

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Petitioners, who are working as Additional District and Sessions Judges in State of Haryana, have invoked the writ jurisdiction of this Court under Articles 226 and 227 of Constitution of India, for quashing the Administrative Instructions issued in the year 2011 (Annexure-P-2), vide which criteria for promotion as Additional District and Sessions Judges by way of merit-cum-seniority for the State of Haryana was determined as per Rule 6(1) (a) of the Haryana Superior Judicial Services Rules, 2007 (in short

'Superior Judicial Service Rules of 2007'). Petitioners also seek quashing of Administrative Instructions subsequently issued, vide Annexure-D, appended to Rules dated 6.6.2012 (Annexure-P-3) whereby Superior Judicial Service Rules of 2007 (Annexure-P-1) have been modified retrospectively w.e.f. 1.1.2011. Further prayer is made that seniority of petitioners vis-a-vis private respondents, who are working as Additional District and Sessions Judges in State of Haryana, be fixed as per their inter-se seniority in the cadre of HCS Judicial Services.

The Apex Court, vide judgment dated 8.2.2001 in *All India Judges Association and others Versus Union of India and others*, reported as 2002 (4) SCC 247, directed that recruitment to the higher judicial service i.e. cadre of District Judge shall be as under :-

- (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 through respective High Courts.

In pursuance to said directions of Apex Court, the Governor of Haryana in consultation with the High Court of Punjab and Haryana promulgated the Haryana Superior Judicial Service Rules, 2007, which were notified on 10.1.2007 to regulate the recruitment and conditions of service of persons appointed to Haryana Superior Judicial Service.

Regarding the method of recruitment, Rule 5 of Haryana

Superior Judicial Service Rules, 2007, provides as under :-

'5. Recruitment to the Service shall be made by the Governor,-

- (i) by promotion from amongst the Haryana Civil Service (Judicial Branch) in consultation with the High Court; and
- (ii) by direct recruitment from amongst eligible Advocates on the recommendations of the High Court on the basis of the written and viva voce test conducted by the High Court.'

Rule 6 of Haryana Superior Judicial Service Rules, 2007, lays down as under :-

'6 (I) Recruitment to the Service shall be made,-

- (a) 50 per cent by promotion from amongst the Civil Judges (Senior Divisions)/Chief Judicial Magistrates/Additional Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing of suitability test;'

For the purpose of assessing and testing the merit and the suitability of a member of the Haryana Civil Service (Judicial Branch) under Rule 6 (1) (a), Rule 8 of Haryana Superior Judicial Service Rules, 2007, provides as under :-

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

- (a) take into consideration
 - (i) Annual Confidential Reports for preceding five years ;
 - (ii) inspection reports of the court of the officer made by the inspecting Judge nominated by the Chief Justice during the preceding three years ;
 - (iii) inspections done by the officer of his own court and courts subordinate to him if he is assigned inspection

work of those courts during the preceding three years ;

- (iv) self assessment report of the officer of the work during the preceding three years ;
- (v) judgments of the cases decided by the officer during the preceding three years ; and
- (b) hold a written objective test (20 marks); and viva voce (20 marks) in order to ascertain and examine the legal knowledge and to assess the efficiency in legal field ;

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

Rule 9 of Haryana Superior Judicial Service Rules, 2007, provides for limited written competitive examination for promotion from members of Haryana Civil Service (Judicial Branch) as per Rule 6 (1) (b).

Regarding fixing of inter-se seniority of the members of the Haryana Civil Service (Judicial Branch), Rule 10 of Haryana Superior Judicial Service Rules, 2007, provides as under :-

- '10. (i) (a) The inter se seniority of the members of the Haryana Civil Service (Judicial Branch) promoted in the same batch under rule 6 (a) shall be the same as in the Haryana Civil Service (Judicial Branch)
- (b) Inter se seniority of the member of the Haryana Superior Judicial Service promoted under rule 6(b) shall be in order of merit determined in the selection process.
- (c) Inter se seniority of the direct recruits to the Service under rule 6 (c) shall be on the basis of merit determined by the Selection Committee of the High Court at the time of recruitment.'

It is common case of the parties that in order to assess merit for the purpose of promotion as Additional District and Sessions Judges in State of Haryana by way of merit-cum-seniority order, criteria (Annexure-P-2) was

laid down, in which it was provided as under :-

'the officers in the zone for consideration who are having three B-plus (Good) reports out of the preceding five years and who are not having any integrity doubtful report in any of the last five years should be called for assessing and testing the merit and suitability of the members of Haryana Civil Service (Judicial Branch) under Rule 8 of the Haryana Superior Judicial Service Rules, 2007, for making promotion under the 50% quota.

It was made clear that even an officer, who is having any of the said reports as C-Average and against whom disciplinary proceedings are pending is to be called for assessing and testing of his merit and suitability under the aforesaid rule provided he fulfills aforementioned criterion.

The officers who fall in the consideration zone are to be assessed as per the following criteria :-

i) A candidate is required to obtain at least 16 marks out of 40 marks in the written test and viva-voce so as to be considered eligible for promotion.

ii) 20 marks have been allocated for annual confidential reports for the preceding 5 years in the following manner :

A+ Outstanding	04 marks
A Very Good	03 marks
B+ Good	02 marks
B Satisfactory	01 marks
C	0 marks

iii) Twenty marks in all have been allocated for the 6 best judgments (3 Civil and 3 Criminal that is one each of every year) of the last three years to be supplied by the Officer.

iv) Award half mark for every completed year in the service by the Officer but the maximum marks for the completed years of service shall not exceed ten.

v) For the annual confidential reports which are not written, the previous annual confidential report approved by the Full Court would be adopted.'

Petitioners are aggrieved by the allocation of 20 marks to ACRs for preceding five years and 20 marks to the best judgments. It is also not disputed that by way of Notification dated 6.6.2012, said Haryana Superior Judicial Service Rules, 2007, were amended. New set of rules i.e. Haryana Superior Judicial Services (Amendment) Rules, 2012, were brought into force retrospectively with effect from 1.1.2011. Under the amended rules, now 65 per cent promotions to be made by way of promotion from amongst the Civil Judges (Senior Division)/Chief Judicial Magistrates/Additional Civil Judges (Senior Division), 10 per cent promotions through limited competitive examination and 25 per cent direct recruitment from amongst eligible advocates on the basis of written and viva voce test, conducted by the High Court.

The roster indicating inter-se seniority of the officers of all categories was also laid down. Now, another criteria was laid down, in which while maintaining 20 marks for written test and viva voce each, it was required that the candidate must obtain 40% marks. The marks for ACRs were reduced and so were marks for best judgments. The relevant extracts from the amended criteria is as under :-

- i) A candidate is required to obtain at least 40% marks in aggregate in the suitability test consisting of written test and viva voce of 20 marks each to be considered eligible for promotion.
- ii) After a candidate has passed the suitability test, his/her merit shall be determined in the following manner :-
 - a) 15 marks are allocated for Annual Confidential Reports for the preceding 5 years in the following manner :-

A+ Outstanding	03.0 marks
A Very Good	02.5 marks
B+ Good	02.0 marks

B Satisfactory 01 marks

C 0 marks

- b) 15 marks in all have been allocated for the 6 best judgments (3 Civil and 3 Criminal that is one each of every year) of the last years to be supplied by the Officer.
- c) Award one mark for every completed year of service by the officer but the maximum marks for the completed years of service shall not exceed twenty.
- d) For the Annual Confidential reports which are not written, the previous Annual Confidential Report approved by the Full Court would be adopted.
- iii) Once a candidate passes the suitability test by securing 40% or more marks but fails to qualify for promotion, he/she shall not be required to appear for suitability test in subsequent processes initiated within 2 years from the date of the said test.'

Undisputedly, when the suitability test was held in the year 2012 for promotion to the posts of Additional District and Sessions Judges in State of Haryana, 46 candidates were called for interview. Their inter-se seniority was as under :-

Sr. No.	Name of Officer	
1	Sh. G.S. Wadhwa, Addl. District and Sessions Judge (Adhoc), FTC, Nuh.	Respondent No. 3
2	Sh. Pradeep Kumar, Addl. District and Sessions Judge (Adhoc), FTC, Hisar	
3	Sh. Sukrm Pal, Addl. District and Sessions Judge (Adhoc), FTC, Sirsa.	Respondent No. 4
4	Sh. Sudhir Jiwan, Addl. District and Sessions Judge (Adhoc), FTC, Narnaul.	Respondent No. 5
5	Sh. Randhir Kumar Dogra, Civil Judge (SD)-cum-CJM, Nuh.	Respondent No. 6
6	Mrs. Alka Malik, Addl. District and Sessions Judge (Adhoc), FTC, Sonapat.	Respondent No. 7
7	Sh. Jagjit Singh, Addl. District and Sessions Judge (Adhoc), FTC, Rohtak.	Respondent No. 8
8	Sh. Rajinder Pal, Addl. District and Sessions Judge (Adhoc), FTC, Karnal.	Respondent No. 9
9	Sh. Ajay Prashar, Civil Judge (SD), Fatehabad.	Petitioner No. 3
10	Sh. Lal Chand, Civil Judge (SD), Sonapat.	Respondent No. 10
11	Sh. Raj Kumar Yadav, Civil Judge (SD), Jhajjar.	Respondent No. 11

Sr. No.	Name of Officer	
12	Sh. Mahender Singh, CJM, Fatehabad.	Respondent No. 12
13	Dr. Abdul Majid, Civil Judge (SD), Jagadhri.	Respondent No. 13
14	Sh. Gopal Krishan, CJM, Jhajjar.	
15	Ms. Gagandeep Kaur, CJM, Presiding Officer, Environment Court, Kurukshetra.	Respondent No. 14
16	Sh. Vijay Singh, Civil Judge (SD), Gurgaon.	Respondent No. 15
17	Sh. Parveen Gupta, Civil Judge (SD), Narnaul.	Respondent No. 16
18	Ms. Seema Singhal, Civil Judge (SD), Sirsa.	Petitioner No. 7
19	Ms. Poonam Suneja, Civil Judge (SD), Ambala.	Respondent No. 17
20	Sh. Devender Singh, Civil Judge (SD), Kurukshetra.	
21	Ms. Raj Rani, Civil Judge (SD)-cum-CJM, Hisar.	Petitioner No. 2
22	Sh. Naresh Kumar Singhal, CJM, Sirsa.	Petitioner No. 8
23	Sh. Vimal Kumar-III, CJM, Jagadhri.	Petitioner No. 1
24	Sh. Bhupinder Nath, Civil Judge (SD), Karnal.	
25	Sh. Rakesh Singh, Civil Judge (SD), Panchkula.	
26	Sh. Daya Nand Bhardwaj, CJM, Sonapat.	Respondent No. 18
27	Ms. Madhu Khanna Lalli, Civil Judge (SD), Kaithal.	
28	Sh. Virender Malik, Civil Judge (SD), Faridabad.	Respondent No. 19
29	Sh. Sanjay Sandhir, Civil Judge (SD), Rohtak.	Respondent No. 20
30	Ms. Gurvinder Kaur, CJM, Panchkula.	Petitioner No. 4
31	Sh. Sandeep Singh, CJM, Faridabad.	Respondent No. 21
32	Ms. Sangeeta Rai, Civil Judge (SD), Bhiwani.	Petitioner No. 5
33	Sh. Raj Kumar Jain, CJM, Bhiwani.	Petitioner No. 6
34	Sh. Jasbir Singh Sidhu, CJM, Chandigarh.	Respondent No. 22
35	Sh. Prithvi Raj Sharma, CJM, Rohtak.	
36	Sh. Phalit Sharma, CJM, OSD, Gaz.II, Pb. and Haryana High Court, Chd.	Respondent No. 23
37	Sh. Rajesh Garg, CJM, Kaithal.	
38	Mrs. Shashi Bala, Civil Judge (SD), Rewari.	
39	Sh. Amarjit Singh, CJM Ambala.	Petitioner No. 9
40	Ms. Ranjana Aggarwal, CJM, Kurukshetra.	
41	Sh. Rajesh Kumar, CJM, Rewari.	
42	Sh. Chander Hass, CJM, Narnaul.	
43	Ms. Sunita Grover, Civil Judge (SD), Panipat.	
44	Sh. Ashwani Kumar, Civil Judge (SD), Palwal.	Respondent No. 24
45	Sh. Rajan Walia, CJM, Karnal.	
46	Sh. Jasbir Singh, CJM Gurgaon.	

While adopting the said criteria, merit wise result of suitability test (written and viva voce) of all 46 candidates was declared, which is as under :-

Sr. No.	Name of the Officers	Marks in written test	Marks in Viva voce	Total
1	Sh. Rajinder Pal, Addl. District and Sessions Judge (Adhoc), FTC, Karnal.	15.6	14.33	29.93
2	Sh. Sanjay Sandhir, Civil Judge (SD), Rohtak.	16.6	12.83	29.43
3	Sh. Lal Chand, Civil Judge (SD), Sonapat.	16.2	12.67	28.87
4	Sh. Pradeep Kumar, Addl. District and Sessions Judge (Adhoc), FTC, Hisar	14.2	13.83	28.03
5	Sh. Sudhir Jiwan, Addl. District and Sessions Judge (Adhoc), FTC, Narnaul.	13.6	14.17	27.77
6	Ms. Gagandeep Kaur, CJM, Presiding Officer, Environment Court, Kurukshetra.	14.2	13.33	27.53
7	Sh. Sukrm Pal, Addl. District and Sessions Judge (Adhoc), FTC, Sirsa.	13	14	27
8	Sh. Daya Nand Bhardwaj, CJM, Sonapat.	14.8	12.17	26.97
9	Sh. Randhir Kumar Dogra, Civil Judge (SD)-cum-CJM, Nuh.	14.2	12.5	26.7
10	Sh. Jagjit Singh, Addl. District and Sessions Judge (Adhoc), FTC, Rohtak.	13	13.67	26.67
11	Mrs. Alka Malik, Addl. District and Sessions Judge (Adhoc), FTC, Sonapat.	12.6	14	26.6
12	Sh. G.S. Wadhwa, Addl. District and Sessions Judge (Adhoc), FTC, Nuh.	12	14.5	26.5
13	Sh. Ashwani Kumar, Civil Judge (SD), Palwal.	14.8	11.67	26.47
14	Sh. Mahender Singh, CJM, Fatehabad.	14.4	11.83	26.23
15	Sh. Raj Kumar Yadav, Civil Judge (SD), Jhajjar.	14.4	11.67	26.07
16	Ms. Sangeeta Rai, Civil Judge (SD), Bhiwani.	13.4	12.67	26.07
17	Ms. Poonam Suneja, Civil Judge (SD), Ambala.	13.6	12.33	25.93
18	Sh. Virender Malik, Civil Judge (SD), Faridabad.	12.8	13	25.8
19	Sh. Ajay Prashar, Civil Judge (SD), Fatehabad.	13.2	12.5	25.7
20	Sh. Rajesh Garg, CJM, Kaithal.	13.6	12	25.6
21	Dr. Abdul Majid, Civil Judge (SD), Jagadhri.	13	12.33	25.33

Sr. No.	Name of the Officers	Marks in written test	Marks in Viva voce	Total
22	Sh. Rakesh Singh, Civil Judge (SD), Panchkula.	14	11.17	25.17
23	Sh. Jasbir Singh Sidhu, CJM, Chandigarh.	14.8	10.33	25.13
24	Sh. Vijay Singh, Civil Judge (SD), Gurgaon.	11.6	13.33	24.93
25	Ms. Sunita Grover, Civil Judge (SD), Panipat.	13	11.83	24.83
26	Sh. Phalit Sharma, CJM, OSD, Gaz.II, Pb. and Haryana High Court, Chd.	12.4	12.33	24.73
27	Sh. Parveen Gupta, Civil Judge (SD), Narnaul.	12.6	11.83	24.43
28	Ms. Raj Rani, Civil Judge (SD)-cum-CJM, Hisar.	13	11.33	24.33
29	Ms. Madhu Khanna Lalli, Civil Judge (SD), Kaithal.	13	11.33	24.33
30	Ms. Gurvinder Kaur, CJM, Panchkula.	13	11.33	24.33
31	Ms. Seema Singhal, Civil Judge (SD), Sirsa.	10.8	13.5	24.3
32	Sh. Sandeep Singh, CJM, Faridabad.	13	11.17	24.17
33	Sh. Jasbir Singh, CJM Gurgaon.	13.2	9.83	23.03
34	Sh. Vimal Kumar-III, CJM, Jagadhri.	12.2	10.67	22.87
35	Sh. Amarjit Singh, CJM Ambala.	12.4	10.33	22.73
36	Sh. Rajesh Kumar, CJM, Rewari.	12	10.33	22.33
37	Sh. Devender Singh, Civil Judge (SD), Kurukshetra.	12.8	9.5	22.3
38	Sh. Prithvi Raj Sharma, CJM, Rohtak.	13.4	8.5	21.9
39	Ms. Ranjana Aggarwal, CJM, Kurukshetra.	11.4	10	21.4
40	Sh. Raj Kumar Jain, CJM, Bhiwani.	12	9.33	21.33
41	Sh. Naresh Kumar Singhal, CJM, Sirsa.	10	11	21
42	Sh. Rajan Walia, CJM, Karnal.	11	10	21
43	Sh. Bhupinder Nath, Civil Judge (SD), Karnal.	9.8	11	20.8
44	Sh. Chander Hass, CJM, Narnaul.	11.4	9	20.4
45	Mrs. Shashi Bala, Civil Judge (SD), Rewari.	10.6	9.5	20.1
46	Sh. Gopal Krishan, CJM, Jhajjar.	11.6	6.33	17.93

Thereafter final merit wise list of all 46 candidates, who qualified the suitability test, was prepared, which is as under :-

Sr. No.	Name of the Officers	Judgments	ACRs	Length of Service	Total
1	Mrs. Alka Malik, Addl. District and Sessions Judge (Adhoc), FTC, Sonapat.	14	12	7.5	33.5
2	Ms. Gagandeep Kaur, CJM, Presiding Officer, Environment Court, Kurukshetra.	13.5	13	7	33.5
3	Sh. Phalit Sharma, CJM, OSD, Gaz.II, Pb. and Haryana High Court, Chd.	12.17	14	6.5	32.67
4	Sh. Jagjit Singh, Addl. District and Sessions Judge (Adhoc), FTC, Rohtak.	14	11	7.5	32.5
5	Sh. Sudhir Jiwan, Addl. District and Sessions Judge (Adhoc), FTC, Narnaul.	13.33	11	8	32.33
6	Sh. Rajinder Pal, Addl. District and Sessions Judge (Adhoc), FTC, Karnal.	14.33	10	7.5	31.83
7	Sh. Vijay Singh, Civil Judge (SD), Gurgaon.	12.33	12	7	31.33
8	Dr. Abdul Majid, Civil Judge (SD), Jagadhri.	11.67	12	7.5	31.17
9	Sh. Virender Malik, Civil Judge (SD), Faridabad.	12.17	12	7	31.17
10	Sh. G.S. Wadhwa, Addl. District and Sessions Judge (Adhoc), FTC, Nuh.	14	9	8	31
11	Sh. Sukrm Pal, Addl. District and Sessions Judge (Adhoc), FTC, Sirsa.	13	10	8	31
12	Sh. Lal Chand, Civil Judge (SD), Sonapat.	12.5	11	7.5	31
13	Sh. Pradeep Kumar, Addl. District and Sessions Judge (Adhoc), FTC, Hisar	13.67	9	8	30.67
14	Sh. Daya Nand Bhardwaj, CJM, Sonapat.	11.67	12	7	30.67
15	Sh. Ashwani Kumar, Civil Judge (SD), Palwal.	11.5	13	6	30.5
16	Sh. Raj Kumar Yadav, Civil Judge (SD), Jhajjar.	11.83	11	7.5	30.33
17	Sh. Mahender Singh, CJM, Fatehabad.	11.67	11	7.5	30.17
18	Ms. Poonam Suneja, Civil Judge (SD), Ambala.	12	11	7	30

Sr. No.	Name of the Officers	Judgments	ACRs	Length of Service	Total
19	Ms. Raj Rani, Civil Judge (SD)-cum-CJM, Hisar.	10.83	12	7	29.83
20	Sh. Randhir Kumar Dogra, Civil Judge (SD)-cum-CJM, Nuh.	11.67	10	8	29.67
21	Sh. Sanjay Sandhir, Civil Judge (SD), Rohtak.	12.67	10	7	29.67
22	Sh. Parveen Gupta, Civil Judge (SD), Narnaul.	11.33	11	7	29.33
23	Sh. Rakesh Singh, Civil Judge (SD), Panchkula.	10.33	12	7	29.33
24	Sh. Sandeep Singh, CJM, Faridabad.	10.33	12	7	29.33
25	Sh. Vimal Kumar-III, CJM, Jagadhri.	10.17	12	7	29.17
26	Ms. Sangeeta Rai, Civil Judge (SD), Bhiwani.	11.17	11	7	29.17
27	Ms. Seema Singhal, Civil Judge (SD), Sirsa.	12	10	7	29
28	Sh. Ajay Prashar, Civil Judge (SD), Fatehabad.	11.33	10	7.5	28.83
29	Sh. Naresh Kumar Singhal, CJM, Sirsa.	10.83	11	7	28.83
30	Sh. Jasbir Singh Sidhu, CJM, Chandigarh.	10.83	11	7	28.83
31	Sh. Rajesh Garg, CJM, Kaithal.	11.33	11	6.5	28.83
32	Ms. Sunita Grover, Civil Judge (SD), Panipat.	11.33	11	6.5	28.83
33	Ms. Madhu Khanna Lalli, Civil Judge (SD), Kaithal.	10.33	11	7	28.33
34	Ms. Gurvinder Kaur, CJM, Panchkula.	11.33	10	7	28.33
35	Sh. Bhupinder Nath, Civil Judge (SD), Karnal.	10.17	11	7	28.17
36	Mrs. Shashi Bala, Civil Judge (SD), Rewari.	9.17	12	7	28.17
37	Sh. Amarjit Singh, CJM Ambala.	9.83	11	7	27.83
38	Sh. Jasbir Singh, CJM Gurgaon.	10.17	12	5.5	27.67
39	Ms. Ranjana Aggarwal, CJM, Kurukshetra.	10	10	7	27
40	Sh. Rajesh Kumar, CJM, Rewari.	10.5	10	6.5	27
41	Sh. Raj Kumar Jain, CJM, Bhiwani.	9.17	10	7	26.17
42	Sh. Devender Singh, Civil Judge (SD), Kurukshetra.	9	10	7	26

Sr. No.	Name of the Officers	Judgments	ACRs	Length of Service	Total
43	Sh. Chander Hass, CJM, Narnaul.	8.33	11	6.5	25.83
44	Sh. Rajan Walia, CJM, Karnal.	10	9	6	25
45	Sh. Prithvi Raj Sharma, CJM, Rohtak.	7.67	10	7	24.67
46	Sh. Gopal Krishan, CJM, Jhajjar.	7	9	7.5	23.5

Out of said 46 candidates, first 23 candidates were selected. However, while selecting, their inter-se seniority was maintained and final result was declared which is as under :-

Sr. No.	Name of the Officers	Judgments	ACRs	Length of Service	Total
1	Sh. G.S. Wadhwa, Addl. District and Sessions Judge (Adhoc), FTC, Nuh.	14	9	8	31
2	Sh. Pradeep Kumar, Addl. District and Sessions Judge (Adhoc), FTC, Hisar	13.67	9	8	30.67
3	Sh. Sukrm Pal, Addl. District and Sessions Judge (Adhoc), FTC, Sirsa.	13	10	8	31
4	Sh. Sudhir Jiwan, Addl. District and Sessions Judge (Adhoc), FTC, Narnaul.	13.33	11	8	32.33
5	Sh. Randhir Kumar Dogra, Civil Judge (SD)-cum-CJM, Nuh.	11.67	10	8	29.67
6	Mrs. Alka Malik, Addl. District and Sessions Judge (Adhoc), FTC, Sonapat.	14	12	7.5	33.5
7	Sh. Jagjit Singh, Addl. District and Sessions Judge (Adhoc), FTC, Rohtak.	14	11	7.5	32.5
8	Sh. Rajinder Pal, Addl. District and Sessions Judge (Adhoc), FTC, Karnal.	14.33	10	7.5	31.83
9	Sh. Lal Chand, Civil Judge (SD), Sonapat.	12.5	11	7.5	31
10	Sh. Raj Kumar Yadav, Civil Judge (SD), Jhajjar.	11.83	11	7.5	30.33
11	Sh. Mahender Singh, CJM, Fatehabad.	11.67	11	7.5	30.17
12	Dr. Abdul Majid, Civil Judge (SD), Jagadhri.	11.67	12	7	31.17

Sr. No.	Name of the Officers	Judgments	ACRs	Length of Service	Total
13	Ms. Gagandeep Kaur, CJM, Presiding Officer, Environment Court, Kurukshetra.	13.5	13	7	33.5
14	Sh. Vijay Singh, Civil Judge (SD), Gurgaon.	12.33	12	7	31.33
15	Sh. Parveen Gupta, Civil Judge (SD), Narnaul.	11.33	11	7	29.33
16	Ms. Poonam Suneja, Civil Judge (SD), Ambala.	12	11	7	30
17	Ms. Raj Rani, Civil Judge (SD)-cum-CJM, Hisar.	10.83	12	7	29.83
18	Sh. Rakesh Singh, Civil Judge (SD), Panchkula.	10.33	12	7	29.33
19	Sh. Daya Nand Bhardwaj, CJM, Sonapat.	11.67	12	7	30.67
20	Sh. Virender Malik, Civil Judge (SD), Faridabad.	12.17	12	7	31.17
21	Sh. Sanjay Sandhir, Civil Judge (SD), Rohtak.	12.67	10	7	29.67
22	Sh. Phalit Sharma, CJM, OSD, Gaz.II, Pb. and Haryana High Court, Chd.	12.17	14	6.5	32.67
23	Sh. Ashwani Kumar, Civil Judge (SD), Palwal.	11.5	13	6	30.5

The other 23 candidates, who had obtained lower marks, were not selected and appointed on the ground that they had obtained lower marks in the suitability test, as per gradation mentioned above.

Petitioners made a representation to Chief Justice of this Court regarding the said administrative instructions, stating that these are not part of Superior Judicial Service Rules of 2007 and they also questioned the criteria for allocation of marks i.e. six best judgments, which was subjective in nature. Since no decision was taken on representation, petitioners filed Writ Petition (Civil) No. 189 of 2012, titled as *Vimal Kumar and others Versus State of Haryana and others*, under Article 32 of Constitution of India before the Apex Court. The said writ was dismissed as withdrawn, vide order dated 16.5.2012 (Annexure-P-8), with liberty to approach this

Court on the same cause of action. In the meanwhile, vide order dated 19.5.2012 (Annexure-P-9), private respondents No. 3 to 24 were inducted in the Haryana Superior Judicial Service and were promoted to the supernumerary posts of Additional District and Sessions Judges. Said 23 officers were amongst 46 judicial officers, who had qualified said suitability test. Out of 23, one of officers Pardeep Khara expired and 22 officers have been impleaded as respondents No. 3 to 24. Consequently, some of the private respondents, who were promoted, were not senior to the petitioners in seniority list of HCS Judicial Officers. Number of officers including petitioners were superseded. The last candidate i.e. respondent No. 24 is otherwise at Serial No. 64 of the tentative seniority list of Haryana Superior Judicial Officers.

The High Court in the written statement has stated that process for assessment of suitability as prescribed by Rules is in total conformity with the mandate of Apex Court in *All India Judges Association Versus Union of India*. It was stated that petitioners having passed suitability test under Rule 6 (1) (a) of Superior Judicial Service Rules of 2007, participated in the process for appointment. Respondents have also relied upon Rule 5 of Superior Judicial Service Rules of 2007. It was stated that in the Full Court Meeting held on 21.5.2012, the criteria was laid down after going through the judgment of Apex Court. Therefore, the candidates were required to obtain at least 16 marks out of 40 marks in the written test and viva voce, so as to be considered eligible for promotion. 20 Marks for ACRs and best judgments were not denied. It was stated that selection was to be made on the basis of principle of merit-cum-senior and passing of a suitability test. It was admitted that said test was held on 5.3.2011, in which questions relating to general knowledge, civil law, criminal law and constitutional law

were asked. The viva voce test was not part of suitability test and was to be conducted separately and will be treated as component of merit. On the recommendations of recruitment/promotion committee, 15 candidates were called for suitability test, held on 5.3.2011. It was stated that 23 vacancies of Additional District and Sessions Judges under Rule 6 (1) (a) of Haryana Superior Judicial Service Rules, 2007, from amongst the Civil Judge (Senior Division)/Chief Judicial Magistrate/Additional Civil Judges (S.D.) on the basis of principle of merit-cum-seniority and passing of suitability test were approved by committee. Test of Two times the number of candidates i.e. 46 was conducted on 5.2.2012. The objective test was of 100 questions, consisting of general knowledge, civil law, criminal law and constitutional law. 46 officers of Haryana Civil Service (Judicial Branch) were called for written test on 5.2.2012. The result was approved. The committee gave report on 17.4.2012. The joint representation submitted by Shri Ajay Prasher, Civil Judge (Senior Division), Fatehabad, and 14 other HCS (JB) Officers, regarding reconsideration of selection process was referred to Administrative Committee to examine the grievances raised therein. It is stated that report was accepted and 23 HCS (JB) officers were recommended to the Haryana Government for appointment to Additional District and Sessions Judges. The subsequent change of criteria is also not denied, as claimed by petitioners and regarding fixing of inter-se seniority list of officers, who were promoted/absorbed/appointed under Rule 6 (1) (a) of Haryana Superior Judicial Service Rules, 2007, was also approved. It was stated that the earlier criteria was superseded and new criteria was approved in the meeting of Full Court held on 5.10.2013 and 10.10.2013.

We have heard learned senior counsel for petitioners, learned State counsel, learned counsel for respondents and have also carefully gone

through the file.

The main challenge of the petitioner is to the marks allocated for ACRs and marks allocated for best judgments. Undoubtedly, all 46 candidates passed the suitability test in writing as well as in viva voce. In the amended criteria, some marks were allocated to 'A+' 'Outstanding' and lower marks to 'A' 'Very Good', 'B+' 'Good' and 'B' 'Satisfactory'.

We are of the view that criteria of allocating marks for the ACRs is unjust and contrary to Rule 8 of Haryana Superior Judicial Service Rules, 2007. Rule 8 of Haryana Superior Judicial Service Rules, 2007, provides for taking into consideration the ACRs and judgments. It does not provide for allocating marks to ACRs and the judgments of officers. Further marks are allocated only for written test and viva-voce. For the purpose of promotions what the Apex Court in *All India Judges Association* (supra), had desired is that a suitability test should be held. The High Court accordingly decided to hold a suitability test in the form of written test and viva voce. For the purpose of promotion, 'B+' report is considered a benchmark to promote a Judicial Officer. Therefore, by allocating higher marks to the higher grading in ACRs resulted in discrimination. As all individuals have different nature, way of working and manner of assessment, therefore, the different Administrative Judges may grant different grading to different Judicial Officers for the same work. In this process, some of the Judicial Officers may get comparatively good reports than other Judicial Officers, who are equally or more competent.

Similarly, the marks allocated to six best judgments (3 Civil and 3 Criminal) was also unjust and contrary to Rule 8 (ibid). It is to be noted that in the ACRs recorded annually, there is a column regarding quality of

judgments. Therefore, the Administrative Judge, after observing the work and conduct of the Judicial Officer and going through the judgments, makes comments on the quality of the judgments every year. Judging the quality of judgments is always subjective. Therefore, the assessment made by Administrative Judge for a particular year may be different from the assessment, which was to be made by the Committee. Again here, a benchmark was sufficient to see whether the judgments are good and the Judicial Officer is suitable for promotion to the higher post.

It is not as that the High Court was not aware about the drawbacks in the criteria, which were laid down on 30.10.2007 and 10.7.2012. The Full Court, in its meeting held on 29.1.2013, after superseding the earlier criteria, laid down fresh criteria with effect from 1.4.2013 as per Annexure D for promotion to the post of Additional District and Sessions Judge in the States of Punjab and Haryana. The extracts from the proceedings are Annexure-P-15. In the State of Haryana, for the purpose of written examination, viva voce, best judgments and ACRs, following criteria was laid down :-

- i) In terms of Rule 8 (a) of the Haryana Superior Judicial Service Rules, 2007, the suitability test shall consist of written objective test of 75 marks and viva voce of 25 marks so as to assess legal knowledge and the efficiency in legal field for discharging higher duties and responsibilities. Obtaining of 50% marks in aggregate of the written test and in viva voce would make a candidate eligible for promotion.
- ii) In terms of clause (v) of Rule 8 (a) of the Rules, the Committee constituted by Hon'ble the Chief Justice, shall examine the judgments delivered in a month of months during the last three years as it considers appropriate. If the Committee grades the judgments below average, the Officer shall not be considered suitable for promotion.

iii) For the purposes of Rule 8 (a) (i to iv), a candidate should have obtained at least four 'B+ Good' or above grading in the Annual Confidential Reports in the preceding five years. However, for the purposes of promotion upto March, 2013, it shall be sufficient if a candidate has obtained three 'B+ Good' or above grading in the Annual Confidential Reports.'

It is to be seen that here four 'B+ Good' or above grading in ACRs in preceding five years were considered to be good for promotion. Similarly, judgments delivered in a month of months during last three years as it considers appropriate, are to be examined by a Committee, constituted by Hon'ble Chief Justice and only if the Committee grades the judgments below average, the Judicial Officer shall not be considered suitable for promotion. Meaning thereby that if the judgments are found average or above, the Judicial Officer is fit for promotion.

We are of the view that this was the correct way to assess the suitability of Judicial Officer for promotion to the post of Additional District and Sessions Judge. Regarding the new criteria for assessing judgments and ACRs, this Court is informed that now it is being taken into consideration for the purpose of promotions. Therefore, we are of the view that criteria laid down in the Administrative Instructions dated 30.10.2007 (Annexure-P-2) and criteria laid down in Annexure D dated 10.7.2012, appended to Rules dated 6.6.2012 (Annexure-P-3), so far as it relates to granting marks for ACRs and best judgments, are arbitrary and liable to be quashed. The latest criteria, as discussed above, is the best way to assess the suitability of Judicial Officer, so far as ACRs and best judgments are concerned. As a result of said discriminatory criteria, present petitioners had to suffer. Though they had qualified the suitability test, held in the year 2012, but since private respondents No. 3 to 24 had obtained higher marks in the

written exam, viva voce, best judgments, ACRs and length of service, the High Court decided to prepare a merit list, which has been discussed above and appointed first 23 candidates as if it was a competitive examination.

It was never the intention of the Apex Court that after taking the suitability test, a merit list is to be prepared and the Judicial Officers should be promoted only, if they fall in the said merit list. It was not a competitive exam. Only the suitability of the Judicial Officer is to be seen and once it is found that petitioners got requisite marks in suitability test, they could not be ignored for promotion. The High Court, after preparing the merit list, appointed first 23 candidates on 19.5.2012. However, their inter-se seniority, as in the Haryana Civil Service (Judicial Branch), was maintained. Later on, after six months i.e. on 8.11.2012, on the basis of same test, 21 candidates including the petitioners were promoted, maintaining their inter-se seniority. However, some of the private respondents, who are otherwise junior to petitioners in the Haryana Civil Service (Judicial Branch), having been appointed earlier in time on account of their falling in first 23 candidates in merit list, were made senior to them. This amounts to going beyond the intention of the Apex Court, directing the holding of suitability test. The action of High Court, in ordering promotion in such a manner, is illegal, arbitrary and hit by Articles 14 and 16 of Constitution of India. Consequently, the petitioners could not be denied the rightful seniority by preparing a merit list of suitability test.

As a result of foregoing discussion, present civil writ petition is allowed. The Administrative Instructions dated 30.10.2007 (Annexure-P-2), vide which criteria for promotion of Additional District and Sessions Judges by way of seniority in the State of Haryana was determined as per Rule 6 (1) (a) of Haryana Superior Judicial Rules, 2007 and criteria dated 10.7.2012,

subsequently issued, vide Annexure D, appended to Rules dated 6.6.2012 (Annexure-P-3), so far as it allocates marks to the grading in the ACRs and best judgments, are hereby quashed. It is held that the latest criteria, as discussed above, whereby four 'B+ Good' out of five preceding years, were to be considered good for promotion and only those officers whose judgments are graded below average are to be found not suitable for promotion, is the proper way for assessing the suitability regarding ACRs and best judgments.

In this case, since present petitioners had passed the suitability test held in the year 2012, therefore, irrespective of their merit in the said suitability test, they were entitled to be promoted in the order of seniority in the Haryana Civil Service (Judicial Branch) and consequently, they are also held to be entitled to seniority over some of the private respondent No. 3 to 24, who were junior to them in Haryana Civil Service (Judicial Branch). The Respondent No. 2 is directed to accordingly adjust the date of promotion of petitioners and private respondents No. 3 to 24 and grant seniority to the petitioners as per their seniority in Haryana Civil Service (Judicial Branch), if necessary, by creating supernumerary posts. The necessary action shall be carried out within two months from the date of receipt of certified copy of this order.

(A.B. CHAUDHARI)
JUDGE

(KULDIP SINGH)
JUDGE

27.8.2018

sjks

Whether speaking / reasoned : Yes

Whether Reportable : Yes

CWP No. 23028 of 2013 (O/M)

SANJIV KUMAR SHARMA
2018.08.27 14:32 22
I attest to the accuracy and
authenticity of this document