



2024 : DHC : 821



\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on : 01.02.2024

Judgment pronounced on : 05.02.2024

+ W.P.(C) 9835/2020 & CM APPL. No.34989/2021 (for directions)

DISTRICT AND SESSIONS COURTS EMPLOYEES  
WELFARE ASSOCIATION ..... Petitioner

versus

DISTRICT & SESSIONS JUDGE HEADQUARTERS & ANR  
..... Respondents

**Advocates who appeared in this case:**

For the Petitioner : Mr. Rajat Aneja, Ms. Vandana Aneja,  
Ms. Alka Dwivedi and Mr. Puneet  
Dhawan, Advocates

For the Respondents : Mrs. Avnish Ahlawat, Standing  
Counsel with Mrs. Tania Ahlawat, Mr.  
Nitesh Kumar Singh, Ms. Laavanya  
Kaushik, Ms. Aliza Alam and Mr.  
Mohnish Sehrawat, Advocates.

**CORAM:**

**HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

**J U D G M E N T**

**TUSHAR RAO GEDELA, J.**

1. This is a writ petition under Article 226 of the Constitution of India, 1950 seeking, *inter alia*, the following reliefs:-

*“It is, therefore, most respectfully prayed that this Hon'ble may be pleased to issue a Writ in the nature of CERTIORARI and/ or any other appropriate Writ/ Order/ Direction of like nature; thereby quashing the Letter dated 25.09.2020 issued by the Respondent No. 1, and to consequently pass appropriate directions by way of Writ in the nature*



*of MANDAMUS and/ or any other appropriate Writ/ Order/ Direction of like nature directing the Respondents to the following effect:*

- a. To carry out the promotions for filling up the vacancies of the Senior Judicial Assistants and Judicial Assistant (erstwhile nomenclature being Readers and Ahlmads respectively) in consonance and compliance with the Letters dated 29.01.2013 and 08.08.2019 issued by the Respondent No. 2 as well as the Notification dated 18.02.2019 issued by the Respondent No. 1; alongwith all the consequential benefits, i.e. seniority, arrears etc. from the date of arising of those vacancies;*
- b. And also, to forthwith take appropriate measures to fill up the vacancies of Junior Judicial Assistant (erstwhile nomenclature being Assistant Ahlmads) falling vacant owing to the promotions of the Senior Judicial Assistant and Judicial Assistant through the impending recruitment drive, in the light of the detailed facts and circumstances narrated hereinabove."*

2. While the aforesaid writ petition, seeking the above prayers, was pending, the respondents in the meanwhile *vide* the orders dated 24.09.2021 (from Judicial Assistants to Senior Judicial Assistants) and 25.09.2021 (from Junior Judicial Assistants to Judicial Assistants) had granted promotions to the members of the Petitioner Association. The Petitioner Association asserts that the promotions which were granted *vide* the aforesaid orders were to be effective from the date of assuming charge. Their grievance in respect of the said orders was that the same should have been with retrospective effect from the date when the vacancies had arisen.

3. Assailing the non-grant of retrospectivity to the promotions so granted *vide* the aforesaid two orders, the petitioners submit that they were constrained to file application bearing CM APPL. 34989/2021 seeking the following reliefs:-



*“It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to direct the Respondents, and in particular, the Respondent No. 1 herein, to grant promotions to the eligible employees from the respective dates of arising of the vacancies, and not prospectively, as has been done by the Office Orders dated 24.09.2021 and 25.09.2021 annexed herewith, and to also issue appropriate directions with respect to the grievances as noted above in Para 6 (ii) and (iii) above, in the light of the facts narrated above.*

*Any other Order(s) which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may kindly be passed in favour of the Petitioner and against the Respondents.”*

4. The said application was taken up by this Court on 05.10.2021 whereby *vide* the order dated 05.10.2021, this Court had directed the respondents to file an affidavit explaining the extent as to why promotions have been given prospectively from the date the employees assumed charge and not from the date when the vacancies had arisen.

5. During the pendency of the writ alongwith aforesaid application, the respondents had, *vide* the notification/advertisement dated 20.12.2023, invited online applications from the eligible officials of the District Courts for filling up 233 vacancies for the post of Senior Judicial Assistant (hereinafter referred to as “SJA”) under the 50% quota by selection on merit from the Judicial Assistants (hereinafter referred to as “JA”) on the basis of written tests and interview. In other words, the advertisement invited eligible Judicial Assistants for promotion to the post of SJA by way of a Departmental Competitive Examination (hereinafter referred to as “DC Examination”) under the Delhi District Courts Establishment (Appointment & Conditions of Service) Rules, 2012 (in short “2012 Rules”). The tentative date was fixed as 14.01.2024.



6. Challenging the same and seeking permission to participate in the said examination, the Petitioner Association had filed an application bearing CM APPL. 171/2024 seeking the following prayers:-

*“It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to issue ex-parte ad-interim directions to the Respondents, more particularly, the Respondent No. 1, thereby restraining the said Respondent from either proceeding to conduct the DCE (Departmental Competitive Examination) under the Notification dated 20.12.2023 and to stay its operation; or in the alternative, to permit the Judicial Assistants working with the Respondent No. 1, who stand promoted under the Office Orders dated 25.09.2021 and 21.04.2023 during the pendency of the present Writ Petition, be permitted to participate in the said Departmental Competitive Examination in terms of the said Notification dated 20.12.2023, and their Applications for the post of Senior Judicial Assistants be directed to be processed and accepted to enable them to fully participate, though, subject to such appropriate directions to be passed by this Hon'ble Court in the interests of justice, in view of the facts explained hereinabove.”*

7. Upon hearing the Petitioner on 03.01.2024, this Court had, purely with a view to balance equities, directed the respondent no.1 to allow the members of Petitioner Association to participate in the said examination. The respondent no.1 challenged the same by way of an appeal bearing LPA No. 21/2024 and by the order dated 09.01.2024, the learned Division Bench of this Court had set aside such direction with a further direction to this Court to dispose of the writ petition in its entirety by 05.02.2024. The operative portion of the order dated 09.01.2024 is extracted hereunder:-

*“ 6. Mr Rajat Aneja, learned counsel, who appears on behalf of the respondent/association, on the other hand, says that if notional service is taken into account the members of the respondent association will fulfill the eligibility conditions. It is this aspect that is required to be adjudicated in the pending writ petition.*

*7. Since the eligibility of a candidate who sits for an examination goes to the heart of the matter, according to us, an interim direction of the*



*kind the learned Single Judge issued will not serve the interest of the parties. If an interim direction is issued, the court has to firstly, conclude that a prima facie case is made out for a grant of relief. The other two tests, i.e., the balance of convenience, and that irreparable damage will be caused if the relief as sought is not granted, follow the establishment of a prima facie case. The learned Single Judge has adverted only to "balance the equities".*

*8. Mr Aneja emphasizes that if the members of the respondent association are unable to take the examination, then, the subject posts will be filled up, putting back their chance of being promoted by several years.*

*9. Having regard to the contentions of the counsel for the parties, in our view, the best way forward would be to defer the examination for a short period and request the learned Single Judge to dispose of the writ petition one way or the other, at the earliest.*

*10. Accordingly, we put this suggestion to Ms Ahlawat, who appears on behalf of the appellants.*

*10.1 Ms Ahlawat says that the examination can be held after five (5) weeks i.e., on 11.02.2024.*

*10.2 The statement of Ms Ahlawat is taken on record.*

*11. Accordingly, the impugned order is set aside only to enable final adjudication in the writ petition.*

*12. The learned Single Judge is requested to dispose of the writ petition on or before 05.02.2024.*

*13. Ms Ahlawat will take steps to inform the candidates about the deferment of the examination.*

*14. The writ petition will be listed before the learned Single Judge on 11.01.2024.*

*15. The appeal is disposed of in the aforesaid terms.*

*16. Pending interlocutory applications shall also stand closed.*

*17. Parties will act based on the digitally signed copy of the order."*

8. In view of the above, this Court had heard detailed arguments of learned counsel appearing for the parties on 23.01.2024, 29.01.2024, 30.01.2024 and 01.02.2024 when the judgment was reserved.

9. Upon perusing the pleadings and hearing the arguments of the learned counsel for the parties, the following questions need



determination by this Court:-

- a. *Whether the members of the Petitioner Association who were promoted vide orders dated 24.09.2021 and 25.09.2021 to the post of SJA and JA, from the date of assumption of charge, have any right to seek retrospective promotion or notional promotion from the date when such vacancies arose ?*
- b. *If in case, this Court comes to the conclusion that question (a) is answered in the affirmative, whether the members of Petitioner Association are eligible to participate in the DC Examination for the post of SJA vide notification dated 20.12.2023 which is now tentatively scheduled to be held on 11.02.2024?*

10. The factual aspects, shorn of unnecessary details, as narrated by the petitioner in the writ petition as also the applications, are culled out as under:-

- a. 29.01.2013: The Govt. of NCT of Delhi (Respondent No.2) sanctioned various posts vide letter 29.01.2013, including 165 SJA's, JA's, and JJA's posts and 150 Judicial Officer posts (50 DHJS & 100 DJS), with the condition that the Ancillary Staff posts would be filled as and when the Judicial Officer posts would be filled. These Judicial Officer posts were filled from 2013 to 2016. The Respondent No.1 (Office of the District Judge) held the DPC from 2013 to 2021, but the Department failed to fill these vacancies/sanctions despite the Petitioner Association's repeated reminders.
- b. On 23.08.2017, Respondent No.1 granted promotion on regular basis to 868 JJAs to the post of JA's (as a result of restructuring of the said posts in the ratio of 50:50) in accordance with the Order dated 02.05.2017 in Cont. Case (Civil) No.1079/2016 titled Jagdish Rana & Anr. Vs. Kewal Kumar Sharma & Ors. in W.P.(C) 5686/1998 (Order dated 22.03.2010, upheld by the Hon'ble Supreme Court).
- c. 23.09.2017: The Petitioner Association, in a Representation dated 23.09.2017, brought to the Department's attention the leftover 2013 vacancies with the request to fill them immediately. However, in continuation of the Promotion Order



*dated 23.08.2017, which promoted 868 JJAs to JAs with all benefits, a subsequent Order was issued on 06.12.2017 (for which DPC was conducted on 08.11.2017) without considering the Petitioner Association's 23.09.2017 Representation and the 2013 vacancies.*

- d. Hence, the first W.P.(C) No. 2719/2018 was filed and disposed of on 21.03.2018 with unambiguous directions to the Respondents to decide the 23.09.2017 and 23.11.2017 Representations within 12 weeks.*
- e. The Petitioner Association awaited compliance with the Order dated 21.03.2018 for 21 weeks. However, after non-compliance, CONT. CAS. (C) No.662/2018 was filed on 31.08.2018. The matter was later withdrawn after the Respondent No.1 assured that the matter would be considered in light of the Representation dated 23.09.2017 and promotions would be given effect at the earliest.*
- f. **14.01.2019:** The Vacancy Notification dated 31.12.2018 and RTI response revealed that these vacancies were sanctioned in 2013 and included in 2018. Thus, the DPC/Selection Committee addressed the promotion of JJAs for 323 JAs positions at its 14.01.2019 meeting, but no results were obtained for more than two years despite repeated reminders.*
- g. In **September 2020**, the Petitioner Association filed a second W.P.(C) No.5940/2020, which was disposed of on 03.09.2020, with directions to Respondent No. 1 to fill the vacancies at the earliest and dispose of the Petitioner Association's Representation within four weeks.*
- h. **04.12.2020:** After more than 12 weeks, the Respondents failed to respond, thus the Petitioner Association filed W.P.(C) No. 9835/2020, a fourth/present round of litigation.*

### **ARGUMENTS ON BEHALF OF THE PETITIONER ASSOCIATION:-**

### **FACTUAL ASSERTIONS:-**

11. Mr. Rajat Aneja, learned counsel for the Petitioner Association, at



the outset, submits that the present Petition is being filed by the said Association for and on behalf of its similarly situated colleagues who are members of the said Association and are directly and uniformly affected by the impugned inaction of the Respondent No. 1 herein. Learned counsel submits that the members of the Petitioner Association have been deprived of their rightful and legitimate entitlements due to the impugned inaction of the Respondents herein.

12. Mr. Aneja, in pursuance thereof, had taken this Court, very minutely, to the entire set of documents placed on record to establish the following arguments.

13. Mr. Aneja submitted that the Respondent No. 2, *vide* the letter dated 29.01.2013, while creating 50 additional posts under the Delhi Higher Judicial Services (hereinafter referred to as “*DHJS*” ) and 100 posts under the Delhi Judicial Services (hereinafter referred to as “*DJS*” ), also created posts for Ancillary Staff comprising of 165 vacancies of Readers (now nomenclatured as SJA), and 360 vacancies of both the Ahlmads (now nomenclatured as JA) and Assistant Ahlmads (now nomenclatured as JJA).

14. Mr. Aneja, starts his arguments by drawing attention of this Court to the judgement dated 22.03.2010, passed by the learned Single Judge of this Court in W.P.(C) 5686/1998 titled as “*Jagdish Rana & Ors vs. Government of N.C.T. of Delhi & Ors*” , particularly to Para 15, to submit that the said judgement was passed to mitigate the disparity and massive stagnation faced by the LDC & UDC employees of Respondent No.1-Institution. The said writ petition was filed for implementation of



the restructuring of the entire cadre, in view of the Central Govt. Circulars dated 16.10.1979 & 20.03.1994. Learned counsel further submits that an SLP against the said judgement was also dismissed *vide* Order dated 27.02.2017, and that the directions contained in para 15 were carried out via a massive exercise. Vacancy Chart was prepared in the year 2017 for consideration of the Committee for implementation of 50:50 ratio as provided in the said judgement. Finally, *vide* the Promotion Order dated 23.08.2017, the Respondent No.1 granted upgradation/promotion on regular basis (retrospectively with all consequential benefits including seniority and arrears of pay) to as many as 868 JJAs to the post of Judicial Assistants (JAs) as a result of restructuring of the said posts in the ratio of 50:50 (JA:JJA). However, at the same time, ignored the clear vacancies which were duly sanctioned *vide* letter dated 29.01.2013 this time as well. Learned counsel also points out that subsequently, another DPC was conducted on 19.08.2017, granting retrospective promotion to the officials from JJAs to JAs on regular basis from the date of completion of qualifying length of service (i.e. 5 years as JJA).

15. Learned counsel submits that, thereafter, the Petitioner Association, *vide* Representation dated 23.09.2017, pointed out the available sanctioned vacancies of 2013, with the request to fill up these vacant posts forthwith. However, in continuation or the Promotion Order dated 23.08.2017 whereby 868 JJAs to JAs were promoted with all the benefits, a subsequent Order was issued on 06.12.2017 (for which DPC was conducted on 08.11.2017), without considering the aforesaid Representation dated 23.09.2017 of the Petitioner Association and the



leftover vacancies pertaining to year 2013.

16. Subsequent thereto, the first Writ Petition bearing W.P.(C) No. 2719/2018 was filed, which was listed before this Court on 21.03.2018, and after hearing the learned Counsel for the parties, this Court was pleased to dispose of the said Writ Petition with a categorical direction to the Respondent No. 1 herein to consider the representations of the Petitioner expeditiously and to make all endeavors to fill up the vacant posts within 12 weeks from the date of passing of the said Order.

17. Learned counsel further submits that due to the deliberate ignorance and willful disobedience of the Respondents *vis-a-vis* the Order dated 21.03.2018 passed by this Court in the Writ Petition bearing W.P. (C) No. 2719/2018 compelled the Petitioner Association to file a Contempt Petition, bearing Cont. Cas(C) No. 662 of 2018, against the Respondents herein. However, the Respondents herein, on the eve of the hearing of the said Contempt Petition, assured the Petitioner Association of favourable consideration, and as a result, the Petitioner Association honoured the said verbal assurance, and accordingly withdrew the said Contempt Petition from this Court on 31.08.2018. Though, this is susceptible to ample objections by the Respondents, as submitted by the learned counsel, he further contends, that the same can be inferred from the usage of the term “*at this stage*”, in the Contempt withdrawal order as recorded by the learned Single Judge then.

18. Mr. Aneja, next contends that after the withdrawal of the contempt, now, for the first time, something favourable happened for the Petitioner Association, in that, Respondent No.1 reflected the Vacancy



Position in the year 2018. The same is revealed from the Vacancy Notification dated 31.12.2018 and the RTI response. Admittedly, these available vacancies were sanctioned in the year 2013 and were included in the year 2018. Accordingly, the DPC/Selection Committee in its Meeting dated 14.01.2019 took up the matter of promotion of JJAs for 323 vacant posts of Judicial Assistants, however, no fruitful result was received for more than two years despite several reminders. A bare perusal of the Minutes dated 14.01.2019 further reveals that the Department was bent upon to deprive the eligible members of the Petitioner Association of their legitimate right of promotion. The said very aspect can be corroborated from the collective reading of Agendum No.3, Serial No.16 of the Table at page No.9 of the said minutes, and Agendum No.5 at Page No.13 of the Minutes dated 14.01.2019. The said Minutes dated 14.01.2019, which is the part of the present petition at PDF page- 631 is recapitulated as under:-

5. Promotion of JJAs for 323 vacant posts :- It is informed on behalf of the Recruitment Cell that ZDC has been received from the Administrative Branch not in compliance of the directions given in the meeting dated 19.12.2018, further details such as Vigilance Clearance reports, Currency of Penalty and ACRs for the preceding five years i.e., 2013-17 have already been sought called for vide letters dated 35.01.2019 from the quarters concerned. The Committee directed that reports be obtained expeditiously, a tabular sheet be prepared and the same be placed before the Committee at its earliest.
- The Committee unanimously resolved to direct that a copy of today's minutes be sent to the Administrative Officer (Jail), Administration Branch-II, Cantt., in a sealed cover for necessary compliance.

19. From this, Mr. Aneja submits that, the DPC was continuously held from the years 2013 to 2021 but the vacancies sanctioned in the year 2013 were ignored. Minutes of DPC Meeting dated 14.01.2019 would intriguingly show that despite availability of 323 vacancies, the



officiating promotions were withdrawn on the pretext of Sealed Cover Promotions and in partial modification of the Order dated 06.12.2017, the date of 'notional promotion' of the JAs was modified and they were also granted notional promotion w.e.f. 22.08.2008.

20. Mr. Aneja, next contends that such wilful and deliberate inaction on the part of Respondent No.1 compelled the Petitioner Association, in the month of September 2020, to again approach this Court by way of second W.P.(C) 5940/2020 which was disposed of on 03.09.2020 itself with directions to the Respondent No.1 to expedite the filling up of the vacancies at the earliest and to dispose of the Representation of the Petitioner Association within four weeks.

21. Learned counsel submits that in pursuance thereof, Petitioner Association through its representation dated 07.02.2020, had approached the Respondent No.1, which had then, *vide* its Letter dated 25.09.2020, had rejected the representation of the Petitioner Association. Learned counsel submits that the letter dated 25.09.2020, besides lacking any cogent reason, is wholly vague and unsustainable as the Respondent No. 1 observed therein that the appointments and promotions cannot take place because of certain reasons such as, pendency of the validation of the Budgetary Allocation for the purpose of recruitment of Staff in the Delhi District Courts, pendency of litigations *vis-a-vis* inter-se seniority disputes, etc.

22. Mr. Aneja, learned counsel further draws attention of this Court to the Notification of Vacancy Position dated 31.12.2018, which was provided in a reply dated 02.08.2021 to an RTI, whereby the



Respondent No.1/Department informed the year-wise vacancies including those 165 posts each for SJAs as well as JAs. Learned counsel further draws the attention of this Court specifically to the (asterisk\*) mark attached to the said tabulated vacancy position in reply to point 5 and submits that through such an (asterisk\*), the Respondent themselves had admitted the vacancy position being sanctioned in the year 2013 but not included till the year 2018. For better clarity, the said document is extracted hereunder:-

Sub: RTI ID No.11508 - Mr. Abhinav

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A letter bearing No.39494/RTI Central/2021/11508 dated 14.07.2021 along with copy of an application moved under RTI Act by Mr. Abhinav Garg, D2/23, Rajasthall Apartment, Pitampura, Delhi-34 (Mob. # 9015022288) has been received from Ms. Usha Arora, Public Information Officer, RTI (Central), Tis Hazari Courts, Delhi.

The information as sought by the applicant Sh. Abhinav is being furnished/replied as below:

| Sl.No.  | Query                                                                                                                                                                                                                                         | Information                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|------|-----------|---|------|----|---|------|--------|---|------|----|---|------|----|---|------|----|---|------|---------|---|------|----|---|------|----|---|------|----|
| 1.      | Kindly provide yearwise details of vacant post of Senior Judicial Assistant from the year 2001 onwards till present year and year of appointment/ promotion to such post. Please provide specific details year wise.                          | <p>Yearwise tentative vacancies for the post of SJA is as under:</p> <table><thead><tr><th>Sl. No.</th><th>Year</th><th>Vacancies</th></tr></thead><tbody><tr><td>1</td><td>2013</td><td>15</td></tr><tr><td>2</td><td>2014</td><td>15</td></tr><tr><td>3</td><td>2015</td><td>14</td></tr><tr><td>4</td><td>2016</td><td>17</td></tr><tr><td>5</td><td>2017</td><td>23</td></tr><tr><td>6</td><td>2018</td><td>25+165*</td></tr><tr><td>7</td><td>2019</td><td>40</td></tr><tr><td>8</td><td>2020</td><td>40</td></tr><tr><td>9</td><td>2021</td><td>55</td></tr></tbody></table> <p>*Sanctioned in the year 2013 included in the year 2018.</p> | Sl. No. | Year | Vacancies | 1 | 2013 | 15 | 2 | 2014 | 15     | 3 | 2015 | 14 | 4 | 2016 | 17 | 5 | 2017 | 23 | 6 | 2018 | 25+165* | 7 | 2019 | 40 | 8 | 2020 | 40 | 9 | 2021 | 55 |
| Sl. No. | Year                                                                                                                                                                                                                                          | Vacancies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 1       | 2013                                                                                                                                                                                                                                          | 15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 2       | 2014                                                                                                                                                                                                                                          | 15                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 3       | 2015                                                                                                                                                                                                                                          | 14                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 4       | 2016                                                                                                                                                                                                                                          | 17                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 5       | 2017                                                                                                                                                                                                                                          | 23                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 6       | 2018                                                                                                                                                                                                                                          | 25+165*                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 7       | 2019                                                                                                                                                                                                                                          | 40                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 8       | 2020                                                                                                                                                                                                                                          | 40                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 9       | 2021                                                                                                                                                                                                                                          | 55                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 2       | Kindly provide information in respect of year wise appointed persons in Delhi District Court as SJA (formerly known as LDC) prior to year 2001 who have been considered for promotion as Senior Judicial Assistant from the year 2001 onward. | Query is not explicit.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 3       | Kindly provide information in respect of number of vacant post of Senior Judicial Assistant lying vacant presently and tenure/specific calendar year from when such posts are vacant.                                                         | As on 30.06.2021, 377 posts of SJAs are vacant. For rest of the queries please refer to reply of query No.1.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 4       | Kindly provide number of employees and their appointment year who are in the line of promotion for the post of Senior Judicial Assistant.                                                                                                     | As per DDCE Rules, 2012, all such Judl. Asssts. who have completed their qualifying length of service are entitled to be considered for promotion to the post of SJAs subject to availability of vacancies irrespective of appointment year.                                                                                                                                                                                                                                                                                                                                                                                                      |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 5.      | Kindly provide year wise details of vacant post of Judicial Assistant from the year 2001 onwards till present year and year of appointment/promotion to such post. Please provide specific details year wise.                                 | <p>Since the post of Judl. Asstt., pursuant to the directions of Hon'ble High Court of Delhi on Judicial side, was restructured in the year 2017, yearwise tentative vacancies for the post of JA are as under:</p> <table><thead><tr><th>Sl. No.</th><th>Year</th><th>Vacancies</th></tr></thead><tbody><tr><td>1</td><td>2017</td><td>51</td></tr><tr><td>2</td><td>2018</td><td>5+165*</td></tr><tr><td>3</td><td>2019</td><td>2</td></tr><tr><td>4</td><td>2020</td><td>27</td></tr><tr><td>5</td><td>2021</td><td>52</td></tr></tbody></table> <p>*Sanctioned in the year 2013 included in the year 2018.</p>                                | Sl. No. | Year | Vacancies | 1 | 2017 | 51 | 2 | 2018 | 5+165* | 3 | 2019 | 2  | 4 | 2020 | 27 | 5 | 2021 | 52 |   |      |         |   |      |    |   |      |    |   |      |    |
| Sl. No. | Year                                                                                                                                                                                                                                          | Vacancies                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 1       | 2017                                                                                                                                                                                                                                          | 51                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 2       | 2018                                                                                                                                                                                                                                          | 5+165*                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 3       | 2019                                                                                                                                                                                                                                          | 2                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 4       | 2020                                                                                                                                                                                                                                          | 27                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |
| 5       | 2021                                                                                                                                                                                                                                          | 52                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |         |      |           |   |      |    |   |      |        |   |      |    |   |      |    |   |      |    |   |      |         |   |      |    |   |      |    |   |      |    |

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Thus, on the basis of the above, learned counsel submits that the eligible members of the Petitioner Association would be entitled for notional/retrospective promotion atleast from the year 2018, without prejudice to the rights of the members of the Petitioner Association to be considered w.e.f. 2013, when the posts were originally sanctioned.

23. Viewed in aforesaid manner, it is urged that the eligible members of the Petitioner Association would be entitled to participate in DC Examination for the posts of SJAs.

### **ARGUMENTS ON BEHALF OF RESPONDENT No.1**

24. Ms. Avnish Ahlawat, learned counsel for the respondent, started her arguments by challenging the locus of the Petitioner Association to file the present Writ Petition on the aspect that the same was filed by an association, wherein list of members of the association has not been disclosed. She further submits that initially, the Petitioner Association filed the present petition on 26.11.2020, claiming to be a welfare association seeking the aforementioned innocuous prayers, to which detailed reply was already filed wherein the details of the steps taken by the Respondent to fill up vacant posts i.e., promotion drive of 2016 - 17, posts were notified on 14.09.2019.

25. In that regard, Ms. Ahlawat submits that on 25.09.2021, the Respondent made promotions as per the Delhi District Court Establishment (Appointment and Conditions of Service) Rules, 2012 and therefore, at that stage, the prayer made by the Association stood satisfied.

26. Learned counsel submits that in an attempt to enhance the ambit



of the initial writ petition, an application was filed on behalf of certain employees of the Respondent agitating individual issues with respect to the date from which their promotions should be made effective. Such an application in itself is not maintainable on the following grounds:-

(i) It is a settled position of law that no interim order by way of an application can be sought which is beyond the scope of the final relief sought in the writ petition. Thus, as of today the alleged members of the association have in fact accepted the order dated 25.09.2021 as the same has never been challenged.

(ii) A petition styled as a public interest litigation which does not establish the locus standi of the petitioner particularly matters involving service of an employee wherein facts of individual cases are to be examined are not maintainable reliance is placed upon *Duryodhan Sahu Vs. Jitender Kumar Mishra* (1998) 7 SCC 273 & *Dr. D P Singh Vs. Union of India* (2004) 3 SCC 363.

27. Learned counsel further submits that subsequently, on 28.11.2023 (20.12.2023) when the Respondent notified the limited departmental examination, another application was filed seeking stay on the examination process or alternatively, allow the Petitioners to participate in the said examination. Even at that juncture, the Court had sought a list of members from the Petitioner Association however the same has not been provided till date.

28. Ms. Ahlawat, took this Court through the entire background of the service history of the ancillary staff of the Respondent No.1/Institution, to submit that the Petitioner Association in the first place itself, had



proceeded on wrong presumption of facts and the same are therefore denied in toto on the basis of timeline as presented from the records is concerned. The said timeline from the Respondent's perspective is projected as hereunder:-

- (i) The service conditions of the Delhi District Court Employees was governed by Chapter 18A Volume-I of the Punjab High Court Rules framed by the Punjab High Court under Section 35(3) of the Punjab High Court Act along with all Central Government Rules and orders framed from time to time by the Government of India. Employees of the Delhi District Courts were promoted under the erstwhile Rules.
- (ii) The Department of Personnel Training, Ministry of Home Affairs, Government of India, to provide better avenues for promotion to the LDCs in the Central Secretariat Clerical Services, *vide* its Memorandum dated 16.10.1979, ordered restructuring of the posts of UDC/LDC in the ratio of 40:60 w.e.f. 01.10.1979. However, since the said restructuring could not remove the stagnation in the LDC grade, the said ratio was modified *vide* Office Memorandum dated 20.03.1994 to 50:50 w.e.f. 01.04.1994.
- (iii) In a public interest litigation titled *Wills Mathews vs. GNCTD*, more than 1200+ posts were sanctioned for efficient working of District Courts. As and when a post of Judicial Officer is sanctioned, 8 posts of ancillary staff are



also sanctioned as support staff.

- (iv) At this juncture, W.P.(C) No. 5868/1998 titled *Jagdish Rana Vs. Govt. of NCT of Delhi and Ors.* was filed wherein this Court, *vide* order dated 22.03.2010, directed the Respondent to forthwith sanction the upgradation of/upgrade the post of LDC to UDC in terms of OM dated 01.10.1979 and 20.03.1994 of the staff working in the Office of the District and Sessions Judge, Delhi, Judge Small Causes Court, Delhi and Administrative Civil Judge, save whose posts have already been upgraded pursuant to orders in W.P.(C) No. 907/1996.
- (v) The order dated 22.03.2010 of the learned Single Judge was challenged in LPA 394/2012 titled *GNCTD vs. Jagdish Rana and Ors.*
- (vi) Appointments made to Group D post were challenged by way of W.P.(C) No.6332/2011 titled *Renu vs. District and Sessions Judge* which was decided *vide* order dated 30.08.2011. An appeal bearing LPA No. 726/2011 was preferred against the said order titled *Renu vs. District and Session Judge*, which was decided *vide* order dated 15.09.2011. An SLP (C) No. 26090/2011 was preferred against the order of the Division Bench which was decided *vide* order dated 10.05.2012, wherein the Supreme Court directed that although the High Court has already framed Recruitment Rules namely the Delhi District Court



Establishment (Appointment and Conditions of Service) Rules, 2012, the same were yet to be notified by the Central Government. Permission was sought that since there is an acute shortage of Group D employees, the authorities may be permitted to fill up the existing vacancies as per the procedure laid down by the 2012 Rules. The said permission was granted by the Supreme Court.

(vii) Meanwhile, this Court framed the Delhi District Court Establishment (Appointment and Conditions of Service) Rules, 2012 and the same were notified by the Central Government. All promotions and Recruitment were henceforth made in accordance with the 2012 Rules.

(viii) The LPA 394/2012 titled *GNCTD vs. Jagdish Rana and Ors.* was dismissed *vide* order dated 26.04.2016. The order dated 26.04.2016 of the learned Division Bench was challenged by way of SLP(C) 7233/2017 titled as *GNCTD vs. Jagdish Rana and Ors.* dismissed on 27.02.2017. Having attained finality following steps were taken in compliance the order of this Court in *Jagdish Rana vs. GNCTD*:

a. The ratio of 60:40 was implemented w.e.f. 1979 upto 1996 and thereafter the 50:50 ratio was implemented w.e.f. 1996 onwards upto 2016.

b. Multiple DPCs were held and 868 posts of Junior Judicial Assistant (JJA) were upgraded to the post of



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Judicial Assistant (JAs) on the following dates viz. 28.06.2017, 19.08.2017, 13.10.2017, 08.11.2017.

c. Circular dated 16.08.2017 was issued wherein 1421 employees across all the District Courts from the post of LDC to UDC with all consequential benefits.

d. 316 officials were recommended for promotion in the Minutes of Meeting dated 23.08.2021 and 08.09.2021.

e. 178 officials were recommended for regular promotion and Twenty (20) officials were promoted 'purely on Officiating Basis' vide Minutes of Meeting dated 17.02.2023 and 24.03.2023, for the reasons mentioned therein. Thus, total 494 JJAs were promoted to JA under the said Minutes of Meeting against regular vacancy and 20 Officials 'purely on Officiating Basis'. It was also clarified in Minutes of Meeting dated 17.02.2023 and 24.03.2023 that the said officials (20) will not be entitled to claim any regular promotion against the officiating promotion. The Benchmark for promotion *qua* the said officials which were recommended in the Minutes of Meeting dated 19.07.2021 was approved by the then learned District Judge. As per benchmark, it was resolved that in accordance with *Rule 6.4.4. of Swamy's- Establishment and Administration*, the effective date of promotion shall be prospective. The said Benchmark was not challenged at any point of time.

29. Learned counsel further submits that the series of Petitions, in



background, were preferred by some officials who were previous employees of the District Courts. At that time, their counterparts who were still working in District Courts were accorded the benefits of the upgradation, but who were not on the strength of the District Courts.

30. Learned counsel for the Respondent No.1 contends that, the petitioners are seeking retrospective promotion as against the promotion rightly granted on 25.09.2021, on the premise that the 165 posts of Senior Judicial Assistant, Judicial Assistant and Junior Judicial Assistant were not taken into account while notifying the vacancy position prior to 2018. She submits that, simply it is the case of the Petitioner that the vacancy position thus notified was wrong. Such an averment is denied as the claim is not supported by the facts of the case. She further goes on to submit that the correct factual position is as follows.

31. Though, the 50 posts of DHJS and 100 posts of DJS were created by way of Order dated 29.01.2013, along with the said posts of judicial officers, ancillary posts of support staff of 165 Readers, 220 Stenographers, 165 Senior Judicial Assistant, 165 Judicial Assistant, 165 Junior Assistants and 220 posts of Peons were also created. These posts however, were not blanket vacancies as the same came with a rider that the ancillary posts will only be filled up as and when the Judicial Officers are appointed.

32. In that regard, Ms. Ahlawat, while providing the numerical figures of the vacancy position and its status, varying upon incumbent recruitment drive concerning the posts of the DJS and DHJS, submits that though the vacancies can be said to be sanctioned already in the



year 2013, the same were included in the year 2018. Simultaneously, as per the records, 99 posts of DJS fell vacant during the period 2013-2018, on account of promotions made from DJS to DHJS. Promotions from DJS to DHJS were made in 2013 (49), 2015 (03), 2016 (10) and 2017 (37). For these posts, the ancillary staff was already available.

33. Substantiating her abovesaid submissions, Ms. Ahlawat, learned counsel for the Respondent, had summarized the concerned data pertaining to the vacancy position in the following terms:-

- (i) A total of 144 vacancies of Judicial Officers (45 in DHJS and 99 in DJS) arose out of the already sanctioned posts/strength on account of superannuation, promotion or elevation of the officers, during the period 2013-2018.
- (ii) The exam notice of 2014 indicates that, out of the 80 posts which were advertised, 15 were backlog vacancies.
- (iii) The exam notice of 2015 indicates that all of the 100 posts advertised were in fact backlog vacancies.
- (iv) The reply dated 09.10.2017 issued by this Court, to an RTI and filed by the Petitioner, clearly indicates that till the year 2017, not a single post of the DJS has been filled up from the posts sanctioned *vide* order dated 29.01.2013.

34. Since time and again, representations and petitions were being received with regard to filling up of ancillary posts sanctioned in 2013, a clarification was sought from the Government of Delhi, asking whether the ancillary posts attached to the post of Judicial Officers may be filled up even though the judicial officers have not been appointed till date.



The Government of Delhi stated that the issue is an administrative issue and therefore left it up to the Office of the Principal District & Sessions judge to decide the same.

35. She submits that, in view of the above facts arising from the documents, no case for retrospective promotion is made out on the alleged administrative delay and laches. There has been neither any delay nor deliberate lapse and as such the members of petitioner association are neither entitled for notional or retrospective promotion nor eligible for participation in the DC Examination.

36. Ms. Ahlawat submits that DC Examination which is going to be held now is only in respect of 50% posts of SJA by Selection On Merit basis, still leaving behind 50% of post of SJA by Promotion on the basis of Seniority-cum-Suitability. As such, she submits that even if the members of Petitioner Association are ineligible here, the 50% post by way of promotion would still be available, subject to eligibility. Thus, the insistence upon participating in the examination is unfounded.

### **REJOINDER ARGUMENTS**

37. From the document handed over by Ms. Ahlawat, during arguments, Mr. Aneja submits that there is a clear cut admission establishing willful delay in implementing the provisions of the 2012 Rules. In that, by way of the letter dated 09.09.2014, the Registrar General of this Court had already intimated the respondent No.1 to correspond directly with the GNCT of Delhi in respect for filling up of an ancillary post related to the posts of Judicial Officers who are to be recruited. However, despite such clear instructions, the respondent No.1



willfully and negligently continued to correspond with the Registrar General till 2018. These four years were crucial to the members of the Petitioner Association whereby they could have been promoted against the vacancies for ancillary post. That having been denied by the respondents, the members of the Petitioner Association would be automatically entitled for the notional or retrospective promotion on the basis of willful administrative delay and latches.

38. On the aforesaid basis, Mr. Aneja further urges that on the doctrine of *suppresio veri suggestio falsi*, the respondent No.1 cannot be permitted to take advantage of its own wrong. As such, this Court can direct the respondent No.1 to give notional promotion to the members of the Petitioner Association from the year 2018 at least.

### **ANALYSIS AND CONCLUSION**

39. This Court has heard the arguments of learned counsel for the parties, scrutinized the voluminous documents on record and considered the judgments relied upon by the parties.

40. Since the dispute in the original writ petition as also the subsequent application would primarily be predicated on the issue as to whether the members of the Petitioner Association would be entitled to retrospective/notional promotion from the date of arising of the vacancies, the same being an issue of law, is being taken up at the first instance. The question (a) which was formulated above is as under:

***“a. Whether the members of the petitioner association who were promoted vide orders dated 24.09.2021 and 25.09.2021 to the post of SJA and JA, from the date of assumption of charge, have any right to seek retrospective promotion or***



*notional promotion from the date when such vacancies arose ?”*

41. Learned counsel appearing for the parties had placed on record a number of judgments in support of their respective contentions. In that, according to Mr. Aneja, learned counsel for the Petitioner Association, the delay, latches and administrative lapses leading to non-holding of DPC every year, leading to the deprivation of the members of the Petitioner Association from being considered every year, on and from the date when such vacancies arose, would enure to the benefit of the members of the Petitioner Association and the vacancies having arisen in the year 2013, the members of the Petitioner Association would be entitled to be considered for promotional post w.e.f. 2013 onwards, as and when such members became eligible.

42. In contradistinction to the aforesaid arguments of Mr. Aneja, Ms. Ahlawat, learned counsel for respondent no.1, placed on record a number of judgments of the Supreme Court in support of her contention that no employee is entitled to retrospective/notional promotion from the date vacancies arose or the employee became eligible, unless the DPC is convened in accordance with the rules and regulations and promotes such of those employees who are selected. She further submits that apart from the law laid down by the Supreme Court, there cannot be a question of retrospective promotion from the date when such vacancy arises, unless the recruitment rules so provide.

43. It is these aforesaid contentions which have propelled this Court to consider this issue of law before applying the same on the facts of the



present case.

44. In support of his aforesaid issue on law, Mr. Aneja, relies upon the following judgments:-

- a. ***Pilla Sitaram Patrudu & Ors. vs. Union of India and Ors.*** reported in (1996) 8 SCC 637.
- b. ***Union of India vs. K.B. Rajoria*** reported in (2000) 3 SCC 562.
- c. ***Govt. of NCT of Delhi and Ors. vs. Rakesh Beniwal and Ors*** reported in 2014 SCC OnLine Del 3944.
- d. ***Atul Kumar Sharma vs. Delhi High Court*** in W.P.(C) Nos. 4077-84/2004 decided on 23.10.2009 reported in **MANU/DE/2723/2009**
- e. ***State of Kerala & Ors. vs. E.K. Bhaskaran*** reported in (2007) 6 SCC 524.
- f. ***Commissioner, Karnataka Housing Board vs. C. Muddaiah*** reported in (2007) 7 SCC 689.
- g. ***Union of India vs. K.V. Janki Raman*** reported in AIR 1991 SC 2010.
- h. ***State of A.P. V. K.V.L. Narsimha Rao & Ors.*** reported in AIR 1999 SC 2255.
- i. ***Balwant Singh Bisht vs. Union of India & Ors.*** in W.P. (C) No. 23332/2005 decided by Delhi High Court on 14.03.2008.
- j. ***The Chief Secretary & Ors. vs. Kuldeep Singh & Anr*** reported in W.P. (C) No. 8910 of 2009 decided by Delhi High Court on



24.11.2011.

- k. *Mohd. Ahmed vs. Nizam Sugar Factory & Ors* reported in 2004 (11) SCC 210.
- l. *Nalini Kant Sinha vs. State of Bihar & Ors* reported in 1993 Supp (4) SCC 748.
- m. *Kalyan Singh vs. Union of India & Ors* reported in 2001 (1) AISLJ (DHC) 216.
- n. *Kusheshwar Prasad Singh vs. State of Bihar & Ors* reported in (2007) 11 SCC 447.
- o. *Mrutunjay Pani & Anr vs. Narmada Bala Sasmal & Anr.* reported in (1962) 1 SCR 290.
- p. *Union of India and Ors vs. General Madan Lal Yadav* reported in (1996) 3 SCR 785.
- q. *Baij Nath Sharma vs. Hon'ble Rajasthan High Court at Jodhpur* reported in 1998 SCC (L&S) 1754, and;
- r. *Ramesh Kumar vs. Union of India & Ors.* in Civil Appeal No.811/2007 decided on 31.07.2015, reported in MANU/SC/0817/2015.

45. So far as the case of *Pilla Sitaram Patrudu (supra)* is concerned, in that case, the Supreme Court had found as a fact that though the inter se seniority in the original post had still not been determined, yet the private respondent was found eligible according to the rules and as such refused to interfere in the action taken by the Department in pursuance of the order passed by the Tribunal. The said judgment is extracted



hereunder:-

*“1. Delay condoned.*

*2. The 5th respondent, K.R. Ramanandan, was selected by direct recruitment in the year 1977 for selection as Assistant Executive Engineer. All the direct recruits except the respondent were appointed in the year 1978. It was admitted that when he had filed OP No. 7226 of 1985 in the CAT, Ernakulam Bench, by order dated 31-1-1990 it was held that his appointment was delayed due to laches on the part of the Railway Administration. After his appointment in the year 1981, within two years he passed his test. When his case was not considered for promotion as Executive Engineer, he filed the OA. The Tribunal without deciding the inter se seniority in the cadre of Assistant Executive Engineers had directed the Railway Administration to consider his case for promotion as Executive Engineer for the years 1984, 1985 and 1986 and if found fit for promotion in any of the posts, to give him promotion for that year and to fix seniority among Executive Engineers accordingly. Pursuant thereto, the respondent was considered and promoted as Executive Engineer. After the above order came to be made, the Railway Administration did not carry the matter in appeal to this Court. Some of the persons seemingly aggrieved against the direction admittedly filed a review petition which was also dismissed and that order became final. The petitioners thereafter challenged the self-same order by filing separate OA and in the impugned order of the Tribunal dated 19-10-1995 the Tribunal has confirmed its earlier order. Thus this special leave petition.*

*3. It is contended by the learned counsel for the petitioners that since the inter se seniority as Assistant Engineers was left open in the order, the directions given by the Tribunal to consider the case as Executive Engineer and determine his seniority on the basis of promotion, is not valid in law. We find no force in the contention. Once he is found to be eligible according to the rules, then his seniority is required to be determined as per the procedure prescribed in the rules in vogue. It is further contended that the fifth respondent was not qualified since he had not completed 8 years' of required service. The Tribunal has recorded a finding that two years' period is relaxable in the case of the reserved candidates. The inter se seniority as Assistant Executive Engineer is required to be determined; he joined service in 1981 and, therefore, he did not have the requisite service. We find no force in the contention. Since he was selected by direct recruitment, he is entitled to be appointed according to rule. His appointment was delayed for no fault of his and he came to be appointed in 1981, he is, therefore, entitled to the ranking given in the select list and appointment made accordingly. Under these circumstances, we do not find any illegality in*



*the order.*

*4. The special leave petition is accordingly dismissed.”*

The said judgement is in respect of direct recruitment. The present case is undoubtedly in respect of promotion. Moreover, the details of the facts involved therein being sketchy, this Court is unable to appreciate the same in the context of the case at hand.

46. In the case of ***K.B. Rajoria*** (*supra*), the respondent K.B. Rajoria was wrongly superseded to the promotional post by a junior and for the next promotional post, the requirement of two years’ eligibility was falling short by one year. In these circumstances, the Supreme Court had held that where the senior had been wrongly superseded by a junior, the erstwhile senior would be entitled to retrospective promotion from the date when the junior was promoted. It was also held that even if Rajoria had not served in that post, keeping in view the facts of the case, the notional period of promotion should be considered as “qualifying service” for the next promotional post. In the present case, there is no question of, nor has there been any argument, that any of the members of the Petitioner Association were superseded by their juniors. As such, the ratio would not be applicable to the facts of the present case.

47. ***Rakesh Beniwal’s case*** (*supra*) is similar to that of ***K.B. Rajoria*** (*supra*). In that, even after Rakesh Beniwal and others had given the DSSSB examination in 2002, they were not promoted to the promotional post even after 12 years. During this period, the respondents, who were juniors had been promoted on 07.02.2011. It was, in these circumstances that the learned Division Bench of this



Court had held that the GNCTD had to consider Rakesh Beniwal and others for promotion from the dates their immediate juniors were promoted granting them consequential benefits and arrears of pay. The same would yet again not be applicable to the facts of the present case.

48. So far as the judgment of *Atul Kumar Sharma (supra)* is concerned, the learned Division Bench of this Court was called upon to decide a situation where the authority, at five different points in time, did not follow the rules; at least in two of those instances, there was really no excuse for not holding departmental test for promotion to the SJA cadre. In that case, the petitioners were successful in seeking orders right up to the Supreme Court permitting their appearance in written test and in spite of holding a supplementary test, were not interviewed. The learned Division Bench found itself duty bound to restitute their “*Lost Opportunity*” as the subsequent promotion would eventually act to their disadvantage *vis-a-vis* those employees who participated in the examination and were promoted in time. In the present case, none of such similar facts arise nor has any such contention been put across by learned counsel for the Petitioner Association. In fact, in the present case, the only question to be decided is whether the promotions granted are to be effective retrospectively from the date of arising out of the vacancy.

49. So far as judgments of *E.K. Bhaskaran, C. Muddaiah, K.V. Janki Raman, K.V.L. Narsimha Rao, Balwant Singh Bisht, Kuldeep Singh, Nizam Sugar Factory Nalini Kant Sinha, Kalyan Singh, Kusheshwar Prasad Singh, Mrutunjay Pani, General Madan Lal Yadav, Baij Nath Sharma, Ramesh Kumar (supras)* are concerned, the



same are ratios laid down for the proposition of exemption from the principle “*No Work No Pay*”. By the aforesaid judgments, the Supreme Court as also the Division Bench of this Court have clearly held that the Principle of “*No Work No Pay*” is not a universal rule and thus, cannot be applied across board without considering the facts arising in a particular case. The same would be unfair and unjustified. There is no quarrel with the proposition laid down by the aforesaid judgments. However, the effect of those judgments in the present case, in the considered opinion of this Court, would arise only as a consequence or as a result of this Court concluding that the members of the Petitioner Association, are in fact entitled to retrospective promotion from the date when the vacancies arose, which according to the petitioner is 29.01.2013. That was the day when the 150 posts of various Judicial Officers of the District Court were sanctioned by GNCT of Delhi. In view of the fact situation arising in the present case, the applicability or otherwise of the aforesaid judgments would be considered once question (a) is decided in the affirmative.

50. Ms. Ahlawat, counsel for the respondent no.1 relied upon the following judgments in support of her submissions in regard to question (a) :-

- a. *Union of India and Ors vs. N.C. Murali and Ors* reported in (2017) 13 SCC 575.
- b. *Union of India and Anr. vs. Manpreet Singh Poonam and Ors.* reported in (2022) 6 SCC 105.
- c. *State of Himachal Pradesh and Ors vs. Raj Kumar and Ors*



reported in (2023) 3 SCC 773.

51. In the judgment of *N.C. Murali (supra)*, the Supreme Court after examining the facts obtaining in the said case, while following and relying upon its own judgment in the case of *Union of India vs. K.K. Vadera* reported in 1989 Supp (2) SCC 625 had held that the retrospective promotions may be permissible without financial benefits in the case of sealed cover procedure or where “*statutory rule mandates effecting promotion by particular time or on occurrence of vacancy*”. It was further held that unless there is a specific rule entitling the applicants to receive promotion from the date of occurrence of vacancy, right of promotion does not get crystallized from the date of occurrence of vacancy and is to be extended from the date it is actually effected. Though in the said case, by the time the matter had reached Supreme Courts, many respondents therein had superannuated, thus on such consideration, the Supreme Court did not interfere.

52. In *Manpreet Singh Poonam (supra)*, the Supreme Court had held that entitlement to retrospective promotion is not vested right. It held that mere existence of a vacancy *per se* will not create a right in favour of an employee for retrospective promotions when the vacancies in the promotional posts are specifically prescribed under the Rules which also mandate a clearance through a selection process. While passing its judgment, the Supreme Court had followed its judgment in *K.K. Vadera (supra)*.

53. In a recent judgment rendered by the learned Three Judge Bench of the Supreme Court, in the case of *State of Himachal Pradesh*



(*supra*), while overruling the judgement in ***Y.V. Rangaiah vs. J. Srinivas Rao*** reported in (1983) 3 SCC 284, laid down certain guidelines by clearly distinguishing the ratio laid down in ***Rangaiah's*** case (*supra*) which are as under:-

*“82. A review of the fifteen cases that have distinguished Rangaiah would demonstrate that this Court has been consistently carving out exceptions to the broad proposition formulated in Rangaiah. The findings in these judgments, that have a direct bearing on the proposition formulated by Rangaiah are as under:*

*82.1. There is no rule of universal application that vacancies must be necessarily filled on the basis of the law which existed on the date when they arose, Rangaiah case must be understood in the context of the rules involved therein.*

*82.2. It is now a settled proposition of law that a candidate has a right to be considered in the light of the existing rules, which implies the "rule in force" as on the date consideration takes place. The right to be considered for promotion occurs on the date of consideration of the eligible candidates.*

*82.3. The Government is entitled to take a conscious policy decision not to fill up the vacancies arising prior to the amendment of the rules. The employee does not acquire any vested right to being considered for promotion in accordance with the repealed rules in view of the policy decision taken by the Government. There is no obligation for the Government to make appointments as per the old Rules in the event of restructuring of the cadre is intended for efficient working of the unit. The only requirement is that the policy decisions of the Government must be fair and reasonable and must be justified on the touchstone of Article 14.*

*82.4. The principle in Rangaiah need not be applied merely because posts were created, as it is not obligatory for the appointing authority to fill up the posts immediately.*

*82.5. When there is no statutory duty cast upon the State to consider appointments to vacancies that existed prior to the amendment, the State cannot be directed to consider the cases.*

*83. The above-referred observations made in the fifteen decisions that have distinguished Rangaiah case demonstrate that the wide principle*



*enunciated therein is substantially watered-down. Almost all the decisions that distinguished Rangaiah hold that there is no rule of universal application to the effect that vacancies must necessarily be filled on the basis of law that existed on the date when they arose. This only implies that decision in Rangaiah is confined to the facts of that case.”*

From the above, it is clear that the principle of ***Y.V. Rangaiah***'s case has lost its applicability, particularly to fact as obtaining in the present case. The case of ***State of Himachal Pradesh (supra)*** was primarily concerned with as to which set of rules, that is, one which were applicable as on the date when the vacancy arose or those which were in force when the vacancy were sought to be filled up would be applicable. In the present case, there is no dispute in respect of the rules since it is only the 2012 Rules which are applicable. Since those rules do not contemplate or postulate any retrospectivity to the promotions, the issue would be no more *res integra* in view of the aforesaid judgments.

54. In similar context, the Supreme Court in ***State of Uttaranchal and Another vs. Dinesh Kumar Sharma*** reported in (2007) 1 SCC 683, though in the context of a direct recruit, following the line of judgments, had categorically held that the date of substantive appointment cannot be reckoned from the date of occurrence of the vacancy and that the relevant provisions in the rules cannot be ignored. It further held that the respondent had no right to claim promotion and seniority from the date when the vacancy arose. In overwhelming line of judgments, the Supreme Court has taken a consistent stand, in that, the retrospectivity to any promotion cannot be granted unless there are substantive rules or provisions in the recruitment rules in place for the said promotional posts.



55. So far as the judgments of the Supreme Court relied upon by Mr. Aneja in *Vinod Kumar Sangal vs. Union of India* reported in (1995) 4 SCC 246 , *P.N. Premachandran vs. State of Kerala* reported in (2004) 1 SCC 245 and *Union of India and Ors vs. N.R. Banerjee and Ors.* reported in (1997) 9 SCC 287 are concerned, these judgments laid down the general guidelines to the Departments as to how to act when there is a delay in convening the Departmental Promotion Committee i.e., DPC which are not constituted regularly every year to consider the cases of eligible candidates within the zone of consideration. Though the Supreme Court in *P.N. Premachandran's* case (*supra*) upheld the retrospective promotion, however, the same was directed on the basis of residual powers conferred by virtue of Rule 39 of the Kerala State and Subordinate Service Rules, 1958. In the present case, there being neither any such rule nor having been brought to the attention of this Court by learned counsel for the Petitioner Association, the ratio laid down in *P.N. Premachandran* (*supra*) cannot be held to be applicable to the facts of the present case.

56. So far as the case of *Vinod Kumar Sangal* (*supra*) is concerned, the Supreme Court had held that the petitioners are entitled to be considered for retrospective promotion and directed the Department to hold the Review DPC for such purpose. The reason behind such direction by the Supreme Court was on the basis of DoPT OM dated 24.12.1980 of Government of India, whereby it was incumbent upon the Authority to prepare year-wise panel of DPC, where no such meeting of the DPC is held in any year, the appointing authority was to issue a certificate that there was no vacancy to be filled during that year. In case



for reasons beyond control, DPC could not be held in a year, even though vacancies had arisen during that year, the first DPC that is scheduled to meet thereafter was stipulated to follow a particular procedure. This would include consideration of each of the years for those officers only who would be within the field of choice with reference to the vacancies of that particular year and then proceed to hold the DPC and make selection accordingly against vacancies which arose in a particular year. The 2012 Rules are conspicuous by the absence of any such mandate upon the Appointing Authority. In the absence of such mandate, merely because the District Judge (Appointing Authority) failed to assess the vacancy in a particular year; notify the said vacancies; forward the list; constitute a Selection Committee, it could not be construed as a mandate upon the District Judge in the manner as understood by the Supreme Court in *Vinod Kumar Sangal (supra)*.

57. In view of the above, the ratio in the judgments of the Supreme Court in *Vinod Kumar Sangal*, *P.N. Premachandran* and *N.R. Banerjee (supra)* are distinguishable, both on facts and on rule position.

58. Apart from the above, this Court had also come across a judgment passed by the learned Division Bench of this Court in W.P.(C) 8102/2012 dated 12.04.2013 in the matter captioned as *UOI v. KL Taneja*, reported in *2013 SCC OnLine Del 1428*. The learned Division Bench of this Court, in para 21, while considering the import and purport of the judgments cited by the parties in the present case, viz. *Vinod Kumar Sangal vs. Union of India* reported in (1995) 4 SCC 246, *P.N. Premachandran vs. State of Kerala* reported in (2004) 1 SCC 245



and *Union of India and Ors vs. N.R. Banerjee and Ors.* reported in (1997) 9 SCC 287 ; *Baij Nath Sharma v. Hon'ble Rajasthan High Court At Jodhpur* reported in (1998) 7 SCC 44 ; *K. Madhavan v. UOI* reported in (1987) 4 SCC 566 ; *Union of India v. K.K. Vadera* reported in 1989 Supp (2) SCC 625 ; *State of Uttaranchal v. Dinesh kumar Sharma* reported in (2007) 1 SCC 683 had crystallized the law as emerged from the consideration of the aforesaid judgements. The said Para 21 is extracted hereunder:-

*“21. The cornucopia of case law above noted brings out the position: -*

*(i) Service Jurisprudence does not recognize retrospective promotion i.e. a promotion from a back date.*

*(ii) If there exists a rule authorizing the Executive to accord promotion from a retrospective date, a decision to grant promotion from a retrospective date would be valid because of a power existing to do so.*

*(iii) Since mala fides taints any exercise of power or an act done, requiring the person wronged to be placed in the position the person would find himself but for the mala fide and tainted exercise of power or the act, promotion from a retrospective date can be granted if delay in promotion is found attributable to a mala fide act i.e. deliberately delaying holding DPC, depriving eligible candidates the right to be promoted causing prejudice.*

*(iv) If due to administrative reasons DPC cannot be held in a year and there is no taint of malice, no retrospective promotion can be made.”*

59. The other relevant aspect to be considered by this Court is the reliance of the Petitioner Association on DoPT OM dated 10.04.1989. It would be apposite to extract Part-II – Frequency of Departmental Promotion Committee Meetings (Paras 3.1 and 3.2) which is as under:-

*“3.1 The DPCs should be convened at regular annual intervals to draw panels which could be utilised on making promotions against the vacancies occurring during the course of a year. For this purpose, it is essential for the concerned appointing authorities to initiate action to*



*fill up the existing as well as anticipated vacancies well in advance of the expiry of the previous panel by collecting relevant documents like CRs, integrity certificates, seniority list, etc. for placing before the DPC. DPCs could be convened every year if necessary, on a fixed date April or May. The Ministries/Departments should lay down a time schedule for holding DPCs under their control and after laying down such a schedule the same should be monitored by making one of their officers responsible for keeping a watch over the various cadre authorities to ensure that they are held regularly. **Holding of DPC meetings need not be delayed or postponed on the ground that recruitment rules for a post are being reviewed/amended. A vacancy shall be filled in accordance with the recruitment rules in force on the date of vacancy unless rules made subsequently have been expressly given retrospective effect. Since Amendments to recruitment rules normally have only prospective application, the existing vacancies should be filled as per the recruitment rules in force.***

*3.2 The requirement of convening annual meetings of the DPC should be dispensed with only after a certificate has been issued by the appointing authority that there are no vacancies to be filled by promotion or no officers are due for confirmation during the year in question.”*

[Emphasis Supplied]

60. A perusal of the aforesaid provision makes it apparent that the OM itself stipulated that a vacancy shall be filled in accordance with the recruitment rules in force as on the date of vacancy unless rules made subsequently have been given retrospective effect. Though in the present case, there are no amendments to the rules, however, there is no such rule giving retrospective effect either. As such, this Court is unable to appreciate as to for what reason the Petitioner Association is relying on the aforesaid OM.

61. From the analysis of various judgements of the Supreme Court as well as this Court, it is manifest that unless the Recruitment Rules in force at the time of consideration of filling up of vacancies, prescribe or confer power and authority upon the Appointing Authority to grant



retrospective promotions, no employee has a vested or indelible right of seeking retrospective promotion.

62. Now so far as the facts arising in the present case are concerned, the following facts would become essential.

62.1. It is undisputed that the rules governing the recruitment and promotion etc., of the ancillary staff of the District Courts at Delhi were promulgated on 02.12.2013 called “Delhi District Courts Establishment (Appointment and Conditions of Service) Rules, 2012”.

62.2. By virtue of the letter dated 29.01.2013, the Government of NCT of Delhi, Department of Law, Justice and Legislative Affairs had sanctioned 50 additional posts of DHJS and 100 posts of DJS with ancillary staff.

62.3. It was further stipulated in the said letter that the posts of ancillary staff would be filled as and when the posts of judicial officers are filled. The requirements of post assessed (including leave reserves) were indicated in a table in the said letter. The said table is extracted hereunder :



2024:DHC:821



GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF  
DELHI  
(DEPARTMENT OF LAW, JUSTICE & LEGISLATIVE  
AFFAIRS)  
— E-LEVEL, C-WING, DELHI SECRETARIAT, 1P ESTATE,  
NEW DELHI-110002.

The Registrar General,  
High Court of Delhi,  
New Delhi.

Sub: Creation of 50 additional posts of DJS and 100 posts of JJS  
with ancillary staff.

I am directed to refer to the subject proposed and to convey the  
approval of the Hon'ble Lt. Govt. of NCT of Delhi towards the  
creation of following posts under Non-Off with the fixed the for posts  
of ancillary staff will be filled as and when the posts of Judicial Officers  
are filled.

| S.No. | Name of Post     | Number of posts assessed (including<br>leave reserve) |             |
|-------|------------------|-------------------------------------------------------|-------------|
|       |                  | For 50 DJS                                            | for 100 JJS |
| 1     | Judicial Officer | 50                                                    | 100         |
| 2     | Deputy           | 55                                                    | 110         |
| 3     | Sanitary Officer | 110                                                   | 110         |
| 4     | Assistant        | 55                                                    | 110         |
| 5     | Asst. Assistant  | 55                                                    | 110         |
| 6     | Peon             | 110                                                   | 110         |
|       | Total            | 435                                                   | 650         |

This issues with the concurrence of Finance Department, Govt. of  
NCT of Delhi vide their U.O. 542 D&2 dated 29.01.2013.

Yours faithfully,

62.4. Both parties are *ad idem* that the ancillary posts of these 150 judicial officers are contingent upon the selection of those judicial officers in the first place. In other words, it is only upon the condition that the judicial officers are appointed, that the need and requirement to fill up the ancillary post would arise. In case there is any delay in commencement of recruitment process, or posts of judicial officers are not filled for one reason or the other, the need of requirement to fill up the ancillary posts would not arise. According to the aforesaid table, the sanctioned strength of



the ancillary posts in relation to the JAs and the SJAs is 165 + 165 = 330 posts in all.

62.5. The Petitioner Association is stated to consist of JJAs, JAs as well as SJAs, who were promoted on 24.09.2021 and 25.09.2021 from the date they would assume the charge.

62.6. It is also not disputed that the Selection Committee as stipulated in Rule 2 (15) (b) of the 2012 Rules is in respect of the members constituting the Petitioner Association. It is also not disputed that the rules of promotion pertaining to the aforesaid employees are part of Group 'B' and Group 'C' employees falling under Schedule B of the 2012 Rules.

62.7. For the posts of JJA, the Recruitment Rules postulate 80% of posts being filled by direct recruitment and the remaining 20% posts by promotion from Head Jamadar/ Daftry/ Book Binder/ Peon/ Orderly/ Dak Peon/ Frash-cum-Dak Messenger/ Chowkidar/ Maali/ Sweeper/ Safai Karmachari on the basis of written test and interview. It also stipulates certain essential educational qualifications.

62.8. For the posts of JA, the Recruitment Rules postulate 100% of posts being filled by promotion from JJAs on the basis of seniority-cum-suitability alone. It also stipulates educational qualifications for the members of establishment of the Court to be a Graduate with five years and Non-Graduates with 10 years as JJA.

62.9. For the posts of SJA, the Recruitment Rules postulate 50%



of posts being filled by promotion on the basis of seniority-cum-suitability from JAs, who are Graduates with five years experience and Non-Graduates with eight years of service as JA. The remaining 50% of posts are to be filled by selection on merit from JA on the basis of written test (DCE) and interview for JAs who are Graduates with five years service and Non-Graduates with eight years service as JAs, failing which by direct recruitment.

62.10. It is also undisputed that the initiation for filling up the posts of 150 judicial officers and the ancillary staff sanctioned in 2013 commenced sometime in the year 2017 and the ancillary posts were included in the year 2018. It was only thereafter that the respondent No.1 commenced the said filling up of vacancies for the 150 posts by notifying the same in the year 2018.

62.11. The Petitioner Association had also placed on record the RTI reply of respondent No.1 disclosing that the 2013 vacancies in respect of the ancillary posts were included in the year 2018.

62.12. From the documents handed over by Mrs. Ahlawat during the course of the hearing, which are taken on record, it appears that the respondent No.1 had continuously corresponded with Registrar General of this Court requesting waiver of rider/condition in respect of ancillary staff in the sanction letter dated 29.01.2013 referred to above, so as to enable the respondent No.1 to requisition/ create additional posts of support staff, so that the posts could be filled up by the time newly recruited judicial



officer take charge. These letters along with the posts and the pay scales along with grade pay were regularly being sent to the Registrar General of this Court w.e.f. at least 30.01.2016 till March – April, 2018. It was only on 10.04.2018 that the respondent No.1 had, corresponded directly with the Principal Secretary, Department of Law, Justice, Legal Affairs, GNCT of Delhi in respect of the post of the Judicial Officers and the ancillary staff as per letter dated 29.01.2013 as a separate request to sanction the post of ancillary staff. By the letter dated 27.06.2018, the Additional Secretary (Law, Justice and Legal Affairs) informed respondent No.1 that no such permission of waiver is required and it is purely an administrative matter which can be implemented by the respondent itself.

62.13. According to the respondent, it is only then that the entire exercise for recruitment of ancillary staff in respect of posts sanctioned *vide* letter dated 29.01.2013, was undertaken.

63. Mr. Aneja, learned counsel for the petitioner was at pains to take this Court through almost each and every document on record, some of which were filed as late as in the month of January, 2024 after taking permission of this Court. On that basis, he submits that the overwhelming documentary evidence would establish that the respondent was not only delaying the recruitment process of the vacancies which had arisen in the year 2013, but was also grossly negligent in performing its duties in accordance with the 2012 Rules. According to him, respondent was also guilty of administrative lapses which would enure to the benefit of the members of the petitioner



association. He urges that the gross negligence and the administrative lapse would give rise to a corresponding entitlement for retrospective promotion or notional promotion to each of those members of the Petitioner Association who were given promotions on 24.09.2021 and 25.09.2021.

64. Mr. Aneja submits that the notification dated 20.12.2023 calling for eligible JAs to fill up forms for the intended promotional posts of SJAs by DC Examination with a stipulation that only those JAs who are Graduates with five years and Non-Graduates with eight years of service alone would be eligible for attempting the said examination, is absolutely illegal, unlawful and arbitrarily deprives the members of the Petitioner Association from being considered for the promotional posts of SJAs by DC Examination procedure. The cut-off date for eligibility as per the notification was 03.01.2024.

65. This, according to Mr. Aneja would be contrary to the law, as also the facts which obtained in the present case.

66. Learned counsel also submitted that if not the year 2013, the eligible members of the Petitioner Association ought to have been considered as JAs from JJA and from JAs to SJAs at least as on 23.08.2017, when the respondent No.1, in pursuance of the judgment of this Court dated 22.03.2010 passed in W.P.(C) 5686/1998 captioned as “*Jagdish Rana and Others vs. Government of NCT of Delhi and others*” and order dated 02.05.2017 passed in Cont. CAS. (C) 1079/2016 titled as “*Jagdish Rana and Another vs. Kewal Kumar Sharma and Others*”, granted promotion/upgradation to JJAs as JAs. The respondent not



having considered the eligible members as on 23.08.2017, deprived such members of the Petitioner Association from being promoted to the next rank and consequently becoming ineligible for the DC Examination contemplated under Notification dated 20.12.2023. If the members of the Petitioner Association were considered eligible for notional promotions or retrospective promotions either from the year 2017 or 2018 when the sanctioned posts of ancillary staff stipulated in the letter dated 29.01.2013 was included, the members of the Petitioner Association would have automatically become eligible to sit in the DC Examination since each of those members would have either five or eight years of service, as the case may be, by the cut-off date stipulated in the said notification. By deliberately not following the law, the members of the Petitioner Association have been denied even the right of consideration for the said examination, which could not have been done by the respondent No.1.

67. Learned counsel refers to the documents placed on record by Ms. Ahlawat during arguments to submit that the said letters demonstrate, admittedly, that the respondent No.1 was not only guilty of administrative delay but also of deliberate and wanton negligence. He predicates this submission on the basis of the letter dated 09.09.2014 to submit that, as far back as in the year 2014, the Registrar General of this Court had informed respondent No.1 to correspond directly with the GNCT of Delhi in respect of proposals for creation of additional posts of support staff, so that the posts can be filled up by the time newly recruited Judicial Officers can take charge. Despite such clear directions, the respondent No.1 negligently and wantonly corresponded



with the Registrar General continuously till 10.04.2018. This, according to Mr. Aneja is an admission of not only administrative lapse but also negligence on the part of respondent No.1 in following the statutory provision of 2012 Rules. As such, he prays that this Court, if not on law, then on facts direct respondent No.1 to grant notional or retrospective promotions to each of the eligible members of the Petitioner Association for the next promotional post in the hierarchy of promotions.

68. In respect of the aforesaid set of documents, Mr. Aneja alternatively submits that despite the Petitioner Association having filed the writ petitions twice bearing W.P.(C) Nos.2719/2018 and 5940/2020 on the same aspect, the respondent No.1 did not file these documents which would amount to *suppresio veri suggestio falsi* and the respondent No.1 cannot be allowed to take advantage of its own wrongs.

69. *Per contra*, Mrs. Ahlawat by relying upon the documents handed over during arguments, submits that the letters, rather than depict negligence or administrative lapse on the part of respondent No.1, would actually show that the respondent No.1 was in fact diligently following up sincerely and in all earnest, the filling up of ancillary vacancies which arose on account of the post of 150 Judicial Officers in accordance with the sanction letter dated 29.01.2013.

70. She submits that during the period from 2013 to 2018, the ancillary posts of JAs and SJAs which were being filled up, pertained to those posts of the Judicial Officers which were backlog vacancies and not in respect of all the 150 posts of Judicial Officers covered under the sanction letter dated 29.01.2013. According to her, the documents



placed on record on behalf of respondent No.1, including the chart forming part of the documents handed over during arguments, the correspondence exchanged between the respondent No.1 and the Registrar General of this Court indicating the year-wise vacancies, showing the filled up posts of the Judicial Officers and the ancillary staff, all pertained to the backlog vacancies barring some fresh vacancies.

71. According to Ms.Ahlawat and which is not disputed, this Court did not initiate the filling up of posts of 150 Judicial Officers till the year 2017-2018. The posts having been filled subsequently, then gave impetus to filling up of ancillary post too. The time spent between 2018 till 2020-2021, when the promotional posts of ancillary staff by the members of the Petitioner Association were not filled up, was not a deliberate delay but on account of administrative reasons and the impact of COVID-19, which debilitated the smooth functioning of the District Courts even on the administrative side. On the first occasion, when it became possible to fill up the promotional posts, the same was done without any further ado and promotions were granted to the members of the Petitioner Association in accordance with the rules, from the date of assuming official charge. Though, during the said COVID period, all endeavors and efforts were diligently made by the respondent No.1 to initiate and conduct the virtual DPCs. In fact from the period 2018, it is stated that many DPCs were convened and the backlog vacancies were suitably adjusted accordingly.

72. Mrs. Ahlawat had also submitted that the writ petition has already worked out itself and by virtue of applications bearing CM APPL. Nos.



34989/2021 and 171/2024, the petitioners cannot seek for reliefs which were not hithertobefore sought in the main writ petition itself. As such, she submits that the writ petition should be dismissed with exemplary costs. She also further submits that the omnibus prayers of an unrecognized association without any detail in respect of any of the members of the said association, cannot be countenanced in service jurisprudence and hence, even on that count, the writ petition is not maintainable and has to be dismissed. That apart, she submits that no individual of the so-called association has come forward before this Court or the respondent No.1 to show and demonstrate his or her individual eligibility for seeking retrospective or notional promotion. According to her, in view of the aforesaid, there is neither any cause of action nor any locus to any of the members of the Petitioner Association to maintain the present writ petition.

73. After having heard the aforesaid arguments, it remains to be seen as to what would be the impact of issue (a) on issue (b).

74. The overall consideration by this Court on the issue (a) involving the law as evolved in service jurisprudence by the Supreme Court in the judgments commencing from *K.K. Vadera (supra)* through till *State of Himachal Pradesh (supra)* and *K L Taneja (supra)* of the learned Division Bench of this Court, propels this Court to conclude that the **issue (a) is answered in the negative**, in that, employees do not have any vested or indefeasible right to retrospective/notional promotion, unless the recruitment rules so provide.

75. So far as issue (b) is concerned, the same is as under :



***b. If in case, this Court comes to the conclusion that question (a) is answered in the affirmative, whether the members of petitioner association are eligible to participate in the DC Examination for the post of SJA vide notification dated 20.12.2023 which is now tentatively scheduled to be held 11.02.2024?***

Since the conclusion of this Court in respect of issue (a) is answered in the negative, the members of the Petitioner Association would automatically become ineligible for participating in the Departmental Competitive Examination scheduled to be held on 11.02.2024. **Issue (b) is answered accordingly.** As such, the applications which have been filed are devoid of any merit and are, dismissed as such.

76. The Petitioner Association had also impugned the letter dated 25.09.2020 issued by the Respondent No.1 seeking that the same be quashed and set aside. Keeping in view the conclusions reached by this Court in respect of issue (a) and (b), as also the overwhelming law as settled by the Supreme Court, the examination of the impugned letter would be purely an academic exercise, requiring no observations by this Court.

77. In view of the aforesaid conclusion on the issues (a) and (b), the writ petition is devoid of any merits and is dismissed along with all pending application.

**TUSHAR RAO GEDELA  
(JUDGE)**

**FEBRUARY 05, 2024**

*Aj/nd/ms*