REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.57 OF 2008

Ramesh Kumar … Petitioner

Vs.

High Court of Delhi & Anr. … Respondents

(With W.P. (C) No.66/2008)

J U D G M E N T

Dr. B.S. CHAUHAN, J

1. These two petitions have been filed under Article 32 of the Constitution of India for seeking directions to the respondents i.e. the High Court of Delhi and Govt. of NCT of Delhi to offer appointment to the petitioners on the posts in the cadre of District Judge.

2. The facts and circumstances giving rise to these petitions are that in order to fill up 20 vacancies in the cadre of District Judge in Delhi, the Respondent No.1, the High Court of Delhi issued an advertisement on

19.5.2007. Out of these 20 vacancies, 13 were to be filled up from the General Category candidates, 3 from Scheduled Castes candidates and 4 from Scheduled Tribes candidates. The petitioners who belong to Scheduled Castes category faced the selection process. The result was declared on 3.1.2008. All the three vacancies reserved for Scheduled Castes candidates could not be filled up as the Respondent No. 1 found only one person suitable for the post. The two petitioners herein were found unsuitable on the ground that they did not secure the required minimum marks in interview. Hence, these petitions.

3. Shri V. Shekhar, learned senior counsel appearing for the petitioners has submitted that in view of decision taken by the Respondent No. 1, a candidate belonging to Scheduled Castes Category would be called for interview provided he secured 45% marks in written test. Only three candidates belonging to the said category stood qualified in the written test, thus, they could have been offered the appointment without asking them to complete the formality of facing the interview. It was not permissible for the Respondent No. 1 to fix minimum Bench Marks at the interview level also for the purpose of selection. The petitions deserve to be allowed and the respondents be directed to offer the appointment to the petitioners.

4. Per contra, Shri A. Mariarputham, learned senior counsel appearing for the respondents has vehemently opposed the petitions contending that mere passing the written test is not sufficient for appointment as some of the required qualities of a candidate can be assessed only in viva-voce/oral examination. The competent authority is permitted in law to fix the minimum marks at interview level also. In case, the candidate does not secure the marks so fixed, the candidate cannot claim the appointment to the post. Decision for fixing the cut-off marks in the written test and further for securing the minimum Bench Marks in the interview had been taken prior to initiation of selection process and was made public at the same time. The petitioners did not challenge the said criteria at the appropriate stage. Once they had appeared in the examination and could not succeed, petitioners cannot be permitted to take U-turn and challenge the selection process on this ground at all. The petitions lack merit and are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. The advertisement dated 19.5.2007 provided that selection process would be in two stages as it would comprise of written examination

carrying 750 marks and Viva-Voce carrying 250 marks. Respondent No.1, the Delhi High Court furnished detailed information about the pattern of selection process in the instructions annexed to the application form. It provided 50% minimum qualifying marks in the written examination as well as in the interview for General Category candidates and 45% for Scheduled Castes and Scheduled Tribes candidates.

The relevant part of the said instruction reads as under:

> *"A candidate shall be eligible to appear in the viva-voce only in case he secures 50% marks in the written examination i.e. aggregate of both parts (objective/descriptive) in the case of general category, and 45% marks in the case of reserved category.*
>
> *Interview/viva-voce will carry 250 marks. A candidate of general category must secure a minimum of 50% marks and a candidate of reserved category must secure a minimum, of 45% marks in the viva-voce".*

It was also provided that final merit list will be drawn up from among the candidates who have secured the stipulated minimum marks in the written examination and also the stipulated minimum marks in the viva-voce by adding up the marks in the written examination and the viva-voce.

RESULT OF THE PETITIONERS REMAINED AS UNDER

Name	Marks obtained in written test **Out of 750**	Marks obtained in interview **Out of 250**	Grand total **Out of 1000**	**Result**
Ramesh Kumar	357.50	105.00	462.50	Not qualified in interview
Desh Raj Chalia	341.50	83.00	424.50	Not qualified in interview

It is thus evident that the petitioners were found unsuitable on the ground that they failed to secure minimum Bench Marks i.e. 112.50 in interview.

7. As per the submissions advanced by the learned counsel for the Respondent No.1, the High Court of Delhi had fixed the said criteria being empowered by the statutory provisions contained in The Delhi Higher Judicial Service Rules, 1970 (hereinafter called 'the Rules"). Rule 10 thereof reads as under:

> *"The High Court shall before making recommendations to the Administrator invite applications by advertisement and may require the applicants to give such particulars as it may prescribe and may further hold* ***such tests as may be considered necessary****." (Emphasis added)*

8. The aforesaid statutory provision undoubtedly does not fix any particular criteria or minimum Bench Marks either in the written test or in interview for the purpose of selection. Rule 10 provides that the High Court "**may hold such tests as may be considered necessary",** it impliedly provides for requirement necessary for assessment of suitability of a candidate. There is no challenge to the validity of Rule 10 in these writ petitions. The question does arise as to whether the Rules enabled the High Court to fix the minimum Bench Marks for interview?

9. In **State of U.P**. v. **Rafiquddin & Ors.**, AIR 1988 SC 162; **Dr. Krushna Chandra Sahu & Ors.** v. **State of Orissa & Ors.** AIR 1996 SC 352; **Majeet Singh, UDC & Ors**. v. **Employees' State Insurance Corporation & Anr.** AIR 1990 SC 1104; and **K.H. Siraj** v. **High Court of Kerala & Ors**. AIR 2006 SC 2339, this Court held that Commission/Board has to satisfy itself that a candidate had obtained such aggregate marks in the written test as to qualify for interview and obtained "sufficient marks in viva voce" which would show his suitability for service. Such a course is permissible for adjudging the qualities/capacities of the candidates. It may be necessary in view of the fact that it is imperative that only persons with a prescribed minimum of said qualities/capacities should be selected as

otherwise the standard of judiciary would get diluted and sub-standard stuff may get selected. Interview may also be the best mode of assessing the suitability of a candidate for a particular position as it brings out overall intellectual qualities of the candidates. While the written test will testify the candidate's academic knowledge, the oral test can bring out or disclose overall intellectual and personal qualities like alertness, resourcefulness, dependability, capacity for discussion, ability to take decisions, qualities of leadership etc. which are also essential for a Judicial Officer.

10. Re-iterating similar views, this Court has given much emphasis on interview in **Lila Dhar** v. **State of Rajasthan & Ors.**, AIR 1981 SC 1777; and **Ashok Kumar Yadav & Ors. v. State of Haryana & Ors.** AIR 1987 SC 454 stating that interview can evaluate a candidate's initiative, alertness, resourcefulness, dependableness, co-operativeness, capacity for clear and logical presentation, effectiveness in discussion, effectiveness in meeting and dealing with others, adaptability, judgment, ability to make decision, ability to lead, intellectual and moral integrity with some degree of error.

11. In **Shri Durgacharan Misra** v. **State of Orissa & Ors.** AIR 1987 SC 2267, this Court considered the Orissa Judicial Service Rules which did not

provide for prescribing the minimum cut-off marks in interview for the purpose of selection. This Court held that in absence of the enabling provision for fixation of minimum marks in interview would amount to amending the rules itself. While deciding the said case, the Court placed reliance upon its earlier judgments in **B.S. Yadav & Ors.** v. **State of Haryana & Ors.** AIR 1981 SC 561; **P.K. Ramachandra Iyer & Ors. v Union of India & Ors**. AIR 1984 SC 541; and **Umesh Chandra Shukla** v. **Union of India & Ors.** AIR 1985 SC 1351, wherein it had been held that there was no "inherent jurisdiction" of the Selection Committee/Authority to lay down such norms for selection in addition to the procedure prescribed by the Rules. Selection is to be made giving strict adherence to the statutory provisions and if such power i.e. "inherent jurisdiction" is claimed, it has to be explicit and cannot be read by necessary implication for the obvious reason that such deviation from the rules is likely to cause irreparable and irreversible harm.

12. Similarly, in **K Manjusree** v. **State of Andhra Pradesh & Anr**. AIR 2008 SC 1470, this Court held that selection criteria has to be adopted and declared at the time of commencement of the recruitment process. The rules of the game cannot be changed after the game is over. The competent

authority, if the statutory rules do not restrain, is fully competent to prescribe the minimum qualifying marks for written examination as well as for interview. But such prescription must be done at the time of initiation of selection process. Change of criteria of selection in the midst of selection process is not permissible.

13. Thus, law on the issue can be summarised to the effect that in case the statutory rules prescribe a particular mode of selection, it has to be given strict adherence accordingly. In case, no procedure is prescribed by the rules and there is no other impediment in law, the competent authority while laying down the norms for selection may prescribe for the tests and further specify the minimum Bench Marks for written test as well as for viva-voce.

14. In the instant case, the Rules do not provide for any particular procedure/criteria for holding the tests rather it enables the High Court to prescribe the criteria. This Court in **All India Judges' Association & Ors. v Union of India & Ors.** AIR 2002 SC 1752 accepted Justice Shetty Commission's Report in this regard which had prescribed **for not having minimum marks for interview**. The Court further explained that to give effect to the said judgment, the existing statutory rules may be amended.

However, till the amendment is carried out, the vacancies shall be filled as per the existing statutory rules. A similar view has been reiterated by this Court while dealing with the appointment of Judicial Officers in **Syed T.A. Naqshbandi & Ors.** v. **State of J & K & Ors.** (2003) 9 SCC 592; and **Malik Mazhar Sultan & Anr. v. Union Public Service Commission** (2007) 2 SCALE 159. We have also accepted the said settled legal proposition while deciding the connected cases, i.e., Civil Appeals @ SLP (Civil) Nos….. in CC 14852-14854 of 2008 (Rakhi Ray & Ors. v. The High Court of Delhi & Ors.) vide judgment and order of this date. It has been clarified in Ms. Rakhi Ray (supra) that where statutory rules do not deal with a particular subject/issue, so far as the appointment of the Judicial Officers is concerned, directions issued by this Court would have binding effect.

15. The view taken hereinabove is in conformity with the law laid down by this Court in **Nand Kishore v. State of Punjab** (1995) 6 SCC 614, wherein it has been observed as under :-

> *"Their Lordship's decisions declare the existing law but do not enact any fresh law, is not in keeping with the plenary function of the Supreme Court under Article 141 of the Constitution, for the Court is not merely the interpreter of the law as existing but much beyond that. The Court as a wing of the State is by itself a source of law. The law is what the Court says it is."*

16. These cases are squarely covered by the judgment of this Court in **Hemani Malhotra v. High Court of Delhi** AIR 2008 SC 2103, wherein it has been held that it was not permissible for the High Court to change the criteria of selection in the midst of selection process. This Court in **All India Judges' case** (supra) had accepted Justice Shetty Commission's Report in this respect i.e. that there should be no requirement of securing the minimum marks in interview, thus, this ought to have been given effect to. The Court had issued directions to offer the appointment to candidates who had secured the requisite marks in aggregate in the written examination as well as in interview, ignoring the requirement of securing minimum marks in interview.

17. In pursuance of those directions, the Delhi High Court offered the appointment to such candidates. Selection to the post involved herein has not been completed in any subsequent years to the selection process under challenge. Therefore, in the instant case, in absence of any statutory requirement of securing minimum marks in interview, the High Court ought to have followed the same principle. In such a fact-situation, the question of acquiescence would not arise.

18. In view of the above, as it remains admitted position that petitioner Ramesh Kumar had secured 46.25% marks in aggregate and as he was

required only to have 45% marks for appointment, writ petition No.57 of 2008 stands allowed. The connected writ petition filed by Desh Raj Chalia as he failed to secure the required marks in aggregate, stands dismissed. The respondents are requested to offer appointment to petitioner Ramesh Kumar, at the earliest, preferably within a period of two months from the date of submitting the certified copy of this order before the Delhi High Court. It is, however, clarified that he shall not be entitled to get any seniority or any other perquisite on the basis of his notional entitlement. Service benefits shall be given to him from the date of his appointment. No costs.

..……CJI.

……... J.
(DEEPAK VERMA)

. ..……..... J.
(Dr. B.S. CHAUHAN)

New Delhi,
February 1, 2010.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2010
(Arising out of SLP (C) Nos. ……. Of 2008 in CC 14852-14854/2008)

Rakhi Ray & Ors. … **Appellants**

Vs.

The High Court of Delhi & Ors. … **Respondents**

J U D G M E N T

Dr. B.S. Chauhan, J.

1. Applications for permission to file Special Leave Petitions are granted.

2. Leave granted.

3. These appeals have been filed for seeking directions to the respondents i.e. the High Court of Delhi and the Lt. Governor of Delhi to offer the appointment to the appellants on the posts in the cadre of District Judges in Delhi Judicial Service.

4. Facts and circumstances giving rise to these appeals are that in order to fill up 20 vacancies in the cadre of District Judge in Delhi, the respondent

No.1, the High Court of Delhi, issued an advertisement dated 19.5.2007. Out of these 20 vacancies, 13 were to be filled up from the General Category candidates; 3 from Scheduled Castes; and 4 from Scheduled Tribes. Appellants who belong to General Category, faced the selection process. The result was declared on 3.1.2008. Appellants found place in the merit list but much below. All the 13 vacancies in the said category were filled according to the merit list of General Category candidates. However, two posts reserved for Scheduled Castes candidates and four posts meant for Scheduled Tribes candidates could not be filled up for non availability of suitable candidates.

5. Certain unsuccessful candidates approached the Delhi High Court by filing Writ Petition Nos. 2688/2008, 2913/2008 and 3932/2008 on the ground that 13 vacancies came into existence between 29.2.2008 and 23.5.2008 i.e. during the pendency of the selection process which could have also been filled up from the said select list in view of the judgment of this Court in **Malik Mazhar Sultan & Anr**. v. **U.P. Public Service Commission & Ors**. (2007) 2 SCALE 159. The High Court disposed of all the petitions vide its judgment and order dated 3.10.2008 taking a view that only three vacancies came into existence subsequent to the date of Advertisement which could have been filled up from the said list. Out of the

said three vacancies, two could be offered to General Category candidates and one to the Scheduled Caste candidate and issued direction to appoint two more candidates whose names appeared at Serial Nos.14 and 15 in General Category Merit List. Hence, these appeals are for seeking directions to the respondents for offering appointment to the appellants also.

6. Shri Ranjit Kumar, learned senior counsel appearing for the appellants has submitted that the judgment in **Malik Mazhar Sultan's** case (supra) was delivered by this Court on 4.1.2007. A large number of directions had been issued in the said case and it also formulated the calendar for conducting the examinations for filling up the vacancies in the Judicial Service. It also provided that while determining the number of vacancies, the concerned Authority would also consider alongwith the existing vacancies, as what would be the anticipated vacancies that may arise within one year due to retirement, due to elevation to the High Court, death or otherwise, say 10% of the number of posts; and to take note of the vacancies arising out of deputation of Judicial Officers to other departments. It also provided that the select list so prepared shall be valid till new select list is published. The examination is to be conducted every year. The High Courts were directed to give strict adherence to the aforesaid schedule fixed by this Court. So far as the Delhi High Court was concerned, it was provided

that the High Court would amend its calendar accordingly. In view of the above, it has been submitted that while making the advertisement, the Delhi High Court had not taken note of the anticipated vacancies which could be available during the next year. As per the direction of this Court, as 13 more vacancies came into existence, those vacancies must be filled up from the select list so prepared. As the appellants are in the select list they should be offered appointments.

7. On the contrary, Shri A. Mariarputham, learned senior counsel appearing for the respondents has vehemently opposed the appeals contending that the law does not permit filling up the vacancies over and above the number of vacancies advertised. Thirteen vacancies of the General Category were advertised; the same had been filled up according to merit, therefore, selection process in that respect stood exhausted. The waiting list does not survive. The appellants had not challenged the advertisement in spite of the fact that the judgment in **Malik Mazhar Sultan's** case (supra) was delivered on 4.1.2007 and vacancies were advertised on 19.5.2007. The appellants were not aggrieved for not offering the appointment to them, as they did not even approach the High Court for any relief. The Special Leave Petitions were filed at much belated stage on 24.10.2008, though the result had been declared on 3.1.2008, and

appointments had been made on 3.4.2008. The directions of the Court could not supersede the statutory rules as there was a direction to fill up the vacancies as per the existing statutory rules. Appointments had been made according to law. Thus, the appeals have no merit and are liable to be dismissed.

8. We have considered the rival submissions made by learned counsel for the parties and perused the record.

9. It is a settled legal proposition that vacancies cannot be filled up over and above the number of vacancies advertised as "the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution", of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of

vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. (Vide **Union of India & Ors.** v. **Ishwar Singh Khatri & Ors**. (1992) Supp 3 SCC 84; **Gujarat State Deputy Executive Engineers' Association** v. **State of Gujarat & Ors.** (1994) Supp 2 SCC 591; **State of Bihar & Ors**. v. **The Secretariat Assistant S.E. Union 1986 & Ors** AIR 1994 SC 736; **Prem Singh & Ors**. v. **Haryana State Electricity Board & Ors**. (1996) 4 SCC 319; and **Ashok Kumar & Ors.** v. **Chairman, Banking Service Recruitment Board & Ors**. AIR 1996 SC 976).

10. In **Surinder Singh & Ors**. v. **State of Punjab & Ors.** AIR 1998 SC 18, this Court held as under:

> *"A waiting list prepared in an examination conducted by the Commission does not furnish a source of recruitment. It is operative only for the contingency that if any of the selected candidates does not join then the person from the waiting list may be pushed up and be appointed in the vacancy so caused or if there* ***is some extreme exigency the Government may as a matter of policy decision pick up persons in order of merit from the waiting list. But the view taken by the High Court that since the vacancies have not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed does not appear to be sound****. This practice, may result in depriving those candidates who become eligible for competing for the vacancies available in future. If the waiting list in one examination was to operate as an infinite stock for appointment, there is a danger that the State Government may resort to the device of not holding an examination for years*

together and pick up candidates from the waiting list as and when required. The constitutional discipline requires that this Court should not permit such improper exercise of power which may result in creating a vested interest and perpetrate waiting list for the candidates of one examination at the cost of entire set of fresh candidates either from the open or even from service…..Exercise of such power has to be tested on the touch-stone of reasonableness….It is ***not a matter of course that the authority can fill up more posts than advertised****."*

(Emphasis added)

11. Similar view has been re-iterated in **Madan Lal** v. **State of J & K & Ors.** AIR 1995 SC 1088; **Kamlesh Kumar Sharma** v. **Yogesh Kumar Gupta & Ors**. AIR 1998 SC 1021; **Sri Kant Tripathi** v. **State of U.P. & Ors.** (2001) 10 SCC 237; **State of J & K** v. **Sanjeev Kumar & Ors**. (2005) 4 SCC 148; **State of U.P.** v. **Raj Kumar Sharma & Ors.** (2006) 3 SCC 330; and **Ram Avtar Patwari & Ors.** v. **State of Haryana & Ors.** AIR 2007 SC 3242).

12. In **State of Punjab** v. **Raghbir Chand Sharma & Ors.** AIR 2001 SC 2900, this Court examined the case where only one post was advertised and the candidate whose name appeared at Serial No. 1 in the select list joined the post, but subsequently resigned. The Court rejected the contention that post can be filled up offering the appointment to the next candidate in the select list observing as under:–

"With the appointment of the first candidate for the only post in respect of which the consideration came to be made and select list prepared, the panel ceased to exist and has outlived its utility and at any rate, no one else in the panel can legitimately contend that he should have been offered appointment either in the vacancy arising on account of the subsequent resignation of the person appointed from the panel or any other vacancies arising subsequently."

13. In **Mukul Saikia & Ors**. v. **State of Assam & Ors.** AIR 2009 SC 747, this Court dealt with a similar issue and held that "if the requisition and advertisement was only for 27 posts, the State cannot appoint more than the number of posts advertised". The Select List "got exhausted when all the 27 posts were filled". Thereafter, the candidates below the 27 appointed candidates have no right to claim appointment to any vacancy in regard to which selection was not held. The "currency of Select List had expired as soon as the number of posts advertised are filled up, therefore, the appointments beyond the number of posts advertised would amount to filling up future vacancies" and said course is impermissible in law.

14. In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, process of selection comes to an end.

Waiting list etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service any more.

15. In the instant case, as 13 vacancies of the General Category had been advertised and filled up, the selection process so far as the General Category candidates is concerned, stood exhausted and the unexhausted select list is meant only to be consigned to record room.

16. So far as the submission made by Shri Ranjit Kumar that directions issued by this Court in **Malik Mazhar Sultan** (supra) had to be given effect to is concerned, the same requires consideration elaborately.

17. In **All India Judges' Association & Ors.** v. **Union of India & Ors.** AIR 1993 SC 2493, several directions had been issued by this Court in respect of the service conditions of the Judicial Officers. In view thereof, a notification dated 21st March, 1996 was issued appointing Justice K.J. Shetty Commission to consider about their service conditions.

18. In **All India Judges' Association & Ors**. v. **Union of India & Ors.** AIR 2002 SC 1752, this Court considered various aspects of Justice Shetty Commission Report and approved the same. However, the question arose as to whether the recommendations so accepted by this Court could be implemented as such or was it required to be incorporated in the statutory rules governing the service conditions of the Judicial Officers or alteration of the rules applicable to them? This Court held as under:

> *"We are aware that it will become necessary for service and other rules to be amended so as to implement this judgment...."*

19. In **Syed T.A. Naqshbandi & Ors.** v. **State of J & K & Ors.** (2003) 9 SCC 592, this Court reconsidered the same issue while examining the appointments to the post of District & Sessions Judges (Selection Grade) in the State of Jammu & Kashmir and relying upon its earlier judgment in **All India Judges' Association** (supra) held as under:

> ***"Reliance placed upon the recommendations of Justice Jagannatha Shetty Commission or the decision reported in All India Judges' Assn. v. Union of India or even the resolution of the Full Court of the High Court dated 27-4-2002 is not only inappropriate but a misplaced one and the grievances espoused based on this assumption deserve a mere mention only to be rejected. The conditions of service of members of any service for that matter are governed by statutory rules and orders, lawfully made in the absence of rules to cover the area which has not been specifically covered by such rules, and so long as they are not replaced or amended in the manner known to law, it would be futile for anyone to claim for those existing rules/orders being ignored***

> ***yielding place to certain policy decisions taken even to alter, amend or modify them***. *Alive to this indisputable position of law only, this Court observed at SCC p. 273, para 38, that "we are aware that it will become necessary for service and other rules to be amended so as to implement this judgment". Consequently, the High Court could not be found at fault for considering the matters in question in the light of the Jammu and Kashmir Higher Judicial Service Rules, 1983 and the Jammu and Kashmir District and Sessions Judges (Selection Grade Post) Rules, 1968 as well as the criteria formulated by the High Court. Equally, the guidelines laid down by the High Court for the purpose of adjudging the efficiency, merit and integrity of the respective candidates cannot be said to be either arbitrary or irrational or illegal in any manner to warrant the interference of this Court with the same. Even de hors any provision of law specifically enabling the High Courts with such powers in view of Article 235 of the Constitution of India, unless the exercise of power in this regard is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justiciable issue before courts. The grievance of the petitioners, in this regard, has no merit of acceptance".*
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> *(Emphasis added)*

20. In **Malik Mazhar Sultan's** case (supra), this Court made it clear that appointments in Judicial Service have to be made as per the existing statutory rules. However, direction was issued to amend the rules for future selections. This Court considered the correspondences between various authorities of the States and also the decision taken in the conference of the Chief Ministers and Chief Justices held on 11.3.2006, and observed as under:

> *"... Before we issue general directions and the time schedule to be adhered to for filling vacancies that may arise in*

subordinate courts and district courts, ***it is necessary to note that selections are required to be conducted by the concerned authorities as per the existing Judicial Service Rules in the respective States****/Union Territories…… As already indicated, the* ***selection is to be conducted*** *by authorities empowered to do so* ***as per the existing Rules.*** *… In view of what we have already noted about* ***the appointments to be made in accordance with the respective Judicial Services Rules in the States****, the apprehension of interference seems to be wholly misplaced….” (Emphasis added).*

21. Therefore, it is clear that this Court clarified that selection was to be made as per the existing Rules and direction was issued for amending the existing laws to adopt the recommendations of Justice Shetty Commission as approved by this Court for the future.

22. So far as the judgment of this Court in **Hemani Malhotra** v. **High Court of Delhi & Ors.** AIR 2008 SC 2103 is concerned, the facts are quite distinguishable. The Delhi High Court did not frame any statutory rule providing for cut-off marks in interview for assessing the suitability for selection. After the selection process had been initiated, such a resolution was adopted. Therefore, the basic issue for consideration before this Court had been as to whether it was permissible for the High Court to change the selection criteria at the midst of the selection process. The Court placing reliance upon its earlier judgments held that once the selection process starts,

it is not permissible for the competent authority to change the selection criteria and in that view observation was made that a fresh merit list is to be prepared ignoring the said resolution of the High Court taking cut-off marks in interview. Undoubtedly, the Court had taken note of Justice Shetty Commission Report in this regard and held that such a criteria could not have been provided. In absence of any statutory rule governing a particular issue, directions issued by this Court would prevail.

23. Therefore, it is evident from the aforesaid judgment that in spite of acceptance of the recommendations made by Justice Shetty Commission, this Court insisted that the existing law/statutory rules in making the appointment of Judicial Officers be amended accordingly. In **Syed T.A.Naqshbandi** (supra), this Court repealed the contention which is being advanced by the learned counsel for the petitioners therein and the Court in crystal clear words held that appointments have to be made giving strict adherence to the existing statutory provisions and not as per the recommendations made by Justice Shetty Commission. Of course, in absence of statutory rule to deal with a particular issue, the High Courts are bound to give effect to the directions issued by this Court.

24. The appointments had to be made in view of the provisions of the Delhi Higher Judicial Service Rules, 1970. The said rules provide for advertisement of the vacancies after being determined. The rules further provide for implementation of reservation policies in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes. As the reservation policy is to be implemented, a number of vacancies to be filled up is to be determined, otherwise it would not be possible to implement the reservation policy at all. Thus, in view of the above, the question of taking into consideration the anticipated vacancies, as per the judgment in **Malik Mazhar Sultan** (supra), which had not been determined in view of the existing statutory rules could not arise.

25. In view of above, we do not find any force in the submissions that the High Court could have filled vacancies over and above the vacancies advertised on 19.5.2007, as per the directions issued by this Court in **Malik Mazhar Sultan's case** (supra). More so, no explanation could be furnished by Shri Ranjit Kumar, learned senior counsel for the appellants as to why the appellants could not challenge the advertisement itself, if it was not in conformity with the directions issued by this court in the said case.

26. It has further been submitted on behalf of the appellants that the Delhi High Court vide its judgment and order dated 3.10.2008 had issued directions to offer appointment to two persons implementing the said judgment in **Malik Mazhar Sultan's case** (supra) whose names appeared in select list at SI. Nos. 14 and 15, and, as the High Court had implemented the said directions, the appellants could not be treated with such hostile discrimination. Undoubtedly, the directions had been issued to fill up two vacancies over and above the vacancies notified. However, that part of the judgment is not under challenge before us. In such a fact situation, it is neither desirable nor permissible in law to make any comment on that. A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed. The vacancies have to be filled up as per the statutory rules and in conformity with the constitutional mandate. In the instant case, once 13 notified vacancies were filled up, the selection process came to an end, thus there could be no scope of any further appointment.

27. In view of the above, we do not find any force in these appeals which are accordingly dismissed.

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CJI.

…….J.
(DEEPAK VERMA)

……..J.
(Dr. B.S. CHAUHAN)

New Delhi,
February 1, 2010.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION(C) NO. 28488 OF 2008

Navin Kumar Jha … Petitioner

Vs.

Lt. Governor & Ors. … Respondents

With
SLP(C) No. 29248 of 2008

JUDGMENT

Dr. B.S. CHAUHAN, J.

In view of our judgment pronounced today in CA Nos…….. of 2010 @ SLP(C) Nos.…… @CC Nos. 14852-14854 of 2008 (Rakhi Ray & Ors. vs. High Court of Delhi & Ors.), these Special Leave Petitions are dismissed.

..……CJI.

…….. J.
(DEEPAK VERMA)

. ..……..... J.
(Dr. B.S. CHAUHAN)

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