

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

I.A. NO. 89454 OF 2021

IN

WRIT PETITION (C) NO. 1022 OF 1989

**ALL INDIA JUDGES ASSOCIATION
AND OTHERS**

...PETITIONER(S)

VERSUS

UNION OF INDIA AND OTHERS

...RESPONDENT(S)

AND

IN THE MATTER OF

**MS. SHEETAL CHAUDHARY PRADHAN
AND ANOTHER**

...APPLICANT(S)

WITH

I.A. NO. 89450 OF 2021

I.A. NO. 88976 OF 2021

I.A. No. 249 of 2009

I.A. NO. 44132 OF 2022 IN I.A. NO. 89450 OF 2021

IN

WRIT PETITION (C) NO. 1022 OF 1989

O R D E R

B.R. GAVAI, J.

1. I.A. No. 89454 of 2021 has been filed by two judicial officers in the cadre of Delhi Judicial Service (hereinafter

referred to as “DJS”) namely Ms. Sheetal Chaudhary Pradhan and Dr. Shirish Aggarwal, for modification of the orders dated 21st March 2002¹ and 20th April 2010² passed by this Court in the present writ petition. I.A. No. 89450 of 2021 has been filed by the same judicial officers seeking permission to participate in the Limited Departmental Competitive Examination (hereinafter referred to as “LDCE”) initiated by the High Court of Delhi through its letter No. 38-49/Exam.Cell/DHJSCL Exam/2021 dated 15th July 2021, for promotion to the Delhi Higher Judicial Service (hereinafter referred to as “DHJS”) District Judge Cadre and to consider the candidature of the judicial officers-applicants on merits, subject to the outcome of the application for modification. I.A. No. 44132 of 2022 in I.A. No.89450 of 2021 has been filed by the same judicial officers praying for a direction to the High Court of Delhi to identify two seats of LDCE quota of DHJS from the roster under Rule 7(2) of the Delhi Higher Judicial Service Rules, 1970 (hereinafter referred to as the “said Rules”) and to reserve them for the judicial officers-applicants. I.A. No.88976 of 2021 has also

1 (2002) 4 SCC 247

2 (2010) 15 SCC 170

been filed by the same judicial officers praying for their impleadment as co-petitioners in the present writ petition.

2. I.A. No.249 of 2009 has been filed by the High Court of Delhi praying for reducing the minimum qualifying service to 7 years from 10 years for promotion to the DHJS under 25% quota of LDCE.

3. We have heard Shri P.S. Patwalia, learned Senior Counsel appearing on behalf of the judicial officers-applicants, Shri A.D.N. Rao, learned Senior Counsel appearing on behalf of the High Court of Delhi and Shri Siddharth Bhatnagar, learned Senior Counsel appearing as amicus curiae.

4. The present writ petition pertains to the working conditions of the members of subordinate judiciary throughout the country. This Court has issued various directions from time to time. Pursuant to the directions issued by this Court, the then Ministry of Law, Justice and Company Affairs (Department of Justice), Government of India constituted the First National Judicial Pay Commission (also known as “Shetty Commission”) under the

Chairmanship of Mr. Justice K.J. Shetty vide Resolution dated 21st March 1996. The Shetty Commission, after due deliberation, submitted its report on 11th November 1991. The recommendations of the Shetty Commission came to be considered by this Court in its order dated 21st March 2002, passed in the present writ petition. It will be apposite to refer to the observations made by this Court in paragraph (27) of the said order, which read thus:

“27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary that the judicial officers, hard-working as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a Judicial Academy, which is very necessary. At the same time, we are of the opinion that there has to be certain minimum standard,

objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges. While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned : 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.”

5. A perusal thereof would reveal that this Court has observed that there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. This Court was of the view that in this way, the calibre of the members of the Higher Judicial Service will further improve. This Court, therefore, observed that to achieve the same, while the ratio of 75% appointment by promotion and 25% by direct recruitment to the Higher Judicial Service is maintained, there should be two methods for appointment by promotion. 50% of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority and the remaining 25% of posts in the service should be filled by promotion strictly on the basis of merit through LDCE for which the qualifying service as a Civil Judge (Senior Division) should be not less than 5 years. This Court, accordingly, issued the following directions:

“28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:

(1)(a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of

merit-cum-seniority and passing a suitability test;

(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.

(2) Appropriate rules shall be framed as above by the High Courts as early as possible.”

6. In pursuance of the directions of this Court, the High Court of Delhi amended Rule 7 of the said Rules vide Delhi Higher Judicial Service (Amendment) Rules, 2008 dated 22nd October 2008, which reads thus:

“7. Regular recruitment.- (1) Recruitment to the posts in the cadre of District Judge at Entry Level shall be as under:-

(a) 50 percent by promotion from amongst the Civil Judges (Senior Division), having a minimum ten years service in the cadre of Delhi Judicial Service, on the basis of principle of merit-cum-seniority and passing a suitability test;

(b) 25 percent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years qualifying service; and

(c) 25 percent of the posts shall be filled by direct recruitment from amongst the persons eligible as

per rule 7C on the basis of the written and viva voce test, conducted by the High Court.

(2) The first and second posts will go to category (a) (by promotion on the basis of seniority-cum-suitability), the third post will go to category (c) (direct recruitment from the Bar), and the fourth post will go to category (b) (by limited competitive examination) under this rule, and so on.

7A.

7B. Selection for promotion by holding limited competitive examination:- The High Court shall hold a limited written competitive examination for promotion of member of the Delhi Judicial Service as per clause (b) of sub-rule (1) of rule 7 in the following manner:-

- (i) Written Examination - 600 marks
- (ii) Assessment of Record -150 marks
- (iii) Viva voce - 250 marks

Provided that the High Court may, in addition to the above competitive examination, take into consideration any of the materials as prescribed in rule 7A above.

Provided further that any officer having grading as 'C' (Integrity doubtful) in any year, shall not be eligible to appear in the limited competitive examination.

7C.”

7. In the meantime, the issue with regard to eligibility requirement for recruitment to the posts in DHJS under 25% quota by promotion on the basis of merit through LDCE

came up for discussion before the Full Court of the High Court of Delhi in its meeting dated 5th September 2008. In the said meeting, it was considered that a Civil Judge (Junior Division) is not eligible to become Civil Judge (Senior Division) until he completes 5 years qualifying service. It was further discussed that under the said Rules, a Civil Judge (Junior Division) would be required to have a minimum of 10 years qualifying service to be considered even for the 25% quota through LDCE. The Full Court of the High Court of Delhi was of the view that in order to make the quota of LDCE an effective scheme of promotion for meritorious officers, it was appropriate that the eligibility requirement of 10 years be reduced to 7 years [(5 years as Civil Judge (Junior Division) and 2 years as Civil Judge (Senior Division) under the 25% quota]. The High Court of Delhi was of the view that the same would also be in conformity with Article 233 (2) of the Constitution of India and the eligibility conditions for direct recruitment from the Bar. In this background, I.A. No. 249 of 2009 came to be filed by the High Court of Delhi.

8. Various I.As. were filed in the present writ petition. Some of the I.As. came to be decided by this Court vide order dated 20th April 2010. It will be apposite to refer to the following paragraphs of the said order:

“5. In some of the States sufficient number of candidates are not available for being promoted under this particular category as a Civil Judge (Senior Division) in the normal course gets promotion before the completion of period of 5 years. As 25% quota is prescribed, a large number of vacancies remained unfilled and that is not good for the judicial administration in that State.

6. Having regard to various strategies available, we are of the considered view that suitable amendment is to be made for this 25% quota of limited departmental competitive examination. We are also of the view, with the past experience, that it is desirable that 25% quota be reduced to 10%. We feel so as the required result, which was sought to be achieved by this process could not be achieved, thus it calls for modification.

7. Thus, we direct that henceforth only 10% of the cadre strength of District Judges be filled up by limited departmental competitive examination with those candidates who have qualified service of five years as Civil Judge (Senior Division). Every year vacancies are to be ascertained and the process of selection shall be taken care of by the High Courts. If any of the post is not filled up under 10% quota, the same shall be filled up by regular promotion. In some of the High Courts, process of selection of these 25% quota by holding limited departmental competitive examination is in progress, such

process can be continued and the unfilled seats, if meritorious candidates are available, should be filled up. But if for some reason the seats are not filled up, they may be filled up by regular promotion and apply the usual mode of promotion process. Thus we pass the following order.

8. Hereinafter, there shall be 25% of seats for direct recruitment from the Bar, 65% of seats are to be filled up by regular promotion of Civil Judge (Senior Division) and 10% seats are to be filled up by limited departmental competitive examination. If candidates are not available for 10% seats, or are not able to qualify in the examination then vacant posts are to be filled up by regular promotion in accordance with the Service Rules applicable.

9. All the High Courts are hereby directed to take steps to see that existing Service Rules be amended positively with effect from 1-1-2011. If the Rules are not suitably amended, this order shall prevail and further recruitment from 1-1-2011 shall be continued accordingly as directed by us. The time schedule prescribed in the order dated 4-1-2007 (in *Malik Mazhar Sultan case [Malik Mazhar Sultan (3) v. U.P. Public Service Commission, (2008) 17 SCC 703 : (2010) 1 SCC (L&S) 942]*) shall be strictly adhered to for the purpose of selection. All the vacancies are to be filled up in that particular year and there shall not be any carry forward of the unfilled posts.”

9. It could thus be seen that this Court found that it was difficult to find candidates for LDCE for the 25% posts reserved for the said category and in many High Courts, the

said posts remained unfilled. This Court, therefore, reduced the said 25% quota to 10%.

10. I.A. No. 249 of 2009 filed by the High Court of Delhi has been pending for more than a decade. In the meantime, two judicial officers-applicants herein have filed the aforesaid I.As. The first one being for modification of the orders of this Court dated 21st March 2002 and 20th April 2010.

11. It is not in dispute that in the High Court of Delhi, the nature of work to be performed by the Civil Judge (Junior Division) and Civil Judge (Senior Division) is the same. This is a peculiar situation prevailing in the High Court of Delhi where except for the difference in Pay Scale, there is no difference with regard to the powers to be exercised and the duties to be discharged by the said judges. It is also not in dispute that the present ratio of Civil Judge (Junior Division) to Civil Judge (Senior Division) is 80 : 20. The High Court of Delhi has already moved the Principal Secretary (LJ & LA), Government of NCT of Delhi for increase of quota of Civil Judge (Senior Division) to 25% from 20% i.e. an increase

from 96 Civil Judges (Senior Division) to 121 Civil Judges (Senior Division), out of a total strength of 482.

12. It is the grievance of the said two judicial officers-applicants that on account of this peculiar situation, for 10% quota under the LDCE, there are no candidates available for promotion through merit. It is their further grievance that in ordinary course, a person would get promoted even to DHJS in 10 years. In this premise, the judicial officers-applicants pray for modification of the orders dated 21st March 2002 and 20th April 2010 passed by this Court in the present writ petition so as to do away with the requirement of 5 years qualifying service as Civil Judge (Senior Division) and modify the same with the requirement of 10 years total qualifying service as Civil Judge.

13. This position is not disputed by the High Court of Delhi. On the contrary, it is the prayer made by the High Court of Delhi that the order be modified and the requirement of 10 years minimum qualifying service be reduced to 7 years minimum qualifying service [(5 years as Civil Judge (Junior

Division) and 2 years as Civil Judge (Senior Division) under the 25% quota].

14. The very purpose for providing the channel of promotion through LDCE was to provide an incentive to the officers amongst the relatively junior officers to improve and to compete with each other so as to excel and get quicker promotion. In the peculiar situation prevailing in the High Court of Delhi, the very purpose is frustrated. We are, therefore, of the considered view that in the peculiar facts and circumstances, both I.A. No.249 of 2009 and I.A. No.89454 of 2021 deserve to be allowed.

15. Shri Rao, learned Senior Counsel appearing on behalf of the High Court of Delhi has fairly stated that the High Court of Delhi, on its own, has reserved two seats for the present judicial officers-applicants so that their claims are not defeated by passage of time or by delay in holding of the examination.

16. In view of the submission made by Shri Rao, no orders are necessary to be passed in I.A. No. 89450 of 2021, I.A.

No.44132 of 2022 in I.A. No. 89450 of 2021 and I.A. No.88976 of 2021.

17. In the result, I.A. No. 89454 of 2021 filed by the judicial officers-applicants and I.A. No. 249 of 2009 filed by the High Court of Delhi are allowed in the following terms:

- (i) Paragraph 28 (1) (b) of the order dated 21st March 2002 passed by this Court, is modified and substituted as under:

“25% by promotion strictly on the basis of merit through LDCE of Civil Judges having 7 years qualifying service [(5 years as Civil Judge (Junior Division) and 2 years as Civil Judge (Senior Division) or 10 years qualifying service as Civil Judge (Junior Division).”

- (ii) Similarly, in the order dated 20th April 2010 passed by this Court, the direction in paragraph (7), i.e., *“Thus, we direct that henceforth only 10% of the cadre strength of District Judges be filled up by limited departmental competitive examination with those candidates who have qualified service of five*

years as Civil Judge (Senior Division)”, is modified and substituted as under:

“Thus, we direct that henceforth only 10% of the cadre strength of District Judges be filled up by Limited Departmental Competitive Examination with those candidates who have qualified service of 7 years [(5 years as Civil Judge (Junior Division) and 2 years as Civil Judge (Senior Division) or 10 years qualifying service as Civil Judge(Junior Division).”

18. It is needless to state that since the aforesaid modifications are being directed in the peculiar facts and circumstances pertaining to the DHJS, the said modifications shall apply only insofar as the DHJS is concerned.

.....**J.**
[L. NAGESWARA RAO]

.....**J.**
[B.R. GAVAI]

.....**J.**
[ANIRUDDHA BOSE]

NEW DELHI;
APRIL 19, 2022.