[2025] 7 S.C.R. 1998 : 2025 INSC 921

Tosh Kumar Sharma
v.
High Court of Judicature at Allahabad & Ors.
R1: High Court of Judicature at Allahabad
R2: State of Uttar Pradesh
R3: Selection & Appointment Committee of U.P.H.J.S. Examination

(Civil Appeal No. 9510 of 2025)

16 July 2025

[Ahsanuddin Amanullah and S.V.N. Bhatti, JJ.]

Issue for Consideration

Issue arose as regards the correctness of the order passed by the High Court rejecting the claim raised for appointment by the appellant to the post of Additional District and Sessions Judge in the Uttar Pradesh Higher Judicial Service.

Headnotes†

Uttar Pradesh Higher Judicial Service Rules, 1975 – rr.8(2), 18(4) – Number of appointments to be made – Appointment to the post of Additional District and Sessions Judge in the State Higher Judicial Service – Appellant participated in the selection process for 'Direct Recruitment to the Uttar Pradesh Higher Judicial Service-2016' – Thirty-seven posts under the General Category to be filled – Appellant placed at thirty-eight position in the Merit List – One candidate out of the thirty-seven candidates recommended by the High Court did not receive approval from the Hon'ble Governor/ State Government, leaving the actual recruitment under the General Category to thirty-six, with one vacancy remaining – Claim of the appellant that since he was the next candidate in line, he should automatically have been recommended for appointment – However, the said vacant post was carried forward for the next recruitment cycle – High Court rejected the claim of appellant – Correctness:

Held: If there is refusal to intervene, an unjust outcome would be perpetuated – Denial of recommendation and consequential appointment of the appellant not justified – r.8(2) of the Rules does not apply to the situation confronting the High Court upon the rejection

of one candidature by the Hon'ble Governor/State Government from out of the communicated list – First portion of r.8(2) contemplates that the said Rule is attracted only when the number of 'selected direct recruits available for appointment' is less than the number of direct recruit vacancies, *i.e.*, vacant posts available/advertised – In the absence of this condition being satisfied, the High Court not under obligation to act in terms of r.8(2) – Terminology employed in r.8(2) is 'selected direct recruits available for appointment' – Provision fundamentally negates any option of approving the High Court's invocation of r.8(2), as the said Rule itself is cognizant of availability for appointment – Term 'direct recruits' occurring in r.18(4) also need to be construed bearing the other Rules in mind, including the phraseology engrafted in r.8(2) – r.8(2) could have been pressed into service when, exempli gratia, vacancies advertised were ten, but only nine candidates figured in the Merit List, leaving one clear vacancy, which would be filled-up from the *Nyayik Sewa* by way of promotion, and also adjusted in the next recruitment cycle for direct recruits correspondingly, as per the proviso to r.8(2) – Impugned judgment set aside – High Court and the State Government to process and issue appointment letter to the appellant – Seniority to be reckoned notionally as part of 2016 Advertisement – Constitution of India – Art.233, 234, 235, 236. [Paras 21, 22, 25]

Case Law Cited

A. Raja v. D. Kumar, **2025 INSC 629 : 2025 SCC OnLine SC 1033 – relied on.**

Vallampati Sathish Babu v. State of Andhra Pradesh **[2022] 2 SCR 1080 : (2022) 13 SCC 193;** *Bihar State Electricity Board v. Suresh Prasad* **(2004) 2 SCC 681;** *Chief Justice of Andhra Pradesh v. L.V.A. Dixitulu* **[1979] 1 SCR 26 : (1979) 2 SCC 34;** *High Court of Judicature for Rajasthan v. P.P. Singh* **[2003] 1 SCR 593 : (2003) 4 SCC 239;** *Ashok Pal Singh v. Uttar Pradesh Judicial Services Association* **[2010] 12 SCR 25 : (2010) 12 SCC 635;** *Rajendra Singh Verma v. Lieutenant Governor* **[2011] 12 SCR 496 : (2011) 10 SCC 1;** *Dr. P.S. Malik v. High Court of Delhi* **(2020) 19 SCC 714;** *High Court of Kerala v. Reshma A.* **[2021] 1 SCR 289 : (2021) 3 SCC 755 – referred to.**

List of Acts

Uttar Pradesh Higher Judicial Service Rules, 1975; Constitution of India.

List of Keywords

Post of Additional District and Sessions Judge; '2016 Advertisement'; General category; One vacancy remaining; 'Selected direct recruits available for appointment'; 'Selected direct recruits'; 'Available for appointment'; Uttar Pradesh Higher Judicial Service; Merit List; Hon'ble Governor/State Government; Carried forward; Recruitment cycle; *Exempli gratia*; *Nyayik Sewa*.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9510 of 2025

From the Judgment and Order dated 22.09.2022 of the High Court of Judicature at Allahabad in WA No. 13979 of 2022

Appearances for Parties

Advs. for the Appellant:
Ajit Kumar Sinha, Sr. Adv., Deepak Goel, Jitendra Bharti, Ms. Alka Goyal, Ms. Archana Preeti Gupta.

Advs. for the Respondents:
Ms. Preetika Dwivedi, Abhisek Mohanty.

Judgment / Order of the Supreme Court

Order

Leave granted.

2. Heard Mr. Ajit Kumar Sinha, learned senior counsel for the appellant and Ms. Preetika Dwivedi, learned counsel for Respondent No.1-Allahabad High Court and Respondent No.3. The State of Uttar Pradesh is unrepresented, despite valid service of notice. We are glossing over the non-appearance in praesenti; however, the State to take note of defaults in appearances to avoid adverse orders that affect public interest.

3. The present appeal is directed against the Final Judgment and Order dated 22.09.2022 in WRIT - A No.13979 of 2022 passed by a learned Division Bench of the High Court of Judicature at Allahabad [2022:AHC:164781-DB] (hereinafter referred to as the 'Impugned Judgment'), whereby the claim raised for appointment by the appellant to the post of Additional District and Sessions Judge

in the Uttar Pradesh Higher Judicial Service (of the State of Uttar Pradesh) has been negatived.

FACTUAL SETTING:

4. The appellant, pursuant to the 'Direct Recruitment to the Uttar Pradesh Higher Judicial Service-2016' advertisement dated 10.05.2016 (hereinafter referred to as the '2016 Advertisement'), participated in the said selection process. The final results were published on 01.10.2020, and the appellant ranked at Sl. No.38 in the Merit List. However, since the total vacancies were only thirty-seven under the Unreserved/General Category (hereinafter referred to as the 'General Category'), the High Court forwarded a list of the top thirty seven persons, who were placed above the appellant, to the Hon'ble Governor/Government of Uttar Pradesh for acceptance, clearance and final issuance of Appointment Letters. However, at the level of the Hon'ble Governor, State of Uttar Pradesh, only thirty-six persons out of the thirty-seven recommended candidates were approved and consequently appointed. Herein lies the genesis of the instant dispute.

5. As per the appellant, since he was the next candidate in line as the next person (at Sl. No.38 in the Merit List) belonging to the General Category, he should automatically have been recommended to the State Government for appointment. The same was not done; instead, the said vacant post was carried forward for the next recruitment cycle and left unfilled in the subject selection.

APPELLANT'S SUBMISSIONS:

6. Mr. Sinha, learned senior counsel for the appellant, contended that once the vacancies as per the 2016 Advertisement were for thirty-seven persons in the General Category, the entirety of the said thirty-seven vacancies had to be filled up from the same selection process. It was urged that there cannot be any question of carry-forward of any vacancy in the facts of the present lis, for the reason that it was not the case of a casual vacancy having arisen after the candidates concerned had joined their posts. Rather, it was a case where one recommended candidate was not finally approved by the Hon'ble Governor/State Government, which made the thirty seventh post available and vacant for recruitment. In such a scenario, as canvassed by Mr. Sinha, it was incumbent upon the High Court to

recommend/forward the name of the next eligible candidate, which, as per the Merit List, was the present appellant.

7. It was further argued that Rule 8(2) of the Uttar Pradesh Higher Judicial Service Rules, 1975 (hereinafter referred to as the 'Rules'), being relied upon by the High Court, is not attracted in the facts at hand as the same is applicable only when the persons finally found eligible for being recommended for appointment is less than the total posts available, which is not the situation herein as there were more than thirty-seven persons available and eligible. Due to the restriction of thirty-seven posts, as pointed out above, only thirty-seven names were finally recommended to the Hon'ble Governor/ State Government, out of which only 36 candidates found favour.

8. It was also submitted that the one candidate who was not approved by the Hon'ble Governor/State Government had accepted the said position, and there was no pending litigation vis-à-vis the said person and the High Court/State Government. Learned senior counsel argued that as the said thirty seventh post was never filled up pursuant to the 2016 Advertisement, technically, such a post was still available. The contention of the High Court that it had been subsequently filled up by carry-forward to the next recruitment cycle, thus, ought not to be sustained. The Court was urged to allow the appeal.

SUBMISSIONS BY RESPONDENTS NO.1 AND 3:

9. Per contra, Ms. Dwivedi, learned counsel for the High Court, in support of the Impugned Judgment, submitted that the appellant may not be eligible for the reason that there was one candidate (Mr. Shakir Hasan) belonging to the Other Backward Classes Category (hereinafter referred to as the 'OBC Category'), who had fared better than the appellant in the Merit List, and if somebody was to be appointed for the said thirty seventh post, it would be Mr. Shakir Hasan. On the direct query as to whether the appointment of Mr. Shakir Hasan had materialised, learned counsel informed us that he had been appointed, treating him as falling in the OBC Category.

10. The Court's next line of examining proceeded as follows:

    (a) Whether, even after the appointment of Mr. Shakir Hasan in the OBC Category, a vacancy in the General Category subsisted, in relation to the selection process initiated by the 2016 Advertisement?

(b) Whether any candidate had staked a claim for appointment on the ground that she/he stood higher in the Merit List than the appellant but had not been recommended for appointment?

11. Learned counsel referred to the Counter-Affidavit to submit that in accordance with Rule 8(2) of the Rules, after the candidature of one recommended person was not approved by the Hon'ble Governor/ State Government, the Selection and Appointment Committee vide Minutes dated 19.06.2020 had resolved, inter alia, as under:

> '…The post now vacated after the cancellation of his candidature will be accounted for in the next recruitment process as an unforeseen vacancy. It is also resolved that promotion under Rule 8(2) of Rules, 1975 against one post be made so that necessary compliance of the order of Apex Court in Malik Mazhar Sultan's case may be ensured.'

12. Learned counsel argued that the promotion was also made against the post remaining vacant on account of the rejected candidature as per the Rules.

13. Ms. Dwivedi, as an officer of the Court, on the factual score, submitted viz. (a) Mr. Shakir Hasan was appointed under the OBC Category, and (b) no other person had sought appointment on the thirty seventh post under the General Category claiming to be higher up on the Merit List than the appellant. We appreciate her fair stand.

ANALYSIS:

14. Before appreciating the crux of the matter at hand, we may note the special position of the High Court in matters relating to the Judicial Services of the State(s)/Union Territory(ies) under its jurisdiction. It would be fitting to advert to certain Articles from the Constitution of India, 1950 (hereinafter referred to as the 'Constitution'):

> '233. Appointment of district judges.—
>
> (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.
>
> (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district

judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

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234. Recruitment of persons other than district judges to the judicial service.— Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.

235. Control over subordinate courts.— The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

236. Interpretation.—In this Chapter—

(a) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression "judicial service" means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.'

15. In several judgments, including, but not limited to, Chief Justice of Andhra Pradesh v L.V.A. Dixitulu, (1979) 2 SCC 34; High Court of Judicature for Rajasthan v P.P. Singh, (2003) 4 SCC 239; Rajendra

Singh Verma v Lieutenant Governor, (2011) 10 SCC 1, and; Dr. P.S. Malik v High Court of Delhi, (2020) 19 SCC 714, it has been spelt out by the Court that Article 235 of the Constitution bestows complete, exclusive and effective control over Judicial Officers, encompassing appointment, removal, reduction of rank, dismissal, transfer, promotion etc. on the concerned High Court.

16. Three learned Judges of this Court in the High Court of Judicature for Rajasthan (supra) opined that a Committee of Judges can be authorised by the Full Court/Chief Justice or the concerned High Court Rules to decide on matters, and such delegation to the Committee was permissible in law. In Rajendra Singh Verma (supra), the facts of the lead case were that an officer of the Delhi Higher Judicial Service was recommended to be compulsorily retired by the Screening Committee of the Delhi High Court, and the Full Court approved such recommendation. Aggrieved, that officer moved the Delhi High Court by way of a writ petition, which was dismissed. When the matter was carried to this Court, no reason was found to interfere and the appeal(s) were dismissed, inter alia, with the observation:

> '218. On a careful consideration of the entire material, it must be held that the evaluation made by the Committee/ Full Court, forming their unanimous opinion, is neither so arbitrary nor capricious nor can be said to be so irrational, so as to shock the conscience of this Court to warrant or justify any interference. In cases of such assessment, evaluation and formulation of opinions, a vast range of multiple factors play a vital and important role and no one factor should be allowed to be blown out of proportion either to decry or deify an issue to be resolved or claims sought to be considered or asserted. In the very nature of things, it would be difficult, nearing almost an impossibility to subject such exercise undertaken by the Full Court to judicial review except in an extraordinary case when the Court is convinced that some real injustice, which ought not to have taken place, has really happened and not merely because there could be another possible view or someone has some grievance about the exercise undertaken by the Committee/Full Court.'
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> (emphasis supplied)

17. In this appeal, we are, in effect, considering the legality of the decision(s) taken by the Selection and Appointment Committee comprising of learned Judges of the High Court on the conclusion of selection process initiated pursuant to the subject advertisement. Doubtlessly, the views of a Committee of the High Court or the Full Court itself are to be bestowed due consideration and appropriate weightage. However, we are convinced that in the instant appeal, the appellant deserves to succeed, and if we refuse to intervene, an unjust outcome would be perpetuated. The reasons for our statement follow hereinafter.

18. This Court is required to examine how the said vacancy of one post should be treated, and if at all it should be filled up from the Merit List resulting from the 2016 Advertisement, or not.

19. Having considered the matter in its entirety, we find substance in the contentions of the learned senior counsel for the appellant. The fact remains that thirty-seven posts under the General Category were to be filled pursuant to the 2016 Advertisement. It is a fact that the appellant was placed at position thirty-eight in the Merit List. It is also a fact that one candidate out of the thirty-seven candidates recommended by the High Court did not receive approval from the Hon'ble Governor/State Government, leaving the actual recruitment under the General Category to thirty-six, with one vacancy remaining. For clarity, it is noted that another candidate, although appointed, unfortunately, later committed suicide. However, this does not impact the present matter, and we are not reckoning the said resultant vacancy in appreciating the applicability of Rule 8 of the Rules to the controversy presented by the admitted circumstances of this case.

20. The issue, thus, lies in a narrow compass of Rule 8. Let us look at Rule 8, especially sub-Rule (2) of the Rules:

> '8. Number of appointments to be made –
>
> (1) The Court, shall, from time to time, but not later than three years from the last recruitment, fix the number of officers to be taken at the recruitment keeping in view the vacancies then existing and likely to occur in the next two years.
>
> Note - The limitation of three years mentioned in this sub-rule shall not apply to the first recruitment held after the enforcement of these rules.

> (2) If at any selection the number of selected direct recruits available for appointment is less than the number of recruits decided by the Court to be taken from that source, the Court may increase correspondingly the number of recruits to be taken by promotion from the Nyayik Sewa;
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> Provided that the number of vacancies filled in as aforesaid under this sub rule shall be taken into consideration while fixing the number of vacancies to be allotted to the quota of direct recruits at the next recruitment, and the quota for direct recruits may be raised accordingly; so, however, that the percentage of direct recruits in the service does not in any case exceed 25% of strength of the service:'
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> (emphasis supplied)

21. Rule 8(2) is not mired in complexity. As per the contention of the High Court, the thirty seventh post was a vacancy which had to be carried forward, and was done so by the Selection and Appointment Committee, which also resolved to make a promotion against one post as per the orders passed at different points in time in Malik Mazhar Sultan and Anr. v Uttar Pradesh Public Service Commission and Ors., Civil Appeal No.1867/2006. On deeper scrutiny, our finding is that Rule 8(2) of the Rules does not apply to the situation confronting the High Court upon the rejection of one candidature by the Hon'ble Governor/State Government from out of the communicated list. The first portion of Rule 8(2) of the Rules itself contemplates that the said Rule is attracted only when the number of 'selected direct recruits available for appointment' is less than the number of direct recruit vacancies, i.e., vacant posts available/advertised. In the absence of this condition being satisfied, the High Court is not under obligation to act in terms of Rule 8(2) of the Rules. Admittedly, and at the cost of repetition, thirty-seven General Category posts were available as per the 2016 Advertisement, of which thirty-seven candidates were recommended. Among these thirty-seven candidates, the Hon'ble Governor/State Government rejected one person's candidature. The terminology employed in Rule 8(2) is 'selected direct recruits available for appointment'. Had the term only been 'selected direct recruits', we could have upheld the contentions of Ms. Dwivedi. However, this is immediately followed by 'available for appointment'.

The provision fundamentally negates any option of approving the High Court's invocation of Rule 8(2) of the Rules, as the said Rule itself is cognizant of availability for appointment. This implies that it accounts for a situation wherein, for instance, a Merit List contains eleven candidates, but the recruitment process culminates in recommending ten candidates for notification. If the top ten candidates are approved by the Hon'ble Governor/State Government, the person placed at the eleventh position is out of the game. However, if, for any reason, one or more of the top ten candidates do not get approved for appointment, the eleventh-ranked candidate from the same selection process is entitled to be offered an appointment. This logically flows from reading and construing 'selected direct recruits available for appointment' as a whole. We have borne in mind the principles elucidated recently by a Three-Judge Bench in A. Raja v D. Kumar, 2025 SCC OnLine SC 1033, which has considered a whole host of relevant precedents on interpretive methods. We find our analysis to be in accord therewith. The term 'direct recruits' occurring in Rule 18(4) of the Rules will, therefore, also need to be construed bearing the other Rules in mind, including the phraseology engrafted in Rule 8(2).

22. Rule 8(2) could have been pressed into service when, exempli gratia, vacancies advertised were ten, but only nine candidates figured in the Merit List, leaving one clear vacancy, which would be filled-up from the Nyayik Sewa by way of promotion, and also adjusted in the next recruitment cycle for direct recruits correspondingly, as per the proviso to Rule 8(2), such that the direct recruits do not ever exceed 25% strength of the service.

23. The appellant was placed at the thirty eighth position in merit, alongside others ranking below him, who were all eligible for appointment, i.e., 'available for appointment'. However, due to the limited number of posts, i.e., thirty-seven in the General Category, the top thirty-seven from the Merit List were recommended for final appointment. As fate would have it, the candidature of one originally recommended person did not materialise into an appointment, and the said person accepted the position.

24. In light of the above, we are unable to justify the denial of recommendation and consequential appointment of the appellant. For the sake of clarity, this is not a case where the appellant is

ineligible or otherwise disqualified for appointment. This is also not a case where a 'continuing wait list' is being created. For the reasons stated above, this appeal is allowed. The Impugned Judgment is set aside.

25. The High Court and the State Government are directed to process and issue Appointment Letter to the appellant. His seniority would be reckoned notionally as part of the 2016 Advertisement's selection process. Needless to state, no back-wages or any other emoluments preceding the date of actual joining in service shall be due and/or payable to the appellant. The entire exercise, including necessary formalities, shall be completed within two months from the date. The appellant shall be assigned a posting, and shall complete the prescribed training.

26. We have perused Ashok Pal Singh v Uttar Pradesh Judicial Services Association, (2010) 12 SCC 635; High Court of Kerala v Reshma A., (2021) 3 SCC 755, and; Vallampati Sathish Babu v State of Andhra Pradesh, (2022) 13 SCC 193, which find mention in the High Court's Counter-Affidavit. Insofar as Ashok Pal Singh (supra) is concerned, it does not even touch upon the specific issue emanating herein. The High Court of Kerala (supra) reiterates the settled principle that, ordinarily, the number of appointments made cannot exceed the vacancies advertised/notified, as well as the understanding that a selection process may reasonably contemplate both actual and anticipated vacancies, but not future vacancies. We are unable to see how this judgment in any way militates against what we have held. Vallampati Sathish Babu (supra) held:

> '20. An identical question came to be considered by this Court in Suresh Prasad [Bihar SEB v. Suresh Prasad, (2004) 2 SCC 681: 2004 SCC (L&S) 438]. In the said decision, it is specifically observed and held that even in case candidates selected for appointment have not joined, in the absence of any statutory rules to the contrary, the employer is not bound to offer the unfilled vacancy to the candidates next below the said candidates in the merit list. It is also further held that in the absence of any provision, the employer is not bound to prepare a waiting list in addition to the panel of selected candidates and

> to appoint the candidates from the waiting list in case the candidates from the panel do not join. The aforesaid decision of this Court has been subsequently followed by the Andhra Pradesh High Court in Samiulla Shareef [State of A.P. v. Samiulla Shareef, 2013 SCC OnLine AP 482].'
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> (emphasis supplied)

27. The dicta in Vallampati Sathish Babu (supra), following Bihar State Electricity Board v Suresh Prasad, (2004) 2 SCC 681, was based on the provision/Rule therein. The concerned provision in Vallampati Sathish Babu (supra) is as follows:

> '13. Rule 16 of the 2012 Rules is in respect of preparation of the select list. Sub-rule (5) of Rule 16 of the 2012 Rules, which is relevant for the purpose of this case reads as under:
>
> "(5) The number of candidates selected shall not be more than the number of vacancies notified. There shall be no waiting list and posts if any unfilled for any reason whatsoever shall be carried forward for future recruitment."'
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> (emphasis supplied)

28. Rule 8(2) of the Rules specifically incorporates and employs the term 'selected direct recruits available for appointment'. To try to read it in the manner the High Court would like us to read, would do violence to the plain and clear text of the Rule. As such, Vallampati Sathish Babu (supra) and Bihar State Electricity Board (supra) do not aid the High Court. We may, in passing, albeit, record that the matter deserved a higher level of scrutiny, which the Division Bench did not accord it.

29. Learned counsel for the High Court, at this juncture, prayed that to put an authoritative quietus to the issue(s) and prevent further litigation concerning inter-se seniority, this Court may direct that the appellant be placed below the last-appointed candidate in the same selection process. Finding merit in the request made, the same was put to the learned senior counsel for the appellant. On instructions, learned senior counsel does not oppose such a proposal. Ordered

accordingly – the appellant shall be placed immediately below all persons appointed pursuant to the 2016 Advertisement, including Mr. Shakir Hasan, to reckon his seniority and entry into service without financial commitments to the State Government.

Result of the case: Appeal allowed.

†*Headnotes prepared by:* Nidhi Jain