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**IN THE SUPREME COURT OF INDIA
ORIGINAL JURISDICTION**

***B.R. GAVAI; CJI., SURYA KANT; J., VIKRAM NATH; J., K. VINOD CHANDRAN; J., JOYMALYA BAGCHI; J.*
I.A. NO. 230675/2025 IN WRIT PETITION (CIVIL) NO. 1022 OF 1989; November 19, 2025**

All India Judges Association and Ors. *versus* Union of India and Ors.

Service Law – Higher Judicial Services (HJS) – *Inter Se* Seniority – Direct Recruits (DR) - Regular Promotees (RP) - LDCE Promotees (LDCE) – Held, previous service in the lower rungs of the judiciary (Junior Division/Senior Division) cannot be reckoned for granting weightage, preferential treatment, or a separate quota for determining *inter se* seniority, fixation in higher grades (Selection Grade/Super Time Scale), or assignment of administrative duties within the common cadre of the HJS - Once appointed to the common cadre of the Higher Judicial Service, all members lose the ‘birthmark’ of the source from which they were recruited (RP, LDCE, or DR), and the service rendered in the feeder category pales into insignificance - The theory of classifying District Judges within the HJS based on their length of service in the lower rungs subverts the guarantee of equality available to members of the common cadre - Further advancement within the HJS, including promotion to higher grades, must be based on merit-cum-seniority, evaluated on the basis of performance and service rendered within the HJS cadre and not the lower feeder cadre - Supreme Court ruled out any special quota/weightage for promotee judges in the posts of District Judges, observing that there is no nationwide pattern of disproportionate representation of direct recruits in the Higher Judicial Service. [*Relied on State of Jammu & Kashmir v. Sh. Triloki Nath Khosa & Ors. (1974) 1 SCC 19; Paras 54-65, 94*]

Guidelines on seniority - Supreme Court issued certain guidelines for the filling up of the DJ posts invoking powers under Article 142 of the Constitution - i. The seniority of officers within the HJS shall be determined through an annual 4-point roster, filled by all officers appointed in the particular year in the repeating sequence of 2 Regular Promotees, 1 LDCE, and 1 DR; ii. Only if the recruitment process is completed within the year after which it was initiated and no other appointments, from any of the three sources, have already taken place in respect of the recruitment initiated for that subsequent year, shall the officers belatedly so appointed be entitled to seniority as per the roster of the year in which recruitment was initiated; iii. If the recruitment process is not initiated for vacancies arising in a given year in the same year, the candidate filling such vacancy, in subsequent recruitment, shall be granted seniority within the annual roster of the year in which the recruitment process is finally concluded and appointment is made; iv. After the recruitment of DRs and LDCEs is complete for a particular year, the positions falling in their quota that remain unfilled due to lack of suitable candidates shall be filled through RPs, subject to such RPs being placed only on subsequent RP positions in the annual roster; and the vacancies in the subsequent year shall be computed so as to apply the proportion of 50:25:25 to the entire cadre; v. The statutory rules governing the HJS in the respective States, in consultation with the High Courts, shall prescribe the exact modalities of the Annual Roster and how the directions of this judgement shall be implemented - Clarified that these guidelines are not intended to resolve any *inter-se* dispute - The guidelines are general and mandatory to be incorporated into the regulations governing inter-se seniority of higher

judicial services - The guidelines will not reopen any decided issues related to inter-se seniority disputes. [Paras 97-100]

J U D G M E N T

INTRODUCTION

1. The instant Interlocutory Application seeks to revisit the principles governing the determination of seniority within the cadre of Higher Judicial Services (**HJS**) of all the States. This controversy is neither novel nor transient; rather, it represents a recurring dilemma that has, from time to time, engaged the attention of this Court.

2. To briefly outline the factual context herein, the HJS, across the country, is comprised of officers recruited through three sources: (i) Regular Promotees (**RP**); (ii) those promoted through the Limited Departmental Competitive Examinations (**LDCE**); and (iii) Direct Recruits (**DR**). These three sources for recruitment and appointment to the position of District Judge were crystallised through various directions issued in the successive All India Judges Association (**AJJA**) proceedings. It is amongst these three sources that the dispute of *inter se* seniority has arisen.

3. Over the course of many decades, divergent approaches have been adopted in an endeavour to reconcile competing claims between different streams of appointment, reflecting this Court's continued attempt to bring coherence and uniformity to this enduring issue.

4. This question has once again fallen before us for consideration in light of an interlocutory application, being I.A. No. 230675 of 2025, filed by learned *Amicus Curiae* (Mr Siddharth Bhatnagar, Senior Advocate) in the lead case. Notice was accordingly issued in respect of this application on 17.09.2025.

5. Having regard to the fact that the aforesaid application brought to light an 'anomalous situation' pertaining to the *inter se* seniority between District Judges (Direct Recruits) and District Judges (Promotees), this Court, *vide* order dated 07.10.2025, was pleased to record as follows:

"2. This Court, vide order dated 17th September, 2025, had considered an application filed by Shri. Siddharth Bhatnagar, learned amicus curiae, who had pointed out an anomalous situation viz., in most of the states, judicial officers recruited as Civil Judge ('CJ') often do not reach the level of Principal District Judge ('PDJ'), leave aside reaching the position of a High Court Judge. This has resulted in many bright young lawyers being dissuaded from joining the service at the level of CJ.

....

10. It cannot be disputed that the judges who were initially appointed as CJ gain rich experience since they have been serving in the judiciary for a number of decades. Furthermore, every judicial officer, be it one who was initially recruited as CJ or one who was directly recruited as a District Judge, has an aspiration to reach at least up to the position of a High Court Judge.

11. We are, therefore, of the view that a proper balance has to be struck between the competing claims. However, this issue would involve consideration of some of the judgments and orders passed by Benches comprising of three learned judges of this Court. Therefore, in order to put the entire controversy at rest and provide a meaningful and long-lasting solution, we are of the considered view that it will be appropriate if the issue is considered by a Constitution Bench consisting of five learned Judges of this Court.

12. We, therefore, direct the Registrar (Judicial) to place the matter before the Chief Justice of India, on the administrative side for obtaining appropriate orders."

6. Hon'ble the Chief Justice of India thereafter directed that the matter be placed before a 5-Judge Bench. The matter was accordingly taken up on 14.10.2025, whereupon the limited question requiring consideration was delineated as follows:

"What should be the criteria for determining seniority in the cadre of Higher Judicial Services"

COMPETING VIEWS AND SUGGESTIONS

7. As already mentioned heretofore, the learned *Amicus*, through the captioned application, underscored certain issues pervading *inter se* seniority in the HJS.

8. Although the objective of the application was initially to embellish, enliven, and enrich the District Judiciary by balancing both merit and practical experience, it has presently been prompted by a perceived discontentment and heartburn amongst those recruited to the lower rungs of the judiciary.

9. The malady of disproportionate progression within the HJS has been observed by this Court in previous AIJA proceedings and was also noted with concern by the First National Judicial Pay Commission under the Chairmanship of Justice K.J. Shetty, a former Judge of this Court (**Shetty Commission**).

10. In this vein, as a workable outcome to improve the position of the RPs and LDCes and considering the recommendations of the Shetty Commission, the *Amicus* put forth four proposals:

- i. A 1:1 quota should be prescribed for appointment to Selection Grade and Super Time Scale within the HJS;
- ii. The zone of consideration for upgradation to Selection Grade and Super Time Scale should comprise equal numbers of DRs and promotees (RPs and LDCes combined), without any prescription regarding the actual selections;
- iii. Providing one year seniority for every five years of completed service within the lower rungs of the judicial service, subject to a maximum of three years, which is an attempt to revive the recommendation of the Shetty Commission; or
- iv. Creating three separate seniority lists within the HJS, on the basis of source of recruitment, in the ratio of 50:25:25, as recommended by the High Court of Andhra Pradesh.

11. Thereupon, responses were filed by States / Union Territories Administrations, as well as the Registrar Generals of various High Courts and other stakeholders comprising detailed submissions regarding the rules existing in their respective States for the career progression of Judicial Officers appointed or promoted from the aforementioned three sources.

12. On the one hand, the RPs through their learned counsels, raised cudgels against DRs on the grounds of an advantage being conferred upon them by virtue of their relatively younger age at the time of entering into the HJS. Their contentions have been briefly summarized hereinbelow:

- i. The age advantage enjoyed by DRs enables their progress to the Selection Grade and the Super Time Scale, as well as taking on administrative roles in Districts, and ultimately, being elevated to the High Court;
- ii. Experience in judicial service is superior to experience at the Bar, and there should be recognition of prior judicial service in the posts of Civil Judge-Junior Division (Munsiff/Magistrates) and Civil Judge-Senior Division (Sub Judge/Chief Judicial

Magistrates), whether they are promoted to the HJS from the RP or LDCE cadres. Reliance was placed in this regard on the decision in ***Rejanish K.V. v K. Deepa***¹;

iii. 'Heartburn' is caused by the induction of younger candidates as DRs and their consequential career progression, which diminishes the consideration of the efforts of judicial officers who have toiled endlessly in their judicial work for long years.

13. Similarly, those representing the LDCEs, while largely adopting the arguments raised by the RPs, also sought to bring forward certain issues distinct to them:

i. Earlier judicial service ought to be reckoned in the same manner for both RPs and LDCEs;

ii. If sufficient candidates are not found through LDCE in a recruitment year, the vacancies should not be filled by RPs but should be carried forward. In such a scenario, the passed-over seniority ought to be conferred in the successive selection;

iii. The position on the roster should be preserved even if there aren't sufficient vacancies available in any given year.

14. On the contrary, the learned counsels representing DRs argued that there is no pressing need for this Court to create any favourable systems so as to promote RPs and LDCEs. In this regard, the following submissions were adduced:

i. The available data clearly shows that the situation pertaining to *inter se* seniority varies across different States, with some States where the DRs hold more prominent positions, while in others, the RPs have an advantage over the DRs;

ii. The High Courts, being conferred with the power to regulate, *inter alia*, the *inter se* seniority within the Judicial Services, are better equipped to determine the issue on the basis of the statistics and features intrinsic to a particular State Judicial Service, as well as to determine the *inter se* seniority within the cadre of District Judges;

iii. Upon entry into the HJS, the source of recruitment becomes inconsequential, and the service rendered in the feeder category pales into insignificance. When seniority of the incumbents in a particular recruitment year is adjusted as per the roster system providing proportional representation to RPs, LDCEs and DRs, such seniority on entry continues and the birthmark of the source from which they were recruited is no more relevant for further career advancement within the cadre by way of fixation in the higher grades or designation for the discharge of administrative duties.

iv. The position on the roster should be preserved even if there are not sufficient vacancies available in any given year.

15. Additionally, several High Courts were represented before this Court by learned senior counsel, whose submissions broadly aligned with one or the other set of arguments addressed. As these submissions have already been duly adverted to hereinabove, we do not consider it necessary to reiterate them.

16. What is of greater significance, however, is that the said counsel extended valuable assistance by placing before us relevant statistics and prevailing circumstances, thereby illuminating the range of possible approaches available to this Court for resolving the present issue.

¹ *Rejanish K.V. v K. Deepa*, 2025 SCC OnLine SC 2196

ANALYSIS

17. As we turn to scrutinizing and appraising the singular issue at hand, we deem it appropriate to clarify at the very outset that there can be no separate quota insofar as the recommendations for elevation to the High Court are concerned. We say so, being especially mindful of the truism that such processes are neither promotions nor a fixation for financial upgradation or career advancement.

I. Power of this Court re: seniority within the HJS

THE SUCCESSIVE AIJA PROCEEDINGS

18. At this juncture, it is imperative to address the specific plea raised by various parties before us that this Court, in view of the powers granted to the High Court under Articles 233 to 235, should restrain itself from issuing mandatory guidelines on the rules governing the service of judicial officers.

19. In consideration thereof, we must first trace the trajectory of the AIJA proceedings before this Court.

20. The captioned Writ Petition was filed in the year 1989 and has been retained in this Court as a measure of ongoing mandamus, to safeguard the independence of the judiciary—a basic structure of the Constitution as held by this Court—and to effectively serve the efficient administration of justice.

21. In the ***All India Judges' Association v. Union of India*² (First AIJA)**, this Court addressed: (i) the establishment of an All India Judicial Service; (ii) uniformity in the designation of judicial officers, both on the criminal and civil side, across the Country; (iii) retirement age of judicial officers to be stipulated as 60 years; (iv) consideration of appropriate pay scales; (v) a working library and provision for sumptuary allowance; (vi) residential accommodation to be provided by the State Government; (vii) adequate transport facilities; and (viii) establishment of institutions for in-service training.

22. All of these aspects were articulated to establish a status for the judicial service that aligns with the assigned judicial duties, maintaining the principle of separation of powers and safeguarding the independence of the judiciary. This idea was further supported by creating a supportive working environment free from the burdens of mundane routines and the challenges of maintaining a work-life balance.

23. Although directions were issued on all these aspects, a review was filed, leading to the judgment in ***All India Judges' Association v. Union of India*³ (Second AIJA)**, where some modifications were made; the most significant being the requirement of three years' practice as a mandatory and essential qualification for recruitment to judicial posts at the lower rungs in the judicial hierarchy, and the weeding out of dead wood at an age prior to the stipulation of 60 years as the common age of superannuation.

24. The directions put forth in the ***First AIJA*²** were essentially affirmed in all respects in the ***Second AIJA*³**, except for the direction for grant of sumptuary as well as residence-cum-library allowances, which stood withdrawn subject to fulfilment of certain conditions. Essentially, the directions issued, as already highlighted, aimed to accord a special status to judicial officers who, in their role of dispensing justice, occupy a position that is both demanding and unique; and stands in contrast to other State services, given that their independence is a fundamental aspect of the Constitution, as held by this Court.

² First AIJA, (1992) 1 SCC 119

³ Second AIJA, (1993) 4 SCC 288

25. Thereafter, in the **All India Judges' Association v. Union of India**⁴ (Third AIJA), this Court specifically examined the clarification sought by the State of Kerala and found that the five years of legal practice prescribed as the minimum qualification for appointment to the lower rung of the judicial service in that State, to be perfectly in order, since the direction in the **Second AIJA**³ aimed to establish a minimum essential qualification of three years' practice.

26. While reaffirming the requirement of at least three years' practice for recruitment to the lowest rung of judicial office, it was also determined that a by-transfer appointment to the cadre of Munsif-Magistrates from the ministerial and gazetted staff of the district judiciary and the High Court was bad because it did not meet the minimum requirement of three years' practice at the bar.

27. In **All India Judges' Association v. Union of India**⁵ (Fourth AIJA), the requirement of a minimum experience at the Bar was dispensed with, finding fresh graduates also eligible to offer themselves for recruitment to the lower rungs of the judiciary, especially in the context of a mandatory training period of one year having been provided. Further, a faster promotional opportunity was provided for the judicial officers in the lower rungs by prescribing an LDCE. It was also directed that for proportional representation of the RPs, LDCEs and DRs, a ratio of 50:25:25 would be applied to the cadre of District Judges; the seniority at the entry point in the HJS being determined on a 40point roster as approved by this Court in **R.K. Sabharwal & Ors. v. State of Punjab & Ors.**⁶

28. Later, in the year 2010, in **All India Judges Assn. v. Union of India**⁷ (Fifth AIJA), having realised that a large number of vacancies in the 25% LDCE category remained unfilled, the said quota itself was reduced to 10%. A ratio of 65:10:25, respectively, for the RPs, LDCEs and DRs, was thus prescribed for recruitment to the cadre of District Judges.

29. This ratio has, however, been once again modified this year itself in 2025 in the **All India Judges Association v. Union of India**⁸ (Sixth AIJA) to 50:25:25, also revamping and expanding the framework for accelerated promotion from Junior Division to Senior Division and thereafter to the HJS. As of date, the decision of this Court in **Rejanish K.V**⁷ has further enabled the service of judicial officers to be reckoned for the purpose of direct recruitment to the HJS through participation in the direct recruitment examinations.

30. The series of AIJA decisions thus acknowledges and recognises the fact that in a democracy, the role of the judiciary is truly indispensable. For the efficient functioning of the Rule of Law and to ensure that our democracy prospers, it is *de reiguer* that we nurture an efficient, strong, and enlightened judiciary.

HIGH COURT AS A REPOSITORY OF POWERS

31. At the same time, we are also cognizant of the wideranging powers and general superintendence vested with each High Court regarding the judicial services, within the respective States / Union Territories.

⁴ Third AIJA, (1994) SCC 314

⁵ Fourth AIJA, (2002) 4 SCC 247

⁶ R.K. Sabharwal & Ors. v. State of Punjab & Ors., (1995) 2 SCC 745

⁷ Fifth AIJA, (2010) 15 SCC 170

⁸ Sixth AIJA, 2025 SCC OnLine SC 1184

32. To understand the width of these powers, one need not look beyond the decisions of two Constitution Benches of this Court in ***B.S. Yadav v. State of Haryana***⁹ and ***State of Bihar v. Bal Mukund Sah***¹⁰.

33. To explicate, ***B.S. Yadav***⁹ was a case in which the judicial officers promoted to the higher judicial service of Punjab and Haryana, two different States with a unified High Court, challenged the determination of seniority *inter se* promotees and direct recruits based on two different sets of rules. A Constitution bench of this Court held that although the State Legislature or the Governor has the authority to pass laws regulating the recruitment of Judicial Officers of the State under Article 309, the extent of these powers is to be regulated by Article 235, ensuring that the Rules and Regulations made do not impinge upon or detrimentally affect the control vested in the High Court by Article 235.

34. Similarly, in ***Bal Mukund Sah***¹⁰, this Court considered the application of reservation of vacancies, as enacted by the State of Bihar in the direct recruitment to the posts in the judiciary of the State, both to the Higher Judicial Services of District Judges and the grassroots level in the lower rungs of the judiciary. The Constitution Bench therein held that the appropriate Legislature or the Governor can regulate the recruitment and conditions of services of the persons appointed to public services and posts, only subject to other provisions of the Constitution, including the power of superintendence conferred on the High Court under Article 235.

35. It is therefore quite clear that both the Constitution Bench decisions definitively state that, whether it concerns recruitment or the determination of seniority, the State Legislature empowered under Article 309 or the Governor, exercising the power to make rules under the proviso to Article 309, ought to consult the High Court. This is especially so when Article 309 is subject to other provisions of the Constitution, giving primacy to Articles 233 to 235, wherein the control of the entire District Judiciary is conceded to the High Court.

36. Having said that, we consider it necessary to observe that there can be no doubt that this Court faces no constitutional impediment in exercising its unique power of judicial review under Article 32, read with other relevant provisions of the Constitution, including Articles 141 and 142, to lay down uniform guidelines governing the structure and functioning of the judicial services across the country. It is imperative to note that this very function has been carried out by this Court through a series of judgments passed in the instant Writ Petition as well as in other cases, including in ***Rejanish K.V.***¹ and ***Malik Mazhar Sultan (3) v. U.P. Public Service Commission***¹¹, with the consistent goal of strengthening the judiciary by fostering uniformity in the structure of judicial services, enabling judicial institutions to be more effective, and ensuring that excellence and merit continue to remain the hallmark of judicial officers.

37. There is no gainsaying that Articles 233 to 235 assign policy decisions, such as the specific manner of implementing the directions of this Court, to the domain of the High Court. However, at the same time, it is also essential that overarching guidelines, which would apply across all States, be framed to ensure the development of unified and robust judicial services, with the ultimate goal of cultivating an independent judiciary. These guidelines do not foreclose the powers of the High Court; instead, they establish a

⁹ B.S. Yadav v. State of Haryana, (1980) Supp SCC 524

¹⁰ State of Bihar v. Bal Mukund Sah, (2000) 4 SCC 640

¹¹ Malik Mazhar Sultan (3) v. U.P. Public Service Commission, (2008) 17 SCC 703

homogenous framework within which each High Court, as a Constitutional Court, can exercise superintendence over the judicial services.

II. The curious case of ‘Heartburn’

38. Having addressed the initial concern about this Court's propriety to enter into the domain of seniority within the judicial services, we turn our attention to the issue of ‘heartburn’.

39. The RPs in this regard vehemently urged that a separate quota be created in their favour within the HJS for career advancement. They pointed out their service in the judicial service in the Senior Division and the Junior Division, which, according to them, has been recognised by this Court in ***Rejanish K.V.***¹ as being far superior to experience at the Bar. They further contended that the ‘heartburn’ caused by the induction of younger candidates as DRs and their consequential career progression diminishes the efforts of officers who have toiled endlessly in their judicial work.

40. It may be noticed that the Constitution Bench in ***Rejanish K.V.***¹, while permitting judicial officers to compete along with the Members of the Bar for direct recruitment to HJS, did not observe that the experience in judicial service is superior to that of a practising advocate, but only noticed that it is in no manner inferior.

41. It merits emphasis that in prescribing the minimum years of practice for recruitment to the lower rungs of the judiciary, this Court on earlier occasions specifically laid stress upon the experience at the Bar as an essential requirement for entry into judicial service. The three-judge Bench in the ***Sixth AJJA***⁸ merely equated judicial service and experience at the Bar and did not confer any supremacy on one as against the other.

42. In this context, it must be noted that the discontentment of the RPs within the HJS cadre has been mitigated to a large extent by increasing the ratio for the HJS cadre for LDCEs, and by enabling judicial officers who have completed a minimum period of service and reached an age, at par with that prescribed for bar members are also being considered for direct recruitment to the HJS.

43. We also need to note that the DRs, especially the members from the Bar, are now at a disadvantage due to the decision in ***R. Poornima v. Union of India***¹². This dictum provides that consideration for recommendation to the High Court will be possible only after they have completed ten years as a judicial officer. In sharp contrast, an RP or LDCE would face an advantage in this scenario since such a requirement would also take into consideration their service at the lower rungs of the judiciary and the HJS.

44. The data supplied by various High Courts, hence, has to be looked at in the above perspective. The last three decades have witnessed substantial changes in the minimum required experience for recruitment to the lower rungs in the judiciary. In 1993, three years’ experience at the Bar was prescribed by this Court. Although this minimum requirement was dispensed with in the year 2002, this position has occupied the field for the last two decades.

45. Presently, State Judiciaries are in the cusp of a major change with the reintroduction of the minimum three years’ experience at the Bar for recruitment to junior division and the further directions issued by this Court in ***Sixth AJJA***⁸ enabling accelerated career progression to the judicial officers recruited and continuing in the lower rungs of judiciary, with an additional provision for participating in direct recruitment to HJS, as provided in

¹² R. Poornima v. Union of India, (2023) 12 SCC 519

Rejanish K.V.¹. The data supplied concerns persons continuing in the State Judiciary, which also varies from State to State.

46. As has been noticed earlier, some of the States have more RPs occupying positions of significance, while in others the DRs are more prominent. High Courts across the country are also not *ad idem* on the issue raised, with most of them exhorting before this Court to neither enter into the question of a further seniority determination in the HJS, different from that assigned on entry thereat, nor to tweak the assignment of seniority based on roster points applied to the ratio of recruitment from the three sources.

47. Even within the HJS, the fixation in the Selection Grade and the Super Time Scale is regulated by merit-cum-seniority; seniority being assigned from the date of entry into the HJS in proportion with the ratio based on the roster points assigned to each source. As in any selection based on merit-cum-seniority, merit remains the dominant consideration, and seniority is applied only when the merit or suitability stands equal. The consideration of merit is performance-based within the cadre of HJS, relatable to various periods spent in that cadre and not those spent earlier in the lower rungs of the judiciary.

48. This is also the position with respect to the assignment of administrative duties in a District, which falls upon the senior-most within the HJS, in a given District, designated as District Judge or Principal District Judge.

49. The fixation in higher grades and designations for the purpose of discharging administrative duties is never dependent solely on seniority; merit and suitability are the norm, which must be evaluated based on service in that cadre, rather than prior service in the lower rungs.

50. In bringing this issue to a close, we consider it appropriate to employ an analogy to illustrate the relative modes of entry into the Higher Judicial Service. If entry into the HJS is viewed as a common destination, one may conceive of DRs as reaching that destination by flight, LDCEs as travelling by train, and RPs as traversing the distance on foot. At first blush, it may indeed appear that the RPs experience a greater degree of heartburn when compared to the relative swiftness with which the other categories are able to enter the HJS.

51. However, this perceived difficulty stands sufficiently addressed by the fact that this Court has ensured the availability of multiple avenues to Promotees for career advancement—whether through the LDCE, or, as recognised in **Rejanish K.V.**¹, through the option of participating in the Direct Recruitment process.

52. When such opportunities exist, the mere inability of certain officers to succeed in these examinations on the basis of merit, or the contention that their promotional channel is slower or numerically larger, cannot furnish a valid basis for seeking preferential treatment within the HJS merely on account of a sense of grievance. It is well settled that career progression to the higher echelons of the judiciary is neither a matter of right nor of entitlement.

III. Non-retention of 'Birthmark'

53. The issue of determining seniority, *inter se* RPs and DRs has vexed public offices from the very inception, and there is a wealth of precedents to rely upon.

54. For instance, in **Mervyn Coutindo v. Collector of Customs**¹³, this court considered the rotational system for granting seniority between DRs and RPs upon entering a cadre,

¹³ Mervyn Coutindo v. Collector of Customs, (1966) 3 SCR 600

as well as maintaining that seniority upon promotion to higher posts. In the context of promotion from the post of Appraisers to the Principal Appraisers, the Constitution Bench ruled that when there is only one recruitment source, the normal rule applies, i.e. a person promoted to a higher grade gains seniority in that grade based on the date of promotion, provided they are found fit and confirmed in the higher grade after the probation period. In such cases, continuous appointment in the higher grade determines seniority, since the source of recruitment is the same.

55. This principle straightforwardly applies to the fixation of seniority in the Selection Grade and Super Time Scale within the HJS in the cadre of District Judges, recruited or promoted from the three different sources. Further career advancement in the HJS thus depends on seniority within that cadre, not the feeder category.

56. This principle was followed by another Constitution Bench in ***Roshan Lal Tandon v. Union of India***¹⁴, which was concerned with the promotion from Train Examiners ‘D’ Grade, which was a common cadre formed by separate sources, to Train Examiners ‘C’ Grade.

57. The decision in ***State of Jammu & Kashmir v. Sh. Triloki Nath Khosa & Ors.***¹⁵ also stands out in this context, where a Constitution Bench of this Court had the opportunity to expand the principle laid out in ***Mervyn Coutindo***¹³ and ***Roshan Lal Tandon***¹⁴. Judicial scrutiny in that case was limited to considering whether a classification based on educational qualification had a reasonable basis and bore a nexus with the object in view. When approving the classification, the Court noted that the rules did not discriminate among graduates on the basis of source, thereby undermining any claim of a ‘birthmark’ in the cadre influencing the classification.

58. Article 16, ensuring equality of opportunities in matters relating to employment, was held to be an instance of the guarantee of equality enshrined in Article 14. The concept of equality, it was held, has an inherent limitation arising from the very nature of the constitutional guarantee, mandating ‘equality for equals’ and not for ‘unequals’. The classification on the basis of educational qualification, made with a view to achieving administrative efficiency, was held to be not resting on any fortuitous circumstances and, in the facts and circumstances of the case, justified the validity of such classification.

59. The ratio in ***Roshan Lal Tandon***¹⁴ insofar as it held that the direct recruits and promotees lost their birthmarks on fusion into a common stream of service, prohibiting their classification on the basis of the source from which they were recruited, was found to be not applicable in the facts and circumstances of ***Triloki Nath Khosa***¹⁵. The Constitution Bench in ***Triloki Nath Khosa***¹⁵ held that “... *The ratio of Roshan Lal’s case can at best be an impediment in favouring persons drawn from one source as against those drawn from another for the reason merely that they are drawn from different sources*” (*sic para 47*). This impediment is in the teeth of the answer to the question posed by the *Amicus* in this case.

60. The dictum of ***Roshan Lal Tandon***¹⁴ as succinctly stated in ***Triloki Nath Khosa***¹⁵ however, squarely applies in the case of District Judges appointed from three different sources, being further classified on the basis of their length of service in the lower rungs of the judiciary, prejudicing the DRs, who do not have the advantage of such service in the lower cadre.

¹⁴ *Roshan Lal Tandon v. Union of India*, (1968) 1 SCR 185

¹⁵ *State of Jammu & Kashmir v. Sh. Triloki Nath Khosa & Ors.*, (1974) 1 SCC 19

61. In this light, the theory of classification, as proposed by the *Amicus*, subverts and submerges the precious guarantee of equality as available to the members of the common cadre, who, on appointment and determination of their *inter se* seniority, at the time of appointment into the HJS, lose the 'birthmark' of the source from which they are appointed.

62. Reference must also be made in this regard to the decision in ***Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Ors.***¹⁶, which was *inter alia* concerned with the *inter se* seniority of direct recruits and promotees, as also the determination of seniority of *ad-hoc* appointees. While deciding the issues, including that of implementation of a quota and the consequence of its breakdown, it was unequivocally held that, on appointment to a post in accordance with the rules, seniority ought to be conferred from the date of initial appointment; the departure being possible only when the initial appointment is *ad-hoc* and not in accordance with the rules, with which issues we are not concerned.

63. The appointment made by way of a stopgap arrangement without considering the claims of the eligible available persons and without following the rules of appointment was held to be not comparable with the experience of a regular appointee, because of the sheer qualitative difference in the appointment itself. It was reiterated that otherwise there would be treatment of unequals as equals, which would violate the principle of equality spelt out in Articles 14 and 16 of the Constitution. These principles were further reiterated in the cases of ***State of West Bengal v. Aghore Nath Dey***¹⁷ and ***Ram Janam Singh v. State of Uttar Pradesh***¹⁸.

64. Hence, if at all the experience in the lower rungs of the judiciary is to be reckoned for determining seniority in HJS, there should be some compelling reason which stands the test of reasonableness, not being vitiated by the foul of arbitrariness, which again has to be provided by means of statutory rules. In our view, there is no basis to consider the previous experience as a Civil Judge as an intelligible differentia creating a reasonable classification to favour RPs or LDCEs in the selection for higher grade scales or appointment as Principal District Judges.

65. However, it goes without saying that this does not preclude the High Courts, which are capable of deciding on compelling reasons based on the particular facts and circumstances of each State, along with available data and statistics, from providing preferential treatment to any group within the HJS. Provided that such preferential treatment does not go contrary to the principles enunciated in ***Triloki Nath Khosa***¹⁵, and is incorporated within the statutory rules.

IV. The Roster and its implementation

66. As previously observed, this Court, in the ***Fourth AIJA***⁵, had found that preparation of a Roster is the most suitable method of determining seniority within the HJS, and we see no reason to deviate therefrom. However, hindsight, experience, and subsequent developments have necessitated that this Court take a fresh look at some aspects of the roster system of seniority and address the issues and gaps that have emerged therein.

67. Submissions were made from both sides on the efficacy of a 40-point roster as stipulated in the ***Fourth AIJA***⁵, where the quota for RP, LDCE, and DR was set in a 50:25:25 ratio. Although this ratio for the composition of the cadre was later modified to

¹⁶ Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Ors., (1990) 2 SCC 715

¹⁷ State of West Bengal v. Aghore Nath Dey, (1993) 3 SCC 371

¹⁸ Ram Janam Singh v. State of Uttar Pradesh, (1994) 2 SCC 622

65:10:25, the earlier ratio was reinstated by the Constitution Bench in the **Sixth AIJA**⁸. Whereas, though the stipulation for a 40point seniority roster has remained a common feature across different States, its exact formulations remain varied.

68. At present, the sequence of seniority and the specific roster points assigned to each source are decided by the respective State Governments in consultation with the High Court and stipulated in the relevant service rules. Most of the States / Union Territories / High Courts have supplied this Court with the details of the roster points prescribed in their respective rules. A majority of the States have allocated the first three positions to the RPs, followed by one to the DRs and one to LDCE, with the roster points repeated in the said sequence. However, insofar as the Northeastern States, Chhattisgarh, and Gujarat, are concerned, LDCE is given preference in seniority over the DRs, with the first positions going to the RPs.

69. In three other States, the situation is different, as the LDCEs have been given the first preference in seniority, followed by the RPs and then the DRs. Clearly, the determination of the roster points has created divergent service rules for the same cadre of officers. In our considered opinion, this situation is an affront to the ideal of uniformity within the judicial services that is sought to be preserved through these proceedings.

70. With these observations and having considered the suggestions made across the Bar on this matter, it appears to us that the most appropriate mechanism to harmonise the system of seniority across the HJS is a 4point roster system, wherein the first two points shall be allocated to RPs, the third to LDCE(s), and the fourth to DR(s). This roster would, it goes without saying, repeat thereafter, till all the appointees are placed within the roster.

71. In this backdrop, we may also clarify that the roster is an annual creation. The timeline for recruitment to HJS, as well as the lower judicial services, is prescribed in the operative portions of **Malik Mazhar Sultan**¹¹. If the judgment is followed by the letter, it would result in all appointments, from all three sources, being achieved within the same year. The annual roster is envisaged as a complementary component to manage the intake from all three sources and assign *inter se* seniority thereto. In this situation, the fixation of seniority among RPs, LDCEs, and DRs shall be determined according to the roster points for that particular year, *de hors* the exact date of appointment. To put it tersely, as long as the appointment takes place within the same year as that in which the recruitment is initiated, there are no qualms in placing all such appointees within the same roster of that year.

72. The above clarification, as an obvious consequence, then begs the question: what would happen when the recruitment does not conclude within the same year as when it was initiated? Experience indicates that, especially since the process of evaluation for promotion is based on merit-cum-seniority, with merit being the predominant factor, delays are likely in selecting LDCE candidates and even more so in the case of DRs, where merit is the sole consideration— complications in the evaluation process, unexpected administrative holdups, and lengthy litigation are just a list of examples that delay the procedure.

73. That, however, is only one side of the coin. On the flip side, this Court must also uphold and enforce the ideal of seniority as per continuous service within the cadre to prevent the anomalies that many States are faced with today. The aforementioned question has remained one of the significant gaps in the existing directions regarding the seniority roster in the HJS, and this Court must now strike a balance between these two concerns.

74. This is not the first occasion that this Court has had to consider the impact of selection delays on a seniority roster of a government service. **Union of India. v. N.R. Parmar**¹⁹ considered the *inter se* seniority between direct recruits and the promotees. Therein, the direct recruitment process, though substantially commenced in the same recruitment year, could not be completed within that recruitment year, so the promotees were appointed substantially before the direct recruits, who finally joined two years later. In such a situation, this Court permitted the placement of such direct recruits within the same roster as the timely appointed promotees, since the delay was attributable to the rigmaroles of a direct recruitment.

75. In **K. Meghachandra Singh v. Ningam Siro**²⁰, a three-Judge Bench overruled the decision in **N.R. Parmar**¹⁹ to hold that the general principle of law is that a direct recruit cannot get a back-dated notional seniority, earlier than the date when he joined in service. A Two-Judge Bench in **Hariharan v. Harsh Vardhan Singh Rao**²¹ doubted the correctness of **K. Meghachandra Singh**²⁰ especially since the attention of the three Judge Bench was not invited to the decision of a Co-ordinate Bench in **M. Subba Reddy v. A.P. SRTC**²².

76. In **Hariharan**²¹, attention was drawn to the anomaly arising when the process of recruitment of direct recruits is completed within the same recruitment year, yet an adequate number of candidates could not be selected. It was observed that in such circumstances, the shortfall must be carried forward to the succeeding recruitment year. Consequently, candidates selected against such carried-forward vacancies are required to be placed *en bloc* below the Promotees of the earlier years. Unless this procedure is adhered to, the rotation of the quota system stands frustrated.

77. The reference was thus only with respect to the selections made from different sources, based on a ratio applied to the cadre, to vacancies arising in a recruitment year.

78. While this particular issue remains pending in the abovementioned reference, in our view, keeping in mind the most celebrated principle of assigning seniority on the basis of the period of continuous service while also acknowledging the almost inevitable incidence of speedbumps, the model delineated hereinafter for the purposes of HJS would be most appropriate.

79. If the recruitment process from any source is not completed in the year in which it began, but appointments are made before the end of the following year, those appointees shall be placed at their respective roster points for the year of initiation. Provided that no appointments from any source are made for the next recruitment year before these appointments are effected.

80. To illustrate, let us consider that the recruitment process from all three sources is initiated in Year A. The procedures for appointment of LDCs and RPs are completed within the same Year A, and they are placed in the Annual Roster for Year A. However, a variety of issues cause the appointments of DRs to happen only in Year A+1. Now, these DRs, although appointed in Year A+1, would be permitted to also take their positions within the roster for Year A, as long as they were appointed prior to the LDCs, RPs, and DRs whose recruitment is initiated in Year A+1.

¹⁹ Union of India. v. N.R. Parmar, (2012) 13 SCC 340

²⁰ K. Meghachandra Singh v. Ningam Siro, (2020) 5 SCC 689

²¹ Hariharan v. Harsh Vardhan Singh Rao, 2022 SCC OnLine SC 1717

²² M. Subba Reddy v. A.P. SRTC, (2004) 6 SCC 729

81. Barring the above exception, we affirm that the continuous length of service ought to be the criterion for determining *inter se* seniority in the HJS, subject to the further condition that all appointees in a single recruitment year are placed against their respective annual roster points, regardless of the actual date of appointment.

82. The above mechanism, in our opinion, serves to mitigate the grievances and preserve the seniority of an appointee who was subsequently borne in service only due to the vagaries of the recruitment process. In the same vein, the officers appointed earlier also cannot be aggrieved, as they would be adjusted within the roster only along with their relative contemporaries in the service and would be put on notice regarding the seniority determination once the other selections are concluded.

83. If the High Court, for any valid reason, decides not to initiate the recruitment process from any of the three sources in a given year, the person subsequently appointed from those sources shall not be eligible to be placed within the roster for that year in which recruitment from the source did not take place.

84. We are at the same time also cognizant of the necessity of ensuring that vacancies in the judicial services do not remain unfilled, the negative consequences of which have been very cogently addressed by this Court in **Mazhar Malik Sultan**¹¹. To this end, this Court in the **Sixth AIJA**⁸, has already provided that unfilled vacancies within the LDCE quota may be diverted and filled by RPs.

85. In our considered opinion, the above system can also be extended to the vacancies that remain unfilled after the process of direct recruitment is completed. To explicate, when some of the vacancies pertaining to DRs or LDCEs in a particular year are not filled up due to non-availability of suitable candidates from these sources, despite the recruitment process being taken to its conclusion, the positions which remain vacant for want of candidates shall be filled up in the same recruitment year through regular promotion from the cadre of Civil Judge (Senior Division) as per the applicable rules.

86. In such a scenario, the candidates who are ordinarily selected from the three sources are assigned seniority on induction to the HJS as per the Annual Roster in the regular manner. The remaining RPs, who are promoted in the vacancies from the other sources, would also be entitled to be placed in the same roster, but they would only occupy the subsequent positions for RPs, i.e., this diversion does not grant the roster position of LDCEs or DRs to these RPs. In the subsequent recruitment year, the ratio of 50:25:25 should guide the computation of vacancies to be filled from each source. This would be a continuing exercise of applying the roster points on the candidates selected in each recruitment year, while the ratio is applied to the cadre, for determining the vacancies arising in a subsequent year.

V. Data – an unreliable guide

87. Despite the data presented by the *Amicus Curiae* as to the constitution of the HJS in various States, specifically the number of posts occupied by the RPs and the DRs, a reality check on facts is not possible due to the rather amorphous and fluid situation that has existed in the past three decades.

88. As was found, it was in 1992 that this Court in the **Second AIJA**³ prescribed a minimum requirement of three years' practice at the Bar for recruitment to the lower rungs of the judiciary. Before that, it was not uniform and different periods were prescribed in different States; as we saw from Kerala, which prescribed a minimum five years' practice at the Bar for recruitment to the entry point at the lower rung of the judiciary, which stood approved in 1994 by the **Third AIJA**⁴.

89. Be it the three-year course or the five-year course in LL.B, the latter of which commenced only in 1988-89, that too initially confined to National Law Universities, the average age of recruitment as Munsiff/Magistrate would have been 26 to 28. The age limit would further increase in the case of reservations, wherever it was enabled with a relaxation in the maximum age. There would be minimal representation of those who were recruited at the commencement of the three decades just past.

90. With the **Fourth AIJA**⁵, in 2002, the requirement of practice was fully dispensed with, in which context, the age of recruitment could be anything above 23 years; who would be the present incumbents in the post of District Judges, having been promoted from the Senior Division. Even then, the time spent in Junior Division and Senior Division, before promotion to the HJS varied considerably in the different States and there could be no common malady ferreted out which requires mitigation.

91. We are constrained to observe that the suggestions as placed on record by the learned *Amicus* would be counter-productive and would run against established norms of service jurisprudence, if the service in the lower cadre is reckoned for determining the seniority in the higher cadre, especially when, in addition to regular promotions, there is a merit based promotion opportunity through LDCE and DR, participation in which is now permitted to both the existing Judicial Officers and the Members of the Bar.

92. The ratio of 1:1, as suggested by the *Amicus* and the zone of consideration of 50% officers from the two categories of promotion and direct recruitment, would only create further disparities and lead to discontentment of those promoted on merit and would create a disadvantage to those Judicial Officers who are directly recruited to the HJS. A three-year seniority would also cause injustice insofar as direct recruitment is concerned, providing no such incentive to a Judicial Officer who had earlier been in the Junior Division or the Senior Division.

93. The separate seniority list in respect of the three different sources would also result in inequalities. We have no reason to doubt that creating quotas for fixation in the Selection Grade and Super Time Scale within the cadre of District Judges based on the prior service in the lower rungs of the Judiciary would be iniquitous and would result in sacrificing merit.

94. As was observed, the disparities in the data and statistics presented, coupled with the anticipated change in the constitution of the HJS prompted by the **Sixth AIJA**⁸ and **Rejanish K.V**¹ make today a wholly inopportune moment to bring in any weightage to RPs in the HJS, on the basis of their service in the Junior Division and the Senior Division. This is, especially so, when the merit, suitability and seniority determined for fixation in the higher grades of Selection Grade and Super Time Scale have to be factored and evaluated on the basis of the service in the HJS and not that in the lower feeder cadre. The earlier service in the lower rungs of the judiciary can only enable a meritorious promotion to the HJS, and the incumbents in the HJS having lost their '*genetic blemish*' or so to say the '*genetic adornment*' of experience in the lower cadre, will have to prove their merit in the HJS for further career advancement. It would also dampen the spirit of those who avail the chances of accelerated promotion, since then, there would be no incentive in taking that opportunity.

95. Ambition is a ladder, the last rung of which is always elusive to the one pursuing it, who endlessly searches for it; based on which, seniority cannot be fixed. For all these reasons, we are compelled to note that the questions raised and the reliefs sought by the learned *Amicus* through this Interlocutory Application must be declined, save for the mechanisms envisaged and enumerated through this judgment.

96. Perhaps at this juncture and milieu, prior to solidifying our conclusions and directions, it would be fitting to quote a passage from the **First AIJA**²:

“Judges do not have an easy job. They repeatedly do what the rest of us seek to avoid; make decisions.”

CONCLUSIONS AND DIRECTIONS

97. Before proceeding any further, we consider it apposite to record a *caveat* that the guidelines issued herein are not intended to adjudicate or resolve any *inter se* seniority dispute among RPs, LDCs and DRs. What we seek to lay down are general and mandatory guidelines which shall, henceforth, be incorporated into the respective statutory service rules governing the determination of *inter se* seniority among officers appointed from different sources to the Higher Judicial Services.

98. Likewise, the directions issued herein shall not be construed as an avenue to reopen or unsettle *inter se* seniorities that have already been determined between officers appointed from the different sources of recruitment.

99. It is further clarified that such directions, as well as this judgment *in toto*, are being issued considering the issues as on date and may require reconsideration upon observing the ultimate impact and effect of the decisions rendered by the Constitution Bench in **Rejanish K.V.**¹ and the **Sixth AIJA**⁸. We say so, being mindful of the fact that the *inter se* position amongst RPs, LDCs and DRs is likely to undergo substantial change in due course, in light of the aforesaid decisions. Such altered circumstances may necessitate a review, modification, or recall of the present directions.

100. In this vein, we deem it appropriate to invoke our powers under Article 142 of the Constitution to record the following conclusions and issue the ensuing directions:

(i) ***That, perceived discontentment and heartburn without something more in the form of a legal claim, illegal denial, or at least a legitimate expectation cannot result in creating an artificial classification of members within a cadre.***

(ii) ***That, the statistical data is disparate and does not provide a substantial basis to find such discontentment and heartburn of RPs in the HJS, to be justified.***

(iii) ***That, there is no common malady of disproportionate representation of DRs in the HJS such that it is diminishing the prospects of financial upgradation or designation as Principal District Judges to the promotees, which afflict the Country as a whole or make it imperative for this Court to resolve it, by giving a preference to RPs or LDCs.***

(iv) ***That, the data put forth in many States indicates a prevalence or equivalence of RPs in the HJS and key positions, which is natural since their ratio is 3/4th of the total posts in the cadre.***

(v) ***That, on the entry into a common cadre from different sources (RP, LDC and DR) and assignment of seniority as per the annual roster, the incumbents lose their ‘birthmark’ of the source from which they are recruited.***

(vi) ***That fixation in the Selection Grade and Super Time Scale within the HJS is based on the merit-cum-seniority within the cadre and cannot depend upon the length of service or performance in the lower rungs of the Judiciary; the latter loses its significance after RPs and LDCs, by its virtue, are propelled into the HJS. Reliance on it does not serve the object of efficient administration of justice and is counterproductive.***

(vii) That, the length and performance as a Civil Judge also does not constitute an intelligible differentia to classify incumbents in the common cadre of District Judge and the classification made in Triloki Nath Khosa¹⁵ by a Constitution Bench of this Court on the basis of educational qualifications stands on a different footing.

(viii) That, individual career aspirations are a normal incidence of service, accentuated only by better performance; they are not connected to the objective of an independent and strengthened judiciary and cannot guide the shape of the rules of seniority.

(ix) That, sufficient accelerated opportunities are provided for Members of the Judicial Service entering into the lower rungs, for career advancement as provided by the Constitution Bench in Rejanish K.V.¹; enabling the reckoning of their service for direct recruitment to HJS and by the Sixth AJA⁸; facilitating fast-track promotions to Civil Judge (Senior Division) and the HJS through reduction in the minimum period of service.

(x) That, the seniority of officers within the HJS shall be determined through an annual 4-point roster, filled by all officers appointed in the particular year in the repeating sequence of 2 RPs, 1 LDCE, and 1 DR.

(xi) That, only if the recruitment process is completed within the year after which it was initiated and no other appointments, from any of the three sources, have already taken place in respect of the recruitment initiated for that subsequent year, shall the officers belatedly so appointed be entitled to seniority as per the roster of the year in which recruitment was initiated.

(xii) That, if the recruitment process is not initiated for vacancies arising in a given year in the same year, the candidate filling such vacancy, in subsequent recruitment, shall be granted seniority within the annual roster of the year in which the recruitment process is finally concluded and appointment is made.

(xiii) That, after the recruitment of DRs and LDCEs is complete for a particular year, the positions falling in their quota that remain unfilled due to lack of suitable candidates shall be filled through RPs, subject to such RPs being placed only on subsequent RP positions in the annual roster; and the vacancies in the subsequent year shall be computed so as to apply the proportion of 50:25:25 to the entire cadre.

(xiv) That, the statutory rules governing the HJS in the respective States, in consultation with the High Courts, shall prescribe the exact modalities of the Annual Roster and how the directions of this judgement shall be implemented.

101. The respective States / Union Territory Administrations are hereby also directed to undertake appropriate amendments in their respective statutory rules, in consultation with the High Court, to bring them in consonance with the guidelines laid down in this judgment, within a period of three months.

102. The question framed by us is thus answered in the above terms. The instant Interlocutory Application stands disposed of.

103. I.A. Nos. 269261 and 270515/2025 also stand disposed of.

104. Ordered accordingly.