

Non-Reportable

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

Writ Petition (Civil) No.675 of 2018

Anand Kumar Tiwari & Ors.

.... Petitioner(s)

Versus

High Court of Madhya Pradesh & Ors.

.... Respondent (s)

With

Writ Petition (C) No.997 of 2020

J U D G M E N T

L. NAGESWARA RAO, J.

1. Writ Petition (C) No. 675 of 2018 has been filed for quashing the amendment made on 08.06.2005 to Madhya Pradesh Uchchar Nyayik Sewa (Bharti Tatha Seva Sharten) Niyam, 1994 and for quashing the order dated 27.10.2015 by which the High Court of Madhya Pradesh determined the inter-se seniority of direct recruited and promotee District Judges through a Limited Competitive Examination (for short, 'the LCE'). Further, the Petitioners sought a direction to the Respondent Nos.1 and 2 to give effect to the provisional

gradation list dated 04.09.2007. The relief sought in Writ Petition (C) No. 997 of 2020 is for quashing Rule 11 of the Madhya Pradesh Higher Judicial Services (Recruitment and Conditions of Service) Rules, 2017 (for short, '*the 2017 Rules*'). Another relief sought in the said Writ Petition is to direct the Respondents to give retrospective effect to the 2017 Rules. The Petitioners in both the Writ Petitions were directly recruited as District Judges to the Madhya Pradesh Higher Judicial Services. As the issues that arise in the Writ Petitions are the same, both the Writ Petitions are disposed of by a common judgment.

2. The Petitioners in Writ Petition (C) No. 675 of 2018 were appointed as District Judges (entry level) by direct recruitment on 10.09.2009. A provisional gradation list of the District Judges was issued by a notification dated 15.02.2010. In the said provisional gradation list, the Petitioners were shown as seniors to those District Judges who were promoted through LCE. A representation was made on behalf of the District Judges promoted through LCE for altering the gradation list and showing them as seniors to the direct recruits. The Administrative Committee accepted the representation and resolved to give seniority to three

promotees through LCE over direct recruits. On 18.05.2013, the Full Court accepted the recommendations of the Special Committee for granting seniority to the District Judges promoted through LCE over direct recruits. Thereafter, the Special Committee constituted for considering the inter-se seniority of judicial officers undertook the issue afresh in the light of Rule 11 of the Madhya Pradesh Higher Judicial Services (Recruitment and Conditions of Service) Rules, 1994 (for short, '*the 1994 Rules*') and resolved to recommend that the District Judges who were promoted through LCE on 02.09.2009 shall be given seniority over the directly recruited District Judges who were appointed on 10.09.2009. This decision was taken on the basis that the seniority between direct recruits and promotees shall be determined in accordance with the date of appointment. The recommendation made by the Special Committee was accepted by the Administrative Committee on 13.10.2015. The Full Court approved the recommendation made by the Special Committee regarding the inter-se seniority of the District Judges. Consequently, the seniority list was issued on 27.10.2015 on the basis of the Full Court resolution. The main grievance of the Writ Petitioners pertains to the order

dated 27.10.2015 by which the seniority list was issued showing the Petitioners below the District Judges who were promoted through LCE in the year 2009.

3. The brief facts in Writ Petition (C) No. 997 of 2020 are that the Petitioner was appointed as a District Judge (entry level) in the direct recruitment to the Higher Judicial Services in the State of Madhya Pradesh on 27.05.2008. He preferred representations between 02.08.2010 and 31.05.2014 for determination of seniority on the basis of 40 point roster, as per the directions of this Court in ***All India Judges' Association & Ors. v. Union of India and Ors.***¹ The representations preferred by him were rejected on 11.09.2019 on the ground that the 2017 Rules came into force with effect from 13.03.2018 and are prospective in operation. The Petitioner was informed that the roster for determining the inter-se seniority of the District Judges shall be implemented after 13.03.2018.

4. According to the 1994 Rules, the method of appointment to the post of District Judges (entry level) was either by direct recruitment or promotion. On 21.03.2002, this Court approved the recommendations of Justice Shetty Commission. One of the issues that was considered by this

¹ (2002) 4 SCC 247

Court in its Judgment in ***All India Judges' Association*** (supra) relates to the method of recruitment to the posts in the cadre of Higher Judicial Services District Judges and Additional District Judges. It was held that 25% of the posts shall be filled by direct recruitment from amongst advocates and the process of recruitment has to be on the basis of a competitive examination. The remaining 75% posts shall be filled up by promotion. This Court was of the opinion that there should be an incentive amongst the relatively junior officers to improve and compete with each other to get quicker promotion while maintaining the ratio of 75% appointment by promotion and 25% by direct recruitment in the Higher Judicial Services. It was held by this Court that in this 75% quota for promotees, 50% shall be filled up by promotion on the basis of principle of merit-cum seniority and the remaining 25% of the posts shall be filled up by promotion directly on the basis of merit through a departmental LCE for which the qualifying service as Civil Judge (Senior Division) shall not be less than 5 years. Pursuant to the direction given by this Court in ***All India Judges' Association*** (supra), the 1994 Rules were amended in 2005 to bring them in accord with the directions issued by

this Court. Rule 5 provides appointment as District Judges (entry level) shall be 50% by promotion, 25% through LCE and 25% through direct recruitment. According to the proviso to Rule 5 (1) (b), the recruitment by promotion through LCE shall be made on the basis of posts available till the attainment of the required percentage. The said proviso was declared ultra vires by the High Court of Madhya Pradesh in its Judgment in **Y.D. Shukla & Anr. v. High Court of Judicature of Madhya Pradesh & Ors²**.

5. Civil Judges who passed the LCE were recommended for promotion and were appointed on 02.09.2009. The Petitioners who were selected for appointment by direct recruitment were appointed on 10.09.2009. In **All India Judges' Association** (supra), this Court considered the issue relating to inter-se seniority of the promotees and direct recruit District Judges. It was decided that for the purpose of determination of seniority of the direct recruits and promoted District Judges, the 40 point roster which has been approved by this Court in **R.K. Sabharwal & Ors. v. State of Punjab & Ors.³** should be followed. The High Courts were directed to suitably amend the seniority Rules on

² 2009 (2) MP LJ 22

³ (1995) 2 SCC 745

the basis of roster. The Administrative Committee of the Madhya Pradesh High Court deferred the matter pertaining to the amendment of the seniority rule in view of the pendency of SLP (C) No.24437 of 2008 filed against the judgment of the Madhya Pradesh High Court in Y.D. Shukla's case. Meetings were held by the Administrative Committee on 04.11.2016, 02.12.2016 and 28.02.2017. But no decision could be taken due to the pendency of SLP (C) No. 24437 of 2008. Finally, on 13.03.2018 the 2017 Rules were notified in supersession of the 1994 Rules. According to Rule 5 of the 2017 Rules, 65% of the posts shall be filled up by promotion from amongst Civil Judges (Senior Division) on the basis of merit-cum seniority and passing the suitability test to be conducted by the High Court, 10% of the posts shall be filled up by promotion from amongst Civil Judges (Senior Division) who have completed minimum five years of service on the basis of merit through LCE to be conducted by the High Court and the remaining 25% shall be filled up by direct recruitment from amongst the eligible advocates on the basis of written examination and viva-voce test to be conducted by the High Court.

6. According to Rule 11 (1) of the 2017 Rules, the relative seniority of the members of service holding substantive posts in their respective quota at the time of commencement of the Rules shall be as it existed before the commencement of these Rules. As per Rule 11 (2), the cadre posts shall be filled up by rotation based on the quota fixed in Rule 5 (1) (a), (b) and (c). Insofar as the determination of inter-se seniority of District Judges is concerned, a roster for filling up the posts based on quota shall be maintained.

7. The main contention of the Petitioners is that there has been inordinate delay in amendment to the seniority rule. Though, this Court directed the seniority rule to be amended in the year 2002, the amendment was made by the High Court only in the year 2018. Dr. Harshvir Pratap Sharma and Mr. Ashok Kumar Sharma, learned Senior Counsel relied upon the judgment of this Court in ***All India Judges' Association*** (supra) and an order passed at a later date directing the High Courts to amend the seniority Rule by including the roster system for determining the inter-se seniority of District Judges. The delay that occurred in the amendment of Rules cannot be detrimental to the interest of the directly recruited District Judges, and, therefore, according to the Petitioners,

the seniority of District Judges has to be re-determined on the basis of roster by retrospective effect being given to the 2017 Rules.

8. On the other hand, Mr. Ravindra Shrivastava learned Senior Counsel appearing for the High Court of Madhya Pradesh submitted that the Full Court which met on several occasions after the judgment of this Court in ***All India Judges' Association*** (supra) deferred the amendment to the seniority rule in view of the pendency of SLP (C) No.24437 of 2008 before this Court relating to the inter-se seniority of District Judges. Ultimately, the High Court has taken a decision in the year 2018 to amend the rule of seniority by introducing the roster as the basis for determining inter-se seniority. He asserted that the 2017 Rules are prospective and the representations preferred by the direct recruits for the benefit of roster system from a prior date were rejected by the Administrative Committee of the High Court of Madhya Pradesh.

9. The delay in the decision taken by the High Court to bring the seniority rule in accord with the directions given by this Court in ***All India Judges' Association*** (supra) on the ground of pendency of SLP before this Court is not justified.

The subject matter of the decision of the High Court of Madhya Pradesh in Y.D. Shukla's case is the validity of proviso to Rule 5 (1) (b) of the 1994 Rules, according to which recruitment to the post of District Judges shall be made on the basis of vacancies available on the attainment of required percentage. The question of inter-se seniority of promotees and direct recruits was not directly an issue in the said case. Moreover, the 2017 Rules were made during the pendency of the SLP which was dismissed later on 14.08.2018. However, the Petitioners are not entitled to the relief of the 2017 Rules being given retrospective effect. According to Rule 11 (1) of the 2017 Rules, the relative seniority of members of service working on the date of commencement of the Rules shall not be disturbed. The roster shall be prepared and maintained only after the commencement of operation of the Rules. The Petitioners cannot claim that their seniority has to be reworked on the basis of roster as directed by this Court in ***All India Judges' Association*** (supra) case.

10. Dr. Harshvir Pratap Sharma, learned Senior Counsel submitted that the Petitioners were correctly shown above the District Judges promoted through LCE till 2013. He

argued that the representations preferred by promotee District Judges through LCE ought not to have been accepted by the High Court to unsettle the seniority of direct recruits. He further submitted that the decision of the Special Committee is flawed as the date of appointment was taken to be the criteria for fixing inter-se seniority by resorting to Rule 12 (1) (e) of the Madhya Pradesh Civil Services (General Condition of Service) Rules, 1961 (for short, '*the 1961 Rules*'), which is not applicable for determining the seniority of the District Judges. Therefore, the decision taken by the Special Committee and approved by the Full Court of the Madhya Pradesh High Court is unsustainable.

11. It was contended on behalf of the High Court that there is no provision in the 1994 Rules by which inter-se seniority of promotees and directly recruited District Judges could be determined. Therefore, the High Court followed the principles of the 1961 Rules for determining the same. Moreover, in the absence of any rule for determination of inter-se seniority continuous officiation is a well-accepted principle. After carefully examining the recommendations made by the Special Committee which was approved by the Administrative Committee and the Full Court of the Madhya

Pradesh High Court, we are in agreement with the submission made on behalf of the High Court that in the absence of any rule for determining inter-se seniority of direct recruits and promotees, the date of appointment/promotion can be taken into account for fixing seniority. In addition, there is no error committed by the High Court in adopting the principle of Rule 12 (1) of the 1961 Rules.

12. On 19.07.2014, the Full Court of the Madhya Pradesh High Court requested the Special Committee to examine the dispute of inter-se seniority of direct recruits and promotees through LCE in light of Rule 11 of 1994 Rules and Rule 12 of 1961 Rules. After giving an opportunity to all stakeholders, the Special Committee resolved to follow the 1961 Rules according to which the relative seniority of direct recruits and promotees was determined according to the date of appointment/ promotion order. Taking note of the absence of any provision for determining inter-se seniority of direct recruits and promotees, the Special Committee suggested amendment to the Rules. Realising that the principle of continuous officiation is well settled, especially where inter-se seniority is not dealt with in the Rules, the Full Court of the

High Court correctly approved the resolution of the Special Committee. After the introduction of the 2017 Rules, seniority inter-se direct recruits and promotees shall be determined on the basis of Roster.

13. As we have answered the main issues against the Petitioners, it is not necessary to deal with the other submissions made on their behalf. Mr. Puneet Jain, learned counsel for Respondent No. 11 submitted that the service rendered by Respondent No.11 in the Fast-Track Court should be counted while computing his seniority. Respondent No. 11 is at liberty to pursue his remedies as this Court is not concerned with the said issue in these Writ Petitions.

14. For the foregoing reasons, the Writ Petitions are dismissed.

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

.....J.
[ANIRUDDHA BOSE]

**New Delhi,
August 12, 2021.**