

Prem Narayan Singh vs Honble High Court Of Madhya Pradesh on 12 August, 2021

Equivalent citations: AIR 2021 SUPREME COURT 3892, AIR ONLINE 2021 SC 490

Author: L. Nageswara Rao

Bench: Aniruddha Bose, L. Nageswara Rao

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

Writ Petition (Civil) No.1069 of 2019

Prem Narayan Singh and Ors.

.... Petitioner(s)

Versus

Hon'ble High Court of Madhya Pradesh

... Respondent (s)

J U D G M E N T

L. NAGESWARA RAO, J.

Interlocutory Application for impleadment is allowed.

1. The Petitioners are Members of the Higher Judicial Services working as District Judges in the State of Madhya Pradesh. They were appointed to the Higher Judicial Services from 2007 onwards after being selected in the Limited Competitive Examinations (for short, 'LCE'). They have challenged the resolution of the Administrative Committee of the High Court of Madhya Pradesh dated 14.12.2017 by which it was resolved that the merit of candidates in LCE would not be relevant for altering inter se seniority in the 1 | Page feeder cadre. The Full Court resolution by which the resolution of the Administrative Committee dated 14.12.2017 was approved is also assailed in the Writ Petition. The revised gradation list dated 01.02.2019 on the basis of the resolution of the Special Committee is also questioned in the Writ Petition.

2. Initially, there were two sources of recruitment to the Higher Judicial Services, namely by promotion from the members of the Subordinate Judicial Service and by direct recruitment. The final report dated 11.11.1999 by Justice Shetty Commission was considered by this Court in its judgment dated 21.03.2002 in All India Judges' Association & Ors. v. Union of India and Ors. 1 This

Court was of the opinion that an incentive should be provided to the junior officers to improve and compete with each other to get quicker promotion. This Court was also of the opinion that while maintaining 75 per cent appointments to the post of District Judges by promotion and 25 per cent by direct recruitment, there should be two methods of promotion. 50 per cent of the posts in the Higher Judicial Services must be filled up by promotion on the principle of merit-cum-seniority and the remaining 25 per cent of the posts shall be filled up 1 (2002) 4 SCC 247 2 | Page by promotion, strictly on the basis of merit through a limited departmental competitive examination for which the qualifying service of the Civil Judge (Senior Division) shall not be less than five years. The High Courts were directed to frame rules in that regard.

3. The Madhya Pradesh Higher Judicial Services (Recruitment and Conditions of Service) Rules, 1994 (hereinafter, 'the 1994 Rules') was accordingly amended in the year 2005. Rule 5 of the 1994 Rules reads as follows: -

“Rule 5 - Method of appointment

(a) 50 percent by promotion from among the civil judges (senior division) on the basis of, merit cum seniority and passing 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 5 years qualifying service;

Provided that notwithstanding that a person has passed such competitive examination, his suitability for promotion shall be - considered by the High Court on the basis of his past performance and reputation;

(c) 25 percent of the post shall be filled by the direct recruitment from among the eligible advocates on the basis of the written test and viva-voice conducted by the high court, 3 | Page Provided that if any post earmarked for direct recruitment remains vacant even after two consecutive selection processes held for that purpose, the same shall be filled by promotion from amongst the Civil Judges (Senior Division), having not less than 7 years of aggregate Judicial service and have attained the age of 35 years and have not attained the age of 48 years as on the 1st January of the year in which application for filling up such vacant posts are invited, strictly on the basis of merit through written examination and viva- voce conducted by the High Court keeping in mind suitability of the candidate on the basis of his past performance and reputation, on the assumption that quota for direct recruitment to the extent of vacant posts has broken, down."

(2) Appointment to the categories (b) and (c) of subrule (1) of rule 3 shall be made by the High Court by selection of members of the service from categories (a) and (b) respectively on merit-cum-seniority basis; Provided that no member of the service shall be appointed in the category (b) and (c) of sub-rule (1) of rule 3 unless he has completed five years and three 4 | Page years continuous service in the category (a) and {b) respectively.

4. Seniority of the members of the Higher Judicial Services is dealt with in Rule 11 which is as follows: -

“Rule 11. Seniority – (1) The seniority of the person appointed to a post in categories (a), (b) and (c) of sub rule (1) of rule 3 shall, unless he has been reduced in rank on account of punishment, be determined in accordance with-

(a) The date of continuous officiation in the service in case of officers promoted to category (a);

(b) The date of order of appointment in the case of direct recruits to post in category (a); and

(c) The date of order of promotions to categories (b) and (c) respectively or such date, as may be specified in this regard by the High court:

Provided that where the date of continuous officiation in the case of a member promoted to a post in category

(a) and the date of joining the service in the case of direct recruit to the post in the same category, be the same, the promoted officer shall be treated as senior:

Provided further that inter seniority among the persons promoted by an order of the same date or among direct recruits appointed by an order of the same date shall

5 | Page follow the order in which their names have been recommended by the High court.

(2) The seniority of persons appointed or promoted to the various categories prior to the commencement of these rules, shall also be determined on the basis of above principles.”

5. On 22.04.2007, the Full Court decided that the seniority of Civil Judges who have been selected through LCE shall be on the basis of their merit. A representation was preferred on 23.10.2007 by Mr. N.P. Singh who has filed an application for impleadment in this Writ Petition, requesting the High Court to determine seniority of those Civil Judges who have been promoted after passing the LCE on the basis of seniority in the lower cadre. He filed a Writ Petition in the High Court of Madhya Pradesh on 24.12.2017 which this Court is informed is pending. The representation preferred by Mr. N.P. Singh was rejected on 12.12.2008. Smt. Giribala Singh, one of the impleading Respondents in this Writ Petition has also preferred a representation for restoration of original seniority in the lower cadre to determine the seniority in the Higher Judicial Services which was not accepted.

6. This Court is informed by Mr. P.S. Patwalia, learned Senior Counsel appearing for the Petitioners that the 6 | Page Administrative Committee uniformly took a decision that inter se seniority of the District Judges selected through LCE should be on the basis of merit in the examination and in the

order in which they were recommended for promotion. On 14.12.2017, the Administrative Committee held that the inter se seniority in the feeder cadre shall not be affected. It was resolved that the LCE shall only be for considering the suitability and it was not intended to alter the inter se seniority of the candidates selected in the LCE. The recommendation made by the Administrative Committee was approved by the Full Court on 18.12.2017.

7. The Madhya Pradesh Higher Judicial Services (Recruitment and Conditions of Service) Rules, 2017 (hereinafter, 'the 2017 Rules') was notified on 13.03.2018. Rule 11 of the 2017 Rules reads as under: -

“11. Seniority: -

(1) The relative seniority of the members of service holding substantive post within their respective quota at the time of commencement of these rules shall be as it exists before the commencement of these rules. (2) After the commencement of these rules, the cadre posts in category (a) of sub-rule (1) of Rule 3 shall be filled up by rotation based on the quota fixed in clauses 7 | Page

(a), (b) and (c) of sub-rule (1) of Rule 5 in every recruitment year.

(3) For the purpose of proper maintenance and determination of seniority of persons appointed through the aforesaid sources, a roster for filling of vacancies based on quota of vacancies reserved here-in-above, as given in Schedule-II shall be maintained for each recruitment year. This roster would operate on yearly basis in which applications for appointment were invited in the recruitment year.

(4) Seniority of persons appointed under clause (a), (b) and

(c) of sub-rule (1) of Rule 5 to the Service in category

(a) of rule (1) of Rule 3 shall be determined in following manner: -

(a) The Seniority, inter se, of persons appointed by promotion under clause (a) of sub-rule (1) of Rule 5 shall be determined by their inter se seniority in the lower cadre;

(b) The Seniority, of person promoted through limited competitive examination of Civil Judges (Senior Division) under clause (b) of sub-rule (1) of Rule 5 shall be determined in accordance with the inter se Seniority in the lower cadre;

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(c) The inter se seniority of Persons appointed to the Service by direct recruitment under clause (c) of sub-rule (1) of Rule 5 shall be fixed in the order of merit they are placed in the selection list, those

recruited earlier shall rank senior to those recruited later;

(5) The seniority of the members of the service promoted under clause (a) of sub-rule (1) of Rule 5 and under proviso to clause (c) of sub-rule (1) of Rule 5 of the HJS Rules, 1994, (amended vide L.D. No.F.17(E)40/88/21- B(one) dated 13-08-2015) shall be as per the seniority in the lower cadre.

8. Rule 11 (4) (b) provides that the seniority of a person promoted through LCE as Civil Judge (Senior Division) shall be determined in accordance with inter se seniority in the lower cadre. Consequently, the gradation list of the District Judges was altered and seniority of District Judges was determined on the basis of their seniority in the lower cadre. The Petitioners whose seniority was adversely affected in view of the decision of the Administrative Committee, approved by the Full Court and the revised gradation list preferred representation to the Administrative Committee, 9 | Page which was rejected. Aggrieved thereby, the Petitioners have approached this Court by filing this Writ Petition.

9. We have heard Mr. P.S. Patwalia, learned Senior Counsel for the Petitioners, Mr. Ravindra Shrivastava, learned Senior Counsel for the High Court of Madhya Pradesh and Mr. Dushyant Dave, learned Senior Counsel for the impleaded Respondents. The contention of the Petitioners is that their seniority as District Judges was properly fixed in accordance with the judgment of this Court in All India Judges' Association (supra).

10. There is no dispute regarding their merit in the LCE and the High Court rightly determined the seniority amongst those promoted in the LCE quota as per the recommendations made by the High Court. They relied upon the second proviso to Rule 11 of 1994 Rules, according to which inter se seniority amongst persons promoted by an order of the same date shall follow the order in which their names have been recommended by the High Court. It was argued on behalf of the Petitioners that the agenda placed before the Administrative Committee in 2017 related to the seniority of those District Judges selected by direct recruitment. However, the Administrative Committee proceeded to depart from the earlier decisions of the Full 10 | Page Court and decided that inter se seniority of District Judges from the LCE quota should be on the basis of seniority in the lower cadre. The Petitioners argued that the decision of the Administrative Committee as approved by the Full Court is contrary to the judgment of this Court in All India Judges' Association (supra). Insofar as the 2017 Rules are concerned, it was submitted on behalf of the Petitioners that their seniority cannot be revised as Rule 11 (1) provides that the relative seniority of members of services holding substantive posts in their respective quota at the time of commencement of the 2017 Rules shall be as it existed before the commencement of the 2017 Rules. In other words, the Petitioners contended that their seniority which was settled at the time of their promotion cannot be disturbed. The Petitioners suggested that Rule 11 (4) (b) of 2017 Rules, according to which inter se seniority of the District Judges promoted through LCE should be on the basis of seniority in the lower cadre, is contrary to law. Petitioners referred to a judgment of this Court in Dinesh Kumar Gupta & Ors. v. Hon'ble High Court of Judicature of Rajasthan and Ors.² to submit that this Court while interpreting a Rule which is in pari materia, held that inter se seniority of District Judges promoted through LCE should be on the basis of merit in the examination.

11. The resolution of the Administrative Committee dated 14.12.2017 which was approved by the Full Court was supported by Mr. Ravindra Shrivastava, learned Senior Counsel by arguing that the view taken by the High Court is a possible view and should not be interfered with by this Court. However, Mr. Shrivastava submitted that dispute relating to the criteria for inter se seniority of LCE candidates has been settled by this Court in Dinesh Kumar Gupta's case.

12. Mr. Dushyant Dave, learned Senior Counsel appearing for the impleaded Respondents submitted that the Writ Petition deserves to be dismissed in limine for non-joinder of the parties. None of the District Judges who would be adversely affected have been made parties to the Writ Petition. He argued that introduction of LCE is only for providing a method of recruitment. He submitted that promotion to the Higher Judicial Services is on the basis of seniority-cum-merit to which an exception is carved out by providing a channel of promotion on the basis of merit amongst senior Civil Judges. Merit has to be restricted only for the purpose of selection. This Court in All India Judges' Association's case did not hold that the inter se seniority of District Judges promoted through LCE should be on the basis of merit. According to him, if the Petitioners' case is accepted, the senior Civil Judges who have already been selected as District Judges through LCE would be seriously affected. The decision of this Court in Dinesh Kumar Gupta's case is per incuriam, according to Mr. Dave as it is contrary to the law laid down in All India Judges' Association and it needs to be ignored. He further argued that the earlier decisions of the Full Court are contrary to the Rules and the decision of the Administrative Committee in 2017 is in strict conformity with the Rules.

13. Appointment to Higher Judicial Services in accordance with the Rules was initially by direct recruitment and promotion. On the basis of the recommendations by Justice Shetty Commission, this Court directed that 25 per cent of posts in the service filled by promotion should be strictly on the basis of merit through LCE of Civil Judges (Senior Division). The High Courts were directed to frame appropriate rules in conformity with the judgment in All India Judges' Association. This channel of promotion on the basis of merit in LCE was introduced to provide an incentive to relatively junior officers to get quicker promotion.

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14. In Dinesh Kumar Gupta (supra), this Court considered the issue relating to inter se seniority of District Judges promoted through LCE. Source of recruitment to the Rajasthan Higher Judicial Services in Rule 31 of Rajasthan Higher Judicial Service Rules, 2010 is similar to Rule 5 of the Madhya Pradesh Higher Judicial Service Rules. The decision of the Administrative Committee that the seniority in the lower cadre is to be taken into account for the purpose of inter se seniority of the District Judges promoted through LCE was held not to be justified by this Court. It was observed in Dinesh Kumar Gupta (supra) that LCE will be reduced to a mere qualifying examination if inter se seniority in the lower cadre has to be taken into account for determining the seniority of District Judges promoted through LCE. This Court declared that the inter se placement of candidates selected through LCE must be based on merit and not on the basis of seniority in the erstwhile cadre.

15. We are not in agreement with the learned Senior Counsel appearing for the impleaded Respondents that the judgment of this Court in Dinesh Kumar Gupta (supra) is contrary to the law laid down by this Court in All India Judges' Association's case. Much stress was laid by Mr. Dave on the fact that introducing a channel of appointment 14 | P a g e to District Judges would only be providing a method of recruitment and no more. The incentive that was directed to be given to junior officers working as Civil Judges for promotion as District Judges solely on the basis of merit would be defeated if their seniority in the cadre of District Judges is not determined on the basis of their merit in LCE.

16. The reason for introduction of promotion through LCE is to improve the calibre of the members of Higher Judicial Services. Such of those meritorious candidates who have been promoted on the basis of LCE cannot be deprived of their seniority on the basis of merit in the examination. In any event, 50 per cent of the posts of District Judges shall be filled by promotion on the principle of merit-cum-seniority. The dispute in this case concerns seniority inter se amongst those who have been promoted through LCE.

17. Rule 11 (1) of the 2017 Rules makes it clear that the relative seniority of members of the service who are holding substantive posts at the time of commencement of the Rules shall be as it existed before the commencement of the Rules. The seniority of the Petitioners which has been determined prior to the 2017 Rules cannot be disturbed. The Petitioners will not be adversely affected by Rule 11 (4) (b) of the 2017 Rules which alters the criteria for determination of seniority 15 | P a g e from merit to inter se seniority in the lower cadre. The resolution of the Administrative Committee approved by the Full Court being contrary to the law laid down by this Court in Dinesh Kumar Gupta's case is set aside. Consequently, the gradation list of the District Judges dated 01.02.2019 shall be revised in accordance with the law laid down by this Court in Dinesh Kumar Gupta' case.

18. The Writ Petition is allowed, accordingly.

.....J. [L. NAGESWARA RAO]J. [ANIRUDDHA BOSE]
New Delhi, August 12, 2021.

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