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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3652 OF 2024**

Smt. Khan S.Z.
5th Jt. Civil Judge, Senior Division,
Nagpur and Others Petitioners.

V/s

High Court of Judicature at Bombay
Through the Registrar General
and Others. Respondents.

Mr. Anil V. Anturkar, Senior Advocate a/w Ms. Pushpa Ganediwala, Mr. Areva Lunawadavala, Mr. Anshu Agarwal & Mr. Ankit B. Rawat for Petitioners.

Dr. Milind Sathe, Senior Advocate a/w Mr. Rahul Nerlekar for Respondent Nos. 1 and 2 – High Court.

Mr. P. P. Kakade, GP a/w Mr. M.M. Pabale, AGP for Respondent No.3-State

**CORAM: A.S. CHANDURKAR &
JITENDRA JAIN, JJ.**

DATE: 28th MARCH, 2024

P.C.:-

1] The challenge raised in this writ petition is to the communications dated 13/02/2024 and 15/02/2024 issued by the 1st Respondent – High Court of Judicature at Bombay through its Registrar General calling upon willingness of Judicial Officers considered eligible for filling-up the posts of six District Judges through accelerated

promotion (10%) by conducting Limited Competitive Examination – LCE for the Selection Process, 2023. Since the aforesaid examination is scheduled to be held on 31/03/2024, the learned Senior Advocate for the Petitioners has pressed for the prayer for interim relief. We have accordingly heard the learned Senior Advocates on the prayer for interim relief.

2] Rule 5(1) of the Maharashtra Judicial Service Rules, 2008 (for short, Rules of 2008) prescribes that 65% of the posts of District Judges shall be filled-in by promotion from the Cadre of Senior Civil Judges on the basis of principle of merit-cum-seniority and passing a suitability test. The qualification prescribed is that the concerned Judicial Officer must be in the cadre of Senior Civil Judge after completion of the officiating period and must have been officiating as Senior Civil Judge for at least five years. 10% of the posts are to be filled-in by promotion strictly on the basis of merit through LCE from amongst the Senior Civil Judges. Since rest of the Rule is not required to be gone into at this stage, it is not necessary to refer to the same.

3] Mr. Anil V. Anturkar, learned Senior Advocate for the Petitioners

submits that the qualification of having officiated as a Senior Civil Judge for at least five years is applicable only when 65% of the posts by promotion are to be filled-in. This is clear from the fact that these qualifications have been mentioned only against Clause 1(a) and the same have not been mentioned against Clause 1(b) of Rule 5. Thus, it is submitted that on becoming a Senior Civil Judge, the avenue for seeking promotion on the basis of merit through LCE for 10% posts becomes immediately available. This is for the reason that such promotion for 10% posts is strictly on the basis of merit. The object of the said Rule being to recognize merit amongst Senior Civil Judges and there being no qualification prescribed against Rule 5(1)(b) of the Rules of 2008, the insistence for requiring completion of officiating service as Senior Civil Judge for a period of five years is unjustified.

It is further submitted that assuming that the qualification prescribed against Rule 5(1)(a) of the Rules of 2008 is also applicable to Rule 5(1)(b) thereof, the Petitioners were selected for the year 2017 and were duly posted as Senior Civil Judges in the year 2018. They had therefore completed officiating service of five years from 2017-18. The gradation list as prepared ignores the eligibility of the Petitioners

and hence they are being deprived from appearing in the LCE. Referring to the recommendations of the Shetty Commission as well as decision in *Malik Mazhar Sultan and Anr. Vs. U.P. Public Service Commission & Ors.*, 2007(2) SCALE 159, it is submitted that post these recommendations and decision, the Rules of 2008 have been framed. It would therefore necessary to consider the effect of the Rules as framed and reference to either recommendations or decision rendered prior to the framing of the Rules would be impermissible. It was thus submitted that by way of an interim order, the Petitioners be permitted to appear for LCE for the Selection Process 2023 subject to outcome of the writ petition.

4] Dr. Milind Sathe, learned Senior Advocate appearing for Respondent Nos. 1 and 2 opposed the aforesaid submissions. According to him, the qualifications prescribed in Column-4 of Rule 5(1)(a) of the Rules of 2008 were also applicable to sub-clause (b) thereof. A minimum officiating service of about five years as Senior Civil Judge is required prior to being eligible to appear for LCE for the 10% posts by promotion. Though Petitioners were selected in the year 2017 and were appointed in 2018, they did not satisfy such

qualification inasmuch as till the cut off date of 31/03/2023 they had not completed five years officiating service. Since the basic requirement was not met, the Petitioners were not eligible to seek promotion in 10% quota at this stage. The selection process was for the year 2023 and hence the cut off date fixed was 31/03/2023. The learned Senior Advocate invited attention to the decision in *Malik Mazhar Sultan and Anr.* (supra) and submitted that reference to qualifying service of five years while seeking promotion through LCE had been then ordered. The Rules of 2008 were framed in accordance with directions as issued by the Supreme Court. Reference was also made to the decision in *Dr. Kavita Kamboj vs. High Court of Punjab and Haryana and Others*, 2024 SCC OnLine SC 254 to submit that on consideration of a similar Rule, the requirement of qualifying service of five years has been accepted. It is thus submitted that since basic requirement of qualifying service of five years had not been met, no interim relief be granted to the Petitioners.

5] Having heard the learned Senior Advocates, we are of the view that no exceptional case has been made out to grant interim relief as prayed for. On prima facie consideration of Rule 5(1) read as a whole,

it becomes evident that for seeking promotion to the post of District Judge from the cadre of Senior Civil Judges either on the basis of merit-cum-seniority or passing a suitability test as applicable for 65% posts or by promotion strictly on the basis of merit through LCE for 10% posts, the concerned Senior Civil Judge ought to render officiating service of five years. Restricting the application of the qualification prescribed under Column-(4) only to 65% posts and not making it applicable to 10% posts would result in an anomalous situation. The object behind the same can be easily gathered from the observations of the Supreme Court in *Malik Mazhar Sultan and Anr* as well as *Dr. Kavita Kamboj* (supra). Further, for seeking promotion to the post of District Judge the Rule making authority is justified in requiring a qualifying experience of five years as Senior Civil Judge. Hence, we are of the prima facie view that Column-4 of Rule 5(1) prescribing the qualification of having rendered officiating service as Senior Civil Judge for at least five years would be applicable even to Clause (b) thereof. Even otherwise since the cut off date for being eligible has been shown to be 31/03/2023 since the selection process is of the year 2023 and the Petitioners are yet to complete qualifying service of five years as Senior Civil Judges as on that day, we do not find any

exceptional case made out to permit the Petitioners to appear for the said examination by way of interim relief.

6] We clarify that observations made in this order are only for considering the prayer for interim relief.

7] Stand over to 23/04/2024 by which time Respondent Nos. 1 and 2 shall file their affidavit in reply.

[JITENDRA JAIN, J.]

[A.S. CHANDURKAR, J.]