

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

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WRIT PETITION NO.3091 OF 2024

Maharashtra State Judges Association	}
Through its President Shri Dilip S. Ghumare,	}
Age-54 Years Occp-Judicial Service	}
Address: Aurangabad District Court,	}
Adalat Road, Aurangabad, Maharashtra	}.. Petitioner

Versus

- | | | |
|----|--------------------------------------|-----------------|
| 1. | The State of Maharashtra through | } |
| | Principal Secretary, Law and Justice | } |
| | Department, Govt. of Maharashtra, | } |
| | Mantralaya, Mumbai 400032. | } |
| 2. | The Registrar General, | } |
| | High Court of Judicature at Bombay, | } |
| | Fort, Mumbai-400032. | }.. Respondents |

...
Mr. Rahul S. Kadam with Mr. Shardul R. Diwan, Mr. Vedant P. Babar, Mr. Ditya S. Aklekar, Advocates for the Petitioner.

Mr. Aditya R. Deolekar, Assistant Government Pleader for the Respondent No.1.

Dr. Milind Sathe, Senior Advocate with Mr. Rahul Nerlekar, Advocate for the Respondent No.2.

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**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ**

Date on which the arguments concluded : 18th OCTOBER 2024

Date on which the judgment is pronounced : 17th JANUARY 2025

ORAL JUDGMENT : (PER : A. S. CHANDURKAR, J)

1. Rule. Rule made returnable forthwith and heard learned counsel for the parties. The petitioner is an Association comprising members of judicial service in the State of Maharashtra. The Association has been formed with the object of seeking welfare and improving the service conditions of Judges working in various Courts in the State of Maharashtra. By this writ petition, the Association through its President seeks to raise a challenge to the recruitment process of District Judges through Nomination. The advertisement dated 30th September 2023 with regard to the selection process for the year 2022 as well as the advertisement dated 9th January 2024 with regard to selection process for the year 2023 having given cause to the Association, this writ petition has been filed.

2. Mr. Rahul Kadam, learned counsel appearing for the petitioner in support of the challenge raised to the aforesaid advertisements invited attention to Rule 5 of the Maharashtra Judicial Service Rules, 2008 (for short, 'Rules of 2008') and submitted that 25% of the District Judges are to be recruited through Nomination. The remaining 75% posts are required to be filled in through regular promotion for 65% of the said posts and accelerated promotion for 10% from amongst serving Senior Civil

Judges. Since the posts advertised exceeded the 25% quota as permissible, the advertisements being in breach of Rule 5 of the Rules of 2008 were liable to be set aside. It was pointed out that as on 31st March 2022, the sanctioned strength of District Judges was 423 and as on 31st March 2023, the sanctioned strength of District Judges was 427. 25% of the aforesaid figure would come to 105 posts and 106 posts respectively. This would result in the excess post being created as “Ex-Cadre posts”. Since the Rules of 2008 governed the recruitment and the said Rules were in the nature of a Code in itself, the recruitment ought to be undertaken accordingly. Attention was also invited to the Schedule appended to the Rules of 2008 with regard to Rule 3(2) of the Rules of 2008. Without amending the said Schedule, it was not open for the second respondent to exceed the number of posts to be filled in through Nomination. To substantiate his contentions, the learned counsel for the petitioner placed reliance on the decisions in *V. B. Prasad Vs. Manager, P.M.D.U.P. School & Ors.* AIR 2007 SC 2053, *Prem Parkash Pahwa Vs. United Commercial Bank and Another*, (2012) 1 SCC 123 and *K. Prasad and others Vs. Union of India and others*, 1988 (Supp) SCC 269. It was thus submitted that the impugned advertisements relating to recruitment by Nomination were liable to be set aside.

3. The aforesaid submissions were opposed by Dr. Milind Sathe, learned Senior Advocate appearing for the second respondent. According to him, the provisions of Rule 5 of the Rules of 2008 had not been breached. The posts advertised under the impugned advertisements were within the permissible limit of 25%. He referred to paragraphs 5 to 7 of the affidavit in reply filed on behalf of the second respondent to indicate the manner in which the number of vacancies to be filled in had been worked out and that the correct number of vacancies had been advertised. It was further submitted that the submission as urged that without amending the Rules of 2008 as well as the Schedule thereto, only the number of posts indicated therein ought to be filled was erroneous. The strength of Judges as on 31st March of every year was taken into consideration and on that basis the vacancies were sought to be filled in. The quota for recruiting District Judges from the three sources prescribed under Rule 5 of the Rules of 2008 was calculated on the basis of actual strength of the cadre and the same did not cause any prejudice to any quota. Since the posts advertised were in accordance with the cadre strength, there was no merit in the challenge raised to the aforesaid advertisements. It was thus submitted that the writ petition was liable to be dismissed.

4. Having heard the learned counsel for the parties and having perused the relevant material on record including the Rules of 2008, we are of the view that the challenge as raised to the advertisements dated 30th September 2023 and 9th January 2024 cannot succeed. Under the provisions of Rule 5 of the Rules of 2008, 25% of posts in the cadre of District Judges are required to be filled in by Nomination from amongst eligible candidates. By Resolution dated 12th April 2017, the Permanent Selection and Appointment Committee of the High Court had resolved that for the purposes of determining the quota prescribed under Rule 5, the actual working strength of Judges in that cadre as on 31st March of every year has to be taken into consideration. Since the actual working strength of Judges would not be static every year, the figures as indicated in the Schedule to the Rules of 2008 cannot govern the process of recruitment every year. In fact, the note appended to the Schedule clearly states that the number of posts in each cadre would change from time to time depending upon the increase and decrease of the number of posts and the exigency of the situation. It is on this basis that under the advertisement dated 30th September 2023, 4 posts were sought to be filled in under the 25% quota and under the advertisement dated 9th January 2024, 19 vacancies under that quota were

sought to be filled in. The Association has not demonstrated that the calculation of these posts as indicated in paragraphs 5 to 7 of the affidavit filed on behalf of the second respondent is erroneous. The petitioner seeks to rely upon the decisions in *Vina Malik and Rajasthan Judicial Service Association (supra)*. It is however found that Rule 6 of the Rajasthan Judicial Service Rules is differently worded from Rule 3 of the Rules of 2008. Since the vacancies to be filled in are based on the existing strength of the cadre as on 31st March of the relevant year, the ratio of the aforesaid decisions cannot be applied to the case in hand. It therefore cannot be said that there has been any attempt to fill in the 25% posts through Nomination is in excess of what is permissible under the Rules of 2008. The submission urged on behalf of the Association that the posts in excess would thus amount to “Ex-Cadre posts” cannot be accepted.

5. For the aforesaid reasons, we do not find that any relief can be granted to the petitioner. The writ petition therefore stands dismissed. Rule is discharged with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]