

2023 LiveLaw (SC) 385

**IN THE SUPREME COURT OF INDIA
B.R. GAVAI; J., VIKRAM NATH; J., SANJAY KAROL; J.**

Writ Petition(s)(Civil) No(s). 1022/1989; 25-04-2023

ALL INDIA JUDGES ASSOCIATION & ORS. versus UNION OF INDIA & ORS.

Judicial Services - Supreme Court refuses to order that 50% of High Court judges should be recruited from judicial services - Court says that ratio between judges from district judiciary and from bar be maintained at least as 1:3 - Issues directions to speed up the filling up of vacancies from judicial quota - the tenure of the Service Judges in the High Court, most of the times, is only few years - So, High Courts requested to take immediate steps in recommending the names for elevation from the service cadre prior to the occurrence of such vacancies, so that there is no delay in elevation of the Judges from the service cadre.

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ORDER

I.A. NO.23985/2023 (ITEM NO.4)

1. When this I.A. was called out, none appeared for the High Court of Delhi.
2. Though the matter concerns a very important issue and that certain directions with regard to Delhi High Court were issued on the last date of hearing, the Delhi High Court is not being represented. We do not appreciate the attitude of the Delhi High Court neglecting such an important matter.
3. The Registrar (Judicial) of this Court is directed forthwith to inform the Registrar General of the High Court of Delhi to remain present in this Court at 12.05 P.M., and the matter was passed over till 12.05 P.M.
4. When the matter is taken at 12.05 P.M., the Registrar General of the Delhi High Court as well as Smt. Kavita Jha, learned counsel are present in the Court. The Registrar General of the Delhi High Court tenders an unconditional apology for not being represented. Smt. Kavita Jha submits that since she was in an overnight parheard and pro-bono matter, she could not remain present when the matter was called out.

5. In view of the above, we do not propose to take any further action in the matter. However, the Registry of the High Court of Delhi as also the lawyers representing it, should ensure that they are duly represented when their matters are listed before this Court.

6. The following three prayers are sought through this application:-

i. To High Courts to fill vacancies from service judges or the bench up to 50% of their total strength of judges if a vacancy from the Bar Quota has been lying vacant for more than 6 months.

ii. To issue appropriate directions to the High Courts to fill the vacancies from the Judicial Service Quota as expeditiously as possible: and

iii. To clarify and ensure that the ratio of quota of judges from the Service Judges/Bench remain the same in any given High Court at least to 1/3rd of the total vacancies in that High Court, irrespective of transfer to or from such a High Court.”

7. Insofar as the first prayer i.e. a direction to fill up 50% of the seats in the High Court from the service quota is concerned, we are afraid, as to whether such a direction can be issued on judicial side.

8. We, therefore, are not inclined to consider the said prayer, leaving it open to the applicants to pursue the remedies before such forum as is permissible in law.

9. Insofar as prayer Nos.(ii) and (iii) are concerned, we find the requests to be reasonable, inasmuch as there is already a requirement to fill in 1/3rd of the total vacancies in a particular High Court from the cadre of District & Sessions Judges.

10. We would expect the High Courts to strictly maintain that ratio.

11. It is further to be noted that the tenure of the Service Judges in the High Court, most of the times, is only few years. Taking into consideration that aspect of the matter, we would request all the High Courts to take immediate steps in recommending the names for elevation from the service cadre prior to the occurrence of such vacancies, so that there is no delay in elevation of the Judges from the service cadre.

12. With the above observations and directions, the application is disposed of.

I.A. NOS.121642/2018, 5933/2023 IN I.A. NOS.121642/2018 I.A. NO.162247 & 162248/2018 & I.A. Nos.162199 and 162201 of 2018 (ITEM NOS.1, 2 & 3)

Since the order passed by this Court stands complied with, these applications are disposed of.

I.A. NOS.201893/2022, 93974/2019 & 72900/2021, 73015/2021, 40695/2021 & 50269/2022 (ITEM NOS.5, 6 & 7)

1. We find that seven important issues arise for consideration, which are :-

(i) As to whether the 10% quota reserved for Limited Departmental Competitive Examination (for short, 'LDCE') for promotion to Higher Judicial Service i.e. cadre of District Judge, needs to be restored to 25% as determined by this Court in the case of All India Judges' Association and others v. Union of India and others, reported in (2002) 4 SCC 247?

(ii) As to whether the minimum qualifying experience for appearing in the aforesaid examination needs to be reduced, and if so, by how many years?

(iii) As to whether a quota needs to be reserved for meritorious candidate from the Civil Judge (Junior Division) to Civil Judge (Senior Division) so that there is an incentive for merit in the cadre of Civil Judge (Junior Division)?

(iv) If yes, then what should be the percentage thereof and what should be the minimum experience as a Civil Judge (Junior Division)?

(v) AS to whether the quota to be reserved for the aforementioned departmental examinations in a particular year should be calculated on the cadre strength or on the number of vacancies occurring in the particular recruitment year?

(vi) As to whether some suitability test should also be introduced while promoting the Civil Judge (Senior Division) to the Cadre of District Judges against the existing 65% quota for promotion to Higher Judicial Services on the basis of merit-cum-seniority.

(vii) As to whether the requirement of having minimum three years practice for appearing in the examination of Civil Judge (Junior Division), which was done away by this Court in the case of All India Judges Association & Ors. (supra), needs to be restored? And if so, by how many years?

2. We request the learned Amicus Curiae and the learned counsel appearing on behalf of the State Governments, High Courts and the Union of India, to ponder over these issues and make their submission on the next date of hearing, so that a comprehensive order could be passed with regard to these issues.

3. List on 18.05.2023 at 2.00 p.m., as part heard.

I.A. NOS.44673 and 44677 of 2020 (S. NO.8)

1. Issues raised in the present applications could be considered by the jurisdictional High Court, at the first instance.

2. Learned counsel appearing for the applicants seeks permission to withdraw these applications with liberty to raise the issues before the jurisdictional High Court.

3. Permission is granted.

4. These applications are, accordingly, dismissed as withdrawn with the liberty sought for.

I.A. NOS.77008 and 77010 OF 2020 (S. NO.9.)

1. The applicant-in-person is not present when the matter was called.

2. The application is, therefore, dismissed for want of prosecution.

I.A. NOS.91089 & 91093 OF 2022 (S.NO.10)

1. The issues raised in the present applications are also raised by the applicant(s), by way of filing Civil Writ Petition No.16540/2014, before the High Court of Punjab & Haryana.

2. As such, the petitioner(s) can very well pursue the aforesaid writ petition.

3. We request the High Court to decide the said petition expeditiously, if the petitioner(s) makes an application in this regard.

4. With the aforesaid observations, the application is disposed of.