



**IN THE SUPREME COURT OF INDIA  
INHERENT/ORIGINAL JURISDICTION**

**I.A. NO.93974 OF 2019**

**WITH**

**I.A. NOS. 72900, 73015 AND 40695 OF 2021**

**WITH**

**I.A. NOS.50269 AND 201893 OF 2022**

**IN**

**WRIT PETITION (C) NO. 1022 OF 1989**

**ALL INDIA JUDGES ASSOCIATION  
AND OTHERS**

**...PETITIONERS**

**VERSUS**

**UNION OF INDIA AND OTHERS**

**...RESPONDENTS**

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## **JUDGMENT**

### **B.R. GAVAI, CJI**

#### **I. PREFACE**

**1.** This batch of applications raises issues pertaining to the qualification, promotion and selection of candidates who are desirous of either entering the Judicial Services as Civil Judge (Junior Division) or Higher Judicial Service, and with regard to the promotions at different levels within the Judicial Services.

**2.** Before we consider the issues in light of the submissions made on behalf of the various stakeholders, we first set out below the prayers sought in the various applications.

#### **I.A. NO.93974 OF 2019**

**3.** This I.A. has been filed seeking the following reliefs:

- (i) For clarification/directions whether the quota for LDCE for induction in the West Bengal Higher Judicial Service is to be maintained on the cadre strength of District Judge (Entry Level) or on the basis of the vacancies arising each year; or
- (ii) In the alternative, modify the order dated 20<sup>th</sup> April

2010 passed in the writ petition by restoring the share and/or quota for LDCE for introduction in West Bengal Higher Judicial Service to 25% of the cadre strength of District Judge (Entry Level) and by granting liberty to the High Court at Calcutta to fill up the vacancies for promotion on merit through LDCE in such manner that 10% of the total vacancies arising in a particular recruitment year is earmarked for LDCE or else the object and/or purpose of carving out such channel might be frustrated in so far as State of West Bengal is concerned.

**I.A. NOS. 72900 AND 40695 OF 2021 AND I.A. NO.50269 OF 2022**

**4.** These I.As. have been filed seeking directions in respect of:

- (i) Method of regular promotion (Objective Suitability Test); and
- (ii) Enhancement of percentage of quota for accelerated promotion strictly on the basis of merit through competitive examination for the post of District Judges.

### **I.A. NO. 73015 OF 2021**

**5.** This I.A. has been filed seeking the following relief:

(i) For modification of order dated 20<sup>th</sup> April 2010 passed in I.A. No.77 of 2000 in W.P.(C) No.1022 of 1989 (i.e. to increase and restore the quota to 25% from 10% for accelerated promotion to the post of District Judges) and to stay regular promotion initiated by the Hon'ble Bombay High Court until a suitability test is conducted in terms of the judgment dated 21<sup>st</sup> March 2002 passed by this Court.

### **I.A. NO. 201893 OF 2022**

**6.** This I.A. has been filed seeking the following reliefs:

(i) Modify orders dated 21<sup>st</sup> March 2002 and 20<sup>th</sup> April 2010 in W.P.(C) No.1022 of 1989 to suitably amend the LDCE eligibility conditions for all States and Union Territories, so that the LDCE quota is fully utilized; and

(ii) Modify the judgment and order dated 20<sup>th</sup> April 2010 in W.P.(C) No.1022 of 1989, to restore the LDCE quota to 25% instead of 10%.

## **II. RECORD OF PROCEEDINGS**

7. When the aforesaid IAs were listed before this Court on 25<sup>th</sup> April 2023, we had heard the learned *amicus curiae* as well as the learned counsel for the various State Governments and High Courts and found it necessary to decide certain larger issues concerning the administration of justice. We, therefore, framed the following seven issues for consideration:

- (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?

**8.** On the next date of hearing i.e., 18<sup>th</sup> May 2023, another issue (hereinafter referred to as, “Issue No.8”) was flagged by learned Senior Counsel Shri B.H. Marlapalle for consideration. The relevant portion of the order reads thus:

“Mr. B.H. Marlapalle, learned Senior Counsel, submitted that as per the Bar Council of India Regulations, initially provisional registration is required to be made for a period of 2 years. He further submitted that only if a candidate passes the All-India Bar Examination (AIBE), a permanent registration can be granted. He further submitted that while considering the issue as to whether a minimum number of years of practice should be made mandatory for permitting a candidate to appear for the examination of Civil Judge (Junior Division), it will also be necessary to take into consideration the aforesaid Regulations of the Bar Council of India.

We would also request the Union of India, all the State Governments and the High Courts to consider the aforesaid issue of Bar Council of India Regulations, while considering as to whether a minimum number of years of practice should be made mandatory before applying for the post of Civil Judge (Junior Division).”

**9.** It can thus be seen that Issue No.8 which was sought to be raised was that: “If the requirement of certain minimum years of practice for appearing in the examination of Civil Judge (Junior Division) is restored, should the same be calculated from the date of the provisional

enrolment/registration or from the date of passing of the All-India Bar Examination (AIBE)?”

**10.** On the said date of hearing i.e., 18<sup>th</sup> May 2023, this Court has directed the Union of India, all the State Governments and all the High Courts to furnish their responses in form of an affidavit.

**11.** Accordingly, various State Governments as well as the High Courts and the other stakeholders have filed their affidavits. The learned *amicus curiae* has meticulously tabulated the information as emerging from the said affidavits and produced the same along with his comprehensive note.

**12.** We have heard Shri Sidharth Bhatnagar, learned *amicus curiae* and learned Senior Counsel/counsel appearing for the various stakeholders on several dates. By way of the present judgment, we are deciding all the 8 issues.

### **III. DISCUSSION AND ANALYSIS**

**Issue No.1:** **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?***

**13.** For considering the aforesaid issue, we will have to consider the background for providing the reservation for LDCE for promotion to Higher Judicial Service.

**14.** In pursuance to the directions given by this Court in the judgment in the present proceedings dated 13<sup>th</sup> November 1991<sup>1</sup> (hereinafter referred to as “**First AIJA Case**”), the Government of India by a resolution dated 21<sup>st</sup> March 1996 constituted the First National Judicial Pay Commission under the Chairmanship of Justice K.J. Shetty, Former Judge of this Court (hereinafter referred to as “Shetty Commission”). After thorough deliberations, the Shetty Commission submitted its Report on 11<sup>th</sup> November 1999.

**15.** This Court, in the judgment in the present proceedings dated 21<sup>st</sup> March 2002<sup>2</sup> (hereinafter referred to as “**Third AIJA Case**”), considered various recommendations of the Shetty Commission, and the responses made thereto by various stakeholders. This Court considered the recommendations made by the Shetty Commission that the

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<sup>1</sup> (1992) 1 SCC 119 : 1991 INSC 290

<sup>2</sup> (2002) 4 SCC 247 : 2002 INSC 165

recruitment to the Higher Judicial Service *i.e.*, the District Judge Cadre from amongst the advocates should be 25% and appointment on the basis of promotion should be 75%.

**16.** While considering this recommendation, this Court observed thus:

**“27.** Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service *i.e.* District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary that the judicial officers, hard-working as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a Judicial Academy, which is very necessary. At the same time, we are of the opinion that there has to be certain minimum standard, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges. While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service *i.e.* the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a

competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned : 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.

**28.** As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:

(1)(a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;

(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges

(Senior Division) having not less than five years' qualifying service; and

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.

(2) Appropriate rules shall be framed as above by the High Courts as early as possible."

**17.** It can thus be seen that though this Court had approved the recommendation of the Shetty Commission that the recruitment to the Higher Judicial Service *i.e.*, the District Judge Cadre from amongst the advocates should be 25% and appointment by way of promotion should be 75%, it opined that there should be two methods insofar as appointment by promotion is concerned. This Court opined that 50% of the total posts in the Higher Judicial Service must be filled up by promotion on the basis of principle of merit-cum-seniority. This Court therefore directed that, for the said purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law. This Court further directed that the remaining 25% of the posts in the service

shall be filled up by promotion strictly on the basis of merit through LDCE. This Court further directed that, for being entitled to appear in the said LDCE, the qualifying service as a Civil Judge (Senior Division) should be not less than 5 years. This Court therefore directed the High Courts to frame the necessary rules so as to implement the aforesaid directions.

**18.** In pursuance of the aforesaid directions, the High Courts had amended the Service Rules and 25% of the posts of District Judges were reserved for being filled up through LDCE. However, many of the High Courts found it difficult to fill up 25% of posts through such a process. In some of the States, as many as 50 posts of District Judges to be filled up by such exercise remained vacant and there was no alternative method provided by which these vacant posts could be filled up. Though the Rules framed by some of the High Courts provided that such unfilled posts could be filled up by regular promotion, in some of the States no such Rules were framed. Many of the States therefore were of the opinion that the said 25% reservation needed to be reduced. Though some of the States like Gujarat, Delhi, Madhya Pradesh,

Jammu & Kashmir and Himachal Pradesh wanted that 25% reservation for LDCE should be continued but they also suggested that in case any post has remained unfilled in the said LDCE quota, they be filled by regular promotion. Some of the States also faced the difficulty that sufficient number of candidates were not available for being promoted under the LDCE category from the Cadre of Civil Judge (Senior Division). This was so, because in such States even in normal course, a Civil Judge (Senior Division) could be promoted through the 50% quota for merit-cum-seniority before the completion of his/her mandatory 5 years as a Civil Judge (Senior Division) for the purpose of LDCE. This Court therefore considered this issue in its judgment in the present proceedings dated 20<sup>th</sup> April 2010<sup>3</sup> (hereinafter referred to as “**Fourth AIJA Case**”). This Court found that a large number of unfilled vacancies in the 25% LDCE category was not good for judicial administration. Therefore, this Court found that it was desirable that 25% quota reserved for LDCE be reduced to 10%. This Court therefore issued the following directions:

“**6.** Having regard to various strategies available, we are of the considered view that suitable amendment

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<sup>3</sup> (2010) 15 SCC 170

is to be made for this 25% quota of limited departmental competitive examination. We are also of the view, with the past experience, that it is desirable that 25% quota be reduced to 10%. We feel so as the required result, which was sought to be achieved by this process could not be achieved, thus it calls for modification.

**7.** Thus, we direct that henceforth only 10% of the cadre strength of District Judges be filled up by limited departmental competitive examination with those candidates who have qualified service of five years as Civil Judge (Senior Division). Every year vacancies are to be ascertained and the process of selection shall be taken care of by the High Courts. If any of the post is not filled up under 10% quota, the same shall be filled up by regular promotion. In some of the High Courts, process of selection of these 25% quota by holding limited departmental competitive examination is in progress, such process can be continued and the unfilled seats, if meritorious candidates are available, should be filled up. But if for some reason the seats are not filled up, they may be filled up by regular promotion and apply the usual mode of promotion process. Thus we pass the following order.

**8.** Hereinafter, there shall be 25% of seats for direct recruitment from the Bar, 65% of seats are to be filled up by regular promotion of Civil Judge (Senior Division) and 10% seats are to be filled up by limited departmental competitive examination. If candidates are not available for 10% seats, or are not able to qualify in the examination then vacant posts are to be filled up by regular promotion in accordance with the Service Rules applicable.

**9.** All the High Courts are hereby directed to take steps to see that existing Service Rules be amended positively with effect from 1-1-2011. If the Rules are not suitably amended, this order shall prevail and further recruitment from 1-1-2011 shall be continued accordingly as directed by us. The time schedule prescribed in the order dated 4-1-2007

(in *Malik Mazhar Sultan case [Malik Mazhar Sultan (3) v. U.P. Public Service Commission, (2008) 17 SCC 703 : (2010) 1 SCC (L&S) 942]* ) shall be strictly adhered to for the purpose of selection. All the vacancies are to be filled up in that particular year and there shall not be any carry forward of the unfilled posts.”

**19.** Accordingly, in pursuance to the directions issued by this Court, the Recruitment Rules insofar as the recruitment in the Cadre of District Judges were amended. The earlier recruitment ratio of District Judge Cadre i.e., 50:25:25 for promotion and direct recruitment, was modified to 65:10:25 and the quota for LDCE was reduced.

**20.** However, since with the passage of time, sufficient number of candidates in the Cadre of Civil Judge (Senior Division) were eligible to be promoted as District Judge through LDCE, certain I.As. were filed before this Court for restoring the said 10% quota to 25%.

**21.** In response to the directions issued by this Court *vide* order dated 25<sup>th</sup> April 2023, various High Courts have filed their responses.

**22.** From the data compiled by learned *amicus curiae*, it would reveal that the High Courts of Chhattisgarh, Patna,

Kerala, Manipur, Madras and Uttarakhand have recommended that the quota of LDCE be restored to 25%. However, the High Courts of Gauhati, Andhra Pradesh, Gujarat, Himachal Pradesh, Madhya Pradesh, Orissa, Punjab & Haryana, Rajasthan, Sikkim, Tripura, Calcutta, Delhi and Jammu & Kashmir and Ladakh have recommended to retain the same position.

**23.** It is further to be noted that even those High Courts that have recommended that the LDCE quota to be restored to 25%, have further recommended that if any seat remains vacant, the same shall be filled up by regular promotion in the same year.

**24.** We find that if the quota of LDCE is restored to 25% as originally recommended in the **Third AIJA Case**, which was reduced to 10% in the **Fourth AIJA Case**, it will provide an incentive amongst the officers in the Cadre of Civil Judge (Senior Division). It will also provide them with an opportunity to get accelerated promotion in the Cadre of District Judge if they are meritorious and deserving.

**25.** Another difficulty that has come to our notice is that sufficient number of candidates are not available for

appearing in LDCE on account of requirement of having minimum 5 years' experience as Civil Judge (Senior Division) which is prescribed as an eligibility criterion for appearing in the LDCE for the Higher Judiciary.

**26.** In some of the States, a Judicial Officer who completes about 5 years' service in the Cadre of Civil Judge (Senior Division), in normal course, becomes entitled to be promoted in the Cadre of District Judge. We have already framed Issue No.2 dealing with this very conundrum, which we are considering immediately after this issue.

**27.** We find that in view of the answer that we propose for Issue No.2, sufficient number of Judicial Officers from the Cadre of Civil Judge (Senior Division) would be available who would be eligible for appearing in LDCE.

**28.** If, in a particular year sufficient candidates are not selected from the LDCE quota, it will be appropriate that such posts would revert back to the regular promotion quota based on merit-cum-seniority, to be filled up in the same year. Therefore, in such a case, we find that no adverse impact on the administration of justice would occur even if the LDCE quota is increased to 25%. In our view, this apart

from avoiding any adverse effect on administration of justice due to sufficient number of seats not being filled up would also ensure that no prejudice would be caused to the regular promotees and at the same time, the said exercise would provide an incentive to the meritorious Judicial Officers, if their merit deserves the same.

**Issue No.2: As to whether the minimum qualifying experience for appearing in the aforesaid examination needs to be reduced, and if so, by how many years?**

**29.** The difficulty of the requirement of having 5 years' experience as Civil Judge (Senior Division) was noticed by this Court in its order dated 19<sup>th</sup> April 2022 passed in the present proceedings<sup>4</sup> (hereinafter referred to as "**Fifth AIJA Case**"). No doubt that the said decision of this Court pertained only to the Delhi Judicial Services. After considering the rival submissions, a three-Judges Bench of this Court to which one of us (Gavai, J.) was a Member observed thus:

**"17.** The very purpose for providing the channel of promotion through LDCE was to provide an incentive to the officers amongst the relatively junior officers to improve and to compete with each other so as to excel and get quicker promotion. In the

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<sup>4</sup> (2022) 7 SCC 494 : 2022 INSC 445

peculiar situation prevailing in the High Court of Delhi, the very purpose is frustrated. We are, therefore, of the considered view that in the peculiar facts and circumstances, both IA No. 249 of 2009 and IA No. 89454 of 2021 deserve to be allowed.

**18.** Shri Rao, learned Senior Counsel appearing on behalf of the High Court of Delhi has fairly stated that the High Court of Delhi, on its own, has reserved two seats for the present judicial officers-applicants so that their claims are not defeated by passage of time or by delay in holding of the examination.

**19.** In view of the submission made by Shri Rao, no orders are necessary to be passed in IA No. 89450 of 2021, IA No. 44132 of 2022 in IAs Nos. 89450 and 88976 of 2021.

**20.** In the result, IA No. 89454 of 2021 filed by the judicial officers-applicants and IA No. 249 of 2009 filed by the High Court of Delhi are allowed in the following terms:

**20.1.** Para 28(1)(b) of the order dated 21-3-2002 [*All India Judges Assn. (3) v. Union of India*, (2002) 4 SCC 247 : 2002 SCC (L&S) 508] passed by this Court, is modified and substituted as under:

*“25% by promotion strictly on the basis of merit through LDCE of Civil Judges having 7 years' qualifying service [5 years as Civil Judge (Junior Division) and 2 years as Civil Judge (Senior Division)] or 10 years' qualifying service as Civil Judge (Junior Division).”*

**20.2.** Similarly, in the order dated 20-4-2010 [*All India Judges Assn. v. Union of India*, (2010) 15 SCC 170 : (2013) 1 SCC (L&S) 548] passed by this Court, the direction in para 7 i.e. “Thus, we direct that henceforth only 10% of the cadre strength of District Judges be filled up by Limited Departmental Competitive Examination with those candidates who have qualified service of five years as Civil Judge

(Senior Division)", is modified and substituted as under:

*"Thus, we direct that henceforth only 10% of the cadre strength of District Judges be filled up by Limited Departmental Competitive Examination with those candidates who have qualified service of 7 years [5 years as Civil Judge (Junior Division) and 2 years as Civil Judge (Senior Division)] or 10 years' qualifying service as Civil Judge (Junior Division)."*

**30.** Though in the said order, this Court considered the aforesaid requirement of 5 years' experience, only insofar as High Court of Delhi is concerned, from the responses we have received from various High Courts and the State Governments, we are of the view that the said requirement requires reconsideration.

**31.** As can be seen from the affidavits filed, the High Courts of Gauhati, Chhattisgarh, Himachal Pradesh, Madhya Pradesh, Orissa, Punjab & Haryana, Rajasthan, Sikkim, Madras, Tripura, Calcutta and Jammu & Kashmir and Ladakh have opposed the reduction of experience of 5 years. The Governments of these States have also adopted the suggestions made by their High Courts. However, the High

Court of Patna has recommended the qualifying service as a Civil Judge (Senior Division) should be 3 years.

**32.** The State of Haryana has observed that the average time taken by a Civil Judge (Junior Division) to be eligible for LDCE is 14 years. The State Government has therefore recommended that the qualifying service as Civil Judge (Senior Division) may be reduced to 2 or 3 years for being eligible to appear for LDCE.

**33.** Insofar as the State of Kerala is concerned, both the State Government and the High Court of Kerala have recommended that the minimum requirement of having an experience of 5 years as Civil Judge (Senior Division) should be brought down to 3 years.

**34.** High Court of Uttarakhand has recommended for reducing the minimum qualifying service of 5 years to 2 years. Further, the High Court of Allahabad has also recommended for reducing the minimum qualifying service of 5 years to 3 years.

**35.** Insofar as the States of Chhattisgarh and Manipur are concerned, it appears that the State Governments and the High Courts are not on the same pitch.

**36.** Insofar as the State of Chhattisgarh is concerned, the State Government has given a positive opinion with regard to amending the provision for reducing the minimum requirement of having an experience of 5 years as a Civil Judge (Senior Division) to 2 years. However, High Court of Chhattisgarh has opposed for reduction of the minimum qualifying experience.

**37.** The situation is converse insofar as State of Manipur is concerned. In the State of Manipur, though the High Court has recommended reduction of minimum experience from 5 years to 2 years, it has also recommended that the minimum years of service as a Judicial Officer including that of a Civil Judge (Junior Division) should not be less than 7 years. However, the State of Manipur though has opposed such a reduction, it has left the final decision to the wisdom of this Court.

**38.** Insofar as the State of Gujarat is concerned, it has not given any opinion. From the affidavit filed by the High Court of Gujarat, it appears that there exists a completely anomalous situation. Rule 5(3)(i) of the *Gujarat State Judicial Service Rules, 2005* provides that 2 years of qualifying service

as Civil Judge (Senior Division) is required for being eligible for promotion in the cadre of District Judge against 65% quota. However, Rule 5(3)(ii) of the said Rules provides that 5 years of qualifying service as Civil Judge (Senior Division) is required for being eligible for promotion in the Cadre of District Judge against 10% quota. In the affidavit of High Court of Gujarat itself, it is stated that the said position has been holding the field since the year 2005 and is working out well. The position that emerges in the State of Gujarat though is that, for being eligible for a promotional quota in a regular course, only 2 years' experience is required. However, to compete from LDCE, which is supposed to be for the purpose of providing incentive, a Judicial Officer must have 5 years' service as Civil Judge (Senior Division). We find that such a position is totally inconsistent with the idea of providing an incentive to a meritorious Civil Judge (Senior Division) to have an opportunity to get an accelerated promotion to the Cadre of District Judge.

**39.** We find that it will be appropriate to compare the position in some of the States with regard to average time taken by a Civil Judge (Junior Division) to get eligible for

LDCE as against the average time taken by a Civil Judge (Junior Division) to become a District Judge by regular promotions. In this respect, a Chart was submitted by the learned *amicus curiae*, extracted as under:

i. “Bihar”

- a) average time taken by a Civil Judge (JD) to be eligible for LDCE - **9 to 10 years**
- b) average time taken by a Civil Judge (JD) to become a District Judge by regular promotions – **9 to 10 years**

ii. Himachal Pradesh

- a) average time taken by a Civil Judge (JD) to be eligible for LDCE - **15 to 16 years**
- b) average time taken by a Civil Judge (JD) to become a District Judge by regular promotions – **19 to 20 years**

iii. Maharashtra

- a) average time taken by a Civil Judge (JD) to be eligible for LDCE - **11 years**
- b) average time taken by a Civil Judge (JD) to become a District Judge by regular promotions – **13 years**

iv. Manipur

- a) average time taken by a Civil Judge (JD) to be eligible for LDCE - **10 years 7 months**
- b) average time taken by a Civil Judge (JD) to become a District Judge by regular promotions – **11 years**

v. Punjab

- a) average time taken by a Civil Judge (JD) to be eligible for LDCE - **14 to 15 years**
- b) average time taken by a Civil Judge (JD) to become a District Judge by regular promotions – **15 years**

vi. Haryana

- a) average time taken by a Civil Judge (JD) to be eligible for LDCE - **14 years**
- b) average time taken by a Civil Judge (JD) to become a District Judge by regular promotions – **12 years**

vii. Uttar Pradesh

- a) average time taken by a Civil Judge (JD) to be eligible for LDCE - **9 to 10 years**
- b) average time taken by a Civil Judge (JD) to become a District Judge by regular promotions – **9 to 10 years”**

**40.** The comparative position would reveal that in most of the States, the average time taken by a Civil Judge (Junior Division) to climb the ladder of regular promotion and ultimately, be promoted as a District Judge is almost the same as the time it takes to become eligible for a Civil Judge (Senior Division) to appear for LDCE.

**41.** As such, there will be no actual incentive for a Judicial Officer to appear for LDCE and such incentive cannot be frustrated by actual working of the said scheme.

**42.** As has been discussed hereinabove, the purpose behind providing a special quota for LDCE is to enable the meritorious Judicial Officers to get accelerated promotion and enter the Cadre of District Judge at an earlier point of time than other less meritorious candidates. If a Judicial Officer even otherwise gets entry in the Cadre of District Judge after completion of 5 years of service as a Civil Judge (Senior Division), there will be no incentive available to him/her. As already discussed hereinabove, in some of the High Courts, a Judicial Officer gets into the Cadre of District Judge through regular promotion itself after he/she completes 5 years' service as Civil Judge (Senior Division). Therefore, in our considered view, it will be desirable to modify the requirement to become eligible for LDCE for the Higher Judicial Services and reduce the minimum number of years of experience as a Civil Judge (Senior Division) from 5 years to 3 years. However, at the same time, we are also of the opinion that, as recommended by some of the States, the

total number of years of experience for a Judicial Officer for being eligible for LDCE should be a minimum cumulative of 7 years including service as Civil Judge (Junior Division) and Civil Judge (Senior Division).

**Issue No.3:** **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)?**

**AND**

**Issue No.4:** **If yes, then what should be the percentage thereof and what should be the minimum experience as a Civil Judge (Junior Division)?**

**43.** The High Courts across the country have given varying opinions with regard to the aforesaid two issues. Whereas some of the High Courts have opposed for providing such a quota for promotion from Civil Judge (Junior Division) to Civil Judge (Senior Division), on the other hand, some of the High Courts have recommended the same. There are also diverse views on minimum number of years to be put in by a Civil Judge (Junior Division) before they are considered as

eligible for being promoted as Civil Judge (Senior Division) through LDCE mechanism.

**44.** In this respect, it will be apposite to refer to the judgment of this Court in the **Third AIJA Case**.

**45.** This Court, while considering the recommendation of the Shetty Commission for providing 25% quota for Direct Recruitment from the Bar and 75% quota for promotion on the basis of the principle of merit-cum-seniority, was of the view that in the 75% quota, 25% posts are required to be filled up through LDCE so as to provide an incentive to the meritorious candidates. We are of the view that there should be no reason as to why the said principle also cannot be adopted for promotion of Civil Judge (Junior Division) candidates to the Cadre of Civil Judge (Senior Division).

**46.** Therefore, we are of the view that a system wherein 10% of the posts in the Cadre of Civil Judge (Senior Division) would be reserved for promotion of Civil Judge (Junior Division) through the LDCE mechanism needs to be introduced so as to provide incentive at an earlier promotion to the meritorious candidates working in the Cadre of Civil Judge (Junior Division). The said seats would be filled up

through the same mechanism adopted for filling up the vacancies reserved through LDCE for entry into the Cadre of District Judge. The minimum experience of a Judicial Officer in the Cadre of Civil Judge (Junior Division) for appearing in such an examination should be 3 years.

**Issue No.5:** **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?**

**47.** Insofar as this issue is concerned, most of the State Governments except the four States of Haryana, Madhya Pradesh, Punjab and West Bengal have recommended filling up of vacant seats as per the total cadre strength and not as per the vacancies arising in a particular year. The learned *amicus curiae* has placed on record a chart depicting the said position of all the States who had filed their responses.

**48.** We are of the view that a uniform practice needs to be followed by all the States in the country. Since most of the States are already filling up the vacant posts as per the total cadre strength, keeping uniformity in mind, we are of the

view that the quota to be reserved for LDCE should be calculated on the basis of the cadre strength.

**Issue No.6:** **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.**

**49.** For considering this issue, it will be relevant to refer to the following observations made by this Court in the **Third AIJA Case**:

“**27.** Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary that the judicial officers, hard-working as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a Judicial Academy, which is very necessary. At the same time, we are of the opinion

that there has to be certain minimum standard, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges. **While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service.** Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned : **50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law.** The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.

**28.** As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:

(1)(a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;

(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.

(2) Appropriate rules shall be framed as above by the High Courts as early as possible.”

[Emphasis supplied]

**50.** It can be seen that, in the **Third AIJA Case**, while this Court had accepted the recommendations of the Shetty Commission, which recommended an increase in the Pay-Scales of the subordinate judiciary, this Court also emphasized the necessity of Judicial Officers becoming more efficient. This Court observed that it was imperative that they keep abreast of the developments in law and the latest judicial pronouncements. This Court further observed that, it was for that reason, the Shetty Commission had recommended the establishment of a Judicial Academy. This

Court also expressed that there should be an objective method for testing the suitability of the Judicial Officers who are in line for promotion to the Higher Judicial Service. This Court had observed that 50% of the total posts in the Higher Judicial Service must be filled by promotion based on the principle of merit-cum-seniority. It has further been observed that for the said purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of such candidates and to assess their continued efficiency with adequate knowledge of case-law. This Court further emphasized the necessity of postulating the basis of determining the suitability of the candidate while he/she was being considered to be promoted to the Cadre of Higher Judicial Service. The said determination was on the basis of various factors including as to whether such candidate possesses adequate legal knowledge or not.

**51.** Perusal of the affidavits filed by various High Courts as well as State Governments would reveal that in some of the High Courts, the Rules have been framed for determining the suitability of a candidate for being promoted to the Cadre of Higher Judicial Service from the Cadre of Civil Judge (Senior

Division). Perusal of the affidavits of the High Courts and the States where such suitability is being determined would reveal that various factors are taken into consideration while determining the suitability of a candidate like: (i) evaluation of judgments rendered by the Judicial Officer in the preceding five years; (ii) Annual Confidential Reports (ACRs) of the Judicial Officer in the preceding five years; (iii) disposal rate in the preceding five years; (iv) pendency of the disciplinary proceedings; and (v) the performance of the candidate in the *viva voce*.

**52.** We are of the view that though every High Court would be required to frame the Rules for determining the suitability of a candidate for being promoted to the Cadre of Higher Judicial Service from the Cadre of Civil Judge (Senior Division), no straight-jacket formula can be laid down for the said purpose. We however find that, in such of the States where the Rules have not been framed for determining the suitability of a candidate for being promoted to the Cadre of Higher Judicial Service from the Cadre of Civil Judge (Senior Division), such of the High Courts and the State Governments should frame the Rules forthwith. We further

find that the High Courts and the State Governments shall also examine, as to whether the Rules already existing are sufficient to determine the suitability of a candidate for being promoted to the Cadre of Higher Judicial Service from the Cadre of Civil Judge (Senior Division). We find that while providing a Rule for determining the suitability of a candidate, it would be relevant to consider factors referred to by us in the preceding paragraphs amongst other factors:

- (i) Whether the candidate possesses updated knowledge of law;
- (ii) The quality of judgments rendered by the Judicial Officer;
- (iii) ACRs of the Judicial Officer of the preceding five years;
- (iv) Disposal rate in the preceding five years;
- (v) Performance of the Judicial Officer in the *viva voce*; and
- (vi) General perceptions and awareness as also communication skills.

**Issue No.7:** 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?

**AND**

**Issue No.8:** If the requirement of certain minimum years of practice for appearing in the examination of Civil Judge (Junior Division) is restored, should the same be calculated from the date of the provisional enrolment/registration or from the date of the passing of the AIBE?

**53.** These issues pertain to the question as to whether the requirement of minimum 3 years' practice for appearing in the examination for the post of Civil Judge (Junior Division) which was done away by this Court in **Third AIJA Case** requires to be restored or not. The ancillary question that is framed by us is as to how many years of experience should be prescribed for practicing before appearing in the examination of Civil Judge (Junior Division).

**54.** While we had called upon the responses of various High Courts and the State Governments in the country *vide* order dated 25<sup>th</sup> April 2023, when the matter was listed on 18<sup>th</sup> May 2023, Shri Marlapalle, learned Senior Counsel

submitted that as per the Bar Council of India Regulations, initially provisional registration is required to be made for a period of 2 years. It was further submitted that only if a candidate passes the AIBE, a permanent registration can be granted. He, therefore, submitted that for considering the aforesaid issue No.7, it will also be necessary to take into consideration the aforesaid Regulations of the Bar Council of India. We, therefore, *vide* order dated 18<sup>th</sup> May 2023 requested the Union of India, all the State Governments and the High Courts to consider the aforesaid issue with regard to the Regulations of the Bar Council of India.

**55.** The Law Commission of India in its 117<sup>th</sup> Report, dated 28<sup>th</sup> November 1986 titled - “*Training of Judicial Officers*”, though recommended the fresh law graduates to enter into the judicial service, it emphasized the need for intensive training for such fresh law graduates entering into the judicial service. It will be relevant to refer to the following observations of the Law Commission of India:

**“4.6 .....**The Law Commission is of the opinion that the two years intensive training would outweigh the advantage, if any, of three years practice at the Bar which often enough hardly helps in the matter of equipping oneself.”

**56.** The said recommendations were considered by this Court in the present proceedings in its judgment dated 24<sup>th</sup> August 1993<sup>5</sup> (hereinafter referred to as "**Second AIJA Case**"). This Court observed thus:

"**20.** It has, however, become imperative, in this connection, to take notice of the fact that the qualifications prescribed and the procedure adopted for recruitment of the Judges at the lowest rung are not uniform in all the States. In view of the uniformity in the hierarchy and designations as well as the service conditions that we have suggested, it is necessary that all the States should prescribe uniform qualifications and adopt uniform procedure in recruiting the judicial officers at the lowest rung in the hierarchy. In most of the States, the minimum qualifications for being eligible to the post of the Civil Judge-cum-Magistrate First Class/Magistrate First Class/Munsiff Magistrate is minimum three years' practice as a lawyer in addition to the degree in law. In some States, however, the requirement of practice is altogether dispensed with and judicial officers are recruited with only a degree in law to their credit. The recruitment of raw graduates as judicial officers without any training or background of lawyering has not proved to be a successful experiment. Considering the fact that from the first day of his assuming office, the Judge has to decide, among others, questions of life, liberty, property and reputation of the litigants, to induct graduates fresh from the Universities to occupy seats of such vital powers is neither prudent nor desirable. Neither knowledge derived from books nor pre-service training can be an adequate substitute for the first-hand experience of the working of the court-system and the administration of justice begotten through

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<sup>5</sup> (1993) 4 SCC 288 : 1993 INSC 272

legal practice. The practice involves much more than mere advocacy. A lawyer has to interact with several components of the administration of justice. Unless the judicial officer is familiar with the working of the said components, his education and equipment as a Judge is likely to remain incomplete. The experience as a lawyer is, therefore, essential to enable the Judge to discharge his duties and functions efficiently and with confidence and circumspection. Many States have hence prescribed a minimum of three years' practice as a lawyer as an essential qualification for appointment as a judicial officer at the lowest rung. It is, hence, necessary that all the States prescribe the said minimum practice as a lawyer as a necessary qualification for recruitment to the lowest rung in the judiciary. In this connection, it may be pointed out that under Article 233(2) of the Constitution, no person is eligible to be appointed a District Judge unless he has been an advocate or a pleader for not less than seven years while Articles 217(2)(b) and 124(3)(b) require at least ten years' practice as an advocate of a High Court for the appointment of a person to the posts of the Judge of the High Court and the Judge of the Supreme Court, respectively. We, therefore, direct that all States shall take immediate steps to prescribe three years' practice as a lawyer as one of the essential qualifications for recruitment as the judicial officer at the lowest rung."

**57.** It can thus be seen that this Court noted that though there is no uniformity in all the States with regard to minimum qualifications for being eligible to the post of Civil Judge-cum-Magistrate      First      Class/Magistrate      First Class/Munsiff Magistrate, most of the States provided minimum three years' practice as a lawyer in addition to the

degree in law. This Court noted that in some of the States, the requirement of practice was altogether dispensed with, and judicial officers were recruited with only a degree in law to their credit. This Court observed that the recruitment of "raw graduates" as Judicial Officers without any training or background of lawyering has not proved to be a successful experiment. This Court further noted that from the first day of his/her assuming office, a Judge has to decide, among others, questions of life, liberty, property and reputation of the litigants. This Court further noted that to induct graduates fresh from the Universities to occupy seats of such vital powers was neither prudent nor desirable.

**58.** This Court further found that neither knowledge derived from books nor pre-service training could be an adequate substitute for the first-hand experience of the working of the court-system and the administration of justice begotten through legal practice. This Court found that the experience as a lawyer was therefore essential to enable the Judge to discharge his/her duties and functions efficiently and with confidence and circumspection. This Court, therefore, directed all the States to prescribe a minimum of three years'

practice as a lawyer as an essential qualification for appointment as a Judicial Officer at the lowest rung.

**59.** Subsequent thereto, the Shetty Commission, in its Report dated 11<sup>th</sup> November 1999, noted that though Articles 217 and 233 of the Constitution of India prescribe a minimum experience of 10 years to be appointed as High Court Judge and 7 years to be appointed as District Judge, no such requirement was provided for being eligible to be appointed as a Civil Judge (Junior Division). It will be relevant to refer to some of the observations made in the Shetty Commission Report, which read thus:

**“8.30** As to the observation of the Law Commission in its 14<sup>th</sup> Report recommending three years practice at the Bar, we may state that observation was evidently based on the then existing system of legal education. The Law Commission made that report in 1958 when the LL.B. degree course was only of two years duration for which law practice as a subject was not in the curriculum.

**8.31** In the present system of legal education 3 years or 5 years, law practice is one of the subjects prescribed for the students. Particularly in the curriculum under the present 5 years law degree course, the students have to attend Court compulsorily to get themselves educated in the practical training in Court craft.

**8.32** It would be, therefore, futile to prescribe three years practice as an Advocate to have intimate knowledge of the Court work as a condition for recruitment to the cadre of Civil Judges (Jr. Divn.).

**8.33** If it is not out of place to mention, that the students coming out of the Institute like National Law School of India University, Bangalore to be better equipped and more informed than a junior advocate with three years standing. The students from National Law School of India University are the favourites for campus selection by multinationals. Every year, multinational Companies land at the school campus and select students of the final year by offering them a fat salary of Rs. 20,000 to Rs. 25,000. The entire purpose of establishing the National Law School of India University is to produce good law graduates for enriching the Indian Bar. That purpose has been practically defeated by insisting upon three years Bar practice as a precondition for entering the judicial service.

**8.34** Further, in our opinion, 3 years standing at the Bar as the minimum qualification for entry into the judicial service may be wholly unnecessary and uncalled for in view of the Commission's recommendations on Institutional training for the selected candidates. Attention of the concerned authorities is invited to the report of the Commission on judicial education and training an in particular the broad themes of the curriculum for induction training. It includes among other things, practical training through field placement. The Commission has recommended the induction training course for about one year by qualified trainers.

### **RECOMMENDATION BY THE COMMISSION**

**8.35** If intensive training is given to young and brilliant law graduates, it may be unnecessary to prescribe three years practice in the Bar as a condition for entering the judicial service. It is not the opinion of any High Court or State Government that induction to service of fresh law graduates with brilliant academic career would be counterproductive. We consider that it is proper and necessary to reserve liberty to High Court and State Governments, as the case may be, to select either

Advocates with certain standing at the Bar or outstanding law graduates with aptitude for service. It is not correct to deny such discretion to High Authorities like, High Courts and State Governments.

**8.36** Those High Courts and State Governments who are interested in selecting the fresh law graduates with a scheme of intensive induction training may move the Supreme Court for reconsidering the view taken in All India Judges' Association Case for deleting the condition of three years standing as Advocate for recruitment to the cadre of Civil Judges (Jr. Divn.). We trust and hope that the Supreme Court will reconsider that aspect."

**60.** The recommendations of the Shetty Commission were considered by this Court in the **Third AIJA Case**. This Court observed thus:

**"32.** In *All India Judges' Assn. case* [(1993) 4 SCC 288 : 1994 SCC (L&S) 148 : (1993) 25 ATC 818] (SCC at p. 314) this Court has observed that in order to enter the judicial service, an applicant must be an advocate of at least three years' standing. Rules were amended accordingly. With the passage of time, experience has shown that the best talent which is available is not attracted to the judicial service. A bright young law graduate after 3 years of practice finds the judicial service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views expressed before it by various authorities, that the need for an applicant to have been an advocate for at least 3 years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and the argument of the learned amicus curiae that it should be no longer

mandatory for an applicant desirous of entering the judicial service to be an advocate of at least three years' standing. We, accordingly, in the light of experience gained after the judgment in *All India Judges case* direct to the High Courts and to the State Governments to amend their rules so as to enable a fresh law graduate who may not even have put in three years of practice, to be eligible to compete and enter the judicial service. We, however, recommend that a fresh recruit into the judicial service should be imparted training of not less than one year, preferably two years."

**61.** This Court accordingly directed all the High Courts and the State Governments to amend their Rules so as to enable fresh law graduates who may not even have a single day's experience in practice as a lawyer to be eligible to compete and enter the judicial service. This Court further recommended that a fresh recruit into the judicial service should be imparted training of not less than one year, preferably two years.

**62.** When the matter was subsequently heard, learned *amicus curiae* as well as counsel appearing for most of the High Courts were of the view that the time has come to review as to whether the requirement for minimum years of practice as provided by this Court in the **Second AIJA Case** is required to be restored.

**63.** In response to the orders passed by this Court dated 25<sup>th</sup> April 2023 and 18<sup>th</sup> May 2023, various High Courts have submitted their affidavits. It will be relevant to note that most of the High Courts are in agreement that the earlier requirement of having minimum 3 years' experience at the Bar for appearing in the examination of Civil Judge (Junior Division) needs to be restored.

**64.** The High Court of Andhra Pradesh has stated that some instances have come to the notice of the High Court that some of the Civil Judges (Junior Division) who did not possess any experience at the Bar, appointed straight away from the college to the court, are not treating the bar members and staff members in good spirits and that the officers are finding it difficult to handle the courts when faced with procedural issues. It has therefore been recommended that there should be a minimum experience of 2 years at the Bar before a candidate is considered to be eligible for appointment as a Civil Judge (Junior Division). At the same time, it is also recommended that the existing training module for 2 years (1 year practical training + 1 year institutional training) should be continued so that the

candidates, on selection into judicial service, would discharge their functions more efficiently. The State Government has also agreed with the views expressed by the High Court.

**65.** The High Court of Gauhati has recommended for a minimum 2 years of practice to be made a requirement for a candidate being eligible to appear in the examination of Civil Judge (Junior Division).

**66.** The High Court of Patna as well as the Government of Bihar have opined that minimum 3 years' practice as an advocate should be introduced as a requirement for Civil Judge (Junior Division) as it would be helpful in appointing experienced lawyers which would benefit the judicial service and improve standards of judicial dispensation.

**67.** The State of Karnataka has stated that it is the experience of the Bar members and Principal District Judges that due to the lack of practical professional experience of such Civil Judges, inconvenience is caused during the discharge of duty and day-to-day proceedings, especially when they are passing urgent orders. The State has therefore recommended minimum 2 years' practice as an advocate after completion of law degree to be made as a requirement

for a candidate being eligible to appear in the examination of Civil Judge (Junior Division).

**68.** The State of Kerala as well as the High Court of Kerala have also recommended that the requirement of minimum 3 years' practice at the Bar needs to be restored.

**69.** The High Court of Madhya Pradesh has opined that experience has shown that even candidates who are brilliant in academics having no experience at the Bar were not able to handle court proceedings properly. It is also stated that many oral or written complaints regarding their behavioural attitude towards advocates, litigants, their superiors and staff are being received in the High Court on a regular basis. It is further stated that fresh law graduates having no experience at the Bar lack maturity and experience in handling court proceedings. It has therefore recommended to restore the requirement of experience or practice at the Bar prior to appointment of Civil Judge (Junior Division).

**70.** Both the State of Manipur and the High Court of Manipur have recommended restoration of 3 years' prior experience of practice so as to understand the practical difficulties, challenges faced by lawyers and litigants. It goes

on to state that actual practicing experience is invaluable and irreplaceable.

**71.** The High Court of Orissa has stated that inexperienced candidates take time to acquaint themselves to the environment of a court which ultimately enables them to smoothly handle the day-to-day court proceedings. It is further stated that they are often unaware about the court decorum and this causes inconvenience in judicial administration. It is therefore opined by the High Court of Orissa that the candidates before entering into the judicial service should have some practical knowledge about the day-to-day court proceedings and the manner in which the cases are conducted by the advocates. It has therefore been recommended that there must be reintroduction of the requirement of minimum 3 years' practice before being considered for appointment as a Civil Judge (Junior Division).

**72.** The High Court of Madras as well as the High Court of Uttarakhand have also recommended that there should be a reintroduction of the requirement of 3 years' minimum practice. The High Court of Uttarakhand has stated that

fresh law graduates with no exposure to the court environment are not steeped into the culture, etiquette, temper and conduct of the court proceedings. It further states that this leads to advocates' complaining about misbehaviour and giving ill-treatment to the advocates and litigants by such new officers. The State of Uttarakhand has also supported the views of the High Court of Uttarakhand.

**73.** The High Court of Allahabad as well as the High Court of Calcutta have also supported the reintroduction of the requirement of some prior practice to appear for such examination.

**74.** The High Court of Delhi has recommended that the minimum requirement be 1 year of practice at the Bar.

**75.** Insofar as High Court of Jammu & Kashmir and Ladakh and the High Court of Gujarat are concerned, they have recommended 2 years' minimum practice.

**76.** It is further to be noted that though one or two High Courts have stated that the experience should be counted from the date on which AIBE is passed, most of the High Courts have not given their opinion on the same. It is only the State of Orissa, the High Court of Punjab & Haryana, the

High Court of Delhi and the High Court of Jammu & Kashmir and Ladakh who have recommended that the date of experience should be counted from the date on which the provisional registration was granted to a candidate.

**77.** Insofar as the State of Chhattisgarh is concerned, though the High Court of Chhattisgarh has recommended reintroduction of a practice of minimum 3 years, it is the Government of Chhattisgarh which has opposed the same.

**78.** Though the High Court of Punjab & Haryana has recommended the reintroduction of the requirement of minimum 2 years of experience, the State of Haryana has opposed the same.

**79.** The States of Nagaland and Tripura have opposed such reintroduction.

**80.** It is further to be noted that insofar as the High Courts are concerned, except the High Courts of Rajasthan and Sikkim, no other High Court has opposed such reintroduction of the pre-requisite of practice at the Bar.

**81.** From the affidavits of almost all the High Courts, it is seen that for the last 20 years during which the recruitment

of fresh law graduates as Judicial Officers without a single day of practice at the Bar has been permitted, the said endeavour has not been a successful experience. The appointment of such fresh law graduates has led to many problems as have been enumerated by us in the aforesaid paragraphs on the basis of the affidavits filed by the High Courts.

**82.** We are conscious of the fact that in the initial years, the opportunities available to a young lawyer, fresh from college will be minimal. However, the exposure to courts and more particularly litigants and their briefs would acquaint them with the onerous duties and responsibilities of every stakeholder in the judicial system. It would bring in a sensitivity to human problems, more clarity in the decision making process and educate them of the role of the Bar in justice dispensation.

**83.** The Judges from the very day on which they assume office have to deal with the questions of life, liberty, property and reputation of litigants. As rightly observed, neither knowledge derived from books nor pre-service training can be an adequate substitute for the first-hand experience of the

working of the court-system and the administration of justice. This is possible only when a candidate is exposed to the atmosphere in the court by assisting the seniors and observing how the lawyers and the Judges function in the court. The candidate should be equipped to understand the intricacies of the functions of a Judge. The experience of various High Courts has also shown that such fresh law graduates, upon their entry in judicial service, begin to show behavioural and temperament problems.

**84.** We are therefore in agreement with the views expressed by most of the High Courts that the requirement of reintroduction of a certain number of years of practice would be necessary.

**85.** That leaves us with the question as to whether such experience should be counted from the date on which the provisional registration/enrolment is granted or from the date on which the candidates pass the AIBE. Though Shri Marlapalle, learned Senior Counsel, who had raised this question has recommended that such an experience should be counted from passing of the AIBE, which has also been supported by Ms. Radhika Gautam, learned counsel

appearing for the Bar Council of India, the Court will have to balance the requirement of having a minimum experience at the Bar and also provide an opportunity to the young meritorious law graduates to appear in the said examination.

**86.** There could be various reasons as to why the candidates are not in a position to appear for AIBE. Different Universities may declare their results at different time which may lead to a candidate losing the opportunity to appear for such an examination in a particular year. It will be relevant to note that after a candidate receives the provisional registration, he/she is entitled to practice within the State of which the Bar Council has given the said provisional registration. In that view of the matter, we are of the view that the experience should be counted from the date on which provisional registration has been granted to a candidate.

**87.** Another concern that is expressed is that some candidates may only keep the provisional registration and would be entitled to appear for the Civil Judge (Junior Division) Examination after they complete 2 years from the date of provisional registration. It is submitted that a

candidate may not actually practice even for a single day and may only on the basis of provisional registration apply for the Civil Judge (Junior Division) Examination and this would, in turn, frustrate the very purpose of providing an experience.

**88.** We find that the said concern can be addressed by providing certain safeguards. In a Mofussil Court, there would not be much difficulty inasmuch as taking into consideration the number of lawyers appearing before the Court at such places, the Judicial Officers working at that station can certify that such a candidate has practiced before such court for a requisite number of years. The difficulty may arise at larger stations or in metropolitan cities. At such places, it could be provided that a certificate by an advocate having a minimum standing of 10 years duly endorsed by a Principal Judicial Officer of such a District or a Principal Judicial Officer at a station, certifying that such a candidate has actually practiced for the requisite number of years would take care of the said concern. Insofar as the candidates who are practicing before the High Courts or this Court, they shall be certified by an advocate who has a minimum standing of 10 years duly endorsed by an officer

designated by that High Court or this Court. We are also of the view that the experience of the candidates which they have gained while working as Law Clerks with any of the Judges or Judicial Officers in the country should also be considered while calculating their total number of years of practice.

#### **IV. CONCLUSION AND DIRECTIONS**

**89.** In view of the aforesaid discussion, we issue the following directions:

- (i) All the High Courts and the State Governments in the country shall amend the relevant service Rules to the effect that the quota of reservation for LDCE for promotion from the cadre of Civil Judge (Senior Division) to the Higher Judicial Service is increased to 25%;
- (ii) All the High Courts and the State Governments in the country shall amend the relevant service rules to the effect that the minimum qualifying service required to appear in the LDCE for promotion from the cadre of Civil Judge (Senior Division) to the Higher Judicial Service be

reduced to 3 years' service as a Civil Judge (Senior Division) and the total service required to be undertaken, including service rendered as a Civil Judge (Junior Division) and Civil Judge (Senior Division), be set at a minimum of 7 years' service;

- (iii) All the High Courts and the State Governments in the country shall amend the relevant service rules to the effect that 10% of the posts in the Cadre of Civil Judge (Senior Division) be reserved for accelerated promotion of Civil Judge (Junior Division) candidates through LDCE mechanism. The minimum qualifying service required for appearing in the said LDCE shall be three years' service as Civil Judge (Junior Division);
- (iv) Needless to state that if any post reserved for LDCE for either Civil Judge (Senior Division) or for the Higher Judiciary remains vacant, the same shall be filled through regular promotion on the basis of 'merit-cum-seniority' in that particular year. Filling up of the vacant posts in

the ratio considered for LDCE will have to be carried out from the simultaneous selection process carried out for regular promotions of the same year;

- (v) The High Courts and the Governments of the States where the vacancies for the LDCE are not being calculated based on the cadre strength shall amend the relevant service rules to the effect that the vacancies for LDCE be calculated on the basis of cadre strength;
- (vi) All the High Courts and the State Governments in the country where the Rules are not framed or if they are framed but are not adequate to judge the suitability of a candidate for being promoted to the Cadre of Higher Judicial Service from the Cadre of Civil Judge (Senior Division) shall frame fresh Rules or amend the existing Rules keeping in mind various factors like: (i) whether the candidate possesses updated knowledge of law; (ii) the quality of judgments rendered by the Judicial Officer; (iii) ACRs of the Judicial Officer

of the preceding five years; (iv) disposal rate in the preceding five years; (v) performance of the Judicial Officer in the *viva voce*; and (vi) general perceptions and awareness as also communication skills;

- (vii) All the High Courts and the State Governments in the country shall amend the relevant service rules to the effect that candidates desirous of appearing in the examination for the post of Civil Judge (Junior Division) must have practiced for a minimum period of 3 years to be eligible for the said examination. To fulfill the said requirement, the Rules shall mandate that the candidate produces a certificate to that effect duly certified either by the Principal Judicial Officer of that Court or by an advocate of that Court having a minimum standing of 10 years duly endorsed by the Principal Judicial Officer of such a District or a Principal Judicial Officer at such a station. Insofar as the candidates who are practicing before the High Courts or this Court, they shall

be certified by an advocate who has a minimum standing of 10 years duly endorsed by an officer designated by that High Court or this Court. We further direct that the experience of the candidates which they have gained while working as Law Clerks with any of the Judges or Judicial Officers in the country should also be considered while calculating their total number of years of practice. The Rules shall also mandate that the candidates who are appointed to the post of Civil Judge (Junior Division) pursuant to their selection through the examination must compulsorily undergo at least 1 year of training before presiding in a Court;

- (viii) It is directed that the number of years of practice completed by a candidate desirous of appearing in the examination for the post of Civil Judge (Junior Division) be calculated from the date of their provisional enrolment/registration with the concerned State Bar Council;

- (ix) It is further directed that the said requirement of minimum years of practice shall not be applicable in cases where the concerned High Court has already initiated the selection process for the post of Civil Judge (Junior Division) prior to the date of this judgment and shall be applicable only from the next recruitment process; and
- (x) All the amendments in terms of the aforesaid directions shall be carried out by the High Courts within a period of three months from the date of this judgment and the concerned State Governments shall consider and approve the same within a further period of three months.

**90.** Needless to state that all such recruitment processes which have been kept in abeyance, in view of the pendency of the present proceedings, shall proceed in accordance with the Rules which were applicable on the date of advertisement/notification.

**91.** We place on record our deep gratitude for the assistance rendered by Shri Siddharth Bhatnagar, learned *amicus*

*curiae* ably assisted by Mr. Ankit Yadav and Mr. Aditya Sidhra, learned counsel. Shri Bhatnagar has tirelessly consolidated the stands of various High Courts and various State Governments and also given his valuable suggestions with regard to the directions to be issued by this Court. We also place on record our appreciation for the Senior Counsel and counsel appearing on behalf of the various High Courts, State Governments and other stakeholders.

.....**CJI  
(B.R. GAVAI)**

.....**J  
(AUGUSTINE GEORGE MASIH)**

.....**J  
(K. VINOD CHANDRAN)**

**NEW DELHI;  
MAY 20, 2025.**