

ITEM NO.9

COURT NO.1

SECTION III-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No.1867/2006

MALIK MAZHAR SULTAN & ANR.

Appellant(s)

VERSUS

U.P. PUBLIC SERVICE COMMISSION THROUGH
ITS SECRETARY & ORS.

Respondent(s)

(With IA No.152/2016 - APPLICATION FOR DIRECTIONS, IA No.71428/2020 - APPLICATION FOR PERMISSION, IA No. 153/2017 - APPLICATION FOR PERMISSION FOR VARIATION IN TIME, IA No.6328/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.108508/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.53466/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No.103233/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.134427/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.35106/2022 - APPROPRIATE ORDERS/DIRECTIONS, IA No.177295/2018 - APPROPRIATE ORDERS/DIRECTIONS, IA No.99519/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.117790/2017 - APPROPRIATE ORDERS/DIRECTIONS, IA No.110757/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.143127/2021 - APPROPRIATE ORDERS/DIRECTIONS, IA No.108486/2019 - CLARIFICATION/DIRECTION, IA No.148352/2019 - CLARIFICATION/DIRECTION, IA No.139131/2019 - CLARIFICATION/DIRECTION, IA No.124030/2020 - CLARIFICATION/DIRECTION, IA No.4970/2022 - CLARIFICATION/DIRECTION, IA No.186742/2019 - CLARIFICATION/DIRECTION, IA No.157310/2021 - CLARIFICATION/DIRECTION, IA No.126264/2019 - CLARIFICATION/DIRECTION, IA No.23882/2020 - CLARIFICATION/DIRECTION, IA No.110342/2020 - CLARIFICATION/DIRECTION, IA No.190483/2022 - EXEMPTION FROM FILING AFFIDAVIT, IA No.139136/2019 - EXEMPTION FROM FILING O.T., IA No.97891/2019 - EXEMPTION FROM FILING O.T., IA No.139037/2019 - EXEMPTION FROM FILING O.T., IA No.31928/2019 - EXEMPTION FROM FILING O.T., IA No. 31/2019 - EXEMPTION FROM FILING O.T., IA No.153897/2019 - EXTENSION OF TIME, IA No.13841/2020 - EXTENSION OF TIME, IA No.135200/2020 - EXTENSION OF TIME, IA No.70330/2018 - EXTENSION OF TIME, IA No.81776/2019 - EXTENSION OF TIME, IA No.187810/2019 - EXTENSION OF TIME, IA No. 99499/2020 - EXTENSION OF TIME, IA No.70324/2018 - EXTENSION OF TIME, IA

No.200525/2022 - EXTENSION OF TIME, IA No.29839/2019 - EXTENSION OF TIME, IA No.148502/2021 - EXTENSION OF TIME, IA No.190482/2022 - EXTENSION OF TIME, IA No.37616/2021 - INTERVENTION APPLICATION, IA No.183142/2018 - INTERVENTION APPLICATION, IA No.178581/2018 - INTERVENTION APPLICATION, IA No.108485/2019 - INTERVENTION APPLICATION, IA No.6643/2022 - INTERVENTION APPLICATION, IA No.77756/2017 - INTERVENTION APPLICATION, IA No.186082/2018 - INTERVENTION APPLICATION, IA No.113777/2019 - INTERVENTION APPLICATION, IA No.6324/2020 - INTERVENTION/IMPLEADMENT, IA No.134414/2020 - INTERVENTION/IMPLEADMENT, IA No.124029/2020 - INTERVENTION/IMPLEADMENT, IA No.139035/2019 - INTERVENTION/IMPLEADMENT, IA No.186736/2019 - INTERVENTION/IMPLEADMENT, IA No.109148/2020 - MODIFICATION, IA No.190106/2019 - MODIFICATION OF COURT ORDER, IA No.81229/2022 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES, IA No.170253/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES and IA No.39017/2020 - PERMISSION TO FILE APPLICATION FOR DIRECTION)

WITH S.M.W.(C) No.2/2018 (PIL-W)

(With IA No.118504/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.54188/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No. 46287/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.135297/2020 - APPROPRIATE ORDERS/DIRECTIONS, IA No.6713/2019 - EXEMPTION FROM FILING O.T., IA No.46288/2020 - EXEMPTION FROM FILING O.T., IA No.111743/2019 - EXEMPTION FROM FILING O.T., IA No.65608/2019 - EXEMPTION FROM FILING O.T., IA No.65607/2019 - EXTENSION OF TIME and IA No.77659/2019 - INTERVENTION APPLICATION)

S.M.W.(C) No.1/2017 (PIL-W)

Date : 09-02-2023 These matters were called on for hearing today.

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UPON hearing the counsel the Court made the following
O R D E R

State of Gujarat

- 1 Mr K V Viswanathan, *Amicus Curiae* and Mr Ravi Raghunath, counsel assisting the *Amicus Curiae* have prepared a note, based on a questionnaire which was circulated to all the stakeholders, including the State of Gujarat and the High Court. The position in regard to the filling up of vacancies in the district judiciary of the State of Gujarat and the upgradation of infrastructure is set out below:

I Vacancies and Appointments in District Judiciary

- 1 The position in regard to vacancies and appointments in the district judiciary has been summarized below:

“(i) Vacancies/Appointment:

District Judges:

| | | | | | |
|----------------|------------|------------------|------------|-----------|------------|
| Total Strength | 445 | Working Strength | 259 | Vacancies | 186 |
|----------------|------------|------------------|------------|-----------|------------|

District Judges - By direct recruitment 25%

| | | | | | |
|----------------|------------|------------------|-----------|-----------|-----------|
| Total Strength | 111 | Working Strength | 59 | Vacancies | 52 |
|----------------|------------|------------------|-----------|-----------|-----------|

34 vacancies were notified on 12.04.2022 and 1 candidate was selected, and appointment order was issued on 04.02.2023. The process will be completed by 16.02.2023. The remaining 52 vacancies (33 due to non-availability of candidates and 19 due to creation of posts after previous notification) will be notified as per Malik Mazhar Schedule on 31.03.2023.

District Judges - By limited competitive exam 10%

| | | | | | |
|----------------|-----------|------------------|-----------|-----------|-----------|
| Total Strength | 45 | Working Strength | 21 | Vacancies | 24 |
|----------------|-----------|------------------|-----------|-----------|-----------|

01 vacancy was notified on 12.04.2022, and the successful candidate was issued the Appointment order on 21.10.2022 and the process was completed on 06.02.2023.

Out of the remaining 24 vacancies, 9 vacancies (1 vacancy due to premature retirement and 8 vacant due to increase in sanctioned posts after previous notification) will be notified as per Malik Mazhar Schedule on 31.03.2023, and 15 vacancies will be filled by promotion 65% due to judicial order dated 09.12.2021 passed in SCA 7915/2020 & Ors.

District Judges - By promotion 65%

| | | | | | |
|----------------|------------|------------------|------------|-----------|------------|
| Total Strength | 289 | Working Strength | 179 | Vacancies | 110 |
|----------------|------------|------------------|------------|-----------|------------|

68 vacancies (53 + 15 from LCE above) was notified on 12.04.2022 and is presently at the stage of declaring final select list. The process is likely to be completed by 15.03.2023.

The remaining 57 vacancies (6 due to VRS/death/premature retirement and 51 due to increase in sanctioned posts after previous notification) + any other vacancies at conclusion of the ongoing process will be notified as per Malik Mazhar Schedule on 31.03.2023.

Civil Judges (Sr.Div.)

| | | | | | |
|----------------|------------|------------------|------------|-----------|-----------|
| Total Strength | 496 | Working Strength | 446 | Vacancies | 50 |
|----------------|------------|------------------|------------|-----------|-----------|

71 vacancies were notified on 31.03.2022 and the same is at the stage of declaration of final list and this ongoing process is expected to be completed by 20.02.2023.

Civil Judges (Jr. Div.)

| | | | | | |
|----------------|------------|------------------|------------|-----------|------------|
| Total Strength | 641 | Working Strength | 448 | Vacancies | 193 |
|----------------|------------|------------------|------------|-----------|------------|

219 vacancies were notified on 01.02.2022 and the process was completed on 13/17.01.2023 with the selection of 55 candidates.

The remaining **138 vacancies + vacancies that may be created by promotion to Civil Judges (Sr. Div.)** will be notified immediately after the ongoing process for the Civil Judges (Sr. Div.) is completed.

2 The above note indicates that:

- (i) 52 vacancies in the direct recruitment for District Judges (25%) will be notified on 31 March 2023;
- (ii) 9 vacancies out of the remaining 24 for appointment of District Judges by limited competitive examination (10%) will be notified on 31 March 2023;
- (iii) 15 vacancies will be filled in by promotion (65%) in terms of a judicial order dated 9 December 2021 passed in SCA No 7915/2020;
- (iv) The process of recruitment of District Judges by promotion (65%) is likely to be completed by 15 March 2023 and the remaining 57 vacancies will be notified on 31 March 2023;

- (v) The ongoing process for recruitment of Civil Judges (Senior Division) is expected to be completed by 20 February 2023; and
 - (vi) For recruitment of Civil Judges (Junior Division), 138 vacancies and further vacancies that may be created by promotion to the post of Civil Judge (Senior Division) will be notified immediately after the ongoing process for the Civil Judge (Senior Division) is completed.
- 3 The time-lines which have been indicated by the High Court as summarized above shall be scrupulously observed. A compliance affidavit shall be filed by the Registrar General of the High Court of Gujarat by 30 April 2023.

II Infrastructure

- 1 On the aspect of infrastructure, the note submitted by the *Amicus Curiae* indicates the following position:

"Court halls

There are totally 1524 court halls (1360 are judiciary owned, 134 are government owned and 30 are rented). Presently,

- 175 court halls are under construction
- 189 court halls have been accorded administrative approval by the State Government and the construction will commence soon

If the above is completed, then there would not be any shortfall in Court halls requirement."

- 2 Annexure -2 to the note submitted by the *Amicus Curiae* indicates that as many as 75 proposals related to infrastructure are pending with the State government from 2014-2022.
- 3 We have interacted with the Law Secretary to the Government of Gujarat

and the Registrar General of the High Court of Gujarat on the virtual platform.

- 4 The Court has been apprised of the position that of the 75 proposals, 40 will be cleared immediately in time for the annual Budget; on 14 proposals, there are certain land issues; on 15 proposals, certain issues have to be sorted out with the Road and Building Department; 6 proposals have been approved; on one proposal, the work has commenced; one proposal has not been received from the High Court, while in respect of 4 other proposals, there are pending issues to be resolved.
- 5 There is no justification for proposals to be kept pending by the State of Gujarat for a period of 8 years.
- 6 The submissions which have been made by the Law Secretary indicate that proper coordination between the High Court and the State government could have ensured that the proposals are cleared at an early date.
- 7 We now issue a peremptory direction that in terms of what has been indicated to this Court, the 40 proposals which are to be cleared immediately shall be resolved at the earliest. Necessary action in respect of all the proposals shall be monitored by the Finance Secretary, Law Secretary and the Registrar General of the High Court so that an early resolution is made possible by 31 March 2023. An affidavit of compliance shall be filed before this Court by 30 April 2023.
- 8 The provision in regard to residential quarters for judicial officers is indicated in the following extract from the note of the *Amicus Curiae*:

“Residential units/ Judicial Officers Quarters:

Against the sanctioned strength of 1524, only 1127 residential units are available (953 judiciary owned, 174 are government owned, 214 judicial officers are residing in rented accommodation). Presently,

- 16 residential quarters are under construction
- 48 units have been accorded administrative approval by Government and will commence construction
- 233 residential quarters - **proposals are pending with Government**
- 62 residential quarters - proposals will soon be notified by the Hon'ble High Court to the Government"

- 9 The above position is part of the 75 proposals which have been indicated in the earlier part of this order.
- 10 The data which has been placed before the Court indicates that out of a sanctioned strength of 1524, only 1127 residential units are available. 214 judicial officers are residing in rented accommodation. 233 proposals are pending with the government. We direct that by 31 March 2023 all pending proposals shall be dealt with by the State of Gujarat and a final decision shall be notified to the High Court. Moreover, the High Court shall by 31 March 2023 communicate the proposals for 62 residential quarters to the State government on which a final decision shall be arrived at no later than 30 April 2023.
- 11 On 7 November 2019, an order was passed by this Court. In terms of this order, three proposals were pending before the State government, out of which one has been cleared and two still remain to be cleared. The State government shall take a final decision on the two pending proposals by 31 March 2023.

III Man-Power

- 1 As regards manpower, the position in the State of Gujarat is set out in the note circulated by the *Amicus Curiae* as follows:

“Man-Power

| | | | | | |
|----------------|---------------|------------------|---------------|-----------|-------------|
| Total Strength | 15,168 | Working Strength | 10,021 | Vacancies | 5147 |
|----------------|---------------|------------------|---------------|-----------|-------------|

Hon’ble High Court and the Departmental Promotion Committee constituted by the Principal Judicial Officers is undertaking the recruitment process for various posts, which is under process/to be initiated soon and is expected to be completed within the year [ANNEXURE – B (Part 2)].

Hon’ble High Court has requested State Government for creation of 3516 posts of different cadres by letter dated 05.05.2022 and relevant information requested by Government on 22.11.2022 has also been provided on 30.01.2023. The State Government has indicated that this may be passed in the upcoming budget.

- 2 The above analysis indicates that almost a third of the posts of regular manpower in the district judiciary (5,147 out of 15,168) are vacant. The High Court and the Departmental Promotion Committee constituted by the Principal Judicial Officers is undertaking the recruitment process. We issue a direction to the effect that the recruitment process be commenced no later than by 31 March 2023. This Court shall be apprised on affidavit by 30 April 2023 of the steps which have been taken to fill up the remaining vacancies.
- 3 The High Court had also addressed a communication to the State government on 5 May 2022 for creation of 3516 posts in different cadres. The State government has indicated that this proposal is likely to be passed in the forthcoming Budget. A decision thereon shall be taken and the State of Gujarat shall indicate on affidavit by 30 April 2023 of the decision taken in that regard and the implementation thereof.

IV Status of Utilization of Funds

- 1 On the funding for the State of Gujarat under the Centrally Sponsored Scheme, Ms Aishwarya Bhati, Additional Solicitor General has placed the following position on the record:

“Initial tentative allocation at the beginning of the FY 2022-23 : **Rs 18.53 crore**

Release of funds is under process, in view of the fact that the State Government of Gujarat has utilized more than 75% of funds last released in 2020-21 (Central + State share) and for the requirement of Central Share of Rs.22.50 crore projected by the State under the scheme, for the current financial year 50% of Rs.22.50 crore i.e. Rs.11.25 crore minus the unspent balance of Rs.5.03 crore, i.e. **release of Rs.6.22 crore is being considered.**

| | | | | (in Rs. crore) |
|---------|---------|---------|---------|----------------|
| Year | 2019-20 | 2020-21 | 2021-22 | 2022-23 |
| Gujarat | 16.49 | 13.50 | 0.00 | 0.00 |

- 2 The above statement indicates that an amount of Rs 6.22 crores is being considered for release. A decision in that regard shall be taken by the Union Government before the end of February 2023 and the amount which is allocated to the State of Gujarat in pursuance of the decision shall be transferred to the SNA account before the end of the financial year.
- 3 List the matter on 17 February 2023 at 2 pm.

(CHETAN KUMAR)
A.R. -cum-P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar