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Citation analysis
Civil section
Recruitment : there can't be appointments over and above vacancies declared in advertisement by including vacancies arising from the date of approval of select list and expiry of one year
Supreme Court of India
The High Court Of Kerala vs Reshma A. And Ors.

Civil Appeal Nos. 3974-3975 of 2020

Special Leave Petition (Civil) Nos. 11798-11799 of 2020

Facts as summarized by the High Court

A judgment of a Division Bench of the High Court of Kerala dated 26 August 20201 forms the subject of the appeal. The High Court has affirmed a judgment of its Single Judge2 by holding that appointments to the post of Munsiff-Magistrate in the judicial service of the state can be beyond the number of probable number of vacancies advertised in the notification inviting applications. The High Court held, on Writ Appeal 994/2020 and 998/2020 (High Court of Kerala) Writ Petition (Civil) 10007/2020 and 10361/2020 (High Court of Kerala) a literal reading of Rule 7(2) of the Kerala Judicial Service Rules, 19913(as amended in 2019), that vacancies which arise within a year of the approval of the select list by the Governor should be filled up from amongst candidates on the list even though this exceeds the number of probable vacancies which were notified, unless a fresh list is notified within a year. The consequence of the decision is that vacancies attributable to the next selection year – 2020 – have to be filled up from the select list drawn for the previous selection year, 2019.

2 A notification was issued by the High Court4 on 1 February 2019 inviting applications for appointment to the posts of Munsiff-Magistrate in the Kerala Judicial Service, against regular vacancies and against a carry-forward called 'No Candidates Available (NCA)'. Thirty-seven "probable" vacancies were notified including one vacancy reserved for persons with disabilities, for appointment by direct recruitment and recruitment by transfer. Eight vacancies were notified under the NCA category. The notification is reproduced below:

"Kerala Rules 1991" "Appellant"

3 A preliminary examination was held on 26 March 2019 and the result was declared on 19 July 2019. The main examination was held on 31 August 2019 and 1 September 2019 and the result was declared on 21 December 2019. Interviews were conducted between 8 and 25 January 2020 and the merit list was published on 20 February 2020. After the competitive examination, a list of candidates qualified for selection was prepared and was published on 20 February 2020. The merit list prepared by the appellant was approved by the Governor and was notified by the Government of Kerala through a gazette notification dated 07 May 2020. By way of this notification, 32 candidates were appointed as Munsiff-Magistrate trainees by direct recruitment for the year 2019 against regular vacancies and 5 candidates were subsequently appointed against NCA. All the selected candidates are undergoing training.

4 Two petitions were filed under Article 226 of the Constitution before the High Court, Writ Petition No. 10007 of 2020 and Writ Petition No. 10361 of 2020 in May 2020, claiming that as on 07 May 2020 and thereafter, several vacancies had arisen for the post of Munsiff-Magistrate, which were not specified in the notification inviting applications. The respondents, who were the original petitioners, claimed that in accordance with Rule 7(2) as amended with effect from 14 January 2019, all vacancies which arise for a period of one year after the approval of the merit list by the Governor, are to be filled from the approved merit list. The submission was that appointments of Munsiff-Magistrates must not be limited to thirty-two vacancies and must take into account all other vacancies that have arisen or which may arise till May 2021, that is, within one year from the date on which the merit list dated 7 May 2020 was notified.

5 Opposing these submissions, the High Court of Kerala, the appellant herein, contended that appointment to vacancies in the judicial service of the state is regulated by the Kerala Rules, 1991 and by the directions and timelines fixed by this Court under Article 142 of the Constitution in Malik Mazhar Sultan (3) v. Uttar Pradesh Public Service Commission5 ("Malik Mazhar Sultan (3)"). Relying on Malik Mazhar Sultan (3), the appellant argued that the notification inviting applications is issued for only those vacancies that are available till 31 December of the year in which the notification is issued and only these notified vacancies can be filled up by the recruitment process of a given year.

6 During the pendency of the petitions, a fresh notification dated 30 June 2020 was issued by the appellant inviting applications to 47 probable regular posts of Munsiff-Magistrate. A corrigendum dated 30 July 2020 was issued deleting the term 'probable' from the number of regular vacancies notified. 7 The Single Judge of the High Court, by a judgment and order dated 9 July 2020, held that Rule 7(2) provides that vacancies existing and arising within one year from the date of approval of the merit list by the Governor are to be filled up from the select list, unless a fresh list comes into force before the lapse of a year. The Single Judge held that since a special rule governs the selection and (2008) 17 SCC 703 PART A appointment of candidates to a post, the appellant- as the High Court of Kerala on its administrative side, could not deny appointment on the ground that the recruitment would not fall within the timelines prescribed in Malik Mazhar Sultan (3). Denial of appointment to the additional vacancies would, in the view of the Single Judge, violate Articles 14 and 16 of the Constitution. The Single Judge further held that in case the appointments in accordance with the Kerala Rules, 1991 are not in consonance with the directions of this Court, the appellant would have to seek permission or furnish an explanation before this Court. Rejecting the contention of the appellant that no vacancy in excess of the thirty-seven specified in the notification can be filled up, the Single Judge held that only a probable number of vacancies was specified in the notification. The writ petitions were allowed and the appellant was directed to forward an additional list of candidates from the merit list dated 20 February 2020 to the Governor for approval and appointment to the posts of Munsiff-Magistrate.

8 This judgment and order of the Single Judge was affirmed by the Division Bench in appeal. The Division Bench held that amended Rule 7(2) provides that the approved list is valid for the notified vacancies and the vacancies arising within one year from the date of approval by the Governor or till a fresh list comes into force. Consequently, the merit list approved on 7 May 2020 would be valid for vacancies till 6 May 2021 or till a fresh list comes into force, whichever is earlier. The Division Bench further held that the operation of the Kerala Rules, 1991 for selection and appointment was not in contradiction with the guidelines laid down in Malik Mazhar Sultan (3) as this Court had noticed that selections were to be made according to the existing judicial service rules in the States/Union Territories. According to the Division Bench, the intent of Malik Mazhar Sultan (3) was not to interfere with statutory rules, but only to lay down guidelines for expeditious filling up of judicial vacancies. The Division Bench held that the term 'probable' vacancies in the notification inviting applications indicated that there was a possibility of variance between the actual and advertised vacancies and the advertised vacancies could be reduced or enhanced. Thus, vacancies in excess of those notified could be filled up.

Issues Considered by the Apex Court

(i) Whether Rule 7 of the Kerala Rules, 1991 is contrary to the directions of this Court in Malik Mazhar Sultan (3);

(ii) Whether the respondents and similarly placed candidates who find place in the merit list approved by the Governor can be appointed to vacancies arising within one year from the date of approval of the merit list, in excess of those specified in the notification.

Cases referred

In **Malik Mazhar Sultan** (), this Court directed that after completion of the recruitment process, appointment letters for vacant posts are to be issued on 1 December of every recruitment year and the last date of joining shall be 2 January of the following year. Thus, for every recruitment year the vacancies to be considered are as on 1 December to enable the appointees to join on 2 January of the following year; iv The direction contained in the order of this Court dated 4 January 2007 in Malik Mazhar Sultan (3), which provided that 10% of the posts shall be notified for vacancies that may arise due to elevation, death or otherwise, was superseded by this Court in a subsequent order dated 24 March 2009. In the subsequent order, this Court provided that the High Courts shall notify the existing number of vacancies and anticipated vacancies for the next one year. Thus, the vacancies notified for any selection year are the vacancies existing on 15 January of that year plus anticipated vacancies for that year and a few vacancies which may arise due to death, resignation, promotion or otherwise;

The recognition in Malik Mazhar Sultan (3) of the legal position that selections have to take place in accordance with existing Judicial Service Rules in the States, (2008) 17 SCC 703, at pages 75-76, paras 5-6 "The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."(para 34) Rakhi Ray v. High Court of Delhi13 ("Rakhi Ray") involved a situation where the High Court had issued an advertisement for filling up 20 vacancies in the cadre of District Judge of which 13 were to be drawn from the general category, 3 from the Scheduled Castes and 4 from the Scheduled Tribes. All the 13 vacancies in the general category were filled up according to the merit list and the appellants who ranked below the selected candidates were not appointed. Some of the unsuccessful candidates moved the Delhi High Court with the submission that the vacancies which arose during the pendency of the selection process could also have been filled up from the select list in view of the decision in Malik Mazhar Sultan (3). This Court observed, following its earlier decisions in All India Judges' Association and Malik Mazhar Sultan (3) that "selection was to be made as per the existing Rules"14 and that "appointments have to be made giving strict adherence to the existing statutory provisions"15. Dr Justice BS Chauhan, speaking for the three judge Bench, held that appointments have to be made in view of the provisions of the Delhi Higher Judicial Service Rules 1970 which "provide for advertisement of the vacancies after being determined". Moreover, "the reservation (2010) 2 SCC 637 At page 644, para 18 at page 645, para 20 policy is to be implemented, the number of vacancies to be filled up has to be determined", failing which it would not be possible to implement the reservation policy at all. Consequently, the Court held that there was no question of taking into consideration the anticipated vacancies as per the judgment in Malik Mazhar Sultan (3). Since the anticipated vacancies have not been determined in view of the existing statutory rules, and they could not be taken into consideration:

"21. 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, the 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 (3) case [(2008) 17 SCC 703: (2007) 2 Scale 159] , which had not been determined in view of the existing statutory rules could not arise.

"12. 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, the 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 PART G list/waiting list becomes meaningless and cannot be pressed in service any more." (emphasis supplied) In Bedanga Talukdar v. Saifudaullah Khan19, another two judge Bench of this Court consisting of Justice Altamas Kabir and Justice SS Nijjar held:

"29…In our opinion, it is too well settled to need any further reiteration that all appointments to public office have to be made in conformity with Article 14 of the Constitution of India. In other words, there must be no arbitrariness resulting from any undue favour being shown to any candidate. Therefore, the selection process has to be conducted strictly in accordance with the stipulated selection procedure. Consequently, when a particular schedule is mentioned in an advertisement, the same has to be scrupulously maintained.

There cannot be any relaxation in the terms and conditions of the advertisement unless such a power is specifically reserved. Such a power could be reserved in the relevant statutory rules. Even if power of relaxation is provided in the rules, it must still be mentioned in the advertisement. In the absence of such power in the rules, it could still be provided in the advertisement. However, the power of relaxation, if exercised, has to be given due publicity. This would be necessary to ensure that those candidates who become eligible due to the relaxation, are afforded an equal opportunity to apply and compete. Relaxation of any condition in advertisement without due publication would be contrary to the mandate of equality contained in Articles 14 and 16 of the Constitution of India." 42 The decision in Prem Singh has been followed by a Bench of two learned judges in Anurag Kumar Singh v. State of Uttarakhand20. In that case, the Public Service Commission advertised 38 posts of Assistant Prosecuting Officers for a year (2011) 12 SCC 85 (2016) 9 SCC 426 of recruitment comprising of 12 months commencing from first day of July of the calendar year. The Public Service Commission however, held a selection for 74 posts, 37 additional posts having been created subsequently. The High Court set aside the action, holding that the selection pursuant to an advertisement can only be for clear vacancies and anticipated vacancies, but not for future vacancies. Justice L Nageswara Rao, speaking for the Bench of two learned judges of this Court, observed that the rules referred only to the recruitment year. The Bench observed that "only the number of vacancies that are advertised can be filled up" and if the advertisement gives liberty to the Government to vary the number of posts this power could not be exercised for filling up future vacancies. The Court held that during the pendency of the proceedings a large number of persons would have become eligible for selection to the posts which were advertised and their right to be considered for appointment was guaranteed by Articles 14 and 16 of the Constitution. In the view of the Court, there would be an infraction of such a right if the additional posts are not filled up by a fresh selection. Hence the Court held that the selection pursuant to the advertisement should be confined only to the posts that were advertised and the additional posts which were created after the expiry of the recruitment year would have to be filled up by the issuance of an advertisement afresh.

The next decision which needs to be referred to at this stage is Hirandra Kumar v. High Court of Judicature at Allahabad16 ("Hirandra Kumar"). Hirandra Kumar involved a situation under the rules governing the UP Judicial Service, where a minimum and maximum age limit could be relaxed in the case of SC/ST candidates. The age limit was prescribed with reference to the first day of January of the year following the year in which the notice inviting applications is published. Before this Court, the submission of the appellants was that based on the decision in Malik Mazhar Sultan (3), a candidate who applies for recruitment to the Higher Judicial Service may be granted age relaxation since the candidate has crossed the prescribed age limit between the last date of recruitment and the current. Rejecting this submission, the Court, speaking through one of us (Dr Justice DY Chandrachud) held:

"16. Under Rule 12, a minimum age criterion of 35 years and a maximum age limit of 45 years is stipulated which is relaxable by three years for Scheduled Caste and Scheduled Tribe candidates. The age limit is prescribed with reference to the first day of January of the year which follows the year in which the notice inviting applications is published.

In order to analyze the issue, it becomes necessary to advert to the line of precedent through which the constitutional principle has emerged. In Prem Singh v. Haryana State Electricity Board17, based on the advertisement dated 2 November 1991, the Board decided to fill up 62 vacant posts of Junior Engineer by direct recruitment, 15 posts were reserved for SC and ST candidates, 6 for Backward Classes and 9 for ex-servicemen. The Selection Committee selected 212 candidates and recommended the names. The Board, considering the latest vacancy position as on 11 February 1993, decided to fill up 147 posts. Two questions fell for determination by this Court:

(i) Whether it was open to the Board to prepare the list of 212 candidates and to appoint 137 out of that list when the number of posts advertised was only 62; and

(ii) Whether the appellant was justified in quashing the selection of all 212 candidates and appointments of 137 persons.

(1996) 4 SCC 319 After adverting to the precedent on the subject18, Justice GT Nanavati speaking for Bench of two judges held:

"25…the selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. If the requisition and advertisement are for a certain number of posts only the State cannot make more appointments than the number of posts advertised, even though it might have prepared a select list of more candidates. The State can deviate from the advertisement and make appointments on posts falling vacant thereafter in exceptional circumstances only or in an emergent situation and that too by taking a policy decision in that behalf. Even when filling up of more posts than advertised is challenged the court may not, while exercising its extraordinary jurisdiction, invalidate the excess appointments and may mould the relief in such a manner as to strike a just balance between the interest of the State and the interest of persons seeking public employment. What relief should be granted in such cases would depend upon the facts and circumstances of each case." (emphasis supplied) The Court held that since the selection process was initiated for 62 clear vacancies and, at that time anticipated vacancies were not taken into account, the Board was not justified in making more than 62 appointments. But the Board could have taken into account not only the actual vacancies but also vacancies which were likely to arise because of "retirement etc" by the time the selection process was completed.

A more recent decision in Rahul Dutta v. State of Bihar21 related to the post of Civil Judge (Junior Division). Rule 5(A)-(3) of the Bihar Civil Service (Judicial Branch) (Recruitment) Rules 1955 stipulated that:

"(3) Eligible candidates for the written examination shall be selected on the basis of the result of the Preliminary Test, to the extent of 10% of the total number of appeared candidates, rounded off to the nearest hundred; and all candidates obtaining equal marks as the last candidate's shall also qualify for the written examination;" The Rule provided that only 10 per cent of the total number of candidates who appeared at the preliminary test were to be called for the written examination rounded off to the nearest hundred. The Court held that this stipulation in Rule 5A was contrary to the decision in Malik Mazhar Sultan (3). Moreover, the determination of 10 per cent of the total number of candidates who had appeared in the preliminary examination for being called for the final written examination was arbitrary and unreasonable, particularly, in view of the ratio of 1:10 prescribed in Malik Mazhar Sultan (3). The restriction of candidates to 10 per cent of those who had appeared at the preliminary test was held to curtail the competitive field unreasonably.

Directions of the High Court

We direct the appellant to prepare a select list from the approved merit list including those vacancies which arise as on today and those anticipated till 06.05.2021 or any other date on which the appellant expects the next list to be published." In its conclusion, the High Court also observed:

"We dismiss the Writ Appeals, directing the High Court to forward a select list in accordance with the rules 14 to 17 of Part II of the KS&SSR, 1958 from the approved merit list."

Anomalies noticed by the Apex Court

Firstly, this line of interpretation requires the appointing authority to take into account vacancies which have arisen in the subsequent recruitment year 2020 in making appointments in pursuance of the selection for recruitment year 2019. This, as a matter of first principle, is impermissible. The determination of probable vacancies in terms of Rule 7(1) is a determination which is based on the vacancies which are projected during the course of that recruitment year, in this case 2019. This exercise cannot cover, consistent with the mandate of Art 14 and Art 16, future vacancies of a subsequent year of selection. Nor does Rule 7(1) bring vacancies of a future year within the computation of probable vacancies. 52

Secondly, adopting the interpretation which has been suggested on behalf of the respondents would lead to serious anomalies. As we have seen, a notification was issued by the appellant in the month of June 2020 for the 2020 recruitment. The consequence of accepting the arguments of the respondents would be that posts which have to be allocated for recruitment against the existing and anticipated vacancies for 2020 would have to be reduced by allocating them to recruitment year 2019. The appellant has expressly determined and notified the vacancies which have arisen for 2020. The respondents argued that though the original notification referred to a probable number of vacancies the corrigendum deleted the expression 'probable'. This, in our view, is not a matter of moment since the essence of the controversy lies in interpreting the provisions of the Rules as they stand. If the PART H respondents were right in their submission, this would require the appellant to progressively remove from the ambit of the vacancies which are notified for the subsequent recruitment year, the vacancies which are allocated to the previous year on the basis of a supposed interpretation of Rule 7(2). This would clearly be impermissible and bring uncertainty to the recruitment for subsequent years. It will cause serious prejudice to candidates who qualify in terms of eligibility during the recruitment process of 2020 by reducing the number of probable vacancies and adding them to the previous recruitment cycle.

The third anomaly which arises from the interpretation, which has been suggested by the respondents and which has been accepted by the High Court, was noticed by the High Court itself in the course of its judgment. If Rule 7(2) were to be given overriding importance without reading it in juxtaposition with the determination of the probable number of vacancies under Rule 7(1), the issue is until what period of time would vacancies arising after the date of approval by the Governor have to be factored into account. Some of the petitioners before the High Court, as indeed some of them in the written submissions before this Court, indicated that the number of vacancies as existing on the date of the approval of the Governor should form the basis of making appointments.

The plain consequence of the decision of the High Court would be that vacancies which have arisen during 2020 would be allocated to 2019. The High court rejected the said request. This could only be done if the vacancies for 2020 were anticipated to arise during 2019, which is not the case.

54 The fourth difficulty in accepting the line of approach of the High Court rests on constitutional principles. Undoubtedly, the validity of Rule 7(2) was not in PART H question before the High Court. Counsel for the respondents argued that it does not lie in the province of the appellant to raise a doubt about the validity of its own rules, more particularly Rule 7(2). It is necessary to note that Mr V Giri, learned Senior Counsel appearing on behalf of the appellant did not suggest or argue that Rule 7(2) should be held to be invalid. The submission of learned Senior Counsel is that the expression "probable" denotes an addition/deduction which has to be made due to the imponderables of service such as death, resignation and promotion. The submission of the appellant is that a literal interpretation of Rule 7(2), without reference to the constitutional requirement of not operating a select list beyond the notified vacancies, would render the Rule violative of Articles 14 and 16 and such an interpretation should be

avoided. In other words, his submission was that a constitutional interdict cannot be overcome in the manner it has been suggested by the respondents and a harmonious interpretation of the judicial service rules in the light of the directions in Malik Mazhar Sultan (3) should have been resorted to by the High Court. We are in agreement with this line of submissions, based as it is on the precedent of this Court. It is a settled principle of service jurisprudence that when vacancies are notified for conducting a selection for appointments to public posts, the number of appointments cannot exceed the vacancies which are notified. The answer to this submission, which has been proffered by the respondents is that under Rule 7(1) a probable number of vacancies is required to be notified and since an exact number is not notified, there is no constitutional bar in exceeding the 37 probable vacancies that were notified in 2019. The difficulty in accepting the submission is simply this: it attributes to the expression "probable number of PART H vacancies" a meaning which is inconsistent with basic principles of service jurisprudence, the requirement of observing the mandate of equality of opportunity in public employment under Articles 14 and 16 and is contrary to the ordinary meaning of the expression. Black's Law Dictionary22 defines the expression 'probable' as:

"Probable': likely to exist, be true, or happen" 'Probable number of vacancies', as we have seen, is based on computing the existing vacancies and the vacancies anticipated to occur during the year. It also accounts for the possibility of inclusion of some of the candidates that are in the wait-list. However, the expression 'probable' cannot be interpreted as a vague assessment of vacancies that isn't founded in reason and can be altered without a statutorily prescribed cause. To allow the concept of probable number of vacancies in Rule 7(1) to trench upon future vacancies which will arise in a succeeding year would lead to a serious constitutional infraction. Candidates who become eligible for applying for recruitment during a succeeding year of recruitment would have a real constitutional grievance that vacancies which have arisen during a subsequent year during which they have become eligible have been allocated to an earlier recruitment year. If the directions of the High Court are followed, this would seriously affect the fairness of the process which has been followed by glossing over the fact that vacancies which have arisen during 2020 will be allocated for candidates in the select list for the year 2019. Such a course of action would constitute a serious 11th Edition (Thomson Reuters West, 2019).

The definition of 'Probable' in the 4th edition, Revision 6 (1971) of the Black's Law Dictionary was: "Having the appearance of truth; having the character of probability; appearing to be founded in reason or experience…; having more evidence for than against; supported by evidence which inclines the mind to believe, but leaves some room for doubt; Apparently true yet possibly false." PART H infraction of Articles 14 and 16 and must be avoided. To reiterate, the submission of the appellant which we are inclined to accept is not that Rule 7(2) is invalid but that a harmonious interpretation of Rules 7(1) and (2) must be adopted that is consistent with the Article 142 directions in Malik Mazhar Sultan (3) to bring the rules in accord with the governing principles of constitutional jurisprudence in matters of public employment.

Fifthly, at this stage, we must also advert to another serious aspect which arises from the judgment of the High Court. The High Court noticed in the course of its analysis that the acceptance of the submission of the respondents would lead to the appellant, on its administrative side, having to carry out piece-meal training for candidates who are appointed to vacancies arising in the year after approval of the merit list. The approval of the Governor was received on 7 May 2020. If vacancies which arise between 7 May 2020 and 6 May 2021 are to be reckoned in making appointments for the 2019 process, the training of candidates who are appointed against the subsequent vacancies would take place piece-meal and in a sporadic manner after the initial batch of recruits has been sent on training. Upon receipt of the approval of the Governor, candidates to whom appointment orders were issued joined their training and are in fact in the midst of their training. The High Court without venturing a solution to this imbroglio came out with a suggestion in paragraph 29 of this judgment, which is extracted below:

"29. There could arise one problem insofar as the High Court having to carry out training, piece meal, of the recruits appointed to the vacancies arising in the one year after the PART H approval of the merit list. This could be solved by selecting for training even persons whose vacancies have not arisen, in

anticipation. When appointments are made in June 2020 in accordance with Rue 7(2) it could only be regularly made to vacancies that actually arose till that date. The High Court then would be faced with the problem of appointing fresh recruits in the enabling year to arising vacancies who also would have to be given training for one year which may put the training process into jeopardy. We only observe that the High Court on its administrative side in consultation with the Government could device a procedure through which training could be commenced even for successful candidates, finding a place in the merit list, who could be appointed to the anticipated vacancies, which vacancies definitely would arise by the time their training is completed. This can especially be managed since the validity of the list go beyond one year from the date of approval of the merit list and the training can commence only after the approval of the merit list. The selection of recruits to anticipated vacancies for undergoing training could also be made subject to the vacancy arising and the new list coming into force with continuance in training on a stipend till a regular appointment is made to the vacancy. We do not intent these observations to be in the nature of a direction and are only our thoughts, expressed aloud." The solution which the High Court has indicated is, as it clarified, not in the nature of a direction but "only our thoughts, expressed allowed". The solution suggested by the High Court is that candidates may be selected and sent for training even against vacancies which have not arisen, in anticipation of vacancies arising in future. The High Court observed that when appointments were made in June 2020, they could only be regularly made to vacancies that actually arose until that date. The High Court took notice of the fact that on its administrative side, appointment of fresh recruits to vacancies which would arise in the ensuing year would put the training process into jeopardy. However, it suggested that in consultation with the PART H government, a procedure could be devised by which training could be commenced for candidates against vacancies which have still not arisen and which would arise in the future. The High Court even suggested that the trainees appointed against possible future vacancies could be paid a stipend. The solution which has been suggested by the High Court is plainly unacceptable. Persons are sent on training on being appointed to the judicial service and there cannot be two categories of trainees, one of whom receives a stipend since the vacancies for which they have been selected are yet to arise. Moreover, there will be a serious discontent if not all the candidates who are sent on training in expectation of future vacancies can be accommodated in service. We have emphasized the above aspect, for the simple reason that the High Court was cognizant of the serious problems which would result in the administration if its decisions were to hold the field. The suggestion by the High Court that the administration must send on training, candidates for whom there are no vacancies in the service is contrary to law. In the event that some of the candidates who are sent on training cannot be absorbed at a future date for want of vacancies, it would lead to a serious dissatisfaction and be unfair to the candidates who were sent for training. This would also cause a burden on the exchequer requiring it to pay a stipend to persons who are yet to be recruited to the judicial service, there being no present vacancies to accommodate them.

Ratio

The constitutional principle which finds recognition in the precedents of this Court is that the process of selection in making appointments to public posts is subject to the guarantees of equality under Article 14 and of equality in matters of public employment under Article 16. The process of selection must comport with the principles of reasonableness. Where the authority which makes a selection advertises a specific number of posts, the process of selection cannot ordinarily exceed the number of posts which have been advertised. While notifying a process for appointment, the authority may take into consideration the actual and anticipated vacancies but not future vacancies. Anticipated vacancies are the vacancies which can be reasonably contemplated to arise due to the normal exigencies of service such as promotion, resignation or death. Hence, in notifying a given number of posts for appointment, the public authority may legitimately take into account the number of vacancies which exist on the date of the notification and vacancies which can reasonably be accepted to arise in the exigencies of the service. While the exact number of posts which may fall vacant due to circumstances such as promotion, resignation or death may be difficult to precisely determine the authority may make a reasonable assessment of the expected number of vacancies on these grounds. However, future

vacancies conceptually fall in a distinct class or category. Future vacancies which arise during a subsequent recruitment year cannot be treated as anticipated vacancies of a previous selection year. Vacancies which would arise outside the fold of the recruitment year would not fall within the ambit of anticipated vacancies. For it is only the vacancies, actual and anticipated which would fall within the course of the selection or recruitment year that can be notified when the selection process is initiated. These are constitutional principles to which statutory edicts are subordinate.

Candidates who have ranked lower in the 2019 selection and were unable to obtain appointments cannot appropriate the vacancies of a subsequent year to themselves. To allow such a claim would be an egregious legal and constitutional error. PART H 59 For the reasons which we have indicated,

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