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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3652 OF 2024

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| 1. | Smt. Khan S.Z. Age-56 | } |
| | 5 th Jt. Civil Judge Senior Division, Nagpur | } |
| 2. | Mrs. Vidya G. Upadhye, Age-52 | } |
| | Judge, Small Causes Court, Mumbai | } |
| 3. | Smt. Sarika Deepak Panjwani, Age-48 | } |
| | 3 rd Joint Civil Judge Senior Division, | } |
| | Aurangabad. | } |
| 4. | Shri Anmol A. Dhumkekar, Age-55 | } |
| | 6 th Jt. Civil Judge Senior Division, Nagpur | } |
| 5. | Shri Girish A. Deshpande, Age-55 | } |
| | 5 th Jt. Civil Judge Senior Division, Amravati | } |
| 6. | M. A. Shilar, Age-51 | } |
| | Jt. Civil Judge Senior Division & Addl. | } |
| | Chief Judicial Magistrate, Kopargaon, | } |
| | Ahmednagar. | } |
| 7. | Smt. J. S. Jagdale, Age-48 | } |
| | Civil Judge Senior Division & A.C.J.M. | } |
| | Ambajogai, Beed . | } |
| 8. | Shri Mahavir M. Gadiya, Age-52 | } |
| | Civil Judge Senior Division, Nashik | } |
| 9. | Shri S. D. Ghanwat, Age-48 | } |
| | Civil Judge Senior Division, Majalgaon, | } |
| | Beed. | } |
| 10. | Shri Sachin Vitthal Deshmukh, Age-45 | } |
| | Judge, Small Causes Court, Mumbai. | } |
| 11. | Shri S. B. Deore, Age-48 | } |
| | Jt. Civil Judge Senior Division, Kolhapur | } |

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| 12. | Shri K. R. Singhel, Age-38 | } |
| | 2 nd Jt. Civil Judge Senior Division, | } |
| | Kolhapur. | } |
| 13. | Smt. M. D. Kamble, Age-38 | } |
| | Judge, Small Causes Court, Mumbai | } |
| 14. | Shri Bhagwan D. Pandit, Age-39 | } |
| | 2 nd Jt. Civil Judge Senior Division & | } |
| | A.C.J.M. Kopargaon, Ahmednagar. | } |
| 15. | Shri Rajendra T. Ghogle, Age-45 | } |
| | 6 th Jt. Civil Judge Senior Division, | } |
| | Amravati. | } |
| 16. | Shri Sunil D. Gawade, Age-45 | } |
| | 43 rd Court, Metropolitan Magistrate, | } |
| | Borivali, Mumbai. | } |
| 17. | Shri Shyamkumar Anandrao Gawai, | } |
| | Age-42, Judge, Small Causes Court, | } |
| | Mumbai. | } |
| 18. | Shri B. K. Gawande, Age-37 | } |
| | 36 th Court, Metropolitan Magistrate, | } |
| | Mumbai Central, Mumbai. | } |
| 19. | Smt. Meghana A. Deshmukh, Age-38 | } |
| | 7 th Jt. Civil Judge Senior Division, | } |
| | Amravati. | } |
| 20. | Smt. Smita S. Mane, Age-36 | } |
| | 3 rd Civil Judge Senior Division, | } |
| | Dharashive/Osmanabad. | } |
| 21. | Shri Dhananjay Bhagwanrao Hambire, | } |
| | Age-39, Jt. Civil Judge Senior Division | } |
| | & Addl. Chief Judicial Magistrate, | } |
| | Buldhana. | } |

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| 22. | Smt. Aarti Liladhar Saraf, Age-41 | } |
| | Jt. Civil Judge Senior Division & Addl. | } |
| | Chief Judicial Magistrate, Niphad, | } |
| | Nashik. | } |
| 23. | Smt. Ujwala Sandip Babar, Age-38 | } |
| | 2 nd Jt. Civil Judge Senior Division, Satara | } |
| 24. | Shri Udalak N. Patil, Age-39 | } |
| | Jt. Civil Judge Senior Division, Shahada | } |
| 25. | Smt. Varsha R. Jambhule, Age-45 | } |
| | Jt. Civil Judge Senior Division, Darwha, | } |
| | Yavatmal. | } |
| 26. | Shri Jitendrakumar Vasantrao Bhende, | } |
| | Age-41, 2 nd Jt. Civil Judge Senior Division | } |
| | & Addl. Chief Judicial Magistrate Niphad, | } |
| | Nashik. | } |
| 27. | Smt. Mangal Deepak Kashyap, Age-39 | } |
| | Civil Judge Senior Division & Addl. Chief | } |
| | Judicial Magistrate (At present working as | } |
| | labour judge 2 nd Court, Pune). | } |
| 28. | Shri Sujitkumar Taide, Age-38 | } |
| | 44 th Court, Metropolitan Magistrate, | } |
| | Andheri, Mumbai. | } |
| 29. | Smt. Pratibha L. Gupta, Age-36 | } |
| | Jt. Civil Judge Senior Division, | } |
| | Kolhapur. | } |
| 30. | Shri M. M. Varma, Age-35 | } |
| | Jt. Civil Judge Senior Division, | } |
| | Kolhapur. | } |
| 31. | Shri P. R. Rane, Age-40 | } |
| | Jt. Civil Judge Senior Division, | } |
| | Kolhapur. | } |

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| 32. | Shri P. M. Patil, Age-41 | } | |
| | Jt. Civil Judge Senior Division, | } | |
| | Kolhapur (At present posted as Secretary, | } | |
| | District Legal Services Authority, Kolhapur) | } | |
| 33. | Smt. V. D. Bhosale, Age-39 | } | |
| | Jt. Civil Judge Senior Division, Kolhapur | } | ..Petitioners |

Versus

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|----|-------------------------------------|---|----------------|
| 1. | High Court of Judicature at Bombay | } | |
| | Through the Registrar General, | } | |
| | High Court of Judicature at Bombay, | } | |
| | Fort, Mumbai-32. | } | |
| 2. | The Registrar General | } | |
| | High Court of Judicature at Bombay, | } | |
| | Fort, Mumbai-32. | } | |
| 3. | State of Maharashtra | } | |
| | Through the Secretary | } | |
| | Department of Law and Judiciary, | } | |
| | Mantralaya, Mumbai-32. | } | .. Respondents |

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Ms. Pushpa Ganediwala with Mr. Ankit B. Rathod, Ms. Anshu Agrawal i/by
Mr. Chaitanya Purankar, Advocates for the Petitioners.

Dr. Milind Sathe, Senior Advocate with Mr. Rahul Nerlekar, Advocate for
the Respondent Nos.1 and 2.

Mr. Swapnil P. Kamble, Assistant Government Pleader for the Respondent-
State.

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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.

2. The petitioners who are thirty-three Judicial Officers serving on the post of “Civil Judge, Senior Division” at various Talukas / Districts in the State of Maharashtra have raised a challenge to the communication dated 13th February 2024 issued on behalf of the 1st respondent to the respective Principal District and Sessions Judges by which steps were taken to fill in six posts of “District Judge” through accelerated promotion by conducting a Limited Departmental Competitive Examination (LDCE). A challenge is also raised to the communication dated 15th February 2024 issued on behalf of the 1st respondent calling for judgments of eligible Judicial Officers for filling in thirty-four posts of “District Judge” through regular promotion. Various others ancillary reliefs have been sought by the petitioners.

3. The principal contention raised by Ms. Pushpa Ganediwala, the learned counsel appearing for the petitioners is that the willingness as called from the concerned Judicial Officers for filling in 6 posts of “District

Judge” through accelerated promotion is by erroneously calculating the number of vacancies. Such willingness was called only from 267 Judicial Officers ignoring the entitlement of the petitioners. Despite the fact that the petitioners had completed service of five years as Senior Civil Judges, their names were not included in the list of Judicial Officers from whom the willingness was called. The selection of the cut off date for the purposes of completion of a period of five years was arbitrarily chosen to be 31st March 2023. Despite the fact that the selection of the petitioners was made in the year 2017, on account of delay in issuing the posting orders the petitioners had lost an opportunity to participate in the process of promotion. This resulted in violation of the directions issued by the Supreme Court in *Malik Mazhar Sultan and another Vs. Uttar Pradesh Public Service Commission and others*, (2008) 17 SCC 703. It was further submitted that the seniority of Judicial Officers at Serial Nos.252 to 257 was yet to be fixed. Yet the process of filling in the vacancies through accelerated promotion was being undertaken on the basis of the provisional seniority list. It was also urged that the selection process for the year 2022 was clubbed with the selection process for 2023. As against vacancies of 75 posts under the selection process of 2023, the zone of consideration ought to have been five times the number of vacancies which would have been 375. However only 267 Judicial Officers were

being considered in that regard. It was thus submitted that the manner in which the willingness of the concerned Judicial Officers had been called for ignoring the entitlement of the petitioners, grave prejudice had been caused to them. To substantiate her contentions, the learned counsel for the petitioners relied upon the decisions in *Ajit Singh and others Vs. State of Punjab and others*, (1999) 7 SCC 209, *All India Judges' Association and others Vs. Union of India and others*, (2002) 4 SCC 247, *R. K. Sabharwal and others Vs. State of Punjab and others*, (1995) 2 SCC 745, *Salam Samarjeet Singh Vs. The High Court of Manipur at Imphal & Anr.*, Writ Petition (Civil) No.294/2015 decided on 22nd August, 2024, *Arti Kumari Singh Vs. The Patna High Court and others*, Civil Writ Jurisdiction Case No.2345 of 2019 decided on 18th October 2019, *Salam Samarjeet Singh Vs. The High Court of Manipur at Imphal and others*, Writ Petition (Civil) No.294/2015 decided on 22nd August 2024 and *Kanwaljit Singh Bajwa and others Vs. State of Punjab and others*, C.W.P. No.1056 of 2016 decided on 3rd March 2017.

4. Dr. Milind Sathe, the learned Senior Advocate appearing for the respondent nos.1 and 2 opposed the aforesaid submissions. According to him, under Rule 5(b) of the Maharashtra Judicial Services Rules, 2008 (for short, 'Rules of 2008) 10 % of the posts of District Judges were

required to be filled through accelerated promotion from amongst Senior Civil Judges who had been officiating as such at least for a period of five years. Since the selection process was of the year 2023, the cut off date prescribed was 31st March 2023. It was denied that this date was arbitrarily chosen. In fact the said cut off date was fixed in terms of the judgment of the Supreme Court in *Malik Mazhar Sultan and another (supra)*. Choice of a cut off date was bound to result in some candidates being found ineligible at that particular point of time. That alone could not be the basis for holding the selection of the cut off date to be arbitrary. Reliance was placed on the decision in *Ramrao Vs. All India Backward Class Bank Employees Welfare Association* (2004) 2 SCC 76. It was then submitted that none of the petitioners had completed five years of officiation as Senior Civil Judges prior to 31st March 2023. Hence their willingness was not called for by the first respondent. It was further submitted that the undertaking of the selection process on the basis of the provisional seniority list did not cause any prejudice to the petitioners as they were not eligible to be considered as they had not rendered officiating service of five years. Since the petitioners were not eligible in terms of Rule 5(1) of the Rules of 2008, their willingness was not sought. The other prayers as made by the petitioners were not liable to be granted.

5. We have heard the learned counsel for the parties at length and with their assistance, we have perused the documents on record. We have also gone through the decisions relied upon by the learned counsel. The principal grievance raised by the petitioners is with regard to their non-consideration in the selection process for filling in 10% posts of District Judges on the basis of merit through the LDCE from amongst Senior Civil Judges. Rule (5)(b) in that regard is clear. The eligibility prescribed is the requirement of a Senior Civil Judge having officiated on the said post for at least five years. The record indicates that petitioner nos.1 to 29 were appointed as Senior Civil Judges on 5th May 2018, petitioner no.30 was appointed on 1st December 2018, petitioner nos.31 and 32 were appointed on 1st November 2019 and the petitioner no.33 was appointed on 9th December 2020. It is thus clear that as on 31st March 2023 none of the petitioners had completed five years of officiation as Senior Civil Judges for being eligible to be considered for promotion.

6. As regards choice of the cut off date for consideration of the eligibility under Rule 5(b), it can be seen that the Supreme Court in paragraph 7 of its decision in *Malik Mazhar Sultan and another (supra)* has stipulated 31st March as the date when number of vacancies are required to be notified by the High Court for that particular year.

According to the first respondent, it is on this basis that the cut off date of 31st March 2023 has been chosen while determining the number of vacancies to be filled in that year. It therefore cannot be said that the choice of the cut off date as 31st March 2023 is either arbitrary or irrational as held in *Ramrao (supra)*. It is not the case of the petitioners that certain ineligible Senior Civil Judges had been included in the list of candidates from whom willingness had been called and that the petitioners had been discriminated. Perusal of the impugned communications dated 13th February 2023 and 15th February 2024 indicate that such willingness have been called from 267 Senior Civil Judges who have completed five years officiating service as on 31st March 2023. We therefore find that there is no illegality committed in issuance of the impugned communications dated 13th February 2024 and 15th February 2024.

7. We also do not find much substance in the contention that in the list of 267 Senior Civil Judges, the seniority of Judges at Serial Nos.252 to 257 was not finalised as per the Rules and yet their names were included for the purposes of seeking their willingness. Even if it is assumed that the Senior Civil Judges at Serial Nos.252 to 257 were not found eligible to be placed in the said list of Senior Civil Judges, this aspect would not come to

the aid to the petitioners for the reason that the petitioners themselves have not completed the minimum officiating service of five years as required under Rule 5 (b) of the Rules of 2008. In fact, conduct of the selection process on the basis of the provisional seniority list insofar as these candidates are concerned does not in any manner make the petitioners eligible to seek consideration. Nothing much would turn on this aspect.

8. We also do not find any reason to hold that those Judicial Officers who were in the zone of consideration in the selection process of the year 2022 were not entitled to be again considered in the selection process of 2023 as there is no such disqualification by which an eligible candidate could be prevented from participating in the subsequent selection process. The selection process for 2022 having been completed and the vacancies remaining thereafter having been taken into consideration for the year 2023, all eligible Senior Civil Judges were entitled to participate in the selection process subject to their eligibility.

9. The petitioners have sought further relief in the matter of applying the roster at the ratio of 1:9 from Serial No.1 as shown in the Selection Process, 2016. An alternate prayer is also made to apply the roster of 2:8

with regard to the Common Gradation List. It is seen that the petitioners have made a representation in April 2023 in that regard. The same would first require consideration by the Registrar General of the High Court. Since the objections in that regard have already been raised, it would be appropriate to direct the first respondent through the Registrar General to consider the said objections in the light of the existing Rules and decide the same in accordance with law.

10. For aforesaid reasons, the challenge raised to the communications dated 13th February 2024 and 15th February 2024 calling for willingness of eligible Senior Civil Judges for filling in 6 and 34 post of District Judges respectively cannot be upheld. The challenge to that extent thus fails. It is however directed that the representation preferred in April 2023 with regard to the preperation and operation of the Common Gradation List shall be considered in accordance with law within a period of six weeks of receiving copy of this judgment. The decision taken be communicated to the parties who have made said representation. Rule is disposed of in aforesaid terms with no order as to costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]