

In the High Court of Punjab and Haryana at Chandigarh

CWP No. 1113 of 2009 (O&M)

Reserved on: 04.05.2018

Date of Decision: May 25, 2018

J.S. Khushdil

... Petitioner

Versus

State of Punjab and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

Present: Mr. Rahul Sharma, Advocate,
for the petitioner.

Mr. H.S. Sullar, DAG, Punjab.

Mr. Raman Mahajan, Advocate,
for respondents no.2 and 3.

None for respondents no. 4 to 23.

P.B. Bajanthri, J.

1. In the instant writ petition, petitioner has prayed for the following relief:-

- “i) issue a writ of certiorari quashing the impugned orders, Annexure P-10, dated 24.08.2007, and Annexure P-15, dated 19.12.2008;*
- ii) issue a writ of mandamus directing respondent Nos. 1 to 3 to promote the petitioner to the rank of Additional District and Sessions Judge w.e.f. 27.2.1999, i.e. the date on which the junior of the petitioner were promoted, with all consequential benefits including further promotion and*

restoring the petitioner's original seniority in the cadre of District/Additional District and Sessions Judges;”

2. Petitioner was appointed as a Sub Judge-cum-Judicial Magistrate in the Punjab Civil Services (Judicial Branch) amongst others in the month of October, 1983. While he was working as Sub Judge Ist Class-cum-Judicial Magistrate Ist Class, Chandigarh, his services were drafted on deputation as a Deputy Manager (Inquiry) in the Food Corporation of India, Punjab Region, Chandigarh on 17.02.1989 and he had reported for duty on 23.02.1989 and worked upto 27.07.1991. Similarly when he was working as Additional Civil Judge (Senior Division), Nawanshahar, his services were drafted on deputation as Assistant Legal Remembrancer and Under Secretary to Government of Punjab in the Punjab State Language (Legislative) Commission. Pursuant to the deputation order dated 04.07.1996, he had reported on 24.07.1996 and worked upto October 1998. The total period of both the deputation would be around 4 years and 8 months.

3. On 27.02.1999, Additional District & Sessions Judge posts were filled up with reference to the Punjab Superior Judicial Service Rules, 1963 (for short “Rules, 1963”). One of the mode of recruitment is by promotion - “seniority-cum-merit”. The petitioner's name was overlooked while considering name of the 4th respondent – Sh. Inderjit Singh and others. His name was further overlooked on two other occasions, namely on 23.04.1999 and 28.04.2000. In this regard, petitioner stated to have submitted representation for reconsideration of his name for promotion and for restoration of seniority. His representation was rejected without assigning any reasons and he had requested for personal hearing. Even

though personal hearing was allowed, however, without assigning reasons, it was rejected vide Annexure P/10. Petitioner had requested for supply of copy of the report dated 25.07.2007. It was also rejected stating “considered and filed”. Thereafter, petitioner requested information under RTI and it was also rejected on 11.01.2008 (Annexure P/13). Further he filed application for review of order dated 24.08.2007 on 11.03.2008. It was also rejected on 19.12.2008 vide Annexure P/15. Hence, present petition in challenging orders dated 24.08.2007 and 19.12.2008.

4. Learned counsel for the petitioner submitted that official respondents have not assigned the reasons as to why his name was overlooked for promotion to the post of Additional District & Sessions Judge while considering names of the juniors to him on more than one occasion despite making best efforts even through the RTI, they did not furnish a detailed consideration and rejection of petitioner's name for promotion. It was also contended that Sh. Dev Raj Arora, Sh. Surinder Gupta, Sh. A.K. Singla and Sh. Gobinder Singh, whose names have been overlooked for one or the other reasons for promotion, their representations have been entertained while reconsidering their grievances and so also restoring their seniority. Whereas petitioner's grievance has not been reconsidered and restored the seniority. That apart, throughout from 1999 to presenting of this petition, the official respondents have withheld the exact reasons for overlooking the name of the petitioner for promotion except stating that petitioner's services on deputation for two spells as – (i) Deputy Manager (Inquiry) in the Food Corporation of India; and (ii) Assistant Legal Remembrancer and Under Secretary to Government of Punjab, for which Annual Confidential Reports were not available and there is no scope for

considering the deputation period for the purpose of promotion. Learned counsel for the petitioner further submitted that while passing the orders of deputation on 17.02.1989 and 04.07.1996, official respondents have not indicated whether such deputation would be a hurdle for any service benefits to the petitioner. It was submitted that general principle of law is that if an employee is on deputation and if his junior is promoted in the parent department or get any service benefit, in such circumstances, automatically senior employee who is on deputation would also be entitled to such of those service benefits which have been extended to a junior to the deputationist.

5. It was further contended that official respondents while overlooking the petitioner's claim had taken note of the fact that petitioner was on deputation and the deputation period cannot be taken into consideration for the purpose of merit consideration when the method of promotion is "seniority-cum-merit". Rules, 1963 was invoked for the purpose of merit consideration. There is no criteria laid down in the Rules, 1963 so also there was no amendment to the Rules, 1963. It is learnt that by means of Full Court meeting decision dated 10.12.1998 pursuant to Sub Committee's report dated 02.12.1998, a criteria has been evolved to the extent that five Good (Plus B) reports in the preceding 7 years were required to be taken into consideration. Such evolvement of criteria would be in violation of Rules, 1963. Unless and until rules were amended, the official respondents cannot lay down criteria by means of Committee decision. It was further contended that assuming that the aforesaid criteria is taken into consideration still petitioner was eligible on all the three occasions when petitioner's name was overlooked for promotion and he

was promoted only on 30.05.2001. Learned counsel for the petitioner further submitted that in the replication he has pointed out that as on 23.04.1999 if the ACR is required to be taken into consideration from 1992-93 to 1998-99 how he fulfills the requisite eligibility as per the Full Court meeting decision dated 10.12.1998. Similarly as on 15.01.1999 and 28.04.2000.

6. Learned counsel for the petitioner further submitted that petitioner's representation dated 02.06.2006 was considered by Sub Committee held on 25.07.2007 (Annexure P/16) which was not made available to the petitioner at the relevant point of time, whereas the Committee while rejecting the petitioner's representation held that promotion to the rank of Additional District & Sessions Judge, is based on the principle of "seniority-cum-merit", therefore, there was no question of the representationist having been overlooked when his junior Sh. Inderjit Singh was promoted to the rank of Additional District & Sessions Judge on 27.02.1999. In other words, petitioner had not possessed the minimum requisite merit and he did not satisfy the bench mark. As a matter of practice, reports recorded during the period, a judicial officer is on deputation, are not taken into consideration and petitioner did not invite attention of the Committee to any such rules, regulations or instructions, so also any judicial pronouncement. The Committee followed the earlier practice which was invoked. Learned counsel for the petitioner further submitted that Committee's decision to the extent that criteria is seniority-cum-merit and petitioner did not have the minimum requisite merit and he did not satisfy the bench mark. These issues are all conclusive and not supported by any material so also what is the bench mark is not stated,

assuming that Full Court meeting's decision dated 10.12.1998 is taken into consideration, still the official respondents could have assessed the annual confidential reports of the petitioner. There is no such assessment of annual confidential reports of the petitioner, therefore, Sub Committee's decision is an afterthought. Insofar as not taking the deputation period for the purpose of promotion which is stated to be a matter of practice, in the absence of specific provision in the Rules, 1963 or any amendment to the Rules, 1963, official respondents cannot resort to their own method merely stating that there is no scope for consideration of the deputation period on the sole ground that at the relevant point of time, deputationist was not under the administrative control of the official respondents, consequently, ACRs have not been written for the deputation period. It was also contended that official respondents in all fairness should have communicated the Sub Committee's decision dated 25.07.2007 so as to know the reasons for overlooking the petitioner's name for promotion to the Additional District & Sessions Judge. Learned counsel for the petitioner further submitted that in the absence of specific provision under the statutory rules, overlooking the petitioner's name for promotion to the post of Additional District & Sessions Judge, his junior Sh. Inderjit Singh was promoted in the month of February 1999. Overlooking the petitioner's name would be highly arbitrary and illegal. Learned counsel for the petitioner further submitted that affidavit of the then Registrar General dated 27.08.2011, it was stated as follows:-

“2. That in the Full Court meeting held on 29.07.1998, it was decided that recording of Annual Confidential Remarks of Legal Remembrancers of Punjab and Haryana will be done by the Full Court

whereas in the case of Member Secretaries of Legal Services Authorities of Punjab, Haryana and U.T. Chandigarh, it will be done by their respective Chairman and in the case of Presiding Officers, Labour Courts by the concerned Hon'ble Inspecting Judges. It was further decided that recording of confidential remarks in respect of officers who go on deputation on other posts will also be done by the Full Court.

3 to 6 xx xx xx

7. That the remarks recorded by the Hon'ble Full Court as "No Scope" and the deputation remarks for the years 1989-90, 1990-91 and 1997-98 were also placed before the Hon'ble Full Court in its meeting held on 28.04.2000, for promotion to the petitioner as Additional District & Sessions Judge."

Learned counsel for the petitioner relied on Supreme Court's decision in the case of ***R.L. Gupta and another vs. Union of India and others***, reported in ***(1988) 2 SCC 250 (Para Nos. 13 to 15)*** to contend that deputationist is entitle to all service benefits in the parent department while officer/employee is on deputation. Therefore, the impugned orders are liable to be set aside and petitioner is entitled to promotion on par with the 4th respondent – Inderjit Singh in the cadre of Additional District & Sessions Judge and restoration of seniority and consequential benefits.

7. Per contra, learned counsel for the official respondents submitted that one of the mode of recruitment to the post of Additional District & Sessions Judge is by promotion - seniority-cum-merit, therefore, even though petitioner was senior, his name was considered amongst others like 4th respondent and others, competent authority has taken a decision to the extent that petitioner was not eligible for promotion as on the relevant

date since he did not meet the bench mark criteria and deputation period for 4 years and 8 months annual confidential report was not available, therefore, deputation period has been ignored. It was the practice of the official respondents in respect of promotion of a deputationist, there is no scope for consideration of deputation period for the purpose of eligibility or bench mark. In this regard, while entertaining the petitioner's representation, Sub Committee was constituted and it had taken decision on three counts like seniority-cum-merit, bench mark and there is no scope for considering the deputation period service. Hence, rightly petitioner's name was not considered when the 4th respondent – Sh. Inderjit Singh and others were promoted to the post of Additional District & Sessions Judge. It was further contended that his eligibility was considered from time to time and he fulfilled the eligibility criteria on 30.05.2001, accordingly, he was promoted to the post of Additional District & Sessions Judge. Petitioner's contention that for the purpose of evolving any criteria for promotion to the Additional District & Sessions Judge, amendment of Rules, 1963 was required, is not tenable for the reasons that official respondents have taken a decision on 10.12.1998 while laid down the criteria to the extent of concerned official in the Lower Judicial Services should have earned at least five Good (Plus B) and above reports in the preceding 7 years of his/her service in that cadre. If the officer has been graded as “average” in both the years immediately preceding the year of his consideration, the officer concerned would not be entitled to be promoted in that year to the Higher Judicial Services.

8. Heard learned counsel for the parties.

9. Before adverting to the main contention of the petitioner relating to overlooking his name for promotion to the post of Additional

District & Sessions Judge, it is necessary to how the grievance of the petitioner was protracted by the official respondents in not furnishing the reasons for overlooking his claim for promotion for the reasons that petitioner had submitted number of representations for which the official respondents have issued three line communication stating that his representation is considered and filed. In fact, petitioner had requested information under RTI and it was also turned down stating that there is no provision. The official respondents being a judicial institution in all fairness should have assigned reasons under what circumstances, petitioner's name was overlooked for promotion with reference to Rules, 1963, Full Court meeting decision dated 10.12.1998 and further notification / executive order by which Full Court meeting decision dated 10.12.1998 was implemented in the petitioner's case for overlooking his claim for promotion. Law is trite that recording of reasons is *sine qua non* if the action / decision adversely affects a person resulting into infringement of his civil rights. Such reasoned and speaking order must be communicated to such of those persons whose rights are affected. In other words, if there is any civil consequences and if a decision / order would be subject to a judicial review, in that event, it was necessary to communicate the entire decision / reasoned order. Supreme Court in the case of ***ORYX Fisheries Private Limited vs. Union of India and others***, reported in ***(2010) 13 SCC 427***, in para no. 40 held as under:-

“40. In Kranti Associates, (2010) 9 SCC 496, this Court after considering various judgments formulated certain principles in SCC para 47 of the judgment which are set out below: (SCC pp.510-12)

- (a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- (b) A quasi-judicial authority must record reasons in support of its conclusions.*
- (c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- (d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- (e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*
- (f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
- (g) Reasons facilitate the process of judicial review by superior Courts.*
- (h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*
- (i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

(j) *Insistence on reason is a requirement for both judicial accountability and transparency.*

(k) *If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*

(l) *Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision-making process.*

(m) *It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).*

(n). *Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain (1994) 19 EHRR 553, EHRR at p. 562, para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".*

(o) *In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".*

In view of the above principle denial of furnishing information to petitioner would be arbitrary, illegal and violative of Article 14 of Constitution.

10. Core issues in the present petition are:-

- (i) Bench mark for the purpose of promotion to the Additional District & Sessions Judge or promotion to the Higher Judicial Services from Lower Judicial Services could be introduced by means of Full Court meeting decision like one in the present case dated 10.12.1998 in the absence of amendment to Rules, 1963. Further whether Full Court meeting decision dated 10.12.1998 culminated in the form of notification / order or not?
- (ii) Whether Annual Confidential Reports for the period during which a Judicial Officer had been deputed to the organization other than the Judiciary are required to be taken into consideration for the purpose of extending the service benefits on par with junior to the deputationist or not?

Additional District & Sessions Judge post is governed by Rules, 1963. One of the method of recruitment is by promotion i.e. seniority-cum-merit. When it is seniority-cum-merit, first seniority is required to be taken into consideration and then merit. In other words, overall service record of the concerned officer. In the Rules, 1963, there is no criteria as to how many years of service record is required to be taken into consideration and to what extent like Very Good, Good, Average, etc. Without amendment of Rules, 1963, official respondents have taken a decision in the Full Court meeting held on 10.12.1998 while introducing that a Lower Judicial Service person's

name would be considered for the purpose of Higher Judicial Service provided he has earned at least five Good (Plus B) and above reports in the preceding 7 years of his/her service in that cadre. If the officer has been graded as 'Average' in both the years immediately preceding the year of his name is being under consideration, the officer concerned would not be entitled to be promoted in that year to the Higher Judicial Services. Firstly, Full Court meeting decision dated 10.12.1998 is not culminated in amending the Rules, 1963 and not even an order / notification / executive instructions. Therefore, official respondents invoking Full Court meeting decision dated 10.12.1998 in the absence of giving a legislative shape to the extent of amendment of Rules, 1963 or by means of executive order. Full Court meeting decision dated 10.12.1998 would not operate. That apart, there is no assessment of ACRs of the petitioner for overlooking his claim, to that extent no material has been placed on record as to how the competent authority has assessed the petitioner's ACRs. Therefore, Sub Committee's decision is an afterthought in respect of saying that petitioner did not meet the bench mark and criteria is seniority-cum-merit. Both the decisions of the Sub Committee is of conclusive and not supported by any reasons and documents as on the date of 4th respondent's promotion to the extent how the competent authority had assessed the merit of the petitioner on par with others.

11. It is to be noted that Rules, 1963 and Full Court meeting dated 10.12.1998 or any other instructions are provided to overlook the service rendered on deputation and it would not be considered for the purpose of promotion or there is no scope for consideration. Such criteria is only in practice. In other words, official respondents have adopted practice of

ignoring the deputation period service of an officer for the purpose of promotion. In support of this issue no material is placed on record i.e., in identical matter it was not considered. Since post of Assistant Legal Remembrancer and other posts are encadred and who have been deputed their ACR was not considered. The deputation of an officer or an employee normally it would be in the public interest and some of the deputation posts were en-cadred posts like Assistant Legal Remembrancer-cum-Under Secretary to Government of Punjab is required to be filled up only by Judicial Officer, therefore, one cannot take the decision to the extent that there is no scope for considering the deputation period service for the purpose of extending any service benefits in the parent department. The general principle is that if an employee / officer is on deputation, he had lien in the parent department, so whatever the service benefit is extending to his immediate junior like promotion, ACP and any other service benefit, in that event, a senior officer or employee who is on deputation would automatically entitled service benefits on par with his junior. Therefore, practice of not considering the deputation period service of an officer for the purpose of extending service benefits like promotion would be highly arbitrary and illegal and contrary to Rules 1963 in the present case. If the employer imposes any conditions to a deputationist stating that deputation period service would not count for the purpose of extending any service benefits in the parent department, in that event, no employee/officer would like to go on deputation by losing service benefits in the parent department. Supreme Court in the case of **R.L. Gupta** cited supra laid down the principle that a deputationist is entitled to service benefits when he was on deputation also. In other words, if an officer / employee is on deputation, legally

admissible service benefits cannot be taken away. The Sub Committee's decision dated 25.07.2007 in respect of deputation period service, it is recorded as under:-

“The second contention of the representationist is that the remarks recorded in the annual confidential reports, during the period he was on deputation, were not taken into consideration. It is also the case of the representationist, that if the aforesaid remarks were taken into consideration, he would have satisfied the bench mark on 27.2.1999 i.e. the date when his immediate junior Shri Inderjit Singh, was promoted to the rank of Additional District and Sessions Judge. As a matter of practice, reports recorded during the period, a Judicial Officer is on deputation, are not taken into consideration. It is, therefore, that the Committee required the representationist to refer to any rules, regulations or instructions on the issue, which could be beneficial to his interest. Despite the aforesaid, the representationist did not invite our attention to any such rules, regulations or instructions. He also did not invite the Committee's attention, any judicial pronouncement on the issue, which could have been favourable to him.

In view of the fact that the second contention has not been supported by any rules, regulations or instructions nor any judicial pronouncement, it is not possible for the Committee to accept the same specially in the background of the consistent practice of this Court not to take into consideration the remarks in the annual confidential report of Judicial Officers recorded, while they were on deputation.”

The aforesaid decision of the Sub Committee is arbitrary in view of the aforesaid discussion in respect of insisting for bench mark and not

considering the service rendered on deputation when the Sub committee pointed out that under which rules, regulations or instructions petitioner's interest would be protected and he did not invite their attention to any such rules, regulations or instructions. The aforesaid issue / principle equally applicable to the Sub Committee to say that deputation service cannot be counted for the purpose of considering name of an officer for promotion and what has been said is it is in practice. Therefore, the respondents have not made out a case in defending the impugned action.

12. Official respondents have also not apprised this Court to the extent whether judicial officers who are on deputation to Punjab and Haryana High Court, District & Sessions Judge, Chandigarh, Member Secretary Legal Services Authority and Presiding Officer of Labour Court and whose names have been considered for promotion, their deputation period has been excluded for the purpose of considering their names for promotion or not?

13. In the Full Court meeting dated 15.01.1999, the official respondents proposed as under:-

“Note: The officers next to Shri P.S. Virk are not eligible for promotion as Addl. District & Sessions Judges, as they have not yet completed 10 years service, which is an essential requirement of rule 8 of the Punjab Superior Judicial Service Rules, 1963.

As regards reserved posts for the members of Scheduled Castes and Backward Classes against the available posts, the detail of which has been mentioned on page 17-19 ante, it is submitted that in view of the judgments of the Hon'ble Apex Court in R.K. Sabharwal's case and Ajit Singh Januja's case, if a Scheduled Caste/Backward Class officer comes for promotion, in

order of his own seniority-cum-merit, he may not be considered to be appointed against the reserved post. In this view of the matter, if Scheduled Caste officers namely Shri S.P. Bangarh (Sr. No.10), Shri Virender Kumar (Sr. No. 12), Shri Japal Singh (Sr. No. 26) & Shri Gurmit Ram (Sr. No. 30) are to be promoted in their own seniority-cum-merit, they may not be considered to be appointed against the reserved posts for Scheduled Caste Officers. Similarly, if Shri Suresh Kumar Goel (Sr. No.21), is to be promoted in his own seniority-cum-merit, he may not be considered to be appointed against the post reserved for Backward Class officer. The remaining officers belonging to Scheduled Castes namely Shri G.S. Sewak (Sr. No.1), presently under suspension), Shri J.S. Khushdil (Sr. No. 16), Shri Bua Jee Sansi (Sr. No. 19) & Shri D.S. Malwai (Sr. No. 22) are not eligible for promotion as they do not fulfill the requirement of criteria adopted by this Court. The Scheduled Caste/Backward Class officers after Shri P.S. Virk are otherwise not eligible for promotion as Addl. District & Sessions Judge because they have not yet completed even 10 years service which is an essential requirement of rule 8 of the Punjab Superior Judicial Service Rules, 1963. In these circumstances it may be appropriate, if 20 vacancies may be filled up at this stage and for filling up remaining reserved posts of Scheduled Castes/Backward Class officers, reference may be made to the Punjab Government to carry forward four vacancies (3 of Scheduled Caste Officers & 1 of Backward Class officer), till the officers of these category become eligible for promotion as Addl. District & Sessions Judges and in the meanwhile Government may be requested to let this Court to fill up these vacancies out of the candidate of General Category. The proposal for filling up these vacancies shall be placed before the Full Court, lateron.”

Decision of Full Court meeting held on 15.01.1999 reads as under:-

“11. The matter regarding selection of 21 P.C.S. (Judicial Branch) Officers for appointment as Addl. District & Sessions Judges by promotion in the State of Punjab was considered along with the note of the Registrar and it was decided that -

(a) xxx xxx xxx

(b) Sarv Shri G.S. Sewak, D.K. Sarpal, Mohinder Singh, M.S.Walia, J.S. Khushdil, C.D. Jindal, Bua Jee Sansi, Dharam Singh, D.s. Malwai, K.K. Lomas and Surinder Gupta be passed over.

(c) to (e) xxxx xx xxx

xx xx xxx xx

Might send a copy of above extract to Gaz-I for information and necessary action.

Sd/- 19.1.1999

S.Conf.

Sd/- 19.1.1999

Gaz-I”

No document has been produced by the learned High Court's counsel that method of recruitment to the post of Additional District & Sessions Judge is seniority-cum-merit as on January 1999, the date on which petitioner's name was overlooked for promotion for the first time. The official respondents have not apprised this Court the word “seniority-cum-merit” is obtained from which statutory rules is not made known.

14. Rules of recruitment would be in terms of the constitution,

pattern, nomenclature of posts, cadres, categories, prescription of qualifications and conditions of service including avenues of promotion, subject to the limitations and restrictions envisaged in the Constitution. Competent authority is permitted to frame different rules for different classes of employees. This would include the power to constitute a new cadre or by merging certain existing cadres or criteria to fill up post. The power of the State Government to frame service rules is not an independent power. It is power delegated by the State Legislature. Once the State Legislature enacts a statute to regulate service conditions, to that extent the rules framed by the executive under Article 309 stand superseded. In the present case, Rules 1963 have been framed under Article 309 of the Constitution, therefore, the the purpose of incorporating criteria for promotion to Additional District & Session Judge, necessary amendment to Rules 1963 is required or in the alternative executive order could be passed under Article 73 of the Constitution by the Central Government or Article 162 of the Constitution by the State Government. These can be issued even where rules have been made but are silent on a particular subject or point in issue.

15. In view of the above discussion, impugned orders dated 24.08.2007 and 19.12.2008 (Annexures P/10 and P/15 respectively) are set aside. Petitioner is entitled for consideration of his name for the purpose of promotion to the post of Additional District & Sessions Judge on par with the 4th respondent and others from the date when 4th respondent was promoted to the post of Additional District & Sessions Judge with consequential benefits like restoration of seniority and further promotion to the cadre of District & Sessions Judge on par with the 4th respondent. Since

petitioner is stated to have attained age of superannuation and retired from service his pay and pension be re-fixed and difference of pay and pension be calculated and disbursed to the petitioner. The above exercise shall be completed by the official respondents within a period of six months from today.

14. Petition stands allowed.

 No order as to costs.

[A.B. Chaudhari]
Judge

[P.B. Bajanthri]
Judge

May 25, 2018
vkd

Whether reasoned / speaking : Yes

Whether reportable : Yes