% to 10%. It was directed that 'henceforth' only 10% of the cadre strength of the District Judges shall be filled up by way of limited departmental competitive examination. If any post is not filled up under 10% quota, the same shall be filled up by regular promotion. The existing service Rules were directed to be amended positively w.e.f. 1.1.2011. In case the Rules are not amended by that time, the order was to prevail and all further recruitments from 1.1.2011 were to be made in terms of the directions issued by Hon'ble the Supreme Court. Date was fixed apparently considering the previous experience where amendment in the Rules, as directed by Hon'ble the Supreme Court was not made within the time granted. Relevant paras thereof are extracted below:

“3. After this judgment, High Courts have amended Service Rules and 25% posts of District Judges are being filled up by the Limited Departmental Competitive Examination. But many High Courts found it difficult to fill up 25 per cent through such process. In some of the States as many as 50 posts of District Judges, to be filled up by the said exercise, remained vacant and there is no alternative method provided by which, these vacant posts could be filled up. Some of the States, for example, in the States of Bihar, U. P. and Kerala, there are adequate Rules to the effect so that unfilled posts could be filled up by regular

promotion. But in many States, there are no such Rules to fill up these vacancies. Most of the States are in favour of reducing the percentage from 25 per cent of Limited Departmental Competitive Examination, but many of the States, for example, States of Gujarat, Delhi, M. P., J&K and H. P. maintained that this 25 per cent should be continued but they are also of the view, in case there are vacant posts then it be filled up by regular promotion. For the time being, in many of the States, these unfilled vacancies are filled up by ad-hoc promotions or temporary promotions. This certainly creates difficulty in service as later on when regular candidates will be available for promotion, the ad-hoc/temporary District Judges are likely to be reverted as Civil Judge (Sr. Divn.), which is not desirable for a Judicial Service.

4. In some of the States sufficient number of candidates are not available for being promoted under this particular category as a Civil Judge (Sr. Divn.) in normal course gets promotion before completion of period of 5 years. As 25 per cent quota is prescribed, a large number of vacancies remained unfilled and that is not good for the judicial administration in that State.

5. 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.

6. 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.

7. 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.

8. All the High Courts are hereby directed to take steps to see that existing Service Rules be amended positively with effect from 1.1.2011. If the Rules are not suitably amended, this Order shall prevail and further recruitment from 1.1.2011 shall be continued accordingly as directed by us. The time schedule prescribed in the Order dated 4.1.2007 (in Malik Mazhar Sultan's case) shall be strictly adhered to for the purpose of selection. All the vacancies are to be filled up in that particular year and there shall not be any carry forward of the unfilled posts.”

[Emphasis supplied]

136. In Malik Mazhar Sultan and another v. U. P. Public Service Commission and others, (2006) 9 SCC 507, Hon'ble the Supreme Court emphasized for filling up vacancies annually subject to the exception where sufficient vacancies do not occur in a given year. Relevant para 23 thereof is extracted below:

“23. It is absolutely necessary to evolve a mechanism to speedily determine and fill vacancies of Judges at all levels. For this purpose, timely steps are required to be taken for determination of vacancies, issue of advertisement, conducting examinations, interviews, declaration of the final results and issue of orders of appointments. For all these and other steps, if any, it is necessary to provide for fixed time schedule so that system works automatically and there is no delay in filling up

of vacancies. The dates for taking these steps can be provided for on the pattern similar to filling of vacancies in some other services or filling of seats for admission in medical colleges. The schedule appended to the Regulations governing medical admissions sets out a time schedule for every step to be strictly adhered to every year. The exception can be provided for where sufficient number of vacancies do not occur in a given year. The adherence to strict time schedule can ensure timely filling of vacancies. All State Governments, Union Territories and/or High Courts are directed to provide for time schedule for the aforesaid purposes so that every year vacancies that may occur are timely filled. All State Governments, Union Territories and High Courts are directed to file within three months details of the time schedule so fixed and date from which time schedule so fixed would be operational.”

[Emphasis supplied]

137. In a follow up of the aforesaid judgment in Malik Mazhar Sultan (3) and another's case (supra), schedule was given for filling of vacancies in Superior Judicial Service from all three sources, it was to start with notification of vacancies by 31st March every year and end with joining of officers by 31st October. The exercise was to be done annually with report submitted to Registrar General of Hon'ble Supreme Court by 31st January every year. Liberty was given to the High Courts, State Governments and Union Territories to apply to Hon'ble the Supreme Court for variation in the time schedule in case of any difficulty on account of geographical or climatic or other relevant considerations. Till such time, a different schedule

is permitted, the time schedule as provided in the judgment was to be adhered to. These directions have relevance if seen in the light of directions given in All India Judges' Association 4th case (supra) where roster was to be followed for determining inter-se seniority of officers.

Articles 141/144 of the Constitution of India

138. In B. S. Yadav's case (supra), Hon'ble the Supreme Court observed that it was unable to understand how in discharge of administrative functions, the High Court could have failed to follow a judgment of its own court consisting of five Hon'ble Judges.

139. In Tirupati Balaji Developers (P) Ltd.'s case (supra), Hon'ble the Supreme Court examined the constitutional scheme for the judiciary. The High Court is not a court subordinate to the Supreme Court. The Supreme Court has not been conferred any power of superintendence. Supreme Court and High Courts, both are courts of record. The Supreme Court has been assigned a higher place in hierarchy over the High Court, as it has appellate jurisdiction in all civil and criminal matters, being the highest court. It is the final interpreter of law. It can transfer any case pending before one High Court to another High Court or can withdraw any case to its jurisdiction. Under Article 141 of the Constitution of India, the law declared by the Supreme Court is binding on all courts including High Courts. Under Article 144 of the Constitution of India, all authorities, civil and judicial, including High Courts,-- shall act in aid of the Supreme Court. The appellate jurisdiction inherently carries with it power to issue corrective directions, which are binding in nature. Any failure to carry out such direction or show dis-respect would be destructive of the hierarchial system in the administration of justice. Relevant paras thereof are extracted

below:

“8. Under the constitutional scheme as framed for the judiciary, the Supreme Court and the High Courts, both are courts of record. The High Court is not a court “subordinate” to the Supreme Court.

There are a few provisions which give an edge, and assign a superior place in the hierarchy, to the Supreme Court over High Courts. So far as the appellate jurisdiction is concerned, in all civil and criminal matters, the Supreme Court is the highest and the ultimate court of appeal. It is the final interpreter of the law. Under Article 139-A, the Supreme Court may transfer any case pending before one High Court to another High Court or may withdraw the case to itself. Under Article 141 the law declared by the Supreme Court shall be binding on all courts, including High Courts, within the territory of India. Under Article 144 all authorities, civil and judicial, in the territory of India-- and that would include High Courts as well-- shall act in aid of the Supreme Court.

9..... The appellate jurisdiction inherently carries with it a power to issue corrective directions binding on the forum below and failure on the part of the latter to carry out such directions or show disrespect to or to question the propriety of such directions would – it is obvious – be destructive of the heirarchical system in administration of justice. The seekers of justice and the society would lose faith in both.

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12. Adapting the abovesaid pronouncements of authority as guiding the resolution of the issue in our hands, we may venture to say that in spite of the Supreme Court and the High Courts being both constitutionally independent of each other and both being courts of record, to the extent of exercise of appellate jurisdiction certainly the Supreme Court exercises a superior jurisdiction and hence is a superior court than the High Courts which exercise in that context an inferior or subordinate jurisdiction.”

[Emphasis supplied]

140. In Supreme Court Bar Association and others' case (supra), unique issue came up for consideration before Hon'ble the Supreme Court, where the Supreme Court Bar Association refused to give effect to the judgment of Hon'ble the Supreme Court in Supreme Court Bar Association v. B. D. Kaushik, (2011) 13 SCC 774, vide resolutions dated 16.1.2012 and 18.1.2012. Hon'ble the Supreme Court opined that the aforesaid resolutions adopted in the general body meeting were deliberate act to dis-respect the majesty and dignity of the Supreme Court. It was outrightly contumacious. The Supreme Court Bar Association, being a leading Bar Association and whose members are expected to provide leadership and example to other Bar Associations in the country, should not have behaved in that manner. It was highly regrettable. If the Bar Association resolved not to abide by the judgment and even act in defiance thereof, the Supreme Court has ample power to enforce its orders and directions by taking recourse to Article 142 of the Constitution of India to do complete justice to the parties. Even in a

case where the order has not yet been implemented, the *lis* does not cease and such a matter will be considered to be included in the expression “matter pending before it”, as mentioned in Article 141 of the Constitution of India. In case a party refuses to abide by the decision of the Supreme Court, it would have no option but to take recourse to Article 129 of the Constitution of India and the provisions of the Contempt of Courts Act, 1971. It is obligation of all citizens to act in aid of Hon'ble the Supreme Court to obey any decision and comply with any directions contained in the judgment of Hon'ble the Supreme Court, in view of the provisions of Article 141 of the Constitution of India. To take any other view would result in rendering the orders of Hon'ble the Supreme Court meaningless. Relevant paras thereof are extracted below:

“79. The Resolutions adopted at the General Body Meeting on 16th January, 2012, and, thereafter, on 18th January, 2012, were not only an affront to the majesty and dignity of the Supreme Court, but were outright contumacious. It is highly regrettable that the members of the Supreme Court Bar Association, which is the leading Bar Association in the country and whose members are expected to provide leadership and example to other Bar Associations of the country and to act in aid of the judgments of the Courts, should have resorted to a Resolution not to abide by the judgment and to even act in defiance thereof by resolving that all members of the Bar Association would be entitled to vote in the elections.

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86. We are unable to accept the said submission made by Mr. Dwivedi and Mr. Singh, since the need to implement the directions contained in the judgment does not cease upon the judgment being delivered. In order to enforce its orders and directions, the Supreme Court can take recourse to the powers vested in it under Article 142 of the Constitution to do complete justice to the parties. In such cases, the lis does not cease and the expression “matter pending before it” mentioned in Article 142 of the Constitution, would include matters in which orders of the Supreme Court were yet to be implemented, when particularly such orders were necessary for doing complete justice to the parties to the proceedings. To take any other view would result in rendering the orders of the Supreme Court meaningless.

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88. This Court in *Supreme Court Bar Assn. v. Union of India*, (1998) 4 SCC 409 further observed that: (SCC p. 431, para 47)

“47..... This plenary jurisdiction is, thus, the residual source of power which this court may draw upon as necessary *whenever it is just and equitable to do so* and in particular to ensure the observance of the due process of law, *to do complete justice between the parties*, while administering justice according to law”.

[*Emphasis in original*]

In the event the parties do not or refuse to abide by its decision, the Supreme Court would have no option, but to take recourse

to the provisions of Article 129 of the Constitution or under the provisions of the Contempt of Courts Act, 1971.

89. When a judgment has been delivered by this Court, it is the obligation of all citizens to act in aid thereof and to obey the decision and the directions contained therein, in view of the provisions of Article 141 of the Constitution, until and unless the same are modified or recalled. In the said background, each of the Resolutions said to have been adopted at the purported meeting of the General Body of the SCBA on 16th January, 2012, do not muster scrutiny and must be held to be in violation of Article 141 of the Constitution and cannot, therefore, be countenanced.”

[Emphasis supplied]

141. In Sahara India Real Estate Corporation Limited and others' case (supra), Hon'ble the Supreme Court examined the issue to find out an acceptable constitutional balance between free press and the administration of justice. Theory of order of postponement of publication was devised. The High Courts and the Supreme Court, being courts of record, were held to be competent to pass postponement order under their inherent jurisdiction. Such orders would fall within “reasonable restrictions” under Article 19(2) of the Constitution of India. The principle underlying postponement order is to prevent possible contempt. The power to postpone publicity in appropriate cases is a preventive measure without disturbing its contents. Such orders direct postponement of publication for a limited period. Such measures protect the media from getting prosecuted or punished for committing contempt. It was opined that precedents of the Supreme Court

under Article 141 of the Constitution of India and the comparative constitutional law help the courts to understand the Indian Constitution. While expressing opinion on the right of postponement of publication, the Constitution Bench provided even remedy to enforce that right. Any person apprehending infringement of his/her right under Article 21 of the Constitution of India to a fair trial would be entitled to approach writ court and seek order of postponement of publication. The concept of judicial law making was held to be part of the judicial process. The issue was considered as objection was raised by some of the parties regarding maintainability of the proceedings. The phrase 'law declared by the Supreme Court' as used in Article 141 of the Constitution, means the law made while interpreting the statutes or the Constitution. Relevant paragraphs thereof are extracted below:

“52. Article 141 uses the phrase “law declared by the Supreme Court.” It means law made while interpreting the statutes or the Constitution. Such judicial law-making is part of the judicial process. Further under Article 141, law-making through interpretation and expansion of the meanings of open-textured expressions such as “law in relation to contempt of court” in Article 19(2), “equal protection of law”, “freedom of speech and expression” and “administration of justice” is a legitimate judicial function. According to Ronald Dworkin, “Arguments of principle are arguments intended to establish an individual right. Principles are propositions that describe rights.” [See “Taking Rights Seriously” by Ronald Dworkin, 5th Reprint 2010, p. 90]. In

this case, this Court is only declaring under Article 141, the constitutional limitations on free speech under Article 19(1)(a), in the context of Article 21. The exercise undertaken by this Court is an exercise of exposition of constitutional limitations under Article 141 read with Article 129/Article 215 in the light of the contentions and large number of authorities referred to by the counsel on Article 19(1)(a), Article 19(2), Article 21, Article 129 and Article 215 as also the “law of contempt” insofar as interference with administration of justice under the common law as well as under Section 2(c) of 1971 Act is concerned. What constitutes an offending publication would depend on the decision of the court on case to case basis. Hence, guidelines on reporting cannot be framed across the Board. The shadow of “law of contempt” hangs over our jurisprudence. This Court is duty bound to clear that shadow under Article 141. The phrase “in relation to contempt of court” under Article 19(2) does not in the least describe the true nature of the offence which consists in interfering with administration of justice; in impeding and perverting the course of justice. That is all which is done by this judgment.

53. We have exhaustively referred to the contents of the IAs filed by Sahara and SEBI. As stated above, the right to negotiate and settle in confidence is a right of a citizen and has been equated to a right of the accused to defend himself in a criminal trial. In this case, Sahara has complained to this

Court on the basis of breach of confidentiality by the Media. In the circumstances, it cannot be contended that there was no lis. Sahara, therefore, contended that this Court should frame guidelines or give directions which are advisory or self-regulatory whereas SEBI contended that the guidelines/directions should be given by this Court which do not have to be coercive. In the circumstances, constitutional adjudication on the above points was required and it cannot be said that there was no lis between the parties. We reiterate that the exposition of constitutional limitations has been done under Article 141 read with Article 129/Article 215. When the content of rights is considered by this Court, the Court has also to consider the enforcement of the rights as well as the remedies available for such enforcement. In the circumstances, we have expounded the constitutional limitations on free speech under Article 19(1)(a) in the context of Article 21 and under Article 141 read with Article 129/Article 215 which preserves the inherent jurisdiction of the Courts of Record in relation to contempt law. We do not wish to enumerate categories of publication amounting to contempt as the Court(s) has to examine the content and the context on case to case basis.”

Uniform Rules-Punjab & Haryana Judicial Officers

142.

In B.S. Yadav and others' case (supra), Hon'ble the Supreme

Court, while dealing with issue of seniority pertaining to judicial officers from the States of Punjab and Haryana, found it to be strange that the Rules governing the seniority of the officers in two States were different though being administered by the same High Court. It emphasised for having uniform rules. Relevant paras therefrom are extracted below:

“79. Punjab and Haryana have a peculiar problem since they have a common High Court. But they are blessed, not cursed, with a common High Court. Today we find the strange spectacle of the High Court being called upon to determine the seniority of officers in one State by one test and that of officers in the other State by an opposite test. In Punjab, continuous officiation on a post in the service is the criterion of seniority. In Haryana, the date of confirmation is the governing factor. Can the two Governors not come together and take a joint decision applying a uniform test of seniority of their judicial officers who are under one common High Court ?”

143. Hon'ble the Supreme Court also in All India Judges' Association 3rd case (supra) directed for framing of uniform Rules throughout the country with reference to mode of recruitment and determination of seniority.

144. But at the time of framing of the Rules in 2007 after judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), though same set of Rules were recommended by the High Court to both the States but State of Punjab made changes while notifying the same without consultation with High Court. It was totally inappropriate on the part of the State to have done this. Judgment by Hon'ble the Supreme Court

was binding on it. In the process, it has violated the same. This is how the Rules are little bit different now.

Principles of merit-cum-seniority

145. In Sant Ram Sharma v. State of Rajasthan and others, AIR 1967 SC 1910, a Constitution Bench of Hon'ble the Supreme Court considered the issue whether the petitioner therein had a right to be promoted as Deputy Inspector General of Police merely on the ground of his seniority. Noticing the fact that the post in question was a selection post, it was opined that promotion to selection grade or selection post is to be based primarily on merit and not on seniority alone. Hon'ble the Supreme Court opined that trouble with only seniority system is that it is so objective that it fails to take into account personal merit. This system is fair to every official except the best ones; an official has nothing to gain or loss except when he does not actually becomes so inefficient that disciplinary action has to be taken against him. The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole organisation. Relevant paras from the judgment are extracted below:

(4). The question for determination in this case is whether the petitioner was entitled, as of right, to be promoted as Deputy Inspector General of Police in 1955 or as Inspector General of Police in 1966 merely on the ground that his name stood first in the Gradation List prepared under Rule 6 of the Indian Police Service (Regulation of Seniority) Rules, 1954.

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(6)we are of the opinion that the three posts of Inspector

General of Police, Additional Inspector General of Police and Deputy Inspector General of Police in Rajasthan State are selection posts and outside the junior or senior time-scales of pay.....

In our opinion, the respondents are right in their contention that the ranking or position in the Gradation List does not confer any right on the petitioner to be promoted to selection posts and that it is a well-established rule that promotion to selection grades or selection posts is to be based primarily on merit and not on seniority alone. The principle is that when the claims of officers to selection posts is under consideration, seniority should not be regarded except where the merit of the officers is judged to be equal and no other criterion is therefore available.

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(9) Mr. N. C. Chatterjee argued that the introduction of the idea of merit into the procedure of promotion brings in an element of personal evaluation, and that personal evaluation open is the door to the abuses of nepotism and favouritism, and so, there was a violation of the constitutional guarantee under Arts. 14 and 16 of the Constitution. We are unable to accept this argument as well-founded. The question of a proper promotion policy depends on various conflicting factors. It is obvious that the only method in which absolute objectivity can be ensured is for all promotions to be made entirely on grounds of seniority. That means that if a post falls vacant it is filled by

the person who has served longest in the post immediately below. But the trouble with the seniority system is that it is so objective that it fails to take any account of personal merit. As a system it is fair to every official except the best ones; an official has nothing to win or lose provided he does not actually become so inefficient that disciplinary action has to be taken against him. But, though the system is fair to the officials concerned, it is a heavy burden on the public and a great strain on the efficient handling of public business. The problem therefore is how to ensure reasonable prospect of advancement to all officials and at the same time to protect the public interest in having posts filled by the most able men? In other words, the question is how to find a correct balance between seniority and merit in a proper promotion-policy. In this connection Leonard D. White has stated as follows:-

"The principal object of a promotion system is to secure the best possible incumbents for the higher positions, while maintaining the morale of the whole Organisation. The main interest to be served is the public interest, not the personal interest of members of the official group concerned. The public interest is best secured when reasonable opportunities for promotion exist for all qualified employees, when really superior civil servants are enabled to move as rapidly up the Promotion ladder as their merits deserve and as vacancies occur, and when selection for promotion is made on the sole basis of

merit. For the merit system ought to apply as specifically in making promotions as in original recruitment.

Employees often prefer the rule of seniority, by which the eligible longest in service is automatically awarded the promotion. Within limits, seniority is entitled to consideration as one criterion of selection. It tends to eliminate favouritism or the suspicion thereof; and experience is certainly a factor in the making of a successful employee. Seniority is given most weight in promotions from the lowest to other subordinate positions. As employees move up the ladder of responsibility, it is entitled to less and less weight. When seniority is made the sole determining factor, at any level, it is a dangerous guide. It does not follow that the employee longest in service in a particular trade is best suited for promotion to a higher grade; the very opposite may be true".

[Emphasis supplied]

146. In Rajendra Kumar Srivastava and others' case (supra), Hon'ble the Supreme Court considered as to whether minimum qualifying marks could be prescribed for assessment of past performance and interview, where the promotions were to be made on the principle of 'seniority-cum-merit'. The principle 'seniority-cum-merit' postulates the requirement of certain minimum merit or satisfying a benchmark previously fixed and subject to fulfilling the said requirement, the promotion is based on seniority. Assessment of merit is absent in the case of 'seniority-cum-merit'.

The principle of 'merit-cum-seniority' has been placed at a different pedestal. In this, merit is to play a significant role. The minimum merit can be assessed either by subjecting the candidates to a written examination or interview or by assessment of their work performance during the previous years or by a combination of either two or all the three of the aforesaid methods. It was held that prescribing qualifying marks to ascertain minimum merit necessary for discharging functions of the higher post is not violative of the concept of promotion by merit-cum-seniority.

147. In Haryana State Warehousing Corporation and others' case (supra), while reiterating the aforesaid principle, it was opined that even in the case of promotion being on seniority-cum-merit, the officer cannot claim promotion as a matter of right by virtue of his seniority alone. If he is found unfit to discharge the duties of higher post, he may be ignored. A senior, though less meritorious, may get promotion as the concept of comparative merit is missing, in case both are found to be having minimum necessary merit. Whereas the principle of 'merit-cum-seniority' puts greater emphasis on merit and ability, and seniority plays a less significant role. Seniority is given weightage only when merit and ability are more or less equal.

148. Same principle was reiterated in Balbir Singh Bedi's case (supra).

149. Is public interest more important than the personal interest ? In fact, this apparently was the idea when Hon'ble the Supreme Court, while carrying out mammoth exercise, in All India Judges' Association 3rd case (supra) directed for improvement of infrastructural facilities for the judicial system and pay and other allowances for the judicial officers by giving more weightage to merit than seniority. As an officer goes to the higher position,

his responsibilities increase. The judicial officers are in a system where they are appointed to judge others' decisions. So in the system, criteria of merit has to be on the top. They are moving on upper side in a pyramid; will have more people to command and guide, deal with important matters and so have to lead by example. Unless the leader is meritorious, he may not be able to lead his team.

150. Not only the merit, stress of Hon'ble the Supreme Court was also on the fact that these officers have upto date knowledge of law, which is required to be tested even for the purpose of regular promotion, besides any other quotas. The judicial pronouncements have importance of which upto date knowledge is required as law is to be implemented in terms of the final interpretation by Hon'ble the Supreme Court. The idea is to make the system more responsive and independent to serve the needs of the society. If an officer is upto date in law and correctly applies the same in the facts of a case, consequent order results in lesser litigation and lesser harassment of the litigants. The parties will be satisfied if correct orders are passed. The courts are already over-loaded with litigation. In this manner, certain percentage of litigation could be avoided. As one goes up, merit should be the only criteria. It brings change in attitude. Without consideration of merit, if the promotions are to be made on the basis of seniority alone, it is not a good sign for a progressive society, rather, it will derail the system down. The people will move on a beaten track, with no improvement. Same ideas will flow from bottom to top. Seniority is experience alone, may be with no merit. We are facing new challenges. New ideas are required, hence, the merit is important. Many of the judicial officers in the superior judicial service may have chance of elevation even to this court or the Apex Court,

hence, there cannot and should not be any compromise on merit. A judge is one man machine in judicial system. Judges' stock in trade is their intellect. Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra) did not leave the matter as such after dealing with infrastructure and facilities for the Judges and giving more importance to merit. It also directed for setting up of Judicial Academies to up-date knowledge of the judicial officers in law. If in any system, promotion is assured merely on the basis of seniority, there would be no incentive to work. With the passage of time, even more meritorious will become lethargic. They will also adopt the track adopted by their other colleagues, even though they had the potential sometimes, which brings negativity as well. By giving merit supermacy, the entire effort is to make the foundation of the judicial system, which is the basic structure of the Constitution, strong.

151. With the aforesaid discussions, Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra) provided that even regular promotion have to be on the basis of merit-cum-seniority and passing of a suitability test. A test was devised inter-alia to test 'up-to-date knowledge of law' of the officer seeking promotion. Such knowledge needs to be tested just before the promotion is made. It is not to be treated as mere basic qualification such as graduation or post-graduation or a degree in law which provide you basic knowledge of a subject. The words 'up-to-date knowledge of law' have to be given true and purposive meaning. Any other view will defeat the underlying object. A new quota for promotion was provided which was to be filled by way of limited departmental competitive examination. For this serving officers were made eligible.

Reg. Test for promotion

152. In All India Judges' Association 3rd case (supra), Hon'ble the Supreme Court provided that 50% posts meant for promotion are to be filled on the basis of principle of merit-cum-seniority and passing of a suitability test. For this purpose, the High Courts were to devise and evolve a test in order to ascertain and examine legal knowledge of those candidates and to assess their continued efficiency and adequate knowledge of case law. Though provision for test and viva-voce for regular promotion was made in the 2007 Haryana Rules notified prior to the 2007 Punjab Rules, however, there is no provision to that effect in the 2007 Punjab Rules. As has come on record, the Rules were substantially changed by the State of Punjab at its own level without consultation with High Court. The conduct is deprecable. Apparently, some one played mischief at some level.

153. In Punjab, promotions were made after considering service record of the officers. It was for the first time that in the meeting of the Recruitment Committee held on 24.2.2011, holding of test for regular promotion was proposed. Subsequently, the criteria was devised. It was approved by the Full Court and is being followed. There is no provision in the 2007 Punjab Rules till date for holding of written suitability test. Thereafter, the Rule Committee recommended for amendment of Rule 8 of the 2007 Punjab Rules to that effect on 19.11.2012. After approval by the Full Court on 29.1.2013, proposed amendment was sent to the Government on 2.3.2013 and is still pending there.

154. From 2004 onwards when the Rules were amended providing for a criteria of merit-cum-seniority and passing of suitability test for

regular promotions till 2011 when suitability test was prescribed and is being held, all promotions were made merely by considering the service record of the officers with no bench mark, however, their promotions as such having not been challenged, this Court is not going into that aspect.

155. The effect of change in criteria by Hon'ble the Supreme Court from seniority-cum-merit to merit-cum-seniority and passing of suitability test was evident in the promotions made from 2011 onwards. When the suitability test was held. Either some of the officers did not appear in the test though they were at a position within the seniority considering the number of vacancies or certain officers similarly placed could not qualify the test and as a result the officers, who were far lower in seniority were promoted. The position which finally emerged in the written test held on 18.3.2011 in Punjab was that there were 15 vacancies for promotion on the basis of merit-cum-seniority and passing of a suitability test. 45 officers as per their seniority were called for written suitability test. 21 officers passed the suitability test, whereas 24 officers either could not pass the test or remained absent. It is interesting to note that out of 15 officers recommended for promotion, only four were within first 15 officers as per the seniority list. The last officer, who was promoted against 15 vacancies was, in fact, at Sr. No. 39 in the seniority list. Similar position continued thereafter.

156. The aforesaid fact clearly establishes that there was purpose for prescribing the suitability test even for regular promotion in the judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra) and the purpose could be achieved only after 2011 onwards.

157. Upto the framing of the 2007 Punjab and Haryana Rules,

which superseded the 1963 Punjab Rules, there was no distinction. No suitability test was held for promotion in either of the States. However, after framing of the 2007 Rules in both the States, the suitability test was held in the State of Haryana. It was for the first time in the year 2011 that suitability test was held in the State of Punjab.

Increase in the age of superannuation.

158. Vide All India Judges' Association 2nd case (supra), Hon'ble the Supreme Court directed for enhancement of age of superannuation of the Subordinate Judicial Officers from 58 to 60 years. The judgment was delivered on 24.8.1993. Relevant amendment in clause (a) of Rule 3.26 of the Punjab Civil Services Rules, Volume-I, Part-I was made vide notification dated 14.3.2002.

159. Though the Rules were amended only on 19.3.2002, however, immediately after the judgment of Hon'ble the Supreme Court, the officers were granted extension in service upto 60 years of age, as directed by Hon'ble the Supreme Court, considering that it was sacrosanct.

Amendment/Framing of Rules after Supreme Court judgments in All India Judges' Association cases (supra)

160. In terms of the directions issued by Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), the Rules were to be amended providing for different sources for recruitment to Superior Judicial Service and for inter-se seniority of officers recruited from three different sources. The needful was to be done as early as possible. The judgment was delivered on 21.3.2002. As the officers from the States of Punjab and Haryana were governed by the 1963 Punjab Rules, as applicable to Punjab State, amendment in those Rules was made providing for three sources of

recruitment instead of two earlier vide notification dated 15.1.2004. From that date onwards, there were three sources of recruitment, namely, by way of promotion on the principle of merit-cum- seniority and passing of a suitability test, through limited departmental competitive examination and direct recruitment. The quotas were prescribed for each of the source. Final directions by Hon'ble the Supreme Court as contained in para No. 27(1), which have been incorporated in the 1963 Punjab Rules as such, have to be read in conjunction with discussions in the judgment. The discussion on the issue in para No. 26 of the judgment clearly provides that percentage fixed for the purpose of quota for three different sources was with reference to total posts and not vacancies. As was the information furnished at the time of hearing, no effort was made to fill up the posts reserved for limited departmental competitive examination as no such examination was held after the amendment of the 1963 Punjab Rules on 15.1.2004 till such time those were repealed and replaced by the 2007 Punjab Rules, which were notified on 31.8.2007. In these Rules, changes were made as proposed by the High Court without its consultation. The manner, which violates the principles laid down by Hon'ble the Supreme Court. . The new Rules were notified on 31.8.2007. In the 2007 Punjab Rules as well, different quotas were prescribed as such. Nothing specifically was added with reference to determination of seniority in terms of the judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra).

161. After the judgment of Hon'ble the Supreme Court in All India Judges' Association 4th case (supra), when quota for promotion through limited departmental competitive examination was reduced from 25% to 10% and the judgment was to be effective from 1.1.2011, even if there is no

amendment in the Rules. The process for amendment of the Rules started. In the 2007 Haryana Rules, the amendment to that effect was notified on 6.6.2012, whereas in the State of Punjab, amendment was notified on 29.4.2013.

Analysis of rules governing the cadre of Punjab Superior Judicial Service

162. Earlier the officers of superior judicial service of Punjab cadre were governed by the 1963 Punjab Rules. Rule 8 thereof provided for recruitment to service. Two sources were provided, namely, direct recruitment and promotion with quotas prescribed as 25% and 75%, respectively. Ten years' service was required to be eligible for promotion, whereas for direct recruitment, minimum age of 35 years with maximum of 45 years was required. Ten years' practice as Advocate or Pleader was mandatory for direct recruitment. While considering the working conditions of the members of subordinate judiciary, Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), with a view to give incentive to relatively junior officers to improve and compete with each other, so as to excel and get quicker promotion, provided for 25% of the total posts as quota for promotion by way of limited departmental competitive examination. The Rules were directed to be amended. The amendment was carried out in the 1963 Punjab Rules vide notification dated 15.1.2004. At that time, same Rules were uniformly applicable for both the States of Punjab and Haryana, except some amendments made by respective States after November 01, 1966. Relevant Rule 8 of the 1963 Punjab Rules, before and after the amendment, is extracted below:

<u>Before Amendment</u>	<u>After amendment</u>
8. Recruitment to Service: (1) Recruitment to the Service shall be made- (i) by promotion from amongst the members of the Punjab Civil Service (Judicial Branch) who have completed not less than ten years continuous service as such and have held for an aggregate period of one year or more, any one or more of the following posts: (a) Senior Subordinate Judge; (b) Additional Senior subordinate Judge; (c) Chief Judicial Magistrate; (d) Additional Chief Judicial Magistrate; and (e) Judge Small Cause Court Provided that the High Court may give a member of Punjab Civil Service (Judicial Branch) working outside the ordinary line of service proforma appointment as Senior Subordinate Judge, if considered suitable and on such appointment being made such member shall, for the purpose of this rule, be deemed to have held the said post for the period for which appointment continues; or (ii) by direct recruitment, (2) of the total number of posts, three fourth shall be manned by promotee officers and one-fourth by direct recruits; Provided that nothing in this sub-rule shall prevent the officiating appointment of a member of the Punjab Civil Service (Judicial Branch) on any post which is to be filled in by direct recruitment, till a direct recruit is appointed.	8. Recruitment to Service- Recruitment 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 a suitability test; (b) twenty five per cent by promotion strictly on the basis of merit through limited departmental competitive examination of Civil Judges (Senior Division) having not less than five years qualifying service; (c) twenty five per cent by direct recruitment from amongst the eligible Advocates by holding a test consisting of written examination of 200 marks and <i>viva voce</i> test of 50 marks to be conducted by the High Court.

163. The 1963 Punjab Rules were replaced by the 2007 Punjab Rules, which were notified on 31.8.2007. Relevant Rules from 2007 Punjab Rules are reproduced hereunder:

“7. **Method of appointment.-** (1) The appointment to the Service by promotion shall be made from amongst the members of the Punjab Civil Service (Judicial Branch), by the Governor on the recommendations of the High Court.

(2) The direct appointment to the Service shall be made by the Governor on the recommendations of the High Court from amongst the eligible advocates on the basis of the written test

and *viva-voce* conducted by the High Court.

(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.

(4) These posts shall be filled in accordance with the Roster attached as Appendix-B.

8. Assessment of merit.- For assessing and testing the merit and the suitability of a member of the Punjab Civil Service (Judicial Branch) for promotion under clause (a) of sub-rule (3) of rule 7 of these rules, the High Court may take into consideration-

- (i) annual confidential reports of the preceding five years of the officer concerned;
- (ii) inspection report of the court of the Officer, made by the Inspecting Judge during the preceding three years;
- (iii) inspections done by the officer concerned of his own court and courts subordinate to him, if he is assigned inspection work of those courts during the preceding three years; and
- (iv) self-assessment report of the officer of the work done by him during the preceding three years:

Provided that any officer having grading as C (integrity doubtful) in any year shall not be eligible to be considered for promotion.

9. Limited written competitive examination.- The limited written competitive examination of the members of the Punjab Civil Service (Judicial Branch), for the purposes of out-of-turn promotion under rule 7 of these rules, shall be held by the High Court in the following manner, namely:-

- (i) Written Examination 600 Marks;
- (ii) Assessment of Record 150 Marks; and
- (iii) *Viva-voce* 250 Marks:

Provided that the High Court shall, in addition to the said examination take into consideration any of the criteria as specified in rule 8 above:

Provided further that any officer grading as C (integrity

doubtful) in any year, shall not be eligible to appear in the said examination.

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11. Test for direct appointment.- (1) The High Court shall, before making recommendations to the Governor, invite applications by advertisement and may required the applicants to give such particulars as it may prescribe and may further hold written examination test and *viva-voce* for appointment under rule 7, in the following manner, namely:-

(i) Written Test 750 marks; and

(ii) *Viva-voce* 250 marks.

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.

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23. Application of the Punjab Civil Services (General and Common Conditions of Service Rules, 1994.- (1) In respect of the matters, which are not specifically provided in these rules, the members of the Service shall be governed by the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, as amended from time to time:

Provided that the said rules of 1994 shall not affect the provisions as contained in rules 5, 7, 12, 13, 19, 20 and 21 of these rules:

Provided further that the conditions of service as determined by the National Judicial Pay Commission shall have an over riding effect.

(2) The Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, at present, in force are contained in Appendix 'E'.

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APPENDIX 'B'

[See sub-rule (4) of rule 7]

ROSTER INDICATING THE MODE OF RECRUITMENT

Serial	Source	Rule
1.	Officer promoted on the basis of seniority-cum-suitability.	7(3)(a)
2.	Officer promoted on the basis of seniority-cum-suitability.	7(3)(a)
3.	Direct Recruit from the Bar	7(3)(c)
4.	Officer promoted through limited competitive examination.	7(3)(b)

XX XX XX”

164. Rule 7 provides for three sources of recruitment, namely, 50% by promotion from amongst the Civil Judges (Senior Division) on the basis of merit-cum-seniority and passing of a suitability test; 25% by promotion on the basis of merit through limited departmental competitive examination of Civil Judges (Senior Division) with not less than 5 years' qualifying service as Civil Judge (Senior Division); and 25% of the posts are to be filled up by direct recruitment from amongst the eligible Advocates on the basis of written test and viva-voce. The posts from different sources are to be filled up in accordance with roster attached with the Rules as Appendix 'B'.

165. Rule 8 of the 2007 Punjab Rules provides for matters to be considered for assessment of merit of the candidates for promotion under Rule 7(3)(a).

166. Rule 9 of the 2007 Punjab Rules provides for details regarding limited written competitive examination for the purpose of out-of-turn promotion.

167. Rule 12 of the 2007 Punjab Rules deals with seniority. It refers to inter-se seniority of the promotee officers; out-of-turn promoted officers and the direct recruits. Proviso thereto provides that an officer promoted on ad-hoc basis on a vacant post belonging to out-of-turn promoted officer or direct appointee shall have no right to the said post. The period of ad-hoc service is not to be allowed to be counted for the purpose of seniority.

168. Rule 23 thereof provides for application of the 1994 Punjab Rules in respect of matters not specifically provided in the Rules except

what has been provided for in Rules 5, 7, 12, 13, 19, 20 and 21 of the 2007 Punjab Rules. It specifically excludes application of the provisions of the 1994 Punjab Rules with reference to Rule 12, dealing with seniority. Further second proviso thereto provides that conditions of service, as determined by Shetty Commission shall have an over-riding effect.

169. The recommendations made by Shetty Commission as such may not over-ride the Rules, however, those which have been approved with or without modification by Hon'ble the Supreme Court, shall be treated as the conditions determined by Shetty Commission. Total number of posts in the cadre as mentioned in Schedule 'A' are 92, which at the time of recruitments in the year 2008 were 107.

170. In All India Judges' Association 4th case (supra), Hon'ble the Supreme Court reduced the quota of accelerated promotion through limited departmental competitive examination from 25% to 10% and directed the High Courts to amend the Rules by 31.12.2010. Even in the absence of any amendment, the judgment was to apply from 1.1.2011. The amendment pertaining to the aforesaid quota was carried out in the 2007 Punjab Rules on 29.4.2013.

171. The position as emerges w.e.f. 1.1.2011, irrespective of date of amendment in the 2007 Punjab Rules is that the quota for regular promotion on the basis of merit-cum-seniority and passing of a suitability test is 65%, by way of promotion on the basis of merit through limited departmental competitive examination is 10% and 25% posts are to be filled up by way of direct recruitment.

Analysis of the Rules with reference to the seniority

172. As has been noticed above, though the amendment in the 1963

Punjab Rules governing the service at the relevant time was made in the year 2004 with reference to prescribing three different quotas for recruitment to the Superior Judicial Service, however, no amendment was made in terms of the directions issued by Hon'ble the Supreme Court for providing roster for the purpose of determination of inter-se seniority with reference to the number of posts and not in relation to the vacancies. The 1963 Punjab Rules were replaced by the 2007 Punjab Rules. (The manner in which the 2007 Punjab Rules were promulgated has been separately dealt with in para No. 160 of the judgment). In these Rules, Rule 7 provides for method of appointment. The posts are to be filled up as per roster attached as Appendix 'B'.

173. Rule 12 of the 2007 Punjab Rules provides that original seniority of the promoted officers from PCS (Judicial Branch) shall not be disturbed. Inter-se seniority of out-of-turn promoted officers shall be in the order of merit as determined by the High Court. Inter-se seniority of the direct recruits shall be on the basis of merit as determined by the High Court. Proviso to Rule 12 provides that if an officer has been promoted on ad-hoc basis on a vacant post belonging to out-of-turn promotee officer or direct appointee, he shall have no right on the said post. Such an officer shall not be allowed to claim addition of that period of ad-hoc service for the purpose of seniority. Nothing was provided as to how inter-se seniority of the members of the cadre recruited from three different sources was to be determined. This was despite the fact that Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra) directed for providing roster for the purpose. As emerged during the course of hearing, in fact, the High Court had proposed similar set of Rules to the States of Punjab and Haryana

for notification. The State of Haryana notified the Rules with some minor changes, whereas the State of Punjab notified substantially changed Rules without any consultation with the High Court. In fact, in the process the mandate of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra) was violated by the State.

174. Rule 23 of the 2007 Punjab Rules provides that in respect of the matters which are not specifically provided in these Rules, the members of the service shall be governed by the 1994 Punjab Rules as amended from time to time. Both the provisos attached with this Rule are important. First proviso provides for Rules, which shall not be affected by the 1994 Rules. These relate to age for recruitment, method of appointment, seniority, probation, death-cum-retirement benefits, superannuation from service and administrative control, as contained in Rules 5, 7, 12, 13, 19, 20 and 21 of the 2007 Punjab Rules. This exclusion is important as all these Rules contain main conditions of service, which are special in the case of judicial officers and could not be over-ridden by general rules. Addition of Rule 12 in first proviso to Rule 23 cannot be said to be superfluous and without any meaning. Though the State had not notified the Rules in the manner approved and forwarded by the High Court, which were in line with the directions issued by Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), but still it may be conscious of the fact that directions issued by Hon'ble the Supreme Court with reference to inter-se seniority of the members of the cadre, would be violated if the 1994 Punjab Rules are made applicable for determining inter-se seniority of the members of the cadre coming from three different sources. This intention is fortified by second proviso to Rule 23(1) of the 2007 Punjab Rules, which provides

that conditions of service, as determined by Shetty Commission, shall have an over-riding effect. The Rules notifying authority was conscious of the fact that there are certain special conditions of service recommended by Shetty Commission, which were considered by Hon'ble the Supreme Court from time to time. Some of the recommendations were accepted as such; some were not accepted; whereas some were accepted with certain modifications. Besides others, Shetty Commission had made certain recommendations with regard to inter-se seniority of direct recruits and promotees. The recommendations in the same manner were not accepted by Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), but were modified by providing that certainty be brought in this regard by specifying quotas in relation to posts and not in relation to vacancies. (This position was reiterated by Hon'ble the Supreme Court in a case from Jharkhand in Srikant Roy and others v. State of Jharkhand and others, 2016 (12) Scale 147). The High Courts were directed to amend service rules and promulgate seniority rules on the basis of roster principle, as early as possible, however, to be applied prospectively. It was expected that needful shall be done by 31.3.2003. Hon'ble the Supreme Court was of the opinion that roster system will ensure fair play to all while improving efficiency in the service.

175. Rule 8 of the 1994 Punjab Rules provides that inter-se seniority of persons appointed to the posts in any cadre shall be determined by continuous length of service on such posts. This principle has been applied while determining inter-se seniority of the members of the cadre. The note appended to Rule 8 provides that seniority of persons appointed on purely provisional basis or on ad-hoc basis shall be determined as and when

they are regularly appointed keeping in view the dates of such regular appointments.

176. It is a peculiar case in which there are judgments of Hon'ble the Supreme Court giving certain specific directions to the High Courts to frame Rules governing the cadre of the judicial officers in a particular manner, with an object to bring uniformity throughout the country. The Rules, according to the petitioners, having not been framed strictly in terms of the directions issued by Hon'ble the Supreme Court, hence, defiance for non-compliance of the judgments. In such a situation, the only course open is to harmoniously construe the Rules keeping in view the contents thereof along with the directions issued by Hon'ble the Supreme Court, which are binding.

177. As far as the contention raised by learned counsel appearing for the regularly promoted officers [Rule 7(3)(a)] that second proviso to Rule 23 of the 2007 Punjab Rules, which gives over-riding effect to the recommendations made by Shetty Commission, to the extent that those recommendations have to be taken as such and applied here, irrespective of the fact as to whether those were approved, disapproved or modified by the Supreme Court, we find the contention to be totally mis-conceived. There were number of recommendations made by Shetty Commission, which were considered by Hon'ble the Supreme Court from time to time. Some were accepted as such; some were rejected in totality; whereas some were modified. In our opinion, only those recommendations made by Shetty Commission, which have been finally approved with or without modification by Hon'ble the Supreme Court, which can be read in second proviso to Rule 23 of the 2007 Punjab Rules, for giving over-riding effect.

If the contention as raised is accepted, that would mean violating the

judgments of Hon'ble the Supreme Court, which are binding on all courts subordinate thereto in view of Article 141 of the Constitution of India and would result in setting a very bad precedent.

178. Hon'ble the Supreme Court, while modifying the recommendations made by Shetty Commission with reference to inter-se seniority of the officers, had directed that for future, the same has to be determined by preparing 40-point roster, as approved in R. K. Sabharwal's case (supra). Hence, final dictum of Hon'ble the Supreme Court with reference to inter-se seniority of the officers of the cadre, while considering the recommendations made by Shetty Commission have to be read with Rule 23 of the 2007 Punjab Rules and the seniority list has to be framed accordingly. In fact, the roster as provided at Appendix-B with the Rules is strictly in terms of directions issued by Hon'ble the Supreme Court. There had been various amendments in the 2007 Punjab Rules after the judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra). Even at that stage, issue regarding determination of inter-se seniority was not raised. Presumably, even this court was conscious of the fact that in terms of second proviso to Rule 23 of 2007 Punjab Rules, judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra) was applicable for determination of inter-se seniority of the members of the cadre coming from three different sources. The fact of the matter is that even this court, while recommending the Rules to the State Government for notification in the year 2006, had provided for such a roster. Rule 10(1)(d) therein clearly provided for that. In fact, in Haryana, where same Rules were notified, provide for that. Though identical roster has been provided as Appendix 'B', but reference has been given to Rule 7

(4) mentioning that roster is indicating the mode of recruitment.

179. Any provision in a statute or Rules cannot be read in isolation. Total scheme of the Rules has to be seen. In the present case, especially keeping in view various judgments of Hon'ble the Supreme Court on the issue.

180. Hence, this court is of the opinion that for determination of inter-se seniority of officers recruited from three different sources, roster as directed by Hon'ble the Supreme Court shall be applicable. The same forms part of the Rules as Appendix 'B' but mentioning roster for recruitment, however, shall be applicable even for determination of seniority.

Haryana Cadre

181. For the officers of Superior Judicial Service in Haryana cadre, the 2007 Haryana Rules were notified on 10.1.2007. Prior to that, even Haryana cadre officers were also governed by the 1963 Punjab Rules. Rule 6 of the 2007 Haryana Rules provides for different sources for recruitment to Haryana Superior Judicial Service. Sub-rule (2) thereof provides that first and second post will go to the cadre of promotion; third will go to the category of direct recruitment, whereas fourth post will go to the category of limited departmental competitive examination. Rule 7 thereof provides for procedure for direct recruitment, whereas Rule 8 provides for procedure for promotion. Sub-rule (a) thereof provides the method of determining the merit, whereas sub-rule (b) provides for suitability test. Rule 9 provides for test for limited competitive examination, whereas Rule 10 provides for *inter-se* seniority of the members of Superior Judicial Service. Relevant Rules 6, 7, 8, 9 and 10 are extracted below:

“6. (1) Recruitment to the Service shall be made-

- (a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) Chief Judicial Magistrates/ Additional 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 as Civil Judges (Senior Division)/ Chief Judicial Magistrates/Additional Civil Judges (Senior Division), and who are not less than thirty five years of age on the last date fixed for submission for applications for taking up the limited competitive examinations; 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 the High Court.

2. The first and second post would go to the category (a) (by promotion on the basis of merit-cum-seniority), third post would go to category (c) (direct recruitment from the bar), and fourth post would go to category (b) (by limited competitive examination) of rule 6, and so on.

7. The High Court shall before making recommendations to the Governor invite applications by advertisement and may

require the applicants to give much particulars as it may specify and may further hold written examination and *viva voce* test for recruitment in terms of rule 6(c) above and the maximum marks shall be in the following manner:-

(i) Written Test 750 marks

(ii) Viva Voce 250 marks

8. For assessing and testing the merit and the suitability of a member of the Haryana Civil Service (Judicial Branch) under rule 6(a) above, the High Court may -

(a) take into consideration

(i) Annual Confidential Reports for preceding five years;

(ii) Inspection report of the court of the officer made by the inspecting Judge nominated by the Chief Justice during preceding three years;

(iii) inspections done by the officer of his own court and courts subordinate to him if he is assigned inspection work of those courts during the preceding three years;

(iv) self assessment report of the officer of the work during the preceding three years;

(v) judgments of the cases decided by the officer during the preceding three years; and

(b) hold a written test (20 marks); and viva voce (20 marks) in order to ascertain and examine the legal knowledge and to assess the efficiency in legal field:

Provided that any officer having grading as C (integrity doubtful) in any year shall not be eligible to be considered for promotion.

9. The High Court shall hold a limited written competitive examination for promotion of members of the Haryana Civil Service (Judicial Branch) as per rule 6(b) and the maximum marks shall be in the following manner:

- | | | |
|-------|-----------------------|-----------|
| (i) | Written Examination: | 600 marks |
| (ii) | Assessment of Record: | 150 marks |
| (iii) | Viva Voce: | 250 marks |

Provided that the High Court shall in addition to the above competitive examination take into consideration any of the criteria as specified in rule 8 above:

Provided further that any officer having grading as C (integrity doubtful) in any year, shall not be eligible to appear in the limited competitive examination.

10. (i)(a) The *inter se* seniority of the members of the Haryana Civil Service (Judicial Branch) promoted in the same batch under rule 6(a) shall be the same as in the Haryana Civil Judges (Judicial Branch).

(b) *Inter se* seniority of the member of the Haryana Superior Judicial Service promoted under rule 6(b) shall be in the order of merit determined in the selection process.

(c) *Inter se* seniority of the direct recruits to the Service under rule 6(c) shall be on the basis of merit determined by the Selection Committee of the High Court at the time of the

recruitment.

(d) *Inter se* seniority position of the officers appointed in the Service under rule 6 shall be as given in roster annexed.

(ii) A person recruited to the Service under clauses (a), (b) and (c) of rule 6 shall take his position in the seniority list as shown in the roster annexed irrespective of the date on which he actually joins the Service.

(iii) A promoted officer, who is promoted on an ad hoc basis in the vacancy/post against a roster point earmarked for an officer belonging to categories specified in clauses (b) and (c) of rule 6, shall not have any right to the post. He shall not be entitled to add period of his ad hoc service to regular service for the purpose of seniority:

Provided that the existing rules shall continue to govern the matters of seniority of the existing members of the Service.”

Similar Rules were recommended by the High Court to the State of Punjab for notification but changed at its own level without consultation with High Court.

Shifting of vacancies from limited departmental competitive examination quota to regular promotion quota

182. As has already been noticed above, Punjab Superior Judicial Service was governed by the Punjab 1963 Rules, which provided for two sources of recruitment, i.e., 75% by way of promotion from amongst the members of Subordinate Judicial service and 25% by direct recruitment.

183. Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra) with a view to give incentive to Judicial Officers to improve

and compete with each other so as to excel and get quicker promotion provided for 25% of the posts as quota for promotion by way of limited departmental competitive examination. The judgment was delivered on 21.3.2002. The High Courts were directed to make necessary amendments in the service rules as early as possible. In the 1963 Punjab Rules amendment was made prescribing three sources of recruitment for Superior Judicial Service on 15.1.2004.

184. In All India Judges' Association 4th case (supra), the matter with regard to 25% quota prescribed for limited departmental examination, was re-examined. With experience from different States finding that in many of the States for various reasons the posts in that category could not be filled, Hon'ble the Supreme Court directed that 'henceforth' 10% of the cadre strength of District Judges will be filled up by way of limited departmental competitive examination. In case any of the post is not filled up, the same shall be filled up by way of regular promotion. It was further clarified that 'hereinafter' 25% posts shall be filled up by way of direct recruitment, 65% by way of regular promotion and 10% through limited departmental competitive examination. If the candidates are not available for 10% quota meant for limited departmental competitive examination, vacant posts are to be filled up by regular promotion in accordance with the service rules applicable. The High Courts were directed to take steps to ensure that the existing Rules are amended in line with the direction w.e.f. 1.1.2011. It was further directed that in case the Rules are not suitably amended, the order of Hon'ble the Supreme Court shall prevail and any further recruitment from 1.1.2011 onwards shall be in terms of the directions issued.

185. The amendment in the Punjab 2007, Rules in line with the

directions issued by Hon'ble the Supreme Court in All India Judges' Association 4th case (supra), was made vide notification dated 29.4.2013. In any case, as the direction of Hon'ble the Supreme Court was that even in the absence of amendment of the Rules in line with the judgment, the directions were to apply w.e.f. 1.1.2011, we have to take that quotas were re-defined with effect from that date.

186. It may be summed up that upto 14.1.2004, 75% posts were to be filled up by way of promotion, whereas 25% posts by way of direct recruitment.

187. From 15.1.2004, either under the 1963 Punjab Rules or under the 2007 Punjab Rules, 50% posts were to be filled up by way of promotion on merit-cum-seniority and passing of a suitability test; 25% posts were to be filled up by way of limited departmental competitive examination and 25% by way of direct recruitment.

188. With effect from 1.1.2011, in view of the judgment of Hon'ble the Supreme Court in All India Judges' Association 4th case (supra), as quotas were re-defined, 65% posts were to be filled up by way of promotion on the principle of merit-cum-seniority and passing of a suitability test; 10% posts by way of limited departmental competitive examination and 25% by way of direct recruitment (even though the Rules to that effect were amended on 29.4.2013).

189. It has been noticed by Hon'ble the Supreme Court also in All India Judges' Association 4th case (supra) that there were enabling provisions in the service Rules in some of the States where vacant posts of limited departmental competitive examination could be filled up by way of regular promotion, whereas undisputedly in the case in hand there was no

such enabling provision. If the contention raised by learned counsel for regularly promoted officers is accepted to the extent that vacant posts in the quota of limited departmental competitive examination upto 31.12.2010 are to be treated to be diverted against regular promotion quota from the very beginning when the quota was created, that would mean reading something in the Rules, which is not provided therein. This is not even the direction by Hon'ble the Supreme Court.

190. The direction is not to treat the quota of limited departmental competitive examination reduced from 25% to 10% from day one, namely, the date on which the amendments were made, rather a specific date has been given. On one side, the contention is sought to be raised by the respondents is that the Rules are sacrosanct and on the other hand, the plea is sought to be taken that despite there being no specific direction by Hon'ble the Supreme Court, the Rules should be read differently than what has been provided therein. The judgment of Hon'ble the Supreme Court cannot be read in the manner suggested by regularly promoted officers. If it has to be given a meaning that quota of promotion through limited departmental competitive examination would reduce from 25% to 10% from day one, the consequence would be making appointment of persons in excess of 10% during that period in some States, to be illegal.

191. The fact that Hon'ble the Supreme Court in All India Judges' Association 4th case (supra), while reducing the quota of promotion through limited departmental competitive examination from 25% to 10% provided that un-filled vacancies in that quota be shifted to regular promotion quota, clearly means that these are independent quotas and not to be merged together for calculating the posts to be filled up by intermingling the both.

Hon'ble the Supreme Court was categoric while providing quota for limited departmental competitive examination that now there will be three ways of recruitment to higher judicial service.

192. Hence, to claim that spirit of the order passed by Hon'ble the Supreme Court was diversion of vacant posts in the quota of limited departmental competitive examination to that of regular promotion quota from day one when this quota was created, would be erroneous. The vacancies in that quota will shift to the regular promotion quota only w.e.f. 1.1.2011. A proviso to enable that was added in Rule 7(3)(b) of the 2007 Punjab Rules vide notification dated 29.4.2013.

Beyond quota -hardship

193. In Keshav Chandra Joshi's case (supra), Hon'ble the Supreme Court opined that rule of quota being a statutory one it must be strictly adhered to. Administrative authorities are not entitled to deviate from the rule even in case of administrative exigencies or expediency. Even though resulting of pushing down, the promotees may work out hardship, but it is unavoidable as any construction otherwise would be illegal and offend Article 14 of the Constitution of India.

194. In D. Ganesh Rao Patnaik and others' case (supra), the issue under consideration before Hon'ble the Supreme Court was right of the officers promoted against the quota meant for direct recruits. It pertains to judicial service. In Bihar, there are two sources of recruitment to the higher superior judicial service, namely, by direct recruitment and by promotion. 1/3rd posts are to be filled up by direct recruitment, whereas 2/3rd posts by promotion. Direct recruitments were not regularly made and the posts were often filled by promotion. As there was delay in the process of direct

recruitment, the matter came to the court. A direction was issued for filling up the posts for direct recruitment quota. At the same time, certain regular promotions were made. When the advertisement for direct recruitment was issued, the candidates, who were working against promotion quota were already more than their share. It was opined that promotees could not be given posts, which are meant for direct recruits quota, even if the posts had been lying vacant and there was some delay in appointments. The promotees, who had been adjusted against the posts meant for direct recruits quota, have to revert back to the position from which they were promoted. Instead of taking hard step to rescind order of promotion, the concerned High Court in that case on the administrative side had taken a decision to treat these officers promoted against the subsequent quota from their source. However, they were not held entitled to seniority from the date of their actual promotion. Relevant paras of the judgment are extracted below:

“20. After the decision in the case of *Madan Mohan Singh v. State of Bihar*, CWJC No. 945 of 1991 (Pat) (DB) by the High Court, which ruled that temporary posts have also to be counted for determining the one-third quota of direct recruits, which decision, in our opinion, is legally correct and sound, there was absolutely no scope for giving promotion to the contesting respondents in the vacancies, which did not fall in the quota of promotees but fell within the quota earmarked for direct recruits. The High Court had issued clear directions in the case of K.P. Verma that vacancies meant for recruitment from amongst advocates should never be filled up by promotees even on the ground that the posts are lying vacant

due to the delay caused by the appointment procedure and further if any post out of that lying vacant from the quota of direct recruits had been filled up or is filled up by promotion, such promotee will revert immediately to its original position in the service from which he had been promoted. The promotion order passed in favour of the contesting respondents on 30.4.1991 was, therefore, liable to be cancelled. However, instead of taking this decision, which would have naturally meant reverting the contesting respondents back to their original position, they were allowed to continue treating them as promoted against subsequent quota of promotees. In such circumstances there is absolutely no scope for treating the contesting respondents as senior to the appellants who are all direct recruits.

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22.Their promotion order was passed as there were vacancies to the posts of Additional District and Sessions Judges, though in the quota of direct recruits, but as no recruitment from the said channel had been made for a long time and sufficient number of candidates were not available, the vacancies were filled in by giving promotion to members of Bihar Civil Service (Judicial Branch). If promotion orders had not been passed and the posts had not been filled in, the judicial work in the districts would have suffered. However, it is clear that having regard to the various orders passed on the judicial side by the Patna High Court and the legal position

being well settled that the temporary posts have also to be counted for determining the one-third quota of direct recruits, the promotion given to the contesting respondents was not in accordance with law. Instead of taking the harsh step of rescinding their order of promotion the Patna High Court, on the administrative side, took the decision to treat them promoted against subsequent quota of promotees. Therefore, the contesting respondents can under no circumstances claim seniority over the appellants and the view to the contrary taken by the Jharkhand High Court on 29.8.2002 on administrative side and also in the judgment and order dated 1.4.2003, which is the subject-matter of challenge in the present appeal, is wholly erroneous in law.” *[Emphasis supplied]*

195. The issue regarding status of the persons promoted in excess of their quota in the Rules was considered by a Constitution Bench of Hon'ble the Supreme Court in Ajit Singh and others (II)'s case (supra). The conclusion arrived at was that it was axiomatic in service jurisprudence that any promotions made wrongly in excess of any quota are to be treated as ad hoc. It applies to reservation quota as much as it applies to direct and promotees. The persons wrongly promoted in excess of their quota cannot get additional benefit of seniority. Relevant paragraph thereof is extracted below:

“It is axiomatic in service jurisprudence that any promotion made wrongly in excess of any quota are to be treated as ad hoc. This applies to reservation quota as much as it applies to

direct recruits and promotee cases. If a court decides that in order only to remove hardship such roster-point promotees are not to face reservations,-- then it would, in our opinion be, necessary to hold – consistent with our interpretation of Articles 14 and 16(1) – that such promotees cannot plead for grant of any additional benefit of seniority flowing from a wrong application of the roster. In our view, while courts can relieve immediate hardship arising out of a past illegality, courts cannot grant additional benefits like seniority which have no element of immediate hardship. Thus, while promotions in excess of roster made before 10.2.1995 are protected, such promotees cannot claim seniority. Seniority in the promotional cadre of such excess roster-point promotees shall have to be reviewed after 10.2.1995 and will count only from the date on which they would have otherwise get normal promotion in any future vacancy arising in a post previously occupied by a reserved candidate. That disposes of the “prospectivity” point in relation to R. K. Sabharwal v. State of Punjab, (1995) 2 SCC 745.” *[Emphasis supplied]*

196. In Suraj Parkash Gupta and others' case (supra), while reiterating the aforesaid legal position, it was opined that any person promoted in excess of his quota will get seniority only from the date the post in his quota is available. It was further opined therein that a direct recruit can claim seniority only from the date of his regular appointment and not from the date when he was not born in the cadre. Same view was expressed in Uttaranchal Forest Rangers' Assn. (Direct Recruit) and others'

case (supra). Para No. 14 thereof is extracted below:

“14. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to be adversely affect the direct recruit appointed validly in the meantime, as decided by this court in the case of Keshav Chandra Joshi & others vs. Union of India, 1992 Suppl (1) SCC 272 held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one, it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship, but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1) of the Constitution.

197. The consistent opinion on the issue of promotions/ appointments made beyond quota in any cadre is that the same is to be

treated as ad-hoc. Though it may work out hardship, but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory Rules and would offend Articles 14 and 16(1) of the Constitution of India. Such officers cannot claim additional benefit of seniority from the date of their appointment/ promotion till such time they are absorbed against the posts meant for their quota.

198. As officers coming from the quota prescribed in Rule 7(3)(a) of the 2007 Punjab Rules were already in excess, when 15 officers were promoted. They being in excess of their quota on the date of their promotion cannot be given the benefit of that service till such time, the posts in their quota became available.

Findings of the Committee

199. The cadre strength as on 10.11.2007 was 107. The following table gives the picture of the cadre strength and the posts coming to each quota, actual working strength and vacancy-position:

Total cadre strength of Punjab Superior Judicial Service
as on 10.11.2007:

107

	Regular promotion under Rule 7(3)(a)	Promotion through limited departmental competitive examination under Rule 7(3)(b)	Direct recruitment under Rule 7(3)(c)
	50%	25%	25%
Posts as per quota	53	27	27
Actual working strength	58		6
Vacant/excess	5(excess)	27 (vacant)	21 (vacant)

200. A perusal of the aforesaid table shows that in regular promotion quota under Rule 7(3)(a) of the 2007 Punjab Rules, there were 53 posts. As

against that, 58 officers were already working, hence, these were five in excess. When the quota under Rule 7(3)(a) (regular promotion) was already full, any promotions made in that quota thereafter would be in excess of the quota, hence, has to be legally termed as ad hoc. These officers get their placement in the seniority only from the date when vacancy in their quota will be available. The legal position that any officer appointed in a service beyond quota will not be entitled to benefit of seniority has been accepted even by the Committee while recording finding on issue No. 3 framed by it.

201. This Court is not going into the requirement or conduct of the written test as the promotion of the officers as such has not been challenged. It is settled that there is no estoppel against statute. All the officers are legally educated and judicially trained and are expected to know rules and also the judgments of Hon'ble the Supreme Court, especially pertaining to their service conditions. Even if they were allowed or not allowed or of their own did not appear in the written test for promotion by limited departmental competitive examination, will not have any effect as the fact remains that they have been promoted against a different quota, where they are in excess. They may or may not have grievance in that regard, however, their promotions in a different quota cannot be justified for that reason. The quotas provided in the Rules for recruitment from different sources cannot be allowed to be violated or inter-changed, as it will set a bad precedent, besides being violative of Article 14 of the Constitution of India.

202. While recording finding on issue No. 2 regarding shifting of unfilled posts from limited departmental competitive examination quota to the quota of promotion on the basis of merit-cum-seniority and passing of a suitability test, it has been noticed that there are only two sources of

appointment to the service, whereas in terms of judgment of Hon'ble the Supreme Court in All India Judges' Association 3rd case (supra), there are three sources. It was on that assumption that finding had been recorded that the promotion quota has to be taken as 75% and direct recruitment as 25% to hold that any vacancy remaining unfilled from limited departmental competitive examination has to be included in the quota of promotion on the basis of merit-cum-seniority. There is no enabling provisions in the Rules for that. It was only after the judgment of Hon'ble the Supreme Court in All India Judges' Association 4th case (supra) that such a diversion was permissible. The words used in that judgment were "henceforth", 'hereinafter'. The judgment was to take effect from 1.1.2011, even in the absence of enabling Rules. Aforesaid cut-off date fixed in the judgment of Hon'ble the Supreme Court is sacrosanct.

203. The amendment was carried out in the 2007 Punjab Rules vide notification dated 29.4.2013. A proviso was added to Rule 7(3)(b) of the 2007 Punjab Rules that in case no suitable candidate is available for promotion from this category, the available posts shall be filled up by regular promotion in accordance with the criteria laid down in terms of Rule 7(3)(a) of the 2007 Punjab Rules. The amendment is not retrospective. It is only retrospective to the extent that there is a direction by Hon'ble the Supreme Court in All India Judges' Association 4th case (supra) for implementation thereof with effect from 1.1.2011, even in the absence of enabling provisions in the Rules. It was with a condition that process of recruitment should be conducted regularly.

204. As per the information furnished, the quota in fact has been applied on vacancies and not on the basis of posts. The calculation was

made taking total 80 posts (53+27) in promotion quota ignoring the fact that there were two different sources even in the promotion quota and both were independent. The criteria and sources for promotion were different. Considering that out of total 80 posts coming to the quotas provided in Rules 7(3)(a) and 7(3)(b) of the 2007 Punjab Rules and the actual working strength 58 [recruited in terms of quota as provided in Rule 7(3)(a) only], balance 22 vacancies were divided in the ratio of 50% and 25% to justify promotion of 15 officers under Rule 7(3)(a) in excess of the quota meant for them. Hon'ble the Supreme Court nowhere opined that while considering the recruitment/ promotion from two different quotas, the posts were to be clubbed together or the quotas have to be calculated on vacancies. Rather, it was clearly held that quotas are post based.

205. Once the promotion of officers under Rule 7(3)(a) of the 2007 Punjab Rules on 10.2.2008 are held to be beyond quota, natural consequence is that they will be termed as ad-hoc. Once ad-hoc and promoted against the post meant for other quotas, then even as per Rule 12 of the 2007 Punjab Rules, these officers do not get the benefit of that service for the purpose of seniority. They will get placement in the seniority only from a date when a post in their quota will be available.

206. The promotion of officers under Rule 7(3)(b) of the 2007 Punjab Rules is within their quota and so the appointment of direct recruits. They would be entitled to placement in seniority from the date of their appointment/promotion.

Maintainability of petition

207. The contention raised by learned counsel for the respondents that the writ petitions are not maintainable before this court as for any

clarification or implementation of the directions given by Hon'ble the Supreme Court in All India Judges' Association 3rd and 4th cases (supra), application could be filed only before Hon'ble the Supreme Court is merely to be noticed and rejected. The petitioners in the present case are not seeking clarification or implementation of the directions, rather, they have challenged the seniority list.

208. For the reasons mentioned above, the writ petitions are allowed. The impugned seniority list dated 24.12.2015 is set aside. It is held that:

- (i) promotion of officers under Rule 7(3)(a) [Regular promotion] of the 2007 Punjab Rules is held to be beyond quota, hence, ad hoc. They will not be entitled to get benefit of that service for the purpose of seniority;
- (ii) direct recruits shall not be entitled to be considered as members of the cadre from the date of their recommendation by the High Court to the State, for appointment;
- (iii) as a consequence, the officers promoted under Rule 7(3)(a) of the 2007 Punjab Rules shall be placed at the bottom of the seniority after the direct recruits.

The seniority list be re-cast accordingly.

(Rajesh Bindal)
Judge

(Harinder Singh Sidhu)
Judge

March 03, 2017/mk

Whether speaking/non-speaking:	Yes/No
Whether reportable:	Yes/No

INDEX OF ALL INDIA JUDGES' ASSOCIATION CASES

- (1) All India Judges' Association v. Union of India and others, (1992) 1 SCC 119 [described as 'All India Judges' Association 1st case']
- (2) All India Judges' Association and others v. Union of India and others, (1993) 4 SCC 288 [described as 'All India Judges' Association 2nd case']
- (3) All India Judges Association v. Union of India, (2002) 4 SCC 247 [described as 'All India Judges Association 3rd case']
- (4) All India Judges Assn. & Ors. v. Union of India and others, (2010) 15 SCC 170 [described as 'All India Judges Association 4th case']
- (5) All India Judges' Association and others v. Union of India and others, (1998) 9 SCC 245 (order dated 10.4.1995) [described as 'All India Judges' Association 5th case']
- (6) All India Judges' Assn. and others v. Union of India and others, (1997) 8 SCC 520 [described as 'All India Judges' Association 6th case']
- (7) All India Judges' Assn. and others v. Union of India and others, (1998) 2 SCC 204 [hereinafter described as 'All India Judges' Association 7th case']