

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL No. 3947 OF 2020
(And connected matters)**

IN THE MATTER OF :-

REJANISH K.V.

... APPELLANT

VERSUS

K. DEEPA AND ORS.

... RESPONDENTS

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**WRITTEN SUBMISSIONS ON BEHALF OF PARTIES IN FAVOUR OF THE
PROPOSITION**

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IN THE SUPREME COURT OF INDIA
CIVIL APPEAL NO. 3947 OF 2020

IN THE MATTER OF:

REJANISH K.V.

...PETITIONERS

VERSUS

K. DEEPA & ORS.

...RESPONDENTS

AND IN MATTER OF:

REVIEW PETITION NO. 385 OF 2021

MADHUKAR SINGH

...PETITIONERS

VERSUS

STATE OF UTTAR PRADESH & ANR.

...RESPONDENTS

AND OTHER CONNECTED REVIEW PETITION NO. ~~1027~~ 1027/2021, 867/2021

WRITTEN SUBMISSIONS OF MR. JAYANT BHUSHAN,
SENIOR ADVOCATE ON BEHALF OF THE PETITIONERS

1. The present case relates to the interpretation of Article 233 of the Constitution of India, hence very specifically about the eligibility of Civil Judges to be directly appointed as District Judges under Article 233.
2. The judgment under review in Dheeraj Mor v. High Court of Delhi (2020 7 SCC 401) has held that Civil Judges are not eligible for direct recruitment as District Judges, and any person who wishes to sit for the examination has to be a practicing advocate on the cut-off date and at the time of the appointment he must not be in judicial services. For constituting experience of seven years, judicial service cannot be used. Article 233 of the Constitution is set out herein below for convenience:

Article 233. Appointment of district judges:

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State,

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed as a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

The eligibility for appointment of district Judges is provided in Article 233(2) of the Constitution.

A plain reading of Article 233(2) indicates that either a person has to be in service of the Union or the State (which has been held to be a judicial service) or he has to be an Advocate or Pleader for seven years. Once the person is already in the judicial services of the Union or the State, no further eligibility is prescribed for being appointed a District Judge and the eligibility of being an Advocate or Pleader for seven years is only for those who are not in the services of the Union or the State.

3. The judgment in Dheeraj Mor misreads under Article 233(2) to mean that the requirement of the Article is: (a) he should be an Advocate for seven years; and (b) he should not be in the service of the Union or the State.

It is submitted that this reasoning is incorrect for the following reasons:

- i) A plain reading of the provision shows that the requirement of seven years as Advocate applies only to those who are not already in the service of the Union or the State, meaning thereby that those who are already in the service of the Union or the State (judicial services) have no further eligibility requirement for being appointed as District Judges.

- ii) It is an accepted principle of interpretation of statutes that no such construction should be given which makes any part of the provision superfluous. The construction given by the judgment in Dheeraj Mor that a person has to be presently an Advocate makes the words “a person not already in the services of the Union or the State” totally superfluous and redundant. If that was the intention of the Constitution, the provision would have read as follows:

“A person shall only be eligible to be appointed a District Judge if he has been for not less than seven years as Advocate or Pleader and is recommended by the High Court for appointment.”

4. The interpretation canvassed by the Petitioners is further strengthened by two Constitution Bench judgments of this Hon’ble Court:

(a) Rameshwar Dayal v. State of Punjab (1961 SCR 876);

(b) Chandra Mohan v. State of UP (1967 SCR 77).

5. The judgment in Rameshwar Dayal was given in a petition challenging the appointment of five persons as District Judges on the plea that they were not qualified to be appointed as District Judges under Article 233 of the Constitution since, according to the Petitioner, they were not advocates for seven years when they were appointed as District Judges. Two of them, namely, Harbans Singh and P.R. Sawhney were not advocates when they were appointed. Harbans Singh was working as Deputy Custodian of Evacuee Property and P.R. Sawhney was Chairman of the Jalandhar

Improvement Trust. The Supreme Court decided the cases in favour of these persons, holding them to be eligible on two grounds:

- i) That those who were already in the service of the Union or the State did not require any special qualifications and could be appointed. Since these two persons were already in the service of the Union or the State, they were eligible; and
- ii) That in any case they fulfil the conditions of being advocates since they continued to be advocates of the Punjab & Haryana High Court till they were appointed as District Judges despite being in the service of the Union or the State.

It is the first justification that is given by the Constitution Bench which is being relied upon by the Petitioners. The relevant portions of the judgment of the Supreme Court are quoted herein below:

(page 886 of the SCR)

“Article 233 is a self-contained provision regarding the appointment of District Judges. As to a person who is already in the service of the Union or of the State, no' special qualifications are laid down and under el. (1) the Governor can appoint such a person as a district judge in consultation with the relevant High Court. As to a person not already in service, a qualification is laid down in el. (2) and all that is required is that he should be an advocate or pleader of seven years' standing.”

.....

(page 887 of the SCR)

“We now turn to the other two respondents (Harbans Singh and P. R. Sawhney) whose names were not factually on the roll of Advocates at the time they were appointed as district judge and what is their position? We consider that they also fulfilled' the requirements of [Art. 233](#) of the Constitution. Harbans Singh was in service of the State at the time of his appointment, and Mr. Viswanantha Sastri appearing for him has submitted that clause (2) of [Art. 233](#) did not apply. We consider that even if we proceed on the footing that both these persons were recruited from the Bar and their appointment has to be tested by the requirements of clause (2), we must hold that they fulfilled those requirements.

6. In Chandra Mohan case, appointment of some persons who were in the executive department of the State but called “judicial officers” as an euphemism, was challenged. The challenge succeeded on the basis that “in the service of the Union or the State” means only judicial service of the Union or the State and the Respondents being in the executive department of the State did not fulfil the requirement of Article 233. The relevant portions of the judgment of the Constitution Bench are set out herein below for convenience: (page 887 of the SCR)

“The gist of the said provisions may be stated thus: Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State. There are two sources of recruitment, namely, (i) service of the Union or of the State, and (ii) members of the Bar. The said judges from the first source are appointed in consultation with the

High Court and those from the second source are appointed on the recommendation of the High Court.”

.....

“But Art. 233(1) is nothing more than a declaration of the general power of the Governor in the matter of appointment of district judges. It does not lay down the qualifications of the candidates to be appointed or denote the sources from which the recruitment has to be made. But the sources of recruitment are indicated in cl. (2) thereof. Under cl. (2) of Art. 233 two sources are given, namely, (i) persons in the service of the Union or of the State, and (ii) advocate or pleader. Can it be said that in the context of Ch. VI of Part VI of the Constitution "the service of the Union or of the State" means any service of the Union or of the State or does it mean the judicial service of the Union or of the State? The setting, viz., the chapter dealing with subordinate courts, in which the expression "the service" appears indicates that the service mentioned therein is the service pertaining to courts. That apart, Art. 236(b) defines the expression "judicial service" to mean a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge. If this definition, instead of appearing in Art. 236, is placed as a clause before Art. 233(2), there cannot be any dispute that "the service" in Art. 233(2) can only mean the judicial service.”

5. It is submitted that it has been clearly held that under Clause 2 of Article 233, two sources are given:
 - a) Persons in the services of the Union or the State; and
 - b) Advocate or Pleader
6. Totally contrary to this finding of the Constitution Bench, the judgment in Dheeraj Mor under Article 233(2) actually excludes persons who are in the service of the Union or the State.
7. At this stage it may be relevant to note the history of the qualification required to become a District Judge. Under the Indian Civil Services Act, 1861 only members of the Indian Civil Services (ICS) were eligible to be appointed as District Judge.

By virtue of Section 99 of the Government of India Act, 1915 appointments could be made to certain reserved offices including that of District Judge by authorities based on Rules dated 30.3.1922 as amended by the notification dated 13.05.1923 prescribed by the governor general in council.

The Rules of 30.3.1922, as amended by the notification dated 13.05.1923, provided that the local government may appoint to a superior judicial office from members of Provincial Civil Service subordinate to the Local Government or a person who at the time of the appointment was a Barrister, Pleader, Vakil etc. Thus, apart from ICS, the source of appointment in Rules of 1923 was two folds:

- i) Member of Provincial Civil Services
- ii) Barrister, Vakil, Pleader etc. (having 5 Yrs experience)

It is this theme which was repeated in Section 254 of the Government of India Act, 1935 and again repeated in Article 233 of the Constitution of India.

The petitioner relies upon the Constituent Assembly Debate relating to draft article 209A (volume 9) which corresponds to the present Article 233 Constitution of India. While introducing this Article, Dr. Ambedkar said following:

“Sir, the object of these provisions is two-fold : first of all, to make provision for the appointment of district judges and subordinate judges and their qualifications.”

Thus, the qualification for appointment to District Judge were prescribed by Article 233.

8. It is submitted that appointment includes appointment through ‘direct recruitment’ as well as ‘promotion’. The qualification for all appointments to the post of District Judge whether by way of direct recruitment or by promotion is specified by Article 233. If, as is canvassed by the respondents, the qualification is only 7 years as an Advocate, this would lead to startling consequences. It would mean no Civil Judge would be eligible to be appointed as District Judge even by way of promotion because he does not have qualification of being 7 years as Advocate.
9. The Petitioners also wish to rely upon Article 233A which was introduced into the Constitution by the 20th Amendment Act in 1966 after the judgment of this Hon’ble Court in Chandra Mohan holding that it was only the persons in the judicial services of the Union or the State who were eligible for appointment as District Judges and not any other branch of the Union or the State. And it clearly shows that there was/is two

sources of recruitment (either from Judicial Service or from Advocates) under Article 233 of Constitution of India.

10. The interpretation excluding Civil Judges from being eligible to be appointed directly as District Judges while permitting advocates with seven years standing is also unreasonable and against the interest of the administration of justice. A person who has been in judicial service, particularly those who have been in judicial service for seven years or more, would certainly be more experienced and more suitable for appointment as District Judges. Of course, ultimately the suitability and merit would be decided in the examination followed by interview. The question is of eligibility. It is submitted that it certainly would not be in the interest of justice to exclude people who are in judicial service from the zone of consideration. If this exclusion is not borne out of Article 233, any exclusion by rules would be violative of Article 14 and 16 of the Constitution.
11. Most States have made recruitment rules which do not permit Civil Judges from applying for the 'higher judicial services examination' to be directly recruited as District Judges. Once it is held that there is no bar under Article 233, such a rule would very clearly be arbitrary, discriminatory and violative of Article 14 of the Constitution. All judgments upholding such rules have relied upon their interpretation of Article 233 to hold that the Constitution itself excludes Civil Judges from recruitment as District Judges. It is submitted that such conclusions are incorrect and may be overruled. (Reference- Jyoti Prasad Vs Union Territory of Delhi, 1962 SCR (2) 125 and Hari Datt Kaithala & Anr Vs State of HP (1980) 3 SCC 189)

12. The petitioner relies upon the judgment of this court in *O.P. Garg v. State of Uttar Pradesh*, 1991 SCR (2) 424 that Article 233 of the Constitution does not lay down that Civil Judges can only be promoted as District Judges and cannot be directly recruited. Chandra Mohan's case specifically says that the sources of recruitment are given in Article 233(2). There are two sources, namely, (a) persons in judicial services of the Union or the State; and (b) Advocate or Pleader.

The conclusion in *Dheeraj Mor's* case that Civil Judges cannot be directly recruited as District Judges under Article 233(2) is clearly incorrect and is contrary to the judgment of this Hon'ble Court in *Chandra Mohan*.

13. It is further submitted that it is a judicially recognized problem that the most talented lawyers are not opting for Judicial Services. One of the reasons is the frustration that Civil Judges undergo because of the time taken for promotion or getting eligibility for sitting in the Limited Departmental Competitive Exam (LDCE) for being appointed as District Judge. The petitioner relies on the Shetty Commission Report of 11.11.1999; particularly para- 11.51, 11.52, 11.56, 11.57 and 11.58. The petitioner further relies on the recent judgment of this court in *All India Judges Association v. Union of India* (20.05.2025) **2025 SCC Online SC 1184 (para 39 / 89)**.

14. It is further submitted that neither the promotional avenue nor the avenue of LDCE would be adequate substitutes for using the opportunity of direct recruitment of civil judges. This is so for the following reasons:

- i) Both promotion and LDCE is available only in State's appointment. Civil Judges cannot choose to migrate to different States.

- ii) *“Generally, it takes upto 15 years to be eligible for promotion or to sit in LDCE”* recently quoted in **All India Judges Association v. Union of India 2025 SCC Online SC 1184**. Thus, this would not substitute to the option of sitting for direct recruitment for which a person would be eligible after 7 years from his appointment.

It is also argued by the Respondents that for appointment of District Judges, 75% posts are reserved for promotion and LDCE of Civil Judges and only 25% remains for advocates, and thus 25% cannot be further infringed by Civil Judges seeking direct recruitment. It is settled principle of law that direct recruitment is open for all the eligible candidates. It is submitted that the rule cannot alter the interpretation of a provision of the Constitution. If a constitutional provision does not bar direct recruitment of Civil Judges as District Judges, it cannot be held that rules limiting the number of posts available for advocates can change the correct interpretation of the constitutional provision. No rule can be used to interpret a constitutional provision.

15. The next question that arises is as to whether there is any requirement of any period of time or experience that a Civil Judge must possess thereby to be eligible for direct recruitment as District Judge. It is submitted that Article 233 does not lay down any such requirement. However, that does not mean that such a requirement cannot be introduced by virtue of rules or even be prescribed by the Supreme Court in its power under Article 142. The Court can lay down as to how much experience as Civil Judge or combined experience as a lawyer and a Civil Judge a person must possess to be eligible to be directly recruited as a District Judge. It may be pointed out that once seven years as a lawyer is sufficient, it cannot be held that seven years as a Civil Judge

would be insufficient or seven years combined experience as lawyer and Civil Judge would be insufficient.

16. Once it is held that the Constitution does not debar Civil Judges from being eligible to be directly recruited as District Judges, it is submitted that in any case seven years' experience as a Civil Judge or combined experience of seven years as advocate and Civil Judge would be sufficient.
17. The Petitioners also rely upon explanation (aa) of Article 217(2) of the Constitution which clarifies that for computing the period a person has been an advocate of the High Court that included any period that a person held a judicial office under the Union or a State. The intention that judicial officers or their experience would not be excluded is made clear.
18. This Hon'ble Court has recently noticed reluctance of advocates from accepting Civil Judgeship for applying for recruitment as District Judges. It is submitted that the exclusion of Civil Judges from applying for the District Judges' examination is one of the reasons for this reluctance. Once this Court makes it clear that taking up the post of Civil Judges would not exclude a person from sitting for the higher judicial services examination, it is submitted that more competent and deserving persons would accept for sitting in the judicial services examination. The petitioner also relies on the order dated 17.09.2025 of this court in All India Judges Association v. Union of India.
19. The judgment of this Court in Satyanarayan Singh v. High Court of Allahabad (1985 SCR (2) 122) essentially seems to have been influenced by the fact that if Civil Judges were allowed to sit for higher judicial services examination, they would steal a march

over their seniors in the subordinate judiciary (para 5 of SCC). It is submitted that this rationale may not be quite correct. Moreover, after the introduction of LDCE in appointment of District Judges, the reasoning in Satyanarayan Case has become redundant. For all other services, the fact that a person is already in some service and would steal march over his senior by sitting for direct recruitment for higher posts is not a bar.

Reference may be made to All India Services like IAS/ IPS etc

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New Delhi
Dated:

IN THE SUPREME COURT OF INDIA

CIVIL APPEAL NO. 3947 OF 2020
AND
REVIEW PETITION (C) NO. 1042 OF 2022
IN
WRIT PETITION (C) NO. 999 OF 2019

IN THE MATTER OF:

REJANISH K.V

... APPELLANT

VERSUS

K DEEPA AND ORS.

... RESPONDENTS

IN THE MATTER OF:

REJANISH KV

... REVIEW PETITIONER

VERSUS

JUBIYA A AND ORS.

... RESPONDENTS

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MR. DAMA SESHADRI NAIDU, SENIOR ADVOCATE AND
MR. GEORGE POONTHOTTAM, SENIOR ADVOCATE

**WRITTEN SUBMISSIONS
ON BEHALF OF THE APPELLANT / REVIEW PETITIONER**

1. Appellant challenges the setting aside of his appointment as District Judge by impugned judgments of Hon'ble High Court of Kerala. Judgment in review (Dheeraj Mor v. Hon'ble High Court of Delhi, (2020) 7 SCC 401), was rendered after appellant's appointment holding that for the purpose of Article 233(2) "*an Advocate has to be continuing in practice*" "*at the time of appointment as District Judge*".

2. Judgment under Review is relied upon by High Court for setting aside his appointment on the ground that after applying for the post of District Judge, he got selected as a Munsiff-Magistrate before joining as District Judge, and therefore at the time of appointment, appellant was in Judicial service. In the circumstances the appellant also seeks review of aforesaid judgment (Review Petition (C) No. 1042 OF 2022).

3. Judgment under Review considered three categories of in-service candidates who are in Judicial service. **The crucial distinction in Appellant's case is that the appellant was not "*in service*" on the date of his application or on the date of his appointment as District judge.**

4. The Appellant has applied for the post of District judge as a direct recruitment candidate from the bar. Therefore, **he was not an in-service candidate** to the post of District Judge at the time of his application. Admittedly, the appellant was a practicing Advocate having more than 7 years of practice in the Bar as on the qualification cut-off date of 1-1-2017 as per Rule 3(f) of *Kerala State Higher Judicial Service Rules, 1961* as well as on 1-12-2017, the date of his application as per clause 6(f) of Recruitment Notification as contemplated by Article 233 of the Constitution. Even though the Appellant joined and was appointed on probation as a Munsiff-Magistrate on 12-02-2018, after his application for the post of District Judge while the recruitment process of District Judge was underway, he was discharged as per proceedings dated 17-8-2019 from that service by directing to "hand over his charge", from that service and to take up his "new appointment" before joining and appointing as District judge on 24-8-2019. Rule 2(5) of the KS& SSR, 1958 provides for discharge

of a probationer. It is submitted that on the date of discharge, the Appellant ceased to be a member of the judicial service. Therefore, the Appellant was not in "Judicial service" on the date of his appointment also. Therefore, the appellant cannot be in judicial service on the date of his application or at the date of his appointment as District judge.

I) THE ELIGIBILITY OF BEING AN ADVOCATE FOR APPOINTMENT AS A DISTRICT JUDGE NEED NOT CONTINUE TILL APPOINTMENT.

- a) **Continuance of practice as an advocate till appointment as District Judge is not at all contemplated by Article 233(2).** To attract qualification prescribed under Article 233(2), practice as an Advocate need not be till appointment. The expression "*If he **has been** for not less than seven years **an advocate***" used in Article 233(2) of the Constitution of India is in present perfect tense and it is not present perfect continuous tense. This is more so when experience as an advocate is not a continuous state of affair till appointment.
- b) **Insisting on a further condition of continuous practice as an Advocate till appointment as District judge will amount to prescribing a further period beyond seven years, which is not at all contemplated by Article 233 of the Constitution.** Article 233 does not stipulate that the person applying should be continuing in practice as on the date of appointment also. It is Constitutionally impermissible to insist on further condition not mentioned in the said Article and far beyond the clear language, text and connotation of that Article and insist that the candidate should be continuing in practice at the time of 'appointment' as District Judge.
- c) **Constitution Bench Judgment in Rameshwar Dayal v. State of Punjab [AIR 1961 SC 816 / 1960 SCC Online 123] covers the issue** - In para 8 of **Rameshwar Dayal v. State of Punjab** [AIR 1961 SC 816 / 1960 SCC Online 123], the argument which was considered in that case has been noted. It was argued that "*...(B)y reason of the use of the present perfect tense "has been" in clause(2) of Article 233, the rule of Grammar require that the person eligible for appointment must not have been an advocate or pleader before but must*

be an advocate or pleader at the time he is appointed to the office of District Judge.” Said argument was rejected in para 14 of the judgment. In paragraph 14 the Constitution Bench referring to the requirements in Article 233(2) of the Constitution of India held that Respondent 3 (Harbans Singh) and Respondent No 6 (P.R Sahney) “fulfilled those requirements” even when their “names were not factually on the roll of Advocates at the time they were appointed as district judges”. It was held that “*they were recognised as Advocates entitled to practice*”. Respondent 3 (Harbans Singh) worked as Deputy Custodian, Evacuee Property till 17-4-1950 and he was appointed as District Judge on the next day, 18-4-1950. Respondent 6 (P.R Sahney) had suspended his license to practice as an Advocate on 6-5-1949 and he worked as Deputy Custodian, Evacuee Property till 17-4-1950 and he became Chairman of Jullundur Improvement Trust on 30-3-1949 and while so, he was appointed as District Judge on 6-4-1957. It is categorically stated in paragraph 6 that both of them “*did not have their names factually on the roll when they were appointed as District judges.*” On consideration of requirements of Article 233(2), the Constitution bench held that “...(T)hey were recognised as Advocates **entitled to practice...**”. It was further held that “They did not cease to be Advocates at any time or stage after August 15, 1947, and they continued to be Advocates of Punjab High Court till they were appointed as District Judges. They also had the necessary standing of seven years to be eligible under Clause (2) of Article 233 of the Constitution.” In para 12 of the Judgment, it has been concluded that “*As to persons not already in service, a qualification is laid down in clause (2) and all that is required is that he should be an advocate or pleader of seven years standing.*” Judgment under review though quoted paras 12 and 14 of Constitution Bench Judgment in Rameshwar Dayal v. State of Punjab, has not analyzed para 14.

- d) **Without prejudice to the above, it is submitted that “entitlement to practice” is sufficient as per Article 233(2).** The “entitlement to practice” or “right to practice” constitute eligibility for the post of District Judge in view of the decision of the **Constitution Bench in Prof. Chandra Prakash Agarwal v. Chaturbhuj Das Parikh and others** [AIR 1970 SC 1061] and the decision of

the Hon'ble Supreme Court in **Mahesh Chandra Guptha v. Union of India and Others** [2009 (8) SCC 273 [which were delivered in the context of eligibility of High Court judges under Article 217(2)(b) of the Constitution]. In **Mahesh Chandra Guptha v. Union of India and Others** this Hon'ble Court considered the scope and ambit of the word "Advocate" used in Article 217(2)(b) of the Constitution of India, relating to qualification of High Court Judges. Article 217(2)(b) is similarly worded as in Article 233(2). The Supreme Court also considered the question as to whether "**actual practice**" as against "**right to practice**" is a prerequisite constitutional requirement of the eligibility criteria for becoming a High Court Judge. This Hon'ble Court *inter alia* referring to the provisions of Advocates Act, 1961 and referring to earlier judgments concluded in para 25 of its judgment that the Advocates Act, 1961 *inter alia* provides that once a person is enrolled by any one of the State Bar Councils, he becomes entitled to practice in all courts including Supreme Court. In para 26 it is clearly held that "Therefore, actual practice cannot be read into the qualification provision namely, Article 217(2)(b). The legal implication of the 1961 Act is that any person whose name is enrolled on the State Bar Council would be regarded as "an Advocate of the High Court". The substance of Article 217(2)(b) is that it prescribes an eligibility criteria based on "right to practice" and not actual practice." Hence it was concluded that actual practice is not a requirement for becoming a High Court Judge. Accordingly, appointment of a Member of Income Tax Tribunal, as High Court Judge was upheld. The above Judgment in **Mahesh Chandra Guptha v. Union of India and Others** has been quoted with approval in para 55 of the Judgment by a three Judge Bench of the Hon'ble Apex court in **Deepak Agarwal v. Keshav Kaushik and others** and it has been mentioned in para 4 of the concurring Judgment of Justice Ravindra Bhat in Dheeraj Mor case. Further, a Constitution bench of the honourable Supreme Court in **Prof. Chandra Prakash Agarwal v. Chaturbhuji Das Parikh and others** considering the provisions of Advocates Act, 1961 construed Article 217(2)(b) and accepted the position that the correct interpretation of the expression "an Advocate of a High Court" means an Advocate enrolled as an Advocate of a High Court, irrespective of whether on such enrollment he practiced in a High Court or a Court or Courts Subordinate to the High Court.

It was also held that distinction, if any, between the words “an Advocate” in Article 233(2) and the words “*an Advocate of a High Court*” in Article 217(2)(b) *has no significance in any event after the coming into force of Advocates Act, 1961, as by virtue of Section 16 of that Act there are now only two classes of persons entitled to practice, namely, senior Advocates and other Advocates.*” The Appellant had a right or entitlement to practice as an Advocate at the time of his appointment / joining as a District Judge.

- e) **Constitution Benches in the case of State of Assam and Another v. Kuseswar Saikia and others [AIR 1970 SC 1616] as well as in the case of High Court of Punjab and Haryana and others v. State of Haryana [AIR 1975 SC 613] have categorically concluded that appointment as well as promotion of persons to the post of District Judges is covered by Clause (1) of Article 233 of the Constitution itself.**
- f) **Article 233(2) does not prohibit the consideration of the candidature of a person who is in Judicial service.** A person who is in the service of either the Union or the State would still have the option, if selected, to join the service as a District Judge or continue with his existing employment. Compelling a person to resign from his job, even for the purpose of assessing his suitability for appointment as a District Judge, is not permitted either by the text of Article 233(2) nor contemplated under the scheme of the Constitution as it would not serve any constitutionally desirable purpose. Any other interpretation will be arbitrary.
- g) **Without prejudice to above it is submitted that, if Vijay Kumar Misra (2016) 9SCC 313) case is to be overruled, Prospective overruling of the same may be in the interest of justice** - In Vijay Kumar Mishra v. High Court of Judicature of Patna (2016) 9 SCC 313, a two-judge bench of this Hon'ble court held that “8. *The text of Article 233(2) only prohibits the appointment of a person as a District Judge, if such person is already in the service of either the Union or the State. It does not prohibit the consideration of the candidature of a person who is in the service of the Union or the State. A person who is in the service*

of either the Union or the State would still have the option, if selected, to join the service as a District Judge or continue with his existing employment. Compelling a person to resign from his job even for the purpose of assessing his suitability for appointment as a District Judge, in our opinion, is not permitted either by the text of Article 233(2) nor contemplated under the scheme of the Constitution as it would not serve any constitutionally desirable purpose.” At the time of appointment of the Petitioner, the decision of this Hon’ble Court that held the field was Vijay Kumar Mishra (supra), which held that a person being in service of the Union or State would not prohibit consideration of the candidature for District Judge under Article 233(2). The said decision has been overruled by the judgement under Review. However, applying the doctrine of prospective overruling, it is submitted that the Applicant had taken charge of his post of District Judge before the judgment in Vijay Kumar Mishra (supra) was overruled. Therefore, if Vijay Kumar Misra (2016) 9SCC 313) case is to be overruled, for doing complete justice in the cause, it is just and reasonable not to interfere with the appointment of the Appellant. Therefore, the principles of prospective overruling, legitimate expectation, the laudable principles of equity etc. may be pressed into service in the interest of doing complete justice. It is respectfully submitted that the principle in the maxim “*actus curiae neminem gravabit*” namely act of the Court shall not prejudice any parties is squarely applicable in the present case.

II) GOING BY FACTS ALSO APPEALANT’S APPOINTMENT IS NOT LIABLE TO BE SET ASIDE

- a) Appellant was not “in service” on the date of his application or on the date of his appointment as District judge. The appellant was not an in-service candidate. He was an advocate on the cut-off date of application as District Judge. He was not in service on the date on which he was appointed as District Judge in Kerala Higher Judicial Service, since he was discharged from service by the Kerala High Court dispensing with his Subordinate Judicial service. Therefore, the law laid down in Deeraj Mor case regarding in-service candidates is not applicable to the appellant.

A case similar to that of the appellant was considered by this Hon'ble Court in **Sunil Kumar Verma vs. State of Bihar and Others**, (2022) 9 SCC 686 (paras 18 and 19), which distinguished earlier judgment under review (Deeraj Mor). Therefore, this Civil Appeal may be considered in line with abovementioned Sunil Kumar Verma case (supra). **Similar to Sunil Kumar Verma's case**, In similar circumstances, this Hon'ble Court had allowed the above-mentioned Sunil Kumar Verma case (supra), distinguishing Deeraj Mor (supra). Hence, on parity, this Civil Appeal also may be considered in line with Sunil Kumar Verma case (supra) (paras 18 and 19).

- b) **Rule 2(1) of the Kerala State Subordinate Service Rules, 1958 states that a person is 'appointed' to a service when he discharges the duties of the post for the time or commences the prescribed probation or training.** It is submitted that when the Appellant took charge as District Judge on 24.8.2019, he was no longer a part of any service, since he had already been discharged under the mechanism provided in Rule 2(5). Rule 2(1) reads as follows: "(1) A person is said to be *"appointed to a service"* when in accordance with these rules or in accordance with the rules applicable at the time as the case may be, he discharges for the first time the duties of a post borne on the cadre of such services or commences the probation, instruction or training prescribed for members thereof: ..."
- c) **As on the date of appointment, the appellant was an Advocate, entitled to practice, having right to practice, more so when he was already discharged.** The appointment date has to be reckoned as per Rule 2(1) of the KS&SSR, 1951 and not as per date of resolution of proposed appointment by the full court (Exhibit P6) or not as per the proposal for appointment as per Exhibit P10. Only when the proposal for appointment is accepted by the appellant by joining service the appellant can be considered as appointed and he becomes a 'member of the service'. Before actual joining, the appellant cannot be considered as a "member of service" and he is not entitled to any service benefits, and he cannot be dismissed or discharged before the joining day. Therefore, the appellant was entitled to practice as an Advocate at the

time of his appointment. Hence between date of discharge and date of appointment, appellant was a free person and was neither in Subordinate Judicial Service (as per Kerala Judicial Service Rules, 1991) nor in Higher Judicial service (as per Kerala State Higher Judicial Service Rules, 1961). Both are two different and distinct services. Therefore, even going by the dictum of the honourable Supreme Court in Dheeraj Mor case the appellant was eligible under Article 233(2) of the Constitution and there was no disqualification as on the date of appointment and he satisfied all requirements. The High Court erred in concluding otherwise and holding that order of appointment is issued by the Governor of Kerala.

III. WITHOUT PREJUDICE TO THE ABOVE, IT IS SUBMITTED THAT, UNSEATING PERSONS WHO HAD BEEN PROPERLY DISCHARGING DUTIES AS DISTRICT JUDGE FOR A LONG PERIOD OF TIME WOULD BE INEQUITABLE AND AGAINST PUBLIC INTEREST.

- i) Appellant has been continuing as District Judge, and **he is in seventh year of service**, and he is being considered for promotion as Selection Grade District and Sessions Judge in the Kerala State Higher Judicial Service. It is submitted that in several judgements of this Hon'ble Court, it has been held that unseating persons who had been properly discharging their duties as District Judge for a long period of time would be inequitable and against public interest. In this regard, reliance is placed on the judgements of this Hon'ble Court in **Sivanandan CT v. High Court of Kerala**, (2024) 3 SCC 799 and **Vivek Kaisth v. State of Himachal Pradesh**, (2024) 2 SCC 269.
- ii) **Appellant was the third-ranked holder with 182.5 marks. Contesting candidate (Writ petitioner) was the thirteenth rank holder** (out of fourteen candidates listed) (who was having 160.5 marks), causing great injustice and prejudice to the Appellant as well as to merit. The Writ petitioner was having below 50 percent marks. There was a difference of 22 marks between the Appellant and the Writ petitioner.

IV) WRIT PETITIONER WHO WAS AN ASPIRANT TO THE POST OF DISTRICT JUDGE HAS SUPPRESSED MATERIAL FACTS AND IS NOT ENTITLED TO ANY RELIEF.

The fact that an earlier Writ petition was already filed and withdrawn was such a fact, the suppression of, which would affect the final disposal of the Writ petition on merits more so when fresh writ petition is not maintainable in the light of withdrawal of earlier writ petition. The Writ petitioner had created a wrong impression before this Hon'ble Court that the earlier Writ petition is pending disposal. Accordingly, she had secured permission from the Hon'ble Supreme Court to approach the High Court. In the circumstances, the Writ Petitioner should not be permitted to maintain a fresh writ petition and that too suppressing fact regarding filing and disposal of earlier writ petition, especially in view of the further fact that this Hon'ble Court had not granted liberty to file a 'fresh writ petition'. The Hon'ble High Court is not justified in viewing the suppression of material facts by the Writ petitioner, a District Judge aspirant, lightly and invoking the equitable writ jurisdiction in her favour, observing that when pointed out by the opposite party and exposed, the same was duly rectified by amending the writ petition. Suppression of material facts is fraud on court. Subsequent amendment cannot rectify the suppression. As a matter of fact, the suppression was attempted to be rectified by amending the Writ petition only on pointing out the same by the respondent in the Writ Petition. On the other hand, the allegation of suppression raised by the first respondent against the appellant is unsustainable and wrong. The appellant had disclosed about the Deeraj Mor case and interim order passed therein in his Counter affidavit filed in Writ Petition (Civil) No 20301 of 2019 (page 295 of Civil Appeal). The details regarding WP (C) No 999 of 2019 are also disclosed in his Counter affidavit filed in Writ Petition (Civil) No 20301 of 2019 (page 295 of Civil Appeal).

BRIEF SEQUENCE OF EVENTS

LIST OF DATES	
20.07.2008	Appellant enrolled as an Advocate.
18.02.2016	Recruitment Notification was issued – inviting applications for the post of Munsiff /Magistrate.
17.03.2016	Appellant applied for the post of Munsiff /Magistrate and appeared for the examination.
09.08.2016	Judgement of this Hon'ble Court was rendered in <i>Vijay Kumar Mishra v. High of Judicature at Patna, (2016) 9 SCC 313</i> – which held that there was no bar under Article 233(2) for a person already in service to apply to the post of District Judge. <u>Note:</u> At the time of appointment of Appellant as District Judge – this judgment held the field.
01.01.2017	Cut-off date of qualifications for appointment as District and Sessions Judge
21.11.2017 [Pg 115-121]	Recruitment Notification was issued – inviting applications for appointment as District and Sessions Judge. • Clause 6(f) requires that the candidate should be a practicing advocate for not less than 7 years, <u>as on 1.1.2017.</u>(@Pg 116)
01.12.2017 [Pg 122-134]	Appellant submitted application for the post of District Judge.
28.12.2017 [Pg 136-140]	Notification offering appointment of appellant as Munsiff /Magistrate
11-1-2018	Appellant was offered posting as Munsiff /Magistrate

[Pg 141-149]	
22-01.2018 [Pg 135]	Date of closure of completion of step -2 process of District Judge Application.
12.02.2018	Appellant joined as Munsiff /Magistrate and accordingly appointed as Munsiff /Magistrate and discharged for the first time duties of Munsiff /Magistrate.
20-7-2018 (Annexure A2- Pg 16 in IA No 154702/ 2022)	Appellant obtained permission from High Court to attend preliminary examination for the post of District Judge
17-12-2018 (Annexure A3- Pg 17 in IA No 154702/ 2022)	Appellant obtained permission from High Court to attend main examination for the post of District Judge
10-5-2019 [Pg 150-157]	Interim order in Deeraj Mor regarding in-service candidates. Appellant not in-service candidate- But direct recruitment candidate being Advocate at the time of application -
07.06.2019 08.06.2019 [Pg 156-159] [Pg 160-161]	Kerala High Court issued a list of candidates (along with consequential notice) selected for the post of District and Sessions Judge. • 8 candidates were selected, including the Appellant. (@Pg 161) • The Appellant was ranked 3rd in the Regular Category – 2nd in the Ezhava Reservation Category. (@Pg 158) • The Respondent No. 1 (Writ Petitioner) was ranked 13th in the Regular Category – 4th in the Ezhava Reservation Category. (@Pg 158)
10.06.2019	Writ Petition © No 15832/ 2019 was filed by Respondent No. 1 before the Hon'ble High Court – challenging the appointment of Appellant. <u>Note:</u>

	Writ Petition was withdrawn, with liberty to approach this Hon'ble Court. However, the Writ Petition filed before this Hon'ble Court was also withdrawn, with liberty to go back to the Hon'ble High Court.
22.07.2019 [Pg 212-226]	Second Writ Petition was filed by Respondent No. 1 – seeking the same relief.
02.08.2019 A16 [Pg 257-259]	Government proposing appointment of District Judge
17-8-2019 At Pg 263 [Pg 260-270]	Appellant was ordered to discharge from earlier probation service dispensing with his services as Magistrate directing to handover charge and proceed to take up his new appointment (at pg 263)
21.08.2019	Appellant was discharged from his service from the post of Munsiff Magistrate, in accordance with Rule 2(5) of the Kerala State and Subordinate Service Rules, 1958 – which provides for discharge of a probationer.
24.08.2019 [Pg 281]	Appellant joined as District Judge and accordingly appointed as District Judge and discharged for the first time duties of District Judge.
19.02.2020	Judgement was pronounced in <i>Dheeraj Mor (supra)</i> .
14.07.2020 [Pg 310-324]	The Ld. Single Judge allowed the Writ Petition filed by the Respondent No. 1, by relying on the Judgement under review in <i>Dheeraj Mor (supra)</i> .
11.08.2020 [Pg 325-363]	Appellant filed a Writ Appeal – challenging the Order of the Ld. Single Judge.
14.10.2020 [Pg 1-42]	The Ld. Division Bench declined to interfere with the Order of Ld. Single Judge, by relying on the Judgement under review in <i>Dheeraj Mor (supra)</i> .

	The Hon'ble High Court has deemed it fit to grant a Certificate under Article 134A, certifying that the Appeal raises substantial questions of law of general importance, which would require an authoritative pronouncement of this Hon'ble Court.
01.12.2020	Present Civil Appeal was filed under Article 133 – challenging the Impugned Order.- Interim order granted
Till today	Appellant continuing as District Judge in his Seventh year

**IN THE SUPREME COURT OF INDIA
(CIVIL APPELLATE JURISDICTION)
SPECIAL LEAVE PETITION (CIVIL) NO. 3076 OF 2023**

IN THE MATTER OF:

MITAL NANALAL UKANI

...PETITIONER

VERSUS

HIGH COURT OF GUJARAT & ANR.

...RESPONDENTS

WRITTEN SUBMISSION ON BEHALF OF THE PETITIONER

[PAPERBOOK]

FOR INDEX PLEASE SEE INSIDE

A handwritten signature in black ink, appearing to read 'Tanvi Dubey', with a stylized flourish at the end.

**ADVOCATE ON RECORD FOR PETITIONER
TANVI DUBEY**

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... Petitioner

Versus

High Court of Gujarat (through Registrar General) & one another

.... Respondents

WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER BY
ARVIND P. DATAR, SENIOR ADVOCATE

I. Reference to Constitution Bench

1.1 Through an order dated 12-08-2025¹, the following substantial questions of law were referred to this Hon'ble Constitution Bench:

- (i) *Whether a judicial officer who has already completed seven years in Bar being recruited for subordinate judicial services would be entitled for appointment as Additional District Judge against the Bar vacancy?*
- (ii) *Whether the eligibility for appointment as a District Judge is to be seen only at the time of appointment or at the time of application or both?*

1.2 When this batch of matters were listed on 12-09-2025 under the caption “Direction Matters”, the following issues were also framed for the consideration of the Hon’ble Constitution Bench:

¹ *Rejanish KV v. K. Deepa*, CA 3947 of 2020 and connected matters.

- (iii) *Whether there is any eligibility prescribed for a person already in the judicial service of the Union or State under Article 233(2) of the Constitution of India for being appointed as District Judge?*
- (iv) *Whether a person who has been Civil Judge for a period of seven years or has been an Advocate and Civil Judge for a combined period of seven years or more than seven years would be eligible for appointment as District Judge under Article 233 of the Constitution of India?*

1.3 In the instant case, the petitioner is concerned with only Question No: (iv) above, and other questions are not dealt with in these written submissions.

II. Brief factual background

2.1 On 09.03.2020, the petitioner applied for the post of District Judge, as per the advertisement dated 05-03-2020. The experience of the Petitioner is clear from the following table:

S.No.	Particulars	Date	Duration
1.	Petitioner enrolled with the Bar Council of Gujrat as an Advocate	31.08.2003	-
2.	Petitioner appointed as a Civil Judge on ad-hoc basis	13.09.2012	9 years and 13 days
3.	Petitioner resigned from judicial service and resumed practice	19.11.2015	3 years 2 months and 6 days
4.	Last date of application in the advertisement	21.03.2020	4 years 4 months and 2 days

2.2 Therefore, from the above it is amply clear that as on 21.03.2020, the experience of the Petitioner as an advocate was 13 years 4 months and 15 days and as a Judicial Officer was 3 years 2 months and 6 days.

2.3 It is also pertinent to note that out of 861 candidates who applied, only the petitioner qualified in the Main Written Examination and was selected for *viva voce*. However, a “NIL” final select list was published on 17-03-2022, without disclosing the marks obtained by the Petitioner. Upon enquiry, Respondent No:1, through email dated 30-03-2022, highlighted that the petitioner had been disqualified and that the period of seven years of practice has to be continuous period immediately preceding the date of application.

III. Interpretation of “seven years” in Article 233(2)

3.1 Article 233 reads as follows:

233. Appointment of district judges.—(1) *Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.*

(2) *A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been **for not less than seven years an advocate** or a pleader and is recommended by the High Court for appointment.*

3.2 The text of Article 233(2) does not state that an advocate applying for recruitment as district judge requires seven years of ‘continuous’ experience ‘immediately’ prior to the date of application.

3.3 It is submitted that the correct interpretation of using the term ‘*has been*’ in Article 233 is only to refer to the continuing nature of the Advocate’s practice as on the date of filing for application. It merely represents a ‘continuing state of affairs’ as on the date of application, rather than prescribing a continuous time period immediately preceding the application date. Therefore, the correct interpretation of the term ‘has been’ is merely to signify the continuing nature of the person’s practice as an advocate on the date of application, and the same is disjunct from the stipulation of a minimum practice period of seven years.

IV. *Dheeraj Mor* - need for reconsideration

4.1 The decision in *Dheeraj Mor v High Court of Delhi*² was concerned with the interpretation of Article 233 in the context of three categories:

- (i) Petitioners who were in judicial service but claimed that they had completed seven years of practice before joining judicial service;
or

² (2020) 7 SCC 401.

- (ii) Persons who had completed only seven years of judicial service.

It was urged that they should be taken on par with advocates completing seven years of practice; and

- (iii) A hybrid category of candidates who had completed seven years by combining the experience of serving as judicial officers and as advocates.

4.2 It is submitted that while the conclusion reached by *Dheeraj Mor* is correct qua the three categories cited above, there are other categories who will be eligible under Article 233(2) and are not covered by *Dheeraj Mor*. For example, a candidate may have completed more than seven years' practice as an advocate and has then taken employment as a lecturer in a law college. He is not a member of the judicial service and there is nothing in Article 233 which disentitles him from being appointed under Article 233(2). The only restriction is that the person (or candidate) should not be in the "service of the Union" / "State", a phrase which has been interpreted to mean only the judicial service. The three-judge bench held that persons who are in judicial service cannot claim to be selected under Article 233(2) as this was restricted only to the members of the Bar.

4.3 It has been further held that the candidate should be actually in practice on the date of his application. It is submitted that this interpretation is incorrect. Clause (2) has a *positive* requirement of a candidate being an advocate for at least seven years and a *negative* requirement that he is not

already in the service of a Union/State *i.e.* judicial service. Thus, there is no bar in a person who is either a lecturer or a law officer in a statutory corporation from applying for the post of a District Judge if he has completed the mandatory period of seven years as an advocate.

4.4 Another example can be a person who has first completed more than seven years practice, appointed as a judicial officer but resigned his/her post and once again commenced practice. He can claim consideration under Article 233(2) because he is not in judicial service and is also practising as a lawyer on the date of application. There is no bar in his applying for being selected as a District Judge.

4.5 In the instant case, the experience of the Petitioner as an advocate was 13 years 4 months and 15 days, and her experience as a Judicial Officer was 3 years 2 months and 6 days. It is therefore submitted that there is no bar under Article 233 to appoint the petitioner as a district judge under Article 233 of the Constitution of India.

V. Interpretation of the Constitution- application of literal rule

5.1 In Para 45 of *Dheeraj Mor*, it was held as follows:

45. In view of the aforesaid discussion, we are of the opinion that for direct recruitment as District Judge as against the quota fixed for the advocates/pleaders, incumbent has to be practising advocate and must be in practice as on the cut-off date and at the time of appointment he must not be in judicial service or other services of the Union or State. For constituting experience of 7 years of practice as advocate, experience obtained in judicial service cannot be

equated/combined and advocate/pleader should be in practice in the immediate past for 7 years and must be in practice while applying on the cut-off date fixed under the rules and should be in practice as an advocate on the date of appointment. The purpose is recruitment from Bar of a practising advocate having minimum 7 years' experience.

(emphasis added)

5.2 Thus, *Dheeraj Mor* held that under Article 233(2), an advocate:

- (i) Should be in practice in the immediate past for seven years;
- (ii) Must be in practice while applying on the cut-off date; and
- (iii) Should be in practice as an advocate on the date of appointment.

5.3 It is submitted that the above triple conditions are absent in Article 233(2).

It is settled law that if provisions are clear and expressive, it cannot be reduced to a nullity by reading into it a meaning which it does not carry.

In *Union of India v. Sankalchand Sheth*³, a Constitution Bench followed⁴ this principle and held that the word “consent” cannot be read into Article 222 of the Constitution.

5.4 Therefore, it is submitted that apart from the questions of law framed *vide* orders dated 12-08-2025 and 12-09-2025, the following two questions arise for the consideration of this Hon’ble bench:

³ (1977) 4 SCC 193.

⁴ Para 11 (per Chandrachud, J), para 54 (per Bhagwati, J) and para 105 (per Krishna Iyer, J). See also *Padma Sundara Rao v. State of Tamil Nadu*, (2002) 3 SCC 533 at para 12; *Nathi Devi v. Radha Devi Gupta*, (2005) 2 SCC 271 at paras 13-17.

- (i) *Whether “seven years” in Article 233(2) means seven continuous years immediately preceding the cut-off date? and*
- (ii) *Whether the cut-off date for determining eligibility for appointment under Article 233(2) should be taken as the last date for submission of the application for appointment to the post of District Judge?*

FILED THROUGH



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Dated: 18-09-2025

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE / INHERENT / ORIGINAL JURISDICTION
CIVIL APPEAL NO. 3947 OF 2020

IN THE MATTER OF:

Rejanish K.V.	Versus	... Appellant
K. Deepa & Ors.		... Respondents
ALONG WITH		
REVIEW PETITION (C) NO. 380 OF 2021		
Manglesh Choubey		... Petitioners
	Versus	
Rajasthan High Court & Ors.		... Respondents

WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER /

MANGLESH CHOUBEY

[BY: DR. MENAKA GURUSWAMY, SENIOR ADVOCATE]

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I. FACTUAL OVERVIEW

- A. The Petitioner, Mr. Manglesh Choubey, who was enrolled as an Advocate with Bar Council of India in 2008, is presently serving as Additional District & Sessions Judge, Hisar, Haryana.
- B. On 13.04.2011, the Petitioner cleared the Haryana Judicial Services exam and joined as a Civil Judge, Junior Division.
- C. On 13.04.2016, the Petitioner was promoted to the cadre of Civil Judge, Senior Division.
- D. The Petitioner filed writ petitions before this Hon'ble Court seeking permission to appear in Direct Recruitment Examinations for Delhi, Gujarat, Punjab, and Haryana.
- E. By order dated 23.01.2018 in *Dheeraj Mor v. High Court of Delhi* (SLP (C) No. 14156/2015) and connected matters, including the Petitioner's, the questions under Article 233 were referred to a larger Bench.
- F. This Hon'ble Court *vide* order dated 30.08.2019 granted interim permission to the Petitioner to appear in the examination for direct recruitment of District Judge in Haryana.
- G. The written test for above examination was conducted between 29.11.2019 and 01.12.2019 with papers identical to those of the Limited Departmental Competitive Examination ("LDCE"). The Petitioner secured second rank and was called for viva voce by the Punjab & Haryana High Court.
- H. Due to the judgment in *Dheeraj Mor v. High Court of Delhi*, (2020) 7 SCC 401, which held that direct recruitment requires seven years of continuous and exclusive practice at the Bar and that judicial officers in service are ineligible under Article 233(2), the Petitioner was disallowed from appearing in the Viva Voice for the Direct Recruitment Exam.
- I. The Petitioner was promoted as Additional District Judge on 25.04.2025 by seniority-cum-merit. The six-year delay seriously prejudiced his career prospects for High Court elevation, where seniority is crucial. Promotion in 2019 would have placed him about 80 ranks higher in his batch.
- J. This Hon'ble Court, finding merit in the submission that *Dheeraj Mor* considered a substantial question of law, *vide* order dated 12.08.2025, referred the matter to a five-Judge Constitution Bench for determination of the questions arising from the interpretation of Article 233(2) of the Constitution as framed in the said reference order.

II. ISSUES FOLLOWED BY PROPOSITIONS & SUBMISSIONS

A. Issue 1 & 2:

- Whether a judicial officer, having completed seven years of practice at the Bar prior to joining the subordinate judiciary, is entitled to appointment as District Judge under the Bar quota?
- Whether a person with seven years' experience exclusively as a Civil Judge, or cumulatively as Advocate and Civil Judge, qualifies for appointment as District Judge under Article 233 of the Constitution?

A1. **Article 233(2) must be harmoniously construed with Articles 124(3) and 217(2).**

1. A restrictive interpretation of Article 233(2), confining eligibility exclusively to advocates with seven years of practice and thereby excluding judicial officers from consideration for direct recruitment as District Judges, leads to an incongruous result when read in light of Articles 124(3) and 217(2) of the Constitution which provide the qualifications for appointment of Supreme Court and High Court judges respectively.
- (i) Explanations in Articles 124(3) and 217(2) treat practitioner and judicial service experience as equivalent
2. Explanation II following Article 124 (3) and Explanations (a) and (aa) following Article 217 (2) both treat the prior experience of applicants as a composite whole, whether in the judicial services or as an advocate, while computing their eligibility for appointment as a Supreme Court or High Court judge. **Explanation II to Article 124(3)** provides that in calculating whether an advocate meets the 10 years eligibility criteria to be appointed directly from the Bar, any years spent in the judicial services would be included in the computation of years of relevant experience. Similarly, **Explanation (a) to Article 217 (2)** provides that in calculating whether a person in the judicial services has met the minimum requirement of ten years in service for the purpose of appointment as a High Court judge, any experience as an advocate or any as a member of a tribunal or post requiring "*special knowledge of law*" would be included. Further, Explanation (aa) to Article 217 (2) provides that in calculating whether an advocate has met the minimum requirement of ten years' experience for the purpose of appointment as a High Court judge, any experience in the judicial services, would be included.

Therefore, it incontrovertibly emerges that the intention of the Constitution framers was to treat experience at the Bar and experience in judicial services as equivalent for the purpose of eligibility for appointment as judges of the High Court and the Supreme Court, since both these roles require special knowledge of law.

3. It is well settled that constitutional provisions ought not to be read in isolation and must be construed harmoniously such that each provision takes color from the other and a consistent and holistic interpretation emerges. Our Constitution framers built interwoven and interdependent provisions that collectively create a working system for each branch of government. The Union and State Judiciary is an integrated judiciary that stands on a pyramidal structure with the Supreme Court at the top and the subordinate judiciary at the bottom. Dr. B.R. Ambedkar during Constituent Assembly Debates (Reference: Constituent Assembly Debates, Vol. VII, Pg. 26, dated 04.11.1948) had remarked that – “The Indian Federation though a Dual Polity has no Dual Judiciary at all. The High Courts and the Supreme Court form one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law”.
4. Therefore, the contours of eligibility for appointment as a district judge under Article 233 must be interpreted in a consistent and congruous manner, keeping in mind the eligibility criteria set out for the appointment of Supreme Court and High Court judges under Articles 124 and 217 as set out above.
- (ii) Intent of the Constitutional Framers qua Article 233 was only to separate Executive and Judicial branches
5. The interpretation of Article 233(2) in ***Dheeraj Mor (supra)*** reads into the text of the Constitution an intent that wholly disconnected from the intent of the framers. The context in which Article 233 was introduced, as evidenced from the Constituent Assembly Debates, was to –
 - a. Make provisions for the appointment of District Judges;
 - b. Place the whole of civil judiciary under the control of the High Court.
 - c. To separate the judiciary from the Executive.

[Reference: Constituent Assembly Debates, Vol. IX, Pg. 29, dated 16.09.1949]
6. A Constitution Bench of this Hon’ble Court in ***Chandra Mohan v. State of Uttar Pradesh***, 1966 SCC OnLine SC 35 considered these portions of the Constituent Assembly Debates and held that it was the intention of the framers of the

Constitution that the Subordinate Judiciary, being the closest in contact with the public, must be fiercely independent and completely separate from the Executive branch, in the same way that constitutional courts are independent. To safeguard this independence from executive influence, the Constitution incorporated a distinct set of provisions under Chapter VI of Part VI, titled ‘Subordinate Courts’.

7. The Constituent Assembly Debates do not indicate any intent to create an artificial distinction between the computation of eligibility for Supreme Court and High Court judges, on the one hand, and the lower judiciary, on the other or between experience as an advocate and in the judicial services. The eligibility criteria across all tiers of the Judicial branch must be construed in the same spirit, thereby ensuring a seamless and consistent system of appointment in harmony with the Constitution.
- (iii) Absurdity emanating from a narrow interpretation of Article 233(2)
8. Further, a highly narrow and restrictive interpretation of Article 233(2) leads to a manifest anomaly wherein a civil judge, by tendering resignation, may legitimately qualify for appointment as a High Court Judge under Article 217(2), yet remains barred from applying for direct recruitment as a District Judge pursuant to Article 233(2). Such an interpretation of Article 233(2) is absurd and inconsistent with the constitutional scheme.
9. Reliance is placed on the judgment of this Hon’ble Court in ***Rameshwar Dayal v. State of Punjab***, (1961) 2 SCR 874 (5 JJ.) [¶13], wherein it was held that an advocate applying for direct recruitment under Article 233(2) was entitled to count his period of practice in the High Court of Lahore. The Court further observed that the Constitution, being a living and organic document, ought not to be construed narrowly by rigid grammatical rules so as to defeat the true intent and object underlying its provisions.
10. Hence, an interpretation that excludes judicial officers from the ambit of Article 233(2) contradicts the inclusive approach adopted under Articles 124(3) and 217(2), fails to interpret the text of the Constitution harmoniously and fails to recognize the equivalency of judicial and advocacy experience for eligibility to higher judicial office.

A2. Any interpretation of Article 233(2) that excludes judicial officers from seeking direct appointment to the Higher Judicial Services would be manifestly arbitrary, discriminatory, and contrary to Article 14.

11. This Hon'ble Court by virtue of its judgment in *All India Judges' Association and Ors. vs. Union of India and Ors.*, (2002) 4 SCC 247 (3 JJ.) [¶28], has directed that recruitment to the Higher Judiciary Service *i.e.*, the cadre of District Judges under Article 233 will be in the following manner:
 - (a) 50% by promotion from amongst Civil Judges (Senior Division) based on the principle of merit-cum-seniority and passing a suitability test;
 - (b) 25% by promotion strictly on the basis of merit through limited departmental competitive examination ("LDCE") of Civil Judges (Senior Division) having not less than 5 years' qualifying service; and
 - (c) 25% of the posts shall be filled by direct recruitment from amongst the eligible advocates (7 years of practice) on the basis of the written and viva voce test conducted by respective High Courts.
12. Notably, the second category of LDCE was reduced to 10% in *All India Judges' Association v. Union of India*, (2010) 15 SCC 170 [3 JJ.]. However, it has since been restored to 25% in *All India Judges' Association*, 2025 INSC 735 (3 JJ.) [¶89], while stipulating that the qualifying experience shall be three years as Civil Judge (Senior Division) with a further cumulative experience of seven years as Civil Judge (Senior Division) and Civil Judge (Junior Division).
- (i) Third category should not exclude Civil Judges who had prior experience at the Bar
13. The third category of direct recruitment under Article 233(2) should not be confined solely to those who have only practiced as advocates for a continuous period of seven years. The complete exclusion of serving Civil Judges from the third category cannot be traced to the language of Article 233(2) and is irrational, unreasonable, discriminatory and manifestly arbitrary. [References: *Ram Krishna Dalmia v. S.R. Tendolkar*, AIR 1958 SC 538 (5 JJ.) (¶11); *Shayara Bano vs. Union of India*, (2017) 9 SCC 1 (5 JJ.) (¶101)].
- (ii) Exclusion is irrational and arbitrary
14. Barring Civil Judges who have previously practiced at the Bar and subsequently served in the judiciary is irrational and arbitrary. Civil judges who were previously practicing at the Bar possess equivalent, if not superior, professional experience.

Their cumulative experience—comprising practice at the Bar prior to judicial service and subsequent tenure as Civil Judges—should be fully counted towards eligibility, thereby enabling them to compete for direct recruitment to the post of District Judge under Article 233(2).

(iii) Treating unequals equally

15. An interpretation of Article 233(2) which excludes the Civil Judge from claiming direct recruitment has the effect of treating unequals equally. If excluded from eligibility for the Higher Judicial Services under the direct recruitment route, a person who has 5-6 years of experience at the Bar and then decides to dedicate herself to public service and sit for judicial examinations would be treated as equal to a fresh graduate who sits for the exam as soon as she completes her LLB, despite her many more years of experience in the legal profession.

(iv) No legitimate state purpose

16. This interpretation completely erases all of one's years as a junior lawyer from one's professional record without any legitimate state purpose. The relevance of legal experience as a practicing advocate towards effectively performing one's duty in the service of the lower judiciary has been emphatically underscored by this Hon'ble Court in *All India Judge's Association case (2025)*. To thereafter negate such experience by erasing it from one's professional record is manifestly arbitrary.

(v) Penalising advocates at the Bar who take up a career in the judicial services

17. This interpretation penalizes and thus creates a very significant disincentive upon bright and skilled young advocates who, after a few years in practice, decide to dedicate themselves to public service and join the judicial services at the level of Civil Judge or Magistrate. If the cost of joining the lower judiciary is to be forced to give up one's seniority in the profession and be treated as a fresher, many good candidates would be dissuaded from taking up a career in the judicial services.
18. In *P. Ramakrishnam Raju v. Union of India*, (2014) 12 SCC 1 (¶¶19-20 & 24), this Hon'ble Court considered as to whether Judges of the High Court appointed from the Bar under Article 217(2)(b) could count their 10 years of practice as advocates for the purpose of computing qualifying service so as to draw the maximum pension. This Hon'ble Court, while answering the said question in the affirmative, further held that irrespective of the source of their appointment, all

judges are entitled to the same pension, just as they receive identical salaries, allowances, and perks while in service.

19. Furthermore, in ***Deepak Aggarwal v. Keshav Kaushik***, (2013) 5 SCC 277, this Hon'ble Court held that Public Prosecutors, though in full-time employment of the State, are entitled to seek direct recruitment as District Judges under Article 233(2), since they continue to be treated as 'advocates'. The Court reasoned that notwithstanding their full-time employment status, once a Public Prosecutor appears before a court, he or she is guided solely by norms consistent with the interest of justice. While the Petitioner does not dispute the said interpretation, he respectfully submits that a similar construction of Article 233(2) must extend to Civil Judges (Senior Division), whose experience as judicial officers—rooted in prior enrollment at the Bar coupled with the experience gathered during service, cannot be disregarded merely because they form part of the judicial service. To deny Civil Judges parity of treatment with Public Prosecutors would create an artificial distinction between persons in the employment of the State, and such exclusion would be violative of Article 14 of the Constitution which guarantees equality before law.
20. The aforesaid judicial precedent makes it clear that exclusion of persons in the judicial services entirely under Article 233(2) for the direct recruitment with respect to post of District Judge, regardless of their prior experience at the Bar, is without any reasonable basis. It is clear that complete exclusion of civil judges / judicial officers from seeking direct recruitment as District Judges in terms of Article 233(2) is manifestly unjust, arbitrary and discriminatory and sans any reasonable intelligible differentia. Hence, it is incumbent for this Hon'ble Court to harmoniously construe Article 233(2) so as to entitle the judicial officers to seek direct recruitment for the post of District Judge.

A3. Following *All India Judges Association (2025)*, permitting Civil Judges to seek direct appointment under Article 233(2) does not dilute, but rather preserves, the Bar's representation in the Higher Judiciary.

21. It is submitted that the entire purpose behind reserving quota for advocates under Article 233(2) insofar as direct recruitment to the post of District Judge is concerned is to have the representation of practicing advocates as judges in the Higher

Judiciary. The said representation is not only restricted to Higher Judiciary but goes to High Courts and this Hon'ble Court where practicing advocates are often appointed as judges.

- (i) *All India Judges Association case, (2025): Change in the basic eligibility criteria at the entry level*
22. An apprehension is sought to be created that by allowing civil judges to claim direct recruitment under Article 233(2), the blend of having the experience of bar as judges in the Higher Judiciary would be disturbed. It is submitted that the said apprehension is baseless inasmuch as by virtue of this Hon'ble Court's judgment in ***All India Judges' Association***, 2025 INSC 735 (3 JJ.), it has now been again mandated that any person desirous of appearing in the examination for the post of Civil Judge (Junior Division) [the entry level exam for judicial services] must have practiced for a minimum period of 3 years to be eligible for the said examination. Pertinently, this Hon'ble Court in ***All India Judges' Association***, (1993) 4 SCC 288 had mandated that in order to enter the judicial service, an applicant must be an advocate of at least three years' standing. However, the said rule was done away with in ***All India Judges' Association***, (2002) 4 SCC 247.
23. With the re-introduction of three years of practice as an eligibility criterion for appearing in the entry level exam in the judicial services, following propositions stand established:
 - All judicial officers have foundational Bar experience.
 - The "Bar representation" concern is already addressed at entry level.
 - Civil Judges (Senior Division) are experienced practitioners, not "raw graduates".
24. Moreover, in ***All India Judges' Association*** (2025 INSC 735), this Hon'ble Court reduced the minimum judicial service requirement for Civil Judge (Senior Division) to appear in the LDCE from five years to three years, while expressly mandating a cumulative seven-year tenure in the subordinate judiciary—comprising service as Civil Judge (Junior Division) and Civil Judge (Senior Division)—for eligibility to compete for promotion to District Judge. By recognizing and applying the principle of aggregate experience to satisfy a single seven-year eligibility threshold, this Hon'ble Court has endorsed cumulative qualification criteria. The identical rationale must govern Article 233(2): a candidate's pre-appointment Bar practice

and subsequent judicial service should be combined to meet the seven-year eligibility requirement under the Constitution. Employing the same cumulative-experience logic reinforces the constitutional objective of drawing candidates with a blend of advocacy and adjudication expertise, without undermining the integrity of the eligibility criteria.

A4. Excluding judicial officers from Article 233(2), despite them completing 3 years' Bar practice plus 7 years' judicial service for LDCE, while advocates need only 7 years' practice is entirely arbitrary and irrational.

25. This Hon'ble Court in *All India Judges' Association* (2025 INSC 735) has held that for a Civil Judge (Senior Division) to be eligible for seeking promotion to the post of District Judge through the merit based LDCE route, the minimum waiting period is 10 years inasmuch as:
 - (a) A person desiring to enter into the lowest rung of the judicial services *i.e.*, Civil Judge (Junior Division) must have 3 years of practice at the Bar;
 - (b) For Civil Judge (Senior Division) to become eligible for seeking promotion to the post of District Judge under the expedited exam (LDCE) route, needs a minimum of 3 years' experience as Civil Judge (Senior Division) and a cumulative experience of 7 years as Civil Judge (Junior Division) and Civil Judge (Senior Division).
26. Whereas, in *Dheeraj Mor* (*supra*) it was held that – “For the purpose of Article 233(2), an Advocate has to be continuing in practice for not less than 7 years as on the cut-off date and at the time of appointment as District Judge. Members of judicial service having 7 years' experience of practice before they have joined the service or having combined experience of 7 years as lawyer and member of judiciary, are not eligible to apply for direct recruitment as a District Judge.”
27. When the decision in *Dheeraj Mor* was passed, three years of practice was not a mandatory eligibility criterion at the entry level exam in judiciary.
28. Therefore, only allowing an advocate with seven years of experience to seek direct recruitment under Article 233(2) and completely excluding civil judges who have superior professional experience of at least ten years is completely arbitrary and irrational.

29. Furthermore, excluding judicial officers entirely from Article 233(2) arbitrarily penalizes them despite their superior professional experience compared to advocates. Such exclusion would diminish the appeal of judicial service for law aspirants, frustrating the slew of reforms undertaken by this Hon'ble Court by way of directions in the *All India Judges' Association cases*. Judicial officers, therefore, are clearly entitled to seek direct recruitment under Article 233(2) to the post of District Judge.

B. Issue 3: Whether the eligibility for appointment as a District Judge is to be seen only at the time of appointment or at the time of application or both?

B1. The eligibility criteria for direct appointment for the post of District Judge under Article 233(2) ought to be seen at the time of appointment.

30. It is submitted that while determining as to whether a person is eligible for seeking direct appointment for the post of District Judge in terms of Article 233(2), such eligibility must be seen at the time of appointment and not selection or at the stage of exam for the said post. Moreover, the language of the provision itself states that – **“A person not already in the service of the Union or of the State shall only be eligible to be appointed** a district judge...”. Hence, the logical sequitur to the same is that the eligibility criteria is to be determined at the time of final appointment and not at any prior stage of applying for the post, selection etc.
- (i) Service Law recognizes selection and appointment as two distinct and separate stages
31. The law is well settled in service law that there is a distinction between the terms ‘selection’ / ‘recruitment’ and ‘appointment’. Reliance in this regard is placed upon the judgment of this Hon'ble Court in the case of ***Prafulla Kumar Swain vs. Prakash Chandra Misra***, 1993 Supp (3) SCC 181 (¶29-30).
32. Hence, the eligibility criteria in any exam including the one for direct recruitment for the post of District Judge under Article 233(2) ought to be considered at the stage of appointment and not at the stage when a candidate applies for the recruitment.
33. Furthermore, it is also trite law that every person who is successful in the selection process undertaken by the State does not acquire an indefeasible right to be appointed automatically. Reliance in this regard is placed upon the judgment of this

Hon'ble Court in ***Tej Prakash Pathak v. High Court of Rajasthan***, (2025) 2 SCC 1 (5 JJ.) [¶64].

34. Therefore, even a judicial officer who has prior seven years of experience at the bar, while holding his judicial post can apply for direct recruitment under Article 233(2). Moreover, Article 233(2) bars only the appointment, not the consideration, of a person already in the service of Union or the States. Such a person, if selected, retains the choice to accept appointment as District Judge or remain in existing service. Hence, this Hon'ble Court ought to hold that the stage for determination of the eligibility under Article 233(2) is at the time of final appointment and not prior.

(ii) Decision in *Vijay Kumar Misra* wrongly overruled in *Dheeraj Mor*.

35. It is pertinent to mention that this Hon'ble Court in the case of ***Vijay Kumar Mishra & Anr. vs. High Court of Judicature at Patna & Ors.***, (2016) 9 SCC 313 had allowed petitioners therein who were already employed as part of subordinate judiciary to participate in the exam for direct recruitment (bar quota) under Article 233(2) based on the aforesaid proposition of law.
36. However, by way of the judgment in ***Dheeraj Mor v. Hon'ble High Court of Delhi***, (2020) 7 SCC 401, the aforesaid judgment [*Vijay Kumar Misra (supra)*] has been erroneously held to be *per incuriam* based on the rationale that in-service candidates cannot apply as against posts reserved for advocates because such candidate has to be in the continuous practice in the past as well as at the time when such candidate has applied and appointed. It is submitted that this Hon'ble Bench of 5-Judges ought to correct the said error committed in *Dheeraj Mor (supra)*, inasmuch as it completely disregards the period of service undertaken by a judicial officer while construing the eligibility criteria of 7 years of practice under Article 233(2).
37. Moreover, at the time when the judgment in *Dheeraj Mor (supra)*, was passed, the rule was that even a fresh law graduate could give the judicial services exam and become a Civil Judge (Junior Division) without any prior experience at bar. However, by virtue of this Hon'ble Court's judgment in ***All India Judges' Association***, 2025 INSC 735, 3 years of practice is a mandatory eligibility criterion for entering into judicial services. Therefore, there was no occasion for the judges in *Dheeraj Mor* to appreciate the effect that the said new rule of compulsory practice has brought in *i.e.*, now every judge be it of any cadre would have at least practiced

for 3 years before entering into the judicial services. Hence, it is incumbent to harmoniously interpret Article 233(2) in the light of said changed position of law.

- (iii) Decision in *Dheeraj Mor* has been distinguished by this Hon'ble Court
38. Pertinently, the judgment in *Dheeraj Mor (supra)* was distinguished in ***Sunil Kumar Verma v. State of Bihar***, (2022) 9 SCC 686, authored by Gavai, CJI. In the said case, the appellant, after completing seven years of practice, applied for appointment as ADJ in Bihar but, owing to delays in the process, joined as Civil Judge (Junior Division) in Uttar Pradesh. With the permission of the Allahabad High Court, he subsequently participated in the Bihar Higher Judicial Service selection and was selected. Thereafter, again with the High Court's permission, he resigned from his post in Uttar Pradesh and joined in Bihar. His candidature was later cancelled pursuant to the decision rendered in *Dheeraj Mor (supra)*, which the Patna High Court affirmed. On appeal, however, this Court distinguished the case, noting that the appellant was neither on the rolls of the Bihar Judicial Service at the relevant time nor had acted without permission, and accordingly directed his reinstatement.
39. Hence, in view of the aforesaid judicial precedents it is clear that insofar as Article 233(2) is concerned, the eligibility criteria ought to be determined at the time of appointment and not before.

C. Issue 4: Whether there is any eligibility prescribed for a person already in the judicial service of the Union or State under Article 233(2) of the Constitution of India for being appointed as District Judge?

C1. The language deployed in Article 233(2) does not create any eligibility requirement or bar on a person already in the judicial service of the Union or a State from being appointed as a District Judge.

40. The text of Article 233(2) start with “**A person not already in the service** of the Union or of the State **shall only be eligible** [...]”. The provision clearly contemplates two distinct elements –
- a. Firstly, the Article contemplates a person not already in service, meaning thereby that Article 233(2) cannot be construed in relation to a person already in service.

- b. Secondly, it creates a mandatory requirement of seven years practice as an advocate / pleader and recommendation by the High Court for a person not already in service to be eligible for appointment as District Judge.
41. Thus, Article 233(2) only creates an eligibility for persons not already in service, in the form of a mandatory practice as advocate / pleader for a period not less than seven years and a recommendation from the High Court. This qualification is not applicable to those who are already in the judicial service.
42. Reliance is placed on the observation of the Constitution Bench of this Hon'ble Court in ***Rameshwar Dayal v. State of Punjab***, 1960 SCC OnLine SC 123 wherein at Para 12 it was observed that –
- “As to a person who is already in the service of the Union or of the State, **no special qualifications are laid down** and under clause (1) the Governor can appoint such a person as a district judge in consultation with the relevant High Court. **As to a person not already in service, a qualification is laid down in clause (2)** and all that is required is that he should be an advocate or pleader of seven years' standing”
43. The restriction created against direct recruitment of persons already in the judicial service is evidently not rooted in Article 233(2) which does not create any additional bar or eligibility criteria for a person already in service, to be appointed as a District Judge. The exclusion is only created by Judicial Service Rules issued in exercise of the powers conferred by Article 233 read with the proviso to Article 309 of the Constitution of India.
44. This exercise is patently illegal as nothing in Article 233 creates or envisions a bar on those already in judicial service from applying through the direct recruitment method, it merely creates an additional requirement for those who are not already in judicial service. No other competitive or recruitment exam in the country creates a bar against the participation of those who are appointed on entry level posts. Hence, the interpretation of Article 233 ought to be adopted accordingly.

Drawn By:

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Submitted by:

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DIARY NO. - 17867/2020

**IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION
REVIEW PETITION (CIVIL) NO.381 OF 2021
IN
WRIT PETITION (CIVIL) NO. 396/2018**

IN THE MATTER OF:

Raheemali M. Nadaf & Ors.

...Petitioners

Versus

High Court of Karnataka at
Bengaluru & Anr.

...Respondents

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Place: New Delhi
Dated: 20.09.2025


(M/S NULI & NULI)

**ADVOCATE FOR THE PETITIONERS
AOR CODE:2021**

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IN THE SUPREME COURT OF INDIA
INHERENT JURISDICTION
REVIEW PETITION (CIVIL) NO.381 OF 2021
IN
WRIT PETITION (CIVIL) NO. 396/2018

[Arising out of the Impugned Judgment and Final Order dated 19.02.2020 passed by this Hon'ble Court in Writ Petition (Civil) No.396/2018)]

IN THE MATTER OF:

Raheemali M. Nadaf & Ors.

...Petitioners

Versus

High Court of Karnataka at
 Bengaluru & Anr.

...Respondents

WRITTEN SUBMISSION ON BEHALF OF THE PETITIONERS

Brief backdrop of the case:

1. The facts of the case in a nutshell are that the Petitioner No.2 herein got enrolled as an Advocate on 08.09.2000 and was later appointed as a Civil Judge on 09.04.2014 after gaining an experience of 13 years & 5 months at the Bar. The Petitioner No.1 herein got enrolled as an Advocate on 30.08.2002 and was later appointed as a Civil Judge on 09.04.2014 after gaining an experience of 11 years & 7 months at the Bar. Further, the Petitioner No.3 got enrolled as an Advocate on 21.10.2005 and was later appointed as Civil Judge on 15.06.2016 after having an experience of 10 years & 7 months at the Bar.
2. In the meantime, the 2 Judge Bench of this Hon'ble Court in the case of *Vijay Kumar Mishra & Anr. v. High Court of Judicature at Patna and Ors., (2016) 9 SCC 313* considered the issue of whether the candidates who were appointed in the Subordinate Judicial Service after having completed 7 years of practise were entitled to participate in the selection process of the Higher Judicial Service (HJS) and whether the bar under Article 233(2) if only for the appointment or even for the participation in selection process. This Hon'ble Court held that the text of Article 233(2) only prohibits the appointment of a person as a District Judge, if such person is already in the service of either Union or the State and it does not prohibit the consideration of the candidature of a person who is in the service of the Union or the State. Thereby, holding that candidates who were appointed in the Subordinate Judicial Service were entitled to participate in the selection process of the HJS. The relevant paragraph of the judgement is extracted for the kind perusal of this Hon'ble Court as follows:

"24) In my opinion, there is no bar for a person to apply for the post of district judge, if he otherwise, satisfies the qualifications prescribed for the post while remaining in service of Union/State. It is only at the time

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of his appointment (if occasion so arises) the question of his eligibility arises. Denying such person to apply for participating in selection process when he otherwise fulfills all conditions prescribed in the advertisement by taking recourse to clause (2) of Article 233 would, in my opinion, amount to violating his right guaranteed under Articles 14 and 16 of the Constitution of India."

3. The Hon'ble High Court of Karnataka/ Respondent No.1 published a Notification regarding the Karnataka Higher Judicial Service Examination, 2018 inviting application for the post of District Judge. One Asma Kouser, filed Writ Petition before this Hon'ble Court bearing W.P. No.396/2018 in which this Hon'ble Court was pleased to direct the Respondent No.1 herein to register the application of the Petitioner therein and permitted her to participate in the selection process, vide Order dated 27.04.2018.
4. Later, the Hon'ble High Court of Karnataka/ Respondent No.1 herein issued Notification dated 12.12.2018 inviting applications for filling up 26 backlog vacancies for the post of District Judges by direct recruitment. In response to the same, the Petitioners herein submitted their requisition seeking permission to apply as they all had 7+ years of experience as Advocates. The Hon'ble High Court of Karnataka/ Respondent No.1 herein accorded permission to the Petitioners herein. Subsequently, the Petitioners have participated in the Selection Process with the legitimate expectation and successfully cleared the Preliminary Examinations, Main Examination and Viva-Voce. A list of 9 selected candidates which included the Petitioners herein, was announced on 22.08.2019.
5. It is relevant to note that in the meantime, this Hon'ble Court in **SLP (C) No.14156/2015 titled as Dheeraj Mor v. High Court of Delhi, (2020) 7 SCC 401** Interim Orders dated 10.05.2019 & 19.07.2019 observing that it cannot direct any more appointment by way of interim orders or allow judges to participate in the selection process. Pursuant to the aforementioned Interim, the Petitioners herein have not been appointed as District Judges despite being declared as qualified candidates. This Hon'ble Court in the case of **Vishnu Traders Vs. State of Harayana & Ors., 1995 Supp (1) SCC 461** has held there is a need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and all the similar matters should receive similar treatment. The relevant extract of the aforesaid caselaw is reproduced as follows for the kind perusal of this Hon'ble Court:

"3. In the matters of interlocutory orders, principle of binding precedents cannot be said to apply. However, the need for consistency of approach and uniformity in the exercise of judicial discretion respecting similar causes and the desirability to eliminate occasions for grievances of discriminatory treatment requires that all similar matters should receive similar treatment except where factual differences require a different treatment so that there is assurance of consistency, uniformity, predictability and certainty of judicial approach."

(Emphasis supplied)

6. Thereafter, 3 Judge Bench of this Hon'ble Court passed its Judgement in ***Dheeraj Mor v. High Court of Delhi***, (2020) 7 SCC 401 held that a Judicial Officer regardless of his previous experience, cannot apply and compete for appointment and his chance to occupy the post would be through promotion. Being aggrieved, the Petitioners herein filed the present Review Petition bearing R.P. No.381/2021.

Preliminary Submission:

7. **Substantive Legitimate expectation:** At the outset, it is humbly submitted that the Petitioners herein having participated and undergone the rigour of the entire selection process have ***legitimate expectation*** that the process of selection and appointment would undertaken as promised or established practise. The ***5 Judge Bench of this Hon'ble Court in the case of Shivanandan C T and Ors. Vs. High Court of Kerala and Ors'***, (2024) 3 SCC 799 has extensively considered the doctrine of legitimate expectation and observed as follows:

"46. From the above discussion, it is evident that the doctrine of substantive legitimate expectation is entrenched in Indian administrative law subject to the limitations on its applicability in given factual situations. The development of Indian jurisprudence is keeping in line with the developments in the common law. The doctrine of substantive legitimate expectation can be successfully invoked by individuals to claim substantive benefits or entitlements based on an existing promise or practice of a public authority. However, it is important to clarify that the doctrine of legitimate expectation cannot serve as an independent basis for judicial review of decisions taken by public authorities. Such a limitation is now well recognized in Indian jurisprudence considering the fact that a legitimate expectation is not a legal right. It is merely an expectation to avail a benefit or relief based on an existing promise or practice. Although the decision by a public authority to deny legitimate expectation may be termed as arbitrary, unfair, or abuse of power, the validity of the decision itself can only be questioned on established principles of equality and non-arbitrariness under Article 14. In a nutshell, an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish: (i) the legitimacy of the expectation; and (ii) that the denial of the legitimate expectation led to the violation of Article 14."

(Emphasis supplied)

8. The Judgement of this Hon'ble Court in the case of ***Vijay Kumar Mishra & Anr. v. High Court of Judicature at Patna and Ors.***, (2016) 9 SCC 313 in which it was held that candidates who were appointed in the Subordinate Judicial Service were entitled to participate in the selection process of the HJS was the law laid

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down as the date of Notification dated 12.12.2018 inviting application for filing of backlog vacancies. Further, the Interim Order dated 15.02.2018 passed in W.P. (C) No.64/2018 and Interim Order dated 27.04.2018 passed in W.P. (C) No.396/2018 permitted the Judicial Officers to participate in the selection process. Additionally, the Respondent No.1 has accorded permission to the Petitioner herein during 19.12.2018-21.12.2018. Hence, the Petitioner herein have a substantive legitimate expectation that the selection process would be completed by giving a logic conclusion i.e., vide appointment of the Petitioners herein, as they once had requisite qualification/ eligibility criteria as per the law laid down by this Hon'ble Court.

9. **Rules of the game cannot be changed midway:** It is submitted that, **5 Judge Bench of Hon'ble Court in the case of *Tej Prakash Pathak & Ors. v. Rajasthan High Court & Ors.*, (2025) 2 SCC 1** has held that Eligibility criteria for being placed in the select list, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless extant rules and advertisement permits. The relevant extract from the aforementioned judgement is extracted as follows for the kind perusal of this Hon'ble Court:

"42... (1) Recruitment process commences from the issuance of the advertisement calling for applications and ends with filling up of vacancies;

(2) Eligibility criteria for being placed in the Select List, notified at the commencement of the recruitment process, cannot be changed midway through the recruitment process unless the extant Rules so permit, or the advertisement, which is not contrary to the extant Rules, so permit. Even if such change is permissible under the extant Rules or the advertisement, the change would have to meet the requirement of Article 14 of the Constitution and satisfy the test of non-arbitrariness;"

10. **Prospective ruling:** *In arguendo*, if this Hon'ble Court is to hold that the incumbent Judicial Officers who have already completed 7+ years prior to being appointed as Civil Judge are not eligible to be appointed to HJS under Article 233(2), then such a ruling be prospective and the interest of the Petitioners herein be protected. If not, the same would amount to changing the rules of games midway and negate the legitimate expectation of the Judicial Officers like that of the Petitioners herein would were permitted to participate in the entire selection process. This Hon'ble Court in the case of ***All India Judges Association and Ors. Vs. Union of India and Ors*, 2025 INSC 735**, where the matter pertained to restoration of the mandatory three years practice for the appointment to the cadre of Civil Judge, this Hon'ble Court while restoring such prescription has applied the judgment prospectively and not to the already issued notification. The same has been incorporated in para 90 of the judgment –

"90. Needless to state that all such recruitment processes which have been kept in abeyance, in view of the pendency of the present proceedings,

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shall proceed in accordance with the Rules which were applicable on the date of advertisement/notification”.

11. Further, 9 Judge Bench of this Hon'ble Court considered the doctrine of prospective overruling in *Mineral Area Development Authority and Anr. Vs. M/s. Steel Authority of India and Anr. Etc., 2024 INSC 607* held as follows:

“11. Although Golak Nath (supra) was subsequently overruled in Kesavananda Bharati v. State of Kerala, the doctrine of prospective overruling has been accepted by this Court. This Court has applied the doctrine in varied contexts. The following principles emerge on the application of the doctrine:

- A. The power of this Court to mould the relief claimed to meet the justice of the case is derived from Article 142;*
- B. It is applied by this Court while overruling its earlier decision, which was otherwise final. It has also been applied when deciding on an issue for the first time;***
- C. The object is to validate all the actions taken before the date of declaration in the larger public interest. The doctrine does not validate an invalid law, but the declaration of invalidation takes effect from a future date;*
- D. Cases that have attained finality are saved because doing otherwise would cause unnecessary and avoidable hardships;***
- E. It is applied to bring about a smooth transition of the operation of law without unduly affecting the rights of the people who acted upon the overruled law;*
- F. It is a device innovated to avoid: (i) reopening settled issues, (ii) refund of amounts collected under invalid legislation, and (iii) multiplicity of proceedings; and***
- G. It is applied to avoid social and economic disruptions and give sufficient time to the affected entities and institutions to make appropriate changes and adjustments.”*

(Emphasis supplied)

12. The non-appointment of the Petitioners herein despite having qualified in the selection process is due to subsistence of interim orders passed by this Hon'ble Court. To the best of the knowledge of the Petitioners herein, it is submitted that those vacancies have remained unfilled due to pendency of the present case. Hence, it is humbly submitted that the legitimate expectation of the Petitioners

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herein be observed and the judgement in the present batch of matters be rendered prospectively.

With respect to Issue No.1: Whether a judicial officer who has already completed seven years in Bar being recruited for subordinate judicial services would be entitled for appointment as Additional District Judge against the Bar vacancy?

13. *Use of the words 'has been' in Article 233 (2)* - This Court in *Deepak Aggarwal v. Keshav Kaushik*, 2013 (5) SCC 277 (para 102) has taken the view that the words "has been" in Article 233(2) of the Constitution is an example of present perfect continuous tense and as such the activity of being an advocate should be continued on the date of the application. This has been relied upon in the judgment (pages 31 and 67 of the review petition). This is incorrect. It is an example of present perfect tense.
14. The present perfect continuous tense (also known as the present perfect progressive tense) shows that something started in the past and is continuing at the present. It is normally formed by using has/have been with the verb ending in -ing along with the verb. This is absent in the present case.
15. The present perfect tense is formed by has/have + past participle. This is the case here, as 'been' the past participle of 'be' is used. It normally means that the activity has come to an end, though sometimes it may be continuing, but this is not the case here. The grammar rule from the well-known website Grammarly is attached herewith.
16. A person, who was professor for over seven years and is now retired, will be described as,

"A has been a professor for over seven years."

 However, a professor for over seven years and still working will be described as:

"A has been teaching as a professor for over seven years" or

"A is a professor for over seven years."
17. Had the Constitution framers wanted that a candidate should be continuing as an advocate on the date of application/selection/appointment, then Article 233(2) would have been as follows:
 - a. (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge *if he has been practising as an advocate or a pleader for not less than seven years* and is recommended by the High Court for appointment. Or
 - b. (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge *if he has been practising as an*

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advocate or a pleader for over seven years and is recommended by the High Court for appointment. Or

- c. (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a District Judge *if he is an advocate or a pleader for not less than seven years* and is recommended by the High Court for appointment. Or
- d. (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge *if he is an advocate or a pleader for over seven years* and is recommended by the High Court for appointment.
18. The Constitution framers have purposely not used the above-mentioned phraseology but have used the following phraseology:
- (2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge *if he has been for not less than seven years an advocate or a pleader* and is recommended by the High Court for appointment.
19. This shows that a candidate need not be a practising advocate at the time of applying or selection or appointment.
20. The result is the same, if the Hindi version of the Constitution is considered. The Hindi version is:

(2) वह व्यक्ति, जो संघ की या राज्य की सेवा में पहले से ही नहीं है, जिला न्यायाधीश नियुक्त होने के लिए केवल तभी पात्र होगा **जब वह कम से कम सात वर्ष तक अधिवक्ता या प्लीडर रहा है** और उसकी नियुक्ति के लिए उच्च न्यायालय ने सिफारिश की है।

‘रहा है’ means that he was an advocate. Had the Constitution makers wanted that he should be continuing as an advocate then the Article 233(2) in Hindi would have been:

(2) वह व्यक्ति, जो संघ की या राज्य की सेवा में पहले से ही नहीं है, जिला न्यायाधीश नियुक्त होने के लिए केवल तभी पात्र होगा जब वह कम से कम सात वर्ष तक **से** अधिवक्ता या प्लीडर रहा है और उसकी नियुक्ति के लिए उच्च न्यायालय ने सिफारिश की है।

The words that should not be there are scored out and the words that should have been there are added in **bold**.

21. *Two sources of Article 233 are not mutually exclusive.* – Article 233 envisages two sources of recruitment but they are not mutually exclusive. One can be appointed if he falls into any one source, namely judicial service or an advocate, who has practised for seven years and may or may not be practising advocate at present.
22. In case it is held that A-233(2) excludes those who are not practising, then it will also necessarily exclude an advocate who, after practising law for seven years, takes

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up a full-time salaried job as a law teacher or law officer in a corporation, bank, company, or law firm. It should be remembered that one of the finest judges have been law teachers, e.g., Justice William Oliver Holmes, Justice Felix Frankfurter, Justice Ruth Bader Ginsburg, Judge Richard Posner.

23. **Rule Mandating Practising Lawyer is Discriminatory, Arbitrary, Unreasonable & Unconstitutional:** There is no requirement that a candidate should be a practising lawyer under Article 233(2). The "practising advocate" requirement is mandated under separate service rules. These rules are not only contrary to Article 233(2) but are also discriminatory and unreasonable. There is no meaningful difference among persons who have the minimum qualification of seven years' practice as an advocate and continue to deal with law in different capacities. Such persons, if they become a full-time teacher, a full-time law officer, a legal correspondent in a media house, or become a civil judge, or continue as a lawyer fall in the same class. They have to be treated similarly.

With respect to Issue No.2: Whether the eligibility for appointment as a District Judge is to be seen only at the time of appointment or at the time of application or both?

24. Assuming, though not accepting, that under Article 233(2) an advocate should be a practising one, it is submitted that a reading of Article 233(2) clearly shows that the bar applies at the time of appointment, but not at the time of selection. Persons who have practised for seven years but are no longer practising law can still apply. If selected, they can resign from their current position and revive their licence to practice. Thus, at the time of appointment, they would be practising advocates. *Vijay Kumar Mishra Vs. High Court of Judicature at Patna, 2016 (9) SCC 313*, is rightly decided.
25. It is common knowledge that HJS exams are not held regularly. They are held after three to four years; whereas, civil judge exams are held regularly. If an advocate has completed seven years of practice then appears in the Civil judge exams as it is the only exam available at that time and is selected. Then a chance to appear in HJS exam, whenever it is held should not be denied. It would be unreasonable to do so.
26. The petitioners have more than seven years practice as an advocate. They have qualified in the HJS. In case, appointment is denied to them then great prejudice will be caused to them.

Place: New Delhi

Date: 20.09.2025

Drawn by:

Akhila Wali, Adv

Ashritsai P. Torgal, Adv

Settled by:

Anand Sanjay M. Nuli, Sr. Adv

Filed By:



M/S. NULI & NULI

(ADVOCATE FOR THE PETITIONERS)

**IN THE HON'BLE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION**

WRIT PETITION (CIVIL) NO. 1278 OF 2019

IN THE MATTER OF :-

ROCHAK BANSAL

...PETITIONER

–VERSUS–

STATE OF PUNJAB & ORS.

...RESPONDENTS

WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER

MOST REPECTFULLY SUBMITTED

1. It is submitted that the only short issue involved in the present Writ Petition is the implementation of Notification No. 198 Gaz.I/VI.F.2 dated 16/12/2016 and Rules 7(2) and 7(3)(c) of Punjab Superior Judicial Services Rules 2007 as amended upto 2013 read with Article 233(2) of Constitution of India whereby the petitioner prays before this Hon'ble Court to quash the Result dated 27.02.2019 to a limited extent whereby Respondent No. 3 has been selected/appointed and further to quash order dated 03.04.2019 to a limited extent wherein on the recommendation of Respondent No. 2, the Governor of Punjab has appointed Respondent No. 3 as an Additional District and Sessions Judge in the State of Punjab and to direct the Respondents No. 1 to 2 to consider the Petitioner for appointment under direct recruitment from the Bar in respect of the Punjab Superior Judicial Service Examination, 2018-19.
2. It is submitted that the Petitioner has challenged the appointment of Respondent No.3 on the ground that he does not fulfil any of the essential qualifications required for direct recruitment from amongst Advocates in a following manner –

- (i) The first essential condition required is that the person must not be in the service of the Union or the State. However respondent no.3 being appointed as Civil Judge (Junior Division) on 14.12.2006 was continuing his judicial service at the time of application
- (ii) The first essential condition required is that he must have been for not less than 7 years an Advocate or a Pleader. However respondent no.3 cleared his LLB Course in 2002 and was appointed as Civil Judge (Junior Division) on 14.12.2006. Therefore respondent no.3 does not have the required experience of seven years as a practicing advocate.

Therefore it is humbly submitted that Respondent no.3 does not fulfill any of the two essential conditions required for direct requirement to Punjab Superior Judicial Services from amongst Advocates.

3. It is further humbly submitted that the petitioner satisfies both the essential qualifications (supra) as required, in a following manner –
 - a. The petitioner was not holding any service of the Union or the State at the time of application
 - b. The petitioner had been practising as an advocate for more than 7 years at the time of application and is still practising as an advocate till date

Therefore it is humbly submitted that petitioner fully satisfies both the essential conditions required for direct requirement to Punjab Superior Judicial Services from amongst Advocates.

4. According to the relevant Notification No. 198 Gaz.I/VI.F.2 dated 16/12/2016 (**Annexure P-2**), eligibility condition inter-alia is that “**must have been duly enrolled as an Advocate and**

must have been in practice for a period not less than seven years as on the last date of submission of applications i.e. 16.01.2017”

5. According to Rule 7(2) of Punjab Superior Judicial Services Rules 2007 as amended upto 2013 (Annexure P-14 of Rejoinder), eligibility condition is that “Rule 7(2): The direct appointment to the Service shall be made by the Governor on the recommendations of the High Court from amongst the eligible advocates on the basis of the written test and viva-voce conducted by the High Court”

According to Rule 7(3)(c) of Punjab Superior Judicial Services Rules 2007 as amended upto 2013 (Annexure P-14 of Rejoinder), eligibility condition is that “Rule 7(3)(c): Twenty Five Percent of the posts shall be filled by direct appointment from amongst the eligible advocates on the basis of the written test and viva-voce as conducted by the High Court.”

6. According to Article 233(2) of the Constitution of India, the eligibility condition is that “Article 233(2): A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.”
7. This Hon’ble Court in Special Leave Petition bearing SLP No.14156 of 2015 titled as Dheeraj Mor versus Hon’ble High Court of Delhi on 19.02.2020 held (Para nos. 47 and 48) that “47. We answer the reference as under:
(i) The members in the judicial service of the State can be appointed as District Judges by way of promotion or limited competitive examination.

(ii) The Governor of a State is the authority for the purpose of appointment, promotion, posting and transfer, the eligibility is governed by the Rules framed under Articles 234 and 235.

(iii) Under Article 232(2), an Advocate or a pleader with 7 years of practice can be appointed as District Judge by way of direct recruitment in case he is not already in the judicial service of the Union or a State.

(iv) For the purpose of Article 233(2), an Advocate has to be continuing in practice for not less than 7 years as on the cut-off date and at the time of appointment as District Judge. Members of judicial service having 7 years' experience of practice before they have joined the service or having combined experience of 7 years as lawyer and member of judiciary, are not eligible to apply for direct recruitment as a District Judge.

(v) The rules framed by the High Court prohibiting judicial service officers from staking claim to the post of District Judge against the posts reserved for Advocates by way of direct recruitment, cannot be said to be ultra vires and are in conformity with Articles 14, 16 and 233 of the Constitution of India.

(vi) The decision in Vijay Kumar Mishra (supra) providing eligibility, of judicial officer to compete as against the post of District Judge by way of direct recruitment, cannot be said to be laying down the law correctly. The same is hereby overruled.

48. In the case of Dheeraj Mor and others cases, time to time interim orders have been passed by this Court, and incumbents in judicial service were permitted to appear in the examination. Though later on, this Court vacated the said interim orders, by that time certain appointments had been made in some of the States and in some of the States results have been withheld by the High Court owing to complication which has arisen due to participation of the ineligible in service candidates as against

the post reserved for the practicing advocates. In the cases where such in-service incumbents have been appointed by way of direct recruitment from bar as we find no merit in the petitions and due to dismissal of the writ petitions filed by the judicial officers, as sequel no fruits can be ripened on the basis of selection without eligibility, they cannot continue as District Judges. They have to be reverted to their original post. In case their right in channel for promotion had already been ripened, and their juniors have been promoted, the High Court has to consider their promotion in accordance with prevailing rules. However, they cannot claim any right on the basis of such an appointment obtained under interim order, which was subject to the outcome of the writ petition and they have to be reverted.”

PRAYER

In view of the above submissions, it is most respectfully prayed that this Hon'ble Court may be pleased to accept and allow the present writ petition by quashing the Result dated 27.02.2019 to a limited extent whereby Respondent No. 3 has been selected/appointed and further by quashing order dated 03.04.2019 to a limited extent wherein on the recommendation of Respondent No. 2, the Governor of Punjab has appointed Respondent No. 3 as an Additional District and Sessions Judge in the State of Punjab and by directing the Respondents No. 1 to 2 to consider the Petitioner for appointment under direct recruitment from the Bar in respect of the Punjab Superior Judicial Service Examination, 2018-19.

FILED BY :

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NEW DELHI

DATED:- .08.2025

IN THE SUPREME COURT OF INDIA
REVIEW PETITION (CIVIL) NO. 669 OF 2021

IN

WRIT PETITION (CIVIL) NO. 999 OF 2019

IN THE MATTER OF:

JUBIYA A. & ORS

PETITIONERS

VERSUS

STATE OF KERALA & ORS

RESPONDENTS

WRITTEN SUBMISSIONS FILED ON BEHALF OF THE ABOVE NAMED PETITIONERS

I. Historical Background and Circumstances

1. In the pre-independence era and early years of independence, officers of the Indian Civil Service were appointed as Judges. Justice K.N. Wanchoo, the 10th Chief Justice of India(1967- 1968), was the last judge who was appointed from the ICS. Officers of ICS were also appointed in the Police and Administrative/ Revenue services.

There was no separation of the judiciary from the executive. The term ‘judicial service’ defined in Article 236(b) of the Constitution, has not been in existence.

In this backdrop, the Constituent Assembly, with the clear intention to ensure the independence of the judiciary, incorporated Article 233(2) in the Constitution to eliminate the chances of executive interference in the judiciary. It is against this backdrop that we must interpret the term ‘the service of the Union or of the State’ as used in Article 233(2) of the Constitution of India. Now, the moot question is whether, after 75 years of being a republic and after creating a separate and independent judicial service, do we need to subscribe to the same interpretation or to take this as an opportunity to give the true and plain meaning to the text in the Article and to give effect to the true intent of the framers of the Constitution.

2. In **Chandra Mohan v. State of Uttar Pradesh, AIR 1966 SC 1987 : (1967) 1 SCR 77**, appointments of persons from the service in the executive were struck down. The Constitution Bench held that District Judges cannot be drawn from executive services, as this would undermine judicial independence.

3. The Court began with the striking observation that “judicial service is a euphemism for the posts of District Judges.” The intention was to insulate the judiciary from executive interference by drawing a clear line between civil service and judicial service, as stated in paragraphs 2, 19 and 20.

II. Article 50 and the Basic Structure Principle

It is submitted that Article 50 directs the State to separate the judiciary from the executive. Precisely, in **Rameshwar Dayal and Chandra Mohan**, the Constitution Benches upheld the same principle in two different ways. The Constitution Bench in **Regist(Admn.), High Court of Orissa v. Sisir Kanta Satapathy (1999 (7) SCC 725** observed that ‘**An independent Judiciary is one of the basic features of the Constitution of the Republic.** The Indian Constitution has zealously guarded the independence of the Judiciary. Independence of Judiciary is doubtless a basic structure of the Constitution, but the said concept of independence has to be confined within the four corners of the Constitution and cannot go beyond the Constitution.’ In **State Of Bihar And Another V. Bal Mukund Sah And Others, AIR 2000 SC 1296** the Constitution Bench has considered in extent the independence of judiciary and the definition of judicial service in Article 236(b) and found that the basic structure principle applied to the judicial service to make it independent of and distinct from the service of State or Union and in **All India Judges’ Association v. Union of India, (2002) 4 SCC 247**(paragraph 25), reiterated that independence of the judiciary is part of the basic structure. This position of law was reiterated by a three-Judge Bench in **All India Judges Association versus Union of India & Ors., AIR 2023 SC 2673**.

6. Articles 233–237, read with Article 50, establish a distinct judicial service and fortify the separation of powers between the executive, legislature, and judiciary.

III. Scope and Textual Reading of Article 233(2)

7. The expression “the service” is followed immediately by the qualifying words “of the Union or of the State.” Therefore, if the framers intended to prohibit judicial service, they would have said so explicitly. By tying “the service” to “the Union or the State,” the clause excludes judicial service from its ambit. Judicial service is a distinct constitutional category defined in Article 236(b) of the Constitution.

8. Thus, Article 233(2) disqualifies only those who are already in the civil service of the Union/State. Judicial officers are not part of that class, which is specifically excluded. Such a prohibition was required because of the prevailing situation as per the Government of India Act, 1935, and the appointments had already happened from the Indian Civil Service and officers serving the executive, discharging judicial functions .

9. Once a candidate has acquired seven years’ practice at the Bar, he satisfies the constitutional threshold. Later entry into judicial service cannot retroactively invalidate that qualification. (**Rameshwar Dayal’s** case, Respondent No.3 therein)

IV. Precedents Supporting this Interpretation

(A) Rameshwar Dayal v. State of Punjab, AIR 1961 SC 816 : (1961) 2 SCR 874

- The Constitution Bench held that the essential requirement is seven years’ practice as an advocate.
- The bar is against civil service, not judicial service.
- The qualification was treated as a completed threshold, not a continuous or subsisting requirement.

(B) Chandra Mohan v. State of Uttar Pradesh, AIR 1966 SC 1987 : (1967) 1 SCR 77

- The court invalidated the appointments of executive officers as District Judges.
- Articles 233–237 were treated as a self-contained code to preserve judicial independence.

- Reference to the expression “judicial service” in paras 2, 19, and 20. “*Therefore, the **history of the services** also supports our construction that the expression “the service” in Art. 233(2) can only mean the **judicial service**.*” It was correct on the history of service then”. The paramount intention of the Constitution Bench was to keep the independence of the judiciary. Keeping this in mind, the parliament, by the 12th Amendment Act of 1966, saved all the judicial orders, decrees passed by such executive officials entered in “**judicial service**” and appointed as district judges other than through the mechanism of Chapter VI of the Constitution of India to save the interest of litigants and judicial time.
- The ratio was to insulate the judiciary from executive control; it was not to bar judicial officers with prior Bar practice.

VI. Submissions

11. **First Reference Question:** A judicial officer who has completed seven years’ practice as an advocate before joining judicial service is constitutionally eligible for appointment as a District Judge under the Bar quota.

- Judicial service is not “the service of the Union or of the State.”
- The only disqualification is being in civil service at the time of appointment.
- The factual and historic data available in the earlier Constitution Bench judgements actually interpreted the expression, “the service” in Article 233(2) as one excluding judicial service since now, the judicial service is not part of State or Union service.
- The Constitution Bench rulings in **Rameshwar Dayal** and **Chandra Mohan** never equated judicial service with civil service.

12. **Second Reference Question:**

- Eligibility rests on the acquisition of seven years’ Bar practice. Once satisfied, that qualification endures.
- Treating subsequent judicial service as a disqualification rewrites the Constitution.
- Such officers compete in the open selection, ensuring quality and strengthening the judiciary.

- Continuity in Bar practice is unsupported by the constitutional text.

VII. Conclusion

- The words “the service of the Union or of the State” in Article 233(2) exclude judicial service.
- Constitution Bench dicta in **Rameshwar Dayal** and **Chandra Mohan** fortified judicial independence by excluding executive officers, not judicial officers.
- Once seven years of Bar practice is acquired, judicial officers remain eligible for Bar quota recruitment.
- Any contrary reading narrows the talent pool, undermines independence, and dilutes the basic structure principle of separation of powers.
- The exclusion of judicial officers from the pool of eligible persons undermines the true intention of the constituent assembly while incorporating Article 233(2), for securing the judiciary from the clutches of the executive.
- The reservation of the post of District Judges only to the Advocates amounts to unfair treatment to similarly placed, qualified persons, who otherwise serve and protect the independence of the judiciary.
- The Advocates, who are **not a weaker section of the society** and are not entitled to any reservation against other persons having equal qualifications, while being appointed to the post of District Judges.
- When the judicial officers are eligible for appointment as District Judges by promotion, there cannot be a bar for them to contest in a competitive examination for appointment to the said post if they possess the required qualification of seven years' practice as an Advocate.

ALJO K JOSEPH

ADVOACTE FOR THE PETITIONER

IN THE SUPREME COURT OF INDIA
CIVIL APPEAL NO. 3947 OF 2020

IN THE MATTER OF:

REJANISH K.V.

...PETITIONERS

VERSUS

K. DEEPA & ORS.

...RESPONDENTS

AND IN THE MATTER OF

REVIEW PETITION NO. 379 OF 2021

GAURAV PRAGYANAN

...PETITIONERS

VERSUS

HIGH COURT OF M.P. & Anr.

...RESPONDENTS

Written submissions on behalf of petitioner supporting proposition

Introduction to the controversy

At present, in Indian legal system the members of judicial service are barred from direct recruitment to Higher Judicial service (District Judge Cadre) whereas only advocates are eligible for it. Of late, the Supreme Court and the High Courts have, while misinterpreting Article 233 (2) of the Constitution, ruled that only a person who is not already in the service of the union or of the state and who has been for at least seven years an advocate, is eligible for recruitment to the post of district judge. The insidious result of this interpretation is that even the members of judicial service i.e., the junior judges have also been debarred from direct appointment as district judge i.e., senior judges. It is one of the classic examples of misinterpretation which has resulted in a paradoxical situation. While an advocate of seven years' standing in any court (even of revenue, consolidation, labour courts etc.) is eligible for appointment as district judge, members of judicial service having more than seven years' experience of judicial service or cumulative experience of judicial service and advocacy or more than seven years' experience of advocacy are ineligible to appear in the district judge's direct recruitment examination. Even members of judicial service who are having more than 10 years of experience of judicial service or cumulative experience of advocacy and judicial service who are eligible to become High Court judge are ineligible to direct recruitment to the post of district judge. For instance, the impugned rule in this case is rule 5(c) of U.P.H.J.S. Rules 1975 which provides for direct recruitment for the U.P. Higher judicial service i.e., the direct recruitment to district judge cadre posts in U.P. Rule 5(c) is as under:

“5. Source of recruitment- [2] The recruitment to the service shall be made---
 (a) by promotion from amongst the Civil Judges (Senior Division) on the basis of Principle of merit-cum-seniority and passing a suitability test. (b) 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; *(c) by direct recruitment from amongst the Advocates of not less than seven years standing on the first day of January next following the year in which the notice inviting applications is published.*”

This rule has to conform to the provisions of Art. 233 of the Constitution which makes provision regarding appointment of district judges. Before adverting further, we should first look at Article 233 which runs as under:

“233. Appointment of district judges:

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State

(2) *A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.*

A bare perusal is sufficient to infer that Art. 233(2) lays down qualification for those who are not already members of Government service. It does not lay down any qualification for those who are already in Government service. But such a simple provision is being misinterpreted to give just opposite meaning of this provision to debar members of judicial service for appointment as District judge. The reason for it can easily be understood. *Some persons do not want that members of judicial service may reach to policy making posts in Judiciary.* Let us consider a hypothetical sentence which is almost identical to Art. 233(2): “*A person not already a judge of the High Court shall only be eligible to be appointed a judge of the Supreme Court if he has been for not less than 10 years an advocate of a High Court.*” Can we draw a meaning that only a person who is not a judge of High court can be appointed as Supreme Court judge? Absolutely “No”. Then Art. 233(2) should also not be given such an absurd interpretation. This can be easily discerned if we look at the historical perspective of appointment of district judges in India which has been explained in the coming pages. **Arguments regarding eligibility of members of judicial service in direct recruitment for district judge**

A. Propositions regarding the true construction of Art. 233 in support of the submission that:

(a) Art. 233(1) refers to the general power of appointment to the post of district judge whereas Art 233(2) refers to the sources of appointment.

(b) Art. 233(2) refers to members of judicial service as well as the advocates as sources of appointment to the post of district judge.

(c) Art 233(2) does not bar members of judicial service from appointment as district judge.

A.1 Art 233 has to be interpreted in the light of its historical background and the usual meaning and construction of almost same provision of S. 254 of the Govt. of India Act, 1935.

1. When the Indian Civil Services Act came into force in 1861 the post of district judge and additional district judge was reserved for the covenanted Indian Civil Service. This situation continued for a long time and only an ICS officer was eligible to be appointed as district judge or additional district judge. With the increasing demand of Indianization and of greater participation of Indians in the public services, a Royal Commission on public services was constituted under the chairmanship of Lord Islington in 1913 and its report was published in 1917 and it recommended for some representation of Indians on those posts which were hitherto reserved exclusively for Indian Civil Services by filling some of the posts from members of provincial civil services and from members of Bar. But these recommendations could not be implemented at once. Meanwhile Section 99 of the Government of India Act, 1915 gave power to the local governments to make appointment on some posts which were exclusively reserved for ICS. It provided:

“Section 99 - Power to appoint certain persons to reserved offices:

*(1) The authorities in India, by whom appointments are made to offices in the Indian Civil Service, may appoint to any such office any person of proved merit and ability domiciled in British India and born1[***] of parents habitually resident in India and not established there for temporary purposes only, although the person so appointed has not been admitted to that service in accordance with the fore-going provisions of this Act.*

(2) Every such appointment shall be made subject to such rules as may be prescribed by the Governor-General in Council and sanctioned by the Secretary of State in Council with the concurrence of a majority of votes at a meeting of the Council of India.

(3) The Governor-General in Council may, by resolution, define and limit the qualification of persons who may be appointed under this section, but every resolution made for that purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.”

After the constitutional and legal reforms in 1919, in exercise of the powers conferred by section 99(2) of the Government of India Act, 1915 the Government of India issued a notification Notification No. F. - 438 - Ests., dated the 30th March 1922, that was amended by Notification No. F.- 563/22 - Ests., dated the 17th May 1923 which provided that with the previous sanction of the Governor General in Council and of the Secretary of State in council the local Government might declare the number of superior executive and judicial offices being offices ordinarily filled from amongst the members of the Indian Civil Service to which persons not being members of Indian Civil Service might be appointed. Under rule 2 it was provided that to a superior judicial office, a member of the provincial civil service subordinate to the local government or persons having at least five years experience at the bar could be appointed to such posts. Thus so far as the appointment to the post of district Judge and additional district judges i.e., superior judicial office is concerned, 15% of the posts could have been filled either from the members of subordinate judicial service or from the members of the Bar. It is also pertinent to point out that no quota was prescribed in this notification and the local government could have appointed from any of the two sources i.e., provincial judicial service or from the members of the Bar. The notification dated 23rd May 1923 read as:

“1. With the previous sanction of the Governor General in Council and of the Secretary of State in Council the local Government may, by notification in the official Gazette, declare the number of superior executive and judicial offices, being offices ordinarily filled from amongst the members of the Indian Civil Service, to which, subject to the provisions of sub section (1) of section 99 of the Government of India Act, persons not being members of the Indian Civil Service may be appointed.

2. Within the limit of number declared under rule 1 the local Government may appoint:-

(i) To a superior executive office a member of the provincial civil service subordinate to the local Government;

(ii) To a superior judicial office a member of the provincial civil service subordinate to the local Government, or a person who at the time of the appointment is-

(a) A barrister of England or Ireland or a member of the Faculty of Advocates in Scotland; or

(b) A vakil, pleader, advocate or attorney of a high court in India; or

(c) A pleader or advocate of a chief court or of a judicial commissioner's court; or

(d) A pleader of a district court; and in respect of such qualification is of not less than five years' standing.

3. Notwithstanding anything contained in rule 2, the local Government may, within the limit of number declared under rule 1, appoint to a superior executive or judicial office any person not having the qualifications prescribed for such office by rule 1.

Provided that the number of persons so appointed shall not amount to more than 15 per cent of the total number of superior offices declared under rule 1.

4. The local Government, may, by notification in the local official gazette, declare the number of inferior offices, being offices required under the provisions of section 98 of the Government of India Act to be filled from amongst the members of the Indian Civil Service, to which, subject to the provisions of sub-section (1) of section 99 of the said Act, persons not being members of the Indian Civil Service may be appointed.

.....

..

6. In addition to appointments made under the foregoing rules whenever the exigencies of the public service so require, the local Government may, subject to the provisions of sub-section (1) of section 99 of the Government of India Act, appoint for a period not exceeding twelve months, any person not being member of the Indian Civil Service to any office ordinarily filled from amongst the members of the Indian Civil Service. The Secretary of State for India in Council may, however, sanction the continuance of any such appointment for the period as he may fix, having regard to the exigencies of the public service .”

Thus, it is crystal clear that both members of judicial service as well as advocates were eligible for appointment to superior judicial office i.e., to the post of district judge and ADJ. It can be seen from the perusal of these rules that even a person not qualified for the post could have been appointed under rule (3). Under rule (6) even any person could have been appointed to a post ordinarily reserved for ICS on temporary basis for a period of 12 months. The practice and procedure for the appointment of superior judicial service continued to be the same even after the advent of Government of India Act, 1935. However the Government of India Act 1935 made the earlier provision compact with the same meaning vide section 254. There was no change in the procedure and eligibility for appointment to the post of district judge and appointment to the listed posts was made from officers of provincial judicial service as well as from the Bar. Section 254 of the Government of India Act read as under:

“254. District judges, etc. - (1) Appointments of persons to be, and the posting and promotion of, district judges in any Province shall be made by the Governor of the Province, exercising his individual judgment, and the High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.

(2) A person not already in the service of His Majesty shall only be eligible to be appointed a district judge if he has been for not less than five years a barrister, a

member of the Faculty of Advocates in Scotland, or a pleader and is recommended by the High Court for appointment.

(3) In this and the next succeeding section the expression " district judge " includes additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge, and assistant sessions judge."

Thus most of the superior judicial offices were held by the members of Indian Civil Service and direct recruitment to ICS was open for all eligible candidates even if they belonged to provincial civil service or to the bar. Both members of provincial civil services and members of bar could have got into ICS through an open competition which was open to all eligible graduates. But after independence the posting of ICS officers on the posts of district judges and additional district judges was discontinued. However it was never considered that members of provincial civil services were not eligible to be appointed as district judges.

It is very pertinent to mention here that the provision under Article 233 of the Constitution of India, 1950 is almost identical to section 254 of the Government of India Act 1935. Therefore the provision of Article 233 of the Constitution has to be seen in the background of section 254 of Government of India Act, 1935 and earlier legislations.

The Supreme Court has also delineated the brief history of this matter in the case of **Chandra Mohan v State of U.P., AIR 1966 SC 1987**, in para 20 as follows:

"The history of the said provisions also supports the said conclusion. Originally the posts of district and sessions judges and additional sessions judges were filled by persons from the Indian Civil Service. In 1922 the Governor-General-in-Council issued a notification empowering the local government to make appointments to the said service from the members of the Provincial Civil Service (Judicial Branch) or from the members of the Bar. In exercise of the powers conferred under S. 246(1) and S. 251 of the Government of India Act, 1935, the Secretary of State for India Framed rules styled Reserved Posts (Indian Civil Service) Rules, 1938. Under those Rules, the Governor was given the power of appoint to a district post a member of the judicial service of the Province or a member of the Bar. Though S. 254(1) of the said Act was couched in general terms similar to those contained in Art. 233(1) of the Constitution, the said rules did not empower him to appoint to the reserved post of district judge a person belonging to a service other than the judicial service. Till India attained independence, the position was that district judges were appointed by the Governor from three

sources, namely, (i) the Indian Civil Service, (ii) the Provincial Judicial Service, and (ii) the Bar. But after India attained independence in 1947, recruitment to the Indian Civil Service was discontinued and the Government of India decided that the members of the newly created Indian Administrative Service would not be given judicial posts. Thereafter, district judges have been recruited only from either the judicial service or from the Bar.

Even after Independence there were rules in some states where separate quota was prescribed for promotion from members of provincial judicial service as well as nomination from bar and there was also a separate quota on the basis of merit which was open to both the sources. Mention of such a rule can be found even in the para 16 of **Rameshwar Dayal v. State of Punjab, AIR 1961 SC 816**, which was upheld in this case. It mentions:

“On the partition of the Province, it was stated, eleven superior judicial posts were allotted to East Punjab, and the number was later increased to twelve. Out of these twelve posts, the appellant contended, one third was reserved for the members of the Bar, one third for what was called the Provincial Civil Service (Judicial Branch) and the rest for recruitment from either of the aforesaid two sources on merit.”

Thus it is crystal clear that article 233(2) which describes the two sources of recruitment includes those who are already in judicial service as well as the members of the Bar. It is also to be noted that before Independence the members of ICS were given an option after 5 to 6 years of service to opt either for executive branch or for judicial branch. Thus it also clarifies that members of Indian civil service i.e., persons already in the service of the government could have been appointed to the posts of district judges. Article 233(2) should be interpreted in the light of the meaning and position regarding appointment of district judges which was prevalent at the time of framing of the Constitution. It cannot be given a meaning which the Constitution makers never thought of.

In **AIJA v. UoI, (1992) 1 SCC 119**, it was held: “***Prior to independence, the District Judge used to be invariably a Member of the Indian Civil Service*** and his position in the district was superior to that of the District Magistrate. This position continued until the Indian Civil Service came to be abolished around 1946-47. This long association of the Civil Service with the judicial manning had led to service conditions of both to be tied up. Criminal justice at that time was handled by Magistrates who belonged to the Executive.” Even after independence, judicial magistrates of Executive branch were eligible for direct recruitment and it continued till the judgment of **Chandra Mohan v. State of U.P., AIR 1966 SC 1987**. In Chandra Mohan’s case (1966), what was held is that only members of judicial service can be appointed as district judge and not that persons already in service are barred under Art 233(2).

Similar matter was raised in **Rameshwar Dayal v. State of Punjab, AIR 1961 SC 816**, wherein appointment of P. R. Sawhney and Harbans Singh as district judges was challenged on the ground that they were already members of Government service. The constitution bench of the Supreme Court negated the challenge on this ground and appointment of these two petitioners was upheld who were even not members of judicial service. This was the correct interpretation of article 233 which was in accordance with the prevalent legal system and historical past. The relevant extracts from Rameshwar Dayal case are reproduced below:

“It would facilitate appreciation of the points in controversy if we state first, in broad outline, the circumstances in which respondents 2 to 6 were appointed as District Judges.

(2) Respondent 3 (Harbans Singh, J.) was also called to the Bar and then enrolled as an Advocate of the Lahore High Court on March 5, 1937. He worked as an Additional District and Sessions Judge, s Ferozepore, from July 2, 1947, to February 22, 1948. He then returned to practice at Simla for a short while. On March 15, 1948, he worked as Deputy Custodian, Evacuee Property, till April 17, 1950. On April 18, 1950, he was appointed as District and Sessions Judge and on August 11, 1958, he was appointed as an Additional Judge of the Punjab High Court.

(5) Respondent 6 (P. R. Sawhney) was called to the Bar on November 17, 1930, and was enrolled as an Advocate of the Lahore High Court on March 10, 1931. After partition he shifted to Delhi and worked for sometime as Legal Adviser to the Custodian, Evacuee Property, Delhi. Then he practised for sometime at Delhi; he then accepted service under the Ministry of Rehabilitation as an Officer on Special Duty and Administrator, Rajpura Township. On March 30, 1949, he became the chairman, Jullundur Improvement Trust. On May 6, 1949, he got his licence to practise as an Advocate suspended. On April 6, 1957, he was appointed as District and Sessions Judge.

6. Two of them, Harbans Singh and P. R. Sawhney, did not have their names factually on the roll when they were appointed as District Judges. P. R. Sawhney, it appears, had his name so enrolled on October 20, 1959, that is, after his appointment as District Judge. We are inviting attention to this distinction amongst the respondents at this stage, because as will appear later this distinction has some bearing on one of the arguments made before us on behalf of the appellant.”

Upholding the appointment of these persons, the Supreme Court observed in para 14:

“.....We now turn to the other two respondents (Harbans Singh and P. R. Sawhney) whose names were not factually on the roll of Advocates at the time they

were appointed as district judge. What is their position? We consider that they also fulfilled' the requirements of Art. 233 of the Constitution.”

This view in Rameshwar Dayal's case has been followed by the division bench of Allahabad High Court in **Subhash Chandra And Ors. vs State Of U.P. And Ors. on 17 March, 2004, (2004) 2 UPLBEC 1150**. It has been held:

“99. So far as the case of Rameshwar Dayal (supra) is concerned, in that case also the Hon'ble Supreme Court in Para 6 has held that :

".....Harbans Singh and P. R. Sawhney did not have their names factually on the Roll when they were appointed as District Judges. P.R. Sawhney, it appears, had his name so enrolled on October 20, 1959, that is, after his appointment as District Judge"

100. In such circumstances, it is also clear that, so far as the decision in the case of Rameshwar Dayal (supra) is concerned, even though Sri Harbans Singh and P.R. Sawhney were not on the roll as Advocate, their appointment was upheld.”

Thus it is crystal clear that there was no bar on appointment of a person who is already in service. Had it been so, the persons working in the Indian civil services could not have been appointed as district judges after five or six years of service in executive branch nor could the members of provincial judicial service have been appointed to such posts under the notification of 1922/1923(mentioned earlier). The provision under Art 233 of the Constitution of India remained the same as it was in S. 254 of Government of India Act 1935, and as such no different interpretation can be given to Article 233 of the Constitution so as to debar the members of judicial service.

A. 2 Even appointment from bar is made u/Art. 233(1). The two sources are given in clause (2).

The argument that A. 233(1) is for members of judicial service whereas A. 233(2) is for advocates is fallacious. Even appointment from bar is made u/A 233(1).

(State of Kerala v A. Lakshmikutty, AIR 1987 SC 331; Hari Datt Kainthla v State of H.P., AIR 1980 SC 1426; A. Pandurangarao v State of A.P., AIR 1975 SC 1922)

A.3 Commenting upon the Scope of the aforesaid two clauses of Article 233 viz. Art.233(1) and (2), Constitutional Bench of five judges of the Supreme Court in the

case of *Chandra Mohan vs. State of Uttar Pradesh AIR 1966 SC 1987* had observed in para 16:

“.....Article 233(1) is nothing more than a declaration of the general power of the Government in the matter of appointment of District Judges. It does not lay down qualifications of the candidates to be appointed nor does it denote the source from which the recruitment is to be made. The said source of recruitment is to be indicated in clause (2) of Article 233 of the Constitution. Under clause (2), two sources are specified, namely (1) person in service of the Union or the State; or (2) Advocate or Pleader.”

A.4 Art. 233A also makes it clear that Art 233(2) does not refer a single class, i.e., advocates of 7 years' standing.

Article 233 does not make a provision that only a person not already in service can be appointed as district judge. Some of the High Courts and in some cases even the Supreme Court has made observations in this regard but they are absolutely in disregard to the provisions of the Constitution and the Constitution bench judgement of Rameshwar Dayal and Chandra Mohan. It would be very pertinent to look at article 233A which was inserted just after the judgement of Chandra Mohan (1966) in 1966. Article 233A reads as under:

“233A. Validation of appointments of and judgments, etc., delivered by, certain district judges. -Notwithstanding any judgment, decree or order of any court,-

(a) (i) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State,.....”

Thus it is clear that article 233(2) includes not only advocates but also members of judicial service. Use of conjunction “**or**” makes it crystal clear that Art. 233(2) includes the appointment of members of judicial service as well as advocates.

A.5 The above view is also fortified by the positioning of the word "only" in article 233 (2). The word “only” qualifies the word or phrase before which it is placed. (See **Nasfield grammar**). In Article 233 (2) the word “only” does not qualify the phrase "a person not already in the service of the union or of the state". It qualifies the phrase "if he has been for not less than seven years an advocate or pleader and is recommended by High Court" and it is for those who are not already

in

service. Had it been the intention of the Constitution makers to make only advocates eligible for appointment as district judge, then there would not have been any need to write the words "a person not already in the service of the union or of the state". The Constitution makers could have written "only a person who has been for not less than seven years an advocate or pleader and is recommended by High Court shall be appointed as district judges." But this is not the case and as such the interpretation that article 233(2) debars members of judicial service is not tenable at all.

A.6 Art. 233(2) uses the conditional conjunction “only if” for those who are not already in service.

Conditional conjunctions, in short, are used to describe a condition. These words include unless, since and if. By using conditional conjunctions, we are showing that one clause is dependent upon the other clause being possible.

Conditional conjunctions are found in sentences with two clauses where one clause describes something that did or will happen, if the condition of the other clause was or is satisfied. Conditional conjunctions can be a single word like “if” or several words like “so long as” placed at the beginning of the clause to describe the condition that needs to be met.

Conditional clauses:

Conditional phrases and words are found within the conditional clause, or the part of the sentence that sets up the condition. Look at this sentence: “If it rains, then I will get wet.” Only on the condition that it rains. Conditional sentences always have a conditional clause, which establishes the condition, and a main clause which resolves it.

The word “if” let’s us know that someone is setting up a conditional phrase. The main clause is only possible if the conditional clause applies. “Only if” means only one condition happens. This form basically means the same as “if”. The main emphasis is on the result.

-“You can go out only if you do your homework.” Here, there is just a condition of doing homework. Then, he can go out. If he doesn’t do his homework, he cannot go out.

In Article 233(2), the conditional clause is “only..... If he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.” The main clause is-“A person not already in the service of the union or of the state shall be eligible to be appointed a district judge.” The main clause is possible only if the conditional clause applies. The use of conditional conjunctive “only if” makes it clear that the main clause is possible in only one condition. Now the main clause is not applicable to those who are already in service. The main clause is applicable to those who are not already in service. Article 233(2) can simply be written as:

“A person not already in the service of the union or of the state shall be eligible to be appointed the district judge only if he has been for not less than seven years an advocate or a pleader....”.

A.7 The Hindi version of the Constitution also makes it crystal clear that Art. 233(2) does not lay any qualification for those who are in judicial service.

The authoritative text of the Constitution in Hindi was signed by all the members of the constituent assembly and published in 1950 itself. Both the Hindi and English text of the Constitution are authorised versions. The legislative intent is very much clear in the Hindi text which has one and only one meaning of Article 233(2) which was signed by all the members of the constituent assembly. Hindi version can also be looked into to find the legislative intent. It is a normal rule of interpretation that when there are two texts then the two should be construed together and a meaning common to both should be accepted. In this regard Crawford observed:

“In some jurisdictions statutes may be enacted in more than one language. Where this is the situation, both texts constitute the law and each must be considered in ascertaining the meaning of the legislature.” (Crawford, *The Construction of Statutes*, 202(1940)).

A.8 It is also a basic principle of interpretation that the provision of a statute must be interpreted harmoniously so that any other provision of the Constitution does not become redundant. If the interpretation is given which bars the members of judicial service then it would render the phrase “not already in service of the union or of the state” redundant which should be avoided. Moreover this interpretation would also be against the provisions of article 124, 217, 233A of the Constitution.

A.9 Appointment includes appointment by way of promotion and as such Art. 233(2) cannot be interpreted as barring members of judicial service from direct recruitment otherwise judicial officer cannot be appointed as district judge in any manner which would be against the provisions of Constitution.

In **Dr. Harkishan Singh v. State Of Punjab & Ors, (1971) 2 SCC 58**, it was held: “The word “appointment” cannot mean only promotion. It means appointment both by promotion and by direct recruitment. “

Appointment includes both direct recruitment and promotion and if appointment of members of judicial service is assumed to be barred under article 233, then members of judicial service cannot be appointed even by way of promotion which would be a very wrong interpretation of the provisions of the Constitution. The difference between recruitment and appointment is very much visible in the Uttar Pradesh Higher Judicial Service rules itself. Rule 5 provides for recruitment whereas rule 22 provides for appointment and members of judicial service are also appointed vide appointment letter. Thus no such interpretation can be given to Article 233 so as to debar the appointment of members of judicial service otherwise their appointment by way of promotion will

also be barred rendering the appointment of members of judicial service as district judges void which would give rise to an anomalous situation.

A.10 So far as reliance by the respondents on Chandra Mohan (1966) is concerned, in this case process to appoint some Judicial Officers of executive service through direct recruitment to the post of District Judge, had been in question and in this backdrop the Hon'ble Court in para 13 took following note-

The third point raised is one of far-reaching importance. Can the Governor, after the Constitution, directly appoint persons from services other than the judicial service as district judges in consultation with the High Court? Can he appoint "judicial officers" as district judges? The expression "judicial officers" is a misleading one. It is common case that they belong to the executive branch of the Government, though they perform certain revenue and magisterial functions. The relevant article on which both the parties rely upon in support of their respective contentions is Art. 233.

In aforesaid facts and circumstance, the Hon'ble Court held that there is bar of the entry of members of non-judicial service to the Higher Judicial Service through direct recruitment as only members of Judicial Service are entitled thereto. Hon'ble Court went to observe that in Para 20 of said Chandra Mohan case (supra):

Till India attained independence, the position was that district judges were appointed by the Governor from three sources, namely, (i) the Indian Civil Service, (ii) the Provincial Judicial Service, and (ii) the Bar. But after India attained independence in 1947, recruitment to the Indian Civil Service was discontinued and the Government of India decided that the members of the newly created Indian Administrative Service would not be given judicial posts. Thereafter, district judges have been recruited only from either the judicial service or from the Bar. There was no case of a member of the executive having been promoted as a district judge. If that was the factual position at the time the Constitution came into force, it is unreasonable to attribute to the makers of the Constitution, who had so carefully provided for the independence of the judiciary, an intention to destroy the same by an indirect method. What can be more deleterious to the good name of the judiciary than to permit at the level of district judges, recruitment from the executive departments? Therefore, the history of the services also supports our construction that the expression "the service" in Art. 233(2) can only mean the judicial service."

Further, in second *Chandra Mohan v. State of U.P. and others AIR 1976 SC 1482*, the Hon'ble Court noted down the outcome of previous *Chandra Mohan v. State of U. P., AIR 1966 SC 1987* in para 4 as follows:

Against that judgment, the writ-petitioner came in further appeal to this Court. His appeal was allowed by this Court by a judgment, dated August 8, 1966. This judgment is reported as *Chandra Mohan v. State of U. P., (1967) 1 SCR 77 = (AIR 1966 SC 1987)*. Thereby this Court held: (a) that the 1953 Rules providing for recruitment of District Judges contravened the Constitutional Mandate of Article 233 (1) and (2) and therefore the rules and the appointments made thereunder were illegal: (b) the 1953 Rules empowering the Governor to recruit District Judges from the Judicial Officers were also unconstitutional because the expression "Service" in cl. (2) of Article 233 of the Constitution can only mean "Judicial Service" and all Judicial Officers of the State of U. P. were not members of the Judicial Service. Therefore, the recruitment of Judicial Officer-respondents was bad.

This may be contended in view of aforesaid observations of Constitutional Bench made in *Chandra Mohan case (1966) (supra)* that Article 233 (2) by comprising the phrase "*A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if*" followed by the phrase "*he has been for not less than seven years an advocate or a pleader*", is categorically intended that the members of Judicial Service like petitioner, are already eligible by very virtue of being so, to be appointed to the Higher Judicial Service (if they are found successful in the examination process devised thereto). In this way the phraseology of Article 233(2) may be understood to the effect that apart from members of Judicial Service, advocates or pleaders having seven years of experience, may also be appointed to the Higher Judicial Service.

In Chandra Mohan's case (1966), what was interpreted was "in the service of the union or of the state" and not "not already in the service of the union or of the state." In Chandra Mohan's case, the respondents were already members of the state (executive) service and the point for consideration was the ambit and scope of word "service" regarding those candidates/ respondents who were already in service. That is why a need to explain the word "service" arose otherwise the matter would have been decided on the only ground that those persons/ (all respondents) were already in service, whatever the service may be, and were ineligible for appointment under article 233(2).

Interpreting Chandra Mohan case, 1966, The Supreme court in *State of Maharashtra v. Labour law practitioners' Association, (1998) 2 SCC 688*, the SC

observed: “In the case of [Chandra Mohan v. State of Uttar Pradesh & Ors](#) [AIR 1966 SC 1987] this Court was required to consider the question of eligibility of "judicial officers" for appointment as District Judges under [Article 233](#) of the Constitution. Under the U.P. Higher Judicial Service Rules "Judicial Officers" were eligible for appointment as District Judges and the expression was meant to cover members of the executive department who discharged some revenue and magisterial duties also. When selection of such persons was challenged, this Court was required to consider and interpret the provisions of Articles 233 to 236 of the Constitution. The procedure for selection under the said Rules was also challenged as violative of [Article 233](#). *The Court said that the Governor could not appoint as District Judge persons from services other than the judicial services. A person who is in the police, excise, revenue or such other service cannot be appointed as a District Judge.*

A.11 In **Chandra Mohan v. State**, AIR 1969 All 230, while interpreting Art. 233 against the backdrop of Rameshwar Dayal and Chandra Mohan (1966) cases, the Allahabad High Court held: “ 7. Sub-article (1) confers the power of appointment and provides for the conditions under which the power is to be exercised. Sub-article (2) deals with the field of eligibility to which the selection is to be confined. Under sub-article (2) a person already in the service of the Union or of the State is eligible. According to the decision of the Supreme Court in Chandra Mohan's case, "service" means the "judicial service". A person who is not already in the judicial service is eligible only if he has been an advocate or a pleader of at least seven years' standing and is recommended by the High Court. The submission of Mr. Jagdish Swarup, that a person who is in the service of the Union or of the State other than judicial service is not at all eligible, seems to do violence to the language of sub-article (2). The construction of the sentence in sub-article (2) seems to emphasise that a person not in the judicial service is also eligible, but only if the other two conditions are present, namely, that he has been a lawyer of seven years' standing and is recommended by the High Court.

8. It was urged that the words "has been" in the phrase "if he has been for not less than 7 years an advocate or a pleader signify that the eligibility is that the individual is an advocate or a pleader at the time when he is recommended by the High Court, or, on the date of his appointment. In substance, the argument is that a person must be a practising lawyer when he is appointed. In *Rameshwar Dayal v. State of Punjab*, AIR 1961 SC 816, the Supreme Court held that Clause (2) of Article 233 provides a qualification for persons not already in service. The required qualification is that he should be an advocate or pleader of seven years' standing but that clause does not say how that seven years' standing has to be reckoned. The other authorities are also against Mr. Jagdish Swarup's contention.

In the second proviso to Section 86 (3) of the Representation of the People Act,

1951 a person who "has been" a Judge could be appointed as a member of the Election Tribunal. A Division Bench of this Court in *Mubarak Mazdoor v. K. K. Banerji*, AIR 1958 All 323, held that this phrase meant a person who has, at some time, held office as a Judge, but it does not necessarily mean that the person must be holding office as a Judge at the time of the appointment as a member of the Tribunal. A retired Judge was eligible. The Bench observed that the argument that the words "has been" in the phrase "a person who has been a Judge" is a present perfect continuous tense, was incorrect. "Has been" when not followed by a participle is the present perfect tense of "to be" and accordingly indicates that the state of being has existed and may be (but not necessarily is) continuing. For example, the statement "A has been to Ceylon" indicates that A has visited Ceylon but is not there now; whereas the sentence "the baby has been ill all day" implies not only that the baby has been ill but is still ill. On the other hand, "Y has been a soldier" excludes neither the possibility that Y is still a soldier nor that he has ceased to be one. The line of reasoning of this authority is applicable. The qualification of seven years' standing need not necessarily be a continuing one till the appointment."

On this basis, the appointment of Prayag Narayan, already in service, was upheld. This view was ultimately upheld in 2nd Chandra Mohan case (1976).

A.12 If an interpretation is given which bars those candidates who are in judicial service under Art. 233(2), it would be against the very judgment of Chandra Mohan case (1966).

It is also pointworthy that if an interpretation is given that article 233 bars the appointment of a person who is already in service of the union or of the state then it would lead to a peculiar situation. As per Chandra Mohan's case service under article 233 (2) means judicial service and then it would mean that if a person is already in judicial service of the union or of the state, he would not be eligible to be appointed as district Judge. It means that a person who is not already in judicial service of the union or of the state, i.e., a person who is in any service other than judicial service is eligible to be appointed as district judge. This is exactly the ratio which was adopted in *Bihariji Dass* case (infra). But such a view would be against the very ratio of Chandra Mohan's case which declared that only members of judicial service are eligible to be appointed as district judge. Thus the view taken in *Satyanarayana Singh's* case or in *Deepak Agarwal's* case that a person already in service of union or State is not eligible to be appointed as district judge is against the very ratio of Chandra Mohan's case.

In ***Bihariji Dass v. Chandra Mohan*, AIR 1969 All 594**, the full bench of the Allahabad High Court held that a person in service other than judicial service was eligible to be appointed under direct recruitment. This judgement has been upheld by the constitution bench of Supreme Court in second Chandra Mohan case (1976) (supra). It was held:

“10. It will be convenient to take up the case of Sri Prayag Narayan first. He was opposite party No. 12 in this writ petition. At the time of his appointment to U. P. Higher Judicial Service he was serving as a Judicial Magistrate. In the previous case (AIR 1966 SC 1987) it has been held that Judicial Magistrates are not eligible for appointment to U. P. Higher Judicial Service.

.....

13. It is true that Sri Prayag Narayan was in service at the material time. But in the previous case (AIR 1966 SC 1987) it has been held by the Supreme Court that the expression "the service" in Article 233(2) can only mean 'Judicial service' as defined in Clause (b) of Article 236. Admittedly, Sri Prayag Narayan was not in "judicial service" as defined in Clause (b) of Article 236. It follows that he was not in "the service" within the meaning of Clause (2) of Article 233.

.....

18. Sri Prayag Narayan was not already in the service of the State within the meaning of clause (2) of Article 233. He has been a pleader for not less than seven years before his appointment to the Higher Judicial Service. He was, therefore, eligible for the appointment under clause (2) of Article 233. The learned single Judge was right in upholding Sri Prayag Narain's appointment.”

Thus such interpretation has really overturned the ratio in 1st Chandra Mohan case (1966) which has created an anomalous situation.

One more thing can be easily seen that by upholding the Behariji Dass judgment, the constitution bench of Supreme Court in 2nd Chandra Mohan case has clearly accepted that even a person who is already in service of union or of State is eligible to be appointed as district Judge even by direct recruitment.

A.13 There are instances of appointing persons who were in Government service on the date of recommendation.

There are numerous instances in which a candidate is in government service when he took preliminary examination or main examination for the HJS (See **Subhash Chandra And Ors. vs State Of U.P. And Ors. on 17 March, 2004, (2004) 2 UPLBEC 1150**). On the date of declaration of result and thereafter recommendation by the High Court, he is already in service. Had appointment been barred of a person who is already in service, how can such candidates be recommended for appointment as district judges who may not be eligible on the date of recommendation. An ineligible candidate cannot be recommended for appointment. This practice and law also clarifies that there is no bar on a member who is already in service for being appointed as district judge. This

view has also been approved by the Supreme court in **Vijay Kumar Mishra's case (Supra)**.

A.14. A contrary interpretation would create an anomalous situation.

If a contrary interpretation is given to Art 233 as suggested by the respondents a very anomalous situation would arise where a person eligible to be appointed as High Court judge would be ineligible for appointment as district judge which is very paradoxical. It is a matter of common prudence that a person who is competent enough to hold the post of a High Court judge shall naturally be eligible for appointment as district judge. Moreover higher qualification presupposes lower qualification (**vide Jyoti K.K. & Ors. V Kerala Public Service Commission & Ors., (2010) 15 SCC 596**). It is but natural that a person eligible for high court judgeship is eligible for district judge. In this regard it is mentionworthy that in **Prof. C. P. Agrawal v. C. D. Parekh, AIR 1970 SC 1061**, the Supreme Court refused to adopt an anomalous interpretation that suggested that a person eligible for Supreme Court judge was not eligible for High Court judgeship.

A.15. Interpretation which bars members of judicial service under Art. 233(2) would render even eligible advocate of one state as ineligible once he is selected and appointed in any other state which would be absurd.

If an interpretation is adopted that a person already in service is not eligible then even an eligible advocate candidate who gets selected and appointed in one state would become ineligible for appointment in any other state. Suppose, an advocate of Uttar Pradesh applies for Kerala higher judicial service and he gets selected and is appointed in Kerala. After appointment he will be in service of that state and therefore he will become ineligible for appointment in any other state including Uttar Pradesh. It is just like punishing eligible and meritorious candidates and also a negation of right to choose profession in any state in India. Such an interpretation would be absurd.

A.16 The judgment of Deepak Aggarwal v Keshav Kaushik, (2013) 5 SCC 277 is not a good law so far as members of judicial service is concerned.

Firstly, in this case the eligibility of members of judicial service was not under consideration and as such this judgment has no relevance in this case. Some observations by way of obiter has no binding effect. In para 42 of the judgment it was observed:

42. Article 233 of the Constitution makes provision for appointment and qualification for District Judges. Under clause (1) of Article 233 no special qualifications are laid down. The Governor can appoint a person who is already in service of the Union or of the State as a District Judge in consultation with the relevant High Court. Clause (2) of Article 233 lays down three essentials for appointment of a person to the post of District Judge; (i) a person shall not be in service of the Union or of the State; (ii) he has been for not less than seven years an advocate or a pleader; and (iii) his name is recommended by the relevant High Court for appointment. In other words, as regards a person not already in service what is required is that he should be an advocate or pleader of seven years' standing and that his name is recommended by the High Court for appointment as District Judge."

On this premise, unfortunately, a finding in para 46 thereof adverse to the interest of members of Judicial Service too cropped up:

"46. From the above, we have no doubt that the expression, the service in Article 233(2) means the judicial service. Other members of the service of Union or State are as it is excluded because Article 233 contemplates only two sources from which the District Judges can be appointed. These sources are: (i) judicial service; and (ii) the advocate/pleader or in other words from the Bar. District Judges can, thus, be appointed from no source other than judicial service or from amongst advocates. Article 233(2) excludes appointment of District Judges from the judicial service and restricts eligibility of appointment as District Judges from amongst the advocates or pleaders having practice of not less than seven years and who have been recommended by the High Court as such."

It may be pointed out here that though in first portion of said **para 46** of *Deepak Agrawal (supra)* the interpretation given to **Article 233 (2)** by *Chandra Mohan (1966) (supra)* appears to be followed but in concluding portion of said **para 46** there is adverse finding to the first portion. The last sentence of said **para 46** of *Deepak Agrawal (supra)* is in contradiction and not compatible either to *Chnadra Mohan (1966) (supra)* or rest portion of that **para 46** itself, with respect to the eligibility of members of Judicial Service to the Higher Judicial Service through direct recruitment.

Moreover if the test given in para 42 of this case is appilied, then a person who is full time employee of a private company and who has been an advocate for 7 years is eligible whereas a member of judicial service is not. It itself goes to show that this observation was without any thoughtful consideration against the very ratio of Chandra Mohan case (1966).

A.17 Article 233 (2) is only an enabling provision to appoint those who are not in service.

Article 233(2) is only an enabling provision for those who are not already in service. It nowhere bars the appointment of a person who is already in service. This view was countenanced by the Supreme Court in Chandra Mohan's (1966) case. Article 233 (2) clarifies two sources of recruitment for appointment of district judges. So far as members of judicial service are concerned, no special qualification is required. It is only in the case of advocates the requirement of seven years practice is there. This is clear from Rameshwar Dayal's and Chandra Mohan's cases. There is no other larger bench of the Supreme Court of this point and as such the ratio in these cases are binding law of the land. If any observation contrary to this ratio has been made in Satyanarayana Singh's case or Deepak Agarwal's case, then the observations in this cases would be nothing but per incuriam.

B. Propositions regarding the submission that even if it is assumed that Art. 233(2) refers to advocates only, members of judicial service cannot be debarred from direct recruitment.

B.1 The experience of advocacy and judicial service have always been put at par. experience of judicial service and advocacy are on the equal footing for the purpose of this recruitment. This basic tenet has been accepted throughout our legal and constitutional scheme. This view is fortified by the explanations to Article 124 and Article 217 of the Constitution of India. In **P. Ramakrishnam Raju vs Union Of India & Ors, (2014) 12 SCC 1**, the Supreme has held that experience at bar and the experience of judicial service are at equal footing. It was observed:

“The explanation thus treats the experience of an Advocate at the Bar and the period of judicial office held by him at par.”

.....

“The experience and knowledge gained by a successful lawyer at the Bar can never be considered to be less important from any point of view vis-a-vis the experience gained by a judicial officer. If the service of a judicial officer is counted for fixation of pension, there is no valid reason as to why the experience at Bar cannot be treated as equivalent for the same purpose.”

B.2 Even some states have given express recognition to this tenet in their judicial service rules. For example states like Gujarat, Maharashtra, etc., in their judicial service rules have heartily accepted this proposition. Rule 5 of Maharashtra Judicial Service Rules while prescribing qualification for appointment as district judge provides: “(b) Experience – Must be practising as an Advocate in the

High Court or Courts subordinate thereto for not less than 7 years on the date of publication of the advertisement and **while computing the period for practising as an Advocate, the period during which he has held the post of Public Prosecutor or Government Advocate or Judicial Officer shall be included;**"

Rule 5 of Gujrat State Judicial Service Rules, 2005, provides:

"(2) In order to be eligible for appointment by direct recruitment to the cadre of District Judges, the incumbent-

(a) Must possess a degree in law from the University established by law in India.

(b) Must be a Practising advocate in Courts of Civil and Criminal Jurisdiction..... **Explanation: For the purpose of this clause in computing the period during which a person has been an Advocate there shall be included the period during which he has held Judicial Office."**

B.3 In Govt. of NCT of Delhi & Ors. vs. All India Young Lawyers' Association (Registered) And Another, (2009) 14 SCC 49, a Lawyers' Association filed a writ petition in the High Court of Delhi praying therein that the benefit of 15 years addition of service be given to the Judge, who is directly appointed from the Bar to the Higher Judicial Service for the purposes of pension. The writ petition was allowed and Rule 26B was ordered to be added to the Delhi Higher Judicial Service Rules, 1970. The Govt. of NCT, Delhi challenged the said judgment and order and this Court upheld the validity of Rule 26B, however, the period to be added to the service for the purposes of pension, was reduced to 10 years or actual practice at the Bar whichever is less. Thus advocacy and judicial service were again treated at par otherwise advocacy cannot be clubbed with judicial service.

B.4 The word advocate should be given the same meaning as in Art 124 and 217. This word is given the same meaning in all the appointments made by Govt. e.g., by UPSC, PSC, PSUs, etc. The contrary observation in Satya Narain Singh v. High Court of Judicature at Allahabad, (1985) 1 SCC 225, is not a good law.

In this case the Supreme Court failed to correctly appreciate the constitutional provisions and the law laid down by the earlier constitution benches.

The limited quotation in Satyanarayana Singh's case regarding Article 233 being a self-contained provision was incomplete and out of context. The quotation was: "Article 233 is a self-contained provision regarding the appointment of district judges. As to a person who is already in the service of the union or of the state, no special qualification is laid down and under clause (1) the Governor can appoint such a person as a district judge in consultation with the relevant High Court. As to a person not

already in service, a qualification is laid down in clause (2) and all that is required is that they should be an advocate or pleader of seven years' standing."

The full text of the paragraph in Rameshwar Dayal's case is as under:

"Learned Counsel for the appellant has also drawn our attention to Explanation 1 to cl (3) of [Art. 124](#), of the Constitution relating to the qualifications for appointment as a Judge of the Supreme Court and to the **Explanation to cl. (2) of [Art. 217](#)** relating to the qualifications for appointment as a Judge of a High Court, and has submitted that where the Constitution-makers thought it necessary they specifically provided for counting the period in a High Court which was formerly in India. *Articles 124 and 217 are differently worded and refer to an additional qualification of citizenship which is not a requirement of Art., 233, and we do not think that el. (2) of [Art. 233](#) can be interpreted in the light of Explanations added to Arts. 124 and 217.* [Article 233](#) is a self contained provision regarding the appointment of District Judges. As to a person who is already in the serve of the Union or of the State, no' special qualifications are laid down and under el. (1) the Governor can appoint such a person as a district judge in consultation with the relevant High Court. As to a person not already in service, a qualification is laid down in el. (2) and all that is required is that he should be an advocate or pleader of seven years' standing. The clause does not say how that standing must be reckoned and if an Advocate of the Punjab High Court is entitled to count the period of his practice in the Lahore High Court for determining his standing at the Bar, we see nothing in [Art. 233](#) which must lead to the exclusion of that period for determining his eligibility for appointment as district judge.

What will be the result if the interpretation canvassed for on behalf of the appellant is accepted? Then, for seven years beginning from August 15, 1947, no member of the Bar of the Punjab High Court would be eligible for appointment as district judge a result which has only to be stated to demonstrate the weakness of the argument."

In Rameshwar Dayal's case the challenge was that the practice of the respondents before partition cannot be clubbed with the practice in India after partition. The argument was that wherever Constitution makers thought that earlier practice should be clubbed, they made a specific provisions i.e., in article 124 (3) and explanation to clause (2) of article 217. Since no such provision was made in article 233, it was contended that the practice before the Constitution cannot be clubbed with practice after the Constitution. But the Supreme Court negated this contention because this article 233 does not say how the period of practice has to be counted. The court held: "the clause does not say how that standing must be reckoned and if an advocate of Punjab High Court is entitled to count the period of his practice in the Lahore High Court for determining his standing at the bar, we see nothing in article 233 which must lead to the exclusion of that period for determining his eligibility for appointment of

district judge." The court also opined that article 124 and 217 referred to an additional qualification of citizenship which is not a requirement of article 233 and it was in this respect it was held that article 233 is a self-contained provision regarding the appointment of district judges and that clause (2) of article 233 cannot be interpreted in the light of explanation added to articles 124 and 217.

It has been mentioned in the judgement of Rameshwar Dayal that the counsels of the petitioner had **drawn attention to explanation 1 to Article 124 (3) and explanation to clause (2) of Article 217** relating to the qualifications for appointment as a judge of a High Court and has submitted that wherever the Constitution makers thought it necessary they have **specifically provided for counting the period in a High Court which was formerly in India.** Article 124 (3) of the Constitution reads as follows:

“ A person shall not be qualified for appointment as a judge of the Supreme Court unless he is a citizen of India and (A) has been for at least five years a judge of a High Court or of two or more such courts in succession; or (B) has been for at least 10 years an advocate of a High Court or of two or more such courts in succession; or
.....

Explanation 1 – in this clause "High Court" means a High Court which exercises or which at any time before the commencement of this Constitution exercised jurisdiction in any part of the territory of India. Article 217 (2) as it stood in 1950 was as follows:

A person shall not be qualified for appointment as a judge of the High Court unless he is a citizen of India and – (A) has for at least 10 years held a judicial office in the territory of India; or (B) has for at least 10 years been an advocate of a High Court in any state specified in the first schedule or of two or more such courts in succession. Explanation – for the purposes of this clause – (a) in computing the period during which a person has been an advocate of a High Court, there shall be included in the period during which the person had held judicial office after he became an advocate: (b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of High Court, there shall be included in a period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before 15 August 1947 within India as defined by the government of India act, 1935 or has been an advocate of any High Court in any such area, as the case may be.

[Clause (a) was renumbered as clause (aa) vide Constitution 44th Amendment Act, 1978. (w.e.f. From 20.06.1979)] In Rameshwar Dayal's case the explanation referred to in the argument was only one explanation, i.e., explanation (b) as the word "explanation" has been used and not "explanations". Moreover, the explanation (b) to article 217 was akin to explanation to article 124 (3) as both were referred to show that

where the Constitution makers thought it necessary, they specifically provided for counting the period in a High Court which was formerly in India. Thus the reference was limited to explanation (b) and explanation (a) was nowhere in picture. Therefore the quotation cited in Satyanarayana Singh's case is only out of context and against the very ratio of Rameshwar Dayal's case.

In reality, clause (2) of article 233 was interpreted on the same line as article 124(3) and 217(2). The court held – "the clause does not say how that is standing must be reckoned and if an advocate of the Punjab High Court is entitled to count the period of his practice in the Lahore High Court for determining his standing at the bar, we see nothing in article 233 which must lead to the exclusion of that period for determining his eligibility for appointment as district Judge." It is clear that the Supreme Court opined that the practice before the partition was to be added with the practice after the partition and Art. 233 was interpreted in the light of Art. 124(3) and 217(2) of the constitution.

Moreover, clause (a) [presently clause (aa)] of article 217(2) was never considered and no finding has been given on it. It is pertinent to mention here that the rules of Gujarat and Maharashtra higher judicial service are on the line of explanation (aa) [previously (a)] to article 217 (2).

B.5 Even after joining judicial service, an advocate remains an advocate and as such eligible for direct recruitment.

Even if it is assumed that article 233 permits only advocates of at least seven years standing to be appointed as district judge, then also members of judicial service who were earlier advocates are within the eligibility zone. In **Mahesh Chandra Gupta v. Union of India, (2009) 8 SCC 273** it has been held that actual practice is not necessary. What is important is that a candidate should be enrolled as advocate and he should be working in a field related with law. It was held:

“23. Thus, it becomes clear from the legal history of the 1879 Act, 1926 Act and 1961 Act that they all deal with a person's right to practice or entitlement to practice. The 1961 Act only seeks to create a common Bar consisting of one class of members, namely, Advocates. Therefore, in our view, the said expression "an advocate of a High Court" as understood, both, pre and post 1961, referred to person(s) right to practice. Therefore, actual practice cannot be read into the qualification provision, namely, [Article 217\(2\)\(b\)](#). The legal implication of the 1961 Act is that any person whose name is enrolled on the State Bar Council would be regarded as "an advocate of the High

Court". The substance of [Article 217\(2\)\(b\)](#) is that it prescribes an eligibility criteria based on "right to practice" and not actual practice."

This view can be appreciated by an example. Suppose an advocate of seven years' standing had met an accident in his career and he was on bed for six months. If seven years practice is misinterpreted as seven years continuous and actual practice in court then such persons cannot be appointed as any kind of judge. Moreover it would be very difficult to see whether a particular advocate has actually practised on all the working days for seven years. When appointment by direct recruitment is to be made on the basis of merit then such kind of requirement is not warranted at all. Most of the judicial officers have been advocates at one point of time. They do not become meritless just by passing judicial service examination. All that is required is that the person should be enrolled as an advocate. It has to be seen that the word advocate has the same meaning in article 217 (B) and in Article 233. If the word advocate includes judicial service in article 217 there is no reason why the word advocate should exclude judicial service in article 233 when there is no such provision anywhere in the Constitution.

In **Subhash Chandra and Ors. v State of U.P. (supra)** it was held:

"95. In Para 17 of the decision in Behariji Das (supra) it has been held by the Full Bench that:

"It is well known that in several cases persons have been appointed as High Court Judges some time after their retirement as District Judges. Such appointments have never been challenged. *The position under [Article 233\(2\)](#) is similar to that under [Article 217\(2\)](#) of the Constitution.*"

This judgment of Behariji Dass was affirmed by 5 judges' bench in **Chandra Mohan v. State of U.P. & Ors., (1976) 3 SCC 560**.

It was further observed in Subhash Chandra's case: "101. In this connection, [Article 217\(2\)](#) of the Constitution is relevant.

[Article 217](#), sub-rule (2) is being reproduced as follows :

"A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India, and

- (a) Has for at least ten years held a judicial office in the territory of India; or
- (b) Has for at least ten years been an Advocate of a High Court or of two or more such Courts in succession;"

102. It is relevant that, in sub-section (2) (b) word "has been an Advocate" has been used.

103. In this connection, [Article 217\(2\)](#) Explanation (aa) is relevant, which is being reproduced :

"In computing the period during which a person has been an Advocate of a High Court, there shall be included any period during which the person (has held judicial office or the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law) after he became an Advocate."

104. *It also shows that, in computing the period, during which a person has been an Advocate period, during which, he held the judicial office shall also be considered, it means that, active practice during process of selection till recommendation for appointment as District Judge is not essential.* In such circumstances, argument of the learned Counsel for the respondents has no force that applicants should remain in active practice, during process of selection till recommendation for appointment."

Thus the court interpreted Art 233(2) in the light of Art. 217.

C. Propositions regarding the submission that rule 5(c) is unconstitutional as it violates the fundamental rights of the petitioners.

C.1. Rule 5(c) fails in the test of reasonable classification.

Object of direct recruitment and reasonableness of classification

Direct Recruitment is defined as: *Direct recruitment is the recruitment which is open to all candidates, eligible as per the provisions regarding age, educational qualification/ experience etc. As prescribed in recruitment rules.* (www.staffnews.in/2013/03/faq-o) Before examining the matter on the touchstone of reasonable classification, we have to know what is the object of direct recruitment. The object of direct recruitment is to infuse young blood in the service so that young and energetic persons are there in the service. In direct recruitment seniority never counts and it is made only on the basis of merit so as to find out the best suitable persons for the service. Direct recruitment is never confined to only a selected class of willing candidates keeping out better class of other willing candidates. In **Union of India v. S.D. Gupta, AIR 1996 SC 3325**, it was held that *object of direct recruitment is to blend talent and experience to augment efficiency.*

In **A. N. Sehgal v. Raje Ram Sheoram, (1992) Supp (1) SCC 304**, it was observed:

“With a view to have efficient and dedicated services accountable to proper implementation of Government policies, it is open, and is constitutionally permissible for the State, *to infuse into the services, both talented fresh blood imbued with constitutional commitments, enthusiasm, drive and initiative by direct recruitment*, blended with matured wealth of experience from the subordinate services.....

.....

Talent is not the privilege of few but equal avenues made available would explore common man's capabilities overcoming environmental adversity and open up full opportunities to develop one's capabilities to shoulder higher responsibilities without succumbing to despondence. Equally talented young men/women of great promise would enter into service by direct recruitment when chances of promotions are attractive. The aspiration to reach higher echelons of service would thus enthuse a member to dedicate honestly and diligently to exhibit competence, straightforwardness with missionary zeal exercising effective control and supervision in the implementation of the programmes.”

In **Dr. Harkishan Singh v. State Of Punjab & Ors, (1971) 2 SCC 58**, it was observed, “.....the *implicit idea inherent in the words "direct recruitment and direct appointment" in Rule 5 for the purpose of attracting able and meritorious persons to the service.....”*

It is also very pertinent to point out here that promotion cannot be equated with direct recruitment. Promotion is given to remove the stagnation of the officers and bring experience in the service whereas direct recruitment is made to infuse more meritorious candidates in the service who are comparatively young and energetic. If the object of direct recruitment to district judge is to recruit young and meritorious persons who have adequate knowledge of legal and judicial system and who are well acquainted with law, then there is no justification to exclude the members of judicial service from direct recruitment to District judge.

C.2. In All India Judicial Service Association v. Union of India, (1998) 8 SCC 771, a three-judge bench of the Supreme Court has held that *intimate knowledge of judicial system is more important than appearance in court*. If such is the proposition then how members of judicial service can be excluded from the eligibility zone of direct recruitment to higher judicial service who have more intimate knowledge of judicial system and law as they are continuously working in the judicial system as they have to keep themselves abreast of new developments in law as they have to decide cases according to the latest legal position? So far as knowledge of law and legal system is concerned the bar and the bench have always been treated at par rather members of

judicial service are better suited for this appointment who are already performing judicial work.. In such a situation excluding members of judicial service only on the basis that they are members of judicial service is absolutely arbitrary. There is no nexus of this differentiation with the object sought to be achieved i.e., best law knowing and experienced persons should be appointed as district judge.

C.3 In All India Judges' Association v Union of India, (1992) 1 SCC 119, the Supreme Court also quoted the 14th report of law commission with approval and said:

“The Law Commission of India in its 14th Report in the year 1953 said:

"If we are to improve the personnel of the subordinate judiciary, we must first take measures to extend or widen our field of selection so that we can draw from it really capable person. A radical measure suggested to us was to recruit the judicial service entirely by a competitive test or examination. It was suggested that the higher judiciary could be drawn from such competitive tests at the all- India level and the lower judiciary can be recruited by similar tests held at State level. Those eligible for these tests would be graduates who have taken a law degree and the requirement of practice at the Bar should be done away with.

Such a scheme, it was urged, would result in bringing into the subordinate judiciary capable young men who now prefer to obtain immediate remunerative employment in the executive branch of Government and in private commercial firms. The scheme, it was pointed out, would bring to the higher subordinate judiciary the best talent available in the country as a whole, whereas the lower subordinate judiciary would be drawn from the best talent available in the State".

The object of requirement of seven years practice also is that the person to be appointed as district judge should have adequate knowledge and experience of law and legal field. The legal knowledge and experience of members of judicial service is already tested in the examination conducted by the public service commission or the respective High Courts. Members of judicial service are mostly earlier advocates who took the examination, passed that and appointed as members of judicial service. Just by passing an examination, the members of judicial service do not lose their merit. Therefore the impugned rule 5(c) of the U.P. higher judicial service rule is unconstitutional.

C.4 There should be equality of opportunity to both the sources.

In **O.P. Garg v. State of U.P., 1991 Supp (2) SCC 51**, it was held, *“With these characteristics of the service it is obligatory that there should be equality of opportunity to enter the service for all the three sources of recruitment.* The seniority in the service is consequential and dependent on appointment. If the recruitment rule

gives unjustifiable preference to one source of recruitment the seniority rule is bound to become unworkable. *The object of having recruitment from different sources is to have a blended service to create healthy competition and in the process achieve efficiency. If one of the sources of recruitment is dealt with unevenly under the Service Rules the said objective cannot be fulfilled.*” In this case, it was emphasized that there should be equality of opportunity to both the sources and as such rule 5(c) which gives opportunity to only advocates for direct recruitment barring members of judicial service is unconstitutional.

C.5 In Jyoti Prasad v. Union Territory of Delhi, AIR 1961 SC 1602, (7 judges bench) the test of legislation was laid down and it was held that if the rule applies unequally to persons or things similarly situated it would be unconstitutional. It was held: *“If the statute itself or the rule made under it applies unequally to persons or things similarly situated, it would be an instance of a direct violation of the Constitutional guarantee and the provision of the statute or the rule in question would have to be struck down.”* In this case also rule 5(c) applies unequally to members of judicial service who are similarly situated so far as direct recruitment to higher judicial service is concerned vis-a-vis the advocates. Therefore rule 5(c) is arbitrary and against the Constitution.

C.6. In Hari Datt Kainthla & Anr. v. State of Himachal Pradesh & Ors., (1980) 3 SCC 189, it was held that rules under proviso to Art. 309 must conform with Art. 16 and chapter vi of part VI of the Constitution. Rule 5(c) fails to satisfy this requirement also as it has no nexus with the object and is also against Art. 233 of the Constitution.

C.7 Promotion is no substitute for direct recruitment.

Direct recruitment cannot be equated with promotion. In direct recruitment the candidate can apply in any state all over the India whereas an in-service candidates can be promoted only in his service state. Apart from it, an advocate is eligible for taking the higher judicial service examination as soon as he has completed seven years of practice whereas there is no such definite period of service for a member of judicial service to be appointed as district judge by way of promotion. In some states more than 10 years are lost in promotion from junior division to senior division. Then there is no definite period for coming into zone of consideration for higher judicial service. Thus direct recruitment is altogether different from promotion and direct recruitment of members of judicial service cannot be barred on the name of promotion.

C.8 Rule 5(c) is violative of Art. 19(1)(g) also.

In **Chintaman Rao v. State of M.P.**, AIR 1951 SC 118, it was held:

“Unless it is shown that there is a reasonable relation of the provisions of the Act to the purpose in view, the right of freedom of occupation and business cannot be curtailed by it.

The phrase "reasonable restriction" connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word "reasonable" implies intelligent care and deliberation, that is, the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in [article 19 \(1\) \(g\)](#) and the social control permitted by clause (6) of [article 19](#), it must be held to be wanting in that quality.”

It can be seen that rule 5(c) has no relation with the object nor is it in public interest and it is violative of Art. 19 (1) (g) also.

C.9 100% reservation for any particular class is impermissible.

It is well established that there are two sources of recruitment for appointment of district judges – (1) members of judicial service and (2) advocates. But rule 5(c) reserves hundred percent of the posts of direct recruitment to only one source which cannot be sustained at all as it would be violative of article 14 and 16 of the Constitution.

In this
regard the judgement of **Indira Sawhney & Ors. v. Union of India, 1992 Supp (3) SCC 217**, may be referred to.

In **S. Renuka & Ors. V. State of A.P. & Anr., (2002) 5 SCC 195**, 100% reservation for women in appointment of judges of family court was held unconstitutional.

C.10 Shetty Commission also favoured that members of judicial service be given chance to participate in direct recruitment to district judge. The direction in *AIJA v. UoI, (2002)* regarding direct recruitment is against the very report of the Shetty Commission.

The Shetty commission has also observed that there is no reason why officers of judicial service be debarred from direct recruitment. The Supreme Court committed a mistake in ***All India Judges Association v. Union of India case, 2002 (AIR 2002 SC 1752)*** by inadvertently holding: “... While as 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.....”. It can be seen that this

holding of the Supreme Court is diametrically opposite to the recommendation of the Shetty Commission in this regard. The Shetty Commission nowhere recommended that this recruitment should be restricted from amongst the advocates only. The Shetty Commission had recommended that this recruitment should be open for the judicial officers also. The relevant portion of the reports is extracted below:

“10.80 Since temporary posts are also available for direct recruitment, we consider that not exceeding 25% of the posts in the cadre of District Judges should be reserved for direct recruitment. This percentage of reservation would not jeopardise the interests of the promotees since we have decided to give them certain weightage for fixing the inter-se seniority, **besides providing an opportunity to service judges to compete for such direct recruitment.**

.....

11.51 The majority of the High Courts and the Service Associations barring a couple of them are for giving an opportunity to the Service judges for direct recruitment of District Judges. Even, some of the Governments are in favour of such a move. The reasons given in support of the proposal are that it would promote efficiency, improve discipline in judicial service and make the officers to work more efficiently, diligently and sincerely.

11.52 We are highly impressed by the reasons given by the High Courts of Allahabad, Bombay, Punjab & Haryana and All India Judges' Association. If meritorious young blood should be introduced in the mixed cadre, there is no reason why merited serving judges should be excluded from consideration for direct recruitment. In such selection the High Court will have an opportunity to assess the merit of serving judges as against the merits of the competent advocates.

.....

11.56 The Commission considers that if an opportunity for direct recruitment is afforded to inservice judges, it would, to a great extent, remove the frustration which is presently dogging them. Such an opportunity would add lustre to their career and enable them to outshine with their merit, hard work and sincerity.

11.57 The contention urged by the directly recruited District Judges that those who have got the promotional channel should be allowed to make a move only through that channel does not sound to reason. In All India Administrative Service, there is no bar for any person in any service for applying, subject to the age prescribed. It is a common experience that many of the successful IAS and IPS candidates initially belonged to one or the other service.

11.58 The Commission, therefore, considers that it is reasonable and also necessary to provide eligibility for service judges for direct recruitment of District Judges.

.....

Thus, it appears that the Supreme Court misread the report and the recommendations of the Shetty Commission in this regard and this mistake of the Supreme Court marred the future of many bright and young candidates.

The direction of the Supreme Court confining direct recruitment to advocates only is also against the very spirit of the judgment in this case. As we have seen that the Supreme Court did away with the requirement of three years practice for appointment at junior division level just to attract bright young law graduates in the judicial service. The Supreme Court itself said:

“32. In the All India Judges's case, (1993 (4) SCC 288 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, directs 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 even 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 with training of not less than one year, preferably two years.”

Thus the emphasis of the Supreme Court was to attract young and merited law graduates to the judiciary. Then why these bright young law graduates are being thrown out of the competition at the direct recruitment (HJS) level just after few years? It is just like catching young calves and evirating them. In this judgment the Supreme Court also said that 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. If a candidate of CJ (JD) is more meritorious than an advocate, it is no ground to throw him out from the competition at direct recruitment (HJS) level.

In the light of aforesaid facts and circumstances the mistake in All India Judges' Association's case (AIR 2002 SC 1752) should be corrected in order to enhance the quality of judges at HJS and High Court level and also to prevent violation of human and fundamental rights of the officers of the CJ(JD)/CJ(SD) cadre.

C.11 There is no such bar in any other service in India.

There is no such bar in any other service anywhere in the world where an in service candidate is barred despite having equal qualification for direct recruitment to higher post.

C.12 The judgment of Satyanarayan Singh (1984) is not a good law even with respect to the claim of violation of fundamental rights of members of judicial service.

Even in Satyanarayan Singh's case it was held that article 233(1) does not lay down the qualifications of the candidates or denoted the sources from which the recruitment had to be made. It was also admitted that under article 233(2) "persons in the service" is also a source. However the Supreme Court negatived the claim because it thought that it would overlook the claims of all other seniors in the subordinate judiciary contrary to article

14 and 16 of the Constitution. It was observed: “Subba Rao, CJ. then proceeded to consider whether the Government could appoint as district judges persons from services other than the judicial service. After pointing out that [Art. 233\(1\)](#) was a declaration of the general power of the Governor in the matter of appointment of district judges and he did not lay down the qualifications of the candidates to be appointed or denoted the sources from which the recruitment had to be made, he proceeded to state, "But the sources of recruitment are indicated in cl. (2) thereof. Under cl. (2) of Art. 233 two sources are given namely, (i) persons in the service of the Union or of the State, and (ii) advocate or pleader." *Posing the question whether the expression "the service of the Union or of the State" meant any service of the Union or of the State or whether it meant the judicial service of the Union or of the State, the learned Chief Justice emphatically held that the expression "the service" in [Art. 233\(2\)](#) could only mean the judicial service. But he did not mean by the above statement that persons who are already in the service, on the recommendation by the High Court can be appointed as District Judges, overlooking the claims of all other Seniors in the Subordinate Judiciary Contrary to [Art. 14](#) and [Art. 16](#) of the Constitution.*”

Firstly the court failed to consider the claim of many senior officers vis-a-vis the advocates. If a junior officer cannot go ahead of senior, how can a junior advocate can bypass a number of senior officers/advocates.

The Supreme Court also failed to consider that the classification is permissible on the basis of merit. Moreover, the reasoning of overlooking the claims of seniors is fallacious as articles 14 and 16 guarantee only equality of opportunity, not equality of results.

If the reasoning of Satyanarayana Singh's case is to be accepted, the concept of competitive examination and promotion on the basis of merit will have to be put in oblivion. When a competitive examination is based on merit even the eligible seniors will get chance and not only the juniors. Moreover after introduction of limited departmental competitive examination, this reasoning has no place at all where juniors may march ahead of seniors and it is happening in HJS also. This year also, a number of junior officers have marched ahead of their seniors.

C.13 A person who is eligible u/A. 233 cannot be made ineligible by a rule made under the proviso to Art. 309.

C.14 Rule 5(c) Violates the basic human rights of the officers of the civil judge (JD)/civil judge(SD) cadre.

Equality before law is a very basic human right. As has been discussed earlier, the officers of the CJ (JD)/CJ(SD) are denied the opportunity to appear in HJS

examination just because they have been selected earlier due to their competence. In this regard it would be pertinent to quote here some of the findings of Advisory Panel on Judicial Diversity in U.K. The Advisory Panel on Judicial Diversity has observed in its report in 2010:

“22. Equal opportunities. All properly qualified people should have an equal opportunity of applying and of being selected for judicial office. Well-qualified candidates for judicial office should be selected on their merits and should not be discriminated against, either directly or indirectly.

23. Inherent in the concept of human equality is the principle that talent is randomly and widely distributed in society, and not concentrated in particular racial or other groups. It therefore follows that the more widely one searches for talent, the more likely it is that the best candidates will be identified.

“You should not be looking for unusual talent, but looking for talent in unusual places”.

The current under-representation of certain well-qualified groups within the judiciary suggests that factors other than pure talent may be influencing either people’s willingness to apply or the selection process, or both.”

Thus, all judicial officers or advocate who have 7 yrs experience in legal / judicial profession should have an equal opportunity of applying and being selected for judicial office at ADJ level and it is their basic human right .

There is yet another perspective. The universal declaration of human right sets out the minimum basic human right guaranteed to all the person across the world. Universal declaration of human rights (UDHR) along with International Covenant on Civil and Political Rights (CCPR) and International Covenant on Economic, Social and Cultural Rights (CESCR) creates the international bill of human rights. All signatories to these conventions recognise the rights enumerated in these convention as basic human rights from which no derogation is permissible, India is also a signatory to UDHR, CCPR and CESCR. Article 2 of UDHR provides:

“Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”

Thus, Article 2 of this convention prohibits discrimination of any kind among the human being. Article 7 of UDHR makes specific provision in this regard and says:

“All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. “

Thus, allowing only advocates to take part in the 25% direct recruitment quota in higher judicial services in against Article 2 and 7 of UDHR. It is also pertinent to point out that Article 7 of UDHR also speaks of entitlement of all persons to equal protection against any discrimination in violation of the declaration.

Apart from this Article 7 of the CESCRC recognises a human right of equal opportunities for everyone to be promoted in his employment to an appropriate higher level subject to no consideration other than those of seniority and competence. In this regard Article 7 provides: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

.
 . .

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

As we have seen that in 25% direct recruitment quota only advocates of atleast 7 year practice are eligible to take the examination. Additional District Judge level post is nothing but a post of higher level in the judicial service, then there is no justification for debarring the candidate of CJJD and CJSD to take part in this examination. According to Article 7 of CESCRC the candidate of CJJD and CJSD can be denied

promotion as against the candidate from the bar only on two grounds i.e., seniority and competence. So far as seniority is concerned, the judicial officers are also on the same footage as advocates. As to competence, it cannot be tested unless the candidate of CJJD and CJSD are also allowed to compete with the advocates in 25% direct recruitment quota as recommended by the Shetty Commission.

D. Alternatively what is barred is appointment and not selection.

In **Vijay Kumar Mishra & Anr. v High Court of Judicature at Patna, (2016) 9 SCC 313**, it was held:

“Textually, [Article 233\(2\)](#) only prohibits the appointment of a person who is already in the service of the Union or the State, but not the selection of such a person. The right of such a person to participate in the selection process undertaken by the State for appointment to any post in public service (subject to other rational prescriptions regarding the eligibility for participating in the selection process such as age, educational qualification etc.) and be considered is guaranteed under [Art. 14](#) and [16](#) of the Constitution.

8. The text of [Article 233\(2\)](#) only prohibits the appointment of a person as a District Judge, if such person is already in the service of either the Union or the State. It does not prohibit the consideration of the candidature of a person who is in the service of the Union or the State. A person who is in the service of either of the Union or the State would still have the option, if selected to join the service as a District Judge or continue with his existing employment.”

E. There is no prohibition on the power of the high court to recommend a better candidate of judicial service as district judge.

Moreover under the constitutional scheme the district judges have to be appointed on the basis of the recommendation of High Court's. High Court is the entity which has supervision and control over both the judicial service and advocates. There is no prohibition on the power of the High Court so as to compel the High Court to recommend a less meritorious candidates for appointment as district judge overlooking more meritorious candidates. In **K. H. Siraj v High Court of Kerala, (2006) 6 SCC 395**, it was held:

“The High Court is vested with the power to see that the high traditions and standards of the judiciary are maintained by the selection of proper persons to man the subordinate judiciary.

The place of the High Court in the matter of administration of justice was very elaborately and poignantly delineated by S.B. Majmudar, J., speaking for the Constitution Bench in (2000) 4 SCC 640, said *that the very responsible and onerous duty is cast on the High Court under the Constitutional scheme and it has been given a prime and paramount position in this matter, with the necessity of choosing the best available talent for manning the subordinate judiciary.*”

It is also very pertinent to point out here that the word consultation has also been interpreted as recommendation. (**M. M. Gupta v. State of Jammu and Kashmir, AIR 1982 SC 1579**).

Filed By

AJAY KUMAR SINGH
ADVOCATE ON RECORD

WRITTEN SUBMISSION OF DR. VIVEK SHARMA**(In Support of Proposition)**

234043
[I.A. NO. /2025 IN CIVIL APPEAL NO. 3947/2020]

On 12 August 2025, a three Bench referred the case to a larger Bench. Specifically, the larger Bench will decide whether:

- i. Judicial officers who have qualified as advocates for seven years before joining the judiciary may be considered eligible for direct recruitment as district judges reserved for practising advocates.
- ii. The eligibility must be determined at the time of application or at the time of appointment or both.

On 12 September 2025, Five judge Constitution Bench also decided two more issues for consideration-

- iii. Whether there is any eligibility prescribed for a person already in the judicial service of the Union or the State under Article 233(2) of the constitution of India for being appointed as District Judge?
- iv. Whether a person who has been civil judge for a period of seven years or has been an Advocate and civil judge for a combined period of seven years or more than seven years would be eligible for appointment as District judge under Article 233 of the Constitution of India?

Regarding the issues, my submission is-

They should be decided according to Constitutional Provisions and law.

Because.....(.....Argument.....).

Minimum Time Required for Argument- 30 Minutes

Drawn & Filed BY:


(DR.) VIVEK SHARMA
 Advocate on Record for the Intervenor

Filed on: 15/09/2025