

(2008) 08 JH CK 0054
Jharkhand High Court
Case No: None

Rajesh Kumar Pandey and
Others

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: Aug. 29, 2008

Citation: (2009) 1 JCR 533

Hon'ble Judges: Gyan Sudha Mishra, C.J; D.K. Sinha, J

Bench: Division Bench

Final Decision: Allowed

Judgement

1. This writ petition has been filed seeking a direction to the respondents to stay the process of filling up 34 posts of Additional District Judges by promotion through Limited Competitive Examination from amongst the Sub Judges, i.e., Civil Judge (Senior Division) possessing five years experience or more, scheduled to be held on 31.08.2008 on the sole ground that the respondents have disturbed the quota of promotion on the post of Additional District Judges by assigning more posts in the quota of Civil Judge (Senior Division), i.e., Subordinate Judges, leaving no posts to be filled up by the direct recruits, which is clearly contrary to the ratio of the judgment and order delivered in the matter of [All India Judges Association and Others Vs. Union of India \(UOI\) and Others](#), commonly known as All India Judges Association Case.

2. The petitioners have further prayed that until the confirmation of services of the petitioners in the rank of Additional District & Sessions Judge in the Jharkhand Superior Judicial Service Cadre, the examination, i.e., Limited Competitive Examination for promotion from amongst the Subordinate Judges working for five years or more should not be held. However, in course of arguments, the counsel for the petitioners merely pressed that the quota assigned for the Limited Competitive Examination from amongst the Subordinate Judges/Civil Judge (Senior Division)

scheduled to be held on 31.08.2008, which was to be held in pursuance to the notification available on the High Court Web Site was fit to be quashed and set aside as the same was contrary to the directions of the Supreme Court issued in the All India Judges Association Case.

3. It would be relevant to refer that the Supreme Court in the matter of All India Judges Association Case had directed that the promotion to the Higher Judicial Service in the cadre of District Judges shall be made by following the roster principle as approved by the Supreme Court in R.K. Sabbanval's case vide (1992) 2 SCC 745 which was to be made in the ratio of 50:25:25, meaning thereby 50% of the available posts had to be filled up by the promotees on the basis of merit-cum-seniority and the left over 50% had to be divided by allocating 25% of the posts to the direct recruits and another 25% posts exclusively on merit to be adjudged by conducting Limited Competitive Examination from the rank of Subordinate Judges/Civil Judge (Senior Division) of five years experience or more. The Supreme Court had further clearly directed that this rule would apply prospectively and for this purpose, the concerned States, if necessary, were also directed to introduce amendment in the Rules prescribed for filling up the posts. Pursuant to this order, the State of Jharkhand, Introduced amendment in the Jharkhand Subordinate Judicial Service (Recruitment, appointment and Conditions of Service) rules, 2001, which came into effect on 20.08.2004, following the ratio of 50% quota by promotees on the basis of seniority-cum-merit, 25% exclusively on merit to be adjudged through Limited Competitive Examination and the remaining 25% by direct recruits on the basis of competitive examination comprising written plus viva voce.

4. In pursuance to the aforesaid Rule of 2001, which became effective in 2004, the available posts of Additional District Judges, admittedly, were 82, out of which 41 posts of Additional District Judges were available to be filled up by eligible candidates as per the roster system in the ratio of 50%, 25% and 25% as given out in the All India Judges Association case already referred to hereinbefore. In pursuance to this rule, 50% posts already have been filled up by the promotees on the basis of seniority-cum-merit and thus, 41 posts were filled up by the promotees on the basis of seniority-cum-merit. Thereafter 41 posts were left to be filled up by the eligible candidates who were functioning as Civil Judge (Senior Division)/Subordinate Judges. However, 50% of the left over posts, which had to be bifurcated between the direct recruits and for appointment exclusively on merit through the Limited Competitive Examination was not followed by the respondents since the notification indicated that all 34 posts would be filled up on the basis of Limited Competitive Examination from the rank of Civil Judge (Senior Division)/Subordinate Judges without leaving any post to be filled up by direct recruits.

5. In fact, the counsel for the petitioners also drew the attention of this Court that the respondents had violated even the quota in the category of merit-cum-seniority as they had exceeded and filled up more posts than 41 posts on the basis of

merit-cum-seniority reducing the posts which are to be filled up exclusively on merit by way of Limited Competitive Examination and by direct recruits by holding written examination plus viva voce.

6. The question, which has now been raised in this writ petition, is only to the extent that the 42 posts of Additional District Judges, which had to be filled up by following the roster system, as per the directions of the Supreme Court in All India Judges Association case, have to be bifurcated in the ratio of 25:25 as the quota of promotees on the basis of seniority-cum-merit had already been filled up as indicated hereinbefore and hence, the left over posts had to be divided equally, meaning thereby that 50% posts having already been filled up by the promotees on the basis of merit-cum-seniority, the balance 50% posts had to be filled up in the ratio of half and half, i.e., 25% posts could be filled up by the direct recruits and the remaining 25% posts from the rank of Subordinate Judges on the basis of Limited Competitive Examination. But, the respondents issued a notification on the internet indicating that the entire 34 posts as also all vacancies which were to accrue in future, were to be filled up by conducting Limited Competitive Examination in which the Subordinate Judges/Civil Judge (Senior Division) alone were held eligible to apply and no post was left to be filled up by following the process of direct recruitment clearly disturbing the roster system.

7. Hence, the contention of the counsel for the petitioners is that the entire left over posts, which were 42 in all, could not have been filled up by the Limited Competitive Examination system to be conducted only for the Subordinate Judges as out of 42 posts which were to be filled up, only 21 posts could be earmarked to be filled up by holding Limited Competitive Examination wherein the Subordinate Judges/Civil Judge (Senior Division) would be eligible to appear and the balance 25% of the available posts ought to have been assigned to the quota of direct recruits.

8. The respondents, therefore, were called upon to explain as to how the entire posts which were available to be filled up could be advertised on the internet to be filled up by holding Limited Competitive Examination in which the Civil Judge (Senior Division)/Subordinate Judges alone were held eligible to appear as that would be clearly contrary to the direction of the Supreme Court issued in the All India Judges Association Case (supra).

9. Learned Counsel for the respondents sought to explain and justify the bifurcation of the posts in the entire cadre strength ever since the State of Jharkhand came into existence and not after the amendment was introduced in the Jharkhand Subordinate Judicial Service Rules, 2001 which became effective on 20.08.2004 clearly missing that as per the direction in the All India Judges' Association Case the bifurcation of posts has to be prospective and not retrospective. The respondents also could not explain as to how the quota of direct recruits could be clubbed with the posts, which could be filled up exclusively on merit, i.e., on the basis of Limited Competitive Examination as the direction of the Supreme Court clearly came in the

way of the respondents wherein it was unambiguously laid down that the ratio for assigning the posts would be 50% on the basis of merit-cum-seniority, 25% by the Civil Judge (Senior Division)/Subordinate Judge and 25% by the direct recruits. It was further observed in the said judgment that this ratio had to apply prospectively and for this purpose all the States were directed to amend the Rules as already mentioned hereinbefore.

10. Since it was clearly laid down in the All India Judges Association Case that the roster principle and the ratio, by which the posts of Additional District Judges could be filled up, would be prospective to the said judgment, the respondents, obviously, could not have been allowed to club the entire posts to be filled up by the Subordinate Judges/ Civil Judge (Senior Division) leaving no posts to be filled up by the direct recruits. Since the Superior Judicial Service Rules, 2001, came into effect in 2004, the entire posts which were available in the year 2004 and 2005 till date had to be bifurcated in the ratio of 50%, 25% and 25% by allowing 50% of the posts to be filled up by the promotees on the basis of seniority-cum-merit, 25% by direct recruits and rest 25% posts by promotion from the Subordinate Judges exclusively on the basis of merit to be adjudged on the performance In the Limited Competitive Examination, which was scheduled to be held on 31.08.2008.

11. The petitioners, therefore, came up before this Court assailing the commencement of holding of the examination and in support of the same contended that all the posts of Additional District Judges could not have been advertised to be filled up on the basis of examination wherein the Subordinate Judges of five years experience or more were alone to participate as only 25% of the posts could be filled up by the Limited Competitive Examination and the remaining 25% posts had to be assigned to the quota of direct recruits, since 50% of the posts had already been filled up by the promotees on the basis of seniority-cum-merit.

12. Having heard the counsel for the parties at some length in the light of the explanation in regard to bifurcation of the posts as per roster system to be followed in pursuance to the Jharkhand Superior Judicial Service Rules, which was amended in view of the directions of the Supreme Court, we are of the view that 50% of the posts having already been filled up by the promotees on the basis of the merit-cum-seniority due to which 41 posts were filled up, the left over 42 posts have to be bifurcated into 25% and 25% meaning thereby 21 posts will have to be assigned to be filled up by promotion from the Subordinate Judges/Civil Judge (Senior Division) on the basis of Limited Competitive Examination and left over 21 posts which constitute 25% of the available posts will have to be filled up by the direct recruits as that is the clear mandate of the Supreme Court in the case referred to hereinbefore in pursuance to which the Jharkhand Superior Judicial Service Rules was also amended in 2001 and became effective in 2004.

13. In fact, the petitioners have informed this Court that the respondents have not only invited the applications for all the 42 posts to be filled up by the Subordinate

Judges on the basis of Limited Competitive Examination, but even the posts that might be available in the year 2009 have also been Included in the advertisement, which is clearly not In consonance with the direction of the Supreme Court and is also contrary to the Jharkhand Superior Judicial Service Rules, 2001.

14. Hence, this Court is left with no option, than to set aside the examination process, which is scheduled to be held on 31.08.2008 and further direct the respondents to bifurcate the left over posts into the ratio of half and half, i.e., 25% and 25% equally and thereafter issue a fresh advertisement for filling up 21 posts by the Subordinate Judges on the basis of Limited Competitive Examination and the rest 21 posts will have to be filled up by direct recruits for which exercise wilt have to be undertaken in future by the respondents.

15. As no other point has been pressed in this writ petition and the only dispute that has been raised is in regard to bifurcation of posts contrary to the roster principle, referred to hereinbefore, and the same having been found to be correct, the notification issued on the internet for filling up the posts of Additional District Judges is quashed and set aside. Consequently, the process of examination to be held on 31.08.2008 is also set aside.

16. The Writ Petition, accordingly, is allowed, but without any order as to costs.