

CWP No.8817 of 2019

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP No.8817 of 2019

Date of decision : 30.09.2022

Hardeep Kaur

.....Petitioner

VERSUS

Punjab and Haryana High Court, Chandigarh and another

....Respondents

**CORAM:- HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE LALIT BATRA**

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Sandeep Dhull, Advocate, for the petitioner.

Ms. Divya Sharma, Advocate
for respondent No.1 – High Court.

Mr. Deepak Bhadwaj, Deputy Advocate General, Haryana.

AUGUSTINE GEORGE MASIH, J.

This writ petition has been preferred by the petitioner, who had, in pursuance to a notification dated 29.04.2013, issued by the Punjab and Haryana High Court (hereinafter referred to as 'High Court') inviting applications for selection of 17 candidates (8 for general category, 6 for S.C. Category and 3 for B.C. Category) for appointment to the Haryana Superior Judicial Services (hereinafter referred to as 'HSJS') by way of direct recruitment in the State of Haryana, applied for the said post under the General category. The preliminary examination was held on 22.09.2013 leading to the main examination which was held in the month of November, 2013, where the petitioner participated under Roll No.5069.

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She having cleared the main written examination participated in the interview leading to the declaration of result in the month of February, 2014, where she was placed at merit No.12. Five candidates, who were higher in merit than the petitioner, were also selected in the Punjab Superior Judicial Services and opted for appointment in the State of Punjab leading to the petitioner being placed at merit position No.8. Out of these 8 candidates, one belong to the Backward Class category, who had obtained higher marks than the petitioner and therefore, came within the selection zone and was placed at Sr. No.7. Seven candidates, according to the merit, were offered appointment and joined service as Additional District Judge (Direct Quota) in the month of April, 2014. Petitioner was not offered the appointment despite there being 8 posts for the General category for the reason that CWP No.24195 of 2013 was preferred by one Nidhi challenging the preliminary examination, where she was allowed to appear in the main examination as also in the interview provisionally with a decision having been taken by the High Court on the administrative side not to issue appointment letter because of the pendency of the writ petition to the last candidate according to the merit list in the General category i.e. the petitioner. The said writ petition preferred by Nidhi was dismissed by this Court vide judgment dated 19.03.2018 which when challenged in the Hon'ble Supreme Court i.e. SLP (C) No.11602 of 2018 was dismissed on 11.05.2018.

2. Petitioner, after the dismissal of the writ petition by the High Court on 19.03.2018, submitted a representation to the Registrar, dated 19.04.2018 (Annexure P-2) highlighting therein the aspect with regard to

she being placed at merit list No.8 in the General category and that the said post was kept vacant because of the pendency of the writ petition which post can be filled-up now after the dismissal of the writ petition. It was also intimated that she has shifted from Chandigarh to Delhi and supplied the fresh correct address at Delhi for future communication. High Court, vide letter dated 18.09.2018 (Annexure P-4) asked the petitioner to give an option as to whether she was interested to join HSJS in case the post is offered to her to which she responded vide communication dated 08.10.2018 (Annexure P-3) mentioning that the option for joining the HSJS be kept open. The said communication was considered by the High Court and the request for keeping the option open at the hands of the petitioner was rejected vide decision dated 16.11.2018 (Annexure P-5).

A representation dated 22.11.2018 (Annexure P-6) was submitted by the petitioner stating therein that neither any post has been offered nor any appointment letter issued to the petitioner and only willingness has been sought where she stated that she is willing to join the HSJS, if the post is offered to her. It is here, for the first time, she disclosed that she had already joined Delhi Higher Judicial Services on 26.09.2015 and continuing on the post of Additional District Judge since then. She further intimated that she would be sending her willingness through proper channel i.e. through the office of the Registrar General of Delhi High Court in case the offer of appointment is made to her. It was also mentioned that the option for joining HSJS may be kept open for her till the post is offered. This representation was also rejected by the High Court where she requested to keep the option open and the decision was

communicated to her on 07.12.2018 (Annexure P-7).

3. Another representation dated 12.12.2018 (Annexure P-8) was submitted by the petitioner requesting to consider her willingness to join the HSJS and to issue appointment orders by considering her case on humanitarian ground. With no response from the High Court, this writ petition was filed by the petitioner on 25.03.2019 praying for issuance of a writ in the nature of *certiorari* to quash the the order dated 16.11.2018 (Annexure P-5) and order dated 07.12.2018 (Annexure P-7), by which the willingness of the petitioner in response to her request for keeping the option open for offering an appointment for the post of Additional District Judge had been rejected. Writ of *mandamus* has also been prayed for considering her claim for appointment as Additional District Judge being selected within the advertised post and after issuance of the appointment, grant her all consequential benefits.

4. The ground for challenge is that there is no fault on the part of the petitioner and it has so happened that in the year 2014 although the petitioner had been placed at merit No.8 in the General category of HSJS and even the High Court, as is apparent from the letter/communication sent after the dismissal of the writ petition of Nidhi referred to above on 19.03.2018, willingness of the petitioner was sought but no offer of appointment was made and therefore, the petitioner could not exercise her option effectively. Had it not been the pendency of the writ petition and a decision taken by the High Court on the administrative side not to offer appointment to the petitioner being the last candidate of General category in the merit list, she would have joined the service in April 2014 along

with the other selected candidates. Immediately after the dismissal of the writ petition filed by Nidhi, petitioner herein had expressed her interest and willingness to join HSJS and also gave the changed address. There was no ground for rejecting her request for keeping the option open without offering her an appointment against the post which was kept unfilled because of the administrative decision of the High Court. The language and the tenor of the responses/representations which have been submitted by the petitioner to the High Court clearly indicate her willingness to join HSJS, if the post is offered to her. In the absence of any such offer at the end of the High Court, petitioner cannot be held responsible for having not given her willingness and requesting for keeping the option open. The rejection of the claim of the petitioner, therefore, being unjustified and is contrary to the settled principles of law which mandate issuance of an appointment letter when the Appointing Authority is inclined to fill-up the post which is apparent from the offers of willingness issued by the High Court dated 18.09.2018 (Annexure P-4) and 16.11.2018 (Annexure P-5).

5. Upon notice having been issued, reply has been filed to the petition by the respondents. So far as respondent No.2 – State of Haryana is concerned, the same is formal as it has been stated therein that it is for the High Court (respondent No.1) to respond to the factual aspects as well as the claim as has been made.

In the reply which has been filed by the High Court (respondent No.1), the stand taken is that the petitioner despite having been selected and joined the Delhi Higher Judicial Services on 26.09.2015,

had neither disclosed this fact nor was it stated in her representation dated 19.04.2018 (Annexure P-2) or in her letter dated 08.10.2018 (Annexure P-3). These facts have been disclosed by her for the first time in her representation dated 22.11.2018 (Annexure P-6). Petitioner, according to the High Court, is adopting extremely evasive and opaque approach, dis-entitling her to the relief as has been claimed by her in the writ petition. Another objection which has been highlighted by respondent No.1 – High Court is that the petitioner would not be entitled to the claim made in the writ petition in the light of the judgment of the Hon'ble Supreme Court in Dheeraj Mor Vs. Hon'ble High Court of Delhi 2020 (7) SCC 401, wherein the Three Judges Bench of the Hon'ble Supreme Court has decided the issue whether the eligibility for appointment of an applicant/candidate in the selection process for appointment as District Judge has to be seen at the time of last date of receipt of the applications or at the time of appointment as well. It is contended that the Hon'ble Supreme court has held that the eligibility of a candidate is not only to be seen as on the cut off date but at the time of appointment as District Judge as well. On that basis, it has been pleaded that when the option has been sought from the petitioner about her willingness to join HSJS i.e. on 18.09.2018 (Annexure P-4), she had already joined the Delhi Higher Judicial Services as Additional District Judge on 26.09.2015 and therefore, she was not eligible for appointment as District Judge in the HSJS.

6. Further, as far as the factual aspects as has been pointed out by the petitioner and stated above have not been disputed by the High Court but what has been submitted is that despite having been specifically asked

as to whether she was interested to join HSJS in case the post is offered to her, she had never come forward to specifically express her willingness to join HSJS through her communications addressed to the High Court but had always stated that the option be kept open. In the light of the failure on the part of the petitioner to furnish her unambiguous and unequivocal willingness to join the HSJS, her request has rightly been rejected by the High Court. The representations which have been submitted by the petitioner appear to be with an intention to play hide and seek and in that process, keep the post unfilled for an indefinite period while continuing to work as a Judicial Officer in the Delhi Higher Judicial Services. The High Court could not have recommended the name of the petitioner for appointment unless a clear actual willingness to join the HSJS was received from her which she failed to submit leading to the passing of the orders of rejection on her representations. It is, on these basis, that the prayer has been made for dismissal of the writ petition.

7. Learned senior counsel for the petitioner has, apart from reiterating the factual position, submitted that there was simultaneous process of selection to the Superior Judicial Services both in the State of Haryana as well as in Delhi and the petitioner had applied in pursuance to the advertisements issued by the respective High Courts. Petitioner being resident of Haryana was always inclined to take-up the appointment in Haryana and is still so and therefore, pursuing the remedy before this Court but because of the administrative decision having been taken by the High Court, where the post which was to fall to the petitioner being the highest in merit i.e. at Sr. No.8, because of the pendency of the writ

petition preferred by one Nidhi i.e. CWP No.24195 of 2013 challenging the preliminary examination where she had been permitted provisionally to participate in the main examination as well as in the interview to await the decision thereof, cannot be taken against the petitioner. It is during the interregnum that she was selected and offered appointment in the Delhi Higher Judicial Services where she joined as an Additional District Judge on 26.09.2015 and continuing thereafter. It is immediately after the dismissal of the writ petition on 19.03.2018 that the petitioner submitted a representation highlighting the aspect of change of address in the month of April, 2018 for future communication which clearly indicates her interest in joining the post. Had there been a clear offer on the part of the High Court offering appointment against the post, there was no reason why the petitioner would not have joined the service. In the absence of any such offer of appointment, the petitioner had requested for keeping the option open till the offer of appointment against the post is given to her. For the reasons beyond the control of the petitioner, she could not be held responsible and cannot be denied the rightful claim for appointment to the post against which she had been duly selected and willingness to join had also been sought by the High Court.

As regards the judgment of the Hon'ble Supreme Court in *Dheeraj Mor's* case (supra), learned senior counsel for the petitioner had made an effort to distinguish the same on facts by asserting that on the last date of receipt of the application, the petitioner was an Advocate and even at the time when the result was declared by the High Court was continuing as an Advocate. Had she been offered appointment along with the other

batch-mates to the post of Additional District Judge in April, 2014, she would have joined the service. In the light of the uncertainty which prevail because of the decision taken by the High Court on administrative side for not issuing appointment letter to the petitioner awaiting the decision in the writ petition preferred by Nidhi (supra), petitioner would not be expected to await for an uncertain time. A prudent person would avail of an opportunity and that too at the same level but in a different State, if offered, which she availed of and joined Delhi Higher Judicial Services in the year 2015. The wait could not be unending as there was uncertainty as to when the writ petition would be decided and what would be the fate thereof and therefore, the petitioner cannot be denied her rightful claim for appointment to the post of Additional District Judge in HSJS and that too, for the reasons not attributable to the petitioner.

Learned senior counsel has further pointed out that the issue involved before the Hon'ble Supreme Court was primarily relatable to the eligibility of a Judicial Officer to participate in the selection process for appointment to the post of District Judge through direct recruitment. The answer to the said question was in the negative and it was held that the Judges of the Subordinate Judicial Services cannot be considered eligible for appointment to the post of District Judge in the light of Article 233 of the Constitution of India. He, on this basis, contends that the petitioner cannot be denied her rightful claim and the judgment of the Hon'ble Supreme Court in *Dheeraj Mor's* case (supra) would not be applicable to the case of the petitioner.

8. Learned senior counsel has made an attempt to contend that

where a candidate is eligible on the last date of receipt of applications i.e. cut off date and even at the time when the selection process is completed she continues to be an Advocate and therefore, eligible for appointment as District Judge under Article 233 of the Constitution of India, the subsequent appointment to the Judicial Services and that too at the same level but in a different State, cannot be a ground for holding the said candidate to be an inservice candidate or a Judicial Officer on the date when the offer of appointment is made. There is no other disqualification which has been attached or projected by the High Court except for this. Prayer has, thus, been made for accepting the writ petition and grant the benefit of consideration of the claim of the petitioner for appointment to the post of Additional District Judge in the HSJS and as a consequence thereof, on her appointment grant her all consequential benefits.

9. Counsel for respondent No.1 – High Court has reiterated the grounds and stand taken by the High Court in her arguments by asserting that at no stage, after the petitioner had been requested to give her option for joining the post if offered, had the petitioner accepted the said offer in categorical terms nor has she put forth and projected her willingness in clear terms. Her response has been evasive and with an intention to gain time. The uncertainty is writ large in the response which has been received from her. In the light of there being no specific response from the petitioner, the High Court was not in a position to offer her appointment to the post. Counsel has also emphasized upon the fact that in the initial response which was received from the petitioner, she did not disclose the fact that she had been selected and had joined as Additional District Judge in the

Delhi Higher Judicial Services on 26.09.2015. This fact was disclosed in her 3rd communication which was received by the High Court on 22.11.2018 and in that communication also, there was no specific and express willingness to join HSJS. With the High Court coming to know about her joining the Delhi Higher Judicial Services in 2015, her request cannot be accepted for issuing her the appointment letter for the post of Additional District Judge in the HSJS since she does not fulfill the mandate of Article 233 of the Constitution of India as interpreted and held by the Hon'ble Supreme Court in *Dheeraj Mor's* case (supra), where it has categorically been mentioned that for direct recruitment as District Judge against the quota fixed for Advocates/Pleaders, an incumbent has to be a practising Advocate and must be in practice as on the cut off date and also at the time of appointment, he must not be in Judicial Services or other services of Union and the State. This, she states with reference to para 45 of the said judgment, which according to her puts a seal of dis-entitlement on the claim as made by the petitioner. If the mandate under the Constitution is such, the petitioner cannot be granted the claim as has been prayed and projected. Prayer has, thus, been made for dismissal of the writ petition.

10. We have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the pleadings and the records of the case.

11. The facts as have been narrated above being undisputed are not being again reiterated here as it would be sheer repetition thereof except for mentioning that the petitioner was held eligible for

consideration for appointment to the post of Additional District Judge, HSJS and was placed at Sr. No.8 in the select list against the eight posts of General category which were advertised. Because of the pendency of the writ petition of one Nidhi (supra), petitioner who was at No.8 i.e. the last of the candidates in the General category, was not offered appointment to the post and this post was kept vacant to await the outcome of the writ petition. The other selected candidates joined the service in April, 2014 as Additional District Judge in the State of Haryana.

12. In the meanwhile, the selection process for Delhi Higher Judicial Services came to be finalized where the petitioner had also participated and was selected. She joined as Additional District Judge on 26.09.2015 and is continuing as such. The writ petition was dismissed on 19.03.2018 and SLP against the said judgment of the Division Bench of this Court was dismissed by the Hon'ble Supreme Court on 11.05.2018 clearing the way for consideration of the petitioner for appointment against the 8th post of General category which was kept unfilled because of the pendency of the writ petition.

Petitioner submitted a representation dated 19.04.2018 (Annexure P-2) indicating the change of address from Chandigarh to Delhi and her interest in pursuing her claim for appointment to the said post. The High Court responded to the said communication dated 18.09.2018 (Annexure P-4), whereby she was given an option as to whether she was interested to join HSJS in case the post is offered to her now. She responded through a communication dated 08.10.2018 (Annexure P-3) by submitting that option for joining HSJS be kept open, which request on

consideration for keeping the option open was rejected and conveyed to the petitioner on 06.11.2018 (Annexure P-5). Thereafter, another representation was received from the petitioner dated 22.11.2018 (Annexure P-6) where, for the first time, she disclosed about her having joined the Delhi Higher Judicial Services on 26.09.2015 and continuing there, where again it was mentioned that the option for joining HSJS may be kept open till the post is offered to her and intended to send her willingness through proper channel. The said representation of the petitioner dated 22.11.2018 (Annexure P-6) was rejected by the High Court and the decision was communicated on 07.12.2018 (Annexure P-7).

13. These factual aspects make it amply clear that there has been an indication on the part of the petitioner showing her inclination but in none of these communications, she had, in categoric and clear terms, stated that she is willing to join HSJS. What was expected and enquired of her was a simple response as to whether she was willing to join HSJS in case the post is offered to her. A categoric 'Yes' if she was interested was expected of her which she failed to state in all her communications. The language used in the representations received from her is evasive and non-committal leading to the High Court to a conclusion that the petitioner is probably not interested and the reason was apparent that she had already joined the Delhi Higher Judicial Services in the year 2015 and had been continuing there. The decision of rejection of her option of being kept open to join, therefore, appears to be quite justified.

14. In any case, in the light of the petitioner having joined the Delhi Higher Judicial Services, she would cease to be eligible for

appointment to the post of District Judge as provided for under Article 233 of the Constitution of India, which aspect has been interpreted by the Three Judges' Bench of the Hon'ble Supreme Court in *Dheeraj Mor's* case (supra), where, in para 45, it has been held as follows:-

“45. In view of the aforesaid discussion, we are of the opinion that for direct recruitment as District Judge as against the quota fixed for the advocates/pleaders, incumbent has to be practicing advocate and must be in practice as on the cutoff date and at the time of appointment he must not be in judicial service or other services of the Union or State. For constituting experience of 7 years of practice as advocate, experience obtained in judicial service cannot be equated/combined and advocate/pleader should be in practice in the immediate past for 7 years and must be in practice while applying on the cutoff date fixed under the rules and should be in practice as an advocate on the date of appointment. The purpose is recruitment from bar of a practicing advocate having minimum 7 years' experience.” (highlighting is ours)

In para 47, the reference to the Larger Bench was answered as follows:-

“(i) The members in the judicial service of the State can be appointed as District Judges by way of promotion or limited competitive examination.

(ii) The Governor of a State is the authority for the purpose of appointment, promotion, posting and transfer, the eligibility is governed by the Rules framed under Articles 234 and 235.

(iii) Under Article 232(2), an Advocate or a pleader

with 7 years of practice can be appointed as District Judge by way of direct recruitment in case he is not already in the judicial service of the Union or a State.

(iv) For the purpose of Article 233(2), an Advocate has to be continuing in practice for not less than 7 years as on the cutoff date and at the time of appointment as District Judge. Members of judicial service having 7 years' experience of practice before they have joined the service or having combined experience of 7 years as lawyer and member of judiciary, are not eligible to apply for direct recruitment as a District Judge.

(v) The rules framed by the High Court prohibiting judicial service officers from staking claim to the post of District Judge against the posts reserved for Advocates by way of direct recruitment, cannot be said to be ultra vires and are in conformity with Articles 14, 16 and 233 of the Constitution of India.

(vi) The decision in *Vijay Kumar Mishra* (supra) providing eligibility, of judicial officer to compete as against the post of District Judge by way of direct recruitment, cannot be said to be laying down the law correctly. The same is hereby overruled.” (highlighting is ours)

15. In the light of the above, it is clear that a candidate is not only required to be qualified on the last date of receipt of the applications i.e. the cut off date fixed under the Rules which mandate experience of 7 years of practice as an Advocate but is continuing to be a practising Advocate on the date of appointment. A candidate who might be eligible on the cut off date being an Advocate with 7 years practice but at the time when the appointment is to be made as a District Judge, if he has joined service with

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Judiciary or other service of the Union or State is not eligible to be appointed as District Judge by way of direct recruitment.,

16. Petitioner, being in service as an Additional District Judge in the Delhi Higher Judicial Services, would not be eligible for appointment as District Judge and thus, cannot be granted the relief as has been claimed.

17. Finding no merit in the present writ petition, the same stands dismissed.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

30.09.2022
Harish

**(LALIT BATRA)
JUDGE**

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>