

Malik Mazhar Sultan vs U.P. Public Service Commission Through ... on 26 September, 2023

Author: Dhananjaya Y Chandrachud

Bench: Dhananjaya Y Chandrachud

2023INSC860

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

IA No 53466 of 2022
in
Civil Appeal No 1867 of 2006

Malik Mazhar Sultan & Anr

...

Versus

U P Public Service Commission & Ors

...

In the matter of :

State of Haryana

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JUDGMENT

Dr Dhananjaya Y Chandrachud, CJI 1 An application has been filed by the State of Haryana in the proceedings in Malik Mazhar Sultan v U P Public Service Commission 1 seeking two directions:

(i) The recruitment of judicial officers in the Judicial Branch of the Haryana Civil Service be conducted in accordance with the provisions of Part C of the Punjab Civil Service (Judicial Branch) Rules 1951 2 (as applicable to 1 Civil Appeal No 1867 of 2006 2 “Rules”

(ii) The order of this Court dated 12 February 2009 in IA 60 of 2008 filed by the High Court of Punjab and Haryana be modified.

2 The issue bears upon the filling up of 175 posts of Junior Civil Judges. 3 By its order dated 4

January 2007, this Court underscored that an independent and efficient judicial system is part of the basic structure of the Constitution and that if a sufficient number of Judges is not appointed, the dispensation of justice to citizens would be seriously affected. The Court noted that the judicial system faces problems arising out of delays in the dispensation of justice for which one of the major causes is an insufficient number of judges when compared to the large number of cases pending or in relation to the judge-population ratio. In this backdrop, the Court issued directions, noting that it had become necessary to take steps to ensure that vacancies in judicial institutions are filled on a timely basis.

4 The relevant part of the order of this Court is extracted below:

“Before we issue general directions and the time schedule to be adhered to for filling vacancies that may arise in subordinate courts and district courts, it is necessary to note that selections are required to be conducted by the concerned authorities as per the existing Judicial Service Rules in the respective States/Union Territories. We may, however, note that, progressively, the concerned authorities would consider, discuss and eventually may arrive at a consensus that the selection process be conducted by the High Court itself or by Public Service Commission under the control and supervision of the High Court. In this regard, considerable progress has already been made. Reference can be made to the decision taken in a Conference held between the Chief Justices and Chief Ministers, minutes whereof show that in some of the States, selection of subordinate judicial officers at all levels of civil judges is already being made by the High Courts. Some States, where selection is still being made by the Public Service Commission, were agreeable to entrust the selection to the High Courts whereas Chief Ministers/Ministers of Himachal Pradesh, West Bengal, Punjab and Kerala were of the view that the present system may continue but the decision taken jointly was that in the said States [Himachal Pradesh, West Bengal, Punjab and Kerala] setting up of question papers and evaluation of answer sheets be entrusted to the High Court. Further decision taken was that in other States where selection of subordinate judicial officers is not being done by the High Courts, such selection be entrusted to the High Courts by amending relevant Rules. In this connection, with the affidavit filed on behalf of the Calcutta High Court, a copy of the letter dated 15th September, 2006, addressed by the Registrar General of the said Court to the Secretary, Judicial Department, Government of West Bengal, has also been annexed. That letter refers to the aforesaid decision taken in the Conference of Chief Ministers and Chief Justices held on 11th March, 2006 requesting the State Government for effecting suitable amendment in the recruitment rules in terms of the decision in the Conference above-referred. At this stage, however, these are not the issues for our consideration. As already indicated, the selection is to be conducted by authorities empowered to do so as per the existing Rules.”

5 In the above observations, the Court observed that selections are required to be conducted in terms of existing judicial service rules in the States/Union Territories. The Court expressed the view that a consensus has to be evolved so that the selection process can be conducted by the High Courts

or by the Public Service Commissions under the control and supervision of the High Courts. The above extract contains a reference to a decision which was arrived at during the Conference between the Chief Justices and Chief Ministers. Several States where the selection was being conducted by the Public Service Commissions had agreed to entrust the process to the High Courts. Certain States (Himachal Pradesh, West Bengal, Punjab and Kerala) desired that the existing system may continue, but the drawing up of question papers and evaluation of answer sheets would be entrusted to the High Court. In States where the selection was not being done by the High Courts, it was expected that the selection should be entrusted to them by amending the relevant Rules. This Court rejected the submission that the constitution of a Committee by the Chief Justice to oversee the process of appointment to the judicial service would amount to an encroachment on the functioning the State Public Service Commissions, since the object and purport of doing so was to ensure that the vacancies are filled up on a timely basis and the problem of delay in the dispensation of justice is tackled.

6 On 15 January 2007, the Registrar General of the High Court of Punjab and Haryana conveyed to the State Government that in view of the order dated 4 January 2007 in Malik Mazhar Sultan (supra), the vacancies in the cadre of Civil Judge and District Judge up to 15 January every year will be notified by the High Court and the process of recruitment would be conducted by the High Court “at its end” by advertising the posts, conducting the examination and declaring the results.

7 On 23 March 2007, the State of Haryana constituted a Selection Committee consisting of:

- (i) Three-Judges nominated by the Chief Justice;
- (ii) The Advocate General;
- (iii) The Legal Remembrancer; and
- (iv) The Secretary of the Legislative Department.

8 The State Government has stated on affidavit that the Members of the Haryana Public Service Commission stood impeached between 2006 and 2008; and the Commission was reconstituted in September 2008. 9 Recruitment to the judicial service in the State of Haryana is governed by the Rules, as applicable to the State of Haryana. Part C of the Rules provides for ‘Examination of Candidates’. Part C is prefaced by the provision that:

“The following rules and instructions, which are liable to alteration from year to year, are prescribed for the examination of candidates for admission to the Judicial Branch of Haryana Civil Service”.

(emphasis supplied) 10 Rules 4 and 5 of Part C are set out below:

“4. The examination papers shall be set and marks awarded by the examiners who will be appointed by the Haryana Public Service Commission. There shall also be a test in viva voce which will be conducted by the Haryana Public Service Commission. The representative of the High Court shall be one of the members of the Selection Committee and the opinion given by him with regard to the suitability of the candidate shall not be disregarded unless there are strong and cogent reasons for not accepting the opinion, which reasons must be recorded in writing.

5. The Judges of the High Court may, from time to time, declare what the subject of the examination shall be.”¹¹ From 2007, the State Government has, on the occasion of each recruitment, notified amendments to the Rules in question so as to provide for the filling up of vacancies in the judicial service under a Committee consisting of the representatives of the High Court, the State Government and the Public Service Commission.

¹² On 11 May 2007, an IA³ was filed before this Court by the State of Haryana on which the following order was passed:

³ IA No 17 “So far as prayer No.1 is concerned, we may state that after considering all the points including the points raised by the State in this IA, the order was passed by this Court and hence the prayer is rejected.

So far as prayer No.2 is concerned, in our opinion, the order passed by this Court is very clear. It is also clear from the following observations:

“Before we issue general directions and the time schedule to be adhered to for filling vacancies that may arise in subordinate courts and district courts, it is necessary to note that selections are required to be conducted by the concerned authorities as per the existing Judicial Service Rules in the respective States/Union Territories.” Therefore, this Court expressed that in future what course of action to be taken. In our opinion, therefore, the High Court was not right in addressing a letter to the State Government. Accordingly to the understanding of the High Court the vacancies were to be filled up at its end by advertising the posts and by conducting the examinations and declaring the results which was not true. The application is accordingly disposed of.” (emphasis supplied)¹³ By its observations in the above order, this Court was of the view that the understanding of the High Court that the vacancies were to be filled up “at its end” by advertising the posts and conducting the examination and, eventually, declaring the results was not a correct reading of the previous order dated 4 January 2007. Be that as it may, on 23 May 2008, a meeting was held of a Selection Committee consisting of three-Judges of the High Court, the Chief Secretary of the Government of Haryana, the Principal Secretary, Home and Justice, the Advocate General and the Joint Registrar (Recruitment). The minutes recorded an assurance of the Chief Secretary that sanction for taking the selection of candidates for Haryana Civil Service (Judicial Branch) out of the purview of the Haryana Public Service

Commission and entrusting it to the Selection Committee of the High Court would be sent shortly, after obtaining the approval of the Cabinet.

14 Following the above development, on 12 February 2009, this Court took up IA No 60 filed by the High Court and two writ petitions 4 in which the following order was passed:

“The Public Service Commission had initiated steps to fill up 78 vacancies of Civil Judge (Jr.Division) pursuant to the request made by the High Court of Punjab & Haryana and on 14 th September 2008 a notification was issued by the Haryana Public Service Commission. There were about 6,000 candidates appeared for the preliminary examination which was held on 16.11.2008 and the result was also published by the Public Service Commission and the candidates have to appear for final selection. Meanwhile, the High Court after consultations with the Government of Haryana and the Public Service Commission decided that further process of selection would be held at the instance of the High Court and the Public Service Commission jointly. The High Court has now constituted a Committee and the Committee will set up the question papers which will be valued and thereafter followed by interview wherein three Judges are nominated by the Chief Justice of the Punjab & Haryana and three members of the Public Service Commission would participate.

In the Writ Petition(C) Nos.39 and 40/2009, the petitioners allege that the process of recruitment had already been initiated by the Public Service Commission as per Article 235 of the Constitution of India and as per the Punjab Civil Service (Judicial Branch) Rules, 1951 (as applicable to State of Haryana) and it is submitted that the recruitment had already been started on the basis of the rules. The same can be continued under the said rules and any deviation would be against the decision of this Court in Hemen Malhotra Vs. High Court of Delhi, reported in (2008) 7 SCC p.11 and other cases and the writ petitioners pray that Haryana Public Service Commission alone has got the authority to continue the further selection process.

We are not inclined to interfere with the process of selection as the Public Service Commission is also involved in the process of selection. The final recruitment would take place on the basis of the joint consultation with the High Court of Punjab & Haryana, representatives of the State and the Haryana Public Service Commission as per the decision of December 22, 2008. As large number of posts are still lying vacant, we request the 4 Writ Petition (C) Nos 39 and 40 of 2009 High Court as well as Haryana Public Service Commission and the State Government to complete the process of selection at the earliest. The order of 11.5.2007 is modified to the extent indicated above.” (emphasis supplied) 15 The process which has been followed in the State of Haryana is that the State Government has notified alterations in the Rules so as to facilitate the selection process to the judicial service being conducted under the supervision of a Committee consisting of three-Judges of the High Court nominated by the Chief Justice, two representatives of the State Government and a member of the Public Service Commission.

16 By a notification dated 14 December 2020 issued by the Governor in exercise of powers conferred by Article 234 read with proviso to Article 309 of the Constitution, the Punjab Civil Service (Judicial Branch) Haryana Amendment Rules 2020 were notified. Rule 7B has been substituted in the following terms:

"7B (1) Notwithstanding anything to the contrary contained in these rules, appointment to two hundred and thirty nine presently lying vacant and seventeen anticipatory/unforeseen posts of Civil Judges (Junior Division) shall be made by the State Government through Special recruitment on the recommendations of a Selection Committee constituted for the purpose in the manner hereinafter laid down.

(2) The Selection Committee referred to in sub-rule (1) shall comprise of the following members, namely:-

(i) three Judges of the High Court of Punjab and Haryana nominated by the Chief Justice, of whom the senior-most shall be the Chairman;

(ii) the Advocate General, Haryana;

(iii) the Chief Secretary to Government, Haryana; and

(iv) the Chairman of the Haryana Public Service Commission."

Part C of the Rules which provides for conducting of the competitive examination has also been substituted. The substitution of Rule 7B was specifically made to facilitate the filling up of 239 vacancies in the post of Civil Judge (Junior Division) which were lying vacant and 7 anticipated vacancies. 17 In the application which has now been filed before this Court, the State of Haryana seeks a direction that it should be permitted to conduct the entire selection process through the Public Service Commission for recruitment to the Judicial Branch and the order dated 12 February 2009 should be modified in order to facilitate this exercise.

18 In support of the application, it has been urged by Mr Lokesh Sinha, Senior AAG, that the Rules contemplate that:

(i) The selection process to the judicial service has to be carried out by the Public Service Commission;

(ii) Rule 4 of Part-C provides that while the examination papers shall be set and marks awarded by the examiners appointed by the Public Service Commission, a representative of the High Court shall be one of the members of the Selection Committee for conducting the viva voce and the opinion given by that representative in regard to the suitability of the candidate would not be disregarded, save and except for cogent reasons to be recorded in writing;

(iii) Rule 5 provides that the Judges of the High Court may from time to time declare the subject of the examination;

(iv) Hence, in terms of the mandate of the Rules, it is for the Public Service Commission to carry out the entire process of recruitment and a limited role is assigned to the representative of the High Court in conducting interviews; and

(v) The order of this Court dated 4 January 2007 also contemplated that the rules for recruitment which have been framed by the respective States have to be followed.

19 Responding to the above submissions, it has been urged on behalf of the High Court of Punjab and Haryana, by Mr P S Patwalia, senior counsel, that:

(i) From 2007 a consistent pattern has been followed by which recruitment has been made under the auspices of a Selection Committee consisting of three representatives of the High Court and three other members, namely,

(a) the Advocate General; (b) the Chief Secretary; and (c) the Chairperson of the Haryana Public Service Commission;

(ii) This process which has been consistently followed should not be deviated from, particularly, having regard to the fact that the entrustment of the process to the High Court would subserve the integrity and independence of the selection process; and

(iii) A unilateral decision has been taken by the State Government to take over the process in deviation of settled practice under the rule making power which has received the imprimatur of this Court.

20 The order of this Court dated 4 January 2007 specifically noted the importance of making timely appointments to the District Judiciary. This Court made a reference to the decision which was arrived at in the Conference of Chief Justices and Chief Ministers by which the High Courts were to be entrusted with the role of making appointments to the judicial service. Several States have already ensured the amendment of their Rules framed under Articles 234 and 309 by entrusting the selection process to the High Courts. This Court also noted that in other States where the work was being conducted under the authority of the Public Service Commission, the work of selection was being supervised by a Committee appointed by the High Court. Thereafter, the order of this Court of 11 May 2007 found fault with the understanding of the High Court that the entire process would be carried out exclusively by the High Court. This order, however, was modified on 12 February 2009 so as to allow the selection process which was then underway to be concluded by a process in which the Committee for selection composed of the Judges nominated by the Chief Justice and representatives of the State and the Public Service Commission. 21 Part C of the Rules governing the selection to the judicial service in the State of Haryana contains provisions in terms of Rules 4 and 5 to the effect that the examination papers shall be set and marks awarded by examiners appointed by the Public Service Commission, while the High Court will have a representative only in the

Committee conducting the interviews. However, the initial part of Part C contains a provision that the rules and instructions are liable to alteration from year to year. It is undisputed that since 2007 Rule 7B has been substituted so as to allow for the selection process to be conducted under the supervision of a Committee consisting of three representatives of the High Court and three persons representing the State Government, including the Public Service Commission. This arrangement has been followed even in the previous recruitment which was conducted pursuant to the notification dated 14 December 2020.

22 Article 234 of the Constitution provides that appointments to the judicial service of a State, other than district Judges, shall be made by the Governor of the State in accordance with the 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.

23 The consistent pattern which has been followed by the State Government is that recruitment to the judicial service has been entrusted to a Selection Committee, as noted above. If the State Government wished to bring about any change in that position, it was incumbent upon it to consult the High Court and to do so based on cogent material bearing on objective data indicating the justification for abrogating the involvement of the High Court in conducting the selection examination and overseeing the process. The State Government has, during the course of its submissions, set out only two grounds for the proposed departure, namely:

(i) Under the Rules it is a mandate of the Public Service Commission to fill up vacancies in the judicial service; and

(ii) Even in the order dated 4 January 2007, this Court observed that the Rules of each State/UT have to be followed. This would be a superficial understanding of the position as it obtains in the State of Haryana. The consistent course of action which was followed on the basis of the exercise of the rule making power, by the substitution of Rule 7B, would have been founded on the understanding that a broad-based committee consisting of both representatives of the High Court and of the State and the Public Service Commission should be entrusted with the task. This acknowledges the position that the High Court is best situated to understand the needs of the judicial service. Judges of the High Court who participate in the selection process have domain knowledge both of the subject and of the nature of the service. If this understanding, which has been reflected in the consistent course of action since 2007, was to be deviated from, this had to be based on cogent material which is found to be evidently lacking.

The State Government has not come before this Court seeking a modification of the arrangement by placing objective data which would indicate either the inability of the High Court to perform its task thus far or demonstrating that there have been deficiencies in the process conducted by the High Court.

24 Hence, for the above reasons, we are of the view that the State Government has not placed sufficient material before this Court to warrant a deviation from the course of action which has been pursued since 2007, for over fifteen years, including, as recently as by the notification dated 14 December 2020. 25 We accordingly do not accede to the request which has been made by the State Government in the IA which shall accordingly stand dismissed. 26 There is an urgent need to ensure that the existing 175 vacancies of Junior Civil Judges are filled up at the earliest. The State Government shall, therefore, within a period of two weeks from the date of this order, take necessary steps to ensure that the recruitment is conducted by a Committee consisting of (i) three Judges of the High Court nominated by the Chief Justice; (ii) the Chief Secretary of the State of Haryana; (iii) the Advocate General of Haryana; and (iv) the Chairperson of the Haryana Public Service Commission.

27 The Public Service Commission shall provide all required logistical support in accord with the past practice followed since 2007.

.....CJI.

[Dr Dhananjaya Y Chandrachud]J. [J B Pardiwala]
.....J. [Manoj Misra] New Delhi;

September 26, 2023

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