

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13203 OF 2016

- | | | |
|----|---|---|
| 1] | Sanjay Ganpatrao Mehare |] |
| | aged about 51 years, |] |
| | Principal District & Sessions Judge |] |
| | Dadra & Nagar Haveli, Silvassa |] |
| | |] |
| 2] | Shivkumar Ganpatrao Dige |] |
| | aged about 44 years, |] |
| | Principal and District and |] |
| | Sessions Judge, Ratnagiri |] |
| | |] |
| 3] | Anil Laxman Pansare |] |
| | aged about 50 yrs. |] |
| | Principal District and Sessions Judge, Beed |] |
| | |] |
| 4] | Anil S. Subramaniam |] |
| | aged about 45 yrs. |] |
| | District Judge-1, Akot |] |
| | District Akola |] |
| | |] |
| 5] | Pradeep H Kale |] |
| | aged about 46 yrs. |] |
| | District Judge-2, Dhule |] |
| | |] |
| 6] | Sanjay Anandrao Deshmukh |] |
| | aged about 48 years, |] |
| | District Judge-1, Gadinglaj |] |
| | District Kolhapur |] |
| | |] |
| 7] | Yanshivraj G Khobragade |] |
| | aged about 49 years, |] |
| | Member, Industrial Court, |] |
| | Nagpur. |] |
| | |] |
| 8] | Abhay S Waghware |] |
| | aged about 49 years, |] |
| | Judge, City Civil Court, Mumbai |] |
| | |] |
| 9] | Vijay P Gaikwad |] |
| | aged about 51 years, |] |

- Member, Industrial Cour]
 Jalna]
 (Deleted as per order Dated 8/8/2016)]
]
- 10] Shri Mahendra K Mahajan]
 aged about 49 yrs.]
 Member, Industrial Court,]
 Mumbai.]
]
- 11] Ms. Vrushali V Joshi]
 Aged about 50 yrs.]
 District Judge-1, Kolhapur]
]
- 12] Shri V P Patkar]
 aged about 45 yrs.]
 District Judge-1, Achalpur,]
 District Amravati.]
]
- 13] Rajesh G Asmar]
 aged about 45 yrs.]
 District Judge-1, Ichalkarangi]
 Dist. Kolhapur]
]
- 14] P. S. Tarare,]
 Age : 53 years,]
 Judge, City Civil Court, Mumbai.]..... Petitioners.

Versus

- 1] Bombay High Court,]
 (On its Administrative Side)]
 Through the Registrar General]
 Mumbai.]
]
- 2] The State of Maharashtra]
 Through the Law and Judiciary Department]
 Served upon the Government Pleader, A.S.]
 Bombay High Court, Mumbai]
]
- 3] Hon'ble Shri M. G. Sewlikar]
 Principal District & Sessions Judge]
 For Alibaugh, having his office at]
 Raigad District Court,]
 District Raigad, Alibaugh]

- 4] Hon'ble Smt. M. S. Jawalkar]
 Court of Small Causes at Mumbai]
 Dhobi Talao, Mumbai 400 002]
]
 5] Hon'ble Shri S. P. Tavade]
 Registrar-I (Inspection)]
 Bombay High Court,]
 (On its Administrative Side)]
 Mumbai]..... Respondents.

Mr. Mihir Desai, Senior Advocate a/w Mr. Shardul Singh I/by Mr. T D Deshmukh for the Petitioners.

Mr. S K Talsania, Senior Advocate a/w Mr. Sanjay Udeshi and Mr. Netaji Gawade I/by M/s. Sanjay Udeshi & Co. for the Respondent No.1.

Mr. A I Patel, Addl. Government Pleader a/w Mr. Rajan Pawar, AAGP for the Respondent No.2/State.

Mr. S C Naidu I/by Mr. Rakesh Sawant for the Respondent No.3.

Mr. Akshay P Shinde for the Respondent No.4.

Mr. A Y Sakhare, Senior Advocate I/by Mr. R S Mirpuray for the Respondent No.5.

CORAM : R. M. SAVANT &
 REVATI MOHITE DERE, JJ.
 Reserved on : 14th August 2018
 Pronounced on : 25th October 2018

JUDGMENT [PER R M SAVANT, J] :-

1 Rule, having regard to the challenge raised, made returnable forthwith and heard with the consent of the learned counsel for the parties.

2 The vexed issue of the seniority between direct recruits and promotees has once again engaged the attention of this Court in the above Writ Petition.

By the above Writ Petition filed under Article 226 of the Constitution of India exception is taken to the Final Approved Seniority List of Judicial Officers in the cadre of District Judge (recruited by nomination and promotion in the recruitment process 2007, 2008, 2010 and 2011) dated 11th September 2015. The Petitioners also seek the consequential order/writ or direction to the 1st Respondent to draw the seniority list afresh for each calendar year i.e. from the year 2008 onwards in accordance with the applicable rules based on the actual appointment of the Judicial Officers

3] The factual matrix giving rise to the above Writ Petition can be stated thus:-

Background :-

The service conditions in the Subordinate Judiciary were the subject matter of the All India Judges' Association's case wherein directions and reliefs were sought in respect of the working and service conditions of the Subordinate Judiciary. The Apex Court vide its judgment and order reported in (1992) 1 SCC 119 in the matter of All India Judges Association v/s. Union of India - I issued certain directions which were required to be complied with by the respective States and Union Territories. A Review Petition came to be filed against the aforesaid judgment of the Apex Court. Pursuant to the directions issued in the said Review Petition by order dated 21st March 1996,

the Central Government constituted the First National Judicial Pay Commission under the Chairmanship of Justice K. J. Shetty which came to be known as the “Shetty Commission”. The Shetty Commission carried out its deliberations and submitted its report on 11th November 1999. The Shetty Commission made its recommendations in respect of various issues, however, in the context of the present Writ Petition the inter-se seniority between the District Judges i.e. between the promotees and direct recruitees is relevant. The issue of method of recruitment to the posts of District Judges from different cadres and the inter-se seniority to be maintained amongst them came up for consideration before the Apex Court in the third round of litigation i.e. in the case of *All India Judges' Association's vs. The Union of India - III.* The Apex Court considering the recommendations made by the Shetty Commission delivered a judgment which is reported in *(2002) 4 SCC 247.* In so far as the post of District Judge is concerned, the Apex Court directed that the recruitment to the Higher Judicial Service should be trifurcated. It directed to the following effect:-

- (a) 25% posts should be filled in by direct recruitment from amongst advocates on the basis of a competitive exam.
- (b) 25% posts should be filled in by promotion strictly on the basis of merit through a competitive examination (accelerated promotion) and

- (c) 50% posts should be filled in by promotion from amongst the Civil Judges (Senior Division) on the basis of merit-cum-seniority.

The Apex Court in the said case noted that there has been a constant discontentment amongst the members of the Higher Judicial Service in regard to their seniority in service. The Apex Court took the note of the fact that large number of cases are filed in order to decide the relative seniority inter-se between various officers recruited from different cadres to the post of District Judge. The Apex Court held that in order to mitigate such inter-se seniority issues, it would be best if a roster system is followed. The Apex Court was of the view that a 40-point roster system as followed by the Central Government and as approved by the Apex Court in the case of **R. K. Sabharwal vs State of Punjab** reported in **(1995)-2-SCR-35** would be best sub-serve the purpose of avoiding conflict in promotions. The Apex Court accordingly directed all High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle.

Statutory Scheme Applicable :-

In exercise of powers conferred by Articles 223, 234, 235 and 309 of the Constitution of India the Respondent No.1 has framed and promulgated the Rules known as the Maharashtra Judicial Services (Seniority) Rules 2007 (herein after referred to as “the Seniority Rules of 2007). Thereafter the

Maharashtra Judicial Services Rules 2008 were brought into force (herein after referred to as “the Rules of 2008). Rules 5 and 6 of the Seniority Rules of 2007 are relevant in the context of the present Writ Petition and are therefore reproduced herein under :-

- “5 Seniority of District Judges to be appointed after these rules come into force:-** Seniority of the Officers who are appointed under rule 4(1) shall be regulated as per Forty Point Roster in Appendix appended to these rules.
- 6 Gradation lists :-** Every year in the month of January seniority lists of Officers in all cadres shall be prepared and published by the High Court of Judicature at Bombay and the lists so published shall be used for the purpose of making promotions to the next higher cadre.”

Reading of the aforesaid Rule 5 therefore discloses that the seniority of officers who are appointed after the Seniority Rules comes into force shall be regulated as per 40 point Roster which is appended to the Seniority Rules. Reading of Rule 6 discloses that every year in the month of January seniority list of officers in all cadres shall be prepared and published by the Respondent No.1 and the lists so published shall be used for the purpose of making promotions to the next higher cadre.

Now coming to the Rules of 2008. Rule 3 contemplates the constitution of Judicial Service of the State. The Judicial Services of the State is to comprise of three cadres, which in the order of hierarchy are :-

- (i) District Judge
- (ii) Civil Judge, Senior Division and
- (iii) Civil Judge, Junior Division.

In so far as the posts of District Judges are concerned, they can be said to be belonging to the Higher Judicial Service. Thereafter Rule 5 provides for the manner in which the posts of District Judges in the Higher Judicial Services are to be filled in. The said Rule 5 postulates the manner of filling up of the said posts :-

- (i) 25% posts of District Judges/Higher Judicial Service shall be filled in from amongst eligible advocates on the basis of written and oral test (Direct Recruits)
- (ii) 10% posts of District Judges/Higher Judicial Service shall be filled in by promotion strictly on the basis of merit through competitive examination (hereinafter referred to as '**accelerated promotion**'). (Prior to the amendment in 2010 the same was 25%. The amendment in 2010, added a proviso that, if all posts earmarked from this source could be filled in, the balance would be filled in by regular promotion).
- (iii) 65% posts of District Judges/Higher Judicial Service shall be filled in from the cadre of Senior Civil Judges on the basis of merit-cum-seniority. (Prior to the amendment on 31.12.2010 the same was 50%)."

Thereafter Rule 6 of the Rules of 2008 provides the manner in which the exercise of filling up of the posts is to be carried out. It inter-alia encompasses within itself that a list of eligible candidates is to be prepared, that the Respondent No.1 after the selection process contemplated by the

preceding sub-rules of Rule 6 are completed, recommend the names of the selected candidates to the State Government, and the State Government upon receipt of the names from the Respondent No.1 shall complete the process of verification of antecedents and medical examination and thereafter issue appointment orders. It is after issuance of the appointment orders, that the Respondent No.1 then issues posting orders in respect of an individual judge. It is required to be noted that Rule 6(7) provides that the inclusion of a name in the list under Rule 3 shall not confer any right of appointment of the candidate. The aforesaid is an overview of the statutory regime which is in contention in the instant case.

4 The facts giving rise to the filing of the above Writ Petition can be stated thus :-

 In so far as the post of District Judge is concerned, from the year 2001 till the year 2006 there was no appointment made to the post of District Judge by way of direct recruitment by nomination. Resultantly 25% quota meant for direct appointments by nomination were not filled up in the State of Maharashtra for the years 2001 to 2006. There was also no appointment made to the 50% quota meant for being filled in from amongst the officers of lower judiciary on the basis of merit-cum-seniority. Also there was no appointment made to the 25% quota meant for being filled in from the officers of the lower judiciary on the basis of competitive examination. However, the Respondent

No.1 was pleased to fix the seniority of the District Judges recruited by way of promotion from amongst the lower judiciary from 2003-2006. Thereafter in the month of January 2007 the process for appointment by nomination to the posts of District Judges was commenced. In the said recruitment process the Respondent No.1 appointed 5 candidates to the post of District Judge and their appointment orders were issued in October 2007. It is during the pendency of the said recruitment process of the year 2007 by nomination, that the Respondent No.1 commenced another recruitment process for appointment by nomination. The said process began in July 2007 and the Respondent No.1 in the said process appointed 30 candidates to the post of District Judge. It is in the 2nd recruitment process which commenced in July 2007 that the Petitioners herein have been selected and appointed. The Petitioners and others selected along with them were accordingly appointed as District Judges on 02nd May 2008. Meanwhile in 2007 itself the process of recruitment from the feeder cadre of Senior Civil Judges under 25% quota as accelerated promotion (now reduced to 10%) was commenced and 9 Senior Civil Judges who came to be recruited in the said process were appointed as District Judges and their appointment orders were issued in the year 2007. At the same contemporaneous time in the year 2007, the Respondent No.1 began the process of recruitment in the 65% quota (enhanced from the original 50%) meant for promotion on merit-cum-seniority basis from the feeder cadre of Senior Civil Judges. In the said process which commenced in 2007 the

Respondent No.1 recommended 70 candidates and the State Government thereafter was pleased to issue appointment orders in respect of 70 candidates only in March 2008. Hence though the recruitment process in respect of filling up of the posts by promotion in the 65% quota meant for promotees had commenced in the year 2007. The same ultimately culminated in March 2008. Thereafter in the year 2009, there was no appointment made to the post of District Judge from the members of the lower judiciary, by either normal or accelerated promotion. The Respondent No.1 published a gradation list for the years 2009 to 2014 on 01.01.2009, 01.01.2010, 01.01.2011, 01.01.2012, 01.01.2013 and 01.01.2014. It was mentioned in the said gradation list that the seniority of the officers inclusive of all the Petitioners herein would be fixed later on as per Rules.

Thereafter on 29th March 2014, the learned Registrar General of this Court was pleased to issue a letter to all Principal Judges informing all the concerned Judicial Officers that the Respondent No.1 had prepared a provisional seniority list of Judicial Officers in the cadre of District Judge who were recruited by nomination and promotion in the recruitment process of the years 2007, 2008, 2009 and 2011. It was informed that the said list was available on the official website. By the said letter, the concerned Judicial Officers were further called upon to submit their written objections, if any, to the said provisional seniority list within a period of 30 days thereof. The

Petitioners herein having perused the said seniority list submitted their objections to the same vide letter dated 25th April 2014 along with the annexures appended to the said letter. The Petitioners also submitted the judgments of the Apex Court in support of their said objections. The sum and substance of the objections of the Petitioners was that the officers otherwise junior to the one of the Petitioners especially 3rd Petitioner were shown senior to the 3rd Petitioner and therefore in essence to the other Petitioners. The objections were also revolving around the fact that the Promotees who were issued appointment orders in the year 2008 were not treated as having been appointed in the year 2008 but treated as appointed in the year 2007 i.e. when the recruitment process began. It was therefore the case of the Petitioners that the 10 Promotee Recruits having been appointed in the year 2008 could not have been placed above the Petitioners who were direct Direct Recruits of 2008. The said objections of the Petitioners were considered by the Respondent No.1 and the same were rejected which was accordingly communicated to the Petitioners. Thereafter on 11th September 2015 the final approved Seniority List of Judicial Officers in the cadre of District Judge recruited in the recruitment process of the years 2007, 2008, 2010 and 2011 came to be published. As indicated above it is the said Final Approved Seniority List of Judicial Officers in the cadre of District Judge dated 11th September 2015 which is taken exception to by way of the above Writ Petition. Though the Petitioners are part of the 2nd recruitment process by nomination

which began in July 2007 and culminated in May 2008, the Petitioners have chosen to challenge the seniority list for the subsequent years.

5 On behalf of the Respondent No.1 i.e. the High Court an Affidavit in Reply has been filed by the learned Registrar (Legal & Research). The said Affidavit in Reply initially refers to the mode of recruitment to the post of District Judge i.e. by nomination, accelerated promotion and regular promotion. It is stated in the said Reply that the Petitioners had participated in the selection process of 2007 by way of nomination. It is stated that as the process for all the three modes including that of the Petitioners by direct recruitment had commenced in the same year, and all the candidates were considered as appointees of the same year for the purpose of the gradation/seniority list. Thereafter a table has been reproduced showing the dates on which the selection process for the different streams has commenced. It is thereafter stated in the Affidavit that in the selection process which commenced in March 2007 by direct recruitment 5 candidates were selected and as per the Government Notifications dated 26/09/2007 and 18/01/2008 the said 5 candidate were given appointments. Thereafter an Advertisement was issued on 05/07/2007 for filling up of 16 vacancies by nomination. It is stated that the number of vacancies was increased to 31 from 16 and that the present Petitioners were part of the said selection process. A select list of 33 candidates who were selected for the post of District Judge by nomination was

approved in the Full Court Meeting dated 07/04/2008. It is further stated that in all 30 candidates including the Petitioners were appointed as per the Government Notification dated 25/04/2008. Out of 30 candidates, 29 candidates including the Petitioners joined their posting on 02/05/2018 and, one candidate namely Shriv S V Kulkarni did not join service pursuant to his selection. The remaining 3 candidates were appointed as per the Government Notification dated 31/05/2008. It is further stated that 9 Judicial Officers were promoted by accelerated promotion as per the decision taken in the Full Court Meeting dated 31/07/2007. It is further stated that in the Full Court Meeting dated 31/01/2008 the list of 79 Judicial Officers in addition to 8 Judicial Officers on the waiting list was approved for promotion to the post of District Judge by regular promotion. Out of these, 76 Judicial Officers were appointed as per Government Notification dated 12/03/2008, 8 Judicial Officers were appointed as per Government Notification dated 22/09/2008. Remaining two Judicial Officers were not given posting on account of pending vigilance inquiry. One of them was compulsory retired before he was given posting and the other Judicial Officer was prematurely retired on 02/09/2014. It is stated that the promotion of District Judges by regular promotion was completed before the process of selection of District Judges by nomination i.e. selection process of Petitioners. It is thereafter stated in the Affidavit that a Committee was constituted for fixing of the seniority of District Judges as per the Seniority Rules of 2007. The said Committee on 24th December 2013

recommended to fix the seniority of District Judges who were appointed during the years 2007 till 2011. It is further stated that on 23rd January 2014 the aforesaid Committee approved the seniority list and decided to place it before the Full Court. On 27/01/2014, the seniority list as approved was placed before the Full Court and it was decided to publish the seniority list of the District Judges as Provisional Seniority List, and invite objections to the same from the District Judges within a period of thirty days from the date of publication of the said Provisional Seniority List. It is stated that accordingly the Provisional Seniority List was published on 29/03/2014 and on 06/08/2015 various objections were received from the Judicial Officers including some of the Petitioners were placed before the Committee which was constituted for the said purpose. It is stated that the Committee was pleased to reject the said objections. The Committee was of the view that as the time required to complete the recruitment process is not certain, the said process cannot be ignored only because it takes time. The Committee therefore considered the date of initiation of process as the norm for deciding the seniority and made it applicable uniformly. It is stated that the Judicial Officers recruited and promoted in the selection process 2007 to 2011 are placed in the seniority list as per 40 point roster system. It is stated that the District Judges who are part of the process of 2007 have been taken as appointees of the year 2007 irrespective of their date of appointments. It is stated that in all 132 District Judges were recruited and promoted in the

selection process 2007. It is stated that the same exercise is carried out in respect of the years 2008, 2010 and 2011. It is stated that since the Petitioners are all of the process commenced in the year 2007 and therefore all of them have been taken in the same group and have been arranged in seniority as per the 40 point roster. Hence the sum and substance of the Affidavit in Reply is that since the selection process by nomination and by promotion was initiated simultaneously in the year 2007, accordingly the Petitioners and the Promotees of the said selection process have been considered together as one unit for ascertaining their seniority and have been fitted in the respective slots in the 40 point roster. It is lastly contended in the said Affidavit that the same has been done for giving an harmonious meaning to the rules of seniority by reckoning the seniority on the basis of the year in which the recruitment process commenced.

6 In so far as the Affidavit in Reply filed on behalf of the Respondent No.3 is concerned, the said Affidavit refers to the antecedent facts in some details. The said Affidavit refers to the Bombay Judicial Service Recruitment Rules, 1956, amendments to the said Rules in the year 1987 and 1992. It is stated that in terms of clause 5(2)(b) of the said Rules, the seniority of a District Judge is to be reckoned from the date of placement in the said cadre and not from the date of initial appointment as Additional Judge. Thereafter reference is made to the judgment of the Apex Court in All India Judges,

Association (I) v/s. Union of India [(1992) 1 SCC 119] - I, thereafter to the Shetty Commission Report and thereafter to the report of the Committee constituted by this Court to implement the directions of the Supreme Court whilst accepting the Shetty Commission Report. It is stated that the Respondent No.1 on its administrative side constituted a four member Committee of Judges under the Chairmanship of Justice S.H.Kapadia (as His Lordship then was) to implement the directions of the Supreme Court issued whilst accepting the Shetty Commission Report. It is stated that Justice Kapadia Committee by its report dated 24th August 2002 accepted that there shall be a uniform single cadre of District Judge. The Committee also recommended that 1st July 1996 should be the date for caderisation. Thereafter a reference is made to the Writ Petitions filed in the Apex Court challenging the above recommendations. By a common Judgment dated 15th February 2006, the Apex Court disposed of the said Writ Petitions with the observation that it would be expedient if the High Court first examines the grievances made in the Petition having regard to all relevant considerations. The Respondent No.1 thereafter on its administrative side constituted a Committee comprising of 3 Hon'ble Judges of this Court under the Chairmanship of Justice H. L. Gokhale (As His Lordship then was). The Justice Gokhale Committee submitted its report dated 19th September 2006. The said report did not disturb the constitution of the unified cadre of District Judge recommended by the Justice Kapadia Committee. The said Justice Gokhale

Committee report was accepted in the Full Court Meeting on 3rd February 2007. Pursuant to the acceptance of the said recommendations, Rules known as the Maharashtra Judicial Service (Seniority) Rules, 2007 were framed by the State of Maharashtra. The said Seniority Rules of 2007 were notified vide Notification dated 28th March 2007, and were deemed to have come into force from 1st July 1996. Thereafter a reference is made to Rules 4 and 5 of the Seniority Rules of 2007. Thereafter a reference is made to the challenge raised to the said Seniority Rules of 2007 which was repelled by the Apex Court by judgment and order dated 11th December 2008. The affidavit thereafter refers to the sanctioned strength for the cadre of District Judge and Civil Judges (Senior and Junior) in the State which is 313 and 337 respectively. Thereafter a reference is made to the appointment of ad-hoc District Judges as Fast Track Court. A reference is made to the judgment of the Apex Court in **Malik Mazhar Sultan & Anr. Vs. U. P. Public Service Commission & Anr.** reported in **2008 (17) SCC 703** in which judgment the process for recruitment to the posts of District Judges was directed to be completed within the time frame mentioned in the said judgment. Thereafter the measures which were taken by the Respondent No.1 for the compliance of the directions of the Supreme Court have been stated in the said affidavit. It is stated that in so far as filling up the posts of District Judges on promotion from the cadre of Senior Civil Judges on the basis of principle of merit-cum-seniority, 177 eligible officers were notified by Notification dated 6th March 2007 for 46 actual vacancies and

13 probable vacancies. By a further Notification dated 22nd March 2007 the list of eligible officers was increased from 177 to 233. It is stated that six judgments of each of the 233 eligible Civil Judges Senior Division in the zone of consideration for promotion to District Judge had to be submitted by 30th March 2007. Thereafter a reference is made to the filling up the post by direct recruitment i.e. by nomination and by accelerated promotion. A reference is made to the second recruitment process in respect of nomination. Thereafter a reference is made to the final select list in respect of successful candidates in the recruitment process by nomination. Thereafter a reference is made to the 9 Senior Civil Judges who were selected for accelerated promotion and whose names were notified by Notification dated 22nd November 2007. Thereafter a reference is made to the Notification dated 12th March 2008 by which 76 Judicial Officers were promoted to the posts of District Judges.

It is stated in the said affidavit that evaluation of Senior Civil Judges for promotion on the basis of merit-cum-seniority is an entirely different process from assessing the examination papers for direct recruitment or accelerated promotion. It is stated that the evaluation has to be done first in respect of 6 judgments of each Judicial Officer in the zone of consideration. Thereafter evaluation of the confidential report for the last five years of each eligible candidate in the zone of consideration and thereafter eligible candidates are called for interview. Hence in the aforesaid process though the

recruitment process for promotion on the basis of merit-cum-seniority had commenced in March 2007, the same could culminate only in March 2008. It is further stated that the recruitment to the posts of District Judges which commenced on 2nd March 2007 was an extra ordinary inasmuch as the said process was initiated after a gap of 4 years. It is stated that the said recruitment process which commenced from 3rd March 2007 was as per the directions of the Supreme Court issued in the case of Malik Mazhar Sultan (supra). It is lastly stated that the Seniority Rules of 2007 were challenged before the Apex Court. By the judgment and order dated 11th December 2008 the Apex Court rejected the challenge to the vires of the Seniority Rules of 2007. On the said basis it is submitted that the submission that gradation list as mandated by Rule 6 of the Seniority Rules of 2007 ought to have been published as on 1st January 2008 is misconceived to say the least.

7 SUBMISSIONS OF THE LEARNED SENIOR COUNSEL SHRI MIHIR DESAI APPEARING ON BEHALF OF THE PETITIONERS.

A] That the Rules postulate fixing of the inter-se seniority of various persons converging from different streams into the cadre of District Judge. The term “officers” used in the Rule is therefore meant “validly appointed” officers. The term officers in all cadres would and cannot mean or even remotely suggests that even those who are undergoing a recruitment process or those who will

undergo a recruitment process and not yet appointed or inducted into the cadre can be considered

- B] That the Rules are mandatory in nature and require that all officers in the Higher Judicial Service as on the first month of every English calendar year must be put in a consolidated list in terms of the 40-point roster and must be placed or put in an appropriate slot in the said roster depending upon the source of their recruitment. Hence a person whose name can appear in the said list has to be a person who has been 'appointed' and 'in service' as on the first month of every English calendar year.
- C] That it is only after the appointment order is issued and notified by the State Government, that the Respondent No.1 can treat the candidate as appointed and proceed to issue appointment orders.
- D] That there is no vested right in a candidate only because his name appears in the final list to be sent to the Government, nor is there any certainty that the person would meet the other parameters at the stage of verification and medical examination. Hence such a person cannot be included in the list.

- E] That a seniority list ought to have been prepared and published in January 2008, so as to decide the seniority of the Judicial Officers in the cadre of District Judge which would include the Direct Recruits of 2007. Thereafter seniority list ought to have been prepared and published in January 2009 which would then have the Petitioners herein and the Promotee Recruits of 2008.
- F] That the gradation list published by the Respondent No.1 for the years 2009 to 2014 on 01/01/2009, 01/01/2010, 01/01/2011, 01/01/2012, 01/01/2013 and 01/01/2014 was neither in the nature of a provisional or draft seniority list and hence the mandate of Rule 6 was not followed.
- G] That the inclusion of the Promotee Recruits of the year 2008 on the basis of they having been appointed in the year 2007 i.e. when the recruitment process began has resulted in the said promotees being shown as senior to the Petitioners. The consequence of the same is that they were shown as borne on the cadre of District Judge at the time when they were admittedly performing duties of the Civil Judge Senior Division. That 10 Promotee Recruits of 2008 having been appointed in the year 2008 could not have been placed above the Petitioners who were Direct Recruits of the year

2008. In support of the said submission reliance is placed on the Judgment of the High Court of Hyderabad in the matter of *B.S.Jag Jeevan Kumar v/s. High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh* reported in *Manu/AP/0253/2017* , Judgments of the Apex Court reported in *Uttaranchal Forest Rangers' Assn. (Direct Recruit) and others v/s. State of U.P and others* reported in *(2006) 10 SCC 346. 2006(10) SCC 346,* and *Col. D.D.Joshi and others v/s. Union of India and others reported in (1983) 2 SCC 235.*

- H] That the seniority list ought to have been prepared by taking into consideration the first month of English calendar year of actual appointment of each Judicial Officer and not the year of initiation of recruitment process which has been taken into consideration in the instant case. Reliance is placed on the judgment of the Apex Court in the matter of *Sri Parth Sarathi Sen & ors. V/s. Registrar General, High Court, Calcutta & ors.* reported in *2017 SCC Online Cal 5040.*

- I] That the seniority list prepared on the basis that there will be a break down of the roster, on account of quota rota rule not being

followed is not permitted even by the Apex Court by observing that a pragmatic interpretation must be given to the rules. Reliance is placed on the judgment of the Apex Court in the matter of Hon'ble High Court of Judicature at Allahabad – through Registrar General v/s. The State of Uttar Pradesh & ors. reported in 2018 SCC OnLine SC 300.

J] That the impugned seniority list in so far as it proceeds on the basis that the time taken from the year of initiation of the recruitment process till the year of actual appointment is uncertain, the year of initiation of the recruitment process should therefore be taken as a basis for placement in the seniority list is erroneous and is in violation of the Rules.

K] That the impugned seniority list does not apply to quota rule in accordance with the settled position of law, which is to take a English calendar year as a single unit.

L] That the impugned seniority list in so far as it takes into consideration the initiation of the recruitment process as the year of appointment is in conflict with the rules as the rules contemplate that an appointment to take place only after

appointing orders are issued by the State Government. The decision to take the year of initiation of the recruitment process as the year of appointment for inclusion in the seniority list is therefore unreasonable, unfair and manifests in injustice to the Petitioners.

8 SUBMISSIONS OF THE LEARNED SENIOR COUNSEL SHRI S K TALSANIA APPEARING ON BEHALF OF THE RESPONDENT NO.1.

- i] That the Petitioners above-named are part of the second selection process which was initiated in the year 2007 to fill up the posts of District Judges by nomination. The select list of 33 candidates selected by nomination was approved in the Full Court Meeting dated 07/04/2008.

- ii] That in so far as the promotees are concerned, the process had commenced in the year 2007, however the same was culminated in January 2008 in the Full Court Meeting dated 31/01/2008. The list of 79 Judicial Officers in addition to 8 Judicial Officers on waiting list was approved in the Full Court Meeting for appointment by Regular Promotion. Hence it is clear that the promotion of the District Judges by Regular Promotion was

completed before the process of selection to District Judges by nomination.

- iii] That the Petitioners have not demonstrated as to how any prejudice is caused to them on account of the seniority list being prepared by taking the date of initiation of the recruitment process as the date for reckoning seniority.
- iv] That in terms of the judgment of the Apex Court in *All India Judges Association's* case (supra) a Committee was constituted by the Respondent No.1 to fix the seniority of District Judges who were appointed during the period 2007 till 2011. The Committee, in view of the fact that the time required to complete the recruitment process is not certain, considered the date of initiation of recruitment process as a norm for deciding the seniority and made it applicable uniformly.
- v] That the candidates selected either by direct recruit or by regular promotion or accelerated promotion were first arranged as per the year of the process of recruitment having started and accordingly seniority list was prepared by applying 40-point roster as per Rules. As there was no recruitment in the year 2009, there

is no reference to the year 2009 in the seniority list.

- vi] That the promotee District Judges who are part of the process initiated in the year 2007 were taken as appointees of the year 2007 irrespective of their date of appointment. The Petitioners being also part of the process commenced in the year 2007, they have also been taken in the same group and have been arranged in seniority as per the 40-point roster and hence the Petitioners cannot have a grievance about the same.
- vii] That the contention urged on behalf of the Petitioners that two separate lists which have been prepared for the years 2007 and 2008 cannot be accepted, since in so far as the promotees are concerned, the process having commenced in the year 2007 and since the process for nomination also commenced in the year 2007, all the appointments of the selection process were taken as of the year 2007 and have been considered as one unit.
- viii] That the contention urged on behalf of the Petitioners that the Judges appointed in the year 2008 in the process of Regular Promotion are placed above Judges appointed in the year 2007 is misconceived as for the purpose of seniority the date of initiation

of process has been considered for all the recruitment as the date to be reckoned for seniority.

- ix] That it is practically not possible to apply the 40-point roster for a unit of one calendar year as is sought to be contended by the Petitioners as the selection process for various streams is different. Moreover in case of the promotees whose case is kept pending on account of vigilance / complaint, it is on closure of the same that a deemed date of appointment is given as per the Seniority Rules 2007. Thus in such a scenario the 40-point roster cannot be made applicable for a unit of one calendar year as is sought to be contended by the Petitioners.

9 **SUBMISSIONS OF THE LEARNED SENIOR COUNSEL SHRI A Y SAKHARE APPEARING ON BEHALF OF THE RESPONDENT NO.5.**

- i] That a conjoint reading of Rule 4 of the Seniority Rules 2007 and Rule 6 of the Maharashtra Judicial Services Rules 2008 makes it clear that the seniority is to be reckoned not from the date of recruitment process but from the date of appointment.
- ii] That in terms of Rule 4 of the Seniority rules 2007, the seniority is

to be determined in accordance with 40-point roster as appended to the Rules;

- iii] That the words used in the said provision viz. The seniority of the officers who are appointed in the cadre of District Judge clearly indicates that 40-point roster is to be applied only after the appointment in the cadre of District Judge.
- iv] That the gradation list in accordance with Rule 6 was required to be prepared in January 2008. The said list would have only consisted of 5 direct recruits who have been appointed in October 2007 and 9 officers appointed by way of accelerated promotion vide order issued in November 2007 therefore the seniority would have been required to be given to the said officers based on such gradation list.
- v] That the gradation list prepared in 2009 which includes direct recruits appointed in 2007, the accelerated promotees appointed in 2007 as well as promotees appointed in 2008 as per the 40-point roster is contrary to the Rules.
- vi] That the effect of the promotees being shown above the direct

recruits of the year 2007 as well as the nominees by accelerated promotion appointed in the year 2007 is contrary to the Rules and well settled principles of Service Jurisprudence, that no person can be given seniority prior to his birth in the cadre.

10 **SUBMISSIONS OF THE LEARNED COUNSEL SHRI S.C.NAIDU
APPEARING ON BEHALF OF THE RESPONDENT NO.3.**

- i] That in terms of Rule 5 the seniority of Judicial Officers appointed as District Judges is to be regulated as per the 40-point roster.

- ii] That the successful candidates in recruitment process from all three streams will constitute one single batch irrespective of the date when they were appointed.

- iii] That commencement of recruitment process in March 2007 from all three streams to fill up vacancies in the cadre of District Judge will constitute one single process of recruitment and, the seniority of all the candidates from all three sources will be regulated as per Rule 5 of the 2007 Rules.

- iv] That the roster under Rule 5 will operate after recruitment as per quota and the seniority is fixed by the roster point and

irrespective of the fact that as to when a person is recruited.

- v] That in terms of mandate of the Apex Court in **Malik Mazhar Sultan v/s. UP Public Service Examination and ors. - II** reported in **(2008) 17 SCC 703** that all successful candidates from all three sources would have to be treated as one batch for the purpose of placing them in the 40-point roster and the seniority would accordingly have to be regulated.

- vi] That the quota – rota rule is mandatory and should not be permitted to break down as it is linked to seniority. If it breaks down or is illegally not adhered to giving effect to the second would be unjust, inequitous and improper. Reliance is placed on the judgment of the Apex Court in **A. Janardhana v/s. Union of India & ors.**, reported in **AIR 1983 SC 769.**

- vii] That the quota – rota system can only be adhered to if commencement of recruitment process through different sources is considered as one batch for placing successful candidates from Bar, accelerated promotion and regular promotees at the respective points of 40-point roster in terms of Rule 5 of the Seniority rules 2007.

- viii] That the second process of direct recruitment before completion of the first process could not have been undertaken without proper advertisement and notification. That in the instant case there is no advertisement and notification of the Respondent No.1 calling for application from eligible candidates for filling up 31 vacancies in quota of direct recruitment. The defect is an incurable defect and which in violation of Articles 14 and 16 of the Constitution of India. Reliance is sought to be placed on the judgment of the Apex Court in **Rakhi Ray vs. High Court of Delhi** reported in **(2010) 2 SCC 637**.
- ix] That many of the promotees having been appointed as Fast Track Court Judges. In terms of the Judgment of the Apex Court in **Brij Mohan Lal v/s. Union of India and ors** reported in **(2002) 5 SCC 1** the service in the Fast Track Courts would be considered as service in the higher cadre. Hence equity has to lean in favour of the promotees.
- x] That by taking into consideration the date of initiation of the recruitment process and the date for counting the seniority, the administration has adopted a pragmatic approach. Hence the

same does not call for any interference in the Writ Jurisdiction of this Court.

11 **CONSIDERATION:-**

We have heard the learned counsel appearing for the different parties and we have bestowed our anxious consideration to the rival contentions. Before proceeding further it is necessary to refer to the law laid down by the Apex Court which in our view impacts the present case. The relevant judgments of the Apex Court are mentioned herein under :-

A] **All India Judges' Association's vs. The Union of India - I :-.**

The Apex Court by the said Judgment directed the Union of India to take steps to bring about uniformity in the designation of judicial officers both on the Civil and Criminal sides by 31/03/1993. Paragraph 15 of the said Report is material and is reproduced herein under :-

“We are inclined to adopt the view of the Law Commission. On the civil side, the State Judicial Service, therefore, should be classified as District or Additional District Judge, Civil Judge (Senior Division) and Civil Judge (Junior division). On the criminal side, there should be a Sessions Judge or Additional Sessions Judge and below him there should be the Chief Judicial Magistrate and Magistrates provided for in the Code of Criminal Procedure. Appropriate adjustments, if any, may be made of existing posts by indicating their equivalence with any of these categories. The process of bringing about such uniformity would require some time and perhaps some monitoring. We direct that the Ministry of Law and Justice of the Union Government

would carry on the monitoring activity and all the States and Union Territories would follow the pattern indicated above by March 31, 1993.”

B] *All India Judges' Association's vs. The Union of India – II :-.*

By a further order dated 24/08/1993 the Apex Court extended the time to comply with the directions for bringing about the uniformity in hierarchy and designations and jurisdictions of the judicial officers on both Civil and Criminal sides upto 31/03/1994.

C] *All India Judges' Association's vs. The Union of India – III :-.*

The said Judgment was rendered in the aftermath of the Justice Shetty Commission Report. The Apex Court accepted the Shetty Commission Report subject to the modifications mentioned in the said Judgment. The High Courts and the State Governments were required to amend their Rules to bring them in conformity with the directions of the Apex Court. Paragraphs 27, 28 and 29 of the said Report are material and are reproduced herein under :-

27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of higher judicial service i.e., District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the higher judicial service, namely, by promotion from amongst the members of the subordinate judicial service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation

of the Shetty Commission which will result in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary that the judicial officers, hardworking 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 advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the higher judicial service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the caliber 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 post in the higher judicial services must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will

have to frame a rule in this regard.

28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the higher judicial service i.e., the cadre of District Judges will be:

(1)(a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;

(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years qualifying service; and

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.

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

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, a 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 the higher judicial service. The quota for promotion which we have prescribed is 50 percent by following the principle "merit-cum-seniority", 25 percent 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 or 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. 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 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 31-3-2003."

Hence what flows from the aforesaid judgment is that the recruitment to the posts of District Judges was to be from the three sources i.e.

- (i) by nomination;
- (ii) by accelerated promotion from amongst the Senior Civil Judges; and
- (iii) by regular promotion from amongst the Senior Civil Judges on merit-cum-seniority basis.

The quota amongst the three sources of recruitment was prescribed by the Apex Court which is as under :-

- (a) Promotion on the basis of merit-cum-seniority and passing a suitability test :- 50%
- (b) Promotion through limited competitive examination : 25%
- (c) Direct Recruitment :- 25%

D] **Malik Mazhar Sultan & Anr. Vs. U. P. Public Service Commission & Anr – I :-**

Paragraphs 22 and 23 of the said Report are material and are reproduced herein under :-

“22 The Rules postulate timely determination of vacancies and timely appointments. The non-filling of vacancies for long not only results in the avoidable litigation but also results in creeping of frustration in the candidates. Further, non-filling of vacancies for a long time, deprives the people of the services of the Judicial Officers. This is one of the reasons of huge pendency of cases in the courts.

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 the 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 the State Governments, the Union Territories and/or the 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 the State Governments, the Union Territories and the High Courts are directed to file within three months details of the time schedule so fixed and date from which the time schedule so fixed would be operational.”

Hence a reading of said paragraphs 22 and 23 expresses the need to evolve a mechanism to speedily determine and fill the vacancies of Judges at all levels. The State Governments, Union Territories and the High Courts were directed to fill the vacancies within 3 months as per the details of the time schedule fixed and the date from which the time schedule so fixed would be operational.

E] **Malik Mazhar Sultan & Anr. Vs. U. P. Public Service Commission & Anr - II :-**

Paragraph 7 of the said Report is material and is reproduced herein under (excerpt) :-

“7. For filling up of vacancies in the cadre of District Judges, accepting the proposal to which none has objected, except in the manner hereinafter noticed, we direct as under:

A. For filling of vacancies in the cadre of District Judge in respect of

(a) twenty five percent vacancies to be filled by direct recruitment from the Bar; and

(b) twenty five percent by promotion through limited competitive examination of Civil Judges (Senior Division) not having less than five years of qualifying service.

Sl.No.	Description	Date
1	Number of vacancies to be notified by the High Court. Vacancies to be calculated including a) Existing vacancies b) Future vacancies that may arise within one year due to retirement, c) Future vacancies that may arise due to elevation to the High Court, death or otherwise, say ten per cent of the number of posts, d) Vacancies arising due to deputation of judicial officers to other department may be considered as temporary vacancy.	31 st March
2	Advertisement inviting application from eligible candidates.	15 th April
3	Last date for receipt of application	30 th April
4	Publication of list of eligible applicants List may be put on the website	15 th May
5	Despatch/Issue of admit cards to the eligible applicants	16 th May to 15 th June
6	Written examination Written examination may be a) objective questions with multiple choice which can be scrutinized by the computer, and b) subjective/narrative	30 th June
7	Declaration of result of written examination a) Result may be put on the	16 th August

	website and also published in the newspaper b) The ratio of 1:3 of the available vacancies to the successful candidates be maintained.	
8	Viva Voce	1 st to 7 th September
9	Declaration of final select list and communication to the appointing authority a) Result may be put on the website and also published in the newspaper b) Select list be published in order of merit and should be double the number of vacancies notified, c) Select list shall be valid till the next select list is published.	15 th September
10	Issue of appointment letter by the competent authority for all existing vacant posts as on date	30 th September
11	Last date for joining	30 th October

B. For filling of vacancies in the cadre of District Judge in respect of fifty per cent vacancies to be filled by promotion.

Sl.No.	Description	Date
1	Number of vacancies to be notified by the High Court. Vacancies to be calculated including a) Existing vacancies b) Future vacancies that may arise within one year due to retirement, c) Future vacancies that may arise due to elevation to the High Court, death or otherwise, say ten per cent of the number of posts.	31 st March
2	Publication of list of eligible	15 th May

	officers a) The list may be put on the website b) Zone of consideration should be 1:3 of the number of vacancies	
3	Receipt of judgments from the eligible officers	30 th May
4	Viva voce Criteria a) ACR for last five years; b) Evaluation of judgments furnished; and c) Performance in the oral interview	15 th to 31 st July
5	Declaration of final select list and communication to the appointing authority a) Result may be put on the website and also published in the newspaper b) Select list be published in order of merit and should be double the number of vacancies notified.	31 st August
6	Issue of appointment letter by the competent authority for all existing vacant posts as on date.	30 th September
7	Last date for joining	31 st October

The Apex Court in the aforesaid case recalled its directions in ***All India Judges' Association's*** case (supra) that existing vacancies in the subordinate Courts at all levels should be filled by 31/03/2003 in all States. The Apex Court as can be seen stipulated a definite time line for taking steps for recruitment by different modes and specified dates for filling up the vacancies in the cadre of the District Judge from all sources. The Apex Court directed the Chief Justice

of each High Court to constitute a committee of two or three Judges to monitor and oversee that timely selection and appointment of judicial officers is made. The Chief Justice of each High Court was further requested to constitute a special cell in the name of "Selection and Appointment" in the High Court or under such other name as the learned Chief Justice may consider proper with an officer of the rank of Registrar for assisting the Committee. The Apex Court directed the State Government to issue appointment letters within one month of receipt of the recommendations from the High Courts. The Apex Court granted liberty to the High Courts/State Government/Union Territories to apply to the Apex Court for variation in the time schedule in case of any difficulty having regard to the peculiar geographical and climatic conditions in the State or other relevant considerations.

A] Facts Involved in the present case which are required to be revisited in the context of the law laid down by the Apex Court :-

In the State of Maharashtra there are 313 posts of District Judges. The vacancy position as on the date of issuance of the advertisement for recruitment by nomination in 2007 (first process) was 133. However, between the period 2001 to 2006 there was no appointment made to the posts of District Judges by way of nomination i.e. direct recruitment, or by regular promotion on the basis of merit-cum-seniority as also by way of accelerated promotion from the lower cadre by way of a limited competitive examination.

The selection process for all the three streams for appointment to the posts of District Judges commenced simultaneously by notifying the vacancies. The details of the same are as follows :-

- (i) The advertisement being No.A/5504/2007 dated 03/03/2007 for filling up 21 vacancies in the cadre of District Judge by nomination.
- (ii) By Order No.A/5504/2007 dated 03/03/2007 willingness to appear for examination was invited from the candidates holding the post of Civil Judge (Senior Division) for a period of at least 5 years as on 01/03/2007 for appointment to the posts of District Judges by accelerated promotion.
- (iii) By Notification No.A/5504/2007 dated 06/03/2007 names of 177 eligible officers were notified for regular promotion as District Judges for 46 actual vacancies and 13 probable vacancies. The promotion was to be on merit-cum-seniority and passing suitability test.
- (iv) By further Notification dated 22/03/2007 the list of eligible officers was increased from 177 to 233 Ad-hoc District

Judge/Senior Civil Judge. Six judgments of each of the 233 eligible Civil Judges Senior Division, in the zone of consideration from promotion to District Judge had to be submitted by 30/03/2007.

B] Written Examination :-

- (i) The written examination for recruitment by nomination was conducted on 21/05/2007.
- (ii) The limited competitive examination from amongst the Senior Civil Judge was also conducted on 21/05/2007;

C] Interviews :-

- (i) The Interviews for recruitment by nomination were conducted on 28/06/2007 and 29/06/2007.
- (ii) The Interviews for recruitment by accelerated promotion were conducted on three consecutive dates i.e. 07/09/2007 to 09/09/2007.
- (iii) The interview for promotion from amongst Senior Civil Judge on merit cum seniority were conducted on diverse dates commencing

from 07/09/2007.

D] **Second Process of Recruitment :-**

- (i) Since the response to the first process of recruitment by nomination was found to be inadequate, the Respondent No.1 issued advertisement bearing No.A/5504/2007 dated 05/07/2007 for filling up 16 vacancies in the cadre of District Judge by nomination.

E] **Completion of 1st process by declaration of final select list and Govt. Notification appointing successful candidates :-**

- (i) 5 candidates were selected for appointment by nomination. The notifications came to be issued by the State Government. (The said 5 candidates have no concerned with the issue raised in the above Writ Petition.)
- (ii) 9 Senior Civil Judges were selected and by Government Notification dated 22/11/2007 appointed in vacancies in the cadre of District Judge.
- (iii) By Government Notification dated 12/03/2008, 76 Judicial Officers were promoted to the posts of District Judges.

F] **Declaration of final select list in the second process i.e. by nomination:-**

- (i) 30 candidates selected for the posts of District Judges by nomination were appointed by Notification dated 25/04/2008. Out of the 30 only 29 jointed duties. By a further Notification dated 31/05/2008, 3 selected candidates were appointed by nomination. (The Petitioners herein are the part of this process)

12 The aforesaid facts therefore disclose that the recruitment from the three streams had commenced simultaneously in March 2007. In fact a second process was commenced in respect of posts to be filled by nomination in July 2007. As indicated above, the Petitioners are part of the second process. As can be seen from the facts as disclosed above, the promotees were appointed by Notification dated 12/03/2008 whereas the Petitioners were appointed by Notification dated 25/04/2008 and therefore both the initiation of the process for recruitment as also the appointment of the Petitioners was after that of the promotees i.e. the Respondent No.3 and others similarly situated like him. Hence the Petitioners cannot have a grievance even if the promotees are shown as senior to the Petitioners in the seniority list. It is also not demonstrably proved as to how the Petitioners have been affected. If any category can be said to have been affected, it could have been the accelerated

promotees but they have not chosen to approach this Court and it is the Petitioners who have done so.

13 It is required to be noted that the filling up of the vacancies by regular promotion on the basis of merit-cum-seniority is an entirely different process than the filling up of the vacancies by nomination or on the basis of the limited competitive examination amongst the lower judiciary. In so far as regular promotion is concerned, the Respondent No.1 i.e. the High Court has to evaluate and assess 6 judgments of each judicial officer in the zone of consideration. Thereafter the confidential report for the preceding 5 years of each eligible candidate in the zone of consideration has to be evaluated. It is on account of the nature of the process involved, that though the interviews were commenced in March 2007 but the Notification appointing the promotees could only be issued on 12/03/2008. Hence it was on account of the administrative exigencies that the process in respect of the appointment of promotees though commenced in the year 2007 could only be completed in March 2008. The promotees obviously cannot be made to suffer for the said delay on account of administrative exigencies in the matter of fixation of their seniority. It would be a travesty if the promotees on account of the administrative delay in their appointment are to be shown as junior to the direct recruits on the ground that they were not even born in the cadre, on the date from which their seniority is fixed.

14 It is further required to be noted that the Apex court in **Malik Mazhar Sultan's case - II** (supra) directed that the commencement of the process of recruitment by all the 3 modes was required to be notified by 31/03/2007. the dates for completion of various stages of recruitment in respect of all three streams was fixed. It was however directed that all selected candidates should join the services on or before 30-31/10/2007. Hence what flows from the scheme as enunciated in **Malik Mazhar Sultan's case II** (supra) is that all selected candidates, by nomination, by accelerated promotion, regular promotion by merit-cum-seniority would constitute one single process and their inter-se seniority should be fixed on the basis of the 40 point roster. There can be no gain-saying of the fact that 40 point roster would only operate if appointments by all three streams are part of one single process and in accordance with the percentage fixed by the Apex Court. It is trite that where the quota of direct recruits and promotees is fixed, the quota rule is linked with the seniority rule. If the quota breaks down then giving effect to the seniority rule would be unjust, inequitable and improper. Reference could be made to **A Janardhana's case** (supra) and especially paragraph 29 thereof which reads thus :-

In the '1949 Rules' which came into force on April 1, 1951, a provision was made for determining inter se seniority between direct recruits and promotees. In para 3(iii) of Appendix-V of '1949 Rules' it was provided that a roster shall be maintained indicating, the order in which appointments are to be made by

direct recruitment and promotion in accordance with the percentages fixed for each method of recruitment in the recruitment rules. The relative seniority of promotees and direct recruits shall be determined by the dates on which the vacancies reserved for the direct recruits and the promotees occur. It would appear at a glance that this rule was related to the quota of 9:1 between direct recruits and promotees prescribed in R.4.A combined reading of rule 4 and para 3(iii) of Appendix V would clearly show that a roster has to be maintained consistent with the quota so that the relative inter se seniority of promotees and direct recruit be determined by the date on which vacancy occurred and the vacancy is for the direct recruit or for the promotee. If quota prescribed by rule 4 was adhered to or was inviolable, the rule of seniority enunciated in para 3(iii) of Appendix V will have to be given full play and the seniority list has to be drawn in accordance with it. But as pointed out by this Court in Bachan Singh's case (AIR 1973 SC 441) during the years 1959, 1969 and especially during 1962, 1963 and 1964 on account of adverse market conditions for recruitment of engineers, the Government had to be make recruitment in complete relaxation of Rr. 3 and 4 including the relaxation of the quota rule. As quota rule was directly inter-related with the seniority rule, and once the quota rule gave way, the seniority rule enunciated in para 3(iii) of Appendix V became wholly otiose and ineffective. It is equally well recognized that where the quota rule is linked with the seniority rule if the first breaks down or is illegally not adhered to giving effect to the second would be unjust, inequitous and improper. An identical situation was noticed by this Court in First B. S. Gupta's case (AIR 1972 SC 2627) wherein this Court while rejecting the contention of the promotees that the quota rule and the seniority rule deserved to be independent of each other held that with the upgrading of the large number of posts and the appointments to them of promotees, the quota rule collapsed and with that the seniority rule also. Therefore, once the quota rule was wholly relaxed between 1959 and 1969 to suit the requirements of service and the recruitment made in relaxation of the quota rule and the minimum

qualification rule for direct recruits is held to be valid, no effect can be given to the seniority rule enunciated in para (iii), which was wholly inter-linked with the quota rule and cannot exist apart from it on its own strength. This is impliedly accepted by the Union Government and is implicit in the seniority lists prepared in 1963 and 1967-68 in respect of AEE. because both those seniority lists were drawn up in accordance with rule of seniority enunciated in Annexure 'A' to Army Instruction No. 241 of 1950 dated September 1, 1949, and not in compliance with para 3(iii) of Appendix V.”

(emphasis supplied)

15 The submission urged on behalf of the Petitioners and the Respondent No.5 that every year in the month of January the seniority list of officers in all cadres shall be prepared and published and that only such officers who are validly appointed can be included in 40 point roster. We have already in the earlier part of this Judgment referred to the text of Rule 5 and Rule 6 of the Rules. In so far as Rule 5 is concerned, it lays down that the seniority of candidates appointed in the unified cadre of District Judge will be regulated by 40 point roster. Rule 6 postulates that every year in the month of January the Respondent No.1 shall prepare and publish the gradation/seniority list of Judicial Officers. The gradation list is not to be confused with the seniority list, though only a thin line separates them. Rule 6 in the instant case contemplates a gradation list. The gradation list is prepared accordingly for each cadre and is the list of persons who have been recruited in that cadre and shown in the order of seniority as on 1st January of that particular year. The manner of preparation of gradation list is set out in Rule 7 of the Maharashtra

Civil Services (Regulation of Seniority) Rules 1982. As indicated above the gradation list of the District Judges in terms of the said Rules has been prepared for the years 2009 to 2014 respectively. The said gradation list clarifies that the seniority will be fixed as per rules later on. The drawing up of Seniority List in the instant case would be dependent on the rules as well as other factors such as recruitment from different streams and placing them in the correct roster point as as per quota-rota rule. Rules 5 and 6 would have to be interpreted in the context of the recruitment being from three different streams as contemplated by the Apex Court in *Malik Mazhar Sultan's case - II* (supra) that the recruitment process commenced in March 2007 would have to be considered as one single process and the seniority of successful candidate of all the three streams would be regulated as per Rule 5. That the 40 point roster under Rule 5 would operate after recruitment as per quota and the seniority would be fixed as per roster point irrespective of the fact as to when a person is recruited.

16 The Apex Court in *Malik Mazhar Sultan's case - II* (supra) has envisaged one single day for issuance of the appointment letter to all successful candidates i.e. 30/09/2007. Implicit in the same is the fact that the successful candidates from all the three streams would have to be deemed to have been recruited in one batch and accordingly their seniority would be regulated as per 40 point roster. The quota-rota which is embedded in the 40 point roster

can only be adhered to if commencement of the recruitment process from different streams is considered as one batch so as to fit them in the respective slots in the 40 point roster. If the course of action as propounded on behalf of the Petitioners is followed, then it would result in the break down of the quota-rota, as there would be no promotees for the year 2007. It is trite that quota-rota should be maintained and should not undermined in any manner. Re : **A. Janardhana's** case (supra).

17 In so far as non-publication of the gradation list for the year 2008 is concerned, it is required to be noted that the vires of the Seniority Rules of 2007 was a subject matter of challenge before the Apex Court. The said challenge was turned down by the Apex Court by the judgment and order dated 11/12/2008. Hence it is during pendency of the said challenge that the gradation list could not be published and the same was published in the year 2009 as on 01/01/2009.

18 **The judgments relied upon on behalf of the Petitioners :-**

A] The judgment of the High Court of Hyderabad in the matter of **B.S.Jag Jeevan Kumar's** case (supra) :-

The said case also involved a challenge to the seniority list of the cadre of District Judge. The seniority list was challenged on the ground that it was not fixed in consonance with Rule 13(a) of the Rules in question. The

Petitioner a was promotee who was appointed in the year 2012. Para 18 of the said report is material and is reproduced herein under :-

“18. At the outset, it should be pointed out that there is a fallacy in the contention of the petitioner. If persons recruited by 3 different methods of recruitment are to be accommodated in the 40-point roster irrespective of the year of recruitment, then a person may gain seniority over and above another person who was appointed 2 years earlier and on which date the former was not even born in the service. It is now well settled that no person can claim seniority with effect from a date on which he was not even born in the service. If the contention of the petitioner is accepted and he is placed at serial No.3 against roster point No.3 in the 1st cycle of the roster, then the petitioner will be gaining seniority over persons appointed in the year 2010, despite the fact that the petitioner was appointed in the year 2012. This is not the purport of the decision of the Supreme Court in All India Judges Association case. This is not also the purport of Rule 13(a).”

B] The judgment of the Apex Court in the matter of **Uttaranchal Forest Rangers' Assn. (Direct Recruit) and others** (supra) :-

The said case also concerned the seniority between the direct recruits and the promotees. It was held in the said case that the promotion in excess of quota was ad-hoc and seniority cannot be given to promotees on the basis of such ad-hoc promotions. It was held that the retrospective seniority cannot be granted to the promotees from the date when vacancy arose, when they had not even been born in the cadre so as to adversely affect the direct recruits who had been appointed validly.

C] The judgment of the Apex Court in the matter of **Col. D.D.Joshi and others v/s. Union of India and others** (supra) :-

In the said case the Army Medical Corps had a provision for granting a benefit of antedating commission of its officers for varying periods if the officers at the time of their appointments fulfill certain specified higher qualifications or experience. By virtue of this provision, such qualified officers are deemed to have been commissioned at a date anterior to the date of their actual commission. This deemed date becomes the date on which the person concerned is deemed to have been commissioned and his seniority is reckoned from such deemed date. The Apex Court held that an incentive cannot be retrospective though conditions of service can be retrospectively made. The Apex court held that in respect of benefits which are available for certain qualification at the time of entering the service, the same having been made available, an enlargement by revision of the same at a later date to attract fresh entrants cannot be retrospectively claimed by those who had already entered service knowing full well the benefit then available and availing full advantage of the benefit at the time of entering service. The Apex Court held that since the promotion in Army Medical Corps is based on a common seniority list, giving of longer period of antedating to the earlier entrants also by applying the amended 1978 Army Instruction would disturb the seniority and promotional prospects of a large number of persons.

D] The judgment of the learned Single Judge of the High Court of Calcutta in the matter of **Sri Parth Sarathi Sen & ors.** (supra) :-

The challenge in the said case was to the gradation list of the Judicial Officers for the posts of District Judges (Entry Level). The said list was challenged on the ground that the same has not been prepared in accordance with the West Bengal Judicial (Conditions of Service). Paragraph 31 of the said Report is material and is reproduced herein under :-

“31 The directions issued in Malik Mazhar Sultan (3) (supra) stipulates that, in respect of direct recruits and jump promotees the date of issuance of the letter of appointment would be September 30th of each year and that, the issuance of letter of appointment for normal promotion would also be of the same date. In All India Judges' Association (supra) it has been observed that, ".....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." Reading the directions of All India Judges' Association (supra) and Malik Mazhar Sultan (3) (supra) together one can safely infer that, all the three avenues of appointments would culminate into an appointment or a promotion or a selection, as the case may be, to the post of District Judge (Entry Level) on one single day and that, the inter se seniority amongst such persons would be determined in terms of the 40 Point Roster system as may be adopted by a High Court. Our High Court has adopted the 40 Point Roster system read with Andhra Pradesh model. Consequently, the date of October 28, 2009 is taken for the purpose of consideration of the inter se seniority amongst the three avenues of appointment, in the facts of the present case. Even if the appointment, promotion or selection does not culminate on a single day, then also, in view of the direction quoted from All India Judges' Association

(supra), the recruitment being annual and happening on the basis of a quota, the roster system is to be followed, in determining inter se seniority, irrespective of the actual date of appointment, promotion or selection.”

- E] The judgment of the Apex Court in the matter of *Hon'ble High Court of Judicature at Allahabad – through Registrar General* (supra).

The dispute in the said case related to the principle to be applied for determining seniority for direct recruits and promotees of the years 2007 and 2009, in the context of Rules 22 and 26 of the Uttar Pradesh Higher Judicial Service Rules 1975 and the judgment of the Apex Court in *All India Judges Association v/s Union of India-III*.

The facts in the said case were that for the recruitment year 2009, after following the gamut of process for recruitment in respect of all the 3 streams i.e. direct recruitment, regular promotion and accelerated promotion from the lower judiciary appointments of the promotees were notified on 07th September 2010. The Direct Recruits for the year 2009 were appointed between 24th December 2010 to 20th April 2011. After the appointments the dispute of seniority arose between the direct recruits and promotees. The direct recruits claimed that they were entitled to be given seniority as per rota system laid down in the Rules and that they had been wrongly placed junior to

the promotees. The promotees claimed that their seniority should commence from the date of accrual of vacancy, date of their eligibility and officiation and not from the date of actual appointment. The Apex Court held that promotees could be given seniority only from the date of their appointments and not from the accrual of vacancies, as they had not passed the suitability test which was prescribed by the All India Judges Association Case. The Apex Court as regards the quota-rota rules observed that no doubt the same is a mandatory requirement, but would have to be seen in the peculiar fact situation. The Apex held that the Rules would have to be given a pragmatic interpretation.

Paragraphs 22, 29 and 30 of the said report are relevant and are reproduced herein under :-

22. The question considered by the Committee was whether long officiation by officers of UPNS should be given due credit so that they may not suffer on account of delay in holding suitability test. Suitability test was not held due to non amendment of the Rules upto 9th January, 2007 inspite of judgment of this Court dated 21st March, 2002. Thus, from 21st March, 2002 to 2008 since a different regime of Rules was stipulated under the judgment of this Court in All India Judges case (supra) and the Rules were amended by the High Court only on 9th January, 2007, in spite of availability of vacancies in promotion quota, the promotee officers who were eligible and were officiating against the said vacancies, could not be recruited. They were recruited only after the suitability test was held for the first time in the year 2008. The Committee thus held that they were entitled to en bloc seniority without rota system. The direct recruits could not be given seniority for the period prior to their appointment. Same was the position with regard to 2009 recruitments. The view of

the Committee was that rota system will create imbalance and injustice.

29. We have heard learned counsel for the parties. The first issue raised is whether the promotees recruited in the year 2008/2009 are entitled to seniority prior to their selection on the ground that no suitability test was required prior to 9th January, 2007 and retrospective effect to such requirement was illegal. We are in agreement with the view taken by the High Court that suitability test was required in terms of judgment of this Court in All India Judges' case (supra) and under the amended Rules applicable retrospectively which was duly upheld by this Court in V.K. Srivastava (supra). Thus, the promotees could not be given promotion without suitability test nor could they claim seniority without the same. They have been rightly given seniority from their appointments.

30. With regard to the Quota-Rota rule, there is no doubt that this is a mandatory requirement of the Rules. The said requirement has however to be seen in the peculiar fact situation. The issue of determination of vacancies was embroiled in continuous litigation. The Quota-Rota rule could not be applied in the absence of determination of vacancies. The suitability test though validly laid down could not be held till 2008 for reasons already noted. No promotion could be given in absence of suitability test. The rule provided for seniority of the promotees to be fixed from the date of availability of vacancy but such seniority could also not be given in the present fact situation. If rota rule is applied, it will work serious prejudice to the promotees. Thus, the Rules will have to be given pragmatic interpretation. As laid down by this Court in Direct Recruit Class-II Engineering Officers' Association v. State of Maharashtra, if it becomes impractical to act upon rule fixing quota from two sources, it is no use insisting that the authority must give effect to such a rule. Every effort has to be made to respect a rule but if it is not feasible to enforce it, the rule has to be given a practical interpretation. Thus, interference by the High Court with the seniority given

to the promotees above the direct recruits without following the rotation principle cannot be sustained.”

(emphasis supplied)

19 In our view the judgments (supra) on which reliance was placed on behalf of the Petitioners would not further case of the Petitioners. It is in the fact situation as prevailing in the said cases that the Apex Court and the concerned High Courts have held that Seniority cannot be granted to the officers who were not borne on the cadre on a particular date, and the administrative instructions resulting in such benefit were held to be illegal. In the instant case in the situation arising out of the Appointment of the promotees coming about in March 2008, though initiation of the process was in March 2007, that the date of initiation of the recruitment process was taken as the date for reckoning the seniority. As held herein above the promotees cannot be made to suffer on account of circumstances which are beyond their control, ultimately the endeavour is to see to it that the Rules are complied with. A pragmatic and practical approach in the matter of interpretation of the rules has received the seal of approval of the Apex Court in the judgments cited (supra). In the instant case the Respondent No.1 has sought to harmonize the Rules by fixing the seniority from the date of initiation of the process of recruitment, by putting the promotees in the slots meant for them in the 40 point roster for the year 2007. In our view therefore the seniority list in question prepared on the basis of the date of initiation of recruitment process

does not merit any interference.

20 The Central Government for the implementation of the recommendations of the 11th Finance Commission in respect of the upgradation of the judicial administration established Fast Tract Courts under the upgradation granted for elimination of old pending cases. The expenditure was to be borne by the Central Government for running of the Fast Track Courts. The State of Maharashtra consequently established the Special Scheme for elimination of arrears the Judicial Officers appointed under the said scheme were designated as Ad hoc/Additional District Judges. The appointment to the Fast Track Courts were from amongst the serving Civil Judges Senior Division, upon their appointment to the Fast Track Courts they were re-designated as Ad hoc District Judges. It appears that most of the judges appointed as Ad hoc District Judges were in the zone of consideration for regular promotion as District Judges. Their appointments as Ad hoc District Judges of Fast Track Courts were therefore awaiting their regular promotion. The Apex Court in the case of **Brij Mohan Lal's** case (supra) was seized with the issue of the seniority and other benefits of the judges manning the Fast Track Courts. The Apex Court in the said case directed that no right would be conferred on the Judicial Officers in service for claiming any regular promotion on the basis of ad-hoc post in the Fast Track Courts. However, the Apex Court at the same time clarified that any Judicial Officer promoted to the higher grade in the parent

cadre during his tenure in the Fast Track Courts, the service rendered in the Fast Track Courts would be considered as service in such higher cadre.

21 The Apex Court was once again concerned with the service conditions applicable to the judges appointed to the Fast Track Courts in *Civil Appeal Nos.8216-8217 of 2018* in the matter of *K. Anbazhagan & Anr. V/s. The Registrar General, High Court of Madras & Anr.* and other companion Appeals. Paragraphs 27 and 28 of the said report are material and are reproduced herein under :-

27. We have noticed above that this Court in *Brij Mohan Lal Vs. Union of India and others* in paragraph 10 of the judgment has directed that persons appointed under the Scheme (Fast Track Courts Scheme) shall be governed, for the purposes of leave, reimbursement of medical expenses, TA/DA and conduct rules and such other service benefits, by the rules and regulations which are applicable to the members of the judicial services of the State of equivalent status.

28. By direction 10(16), this Court had directed the State Governments to ensure compliance, hence, the terms and conditions of service of appellants were same as those other judicial officers of the State as per Order of this Court. High Court in its judgment although observed that Fast Track Courts cannot be said to have been created in 'pensionable establishment' but said conclusion has been arrived without considering relevant materials and without giving any cogent reasons. We thus are of the view that appointment of appellants was in 'pensionable establishment'."

22 Hence by the judgments of the Apex Court in *Brij Mohan Lal's*

case (supra) recognition has been given to the services rendered by the Judicial Officers whilst manning the Fast Track Courts. As indicated above it is the case of the promotees that many of them were rendering service as Fast Track Court Judges prior to their promotion in the regular cadre of District Judges. If that be so, it would have to be said that equity is in favour of the regular promotees as in terms of the judgment of the Apex Court in *Brij Mohan Lal's* case (supra) they were already part of the higher cadre at the time of their promotion to the regular cadre of District Judges. The aforesaid view of ours is further fortified by the judgment of the Apex Court in *Rakhi Ray's* case (supra) wherein the Apex Court found fault with the action of the Delhi High Court of filling up vacancies in the cadre of District Judges beyond the posts advertised. The said judgment can be said to impinge upon the second recruitment process which was carried out by way of nomination.

23 However, the aforesaid observations of ours are only incidental as otherwise we are of the view that the placement of the promotees above the direct recruits in the impugned seniority list on the basis of the date of initiation of the recruitment process as the norm for fixing seniority was justified in the facts and circumstances of the present case.

24 After we had concluded hearing in the above Writ Petition and closed the above Writ Petition for pronouncement of Judgment. The learned

counsel appearing for the Respondent No.3 Shri S C Naidu through the Advocate on record moved a praecipe dated 04/10/2018 for placing the judgment of the Apex Court in Civil Appeal Nos.5518-5523 of 2017 in the matter of **Hon'ble Punjab and Haryana High Court at Chandigarh v/s. State of Punjab and ors.** We had accordingly placed the above Writ Petition in Chambers on 09/10/2018 at 2.45 pm. On the said day we had passed an order taking the said judgment on record and observed that the said judgment would be taken into consideration by us whilst delivering the judgment in the above Writ Petition. The learned counsel for the parties i.e. the learned counsel for the Respondent No.3 Shri S C Naidu and the learned Senior Counsel for the Respondent No.5 Shri A Y Sakhare submitted their respective notes in respect of the applicability of the said judgment whilst the learned counsel Shri S C Naidu sought to draw support from the said judgment, whereas the learned Senior Counsel Shri A Y Sakhare sought to distinguish it.

It would be necessary to refer to the facts involved in the said case. In the said case the High Court of Punjab and Haryana on 14/10/2004 had made 10 promotions as per unamended Rules on 10 vacancies which were existing since prior to amendment of the Rules on 15/01/2004. The cadre strength of the District Judge which was 89 was increased to 107 as on 11/10/2007. The process for recruitment of direct recruits under Rules was initiated on 02/02/2008 with the publication of advertisement. The

promotions under 50% quota on the basis of merit-cum-seniority was initiated on 18/02/2008. The competitive test for limited departmental competitive examination was held on 18/05/2008 for which the process was initiated on 23/04/2008. The Full Court on 25/07/2008 approved the recommendations both for direct recruitment and out of turn promotion. The recommendations for out of turn promotion were sent to the Government. The appointment letters in reference to limited competitive examination were received earlier than those of direct recruits. On 14/08/2008 the Governor of Punjab issued office Order in respect of the promotion of eight officers under out of turn quota in respect of which posting orders were issued on 22/10/2008. the order in respect of direct recruits was issued on 28/11/2008 in respect of whom the posting orders were issued on 08/12/2008. In so far as regular promotion is concerned, 15 officers were appointed under 50% quota, 8 officers were appointed under out of turn quota and 12 officers were appointed in direct recruits quota vide order dated 08/12/2008. The officers of the three streams joined their respective posts in the year 2008 itself although on different dates. The promotees joined first followed by out of turn promotees and lastly by direct recruits. The seniority list published by the High Court in respect of the seniority of the members of the Punjab Superior Judicial Service for the year 2008 was under challenge before the Apex Court. It seems that a Judges Committee was constituted which submitted a report after considering the objections received recommending that the tentative seniority list

determined does not require any modification or alteration and the same may be finalized. The report of the Committee was accepted by the Full Court on 22/12/20015. It is the said seniority list which was taken exception to before the High Court. The High Court did not interfere with the seniority list and confirmed the same by dismissing the Petition. Before the Apex Court the issues which fell for consideration were culled out and amongst the issues was the issue whether for determination of inter-se seniority belonging to all the three streams has to be based on the basis of roster in pursuance of Rule 7 read with Appendix B. Paragraphs 48, 49, 52 and 53 of the said Judgment are material and are reproduced herein under :-

48. In the present case, we need not enter into the issue as to what was proposed and what changes were made by Government while notifying the rules. The above observation in the impugned judgment clearly indicate that Punjab & Haryana High Court has contemplated to implement the direction of this Court in **All India Judges case (supra)** and it was clear to the High Court that the appointment of all the three streams as per roster is to also determine the seniority as per the roster. In any view of the matter, there is nothing in the Rules - Punjab Superior Judicial Service Rules, 2007, which may indicate that there is any provision contrary to determination of seniority by roster. Mere fact that said rules are not explicit or makes it expressly clear that seniority is to be determined on the basis of roster is not conclusive. The purpose and object of the Rule 7 of Rules, 2007 read with Appendix-B is clear that the roster is to be followed for determination of the seniority. The High Court in the impugned judgment has considered the issue as to whether roster is applicable in determination of seniority or not. Issue No. 7 as was noticed above, which was framed by the Committee and was also adjudicated by the High Court was

"Whether roster (Appendix-B) can be read into and applied to the rule of seniority". After elaborate discussions, High Court in Para 180 concluded:-

"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."

49. We endorse the above view of the High Court that roster shall be applicable for determination of seniority.

52. In the above context, this court laid down following in Paragraph 31.2 that "it is not necessary, that the direct recruits of a particular recruitment year, should join within the recruitment year itself". It was held that date of joining would not be a relevant factor for determining seniority of direct recruits. In paragraph 31.2 and 34.1 following has been laid down:-

"31.2. It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for

recruitment within the recruitment year would be sufficient to assign seniority to the appointees concerned in terms of the "rotation of quotas" principle, so as to arrange them with other appointees (from the alternative source), for vacancies of the same recruitment year.

34.1. If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held), and the selected candidates joined in a further later year (than the one in which the result was declared), the selected candidates will be entitled to be assigned seniority, with reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion (expressed in the ON dated 2-2-2000) is, if the process of direct recruitment is initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection."

53. In the present case, process for all the three streams was completed in the year 2008 and all the officers of three streams had joined in the same year. The submission that quota rota rule was broken or seniority will be affected because of joining of one category of officers earlier cannot be accepted. It is also relevant to notice that purpose of statutory rules and laying down a procedure for recruitment was to achieve the certainty. Officers belonging to different streams have to be confident that they shall be recruited under their quota and get seniority as per their quota and roster. In event, the seniority is to be fixed with date of joining of particular stream, it will

lead to uncertainty and making seniority depending on administrative authorities, which is neither in the interest of service nor serve the cause of justice. We, thus, conclude that roster is fully applicable for determination of seniority. Officers of different streams selected in a particular year even though they were allowed to join the post on different dates shall not affect their inter se seniority, which is to be decided on the basis of roster.”

The Apex Court as can be seen held that the roster shall be applicable for determination of seniority and that the date of joining would not be a relevant factor for determining the seniority of direct recruits. The submission that the quota-rota rule was broken or seniority will be affected because of joining of one category of officers earlier was not accepted by the Apex Court. The Apex Court further observed that the purpose of statutory rules and laying down a procedure for recruitment was to achieve certainty. The Apex Court lastly observed that the officers of different streams selected in a particular year even though they were allowed to join the post on different dates shall not affect their inter-se seniority, which is to be decided on the basis of roster.

Hence the aforesaid findings of the Apex Court support the case of the promotees in the present case as the recruitment process of the promotees and the two other streams had in the instant case commenced simultaneously and it is only on account of the administrative exigencies that the appointments could culminate in March 2008 in so far as the promotees are

concerned.

The said judgment was sought to be distinguished on behalf of the Respondent No.5 on the ground that there is no rule akin to Rule 6 of the Seniority Rules of 2007 in so far as the State of Punjab is concerned.

25 We have already in the earlier part of this judgment recorded the finding as to the purpose of publishing the gradation list and the fine distinction between the gradation list and the seniority list. We have also mentioned the plausible reason as to why the gradation list could not be published until the year 2009. In our view, even if the rule akin to Rule 6 was absent in so far as the case before the Apex Court is concerned, the same would not make any difference as the Apex Court has in the facts of the said case where the recruitment process was commenced and completed in the same year had observed that the officers of different streams selected in a particular year even though they were allowed to join the post on different dates shall not affect their inter-se seniority which is to be decided on the basis of roster. Hence we do not find any merit in the distinction which is sought to be made in respect of the instant case and the case before the Apex Court in the matter of *Hon'ble Punjab and Haryana High Court at Chandigarh and the State of Punjab* (supra)

26 To put the matter in perspective, the modality of fixing the seniority by taking the date of initiation of the recruitment process as the norm cannot be said to be anathema to the general principle applied for fixation of seniority, considering the fact that the recruitment in the instant case is from 3 streams, the quota-rota rule which is required to be adhered to, and having regard to the peculiar facts and circumstances of the present case.

27 For the reasons afore-stated, we do not find any merit in the above Writ Petition, the same is accordingly dismissed. Rule discharged with parties to bear their respective costs.

[REVATI MOHITE DERE, J]

[R.M.SAVANT, J]