

SYNOPSIS & LIST OF DATES

That the present Writ Petition under Article 32 of the Constitution of India is being filed by the Petitioner for enforcement of his fundamental rights by way of issuing an appropriate Writ, Order or Direction in the nature of Mandamus and/or Certiorari, or any other Writ, Order or Direction thereby quashing Rule 11 of the Madhya Pradesh Higher Judicial Services (Recruitment and Condition of Services) Rules, 2017 published on 13.03.2018, and/or for issuance of Writ of Mandamus commanding the respondents to amend/give retrospective effect to the Rules dated 13th March 2018 so as to prevent infringement of the fundamental rights of the petitioner and the certain class of persons to which the petitioner also belongs.

That the petitioner is aggrieved by the enactment of Madhya Pradesh Higher Judicial Services (Recruitment and Condition of Services) Rules, 2017 (hereinafter referred to as 'new rules' for sake of brevity) since it is blatantly in violation of the principles enshrined under Article 14, 16, 19 and 21 of the Constitution of India.

That this Hon'ble Court in "All India Judges Association and Ors. Vs. Union of India and Ors. (2002) 4 SCC 247" have held that due to dispute and discontentment in the Higher Judicial Services, there was a need for introduction of roster system. Hence, roster system was to be introduced latest by 31st March, 2003. Relevant extract of the judgment is reproduced as under-

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

quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in R.K. Sabharwal and Ors. V. State of Punjab. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in R.K. Sabharawal's case (supra) as early as possible. We hope that as a result thereof, there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the the higher judicial service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31st March, 2003.

We disapprove the recommendation of giving any weightage to the members of the subordinate judicial service in their promotion to the higher judicial service in determining seniority vis-a-vis direct recruits and the promotes. The roster system will ensure fair play to all while improving efficiency in the service."

Further, this Hon'ble Court in Para 39 of the 'All India Judges Association case' (supra) has held that any clarification required will be sought only from this court. The Proceedings, if any, for implementation of the directions given in this judgment shall be filed only in this Court and no other court shall entertain them.

It is respectfully submitted that the High Court of Madhya Pradesh was equally obligated and bound by the directions of this Hon'ble Court. Therefore, pursuant to the directions of this Hon'ble Court, the governor of Madhya Pradesh, in consultation of the High Court of Madhya Pradesh amended the Madhya Pradesh Higher Judicial Service Rules, 1994 by notification dated June 8, 2005 and caused substitution of Rule 5 i.e. method of appointment but roster system, which formed part of the binding directions of this Hon'ble Court, was not incorporated in the amendment.

That It is submitted that though this Hon'ble Court clearly directed incorporation of the 40 point roster system in the respective Rules, however no amendment was made to give effect to the obligatory directions of this Hon'ble Court by the Respondents.

That it is humbly submitted that after incorporation of quota principle in the rules as per direction of this Hon'ble Court, the Madhya Pradesh government and the High Court of Madhya Pradesh should have amended corresponding seniority rule in Madhya Pradesh Higher Judicial Service Rules, 1994 but by mistake or some other reason better known to them the respondents, Rule 11 remained untouched and no amendment in this rule was made incorporating the roster principles as per direction of this Hon'ble Court.

It is also submitted that in the year 2010 an affidavit on behalf of the State government of Madhya Pradesh/High Court was submitted before this Hon'ble Court assuring that they are going to amend the rules incorporating the roster principle: but no amendments were incorporated by the respondents. Petitioner and other made repeated representations, surprisingly such rule surface only after a gap of almost 15

years of the directions given by this Hon'ble Court in Judges Association case. It is therefore submitted that such arbitrary and unjustified delay in incorporation of the rule regarding roster has infringed the valuable rights of the petitioner as well as other persons who were appointed directly from the bar as District Judges.

That in the year 2008 law and legislature department published a tentative gradation list of all judicial officers under Madhya Pradesh High Court. Petitioner smelt that the gradation list was being prepared disregarding the directions of this Hon'ble Court in R.K. Sabharwal case (supra) and on the basis of date of order. The petitioner protested against his placement in the tentative gradation list and requested to determine the seniority as per directions of this Hon'ble Court applying the roster principle. His protest petition was kept pending. Not only the petitioner but other direct recruities and perhaps regular cadre candidates protested the seniority list in the light of directions of this Hon'ble Court but the matter was kept pending and tentative gradation list was published in the year 2014 and then after in 2016 and after this gradation list

with same infirmities got displayed on the official website of the Madhya Pradesh High Court.

That although the tentative gradation list was never finalized but promotion on the basis of this gradation list was being given, in spite of that petitioner was hopeful that his seniority would be decided as per roster rule and his chance to be elevated would remain alive. But to utter surprise of the petitioner in the year 2017 a new rule namely 'Madhya Pradesh Higher Judicial Service Rule (Recruitment and Conditions) promulgated repealing the earlier rule. This rule came into force from the date of publication i.e. 13.03.2018. In this new rule 100 point roster incorporated for deciding seniority of officers appointed from the three sources. The new seniority Rule 11 reads as under:-

Seniority -

- (1) The relative seniority of the members of service holding substantive post within their respective quota at the time of commencement of these rules shall be as it exists before the commencement of these rules.
- (2) After the commencement of these rule, the cadre posts in category (a) of sub-rule (1) of Rule 3 shall

be filled up by rotation based on the quota fixed in clauses (a), (b) and (c) of sub-rule (1) of Rule 5 in every recruitment year.

- (3) For the purpose of proper maintenance and determination of seniority of persons appointed through the aforesaid sources, a roster for filling of vacancies based on quota of vacancies reserved here-in-above, as given in Schedule-II shall be maintained for each recruitment year. This roster would operate on yearly basis in which applications for appointment were invited in the recruitment year.
- (4) Seniority of persons appointed under clause (a), (b) and (c) of sub-rule (1) of Rule 5 to the Service in category (a) of rule (1) of Rule 3 shall be determined in following manner:-
 - a. The Seniority inter se, of persons appointed by promotion under clause (a) of sub-rule (1) of Rule 5 shall be determined by their inter se seniority in the lower cadre;
 - b. The Seniority, of person promoted through limited competitive examination of Civil Judges (Senior

Division) under clause (b) of sub-rule (1) of Rule 5 shall be determined in accordance with the inter se Seniority in the lower cadre;

- c. The inter se seniority of Persons appointed to the Service by direct recruitment under clause (c) of sub-rule (1) of Rule 5 shall be fixed in the order of merit they are placed in the selection list, those recruited earlier shall rank senior to those recruited later;

(5) The Seniority of the members of the service promoted under clause (a) of sub-rule (1) of Rule 5 and under proviso to clause (c) of sub-rule (1) of Rule 5 of the HJS Rules, 1994. (amended vide L.D. No. F:17(E)40/88/21-8 (one) dated 13-08-2015) shall be as per the seniority in the lower cadre.

That on the basis of Rule 11 and schedule 1 it has been tried to show that roster principle as per direction of the Apex Court had been incorporated in the rule but it is pertinent to note that in reality vacancy based roster system has been developed where as in 'All India Judges Association case' (supra) this Hon'ble Court has approved 40-point cadre base

roster system not vacancy based roster system as incorporated in the new rule. On this count also the new rule is not legally sustainable and deserves to be declared ultra virus. It is also submitted that applying this roster system is not practically possible as well as no desired result could be achieved and very object of incorporation of roster system will fail.

It is submitted that after coming into force of the new rule the protest petition of the petitioner which was pending since last 12 years were rejected on the ground that petitioner is claiming seniority from the date when he was not in the service. It was also mentioned that 'Madhya Pradesh Higher Judicial Service (Recruitment and Condition of Service) Rules 2017' came into force w.e.f. 13-03-2018 which provides specific provisions for roster system in determining seniority of officers appointed to Higher Judicial Service and these rules are applicable from the date of their publication in the official gazette therefore no benefit can be given to the petitioner with regard to roster system as it could only operate prospectively.

It is respectfully submitted that the Hon'ble High Court of Judicature at Allahabad has amended the Uttar Pradesh Higher Judicial Service Rules, 1975 and have implemented the directions of this Hon'ble Court passed in the case of 'All India Judges Association (supra)' and the same has been approved by this Hon'ble Court. The relevant extract of 'The Uttar Pradesh Higher Judicial Service Rules, 1975' is produced herein below as under:-

Rule-22:- Appointment -

"(1) Subject to the provisions of sub-rule (2), the Governor shall, on receipt from the Court of the list mentioned in Rules 18, 20 and 21 make appointments to the service on the occurrence of substantive vacancies by taking candidates from the list in the order in which they stand in the respective lists in accordance with the roster.

(2) Appointments to the service shall be made on the basis of roster system, the first post shall be filled from the list of promotees, the second post shall be filled up by direct recruit, the third and fourth posts shall be filled up from the list of promotees and fifth post shall be filled up by the candidate selected strictly on merit through LDCE (and so on) according to the roster as prescribed in Appendix '1', which will cease to become operative on the date the respective three streams achieve their full

allotted vacancies. Thereafter on account of arising any vacancy in quota of respective stream the same could be filled-up from the same stream of which vacancy arises;

Provided that while following the roster at no point of time the respective percentage of posts filled from direct recruit and LDCE shall exceed 25% and 10% of the strength of service. In case the percentage is exceeding the allotted quota, in such eventuality the promotee shall occupy the vacancy which would have gone to the direct recruit or LDCE, had not the same been in excess of 25% and 10% respectively of either of the two.

(3) In the eventuality of delay in making appointment under sub-rule(1) and further if exigency of service so requires, the Governor may, in consultation with the Court, make short term appointment as a stop-gap arrangement from amongst the promotees, in the vacancy in these services till the appointments are made under sub-rules (1) and (2):

Provided that the period of service spent by the promotees on a short term appointment to the service as a stop-gap arrangement shall not be computed under Rule 26."

Rule-26:- Seniority

"(1) Seniority of the officers appointed in the Service shall be determined in accordance with the order of appointment in the Service under sub rules (1) and (2) of Rule 22 of these rules.

(2) Seniority of members of the service who have been confirmed in the service prior to the commencement of these rules shall be as has been determined by the order of the Government as amended from time to time."

That this Hon'ble Court in 'All India Judges Association Case' Hon'ble Governor was obliged to give it a retrospective effect from 21 March, 2002. Infact in the similar situation the State govt. of U.P. made rule for Higher Judicial services in 2007 but gave it a retrospective effect from 21 March, 2002 and this Hon'ble Court in 'V.K. Shrivastava & Ors Versus State of Uttar Pradesh & Anr (Writ Petition Civil No. 206 of 2007) affirmed this new rule having a retrospective effect.

That in 'Hon'ble Punjab & Haryana High Court at Chandigarh Vs. State of Punjab & Ors., Civil Appeal Nos. 5518-5523 of 2017' this Hon'ble Court has held that;

"It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the

recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for deter candidate(s) and cannot be blamed for the administrative delay, in completing the process of selection.

In the present case, process for all the three streams was completed in the year 2008 and all the officers of their streams had joined in the same year. The submission that quota rota rule was broken or seniority will be affected because of joining of one category of officers earlier cannot be accepted. It is also relevant to notice that purpose of statutory rules and laying down a procedure for recruitment was to achieve the certainty. Officers belonging to different streams have to be confident that they shall be recruited under their quota and get seniority as per their quota and roster. In event, the seniority is to be fixed with date of joining of particular stream, it will lead to uncertainty and making seniority depending on administrative authorities, which is neither in the interest of service nor serve the cause of justice. We, thus, conclude that roster is fully applicable for determination of seniority. Officers of different streams selected in a particular year even though they were allowed to join the post on different dates shall not affect their inter se seniority, which is to be decided on the basis of roster.”

The petitioner being aggrieved by the belated rejection of his representations by which he never claimed seniority from back date, but has simply claimed seniority on the basis of roster as per direction of the Supreme Court. The petitioner also feels aggrieved the effective date of new rule which is in utter violation of the direction of the apex court

LIST OF DATES

- 2002 This Hon'ble Court in "All India Judges Association and Ors. V/s. Union of India and Ors. (2002) 4 SCC 247" has issued directions due to dispute and discontentment in the Higher Judicial Services Rules for introducing roster system in the Higher Judicial services.
- 08.06.2005 That Madhya Pradesh High Court failed to comply the directions as given by this Hon'ble Court in "All India Judges Association and Ors. V/s. Union of India and Ors (2002) 4 SCC 247", and incorporated only the quota system in the Higher Judicial Services Rules, 2005, but did not incorporate / amend the roster system.

10.05.2008 The Hon'ble High of Madhya Pradesh passed a resolution for settlement of roster of candidates and the same was not incorporated in the Rules, 2005.

2010 The respondents filed an affidavit before this Hon'ble Court assuring that they are going to amend the rules incorporating the roster principle: but no amendments were incorporated by the respondents as per the directions of this Hon'ble Court.

2008-2018 The Hon'ble High Court has displayed the gradation list of all Judicial Officers of Madhya Pradesh Higher Judicial Services.

2008 The Petitioner smelt that the gradation list was being prepared disregarding the directions of this Hon'ble Court in 'R.K. sabriwal case' and on the basis of date of order. The petitioner protested against his placement in the tentative gradation list and requested to determine the

seniority as per directions of this Hon'ble Court passed in 'R. K. Sabharwal' (supra) applying the roster principle.

13-03-2018 The respondents amended the Madhya Pradesh Higher Judicial Service (Recruitment and Condition of Service) Rules, 2017 which provides specific provisions for roster system in determining seniority of officers appointed to Higher Judicial Service and these rules are applicable from the date of their publication in the official gazette, therefore petitioner is aggrieved by the said Rule as no benefit is given to the petitioner with regard to roster system as it could only operate prospectively.

_____ Hence, the present Writ Petition.

IN THE SUPREME COURT OF INDIA

EXTRA ORDINARY ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) No. _____ of 2020

IN THE MATTER OF:-

Axay Kumar Dwivedi

Presently Posted as
Chairman, State Transport Appellate Tribunal,
Moti Mahal, Gwalior, Madhya Pradesh-474007...Petitioner

Versus

1. High Court of Madhya Pradesh,
Principal Bench at Jabalpur,
Madhya Pradesh- 482001
Through Registrar General ...Respondent No.1

2. State of Madhya Pradesh
Law and Legislative Affairs
First Floor, Vindhyachal Bhavan,
Bhopal – 462004
Through Principal Secretary (Legal) ...Respondent No.2

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA FOR ENFORCEMENT OF THE**

**FUNDAMENTAL RIGHTS OF THE PETITIONER BY WAY OF
ISSUANCE OF AN APPROPRIATE WRIT, ORDER OR
DIRECTION IN THE NATURE OF MANDAMUS AND/OR
CERTIORARI, OR ANY OTHER WRIT, ORDER OR
DIRECTION**

To,
The Hon'ble Chief Justice of India
and other Lordship's Companion Justices
of the Hon'ble Supreme Court of India

The Humble petition of the
Petitioner above named

MOST RESPECTFULLY SHOWETH:

1. That the present Writ Petition under Article 32 of the Constitution of India is being filed by the Petitioner for enforcement of his fundamental rights by way of issuing an appropriate Writ, Order or Direction in the nature of Mandamus and/or Certiorari, or any other Writ, Order or Direction thereby quashing Rule 11 of the Madhya Pradesh Higher Judicial Services (Recruitment and Condition of Services) Rules, 2017 published on 13.03.2018, and/or for issuance of Writ of Mandamus

commanding the respondents to amend/give retrospective effect to the Rules dated 13th March 2018 so as to prevent infringement of the fundamental rights of the petitioner and the certain class of persons to which the petitioner also belongs. True copy of the Madhya Pradesh Higher Judicial Services (Recruitment and Condition of Services) Rules, 2017 published on 13.03.2018 is annexed herewith as **ANNEXURE P-1** (Pages)

2. That, the petitioner is an Additional District Judge recruited through Higher Judicial Services Examination conducted in 2007, and currently posted as Chairman, State Transport Appellate Tribunal, Moti Mahal, Gwalior, Madhya Pradesh. The details of the petitioner are given herein below:-

Name of the Petitioner	Mr. Axay Kumar Dwivedi
Father's Name:	
Postal Address:	
Mobile No.	
Email Address:	

Occupation:	Judicial Officer
Aadhar Card No.	
Annual Income:	
PAN Number:	

3. The Petitioner has not filed any other Writ Petition either before this Hon'ble Court or before any other Hon'ble High Court seeking same or similar directions / relief as prayed for in this petition.
4. The cause of action for filing the present Writ Petition arose when the respondents amended and published the Madhya Pradesh Higher Judicial Services Examination (Recruitment and Condition of Services) Rules, 2017 on 13.03.2018 and when the respondents ignored the representation of the petitioner filed pursuant to the Judgment of this Hon'ble Court passed in 'R.K. Sabharwal & Ors. Vs. State of Punjab &Ors. And rejected the representation.

5. BRIEF FACTS OF THE CASE

- I. That, the petitioner is Additional District & Sessions Judge recruited through 'Madhya Pradesh Higher Judicial

Service Examination conducted in 2007'. The petitioner is aggrieved by the enactment of 'Madhya Pradesh Higher Judicial Services (Recruitment and Condition of Services) Rules, 2017' (hereinafter referred to as 'new rules' for sake of brevity) since it is blatantly in violation of the principles enshrined under Article 14, 16, 19 and 21 of the Constitution of India.

II. That, in the year 1999, Justice Shetty Commission (hereinafter referred to as "Shetty Commission") submitted its report, which were considered and adopted by this court in "All India Judges Association and Ors. V/s. Union of India and Ors. (2002) 4 SCC 247" and held vide its order dated March 21, 2002 that recruitment in the Higher Judicial Services (i.e. for cadre of District Judges) shall be as follows-

- (a) 50% by promotion from amongst Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority after passing suitability test.

- (b) 25% by promotion on the basis of merit through 'Limited Competitive Examination' (in short L.C.E.) of Civil Judges (Senior Division) having not less than 5 years of qualifying services.
- (c) 25% by **Direct promotion** from amongst eligible advocates on basis of examination conducted by the High Court.

III. That, it was further noted by the Hon'ble Supreme Court in the aforementioned judgment that due to dispute and discontentment in the Higher Judicial Services, there was a need for introduction of roster system. Hence, roster system was to be introduced latest by 31stMarch, 2003. Relevant extract of the judgment is reproduced as under-

"Experience has shown that there has been a constant discontentment amongst the members of the higher judicial service in regard to their seniority in service. For over three decades, large number of cases has been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the

decision today, there will, in a say, be three ways of recruitment to higher judicial service. The quota for promotion which we have prescribed is 50 percent by following the principle "merit-cum-seniority" 25 percent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, in so far as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in R.K. Sabharwal and Ors. V. State of Punjab. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend

and promulgate seniority rules on the basis of the roster principle as approved by this Court in R.K. Sabharawal's case (supra) as early as possible. We hope that as a result thereof, there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the the higher judicial service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31st March, 2003. (emphasis supplied).

We disapprove the recommendation of giving any weight age to the members of the subordinate judicial service in their promotion to the higher judicial service in determining seniority vis-a-vis direct recruits and the promotes. The roster system will ensure fair play to all while improving efficiency in the service."

- IV.** That, for the better administration of Justice, the Hon'ble Supreme Court enunciated the application of the above two principles in appointment of Judges vis-a-vis the Higher Judicial Services. The first

principle determines the quota of all three sources viz. firstly through promotion, secondly through LCE and thirdly directly through bar.

V. That it is respectfully submitted that in light of Article 141 read with Article 142 of the Constitution of India and in view of catena of case laws the directions of this Hon'ble is mandatorily to be followed in letter and spirit by the subordinate courts. Hence every State/High Court was under an obligation to make suitable amendments in its Higher Judicial Services Rules for determination of quota of each branch and for application of roster in fixing the gradation.

VI. That it is respectfully submitted that the High Court of Madhya Pradesh was equally obligated and bound by the directions of this Hon'ble Court. Therefore, pursuant to the directions of this Hon'ble Court, the Hon'ble Governor of Madhya Pradesh, in consultation of the Hon'ble High Court of Madhya Pradesh amended the Madhya Pradesh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 1994,

amended vide notification dated June 8, 2005 and caused substitution of Rule 5 as follows-

"5. Method of Appointment –

Appointment to the posts in category (a) of sub-rule

(1) of Rule 3 shall be made as follows –

- (a) 50 percent by promotion from amongst Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority after passing suitability test.
- (b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than 5 years qualifying services.
- (c) Provided that notwithstanding that a person has passed such competitive examination, his suitability for promotion shall be considered by the High Court on the basis of his past performance and reputation; 25% per cent of the posts shall be filled by direct recruitment from amongst eligible advocates on basis of

written test and viva voce conducted by the High Court."

True copy of the Madhya Pradesh Higher Judicial Service Rules, 1994 amended vide notification dated June 8, 2005 is annexed herewith as **ANNEXURE P-2**(Pages)

- VII.** That it is humbly submitted that quota system was incorporated in the Higher Judicial Services Rules by the abovementioned amendment (2005) but roster system, which formed part of the binding directions of this Hon'ble Court, was not incorporated in the amendment.
- VIII.** That it is further submitted that though the Hon'ble Supreme clearly directed incorporation of the 40 point roster system in the respective Rules, however no amendment was made to give effect to the obligatory directions of this Hon'ble Court by the State and High court of Madhya Pradesh.
- IX.** That it is humbly submitted that after the amendment of 'Madhya Pradesh Higher Judicial Service

(Recruitment and Conditions of Service) Rules, 1994' and after the incorporation of method of the recruitment from three different sources i.e. by Promotion, Limited Competitive Examination and directly from bar, the Madhya Pradesh High Court from 2006 till date regularly determined vacancies for Higher Judicial Services in the quota of promotion, limited examination and for directly from bar and regular appointment from three sources are being made.

- X.** That it is humbly submitted that after incorporation of quota principle in the rules as per direction of this Hon'ble Court, the Madhya Pradesh Government and the High Court of Madhya Pradesh should have amended corresponding seniority rule in Madhya Pradesh Higher Judicial Service Rules 1994, but by mistake or some reason better known to them the Rule 11 remained untouched and no amendment in this rule was made incorporating the roster principles as per direction of this Hon'ble Court.

- XI.** That it is humbly submitted that before the amendment in 2005 there were only 2 quotas from where District Judge Entry Level were recruited that is by promotion or directly from Bar.
- XII.** That it is humbly submitted that Rule 11 remained as it is as existed before the amendment and this rule does not cover all the probabilities for deciding the seniority of three categories because this rule was made to cover only two types of quotas.
- XIII.** It is humbly submitted that Rule 11 of the amended rule is as follows:
- (a) Rule 11. Seniority-**
- (1) The seniority of the person appointed to a post in categories (a), (b) and (c) of sub rule (1) of rule 3 shall, unless he has been reduced in rank on account of punishment, be determined in accordance with-
 - b. The date of continuous officiation in the service in case of officers promoted to category (a);
 - c. The date of order of appointment in the case of direct recruits to post in category (a); and

- d. The date of order of promotions to categories (b) and (c) respectively or such date, as may be specified in this regard by the High Court.

Provided that where the date of continuous officiation in the case of a member promoted to a post in category (a) and the date of joining the service in the case of direct recruit to the post in the same category, be the same, the promoted officer shall be treated as senior.

Provided further that inter seniority among the persons promoted by an order of the same date shall follow the order in which their names have been recommended by the High Court.

- (2) The seniority of persons appointed or promoted to the various categories prior to the commencement of these rules, shall also be determined on the basis of above principles.

XIV. It is humbly submitted that on 10-05-2008 the Hon'ble High Court of Madhya Pradesh also passed resolution considering the seniority of District Judge (Entry Level) by way of direct recruitment by eligible Advocates from

Bar under rule 5 (1)(c) pursuant to the advertisement in the year 2007. It was resolved as follows –

- a. "the seniority Rules be amended in accordance with the directions of the Supreme Court in paragraph 29 of the Judgment in All India Judges Association Case (AIR 2002 S.C.-1752) after taking into consideration the judgment of the Supreme Court in R.K. Sabharwal Vs. State of Punjab, 1995 (2) SCC 745".

It is submitted that in spite of the abovementioned resolution passed by Hon'ble High Court of Madhya Pradesh for settlement of roster of candidates the same was not incorporated in the rules by the respondent. True copy of the resolution dated 10.05.2008 passed by the Madhya Pradesh High Court is annexed herewith as **ANNEXURE P-3(Pages**
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XV. That the Hon'ble High Court of Judicature at Allahabad has amended the Uttar Pradesh Higher Judicial Service Rules, 1975 and have implemented the directions of this Hon'ble Court passed in the case of 'All India Judges Association (supra)' and the same has been approved by this Hon'ble Court. The relevant extract of 'The Uttar

Pradesh Higher Judicial Service Rules, 1975' is produced herein below as under:-

Rule-22:-Appointment-

"(1) Subject to the provisions of sub-rule (2), the Governor shall, on receipt from the Court of the list mentioned in Rules 18, 20 and 21 make appointments to the service on the occurrence of substantive vacancies by taking candidates from the list in the order in which they stand in the respective lists in accordance with the roster.

(2) Appointments to the service shall be made on the basis of roster system, the first post shall be filled from the list of promotees, the second post shall be filled up by direct recruit, the third and fourth posts shall be filled up from the list of promotees and fifth post shall be filled up by the candidate selected strictly on merit through LDCE (and so on) according to the roster as prescribed in Appendix '1', which will cease to become operative on the date the respective three streams achieve their full allotted vacancies. Thereafter on account of arising any vacancy in quota of respective stream the same could be filled-up from the same stream of which vacancy arises;

Provided that while following the roster at no point of time the respective percentage of posts filled from direct recruit and LDCE shall exceed 25% and 10% of the strength of service. In case the percentage is exceeding

the allotted quota, in such eventuality the promotee shall occupy the vacancy which would have gone to the direct recruit or LDCE, had not the same been in excess of 25% and 10% respectively of either of the two.

(3) In the eventuality of delay in making appointment under sub-rule(1) and further if exigency of service so requires, the Governor may, in consultation with the Court, make short term appointment as a stop-gap arrangement from amongst the promotees, in the vacancy in these services till the appointments are made under sub-rules (1) and (2):

Provided that the period of service spent by the promotees on a short term appointment to the service as a stop-gap arrangement shall not be computed under Rule 26."

Rule-26:-Seniority

"(1) Seniority of the officers appointed in the Service shall be determined in accordance with the order of appointment in the Service under sub rules (1) and (2) of Rule 22 of these rules.

(2) Seniority of members of the service who have been confirmed in the service prior to the commencement of these rules shall be as has been

determined by the order of the Government as amended from time to time."

True copy of The Uttar Pradesh Higher Judicial Service Rules, 1975 dated 08.05.2014 is annexed herewith as **ANNEXURE P-4 (Pages)**.

XVI. It is submitted that Hon'ble Madhya Pradesh High Court in "Civil Appeal No.1867 of 2006, titled 'Malik Mazhar Sultan &Anr. Vs. U.P. Public Service Commission &Ors.'" filed an affidavit through its Registrar (Vigilance and Litigation) and Officer-in-Charge stating that necessary steps will be taken to fill the post after formulation of the Roster System effective from January, 2011. The respondent No.1 also assured this Hon'ble Court that the High Court is going to amend the rules incorporating the roster principle, however, no amendment have been done / incorporated by the respondent. Petitioner and other officers of the cadre who were directly recruited made repeated representations. Surprisingly, all the representations were kept pending for almost 13 years and the directions of this Hon'ble Court as far

as roster principles are concerned were not followed. It is therefore submitted that such arbitrary and unjustified delay has been caused in not incorporating the Rules regarding roster and therefore, the respondent have infringed the valuable rights of the petitioner as well as other similarly placed persons who were appointed directly from the bar as District Judges.

XVII. That, in the year 2006 the Madhya Pradesh High Court started the initiation of process for recruitment against the vacancies arising out in this year and on the basis of cadre strength of 163 calculations was made. As number of candidates in the regular cadre i.e. under rule 5(1)(a) was already in excess and no post were ear-marked in this category. On the basis of vacancies 20 posts were ear-marked under rule 5(1)(c) for directly from bar and 20 Post ear-marked under rule 5(1)(b) for the civil Judges senior division through limited competitive examination accelerated promotion.

XVIII. It is submitted that Subsequent to determination of quota for direct from bar and through limited competitive examination, the recruitment process for these two categories started. Eligible Civil Judges having 5 year experience were invited to appear in the limited competitive examination. Similarly advertisement was made on 21/08/2006 for 30 post of Additional District Judges in the cadre of District Judge entry level and written examination held on 17/12/2006 and final result was declared on 22/04/2007. In the final result only one candidate that is the petitioner was found successful and his name was considered for appointment by the full Court of Hon'ble Madhya Pradesh High Court.

XIX. Further, it is humbly submitted that the selection process organized by Madhya Pradesh High Court for District Judge entry level directly from the bar was challenge by one of the candidate 'Mahendra Kumar' under Art 32 of the constitution before this Hon'ble Court in Writ Petition 289/2007. In this Writ Petition petitioner was also made a party and Writ Petitioner

got an interim stay hence the appointment letter for the petitioner could not be issued in the year 2007 where as the candidates who were selected under Rule 5(1)(b) got their appointment in the same year. The petitioner was appointed after the vacation of interim order in June 2008. In this way although recruitment of two streams started in the same year by common process but the joining was possible for two different subsequent years for no fault of the petitioner.

XX. That in the year 2008 law and legislature department published a tentative gradation list of all judicial officers under Madhya Pradesh High Court. In this gradation list in the entry level cadre list the all recruit made under rule 5(1)(b) were placed en-bloc above from serial number and petitioner was placed below them. Petitioner smelt that the gradation list was being prepared disregarding the directions of this Hon'ble Court passed in 'R.K. Sabharwal case' and on the basis of date of order. The petitioner protested against his placement in the tentative gradation list

and requested to determine the seniority as per directions of this Hon'ble Court applying the roster principle. His protest petition was kept pending.

XXI. That in all tentative gradation list of 2008, 2009, 2011, 2014, 2016 and in the current gradation list displayed on the website of respondent No.1, the petitioner is placed just below Ms. Ruchi Sharma, who is the last successful candidate selected under rule 5(1)(b) of Madhya Pradesh Higher Judicial Service (Recruitment & Conditions) of Service Rules. It is submitted that the petitioner should have been placed just after Smt. Anuradha Shukla as per roster rule because in that particular year of 2006 only candidates from two source were selected and their seniority should have been fixed on the basis of 1:1 roster. It is submitted that the Judicial Officers who got promotion prior to the petitioner are as under:-

True copy of the Gradation List of District Judges as on 01.02.2019 is annexed herewith as **ANNEXURE P-5** (Pages)

XXII. That not only the petitioner but other direct recruit and perhaps regular cadre candidates protested the seniority list in the light of directions of this Hon'ble Court but the

matter was kept pending and tentative gradation list were published in the year 2014 and then after in 2016 and after this gradation list with same infirmities got displayed on the official website of the High Court.

XXIII. That although the tentative gradation list was never finalized but promotion on the basis of this gradation list was being given, in spite of that petitioner was hopeful that his seniority would be decided as per roster rule and his chance to be elevated would remain alive. But to the utter surprise of the petitioner in the year 2017 a new rule namely 'Madhya Pradesh Higher Judicial Service (Recruitment and Conditions of Service) Rules, 2017' recruitment and conditions promulgated repealing the earlier rule. This rule came into force from the date of publication. In this new rule 100 point roster incorporated for deciding seniority of officers appointed from the three sources. That the new seniority Rule 11 reads as under:-

Rule-11 - Seniority-

- (1) The relative seniority of the members of service holding substantive post within their

respective quota at the time of commencement of these rules shall be as it exists before the commencement of these rules.

- (2) After the commencement of these rule, the cadre posts in category (a) of sub-rule (1) of Rule 3 shall be filled up by rotation based on the quota fixed in clauses (a), (b) and (c) of sub-rule (1) of Rule 5 in every recruitment year.
- (3) For the purpose of proper maintenance and determination of seniority of persons appointed through the aforesaid sources, a roster for filling of vacancies based on quota of vacancies reserved here-in-above, as given in Schedule-II shall be maintained for each recruitment year. This roster would operate on yearly basis in which applications for appointment were invited in the recruitment year.
- (4) Seniority of persons appointed under clause (a), (b) and (c) of sub-rule (1) of Rule 5 to the Service in category (a) of rule (1) of Rule 3 shall be determined in following manner:-
 - a. The Seniority inter se, of persons appointed by promotion under clause (a) of sub-rule (1) of Rule 5 shall be

determined by their inter se seniority in the lower cadre;

- b. The Seniority, of person promoted through limited competitive examination of Civil Judges (Senior Division) under clause (b) of sub-rule (1) of Rule 5 shall be determined in accordance with the inter se Seniority in the lower cadre;
- c. The inter se seniority of Persons appointed to the Service by direct recruitment under clause (c) of sub-rule (1) of Rule 5 shall be fixed in the order of merit they are placed in the selection list, those recruited earlier shall rank senior to those recruited later;

- (5) The Seniority of the members of the service promoted under clause (a) of sub-rule (1) of Rule 5 and under proviso to clause (c) of sub-rule (1) of Rule 5 of the HJS Rules, 1994. (amended vide L.D. No. F:17(E)40/88/21-8 (one) dated 13-08-2015) shall be as per the seniority in the lower cadre.

XXIV. That it is submitted that on the basis of Rule 11 and schedule 1 it has been tried to show that roster principle as per directions of this Hon'ble Court had been incorporated in the rule but it is pertinent to note that in

reality vacancy based roster system has been developed where as in the 'All India Judges Association case' this Hon'ble Court has approved 40-point cadre base roster system not vacancy based roster system as incorporated in the new rule. On this count also the new rule is not legally sustainable and deserves to be declared ultra virus. It is also submitted that applying this roster system is not practically possible as well as no desired result could be achieved and very object of incorporation of roster system will fail.

XXV. After coming into force of the new Rule, 2017 the representations of the petitioner which were pending since last 12 years were rejected on the ground that petitioner is claiming seniority from the date when he was not in the service. It was also mentioned that Madhya Pradesh Higher Judicial Service (Recruitment and Condition of Service) Rules 2017 came into force w.e.f. 13-03-2018 which provides specific provisions for roster system in determining seniority of officers appointed to Higher Judicial Service and these rules are applicable from the date of their publication in the official gazette

therefore no benefit can be given to the petitioner with regard to roster system as it could only operate prospectively. True copy of the rejection order dated 11.09.2019 rejecting the Protest Petition of the petitioner is annexed herewith as **ANNEXURE P-6**(Pages).

XXVI. The petitioner being aggrieved by the belated rejection of his representations by which he never claimed seniority from back date, but has simply claimed seniority on the basis of roster as per Directions of this Hon'ble Court. The petitioner also feels aggrieved the effective date of new rule which is in utter violation of the direction of the apex court where it was specifically mentioned that roster principle should be incorporated in the relevant rule by 31stMarch, 2003. The petitioner also feels aggrieved by en-bloc placement of the entire selected candidate under rule 5(1)(b) above the petitioner on the basis of date of order of promotion although petitioner and those candidates were selected through a common process for same recruitment year.

XXVII. That it is also submitted that in addition to the present petitioner, there are several other Additional District Judges who have been recruited from the bar since the year 2003 till 2018 and the seniority of all these direct recruiters is being determined not on the basis of roster system.

6. That the respondents have failed to comply the directions of this Hon'ble Court and hence the petitioner being aggrieved is filing the present writ petition inter-alia on the following grounds:-

GROUND:

- A. Because in the facts and circumstances of the case, Rules of 2017 made effective from March 13, 2018 is discriminatory and suffers from illegality and perversity. This Hon'ble Court in the matter of 'All India Judges Association & Ors. Vs. Union of India & Ors.', 2002 4 SCC 247', issued two directions. One was given effect, with effect from 2005, but the

other was not given effect despite passing of 15 years.

- B. Because the new Rules, 2017 passed by Respondents suffers from bias and arbitrariness against the Judicial Officers appointed in Madhya Pradesh.
- C. Because Rule 11 (5) R/w Rule 5 of the new Rules of 2017 violates the fundamental rights of the petitioner vis-a-vis similarly placed candidates of the same cadre between different States of India.
- D. Because the direction issued by this Hon'ble Court in "All India Judges Association and Ors. V/s. Union of India and Ors. (2002) 4 SCC 247" was violated by the respondents by not complying with the directions in true letter and spirit as whole.
- E. Because it is not permitted to the Respondents to deal one part of the direction at its whims and fancies and other part in a distinct manner.

- F. Because enactment of new rules of 2017 is breach of the fundamental rights of the petitioner and vis-a-vis similarly placed persons.
- G. Because the respondent committed error of law as the rotational system was not issued in accordance with the 40 point roster, hence violating the orders of the Hon'ble Supreme Court in 'Arvind Singh Bains Vs. State of Punjab (2006 (6) SCC 673)'.
- H. Because claiming placement in the gradation list on the basis of the directions of the Supreme Court approving 40 point roster as per 'R.K. Sabharwal Case' amounts to claiming seniority from the date when he was not in service.
- I. Because the rejection of representation of the petitioner assigning reason that new rules 2017 came into force and this rules are applicable from the date of publication is un-fair arbitrary and against natural justice.

- J. Because en-bloc placement of one category in the gradation list although recruited by the same process and in the same year is arbitrary and in violation of fundamental rights of the petitioner under Art 14 and 16 of the Constitution of India.

- K. Because keeping the matter pending for years and rejecting the grievance by one stroke against the legitimate expectation of the petitioner which has arisen in the light of direction of this Hon'ble Court and incorporation of 'Rota-Quota' principle by other high Courts of the country, by the resolution of the Madhya Pradesh High Court and by the assurance given by the High Court to the apex court in 'All India Judges Association Case' is not arbitrary, against natural justice and against the right to equality enshrined in the constitution.

- L. Because classification made on the basis of a particular date that is date of publication of new rules is arbitrary and against the right to equality under Article 14 of the Constitution of India.

- M. Because 'Quota' and 'Rota' principles are not interwoven and by incorporation of 'Quota' the 'Rota' principle automatic come specific in the case of the petitioner as existing seniority rule becomes null and void due to its inability to contain all the probabilities.
- N. Because the direction given by this Hon'ble court in 'All India Judges Association Case' is mandatory in nature and every High Court and Govt. were obliged to respect the direction of this Hon'ble court.
- O. Because the Hon'ble Governor was not competent to give the new rules retrospective effect in the light of direction of the Supreme Court.
- P. Because the new rules which is based on vacancies based roster is against the law and to be declared ultra virus.
- Q. Because the impugned new Rules of 2017 is contrary to the directions and mandate of this

Hon'ble Court in 'All India Judges Association &Ors.
Vs. Union of India & Ors'.

- R. Because the rules dated 13th March 2018 passed by the Hon'ble Madhya Pradesh High Court are prospective in nature.
- S. Because the action of the respondents against the settled principle of equality, reasonableness, arbitrariness and non-discrimination of similarly situated persons.
- T. Because the new Rules of 2017 published and effected on 13thMarch, 2018 has been made by giving it prospective effect, which thereby causes infringement of the fundamental rights of the petitioner. The amendment discriminates the Judicial Officers of Madhya Pradesh from similarly placed Judicial Officers of other State.
- U. Because the new Rules of 2017, only gives an illusion of compliance with the directions of the Supreme Court, but in reality, is in clear violation, it

only gives an illusion of justice, whereas is in clear violation of the fundamental rights of petitioner and is patent non-compliance of directions of this Hon'ble Court.

- V. Because as per the order of Supreme Court, the right to be graded according to roster system virtually came into existence on 31st March 2003 (i.e. last day by which amendment to the rules should have been carried out). It is only since the respondent did not comply with the orders of the Supreme Court that there is an unreasonable classification resulted between Judicial Officers of Madhya Pradesh and other states of India vis-a-vis the seniority.
- W. Because the classification created due to prospective application of the new rules of 2017 has no nexus with the object of the amendment, and therefore is highly unreasonable, patently arbitrary and in violation of fundamental rights of the petitioner.

- X. Because it is worthwhile to consider that the implementation of the order of this Hon'ble Court in part was done by the respondent by amendment dated March, 13, 2018. It is submitted that there is no justification as to why the order of this Hon'ble Court was not implemented in entirety. The non-implementation of the part of orders of this Hon'ble Court without any justification is manifestly arbitrary, irrational, unjust and violative of the fundamental rights provided under Part III of the Constitution of India.
- Y. Because the directions issued by this Hon'ble Court with regard to the Higher Judicial Service were made in order to create uniformity in different states. If different rules for higher judicial officers prevail in different states, then there will not be equal opportunity for the purpose of promotion and consideration of suitable officers in order to be promoted to the Hon'ble High Court.

- Z. That it is further submitted that including Allahabad High Court and other High Courts have already made amendment in their Higher Judicial Service Rules as per the direction issued by this Honb'le Court in 'All India Judges Association case' (supra) from the retrospective effect.
- AA. Because this Hon'ble Court in Para 39 of the 'All India Judges Association case' (supra) has held that any clarification required will be sought only from this court. The Proceedings, if any, for implementation of the directions given in this judgment shall be filed only in this Court and no other court shall entertain them.
- BB. Because this Hon'ble Court has, on various occasions had the occasion to consider the ambit of arbitrary and unreasonable acts of the executive, acting in administrative as well as legislative capacity. It was observed in 'E.P. Royappa Vs. State of Tamil Nadu & Anr. (AIR 1974 SC 555)' that-
- "...From a positivistic point of view, equality is antithetic to arbitrariness. In fact equality and*

arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarchy. Where an act is arbitrary it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violation of Art. 14, and if it affects any matter relating to public employment, it is also violative of Art. 16. Arts. 14 and 16 strike at arbitrariness in State action and (ensure fairness and equality of treatment. They require that State action must be based on relevant principles applicable alike to all similarly situated and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality"

- CC. Because in *Mardia Chemicals Ltd. & Ors. Etc.Vs. Union of India &Ors. etc.* (2004) 4 SCC 311 and in *A.P. Dairy Dev. Corp. Dederation Vs. B. Narasimha Reddy &Ors,* AIR 2011 SC 3298, it was also held that an unreasonable and arbitrary legislation which is violative of Article 14 and can be struck down by the Constitutional Courts.
- DD. Because the impugned provision of legislation of 2018 is manifestly arbitrary, unreasonable, and

discriminatory and the classification has no nexus with the object of the legislation. Hence, it is liable to be struck down as being violative of the fundamental rights enshrined under part III of the Constitution of India.

EE. It is submitted that the directions given by this Hon'ble Court in the light of Article 141 of the Constitution of India and this view has been affirmed by this Hon'ble Court in 'Hon'ble Punjab & Haryana High Court at Chandigarh Vs. State of Punjab & Ors., Civil Appeal Nos.5518-5523 of 2017, and in catena of other cases.

FF. Because in 'Nandkishore Vs. State of Punjab (1995) 6 SCC 614' it has been held that:

"Para-17- 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.

GG. Because in 'Rakhi Ray &Ors. Vs. High Court of Delhi, (2010) 2 SCC 637'it has been held that:

"It has been clarified that where statutory rules do not deal with a particular subject/issue so far as the appointment of the Judicial Officer is concerned, direction issued by this Court would have binding effect. It is submitted that in the case in hand the statutory rules of seniority on the basis of which gradation list has been prepared is not supposed to apply to three categories as this rule was made when recruitment was being made only from two sources i.e. through promotion and direct recruitment. It is further submitted that this rule of seniority is not inconsonance with the direction of the Apex Court"

HH. Because in the light of directions of this Hon'ble Court in 'All India Judges Association Case' Hon'ble Governor was obliged to give it a retrospective effect from 21 March, 2002. Infact in the similar situation the State govt. of U.P. made rule for Higher Judicial services in 2007 but gave it a retrospective effect from 21 March, 2002 and this Hon'ble Court in 'V.K. Shrivastava & Ors Versus State of Uttar Pradesh & Anr (Writ Petition Civil No.

206 of 2007) affirmed this new rule having a retrospective effect.

- II. Because in 'All India Judges Association case' direction was to create post based roster where as this new rule has created vacancy based roster not approved by this Hon'ble Court in 'R.K. Sabharwal case':

"11. We may examine the likely result if the roster is permitted to operate in respect of the vacancies arising after the total posts in a cadre are filled. In a 100 point roster, 14 posts at various roster points are filled from amongst the scheduled Casts/ Scheduled Tribes candidates, 2 posts are filled from amongst the Backward Classes and the remaining 84 posts are filled from amongst the general category. Suppose all the posts in a cadre consisting of 100 posts are filled in accordance with the roster by December 31, 1994. Thereafter in the year 1995, 25 general category persons (out of the 84) retire. Again in the 1996, 25 more persons belonging to the general category persons (out of the 84) retire. Again in the year 1996, 25 more persons belonging to the general category

retire. The position which would emerge would be that the Scheduled Casts and Backward Classes would claim 16% share out of the 50 vacancies. If 8 vacancies are given to them then in the cadre of 100 posts the reserve categories would be holding 24 posts thereby increasing the reservation from 16% to 24%. On the contrary if the roster is permitted to operate till the total posts in a cadre are filled by the same category of persons whose retirement etc. caused the vacancies then the balance between the reserve category and the general category shall always be maintained. We make it clear that in the event of non-availability of a reserve candidate at the roster-point it would be open to the State Government to carry forward the point in a just and fair manner.

JJ. Because in 'Hon'ble Punjab & Haryana High Court at Chandigarh Vs. State of Punjab & Ors., Civil Appeal Nos.55185523 of 2017' this Hon'ble Court has held that;

"It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of

joining would not be a relevant factor for deter candidate(s) and cannot be blamed for the administrative delay, in completing the process of selection."

In the present case, process for all the three streams was completed in the year 2008 and all the officers of their streams had joined in the same year. The submission that quota rota rule was broken or seniority will be affected because of joining of one category of officers earlier cannot be accepted. It is also relevant to notice that purpose of statutory rules and laying down a procedure for recruitment was to achieve the certainty. Officers belonging to different streams have to be confident that they shall be recruited under their quota and get seniority as per their quota and roster. In event, the seniority is to be fixed with date of joining of particular stream, it will lead to uncertainty and making seniority depending on administrative authorities, which is neither in the interest of service nor serve the cause of justice. We, thus, conclude that roster is fully applicable for determination of seniority. Officers of different streams selected in a particular year even though they were allowed to join the post on different dates shall not affect their

inter se seniority, which is to be decided on the basis of roster."

KK. Because it is settled preposition of law that once order has been passed, it is complied with, accepted by the other party and derived the benefit out of it. In R.N Gosain AVs. Yashpal Dhir (1992) 4 SCC 683 this Hon'ble court has observed that:-

"Para-10- Law does not permit a person to both approbate and reprobate. This principle is based on the doctrine of election which postulates that no party can accept and reject the same instrument and that a person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other advantage." This court in Rajsthan state industrial development and Investment Corpn. V. Diamond and Gem Development Corpn. Ltd (Rajasthan State Industrial Development and Investment Copn. V. Diamond and Gem Development Corpn. Ltd, (2013) 5 SCC 470 (2013) 3 SCC (Civ) 153), made an observation that a party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate". Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on

him of such contract or conveyance or order. This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience."

- LL. Because Calcutta High Court in 'Chanchal Chatterji Vs. State of West Bengal' in W.P 4398 of 2018 after discussing the various Judgments of this Hon'ble Court on the point of Approvate and Retrogate observed as follows:-

"Para-13- On a thorough study of these above noted judgments, the principles that emerges is that a person cannot at the same time accept and reject an instrument. Such acceptance has to be judged by his conduct and actions. If the person has chosen to accept a particular instrument and/or order. Carrying the analogy further, if a person acts on a part of an order passed by a Court, he cannot choose to ignore and/or reject the other part of the order unless the same has been challenged by him under the process established in law. In the present case, the authorities accepted the order passed on April 8, 2011 and proceeded to carry out the first point of the order that is of refunding the overdrawn amount. With regard to the second part of the order for recalculation of the pension

payment order steps were taken by the authorities to comply with the same. It is only after five years that the Assistant Director, Pension, Provident Fund and Group Insurance objected to the order and directed the authorities below to act in consonance with another order passed by the Calcutta High Court. The very fact that the respondent authorities did not file any appeal against the order dated April 8, 2011 lends credence to the fact that they had accepted the order and had in fact complied with part of the same. Apropos, having accepted the same, it did not lie in their mouth at a later date to not comply with another part of the order”.

7. That the petitioner respectfully submits that the action of the respondents is arbitrary, unjustified and violative of the directions of this Hon'ble Court, therefore, kind intervention of this Hon'ble Court is required to do the complete justice with the Petitioner and other similarly placed candidates.

PRAYER

In view of the facts and circumstances stated hereinabove and the judicial principle espoused, it is most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- a. issue a Writ/Order/Direction in the nature of Mandamus and/or Certiorari, or any other Writ, Order or Direction thereby quashing Rule 11 of the Madhya Pradesh Higher Judicial Services (Recruitment and Condition of Services) Rules, 2017 published on 13.03.2018,

And/or

- b. issue a Writ of Mandamus upon the respondents directing them to amend/give retrospective effect to the Rules dated 13th March 2018 so as to prevent infringement of the fundamental rights of the petitioner and a certain class of persons to which the petitioner also belongs.
- c. Pass any other order/direction as this Hon'ble Court may deem fit and proper pass such other or further orders which this Hon'ble Court deem just and proper in the facts and circumstances of the case to meet the ends of justice.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER
AS IN DUTY BOUND SHALL EVER PRAY.**

Filed by

Drawn on:
Filed on:
Place: New Delhi

ASHWANI KR. DUBEY
Advocate for the Petitioner