

CHIEF JUSTICE'S COURT

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SURYA KANT

HON'BLE MR. JUSTICE VIKRAM NATH

HON'BLE MR. JUSTICE K. VINOD CHANDRAN

HON'BLE MR. JUSTICE JOYMALYA BAGCHI

COURT NO.1**SUPREME COURT OF INDIA****RECORD OF PROCEEDINGS****I.A. NO. 230675/2025 IN W.P. (C) NO. 1022/1989****ALL INDIA JUDGES ASSOCIATION & ORS****Appellant(s)****VERSUS****UNION OF INDIA & ORS.****Respondent(s)**-----
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1 **10:30 AM**

2 **CHIEF JUSTICE B.R. GAVAI:** Yesterday, Justice Nath was missing you.

3 **GOPAL SANKARANARAYANAN:** Yes.

4 **JUSTICE VIKRAM NATH:** No, no, we miss you every day, not only yesterday.

5 **GOPAL SANKARANARAYANAN:** Special Bench at 3:30, sir.

6 **CHIEF JUSTICE B.R. GAVAI:** Yes.

7 **JUSTICE VIKRAM NATH:** You have been placed in a category with somebody you know.

8 **GOPAL SANKARANARAYANAN:** I heard about it.

9 **VIBHA DATTA MAKHIJA:** Your Lordships may share the joke with us too.

10 **GOPAL SANKARANARAYANAN:** Best not to.

11 **CHIEF JUSTICE B.R. GAVAI:** He doesn't want to take it any further. Yes, Mr. Dwivedi.

12 **RAKESH DWIVEDI:** May I please, Your Lordship? My Lord, there's a problem in this
13 matter. Your Lordships have appointed one *Amicus*. There should have been at least two
14 *Amicuses*.

15 **CHIEF JUSTICE B.R. GAVAI:** One for direct and one for promotees. Three, three, sorry.
16 Third for the LDCE.

17 **RAKESH DWIVEDI:** One for the High Court. Because the High Courts are very reluctant to
18 provide data, to speak up what they desire, My Lords.

19 **JUSTICE VIKRAM NATH:** That is the whole difficulty, Mr. Dwivedi.

20 **RAKESH DWIVEDI:** Yes.

21 **JUSTICE VIKRAM NATH:** The High Court Registry controls everything so strongly, same
22 as Supreme Court also. Registry is very powerful everywhere. So High Court also, the Registry,
23 if they are direct recruits, they will make sure that the promotees don't get their due benefits.
24 And if the promotees are in majority there, they will fall back. That's the whole difficulty.

1 **RAKESH DWIVEDI:** No, sir, not only the Registry, My Lords, even the judges... with great
2 respect...

3 **JUSTICE VIKRAM NATH:** I don't know about the judges but I know definitely they will
4 not provide you the data, they will not paste the file at the appropriate time, you keep asking
5 them, file this laws, they are searching, this, that, everything is happening. Until and unless,
6 you have a very good administrator at the helm.

7 **RAKESH DWIVEDI:** There are issues which can be raised factually, constitutionally and
8 unless, the data, as My Lord Justice Chandran observed, unless the data is accurately
9 presented before Your Lordships, there's a grave danger. There's a grave danger of doing
10 something which may cause serious imbalance rather than arriving at a proper balance, we
11 create a situation that where there is balance already existing and imbalance creeps in there.
12 So that data, with great respects, is not there, My Lords. One My Lord...

13 **CHIEF JUSTICE B.R. GAVAI:** The High Courts are before us.

14 **RAKESH DWIVEDI:** No High Courts are there, but the data...

15 **CHIEF JUSTICE B.R. GAVAI:** You are for the High Courts, so you should have placed the
16 data on record.

17 **RAKESH DWIVEDI:** So, I'm just... My Lord that's what I started, that has to be an *amicus*
18 My Lord who can pressurise My Lords that...

19 **CHIEF JUSTICE B.R. GAVAI:** It's the *amicus* who placed the data yesterday.

20 **RAKESH DWIVEDI:** Yes.

21 **CHIEF JUSTICE B.R. GAVAI:** So, in the last so many years.

22 **RAKESH DWIVEDI:** No, it's not. Your Lordships want to lay down a uniform rule.

23 **CHIEF JUSTICE B.R. GAVAI:** Yes. So therefore, so...

24 **RAKESH DWIVEDI:** Therefore...

25 **CHIEF JUSTICE B.R. GAVAI:** You are appearing for the High Court...

26 **RAKESH DWIVEDI:** So, I'm appearing for one High Court.

1 **JUSTICE VIKRAM NATH:** You're appearing for Allahabad High Court?

2 **RAKESH DWIVEDI:** Allahabad High Court. I'm not appearing for all the High Courts My
3 Lords.

4 **GOPAL SANKARANARAYANAN:** There are only three here.

5 **RAKESH DWIVEDI:** And most of the High Courts are not represented My Lords.

6 **CHIEF JUSTICE B.R. GAVAI:** But they have been noticed.

7 **RAKESH DWIVEDI:** No, legally speaking, I'm not saying that adjourn the matter. I'm not
8 saying that.

9 **CHIEF JUSTICE B.R. GAVAI:** But the High Courts, all the High Courts as well as all the
10 State Governments...

11 **RAKESH DWIVEDI:** But there...

12 **CHIEF JUSTICE B.R. GAVAI:** All have been duly served.

13 **RAKESH DWIVEDI:** I'm saying the data therefore is not before Your Lordships. And
14 whatever data has been picked up My Lords by the learned *amicus*, and I must say he has
15 faithfully reproduced from the various Affidavits. But they are scanty, incomplete, and based
16 on pre-existing legal positions. We still don't know, Your Lordships have brought...

17 **CHIEF JUSTICE B.R. GAVAI:** That's what Justice Nath said yesterday. Now, these few
18 judgements the dynamics will change.

19 **GOPAL SANKARANARAYANAN:** Yes.

20 **RAKESH DWIVEDI:** So therefore I stand up on behalf of Allahabad High Court to dissuade
21 Your Lordships from issuing any directions, because it will create imbalance and High Courts
22 are in the best position. I will show from the learned *amicus* and my dissuasion is firstly based
23 on the Constitutional plank, that Chapter 6 of Part 6 vests exclusive control in matters of
24 appointment, promotion, postings and control in the High Courts. There may be some
25 situations. I'm not saying that the Supreme Court should keep its hands off completely My
26 Lord. There may be situations My Lord where Your Lordships interventions are required. But
27 generally the High Courts are seized with the data and facts and therefore, they are in a
28 position to deal with the situation which prevails in the High Court in the particular State.

1 **CHIEF JUSTICE B.R. GAVAI:** That's the reason, because every High Court is taking
2 different stance. The practices adopted in every High Court are different, and therefore some
3 uniformity has to be there.

4 **RAKESH DWIVEDI:** There cannot be. There cannot be. I'll show from the *Amicus'* Affidavit
5 itself. Kindly have that Affidavit. Look at the situation, how drastically it is varying. How do
6 you bring about uniformity by a particular issue? It's not a question whether we should have
7 quota. Next question will be, "What should be the quota?" Merely saying that there should be
8 some quota is not enough. Where to have the quota? Where not to have? Whether to have? To
9 what extent the quota should be? Should it be 10%, 20%, 50%? So, if the situation is varying,
10 for example My Lord in West Bengal as My Lord pointed out on the last occasion. There is a
11 fair balance today existing. So, any quota is bound to disrupt that balance. In Allahabad High
12 Court the age gap, which was 10 years in the last three years, has come down. It is varying
13 between four months to three years now. Because of the roster system, and the holding of the
14 examinations regularly in time. And simultaneously, every year, recruitment year, it has come
15 down. Now to introduce My Lords a Quota System, 'a', is unnecessary, and 'b', can create
16 another balance. My Lord look at the situation. Your Lordships introduced a quota in 2002,
17 50 : 25 : 25. In 2010, within eight years, Your Lordship thought people are not coming;
18 therefore, 65 : 25 : 10. Another 10 years, My Lords again, we say that it should be 50 : 25 : 25.
19 So, within a span of 18 years three uniformities. So, let the High Courts deal with the situation.
20 This is not that kind of a problem which is uniformly existing in the same manner in every
21 High Court.

22 Now, see, look at their *Amicus'* Affidavit. Written Submissions, sorry My Lords. And Your
23 Lordships have made some good changes. In the previous judgment Your Lordships have
24 opened up the direct recruitment also. So therefore, now the whole 100% field is open for the
25 Civil Judge Junior Division to walk into the higher judicial service. If they are keen, if they are
26 intelligent, if they believe in themselves, they should appear at the earliest My Lord in that
27 examination directly to examinations and they will be at par. But if they are diffident and if
28 they feel that it's better to walk the longer route, as we know My Lord that if you go to
29 Amarnath, there are one, there is short route which is much more steep and risky and the other
30 through Pahalgam, and the other is through Sonmarg, which is a longer route and less.

31 **CHIEF JUSTICE B.R. GAVAI:** Longer route, but which is the destination?

32 **RAKESH DWIVEDI:** Yes, you reach the destination and unfortunately that's the problem.

1 **CHIEF JUSTICE B.R. GAVAI:** But here the difficulty would be if you take that route, you'll
2 be lost.

3 **RAKESH DWIVEDI:** No, here, the destination is not selection grade, not super time. Here
4 the Amarnath is the judgeship My Lord of the High Court. These are not problems. Yesterday's
5 argument, then I again obtained more data from the Allahabad High Court and I find that in
6 the selection grade also the promotees are much more than the direct recruits. I'll show that.
7 So, selection grade is also not an issue. Issue is the High Court judgeship, because there, Your
8 Lordships have some unwritten rules, what will be the zone of consideration, etc., and Your
9 Lordship knows better than me, how, from the judicial service they are picked up. If Your
10 Lordship opens it up to the entire zone of consideration is made the whole of this super
11 timescale or the district judgeship. Every lawyer doesn't become a judge. There is
12 heartburning, heart is a very...

13 **CHIEF JUSTICE B.R. GAVAI:** No, no, many lawyers refuse to become judges.

14 **RAKESH DWIVEDI:** Many refuse to become judge My Lords. So maybe there is
15 heartburning also, why A is selected, why B is not selected? All those keeps on happening
16 everywhere. And there is no system of selection, My Lord, that a higher, a lawyer of, who is
17 more aged he will be selected and who is less aged will not be selected. So, this kind of heart-
18 burnings are normal. Heart is such a fickle thing that it very easily burns. Even if the neighbour
19 is having a better car or a better fridge or something it will burn. So, we can't take care of
20 heartburns. Your Lordship, since *O.P. Garg's* case, I've been saying that now we hope it will
21 come to rest. It will not rest. Whatever Your Lordship provides quota, this promotee versus
22 direct recruit will go on and it lingers My Lord after becoming judge.

23 **JUSTICE SURYA KANT:** That has been a wishful thinking in many judgments. And still it's
24 like that.

25 **RAKESH DWIVEDI:** Yes.

26 **JUSTICE SURYA KANT:** It's not... this judgment will not be an end of the conclusion.

27 **RAKESH DWIVEDI:** My Lords are right.

28 **JUSTICE SURYA KANT:** But both sides should...

29 **RAKESH DWIVEDI:** Our effort is My Lord to reach, improve it, that's about all. Whether
30 that improvement becomes My Lord a deterioration, we don't know.

1 **CHIEF JUSTICE B.R. GAVAI:** It's always a trial and error.

2 **RAKESH DWIVEDI:** Therefore, leave it to the High Court. That's what I'm saying. If it is
3 trial and error let that authority which is constitutionally constituted, capacitated to do it, do
4 it. Force them to do it. As in the last case of age, Your Lordships passed an interim order saying
5 let the High Court first consider whether age should be 61 instead of 60. Why should the High
6 Court be bypassed My Lord? Why should this be divested of their authority, power and duty?
7 It's a constitutional duty of the High Court. Not only authority and entitlement, it's a duty My
8 Lords. And it's time to strengthen the High Courts, not to weaken the High Courts. With great
9 respects My Lord Your Lordships may condone my expression, but things are gone a little too
10 far. In this very court, a petition was filed, which is still pending. 1 of 2017. In Re-Concept
11 Note.

12 **CHIEF JUSTICE B.R. GAVAI:** In Re...?

13 **RAKESH DWIVEDI:** Concept Note. On the basis of some letter from the government, a
14 committee was constituted and that committee was tasked to determine, My Lord, whether
15 this court should hold the selections and create a pool for recruitment to the Office of District
16 Judge. That was the Concept Note. And that...

17 **CHIEF JUSTICE B.R. GAVAI:** The issue is regarding All India Judicial Services on the
18 pattern of IAS and IPS is always alike.

19 **RAKESH DWIVEDI:** That authority... That's another grave breach of... Kindly have a look
20 at... Let me complete this story, My Lord, first before going to 312 All India Judicial Service,
21 what it is. That committee headed by Justice Goel approved that Concept Note, *Amicus* was
22 appointed and the matter was listed in the Concept Note in the court. So, the whole selection
23 will be done by the Supreme Court, and High Courts will now just pick up. What remains of
24 Chapter 6, My Lord, it's dead.

25 **CHIEF JUSTICE B.R. GAVAI:** We are not inclined to do anything of that sort.

26 **RAKESH DWIVEDI:** No, it's pending.

27 **CHIEF JUSTICE B.R. GAVAI:** Not even remotely.

28 **RAKESH DWIVEDI:** After our resistance, the bench was disbanded. After hearing the
29 matter for two days, bench of Chief Justice Khehar, Justice Goel, it was disbanded. We said

1 please, they said destruction of the High Court. It's an elimination of Chapter 6. Now what
2 should be the qualification?

3 **CHIEF JUSTICE B.R. GAVAI:** Even if we recommend to the collegium of some of the
4 lawyers practicing here, you only suggest the names and leave it to the discretion of the High
5 Court entirely. We call upon those candidates, go and argue before the Chief Justice and the
6 collegium judges, and only after they find suitable, the names have been recommended, even
7 from the lawyers of [UNCLEAR].

8 **RAKESH DWIVEDI:** That's good. That's very good, My Lords. That's how it should be.

9 **CHIEF JUSTICE B.R. GAVAI:** We thought that there has to be some opening to the lawyers
10 practicing here from different states.

11 **JUSTICE SURYA KANT:** Mr. Dwivedi, the instance which you are quoting...

12 **RAKESH DWIVEDI:** Yes.

13 **JUSTICE SURYA KANT:** I'm quite sure that you must be aware that what was the reaction
14 by some of the High Courts.

15 **RAKESH DWIVEDI:** I appeared for the High Court, for three High Courts.

16 **JUSTICE SURYA KANT:** And I wish if a day comes when you display the online discussion,
17 when the opinion of the High Court were sought, how some of the judge of the High Courts
18 reacted, including me. So, if there is an issue, there is a point, if there is a need to take a stand,
19 we do take a stand.

20 **RAKESH DWIVEDI:** That's right.

21 **JUSTICE SURYA KANT:** And I wish, if that is displayed and what I said.

22 **RAKESH DWIVEDI:** It should be displayed. Therefore, I'm saying today, we are fixing the
23 age of retirement, we are fixing the quota, we are fixing the criteria, we are fixing what should
24 be the quota of the various sources, what should be the age at which there will be eligibility.
25 Then if you allow that petition also, My Lord, Concept Note petition is still pending.
26 Unfortunately, though it was adjourned, it was tagged with *Malik Mazhar* and it is still
27 pending. So someday, My Lord, somebody may feel that it's time now to...

1 **JUSTICE SURYA KANT:** [UNCLEAR]. The purpose is not to usurp the power of anyone.
2 That question is about power.

3 **RAKESH DWIVEDI:** But ultimately to introduce, whether Your Lordship weightage or
4 quota, that's the two broad suggestions, Your Lordship, you will have to issue a *mandamus*.
5 And *mandamus* for what? To make a legislation. The rule of the High Court is legislation at
6 par with Parliaments and State Legislature's law. It's not a subordinate legislation. In some
7 cases, they refer to it as subordinate. It's not subordinate. So, you'll have to issue a *mandamus*.

8 **JUSTICE SURYA KANT:** It will be only, as already hinted for the uniform guidelines for a
9 kind of an infusement of the strength and for betterment of the...

10 **CHIEF JUSTICE B.R. GAVAI:** Betterment and... when I say the efficiency. That's the only
11 thing.

12 **RAKESH DWIVEDI:** So what will the High Court do? High Court has to follow it.

13 **CHIEF JUSTICE B.R. GAVAI:** Suppose...

14 **RAKESH DWIVEDI:** And High Court can't amend it.

15 **CHIEF JUSTICE B.R. GAVAI:** We don't know what we are going to do.

16 **RAKESH DWIVEDI:** No, I'm dissuading.

17 **CHIEF JUSTICE B.R. GAVAI:** If we accept any of the suggestions given by the learned
18 *amicus*, even if quota is provided, it's not necessarily go by seniority.

19 **RAKESH DWIVEDI:** No, I'm not on what Your Lordship will do. I'm trying to dissuade Your
20 Lordships.

21 **CHIEF JUSTICE B.R. GAVAI:** We are... We also don't know what we are going to do. That's
22 what we are saying. But even if we do something of that sort, we'll not be taking away the
23 discretion of the High Court, in recommending the names.

24 **RAKESH DWIVEDI:** No, it's...

25 **CHIEF JUSTICE B.R. GAVAI:** There could be recommendations by the High Court, solely
26 on the basis of their satisfaction with regard to the suitability of a candidate to be elevated.

1 **RAKESH DWIVEDI:** If the discretion is of the High Court is not to be taken away, leave it
2 to the High Court.

3 **CHIEF JUSTICE B.R. GAVAI:** But why are you averse to having some uniform policy
4 throughout the country?

5 **RAKESH DWIVEDI:** No uniformity...

6 **CHIEF JUSTICE B.R. GAVAI:** Why should there be some different policy in the Bombay
7 High Court and something that...

8 **RAKESH DWIVEDI:** Because My Lords in all aspects... with great respects, in all aspects,
9 there cannot be uniformity and uniformity is a wrong word to say.

10 **CHIEF JUSTICE B.R. GAVAI:** There can't be 100% uniformity. Aren't there promotee
11 judges in the every High Court? Aren't there direct district judges in the every High Court? Is
12 there any distinction that in say Madras High Court 50% are direct district judges and 50%
13 are promotees? When there is a uniformity in all that aspects.

14 **RAKESH DWIVEDI:** So uniformity in this matter My Lords.

15 **CHIEF JUSTICE B.R. GAVAI:** And now, be rest assured. We do not even indirectly,
16 remotely intend to take away the discretion of the High Courts.

17 **RAKESH DWIVEDI:** My Lord, uniformity in this respect will be disastrous.

18 **JUSTICE SURYA KANT:** Mr. Dwivedi you also please keep cool.

19 **RAKESH DWIVEDI:** Yes.

20 **JUSTICE SURYA KANT:** We're quite sure you are aware. Some of the judgments have been
21 cited. This Court has already intermittently, and in one or the 2, 3, 4, 5, 7 High Courts. The
22 only criteria or formulation of seniority, has already interfered, leaving no scope for the High
23 Courts... leaving no scope to the discretion of the High Courts. The full Court decision of the
24 High Court have been set aside here. And if a particular way of directions have been issued. In
25 some of the cases, when ignoring these statutory rules. What to do? Are we not required to in
26 sitting in larger Bench and to rectify our own mistakes?

27 **RAKESH DWIVEDI:** Because once the High Court makes a rule, if Your Lordship matter
28 comes before Your Lordships in an appeal, Your Lordships certainly can issue directions. But

1 today My Lord is a... here is an I.A. moved by an *Amicus* seeking a direction to protect the
2 promotees.

3 **JUSTICE SURYA KANT:** That's only everybody's giving their viewpoint. It's not that
4 necessarily that we will follow that rule.

5 **RAKESH DWIVEDI:** No. But this methodology My Lords. I'm... with great respects My
6 Lords.

7 **JUSTICE SURYA KANT:** It is only evaluation of the best of the possibilities that we can do.

8 **RAKESH DWIVEDI:** Well, it's my humble submission, My Lords. Your Lordships...

9 **CHIEF JUSTICE B.R. GAVAI:** It's not that simple.

10 **JUSTICE VIKRAM NATH:** Alright, we have taken note of the submissions that we need not
11 do anything. All right. Now you proceed whatever you wish to say on the submissions.

12 **CHIEF JUSTICE B.R. GAVAI:** On the submissions, on the other side, including Ms.
13 Makhija's, that there has to be a separate Court of our LCEs, for elevation.

14 **RAKESH DWIVEDI:** This Your Lordship will take note. Do whatever Your Lordship feels.
15 My Lords I'm trying to dis... I said.

16 **CHIEF JUSTICE B.R. GAVAI:** We have... We have recorded your submission and Justice
17 Nath has rightly pointed out, you should adopt the practice of hands-off.

18 **RAKESH DWIVEDI:** The hands-off and be My Lords even if Your Lordship has to issue
19 some guidelines or directions, it should be general so that High Courts discretion.

20 **CHIEF JUSTICE B.R. GAVAI:** How many times have we been telling you that we don't
21 even remotely intend to take away any discussion vested in the High Court?

22 **RAKESH DWIVEDI:** That's my humble submission.

23 **JUSTICE SURYA KANT:** It's only going to be a general direction. There is nothing like that
24 *inter se* seniority. We have already indicated to the other side also. There is no question of
25 entertaining *inter se* seniority dispute by us.

26 **RAKESH DWIVEDI:** Now kindly have My Lords the second plank for dissuasion is the great
27 divergence. Come to paragraph 23. Kindly come to paragraph 23 *Amicus'* Written Statement?

- 1 **CHIEF JUSTICE B.R. GAVAI:** Yes.
- 2 **JUSTICE VIKRAM NATH:** Paragraph 23?
- 3 **RAKESH DWIVEDI:** Yes.
- 4 **JUSTICE VIKRAM NATH:** Yes, the chart.
- 5 **RAKESH DWIVEDI:** Now kindly see different states, what is the age gap difference?
6 Andhra, Chhattisgarh happens to be on the higher side, Gujarat is somewhere in the middle.
7 Now see Haryana, only two. This is not something abnormal. Two years gap. Kerala is four,
8 Madhya Pradesh is two and next page...
- 9 **CHIEF JUSTICE B.R. GAVAI:** Rajasthan, 42 against 13?
- 10 **RAKESH DWIVEDI:** Yes. Barring the first two, the rest are between 2 to 6. And if Your
11 Lordship comes to Sikkim and Uttarakhand.
- 12 **CHIEF JUSTICE B.R. GAVAI:** It's reverse.
- 13 **RAKESH DWIVEDI:** Reverse.
- 14 **CHIEF JUSTICE B.R. GAVAI:** Sikkim, what was the strength of judiciary?
- 15 **RAKESH DWIVEDI:** Now, kindly have a look at paragraph 27. However, the situation is
16 quite different in several other states where promotee district judges are much more in
17 number than district recruit, direct recruit district judges at the post of Principal District and
18 Sessions Judge, District Judge super timescale as is evident from the following. In the State of
19 Chhattisgarh, as for the seniority gradation list of the cadre of district judges out of 23
20 Principal District Session Judge, 14 are promotee District Judges. In State of Gujarat, as per
21 seniority gradation list, out of 33, 24 are promoted. So whole list of High Courts which runs
22 through, at least 12 High Courts, include 13 High Courts, including State of West Bengal, which
23 is at (k) and Tamil Nadu is (h). Delhi High Court is there. So where is the need for...?
- 24 **CHIEF JUSTICE B.R. GAVAI:** Even for uniformity. It will also be in the interest of the
25 direct recruits where their position is up.
- 26 **RAKESH DWIVEDI:** No, this will keep on varying from... it's not a question that this is a
27 data based on the preexisting rules. Now, with Your Lordships opening the doors of direct
28 recruit, many of these promotees will get an opportunity to...

1 **CHIEF JUSTICE B.R. GAVAI:** If the dynamics change, the law will change, where four of
2 us would not be here.

3 **RAKESH DWIVEDI:** That's not the point My Lord. To us, Your Lordships are Lordships.
4 We don't look at the faces.

5 **CHIEF JUSTICE B.R. GAVAI:** We also don't, in a lighter way.

6 **RAKESH DWIVEDI:** Your Lordship will have to look at the faces.

7 **CHIEF JUSTICE B.R. GAVAI:** 2010 changes into...

8 **RAKESH DWIVEDI:** Perhaps Your Lordship or its judges My Lords. It doesn't matter My
9 Lords who is there.

10 **CHIEF JUSTICE B.R. GAVAI:** 2002 changes into 2010 depending upon the circumstance
11 existing with '25. 2024-25, many of the High Courts feel that the changes made in 2010 need
12 to be relooked into.

13 **RAKESH DWIVEDI:** No, therefore let them... therefore I'm saying that such is the variance,
14 that therefore there should be no uniform guideline directed to the High Courts because there
15 is so much of variance. Leave it to...

16 **CHIEF JUSTICE B.R. GAVAI:** But problem is if this variance is removed it will balance the
17 rights of all the stakeholders.

18 **RAKESH DWIVEDI:** Because there is lot of other factors in play. Let me come to the other
19 factors based on what is happening.

20 **GOPAL SHANKARANARAYANAN:** I'm sorry to interrupt my friend. Para 25 goes one
21 way, para 27 goes the other way. So the whole set of states in paragraph 25 where the direct
22 recruits are more, para 27 is what my friend...

23 **CHIEF JUSTICE B.R. GAVAI:** Where the promotees are more.

24 **GOPAL SHANKARANARAYANAN:** So there's no uniformity there in that.

25 **CHIEF JUSTICE B.R. GAVAI:** That's what we are saying.

26 **GOPAL SHANKARANARAYANAN:** Whichever way you correct it, it's very difficult to
27 create.

1 **JUSTICE SURYA KANT:** After seven- eight years, you are right the dynamics will change.
2 Now with three years practice at the Bar joining the service, the judicial service as rightly
3 pointed out, part of eligibility for direct recruitment. So after 7-8 years, the judicial officers
4 will be eligible to compete not only for 25% LDC, but for 25% direct recruitment also. So, there
5 can be a possibility that suppose you have a cadre of 100 officers in your division, out of them
6 25 are selected in LDC, 25% are selected in directly, hypothetically, and only 50% are left.

7 **RAKESH DWIVEDI:** But My Lords... I appreciate.

8 **JUSTICE SURYA KANT:** That is still completely a new dynamics deposition you have to
9 determine...

10 **RAKESH DWIVEDI:** So... And...

11 **COUNSEL:** [UNCLEAR] Your Lordships have put the concept of LDCE even at the... so that
12 will further give a [UNCLEAR]. I'm sorry, my apologies.

13 **JUSTICE SURYA KANT:** But the impact of it will be only after 7-8, maybe 10 years that
14 somebody will be able to evaluate...

15 **JUSTICE VIKRAM NATH:** We will not be there. All of you will be there after 7-8 years and
16 again take up that issue and get it modified.

17 **RAKESH DWIVEDI:** No. There's something much more than this.

18 **JUSTICE VIKRAM NATH:** Yes.

19 **RAKESH DWIVEDI:** Look at the various other factors. Your Lordship may have quota, if
20 Your Lordship wants, put weightage, whatever...

21 **CHIEF JUSTICE B.R. GAVAI:** We are telling you, we don't know what we are going to
22 decide.

23 **RAKESH DWIVEDI:** No, I'm saying...

24 **CHIEF JUSTICE B.R. GAVAI:** At the threshold, one argument we have, obviously we
25 understood. So you tell us, what are your oppositions to the submissions made by us. So that
26 we can consider. We are not going to decide only on the basis of the arguments.

27 **RAKESH DWIVEDI:** I'm not proposing anything. I'm saying, don't do anything.

1 **CHIEF JUSTICE B.R. GAVAI:** That's all. Let the others argue.

2 **RAKESH DWIVEDI:** I have to... No, it's not simply by saying *ipse dixit*, My Lord, that I say,
3 don't do. Why you should not do it, that's the reasons I am...

4 **JUSTICE VIKRAM NATH:** Come to the other factors now.

5 **RAKESH DWIVEDI:** Now, there are various...

6 **CHIEF JUSTICE B.R. GAVAI:** On applying the...

7 **RAKESH DWIVEDI:** There are various imponderable factors which operate in determining
8 whether there should be a quota, weightage, or not, neither of them or leave it as it is to the
9 High Courts. There are various factors. First is why is there this age gap? None of the petitions,
10 affidavits are throwing any light as to why the judicial officers in the civil divisions, civil judge,
11 junior division are reaching late, My Lords. If a lawyer gets an LLB degree at 22 or 23... Before
12 Your Lordship's judgment, there was no bar in appearing in the examinations for the junior
13 division but lawyers were not appearing at 26. The average age of the lawyers appearing in the
14 examination is the most important factor which get. In Allahabad High Court, it is 28. Now
15 please get this data from all the High Courts. This is very important. They are all crying about
16 the age gap, increasing age gap. Even Shetty Commission emphasizes. The reason is that
17 lawyers are appearing in this examination at a late stage. Your Lordships have not barred the
18 door. It's their choice. I have a choice to carry on with my practice. I have a choice to refuse
19 judgeship. I have a choice to appear in the 7 years examination upon reaching 35 years and go
20 straight to High... HJS. And I have a choice to go at the earliest, at the lowest run and take the
21 long road. So an individual lawyer is exercising his choice. And if I exercise my choice at the
22 age of 30 and 32, I am bound to be there, the age gap will be there. And in the examination
23 experience in the Allahabad High Court is that the average age is 28 years. We have mentioned
24 in our affidavit, if Your Lordship has that affidavit. Volume 3, R-1. Now, if average age is 28,
25 which shows that the larger number of people are appearing in the examinations beyond the
26 age of 30 years, and none of the promotees are giving Your Lordships the data from different
27 High Courts as to what is the average age.

28 Now if I choose to appear at the age of 35 and become a Munsiff My Lord and then I complain,
29 My Lord, that I don't get a fast track. So, these are the problems which are existing there. And
30 these facts are not before Your Lordships. Whatever solution Your Lordships will find will be
31 in the absence of material data. Finally, I have paragraph 7 of my Affidavit. And now Your
32 Lordships have put a three years bar of experience. So they will appear naturally My Lord at a
33 later stage. That's a further. Earlier, there was no bar. Now, in the interest of efficiency of

1 service My Lords, have rightly put that bar. So therefore, it's not a question of a difference of
2 age gap between the two groups and who is reaching and who is more or who is less. You have
3 to keep in mind the overall efficiency of the judicial system. That's the most important thing.
4 And that's why this three years bar has been put notwithstanding the consequence being that
5 they will be delayed. However, even if three years is taken to 23 to 26 and 26... before 35,
6 nobody can appear. So they complete seven years also for directly appearing. So, who prevents
7 My Lords this judicial officers. Now, that Your Lordships have opened the door, they should
8 compete. Then whoever is confident about himself, he will come My Lords in the direct recruit
9 quota. Your Lordships will find that half of the direct recruits will be promotees. So let us see
10 the fallout of what Your Lordships have already provided.

11 **CHIEF JUSTICE B.R. GAVAI:** But they will not be promotees, they will be appointees.

12 **RAKESH DWIVEDI:** Sorry.

13 **CHIEF JUSTICE B.R. GAVAI:** How will they be a promotee?

14 **RAKESH DWIVEDI:** No...

15 **CHIEF JUSTICE B.R. GAVAI:** If they're selected, if they are selected, they'll be direct
16 recruits.

17 **RAKESH DWIVEDI:** No, no. No from their group. From their group. I'm not, they are from
18 the judicial...

19 **CHIEF JUSTICE B.R. GAVAI:** It's not as if that their initial service will be counted and
20 they will get a retrospective or a something. There will be a fresh appointment.

21 **RAKESH DWIVEDI:** No I'm saying... of course. Of course it will be fresh, but the Civil Judge
22 Junior Division by this route comes faster into the District Judge. That's the important... So
23 therefore, this permutation and combination which Your Lordships have now produced, let us
24 see My Lords. We are sort of hastily, hastily moving ahead My Lords in another.

25 **CHIEF JUSTICE B.R. GAVAI:** Mr. Dwivedi, what is the next point now?

26 **RAKESH DWIVEDI:** So Your Lordships may kindly note, My Lord, we have... I have
27 indicated at paragraph 7, the minimum age 28. Now there is a small note which I have
28 prepared. If Your Lordship has that note, allows me to place it. May I quickly just take Your
29 Lordship through this notes. A small note. "The submissions of the learned *amicus* are
30 founded on the factual premise of increasing age gap between the direct recruits and

1 promotees in the HJS cadre. As per para 23 of his note, it appears that there is no uniformity
2 as regards age gap in different States. In West Bengal, Chhattisgarh and Madhya Pradesh,
3 there is broad equivalence between the two categories and in Sikkim and Uttarakhand, the
4 promotees are younger in age. In Haryana and Madhya Pradesh the gap is a negligible, two
5 years. Even in Jharkhand and Kerala, the gap is only five years. Further in para 27, it is pointed
6 out that there is not much difference in the average age of promotees and direct recruits.
7 Reverting to the additional Affidavit of the Allahabad High Court dated 25-10-25, it would
8 appear that from the year 2012 onwards, the age gap has come down drastically from 10 years
9 to between 4 months and 3 years. There is some variation on account of different factors. One
10 of the factors for the relatively higher age for the recruitment of HJS is that several of the
11 candidates appear in the Civil Junior Division examinations when they are 28 years of age or
12 above. Ordinarily, a lawyer would be eligible to appear in the examination at the age of 22, 23
13 years, as earlier there was no limitation of three years practice at the bar for appearing in the
14 examination. Even after the stipulation of three years practice requirements, they will be
15 eligible to appear in the age of 25, 26. Ordinarily, the Civil Judge Junior Division takes 10 to
16 12 years of service before being considered for promotion to HJS. Since the minimum age for
17 HJS is 35 years, normally there should not be occasion for substantial age gap between the
18 two categories. In para 7 of the High Court affidavit, it has been stated that the year 2022, the
19 average age of selected candidates for Civil Judge Junior Division was 28 years. This indicates
20 that a sizable number of candidates were above 30 years. In para 9 of the aforesaid Affidavit,
21 a chart is included which shows that from the year 2008 to '25, the promotees are occupying
22 75% or more of the post in the HJS cadre. So far as the post of District Judge/equivalent posts
23 are concerned it is stated that there are in all 268 posts, of which 75 posts in 75 districts are of
24 District Judge. The rest are equivalent posts. Out of 268 posts at present, there are 103 direct
25 recruits and 148 are promotee officers. At present, there are 70 District Judges, of which 12
26 are promotee officers. According to the information obtained from the High Court on 28-12-
27 '25 there are 233 posts in the District Judge selection grade, which constitutes 35% as per Rule
28 27 of the UP HJS Rules. Out of these 233 posts, only 34 are direct recruit officers and 198 are
29 promotee officers." So, even in the selection grade, they are in large numbers. Much larger
30 than the direct recruits. "Out of these 233 posts, only 34 are direct recruits and 198 are
31 promotee officers. One officer is from LCDE. There are 78 posts of District Judge super time
32 pay scale. Out of these 65 are direct recruits and 12 are promotee officers." The letter from the
33 High Court is enclosed My Lords. I have annexed My Lords. Yesterday I got this information,
34 which is at the end of this note. "Apparently the situation is not at all alarming as has been
35 projected. Moreover the *inter se* configuration at different levels is a fluctuating phenomena
36 and would vary from time to time. Para 16 of the Affidavit... additional Affidavit it has been
37 stated that since the year 1990, a total of 200 officers from HJS have been elevated to the High

1 Court. Out of these, 133 officers were promotees and 67 were direct recruits. Considering the
2 elevation at different points of time, it is apparent from the chart that up till the year 2009 the
3 promotees elevated in the judge of High Court were far more than the direct recruits. Between
4 2010 and 2019, 32 direct recruits were elevated, and while 27 promotees had been elevated.
5 It's almost a fair balance. After 219, the promotee officers is 11 while the direct recruits are 26.
6 The fluctuation is on account of more than one reason My Lords which is happening." So when
7 a drop of younger Civil Judge Division are there My Lord, they will remain and get a longer
8 term but...

9 **JUSTICE VIKRAM NATH:** But you must also keep in mind that the direct recruits quota is
10 much bigger than the direct... promotees quota is much bigger than the direct recruits. And
11 see their numbers.

12 **RAKESH DWIVEDI:** So therefore, I said in the beginning the target is that, then it is there
13 My Lord that some internally, some changes should be there so that the whole of this is...

14 **JUSTICE VIKRAM NATH:** That is actually to be examined, whether or not to do anything.

15 **RAKESH DWIVEDI:** But that has been prevailing since long, that's up to My Lords. That's
16 not the issue before Your Lordship, that's entirely within the Lordships' domain what to do or
17 not to do. "It is submitted that according to the written submission of the learned *Amicus*, in
18 several states the promotees are much more than direct recruits at the post of Principal District
19 Judge, District Judge super time. See para 27. States mentioned are so and so. There is no
20 similarity in the position of different states. In most states either there exists a broad
21 equivalence or the promotee officers are larger in number. This is apart from the fact that the
22 numerical interrelationship is of a dynamic nature, and is variable. Therefore, the prayer
23 sought for, ought not to be accepted and the matter should be left to the High Court to tackle
24 any imbalance which may exist." Now, My Lord, I may just inform Your Lordship that it has
25 also happened in the Allahabad High Court and My Lord Justice Vikram Nath must be
26 knowing that sometimes there are vacancies in the civil judge senior division level and enough
27 candidates are not available because of the eligibility requirement. So the High Court has been
28 granting relaxations.

29 **JUSTICE VIKRAM NATH:** That's right.

30 **RAKESH DWIVEDI:** Your Lordships are aware. So it's not that the High Court is closed its
31 eyes and doing nothing. So whenever a situation requires in the interest of judicial efficiency,
32 administrative efficiency, the High Courts have been alive to the situation...

1 **JUSTICE SURYA KANT:** Many a times, that is necessitated because of the jurisdictional
2 issues like monetary suit or even...

3 **JUSTICE VIKRAM NATH:** We don't have minimum officers for to be placed in every
4 district.

5 **JUSTICE SURYA KANT:** That relaxation is always in public interest.

6 **RAKESH DWIVEDI:** Yes.

7 **JUSTICE SURYA KANT:** That is done. So many High Courts have done.

8 **RAKESH DWIVEDI:** I have mentioned about it, I have quoted Your Lordship's orders. I'm
9 not reading them, recent judgments. And my plea is that please wait and watch and see My
10 Lords, what is the fallout of these judgments. Maybe My Lords, in a year or two years' time,
11 we'll have fresh data as to what is the fallout? What is the imbalance? But exact equality, My
12 Lord...

13 **CHIEF JUSTICE B.R. GAVAI:** That has already been argued.

14 **RAKESH DWIVEDI:** Exactly. Your Lordship may pardon me for repetition.

15 **CHIEF JUSTICE B.R. GAVAI:** This was with the 8 or 10 times that you are arguing the
16 same point.

17 **RAKESH DWIVEDI:** But the point is...

18 **CHIEF JUSTICE B.R. GAVAI:** It's not like hammer that if you do it 12 times, then it will
19 have more impact.

20 **RAKESH DWIVEDI:** We don't know, My Lords, what will have impact. That's... we argue
21 in a state of uncertainty not knowing what is impacting.

22 **JUSTICE VIKRAM NATH:** Correct.

23 **RAKESH DWIVEDI:** And so far as the position of the Allahabad High Court, something was
24 said by two learned Counsels that the promotees and the direct recruits are not being recruited
25 in the same recruitment year and if the promotees are recruited in year A and year - 1 and the
26 direct recruits in year - 2, so they can't then be put in through the roster system above. But
27 that's not the position after 2012. Earlier, there was a problem. Number of litigations which

1 came up to this court My Lord, where vacancy determination and other aspects promotees
2 versus direct recruits, because of which the recruitments were held up. But after 2012, every
3 recruitment, if the recruitment year is same, the advertisement for selections and
4 appointments in all the three grades are being issued simultaneously. The letters of
5 appointment are being issued simultaneously. So, it's not a case where there is a different
6 recruitment year. So I agree that should be the same recruitment year, at least in this court. I
7 don't know about Bihar. But in Allahabad High Court, this is happening. And in fact, in the
8 previous year when we sent the notification law to the State Government, they issued for the
9 direct recruit first; we sent it back to them, no, all three should be issued simultaneously. So
10 all those issues don't arise which Ms. Mayuri and Mr. Dinesh Dwivedi, they were pressing
11 about the roster being same. So, so far as Allahabad is concerned...

12 **CHIEF JUSTICE B.R. GAVAI:** So you agree with Mr. Dwivedi on one aspect at least?

13 **RAKESH DWIVEDI:** I totally disagree.

14 **CHIEF JUSTICE B.R. GAVAI:** No. You said that you agree that the quota should be only
15 the recruitment, only for the recruitment year.

16 **RAKESH DWIVEDI:** No, I'm not saying anything. I'm only saying that in Allahabad, this
17 problem doesn't exist.

18 **JUSTICE VIKRAM NATH:** Because Allahabad has been regularly holding these elections.

19 **RAKESH DWIVEDI:** And we are filing the affidavit in that *Malik Mazhar* case also.

20 **JUSTICE SURYA KANT:** Mr. Dwivedi, we have already clarified, it's not Allahabad High
21 Court or Punjab and Haryana High Court where...

22 **RAKESH DWIVEDI:** My Lords, unfortunately I can explain my position. I don't know the
23 data of other High Courts. There must be some problems in some courts.

24 **JUSTICE SURYA KANT:** When you are saying one year roster points, are you also agreeing
25 to that, that the direct recruits, say, on hypothetical basis recruited in 2020... 2025 and
26 occupying a roster point which will remain unfilled in 2019 or 2018?

27 **RAKESH DWIVEDI:** So, Your Lordships have in such cases, taken a view that if the Roster
28 System has broken down, the authority concerned, either the High Court or the Supreme Court
29 should come to a conclusion that the Roster System is broken down. For example, My Lord in
30 Justice Rohinton Nariman's...

1 **JUSTICE SURYA KANT:** That is, wherever it is broken down, continuous length of service,
2 that's a separate...

3 **RAKESH DWIVEDI:** Then My Lords, then that roster will not apply. But merely because
4 My Lords one selection happens in December 2018 and the other happens My Lords in
5 February 2019. One can't say that the rule has broken down. So it all depends My Lords,
6 whether Your Lordships on facts can conclude because of the long gap. For example My Lords
7 in **(2018) 15 SCC 439**, in the Allahabad High Court this problem was there between 2002
8 and 2009, when there were litigations because of which... So Your Lordships said that we will
9 not apply the Rota System.

10 **JUSTICE SURYA KANT:** But must have been [UNCLEAR].

11 **RAKESH DWIVEDI:** That's how Your Lordships have done. I'm not citing that the
12 judgments My Lords which I will...

13 **JUSTICE SURYA KANT:** [UNCLEAR].

14 **RAKESH DWIVEDI:** Some of the judgments which I've mentioned in my petition My Lords
15 are contained in this compilation for convenience. So that's my submission My Lords. I have
16 cited judgments also. For example in one of the cases which came before Your Lordships in
17 ***Asia Resurfacing***, a direction had been issued by this Court Justice Nariman. That since
18 the... in Criminal Petitions of quashing, Interim Orders are granted by the High Court, and
19 then that matter doesn't come up, so the Order had been passed by this Court, that if within
20 six months the High Court doesn't decide, then the stay will be vacated.

21 **CHIEF JUSTICE B.R. GAVAI:** That was rectified.

22 **RAKESH DWIVEDI:** Yes so I filed a Petition on behalf of them. So we have been trying to
23 get these things rectified. So I'm only saying that.

24 **JUSTICE VIKRAM NATH:** Right.

25 **CHIEF JUSTICE B.R. GAVAI:** If errors are there, they are bound to be corrected.

26 **RAKESH DWIVEDI:** Yes. So these things keep on happening it and it is a part of the system.
27 That in my humble submission is one that on account of the exclusive competence which
28 Constitution has reposed in the High Court My Lords its discretion ought not to be curbed, at
29 least not curbed drastically. Second, I submit that there is so much divergence, so much
30 variations, and it is dynamic, whatever Your Lordships will do tomorrow rest assured Your

1 Lordship will find that this one-to-one will never come across My Lords. This age gap
2 disappearance will never happen. There will be some this gap because of the fact, the manner
3 in which the lawyers exercise their choice. So for all these reasons, please leave it to the High
4 Court My Lord at least with some minimal guidance and that's my humble submission. I'm
5 grateful. Volume 2 R-1 is my main Written Submissions My Lords.

6 **CHIEF JUSTICE B.R. GAVAI:** Thank you, Mr. Dwivedi.

7 **MANINDER ACHARYA:** Please, Your Lordships. Your Lordships I appear for the
8 Honourable High Court of Punjab and Haryana.

9 **RAKESH DWIVEDI:** My Lords I wanted to call that All India Judicial Service, which Your
10 Lordship mentioned.

11 **CHIEF JUSTICE B.R. GAVAI:** Yes.

12 **RAKESH DWIVEDI:** Would Your Lordships like to just look at Article 312?

13 **JUSTICE SURYA KANT:** Which provision Mr. Dwivedi?

14 **RAKESH DWIVEDI:** Of course, the All India Judicial Service, is the best solution. I'm sorry
15 My Lords?

16 **JUSTICE SURYA KANT:** Which provision are you referring to?

17 **RAKESH DWIVEDI:** Article 312. I'm sorry My Lords.

18 **CHIEF JUSTICE B.R. GAVAI:** No. No High Court is willing for that.

19 **RAKESH DWIVEDI:** No. I don't know whether Supreme Court will be willing My Lords
20 unless we don't know. Just look at this. It's a very dangerous provision My Lords introduced
21 during Emergency and I'll be filing a PIL My Lords. Just look at it. This is surprising. It's on
22 many basic features are being violated by this one. Notwithstanding anything in Chapter 6 of
23 Part 6 of Part 11 of the Council... "If the Council of States has declared..." see only Rajya Sabha.
24 "By a resolution supported by not less than two-thirds of the members present in-voting, that
25 it is necessary or expedient in the national interest so to do. Parliament may, by law provide
26 for the creation of one or more All India Services including an All India Judicial Service." Note
27 the number My Lords, 1976.

28 **JUSTICE VIKRAM NATH:** 1976, yes.

1 **RAKESH DWIVEDI:** "Common to the Union and the states. And the subject to other
2 provisions of this chapter regulate the recruitment and the conditions of service of persons
3 appointed to any such service. The services known at the commencement of this constitution
4 shall be deemed to be services created by Parliament under this. We're not concerned. Three,
5 the All India Judicial Service referred to in Clause 1 shall not include any post inferior to that
6 of District Judge as defined in Article 236. So District Judge goes out of Chapter 6, if this
7 happens, the rest remains in." Now this is the most objectionable. "The law providing for the
8 creation of the All India Judicial Service aforesaid may contain such provisions for the
9 amendment of Chapter 6 of Part 6 as may be necessary for giving effect to the provisions of
10 that law, and no such law shall be deemed to be an amendment of this Constitution for the
11 purposes." So, now you bypass 368 and amend Chapter 6, which has been held to be basic part
12 of the basic feature and independence of Judiciary. 368 itself is basic feature that's also
13 bypassed and resolution is only of Rajya Sabha, which is required, of course Parliament comes
14 in later on.

15 **CHIEF JUSTICE B.R. GAVAI:** Parliament comes through.

16 **RAKESH DWIVEDI:** Yes, Parliament will wait.

17 **CHIEF JUSTICE B.R. GAVAI:** The Bill has to be by both the houses.

18 **RAKESH DWIVEDI:** By ordinary law. Just as the law My Lords in... Fortunately, no party
19 had two-thirds My Lords majority in Rajya Sabha. So, that resolution is not coming.

20 **CHIEF JUSTICE B.R. GAVAI:** So after the golden jubilee of that amendment, you got to
21 challenge it.

22 **MANINDER ACHARYA:** Please, Your Lordships. Your Lordships I appear for Honourable
23 High Court of Punjab and Haryana. I filed my written submissions. But before My Lords they
24 are short submissions. Before I take Your Lordships to the submissions, My Lords, I would
25 like Your Lordships to look at the rules very quickly which My Lords are at page 721, Volume
26 4A. PDF 721, Volume 4A. Your Lordships may kindly have page 723. I'm sorry.

27 **JUSTICE VIKRAM NATH:** 723 of what, Madam?

28 **MANINDER ACHARYA:** Of Volume 4A, IV A.

29 **JUSTICE VIKRAM NATH:** PDF page 721.

1 **MANINDER ACHARYA:** My Lords it starts at 721. Your Lordships may kindly have at page
2 723.

3 **JUSTICE VIKRAM NATH:** 711, 713?

4 **MANINDER ACHARYA:** 723 My Lords. I would like to show Rule 7, PDF 723.

5 **JUSTICE VIKRAM NATH:** Yes. Method of appointment?

6 **MANINDER ACHARYA:** Yes, My Lords. So My Lords I'm not reading the whole thing. Your
7 Lordships can see... Please Your Lordships. Your Lordships I'm not reading the whole Rule.
8 The percentage is based on ***All India Judges Associations*** ratio. At that time it was 65%
9 by promotion, 10% by LDCE and 25% by direct recruitment. Now, My Lords, of course we are
10 pursuant to the latest judgment My Lords, we are in the process of restoring 25% to the LDCE.
11 Then Your Lordships may kindly have seven subsection rules. Sub rule (iv). Sub rule (iv),
12 "these posts shall be filled in accordance with the roster attached as Annexure B". I'll be taking
13 Your Lordships through that roster. That Your Lordships, thereafter, Rule 8 is Assessment of
14 Merit. Because arguments were raised yesterday that there is no subjective assessment of
15 merit, My Lords when for the promotees, when they are promoted. So, the rule says "for
16 assessing and testing the merit and the suitability of the member of Punjab Civil Services,
17 Judicial Branch for promotion under clauses of sub rule of (iii) of Rule 7 of these rules, the
18 High Court may hold a written, objective test of 75 marks and viva voce of 25 marks and then
19 take into consideration the ACR." So My Lords, this is the process for them for the limited
20 written competitive examination, Rule 9 applies My Lords, where there is a written
21 examination which is much more elaborate and which is, for 600 marks, an assessment of
22 record 150 marks and viva is for 250 marks. Then Your Lordships, I'll request Your Lordships
23 to have a look at a rule...

24 **JUSTICE SURYA KANT:** Then comes Seniority recruit.

25 **MANINDER ACHARYA:** Yes, My Lords. I'm coming.

26 **JUSTICE SURYA KANT:** It has a written examination.

27 **MANINDER ACHARYA:** Yes, My Lords, I'm coming. So Rule 12 deals with the seniority.
28 And Your Lordships, the Rule 12 in crux says that the seniority after the appointment to the
29 cadre from all sources, will be as per the roster. That's what it says My Lord. And so it will be,
30 as per the roasted 12(d). 12(d). "The *inter-se* seniority position of the officers appointed in the
31 services under Rule 7 shall be as given in the roster annexed." Now... Your Lordships also

1 12(2), "A person recruited to the service under clauses A, B, C by all the sources..." My Lords,
2 three sources. "... of Rule 7 shall take his position in the seniority list as shown in the roster
3 attached as Annexure B, irrespective of the date on which he is actually joining the service."
4 So, My Lords is not the date of appointment, but it is the roster. Now Your lordship may kindly
5 have the roster. Roster is My Lords, at page 730.

6 **JUSTICE K. VINOD CHANDRAN:** So this roster has been introduced when?

7 **MANINDER ACHARYA:** These rules My Lords, have, are of... they have been amended
8 various times though, Your Lordships but the rules are of 2007.

9 **JUSTICE SURYA KANT:** Rules are of 2007.

10 **MANINDER ACHARYA:** Roster is My Lords after the All India Judges Association's second
11 case, My Lords.

12 **JUSTICE SURYA KANT:** This roster system has been introduced when?

13 **MANINDER ACHARYA:** 2007, My Lords. Now...

14 **CHIEF JUSTICE B.R. GAVAI:** 34. Rule 12 has a subsidiary right notification number so
15 and so, dated 19 August 2024. The footnote.

16 **MANINDER ACHARYA:** My Lords, Rule 12 was amended post the judgment.

17 **CHIEF JUSTICE B.R. GAVAI:** Absolutely, yes.

18 **MANINDER ACHARYA:** Yes My Lords, post the judgment. And that is why it says 2024,
19 only Rule 12. The rules have been there with effect from 2007. Now, Your Lordships may
20 kindly have roster. My Lords may kindly have... rosters is at page 732 and that is under Sub-
21 rule (iv) of Rule 7. 732.

22 **JUSTICE VIKRAM NATH:** Your running page is 722?

23 **MANINDER ACHARYA:** 732.

24 **JUSTICE VIKRAM NATH:** That is a PDF page.

25 **MANINDER ACHARYA:** Please My Lords, PDF page.

26 **JUSTICE VIKRAM NATH:** The running page which you have mentioned...

- 1 **MANINDER ACHARYA:** Running page is 722.
- 2 **JUSTICE VIKRAM NATH:** 722.
- 3 **MANINDER ACHARYA:** Yes, My Lords. I thought PDF will be more convenient for Your
4 Lord.
- 5 **JUSTICE VIKRAM NATH:** The running pages are there straight away, why?
- 6 **MANINDER ACHARYA:** Please Your Lord, I'll use them. Now Your Lordships may see,
7 there are first 3 points on the roster which go to promotees. The fourth point goes to the direct
8 recruits. Then again, three points Wave 5, 6, 7 go to the promotees, 8 goes to the direct recruit.
9 Then 9, 10, 11 and My Lords...
- 10 **CHIEF JUSTICE B.R. GAVAI:** 10 goes through the...
- 11 **MANINDER ACHARYA:** 10 goes through the limited competitive examination.
- 12 **CHIEF JUSTICE B.R. GAVAI:** That is because of the 10% trigger?
- 13 **MANINDER ACHARYA:** Yes, My Lords, because of the weightage. Because 65% promotees
14 are there, so that's why the roster starts with them. And My Lords, only 10% limited
15 departmental examination are there.
- 16 **CHIEF JUSTICE B.R. GAVAI:** This will have to be changed now.
- 17 **MANINDER ACHARYA:** This will now be changed because Your Lordships have restored
18 it to 25%. Now Your Lordships, so these are the rules and this is the roster. And so, after the
19 additional district judges are appointed by various three sources, my submission is that they
20 lose their birthmark, they become one cadre. And their seniority is decided by the roster. I
21 would humbly submit, that the roster has worked for us. Now, Your Lordship, I will show the
22 data. Now Your Lordships may see and the apprehension of the learned *Amicus* that
23 promotees are lagging behind both in terms of designation, elevation and age doesn't hold true
24 in our High Courts. I will show the data, my submissions. My written submissions are there,
25 My Lords. I'll show two, My Lords, I'll show my written submissions and then I also show my
26 reply affidavit. So My Lords...
- 27 **JUSTICE SURYA KANT:** Madam, you should be correct on record.
- 28 **MANINDER ACHARYA:** Please My Lords.

1 **JUSTICE SURYA KANT:** Your roster has come into force only in 2024, after the decision
2 of this court in relation to an *inter se* seniority dispute. The original Rule 12, did not
3 contemplate any Roster System.

4 **MANINDER ACHARYA:** My Lords maybe we are wrong, but our instructions are that the...

5 **JUSTICE SURYA KANT:** Not maybe, you are wrong.

6 **MANINDER ACHARYA:** Please My Lords. Your Lordships would know better.

7 **JUSTICE SURYA KANT:** Please appreciate this.

8 **MANINDER ACHARYA:** Your Lordships would know better. I can't contest that.

9 **JUSTICE SURYA KANT:** Just can you not dispute on facts.

10 **MANINDER ACHARYA:** Yes so, My Lords, may kindly see Volume 2. Volume 2 My Lords,
11 the Written Submissions are there and running page R-2. Volume 2, R-2, and page number 1.
12 Your Lordship has it? So first, is the issue framed by Your Lordships in Your Lordships earlier
13 Order as to what should be the criteria for determining seniority in the Higher Judicial
14 Services. Then, My Lords, I have reproduced the rules, et cetera, that I won't bother Your
15 Lordships with. And at para 4, page 3 is the criteria for designation as the District Judge from
16 the cadre of Additional District Judge. So Your Lordships para 4. "Thereafter for the ADJs to
17 be promoted and designated as District and Session Judge, the following criteria has been
18 framed by the High Court. He has earned at least two good reports during the last three years,
19 preceding the year of his consideration. An Officer with good record of service and whose latest
20 grading is B+ or above, shall only be entitled to be considered for designation as District and
21 Session judge. Three, he has not been assessed C-below average during the last five years
22 preceding the years of his consideration. Four, he has not been assessed C- Integrity doubtful,
23 during the last 10 years of his tenure in the Superior Judicial Services. An Officer undergoing
24 punishment awarded by the full Court shall not be considered for designation as District and
25 Session Judge during currency of the punishment. The zone of consideration shall be three
26 times the number of vacancies up to five. And if the vacancies are more than five, then twice
27 the number of such vacancies subject to the minimum of 15 Officers in the later eventuality.
28 The cases of Additional District and Session Judge in the consideration zone, be placed before
29 the Honourable Screening Committee with a view to examine the suitability of the Officers for
30 designation as District and Session Judge before placing the same for consideration of
31 Honourable Judges." Now My Lords, for the *inter se* seniority. Besides, the issue framed by
32 Your Lordships the apprehension of the learned *Amicus* are as expressed in his application

1 that promotees are lagging behind or if they are being designated or elevated to the
2 Honourable High Court also the age that they get is, they reach there very late. So, My Lords,
3 these are the and the another... So therefore, it has been prayed by the learned *Amicus* that
4 para 29 of **All Indian Judges Association** where the Roster System *viz-a-viz* weightage
5 was examined and the recommendation of Shetty Commission regarding the weightage was
6 not accepted and what was accepted was roster on two grounds, that it gives to less disputes.
7 It gives rise to the lesser disputes, lesser inter-seniority disputes and it is a fairer method. And
8 also My Lords they relied upon... the Honourable Court relied upon the earlier judgments
9 related relating to other quotas and said that those 40 point rosters have worked. So these are
10 the prayers that my learned friend is asking. Now let us examine My Lords our data in the light
11 of My Lords what has been submitted. So My Lords, may kindly have the running page 11 of
12 my submissions, where I've given a table. Now if Your Lordship permits, I'll read para 14 along
13 with the table which is at page 10, bottom. Para 14 starts at page 10, bottom. Your Lordships
14 have it?

15 **CHIEF JUSTICE B.R. GAVAI:** Yes.

16 **MANINDER ACHARYA:** Yes. "So, the state of Punjab and Haryana, the apprehension
17 expressed... in the state of Punjab and Haryana the apprehension expressed by the learned
18 *Amicus* in the application does not exist, as the ratio of promotees and direct recruits
19 promoted to the post of District and Session Judges, 2:1 and 3:2 in the states of, two is
20 promotees My Lords, promotees versus direct, *viz-a-viz* direct recruits in the states of Punjab
21 and Haryana respectively, that the roster system appended in the service rules of the respective
22 states itself ensures that the promotees who make up for the 75% of the superior judicial
23 services have proportionate opportunity for promotion. Further, the data in the last 10 years
24 shows that the ratio of promotees and direct recruits who have been elevated to High Court is
25 13:3. 13 promotees and 3 direct recruits, and 12:4 in the states of Punjab and Haryana,
26 respectively. Detailed breakup of the data is as under. So Your Lordships in the table these are
27 the number of the judicial officers. This is total number who form the ratio of promotees and
28 direct recruits of 5:1 entering the higher judicial services. So promotees are 240 in number in
29 Punjab and direct recruits are 47 in Punjab. Similarly in Haryana, promotees are 239, while
30 there are 47 direct recruits. Similarly, on the next point, number of the judicial officers who
31 form the ratio of 29:15 and 31:21 promoted to Principal District Judges. So the Learned ADJs,
32 who have been promoted as District Judges, they are 29 from amongst the promotees and 15
33 from amongst the direct recruits in Punjab. And 31 from amongst the promotees and 21 from
34 amongst the direct recruits in Haryana. Then number of judicial officers who have been
35 elevated to the High Court in the last 10 years are 16 in total in Punjab, out of which there are
36 13 promotees and there are 3 direct recruits. In Haryana, there are 12 promotees and 4 direct

1 recruits." Now I'm not taking Your Lordships through the Haryana rules because they are
2 same. Now Your Lordships may kindly also see my... I will request Your Lordships to have a
3 look at my Affidavit by Honourable High Court of Punjab and Haryana. Volume 3, Your
4 Lordships.

5 **CHIEF JUSTICE B.R. GAVAI:** Volume 3?

6 **MANINDER ACHARYA:** Volume 3.

7 **CHIEF JUSTICE B.R. GAVAI:** 3H.1?

8 **MANINDER ACHARYA:** 1428. It starts at 1431 Your Lordships. I'm sorry, it starts at 1431.
9 It's an Affidavit of one Mr. Jaspinder Singh.

10 **CHIEF JUSTICE B.R. GAVAI:** Yes, 1431.

11 **MANINDER ACHARYA:** Yes My Lords. Your Lordships, along with this Affidavit, we have
12 also annexed the gradation and the seniority list of judges in the District Judge cadre and also,
13 the ratio of judges promoted, which is the same, which I have taken Your Lordships through
14 it. So Your Lordships may kindly have page 1433 and there is a table there, in para 5. 1433.
15 May I Your Lordships?

16 **JUSTICE VIKRAM NATH:** Running page 1421?

17 **MANINDER ACHARYA:** My Lords I'm requesting Your Lordships to have a look at para 5,
18 1433. Yes.

19 **JUSTICE VIKRAM NATH:** Running page 1433.

20 **MANINDER ACHARYA:** Running page is 1433. Yes My Lords. Para 5. Deponent is placing
21 on record the information sought in paragraph 5 of the application. So the gradation seniority
22 list of judges in the district judge cadre, I have annexed as Annexure R-1 for Punjab and
23 Annexure R-2 for Haryana. Then the ratio, I've already taken Your Lordships through in my
24 submissions is 5:1. Total ratio of the total appoint, promotees and direct recruits. And then the
25 average age of judges promoted through the civil judge cadre as compared to the direct recruits
26 in the district judge matter. So promotee officers, the age is... average age is 46 years and direct
27 recruits is 40 years in Punjab. And in Haryana, it is 43 viz-a-viz 1. 43 for promotees and direct
28 recruits 41 years. Then ratio of promotee district judges and direct recruits who have been
29 appointed as principal district judges 29:15, 31:12. This I have mentioned in my submissions
30 also. Now, my submissions are that my learned friends, my learned *Amicus'* prayers that para

1 29 of the *All India Judges Association* which wherein the Shetty Commission's
2 recommendation regarding the weightage was rejected and roster was accepted, should be
3 modified or in the alternative 50:50 or 1:1 should be done. My Lords, my submission is that
4 once all the officers are appointed as additional district judges from these three sources, then
5 they lose their birthmark. And they become one cadre, and they are all equal. So equals should
6 be treated as equal, and there should not be any quota provided. This submission is *dehors* the
7 fact that in the data of the Hon'ble High Courts of Punjab and Haryana, in fact, promotees are
8 more than the direct recruits, both in the cases of elevation to the Hon'ble High Court and also
9 as having been designated as district judges. So on both the counts, promotees are more. But
10 despite that, in law my submission is that *Roshan Lal Tandon*, squarely applies to my case
11 and Your Lordships are very well aware. I'm not reading it, and so, therein also, the birthmark
12 is lost, they are all one cadre. They all must be treated equally. The other judgment is *Atul*
13 *Shukla*, I mentioned all these judgments in my submissions, wherein the different age of
14 superannuation was provided for two sets depending upon the source they came from. So My
15 Lords, therein also, it was held that they are all equal and they must be treated as equal. I'm
16 sorry, I may be wrong, but we called the High Court, and the instructions that we got was that
17 the roster has been in operations since 2007. Subject to correction these are our instructions.

18 **JUSTICE SURYA KANT:** Not in Rule 12. It was in Rule 7.

19 **MANINDER ACHARYA:** Rule 7, Rule 7, My Lords. Because Rule 7 says the seniority will
20 be as per the roster.

21 **JUSTICE SURYA KANT:** But you are...

22 **MANINDER ACHARYA:** Rule 7.

23 **JUSTICE SURYA KANT:** Rule 12 it was introduced...

24 **MANINDER ACHARYA:** 12 was later on amended.

25 **JUSTICE SURYA KANT:** 7 is only pertaining to the determination of ratio in recruitment
26 where roster was there...

27 **MANINDER ACHARYA:** Roster is also there in Rule 7.

28 **JUSTICE SURYA KANT:** You're right.

29 **MANINDER ACHARYA:** And seniority, in relation to seniority,

1 **JUSTICE SURYA KANT:** Seniority rule is...

2 **MANINDER ACHARYA:** Your Lordships may I read the...

3 **JUSTICE SURYA KANT:** ...amended only in 24.

4 **MANINDER ACHARYA:** 12 is amended in 24. Your Lordships is right. And My Lords may
5 kindly have Rule 7 once more. Your Lordships may have 7(iv). "These posts shall be filled in
6 accordance with..." It doesn't use the word 'seniority.' "They should be filled in accordance
7 with the roster attached as Appendix B." But our instructions are that after these appointments
8 were made through different three sources, they have been placed in these sources in this
9 roster for the purpose of seniority since 2007. So all these data I have given, my instructions
10 are, that this data is the result of the roster system. And so therefore, the roster system has
11 proved to be successful in the Honourable High Court of Punjab and Haryana. And there is no
12 such discrimination both in terms of age or designation as district judges or elevation to the
13 High Court. And there is one more chart which I would like Your Lordships to see. This is in
14 the last 10 years. We also wanted to test it independently; so we called for this. In the last 10
15 years this is the data with effect from '15 to 2025.

16 **JUSTICE SURYA KANT:** Of elevation?

17 **MANINDER ACHARYA:** Please, My Lords. Of elevation to the High Courts. Total Judicial
18 Officers elevated as Honourable Judges 16. 13 Promotee Officers in Punjab and three direct
19 recruits. And average age on elevation was Promotee Officers was 57 years and direct recruits
20 55 years. I would say My Lords. It can't be exact.

21 **JUSTICE SURYA KANT:** Up to which date?

22 **MANINDER ACHARYA:** My Lords this is up to 01-01-2000. From 01-01-2015 till date.

23 **CHIEF JUSTICE B.R. GAVAI:** Till date?

24 **MANINDER ACHARYA:** Till date.

25 **CHIEF JUSTICE B.R. GAVAI:** In 10 years only 16 judicial officers have been elevated?

26 **MANINDER ACHARYA:** 13 + 3 =16 My Lords. Only 16.

27 **CHIEF JUSTICE B.R. GAVAI:** I think the last [UNCLEAR].

1 **MANINDER ACHARYA:** My Lords in between there was COVID years also.

2 **JUSTICE VIKRAM NATH:** 32.

3 **CHIEF JUSTICE B.R. GAVAI:** 32?

4 **MANINDER ACHARYA:** My Lords three years were COVID years.

5 **JUSTICE VIKRAM NATH:** Three years were COVID years?

6 **MANINDER ACHARYA:** Three years were COVID years.

7 **CHIEF JUSTICE B.R. GAVAI:** Can't be only 32 in ten years.

8 **JUSTICE JOYMALYA BAGCHI:** One third of the sanction strength that is nine. *Ninety ka*
9 *thirty hai.* 94 is Punjab, Haryana.

10 **MANINDER ACHARYA:** My Lords I have... in 2020, there was no appointment. In 2020
11 and 2022, during the COVID years, there were no appointments under either of the quotas.

12 **CHIEF JUSTICE B.R. GAVAI:** Yes.

13 **MANINDER ACHARYA:** And My Lords may kindly see the last thing. The average age is 57
14 *viz-a-viz* 55 in, promotee and direct recruits in Punjab. And Haryana it is 57 and 56. So, Your
15 Lordships, with this I end My Lords by saying, that as far as Punjab, Haryana and Haryana
16 High Court is concerned the roster has worked. And the apprehensions of the learned *Amicus*
17 are, have no basis. Obliged, My Lords.

18 **JUSTICE VIKRAM NATH:** Thank you.

19 **R. BASANT:** May I please Your Lordships. Your Lordships to put it in a nutshell, I appear for
20 direct recruits in I.A. 251959, of '25. 251959 of '25 they are direct recruits, some direct recruits
21 from Kerala and I.A. 270501 of '25, some direct recruits from Bihar.

22 **CHIEF JUSTICE B.R. GAVAI:** Yes.

23 **R. BASANT:** On behalf of these direct recruits, My Lord, my humble submission would be
24 it's not necessary to disturb on an all India basis the rules that are framed, which are enforced.
25 That would be my ultimate submission. There is no requirement of a change of rules. It would
26 be my humble submission before Your Lordships. I'll quickly refer to the reasons for which I
27 say this. Right at the beginning. My Lord, I would like Your Lordships to see right through in

1 the Indian Judiciary, we have accepted that lateral induction of members from the Bar at
2 higher levels is required and necessary for the health of the Institution. I would request that
3 we do not look at it, My Lord, from the point of view of some individuals who have been denied
4 promotion or getting promotion. Maybe we'll have to look at it from the point of view of the
5 health of the system, that will be the proper way to look at it, not a Trade Union type of an
6 approach where each person says, I did not get it, I did not get it. But the point should be what
7 would contribute to the health of the system as envisaged under the Indian Judicial System.
8 For which I would like to bring to Your Lordships' notice observations in *Dheeraj Mor*, two
9 places My Lord, where the advantage of having members from the Bar recruited at higher
10 levels is recognized. Can I take Your Lordship to that My Lord? (2020) 7 SCC 401, para 29,
11 85 and 87 would be the relevant.

12 **CHIEF JUSTICE B.R. GAVAI:** No more a good law.

13 **R. BASANT:** No, it may not be a good law. I'm not trying to follow anything that is laid down
14 there. Observation as to why lateral induction of members on the bar is relevant.

15 **CHIEF JUSTICE B.R. GAVAI:** That is there in Shetty Commission itself in 2002. Shetty
16 Commission itself recognizes.

17 **R. BASANT:** The reasons are perhaps stated more clearly here. That's why I wanted to just
18 bring to Your Lordships notice that aspect.

19 **CHIEF JUSTICE B.R. GAVAI:** Which volume? Volume?

20 **R. BASANT:** Para 29. R-1.

21 **JUSTICE VIKRAM NATH:** Please inform the correct volume.

22 **CHIEF JUSTICE B.R. GAVAI:** Nobody disputes that the lateral entry has been provided in
23 order to enhance the efficiency of administration.

24 **R. BASANT:** That's what I wanted to point out to Your Lordship.

25 **CHIEF JUSTICE B.R. GAVAI:** That is found in 2002 also.

26 **R. BASANT:** That's why I said My Lord right from the beginning, right from the very early
27 days, decades earlier, we have accepted this principle of... Can I go on My Lord? Your Lordship
28 has got it? Paragraph 29 and 87. I would read 87 because that should be enough. 87. "The
29 Constitution makers, in the opinion of this court, conscious..."

1 **JUSTICE VIKRAM NATH:** Paragraph?

2 **R. BASANT:** 87.

3 **JUSTICE VIKRAM NATH:** 87?

4 **R. BASANT:** Yes. 29 also similar observations. I'll be starting by reading to 87. "The
5 Constitution makers...", para 87. 205.

6 **JUSTICE VIKRAM NATH:** 205? PDF page 208?

7 **R. BASANT:** Yes.

8 **CHIEF JUSTICE B.R. GAVAI:** Yes.

9 **R. BASANT:** "The Constitution makers, in the opinion of this court consciously wish that
10 members of the Bar should be considered for appointment at all the three levels, that is District
11 Judges, High Court and this court. This was because Counsel practicing in the law courts have
12 a direct link with the people who need their services. Their views about the functioning of the
13 courts is a constant dynamic. Similarly, their views based on the experience gained at the Bar
14 injects the judicial brand with fresh perspectives uniquely positioned as a professional, an
15 advocate as a tripartite relationship, one with the public, the second with the court, and the
16 third with her or his client. A Counsel learned in the law has an obligation as an officer of the
17 court to advance the cause of his client in a fair manner and assist the court. Being members
18 of the legal profession, advocates are also considered to be thought leaders, therefore, the
19 Constitution makers envisaged that every rung of the Judicial system, a component of direct
20 appointment from members of the Bar should be resorted to. For these reasons, it's held." The
21 point that I want to urge before Your Lordship is...

22 **CHIEF JUSTICE B.R. GAVAI:** Read further.

23 **R. BASANT:** You want...

24 **CHIEF JUSTICE B.R. GAVAI:** Read the next sentence.

25 **R. BASANT:** Please My Lords.

26 **CHIEF JUSTICE B.R. GAVAI:** "For all these reasons..."

1 **R. BASANT:** "It's held that members of the judicial service of any state cannot claim to be
2 appointed for vacancies in the cadre of district judges in the quota earmarked for appointment
3 from amongst the..."

4 **CHIEF JUSTICE B.R. GAVAI:** That's the overrule.

5 **R. BASANT:** That's gone.

6 **CHIEF JUSTICE B.R. GAVAI:** This is overruled.

7 **R. BASANT:** That's gone. No doubt about it. The point is, why...

8 **CHIEF JUSTICE B.R. GAVAI:** Therefore, the best judgment on which you should have
9 relied on, ought to have been 2002, which [UNCLEAR].

10 **R. BASANT:** Right, My Lord. The latest one, why I rely on that.

11 **CHIEF JUSTICE B.R. GAVAI:** Latest one is the one which is overruled.

12 **R. BASANT:** My Lord, overruled on the question whether they can gain entry as a direct
13 recruitee, that is all that is there.

14 **CHIEF JUSTICE B.R. GAVAI:** No doubt with regard to the proposition that the lateral
15 entry is provided in order to introduce efficiency on the administration of justice.

16 **R. BASANT:** I'm only on that point, My Lord, because this lateral entry people should also
17 be not frustrated, must be properly looked after, and that's the point that I'm trying to make
18 before Your Lordship, that the grievance of the other section promotees cannot be looked at
19 in isolation. For the health of the system it's very important that people directly recruited also
20 have avenues, they also have career progression, which is...

21 **CHIEF JUSTICE B.R. GAVAI:** Nobody doubts about that. Nobody doubts about that
22 proposition.

23 **R. BASANT:** My Lord, next submission would be if the type of weightage...

24 **CHIEF JUSTICE B.R. GAVAI:** The question is whether only their aspirations have to be
25 looked into, or the aspirations of all?

26 **R. BASANT:** Exactly what I'm saying. Not the aspirations of the other side alone. This side
27 also has to be looked into.

- 1 **CHIEF JUSTICE B.R. GAVAI:** There is no dispute on that proposition.
- 2 **R. BASANT:** Right My Lord. Very evident, My Lord. Both have to be looked into.
- 3 **CHIEF JUSTICE B.R. GAVAI:** Yes, that's what we are saying from the beginning. That's
4 what we are saying from the beginning, that aspirations of all have to be...
- 5 **R. BASANT:** Right, I will be...
- 6 **CHIEF JUSTICE B.R. GAVAI:** ...taken off a perspective.
- 7 **R. BASANT:** I will be trying to show before Your Lordship. I will be trying to show before
8 Your Lordship...
- 9 **CHIEF JUSTICE B.R. GAVAI:** Nobody disputes, at least neither of five of us dispute that
10 proposition.
- 11 **R. BASANT:** Nobody disputes. But my point is...
- 12 **JUSTICE VIKRAM NATH:** That a promotee is not a direct recruitment.
- 13 **R. BASANT:** We should not. That is in the interest of the promotee. The interest of the direct
14 recruitees cannot be compromised is the humble submission that I'm trying to make before
15 Your Lordships. Right? That's clear. The next point that I want to make is when an integrated
16 cadre is made of two sources, from two sources...
- 17 **CHIEF JUSTICE B.R. GAVAI:** They lose their birthmark?
- 18 **R. BASANT:** Yes. They lose their birthmark. I would rely on three decisions on this point My
19 Lord, *Roshan Lal Tandon versus Union*. I'm not going to take Your Lordships through
20 that. *Roshan Lal* then *Triloki* and the Seven Judge Bench in *Davinder Singh*. I want
21 Your Lordships to see that. That is at page... paragraph 93, Volume R-2.
- 22 **JUSTICE VIKRAM NATH:** Same Volume, page 230.
- 23 **R. BASANT:** Para 93.
- 24 **CHIEF JUSTICE B.R. GAVAI:** Para?
- 25 **R. BASANT:** Para 93. SCC para 93.

1 **JUSTICE VIKRAM NATH:** This is that Punjab judgment?

2 **R. BASANT:** Yes. I'm not taking Your Lordship through all the detailed discussions.

3 **CHIEF JUSTICE B.R. GAVAI:** Para 97?

4 **R. BASANT:** 93.

5 **CHIEF JUSTICE B.R. GAVAI:** Yes.

6 **R. BASANT:** Yes. I invite Your Lordship's attention to the statement of the law there. "Thus,
7 a class which is not similarly situated for the purpose of law can be further classified. The test
8 that the Court must follow to determine the validity of sub classification of a class is as follows."
9 That is the point that I wanted to point out here. Now, there is a classification as District
10 Judges, the common cadre. Can there be a sub classification? Under what circumstances it can
11 be? That's what I'm trying to point out. "Now the test is whether the class is homogeneous or
12 similarly situated for the purpose of the specific law. If the answer to (a) above is in the
13 affirmative, the class cannot be subclassified. If the answer to (a) is in the negative, the class
14 can be subclassified." My humble submission would be the cadre is homogeneous, similarly
15 situated persons, and therefore...

16 **CHIEF JUSTICE B.R. GAVAI:** You read this further... The class can be subclassified upon
17 on the basis of the following standards.

18 **R. BASANT:** Yes, that is if the answer to the first portion is no. Then only that comes.

19 **CHIEF JUSTICE B.R. GAVAI:** The difficulty is that the judgments have to be read as a
20 whole.

21 **R. BASANT:** It has to be My Lords.

22 **CHIEF JUSTICE B.R. GAVAI:** Not one, the practice here is that one sentence is here and
23 there are pointed out.

24 **R. BASANT:** No ultimately, the law was laid down by them in these kinds of...

25 **CHIEF JUSTICE B.R. GAVAI:** So therefore you have to read (c) also.

26 **R. BASANT:** Yes (c). "If the answer to (a) above is in the negative the class can be
27 subclassified. The submission is it can... there can be a yardstick of intelligible differentiate

1 further classifying the class and the yardstick must have normal nexus with the object of the..."
2 Now here, if it is homogeneous and that are similarly situated, there is no question of a further
3 classification. That's the point that I'm trying to argue before Your Lordship. In this case all of
4 them are from different streams, have come into the common cadre, and having come to the
5 common cadre on the basis of the streams from which they came, you cannot make a sub
6 classification. That's what I'm saying.

7 **CHIEF JUSTICE B.R. GAVAI:** After Sangam, then it is Ganga.

8 **R. BASANT:** Sorry?

9 **CHIEF JUSTICE B.R. GAVAI:** After Sangam it is Ganga?

10 **R. BASANT:** Right.

11 **CHIEF JUSTICE B.R. GAVAI:** There can't be a different Jamuna and...

12 **R. BASANT:** There cannot be a further classification of homogeneous and similarly situated
13 group is a submission that I make.

14 **DINESH DWIVEDI:** With due respect My Lords, that is not entirely correct because Ganga
15 flows into the delta which comprises of both Brahmaputra and [UNCLEAR]. So that's a further
16 classification.

17 **R. BASANT:** Okay we are only here. Here My Lordships, my point is when the integrated
18 cadre...

19 **CHIEF JUSTICE B.R. GAVAI:** That is what Ms. Acharya also argued, that once you...

20 **R. BASANT:** Acharya also...

21 **CHIEF JUSTICE B.R. GAVAI:** Enter a cadre. Then the birthmark is lost and you are...

22 **R. BASANT:** Right. That is very clearly stated in *Triloki* also My Lords. When they come
23 from two different sources, and when they merge into one and the common category comes,
24 thereafter, your birthmark is lost, and there cannot be a distinction on the basis of the source
25 from which we came. Here, distinction is attempted to be made on the basis of the source from
26 which we came because, the argument is they have service, they have service in the Judiciary,
27 and therefore they can be distinguished, or further classified appears to be the argument that's
28 there. It cannot be. Because look at the other side. Later on, you cannot say, for every five years

1 of practice, you will get one weightage. You cannot say that, obviously. Just as you can see,
2 when the integrated cadre comes, you cannot later on contend that I came from the Judiciary
3 and therefore five years of weightage or a quota for promotion. And the other side can also,
4 the ridiculous nature of that argument can be seen from the fact, supposing the member of the
5 Bar were to argue, that I have come from the Bar and therefore five years I must get a
6 weightage.

7 **CHIEF JUSTICE B.R. GAVAI:** But this Court has done that for pensionable services of the
8 High Court Judges. It has said that the Judges coming from the Bar they will be entitled to 10
9 years additional for getting the place.

10 **R. BASANT:** That is Your Lordship is referring to the service in the Bar to be counted?

11 **CHIEF JUSTICE B.R. GAVAI:** Justice [UNCLEAR] judgment.

12 **R. BASANT:** That is for the purpose of pension. That's for the purpose of pension it's
13 mentioned. Yes, my humble submission would be when they come from different sources and
14 merge into one source, integrated cadre, similarly situated cadre thereafter you can't make a
15 distinction based on the birthmark where you came from. Other considerations can happen.
16 Last time My Lords was putting the question. Supposing there is a better educational
17 qualification. That would be a different situation altogether. All the decisions holding
18 otherwise would only say that it's a different criteria not the source from which you came.
19 When the source from which you came cannot be the basis for distinguishing or discriminating
20 between the two different groups. And therefore it would be my submission My Lord, it's not
21 possible for us to, on the basis or the length of service that one has at the Bar or the other at
22 the Bench, as a judicial officer to further subclassify them on the basis of their birthmark, on
23 the basis of the source from which they came.

24 Now, My Lord the next question is, I think Mr. Dwivedi has already adverted to that aspect,
25 I'll just mention it. What are the basis for this? Why do they want this to be, further restrictions
26 or improvements to be made to the rule? There are only two things that are stated. One, that
27 there is bunching of direct recruits on the top. That appears to be one argument. There is
28 bunching of direct recruits at the top, and the second is the age difference. These are the two
29 points on which they are. Now, My Lord, bunching is a phenomena which has arisen because
30 of not making the selections promptly. It's a matter of the past. After **Malik Mazhar**
31 decision, there cannot be. We need only enforce the law. We need to only enforce the directions
32 in **Malik Mazhar**. Every year the selection has to be conducted and every year everything is
33 mentioned. Can I invite Your Lordships attention to **Malik Mazhar** also, please?

1 **JUSTICE VIKRAM NATH:** V(a).

2 **R. BASANT:** Your Lordships are aware of that, I just want to particularly point out there.
3 V(a).

4 **JUSTICE VIKRAM NATH:** PDF 487 otherwise 483.

5 **R. BASANT:** Paragraph 7. Have a look at paragraph 7. I'll take Your Lordship to 7 (a) and (b).
6 "We direct as here under". My Lords have got it? Kindly see, that (a) is with regard to direct
7 recruitees and (b) is in respect of recruitment from/by promotion 50%. Kindly see, the number
8 of vacancies is to be ascertained by 31st March in both cases a) and b) or the dates on which
9 examinations are to be conducted, everything is mentioned and ultimately, orders have to be
10 passed, issue appointment order by 30th September in both cases. What I am trying to point
11 out before Your Lordship is, now this has to be followed. We need only insist that this must be
12 followed. No change of the rules is required. If there is human failure regarding compliance
13 with these, we have to correct that. Now, if that happens Your Lordship finds every year we
14 will have both categories of people ready for absorption to the common cadre and there will
15 be no bunching as it is now alleged. Now Your Lordship will go... if we go through the seniority
16 list you will find number of direct recruitees are bunched together. This happens because both
17 in Bihar as also in Kerala at times, this happens because in due time the selection do not take
18 place, which malady is not there now. If **Malik Mazhar** is followed, there can be no question
19 of bunching at all.

20 There is no question of selection for various years, being bunched together and the direct
21 recruitees or the promotees coming in one lot, occupying the entire position. So that, what, my
22 submission before Your Lordship would be that in the light of **Malik Mazhar**, there is no
23 possibility now except in violation of that judgment of any bunching together. And therefore,
24 the possibility that the promotees will have to wait until the entire list of direct recruitees are
25 exhausted is a story of the past, it will not anymore be there. To counter that or to provide
26 against that, it is not necessary for us to amend the rules. That is what I want to submit before
27 Your Lordships.

28 **JUSTICE SURYA KANT:** But the other side of this very principle will be that in light of now
29 **Malik Mazhar**, that every High Court is obligated to hold the annual examination and go for
30 annual recruitment process, where is the necessity of assigning roster points for the purpose
31 of seniority?

1 **R. BASANT:** I'll come to that. That's the next point that I have to... Your Lordship finds so
2 that, what I am saying. We know from the both streams, we have people selected, appointed
3 also.

4 **JUSTICE SURYA KANT:** It's an annual feature.

5 **R. BASANT:** Right, My Lord, annual feature.

6 **JUSTICE SURYA KANT:** Annual feature, both recruitments will never take place together
7 because the examination is different.

8 **R. BASANT:** Yes. Exactly.

9 **JUSTICE SURYA KANT:** Merit cum seniority criteria is altogether different than direct
10 recruit. Direct recruit is normally different than the LDCE. Therefore, all three will be different
11 selection processes.

12 **R. BASANT:** Right. From each stream, the persons to be appointed are selected. From each
13 stream, person to be appointed are selected. Now the question is, how do you appoint?
14 Supposing three persons are selected from one stream, do you appoint all of them together on
15 top? Supposing five persons promotees are selected, do you appoint all of them together at the
16 top? That is where the principle of roster comes. The principle of roster comes so that you may
17 have selected people from various sources; they will not together join the mainstream. That is
18 where the roster becomes important. Your Lordship, I found such a lot of grievances against
19 the roster. I believe the roster is something which ought to be accepted gratefully because what
20 it seeks to prevent is again bunching of selectees from one particular stream, for one particular
21 year together. To avoid that what is said is, there shall be a roster. Now it is referred to as a 40
22 point roster. I am unable to understand how the 40 point comes.

23 **JUSTICE SURYA KANT:** What is the genesis or the history of introducing roster? Was it
24 not essentially meant only to ensure the representation for the constitutionally provided
25 reservations which were unfortunately being overlooked and ignored...

26 **R. BASANT:** Right.

27 **JUSTICE SURYA KANT:** By most of these states throughout the country?

28 **R. BASANT:** Right. Whatever may have been the historic reasons that the roster came into
29 existence, here the purpose I explained to My Lords. Now, all the three streams, people are
30 selected. Now my last decision in *All India Judges* case, 50% to one, 25 % to one, 25 % to

1 the other. If all the 50 persons together are appointed on top, that would work out injustice.
2 And therefore My Lord said...

3 **JUSTICE SURYA KANT:** The direct recruit is appointed in January and a promotee comes
4 in December of that very year, what is wrong if December appointee ranks to junior to the
5 January appointee?

6 **R. BASANT:** Well, I would say all the appointments are to take place together. If you follow
7 *Malik Mazhar*, all the appointments are to take place....

8 **JUSTICE SURYA KANT:** If it is only when you have a readymade list of the direct recruits,
9 you have a readymade list of LDCE, you have also a list of the promotee and you are to give
10 appointment to them altogether. They are entering the cadre together.

11 **R. BASANT:** Right, My Lord.

12 **JUSTICE SURYA KANT:** There the question of, you may be right, that how to place them
13 in bulk at one place, then another, that may arise. If the appointments are at different points
14 of time, then where is the... under which law, there is a [UNCLEAR]?

15 **R. BASANT:** My humble submission would be after *Malik Mazhar*, there is no question of
16 appointments being at different points of time. That's why I took Your Lordship to *Malik*
17 *Mazhar. Malik Mazhar*, from the date of publication to date of appointment is the same
18 date and therefore, appointments will be made on the same date. And while making that
19 appointment...

20 **CHIEF JUSTICE B.R. GAVAI:** To what extent it is followed?

21 **R. BASANT:** My Lords, if it is not followed, it's for us to enforce that and not change the rules
22 for that, with great respect.

23 **CHIEF JUSTICE B.R. GAVAI:** It should contain notices to the High Courts.

24 **R. BASANT:** Yes, My Lord?

25 **CHIEF JUSTICE B.R. GAVAI:** It should contain notices to the High Courts.

26 **R. BASANT:** Your Lordship whatever. I don't think the High Courts would be interested in
27 violating the directions of this court. The possibility of violation should not persuade us to
28 amend the rules. That's what I'm submitting. What are we worried about? We have issued

1 specific directions in *Malik Mazhar* specifying the date on which the appointment should
2 be made. All three lists must be ready on a one particular day, and for that the Court very
3 gracefully said, "don't appoint them, bunch them together, follow the roster." That's what he
4 said. That all that is said. They said the 40 point roster. I think the 40 point is a misnomer. 40
5 point will not be there. It'll be only, as of now, 50% to 1, 25 % to 1, 25 % to the other. So at
6 worst, at best, it can only be a four point roster.

7 **JUSTICE SURYA KANT:** According to you an annual roster, is the ideal answer to this
8 equation?

9 **R. BASANT:** Right. It is the answer not my suggestion. That is what *Malik Mazhar* says.
10 That is what para 29 of *All India Judges* decision says, and it's a roster, but it said 40 point
11 roster. I'm not able to understand how the 40 point roster would come in because there are
12 only for three sources. Two for promotees, one for direct recruitee, one for LCDE. And then
13 therefore, LDCE. And therefore, there is no question of a 40 point roster. Many of the High
14 Courts are that four plus, four plus, four plus four made it 40. It's not necessary. It's a four
15 point roster. According to me, it's only a four point roster. And then Your Lordships find
16 ideally, what should. Ideally, I would suggest what should happen is the promotees, they
17 having been in service, give them the first 1 - 2 and then 3, the LDCE and the fourth the direct
18 recruitee. And therefore, there is no chance of people being bunched together to deny the
19 legitimate aspirations of those coming lower. This is what, paragraph 29, which when it spoke
20 of the roster said, though I must confess the 40 point roster, usage of that expression does not
21 appear to be very correct. 40 point roster would come only where the constitutional
22 reservations come. Here a roster. Read the 40 point roster as only a roster, and in that roster
23 the purpose of the roster is very evident. Don't bunch people together in one. You give them
24 this one priority, two plus one plus one. That is the purpose. And if that is followed, my
25 respectful submission will be all the assumed difficulties, imbalances that are there will vanish.
26 And as pointed out by Allahabad High Court, it is vanishing also. It's not necessary to do that
27 now. It's already done. It's already done. It's being followed. I'll take Your Lordships to the
28 Kerala rules. And again try to convince Your Lordships on that. And therefore what is required
29 is a 40 point roster will now be because there was one 10 %, 65% and 25% there was some
30 confusion. Right now, after the last judgment by this Court, all that is required, is it has to be
31 Promotee 1, Promotee 2, LDCE 3 and a Direct Recruitee 4 as simple as that.

32 **CHIEF JUSTICE B.R. GAVAI:** Yes.

1 **R. BASANT:** For this is it necessary to amend the rules? Is a question I would request My
2 Lords to consider and my humble submission will be kindly do not do that. It's not necessary
3 at all.

4 **CHIEF JUSTICE B.R. GAVAI:** Thank you.

5 **R. BASANT:** I'll complete now. Your Lordship finds the other aspect will also be merged.
6 Your Lordship finds the question is today the fact scenario is very, very different, direct
7 recruitee 25% also, these people can get in, LDCE Your Lordship...

8 **CHIEF JUSTICE B.R. GAVAI:** That is already argued Mr. Basant. There's no point in again
9 repeating the same argument.

10 **R. BASANT:** Right. I just want Your Lordship to be reminded of that because...

11 **CHIEF JUSTICE B.R. GAVAI:** It has been argued time and again that now the dynamics
12 have changed. Mr. Dwivedi also has argued that.

13 **R. BASANT:** That's what I said. I accept what Mr. Dwivedi submitted on that. Now Your
14 Lordship finds... Now the next question is from the entry grade District Judges when they go
15 to the next higher of the selection grade and the super timescale what happens? That's the next
16 point. Kindly have a look at the Kerala rules. The Kerala rules from the entry grade to the
17 selection grade, it is only merit. It's only merit. I want to read Your Lordships the rules. If at
18 all any rules are to be maintained, identical rules on the Kerala pattern has to be maintained,
19 made elsewhere. It is only... Please see that Rule 22. It is... What is submitted by the Kerala
20 High Court, isn't it? Yes, I am reading it. Your Lordships, it says. It speaks like this.
21 "Appointment to 35% selection grade posts in the service shall be made by the High Court with
22 effect from the 1st January 2020 from amongst the members of the service on the basis of...
23 now comes a... merit and ability, seniority being considered only when merit and ability are
24 equal."

25 **JUSTICE SURYA KANT:** But that is broadly same criteria everywhere. Merit is the first
26 emphasis. Seniority only determines the zone of consideration. First is the ability and
27 suitability.

28 **R. BASANT:** Your Lordship from all the... I wanted to read the next line also.

29 **JUSTICE SURYA KANT:** That is why Madam Maninder [UNCLEAR].

1 **R. BASANT:** Only approved probationers with five years' service shall be eligible for being
2 considered for promotion, so that whoever has completed five years is eligible to be
3 considered. Forget about you've come from which stream, all of them are eligible.

4 **JUSTICE SURYA KANT:** Mr. Basant we don't think that there is a single High Court having
5 criteria of seniority cum merit or seniority cum fitness or seniority cum suitability. Every High
6 Court has merit, then come may be ability, maybe seniority, may be suitability, maybe
7 anything, but first emphasis is on merit. So, selection in promotion quota has to be there
8 purely on the basis of merit. Seniority will be only for the limited purpose of identifying the
9 zone of consideration. That's all.

10 **R. BASANT:** Right, My Lord. My humble submission would be, and therefore the grievance
11 that we are lower in the seniority list is not going to affect your movement upwards to the
12 selection grade or thereafter. That's what I'm trying to point out. So that Your Lordship finds,
13 well how it is being enforced, Your Lordship may clarify that it has to be purely on the basis of
14 merit. And pursuit of excellence is an axiom under 51(a) or the fundamental duties also. And
15 therefore, Your Lordship finds, in the light of the rules that we have in Kerala, which identical
16 rules, if Your Lordship wants others can be asked to, and it can be directed that strictly this
17 movement from entry district, Entry Point District Judge to selection grade shall be only on
18 the basis of merit. And therefore, what happens is the question of seniority lapses into
19 insignificance. You don't have to upset the seniority for this purpose. They would still be on
20 top if they have merit. Merit and ability. So that where is the need to amend the rules to
21 accommodate something which is already there? If they are good, if they are meritorious, they
22 come up. There are many, many sources by which they can become the entry cadre District
23 Judge. From the entry cadre to the next higher level selection grade, it is going to be only on
24 merit and therefore your seniority does not matter at all. And therefore, to give you a position
25 there, it's not necessary to amend the rules at all.

26 **CHIEF JUSTICE B.R. GAVAI:** Yes, what next?

27 **R. BASANT:** Yes, now the same position relating to movement from selection grade to the
28 next grade also. That is where the...

29 **CHIEF JUSTICE B.R. GAVAI:** Super timescale?

30 **R. BASANT:** Super timescale. Now, My Lord, can I take Your Lordship through the Kerala
31 rules once again, the Kerala High Courts Affidavit? Please see that Affidavit My Lord. What is
32 the position in Kerala? Is it necessary to invoke the 142 powers to interfere with something
33 that is happening in Kerala?

1 **CHIEF JUSTICE B.R. GAVAI:** As my Learned Brother pointed out, that we are not
2 considering state wise position.

3 **R. BASANT:** No, no, I want to point out that if no amendment to the rules was required, the
4 rules presently enforced is sufficient. Now, if at all Your Lordship feels it is necessary, extend
5 this rule to other places, is what my humble submission would be. Your Lordship finds an
6 amendment to the rule to provide quota, amendment to the rule to provide weightage is not
7 necessary at all, and maintenance of separate seniority lists are not necessary at all, because
8 the malady which we are trying to cure, the solution is already there.

9 **JUSTICE VIKRAM NATH:** In the Kerala rules?

10 **R. BASANT:** Yes.

11 **JUSTICE VIKRAM NATH:** So you want the Kerala rules to be model rules to be followed
12 by all the states?

13 **R. BASANT:** My Lord if Your Lordship feels that such a clarification will be given so far as
14 the others are concerned, please do that. Please do that. Please make it clear that the seniority
15 shall be on the basis of the order of appointment. Now the order of appointment you'll get
16 posted according to the roster. And now thereafter, the promotion from there will be not on
17 the basis of the seniority at all, but purely on merit. And if that is so, there can be no grievance.
18 Now we don't want to promote somebody who's not meritorious and go to the selection grade.
19 Only those who are meritorious must go in. Your Lordship finds the want of merit cannot be
20 used as an excuse to go up the ladder because Your Lordship finds from the entry cadre,
21 promotee district judges Your Lordship finds what will happen is, all of them, all the entry
22 cadre, they are people who have not qualified for... they have not come for direct recruiting as
23 per the last decision; they are people who have not succeeded in the LDCE. For them, who
24 have not got into the selection grade, for them to protect their interest, please don't think of
25 an amendment to the rule. It's not necessary at all.

26 **CHIEF JUSTICE B.R. GAVAI:** We have understood. Thank you.

27 **R. BASANT:** I just wanted Your Lordship to see the Kerala situation as reported by the High
28 Court. Will Your Lordship kindly see paragraph 7 of the Kerala High Courts affidavit?

29 **CHIEF JUSTICE B.R. GAVAI:** Mr. Giri already pointed that out.

30 **V. GIRI:** I read out the affidavit.

- 1 **CHIEF JUSTICE B.R. GAVAI:** Yes, he has read out the affidavit.
- 2 **R. BASANT:** Now, what is of importance is the statistics given there shows out of 30...
- 3 **CHIEF JUSTICE B.R. GAVAI:** That was read to us yesterday by Mr. Giri. He has already
4 read it to us, this affidavit.
- 5 **R. BASANT:** Right. I just wanted to bring it to Your Lordship's notice again so that it stays
6 with Your Lordship. Because it is important so far as the Kerala rules are concerned, they do
7 not result in the apprehensions which are aired by the *Amicus*. That is what I want to point
8 out.
- 9 **CHIEF JUSTICE B.R. GAVAI:** That is already pointed to us by the learned senior Counsel
10 appearing on behalf of the High Court of Kerala.
- 11 **R. BASANT:** High Court, unfortunately, did not take a specific stand as to whether this
12 should be there or that should be there.
- 13 **CHIEF JUSTICE B.R. GAVAI:** Rightly because the High Court can't...
- 14 **R. BASANT:** Why? What is...
- 15 **CHIEF JUSTICE B.R. GAVAI:** High Court can't... the actual position...
- 16 **R. BASANT:** Just and fair, the High Court should have the guts to...
- 17 **CHIEF JUSTICE B.R. GAVAI:** How could the High Court afford to take a particular stand
18 that their promotee... that they are supporting promotee or they are supporting direct?
- 19 **R. BASANT:** I will not say that. But it is up to the High Court to take a stand on what is fair
20 and just, we can't avoid that. We can't avoid that responsibility, and it's for the High Court to
21 point out to the court, that they have done on this and analyse and show that the
22 apprehensions of the *Amicus* are non-existent in Kerala. That is what I wanted to point out.
- 23 **CHIEF JUSTICE B.R. GAVAI:** Yes, thank you, Mr. Basant. Thank you. Who's next?
- 24 **AMIT RAWAL:** I am also in the same application though my sequence is in the end.
- 25 **CHIEF JUSTICE B.R. GAVAI:** In one eye, only one Counsel can argue. So your name is
26 there in some other eye.

1 **AMIT RAWAL:** I just wanted to apply this quote that I am in the sequence in the end, My
2 Lord, though I am also representing few of the applicants in the same application.

3 **CHIEF JUSTICE B.R. GAVAI:** In so far as one application is concerned, only one senior
4 counsel can argue.

5 **AMIT RAWAL:** I'm also there, therefore yesterday I said, I am with him, My Lord.

6 **CHIEF JUSTICE B.R. GAVAI:** Your presence is marked.

7 **R. BASANT:** What has happened is there were seven applicants. I continue with four. Three
8 have gone to others. That's why he is coming out. Seven applicants originally...

9 **CHIEF JUSTICE B.R. GAVAI:** You're not appearing for anybody from Punjab and
10 Haryana.

11 **AMIT RAWAL:** No My Lord, for the time being I'm... South only, not so far.

12 **CHIEF JUSTICE B.R. GAVAI:** So South has been...

13 **AMIT RAWAL:** I'm trying to... I'm trying to, My Lords.

14 **R. BASANT:** That's all. Thank you.

15 **CHIEF JUSTICE B.R. GAVAI:** Yes, Mr. Patwalia.

16 **P. S. PATWALIA:** May I please, Your Lordships? I am appearing in IA No. 260414 of 2025
17 for the direct recruits in Delhi. Now my Lord, I have three or four submissions to make. I adopt
18 what has already...

19 **JUSTICE SURYA KANT:** You have also shifted venue.

20 **P. S. PATWALIA:** No My Lord. Actually by the time the Punjab people came, I had already
21 appeared for Delhi, so I could not appear for the other side in Punjab. But what I'm submitting,
22 I'm going to submit. I am adopting what Mr. Dwivedi said and what has been argued earlier,
23 but I have two or three particular submissions to make on one argument addressed whether
24 weightage of any sort is necessary to be granted or not? Second on the roster system, which,
25 according to me, is a very good system, it has not failed, but it has not been given a chance to
26 operate properly. And my third submission is going to be on the quota, which cannot be
27 granted. Much has been said. I just want to refer to two paragraphs, but before I come to that

1 My Lord, please have my written submission. Just 2-3 paragraphs to show that Delhi actually
2 presents the other end of the spectrum as which the learned Amicus pointed to Your
3 Lordships. It is Volume II, R-1, page 1 to 9, 1 to 19.

4 **CHIEF JUSTICE B.R. GAVAI:** But what is the reason, in certain states, it's dominated by
5 promotees? In certain High Courts, it is dominated by promotees. And if it's certain High
6 Courts, it is dominated by directs. Then some rationalization would be in your benefit.

7 **P. S. PATWALIA:** So my submission is going to be that the 2002 judgment in para 30, while
8 rejecting the argument of weightage, introduced a concept of roster. And para 30 weightage is
9 rejected by saying roster will take care of it. Now unfortunately, in the working of the roster,
10 there have been one or two problems, and the main problem is the delay in the selection
11 process of the direct recruits. On account of the delay in the selection process of the direct
12 recruits this roster could not work properly because what then happens and what has been
13 falling from Your Lordships is promotee comes in, say year 2007. Process of direct recruitment
14 also commenced in 2007. It is completed in 2009. By the time the direct recruit comes and
15 then makes a claim that I should be given a seniority from 2007, it perhaps becomes a little
16 too late in the day for it to be granted, and then Your Lordships judgments have also leaned in
17 favour of length of service. This is what happened in Delhi in **B. S. Mathur** and the two earlier
18 judgments. Even though the rules had rota quota, but because of delay in direct recruitments,
19 the Court ultimately said no, let it be 'length of service.' But all that My Lord, I'm just wanting
20 five minutes before that, please have this. Volume 2 R-1 page 1 to 19. Now, kindly have first,
21 internal page will be 2 and running page will be 4. There is a para 6. Your Lordships got it?

22 **CHIEF JUSTICE B.R. GAVAI:** Factual position.

23 **P. S. PATWALIA:** Factual position in Delhi is. Just two, three paras. I'm not going to dwell
24 much on. "The factual position in Delhi is that promotees far outnumber the direct recruits in
25 the post of Principal District Judge. Since out of 12 posts of Principal District Judges, 9 were
26 promotees and 2 were direct recruits." Please turn over the next page My Lord. The first
27 column is direct and then promotee. So there are four direct in 2022, seven promotees and if
28 Your Lordship will go down the chart in January '25, there was no direct Principal District
29 Judge. And now there are 2 and 9 are promotees. Now, please have para 7. "The factual
30 position in Delhi is also that during the period '20 to '25, 17 Judges from the District Judiciary
31 were elevated to the Honourable High Court of Delhi, out of which 15 were promotees and only
32 two were direct recruits." Then My Lords we have said the situation in some other State also
33 remains the same. Of course, this Your Lordship has a much better chart given by the *Amicus*
34 which Mr. Dwivedi read those 13 States. I don't need to read it again. He has given that better

1 chart. Now so far as age is concerned also, if Your Lordships will come to page 6... running
2 page 6 para 10. "The factual position is that the average age at the time of appointment as
3 District Judges for both promotees and direct recruits is similar. The average age of
4 appointment of both direct recruits and promotees is in the range of 40 to 41 years. There are
5 instances of promotees being appointed even before the age of 35. We have three such people,
6 who were 34 years and plus when they became. There are numerous instances of promotees
7 becoming District Judges between 35 to 38 and 38 to 40." Then My Lord, I need not read the
8 whole of it. So age also is the same in Delhi. Average age is 40 versus 40.6. So promotees are
9 negative by six months only. And I have that chart. I will give it to Your Lordships, but Your
10 Lordship may take it. Now, we have said in some other States also the position remains the
11 same. So, so far as Delhi is concerned, the promotees actually are taking a larger share, both
12 at the stage of Principal District Judge and also at the stage of High Court. Now, one other
13 point which I want to point out is at page... because this will then, in the course of arguments,
14 I will be referring to these facts. Page 16, running page 14 internal, para 28. In fact, if I can
15 start from page 13 internal.

16 **CHIEF JUSTICE B.R. GAVAI:** Paragraph?

17 **P. S. PATWALIA:** Paragraph 27 that fresh para, last three lines at the bottom. "It is
18 submitted that whereas appointment of direct recruits against vacancies for a particular year
19 is delayed due to administrative process. On an average, the process takes two to four years.
20 However, promotees are appointed speedily upon arising of vacancies." Now here that roster
21 will come and what My Lord Justice Surya Kant had also observed that, will it be yearly, why
22 should they get the slots? There are rational answers to that, My Lord. I will attempt to give
23 them to Your Lordships just after I finish reading this. Now promotees are appointed speedily.
24 "As a result, between the period from arising of vacancies and initiation of the recruitment
25 process for direct recruits to the eventual appointment of the direct recruits, several batches
26 of promotees get appointed. In such situation the application of the rule for determining
27 seniority from date of appointment works in a matter which is grossly unjust and unfair to the
28 direct recruits." Now, we have given instances. The recruitment notice of Delhi which was
29 issued in December '13, the left hand side column. Final result is declared in July '15 and direct
30 recruit is appointed in September. In the meantime, in '13, in the year '13 itself 52 promotees
31 came and joined. This is page 14 internal My Lord, in the chart. Yes. Now similarly is the
32 position every year. Now in the '15 recruitment the result is declared in '17 and the direct
33 recruits come in May 2018 and during this time 47 officers are promoted from '16-'17. And
34 then in '17 again, direct recruitment final result is issued in 2020 and direct recruits are
35 appointed in '21 and 87 officers are promoted during this period from '17 to '20. So, that is one
36 problem. Now My Lord, in my respectful submission, this problem can be solved if there is

1 proper and honest implementation of the roster system. Now one of the most important
2 requirements of the roster to operate is a yearly recruitment of three sources. If there is no
3 yearly recruitment of three sources, then the implementation of the roster is bound to cause
4 practical difficulties and problems. Therefore, in **Malik Mazhar**, Your Lordships had
5 actually laid down a time schedule as to when the recruitment is to be made. And if that time
6 schedule is adhered to and the recruitment is made in all sources... from all sources within the
7 year then in my respectful submission, the roster will operate and the roster will fully satisfy
8 the aspirations of all the three batches. Now, two or three more things. First, Your Lordship
9 said, how would the roster operate? Since the percentages for direct recruitment promotees
10 and merit promotees is to be worked out on cadre strength, the roster has to operate on cadre
11 strength and cannot operate on vacancies. This is clearly stated in para 29 of the 2002
12 judgment. It is also clearly stated in **Sabharwal** on which para 29 relies on. I have only half
13 an hour My Lord, I will put all this in a small note because this is... Over yesterday, I have
14 improved a lot of things. So, the roster firstly has to operate on posts. Now, **Sabharwal** says
15 that when you start the roster you start, every roster says, 2-1-1, 2-1-1, 2-1-1. Now, when you
16 start the roster initially, obviously, the entire cadre is available to you and then you start and
17 you proceed. Now, the second point is why should the persons be fitted at the roster point at
18 the slots? That is very important, because once you fit the persons at the slots assigned to each
19 category, every category will then get a representation in every four slots in the cadre. There
20 will be no bunching. You will have two promotees, one direct, one limited, in every four slots
21 of the cadre at every stage. So therefore, when you then proceed to give any benefit of the
22 service, whether it is a senior scale, a super timescale or even deployment as a Principal
23 District Judge, when you sit down to make the zone of consideration, within that zone, every
24 person in every slot will be available. So, my respectful submission to Your Lordships is, that
25 the solution which was given in the 2002 judgment, and in states where the roster has
26 operated, there is no disparity. In Delhi the disparity is because up to today, there is no roster.
27 In fact, in the judgement of **B. S. Mathur**, Your Lordships in para 52, which in my written
28 submission I have quoted, categorically said we are now doing length of service but from six
29 onwards, please bring back the roster. Delhi has still not brought back the roster even upto
30 today. Even up to today there is a length of service which is going on, and roster will only... has
31 been only brought back if direct recruit and promotee is appointed on the same day, only then.
32 That is not a solution. It has to be a year wise running account which is necessary for a proper
33 settling of the equities of all concerned.

34 Now, My Lord, so far as the principle of weightage is concerned, which is being argued before
35 Your Lordships, there are three reasons why I say weightage should not be given today. First
36 is Your Lordships originally when appointment to the post of Additional District Judges were

1 made, there were only two modes of recruitment. Some did not have direct recruitment. It was
2 either promotion or direct recruitment. The Shetty Commission records, some states had
3 60:40, 75 promotee, 25 direct. Some had two-thirds, one-thirds. Your Lordships then
4 reworked those quotas to give a 25%, and I'm borrowing the words from the 2025 judgment
5 of Your Lordships, to give an accelerated promotion within the cadre of the Civil Judges. So
6 that accelerated promotion was given by carving out this 25% limited departmental quota, so
7 that they could work, so that they could proceed in a slightly faster fashion. This is a facet of
8 weightage which has already been given to them within the cadre. The man who would have
9 to wait has one option of accelerated LCDE and proceed further.

10 Second now this argument becomes all the more important because now Your Lordships have
11 given within the junior to senior also an LCDE. So, now actually speaking and hypothetically,
12 it may not happen, if at 24, I pass my law, three years I wait, 26, I get appointed as a Civil
13 Judge, Junior Division. Then another three or four years, I get promoted, I take the LCDE and
14 become a Senior Division, then another three years I will have to... four years I will have to
15 wait. By 34, 35, even within the promotion quota, I could be eligible to become a District Judge.
16 So, therefore, My Lord, this what you have granted, this what Your Lordships have granted to
17 them now to move from the lower junior to the senior scale by way of an LCDE is also a sort of
18 a weightage or an acceleration which is granted to the brighter of them, as Mr. Dwivedi had
19 put it, that if a person wants to be patient and take the longer route, then it is, of course, each
20 person has his own aspirations and his own thinking. So, this is the second thing.

21 The third now, Your Lordships have also opened the direct recruitment route to the
22 subordinate judges. So therefore, if Your Lordship sees a subordinate judge who joins, first
23 has an option to go in for direct recruitment. Then he has an option to take the LCDE to move
24 faster from the junior to the senior scale. And then he has another LCDE to move from the
25 junior, from the senior to the ADJ scale. So therefore, now giving them another benefit of
26 weightage in my respectful submission is not the solution. This is the second point that I am
27 making.

28 The third reason for not giving them weightage is that Your Lordships, in the 2002 judgment
29 para 30, have categorically said that weightage should not be granted and roster is the solution.
30 And therefore, my submission on the first point being roster has not failed actually. Roster has
31 never been given a chance actually a fair chance to operate fairly. And for a roster to operate
32 fairly yearly recruitment is a must. So, therefore, if Your Lordships is giving some directions,
33 then the directions would be that the observations made in **Malik Mazhar** for yearly
34 recruitment should be scrupulously followed. That is my second submission. Now, My Lord,
35 so far as quota is concerned, so far as quota is concerned My Lord I can do no better than

1 reading paras 44 and 45 of *Mohammad Shujat Ali*, My Lord. If Your Lordship will just
2 have that judgment because that is what is ultimately in *Khosa* My Lord, *Triloki Nath*
3 *Khosa*, that is Volume V(a). If Your Lordship will have at page 49, Placitum B, C and D. Your
4 Lordships is coming back at 02:00 or is it?

5 **CHIEF JUSTICE B.R. GAVAI:** Yesterday only we said.

6 **P. S. PATWALIA:** Yes, but then there was some circular which confused some of us that the
7 bench will assemble on Wednesday for the day or something like that. It didn't say for the day,
8 it said bench will assemble, so we thought perhaps...

9 **ATUL KUMAR:** Your Lordships indicated that only till lunch today, you will...

10 **CHIEF JUSTICE B.R. GAVAI:** Yesterday only...

11 **ATUL KUMAR:** Before rising Your Lordships said.

12 **P. S. PATWALIA:** So then can I get 10 minutes on the next... 10, 15 minutes on the next day.

13 **CHIEF JUSTICE B.R. GAVAI:** You decide amongst yourselves for the time being.

14 **P. S. PATWALIA:** No, 10 minutes only. I have hardly taken 15 minutes, I got a slot of... Only
15 10 minutes on the next day, whichever next day Your Lordship is granting.

16 **CHIEF JUSTICE B.R. GAVAI:** Tuesday.

17 **P. S. PATWALIA:** Tuesday.

18 **CHIEF JUSTICE B.R. GAVAI:** 5-7 minutes, you can...

19 **P. S. PATWALIA:** My Lord, let me get it on the next day.

20 **JUSTICE VIKRAM NATH:** Then you'll not take 10 minutes, you'll take more.

21 **P. S. PATWALIA:** No, I promise to take 10, with a maximum of 15. I'll just recapitulate and
22 say...

23 **CHIEF JUSTICE B.R. GAVAI:** We get Wednesday, Thursday, Friday...

24 **P. S. PATWALIA:** Time will not change. Time will not change, My Lord. I will not take extra.

1 **CHIEF JUSTICE B.R. GAVAI:** Lot of time to get your ammunitions.

2 **P. S. PATWALIA:** Grateful.

3 **ANUNAY SAHAY:** Your Lordship, there's been a fresh IA that has been filed. IA number has
4 still not been given. The court could allow because the Registrar is...

5 **CHIEF JUSTICE B.R. GAVAI:** Maybe you decide to find it out.

6 **ANUNAY SAHAY:** Okay.

7

8

9 <<<<END OF DAY'S PROCEEDINGS>>>

10