

**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**

**VOLUME – II  
(Pages **1 - 249** )**

**WRITTEN SUBMISSIONS ON BEHALF OF PARTIES  
OPPOSING THE PROPOSITION**

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**Compiled by Nodal Counsels**

**Ajay Kumar Singh and John Mathew**

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## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3947 OF 2020

**IN THE MATTER OF:**

Rejanish K.V.

...Appellants

Versus

K. Deepa &amp; Ors.

...Respondents

**WRITTEN SUBMISSIONS BY MR. CHANDER UDAY SINGH, SENIOR****ADVOCATE, ON BEHALF OF RESPONDENT NO. 1**I. STARE DECISIS, AND THE PRESERVATION OF CERTAINTY OF LAW:

1. The case of the Review Petitioners and others who challenge the dictum in *Dheeraj Mor v. High Court of Delhi* <sup>1</sup> (hereafter, *Dheeraj Mor*) proceeds on a misconception that the learned 3-Judges Bench in that case carved out new territory, or laid down some new propositions of law. Nothing could be further from the truth.
2. The Bench in *Dheeraj Mor* only reiterated the interpretation of Article 233(2) of the Constitution that has held the field continuously for at least the past 65 years, since 1960. Indeed, the reference to a 3-Judges Bench would not have been needed at all, had certain 2-Judge Benches not disregarded the binding judgments

<sup>1</sup> (2020) 7 SCC 401

of at least two Constitution Benches of five learned Judges each, and several 3-Judge Bench decisions which had followed the larger Bench judgments. Be that as it may, all that *Dheeraj Mor* has done is to reiterate the ratios of Constitution Benches in 1960 and 1965, which have in turn been explained and followed in several 3-Judges Bench judgments, including but not limited to *Satya Narain Singh v. High Court of Allahabad* <sup>2</sup> in 1984, *Sushma Suri v. State (NCT of Delhi)* <sup>3</sup> in 1998, and *Deepak Aggarwal v. Keshav Kaushik* <sup>4</sup> in 2013.

3. It is submitted that the Constitution Benches in *Rameshwar Dayal v. State of Punjab* <sup>5</sup> (1960), and *Chandra Mohan v. State of U.P* <sup>6</sup> (1965) clearly held that there are two distinct sources of recruitment under Article 233, one from the Bar and the other from the Bench. They held in unambiguous terms that candidates already in judicial service cannot seek appointment under Article 233(2). This ratio was explained and reiterated by a 3-Judge Bench in *Satya Narain Singh v. High Court of Allahabad* <sup>7</sup> (1984), and was taken as the settled legal position in the 1998 judgment of a 3-Judges Bench in *Sushma Suri v. State (NCT of Delhi)* <sup>8</sup> where it was held that members of the bar meant classes of persons who were practicing in a court of law as pleaders or advocates. The only issue that this Hon'ble Court believed was open for debate was whether Government Pleaders, Public Prosecutors, and the like could still be considered to be in active practice of the law, and this was answered in the affirmative. The clear and unambiguous

<sup>2</sup> (1985) 1 SCC 225

<sup>3</sup> (1999) 1 SCC 330

<sup>4</sup> (2013) 5 SCC 277

<sup>5</sup> (1961) 2 SCR 874

<sup>6</sup> (1966) SCC Online All 57

<sup>7</sup> (1985) 1 SCC 225

<sup>8</sup> (1999) 1 SCC 330

ratio of law laid down by two Constitution Benches in 1960 and 1965 were continuously followed in several cases thereafter, including more recent decisions like *Mahesh Chandra Gupta v. Union of India* <sup>9</sup>(2009) and *Deepak Aggarwal v. Keshav Kaushik* <sup>10</sup> 2013), in which this Hon'ble Court reiterated that the expression “advocate” or “pleader” refers to members of the bar actually practicing law. The directions issued by the court in paras 27 and 28 of *All India Judges Association (3) v. Union of India* <sup>11</sup>, directing a quota of 75:25, further split into 50:25:25 for recruitment to posts of District Judge in all States, with the last 25% being exclusively reserved for eligible advocates, was entirely in tune with the decisions of 1960, 1965, 1985, and 1998.

4. The questions raised by serving judicial officers in the present matter are covered by over six decades ***stare decisis***. *Stare decisis et non quieta movere*, or “to stand by decisions and not to disturb what is settled”, is a doctrine which clearly applies to the present Reference. The 3-Judge Bench in *Dheeraj Mor* has merely reiterated the law as settled several decades ago, that only advocates in actual and active practice, who are not in the service of the Union or the State, shall alone be eligible for appointment under Article 233(2). No bench of five Judges or three Judges has ever taken a view contrary to that taken in the 1960, 1965, 1985, and 1999 judgments listed above. The said interpretation has not only held the field for over six decades, but it has worked smoothly and well, fulfilled the goals of the framers of our Constitution, and most importantly, has not been productive of any public hardship, inconvenience, or harm.

<sup>9</sup> (2009) 8 SCC 273

<sup>10</sup> (2013) 5 SCC 277

<sup>11</sup> (2002) 4 SCC 247

5. In the circumstances, this Hon'ble Court ought to pay heed to the caution voiced by Justice H.R. Khanna in his concurring opinion in the judgment of a 7-Judges Bench in *Maganlal Chhaganlal (P) Ltd. v. Municipal Corporation of Greater Bombay*<sup>12</sup>, to the following effect:

“22. I must also utter a note of caution against the tendency to lightly overrule the view expressed in previous decisions of the Court..... [and after quoting Cardozo] ..... At the same time, it has to be borne in mind that certainty and continuity are essential ingredients of rule of law. Certainty in law would be considerably eroded and suffer a serious set back if the highest court of the land readily overrules the view expressed by it in earlier cases, even though that view has held the field for a number of years. In quite a number of cases which come up before this Court, two views are possible, and simply because the Court considers that the view not taken by the Court in the earlier case was a better view of the matter would not justify the overruling of the view. The law laid down by this Court is binding upon all courts in the country under Article 141 of the Constitution, and numerous cases all over the country are decided in accordance with the view taken by this Court. Many people arrange their affairs and large number of transactions also take place on the faith of the correctness of the view taken by this Court. It would create uncertainty, instability and confusion if the law propounded by this Court on the basis of which numerous cases have been decided and many transactions have taken place is held to be not the correct law. This Court may, no doubt, in

<sup>12</sup> (1974) 2 SCC 402

*appropriate cases overrule the view previously taken by it but that should only be for compelling reasons.....*

*23. So far as the question is concerned about the reversal of the previous view of this Court, such reversal should be resorted to only in specified contingencies. It may perhaps be laid down as a broad proposition that a view which has been accepted for a long period of time should not be disturbed unless the Court can say positively that it was wrong or unreasonable or that it is productive of public hardship or inconvenience.....”*

6. Similarly, a Constitution Bench of five learned Judges held in *Chandra Prakash v. State of U.P.*, (2002) 4 SCC 234 as follows:

*“22. A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments, it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is*

*this need for consistency in the enunciation of legal principles in the decisions of this Court.....”*

7. These principles were neatly summed up in the unanimous opinion of five learned Judges in *Shah Faesal v. Union of India*, (2020) 4 SCC 1, as follows:

*“17. This Court's jurisprudence has shown that usually the courts do not overrule the established precedents unless there is a social, constitutional or economic change mandating such a development. The numbers themselves speak of restraint and the value this Court attaches to the doctrine of precedent. This Court regards the use of precedent as indispensable bedrock upon which this Court renders justice. The use of such precedents, to some extent, creates certainty upon which individuals can rely and conduct their affairs. It also creates a basis for the development of the rule of law. As the Chief Justice of the Supreme Court of the United States, John Roberts observed during his Senate confirmation hearing, “It is a jolt to the legal system when you overrule a precedent. Precedent plays an important role in promoting stability and even-handedness”. [ Congressional Record—Senate, Vol. 156, Pt. 7, 10018 (7-6-2010).]*

*18. Doctrines of precedents and stare decisis are the core values of our legal system. They form the tools which further the goal of certainty, stability and continuity in our legal system. Arguably, Judges owe a duty to the concept of certainty of law, therefore they often justify their holdings by relying upon the established tenets of law.*

19. When a decision is rendered by this Court, it acquires a reliance interest and the society organises itself based on the present legal order. When substantial judicial time and resources are spent on references, the same should not be made in a casual or cavalier manner. It is only when a proposition is contradicted by a subsequent judgment of the same Bench, or it is shown that the proposition laid down has become unworkable or contrary to a well-established principle, that a reference will be made to a larger Bench. In this context, a five-Judge Bench of this Court in *Chandra Prakash v. State of U.P.* [*Chandra Prakash v. State of U.P.*, (2002) 4 SCC 234 : 2002 SCC (Cri) 496 : 2002 SCC (L&S) 496] , after considering series of earlier rulings reiterated that : (SCC p. 245, para 22)

“22. ... The doctrine of binding precedent is of utmost importance in the administration of our judicial system. **It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court.**”

**(emphasis supplied)”**

8. In the above background it is submitted that it would create uncertainty, instability and confusion if the law laid down by this Hon’ble Court, which has been consistently followed and acted upon for over six decades, were to be overruled merely because the Review Petitioners urge that another view is possible. Stare decisis requires that interference in a principle or view long held, should only be for very compelling reasons, which cannot be said to arise in the present case. It is

submitted that there are no compelling reasons of public policy, public good, or remedying a manifest injustice, such as to warrant an intervention or overruling of *Dheeraj Mor*.

## II. ARTICLE 233 ENVISAGES AND PROVIDES FOR TWO DISTINCT

### SOURCES OF APPOINTMENT:

9. Article 233(2), when read with sub-Article (1) and the remaining Articles of Chapter VI of Part VI of the Constitution, clearly provides for two different sources of appointment as a District Judge. It provides for appointments by way of direct recruitment and promotion. There is a clear dichotomy in the two sources of recruitment, which has been culled out in *Chandra Mohan*. The two separate streams, i.e., one from persons in judicial service and the other for persons not in judicial service of the Union or the State, who have been in practice for 7 years, are clear and distinct streams which have been kept separate on purpose, and do not overlap or intermingle with one another. The two streams have been kept distinct intentionally and there are separate methods and opportunities of appointment for both streams. It is imperative that the process of recruitment from one stream does not impinge upon the other, and that candidates from both streams are given equality of opportunity while being confined to their respective quotas.
10. Following the Constitution Bench decisions in *Rameshwar Dayal*(1960) and *Chandra Mohan* (1965), it was held in *Satya Narain Singh*(1985), at para 3:

*“In other words, in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less*

*than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges, while in the case of candidates who are members of a Judicial Service the 7 years rule has no application but there has to be consultation with the High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. Obviously the same ship cannot sail both the streams simultaneously.”*

11. It is on the basis of this settled legal position that this Hon’ble Court in *All India Judges Association (3) v. Union of India* <sup>13</sup> directed, after studying and implementing the Shetty Commission recommendations, that all States shall frame Rules under Article 233, providing for appointment of District Judges from the two separate and distinct sources in the ratio of 75:25, 75% being filled by promotion from amongst Civil Judges (Senior Division) while the remaining 25% to be filled by direct recruitment from amongst eligible advocates. The Court further directed that the 75% promotion quota would further be divided by reserving 50% for promotion on the principle of merit-cum-seniority, and 25% by promotion strictly on merit to be adjudged through a limited competitive examination of Civil Judges (Senior Division) having not less than five years’ qualifying service. The 25% reserved for practicing advocates was directed to be filled by direct recruitment on the basis of written and viva voce test conducted by respective High Courts. This well-settled distinction between the 2 streams of appointment has been reiterated several times before, and was merely reiterated in *Dheeraj Mor*.

<sup>13</sup> (2002) 4 SCC 247

### III. DEFINITION OF “SERVICE” UNDER ARTICLE 233:

12. Article 233(2) begins with the negative stipulation, “A person not already in service of the Union or of the State...” The term “service” has been held to mean judicial service in *Chandra Mohan*. The wording of Article 233(2) is unequivocal in distinguishing those who are already in service and placing them in a separate category. It is therefore evident that the provision applies only to those who are not in judicial service either of the Union or of the State. The requirement of having 7 years of experience as an advocate or pleader is qualified by the rider “not already in service”. Article 233 clearly does not apply to individuals who are in judicial service and is applicable only to advocates or pleaders who are actively engaged in practice of law. Nowhere does it provide an eligibility condition for the appointment of in-service candidates merely because they had completed 7 years of practice as an advocate prior to their appointment as subordinate Judges. The wording of Article 233 refers only to practicing advocates or pleaders and is unequivocal in stating that it does not apply to those persons already in service.
13. The attempt to stretch the 25% quota reserved for advocates or members of the Bar so as to include members of the subordinate judiciary who had completed 7 years of practice in the past, not only strains the plain language of Article 233(2) and the Rules framed pursuant to *All India Judges Association (3) v. Union of India*<sup>14</sup>, but it also leads to patent absurdity, redundancy and superfluity. It is likely that the vast majority of Civil Judges (Senior Division) consists of persons who were practicing Advocates before their appointment in service, and who had

<sup>14</sup> (2002) 4 SCC 247

completed 7 years of practice before joining judicial service. If that be so, the plain words of Article 233(2) and the negative stipulation therein would be rendered completely otiose, superfluous and redundant if the interpretation advanced by the Review Petitioners is accepted.

14. The doctrine of election is also clearly violated by accepting the interpretation advanced by the Review Petitioners. Having consciously elected to join the subordinate judicial service either before or after applying for recruitment against the 25% quota reserved for persons “not in service”, they must be deemed to have elected to confine themselves to the 75% quota reserved for promotion of Civil Judges (Senior Division), and to have given up any putative rights in the 25% quota for those “not in service of the Union or the States”. The law laid down by two Constitution Benches in 1960 and 1965 having been explained and clarified repeatedly by diverse 3-Judge Benches between 1985 and 2013, it was beyond cavil that a person had to elect which of the two streams she wished to aspire for. Having so elected, it is not open to such person to eat into the other quota.

#### IV. REQUIREMENT OF CONTINUING PRACTICE:

15. Once an individual joins the stream of service, he/she ceases to be an advocate. A person in judicial service cannot simultaneously also be a practicing advocate is therefore not eligible for being appointed as against the quota reserved for advocates. The requirement of having 7 years of practice refers to a continuing state of affairs. The candidate should still be a practicing advocate not only on the cut-off date but should continue to be in practice even at the time of appointment.

The phrasing “...if he has been for not less than seven years an advocate or a pleader” refers to a position that began at some time in the past and is still continuing. The present perfect continuous tense used in Article 233 clearly refers to practice that is still continuing, not practice that happened for 7 years in the past before judicial service began. A candidate who has joined judicial service can certainly not be considered a practicing advocate and cannot be eligible for appointment under Article 233.

16. Article 233(2) may benefit from being read in two halves, the second half of which only comes alive once the condition apparent in the first half has been fulfilled. The first half would be “A person not already in service of the Union or of the State...” and the second half would be “...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.” Thus, the very first hurdle that a candidate must fulfill is to be a person not already in service of the Union or of the State. The question of the number of years in practice cannot arise unless the person is not in service. For any candidate who is part of the judicial services, there is no question of relying upon 7 years or more in service to make his/her case. It is a secondary condition that can only arise once the first condition has been met.

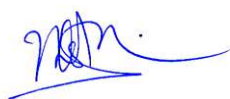
V. PURPOSE AND INTENTION BEHIND PROVIDING THE 25% QUOTA OF  
APPOINTMENT FOR ADVOCATES:

17. The appointment of judges from the bar has a purpose. Practicing advocates are recruited not just as District judges but as High Court and Supreme Court judges as well. They gain wide experience of appearing before various courts and forums and dealing with different laws and various stages of arguments. Their interaction with clients gives them an insight into the people behind the petitions. The judiciary at all levels has benefited from having members of the bar being appointed directly as judges. They bring not just their experience and knowledge but also their unique perspective, which enriches the Bench, the Bar, and most significantly, enriches the relationship and understanding between the two. Members of the judicial services cannot be allowed to impinge upon the 25% quota that has been made available expressly for this purpose.

CHANDER UDAY SINGH, SENIOR ADVOCATE

(With research inputs and drafting assistance from Ms. Katyayani Suhrud, Advocate)

FILED BY:



MS. USHA NANDINI .V, ADVOCATE ON RECORD

**IN THE SUPREME COURT OF INDIA**

Civil Appeal No.3947/2020

REJANISH K.V. V/s K.DEEPA & Ors

**LIST OF SALIENT DATES**

| <b>No.</b> | <b>Date</b> | <b>Event</b>                                                                                                                                                                                                   |
|------------|-------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1.         | 18.02.2016  | Kerala High Court (HC, in short) issued notification inviting applications for post of Munsiff Magistrates, to undergo the Kerala Judicial Services Examination, 2016.                                         |
| 2.         | 04.08.2017  | HC issued the Merit List in respect of the above examination, in which the Appellant stood 21 <sup>st</sup> in the said List.                                                                                  |
| 3.         | 28.12.2017  | Hon'ble Governor of Kerala under Article 234 appointed 21 persons, including the Appellant, as Munsiffs/Magistrates.<br><br><b>Ann. A-4 of Civil Appeal</b>                                                    |
| 4.         | 11.01.2018  | HC issued posting orders of the appointed Munsiffs/Magistrates, with directions to join on 12.02.2018. Appellant, at number 21, was posted as Additional Munsiff, Alappuzha.<br><br><b>Ann of Civil Appeal</b> |
| 5.         | 12.02.2018  | Appellant joined as Additional Munsiff, Alappuzha.                                                                                                                                                             |
| 6.         | 29.07.2018  | Appellant sat in the preliminary examination for the post of District Judge (Higher Judicial Recruitment), the results of which were published on 23.11.2018.                                                  |
| 7.         | 22.12.2018  | Appellant appeared for the first and second papers in the main                                                                                                                                                 |

|    |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|----|------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    | 23.12.2018 | written examination for the post of District Judge, the results of which were published on 14.03.2019.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 8. | 06.04.2019 | Appellant appeared at the viva voce for the post of District Judge.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| 9. | 10.05.2019 | <p>The Hon'ble Supreme Court, in a batch of matters led by <i>SLP (C) No. 14156/2015, Dheeraj Mor v. Hon'ble High Court of Delhi</i>, recorded that <i>All India Judges Association v. Union of India</i>, (2002) 4 SCC 247 and <i>All India Judges Association v. Union of India</i>, (2010) 15 SCC 170 made it clear that there were distinct quotas in the Higher Judicial Services for recruitment of in-service candidates, and for members from the Bar, and that it was not permissible for such in-service incumbents to stake their claim against posts reserved for direct recruitment from the Bar.</p> <p>Consequently the Supreme Court directed that while those already appointed due to interim orders of Courts would not be disturbed for the time being, no new appointments would be made from now onwards of in-service candidates against the quota reserved for the Bar. The relevant paragraph reads as under:</p> <p style="padding-left: 40px;">“We make it clear that we are not disturbing the appointments which have been made so far by virtue of such interim orders. However, no new appointments be made from now onwards of in-service candidates against quota reserved for bar. In case even if in-service candidate has been selected in the examination held earlier as against the Bar quota no further appointment to be</p> |

|     |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
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|     |            | <p>made of such candidates. However, the practicing advocates who have been found selected for appointment, their result be declared and they be appointed subject to the outcome of the pending matter.”</p> <p style="text-align: right;"><b>Ann. A-6 of Civil Appeal</b></p>                                                                                                                                                                                                                                                                                                            |
| 10. | 07.06.2019 | <p>HC published Selection List, in which Appellant was listed at No. 2 and Respondent was listed at No. 4 in the quota reserved for Ezhavas, Thiyyas and Billavas. <b>Ann. A-7 of Civil Appeal</b></p>                                                                                                                                                                                                                                                                                                                                                                                     |
| 11. | 08.06.2019 | <p>HC recommended 8 names to the Governor for appointment of District Judges. Though the High Court was cognizant of the Interim Order dated 10.05.2019 passed by the Supreme Court, and consequently deleted from the Selection List others who were in-service candidates, they nevertheless recommended the name of the Appellant. The recommendation was made expressly subject to the result of SLP (C) No. 14156/2015 (Dheeraj Mor), W.P.(C) Nos. 229, 232 and 618 of 2017 in the Supreme Court, and W.A. No. 406/2018 pending in the Kerala HC. <b>Ann. A-8 of Civil Appeal</b></p> |
| 12. | 19.07.2019 | <p>Hon’ble Supreme Court permitted the Respondent to withdraw W.P.(C) No. 888/2019 with liberty to move the Hon’ble HC.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| 13. | 22.07.2019 | <p>Respondent filed W.P. 20301/2019 in the Hon’ble Kerala HC.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 14. | 02.08.2019 | <p>Hon’ble Governor issued G.O.(Ms.) No. 111/2019/Home,</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |

|     |            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-----|------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|     |            | <p>appointing inter alia the Appellant as a directly recruited District and Sessions Judge, subject to the outcome of SLP (C) No. 14156/2015 (Dheeraj Mor) and various WPs pending before the Hon'ble Supreme Court, as also matters pending before the HC. Additionally, the Appellant's appointment was also made subject to the final disposal of W.P.(C) Nos. 414/2016 and 423/2016 pending before the Supreme Court.</p> <p style="text-align: right;"><b>Ann. A-16 of Civil Appeal</b></p> |
| 15. | 17.08.2019 | <p>HC issued proceedings posting various directly recruited judicial officers, including the Appellant, for training as District Judges.</p> <p style="text-align: right;"><b>Ann. A-17 of Civil Appeal</b></p>                                                                                                                                                                                                                                                                                  |
| 16. | 14.07.2020 | <p>Ld. Single Judge allowed W.P. 20301/2019 filed by the Respondent, and quashed the appointment of the Appellant in the quota reserved for the Bar.</p> <p style="text-align: right;"><b>Ann. A-24 of Civil Appeal</b></p>                                                                                                                                                                                                                                                                      |
| 17. | 14.10.2020 | <p>Ld. Division Bench of the Kerala High Court upheld the Judgement of the Ld. Single Judge. <b>Impugned Order</b></p>                                                                                                                                                                                                                                                                                                                                                                           |
| 18. | 14.10.2020 | <p>Ld. Division Bench granted a certificate to appeal under Article 134-A of the Constitution of India.</p>                                                                                                                                                                                                                                                                                                                                                                                      |

## IN THE SUPREME COURT OF INDIA

CIVIL APPEAL NO. 3947 OF 2020

IN THE MATTER OF**REJANISH K.V.****...APPELLANT***- Versus -***K. DEEPA & ORS.****...RESPONDENTS**AND IN THE MATTER OF:**BAR COUNCIL OF DELHI****...APPLICANT****INDEX**

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Dated : 21.09.2025

Place : New Delhi

## IN THE SUPREME COURT OF INDIA

CIVIL APPEAL NO. 3947 OF 2020

IN THE MATTER OF

REJANISH K.V.

...APPELLANT

- *Versus* -

K. DEEPA &amp; ORS.

...RESPONDENTS

AND IN THE MATTER OF:

BAR COUNCIL OF DELHI

...APPLICANT

**BRIEF WRITTEN SUBMISSIONS ON BEHALF OF THE**  
**APPLICANT - BAR COUNCIL OF DELHI (BCD)**

**I. BRIEF FACTUAL BACKDROP**

1. The present batch of petitions in effect seek review of the judgment and order dated 19.02.2020 passed by this Hon'ble Court in the case of *Dheeraj Mor v. Hon'ble High Court of Delhi [2020) 7 SCC 401]* whereby this Hon'ble Court held that the Members of the Judicial Service of a State could be appointed as District Judges either by way of Promotion or the Limited Departmental Competitive Examination (LDCE). This Hon'ble Court further held that under Article 233(2) of the Constitution, an advocate or pleader with 7 years of practice could 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. Thus, it was held that the rules framed by the High Court debarring Judicial Officers

from staking their claim as against the posts reserved for direct recruitment from Bar would not be ultra vires to the Constitution.

2. It is submitted that along with the review petitions, many other writ petitions as well as special leave petitions have also been filed, inter-alia, praying for a declaration that even those Judicial Officers who have an experience of seven years at the Bar prior to their joining as Judicial Officers would be entitled to be appointed as District Judges via Direct Recruitment under Article 233(2) of the Constitution.
3. That the Applicant humbly submits that this Hon'ble Court in the present appeal, upon a perusal of the text of Article 233(2) and in light of the submissions advanced by the learned counsel for the parties on the interpretation of the provision, were of the considered view that the following two issues are substantial question of law as to the interpretation of Article 233(2) of the Constitution:
  - (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?
4. It is submitted that the aforesaid issues were referred for consideration of the present Hon'ble Constitution Bench of Five Judges of this Hon'ble Court vide judgement dated 12.08.2025.
5. In addition to the issues which had already been framed vide judgment dated 12.08.2025 rendered in these matters, the following two issues were also framed for consideration by the present Hon'ble Constitution Bench of five Judges of this Hon'ble Court vide order dated 12.09.2025 :-

- (i) 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?
- (ii) 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?

## II. INTRODUCTION

- 6. It is submitted that the Applicant / Bar Council of Delhi has more than 1,90,314 registered member advocates (as on 31.07.2025), making it is the largest Bar Council in the country. The Applicant / Bar Council of Delhi has a statutory obligation under the Advocates Act, 1961 to safeguard the interests of the legal profession, uphold professional standards, and ensure fair and just appointment procedures that affect the rights and aspirations of its members.
- 7. The issues for consideration before the Constitution Bench determines whether prior experience at the Bar (before joining judicial service as Civil Judge) should count toward the mandatory seven years' practice required for direct recruitment as District Judge. This question bears upon thousands of practicing advocates who may later choose to join the judiciary and then seek promotion or appointment under the bar quota, making the Bar Council's inputs crucial for justice and policy.
- 8. It is submitted that the Applicant / Bar Council of Delhi vehemently opposes the proposition that serving members of the Judicial Service are eligible for appointment as District Judges by way of Direct Recruitment under the quota reserved exclusively for

advocates with a minimum of seven years' practice at the Bar, as provided by Article 233(2) of the Constitution of India. The Bar Council submits that permitting such eligibility or dilution of the "Bar quota" would subvert the constitutional mandate, undermine the intent of the founding fathers of the Constitution, thereby diluting the well-fleshed out advocate's quota for appointment as District Judges.

### III. CONSTITUTIONAL MANDATE OF "BAR QUOTA" - ARTICLE 233(2)

9. It is submitted that the Article 233 of the Constitution of India constitutes a self-contained code governing the appointment of District Judges. Article 233 is being extracted herein below for reference:

“ .....

#### ***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.*

.....”

10. It is submitted that this constitutional provision establishes two distinct channels for appointing District Judges. These two-fold channels being:

- 10.1. Article 233(1) allows appointment by promotion from within the judicial service.
  - 10.2. Article 233(2) reserves direct recruitment strictly for “a person not already in the service of the Union or the State, who has been for not less than seven years as an advocate or a pleader and is recommended by the High Court for appointment.”
11. It is submitted that this separation of entry-channel in appointment of District Judges is deliberate and fundamental to ensuring representation from both the Bar and judicial service within the District Judiciary. It is crystal clear that the founding fathers of the Constitution of India envisaged two separate and distinct sources for appointment of District Judges: Members of the Bar and Judicial Officers. It is submitted both serve the judicial system, but candidates from each source are to enter the cadre through mutually exclusive tracks, i.e., either through Promotion under Article 233(1) or Direct Recruitment under Article 233(2).
  12. It is submitted that a literal interpretation of this provision Constitution clearly demonstrates that only advocates - those not already in service - are eligible to apply for direct recruitment as District Judges under Article 233(2). An advocate must have been in practice for at least seven years for appointment as a District Judge in order to be eligible for benefits under Article 233(2). Thus, experience as a judicial officer (even if preceded by Bar practice) or hybrid experience (combining advocacy and judicial service) does not qualify under the “Bar quota.”
  13. It is submitted that members of the judicial service, regardless of previous or hybrid experience at the Bar, are constitutionally excluded from the direct recruitment “Bar quota.” Thus, only advocates in practice for seven years or more are eligible to

participate in Direct Recruitment for posts of District Judges under Article 233(2). It is submitted that permitting judicial officers to enter under Article 233(2) would render the advocate quota illusory, resulting in grave injustice and prejudice to the bar, thereby defeating the constitutional intent of Article 233(2).

#### IV. RATIONALE OF “BAR QUOTA” - ADVOCATE REPRESENTATION

14. It is submitted that the advocate quota provided in Article 233(2) of the Constitution of India is a constitutional guarantee for advocates. It may be fair to submit that it is not a mere statutory provision, but a constitutional safeguard vital to the independence of the judiciary and the Bar. The intent behind incorporation of “Bar quota” as under Article 233(2) was to ensure their distinct perspective, independence, and direct representation in higher levels of the judiciary.
15. It is submitted that practicing advocates play a unique role as they interact with the society, clients, and the judiciary. Thus, direct representation of advocates aims to enrich higher judiciary with their expertise, experience and thus contribute to judicial diversity and independence.
16. It is submitted that Judicial Officers already enjoy well-defined promotion tracks under Article 233(1). If Judicial Officers were allowed to access both channels, it would create unfair dual entitlement to the detriment of eligible advocates. It is submitted that such a dilution would deprive practicing advocates - who have devoted their careers to the Bar - of rightful opportunities, undermining the diversity and openness of the judiciary sought by the framers”.
17. If this Hon’ble Court permits members of the Judicial Service to compete with practicing advocates for the same posts, it would have the effect of making the bar quota

redundant, and that could not have been the intent or design of Article 233(2)". Thus, a harmonious construction of Article 233 requires that the two recruitment streams - Promotion for Judicial Officers and Direct Recruitment for advocates - remain distinct and separate as both of them cannot be conflated without violating the constitutional scheme.

## V. CONCLUSION

18. It is respectfully submitted that serving judicial officers cannot claim eligibility under the Direct Recruitment quota reserved by Article 233(2) exclusively for advocates. It is thus humbly submitted that plea for counting experience at the Bar or hybrid experience for members currently within the judicial service for the purposes of the "Bar quota" ought to be categorically rejected. It is submitted any relaxation or dilution will irretrievably harm both the letter and spirit of the constitutional safeguard for advocates.

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Dated : 21.09.2025

Place : New Delhi

**Main Matter Listed on 23.09.2025, Court No.1 item 501**

**SECTION-XI-A**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
I.A. NO. \_\_\_\_\_ OF 2025  
IN  
CIVIL APPEAL NO. 3947 OF 2020

**IN THE MATTER OF:**

REJANISH K.V.

...APPELLANT

VERSUS

K. DEEPA & ORS.

...RESPONDENTS

**AND IN MATTER OF:**

SUDHIR UBNARE

...INTERVENER/APPLICANT

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PLACE: NEW DELHI

DATE: 20/09/2025

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IN THE SUPREME COURT OF INDIA  
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**WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENER/APPLICANT**

**SPECIFIC POINTS EMPHASISED BY THE INTERVENER/APPLICANT**

1. Article 233(2) imposes an embargo on appointment of a judicial officer to the Bar quota by using the phrase 'not already in service'. The negative phrasing is categorical and admits of no exceptions.
2. 'Has been for not less than seven years an advocate' employs present perfect tense, signifying a state that began in the past and continues into the relevant present; the emphasis is on sustained practice as an Advocate, not past tenure clubbed with service.
3. Combined practice is impermissible: constitutional design requires contentious, active Bar practice. The Chief Justice of India has affirmed that service as a judicial officer is not 'practice' at the Bar; the two are ontologically distinct professional states.
4. A person enters 'judicial service' upon assumption of office and surrender of Bar licence; at that moment, he transitions into a different stream for the purposes of Article 233 and the HJS structure.
5. Eligibility must be tested with fidelity to the constitutional mandate: the decisive temporal point is the stage relevant to appointment under Article 233(2) for those 'not already in service'; once a person assumes service before appointment, his claim falls to be considered only within the service streams.

6. All India Judges' Association cases prescribe distinct quotas; any statutory attempt to collapse or convert Bar quota seats (e.g., Rule 5(1)(c) proviso) violates the constitutional separation of streams and must be struck down or read down.

## **I. LIST OF ABBREVIATIONS**

“Constitution” : Constitution of India

“Art.” / “Article” : Article of the Constitution of India

“HJS” : Higher Judicial Service

“MP HJS Rules, 2018/2017” : Madhya Pradesh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2017 (published 13.03.2018)

“Bar quota” : 25% quota for direct recruitment of Advocates as District Judges under Art. 233(2)

“Service quota” : Promotion and limited competitive examination quotas for in-service judicial officers

“AIJA (2002)” : All India Judges' Association v. Union of India, (2002) 4 SCC 247

“Dheeraj Mor (2020)” : Dheeraj Mor v. High Court of Delhi, (2020) 7 SCC 401

## **II. IMPORTANT CASE LAWS**

1. Rameshwar Dayal v. State of Punjab — AIR 1961 SC 816
2. Chandra Mohan v. State of U.P. — AIR 1966 SC 1987
3. Satya Narain Singh v. High Court of Allahabad — (1985) 1 SCC 225
4. Ashok Kumar Sharma v. Chander Shekhar — (1997) 4 SCC 18
5. All India Judges' Assn. v. Union of India — (2002) 4 SCC 247
6. All India Judges' Assn. (3rd) — (2010) 15 SCC 170
7. Deepak Aggarwal v. Keshav Kaushik — (2013) 5 SCC 277
8. Zile Singh v. State of Haryana — (2004) 8 SCC 1
9. Dheeraj Mor v. High Court of Delhi — (2020) 7 SCC 401
10. Rajendra Kumar Shrivastava v. State of MP — Civil Appeal No. 1514 of 2023
11. *Constitution of India — Articles 141, 142, 217, 233*
12. *Madhya Pradesh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2017/2018 — Rule 5(1) and proviso to Rule 5(1)(c)*

## **III. STATEMENT OF JURISDICTION & MAINTAINABILITY**

1. These Written Submissions are filed in support of the Intervener–Applicant in Civil Appeal No. 3947 of 2020, wherein this Hon'ble Court, by order dated 12.09.2025, framed

inter alia two issues concerning Article 233(2) of the Constitution and fixed the matter for final hearing on 23–25 September 2025.

2. The Intervener has direct and substantial interest: he is an Advocate of more than seven years' standing and falls within the age bracket for the Bar quota; the outcome directly affects his constitutional right to be considered for appointment to the District Judge (Entry Level) under Article 233(2).

3. The issues arise under the Constitution of India (Arts. 141, 142, 233) and binding precedents of this Hon'ble Court. This Hon'ble Court's appellate and plenary powers are attracted; directions in All India Judges' Association (2002/2010) are binding across jurisdictions.

#### **IV. STATEMENT OF FACTS & BACKGROUND**

4. Article 233 constitutes the scheme for appointment of District Judges. Article 233(1) deals with appointment of persons already in judicial service (promotion and in-service channels). Article 233(2) provides an independent entry stream for 'a person not already in the service of the Union or of the State' who has been for not less than seven years an Advocate or Pleader and is recommended by the High Court.

5. Pursuant to directions in All India Judges' Association (2002) and its sequels, States framed or amended Higher Judicial Service Rules on the 50:25:25 structure: 65%/50% promotion (as applicable), 10%/25% limited competitive examination, and 25% direct recruitment from the Bar.

6. Madhya Pradesh notified the MP Higher Judicial Service Rules, 2017 (published 13.03.2018), prescribing 65% promotion [Rule 5(1)(a)], 10% limited competitive examination [Rule 5(1)(b)] and 25% direct from Advocates [Rule 5(1)(c)], but introduced a proviso to Rule 5(1)(c) converting unfilled Bar quota seats, after two consecutive recruitment years, into promotion seats.

7. The said proviso permits erosion of the constitutional Bar quota, contrary to Article 233(2) and binding directions of this Hon'ble Court. In practice, Bar quota vacancies have been diverted to service streams, undermining the independent channel reserved for Advocates.

8. Separately, a constitutional question persists: whether persons already in judicial service can compete for or be appointed under the Bar quota, and whether pre-service Bar practice can be aggregated with service to make up the seven-year threshold. The Constitution Bench in Dheeraj Mor (2020) emphatically answered these in the negative, preserving exclusivity of the Bar quota for practicing Advocates and prohibiting in-service judicial officers from staking a claim in that stream.

#### **V. QUESTIONS/ISSUES FOR CONSIDERATION**

Q1. Whether persons already in judicial service are eligible under Article 233(2) for appointment as District Judges (by direct recruitment).

Q2. Whether combined experience of Bar practice and service as Civil Judge can be clubbed to satisfy 'has been for not less than seven years an advocate or a pleader' under Article 233(2).

Q3. Whether the proviso to Rule 5(1)(c) of the MP HJS Rules, 2017/2018, which permits conversion of Bar quota seats into promotion quota after two consecutive recruitment years, is ultra vires the Constitution and the binding directions of this Hon'ble Court.

## **VI. SUMMARY OF ARGUMENTS**

(A) Article 233(2) contains a negative mandate — 'a person not already in the service of the Union or of the State' — which is an express constitutional bar against in-service candidates for the Bar quota. The dichotomy of streams (service vs. Bar) is a structural feature of the Constitution and reinforced by this Court's jurisprudence.

(B) Eligibility under Article 233(2) pertains to the Advocate's standing and competence, not aggregation with service. Once a person enters judicial service, Bar practice ceases. Allowing aggregation creates a double benefit for service officers (promotion + limited competitive + Bar), collapsing the carefully balanced structure.

(C) The proviso to Rule 5(1)(c) is ultra vires: a subordinate rule cannot convert constitutionally protected Bar quota seats to service, directly frustrating Article 233(2) and this Court's binding directions in *All India Judges' Association*. Vacancies must be carried forward and re-notified, not diverted.

(D) Public interest and comparative practice favour preserving an independent Bar stream: it ensures diversity, independence from bureaucratic hierarchies, and public confidence in the judiciary. Administrative convenience cannot override constitutional design.

## **VII. DETAILED SUBMISSIONS ON ISSUE I: ELIGIBILITY OF PERSONS ALREADY IN JUDICIAL SERVICE UNDER ARTICLE 233(2)**

1. Textual Command. Article 233(2) begins with the negative phrase 'not already in the service of the Union or of the State'. The plain meaning excludes those currently in service — including judicial service — from appointment under the Bar quota. No interpretive device can rewrite or dilute this express constitutional bar.

2. Structural Design. The Constitution, supplemented by *All India Judges' Association* directions, preserves distinct pipelines: (i) service quota(s) for in-service officers, and (ii) the Bar quota for practicing Advocates. This duality is not ornamental; it is the very

mechanism to preserve independence and diversity in the District Judiciary — the backbone of the justice system.

3. Precedent Consistency. In *Chandra Mohan* (AIR 1966 SC 1987), this Court construed 'service' in Article 233(2) in its ordinary sense and excluded executive and judicial service officers from the Bar quota. *Satya Narain Singh* (1985) and *Deepak Aggarwal* (2013) reaffirmed the separation of streams. The Constitution Bench in *Dheeraj Mor* (2020) settled the controversy authoritatively: in-service judicial officers are ineligible for appointment under Article 233(2).

4. Independence & Perception. A judiciary fed exclusively by service pipelines risks becoming a closed cadre. The Bar quota infuses independent professionals with varied litigation exposure, reinforcing both independence and the appearance of independence. This design must be zealously protected.

5. Administrative Difficulty is No Answer. Claims of unfilled Bar vacancies or convenience cannot override a constitutional prohibition. The correct remedy is to improve recruitment cycles, outreach, and exam design — not to invade the Bar quota with in-service candidates.

## **VIII. DETAILED SUBMISSIONS ON ISSUE II: IMPERMISSIBILITY OF CLUBBING BAR PRACTICE WITH JUDICIAL SERVICE**

1. Present Status Rule. Article 233(2) speaks to a person who 'has been for not less than seven years an advocate or a pleader' and is not already in service. The emphasis is on continuous, substantive standing as an Advocate — a professional status carrying rights of audience and active engagement in contentious practice.

2. Cessation Upon Entry to Service. Upon joining judicial service, a person ordinarily surrenders the Bar licence and ceases to be in practice. There is thus a legal rupture; earlier practice cannot be revived or clubbed to meet the seven-year criterion while remaining 'already in service'.

3. Double Benefit & Article 14. Allowing aggregation grants service officers a triple pathway: promotion, limited competitive examination, and Bar quota. Advocates have only one. Such asymmetry is unreasonable and violates equality by stacking the deck against practicing Advocates.

4. Purpose of Bar Quota. The Bar quota is not a consolation prize; it is a constitutional instrument to bring in active litigators with contemporary courtroom exposure. Counting stale pre-service practice undermines that object and converts the Bar stream into a backdoor for in-service officers.

5. Dheeraj Mor Controls. The Constitution Bench rejected claims based on combined experience. Any departure would unsettle settled law, trigger systemic disruption, and incentivize 'quota shopping' by service officers.

## **IX. CHALLENGE TO PROVISIO TO RULE 5(1)(C) OF MP HJS RULES, 2017/2018**

1. Text of the Proviso. The proviso to Rule 5(1)(c) declares that if posts meant for direct recruitment remain vacant even after two consecutive recruitment years, 'the same shall be filled up by promotion from amongst the Civil Judges (Senior Division)'. (MP Gazette Notification dated 13.03.2018).

2. Ultra Vires the Constitution. The proviso neutralises the substantive guarantee of an independent Bar channel under Article 233(2). A subordinate rule cannot abrogate a constitutional mandate; to that extent, it is void.

3. Contrary to Binding Directions. In *All India Judges' Association* (2002) and (2010), this Court ring-fenced the quota structure and reserved to itself the power to clarify/modify. No State rule can tinker with the quota or the identity of streams without leave of this Court (Art. 141/142).

4. Practical Mischief. Conversion turns a constitutional quota into a vanishing category, defeating the framers' design of diversity and independence at the entry level. The only constitutionally faithful approach is to carry forward Bar vacancies and re-notify them until filled.

5. Retrospective Misuse. In practice, conversions have been applied to past cycles or without adequate waiting, retroactively depriving Advocates of opportunities; such retrospective application is impermissible absent clear authority (cf. *Zile Singh* (2004)).

## **X. PUBLIC INTEREST, LAW COMMISSION INSIGHT & COMPARATIVE PRACTICE**

1. Public Confidence & Diversity. The judicial office draws legitimacy from both legality and representativeness of perspectives. The Bar quota ensures infusion of independent practitioners with varied experiences (civil, criminal, constitutional), strengthening the system's responsiveness.

2. Law Reform Reports. Foundational reports (e.g., 14th Law Commission Report, and subsequent commissions/committees) have emphasized recruiting from the Bar to maintain quality and independence. The Bar stream is thus a structural necessity, not a dispensable option.

3. Comparative Norms. Mature common law systems (UK, Canada, Australia) emphasise past standing at the Bar and do not insist upon continued practice up to the moment of

appointment, provided constitutional or statutory text is respected. India's constitutional text, however, adds an express bar against those already in service competing in the Bar stream.

4. Administrability. The solution to unfilled seats lies in better scheduling, transparent syllabi, model answers/parameters, and independent valuation — not in conversion or encroachment. Establishing an independent examination cell under the High Court's administrative supervision would enhance fairness and transparency.

## **XI. APPENDIX (EXTRACTS)**

A. Article 233(2), Constitution of India: '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.'

B. Proviso to Rule 5(1)(c), MP HJS Rules, 2017/2018 (Gazette 13.03.2018): Conversion of unfilled Bar quota seats to promotion after two consecutive recruitment years.

### **EXPANDED CASE EXTRACTS**

#### **ISSUE I — ELIGIBILITY OF PERSONS ALREADY IN JUDICIAL SERVICE**

**A. Chandra Mohan v. State of U.P., AIR 1966 SC 1987**

This Court observed:

*“The expression ‘a person not already in service of the Union or of the State’ has been deliberately used to exclude those who are in the service either of the Union or of the State. It is a clear bar, and the intention of the framers was to maintain two distinct sources of recruitment.”* (para 21)

*“The Governor cannot appoint a person who is already in service as a District Judge from the Bar quota; such appointments would amount to rewriting the Constitution.”*

**B. Satya Narain Singh v. High Court of Allahabad, (1985) 1 SCC 225**

*“It is evident from the scheme of Article 233 that members of the judicial service are to be considered for promotion within their own stream, and persons from the Bar for direct recruitment. The two channels are exclusive and cannot be intermixed.”* (para 13)

**C. Deepak Aggarwal v. Keshav Kaushik, (2013) 5 SCC 277**

*“The very object of Article 233(2) will be defeated if members of the judicial service are permitted to steal a march over the Bar quota by claiming past practice. Such an interpretation would make the constitutional bar under the opening words nugatory.”* (para 103)

### **D. Dheeraj Mor v. High Court of Delhi, (2020) 7 SCC 401 (Constitution Bench)**

The Constitution Bench categorically ruled:

*“The expression ‘not already in service’ cannot be watered down. Judicial officers, on joining service, cease to be advocates. They cannot thereafter invoke their past practice to enter the quota reserved exclusively for advocates.”* (para 33)

*“The Bar quota is not intended for those who have already chosen the career of judicial service. They have their channels of promotion. The Bar quota is preserved to ensure infusion of fresh talent and perspective from the practicing Bar.”* (para 41)

## **ISSUE II — CLUBBING OF BAR PRACTICE WITH JUDICIAL SERVICE**

### **A. Interpretation of “has been for not less than seven years an Advocate”**

*“The use of the present perfect tense in ‘has been’ connotes a state of affairs commencing in the past and continuing to the present. Thus, at the time of appointment, the candidate must be an Advocate for not less than seven years. It excludes a person who once was an advocate but has ceased to be one.”* — Dheeraj Mor (2020), para 29

### **B. Cessation of Practice upon Service Entry**

*“On joining judicial service, an advocate surrenders the right of audience in court and ceases to be in practice. The fiction of combining past practice with current service would amount to enlarging the constitutional eligibility clause, which is impermissible.”* — Deepak Aggarwal (2013), para 101

### **C. Article 14 Violation**

*“Advocates have only one window — the 25% quota. Judicial officers have promotion and competitive examination. To allow them a third entry through aggregation would amount to creating an invidious classification against practicing advocates.”* — Satya Narain Singh (1985), para 15

## **ISSUE III — VALIDITY OF PROVISIO TO RULE 5(1)(c) MP HJS RULES**

### **A. All India Judges’ Association v. Union of India, (2002) 4 SCC 247**

*“We make it clear that the quota structure fixed herein is binding. No High Court or State Government shall modify or alter the percentages, except with prior leave of this Court. Any attempt to do so would be unconstitutional.”* (para 40)

**B. All India Judges' Association (3rd case), (2010) 15 SCC 170**

*"The 25% direct recruitment from the Bar must be scrupulously observed. Any dilution would undermine the object of ensuring independence and diversity of the judiciary." (para 9)*

**C. Zile Singh v. State of Haryana, (2004) 8 SCC 1**

*"Unless a statute expressly provides retrospective application, substantive changes affecting rights and eligibility must be construed prospectively. Retrospective deprivation of accrued rights is unconstitutional." (para 13)*

Applied here, retrospective diversion of Bar seats to service officers under the MP Rule is impermissible.

**D. Rajendra Kumar Shrivastava v. State of M.P., Civil Appeal No. 1514 of 2023 (SC, 13.03.2023)**

*"Any Advocate whose chances are diminished by diversion or breach of quota has locus standi to challenge the process. The constitutional right under Article 233(2) cannot be reduced by administrative or rule-making actions."*

**PUBLIC INTEREST & COMPARATIVE MATERIAL****Law Commission of India, 14th Report (1958):**

*"The recruitment of District Judges directly from the Bar is necessary not only for maintaining standards of competence, but also for preserving independence. A career judiciary divorced from the Bar would be prone to stagnation and uniformity."*

**NJAC Judgment, Supreme Court Advocates-on-Record Association v. Union of India, (2016) 5 SCC 1:**

*"The independence of the judiciary is a part of the basic structure. Independence is not merely institutional, but also derived from the diverse background and professional independence of those entering the Bench."*

**XII. PRAYER**

(a) Declare that persons already in judicial service are ineligible for appointment under Article 233(2) (Bar quota), reaffirming the ratio of Dheeraj Mor (2020).

(b) Hold that combined experience of Bar + judicial service cannot be clubbed to meet the seven-year requirement under Article 233(2).

(c) Declare the proviso to Rule 5(1)(c) of the MP HJS Rules, 2017/2018 unconstitutional to the extent it permits conversion of Bar quota seats into service quota; direct that Bar vacancies be carried forward and re-notified until duly filled from the Bar.

(d) Direct framing of transparent, notified evaluation norms (model answers/parameters) and creation of an independent examination cell to ensure fair recruitment from the Bar, in line with All India Judges' Association directions.

(e) Pass such other order(s) as this Hon'ble Court may deem fit to preserve the constitutional scheme of Articles 233(1)-(2), the balance of streams, and public confidence in judicial recruitment.

SETTLE BY

FILED BY:

(DR. SATYAM CHANSORIYA)

ADVOCATE



(PAWAS AGARWAL)

ADVOCATE FOR APPLICANT

PLACE: NEW DELHI

FILED ON: 20/09/2025



41

pradeep Borana <boranapardeep3154@gmail.com>

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## WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENER/APPLICANT IN CIVIL APPEAL NO 3947 OF 2020

1 message

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**pradeep Borana** <boranapardeep3154@gmail.com>

Sat, Sep 20, 2025 at 7:59 PM

To: advnandini@rediffmail.com, anne.mat@gmail.com, cksasi@yahoo.com, nairtgn@gmail.com

DEAR ALL,  
PFA

Copy of WRITTEN SUBMISSIONS ON BEHALF OF THE INTERVENER/APPLICANT

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 **WS-CA-3947-20.pdf**  
526K

**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

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION (CIVIL) NO.759 OF 2017**

**IN THE MATTER OF:**

**DR. MANDEEP MITTAL**

**...PETITIONER**

**VERSUS**

**HON'BLE HIGH COURT OF PUNJAB AND HARYANA  
THR. REGISTRAR GENERAL & ANR.**

**...RESPONDENTS**

**AND OTHER CONNECTED MATTERS**

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PLACE: NEW DELHI

DATE: 21/09/2025

ASHOK MATHUR

ADVOCATE FOR RESPONDENT NO.1

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**WRIT PETITION (CIVIL) NO.759 OF 2017**

**IN THE MATTER OF:**

**DR. MANDEEP MITTAL**

**...PETITIONER**

**VERSUS**

**HON'BLE HIGH COURT OF PUNJAB AND HARYANA  
THR. REGISTRAR GENERAL & ANR.**

**...RESPONDENTS**

**AND OTHER CONNECTED MATTERS**

**WRITTEN SUBMISSIONS BY  
MR. NIDHESH GUPTA, SENIOR ADVOCATE  
ON BEHALF OF RESPONDENT NO.1, PUNJAB & HARYANA HIGH  
COURT**

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?

The answer to the above Issue is in the negative for the following reasons:

- I. Two separate sources/streams of recruitment both of which are separate, distinct & dichotomy is maintained till appointment:

Article 233 reads 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.*

(Emphasis Supplied)

1. An analysis of the aforesaid Article reveals the following:
  - i. Both sub clause (1) and (2) speak of appointments.
  - ii. Sub clause (1) specifically refers to promotion. Additionally, the factum of the said sub clause dealing with promotion is apparent from the use of the words 'consultation with the High Court exercising jurisdiction in relation to such State'. Sub clause (2), however, deals with direct recruitment from the bar since references made to appointment of an advocate or a pleader;
  - iii. The use of the words 'an advocate or a pleader' is well understood, i.e., as per the Bar Council Rules he cannot be in service.

- iv. The use of the words ‘if he has been’ and not ‘if he was’ shows that the said expression has been used in the present perfect continuous tense, i.e., he is now and he has been an advocate/pleader. This is so because this tense combines the present with the past indicating that a past action of becoming an advocate began at some point and continues upto the present moment.
2. Article 233(2) prescribes three conditions for being appointed as a District Judge. These conditions deal with appointments as District Judges from the Bar i.e. direct recruitment.

The three conditions are –

- i. The person should not be already in the service of the Union or the State i.e. he should not already be in judicial service;
- ii. He has been for not less than 7 years an Advocate or a pleader; and
- iii. He is recommended by the High Court for appointment.

The aforesaid submission is further fortified by the use of the word ‘only’ in Article 233(2). It is thus apparent that he should not already be in judicial service and needs a minimum of 7 years as an advocate/pleader.

Reference may be made to the judgment in *K.S. Puttaswamy v. Union of India*, (2019) 1 SCC 1 (5 Judges)

1116. As a matter of interpretation, the use of the word “only” indicates that a particular entry is exhaustive and is inapplicable to anything which falls outside its scope. This Court has interpreted the expression “only” as a word of exclusion and restriction. [*Hari Ram v. Babu Gokul Prasad*, 1991 Supp (2) SCC 608; *Saru Smelting (P) Ltd. v. CST*, 1993 Supp (3) SCC 97] The interpretation of Article 110(1) as being restrictive in nature is also supported by the proceedings in the Constituent Assembly of India.....

3. The factum of sub clause (2) dealing with appointments from the bar alone is also apparent from the Constituent Assembly Debates, the relevant part of which is reproduced hereunder:

#### *Article 209A*

***The Honourable Dr. B. R. Ambedkar*** : Sir, I move:

*“That after article 209, between Chapters VII and IX of Part VI the following be inserted:—*

*“Chapter VIII*

*Subordinate Courts.*

*209-A (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 Appointment of District Judges 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 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.

209 B. Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor in accordance with rules made by him in this behalf after consultation with the State Public Service Commission and with the High Court.

209 C. The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court but nothing in this article shall be construed as taking away from any such person the right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.

209 D. (1) In this Chapter—

(a) the expression “district judge” includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, Chief Presidency magistrate, additional chief Presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;

(b) the expression “judicial service” means 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.

209 F. The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in this behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification’.”

**Shri Kuldhar Chaliha** : (Assam: General) : Mr. President Sir, I beg to move :

“That in amendment No. 20 above, in clause (2) of the proposed new article 209 A, after the words ‘seven years’ and ‘pleader’ the words ‘enrolled as’ and ‘of the High Court of the State or States exercising jurisdiction’ be inserted respectively.”

Sir, the object of this amendments is that unless a lawyer has practised in the same province in which he is going to be appointed as a Judge, it will be very difficult for him to appreciate the customs, manners and the practices of the country. We have in our country strange results from the appointment of I.C.S. officers in the beginning of British administration. So also in cases when officers from outside the province were brought in. I am not limiting thereby the enrolment of advocates from any province. They may come and practise. Only I am saying

that he should have resided in the province for a period of seven years. The results from the appointment of persons from outside the province were like this. In our part of the country, there is a custom for the New Year day for young men to go and dance and sing and go on a maying and sky-larking for some time, and then stage manage on the bank of a river or a stream that she has been kidnapped or taken by force. The parents brought criminal complaints that their girls had been kidnapped and the persons were sentenced very heavily by the Judges who did not know the elementary condition of life there. Some time later, the Government had to issue circulars that in such cases, the matter should be allowed to be compromised. Probably, in other provinces also, this would be taken as a very serious offence and the persons would be given four to seven years rigorous imprisonment. In our country for such cases a preliminary enquiry has to be made and a chance has to be given for compromise. In 99 per cent. of the cases, compromises were effected after giving some solatium to the parents. In the same way, as regards marriages, we have a very simple custom of tying the nuptial knot and blessings by the people present in the village completes a marriage. The People who come from Bengal and other provinces or Europeans, who have read the Hindu Law and other things, put into force the strict laws of those countries and the result was the nullification of marriages. This may happen in Orissa or Bihar. People may not know the customs in Ranchi and other places and they may commit mistakes. I have not prevented any man from coming from any other province and practising in the High Court of the province. The only thing I insist is that they should live there for seven years so that they may be acquainted with the customs in the country, to become eligible for appointment as district judges.

**The Honourable Dr. B. R. Ambedkar :** With regard to the observations of the last speaker, I should like to say that this chapter will be part of the Provincial Constitution, and we will try to weave this language into that part relating to States in Part III by special adaptation at a later stage.

There are two amendments—one by Mr. Chaliha and the other by Pandit Kunzru—which call for some explanation.

With regard to the amendment moved by Mr. Chaliha, I am sorry to say I cannot accept it, for two reasons : one is that we do not want to introduce any kind of provincialism by law as he wishes to do by his amendment. Secondly, the adoption of his amendment might create difficulties for the province itself because it may not be possible to find a pleader who might technically have the qualifications but in substance may not be fitted to be appointed to the High Court, and I think it is much better to leave the ground perfectly open to the authority to make such appointment provided the incumbent has the qualification. I therefore cannot accept that amendment.

The amendment of my Friend, Pandit Kunzru, raises in my judgment a very small point and that point is this : whether the posting and promotion of the District Judges should be with the Governor, that is to say, the government of the day, or should be transferred to 209 C to the High Court? Now the provision as contained in the Government of India Act, 1935 was this that the appointment,

posting and promotion of the District Judge was entirely in the hands of the Governor. The High Court had no place in the appointment, posting and promotion of the District Judge. My Friend Mr. Kunzru, will see that we have considerably modified that provision of the Government of India Act, because we have added the condition namely, that in the matter of posting, appointment and promotion of the District Judges, the High Courts shall be consulted. Therefore the only point of difference is this: whether the High Court should have exclusive jurisdiction which we propose to give in the matter of posting, promotion and leave etc. of the Subordinate Judicial Service other than the District Judge, or, whether the High Court should have jurisdiction in these matters over all subordinate Judges including the District Judge. It seems to me that the compromise we have made is eminently suitable. The only difference ultimately will be that in the case of Subordinate Judges any notification with regard to posting, promotion and grant of leave will issue from the High Court, while in the case of the District Judge any such notification will be issued from the Secretariat. Fundamentally and substantially, there is no difference at all. The District Judge will have the protection of the High Court because the consultation is made obligatory and I think that ought to satisfy the exigencies of the situation.

Mr. President : The question is :

*“That in amendment No. 20 above. in clause (2) of the proposed new article 112 A after the words ‘seven years’ and ‘pleader’ the words ‘enrolled as’ and ‘of the High Court of the State or States exercising jurisdiction’ be inserted respectively.”*

*The amendment was negatived.*

**Thus, the inescapable conclusion is that there are two separate and distinct streams, (i) those in service i.e. judicial service i.e. promotion; and (ii) those not already in service i.e. direct recruits from the Bar.** The factum of two different streams being prescribed under Article 233 is apparent from the following judgments of this Hon’ble Court:

- Rameshwar Dayal v. State of Punjab, (1961) 2 SCR 874 (5 Judges)  
**8.** Now, the argument of learned counsel for the appellant has ranged over a wide field; but the point for decision is a narrow one and depends on whether Respondents 2 to 6 fulfilled the requirements of clause (2) of Article 233 of the Constitution when they were appointed as District Judges by Respondent 1. That clause lays down 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 if (1) he has been for not less than seven years an advocate or a pleader and (2) is recommended by the High Court for appointment. As to the second requirement no question arises here, because admittedly Respondents 2 to 6 were recommended by the High Court before their appointment. The dispute is with regard to the first requirement. Learned counsel for the appellant has contended that Respondents 2 to 6 did not fulfil the requirement of having been “seven years an advocate or pleader” and has put his argument in support of his contention in the following way. Firstly, he has submitted that the expression “advocate or pleader” is an expression of legal import and must be given its generally accepted meaning at

the time the Constitution was adopted; and that expression according to learned counsel means an advocate or pleader entitled to appear and plead for another in a court in India, but does not include an advocate or pleader of a foreign Court; for this submission he has relied on the definition of the expression “legal practitioners” in the Legal Practitioners Act, 1879 (18 of 1879); of “pleader” in the Civil Procedure Code, 1908 (Act V of 1908); and of “advocate” in the Bar Councils Act, 1926 (38 of 1926). Secondly, he has submitted that by reason of the use of the present perfect tense “has been” in clause (2) of Article 233, the rules of grammar require that the person eligible for appointment must not only 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. Thirdly, he has submitted that the period of seven years referred to in the clause must be counted as the standing of the advocate or pleader with reference to his right of practice in a Court in the territory of India as defined in Article 1 of the Constitution; in other words, any right of practice in a court which was in India before the partition of the country in 1947 but which is not in India since partition, cannot be taken into consideration for the purpose of counting the period of seven years.

12. Learned counsel for the appellant has also drawn our attention to Explanation I to clause (3) of Article 124 of the Constitution relating to the qualifications for appointment as a Judge of the Supreme Court and to the explanation to clause (2) of Article 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 Article 233, and we do not think that clause (2) of Article 233 can be interpreted in the light of explanations added to Articles 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 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. 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 Article 233 which must lead to the exclusion of that period for determining his eligibility for appointment as district judge.

- Chandra Mohan Versus State of Uttar Pradesh and Others, (1967) 1 SCR 77 (5 Judges)  
15. ... 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.....

16.....But Article 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 clause (2) thereof. Under clause (2) of Article 233 two sources are given, namely, (i) persons in the service of the Union or of the State and (ii) advocate or pleader.....

- Panduranga Rao v. State of A.P., (1975) 4 SCC 709 (3 Judges)  
 7.....As pointed out at p. 89 by this Court in *Chandra Mohan v. State of U.P.* [AIR 1966 SC 1987 : (1967) 1 SCR 77 : (1967) 1 LLJ 412]:  
There are two sources of recruitment namely, (i) service of the Union or 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.
  
- Satya Narain Singh v. Allahabad High Court, (1985) 1 SCC 225 (3 Judges)  
 3.....Two points straightway project themselves when the two clauses of Article 233 are read: The first clause deals with “appointments of persons to be, and the posting and promotion of, District Judges in any State” while the second clause is confined in its application to persons “not already in the service of the Union or of the State”. We may mention here that “service of the Union or of the State” has been interpreted by this Court to mean Judicial Service. Again while the first clause makes consultation by the Governor of the State with the High Court necessary, the second clause requires that the High Court must recommend a person for appointment as a District Judge. It is only in respect of the persons covered by the second clause that there is a requirement that a person shall be eligible for appointment as District Judge if he has been an advocate or a pleader for not less than 7 years. In other words, in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges, while in the case of candidates who are members of a Judicial Service the 7 years' rule has no application but there has to be consultation with the High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained.....
  
- Sushma Suri v. Govt. of National Capital Territory of Delhi, (1999) 1 SCC 330 (3 Judges)  
 3....Rule 5 thereof provides for the mode of recruitment. The recruitment of persons to the service shall be made by the Administrator in consultation with the High Court. In regard to the persons not already in the Delhi Judicial Service, appointment to service shall be made by the Administrator on the recommendations to be made by the High Court. Rule 7 pertains to regular recruitment and provides that persons who had been recruited and promoted on the basis of selection from members of the Delhi Judicial Service, who have completed not less than ten years of service in the Delhi Judicial Service and by direct recruitment from the Bar provided that not more than one-third of the posts

in the service shall be held by direct recruits. Obviously, this Rule has been framed to be in conformity with Article 233 of the Constitution. Article 233(1) thereof provides for appointments of persons who are already in service while Article 233(2) provides that a person not already in service is eligible for appointment if he has been for not less than seven years an advocate or a pleader and is recommended for the purpose by the High Court....

- Deepak Aggarwal v. Keshav Kaushik, (2013) 5 SCC 277 (3 Judges)  
**49.** In Satya Narain Singh [(1985) 1 SCC 225: 1985 SCC (L&S) 196], this Court again had an occasion to consider Article 233 of the Constitution. This Court referred to an earlier decision of this Court in Rameshwar Dayal [AIR 1961 SC 816] and construed Article 233 as follows: (Satya Narain Singh case [(1985) 1 SCC 225: 1985 SCC (L&S) 196], SCC pp. 228-29, para 3)  
 “3. ... The first clause deals with ‘appointments of persons to be, and the posting and promotion of, District Judges in any State’ while the second clause is confined in its application to persons ‘not already in the service of the Union or of the State’. We may mention here that ‘service of the Union or of the State’ has been interpreted by this Court to mean judicial service. Again while the first clause makes consultation by the Governor of the State with the High Court necessary, the second clause requires that the High Court must recommend a person for appointment as a District Judge. It is only in respect of the persons covered by the second clause that there is a requirement that a person shall be eligible for appointment as District Judge if he has been an advocate or a pleader for not less than 7 years. In other words, in the case of candidates who are not members of a judicial service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges, while in the case of candidates who are members of a judicial service the 7 years' rule has no application but there has to be consultation with the High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. Obviously the same ship cannot sail both the streams simultaneously.”  
**51.** 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 the 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. The 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.
- Chief Justice of A.P. v. L.V.A. Dixitulu, (1979) 2 SCC 34 (5 Judges)  
**36.** Article 233 gives the High Court an effective voice in the appointment of District Judges. Clause (1) of the Article peremptorily requires that “appointments of persons to be, and the posting and promotion of, district

judges” shall be made by the Governor “in consultation with the High Court.” Clause (2) of the Article provides for direct appointment of District Judges from Advocates or pleaders of not less than seven years standing, who are not already in the service of the State or of the Union. In the matter of such direct appointments, also, the Governor can act only on the recommendation of the High Court. Consultation with the High Court under Article 233 is not an empty normality. An appointment made in direct or indirect disobedience of this constitutional mandate, would be invalid. (See *Chandra Mohan v. State of U.P.* [AIR 1966 SC 1987 : (1967) 1 SCR 77 : (1967) 1 LLJ 412] and *Chandramouleshwar v. Patna High Court* [(1969) 3 SCC 56 : (1970) 2 SCR 666 AIR 1970 SC 370 : (1971) 1 SCJ 7] ). ‘service’ which under clause (1) of Article 233 is the first source of recruitment of District Judges by promotion, means the ‘judicial services’ as defined in Article 236.

37. The word “posting” as used in Article 233, in the context of “appointment” and “promotion” means the first assignment of an appointee or promotee to a position in the cadre of District Judges. It cannot be understood in the sense of “transfer”. (See *Ranga Mahammad case* [AIR 1976 SC 903 : *State of Assam v. Ranga Mahammad*, (1967) 1 SCR 454 : (1968) 1 LLJ 282] ).

- All India Judges' Assn. (3) v. Union of India, (2002) 4 SCC 247 (3 Judges) 27.....In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned: 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.  
28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:  
(1)(a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;  
(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and  
(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.  
(2) Appropriate rules shall be framed as above by the High Courts as early as possible.”

Thus, it is conclusively established that Article 233 contemplates two separate, distinct and independent streams. The said two streams cannot mingle as it would be contrary to the scheme of Article 233. Being a judicial officer, he cannot make a claim against a vacancy of the Bar.

II. The above submission is fortified by the fact that the expression “consultation with the High Court exercising jurisdiction in relation to such State” in sub-clause (1) refers to appointment by promotion and the expression “recommended by the High Court for appointment” in sub-clause (2) refers to appointment by direct recruitment. While no special qualification is prescribed under Article 233(1), the same being provided by the applicable Rules of the High Court, the necessary qualifications under sub-clause (2) are already stipulated as set out in para I above. In this regard, reference may be made to the law laid down by this Hon’ble Court is set out hereinbelow:

- Panduranga Rao v. State of A.P., (1975) 4 SCC 709 (3 Judges)  
8. A candidate for direct recruitment from the Bar does not become eligible for appointment without the recommendation of the High Court. He becomes eligible only on such recommendation under clause (2) of Article 233. The High Court in the judgment under appeal felt some difficulty in appreciating the meaning of the word “recommended”. But the literal meaning given in the Concise Oxford Dictionary is quite simple and apposite. It means “suggest as fit for employment”. In case of appointment from the Bar it is not open to the Government to choose a candidate for appointment until and unless his name is recommended by the High Court.
- State of Kerala v. A. Lakshmikutty, (1986) 4 SCC 632 (2 Judges)  
22. The heart of the matter is that “consultation” between the State Government and the High Court in the matter of appointment of District Judges under Article 233(1) of the Constitution must be real, full and effective. To make the consultation effective, there has to be an interchange of views between the High Court and the State Government, so that any departure from the advice of the High Court would be explained to the High Court by the State Government. If the State Government were simply to give lip service to the principle of consultation and depart from the advice of the High Court in making judicial appointments without referring back to the High Court the difficulties which prevent the Government from accepting its advice, the consultation would not be effective and any appointment of a person as a District Judge by direct recruitment from the Bar or by promotion from the judicial services under Article 233(1) would be invalid. Unless the State Government were to convey to the High Court the difficulties which prevent the Government from accepting its advice by referring back the matter the consultation would not be effective.  
23. Indubitably, the power of appointment of persons to be District Judges conferred on the Governor, meaning the State Government, under Article 233(1) in consultation with the High Court is an executive function. It has been settled by a long line of decisions of this Court starting from *Chandra Mohan v. State of U.P.* [AIR 1966 SC 1987 : (1967) 1 SCR 77] to *M.M. Gupta v. State of*

*J&K* [(1982) 3 SCC 412 : 1983 SCC (L&S) 32 (2) : AIR 1982 SC 1579 : (1983) 1 SCR 593] that the power of the State Government is not absolute and unfettered but is hedged in with conditions. The exercise of the power of the Governor under Article 233(1) in the matter of appointment of District Judges is conditioned by consultation with the exercise of the power that the power can only be exercised in consultation with the High Court.

24. Appointment of persons to be, and the posting and promotion of, District Judges in any State, shall be made by the Governor of the State under Article 233(1) in consultation with the High Court exercising jurisdiction in relation to such State. Sub-article (2) thereof provides that 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. It is therefore obvious that eligibility of appointment of persons to be District Judges by direct recruitment from amongst the members of the Bar depends entirely on the recommendation of the High Court. The State Government has no power to appoint any person as a District Judge except from the panel of names forwarded by the High Court. As stated, the decisions starting from *Chandra Mohan v. State of U.P.* [AIR 1966 SC 1987 : (1967) 1 SCR 77] have established the principle as a rule of law, that consultation between the Governor and the High Court in the matter of appointment of District Judges under Article 233(1) must not be empty formality but real, full and effective.

- *State of Bihar v. Bal Mukund Sah*, (2000) 4 SCC 640 (5 Judges)  
*Articles 233, 234 and 235*

26.....Article 233 dealing with appointment of District Judges, on its own express terminology projects a complete scheme regarding the appointment of persons to the District Judiciary as District Judges. In the present appeals, we are concerned with direct recruitment to the cadre of District Judges and hence sub-article (2) of Article 233 becomes relevant. Apart from laying down the eligibility criterion for candidates to be appointed from the Bar as direct District Judges the said provision is further hedged by the condition that only those recommended by the High Court for such appointment could be appointed by the Governor of the State. Similarly, for recruitment of judicial officers other than District Judges to the Judicial Service at lower level, a complete scheme is provided by Article 234 wherein the Governor of the State can make such appointments in accordance with the rules framed by him after consulting with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.....

29.....So far as direct recruitment to the posts of District Judges is concerned, Article 233 sub-article (2) leaves no room for doubt that unless the candidate is recommended by the High Court, the Governor cannot appoint him as a District Judge.....

- III. The use of the expression “not already in the service of the Union or the State” in Article 233(2) makes it patent that the person cannot be a judicial officer at the time of appointment. The Constitution by its plain language specifically excludes appointments of persons who are in judicial service as District Judges while making appointments from the Bar. In this regard, reference may be made to the following judgments:
- Deepak Aggarwal v. Keshav Kaushik, (2013) 5 SCC 277 (3 Judges)  
51. 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 the 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. The 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.
- IV. Article 233(2) uses the words ‘not already in the service’; and does not use the words ‘not in the service’:
1. Already has been defined in Oxford Dictionary as ‘before this time’. Accordingly, the intent is that the concerned person should not be in judicial service, not only at the time of appointment but also at the time of application and recommendation.  
(This submission is relevant qua Issue No.2 as well)
  2. Shows intent to keep judges out of channel available for Bar (of 25%)
  3. It also shows intent that just as judges are not in the channel for direct recruitment in vacancies of the bar, intent is to keep bar out of promotion channel.
- V. Expression ‘advocate or pleader’ in Article 233(2) only includes members of the Bar at the time of application:  
The expression ‘advocate or pleader’ in Article 233(2) has been used for a member of the bar who is actually practising in courts of law. In this regard, reference may be made to the law laid down by this Hon’ble Court is set out hereinbelow:
- Sushma Suri v. Govt. of National Capital Territory of Delhi, (1999) 1 SCC 330 (3 Judges)  
4. We have to ascertain the meaning of the expression “advocate or a pleader” used in Article 233(2) of the Constitution and to do so we may use the Advocates Act and the Rules framed by the Bar Council. Under Section 2(a) of the Advocates Act, “advocate” means advocate entered in any roll under the provisions of the Act.  
5. Rule 49 framed by the Bar Council reads as follows:  
“An advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practise

and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an advocate so long as he continues in such employment.

Nothing in this Rule shall apply to a law officer of the Central Government or of a State or of any public corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under Section 28(2)(d) read with Section 24(1)(e) of the Act *despite his being a full-time salaried employee.*

Law officer for the purpose of this Rule means a person who is so designated by the term of his appointment and who, by the said term, is required to act and/or plead in courts on behalf of his employer.”

6. If a person on being enrolled as an advocate ceases to practise law and takes up an employment, such a person can by no stretch of imagination be termed as an advocate. However, if a person who is on the rolls of any Bar Council is engaged either by employment or otherwise of the Union or the State or any corporate body or person practises before a court as an advocate for and on behalf of such Government, corporation or authority or person, the question is whether such a person also answers the description of an advocate under the Act. That is the precise question arising for our consideration in this case.

8. For purposes of the Advocates Act and the Rules framed thereunder the law officer (Public Prosecutor or Government Counsel) will continue to be an advocate. The intention of the relevant Rules is that a candidate eligible for appointment to the Higher Judicial Service should be a person who regularly practises before the court or tribunal appearing for a client.

11. If that be the true position, we fail to understand how the object of recruitment could be defeated if these persons are also allowed to participate in the recruitment process. None of the decisions referred to in *Oma Shanker Sharma case* [CWP No.1961 of 1987] has examined the matter in this perspective. Either those decisions were concerned with the distinction between service and judicial service or the meaning of the expression “advocates” in other contexts. We think it is in this manner that the expression used in Article 233(2) of the Constitution has to be understood and the Rules framed by the Delhi Administration in this regard have to be read in the light of the constitutional provisions. The expression used “from the Bar” would only mean from the class or group of advocates practising in courts of law. It does not have any other attribute.

A reading of the above makes it clear that a member of a Judicial Service does not fall under the definition of ‘advocate’ because on his appointment in the judicial service, he ceases to be an advocate and therefore, cannot be appointed from the second source, i.e., members of the bar, as provided in Clause 2 of Article 233.

#### VI. Legislative Intention:

While deciding the present issue, the Hon’ble Court is required to be mindful of the legislative intention of the makers of the Constitution. It is now well-settled that in cases wherein the legislative intent is apparent from a plain reading of the statute, courts shall refrain from interpreting in a manner that expands the

meaning to include such category of persons the legislature has chosen not to do. This is more so in the case of Constitution of India.

In Chief Justice of A.P. v. L.V.A. Dixitulu, (1979) 2 SCC 34 (5 Judges) it was held as follows

**66.** The primary principle of interpretation is that a Constitutional or statutory provision should be construed “according to the intent of they that made it” (Coke). Normally, such intent is gathered from the language of the provision. If the language or the phraseology employed by the legislation is precise and plain and thus by itself proclaims the legislative intent in unequivocal terms, the same must be given effect to, regardless of the consequences that may follow. But if the words used in the provision are imprecise, protean or evocative or can reasonably bear meanings more than one, the Rule of strict grammatical construction ceases to be a sure guide to reach at the real legislative intent. In such a case, in order to ascertain the true meaning of the terms and phrases employed, it is legitimate for the Court to go beyond the and literal confines of the provision and to call in aid other well recognised rules of construction, such as its legislative/history, the basic scheme and framework of the statute as a whole, each portion throwing light on the rest, the purpose of the legislation, the object sought to be achieved, and the consequences that may flow from the adoption of one in preference to the other possible interpretation.

In Jaishri Laxmanrao Patil v. State of Maharashtra, (2021) 8 SCC 1 (5 Judges), this Hon’ble Court held as follows:

“202. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself [Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907 : 1958 SCR 360] . Oliver Wendell Holmes Jr. has famously said in a letter, “I do not care what their intention was. I only want to know what the words mean.” [ Cited in Felix Frankfurter, “Some Reflections on the Reading of Statutes”, Columbia Law Review, Vol. 47, No. 4, 527-546 (1947), 538.] If the language of the meaning of the statute is plain, there is no need for construction as legislative intention is revealed by the apparent meaning [Adams Express Co. v. Commonwealth of Kentucky, 1915 SCC OnLine US SC 186: 59 L Ed 1267: 238 US 190 (1915)]. Legislative intent must be primarily ascertained from the language used in statute itself. [United States v. Goldenberg, 1897 SCC OnLine US SC 179: 42 L Ed 394: 168 US 95 (1897)]”

In Ombalika Das v. Hulisa Shaw, (2002) 4 SCC 539 (2 Judges), the Hon’ble Supreme Court held:

**“12.** Learned counsel for the appellants submitted that the real need of such landlord (as like the appellants) arises when the person, whose relation he or she is, has ceased to be in service and therefore, the provision should be so interpreted as to advance the purpose sought to be achieved by enacting the provision. We find it difficult to agree. Resort can be had to the legislative intent for the purpose of interpreting a provision of law, when the language employed by the legislature is doubtful or susceptible of meanings more than one. However, when the language is plain and explicit and does not admit of any

doubtful interpretation, in that case, we cannot, by reference to an assumed legislative intent, expand the meaning of an expression employed by the legislature and therein include such category of persons as the legislature has not chosen to do. We cannot also hold that the special procedure of Section 29-B can be taken advantage of by a landlord who is a relation of a member of such service, after his retirement, within five years of the date of retirement because in our opinion, the words “while in service or within five years of retirement” qualify the preceding words “of such member who dies”, and are, therefore, referable to the event of death of such member. If only the legislature would have intended that the benefit of Section 29-B should be available to a landlord who is a relation of a member of such service even after his retirement and living, in that case, in the part of the provision which is under consideration the legislature would have used some such words as “a member or retired member” or simply “such member” instead of “a member”, in which case there could have been some merit in the submission made by the learned counsel for the appellants. But, the legislature has not chosen to do so.”

VII. Persons bound by the stream they choose:

- i. Upon choosing to be a member of the subordinate judiciary, a person is making a conscious choice and once such decision is taken, they are bound by the avenues available under the stream so chosen.
- ii. The aforesaid is buttressed by the decision of the Hon’ble Supreme Court in Sukumar Mukherjee v. State of W.B., (1993) 3 SCC 723 (2 Judges), wherein the Hon’ble Supreme Court held:  
 “19. As regards the second contention, viz., that Section 9 of the Act is violative of Article 19(1)(g) of the Constitution since it prohibits the members of the WBMES from practising privately, the contention has only to be stated to be rejected. In the first instance, the Act does not prohibit private practice by medical practitioners as such. The Act is not enacted to regulate practice of the medical practitioners in general. It is only those medical practitioners who choose to become members of the Services constituted under the Act including the WBMES who are prohibited from practising privately. As has been pointed out earlier, since 1958 to 1965 no member of the former WBHS — whether he held the teaching or non-teaching post, was allowed to practise privately. It was only in 1965, by a memorandum dated April 1, 1965, that temporarily and as and by way of an experiment the relaxation was made and the members of the former WBHS were granted the privilege to practise subject to certain terms and conditions. It was then made clear that the relaxation shall not confer upon the Medical Officers any claim for appointment to any of the posts on practising terms. While making the said relaxation, it was also made clear that the position would be reviewed in future in the light of the experience gained. What is more, each member of the Service who opted for private practice had to give a signed declaration that he shall not acquire any claim for appointment only to practising post in future and that he shall continue to be liable to be transferred to any post in

the cadre, practising or non-practising, in the exigencies of public service. This position continued till the end of 1989, when on the basis of the experience gained, the State Government came to the conclusion that the system was not working satisfactorily and in particular the quality of the medical education in the State had deteriorated considerably. That led to the present Act and the Rules.

20. What is further of importance to note is that the right to private practice is not given to the Government Medical Officers in most of the places since it conflicts with the duties of such officers as government servants. Article 19(1)(g) confers on citizens right to practise any profession, or to carry on any occupation, trade or business for their individual benefit. It does not create an obligation to do so. It is for the citizen to exercise or not his said right. Further, the Article does not oblige a citizen to practise any particular occupation, business or trade. He is free to follow any occupation and on such terms and conditions as he chooses. It does not prevent him from accepting its discipline including such rights and obligations as flow from it. As in the present case, those who join the Government service with the full knowledge that they will have no right to practise the profession privately, agree to give up their right as private practitioners in consideration of the security, status and privilege as a government servant. The Government service is also an occupation and those who choose it cannot complain of its discipline or insist upon pursuing it on their terms. Nobody compels them to join it if they want to practise their profession privately. They are free to leave it at any time. The restriction imposed by Section 9 is not on the freedom to practise the medical profession but on such practice while one continues to be the member of the State Service. Article 19(1)(g) does not give a citizen a right to carry on any profession irrespective of the fact that he has voluntarily accepted restrictions on his said right in consideration of other rights, as in the present case. In the circumstances, it is not even necessary for the State to invoke the provisions of clause (6) of Article 19(1)(g) which permits the State to impose reasonable restrictions on the exercise of the right in the interest of the general public. The present Act constitutes health services for the State. The State has a right to recruit officers to such services on such terms and conditions as it deems desirable to make the services beneficial to the members of the public. The restriction imposed on the members of such service that they shall not be entitled to private practice so long as they continue in the State Service is a reasonable restriction on the officers of the State being in the interest of the general public, as explained earlier. Those who join the Service are bound to abide by it, being a condition of service voluntarily sought by them."

- iii. Thus, applying the same well-founded ratio to the present case, once a person chooses to work as a member of the subordinate judicial service, they forego the right to practice as a member of the Bar for the duration

of employment in the subordinate judicial service, and will thus be bound by the constraints as circumscribed by Article 233(2) of the Constitution.

- VIII. It is well settled that a view which has been holding the field for a long time should not be disturbed:
- Reference may be made to the following:
- Waman Rao v. Union of India, (1981) 2 SCC 362 (5 Judges)
- 36.** The doctrine of stare decisis is the basis of common law. It originated in England and was used in the colonies as the basis of their judicial decisions. According to Dias [R.W.M.Dias: Jurisprudence, 4th Edn. (1976), p.166], the genesis of the rule may be sought in factors peculiar to English legal history, amongst which may be singled out the absence of a Code. The Normans forbore to impose an alien code on a half-conquered realm, but sought instead to win as much widespread confidence as possible in their administration of law, by the application of near uniform rules. The older the decision, the greater its authority and the more truly was it accepted as stating the correct law. As the gulf of time widened, says Dias, judges became increasingly reluctant to challenge old decisions. The learned Author cites the example of Bracton and Coke who always preferred older authorities. In fact, Bracton had compiled a notebook of some two thousand cases as material for his treatise and employed some five hundred of them.
- 37.** The principle of stare decisis is also firmly rooted in American jurisprudence. It is regarded as a rule of policy which promotes predictability, certainty, uniformity and stability. The legal system, it is said, should furnish a clear guide for conduct so that people may plan their affairs with assurance against surprise. It is important to further fair and expeditious adjudication by eliminating the need to relitigate every proposition in every case. [See Harold J. Grilliot : Introduction to Law and the Legal System, 2nd Ed. (1979), p. 132] When the weight of the volume of the decisions on a point of general public importance is heavy enough, courts are inclined to abide by the rule of stare decisis, leaving it to the legislature to change longstanding precedents if it so thinks it expedient or necessary. In *Burnet v. Coronado Oil and Gas Co.* [285 US 393, 406] Justice Brandeis stated that “stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right”.
- 38.** While dealing with the subject of stare decisis, Shri H.M. Seervai in his book on Constitutional Law of India [ 2nd Ed (1975), Vol. I, pp. 59-61] has pointed out how important it is for judges to conform to a certain measure of discipline so that decisions of old standing are not overruled for the reason merely that another view of the matter could also be taken. The learned Author has cited an Australian case in which it was said that though the court has the power to reconsider its own decisions that should not be done upon a mere suggestion that some or all of the members of the later court may arrive at a different conclusion if the matter were res integra. [The Tramways case (No. 1), (1914) 18 CLR 54, per Griffith CJ at p. 58] The learned Author then refers to two cases of our Supreme Court in which the importance of adherence to precedents was stressed. Jagannadhadas, J. said in the *Bengal Immunity case* [*Bengal Immunity Co. Ltd. v. State of Bihar*, (1955) 2 SCR 603: AIR 1955 SC 661: (1955) 6 STC 446]

that the finality of the decisions of the Supreme Court, which is the Court of last resort, will be greatly weakened and much mischief done if we treat our own judgments, even though recent, as open to reconsideration. B.P. Sinha, J. said in the same case that if the Supreme Court were to review its own previous decisions simply on the ground that another view was possible, the litigant public may be encouraged to think that it is always worthwhile taking a chance with the highest Court of the land. In *ITO v. T.S.D. Nadar* [AIR 1968 SC 623: 68 ITR 252: (1968) 2 SCR 33] Hegde, J. said in his dissenting judgment that the Supreme Court should not overrule its decisions except under compelling circumstances. It is only when the court is fully convinced that public interest of a substantial character would be jeopardised by a previous decision, that the court should overrule that decision. Reconsideration of the earlier decisions, according to the learned Judge, should be confined to questions of great public importance. Legal problems should not be treated as mere subjects for mental exercise. An earlier decision may therefore be overruled only if the court comes to the conclusion that it is manifestly wrong, not upon a mere suggestion that if the matter were res integra, the members of the later court may arrive at a different conclusion.

39. These decisions and texts are of high authority and cannot be overlooked. In fact, these decisions are themselves precedents on the binding nature of precedents.

40. It is also true to say that for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of longstanding should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis. Therefore, the reason why Article 31-A was upheld in the earlier decisions, if indeed it was, are not germane for the purpose of deciding whether this is a fit and proper case in which to apply that rule.

42. Thirdly, the history of the world's constitutional law shows that the principle of stare decisis is treated as having a limited application only. Justice William Douglas said in *New York v. United States* [326 US 572, 590-91 (1946)] that it is a wise policy to restrict the principle of stare decisis to those areas of the law where correction can be had by legislation. Otherwise, the Constitution loses the flexibility which is necessary if it is to serve the needs of successive generations. It is for that reason again that Justice Frankfurter said in *U.S. v. International Boxing Club* [348 US 236, 249 (1955)] that the doctrine of stare decisis is not "an imprisonment of reason". Older the standing of a decision, greater the provocation to apply the rule of stare decisis. A possible mischief arising out of this position was pointed out by Justice Benjamin Cardozo in *MacPherson v. Buick Motor Co.* [217 NY 382, 391 (1916)] by saying that precedents drawn from the days of travel by stage-coach do not fit the conditions of travel today. And alive to that possibility, Justice Brandeis said in *State of*

*Washington v. W.C. Dawson & Co.* [264 US 219, 238 (1924)] that stare decisis is merely a wise rule of action and is not a universal, inexorable command. “The instances in which the court has disregarded its admonition are many.” In fact, the full form of the principle, stare decisis et non quieta movere which means “to stand by decisions and not to disturb what is settled”, was put by Coke in its classic English version as: ‘Those things which have been so often adjudged ought to rest in peace’. Such being the justification of the rule, it was said in *James Monroe v. Frank Pape* [5 L Ed 2d US 492, 520, 523] that the relevant demands of stare decisis do not preclude consideration of an interpretation which started as an unexamined assumption. We have already pointed out how the constitutional validity of Article 31-A has to be deemed to have been upheld in *Sankari Prasad* [1951 SCC 966 : 1952 SCR 89, 95 : AIR 1951 SC 458] by a process of inferential reasoning, the real question therein being whether the expression “law” in Article 13(2) includes law made in the exercise of constituent power.

- *Milkfood Ltd. v. GMC Ice Cream (P) Ltd.*, (2004) 7 SCC 288 (3 Judges)  
71. While interpreting a judgment this Court must pinpoint its attention to the ratio thereof. A court of law must not lose sight of the doctrine of “stare decisis”. A view which has been holding the field for a long time should not be disturbed only because another view is possible.”
- *State of Jharkhand and Others v. Rukma Kesh Mishra*, 2025 SCC OnLine SC 676 (2 Judges)  
“26. At this stage, we are reminded of the Latin phrase stare decisis et non queta movere meaning, stand by what has been decided and do not disturb what has been settled. While it is true that courts are not restrained by any principle of law from expressing a different view on a point of law or to distinguish precedents (a topic we wish to advert to briefly a little later), stare decisis need not be disregarded to unsettle settled positions. We would read these precedents (referred to in paragraphs 21 to 25, supra) as settling the law that unless the relevant discipline and appeal rules applicable to an officer/employee of an authority within the meaning of Article 12 of the Constitution so require, disciplinary proceedings by issuance of a charge-sheet cannot be faulted solely on the ground that either the Appointing Authority or the Disciplinary Authority has not issued the same or approved it. These precedents have stood the test of time and having full application to the case at hand, could not have been lightly overlooked. A holistic consideration of all these precedents by the High Court was certainly the need of the hour. Thavasippan (supra) had considered the precedents in *Shardul Singh* (supra), *P.V. Srinivasa Sastry* (supra) and *A. Radhakrishna Moorthy* (supra) and *P.V. Srinivasa Sastry* (supra) was placed before the coordinate Bench in *B.V. Gopinath* (supra). We are anchored in a belief that had the High Court looked into these precedents, the conclusion would have certainly been otherwise.”
- *Shanker Raju v. Union of India*, (2011) 2 SCC 132 (2 Judges)  
“The doctrine of stare decisis

**10.** It is a settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim stare decisis et non quita movere, which means “to stand by decisions and not to disturb what is settled”. Lord Coke aptly described this in his classic English version as “those things which have been so often adjudged ought to rest in peace”. The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible. This has been aptly pointed out by Chandrachud, C.J. in Waman Rao v. Union of India [(1981) 2 SCC 362] thus: (SCC p. 393, para 40)

“40.....for the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of long standing should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. Were it so, the previous decisions could more easily be treated as binding by applying the law of precedent and it will be unnecessary to take resort to the principle of stare decisis. It is, therefore, sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question which arose or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis.”

- State of H.P. v. Ashwani Kumar, (2015) 15 SCC 534 (2 Judges)  
 “20. This Court in Indra Sawhney v. Union of India [Indra Sawhney v. Union of India, 1992 Supp (3) SCC 217 : 1992 SCC (L&S) Supp 1 : (1992) 22 ATC 385] , in SCC para 683 of the judgment, considered the principle of stare decisis and observed that in the law certainty, consistency and continuity are highly desirable features. Where a decision has stood the test of time and has never been doubted, we have respected it unless, of course, there are compelling and strong reasons to depart from it.”
- Sakshi v. Union of India, (2004) 5 SCC 518 (2 Judges)  
 23. Stare decisis is a well-known doctrine in legal jurisprudence. The doctrine of stare decisis, meaning to stand by decided cases, rests upon the principle that law by which men are governed should be fixed, definite and known, and that, when the law is declared by a court of competent jurisdiction authorised to construe it, such declaration, in absence of palpable mistake or error, is itself evidence of the law until changed by competent authority. It requires that rules of law when clearly announced and established by a court of last resort should not be lightly disregarded and set aside but should be adhered to and followed. What it precludes is that where a principle of law has become established by a series of decisions, it is binding on the courts and should be followed in similar cases. It is a wholesome doctrine which gives certainty to law and guides the people to mould their affairs in future.

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?

I. The eligibility is to be seen both at the time of application and appointment. This is so, for the following reasons:

- (i) Article 233(2) speaks of the recommendation by the High Court for appointment. It is, therefore, apparent that the concerned person has yet not been appointed but has only been recommended by the High Court for appointment. It is inconceivable that the High Court would recommend a person who is not already eligible. It is thus clear that the person who is applying for direct recruitment against a Bar vacancy under Article 233(2) has to be eligible at the time of recommendation by the High Court i.e. at the time of application itself. It cannot be suggested that the High Court would recommend someone who will become eligible only at a later date.
- (ii) Further, the said requirement of being eligible is also necessary at the time when the appointment is to be made in as much as it cannot be that the said Advocate has, in the interregnum, been appointed as a Judge in the Subordinate Judicial Services. If he takes any such appointment, then he ceases to fulfil the requirement of “not already in the service....”. Therefore, it is clear that the concerned person is to be eligible both at the time of application and at the time of appointment.
- (iii) Since Article 233(1) deals with appointments by way of promotion, therefore, there is no question of any application being made. At the same time, the eligibility has necessarily to be seen at the time of consideration for promotion as a District Judge. In this regard, it is relevant to note that the language used in Article 233(1) is of appointments of persons “to be” District Judges. Therefore, the qualification required should be met in accordance with the Rules of the concerned High Court in the manner prescribed therein.

II. It is well settled that eligibility is to be seen at the time of application.

If it were not so, it would lead to the arbitrary exercise of power inasmuch as the appointing authority can then render a person who is otherwise ineligible on the date of application, to be made eligible by the date of appointment. Conversely, it is also possible that a person who is eligible on the date of application is rendered ineligible on account of his age or otherwise by keeping the appointments pending for a long time. Therefore, the general law of seeing eligibility at the time of application is necessarily required to be applied.

Reference in this regard may be made to the following:

- Rekha Chaturvedi v. University of Rajasthan, 1993 Supp (3) SCC 168  
 10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to acquire the

qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications....

- Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18  
 6. The review petitions came up for final hearing on 3-3-1997. We heard the learned counsel for the review petitioners, for the State of Jammu & Kashmir and for the 33 respondents. So far as the first issue referred to in our Order dated 1-9-1995 is concerned, we are of the respectful opinion that majority judgment (rendered by Dr T.K. Thommen and V. Ramaswami, JJ.) is unsustainable in law. The proposition that where applications are called for prescribing a particular date as the last date for filing the applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement or notification issued/published calling for applications constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the persons had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority judgment. This is also the proposition affirmed in *Rekha Chaturvedi v. University of Rajasthan* [1993 Supp (3) SCC 168 : 1993 SCC (L&S) 951 : (1993) 25 ATC 234] .....
- Bhupinderpal Singh v. State of Punjab, (2000) 5 SCC 262  
 14. In view of several decisions of this Court relied on by the High Court and referred to hereinabove, it was expected of the State Government notifying the vacancies to have clearly laid down and stated the cut-off date by reference to which the applicants were required to satisfy their eligibility. This was not done. It was pointed out on behalf of the several appellant-petitioners before this Court that the practice prevalent in Punjab has been to determine the eligibility by reference to the date of interview and there are innumerable cases wherein such

candidates have been seeking employment as were not eligible on the date of making the applications or the last date appointed for receipt of the applications but were in the process of acquiring eligibility qualifications and did acquire the same by the time they were called for and appeared at the interview. Several such persons have been appointed but no one has challenged their appointments and they have continued to be in public employment. Such a loose practice, though prevalent, cannot be allowed to be continued and must be treated to have been put to an end. The reason is apparent. The applications made by such candidates as were not qualified but were in the process of acquiring eligibility qualifications would be difficult to be scrutinised and subjected to the process of approval or elimination and would only result in creating confusion and uncertainty. Many would be such applicants who would be called to face interview but shall have to be returned blank if they failed to acquire requisite eligibility qualifications by the time of interview. In our opinion the authorities of the State should be tied down to the principles governing the cut-off date for testing the eligibility qualifications on the principles deducible from the decided cases of this Court and stated hereinabove which have now to be treated as the settled service jurisprudence.

III. Expression ‘if he has been for not less than seven years an advocate or a pleader’ in Article 233(2) makes it further clear that a person should be a practising advocate at the time of the application.

Reference in this regard can be made to the following:

- Deepak Aggarwal v. Keshav Kaushik, (2013) 5 SCC 277  
**102.** As regards construction of the expression, “if he has been for not less than seven years an advocate” in Article 233(2) of the Constitution, we think Mr Prashant Bhushan was right in his submission that this expression means seven years as an advocate immediately preceding the application and not seven years any time in the past. This is clear by use of “has been”. The present perfect continuous tense is used for a position which began at sometime in the past and is still continuing. Therefore, one of the essential requirements articulated by the above expression in Article 233(2) is that such person must with requisite period be continuing as an advocate on the date of application.
- Rameshwar Dayal v. State of Punjab, (1961) 2 SCR 874  
**8.....** Secondly, he has submitted that by reason of the use of the present perfect tense “has been” in clause (2) of Article 233, the rules of grammar require that the person eligible for appointment must not only 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. Thirdly, he has submitted that the period of seven years referred to in the clause must be counted as the standing of the advocate or pleader with reference to his right of practice in a Court in the territory of India as defined in Article 1 of the Constitution; in other words, any right of practice in a court which was in India before the partition of the country in 1947 but which is not in India since partition, cannot be taken into consideration for the purpose of counting the period of seven years.  
**13.** 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. We have proceeded so far on the first two submissions of learned counsel for the appellant, and on that basis dealt with his third submission. It is perhaps necessary to add that we must not be understood to have decided that the expression ‘has been’ must always mean what learned counsel for the appellant says it means according to the strict rules of grammar. It may be seriously questioned if an organic Constitution must be so narrowly interpreted, and the learned Additional Solicitor-General has drawn our attention to other Articles of the Constitution like Article 5(c) where in the context the expression has a different meaning. Our attention has also been drawn to the decision of the Allahabad High Court in *Mubarak Mazdoor v. K.K. Banerji* [AIR 1958 All 323] where a different meaning was given to a similar expression occurring in the proviso to sub-section (3) of Section 86 of the Representation of the People Act, 1951. We consider it unnecessary to pursue this matter further because the respondents we are now considering continued to be advocates of the Punjab High Court when they were appointed as district judges and they had a standing of more than seven years when so appointed. They were clearly eligible for appointment under clause 2 of Article 233 of the Constitution.

- IV. The words ‘has been’ used in Article 217 and the explanation therein have been interpreted by the Hon’ble Supreme Court to be in present perfect continuous form. Reference may be made to the judgment in *R. Poornima v. Union of India*, (2023) 12 SCC 519 (3 Judges)

43. The words “has held” and the words “has been” appear repeatedly in sub-clauses (a) and (b) as well as Explanations (a) and (aa) under Article 217(2). In relation to a person from the category of judicial service, sub-clause (a) uses the words “has held”. But in relation to a person from the category of advocate, sub-clause (b) uses the words “has been”. This is quite relevant for the reason that even in Explanations (a) and (aa) the words “has held” always preceded the words “judicial office” and the words “has been” always preceded the word “advocate”.

44. In common parlance, the words “has held” stand in contra distinction to the words “is holding” or “has been holding”.

45. On the other hand the words “has been” do not have any such connotation. The Cambridge dictionary states that the words “has been” are in present perfect continuous form. The dictionary says that we may use the present perfect continuous, either to talk about a finished activity in the recent past or to talk about a single activity that began at a point in the past and is still continuing. Keeping this in mind, Explanation (a) confers the benefit of clubbing to a limited extent, to a person who has held a judicial office. To be eligible for the limited benefit so conferred, a person should have been an Advocate “*after he has held any judicial office*”. There is no confusion either in the language of Article 217(2) or in our mind.

- V. Further, the person should continue to be eligible at the time of appointment inasmuch as he cannot, in the interregnum, get appointed in judicial service and seek appointment against a Bar vacancy; further “not less than 7 years” shows the intent of the framers of the Constitution that the applicant should already

have the necessary minimum qualification and not that the said qualification will be gained at a future date. Therefore, the qualification required is to be fulfilled at the time of application and not one that will be secured in the future.

VI. The submission made in para IV of Issue No.1 is reiterated here as well.

Relevance of second question in deciding the first question:

It is submitted that the second question is relevant qua the first question as well. This is so because eligibility is to be seen at the time of application because the concerned person should not be already in the service of the Union or the State. As such, he has to be eligible at the time of application and, therefore, he should not be a judicial officer when he makes an application and is recommended under Article 233(2).

It is most respectfully submitted that the answer to the two issues is as follows:

1. Issue No.1- the answer is in negative.
2. Issue No.2- the answer is that the eligibility is to be seen at the time of both, application and appointment.

**ADDITIONAL ISSUES**

Additional Issue No.1: 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?

In view of the submissions made hereinabove, it is submitted that Article 233(1) pertains to the stream of promotion for appointment to the higher judiciary while Article 233(2) pertains to the direct recruitment from the bar. Accordingly, the question of any eligibility being prescribed for a person in judicial service [who will therefore be eligible to apply under Article 233(1)] does not arise under Article 233(2). This is because under Article 233(2) the person to be appointed is to be a member of the bar and therefore, cannot be in judicial service. Detailed submissions made with regard to Issue No.1 hereinabove are reiterated herein.

Additional Issue No.2: Whether a person who has been Civil Judge for a period of 7 years or has been an Advocate and Civil Judge for a combined period of 7 years or more than 7 years would be eligible for appointment as District Judge under Article 233 of the Constitution of India?

It is submitted that the answer to the aforesaid question is that a person who has been a Civil Judge for a period of 7 years will be eligible for appointment under Article 233(1) in view of the law laid down in All India Judges Association & Ors. v. Union of India & Ors., 2025 SCC Online SC 1184 which prescribes a requirement of 3 years as Civil Judge (Senior Division) and a total service of 7 years as a Civil Judge. However, he will not be eligible for appointment as District Judge under Article 233(2). This is in view of the following facts:

- I. Detailed submissions with regard to two separate sources/streams of recruitment has already been made in reply to Issue No.1. The same is reiterated herein. This

Hon'ble Court in various judgments has specifically prescribed a period of 7 years as an advocate for being appointed under Article 233(2). The said judgments have been reproduced under Issue No.1 hereinabove, however, there references are set out hereinbelow:

- Rameshwar Dayal v. State of Punjab, (1961) 2 SCR 874 (5 Judges)  
Refer Para-8 & 12
- Chandra Mohan Versus State of Uttar Pradesh and Others, (1967) 1 SCR 77 (5 Judges)  
Refer Para 15-16
- Satya Narain Singh v. Allahabad High Court, (1985) 1 SCC 225 (3 Judges)  
Refer Para-3
- Sushma Suri v. Govt. of National Capital Territory of Delhi, (1999) 1 SCC 330 (3 Judges)  
Refer Para-3
- Deepak Aggarwal v. Keshav Kaushik, (2013) 5 SCC 277 (3 Judges)  
Refer Para-49 & 51
- All India Judges' Assn. (3) v. Union of India, (2002) 4 SCC 247 (3 Judges)  
Refer Para-27-28

II. Article 124(3) dealing with qualification for appointment as a Judge of the Supreme Court reads as follows:

*(3) 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 ten years an advocate of a High Court or of two or more such courts in succession; or*

*(c) is, in the opinion of the President, a distinguished jurist.*

*Explanation I-- 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.*

*Explanation II--In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district Judge after he became an advocate shall be included.*

(Emphasis Supplied)

A perusal of the above clause makes it clear that two alternate qualifications are prescribed for appointment as a Judge of this Hon'ble Court. Apart from being a citizen of India, the concerned person is required to be a Judge of a High Court for at least 5 years; or an advocate of a High Court for at least 10 years. It is relevant to note that Explanation II stipulates that while dealing with Article 124(3)(b), in computing the period of 10 years as an advocate of a High Court, Explanation II permits the inclusion of such period during which a person has held judicial office not inferior to that of a District Judge after becoming an advocate.

Therefore, it is apparent that

- a. The Explanation II is made applicable only to sub clause 3(b). There is no such provision in so far as sub clause 3(a) is concerned.
- b. The requirement of including the period served as a District Judge has been included in computing the 10 years required as an advocate. The service therefore, is to be that of District Judge and not of a Civil Judge. It would then be completely impermissible to include qua Article 124(3)(a) an Explanation of years of practice as an advocate in computing the period of five years as a Judge of a High Court.

III. Article 217(2) prescribing qualifications for appointment as a Judge of a High Court reads as follows:

*(2) 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;*

*Explanation: For the purposes of this clause—*

<sup>1</sup>*(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;*

<sup>2</sup>*(aa) 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;*

*(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 any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of 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.*

*(Emphasis Supplied)*

A reading of the above sub clause makes it clear that for appointment as a Judge of a High Court apart from being required to be a citizen of India, the stipulation is holding a judicial office for at least 10 years; or has been an advocate for at least 10 years of a High Court.

- Explanation (a) has been inserted by the Constitution (Forty-fourth Amendment) Act, 1978 which came into force w.e.f 20.06.1979. The said Explanation (a) permits that in computing the period during which a person has held judicial office, the period for which he has been an advocate of a High Court after having held any judicial office to be included.
- Explanation (aa) was originally Explanation (a) but has been renumbered as Explanation (aa) after the 44<sup>th</sup> Amendment, Act 1978. Under the said

<sup>1</sup>Ins. By the Constitution (44<sup>th</sup> Amendment) Act 1978 (w.e.f. 20.06.1979)

<sup>2</sup> Clause (a) re-lettered as clause (aa) by the Constitution (Forty –fourth Amendment) Act, 1978 (w.e.f 20.06.1979)

explanation, in computing the period during which a person has been an advocate of a High Court, any period during which he has held judicial office after he became an advocate can be included.

- Further, Explanation (b) permits in computation of two respective periods the inclusion of the period served as a judicial officer or as an advocate in any area comprised before 15<sup>th</sup> August, 1947, within in India to be included.

A perusal of the above Article makes the following points clear:

- a. The said Article specifically permits the inclusion of time in judicial service to be included while computing the period of an advocate.
- b. The said Article specifically permits the inclusion of time as an advocate to be included while computing the period of service as a judicial officer.
- c. Further, while the new numbered Explanation (aa) was part of the original Constitution, Explanation (a) has been introduced by way of Constitution (Forty-fourth Amendment) Act, 1978. Therefore, it is apparent that in computing the period for which a person has been in judicial office, the inclusion of the time spent as an advocate has to be provided specifically under the Constitution and the same requires a Constitutional Amendment and cannot be done by way of a judicial pronouncement. The said aspect falls purely within the realm of Parliament and not within the competence of this Hon'ble Court.

Therefore, any change in the manner of computation of respective 10 years requires a Constitutional Amendment. While initially in computing the period in which a person has been an advocate of a High Court, the inclusion of the period during which he has held a judicial office after he became an advocate was provided for, but the inclusion of the time spent as an advocate in computing the period in judicial office was not prescribed under the original Constitution and the same was brought in only by way of the 44<sup>th</sup> amendment. Where the framers of the Constitution wanted to allow computation in the manner of adding any period held as a judicial officer in computing the period during which a person has been an advocate of a High Court, they provided it there.

Where Parliament felt that the same benefit should also be given to advocates they added by 44<sup>th</sup> Amendment Explanation (a). However, Article 145(3) which deals with interpretation does not allow this Hon'ble Court to take over the role of Parliament.

- IV. Further, even though Article 217 dealing with appointment of judges of a High Court permits clubbing in the manner prescribed in sub clause (2), this Hon'ble Court has held that there are two separate queues, one from judicial service and another from the bar. Hopping on and hopping off from one queue to the other is not permissible.

Reference in this regard may be made to the judgment in R. Poornima v. Union of India, (2023) 12 SCC 519 (3 Judges)

**30.** But what is important to note is that Article 217(2) merely prescribes the eligibility criteria and the method of computation of the same. If a person is found to have satisfied the eligibility criteria, then he must take his place in one of the queues. There are 2 separate queues, one from judicial service and another from

the Bar. One cannot stand in one queue by virtue of his status on the date of consideration of his name for elevation and at the same time keep a towel in the other queue, so that he can claim to be within the zone of consideration from either of the two or from a combination of both.

31. The queue to which a person is assigned, depends upon his status on the date of consideration. If a person is an advocate on the date of consideration, he can take his place only in the queue meant for members of the Bar. Similarly, if a person is a judicial officer on the date of consideration, he shall take his chance only in the queue meant for service candidates.

32. Hopping on and hopping off from one queue to the other, is not permissible. Today, if any of the petitioners cease to be judicial officers and become Advocates, they may be eligible to be considered against the quota intended for the Bar. But while continuing as judicial officers, they cannot seek to invoke Explanation (a) as it applies only to those who have become advocates after having held a judicial office.

33. The issue can be looked at from another angle also. The petitioners successfully claimed and gained seniority over and above the contesting respondents, on the ground that they were directly recruited to the post of District Judges, before the contesting respondents got promoted as District Judges. In other words, for the purpose of seniority, the petitioners went solely by the date of recruitment to the cadre of District Judges and not (i) by the total length of service in a judicial office or (ii) by a combination of the number of years of practice at the Bar and the number of years of judicial service. But for the purpose of determining the eligibility, they want to go by the total period of practice as an Advocate and the period of service in a judicial office. If clubbing is permitted, it should be permitted even for the contesting respondents, which if done, would upset even the seniority of the petitioners.

It is also respectfully submitted that while interpreting a provision of the Constitution, this Hon'ble Court is bound by the constitutional limits placed upon itself, by this Hon'ble Court's interpretation of the doctrine of separation of powers. This Hon'ble Court has, time and again, while interpreting a statute or indeed the Constitution, cautioned against interpreting the provision in such a manner that it leads to creation of a new law, as this would amount to judicial overreach and entering into the domain of the legislature.

In *Shrimanth Balasaheb Patil v. Karnataka Legislative Assembly*, (2020) 2 SCC 595, (3 Judges) this Hon'ble Court held:

“143. We do not subscribe to such an extreme stand taken by the learned Senior Counsel, considering the fact that such extreme stand could have a chilling effect on legitimate dissent. In any case, such a change in the policy cannot be looked into by this Court, as the same squarely falls within the legislative forte. Any attempt to interfere is better termed as reconstruction, which falls beyond the scope of legal interpretation by the courts.

144. It is clear that the power to prescribe qualifications and disqualifications for membership to the State Legislature must be specifically provided for under the Constitution or by Parliament by enacting a law. Since neither the Constitution nor any Act provides for defection to another party as a bar from contesting further elections, reading such a bar into the nebulous concept of the inherent

powers of the Speaker is impermissible and invalid. Without commenting on whether the Speaker has inherent powers or not, a Constitution Bench of this Court in Raja Ram Pal case [Raja Ram Pal v. Lok Sabha, (2007) 3 SCC 184] , while holding that certain unwritten powers inure with Parliament under Article 105(3) of the Constitution, went on to observe even in case of expulsion, the expelled candidate is not barred from contesting re-election.

145. Viewed from a different angle, although the Constitution may not say everything, this Court is mandated to expound the unsaid. However, such elaboration cannot be done in derogation of separation of powers and in a drastic or radical fashion.

146. The contention of the respondents that the political exigencies required such measures to be taken needs to be rejected. The Constitutional silences cannot be used to introduce changes of such nature.

In Rohitash Kumar v. Om Prakash Sharma, (2013) 11 SCC 451, this Hon'ble Court held:

“Addition and subtraction of words

27. The court has to keep in mind the fact that, while interpreting the provisions of a statute, it can neither add, nor subtract even a single word. The legal maxim “A verbis legis non est recedendum” means, “from the words of law, there must be no departure”. A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part thereof. The court cannot proceed with the assumption that the legislature, while enacting the statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to add and amend, or by construction, make up for the deficiencies, which have been left in the Act. The Court can only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, cannot add words to a statute, or read words into it which are not part of it, especially when a literal reading of the same produces an intelligible result. (Vide Nalinakhya Bysack v. Shyam Sunder Haldar [(1953) 1 SCC 167 : AIR 1953 SC 148] , Sri Ram Ram Narain Medhi v. State of Bombay [AIR 1959 SC 459] , M. Pentiah v. Muddala Veeramallappa [AIR 1961 SC 1107] , Balasinor Nagrik Coop. Bank Ltd. v. Babubhai Shankerlal Pandya [(1987) 1 SCC 606 : AIR 1987 SC 849] and Dadi Jagannadham v. Jammulu Ramulu [(2001) 7 SCC 71] , SCC pp. 78-79, para 13.)

28. The statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The courts have to administer the law as they find it, and it is not permissible for the court to twist the clear language of the enactment in order to avoid any real or imaginary hardship which such literal interpretation may cause.

29. In view of the above it becomes crystal clear that under the garb of interpreting the provision, the court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation.”

Further, the factum of no such explanation being provided under Article 233 makes it clear that it was not the intent of the framers of the Constitution or of Parliament to allow the period of 7 years as an advocate to include the period rendered in judicial service.

Reference may be made to the following judgments

- Rameshwar Dayal v. State of Punjab, (1961) 2 SCR 874 (5 Judges)  
12. Learned counsel for the appellant has also drawn our attention to Explanation I to clause (3) of Article 124 of the Constitution relating to the qualifications for appointment as a Judge of the Supreme Court and to the explanation to clause (2) of Article 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 Article 233, and we do not think that clause (2) of Article 233 can be interpreted in the light of explanations added to Articles 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 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. 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 Article 233 which must lead to the exclusion of that period for determining his eligibility for appointment as district judge.
- B.R. Enterprises v. State of U.P., (1999) 9 SCC 700 (2 Judges)  
70. Article 301 is quoted hereunder:  
“301. *Freedom of trade, commerce and intercourse*.—Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.”  
In difference, we find that the words used under this Article are “trade, commerce and intercourse”. We find Article 301 is confined to trade and commerce while Article 298 refers to trade and *business* and to the making of contracts for any purpose. The use of the words “business” and “contracts for any purpose” and its title “... trade, etc.” makes the field of Article 298 wider than Article 301. Significantly, the different use of words in the two Articles is for a purpose; if the field of the two Articles are to be the same, the same words would have been used. It is true, as submitted, that since “trade” is used both in Articles 298 and 301, the same meaning should be given. To this extent, we accept it to be so, but when the two Articles use different words, in a different set of words conversely, the different words used could only be to convey different meanings. If different meaning is given then the field of the two Articles would be different. So, when instead of the words “trade and commerce” in Article 301, the words “trade or business” are used it necessarily has a different and wider connotation than merely “trade and commerce”. “Business” may be of varying activities, may or

may not be for profit, but it necessarily includes within its ambit “trade and commerce”; so sometimes it may be synonymous but its field stretches beyond “trade and commerce”.

- V. It is also relevant that while Article 124(3)(b) requires that the person should have been for at least 10 years ‘an advocate of a High Court’; and similarly, Article 217(2)(b) requiring 10 years as an ‘advocate of a High Court’, there is no such stipulation under Article 233(2) in as much he need not be practicing in a High Court because the said Articles are differently worded than Article 233 and the Explanation of one cannot be read into Article 233.
- VI. That the language of not less than 7 years is in the negative and where the language is in negative it is mandatory. Reference may be made to the following judgments:
- Vijay Narayan Thatte v. State of Maharashtra, (2009) 9 SCC 92  
4. In our opinion, the said notification was clearly barred by clause (ii) of the proviso to Section 6 of the Act which reads as under:  
“6. Provided that no declaration in respect of any particular land covered by a notification under Section 4 sub-section (1),—  
(i)\*\*\*  
(ii) published after the commencement of the Land Acquisition (Amendment) Act, 1984, shall be made after the expiry of one year from the date of the publication of the notification.”  
It can be seen from the aforesaid proviso to Section 6 that it is couched in negative language. It is well settled that when a statute is couched in negative language it is ordinarily regarded as peremptory and mandatory in nature. (See Principles of Statutory Interpretation by Justice G.P. Singh, 11th Edn., 2008, pp. 390 to 392.)
- VII. It is a well settled principle of law that the decision rendered by a coordinate Bench including 3 Judge Bench is binding on the subsequent Benches of equal or lesser strength.  
Reference may be made to the following judgments:
- Shah Faesal v. Union of India, 2020 (4) SCC 1 (5 Judges)  
23. This brings us to the question, as to whether a ruling of a coordinate Bench binds subsequent coordinate Benches. It is now a settled principle of law that the decision rendered by a coordinate Bench is binding on the subsequent Benches of equal or lesser strength. The aforesaid view is reinforced in the *National Insurance Co. Ltd. v. Pranay Sethi* [*National Insurance Co. Ltd. v. Pranay Sethi*, (2017) 16 SCC 680 : (2018) 3 SCC (Civ) 248 : (2018) 2 SCC (Cri) 205] wherein this Court held that : (SCC pp. 713-14, para 59) “59.1. The two-Judge Bench in *Santosh Devi* [*Santosh Devi v. National Insurance Co. Ltd.*, (2012) 6 SCC 421 : (2012) 3 SCC (Civ) 726 : (2012) 3 SCC (Cri) 160 : (2012) 2 SCC (L&S) 167] should have been well advised to refer the matter to a larger Bench as it was taking a different view than what has been stated in *Sarla Verma* [*Sarla Verma v. DTC*, (2009) 6 SCC 121 : (2009) 2 SCC (Civ) 770 : (2009) 2 SCC (Cri) 1002] , a judgment by a coordinate Bench. It is because a coordinate Bench of the same strength cannot take a contrary view than what has been held by another coordinate

Bench.

- Sub-Committee of Judicial Accountability v. Union of India, (1992) 4 SCC 97 (5 Judges)  
5. Even if the prayer is examined as if it were an independent substantive proceeding, the tests apposite to such a situation would also not render the grant of this relief permissible. The considerations against grant of this prayer are obvious and compelling. Indeed, no co-ordinate bench of this Court can even comment upon, let alone sit in judgment over, the discretion exercised or judgment rendered in a cause or matter before another co-ordinate bench. If a request is made that a Judge should refuse to hear a matter either on the ground that there was a reasonable apprehension or likelihood of bias or on any similar or other grounds, the decision on it is exclusively that of the particular Judge or the bench of which he is a member. At that stage, another co-ordinate bench cannot be invited to examine and pronounce on this question. It is for that bench and that bench alone to decide that question. Judicial propriety and discipline as well as what flows from the circumstance that each division bench of this Court functions as the court itself renders any interference by one bench with a judicial matter before another lacking as much in propriety as in jurisdiction.
- State of Punjab v. Devans Modern Breweries Ltd., (2004) 11 SCC 26 (5 Judges)  
339. Judicial discipline envisages that a coordinate Bench follow the decision of an earlier coordinate Bench. If a coordinate Bench does not agree with the principles of law enunciated by another Bench, the matter may be referred only to a larger Bench. (See *Pradip Chandra Parija v. Pramod Chandra Patnaik* [(2002) 1 SCC 1], SCC at paras 6 and 7; followed in *Union of India v. Hansoli Devi* [(2002) 7 SCC 273], SCC at para 2.) But no decision can be arrived at contrary to or inconsistent with the law laid down by the coordinate Bench. *Kalyani Stores* [AIR 1966 SC 1686 : (1966) 1 SCR 865] and *K.K. Narula* [AIR 1967 SC 1368 : (1967) 3 SCR 50] both have been rendered by the Constitution Benches. The said decisions, therefore, cannot be thrown out for any purpose whatsoever; more so when both of them if applied collectively lead to a contrary decision proposed by the majority

For all the aforesaid reasons, it is respectfully submitted that to take a contrary view would not only be against the settled law laid down by this Hon'ble Court but would also be plainly unconstitutional.

Article 145(3) enjoins upon a Constitution Bench of this Hon'ble Court to decide cases involving substantial questions of law 'as to the interpretation of this Constitution'. The mandate of the Constitution is not to amend the Constitution but to only interpret the same. Reference may be made to the following judgments:

- India Cement Ltd. v. State of T.N., (1990) 1 SCC 12 (7 Judges)  
 17. In Re C.P. and Berar Sales of Motor Spirit & Lubricants Taxation Act, 1938 [AIR 1939 FC 1 : 1939 FCR 18 : 180 IC 161] Gwyer, C.J. of the Federal Court of India relied on the observations of Lord Wright in James v. Commonwealth of Australia [1936 AC 578] and observed that a Constitution must not be construed in any narrow or pedantic sense, and that construction most beneficial to the widest possible amplitude of its powers, must be adopted. The learned Chief Justice emphasised that a broad and liberal spirit should inspire those whose duty it is to interpret the Constitution, but they are not free to stretch or pervert the language of the enactment in the interest of any legal or constitutional theory, or even for the purposes of supplying omissions or correcting supposed errors. A Federal Court will not strengthen, but only derogate from, its position, if it seeks to do anything but declare the law; but it may rightly reflect that a Constitution of a country is a living and organic thing, which of all instruments has the greatest claim to be construed ut res magis valeat quam pereat) ‘It is better that it should live than that it should perish’.
  
- Jaishri Laxmanrao Patil v. State of Maharashtra, (2021) 8 SCC 1 (5 Judges)  
 202. The first and primary rule of construction is that the intention of the legislature must be found in the words used by the legislature itself [Kanai Lal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907 : 1958 SCR 360] . Oliver Wendell Holmes Jr. has famously said in a letter, “I do not care what their intention was. I only want to know what the words mean.” [ Cited in Felix Frankfurter, “Some Reflections on the Reading of Statutes”, Columbia Law Review, Vol. 47, No. 4, 527-546 (1947), 538.] If the language of the meaning of the statute is plain, there is no need for construction as legislative intention is revealed by the apparent meaning [Adams Express Co. v. Commonwealth of Kentucky, 1915 SCC OnLine US SC 186 : 59 L Ed 1267 : 238 US 190 (1915)] . Legislative intent must be primarily ascertained from the language used in statute itself. [United States v. Goldenberg, 1897 SCC OnLine US SC 179 : 42 L Ed 394 : 168 US 95 (1897)]  
 203. In his book Purposive Interpretation in Law [ Aharon Barak, Purposive Interpretation in Law, [Sari Bashi (Tr.)], (Princeton : Princeton University Press, 2005).] , Aharon Barak says that constitutional language like the language of any legal text plays a dual role. On the one hand, it sets the limits of interpretation. The language of the Constitution is not clay in the hands of the interpreter, to be moulded as he or she sees fit. A Constitution is neither a metaphor nor a non-binding recommendation. On the other hand, the language of the Constitution is a source for its purpose. There are other sources, to be sure, but constitutional language is an important and highly credible source of information. The fact that we may learn the purpose of a Constitution from sources external to it does not mean that we can give a Constitution a meaning that is inconsistent with its explicit or implicit language. Interpretation cannot create a new constitutional text. Talk of Judges amending the Constitution through their interpretation of the Constitution is just a metaphor. The claim that a constitutional text limits but does not command is true only for the limited number of cases in which, after exhausting all interpretive tools, we can still extract more than one legal meaning from the Constitutional language and must therefore leave the final decision to

judicial discretion. In these exceptional cases, language provides a general direction but does not draw a precise map of how to reach the destination. Usually, however, constitutional language sets not only the limits of interpretation, but also its specific content

205. Ashok Bhushan, J. in his opinion at para 586 rightly held that the elementary principle of interpreting the Constitution or a statute is to look into the words used in the statute and when the language is clear, the intention of the legislature is to be gathered from the language used. He further opined that aid to interpretation is resorted to only when there is some ambiguity in words or expression used in the statute. Bhushan, J. in State (NCT of Delhi) v. Union of India [State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501] held that the Constitutional interpretation has to be purposive taking into consideration the need of the times and constitutional principles. The intent of Framers of the Constitution and object and purpose of Constitutional Amendment always throw light on the Constitutional provisions but for interpreting a particular constitutional provision, the Constitutional scheme and the express language employed cannot be given a go-by. He further held that the purpose and intent of the Constitutional provisions have to be found from the very constitutional provisions which are up for interpretation.

209. The logical corollary that flows from the judicial pronouncements and opinion of reputed authors is that the primary rule of construction is literal construction. If there is no ambiguity in the provision which is being construed there is no need to look beyond. Legislative intent which is crucial for understanding the object and purpose of a provision should be gathered from the language. The purpose can be gathered from external sources but any meaning inconsistent with the explicit or implicit language cannot be given.

From the aforesaid, it is clear that while interpreting a provision of the Constitution, if the language of the text is plain and obvious and there is no ambiguity, there is no requirement to look beyond the words of the said provision. It is not open to the Hon'ble Courts to read into the plain language of the Constitution as that may amount to distorting the intention of the makers of the Constitution and in effect, amend the Constitution, which is the sole prerogative of the Parliament.

From a plain reading of the words "*if he has been for not less than seven years an advocate or a pleader*" used in Article 233(2), it leads to the inescapable conclusion that the pre-requisite in order to be eligible for the post of District Judge under Article 233(2) is that a person has been an advocate / pleader for not less than 7 years. The language is plain and simple. No two interpretations are called for or are justified. The time spent in Judicial service cannot be included in fulfilling the mandate of the aforesaid unambiguous clause.

PLACE: NEW DELHI  
DATE: 21/09/2025

  
(ASHOK MATHUR)  
ADVOCATE FOR RESPONDENT NO.1

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISIDCTION  
REVIEW PETITION (CIVIL) NO. 385 OF 2021  
IN  
CIVIL APPEAL NO. 1700 OF 2020**

**IN THE MATTER OF:**

MADHUKAR SINGH

...PETITIONER

VERSUS

STATE OF UTTAR PRADESH & ANR.

...RESPONDENTS

**WRITTEN SUBMISSIONS ON BEHALF OF HIGH COURT OF**

**JUDICATURE AT ALLAHABAD**

**ADVOCATE FOR RESPONDENT NO. 2: JAGJIT SINGH CHHABRA**

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**IN THE SUPREME COURT OF INDIA  
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HIGH COURT OF JUDICATURE AT ALLAHABAD**

**I. FACTUAL BACKGROUND**

1. That the Hon'ble Supreme Court while dealing with the batch of matters involving the issue regarding the eligibility of members of the subordinate judicial service for appointment as District Judge as against the quota reserved for the members of Bar / Advocates by way of direct recruitment in the case of *Dheeraj Mor vs. Hon'ble High Court of Delhi*, (2020) 7 SCC 401 has held that the rules debarring judicial officers from staking their claim as against the posts reserved for direct recruitment from Bar are not *ultra vires* as rules are subservient to the provisions of the Constitution of India.
2. That the Petitioner and other judicial officers filed review petitions seeking review of the above-mentioned Judgement titled *Dheeraj Mor (supra)* for due consideration before an appropriate bench of

minimum five judges. Several other matters have also been connected by this Hon'ble Court with the aforementioned review petition.

3. That vide order dated 12.08.2025 in the batch of matters, this Hon'ble Court was pleased to frame the following issues and refer the aforesaid issues for consideration of a Constitution Bench of five Judges of this Court:
  - 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?
4. That thereafter, vide its order dated 12.09.2025, this Hon'ble Court framed the following additional issues:
  - 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?

**ISSUE-WISE SUBMISSIONS:**

**ISSUE 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?**

5. It is submitted that the Constitution of India itself in Article 233(2) prohibits the incumbent judicial officers from participating in the recruitment to the service by direct recruitment. The incumbent judicial officers can be considered for recruitment to the service by promotion either under sub-rule (a) or sub-rule (b) of Rule 5 of the U.P. Higher Judicial Service Rules, 1975 (hereinafter “**the 1975 Rules**”) and not under sub-rule (c) of Rule 5. Thus, when Article 233 itself provides that a person not already in the judicial service shall only be eligible to be appointed as a District Judge if he has been for not less than 7 years an advocate or a pleader, the petitioner cannot be permitted to contend that prohibiting a judicial officer from applying for the recruitment for service would result in violation of Articles 14,

16, 19 and 21 of the Constitution of India. Article 233 of the Constitution of India is reproduced herein below:

*“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.*

6. Thus, it is submitted that Rule 5(c) of the 1975 Rules is neither repugnant to Article 233(2) nor *ultra vires* Articles 14, 16, 19 nor 21 of the Constitution of India. Rather, Rule 5(c) of U.P. Higher Judicial Service Rules, 1975 is in harmony with Article 233(2) of the Constitution of India and the same has to be upheld on following grounds:

**I. Article 233 of the Constitution provides two sources of recruitment, one from judicial service and the other from advocates or pleaders**

7. It is submitted that Article 233 of the Constitution provides two sources of recruitment, one from judicial service and the other from advocates or pleaders. Article 233(1) provides for appointments by

way of posting and promotion. The members of the judicial service are eligible for appointment as against the post of District Judge only through mode of promotion. They can stake their claim as per rules for promotion or merit promotion as the case may be. However, they are not entitled for direct recruitment on quota reserved for advocates under Article 233(2).

8. It is submitted that 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. The appointing authority the Governor has to exercise the power of appointment in consultation with the High Court. The term “appointment” is broader and includes appointment by way of direct recruitment or by way of promotion, and sometimes it may also include, if so provided in the rules, by way of absorption.
9. It is submitted that Article 233(2) of the Constitution starts with a negative stipulation that a person “not already in the service of the Union or the State” shall only be eligible to be appointed as District Judge. The expression “in the service of the Union or the State” means judicial service. However, Article 233(2) provides that a person who is not in the service of the Union, shall be eligible only if he has been in practice, as an advocate or a pleader for 7 years; meaning thereby,

persons who are in service are distinguished category from the incumbent who can be appointed as District Judge on 7 years' practice as an advocate or a pleader. Thus, the expression "service of the State or the Union" refers to the source of recruitment. Therefore, Article 233 of the Constitution itself provides two sources of recruitment, one from judicial service and the other from advocates or pleaders and these two sources cannot be intermingled as claimed by the incumbent judicial officer.

**II. Classification or distinction made between advocates and judicial officers is constitutionally sanctioned**

10. It is submitted that the Article 233(2) unambiguously and unequivocally draws a distinction between the two sources of appointment to the post of District Judge. For one i.e. Advocates, eligibility was spelt out in negative phraseology i.e. not less than seven years' practice; for judicial officers, no eligibility condition has been stipulated in Article 233(2). The aforesaid clearly meant that incumbent civil judges are not eligible to be appointed by direct recruitment as they did not and could not be considered advocates with seven years' practice, once they entered the judicial service. The only channel for appointment of incumbent civil judges as district

judges was in accordance with the rules framed by the High Court, for promotion of officers in the judicial service as District Judges.

11. It is submitted that the classification or distinction made between advocates and judicial officers under Article 233(2) is a constitutionally sanctioned one, which is clear from a plain reading of Article 233 itself. Firstly, Article 233(1) provides of both appointments and *promotions*. Secondly, the classification is evident from the description of the two categories in Article 233(2): one “*not already in the service of the Union or of the State*” and the other “*if he has been for not less than seven years as an advocate or a pleader*”. Both categories are to be “*recommended by the High Court for appointment*”.
12. It is submitted that the intent behind Article 233(2) is that in both cases, there are clear exclusions i.e. advocates with less than seven years’ practice (which meant, conversely that those with more than seven years’ practice were eligible) and those holding civil posts under the State or the Union. The omission of judicial officers only meant that such of them, who were recommended for promotion, could be so appointed by the Governor. The conditions for their promotion were left exclusively to be framed by the High Courts.

13. It is submitted that since the Constitution of India vide Article 233(2) itself makes a distinction between advocates on the one hand, and judicial officers, on the other, there is no discrimination, as alleged by the incumbent civil judges. The argument of discrimination is also unfounded as a lion's share of posts are to be filled by those in the judicial service. It is submitted that for the past two decades, only a fourth (25%) of the posts in the cadre of District Judges (in every State) are earmarked for advocates; the balance 75% to be filled exclusively from amongst judicial officers. 50%, (out of 75%) is to be filled on the basis of seniority-cum-merit, whereas 25% (of the 75%) is to be filled by departmental examination. This examination is confined to members of the judicial service of the State concerned. Further, the decision of this Hon'ble Court in *All India Judges' Assn. case*, reduced the limited departmental examination quota (out of turn promotion quota) from 25% to 10% which took effect from 01.01.2011. Thus, cumulatively, even today, judicial officers are entitled to be considered for appointment, by promotion, as District Judges, to the extent of 75% of the cadre relating to that post, in every State.
14. Further, it is submitted that this Hon'ble Court in *Satya Narain Singh Vs. High Court of Allahabad* (1985) 1 SCC 225 has already correctly

appreciated the relevant provisions and held that the dichotomy between the two streams meant that those in one stream i.e. judicial service could not compete for vacancies falling in the quota earmarked for advocates. It is therefore submitted that the 1975 rules prescribing the exclusion, from consideration of judicial officers, to the post of District Judges, in the quota earmarked for Advocates with the requisite standing, or practice, conforms to the mandate of Articles 233 to 235 and is not discriminatory, and hence the aforesaid rules are valid.

**III. If judicial officers are permitted to compete in the quota earmarked for the advocates without the converse situation, the result would be rank discrimination, which is impermissible under the Constitutional scheme**

15. It is submitted that through the 1975 Rules a dichotomy is maintained, and two distinct sources for appointment as envisaged under Article 233(2) is given effect to. Thus, enabling only judicial officers to compete in the quota earmarked for advocates could potentially result in no one from the stream of advocates with seven or more years' practice, being selected. The same would be contrary to the text and mandate of Article 233(2), which clearly contemplates that such category of candidates would always be eligible and occupy the post of district judge.

16. In terms of Article 233(2), clear quotas for both sources have been earmarked under the 1975 Rules. If one of those in one stream or source, i.e. judicial officers, are permitted to compete in the quota earmarked for the other (i.e. advocates) without the converse situation (i.e. advocates competing in the quota earmarked for judicial officers), the result would be rank discrimination, which is impermissible under the Constitutional scheme.

**IV. Article 233(2) furthers the cherished goal of independence of judiciary**

17. The Constitution of India unambiguously envisages separation of the judiciary from executive in terms of Article 50 of the Constitution. It mandates the State to take steps to separate the judiciary from the executive in the public services of the State.
18. Further, the Constitution makers were aware that the judicial branch had to be independent, and at the same time, reflect a measure of diversity of thought, and approach. This is borne out by the eligibility conditions spelt out clearly in regard to appointments at every level of both the lower and higher judiciary: the District Court, the High Courts and the Supreme Court. In regard to judicial positions in each of these institutions, the Constitution enables appointments, from amongst members of the Bar, as its Framers were acutely conscious

that practising advocates reflect independence and are likely to offer a useful attribute i.e. ability to think differently and have novel approaches to interpretation of the laws and the Constitution, so essential for robustness of the judiciary, as well as society as a whole.

V. **Article 233(2) does not provide eligibility of incumbent civil judges for consideration as a District Judge on a purpose**

19. It is submitted that Article 233(2) does not provide the eligibility of incumbent civil judges for consideration as a District Judge concerning a post requiring 7 years' practice as an advocate or a pleader on a purpose. Requirement of 7 years' experience for advocate or pleader is qualified with a rider that he should not be in the service of the Union or the State i.e. in judicial service. No person from the Executive Service can be promoted as District Judge.
20. It is submitted that the omission in regard to spelling out the eligibility conditions vis-a-vis judicial officers, to the post of District Judge, is clearly by design. This subject-matter is covered by three provisions: Article 233(1) of the Constitution, which refers to *promotions* to the post of District Judge; Article 234, which, like Article 233(1) constitutes the Governor as the appointing authority in respect of judicial posts or services, (other than District Judges), and like Article 233(1), subject to recommendation of the High Court concerned. This

position is most definitely brought home by the fact that Article 235 vests in the High Courts the power of supervision and control of the judicial service, *“including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge”*. The corollary to this is that the Governor is the appointing authority for the post of District Judge, and other judicial posts; both are to be filled after prior consultation with the High Court, and crucially, the promotion of judicial officers, to the post of District Judge, is regulated by conditions framed by the High Court.

**VI. Persons in judicial service are eligible to be appointed as District Judge only by way of promotion or by way of merit promotion**

21. A person in judicial service is eligible to be appointed as District Judge, but it is only by way of promotion or by way of merit promotion, which concept has been evolved in *All India Judges Assn.* (3), (2002) 4 SCC 247. In the cadre of District Judge 25 per cent of the posts have to be filled by direct recruitment amongst the advocates based on a competitive examination, both written and viva voce. It is apparent from the decision of *All India Judges Assn.* case that in order to prove the merit of in-service candidates, a limited departmental competitive examination has also been provided, so that

they can take march to hold the post of District Judges on the basis of their merit. They are not deprived of any opportunity in their pursuit once they have joined the judicial stream, they are bound to follow the provisions. It was open to them not to join the subordinate services. They could have staked a claim by continuing to be an advocate to the Higher Judicial Service as against the post of District Judge. However, once they chose to be in service, if they had seven years' experience at Bar before joining the judicial service, they are disentitled to lay a claim to the 25% quota exclusively earmarked for Advocates; having regard to the dichotomy of different streams and separate quota for recruitment. Opportunities are provided not only to in-service candidates but also to practising candidates by the constitutional scheme to excel and to achieve what they aspire i.e. appointment as District Judge. However, when someone joins a particular stream i.e. a judicial service by his own volition, he cannot sail in two boats. His chance to occupy the post of District Judge would be by a twofold channel, either in the 50% seniority/merit quota, by promotion, or the quota for limited competitive examination. The direction issued by the Supreme Court of 25 per cent of the post to be filled by limited departmental competitive

examination has been reduced to 10 per cent by this Hon'ble Court in *All India Judges Assn.(3)* case.

22. Therefore, it is submitted that a person in judicial service is not eligible for being appointed as against the quota reserved for advocates. Once he has joined the stream of service, he ceases to be an advocate. The requirement of 7 years of minimum experience has to be considered as the practising advocate as on the cut-off date, the phrase used is a continuous state of affair from the past. The context "has been in practice" in which it has been used, it is apparent that the provisions refer to a person who has been an advocate or pleader not only on the cut-off date but continues to be so at the time of appointment. Thus, in-service candidates cannot apply as against the post reserved for the advocates/pleaders as he has to be in continuous practice in the past and at the time when he has applied and appointed.

**VII. Recruitment from the Bar also has a purpose behind it**

23. The recruitment from the Bar also has a purpose behind it. The practising advocates are recruited not only in the higher judiciary but in the High Court and Supreme Court as well. There is a stream of appointment for in-service candidates of higher judiciary in the High Court and another stream is clearly earmarked for the Bar. The members of the Bar also become experts in their field and gain

expertise and have the experience of appearing in various courts. Thus, not only in the higher judiciary, in-service candidates of subordinate judiciary are given the opportunity as against 75 per cent to be appointed by way of promotion as provided in *All India Judges Assn.* case, and the members of the Bar are given the opportunity as against 25 per cent of the post having 7 years' standing at Bar.

24. It is submitted from Article 233(2) it is clear that the Constitution makers, consciously wished that members of the Bar, should be considered for appointment at all three levels i.e. as District Judges, High Courts and this Hon'ble Court. This was because counsel practising in the law courts have a direct link with the people who need their services; their views about the functioning of the courts, is a constant dynamic. Similarly, their views, based on the experience gained at the Bar, injects the judicial branch with fresh perspectives; uniquely positioned as a professional, an advocate has a tripartite relationship: one with the public, the second with the court, and the third, with her or his client. A counsel, learned in the law, has an obligation, as an officer of the court, to advance the cause of his client, in a fair manner, and assist the court. Being members of the legal profession, advocates are also considered thought leaders. Therefore, the Constitution makers envisaged that at every rung of the judicial

system, a component of direct appointment from members of the Bar should be resorted to. For all these reasons, it is submitted that members of the judicial service of any State cannot claim to be appointed for vacancies in the cadre of District Judge, in the quota earmarked for appointment from amongst eligible Advocates, under Article 233.

**VIII. Incumbent judicial officers cannot sustain their claim for direct recruitment under Article 233(2) on the ground of deprivation of opportunity.**

25. It is submitted that once the Constitution envisages separate sources of recruitment, no case can be made out of deprivation of the opportunity. Once service is joined, one has to go by the service rules, and it was open to such an incumbent to practise and stake claim in various States while remaining in practice. 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 service of a judicial officer is counted for fixation of pension, there is no valid reason as to why the experience at the Bar cannot be treated as equivalent for the same purpose. They cannot be deprived of their quota.

**IX. Incumbent judicial officers cannot sustain their claim for direct recruitment under Article 233(2) on the ground of violation of basic human rights.**

26. It is submitted that the plea of the incumbent judicial officers with respect to the violation of basic human rights by referring to the findings of the Advisory Panel on Judicial Diversity in the UK in 2010 is unsubstantiated. The aforesaid provides “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.” However, there is no violation of equal opportunity in the present case. There is a wide search for talent for inducting in the judicial service as well as in direct recruitment from Bar, and the best candidates are identified and recruited. In *State of Bihar & Anr. v. Bal Mukund Sah & Ors.*, (2000) 4 SCC 640, this Hon’ble Court has observed that onerous duty is cast on the High Court under the constitutional scheme. It has been given a prime and paramount position in the matter with the necessity of choosing the best available talent for manning the subordinate judiciary. Thus, there is no violation of any principle of the Universal Declaration of Human Rights and the International Covenant on Civil

and Political Rights and International Covenant on Economic, Social and Cultural Rights.

27. Further, it is submitted that reliance upon Article 2 of the Universal Declaration of Human Rights, 1948, which 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” is also unsubstantiated. The aim of the Constitution of the India is also as aforesaid, and there is no violation of any of human rights. In service jurisprudence, it is always permissible to provide different sources of recruitment and quotas along with a qualification. Equal opportunity is given, and seniority and competence are criteria for promotion. Thus, no case of violation of any of the aforesaid principles has been made out.
28. Reliance is placed upon the following judgments in support of the above submissions:
  - a) *Rameshwar Dayal v. State of Punjab*, (1961) 2 SCR 874: AIR 1961 SC 816
  - b) *Chandra Mohan v. State of U.P.*, (1967) 1 SCR 77: AIR 1966 SC 1987
  - c) *High Court of P&H v. State of Haryana*, (1975) 1 SCC 843

- d) *Satya Narain Singh Vs. High Court of Allahabad* (1985) 1 SCC 225
- e) *All India Judges Assn. (1) v. Union of India*, (1992) 1 SCC 119
- f) *All India Judges Assn. v. Union of India*, (1998) 8 SCC 771
- g) *State of Bihar & Anr. v. Bal Mukund Sah & Ors.*, (2000) 4 SCC 640
- h) *All India Judges Assn. (3) v. Union of India* (2002) 4 SCC 247
- i) *Deepak Aggarwal v. Keshav Kaushik*, (2013) 5 SCC 277

**ISSUE 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?**

29. It is submitted that this Hon'ble Court in its judgment in *Ashok Kumar Sharma v. Chander Shekhar* (1997) 4 SCC 18 has categorically held that in cases where application has been sought for fulfilment of a particular post, and the last date for submitting such application has been specified, the eligibility of candidates shall be adjudged from such last date alone. Acquirement of qualification subsequent to such last date shall not be considered. The Hon'ble Supreme Court in the aforementioned judgment held as under:

*“6....The proposition that where applications are called for prescribing a particular date as the last date for filing the*

*applications, the eligibility of the candidates shall have to be judged with reference to that date and that date alone, is a well-established one. A person who acquires the prescribed qualification subsequent to such prescribed date cannot be considered at all. An advertisement of notification issued/published calling for application constitutes a representation to the public and the authority issuing it is bound by such representation. It cannot act contrary to it.*

*7. One reason behind this proposition is that if it were known that persons who obtained the qualifications after the prescribed date but before the date of interview would be allowed to appear for the interview, other similarly placed persons could also have applied. Just because some of the person had applied notwithstanding that they had not acquired the prescribed qualifications by the prescribed date, they could not have been treated on a preferential basis.*

*8. Their applications ought to have been rejected at the inception itself. This proposition is indisputable and in fact was not doubted or disputed in the majority Judgment. This is also the proposition affirmed in Rekha Chaturvedi (Smt.) v. University of Rajasthan and Ors. (1993) 1 LLJ 617 (SC). The reasoning in the majority opinion that by allowing the 33 respondents to appear for the interview, the Recruiting Authority was able to get the best talent available and that such course was in furtherance of public interest is, with respect, an impermissible justification. It is, in our considered opinion, a clear error of law and an error apparent on the face of the record. In our opinion, R.M. Sahai, J. (and the Division Bench of the High Court) was right in*

*holding that the 33 respondents could not have been allowed to appear for the interview.”*

30. Despite a clear stipulation regarding the consideration of date of eligibility for appointment to a particular post in the aforesaid judgment in *Ashok Kumar Sharma* (Supra), a Division Bench of this Hon’ble Court in *Vijay Kumar Mishra v. High Court of Patna*, (2016) 9 SCC 313 failed to consider the ratio laid down by the 3-judge bench in *Ashok Kumar Sharma* (Supra) and held that for appointment of District Judges by way of direct appointment under Article 233(2), the question of eligibility arises only at the time of appointment of such person.
31. Therefore, there is clear authority to the proposition that eligibility of any candidate is to be reckoned, not from the date of his or her selection, but in terms of the rules, or the advertisement for the post.

**ISSUE 3: 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?**

32. Foremost, it is submitted that Article 233 of the Constitution provides two sources of recruitment, one from judicial service and the other

from advocates or pleaders. Article 233(1) provides for appointments by way of posting and promotion. The members of the judicial service are eligible for appointment as against the post of District Judge only through mode of promotion. They can stake their claim as per rules for promotion or merit promotion as the case may be. However, they are not entitled for direct recruitment on quota reserved for advocates under Article 233(2).

33. Since, the incumbent civil judges are not entitled for direct recruitment on quota reserved for advocates under Article 233(2), it is submitted that Article 233(2) nowhere provides eligibility of in-service candidates for consideration as a District Judge concerning a post requiring 7 years' practice as an advocate or a pleader. Requirement of 7 years' experience for advocate or pleader is qualified with a rider that he should not be in the service of the Union or the State i.e. in judicial service. No person from the executive service can be promoted as District Judge.
34. It is submitted that the omission in regard to spelling out the eligibility conditions vis-a-vis judicial officers, to the post of District Judge, is clearly by design. This subject-matter is covered by three provisions: Article 233(1) of the Constitution, which refers to *promotions* to the post of District Judge; Article 234, which, like Article 233(1)

constitutes the Governor as the appointing authority in respect of judicial posts or services, (other than District Judges), and like Article 233(1), subject to recommendation of the High Court concerned. This position is most definitely brought home by the fact that Article 235 vests in the High Courts the power of supervision and control of the judicial service, *“including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of District Judge”*. The corollary to this is that the Governor is the appointing authority for the post of District Judge, and other judicial posts; both are to be filled after prior consultation with the High Court, and crucially, the promotion of judicial officers, to the post of District Judge, is regulated by conditions framed by the High Court.

**ISSUE 4: 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?**

35. Foremost, it is submitted that Article 233 of the Constitution provides two sources of recruitment, one from judicial service and the other

from advocates or pleaders. Article 233(1) provides for appointments by way of posting and promotion. The members of the judicial service are eligible for appointment as against the post of District Judge only through mode of promotion. They can stake their claim as per rules for promotion or merit promotion as the case may be. Since, they are not entitled for direct recruitment on quota reserved for advocates under Article 233(2), the eligibility criteria fixed for advocates under Article 233(2) is neither applicable nor can they claim any benefit of the same.

36. That in view of the aforesaid submissions, it is humbly prayed before this Hon'ble Court that the review petition filed by the Petitioner should be dismissed being devoid of any merit.

**Date: 21.09.2025**

  
**(JAGJIT SINGH CHHABRA)**

**Advocate for the Hon'ble High  
Court of Judicature at Allahabad**

## IN THE SUPREME COURT OF INDIA

## REVIEW JURISDICTION

REVIEW PETITION (C.) NO. 669 OF 2021

IN

WRIT PETITION (C.) NO. 999 OF 2019

IN THE MATTER OF :

JUBIYA A. AND ORS.

... PETITIONERS

VERSUS

THE HIGH COURT

OF KERALA &amp; ORS.

... RESPONDENTS

**WRITTEN SUBMISSIONS ON BEHALF OF RESPONDENT****NOS. 3 & 5 TO 9**

1. The following issues have been referred for consideration by the Constitutional Bench in the present set of matters:

- 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?
- 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?

2. It is submitted that the issue that arises for consideration has to be considered in light of the following categories of candidates for appointment as District Judge against the quota reserved for Bar by way of direct recruitment:

**Category I** - Persons who have at least 7 years of practice as an Advocate and were “factually enrolled” with the Bar at the time of application as well as appointment.

**Category II** – Persons who have completed 7 years of years of practice as an Advocate, but were later recruited in the judicial service of the Union or State.

**Category III** – Persons who have completed 7 years by combining their experience in the judicial service of the Union or State and as Advocate.

**Category IV** – Persons who have completed 7 years by their experience in the judicial service of the Union or any State.

### 3. Scheme of the Constitution

- a) Chapter VI of the Constitution deals with Subordinate Courts. Article 233 is a self-contained provision dealing with the Appointment of District Judges.
- b) Article 233(1) for appointments by way of posting and promotion to the post of District Judge by the appointing authority the Governor of the State, in consultation with the High Court. Article 233(2) starts with a negative stipulation and provides that a person not already in service of the Union or of the State shall be eligible to be appointed as District Judge if (i) he has been an advocate/pleader for not less than 7 years, and (ii) is recommended by the High Court.
- c) 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.

d) Thus, the Constitution itself delineates two distinct sources of recruitment to the post of District Judge, namely:

1. From the Subordinate Judiciary other than District Judges/ Service of the Union or of the State, in consultation with the High Court (by promotion/ selection).
2. From Advocates with 7 years' practice, on the recommendation of the High Court (by direct recruitment).

e) This dichotomy has been repeatedly upheld by the Hon'ble Supreme Court in the judgment of Constitution Bench in *Rameshwar Dayal v. State of Punjab*, 1960 SCC OnLine SC 123, *Chandra Mohan v. State of Uttar Pradesh* 1967 SCR (1) 77 (CB) cited with approval in *Satya Narain Singh v. Allahabad High Court* (1985) 1 SCC 225; and *Dheeraj Mor v. High Court of Delhi* (2020) 7 SCC 401.

4. Eligibility to be reckoned, not from the date of his or her appointment, but in terms of the Article 233 of the Constitution read with Recruitment Rules of the State or the advertisement for the post

a) Eligibility under Article 233(2) must be satisfied both at the stage of application and at the time of appointment. The judgment in *Vijay Kumar Mishra v. High Court of Judicature at Patna* (2016) 9 SCC 313, was overruled by the three-judge of this Hon'ble Court in *Dheeraj Mor v. High Court of Delhi* (2020) 7 SCC 401 insofar as it makes a distinction between consideration, of a candidate's eligibility, at the stage of selection, and eligibility reckonable at the time of appointment, is incorrect. The eligibility of any candidate is to be reckoned, not from the date of his or her selection, but in terms of the rules, or the advertisement for the post. See *Ashok Kumar Sharma & Ors. vs. Chander Shekhar & Ors* 1997 (4) SCC 18.

- b) The distinction sought to be made, between “selection” and “appointment” in the context of eligibility, is without foundation. A selection process begins with advertisement, calling for applications from eligible candidates. Eligibility is usually defined with reference to possession of stipulated qualifications, experience, and age, as on the last date (of receipt of applications, or a particular specified date, etc). Anyone fulfilling those eligibility conditions, with reference to such date, would be ineligible. Therefore, the observation that the right to participate in the selection process, without possessing the prescribed eligibility conditions, is guaranteed, is not correct; the right is guaranteed only if the candidate concerned fulfils the requisite eligibility criteria, on the stipulated date. [See *Dheeraj Mor (supra)*, para 88]

## 5. Continuous Practice Requirement

- a) The construction of the expression, “*if he has been for not less than seven years an advocate*” in Article 233(2) of the Constitution, means seven years as an advocate immediately preceding the application and not seven years any time in the past. This is clear by use of ‘has been’. The present perfect continuous tense is used for a position which began at some time in the past and is still continuing. Therefore, one of the essential requirements articulated by the above expression in Article 233(2) is that such person must with requisite period be continuing as an advocate on the date of application. [See *Deepak Aggarwal v. Keshav Kaushik and Ors.* (2013) 5 SCC 273, para 89, 102 cited with approval in *Dheeraj Mor (supra)*]
- b) In the case of *Rameshwar Dayal (supra)*, the Constitutional Bench also affirmed that that the word “advocate” in clause (2) of Article 233 means an Advocate of a Court in India and the appointee must be such an advocate at the time of his appointment, and the only question to be considered was

whether they can count in the period of seven years the period of practice in or under the Lahore High Court. In this context, this Hon'ble Court while holding the appointment of the Respondents valid made the following relevant observations :

*“14. .... 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. They were Advocates enrolled in the Lahore High Court; this is not disputed. ....They did not cease to be advocates at any time or stage after August 15, 1947, and they continued to be advocates of the 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.”*

- c) Hence, the expression *“has been for not less than seven years an advocate”* requires continuous practice up to the cut-off date with no break in service; a person who has left practice and joined service cannot fall back on earlier practice. [Also see *Dheeraj Mor (supra)* at para 47]

## **6. Judicial Officers are not eligible for recruitment under Article 233(2) and such disqualification did not violate Article 14 of the Constitution**

- a) 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 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. [See *Rameshwar Dayal (supra)* at para 12]

- b) The Constitution Bench in *Chandra Mohan (supra)* *inter alia* held the Rules framed by the Governor of the State of Uttar Pradesh empowering him to recruit district judges from the "judicial officers" as unconstitutional and categorically observed that only advocates can be appointed as direct recruits.
- c) Article 233(2) provides for the modes of recruitment of District Judges. The first mode is from persons who are in the judicial service of the Union or of the State. The expression “*already in the service of the Union or of the State*” has been interpreted by the Supreme Court to mean judicial service. 'Service' does not mean any service but judicial service. The second mode of recruitment is from the Bar, of persons who have practised for at least seven years as advocate or pleader. The expression “service” in Article 233(2) had been held in the earlier decisions in *Chandra Mohan (supra)* and *Satya Narain (supra)* to mean judicial service.
- d) In *Satya Naraian Singh (supra)*, the Hon’ble Supreme Court clearly held that the disqualification of those holding judicial posts from applying as Advocates, under Article 233 (2) did not violate Article 14:

*“3..... in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges, while in the case of candidates who are members of a Judicial Service the 7 years' rule has no application but there has to be consultation with the High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. Obviously the same ship cannot sail both the streams simultaneously.”*

- e) The following observations made by the Hon'ble Supreme Court in *All India Judges' Assn. (3) v. Union of India*, (2002) 4 SCC 247 at page 269 are relevant :

*“27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment.....While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned: 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority....”*

The Hon'ble Supreme affirmed the above cadre structure of 25% seats for direct recruitment from the Bar in *All India Judges' Assn. (3) v. Union of India*, (2010) 15 SCC 170.

## 7. Effect of The Constitution (Twentieth Amendment) Act, 1966

- a) Article 233-A was inserted by the Constitution (Twentieth Amendment) Act, 1966 to validate past appointments of District Judges that may not have strictly complied with Article 233 or 235, with effect from 22.12.1966. In this behalf, reference is made to the Statement of Objects

and Reasons to the Constitution (Twenty-third Amendment) Bill, 1966, which led to the Constitution (Twentieth Amendment) Act, 1966 as follows:

*“STATEMENT OF OBJECTS AND REASONS*

*Appointment of district judges in Uttar Pradesh and a few other States have been rendered invalid and illegal by a recent judgment of the Supreme Court on the ground that such appointments were not made in accordance with the provisions of article 233 of the Constitution. In another judgment, the Supreme Court had held that the power of posting of a district judge under article 233 does not include the power of transfer of such judge from one station to another and that the power of transfer of a district judge is vested in the High Court under article 235 of the Constitution. As a result of these judgments, a serious situation has arisen because doubt has been thrown on the validity of the judgments, decrees, orders and sentences passed or made by these district judges and a number of writ petitions and other cases have already been filed challenging their validity. The functioning of the district courts in Uttar Pradesh has practically come to a standstill. It is, therefore, urgently necessary to validate the judgments, decrees, orders and sentences passed or made heretofore by all such district judges in those States and also to validate the appointment, posting, promotion and transfer of such district judges barring those few who were not eligible for appointment under article 233.”*

- b) Article 233A provides that no appointment, posting, promotion or transfer of a person as District Judge prior to 1966 Amendment Act shall be deemed illegal merely because it was not in accordance with Articles 233/235. The provision was retrospective and curative, designed to protect past actions i.e., judgments, decrees, orders and sentences passed by, and the appointment, posting, promotion and transfer of, such district judges who were not eligible for appointment under article 233; not to alter the substantive scheme of Article 233 prospectively. In ***Chandra Mohan v. State of U.P., (1976) 3 SCC 560*** at page 563, the five-judge bench of the Hon’ble Supreme Court clarified that:

*“14. It is not disputed that the Constitution (Twentieth Amendment) Act did not validate the rules which were declared unconstitutional by this Court.”*

- c) Hence, Article 233-A does not dilute the quota of Bar or confer eligibility on judicial officers for direct recruitment in the appointment of District Judge.

## 8. Conclusion:

- a) It is submitted that the issues that have been referred for consideration before this Hon’ble Court are squarely covered by the judgment of the Constitutional Bench in ***Rameshwar Dayal (supra)***, ***Chandra Mohan (supra)*** cited with approval by the three-judge Bench of this Hon’ble Court ***Deepak Mor (supra)***. The only constitutionally valid interpretation of Article 233(2) is that direct recruitment of District Judges from the Bar quota must be confined strictly to practicing Advocates with 7 years’ continuous practice at the Bar, enrolled at the time of application and appointment. Judicial officers who are already in service, regardless of prior practice as Advocate, cannot claim eligibility under Article 233(2). Any other construction would lead to anomalous and absurd consequences such as a junior member of the Subordinate Judicial Service taking a leap, as it were, over senior members of the Judicial Service with long records of meritorious service.
- b) The constitutional design of Article 233 read with Article 234 & Article 235 ensures two distinct channels for entry into the cadre of District Judges. The Bar quota is exclusively for practicing Advocates with 7 years’ continuous practice at the time of application and appointment. Judicial officers must progress through promotion/limited competitive examination; they cannot claim appointment against Bar quota. **What cannot be done directly, cannot be done indirectly.**

c) Hence, in view of the aforesaid statutory position and judgments of this Hon'ble Court, it is respectfully submitted that:

**Category I:** Eligible

**Category II:** Not eligible under Article 233(2); as they were not “factually enrolled” with the Bar at the time of application; eligible only for promotion under Article 233(1) read with Article 234 & 235 of the Constitution.

**Category III:** Not eligible under Article 233(2), as only a person having not less than 7 years of practice as Advocate or pleader is eligible.

**Category IV:** Not eligible under Article 233(2); eligible only for promotion under Article 233(1) read with Article 234 & 235 of the Constitution.

Drawn By:

Filed By:

Mallika Agarwal

Advocate



John Mathew

Advocate-On-Record

**IN THE SUPREME COURT OF  
INDIA  
CIVIL ORIGINAL JURISDICTION  
REVIEW PETITION No. 781 of 2021**

**IN  
WRIT PETITION (C) NO. 316 OF 2017**

**IN THE MATTER OF:**

Kannoju Murali Mohan.

...Petitioner

Versus

The High Court for the State of Telangana, Hyderabad  
Rep. by Registrar General and Ors.

...Respondents

WRITTEN SUBMISSIONS ON BEHALF OF THE HIGH COURT FOR  
THE STATE OF TELANGANA & ORS. (RESPONDENTS)

[FOR INDEX PLEASE SEE INSIDE]

ADVOCATE FOR THE RESPONDENTS: **SINDOORA VNL**

**IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION  
REVIEW PETITION No. 781 of 2021  
IN  
WRIT PETITION (C) NO. 316 OF 2017  
IN THE MATTER OF:**

Kannoju Murali Mohan.

...Petitioner

Versus

The High Court for the State of Telangana, Hyderabad  
Rep. by Registrar General and Ors.

...Respondents

**BRIEF WRITTEN SUBMISSIONS ON BEHALF OF THE HIGH COURT FOR THE  
STATE OF TELANGANA & ORS. (RESPONDENTS)**

1. The present proceedings arise out of a number of review petitions and writ petitions before this Hon'ble Court regarding the interpretation of Article 233 of the Constitution of India. Vide orders dated 12.08.2025 and 12.09.2025<sup>1</sup>, the Hon'ble Court was pleased to frame the following questions for consideration:
  - a. 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?
  - b. 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?
  - c. 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?
  - d. 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

<sup>1</sup> Orders dated 12.08.2025 and 12.09.2025 in Civil Appeal No. 3947 of 2020 and batch titled "*Rejanish K.V. vs K. Deepa & ors.*"

seven years would be eligible for appointment as District Judge under Article 233 of the Constitution of India?

2. The present written submissions are being filed on behalf of the Respondents in the abovecaptioned matter, **opposing** the proposition that the Members of Judicial Service can also appear for the post of District Judge (by way of direct appointment) and the proposition that for counting the seven years' experience, the experience at the Bar of the Civil Judge should be taken into consideration.

#### **I. EVOLUTION OF ARTICLE 233 IN ITS PRESENT FORM**

3. The history behind Article 233 is important to be noted for a clear understanding of the intent behind its language and form. The precursor of Article 233 of the Constitution of India is Section 254 of the Government of India Act, 1935. However, the reason for inclusion of Section 254 needs to be seen, for the purpose of the present proceedings.

- **Government of India Act, 1915 and Government of India Act, 1919**

4. The judicial system under the British Rule in India was reorganised under the Government of India Act, 1915, (hereinafter referred to as the “1915 Act”) stemming from a demand for higher inclusion of Indians in Civil Services in India. This Act established High Courts in India, and made provisions for superintendence of the High Courts over the subordinate courts within its jurisdiction.<sup>2</sup> Further, the 1915 Act also made the position of “District or Sessions Judge” reserved to be filled by a member of the Indian Civil Service.<sup>3</sup>
5. Subsequently, the Civil Services in India came under detailed review by the Royal

<sup>2</sup> Section 101 read with Section 107 of the Government of India Act, 1915

<sup>3</sup> Section 98 read with the Third Schedule of the Government of India Act, 1915

Commission on the Public Services presided over by Lord Islington (hereinafter referred to as the “Islington Commission”) which made its Report on the 14th August, 1915, and specifically stated that the witnesses before the Commission demanded two things : (1) recruitment from the Bar to the superior judicial service, namely, the District judgeship; and (2) the separation of the judiciary from the executive.<sup>4</sup>

6. Certain changes were brought in by way of the Government of India Act, 1919, which notably provided for establishment of a Public Service Commission<sup>5</sup>.
7. Subsequently, by its Resolution dated 01.12.1920<sup>6</sup>, the Government of India laid down five methods of recruitment for the Indian Civil Service, including appointments to posts ordinarily held by its members – (i) open competitive examinations in London (ii) separate competitive examinations in India (iii) nomination in India to satisfy provincial and communal representation (iv) promotion from the Provincial Civil Service and (v) appointments from the bar. While discussing appointments from the Bar, the Resolution stated as follows:

#### Appointments from the Bar :

Local Governments already have power under the rules laid down in the Home Department Notification No 596, dated the 21st June, 1918, to appoint persons who are not members of the Provincial Service up to one-fourth of the total number of listed appointments. This power will be utilised by them as an experimental measure to appoint District Judges direct from the Bar. It is hoped ultimately to fill no less than 40 posts in this way, should qualified men be available. Members of the Bar will, however, be appointed to posts in excess of 25

<sup>4</sup> Judicial note was taken of the contents of the Islington Commission Report by a Constitution Bench of this Hon’ble Court in *State of W.B. v. Nripendra Nath Bagchi*, (1966) 1 SCR 771 @ para 9

<sup>5</sup> Section 38 of the Government of India Act, 1919

<sup>6</sup> Government of India Resolution titled “The Public Services Commission – Organisation and Recruitment”, dated 01.12.1920

per cent of the total number of such appointments only as new posts are created and with due regard to the claims of existing members of the Civil Service. Thus the right of these officers will be duly safeguarded as was expressly provided for by Section 36(2) of the Government of India Act, 1919. At the same time there will be no reduction in the number of posts open to men promoted from Provincial Civil Service. Should the experiment prove a success, (and on this point the opinion of High Courts will be ascertained from time to time) the full number i.e, 40 will eventually be made available for persons from the Bar. For the purposes of these appointments Vakils and Advocates of High Courts and Pleaders of Chief Courts will be eligible as well as Barristers.

8. Subsequent efforts to streamline the governance in India brought about the White Paper of 1933<sup>7</sup>, which was, in turn, discussed by the Joint Committee on Indian Constitutional Reform<sup>8</sup> (hereinafter referred to as the “Joint Committee 1934”) in its sessions between 1933-1934.
9. Although the topic of subordinate judiciary was not discussed in the White Paper of 1933, the Joint Committee 1934 looked into the necessity of securing independence of the subordinate judiciary. While looking into the aspect of appointments to the post of District Judges, the Joint Committee 1934 noted and recommended as follows:<sup>9</sup>

“In the case of District Judges or additional District Judges, first appointment should, if the candidate is a member of the Indian Civil Service, be made by the Governor on the recommendation of the Minister, after consultation with the High Court. A recommendation by the Minister for the appointment of a member of the subordinate judicial service should only be made with the approval of the Public Service Commission and of the High Court. A recommendation for a direct

<sup>7</sup> White Paper on Indian Constitutional Reform, 1933

<sup>8</sup> Report of the Joint Committee on Indian Constitutional Reform, Volume I Part I, Session 1933-1934

<sup>9</sup> *ibid* @ pg. 202 para 340

appointment from the Bar should be made from among persons nominated by the High Court, subject to any general regulations in force regarding communal proportions. A District Judge should only be promoted (except in the case of automatic time scale promotions) on a recommendation by the Minister after consultation with the High Court ; and the same rule should apply to postings. In all the cases covered by this paragraph we think that the Governor should have a discretion to reject a recommendation if he does not concur with it.”

(emphasis supplied)

10. These recommendations of the Joint Committee 1934 became the basis for the Government of India Act, 1935.

- **Government of India Act, 1935**

11. Pursuant to the recommendations of the Joint Committee 1934, the Government of India Act, 1935 was passed. Section 254 of the Government of India Act, 1935, while carrying out the recommendation of the Joint Committee 1934, was enacted as follows:

254. 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.

12. It thus becomes clear that the intent behind the language used in Section 254 of the Government of India Act, 1935, comes from the understanding at the time that direct appointment to District Judges was to be made *from within Members of the Bar*, and not from those who are already in service of His Majesty. The two streams of appointment to the District Judiciary were pointedly kept separate, and this intent becomes clear from the use of the words “a person *not already in the service of His Majesty*”, as well as the discussions regarding the same. Therefore, the term “has been” in Section 254 of the Government of India Act, 1935 also needs to be understood in the same manner, keeping in mind the intent behind the same.

- **Under the Constitution of India**

13. Under the Draft Constitution, the provisions relating to appointment of District Judges, although not included at first, were later on added as Draft Articles 209-A to 209-E (corresponding to Articles 233 to 237 of the Constitution).
14. It is pertinent to note that even during the debates of the Constituent Assembly regarding Draft Article 209-A, the intent and understanding of the framers of the Constitution points to appointment from Members of the Bar. This is evident from the discussion on an amendment brought by Shri Kuldhar Chaliha proposing to limit eligibility (for appointment as District Judge) of advocates or pleaders enrolled in the roll of the High Court of the State in question.<sup>10</sup> This amendment was also supported by Shri P.S. Nataraja Pillai.<sup>11</sup> However, while disagreeing with the proposed

<sup>10</sup> Constituent Assembly Debates Volume IX dated 16.09.1949 @ pg. 1574

<sup>11</sup> *Ibid* @ pg. 1580

amendment, Dr. B.R. Ambedkar stated as follows<sup>12</sup>:

“The Honourable Dr. B. R. Ambedkar :

.... With regard to the amendment moved by Mr. Chaliha, I am sorry to say I cannot accept it, for two reasons : one is that we do not want to introduce any kind of provincialism by law as he wishes to do by his amendment. Secondly, the adoption of his amendment might create difficulties for the province itself because it may not be possible to find a pleader who might technically have the qualifications but in substance may not be fitted to be appointed to the High Court, and I think it is much better to leave the ground perfectly open to the authority to make such appointment provided the incumbent has the qualification. I therefore cannot accept that amendment.

15. The intent behind the framers and the prevailing understanding of the precursor Section 254 of the Government of India Act, 1935 becomes clear from a perusal of the Debates of the Constituent Assembly, that they intended to retain the sources of appointment to District Judge as two distinct ones, without any overlap.

## **II. JUXTAPOSITION OF ARTICLE 233 WITH ARTICLES 124 AND 217 OF THE CONSTITUTION OF INDIA**

16. For a clear understanding of the provisions under Article 233(2), it becomes necessary to juxtapose the language used therein with the language and form used in other Articles of the Constitution relating to appointment and eligibility of judges. Article 124 provides for appointment of Judges to this Hon’ble Court<sup>13</sup>, and reads as follows:

### **124. Establishment and Constitution of Supreme Court**

(1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law

<sup>12</sup> *Ibid* @ pg. 1580 – 1581

<sup>13</sup> Article 124 is adapted from Section 200 of the Government of India Act, 1935, which provided for Establishment and Constitution of Federal Courts. It is pertinent to note that the form of Section 200(3) was retained and adapted by the framers of the Constitution in Article 124, including the explanation regarding computation of standing at the Bar therein.

prescribes a larger number, of not more than seven other Judges.

(2) to (2A) ....

(3) 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 ten years an advocate of a High Court or of two or more such Courts in succession; or

(c) is, in the opinion of the President, a distinguished jurist.

Explanation I. 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.

Explanation II. In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) to (7) .....

17. Similarly, Article 217 of the Constitution provides for appointment and eligibility of Judges to a High Court, and reads as follows:

217. Appointment and conditions of the office of a Judge of a High Court.

(1) ...

(2) 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.

Explanation. – For the purposes of this clause—

(a) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law;

[(aa)] 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;

(b) in computing the period during which a person has held judicial office in the territory of India or been an advocate of a High Court, there shall be included any period before the commencement of this Constitution during which he has held judicial office in any area which was comprised before the fifteenth day of 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.

1

(3) ...

18. In contradistinction, Art. 233(2) of the Constitution of India reads as follows:

233. Appointment of district judges

(1) ....

(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.

(emphasis supplied)

19. The plain language of Article 233 clearly states two distinct sources of appointment to the cadre of District Judge – (i) from among those already in the service of the Union

or of the State and (ii) if the person has been an advocate or a pleader for not less than seven years and is recommended by the High Court for appointment. It is clear that the eligibility criteria of seven years' standing at the Bar is only applicable in case of persons *who are not already in the service of the Union or of the State*. For those who are already in the service of the Union or of the State, the eligibility criteria of seven years' standing at the Bar is wholly inapplicable.

20. This becomes even clearer when seen in juxtaposition with the language of Articles 124 and 217. While Article 124 and 217 provide for eligibility criteria in the form of options, the language of Article 233 is couched in the negative. Thus, under Articles 124 and 217, if any one of the criteria provided is satisfied, a person would become eligible for appointment as a Judge of this Hon'ble Court or a High Court respectively. This becomes amply clear from the use of the word "or" between Article 217(2)(a) and Article 217(2)(b).

21. Moreover, Explanation II of Article 124(3) Explanation (aa) of Article 217(2) both specifically provide that while computing standing at the Bar, any period during which a person has held judicial office shall be included. However, no such explanation finds its place in Article 233.

22. This Hon'ble Court, in *Mahesh Chandra Gupta vs Union of India & Ors. (2009) 8 SCC 273*, was seized of the question regarding the purport of Article 217. While considering the validity of appointment of an Additional Judge of the Allahabad High Court, it was submitted before this Hon'ble Court since the person in question did not practice before the Hon'ble High Court even though enrolled as an advocate, and was a member of a Tribunal for 11 years before being appointed as an Additional Judge of

the High Court, he was ineligible for appointment and Explanation (aa) to Article 217(2) did not apply. Rejecting this argument, this Hon'ble Court held as follows:

*49. In our view, Explanation (aa) appended to Article 217(2) is so appended so as to compute the period during which a person has been an advocate, (sic by including) any period during which he has held the office of a member of a tribunal after he became an advocate. As stated by the learned author, quoted above, if a person has been an advocate for ten years before becoming a member of the tribunal, Explanation (aa) would not be attracted because being an advocate for ten years per se would constitute sufficient qualification for appointment as a Judge of the High Court.*

*66. Thus, it becomes clear from the legal history of the 1879 Act, the 1926 Act and the 1961 Act that they all deal with a person's right to practise or entitlement to practise. 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 practise. Therefore, actual practise 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 practise" and not actual practice.*

*76. Respondent 3 has worked as a Member of ITAT between the period 3-12-1997 and 6-8-2008 (11 years). Prior thereto, he has worked as Additional Law Officer (Director), Law Commission of India. He was admittedly enrolled as an advocate of the High Court on 13-9-1975. Applying the principles enumerated hereinabove, both, with regard to entitlement to practise and computability of the period during which Respondent 3 has worked in ITAT, he stood qualified for*

*appointment as a Judge of the Allahabad High Court. Therefore, this case does not suffer from the vice of lack of eligibility.*

It is to be seen that such an interpretation of this Hon'ble Court was made in light of the specific form and language of Article 217, which provides that either one of the two criteria thereunder being fulfilled would make a person eligible for appointment as a Judge of the High Court.

23. This Hon'ble Court further had the occasion to consider the words "held a judicial office" under Article 217(2)(a), in ***Sunil Samdaria vs Union of India (2018) 14 SCC 61*** wherein the question raised was whether under Article 217(2)(a), a person must continue to hold judicial office as on the date of their appointment as a Judge of the High Court. Noticing the difference between the language used in Article 217(2)(a) and (b), this Hon'ble Court interpreted the term "held" as follows:

23. The word "held" has been defined in Words and Phrases, Permanent Edn., Vol. 19 to the following effect:

"Held has no primary or technical meaning and its meaning is determined largely by connection in which it is used. *State v. Thomson* [State v. Thomson, 449 P 2d 656 : 79 NM 748 (1969)] , P 2d p. 659.

Perfect participle "held" has no *connotation* of time. *Holman Transfer Co. v. Portland* [Holman Transfer Co. v. Portland, 250 P 2d 929 : 196 Or 551 (1952)] , P 2d p. 930."

24. The word "held" as used in *Article* 217(2)(a) indicates that what is prescribed is qualification for appointment of a Judge of the High Court is that a person has for at least 10 years held a judicial office in the territory of India. Use of word "held" in the above clause does not indicate that qualification is also meant that apart from holding for 10 years a judicial office, the incumbent should also be holding the judicial office at

the time notification under Article 224 is issued.

25. The above conclusion is *also* supported by taking into consideration Explanations (a) and (aa) to Article 217(2). When Explanation (a) provides that in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate of a High Court or has held the office of a member of a tribunal or any post, under the Union or a State, requiring special knowledge of law.

24. Further, this Hon'ble Court in ***R. Poornima & Ors. vs Union of India (2023) 12 SCC***

**519** had an occasion to deal with the question of whether in-service District Judges who had practiced as advocates for ten years before becoming District Judges would be eligible for appointment as a High Court Judge under Explanation (a) to Article 217(2). While interpreting Explanations (a) and (aa) to Article 217(2), this Hon'ble Court held:

*23. Suppose there was no "Explanation" under clause (2) of Article 217, then there would have been no scope for any argument, other than to accept blindly, that the qualification stipulated in clause (2) of Article 217, can be acquired by an individual from 2 separate sources, namely, (i) from the Bar or (ii) from the "judicial service", as defined in clause (b) of Article 236. This is for the reason that sub-clauses (a) and (b) are actually in the alternative, as can be seen from the use of the word "or" in between. The word "or" in English grammar, according to Merriam-Webster dictionary, is a coordinating conjunction. While the word "and", which is also a conjunction, will denote something to be taken cumulatively, the word "or" will denote something to be taken alternatively. This is so far as the first part of clause (2) is concerned. As stated earlier, the first part of clause (2) is in sub-clauses (a) and (b).*

*29. The telescoping of Explanations (a) and (aa) into*

*sub-clauses (a) and (b) of clause (2) of Article 217 would show that a person may acquire the eligibility as indicated in Article 217(2)—*

*(i) either exclusively from the Bar [as provided in clause (b)];*

*(ii) or exclusively from the judicial service [as provided in clause (a)];*

*(iii) or from a cocktail of both [as provided in Explanation (a) and (aa)].*

*30. But what is important to note is that Article 217(2) merely prescribes the eligibility criteria and the method of computation of the same. If a person is found to have satisfied the eligibility criteria, then he must take his place in one of the queues. There are 2 separate queues, one from judicial service and another from the Bar. One cannot stand in one queue by virtue of his status on the date of consideration of his name for elevation and at the same time keep a towel in the other queue, so that he can claim to be within the zone of consideration from either of the two or from a combination of both.*

*31. The queue to which a person is assigned, depends upon his status on the date of consideration. If a person is an advocate on the date of consideration, he can take his place only in the queue meant for members of the Bar. Similarly, if a person is a judicial officer on the date of consideration, he shall take his chance only in the queue meant for service candidates.*

*32. Hopping on and hopping off from one queue to the other, is not permissible. Today, if any of the petitioners cease to be judicial officers and become Advocates, they may be eligible to be considered against the quota intended for the Bar. But while continuing as judicial officers, they cannot seek to invoke Explanation (a) as it applies only to those who have become advocates after having held a judicial office.*

*44. In common parlance, the words “has held” stand in contra distinction to the words “is holding” or “has been holding”.*

*45. On the other hand the words “has been” do not have any such connotation. The Cambridge dictionary states that the words “has been” are in present perfect continuous form. The dictionary says that we may use the present perfect continuous, either to talk about a finished activity in the recent past or to talk about a single activity that began at a point in the past and is still continuing. Keeping this in mind, Explanation (a) confers the benefit of clubbing to a limited extent, to a person who has held a judicial office. To be eligible for the limited benefit so conferred, a person should have been an Advocate “after he has held any judicial office”. There is no confusion either in the language of Article 217(2) or in our mind.*

In this context, it is important to note that even while applying the Explanations to Article 217, this Hon’ble Court specifically held that the two sources for appointment as a Judge of the High Court are distinct, and eligibility can be looked at only from one position or the other, but not both.

### **III. JUDICIAL INTERPRETATION OF ARTICLE 233**

25. As submitted hereinabove, Article 233 mentions two clear and distinct sources of appointment. The use of the words “not already in service of the Union or the State” ensures that the two sources are to remain distinct. As discussed hereinabove, unlike the language and form used in Articles 124 and 217, which give options regarding eligibility, Article 233 maintains separation between the two sources. This is also clear from the conscious omission of any Explanations under Article 233, similar to the ones under Article 217 and 124.

26. Furthermore, the distinction between sources of appointment has been approved and upheld by this Hon’ble Court even within Article 217.

27. Right from 1960, Constitution Benches of this Hon’ble Court have dealt with Art. 233

and appointment of judges to the subordinate judiciary. A Constitution Bench of this Hon'ble Court in ***Rameshwar Dayal v State of Punjab, (1961) 2 SCR 874***<sup>14</sup> first observed the distinct sources of appointment as District Judges and the mode of appointment based on the source of appointment under Art. 233. This Hon'ble Court, while dealing with eligibility of persons for being appointed as District Judges under Article 233 and counting their standing at the Bar in the High Court of Lahore pre-Independence, this Hon'ble Court held as follows:

*12. .... 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 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. 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 Article 233 which must lead to the exclusion of that period for determining his eligibility for appointment as district judge.*

28. Article 233 was considered again by another Constitution Bench of this Hon'ble Court in ***Chandra Mohan v State of Uttar Pradesh, (1967) 1 SCR 77***, wherein this Hon'ble Court was seized of the question of meaning of "service of State or Union" under Article 233. This Hon'ble Court laid down *inter alia* two principles of law relating to the interpretation of Art. 233, which are relevant for the present purpose: (a) That two distinct sources of recruitment are mentioned in Art. 233 for appointment of District

<sup>14</sup> *Rameshwar Dayal v State of Punjab, (1961) 2 SCR 874 @Para 12*

Judges – (i) service of Union or of the State and (ii) members of the Bar<sup>15</sup>; (b) That the expression “service” mentioned in Art. 233 means service pertaining to courts, i.e. judicial service.<sup>16</sup>

29. This interpretation of the Constitution Bench in *Chandra Mohan (supra)* was reaffirmed and followed by another Constitution Bench of this Hon’ble Court in *High Court of Punjab & Haryana v State of Haryana & Os. (1975) 1 SCC 843* while interpreting Art. 233.<sup>17</sup>

30. Subsequently, a three-Judge Bench of this Hon’ble Court in *Satya Narain Singh v High Court of Judicature at Allahabad, (1985) 1 SCC 225* followed the judgments of this Hon’ble Court in *Rameshwar Dayal (supra)* and *Chandra Mohan (supra)*, and categorically observed that the eligibility criteria of 7 years’ standing at the Bar has no application to persons who were already members of the judicial service. The question before this Hon’ble Court therein was whether members of the Uttar Pradesh Judicial Service were eligible to be appointed by direct recruitment to the Higher Judicial Service if they have completed seven years practice at the Bar before joining the Uttar Pradesh Judicial Service. It was specifically held that Art. 233 was a self-contained code and a clear distinction was made between the two sources of recruitment and the dichotomy is maintained.<sup>18</sup>

“3. .... Two points straightway project themselves when the two clauses of Article 233 are read: The first clause deals with “appointments of persons to be, and the posting and promotion of, District Judges in any State” while the second clause is confined in its application to persons “not already in the service of the

<sup>15</sup> *Chandra Mohan v State of Uttar Pradesh, (1967) 1 SCR 77 @ pg. 8*

<sup>16</sup> *Chandra Mohan (supra) @ pg. 8*

<sup>17</sup> *High Court of Punjab & Haryana v State of Haryana & Os. (1975) 1 SCC 843 (CB) @ para 45-46.*

<sup>18</sup> *Satya Narain Singh v High Court of Judicature at Allahabad, (1985) 1 SCC 225 @ para 3-5*

*Union or of the State". We may mention here that "service of the Union or of the State" has been interpreted by this Court to mean Judicial Service. Again while the first clause makes consultation by the Governor of the State with the High Court necessary, the second clause requires that the High Court must recommend a person for appointment as a District Judge. It is only in respect of the persons covered by the second clause that there is a requirement that a person shall be eligible for appointment as District Judge if he has been an advocate or a pleader for not less than 7 years. In other words, in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges, while in the case of candidates who are members of a Judicial Service the 7 years' rule has no application but there has to be consultation with the High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. Obviously the same ship cannot sail both the streams simultaneously. The dichotomy is clearly brought out by S.K. Das, J. in Rameshwar Dayal v. State of Punjab [AIR 1961 SC 816 : (1961) 2 SCR 874 : (1961) 2 SCJ 285] where he observes:*

.....

*Again dealing with the cases of Harbans Singh and Sawhney it was observed:*

*"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."*

*Clearly the Court was expressing the view that it was in the case of recruitment from the Bar, as distinguished from Judicial Service that the requirements of clause (2) had to be fulfilled. We may also add here earlier the Court also expressed the view:*

*“... we do not think that clause (2) of Article 233 can be interpreted in the light of Explanations added to Articles 124 and 217”.*

....

*5. 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 Article 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 Article 14 and Article 16 of the Constitution.*

(emphasis supplied)

31. A perusal of the judgment of this Hon’ble Court in ***Satya Narain Singh (supra)*** makes it clear that the principles laid down by the Constitution Benches of this Hon’ble Court in ***Chandra Mohan (supra)*** and ***Rameshwar Dayal (supra)*** were followed and taken to their logical conclusion.

32. Subsequently, another three-Judge Bench of this Hon’ble Court in ***Deepak Aggarwal v Keshav Kaushik & Ors., (2013) 5 SCC 277***, while dealing with the interpretation of meaning of “advocate or pleader” under Article 233(2), construed the expression “has been” in Art 233(2) to mean a position which began some time in the past and is still continuing. It was categorically held as follows:

*102. As regards construction of the expression, “if he has been for not less than seven years an advocate” in Article 233(2) of the Constitution, we think Mr Prashant Bhushan was right in his submission that this expression means seven years as an advocate immediately preceding the application and not seven years any time*

*in the past. This is clear by use of “has been”. The present perfect continuous tense is used for a position which began at sometime in the past and is still continuing. Therefore, one of the essential requirements articulated by the above expression in Article 233(2) is that such person must with requisite period be continuing as an advocate on the date of application.*

33. It is submitted that all the judgments of this Hon’ble Court starting from ***Satya Narain Singh (supra)*** upto ***Deepak Aggarwal (supra)*** follow the settled principles of law under Art 233(2) laid down by the previous constitution benches of this Hon’ble Court and there is no inconsistency in any of these judgments.<sup>19</sup>
34. However, subsequently, a two-judge bench of this Hon’ble Court in ***Vijay Kumar Mishra vs High Court of Judicature at Patna & Ors., (2016) 9 SCC 313***, dealt with a case where the Appellants were practicing advocates on the cut-off date for eligibility for direct recruitment as District Judges, but after appearing in the preliminary exam the Appellants were appointed as members of the Subordinate Judiciary and hence were refused the opportunity of participating in the interview for direct recruitment unless they resigned from their post. In this context, the two-Judge Bench held that eligibility would have to be considered on the cut-off date and not on the appointment date. In this context, a slight discrepancy arose from the settled position of law that was laid down earlier.
35. This Hon’ble Court, in ***Dheeraj Mor v. High Court of Delhi, (2020) 7 SCC 401***, took into account the evolution of law right from 1960 and came to the conclusion that the questions raised were already conclusively decided by this Hon’ble Court. It was rightly held by this Hon’ble Court that the eligibility criteria of seven years’ practice as

<sup>19</sup> In line with the decisions above, the Andhra Pradesh State Judicial Rules, 2007, were brought in force for the erstwhile composite state of Andhra Pradesh. Rule 4(2) specifically provides for appointment to category of District judges in the three modes as directed by this Hon’ble Court in *All India Judges Association (3) (supra)*.

advocate is inapplicable to judicial officers already in service. It was observed as follows:

*79. The upshot of the above discussion is that the Constitution makers clearly wished to draw a distinction between the two sources of appointment to the post of District Judge. For one i.e. Advocates, eligibility was spelt out in negative phraseology i.e. not less than seven years' practice; for judicial officers, no eligibility condition was stipulated in Article 233(2) : this clearly meant that they were not eligible to be appointed (by direct recruitment) as they did not and could not be considered advocates with seven years' practice, once they entered the judicial service. The only channel for their appointment, was in accordance with rules framed by the High Court, for promotion (as District Judges) of officers in the judicial service [defined as those holding posts other than District Judges, per Article 236(b)].*

*82. In the opinion of this Court, there is an inherent flaw in the argument of the petitioners. The classification or distinction made—between advocates and judicial officers, per se is a constitutionally sanctioned one. This is clear from a plain reading of Article 233 itself. Firstly, Article 233(1) talks of both appointments and promotions. Secondly, the classification is evident from the description of the two categories in Article 233(2) : one “not already in the service of the Union or of the State” and the other “if he has been for not less than seven years as an advocate or a pleader”. Both categories are to be “recommended by the High Court for appointment”. The intent here was that in both cases, there were clear exclusions i.e. advocates with less than seven years' practice (which meant, conversely that those with more than seven years' practice were eligible) and those holding civil posts under the State or the Union. The omission of judicial officers only meant that such of them, who were recommended for promotion, could be so appointed by the Governor. The conditions for their promotion were*

*left exclusively to be framed by the High Courts.*

*84. This Court is also of the opinion that if rules of any State permit judicial officers to compete in the quota for appointment as District Judges, they are susceptible to challenge. The reason for this conclusion is that where a dichotomy is maintained, and two distinct sources for appointment are envisaged, like the present, enabling only judicial officers to compete in the quota earmarked for advocates would potentially result in no one from the stream of advocates with seven or more years' practice, being selected. This would be contrary to the text and mandate of Article 233(2), which visualised that such category of candidates would always be eligible and occupy the post of District Judge. Clear quotas for both sources have been earmarked by High Courts. If one those in one stream, or source—i.e. judicial officers—are permitted to compete in the quota earmarked for the other (i.e. advocates) without the converse situation (i.e. advocates competing in the quota earmarked for judicial officers—an impossibility) the result would be rank discrimination.*

...

*89. As a result of the above discussion, it is held that Vijay Kumar Mishra [Vijay Kumar Mishra v. High Court of Patna, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] , to the extent that it is contrary to Ashok Kumar Sharma [Ashok Kumar Sharma v. Chander Shekhar, (1997) 4 SCC 18 : 1997 SCC (L&S) 913] , as regards participation in the selection process, of candidates who are members of the judicial service, for appointment to the post of District Judge, from amongst the quota earmarked for advocates with seven years' practice, was wrongly decided. To that extent, Vijay Kumar Mishra [Vijay Kumar Mishra v. High Court of Patna, (2016) 9 SCC 313 : (2016) 2 SCC (L&S) 606] is hereby overruled.*

36. The judgments of this Hon'ble Court, therefore, are completely in line with Article

233. The discrepancy which arose in *Vijay Kumar Mishra (supra)*, while bound

within the facts therein, was also resolved rightly by this Hon'ble Court in *Dheeraj Mor (supra)*.

#### **IV. CONSTITUTIONAL SILENCE REGARDING INCLUSION OF PRIOR EXPERIENCE (JUDICIAL OR ADVOCACY) WITHIN ARTICLE 233**

37. It is important to note that the form and language used in Article 233 is deliberate.

While Articles 124 and 217 include explanations to count prior practice at the Bar within the eligibility criteria of a judicial officer, or prior experience in the judiciary within the eligibility criteria of an advocate for the purpose of appointment as a Judge of this Hon'ble Court or a High Court respectively, no such provision or explanation has been included within Article 233. It is submitted that this omission or silence must be taken as a conscious and deliberate one.

38. It is a well-recognised doctrine in the interpretation of a written constitution, that 'Constitutional Silences' have a significant role to play. Any written constitution, such as the Constitution of India has two distinct features, i.e., (i) the explicit written provisions, and (ii) consciously unwritten elements, also referred to as "constitutional silences". The doctrine of constitutional silences posits that equal deference must be given to both, the written provisions of the Constitution, as well as the constitutional silences.<sup>20</sup>

39. This principle of constitutional silence has been recognized by a Constitution Bench in *Manoj Narula v. Union of India*, (2014) 9 SCC 1, wherein while determining whether certain disqualifications can be inferred within the provisions of the Constitution relating to disqualifications for being appointed to the Council of Ministers, held that where there are express provisions regarding the same in the Constitution as well as

<sup>20</sup> Michael Foley, *The Silence of Constitutions - Gaps, 'abeyances' and political temperament in the maintenance of Government*, Routledge, London and New York, 1989

the Representation of Peoples Act, 1951, the Courts cannot take recourse to constitutional silences in order to fill up the gaps. This Hon'ble Court specifically held as follows:

*“Principle of constitutional silence or abeyance*

*65. The next principle that can be thought of is constitutional silence or silence of the Constitution or constitutional abeyance. The said principle is a progressive one and is applied as a recognised advanced constitutional practice. It has been recognised by the Court to fill up the gaps in respect of certain areas in the interest of justice and larger public interest. Liberalisation of the concept of locus standi for the purpose of development of public interest litigation to establish the rights of the have-nots or to prevent damages and protect environment is one such feature. Similarly, laying down guidelines as procedural safeguards in the matter of adoption of Indian children by foreigners in Laxmi Kant Pandey v. Union of India [(1987) 1 SCC 66 : 1987 SCC (Cri) 33 : AIR 1987 SC 232] or issuance of guidelines pertaining to arrest in D.K. Basu v. State of W.B. [(1997) 1 SCC 416 : 1997 SCC (Cri) 92 : AIR 1997 SC 610] or directions issued in Vishaka v. State of Rajasthan [(1997) 6 SCC 241 : 1997 SCC (Cri) 932] are some of the instances.*

*66. In this context, it is profitable to refer to the authority in Bhanumati v. State of U.P. [(2010) 12 SCC 1] wherein this Court was dealing with the constitutional validity of the U.P. Panchayat Laws (Amendment) Act, 2007. One of the grounds for challenge was that there is no concept of no-confidence motion in the detailed constitutional provision under Part IX of the Constitution and, therefore, the incorporation of the said provision in the statute militates against the principles of Panchayati Raj institutions. That apart, reduction of one year in place of two years in Sections 15 and 28 of the Amendment Act was sought to be struck down as the said provision diluted the principle of stability and continuity which is*

*the main purpose behind the object and reason of the constitutional amendment in Part IX of the Constitution. The Court, after referring to Articles 243-A, 243-C(1), (5), 243-D(4), 243-D(6), 243-F(1), 243-G, 243-H, 243-I(2), 243-J, 243-K(2) and (4) of the Constitution and further taking note of the amendment, came to hold that the statutory provision of no-confidence is contrary to Part IX of the Constitution. In that context, it has been held as follows: (Bhanumati case [(2010) 12 SCC 1] , SCC p. 17, paras 49-50)*

*“49. Apart from the aforesaid reasons, the arguments by the appellants cannot be accepted in view of a very well-known constitutional doctrine, namely, the constitutional doctrine of silence. Michael Foley in his treatise on The Silence of Constitutions (Routledge, London and New York) has argued that in a Constitution ‘abeyances are valuable, therefore, not in spite of their obscurity but because of it. They are significant for the attitudes and approaches to the Constitution that they evoke, rather than the content or substance of their strictures’. (p. 10)*

*50. The learned author elaborated this concept further by saying, “Despite the absence of any documentary or material form, these abeyances are real and are an integral part of any Constitution. What remains unwritten and indeterminate can be just as much responsible for the operational character and restraining quality of a Constitution as its more tangible and codified components.’ (p. 82)”*

*67. The question that is to be posed here is whether taking recourse to this doctrine for the purpose of advancing constitutional culture, can a court read a disqualification to the already expressed disqualifications provided under the Constitution and the 1951 Act. The answer has to be in the inevitable negative, for there are express provisions stating the disqualifications and second, it would tantamount to crossing the boundaries of judicial review.*

*(emphasis supplied)*

40. Further, another Constitution Bench of this Hon'ble Court, in ***Kalpana Mehta v. Union of India***, (2018) 7 SCC 1<sup>21</sup> held that while interpreting a constitutional provision, in addition to the letter, spirit and purpose of the language employed therein, the Courts must also look into also the constitutional silences or abeyances that are discoverable, and observed as follows:

*54. In Supreme Court Advocates-on-Record Assn. v. Union of India [Supreme Court Advocates-on-Record Assn. v. Union of India, (1993) 4 SCC 441] , the Court exposted that the Constitution has not only to be read in the light of contemporary circumstances and values but also in such a way that the circumstances and values of the present generation are given expression in its provisions. The Court has observed that constitutional interpretation is as much a process of creation as one of discovery. Thus viewed, the process of interpretation ought to meet the values and aspirations of the present generation and it has two facets, namely, process of creation and discovery. It has to be remembered that while interpreting a constitutional provision, one has to be guided by the letter, spirit and purpose of the language employed therein and also the constitutional silences or abeyances that are discoverable. The scope and discovery has a connection with the theory of constitutional implication. Additionally, the interpretative process of a provision of a Constitution is also required to accentuate the purpose and convey the message of the Constitution which is intrinsic to the Constitution.*

41. It is submitted that going by the principles laid down by this Hon'ble Court in ***Manoj Narula (supra)*** and ***Kalpana Mehta (supra)***, it becomes clear that where there are certain express provisions indicating the intent of the law-makers, the principle of constitutional silence cannot be used to fill in the gaps. Such silences or omissions

<sup>21</sup> *Kalpana Mehta v. Union of India*, (2018) 7 SCC 1 @ para 20, 54

must be taken to be deliberate and intentional, and due deference to such silences must be given to them.

42. In the present case, the history behind the language and form employed for Article 233, in juxtaposition with Articles 124 and 217, make it clear that the omission or silence by the framers of the Constitution by not including Explanations within Article 233 which are similar to Article 124 and 217, is deliberate and conscious. Thus, it would not be permissible to judicially read in the explanations appended to Articles 124 or 217 within the scope of Article 233. There cannot be any judicial construction including prior practice at the Bar within the eligibility criteria of a judicial officer, or prior experience in the judiciary within the eligibility criteria of an advocate for the purpose of appointment as a District Judge, without an express provision to that effect in Article 233.

#### V. EVOLUTION OF QUOTA UNDER ARTICLE 233 OF THE CONSTITUTION

43. The understanding of the present system of filling up of vacancies must be understood for the purpose of the present proceedings. In line with the provisions of Article 233(2), many States/ High Courts had made Rules prescribing a quota for promotion and direct recruitment respectively. On occasion, these quotas were challenged before this Hon'ble Court, which has upheld the system of prescribing a quota as consistent with Article 233. In *Orissa Judicial Services Assn. v. State of Orissa*, 1992 Supp (1) SCC 187, this Hon'ble Court categorically held that the High Court is competent to prescribe quota for the two sources of recruitment to the service by administrative orders, but that it would be desirable and proper to prescribe the quota for recruitment to the Service in the Rules themselves by the State Government, which would

prescribe certainty.

44. Further, in *O.P. Singla v. Union of India*, (1984) 4 SCC 450, in a challenge to a rule prescribing quota for recruitment under the Delhi Higher Judicial Service Rules, 1970, this Hon'ble Court categorically upheld the rule prescribing quota, observing that whenever the rules provide for recruitment to a Service from different sources, there is no inherent infirmity in prescribing a quota for appointment of persons drawn from those sources and in working out the rule of quota by rotating the vacancies as between them in a stated proportion.

45. In 1958, the Law Commission of India made its 14<sup>th</sup> Report regarding Reform of Judicial Administration, primarily recommending creation of an All India Judicial Service and State Judicial Service. Recruitment for State Judicial Service Class I (higher judicial service) was recommended as follows: (i) 40% to be reserved for the Indian Judicial Service (officers therein being selected by all-India competitive examination) (ii) 30% to be filled by promotion from ranks of State Judicial Service Class II (subordinate judicial service) and (iii) 30% to be filled up by direct recruitment from members of the Bar of sufficient seniority and standing.<sup>22</sup> While discussing the aspect of recruitment of District Judges, after due consideration, the Law Commission observed as follows<sup>23</sup>:

“76. We have already indicated that the proportion of direct recruits from the senior members of the Bar to posts of the State Judicial Service Class-I should be thirty percent. We have stated earlier the proportions in which direct recruitment from the Bar take place in various States. There is clear advantage in having

<sup>22</sup> Law Commission of India, Fourteenth Report – Reform of Judicial Administration, dated 26.09.1958 @ para 67 pg. 187-188

<sup>23</sup> *Ibid* @ para 76 @ pg. 192; para 130 @ pg. 225-229

different fields of recruitment so that one may be able to catch talent from any field. It has happened that persons who did not succeed in being appointed as munsifs have, in later years, been recruited as assistance or district judges, or even after long practice at the Bar as High Court judges. It is, therefore, only fair that the Bar which has so far been the main recruiting ground to the judicial service should have an appropriate quota of direct recruitment to the higher judiciary. Though the percentage of thirty which we have suggested means a reduced quota in some of the States, it is, we consider, a fair proportion, having regard to the scheme of direct recruitment at the all-India level suggested by us.

....

130. Our recommendations on the subordinate judiciary can be summarized as follows:

(1) to (33) .....

(34) It is necessary to continue direct recruitment from the Bar at the level of district judges.

(35) The minimum requirement for such appointment should be a practice of seven years and an upper age limit of 40.

(36) It is not necessary to subject such direct recruits to any training.

.....”

46. Subsequent to the Constitution (Forty-second Amendment) Act, 1976, which amended Article 312 to bring in the concept of All India Judicial Service, the Law Commission of India, in its 116<sup>th</sup> Report, recommended constitution of an Indian Judicial Service (which would include up to the post of District Judge) and State Judicial Services (which would include posts below the rank of District Judge or Sessions Judge). The Commission recommended recruitment to Indian Judicial Service to be from three sources: (i) 40% posts by direct recruitment on the result of a competitive examination to be held a National Judicial Service Commission (ii) 40% be filled by promotion

from State Judicial Service (iii) 20% by recruitment from senior experienced members of the Bar who have put in not less than seven years of practice.<sup>24</sup>

47. Subsequently, in *All India Judges' Assn. (I) v. Union of India*, (1992) 1 SCC 119, by way of a writ petition under Article 32 before this Hon'ble Court, the All India Judges' Association sought setting up of the All India Judicial Service. However, the prayer that was ultimately agitated before this Hon'ble Court was Uniformity in the Judicial cadres, age of retirement, pay scales, residential accommodation and transport facility, and other perks to all Judicial officers across India. This Hon'ble Court, while adopting the view of the Law Commission of India in its 14<sup>th</sup> Report, directed *inter alia*, creation of an All India Judicial Service.<sup>25</sup>

48. A review against this judgment was filed by the Union of India and some State Governments, raising objections against the directions given by this Hon'ble Court in *All India Judges' Assn. (I) (supra)*. This Hon'ble Court, in *All India Judges' Assn. (II) v. Union of India*, (1993) 4 SCC 288, modified some of the directions of this Hon'ble Court in *All India Judges' Assn. (I) (supra)*. While doing so, this Hon'ble Court also emphasized the need to set up an independent Pay Commission for reviewing pay scales of judges.<sup>26</sup>

49. Pursuant to the above directions of this Hon'ble Court, the Government of India, vide Resolution dated 21.03.1996, constituted the First National Judicial Pay Commission for the Subordinate Judiciary, to *inter alia*, also make recommendations on the method of recruitment for Judicial Officers, under the Chairmanship of Mr. Justice (Retd.) K.

<sup>24</sup> Law Commission of India, One Hundred Sixteenth Report – Formation of an All India Judicial Service, dated 27.11.1986 @ para 5.4 pg. 23; para 5.7 pg. 25

<sup>25</sup> *All India Judges' Assn. (I) v. Union of India*, (1992) 1 SCC 119 @ para 13-15, 63

<sup>26</sup> *All India Judges' Assn. (II) v. Union of India*, (1993) 4 SCC 288 @ para 11, 35, 36

Jagannatha Shetty. This Commission submitted its report – the First National Judicial Pay Commission Report – on 11.11.1999 (hereinafter referred to as the “Shetty Commission Report”). The following observations in the Shetty Commission Report relating to the aspect of direct recruitment to the post of District Judge, are illuminative<sup>27</sup>:

10.11 It will be seen that the two clauses of Article 233 contemplate recruitment to the cadre of District Judges by promotion from the subordinate judicial service as well as by direct recruitment from Pleaders or Advocates having not less than seven years of practice.

10.14 With these principles in mind, we may now examine the contentions urged for Judicial Officers’ Associations. It was urged for them that there should not be any quota for recruitment from Advocates. According to them, the main source from whom the District Judges could be drawn is the service judges as provided under Clause (1) of Article 233, Clause (2) of Article 233 is only an enabling provision to recruit District Judges from the Bar in case of need and such an enabling provision should not be utilised to whittle down or deprive the legitimate aspirations of the service judges. It was further contended that fixing a quota for direct recruitment should be discontinued, and the discretion should be left to the High Court to decide whether there is any need to resort to clause (2) of Article 233.

10.15 It is too hard to accept these submissions. The fixation of quota for direct recruitment is not inconsistent with the provisions or mandate of Article 233.

....

10.18 We, therefore, proceed that there could be quota prescribed for direct recruitment as well for promotion to the cadre of District Judges.

<sup>27</sup> The Report of the First National Judicial Pay Commission dated 11.11.1999, chaired Mr. Justice (Retd.) K. Jagannatha Shetty (“Shetty Commission Report”) @ para 10.11 – 10.18

.....

#### OUR RECOMMENDATIONS :

10.74 We have carefully examined the various and varied views and suggestions made by High Courts, State Governments and Associations on the triple requirements for direct recruitment of District Judges, namely, (i) Quota; (ii) Age limit and (iii) Procedure for selection.

##### (i) QUOTA :

10.76 At the outset, we may observe that the stand taken by the Service Associations that there should be only promotion and no direct recruitment to the cadre of District Judges does not stand to reason. We have explained elsewhere that there is need to introduce fresh blood to promote efficiency in the cadre in the first place. Second, the makers of the Constitution obviously intended that there should be direct recruitment to the cadre of District Judges. They have provided the eligibility for recruitment of advocates as District Judges under Article 233 of the Constitution. It indicates their intention. We cannot ignore it.

10.78 But while providing for any kind of reservation, we have to bear in mind the impact of such reservations on service judges in all the cadres. We have already given a grim picture of the existing discontentment between the promotees and the direct recruits of District Judges. We have also emphasised that such discontentment should be removed at the earliest and a healthy atmosphere should be created to enable both the classes to give their best to the administration of justice. It would be detrimental to the administration of justice by keeping one class at the disadvantage level over the other.

10.79 In our opinion, 50% reservation provided in some States is too much and 15% or 10% reservation made in some other States is too little. We must have such quota for direct recruitment so that both direct recruits and promotees could move side by side for further benefits and opportunities.

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.

50. Furthermore, the Shetty Commission Report specifically considered the question of whether the lower judicial service personnel could be made eligible for Direct Recruitment to the post of District Judges. The Report, while considering the judgments of this Hon'ble Court in *Rameshwar Dayal (supra)*, *Chandra Mohan (Supra)* and *Satya Narain Singh (supra)*, specifically observed that the Constitution, as it stands, does not provide for consideration of persons who are already in judicial service for direct recruitment to the cadre of District Judges.<sup>28</sup> The Commission recommended amendment of Article 233(2) to be able to permit District Judges to be eligible for Direct Recruitment.<sup>29</sup>

51. This Hon'ble Court, while considering the Shetty Commission Report, as well as the objections and inputs given to the Report by the Union and the States, in *All India Judges' Assn. (3) v. Union of India, (2002) 4 SCC 247*, recognized that the Shetty Commission Report recommended amendment of Article 233(2). Ultimately, while balancing the interests of all parties, this Hon'ble Court held as follows:

*27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial*

<sup>28</sup> *Ibid* @ para 11.1

<sup>29</sup> *Ibid* @ para 11.67 – 11.69

Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary that the judicial officers, hard-working as they are, become more efficient. ....

While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned: 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division)

*should be not less than five years. The High Courts will have to frame a rule in this regard.*

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

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

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

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

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

*29. Experience has shown that there has been a constant discontentment amongst the members of the Higher Judicial Service in regard to their seniority in service. For over three decades a large number of cases have been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to the Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle "merit-cum-seniority", 25 per cent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, insofar as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has*

*been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] . One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in R.K. Sabharwal case [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481] as early as possible. We hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31-3-2003.*

(emphasis supplied)

52. Thus, this Hon'ble Court, conscious of the fact that Article 233(2) does not permit direct recruitment of District Judges from among existing members of the subordinate judiciary, struck a balancing act by carving out 25% quota for direct recruitment from among members of the Bar, and also by making another quota of 25% for a limited departmental competitive examination.

53. On the basis of these directions of this Hon'ble Court, the predecessor of the Respondent herein, i.e. the Hon'ble High Court for the State of Andhra Pradesh,

framed the Andhra Pradesh State Judicial Service Rules, 2007 (hereinafter referred to as the “2007 Rules”). Rule 4(2)(b) of the 2007 Rules provided for the modes of recruitment as well as the quota, and Rule 5 provided for the eligibility criteria as per Article 233(2) of the Constitution, as held by this Hon’ble Court in *All India Judges’ Assn. (3) (supra)*.

54. Further, after reorganization of the erstwhile State of Andhra Pradesh into the State of Telangana and the State of Andhra Pradesh, and the constitution of the High Court for the State of Telangana (the Respondent herein), at present, the Telangana State Judicial Service Rules, 2023 (hereinafter referred to as the “2023 Rules”) are in force. Rule 5.1 of the 2023 Rules provides for the eligibility for direct recruitment of advocates, to be one who has been practicing as an Advocate in the High Court or Courts working under the control of the High Court for not less than 7 years as on the date of the notification. It is respectfully submitted that this is completely in line with the language of Article 233(2) of the Constitution, as well as the judicial interpretation that has been given to the language of Article 233(2), including the directions of this Hon’ble Court in *All India Judges’ Assn. (3) (supra)*.

55. Another aspect that is required to be considered by this Hon’ble Court is that fixation of eligibility criteria and quota, within the confines of Article 233 of the Constitution, is the prerogative of the High Courts on the administrative side, being in supervision over the subordinate judiciary. Therefore, any criteria that may not find explicit place within the Constitution, may be laid down by the High Court of the State in consideration of the factors and specific requirements of the subordinate judiciary of the State. This is a prerogative of the High Court on its administrative side, and does not warrant interference on the judicial side by this Hon’ble Court, as has been held by

this Hon'ble Court in *Orissa Judicial Services Assn. (supra)* and *O.P. Singla (supra)*.

## **VI. QUESTIONS BEFORE THE CONSTITUTION BENCH – CONCLUSIONS**

56. In view of the above submissions, the following submissions are made for the consideration of this Hon'ble Court as answers to the questions framed :

- a. A judicial officer who has completed seven years in Bar before being recruited for subordinate judicial services, would not be entitled for appointment as Additional District Judge against the Bar vacancy, as long as the judicial officer is already *in the service of the State or Union*. The language of Article 233(2), as submitted hereinabove, is very clear on this aspect.
- b. The eligibility for appointment as a District Judge is to be seen both at the time of appointment as well as on the date of notification/ cut-off date. If a person is eligible for applying against the quota for direct recruitment, being an advocate as on the cut-off date, such person would be eligible to appear in the examination and also the interview, and would be eligible for being considered against the vacancy within the Bar quota.
- c. No eligibility has 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. The only eligibility criteria that has been prescribed for in-service candidates is that they be appointed by the Governor in consultation with the High Court.
- d. 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 not be eligible for appointment as District Judge under Article

233 of the Constitution of India. This position of law is clear from the absence of any explanations similar to the ones under Article 124 and 217, within Article 233 of the Constitution of India.

## VII. MERITS OF THE PRESENT REVIEW

57. The present Review Petition before this Hon'ble Court arises out of a writ petition filed by the Petitioner herein seeking to participate in direct recruitment to the post of District Judge, being in the post of Civil Judge (Junior Division), and challenging a notification dated 15.04.2017 as prescribing eligibility criteria inconsistent with the 2007 Rules, which were the applicable Rules at the time.
58. A cut-off date was prescribed in the notification dated 15.04.2017, being 01.04.2017, by which time, the Petitioner herein had already been in the judicial service in the post of Civil Judge (Junior Division) for a period of almost 10 years, having joined the subordinate judicial service on 29.11.2008. It is averred by the Petitioner herein that prior to joining the subordinate judiciary, the Petitioner had been an Advocate for about 13 years 11 months.<sup>30</sup>
59. Placing reliance on *Vijay Kumar Mishra (supra)*, the Petitioner challenged the notification, on the grounds that he was an advocate and hence would be eligible to participate in the direct recruitment process. Vide interim order dated 05.05.2017, this Hon'ble Court was pleased to permit the Petitioner herein to appear for the examination, in which the Petitioner qualified. Vide further interim order dated 10.05.2018, this Hon'ble Court was pleased to direct the Respondent herein to appoint the Petitioner to Higher Judicial Service without requiring his resignation from the

<sup>30</sup> R.P. 781 of 2021 in W.P. 316 of 2017 @ pg. C-D

Subordinate Judicial Service, and subject to the result of the larger question of law.

60. Complying with the interim directions of this Hon'ble Court, the Respondent herein appointed the Petitioner herein to the Higher Judicial Service. However, upon the judgment of this Hon'ble Court in *Dheeraj Mor (supra)*, the Petitioner was reverted and posted as Civil Judge (Senior Division). Aggrieved, the Petitioner herein filed the present review petition before this Hon'ble Court. It is presently admitted that the Petitioner herein has since been promoted to the post of District Judge.
61. It is submitted that the reliance placed by the Petitioner on *Vijay Kumar Mishra (supra)* is completely incorrect. Even assuming that *Vijay Kumar Mishra (supra)* lays down the correct law, the facts involved in the said case were very different, in that, the Petitioners therein were eligible on the date of the notification, being practicing advocates as on the cut-off date. However, after participating in the process for direct recruitment, they were appointed to the subordinate judiciary after the cut-off date, and prior to the declaration of results of the examination of direct recruitment to District Judge. At that stage, the High Court of Patna required the Petitioners therein to resign from their post before appearing in the interview. In such circumstances, this Hon'ble Court was pleased to hold that the Petitioners therein could appear for the interview without resigning from their position.
62. However, in the present case, the Petitioner herein had been in the position of Civil Judge (Junior Division) for a period of more than 9 years at the time of the cut-off date in the notification dated 15.04.2017. Right at the outset, in consonance with the judicial interpretation of Article 233 and subsequent directions by this Hon'ble Court, the Petitioner herein was ineligible to appear for the examination, since he was already

in the judicial service of the State at the time. Therefore, the writ petition as well as the review petition of the Petitioner herein is completely devoid of merit and warrants a dismissal.



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Place: New Delhi

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IN THE SUPREME COURT OF INDIA  
(CIVIL APPELLATE JURISDICTION)  
CIVIL APPEAL NO. 3947 OF 2020

**IN THE MATTER OF:**

REJANISH K.V.

...APPELLANT(S)

VERSUS

K. DEEPA AND OTHERS

...RESPONDENT(S)

WITH  
REVIEW PETITION (C) NO. 774/2021  
IN  
WRIT PETITION NO. (C) NO. 744/2019

DEEPTI DIPAK KOLAPKAR

...PETITIONER(S)

VS.

REGISTRAR GENERAL, HIGH COURT  
OF JUDICATURE AT BOMBAY AND ORS.

...RESPONDENT(S)

**SUBMISSION ON BEHALF OF**  
**HIGH COURT OF BOMBAY**

**PAPER BOOK**

*Sandeep*

**SANDEEP SUDHAKAR DESHMUKH**  
**ADVOCATE FOR THE**  
**HIGH COURT OF BOMBAY**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE/INHERENT/ORIGINAL  
JURISDICTION  
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VERSUS

REGISTRAR GENERAL, HIGH  
COURT OF JUDICATURE AT  
BOMBAY AND OTHERS

...RESPONDENTS)

**Submissions on behalf of the High Court of Bombay**

1. This Hon'ble Court has framed the following issues for determination before the Constitution Bench:

(i) Whether a judicial officer who has already completed seven years at the Bar, being recruited for subordinate judicial service, would be entitled to appointment as Additional District Judge against the Bar vacancy?

(ii) Whether eligibility for appointment as District Judge is to be seen only at the time of appointment or

also at the time of application or both?

(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 a 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, would be eligible for appointment as District Judge under Article 233 of the Constitution of India?

2. Rule 5(1)(c)(b) of the Maharashtra Judicial Service Rules, 2008 reads as under:

(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; or

Must be working or must have worked as Public Prosecutor or Government Advocate for not less than seven years in the post or posts on the date of publication of the advertisement and while computing period of seven years, the period during which the candidate has practised as an Advocate shall be included:

3. Rule 5(1)(c)(b) of the Maharashtra Judicial Service Rules, 2008 makes it clear that experience as an Advocate for not less than 7 years, or as Public Prosecutor or Government Advocate for not less than 7 years, or combined experience of Advocate and Judicial Officer is to be reckoned. The Rules incorporate legislative intent to broaden the scope of counting relevant legal experience.

4. Article 233 of the Constitution of India, which is the subject matter of interpretation reads 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.

5. Article 233 of the Constitution prescribes the governing framework. Clause (1) authorises the Governor to appoint,

post and promote District Judges in consultation with the High Court. Clause (2) restricts eligibility for direct recruitment of persons who are not already in service of Union or State, and who have been for not less than 7 years an Advocate or Pleader, and are recommended by the High Court.

6. The rationale for keeping the two sources of recruitment under Article 233 distinct is very clear. The framers of the Constitution wanted the Higher Judicial Service to benefit from a diversity of experience. On one side, we have judicial officers who are promoted from within the system. They bring with them long years of experience in the subordinate judiciary, familiarity with procedural law, and the discipline of court administration. On the other side, we have members of the Bar, who are appointed directly as District Judges. They carry the strength of active practice, exposure to litigation, the art of advocacy, understanding of client perspectives, and knowledge of practical difficulties faced in the justice delivery system.

7. This twofold scheme ensures that the Higher Judicial Service is not one-sided. The combination of service officers and practicing advocates enriches the system, as each group supplements the other with different skills and experiences. This was not accidental, but a deliberate constitutional design to maintain balance in the higher judiciary.

8. If this distinction is blurred and judicial officers are allowed to claim eligibility even in the Bar quota, the constitutional balance would be upset. A judicial officer would then enjoy the benefit of competing in both categories, once in service quota and again in the Bar quota based on past practice, whereas a genuine advocate who has never entered service would remain confined only to the Bar stream. This would not only tilt the system unfairly in favour of service officers but also result in hostile discrimination against practicing advocates. Such a situation would be directly contrary to Article 14 of the Constitution, which requires equal treatment of all candidates within one category. Equality before law means that judicial officers should compete only with judicial officers, and advocates only with advocates. Thus, the constitutional scheme is designed to maintain a healthy mix of experience in the Higher Judicial Service.

9. There is also a question of fairness under Article 14 of the Constitution. Equality before law requires that all candidates within one stream should be treated equally. Judicial officers should compete with other judicial officers in the service quota, and advocates should compete with other advocates in the Bar quota. If a judicial officer is allowed to fall back on his earlier practice as an advocate and claim eligibility in the Bar quota, then he would have a double benefit, he could claim in both categories. On the other hand, a practising advocate would have only one option. This

would amount to unfair discrimination and create an unequal playing field, which is not permitted under Article 14.

10. This provision was subject to detailed consideration in *Chandra Mohan v. State of U.P.* (AIR 1966 SC 1987) (Constitution Bench) (hereinafter referred to as *Chandra Mohan (I)*). It was held that Article 233 prescribes two distinct sources of recruitment: (a) Judicial Officers in service of Union or State, and (b) members of the Bar with seven years' standing. The Rules framed by the Governor under Article 309 cannot dilute or override the constitutional mandate of Article 233. Any recruitment contrary to this mandate would be unconstitutional. It was clarified that appointments of District Judges from judicial service are by promotion in consultation with the High Court, while direct recruitment is confined to Advocates of not less than 7 years standing recommended by the High Court. The Court in *Chandra Mohan (I)* further held that "service of Union or State" in Article 233(2) is confined to judicial service as defined in Article 236(b). Thus, a serving judicial officer cannot claim to fall under the category of Advocate for the purpose of Article 233(2).

11. Thereafter, the Constitution (Twentieth Amendment) Act, 1966 introduced Article 233-A, which validated prior appointments made to the post of District Judges. This amendment indicates legislative acceptance of the interpretation given by this Court in *Chandra Mohan (I)*.

12. In *Chandra Mohan vs. State of U.P., (1976) 3 SCC 560* (a constitution Bench) (hereinafter referred to as *Chandra Mohan (II)*), the Appellant had challenged constitutional validity of the Constitution (Twentieth Amendment) Act, 1966, as it affected the provisions of Article 129, 141 and 142 of the Constitution and could not have been enacted without the ratification of the State Legislatures. The Appellant also challenged the constitutional validity of U.P. Higher Judicial Service Rules, 1953 on the ground that they make unfair discrimination between direct recruits and promotees.

13. It was argued that rule 5, 8, 13, 14, 15, 17 and 19 of the Uttar Pradesh Higher Judicial Service Rules were declared unconstitutional vide *Chandra Mohan (I)* and as they were intertwined with rule 17 and 19 as well as rules 20 and 23, the seniority fixed on the basis of said rules was illegal.

14. During the course arguments challenge to constitutional validity of the Constitution (Twentieth Amendment) Act, 1966 was given up. This Court held that proviso to rule 20 was severable from the rest of the provision, which was viable by itself. It was also held that it would be open to the Competent Authority to determine the seniority of the Appellant in accordance with rule 20 sans the second proviso, supplemented by any other valid principals or rules. With these observation the appeal was dismissed.

15. The legal position on this issue is governed by the pronouncement of three judges bench of this Court in *Dheeraj Mor v. High Court of Delhi* (2020) 7 SCC 401. Before that, some guidance had been given in *Vijay Kumar Mishra v. High Court of Judicature at Patna*, (2016) 9 SCC 313. In *Vijay Kumar*, this Court took the view that Article 233(2) of the Constitution “only prohibits the appointment” of a serving judicial officer as a District Judge. It does not prevent his participation in the selection process. According to that ruling, a judicial officer could compete for the post under the Bar quota, but if selected, he had to resign from his service before actual appointment. However, this view created ambiguity because it left open the question whether a serving judicial officer, who had earlier completed seven years’ practice at the Bar, could rightfully claim a place in the quota meant exclusively for Advocates. This precise question came before a larger bench in *Dheeraj Mor*. The Court gave a categorical answer. It said a serving judicial officer cannot be treated as eligible for appointment in the Bar quota, even if he had once been an advocate of seven years’ standing before entering service.

16. The reasoning of this Court is clear. Article 233 requires that a person appointed under the Advocates’ quota must be continuing in practice for not less than 7 years and at the time of appointment. This means that an advocate must be in actual practice at the time of his appointment as District

Judge. A person who has already entered the judicial service cannot claim to satisfy this condition. His path to the District Judge cadre lies only through promotion or through the limited competitive examination meant for in-service officers.

17. This Court explained that one cannot claim both advantages at the same time. Once a person chooses to join judicial service, he cannot again lay claim to the 25% quota which is reserved exclusively for practising advocates. In the words of the Court, "he cannot sail in two boats."

18. By giving this ruling, the larger bench expressly overruled the earlier view in *Vijay Kumar*. It also upheld the validity of State rules which bar serving judicial officers from competing in the Advocates' quota. Such rules were found to be consistent with the constitutional scheme under Article 233.

19. This Court summed up the position in a manner leaving no doubt that though the appointment is made under Article 233(1), the channel for judicial officers is by promotion, and for members of the Bar is by direct recruitment. Accordingly, this Court concluded that members of the judicial service cannot claim to be appointed for vacancies in the cadre of District Judge in the quota earmarked for eligible Advocates.

20. On the first and third questions framed by this Hon'ble Court, the legal position admits of no ambiguity. Article 233 of the Constitution recognises two distinct and separate sources of appointment to the post of District Judge. The first source is of persons already in "judicial service" of the Union or the State, as defined under Article 236(b). The second source is of Advocates or Pleaders who have been in practice for not less than seven years and are recommended by the High Court.

21. The distinction between these two sources has been emphasised by the Constitution Bench in *Chandra Mohan (I)*. The Court held that Article 233(1) is intended to govern appointments of persons in judicial service, that is by way of promotion, in consultation with the High Court. Article 233(2), on the other hand, specifically contemplates appointments from the Bar and uses the restrictive word "only". This expression excludes all other classes of persons except those answering the description of "Advocate" or "Pleader" with not less than seven years' standing.

22. The use of the word "only" in Article 233(2) is significant. It signifies exclusivity. A Judicial Officer who has once entered the service ceases to be an Advocate within the meaning of the Advocates Act, 1961 and the Bar Council Rules, so long as he is serving as a Judicial Officer. Such a

person cannot claim to be considered under the Bar quota, while serving as a Judicial Officer, merely because prior to joining service he had completed seven years of practice. To hold otherwise would render the distinction between Article 233(1) and 233(2) meaningless and make the word “only” otiose.

23. This interpretation is also consistent with the scheme of the Advocates Act, 1961. Section 2(1)(a) defines “Advocate” to mean a person whose name has been entered on the roll of a State Bar Council. Rule 49 of the Bar Council of India Rules makes it explicit that a full-time salaried employee, including a Judicial Officer, cannot continue to practise as an Advocate. Therefore, once a person accepts judicial service, he loses his status as an Advocate and cannot be brought within the category of Article 233(2), so long as he is serving as a Judicial Officer.

24. Judicial precedent has consistently supported this view. In *Satya Narain Singh v. High Court of Judicature at Allahabad (1985) 1 SCC 225*, this Court held that eligibility under Article 233(2) is confined only to those who continue to be Advocates of seven years’ standing on the date of appointment, and does not extend to Judicial Officers.

25. Therefore, as far as question (i) is concerned, a Judicial Officer who has earlier practised for seven years at the Bar

cannot seek appointment under the Bar quota, so long as he is serving as a Judicial Officer. His avenue of promotion is under Article 233(1) alone. Since a serving Judicial Officer does not come within the purview of Article 233(2), there is no question of the Article 233(2) prescribing any qualification for appointment of a serving Judicial Officer as a District Judge.

26. As far as question no. (ii) is concerned, eligibility for appointment to the post of District Judge must be examined both at the time of application as well as at the time of appointment. This is for the reason that a recruitment process has multiple stages. The invitation to apply prescribes the eligibility. The candidate must possess the minimum qualification on the cut-off date specified in the advertisement. However, mere possession of eligibility at the time of application does not confer any vested right to appointment. The candidate must continue to remain qualified up to the stage of actual appointment.

27. Applying this principle to Article 233(2), an 'Advocate' seeking appointment as District Judge must not only have 7 years of standing on the date of application but must continue to be an 'Advocate' till the date of his appointment. If during this period he accepts judicial service or employment which disqualifies him from practice, he ceases

to be an 'Advocate' and becomes ineligible under Article 233(2). This construction ensures that the two streams under Article 233 remain distinct and that the constitutional requirement is not defeated by subsequent events.

28. Turning to the fourth question, it is necessary to examine whether a person who has partly served as a Civil Judge and partly practised as an Advocate for a combined period of 7 years can claim eligibility under Article 233(2). The plain text of Article 233(2) provides the answer. It uses the expression: "*A person not already in the service of the Union or of the State shall only be eligible... if he has been for not less than seven years an Advocate or a Pleader.*" The wording is categorical.

29. A Judicial Officer cannot be equated with an Advocate. They are separate and mutually exclusive. This was settled in ***Chandra Mohan (I)*** and followed in ***Satya Narain Singh***. The eligibility for appointment under Article 233(2) must be strictly confined to the category of Advocates with 7 years' standing, and the constitutional mandate cannot be expanded by including Judicial Officers who are serving on the date of advertisement (or other cut-off date) till acceptance of appointment.

30. Therefore, the correct interpretation would be (i) For appointment under Article 233(2), a candidate must be an Advocate with 7 years' continuous standing on the date of application and must remain so till the date of appointment. (ii) Judicial Officers constitute a separate stream under Article 233(1). Their experience as Civil Judge can be clubbed with experience at the Bar to satisfy Article 233(2) provided that he is an Advocate on the date of advertisement (or other cut-off date) and continues to be so till acceptance of appointment. (iii) The two streams are distinct, exclusive, and non-overlapping.

31. Applying this principle, for recruitment under Article 233(2), the candidate must continue to be an Advocate till the stage of appointment and assumption of office. A judicial officer who has ceased to practice as Advocate cannot claim eligibility under the Bar quota merely on the strength of past practice, unless he is an Advocate on the date of advertisement (or other cut-off date) and continues to be so till acceptance of appointment.

32. Therefore, on a harmonious construction of Article 233(1) and 233(2), supported by *Chandra Mohan (I)*, *Chandra Mohan (II)*, the Twentieth Amendment, and subsequent judicial precedents, the position that would emerge is as follows:

(i) Judicial Officers are eligible for appointment to District Judge only by promotion under Article 233(1). They cannot encroach upon the Bar quota.

(ii) A person who is an Advocate on the date of advertisement (or other cut-off date) and continues to be so till acceptance of appointment constitute the sole category for direct recruitment under Article 233(2).

(iii) Eligibility must be tested both at the time of application and appointment.

(iv) A combined period of practice and judicial service can be counted for eligibility under Article 233(2), provided he is an Advocate on the date of advertisement (or other cut-off date) and continues to be an Advocate till acceptance of appointment.

Date : 17 Sept, 2025

  
Registrar (Legal & Research)  
High Court of Bombay

**IN THE SUPREME COURT OF INDIA  
R.P. (C) NO. 621/2021  
IN  
CIVIL APPEAL NO. 1698/2020  
IN  
SLP (C) NO. 14156/2015**

**IN THE MATTER OF:**

DHEERAJ MOR

...PETITIONER

Versus

HIGH COURT OF DELHI

...RESPONDENT

**SUBMISSIONS ON BEHALF OF THE DELHI HIGH COURT**

1. The present submissions are being filed in response to the following questions of law that have arisen for the consideration by this Hon'ble Court:
  - i. Whether a Judicial Officer, who has already completed seven years' standing 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?
  - 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?

2. Article 233 of the Constitution has come up for interpretation before this Hon'ble Court. It may be mentioned that the Delhi Higher Judicial Services Rules, 1970, provide that the posts in cadre of District Judge shall be filled through:
  - (a) 65% by promotion from amongst the Civil Judges (Senior Division) having a minimum ten years service on the basis of merit-cum-seniority;
  - (b) 10% by promotion on basis of merit through limited competitive examination of Civil Judges who have qualifying service of 7 years; and
  - (c) 25% by way of direct recruitment from candidates "continuously practicing as an Advocate for not less than seven years as on the last date of receipt of applications." (Rule 7 read with Rule 9).
3. It is submitted that the Delhi Higher Judicial Services Rules, 1970 have been framed strictly as per Article 233 of the Constitution of India and rightly provide that for direct recruitment to the post of District Judge an applicant should be an Advocate having not less than seven years of continuous practice.
4. Thus, the Delhi High Court opposes the proposition that the Members of the Judicial Service can also appear for the post of District Judge by way of direct appointment.

**CONSTITUTIONAL FRAMEWORK: INTERPRETATION OF ARTICLE 233(2) OF THE CONSTITUTION OF INDIA.**

5. It is settled law that Article 233 is a self-contained provision regarding the appointment of District Judges. [*Rameshwar Dayal v. State of Punjab & Ors. 1961*

*SCR (2) 874 (CB); Chandra Mohan v. State of UP & Ors. 1967 SCR (1) 77 (CB); Deepak Aggarwal v. Keshav Kaushik [2013] 1 S.C.R. 402].*

6. Further, Chapter VI Part V of the Constitution deals exclusively with the “Subordinate Courts.”
7. A comprehensive reading of Chapter VI and specifically Article 233 (1) and (2) clearly shows that in so far as judicial service is concerned, Article 233 (2) proscribes that a judicial officer can be appointed as District Judge by way of direct recruitment.
8. Article 233 (2) states “A person ***not already*** in the service of the Union or of the State ***shall only be eligible*** to be appointed.” Thus, the said Article disentitles anyone in service of the Union or of the State. Once a judicial officer is not even eligible for appointment by way of direct recruitment, there cannot be any question of any further requirement of qualification being prescribed under Article 233 (2) for a judicial officer.
9. In *Rameshwar Dayal (supra)*, the Hon'ble Constitution Bench held that:
 

“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 Cl. (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 Cl. (2) and all that is required is that he should be an advocate or pleader of seven years' standing.***” (1961 SCR (2) 874 (CB) @ Pg. 886)

10. In *Chandra Mohan (supra)*, another Hon'ble Constitution Bench considered Article 233 (2) along with Articles 233 to 237 in Chapter VI. After a thorough analysis it was held that:

“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 in the case of appointments of persons to the judicial service other than as district judges, they will be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the Public Service Commission.” [1967 SCR (1) 77 (CB) @ Pg. 89]

11. It was also held that the expression “the service of the Union or of the State” means “judicial service” only. The relevant excerpt is as follows:

“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. The circumstance that the definition of “judicial service” finds a place in a subsequent Article does not necessarily lead to a contrary conclusion. The fact that in Art. 233(2) the expression “the service” is used whereas in Arts. 234 and 235 the expression “judicial service” is found is not decisive of the question whether the expression “the service” in Art. 233(2) must be something other than the judicial service, for, the entire chapter is dealing with the judicial service. The definition is exhaustive of the service.

We, therefore, construe the expression “the service” in cl. (2) of Art. 233 as the judicial service.”

[1967 SCR (1) 77 (CB) @ Pg. 90, 91]

12. The above interpretation by two different Constitution Benches clearly leads to only one inference that while a judicial officer can be appointed as District Judge under Article 233 (1) in consultation with the High Court, under Article 233 (2) the appointment on the recommendation of the High Court through direct recruitment can only be of an advocate.
13. Thus, Article 233 (2) provides for the eligibility of an advocate who can be recommended by the High Court and a judicial officer has been rendered ineligible.
14. The Constitution Bench judgments are binding on subsequent benches of co-ordinate jurisdiction. [National Insurance Company Ltd. vs. Pranay Sethi (2017) 13 S.C.R 100].
15. Furthermore, the decisions of the Constitution Benches above, have been consistently followed in subsequent judgments of this Hon'ble Court:
  - (a) *Satya Narain Singh v. High Court of Judicature at Allahabad & Ors.* (1985) 1 SCC 225, (3 Judge Bench) wherein it was held that the expression "the service" in Article 233 (2) could only mean the judicial service. It was also held that this does not mean that the person who is already in service, on the recommendation by High Court can be appointed as District Judge. (Para 5 and 6).
  - (b) *Deepak Aggarwal v. Keshav Kaushik* [2013] 1 S.C.R. 402, (3 Judge Bench) wherein it was held that:
 

"...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.”

(Para 46 @ Page 439)

- (c) *All India Judges Association v. UOI & Ors.* [2002] 2 S.C.R. 712; wherein the 3 Judge Bench agreed with report of Shetty Commission that recruitment to the Higher Judicial service from amongst the advocates should be 25%. (Page 736). It was also held that recruitment to Higher Judicial Service will be (i) 50% by promotion from amongst the civil judges, (ii) 25% by promotion on merit through limited examination of civil judges having not less than 5 years qualifying service, and (iii) 25% of posts by direct recruitment from eligible advocates. (Page 737 and 739)

16. In the referral order dated 12.08.2025 it has been stated that the issues which came up for consideration in Rameshwar Dayal (*supra*) and Chandra Mohan (*supra*) were different. It is submitted that in both the judgments, Article 233 was discussed and interpreted comprehensively.
17. *Chandra Mohan (supra)* specifically dealt with the changes in the appointment and posting and promotion of district judges prior to and after the independence. Article 233 (2) was specifically interpreted in line with the Chapter on Sub-

ordinate Judiciary in the Constitution. The ratio of the said judgments is binding on subsequent benches of coordinate jurisdiction.

18. It is correct that in *Chandra Mohan (supra)*, direct recruitment of individuals who were members of the executive branch of the Government performing certain revenue and magisterial functions was under consideration. The point raised for consideration was:

“The third point raised is one of far-reaching importance. Can the Governor after the Constitution, directly appoint persons from a service 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 issue was, thus, whether the phrase “the service of the Union or of the State” in Article 233 (2) would include officers who were performing revenue and magisterial functions. As mentioned above, the Hon'ble Bench interpreted the said phrase to mean only “judicial service” as per Article 236. The Hon'ble Court noted that Article 236 uses “exclusively” and “intended” which emphasize that judicial service consists only of persons intended to fill up the posts of district judges and other civil judicial posts and that is the exclusive service of judicial officers.

19. It is submitted that allowing any other interpretation to the phrase “the service of the Union or of the State” would imply that under Article 233 (1), the Governor can appoint and/or post anyone who may even be in the service of the Union or the State.

The Hon'ble Court noted that prior to independence there was strong opposition to appointment of persons from the executive to the post of District Judge.

The Hon'ble Court therefore, drew a distinction between the two sources of appointment/promotion to the post of the District Judges and held that there can only be two sources: (a) either the officers in judicial service or (b) advocates and resultantly, only advocates conforming to the conditions mentioned in Article 233(2) are entitled to direct recruitment to the post of District Judge.

20. The interpretation in *Chandra Mohan (supra)* is supported by the difference in language between Article 233 and Article 254 of the Government of India Act, 1935. For the sake of convenience, Section 254 of the Government of India Act, 1935 reads as follows:

“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.”

Section 254 (2) created a prohibition for appointment of a person who was already in the service. At the same time Section 254 (1) allowed anyone from the service to be appointed as a District Judge. This has been noted on Page 91 of *Chandra Mohan (supra)* in the following terms:

“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 (iii) 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.”

21. Even the Constituent Assembly Debates support the view taken in *Chandra Mohan (supra)*.
22. Article 209 A was introduced before the Constituent Assembly and was discussed on 16.09.1949. The Constituent Assembly members wanted separation of the judiciary from the executive.
23. The Constitution makers wanted the judicial branch to be independent, and at the same time, reflect a measure of diversity of thought, and approach. Before the Constituent Assembly an amendment was proposed to Article 209 A on the following basis:

“Shri Kuldhhar Chaliha : (Assam: General) : Mr. President Sir, I beg to move :

That in amendment No. 20 above, in clause (2) of the proposed new article 209 A, after the words 'seven years' and 'pleader' the words 'enrolled as' and 'of the High Court of the State or States exercising jurisdiction' be inserted respectively.”

Sir, the object of this amendments is that unless a lawyer has practised in the same province in which he is going to be appointed as a Judge, it will be very difficult for him to appreciate the customs, manners and the practices of the country...”

However, Dr. B.R. Ambedkar did not agree with the amendment by stating that:

“With regard to the amendment moved by Mr. Chaliha, I am sorry to say I cannot accept it, for two reasons : one is that we do not want to introduce any kind of provincialism by law as he wishes to do by his amendment. Secondly, the adoption of his amendment might create difficulties for the province itself because it may not be possible to find a pleader who might technically have the qualifications but in substance may not be fitted to be appointed to the High Court, and I think it is much better to leave the ground perfectly open to the authority to make such appointment provided the incumbent has the qualification. I therefore cannot accept that amendment.”

In regard to judicial positions in the District Court, the High Courts and the Supreme Court, the Constitution enables appointments, from amongst members of the Bar. Having another stream of appointment through advocates promotes independence and allows members having a different and novel approach towards law and justice to be considered as District Judges. A lawyer practising for 7 years or more is bound bring in a fresh perspective towards resolution of disputes.

24. The classification or distinction made—between advocates and judicial officers, per se is a constitutionally sanctioned one which is clear from a plain reading of Article 233 itself.

As stated by Justice S. Ravindra Bhatt in *Dheeraj Mor V. High Court of Delhi* [2020] 2 S.C.R. 161:

“Firstly, Article 233(1) talks of both appointments and *promotions*. Secondly, the classification is evident from the description of the two categories in Article 233(2): one “*not already in the service of the Union or of the State*” and the other “*if he has been for not less than seven years as an advocate or a pleader*”. Both categories are to be “*recommended by the High Court for appointment*”. The intent here was that in both cases, there were clear exclusions i.e. advocates with less than seven years' practice (which meant, conversely that those with more than seven years' practice were eligible) and those holding civil posts under the State or the Union. The omission of judicial officers only meant that such of them, who were recommended for

promotion, could be so appointed by the Governor. The conditions for their promotion were left exclusively to be framed by the High Courts.”

25. The omission — in regard to spelling out the eligibility conditions vis-à-vis judicial officers, to the post of District Judge, is intentional.
26. It is submitted that any proposition that a member of judicial service is eligible for appointment under Article 233 (2) would be contrary to the plain language of the Article. Further, such an interpretation is not supported by any of the earlier binding precedents and the Constituent Assembly Debates.

**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?**

27. It is submitted that under Article 233 (2), a judicial officer is not entitled for appointment against Bar vacancy.
28. In *Rameshwar Dayal (supra)*, the question before the Constitution Bench was regarding the eligibility of persons on the roll of advocates of East Punjab High Court before the partition of India in 1947 for appointment as a District Judge. The Bench held that the period of practice before Lahore High Court could be counted as against the required period of 7 years for appointment as District Judge. It was laid down that practice rendered in or before the Lahore High Court before partition was not open to objection under Article 233(2) of the Constitution. Even if the word 'advocate' in clause(2) of Article 233 meant an advocate of a court in India, and the appointee must be such an advocate at the time of his appointment, no objection can be raised on this ground because being factually on the roll of

Advocates of the Punjab High Court at the time of appointment, the candidate was admittedly an advocate in a court in India and continued as such till the date of his appointment. The Court also considered the principle applied to the East Punjab High Court. An advocate of the Lahore High Court was entitled to practice in the new High Court counting his seniority on the strength of his standing in the Lahore High Court. It was held that a person who continued as an advocate at the time of his appointment as District Judge fulfilled the requirement of Article 233.

29. In *Satya Narain Singh (supra)*, the issue concerned members of Uttar Pradesh Judicial Service who had applied for appointment by way of direct recruitment to the Uttar Pradesh Higher Judicial Service claiming that they had completed 7 years of practice at the Bar before their appointment to the Uttar Pradesh Judicial Service. It was held as follows:

"3 ....Two points straightway project themselves when the two clauses of Article 233 are read: The first clause deals with " appointments of persons to be, and the posting and promotion of, District Judges In any State" while the second clause is confined in its application to persons " not already In the service of the Union or of the State". We may mention here that "service of the Union or of the State" has been interpreted by this Court to mean Judicial Service. Again while the first clause makes consultation by the Governor of the State with the High Court necessary, the second clause requires that the High Court must recommend a person for appointment as a District Judge. It is only in respect of the persons covered by the second clause that there is a requirement that a person shall be eligible for appointment as District Judge if he has been an advocate or a pleader for not less than 7 years. In other words. in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District

Judges. while in the case of candidates who are members of a Judicial Service the 7 years' rule has no application but there has to be consultation with the High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. Obviously the same ship cannot sail both the streams simultaneously."

30. In *Deepak Aggarwal (supra)* a three-Judge Bench considered the provisions of Article 233(2) and held that the expression "advocate" or "pleader" refers to the members of the Bar practicing law. It was stated that members of the Bar meant classes of persons who were practicing in a court of law as pleaders or advocates. This Hon'ble Court further held that in Article 233(2), "if he has been for not less than seven years," the present perfect continuous tense is used for a position which began at some time in the past and is continuing. Therefore, one of the essential requirements is that such a person must with requisite period be continuing as an advocate on the date of application. The relevant extract is as follows:

"77. We do not think there is any doubt about the meaning of the expression "advocate or pleader" in Article 233(2) of the Constitution. This should bear the meaning it had in Jaw preceding the Constitution and as the expression was generally understood. The expression "advocate or pleader" refers to legal practitioner and, thus, it means a person who has a right to act and/or plead in court on behalf of his client. There is no indication in the context to the contrary. It refers to the members of the Bar practising Jaw. In other words, the expression "advocate or pleader" in Article 233(2) has been used for a member of the Bar who conducts cases in court or, in other words acts and/or pleads in court on behalf of his client. In *Sushma Suri v. Govt. of NCT of Delhi*, (1991 1 SCC330, a three-Judge Bench of this Court construed the expression "members of the Bar" to mean class of persons who were actually practising in courts of law as pleaders or advocates ....

...

88. As regards construction of the expression, “if he has been for not less than seven years an advocate” in Article 233(2) of the Constitution, we think Mr Prashant Bhushan was right in his submission that this expression means seven years as an advocate immediately preceding the application and not seven years any time in the past. This is clear by use of “has been”. The present perfect continuous tense is used for a position which began at sometime in the past and is still continuing. Therefore, one of the essential requirements articulated by the above expression in Article 233(2) is that such person must with requisite period be continuing as an advocate on the date of application.”

26. Article 233(2) ex facie does not mention anything about judicial officers from being excluded from consideration for appointment to the post of District Judge. However, it does not imply that by virtue of seven years' practice in the past, a judicial officer can be considered eligible, because such a person cannot clear the bar placed in Article 233 (2) that he “*has been for not less than seven years*” “*an advocate or a pleader*”. The sequitur clearly is that a judicial officer is not one who *has been for not less than seven years*, an advocate or pleader.
27. *Chandra Mohan* (supra), and subsequent decisions hold that Article 233(2) renders ineligible all those who hold civil posts under a State or the Union, just as it renders all advocates with less than seven years' practice ineligible, on the date fixed for reckoning eligibility. Furthermore, those in judicial service [i.e. holders of posts other than District Judge, per Article 236(2)] are not entitled to consideration because the provision [Article 233(2)] *does not prescribe any eligibility condition*. This does not mean that any judicial officer, with any length of service as a member of the judicial service, is entitled to consideration under

Article 233(2), because of the negative phraseology through which eligibility of holders of civil posts, or those in civil service (of the State or the Union) and advocates with seven years' service is couched.

28. In *Dheeraj Mor V. High Court of Delhi* [2020] 2 S.C.R. 161, while taking into consideration all the previous decisions on the issue, this Hon'ble Court came to the conclusion that the Constitution's wish is to be seen which directs for a distinction between the two sources of appointment to the post of District Judge, i.e., (1) From Advocates as eligible and (2) Judicial Officers.

The relevant portion of the said judgment is extracted hereunder:

“27. The upshot of the above discussion is that the Constitution makers clearly wished to draw a distinction between the two sources of appointment to the post of District Judge. For one i.e. Advocates, eligibility was spelt out in negative phraseology i.e. not less than seven years' practice; for judicial officers, no eligibility condition was stipulated in Article 233(2) : this clearly meant that they were not eligible to be appointed (by direct recruitment) as they did not and could not be considered advocates with seven years' practice, once they entered the judicial service. The only channel for their appointment, was in accordance with rules framed by the High Court, for promotion (as District Judges) of officers in the judicial service [defined as those holding posts *other* than District Judges, per Article 236(b)].

29. Article 233(2) is meant for direct recruitment from advocates/pleader whereas no such direct recruitment from the judicial service has been provided. It is only Article 233(1) which deals with the appointment as district judge and while doing so, promotion is included and quite clearly an advocate/pleader who is not in the service cannot be promoted and it is only the judicial officers in service who can be promoted. Article 233(1) enables the appointment without any further criteria.

30. In the “*All India Judges Association v. UOI & Ors.* [2002] 2 S.C.R. 712” (hereinafter referred to third “AIJA case”), this Hon’ble Court has considered the issue of method/recruitment to the cadre of Higher Judicial Service, i.e., District Judge and while agreeing with the recommendations of the Shetty Commission, the recruitment to the District Judge Cadre from amongst the advocates was restricted only upto 25% and the process has to be through competitive exam both written and viva. In the said decision, this Hon’ble Court concluded that the appointment to the District Judge Cadres should be done in the following manner:
1. 50% by way of promotion on the principle of merit cum seniority.
  2. 25% shall be filled by promotion but strictly based on merit through the limited competitive exam (hereinafter referred to as “LDCE”) and for which qualifying service as a Civil Judge (Senior Division) should not be less than 5 years.
31. The aforesaid decision came up for reconsideration on certain issues before this Hon’ble Court on the issue of 10% quota reserved for LDCE and the quota of 25% as determined in the Third AIJA Case and this Hon’ble Court, while referring to the fourth AIJA case (2010 15 SCC 170), wherein due to large number of unfilled vacancies, the 25% LDCE category was reduced from 25% to 10%, and after considering the statistics, restored the LDCE quota to 25% and also held that in case if sufficient number of candidates are not selected from the LDCE quota, such remaining posts would revert back to regular promotion quota based on merit cum seniority. In the said decision itself, this Hon’ble Court has also reduced the experience of 5 years as a Civil Judge (Senior Division) to three years except for few states. In effect, as on today, the issue of appointment through recruitment either by way of promotion or through direct recruitment has gone through several

checks and balances and pursuant to the said judgment, the appointment to the District Judge cadre is to be done in the following manner:

1. 50% from through promotion based on merit cum seniority.
2. 25% through LDCE.
3. 25% through direct recruitment amongst lawyers/pleaders which also includes the public prosecutors/government counsels.

32. In *Dheeraj Mor (supra)*, this Hon'ble Court had also considered the Constitution's wish as evident from Article 217(2) and Article 124 (3). In this decision, this Hon'ble Court also referred to *Ashok Kumar Sharma & Ors. v. Chander Shekhar and Anr*, [1997] 2 S.C.R. 896 whereby it was held that the eligibility of candidates shall have to be judged with reference to the notified date which may be the last date for filing the application or any other prescribed date. In this decision, this Hon'ble Court doubted the decision of *Vijay Kumar Mishra* and held that the eligibility is relevant with reference to the possession of stipulated qualifications/experience and age. The right to participate is not a guaranteed one and can be made available only if the candidate fills the requisite eligibility criteria.
33. The law as enunciated in the above referred cases makes it amply clear that the period of seven years has to be counted as a continuous one and it is on the date of the application that the name of the Advocate has to be on the roll of Advocates. In *Deepak Agarwal (supra)*, this Hon'ble Court found that the name of public prosecutors/government counsels were on the roll of Advocates as maintained by the Bar Council. Even in the case of *Rameshwar Dayal (supra)*, this Hon'ble Court laid much emphasis on the foundational fact that the name of the concerned person

was on the rolls of Advocate on the date of application. Again, in the case of *R. Poornima and Ors. v. Union of India and Ors.* [2020] 8 S.C.R. 89, this Hon'ble Court interpreted the term 'has been' in the same manner as has been done in the case of *Dheeraj Mor* (supra).

34. Furthermore, once the constitution bars a person who is in judicial service for his appointment as a District Judge through direct recruitment, the same should not be lifted by giving an interpretation which is not otherwise available from the plain and literal interpretation of the constitutional provision.
35. When the Constitution clearly bars a specific action, other interpretations are generally not permissible, a principle rooted in the literal meaning rule and expression *uniusest exclusion alterius*, i.e., "express mention is the exclusion of the unexpressed". This approach holds that if the language of the Constitution is unambiguous, its literal meaning should prevail, and any interpretation that deviates from it is invalid. However, in cases of ambiguity, courts may use other interpretation methods, such as considering the purpose of the provision, to determine the intended meaning.
36. It is pertinent to take note of the fact that this Hon'ble Court in *State (NCT) of Delhi v. Union of India* (2018) 8 SCC 501 held that the elementary principle of interpreting the Constitution or a statute is to look into the words used in the statute and when the language is clear, the intention of the legislature is to be gathered from the language used. It was further opined that aid to interpretation is resorted to only when there is some ambiguity in words or expression used in the statute.

37. Therefore, it is respectfully submitted that judicial officers cannot be considered against the bar vacancy irrespective of the fact that they completed 7 years before joining judicial services. They can only be promoted.

**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?**

38. A similar issue with respect to the interpretation of Article 217(2) came up for consideration before this Hon'ble Court in the case of *R. Poornima and Ors. v. Union of India and Ors.* [2020] 8 S.C.R. 89. In this decision, this Hon'ble Court considered the issue as to whether the District Judges who had not completed ten years of service but had experience as an Advocate which made the experience collectively more than ten years, if put together could be considered for appointment as a High Court Judge as per Article 217 (2) (a) of the Constitution. In the said decision, it was noted that Article 217(1) only prescribes the method for appointment including the age, however, Clause (2) provides the qualification. This Hon'ble Court after analysing the relevant material considered the issue in the broader perspective with the observation that there are two separate queues for appointment, i.e., one from Judicial service and another from the Bar. While considering the same, it was observed as under:

30. But what is important to note is that Article 217 (2) merely prescribes the eligibility criteria and the method of computation of the same. If a person is found to have satisfied the eligibility criteria, then he must take his place in one of the queues. There are 2 separate queues, one from judicial service and another from the Bar. One cannot stand on one queue by virtue of his status on the date of consideration of his name for elevation and at the same time keep a towel in the other queue, so that he can claim to be within the zone of consideration from either of the two or from a combination of both.

31. The queue to which a person is assigned, depends upon his status on the date of consideration. If a person is an advocate on the date of consideration, he can take his place only in the queue meant for members of the Bar. Similarly, if a person is a judicial officer on the date of consideration, he shall take his chance only in the queue meant for service candidates.

32. Hopping on and hopping off from one queue to the other, is not permissible. Today, if any of the petitioners cease to be Judicial Officers and become Advocates, they may be eligible to be considered against the quota intended for the Bar. But while continuing as Judicial Officers, they cannot seek to invoke Explanation (a) as it applies only to those who have become advocates after having a judicial office.

39. In the aforesaid decision, the issue of continuous practice as an Advocate also came up for consideration and decision of this Hon'ble Court in the case of *Mahesh Chandra Gupta v. Union of India*, [2009] 10 S.C.R. 921 with respect to the issue about entitlement to practice as an advocate was appreciated. This Hon'ble Court, after taking into consideration the term 'judicial officer', held that the Members of the Income Tax Appellate Tribunal are not judicial officers and therefore only the judicial officers were not found entitled for the purpose of Article 217(2)(b) of the Constitution.
40. Furthermore, the word 'has been' was also considered for the purpose of years of practice and it was held in Para 45 of the judgment in *R. Poornima* (supra) as follows:

45. On the other hand the words "has been" do not have any such connotation. The Cambridge Dictionary states that the words "has been" are in present perfect continuous form. The Dictionary says that we may use the present perfect continuous, either to talk about a finished activity in the recent past or to talk about a single activity that began at a point in the past and is still continuing. Keeping this in mind, Explanation (a) confers the benefit of clubbing to a limited extent, to a person who has held a Judicial Office. To be

eligible for the limited benefit so conferred, a person should have been an Advocate “after he has held any judicial office”. There is no confusion either in the language of Article 217(2) or in our mind.

41. In the same decision, the larger issue of career progression and the justified opportunities to all was also considered, it was held as follows:

“46. The argument that it will be discriminatory to allow the benefit of clubbing only to a person who held a judicial office and later became an advocate, does not appeal to us. In fact, Article 217(2) does not guarantee any one with the right to be appointed as a judge of the High Court. In a way, a person holding a judicial office is better placed, as he is assured of a career progression (though in a limited sense) after being placed in something like a conveyor belt. There is no such assurance for an advocate. Therefore, the argument based upon Article 14 does not impress us.”

**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?**

41. In response to the aforesaid question, it is submitted that although Article 233(2) of the Constitution makes two clear exclusions, i.e., advocates with less than seven years’ practice and those holding civil posts under the State or the Union, the omission of judicial officers only means that such of them, who were recommended for promotion, could be so appointed by the Governor, and the conditions for their promotion were left exclusively to be framed by the High Courts. Meaning thereby, except the law declared by this Hon’ble Court through various pronouncements such as Third AJIA, Fourth AJIA cases which resulted

into formation of different High Court Rules for the Higher Judicial Services, there is no other requirement or say eligibility criteria for appointment of a serving judicial officer as a District Judge as per Article 233 (1) of the Constitution.

42. So far as Article 233(2) and the serving judicial officers are concerned, it is enough to say that the participation of a serving judicial officer is barred and therefore, there cannot be any eligibility criteria prescribed for them.

**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?**

43. The answer to the aforesaid question is negative. It is relevant to take note of the fact that there is a parallel drawn between Article 217 (deals with the appointment for the post of Judge of High Court) and Article 233 (deals with the post of the District Judge) in the judgment of *R. Poornima* (supra) that there are two separate queues for the appointment to the post of District Judge or the Judge of High Court, i.e., one from judicial service and the other from the Bar, and one cannot stand in one queue by virtue of his status as on the date of consideration of his name for elevation and at the same time keep a towel in the other queue, so that he can claim to be within the zone of consideration from either of the two or from a combination of both.
44. Further, the queue to which a person is assigned, depends upon his status on the date of consideration. If a person is an advocate on the date of consideration, he can take his place only in the queue meant for members of the Bar. Similarly, if a person is a judicial officer on the date of consideration, he shall take his chance only in the queue meant for service candidates. Jumping from one queue to the

other is not permissible. Today, if any of the petitioners cease to be Judicial Officers and become Advocates, they may be eligible to be considered against the quota intended for the Bar. But while continuing as Judicial Officers, they cannot seek to invoke Explanation (a) as it applies to those who have become advocates after having held a judicial office.

45. It is relevant to take note of the fact that if clubbing is permitted, it would cause serious issues in the maintenance of the seniority list. Further, the interpretation of the words “has been” used in Article 233, is in the present perfect continuous tense. As per the dictionary meaning, we may use the present perfect continuous, either to talk about a finished activity in the recent past or to talk about a single activity that began at a point in the past and is still continuing. Thus, it applies only to a situation wherein the person appointed in the judicial service has resigned and has been serving as pleader/advocate for not less than seven years, or has been continuing to practice as an advocate for not less than seven years.
46. Thus, in light of the aforesaid submissions, a person who has been Civil Judge for seven years or has been an Advocate and Civil Judge for a combined period of seven years or more than seven years would not be eligible for appointment as District Judge under Article 233 of the Constitution of India.
47. Once a person in judicial service is not eligible for being considered for direct recruitment to the post of a District Judge, the number of years spent by him/her either as a lawyer or as a judge or cumulatively is immaterial in view of Article 233 (2) of the Constitution of India.

48. Thus, if the interpretation being urged by the side seeking answers to the above questions in positive and more particularly the argument that the judicial officers with prior experience as an advocate can be considered for the purpose of appointment under Article 233(2) of the Constitution, is decided in their favour, it would collapse the carefully demarcated distinction between two appointment streams, confer an unfair double benefit upon judicial officers, and run counter to both the plain constitutional text and settled judicial authority.
49. It is respectfully submitted that the determination of these questions goes to the root of the constitutional design for judicial appointments, and their resolution requires harmonisation of the express language of Article 233(2) with the larger principles of judicial independence, separation of powers, and equality of opportunity under Articles 14 and 16.

**FILED BY:**



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**AOR CODE: 1916**

R.P.(C) No. 001354 - / 2021 Registered on 14-12-2021 ROCHAK BANSAL Vs.  
HONBLE HIGH COURT OF DELHI

Question 1: *Whether a judicial officer who has already completed seven years at the Bar, being recruited for subordinate judicial services, would be entitled to appointment as an Additional District Judge against the Bar vacancy?* Arguments Against Entitlement

**1. Textual Interpretation of Article 233(2) of the Constitution of India provides:**

*“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.”*

The phrase “*not already in the service of the Union or of the State*” explicitly excludes individuals who are employed in any capacity by the Union or State governments from eligibility for appointment as a District Judge (including Additional District Judge) against a Bar vacancy. A judicial officer in subordinate judicial services, appointed by the Governor or Administrator of a Union Territory, is undeniably in the service of the State or Union. While their judicial functions are independent and insulated from executive control under Article 235, for all other service purposes—such as appointment, salary, pension, and disciplinary matters—they are employees of the State or Union. Therefore, a judicial officer, despite having completed seven years at the Bar prior to joining judicial service, is disqualified from competing for a Bar vacancy under Article 233(2). The constitutional provision prioritizes candidates who are active advocates and not in government service, ensuring that Bar vacancies are reserved exclusively for practicing lawyers.

**2. Status of Judicial Officers as Employees of the State or Union**

The phrase “*not already in the service of the Union or of the State*” encompasses judicial officers because they are appointed by the Governor (for State judiciary) or the Administrator (for Union Territories) under Articles 233 and 234. Their appointment by a constitutional authority, coupled with their inclusion in the State or Union’s service framework for administrative purposes (e.g., salary, leave, and pension), establishes their status as employees of the State or Union. In *All India Judges’ Association v. Union of India [2022] 5 S.C.R. 692 and [2002] 2 S.C.R.*, the Supreme Court recognized that judicial officers, while independent in their judicial functions, are subject to the administrative control of the High Court and the State for service-related matters. Their salaries are drawn from the Consolidated Fund of the State or Union, and their service conditions are governed by rules framed under Article 309. This confirms their status as State or Union employees, disqualifying them from eligibility for Bar vacancies under Article 233(2). The independence of judicial functions does not negate their employee status for the purposes of Article 233(2). The provision’s exclusion applies to all persons in government service, irrespective of the nature of their duties, as the focus is on their formal employment relationship with the State or Union.

### 3. Object of Bar Vacancies

Bar vacancies, typically constituting 25% of District Judge posts in many States, are designed to bring advocates with substantial litigation experience into the higher judiciary. The requirement of seven years of practice as an advocate or pleader ensures that candidates have hands-on experience in legal advocacy, client representation, and courtroom dynamics. This expertise is distinct from the adjudicatory role of judicial officers, who focus on case management and impartial decision-making. Allowing judicial officers to compete for Bar vacancies would undermine the constitutional intent of Article 233(2) to reserve these posts for active practitioners. Judicial officers, having transitioned to adjudication, no longer function as advocates. Their prior Bar experience, while valuable, is irrelevant once they enter judicial service, as their professional identity shifts. Permitting them to occupy Bar vacancies would reduce opportunities for practicing advocates, diluting the diversity of experience in the higher judiciary.

### 4. Judicial Precedents Supporting Exclusion

The Supreme Court has consistently upheld the exclusion of judicial officers from Bar vacancies. In *Deepak Aggarwal v. Keshav Kaushik* [2013] 1 SCR 402, the Court held that a person who joins judicial service ceases to be an advocate for the purposes of Article 233(2). The Court emphasized that the term "advocate" refers to a person actively engaged in legal practice, and prior Bar experience does not qualify a judicial officer for a Bar vacancy. Similarly, in *Dheeraj Mor v. High Court of Delhi* [2020] 2 S.C.R. 161, the Supreme Court clarified that Article 233(2) bars persons in State or Union service from competing for Bar vacancies, irrespective of their prior practice at the Bar. The Court underscored that the eligibility criteria focus on the candidate's status at the time of application, reinforcing the constitutional intent to prioritize active advocates.

### 5. Loss of Advocate Status

Upon joining subordinate judicial services, a person is required to suspend their enrollment as an advocate with the Bar Council, as per the Bar Council of India Rules. This suspension severs their status as an active advocate, further disqualifying them from being considered an "*advocate*" under Article 233(2). Even if they had seven years of Bar practice prior to joining judicial service, their current role as a judicial officer overrides their prior qualifications for the purposes of Bar vacancy eligibility.

### 6. Policy Considerations and Diversity in the Judiciary

The higher judiciary benefits from a mix of judges drawn from the Bar and in-service candidates, ensuring a diversity of professional experiences. Practicing advocates bring insights from litigation, client interaction, and legal strategy, while judicial officers contribute expertise in adjudication and judicial administration. Article 233(2) safeguards this balance by reserving Bar vacancies for active practitioners, preventing an overrepresentation of in-service candidates.

Allowing judicial officers to compete for Bar vacancies would skew this balance, reducing the representation of practicing advocates and potentially creating a judiciary dominated by those with adjudicatory experience. This would undermine the constitutional goal of fostering a diverse judiciary capable of addressing varied legal and societal challenges, as highlighted in *All India Judges' Association v. Union of India* (2002).

## **7. Separate Pathways for Judicial Officers**

Judicial officers have a distinct pathway for promotion to District Judge posts through the in-service quota (65% in many States) or limited competitive examinations (10% in some States). These pathways are governed by Article 233(1) and State Judicial Service Rules, which assess candidates based on seniority, merit, and performance in judicial service. Allowing judicial officers to compete for Bar vacancies would circumvent this structured process, creating an unfair advantage over practicing advocates who lack the institutional exposure of judicial officers.

## **8. Converse Argument: Can Advocates Compete for In-Service Quotas?**

The converse proposition—whether advocates can compete for in-service quotas—further clarifies the constitutional framework. In-service quotas are reserved for judicial officers already in subordinate judicial services, as defined by State Judicial Service Rules. These quotas are designed to reward the experience and performance of judicial officers, who are evaluated based on their judicial work, not their prior Bar practice. An advocate, not being in judicial service, is ineligible to compete for in-service quotas, as they do not meet the criteria of being “in the service of the State.” This strict separation of quotas is intentional, ensuring that each stream (Bar and in-service) serves its distinct purpose. Just as advocates cannot encroach upon in-service quotas, judicial officers cannot compete for Bar vacancies, as both are governed by mutually exclusive eligibility criteria under Articles 233(1) and 233(2). Allowing advocates to compete for in-service quotas would disrupt the career progression of judicial officers and undermine the merit-based promotion system. Similarly, permitting judicial officers to compete for Bar vacancies would disadvantage practicing advocates, eroding the constitutional balance between the two streams.

## **Conclusion**

Therefore a judicial officer who has completed seven years at the Bar but is currently in subordinate judicial services is not entitled to be appointed as an Additional District Judge against a Bar vacancy. Article 233(2) explicitly excludes persons in the service of the State or Union, and judicial officers, as employees appointed by the Governor or Administrator, fall within this exclusion. Their prior Bar experience is irrelevant, as they are no longer active advocates. The converse argument—that advocates cannot compete for in-service quotas—reinforces the strict separation of recruitment streams, ensuring that Bar vacancies remain reserved for practicing advocates to maintain diversity and expertise in the higher judiciary.

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Question 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?* Arguments in Favor of Eligibility Being Assessed at the Time of Application

### 1. Textual Analysis of Article 233(2)

Article 233(2) states that a person “*shall only be eligible to be appointed a District Judge*” if they meet the specified criteria (not in service and seven years as an advocate or pleader). The term “eligible” refers to the qualifications required to enter the recruitment process. In the context of judicial recruitment, eligibility is assessed at the time of application, as this is the entry point for candidates to participate in examinations, interviews, and High Court recommendations. The phrase “not already in the service of the Union or of the State” further supports this interpretation, as it implies that the candidate’s status as a non-government servant must be established at the outset of the process. Assessing eligibility at the application stage ensures that only constitutionally qualified candidates proceed, aligning with the intent of Article 233(2).

### 2. Judicial Precedents Supporting Time of Application

In *Deepak Aggarwal v. Keshav Kaushik* [2013] 1 SCR 402, the Supreme Court held that eligibility under Article 233(2), including the requirement of seven years of practice and not being in service, must be satisfied at the time of application. The Court emphasized that the recruitment process begins with the submission of applications, and candidates must meet the constitutional criteria at this stage to ensure a fair and transparent selection process. Similarly, in *Vijay Kumar Mishra v. High Court of Judicature at Patna* [2016] 3 S.C.R. 806, the Supreme Court reiterated that eligibility criteria must be strictly enforced at the application stage to comply with Article 233(2). The Court rejected arguments that eligibility could be assessed at the time of appointment, as this would allow ineligible candidates to participate in the process, undermining the constitutional framework.

### 3. Practical Necessity of Assessing Eligibility at Application

Recruitment notifications issued by High Courts typically specify that candidates must meet eligibility criteria (e.g., seven years of practice and not being in service) as of the last date for submitting applications. This ensures that only qualified candidates are evaluated, streamlining the process and preventing disputes at later stages. For example, if a candidate is in State service at the time of application but resigns before appointment, assessing eligibility at the appointment stage could allow strategic manipulation of the process, enabling ineligible candidates to participate and potentially skew the merit-based selection. The phrase “*not already in the service*” implies a continuous status that must be maintained throughout the recruitment process, starting from the application stage.

#### 4. Safeguarding the Recruitment Process

Assessing eligibility at the time of application ensures fairness and transparency. Ineligible candidates, such as those in State or Union service, are excluded at the outset, preventing them from competing with qualified advocates. This protects the integrity of the Bar quota, which is reserved for active practitioners. Allowing eligibility to be assessed only at the time of appointment would permit ineligible candidates to undergo examinations and interviews, wasting judicial resources and creating potential legal challenges.

#### 5. Consistency with Recruitment Rules

State Judicial Service Rules, framed under Articles 234 and 235, align with Article 233(2) by requiring candidates to meet eligibility criteria at the application stage. These rules specify that candidates must have seven years of continuous practice as advocates and must not be in government service as of the last date for application submission. This reflects the constitutional intent to filter candidates at the entry point of the recruitment process.

#### 6. Countering the Time of Appointment Argument

The argument that eligibility should be assessed at the time of appointment relies on a narrow reading of the phrase “*eligible to be appointed*” in Article 233(2). However, this interpretation ignores the practical and legal necessity of assessing eligibility at the application stage. Recruitment is a multi-stage process, and eligibility is a threshold requirement for participation. Allowing candidates who are in State or Union service at the application stage to proceed, only to resign before appointment, would undermine the exclusionary intent of Article 233(2) and create uncertainty in the process. The Supreme Court’s rulings in *Dheeraj Mor* and *Deepak Aggarwal supra* emphasize that eligibility must be established at the application stage to uphold the constitutional mandate. The phrase “*not already in the service*” refers to the candidate’s status at the time they seek to enter the recruitment process, not at the final stage of appointment.

#### 7. Judicial Officers as Employees of the State or Union

The phrase “*not already in the service of the Union or of the State*” is particularly significant in the context of judicial officers. As employees appointed by the Governor or Administrator, judicial officers are in the service of the State or Union for all administrative purposes, despite their judicial independence. Their ineligibility for Bar vacancies must be assessed at the application stage to ensure compliance with Article 233(2). Allowing a judicial officer to apply for a Bar vacancy while still in service, with the expectation of resigning before appointment, would circumvent the constitutional restriction and undermine the purpose of reserving Bar vacancies for active advocates.

#### 8. Converse Argument: Advocates and In-Service Quotas

The converse question—whether advocates can compete for in-service quotas—further supports the argument for assessing eligibility at the application stage. In-service quotas are reserved for judicial officers who are already in subordinate judicial services, as defined by State Judicial Service Rules. An advocate, not being in service, is ineligible to apply for these quotas, as they do not meet the criterion of being a judicial officer. Just as advocates are excluded from in-service quotas at the application stage, judicial officers are excluded from Bar vacancies at the same stage. This mutual exclusivity ensures that the recruitment process remains fair and aligned with the constitutional framework. Assessing eligibility at the application stage for both streams prevents candidates from crossing over into quotas for which they are not qualified, maintaining the integrity of the process.

Therefore the eligibility for appointment as a District Judge under Article 233(2) must be assessed at the time of application. This interpretation is supported by the constitutional text, judicial precedents, recruitment rules, and the need for a fair and efficient selection process. The phrase “not already in the service of the Union or of the State” confirms that candidates, including judicial officers, must be non-government servants at the application stage. The converse argument—that advocates cannot apply for in-service quotas—reinforces the need to assess eligibility at the outset to maintain the distinct pathways for Bar and in-service candidates.

## Conclusion

### 1. On Entitlement to Bar Vacancies:

A judicial officer who has completed seven years at the Bar but is currently in subordinate judicial services is not entitled to be appointed as an Additional District Judge against a Bar vacancy. Article 233(2) explicitly excludes persons in the service of the State or Union, and judicial officers, as employees appointed by the Governor or Administrator, fall within this exclusion. Their judicial independence does not negate their status as State or Union employees for service purposes. Their prior Bar experience is irrelevant, as they are no longer active advocates, and their suspension of Bar enrollment further disqualifies them. The converse argument—that advocates cannot compete for in-service quotas—highlights the constitutional intent to maintain separate recruitment streams, ensuring that Bar vacancies are reserved for practicing advocates to foster diversity in the higher judiciary.

### 2. On Timing of Eligibility Assessment:

The eligibility for appointment as a District Judge under Article 233(2) must be assessed at the time of application. This aligns with the constitutional text, judicial precedents (*Deepak Aggarwal and Dheeraj Mor*) *supra*, and recruitment rules,

which require candidates to meet eligibility criteria (seven years of practice and not being in service) at the application stage. Assessing eligibility at this stage ensures fairness, transparency, and efficiency in the recruitment process. The exclusion of judicial officers, as State or Union employees, must be enforced at the application stage to prevent ineligible candidates from participating. The converse exclusion of advocates from in-service quotas further supports the need to assess eligibility at the outset, maintaining the integrity of the constitutional framework for judicial appointments.

New Delhi  
Dated: 16.09.2025

Filed by



**(RASHID N. AZAM)**  
AOR CODE:3884

**IN THE HON'BLE SUPREME COURT OF INDIA  
REVIEW PETITION (CIVIL) NO. 1354 OF 2021  
IN  
CIVIL APPEAL NO. 1698 OF 2020**

**IN THE MATTER OF:**

ROCHAK BANSAL

...PETITIONER

VERSUS

HON'BLE HIGH COURT OF DELHI AND ORS.

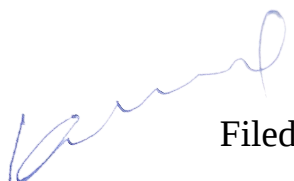
...RESPONDENTS

**VOLUME I- WRITTEN SUBMISSIONS ON BEHALF OF THE  
RESPONDENT NO. 1, I.E., HIGH COURT OF DELHI**

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| 1.         | Written submissions on behalf<br>of the Respondent No. 1, i.e.,<br>High Court of Delhi. |                                    | <b>1-23</b> |

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**WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENT NO.  
1, I.E., HIGH COURT OF DELHI.**

1. The present submissions are being filed in response to the following questions of law that have arisen for the consideration by this Hon'ble Court:

- i. Whether a Judicial Officer, who has already completed seven years' standing 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?
- 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?

Thus, Article 233 of the Constitution has come up for interpretation before this Hon'ble Court. It may be mentioned that the Delhi Higher

Judicial Services Rules, 1970, provide that the posts in cadre of District Judge shall be filled through:

- (a) 65% by promotion from amongst the Civil Judges (Senior Division) having a minimum ten years service on the basis of merit-cum-seniority;
- (b) 10% by promotion on basis of merit through limited competitive examination of Civil Judges who have qualifying service of 7 years; and
- (c) 25% by way of direct recruitment from candidates “continuously practicing as an Advocate for not less than seven years as on the last date of receipt of applications.” (Rule 7 read with Rule 9).

2. It is submitted that The Delhi Higher Judicial Services Rules, 1970 have been framed strictly as per Article 233 of the Constitution of India and rightly provide that for direct recruitment to the post of District Judge an applicant should be an Advocate having not less than seven years of continuous practice. Thus, the Delhi High Court opposes the proposition that the Members of the Judicial Service can also appear for the post of District Judge by way of direct appointment.

**CONSTITUTIONAL FRAMEWORK: INTERPRETATION OF ARTICLE 233(2) OF THE CONSTITUTION OF INDIA.**

3. It is settled law that Article 233 is a self-contained provision regarding the appointment of District Judges. [*Rameshwar Dayal v. State of Punjab & Ors.* 1961 SCR (2) 874 (CB); *Chandra Mohan v. State of UP & Ors.* 1967 SCR (1) 77 (CB); *Deepak Aggarwal v. Keshav Kaushik* (2013) 5 SCC 277].
4. Further, Chapter VI Part V of the Constitution deals exclusively with the “Subordinate Courts.”

5. A comprehensive reading of Chapter VI and specifically Article 233 (1) and (2) clearly shows that in so far as judicial service is concerned, Article 233 (2) proscribes that a judicial officer can be appointed as District Judge by way of direct recruitment.
6. Article 233 (2) states “A person ***not already*** in the service of the Union or of the State ***shall only be eligible*** to be appointed.” Thus, the said Article disentitles anyone in service of the Union or of the State. Once a judicial officer is not even eligible for appointment by way of direct recruitment, there cannot be any question of any further requirement of qualification being prescribed under Article 233 (2) for a judicial officer.
7. In *Rameshwar Dayal (supra)*, the Hon'ble Constitution Bench held that:  

“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 Cl. (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 Cl. (2) and all that is required is that he should be an advocate or pleader of seven years' standing.***” (1961 SCR (2) 874 (CB) @ Pg. 862, Para 12)
8. In *Chandra Mohan (supra)*, another Hon'ble Constitution Bench considered Article 233 (2) along with Articles 233 to 237 in Chapter VI. After a thorough analysis it was held that:  

“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 in the case of appointments of persons to the judicial service other than as district judges, they will be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the Public Service Commission.” [1967 SCR (1) 77 (CB) @ Pg. 89]

9. It was also held that the expression “the service of the Union or of the State” means “judicial service” only. The relevant excerpt is as follows:

“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. The circumstance that the definition of "judicial service" finds a place in a subsequent Article does not necessarily lead to a contrary conclusion. The fact that in Art. 233(2) the expression "the service" is used whereas in Arts. 234 and 235 the expression "judicial service" is found is not decisive of the question whether the expression "the service" in Art. 233(2) must be something other than the judicial service, for, the entire chapter is dealing with the judicial service. The definition is exhaustive of the service.

We, therefore, construe the expression "the service" in cl. (2) of Art. 233 as the judicial service.”  
[1967 SCR (1) 77 (CB) @ Pg. 90, 91]

10. The above interpretation by two different Constitution Benches clearly leads to only one inference that while a judicial officer can be appointed as District Judge under Article 233 (1) in consultation with the High Court, under Article 233 (2) the appointment on the recommendation of the High Court through direct recruitment can only be of an advocate.
11. Thus, Article 233 (2) provides for the eligibility of an advocate who can be recommended by the High Court and a judicial officer has been rendered ineligible.

12. The Constitution Bench judgments are binding on subsequent benches of co-ordinate jurisdiction. [National Insurance Company Ltd. vs. Pranay Sethi (2017) 16 SCC 680].

13. Furthermore, the decisions of the Constitution Benches above, have been consistently followed in subsequent judgments of this Hon'ble Court:

(a) *Satya Narain Singh v. High Court of Judicature at Allahabad & Ors.* (1985) 1 SCC 225, (3 Judge Bench) wherein it was held that the expression "the service" in Article 233 (2) could only mean the judicial service. It was also held that this does not mean that the person who is already in service, on the recommendation by High Court can be appointed as District Judge. (Para 5 and 6).

(b) *Deepak Aggarwal v. Keshav Kaushik* (2013) 5 SCC 277, (3 Judge Bench) wherein it was held that:

"...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."

(c) *All India Judges Association v. UOI & Ors.* (2002) 4 SCC 247; wherein the 3 Judge Bench agreed with report of Shetty Commission that recruitment to the Higher Judicial service

from amongst the advocates should be 25%. (Para 27). It was also held that recruitment to Higher Judicial Service will be (i) 50% by promotion from amongst the civil judges, (ii) 25% by promotion on merit through limited examination of civil judges having not less than 5 years qualifying service, and (iii) 25% of posts by direct recruitment from eligible advocates. (Para 28 and 29)

14. In the referral order dated 12.08.2025 it has been stated that the issues which came up for consideration in *Rameshwar Dayal (supra)* and *Chandra Mohan (supra)* were different. It is submitted that in both the judgments, Article 233 was discussed and interpreted comprehensively.
15. However, *Chandra Mohan (supra)* specifically dealt with the changes in the appointment and posting and promotion of district judges prior to and after the independence. Article 233 (2) was specifically interpreted in line with the Chapter on Sub-ordinate Judiciary in the Constitution. The ratio of the said judgments is binding on subsequent benches of coordinate jurisdiction.
16. It is correct that in *Chandra Mohan (supra)*, direct recruitment of individuals who were members of the executive branch of the Government performing certain revenue and magisterial functions was under consideration. The point raised for consideration was:

“The third point raised is one of far-reaching importance. Can the Governor after the Constitution, directly appoint persons from a service 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 issue was thus whether the phrase “the service of the Union or of the State” in Article 233 (2) would include officers who were

performing revenue and magisterial functions. As mentioned above, the Hon'ble Bench interpreted the said phrase to mean only “judicial service” as per Article 236. The Hon'ble Court noted that Article 236 uses “exclusively” and “intended” which emphasize that judicial service consists only of persons intended to fill up the posts of district judges and other civil judicial posts and that is the exclusive service of judicial officers.

It is submitted that allowing any other interpretation to the phrase “the service of the Union or of the State” would imply that under Article 233 (1), the Governor can appoint and/or post anyone who may even be in the service of the Union or the State.

The Hon'ble Bench noted that pre-independence there was strong opposition to appointment of persons from the executive to the post of District Judge. The Hon'ble Court therefore, drew a distinction between the two sources of appointment/promotion to the post of the District Judges and held that there can only be two sources: (a) either the officers in judicial service or (b) advocates and resultantly, only advocates conforming to the conditions mentioned in Article 233(2) are entitled to direct recruitment to the post of District Judge.

17. The interpretation in *Chandra Mohan (supra)* is supported by the difference in language between Article 233 and Article 254 of the Government of India Act, 1935. For the sake of convenience, Section 254 of the Government of India Act, 1935 reads as follows:

“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.”

Section 254 (2) created a prohibition for appointment of a person who was already in the service. At the same time Section 254 (1) allowed anyone from the service to be appointed as a District Judge. This has been noted on Page 91 of *Chandra Mohan (supra)* in the following terms:

“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.”

18. Even the Constituent Assembly Debates support the view taken in *Chandra Mohan (supra)*. Article 209 A was introduced before the Constituent Assembly and was discussed on 16.09.1949. The Constituent Assembly members wanted separation of the judiciary from the executive.
19. The Constitution makers wanted the judicial branch to be independent, and at the same time, reflect a measure of diversity of thought, and approach. Before the Constituent Assembly an amendment was proposed to Article 209 A on the following basis:

“Shri Kuldhar Chaliha : (Assam: General) : Mr. President Sir, I beg to move :

That in amendment No. 20 above, in clause (2) of the proposed new article 209 A, after the words 'seven years' and 'pleader' the words 'enrolled as' and 'of the High Court of the State or States exercising jurisdiction' be inserted respectively."

Sir, the object of this amendment is that unless a lawyer has practised in the same province in which he is going to be appointed as a Judge, it will be very difficult for him to appreciate the customs, manners and the practices of the country..."

However, Dr. B.R. Ambedkar did not agree with the amendment by stating that:

"With regard to the amendment moved by Mr. Chaliha, I am sorry to say I cannot accept it, for two reasons: one is that we do not want to introduce any kind of provincialism by law as he wishes to do by his amendment. Secondly, the adoption of his amendment might create difficulties for the province itself because it may not be possible to find a pleader who might technically have the qualifications but in substance may not be fitted to be appointed to the High Court, and I think it is much better to leave the ground perfectly open to the authority to make such appointment provided the incumbent has the qualification. I therefore cannot accept that amendment."

In regard to judicial positions in the District Court, the High Courts and the Supreme Court, the Constitution enables appointments, from amongst members of the Bar, as its Framers were acutely conscious that practising advocates reflect independence and are likely to offer a useful attribute i.e. ability to think differently and have novel approaches to interpretation of the laws and the Constitution, so essential for robustness of the judiciary, as well as society as a whole.

20. The classification or distinction made—between advocates and judicial officers, per se is a constitutionally sanctioned one. This is clear from a plain reading of Article 233 itself. Firstly, Article 233(1) talks of both appointments and *promotions*. Secondly, the classification is evident from the description of the two categories in Article 233(2) : one "*not already in the service of the Union or of the State*" and the other "*if he*

*has been for not less than seven years as an advocate or a pleader*". Both categories are to be "*recommended by the High Court for appointment*". The intent here was that in both cases, there were clear exclusions i.e. advocates with less than seven years' practice (which meant, conversely that those with more than seven years' practice were eligible) and those holding civil posts under the State or the Union. The omission of judicial officers only meant that such of them, who were recommended for promotion, could be so appointed by the Governor. The conditions for their promotion were left exclusively to be framed by the High Courts.

21. The omission — in regard to spelling out the eligibility conditions vis-à-vis judicial officers, to the post of District Judge, is by design. It is submitted that any proposition that a member of judicial service is eligible for appointment under Article 233 (2) would be contrary to the plain language of the Article. Further, such an interpretation is not supported by any of the earlier binding precedents and the Constituent Assembly Debates.
  - 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?**
22. It is submitted that under Article 233 (2), a judicial officer is not entitled for appointment against Bar vacancy.
23. In *Rameshwar Dayal (supra)*, the question before the Constitution Bench was regarding the eligibility of persons on the rolls of advocates of East Punjab High Court before the partition of India in 1947 for appointment as a District Judge. The Bench held that the period of practice before Lahore High Court could be counted as against the required period of 7 years for appointment as District Judge. It was laid

down that practice rendered in or before the Lahore High Court before partition was not open to objection under Article 233(2) of the Constitution. Even if the word 'advocate' in clause(2) of Article 233 meant an advocate of a court in India, and the appointee must be such an advocate at the time of his appointment, no objection can be raised on this ground because being factually on the roll of Advocates of the Punjab High Court at the time of appointment, the candidate was admittedly an advocate in a court in India and continued as such till the date of his appointment. The Court also considered the principle applied to the East Punjab High Court. An advocate of the Lahore High Court was entitled to practice in the new High Court counting his seniority on the strength of his standing in the Lahore High Court. It was held that a person who continued as an advocate at the time of his appointment as District Judge fulfilled the requirement of Article 233.

24. In *Satya Narain Singh (supra)*, the issue concerned members of Uttar Pradesh Judicial Service who had applied for appointment by way of direct recruitment to the Uttar Pradesh Higher Judicial Service claiming that they had completed 7 years of practice at the Bar before their appointment to the Uttar Pradesh Judicial Service. It was held as follows:

"3 ....Two points straightway project themselves when the two clauses of Article 233 are read:The first clause deals with " appointments of persons to be, and the posting and promotion of, District Judges In any State" while the second clause is confined in its application to persons " not already In the service of the Union or of the State". We may mention here that "service of the Union or of the State" has been interpreted by this Court to mean Judicial Service. Again while the first clause makes consultation by the Governor of the State with the High Court necessary, the second clause requires that the High Court must recommend a person for appointment as a District Judge. It is only in respect of the persons covered by the second clause that there is a requirement that a person shall be eligible for appointment as District Judge if he has been an advocate or a pleader for not less

than 7 years. In other words, in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges. while in the case of candidates who are members of a Judicial Service the 7 years' rule has no application but there has to be consultation with the High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. Obviously the same ship cannot sail both the streams simultaneously."

25. In *Deepak Aggarwal (supra)* a three-Judge Bench considered the provisions of Article 233(2) and held that the expression "advocate" or "pleader" refers to the members of the Bar practicing law. It was stated that members of the Bar meant classes of persons who were practicing in a court of law as pleaders or advocates. This Hon'ble Court further held that in Article 233(2), "if he has been for not less than seven years," the present perfect continuous tense is used for a position which began at some time in the past and is continuing. Therefore, one of the essential requirements is that such a person must with requisite period be continuing as an advocate on the date of application. The relevant extract is as follows:

"89. We do not think there is any doubt about the meaning of the expression "advocate or pleader" in Article 233(2) of the Constitution. This should bear the meaning it had in Jaw preceding the Constitution and as the expression was generally understood. The expression "advocate or pleader" refers to legal practitioner and, thus, it means a person who has a right to act and/or plead in court on behalf of his client. There is no indication in the context to the contrary. It refers to the members of the Bar practising Jaw. In other words, the expression " advocate or pleader" in Article 233(2) has been used for a member of the Bar who conducts cases in court or, in other words acts and/or pleads in court on behalf of his client. In *Sushma Suri v. Govt. of NCT of Delhi*, (1999) 1 SCC 330, a three-Judge Bench of this Court construed the expression " members of the Bar" to mean class of persons who were actually practising in courts of law as pleaders or advocates ....

...

102. As regards construction of the expression, "if he has been for not less than seven years an advocate" in Article 233(2) of the Constitution, we think Mr Prashant Bhushan was right in his submission that this expression means seven years as an advocate immediately preceding the application and not seven years any time in the past. This is clear by use of "has been". The present perfect continuous tense is used for a position which began at sometime in the past and is still continuing. Therefore, one of the essential requirements articulated by the above expression in Article 233(2) is that such person must with requisite period be continuing as an advocate on the date of application."

26. Article 233(2) *ex facie* does not exclude judicial officers from consideration for appointment to the post of District Judge. This does not mean that if they or any of them, had seven years' practice in the past, they can be considered eligible, because no one amongst them can be said to answer the description of a candidate who "*has been for not less than seven years*" "*an advocate or a pleader*". The sequitur clearly is that a judicial officer is not one who *has been for not less than seven years*, an advocate or pleader.
27. *Chandra Mohan* (supra), and subsequent decisions hold that Article 233(2) renders ineligible all those who hold civil posts under a State or the Union, just as it renders all advocates with less than seven years' practice ineligible, on the date fixed for reckoning eligibility. Equally, those in judicial service [i.e. holders of posts other than District Judge, per Article 236(2)] are not entitled to consideration because the provision [Article 233(2)] *does not prescribe any eligibility condition*. Does this mean that any judicial officer, with any length of service as a member of the judicial service, is entitled to consideration under Article 233(2)? The answer is clearly in the negative. This is because of the negative phraseology through which eligibility of holders of civil posts, or those in civil service (of the State or the Union) and advocates with

seven years' service is couched. However, the eligibility conditions are not spelt out in respect of those who are in the judicial service.

28. It may be mentioned that in *Dheeraj Mor V. High Court of Delhi* (2020) 7 SCC 401, while taking into consideration all the previous decisions on the issue, this Hon'ble Court came to the conclusion that the Constitution's wish is to be seen which directs for a distinction between the two sources of appointment to the post of District Judge, i.e., (1) From Advocates as eligible and (2) Judicial Officers. The relevant portion of the said judgment is extracted hereunder:

**“79.** The upshot of the above discussion is that the Constitution makers clearly wished to draw a distinction between the two sources of appointment to the post of District Judge. For one i.e. Advocates, eligibility was spelt out in negative phraseology i.e. not less than seven years' practice; for judicial officers, no eligibility condition was stipulated in Article 233(2): this clearly meant that they were not eligible to be appointed (by direct recruitment) as they did not and could not be considered advocates with seven years' practice, once they entered the judicial service. The only channel for their appointment, was in accordance with rules framed by the High Court, for promotion (as District Judges) of officers in the judicial service [defined as those holding posts *other* than District Judges, per Article 236(b)].”

29. There is a rider created for the advocates for consideration as a District Judge whereas no such rider was created for the judicial officers. Article 233(2) is meant for direct recruitment from advocates/pleader whereas no such direct recruitment from the judicial service has been provided. It is only Article 233(1) which deals with the appointment as district judge and while doing so, promotion is included and quite clearly an advocate/pleader who is not in the service cannot be promoted and it is only the judicial officers in service who can be promoted. Article 233(1) enables the appointment without any further criteria. In the “All India Judges’ Association and Ors. versus Union of India and Ors. 2002 SCC

Page 247” (hereinafter referred to third “AIJA case”), this Hon’ble Court has considered the issue of method/recruitment to the cadre of Higher Judicial Service, i.e., District Judge and while agreeing with the recommendations of the Shetty Commission, the recruitment to the District Judge Cadre from amongst the advocates was restricted only upto 25% and the process has to be through competitive exam both written and viva. In the said decision, this Hon’ble Court concluded that the appointment to the District Judge Cadres should be done in the following manner:

- I. 50% by way of promotion on the principle of merit cum seniority.
- II. 25% shall be filled by promotion but strictly based on merit through the limited competitive exam (hereinafter referred to as “LDCE”) and for which qualifying service as a Civil Judge (Senior Division) should not be less than 5 years.

30. The aforesaid decision came up for reconsideration on certain issues before this Hon’ble Court on the issue of 10% quota reserved for LDCE and the quota of 25% as determined in the Third AIJA Case and this Hon’ble Court, while referring to the fourth AIJA case (2010 15 SCC 170), wherein due to large number of unfilled vacancies, the 25% LDCE category was reduced from 25% to 10%, and after considering the statistics, restored the LDCE quota to 25% and also held that in case if sufficient number of candidates are not selected from the LDCE quota, such remaining posts would revert back to regular promotion quota based on merit cum seniority. In the said decision itself, this Hon’ble Court has also reduced the experience of 5 years as a Civil Judge (Senior Division) to three years except for few states. In effect, as on today, the issue of appointment through recruitment either by way of promotion or through direct recruitment has gone through several

checks and balances and pursuant to the said judgment, the appointment to the District Judge cadre is to be done in the following manner:

- I. 50% from through promotion based on merit cum seniority.
- II. 25% through LDCE.
- III. 25% through direct recruitment amongst lawyers/pleaders which also includes the public prosecutors/government counsels.

31. In the case of *Dheeraj Mor (supra)*, this Hon'ble Court had also considered the Constitution's wish as evident from Article 217(2) and Article 124 (3). In this decision, this Hon'ble Court also referred to the case of "*Ashok Sharma and Ors. v. Chandra Shekar and Ors. (1997 4 SCC 18)*" whereby it was held that the eligibility of candidates shall have to be judged with reference to the notified date which may be the last date for filing the application or any other prescribed date. In this decision, this Hon'ble Court doubted the decision of *Vijay Kumar Mishra* and held that the eligibility is relevant with reference to the possession of stipulated qualifications/experience and age. The right to participate is not a guaranteed one and can be made available only if the candidate fills the requisite eligibility criteria.
32. The law as enunciated in the above referred cases makes it amply clear that the period of seven years has to be counted as a continuous one and it is on the date of the application that the name of the Advocate has to be on the rolls of Advocates. In *Deepak Agarwal (supra)*, this Hon'ble Court found that the name of public prosecutors/government counsels were on the rolls of Advocates as maintained by the Bar Council. Even in the case of *Rameshwar Dayal (supra)*, this Hon'ble Court laid much emphasis on the foundational fact that the name of the concerned person was on the rolls of Advocate on the date of application. Again, in the case of *R. Poornima and Ors. v. Union of India and Ors. (2020 SCC*

Online SC 714), this Hon'ble Court interpreted the term 'has been' in the same manner as has been done in the case of *Dheeraj Mor* (supra).

33. Furthermore, once the constitution bars a person who is in judicial service for his appointment as a District Judge through direct recruitment, the same should not be lifted by giving an interpretation which is not otherwise available from the plain and literal interpretation of the constitutional provision.
34. When the Constitution clearly bars a specific action, other interpretations are generally not permissible, a principle rooted in the literal meaning rule and expression *uniusest exclusion alterius*, i.e., "express mention is the exclusion of the unexpressed". This approach holds that if the language of the Constitution is unambiguous, its literal meaning should prevail, and any interpretation that deviates from it is invalid. However, in cases of ambiguity, courts may use other interpretation methods, such as considering the purpose of the provision, to determine the intended meaning.
35. It is pertinent to take note of the fact that this Hon'ble Court in the judgment of "*State (NCT) of Delhi v. Union of India* (2018) 8 SCC 501" had held that the elementary principle of interpreting the Constitution or a statute is to look into the words used in the statute and when the language is clear, the intention of the legislature is to be gathered from the language used. It was further opined that aid to interpretation is resorted to only when there is some ambiguity in words or expression used in the statute.
36. Therefore, it is respectfully submitted that judicial officers cannot be considered against the bar vacancy irrespective of the fact that they

completed 7 years before joining judicial services. They can only be promoted.

(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?**

37. A somewhat similar issue with respect to the interpretation of Article 217(2) came up for consideration before this Hon'ble Court in the case of *R. Poornima and Ors. v. Union of India and Ors.* (2020 SCC Online SC 174). In this decision, this Hon'ble Court considered the issue as to whether the District Judges who had not completed ten years of service but had experience as an Advocate which made the experience collectively more than ten years, if put together could be considered for appointment as a High Court Judge as per Article 217(2)(a) of the Constitution. In the said decision, it was noted that Article 217(1) only prescribes the method for appointment including the age, however, Clause (2) provides the qualification. This Hon'ble Court after analysing the relevant material considered the issue in the broader perspective with the observation that there are two separate queues for appointment, i.e., one from Judicial service and another from the Bar. While considering the same, it was observed as under:

“30. But what is important to note is that Article 217 (2) merely prescribes the eligibility criteria and the method of computation of the same. If a person is found to have satisfied the eligibility criteria, then he must take his place in one of the queues. There are 2 separate queues, one from judicial service and another from the Bar. One cannot stand on one queue by virtue of his status on the date of consideration of his name for elevation and at the same time keep a towel in the other queue, so that he can claim to be within the zone of consideration from either of the two or from a combination of both.

31. The queue to which a person is assigned, depends upon his status on the date of consideration. If a person is an advocate on

the date of consideration, he can take his place only in the queue meant for members of the Bar. Similarly, if a person is a judicial officer on the date of consideration, he shall take his chance only in the queue meant for service candidates.

32. Hopping on and hopping off from one queue to the other, is not permissible. Today, if any of the petitioners cease to be Judicial Officers and become Advocates, they may be eligible to be considered against the quota intended for the Bar. But while continuing as Judicial Officers, they cannot seek to invoke Explanation (a) as it applies only to those who have become advocates after having a judicial office.”

38. In the aforesaid decision, the issue of continuous practice as an Advocate also came up for consideration and decision of this Hon’ble Court in the case of *Mahesh Chand Gupta v. Union of India* (2009 (8) SCC 273) with respect to the issue about entitlement to practice as an advocate was appreciated. This Hon’ble Court, after taking into consideration the term ‘judicial officer’, held that the Members of the Income Tax Appellate Tribunal are not judicial officers and therefore only the judicial officers were not found entitled for the purpose of Article 217(2)(b) of the Constitution.

39. Furthermore, the word ‘has been’ was also considered for the purpose of years of practice and it was held in Para 45 of the judgment in *R. Poornima* (supra) as follows:

“45. On the other hand the words “has been” do not have any such connotation. The Cambridge Dictionary states that the words “has been” are in present perfect continuous form. The Dictionary says that we may use the present perfect continuous, either to talk about a finished activity in the recent past or to talk about a single activity that began at a point in the past and is still continuing. Keeping this in mind, Explanation (a) confers the benefit of clubbing to a limited extent, to a person who has held a Judicial Office. To be eligible for the limited benefit so conferred, a person should have been an Advocate “after he has held any judicial office”. There is no confusion either in the language of Article 217(2) or in our mind.”

40. In the same decision, the larger issue of career progression and the justified opportunities to all was also considered, it was held as follows:

“46. The argument that it will be discriminatory to allow the benefit of clubbing only to a person who held a judicial office and later became an advocate, does not appeal to us. In fact, Article 217(2) does not guarantee any one with the right to be appointed as a judge of the High Court. In a way, a person holding a judicial office is better placed, as he is assured of a career progression (though in a limited sense) after being placed in something like a conveyor belt. There is no such assurance for an advocate. Therefore, the argument based upon Article 14 does not impress us.”

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?**

41. In response to the aforesaid question, it is submitted that although Article 233(2) of the Constitution makes two clear exclusions, i.e., advocates with less than seven years’ practice and those holding civil posts under the State or the Union, the omission of judicial officers only means that such of them, who were recommended for promotion, could be so appointed by the Governor, and the conditions for their promotion were left exclusively to be framed by the High Courts. Meaning thereby, except the law declared by this Hon’ble Court through various pronouncements such as Third AJIA, Fourth AJIA cases which resulted into formation of different High Court Rules for the Higher Judicial Services, there is no other requirement or say eligibility criteria for appointment of a serving judicial officer as a District Judge as per Article 233 (1) of the Constitution.
42. So far as Article 233(2) and the serving judicial officers are concerned, it is enough to say that the participation of a serving judicial officer is barred and therefore, there cannot be any eligibility criteria prescribed for them.

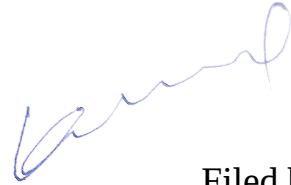
- iv. **Whether a person who has been Civil Judge for a period of seven years or has been an Advocate and Civil Judge for a combined period of seven years or more than seven years would be eligible for appointment as District Judge under Article 233 of the Constitution of India?**

43. The answer to the aforesaid question is negative. It is relevant to take note of the fact that there is a parallel drawn between Article 217 (deals with the appointment for the post of Judge of High Court) and Article 233 (deals with the post of the District Judge) in the judgment of *R. Poornima* (supra) that there are two separate queues for the appointment to the post of District Judge or the Judge of High Court, i.e., one from judicial service and the other from the Bar, and one cannot stand in one queue by virtue of his status as on the date of consideration of his name for elevation and at the same time keep a towel in the other queue, so that he can claim to be within the zone of consideration from either of the two or from a combination of both.
44. Further, the queue to which a person is assigned, depends upon his status on the date of consideration. If a person is an advocate on the date of consideration, he can take his place only in the queue meant for members of the Bar. Similarly, if a person is a judicial officer on the date of consideration, he shall take his chance only in the queue meant for service candidates.
45. “Hopping on and hopping off” from one queue to the other is not permissible. Today, if any of the petitioners cease to be Judicial Officers and become Advocates, they may be eligible to be considered against the quota intended for the Bar. But while continuing as Judicial Officers, they cannot seek to invoke Explanation (a) as it applies to those who have become advocates after having held a judicial office.

46. It is relevant to take note of the fact that if clubbing is permitted, it would cause serious issues in the maintenance of the seniority list. Further, the interpretation of the words “has been” used in Article 233, is in the present perfect continuous tense. As per the dictionary meaning, we may use the present perfect continuous, either to talk about a finished activity in the recent past or to talk about a single activity that began at a point in the past and is still continuing. Thus, it applies only to a situation wherein the person appointed in the judicial service has resigned and has been serving as pleader/advocate for not less than seven years, or has been continuing to practice as an advocate for not less than seven years.
47. Thus, in light of the aforesaid submissions, a person who has been Civil Judge for seven years or has been an Advocate and Civil Judge for a combined period of seven years or more than seven years would not be eligible for appointment as District Judge under Article 233 of the Constitution of India.
48. Once a person in judicial service is not eligible for being considered for direct recruitment to the post of a District Judge, the number of years spent by him/her either as a lawyer or as a judge or cumulatively is immaterial in view of Article 233 (2) of the Constitution of India.
49. Thus, if the interpretation being urged by the side seeking answers to the above questions in positive and more particularly the argument that the judicial officers with prior experience as an advocate can be considered for the purpose of appointment under Article 233(2) of the Constitution, is decided in their favour, it would collapse the carefully demarcated distinction between two appointment streams, confer an unfair double benefit upon judicial officers, and run counter to both the plain constitutional text and settled judicial authority.

50. It is respectfully submitted that the determination of these questions goes to the root of the constitutional design for judicial appointments, and their resolution requires harmonisation of the express language of Article 233(2) with the larger principles of judicial independence, separation of powers, and equality of opportunity under Articles 14 and 16.

Filed on:



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**IN THE SUPREME COURT OF INDIA**

Civil Appeal No. 11390 of 2025

Mital Nanalal Ukani vs. High Court of Gujarat &amp; Anr.

(Item No. 501.28)

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**FILED BY :**

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**IN THE SUPREME COURT OF INDIA**

Civil Appeal No. 11390 of 2025

Mital Nanalal Ukani vs. High Court of Gujarat &amp; Anr

**WRITTEN SUBMISSIONS BY VIJAY HANSARIA, SENIOR ADVOCATE****ON BEHALF HIGH COURT OF GUJARAT**

1. That in the present case this Hon'ble Court is considering the following substantial questions of law:
  - 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?
  - 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?
2. The provisions as regards District Judiciary<sup>1</sup> is contained in Part VI Chapter VI (Articles 233 to 237). The Constitutional Scheme contained in Chapter VI is a

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<sup>1</sup> The Constitution uses the expression 'Subordinate Courts' in the heading of Chapter VI; however, in the present submissions Subordinate Courts are referred to as District Judiciary.

composite self-contained code for recruitment and conditions of service of the District Judiciary. It is submitted that the Constitution only provides the *eligibility* for appointment of District Judge in clause (2) Article 233 of the Constitution both by way of promotion and direct requirement and does not provide any quota between the two sources of recruitment. The recruitment from both the sources is to be made as per the Rules framed by the Governor in consultation with the High Court subject to fulfilling eligibility conditions.

3. The historical background as regards District Judiciary contained in Chapter VI Part VI of the Constitution is stated hereinbelow.

#### **First Draft of the Constitution by the Constitutional Adviser**

4. The Constituent Assembly appointed a number of Committees to consider and report on various matters for which provisions were to be made in the Constitution. These Committees submitted their reports during the period April to August 1947. *Sir B.N. Rau*, the Constitutional Adviser, was asked to prepare a draft of the Constitution embodying the reports of Committees and the decisions of the Constituent Assembly. The draft, so prepared by the Constitutional Advisor, called the 'First Draft of the Constitution of India' contained 240 sections and 13 schedules. The first draft prepared by the Constitutional Advisor did not contain any provisions with regard to District Judiciary.
5. On 29th August 1947, the Constituent Assembly appointed a seven member Drafting Committee comprising *Alladi Krishnaswami Ayyar, N. Gopalaswami Ayyangar, Dr. B R Ambedkar, K M Munshi, Saiyid Mohd. Saadulla, B L Mitter* and

*D P Khaitan.* The Drafting Committee elected *Dr. B R Ambedkar* as the Chairman of the Drafting Committee. The Drafting Committee presented a Draft Constitution to the President of the Constituent Assembly on 21st February, 1948 containing 315 Articles and 8 Schedules. The said Draft also did not make provisions for the District Judiciary.

### **Comments and suggestions on Draft Constitution**

6. Draft Constitution was given wide publicity so that all individuals and organizations have the opportunity to express their views. The Drafting Committee received numerous suggestions from the members of the Constituent Assembly, the Provincial governments, the Provincial Legislatures, Ministries of the Government of India, Federal Courts and High Courts, as well as from non-official bodies and the general public. Suggestions as regards District Judiciary were received from:
  - a. Federal Court and the Chief Justices of Provincial High Courts expressed during a conference,
  - b. Editor of Indian Law Review,
  - c. Bihar Lawyers' Conference, and
  - d. Jai Prakash Narayan
7. *Federal Court and the Chief Justices of Provincial High Courts*<sup>2</sup>: The position of the subordinate judiciary in relation to the Provincial executive was considered at the conference of the judges of the Federal Court and of the Chief Justices of the Provincial High Courts, and it was regarded as essential that the members of that

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<sup>2</sup> The framing of India's Constitution, Selected Documents by B Shiva Rao, Volume IV Page 186.

service should not be exposed to the extraneous influence of members of the party in power. Under the existing Constitution, the appointment, posting and promotion of district judges are in the hands of the Governor who acts on the advice of his Council of Ministers. Appointments to other posts in the service are also made by the Governor from persons included in the list of eligible candidates made by the Provincial Public Service Commission, while the posting and promotion of and the grant of leave to these officers are left in the hands of High Courts [vide sections 254(1) and 255(2) and (3) of the Government of India Act, 1935]. There are no corresponding provisions in the Draft Constitution. So long as the subordinate judiciary, including the district judges, have to depend on the Provincial executive for their appointment, posting, promotion and leave, they cannot remain entirely free from the influence of members of the party in power and cannot be expected to act impartially and independently in the discharge of their duties. It is, therefore, recommended that provision be made placing **exclusively in the hands of the High Courts** the power of appointment and dismissal, posting, promotion and grant of leave in respect of the entire subordinate judiciary including the district judges. (emphasis supplied)

8. *Editor of Indian Law Review*<sup>3</sup>: The Editor of the Indian Law Review and some other members of the Calcutta Bar have expressed the view that in a federal constitution, where the independence of the judiciary and its separation from the executive are essential, the **control of the subordinate judiciary should remain with the**

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<sup>3</sup> The framing of India's Constitution, Selected Documents by B Shiva Rao, Volume IV Page 185.

**High Courts**, and have therefore suggested that sections 254 and 255 of the Government of India Act, 1935 should be retained *mutatis mutandis*. (emphasis supplied)

9. *Bihar Lawyers' Conference*<sup>4</sup> : The Bihar Lawyers' Conference at its fourth session has proposed that provisions should be made in the Constitution of the Union of India regarding district judges etc., subordinate civil judicial service and subordinate criminal magistracy equivalent to sections 254, 255 and 256 of the Government of India Act, 1935.
10. *Jai Prakash Narayan*<sup>5</sup> : The following new article 209-A be added after article 209  
 "209-A. The judicial power shall be separated from the administration in all instances. Judges shall not be required to exercise any executive function or power. They may, however, be entrusted with investigations of a quasi-judicial character.

### **Draft Constitution presented to Constituent Assembly**

11. The aforesaid views were accepted by the Drafting Committee and a new Chapter VIII in Part VI containing Articles 209A to 209E were included in the revised Draft Constitution presented to the Constituent Assembly on 21st February, 1948. Draft Article 209A read thus:

"209A. 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

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<sup>4</sup> The framing of India's Constitution, Selected Documents by B Shiva Rao, Volume IV Page 185.

<sup>5</sup> The framing of India's Constitution, Selected Documents by B Shiva Rao, Volume IV Page 185.

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 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.” (emphasis supplied)

### **Constituent Assembly Debates**

12. Draft Articles 209A to 209E were debated in the Constituent Assembly on 16.09.1949.<sup>6</sup> Dr Ambedkar while moving the aforesaid provisions said:

“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. **The second object is to place the whole of the civil judiciary under the control of the High Court.** The only thing which has been excepted from the general provisions contained in article 209-A, 209-B and 209-C is with regard to the magistracy, which is dealt with in article 209-E. The Drafting Committee would have been very happy if it was in a position to recommend to the House that immediately on the commencement of the Constitution, provisions with regard to the appointment and control of the Civil Judiciary by the High Court were also made applicable to the magistracy. But it has been realised, and it must be realised that the magistracy is intimately connected with the general

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<sup>6</sup> Constituent Assembly Debates dated 16.09.1949 cc 1572.

system of administration. We hope that the proposals which are now being entertained by some of the provinces to separate the judiciary from the Executive will be accepted by the other provinces so that the provisions of article 209-E would be made applicable to the magistrates in the same way as we propose to make them applicable to the civil judiciary. But some time must be permitted to elapse for the execution of the proposals for the Separation of the judiciary and the executive. It has been felt that the best thing is to leave this matter to the Governor to do by public notification as soon as the appropriate changes for the separation of the judiciary and the executive are carried through in any of the provinces. This is all I think I need to say. There is nothing revolutionary in this. Even in the Act of 1935, appointment and control of the civil judiciary was vested in the High Court. We are merely continuing the Same in the present draft.” (emphasis supplied)

### **Submissions**

13. The Article 209A to Article 209E are incorporated in the Constitution as Articles 233 to 237. It is submitted that the provisions contained in Chapter VI Part VI of the Constitution is a complete code for recruitment and conditions of service of the District Judiciary. This Hon'ble Court in various pronouncements has recognized from time to time that the founding fathers have granted complete control over the process of recruitment, appointment, promotion and other conditions of service to the High Court.

14. It is submitted that clause (1) of Article 233 of the Constitution provides that appointment, posting and promotions of District Judges in the State shall be done by the Governor in consultation with the High Court. It is submitted that the entire exercise of selection for both direct recruitment as well as promotion is to be conducted by the High Court alone and the role of the Governor, that is, the State Government is merely a ministerial task for appointment. Clause (1) does not provide any qualification for the post District Judges. Clause (2) of Article 233 prescribes the **eligibility** for the appointment to the post of District Judge. Article 233 contemplates two sources of recruitment,

(a) by promotions of person who is already in the service of the Union or the State (which has been interpreted by this Hon'ble Court to mean judicial service) and

(b) by direct recruitment of a person who has been an advocate for a minimum period of seven years.

It is pertinent to note that a direct appointment of a District Judge can be made only "if **he has been** for not less than seven years as advocate" which clearly means that an advocate must be in practice immediately before the cut-off date for a continuous period of seven years.

15. It is further submitted that neither clause (1) nor clause (2) provides any quota for promotion and/ or direct recruitment. The Constitution has left to the High Court to frame Rules to prescribe qualifications in both the modes of appointment and quota to be fixed. The Constitution does not bind the High Court to prescribe

conditions of eligibility for both the sources of appointment. The same is to be prescribed by the High Court under the Rules.

16. The concept of quota between the promotee and direct recruits was introduced by the judgement of this Hon'ble Court in *All India Judges Association (2002)*<sup>7</sup> wherein this Hon'ble Court held thus:

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

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<sup>7</sup> *All India Judges' Assn. (3) v. Union of India*, (2002) 4 SCC 247.

that there has to be a certain minimum standard, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges. While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned: 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion

strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.

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

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

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

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

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

17. Pursuant to the said direction of this Hon'ble Court in *All India Judges Association*<sup>8</sup>, the Higher Judicial Services Rules have been amended wherein two independent sources of appointment have been prescribed, one by promotion and second by direct recruitment without any overlap and inter se claim by the candidates from

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<sup>8</sup> *All India Judges' Assn. v. Union of India*, (2002) 4 SCC 247.

the two sources. The judgement of *All India Judges Association* and the Rules framed thereafter provide for accelerated promotion on the basis of merit by way of Limited Competitive Examination of the Judicial Officers from the feeder cadre having not less than five years of qualifying service. The twenty-five LCE quota has been subsequently reduced to ten percent by the Judgment and order dated 20th April 2010 passed in *All India Judges Case (2010)*.<sup>9</sup>

18. It is submitted that the validity of the Gujarat Judicial Service Rules, 2005 providing that 25% quota for direct recruitment is meant only for advocates who have been in continuous practice for a minimum period of seven years on the cut-off date has not been challenged by the Petitioner. In the absence of any challenge to the Rule, the Petitioner cannot claim any appointment in the 25% direct recruitment quota.

19. It is submitted that this Hon'ble Court in *Dheeraj Mor*<sup>10</sup> has correctly held that Article 233(2) provides that if an advocate or a pleader has to be appointed, he must have completed 7 years of practice. It is coupled with the condition in the opening part that the person should not be in service of the Union or State, which is the judicial service of the State. The person in judicial service is not eligible for being appointed as against the quota reserved for advocates.

20. It is submitted that in case serving judicial officers are not eligible for recruitment in the direct recruitment quota for advocates having minimum seven years of practice for the following reasons:

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<sup>9</sup> *All India Judges' Assn. v. Union of India*, (2010) 15 SCC 170.

<sup>10</sup> *Dheeraj Mor v. High Court of Delhi*, (2020) 7 SCC 401.

- a. Neither clause (1) nor clause (2) of Article 233 of the Constitution confers any right to the serving Judicial Officers to claim appointment in the quota of district judges reserved for direct recruitment under the Recruitment Rules.
- b. The clause (2) of Article 233 provides eligibility for appointment as a District Judge - both by promotions and direct recruitment without conferring any right to any category of persons.
- c. Direct appointment of a District Judge can be made only “if **he has been** for not less than seven years as advocate” which clearly means that an advocate must be in practice immediately before the cut-off date for a continuous period of seven years.
- d. The Judicial Service Rules framed in all the States on the recommendation of the High Court after the judgement of this Hon’ble Court in *All India Judges Association*<sup>11</sup> (2002) have uniformly provided that 25% direct recruitment quota is only available to practising advocates who have continuous seven years of practise on the qualifying date and in-service candidates are not eligible for the said quota.
- e. If the in-service Judicial Officers are allowed to compete in the direct recruitment quota, the difference between the two routes of appointment, LCE and direct recruitment, both based on merit would wither away.

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<sup>11</sup> *All India Judges’ Assn. (3) v. Union of India*, (2002) 4 SCC 247.

- f. This Hon'ble Court has reduced the quota for LCE candidates from 25% to 10%, inter-alia, having taken into consideration that promotion of a junior officer to a higher post superseding the seniors creates heartburing in service.
- g. Allowing the in-service candidates to compete in the direct recruitment quota would have an adverse impact on the functioning of the courts as judicial officers would devote more time in preparing for the examination at the cost of judicial work.
- h. The Rules providing for 25% quota for only practising advocates in which the serving Judicial Officer have no claim, are in place for more than the last twenty years and there has been judicial opinion by all the Courts upholding the same. Thus, on the principle of stare decisis, it is submitted that the principle laid down by this Hon'ble Court *Dheeraj Mor*<sup>12</sup> may not be interfered with.

### Case Laws Relied Upon

21. In *Bal Mukund Sah*<sup>13</sup>, a Constitution Bench of this Hon'ble Court inter alia held thus :

"29. ....Thus Articles 233 and 234, amongst them, represent a well-knit and complete scheme regulating the appointments at the apex level of the District Judiciary, namely, District Judges on the one hand and Subordinate Judges at the grass-root level of the Judiciary subordinate to the District

<sup>12</sup> *Dheeraj Mor v. High Court of Delhi*, (2020) 7 SCC 401.

<sup>13</sup> *State of Bihar v. Bal Mukund Sah*, (2000) 4 SCC 640

Court. Thus the Subordinate Judiciary represents a pyramidal structure. At the base level i.e. grass-root level are the Munsiffs and Magistrates whose recruitment is governed by Article 234. That is the first level of the Judiciary. The second level represents already recruited judicial officers at grass-root level, whose working is controlled by the High Court under Article 235 first part. At the top of this pyramid are the posts of District Judges. Their recruitment to these posts is governed by Article 233. It is the third and the apex level of the Subordinate Judiciary.

**35.** In order to fructify this constitutional intention of preserving the independence of the Judiciary and for fructifying this basic requirement, the process of recruitment and appointment to the District Judiciary with which we are concerned in the present case, is insulated from outside legislative interference by the Constitution-makers by enacting a complete code for that purpose, as laid down by Articles 233 and 234. Consultation with the High Court is, therefore, an inevitable essential feature of the exercise contemplated under these two articles. If any outside independent interference was envisaged by them, nothing prevented the Founding Fathers from making Articles 233 and 234 subject to the law enacted by the Legislature of States or Parliament as was done in the case of other articles, as seen earlier.....

**36.** It becomes, therefore, obvious that no recruitment to the post of a District Judge can be made by the Governor without recommendation from

the High Court. Similarly, appointments to the Subordinate Judiciary at grass-root level also cannot be made by the Governor save and except according to the rules framed by him in consultation with the High Court and the Public Service Commission.

**37.** .....It is, therefore, obvious that the State Legislature has no role to play while controlling appointments of District Judges under Article 233 or appointment of Civil Judges to the Subordinate Judiciary at grass-root level under the District Judiciary and it is only the Governor who is entrusted with the said task which he has to undertake after consultation with the High Court and by framing appropriate rules for recruitment to the Judiciary at grass-root level as enjoined by Article 234 and can only act on recommendation by the High Court for direct recruitment from the Bar for being appointed as District Judges as laid down by Article 233 sub-article (2). There is no third method or third authority which can intervene in the process or can have its say, whether legislative authority or executive authority, as the case may be, independently of the complete scheme of such recruitment as envisaged by the aforesaid two articles.....

**52.** Naturally, therefore, consultation with the High Court will have a direct linkage with the policy decision as to how many posts should be advertised, what are the felt needs of the District Judiciary and whether there can be any reservation which can be permitted to be engrafted in the rules framed

by the Governor consistent with the maintenance of efficiency of judicial administration in the State.....

**58.** ..... For judicial appointments the real and efficacious advice contemplated to be given to the Governor while framing rules under Article 234 or for making appointments on the recommendations of the High Court under Article 233 emanates only from the High Court which forms the bedrock and very soul of these exercises. It is axiomatic that the High Court, which is the real expert body in the field in which vests the control over the Subordinate Judiciary, has a pivotal role to play in the recruitments of judicial officers whose working has to be thereafter controlled by it under Article 235 once they join the Judicial Service after undergoing filtering process at the relevant entry points. It is easy to visualise that when control over the District Judiciary under Article 235 is solely vested in the High Court, then the High Court must have a say as to what type of material should be made available to it both at the grass-root level of the District Judiciary as well as the apex level thereof so as to effectively ensure the dispensation of justice through such agencies with the ultimate object of securing efficient administration of justice for the suffering litigating humanity.....”

22. The aforesaid view has been reiterated by this Hon’ble Court in various subsequent judgements reference to which are made hereunder :

- a. *Gauhati High Court v. Kuladhar Phukan*, (2002) 4 SCC 524, para 16;

- b. *Nawal Kishore Mishra v. High Court of Judicature of Allahabad*, (2015) 5 SCC 479, paras 19 and 20.1 to 20.3;
- c. *Telangana Judges Assn. v. Union of India*, (2019) 18 SCC 769, para 34

23. A three Judges Bench of this Hon'ble Court in *Satya Narain Singh*<sup>14</sup> has held:

"Two points straightway project themselves when the two clauses of Article 233 are read: The first clause deals with "appointments of persons to be, and the posting and promotion of, District Judges in any State" while the second clause is confined in its application to persons "not already in the service of the Union or of the State". We may mention here that "service of the Union or of the State" has been interpreted by this Court to mean Judicial Service. Again while the first clause makes consultation by the Governor of the State with the High Court necessary, the second clause requires that the High Court must recommend a person for appointment as a District Judge. It is only in respect of the persons covered by the second clause that there is a requirement that a person shall be eligible for appointment as District Judge if he has been an advocate or a pleader for not less than 7 years. In other words, in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges, while in the case of candidates who are members of a Judicial Service the 7 years' rule has no

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<sup>14</sup> *Satya Narain Singh v. Allahabad High Court*, (1985) 1 SCC 225.

application but there has to be consultation with the High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. Obviously the same ship cannot sail both the streams simultaneously. The dichotomy is clearly brought out by S.K. Das, J. in *Rameshwar Dayal*<sup>15</sup> where he observes:

"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 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.'"

24. This Hon'ble Court in *Jai Singh*<sup>16</sup> held that :

"**59.** The doctrine of stare decisis lays importance on stability and predictability in the legal system and mandates that a view consistently upheld by courts over a long period must be followed, unless it is manifestly erroneous, unjust or mischievous."

25. It is thus submitted that this Hon'ble Court may be pleased to answer the reference by holding thus :

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<sup>15</sup> *Rameshwar Dayal v. State of Punjab*, AIR 1961 SC 816.

<sup>16</sup> *State of Haryana v. Jai Singh & Ors.*, 2025 INSC 1122.

i. A judicial officer who has already completed seven years in Bar before being recruited for subordinate judicial services, would not be entitled for appointment as Additional District Judge against the Bar vacancy by direct recruitment.

ii. The eligibility for appointment as a District Judge is to be seen both at the time of appointment and at the time of application.

iii. (a) Clause (1) of Article 233 does not provide any qualification for the post of District Judges by promotion, it merely requires the Governor to make appointments of District Judges in consultation with the High Court and the recommendation of the High Court is binding on the Governor.

(b) Clause (2) of Article 233 prescribes the eligibility for the appointment to the post of District Judge without earmarking any quota for promotee and/or direct recruitment. The appointment by way of direct recruitment as well as promotion has to be made in accordance with Service Rules, subject to fulfilment of eligibility prescribed in clause (2) of Article 233.

iv. The 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 not be eligible for appointment as District Judge under clause (2) of Article 233 of the Constitution of India under the direct recruitment quota.

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