

2025 LiveLaw (SC) 793

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/INHERENT/ORIGINAL JURISDICTION
B.R. GAVAI; CJI., K. VINOD CHANDRAN; J., N.V. ANJARIA; J.
CIVIL APPEAL NO. 3947 OF 2020; AUGUST 12, 2025
REJANISH K.V. *versus* K. DEEPA AND OTHERS**

Constitutional Law - Article 233 - Appointment of District Judges - Reference to Constitution Bench - A person not already in the service of the Union of the State shall only be eligible to be appointed a district judge if they have been for not less than 7 years an advocate or a pleader and are recommended by the High Court for appointment - Supreme Court referred two substantial questions of law regarding the interpretation of Article 233(2) of the Constitution to a Constitution Bench of five judges - Whether a judicial officer who has already completed seven years at the bar, recruited for subordinate judicial services, would be entitled to appointment as ADJ against a bar vacancy - Whether eligibility for appointment as a DJ is to be seen only at the time of appointment or at the time of application or both - Writ Petition was filed for review of decision passed in *Dheeraj Mor v. High Court of Delhi*, which held that an advocate who applies for the post of DJ by way of direct recruitment should continue to be a practising advocate until date of appointment and should not already be in judicial service of Union or State and held that rules framed by High Court debarring Judicial officers from staking their claim as against posts reserved for direct recruitment from Bar would not be ultra vires to the Constitution - Supreme Court directed registry to place the matter before the Chief Justice of India for obtaining appropriate orders for Constitution of 5 judge bench.
[Paras 17-22]

With WRIT PETITION (C) NO. 759 OF 2017 WRIT PETITION (C) NO. 1278 OF 2019 REVIEW PETITION (C) NO. 381 OF 2021 IN WRIT PETITION (C) NO. 396 OF 2018 REVIEW PETITION (C) NO. 385 OF 2021 IN CIVIL APPEAL NO. 1700 OF 2020 REVIEW PETITION (C) NO. 1027 OF 2021 IN WRIT PETITION (C) NO. 405 OF 2016 REVIEW PETITION (C) NO. 379 OF 2021 IN WRIT PETITION (C) 578 OF 2018 MISCELLANEOUS APPLICATION NO. 179 OF 2021 IN WRIT PETITION (C) NO. 405 OF 2016 REVIEW PETITION (C) NO. 669 OF 2021 IN WRIT PETITION (C) NO. 999 OF 2019 REVIEW PETITION (C) NO. 380 OF 2021 IN WRIT PETITION (C) NO. 222 OF 2017 MISCELLANEOUS APPLICATION NO. 1050 OF 2021 IN CIVIL APPEAL NO. 1698 OF 2020 REVIEW PETITION (C) NO. 781 OF 2021 IN WRIT PETITION (C) NO. 316 OF 2017 REVIEW PETITION (C) NO. 774 OF 2021 IN WRIT PETITION (C) NO. 744 OF 2019 REVIEW PETITION (C) NO. 780 OF 2021 IN WRIT PETITION (C) NO. 602 OF 2016 REVIEW PETITION (C) NO. 853 OF 2021 IN WRIT PETITION (C) NO. 1080 OF 2019 REVIEW PETITION (C) NO. 621 OF 2021 IN CIVIL APPEAL NO. 1698 OF 2020 REVIEW PETITION (C) NO. 868 OF 2021 IN WRIT PETITION (C) NO. 414 OF 2016 REVIEW PETITION (C) NO. 867 OF 2021 IN WRIT PETITION (C) NO. 405 OF 2016 REVIEW PETITION (C) NO. 782 OF 2021 IN WRIT PETITION (C) NO. 639 OF 2018 WRIT PETITION (C) NO. 857 OF 2021 REVIEW PETITION (C) NO. 989 OF 2021 IN TRANSFER PETITION (C) NO. 272 OF 2018 REVIEW PETITION (C) NO. 996 OF 2021 IN CIVIL APPEAL NO. 1703 OF 2020 WRIT PETITION (C) NO. 864 OF 2021 REVIEW PETITION (C) NO. 835 OF 2021 IN CIVIL APPEAL NO. 1704 OF 2020 REVIEW PETITION (C) NO. 836 OF 2021 IN CIVIL APPEAL NO. 1706 OF 2020 REVIEW PETITION (C) NO. OF 2025 @ DIARY NO. 18470 OF 2021 REVIEW PETITION (C) NO. 1354 OF 2021 IN CIVIL APPEAL NO. 1698 OF 2020 REVIEW PETITION (C) NO. 1042 OF 2022 IN WRIT PETITION (C) NO. 999 OF 2019 CIVIL APPEAL NO. OF 2025 [ARISING OUT OF SLP (C) NO. 3076 OF 2023]

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J U D G M E N T

B.R.GAVAI, CJI

1. The present batch of petitions in effect seek review of the judgment and order dated 19th February 2020 passed by this Court in the case of **Dheeraj Mor v. Hon'ble High Court of Delhi**¹ (hereinafter referred to as "**JUR**") wherein a Bench of three learned Judges held that the members of the judicial service of a State could be appointed as district judges either by way of promotion or the Limited Departmental Competitive Examination (LDCE). It was further held that under Article 233(2) of the Constitution, an advocate or pleader with 7 years of practice could be appointed as district judge by way of direct recruitment, in case he is **not** already in the judicial service of the Union or a State. Thus, it was held that the rules framed by the High Court debarring judicial officers from staking their claim as against the posts reserved for direct recruitment from Bar would not be *ultra vires* to the Constitution.

2. Along with the review petitions, many other writ petitions as well as special leave petitions have been filed, *inter-alia*, praying for a declaration that even those judicial officers who have an experience of seven years at the Bar prior to their joining as judicial officers would be entitled to be appointed as district judges *via* direct recruitment under Article 233(2) of the Constitution.

3. We have heard Shri Jayant Bhushan, Shri Dama Seshadri Naidu, Dr. Menaka Guruswamy, Shri V. Giri, Shri Anand Sanjay M Nuli, Shri Shoeb Alam, Shri Rajive Bhalla, learned Senior Counsel and other counsel appearing for different parties praying that the

¹ (2020) 7 SCC 401

question with regard to interpretation of Article 233(2) of the Constitution requires consideration by a Constitution Bench of this Court.

4. We have also heard Shri Nidhesh Gupta, Shri C.U. Singh, Shri Jaideep Gupta, Shri A. Hariprasad, Shri Shekhar G Devasa, Shri A. M. Bujor Barua, Shri R. Basant, learned Senior Counsel and other counsel praying that such a Reference is not necessary.

5. Learned counsel supporting the Reference have drawn the attention of this Court to the case of **G. Sabitha and others v. High Court of Judicature at Hyderabad Rep. by its Registrar General and others**² wherein *vide* order dated 10th May, 2018, this Court had recorded that the issue as to “whether the judicial officer who has already completed seven years in Bar being recruited for subordinate judicial services would be entitled for appointment as Additional District Judge against the Bar vacancy is pending consideration before the Constitution Bench in SLP(C) No.14156 of 2015”.

6. It is submitted that in the said SLP(C) No. 14156 of 2015 i.e., **JUR**, though the issue was referred to a Constitution Bench, the same came to be decided by a Bench consisting of three learned Judges of this Court.

7. Attention of this Court is further drawn to the order dated 23rd January, 2018³ passed by this Court in the **JUR** wherein after considering the different views in various pronouncements, this Court had found that the issue involved substantial question of law as to the interpretation of Article 233(2) of the Constitution. Therefore, this Court directed the matter to be placed before Hon’ble the Chief Justice of India for constitution of an appropriate Bench.

8. It is submitted that in view of the issue involving interpretation of Article 233(2) and the language used in Article 145(3) of the Constitution, the matter ought to have been referred to a Bench consisting of five learned Judges and could not have been referred to a Bench of three learned Judges. It is, therefore, submitted that it is in the interest of justice that the matter be referred to a Bench consisting of five learned Judges of this Court.

9. As against this, the learned counsel opposing the Reference submitted that the **JUR** only culls out the principle laid down by this Court in various decisions including the Constitution Bench judgments of this Court in the cases of **Rameshwar Dayal v. the State of Punjab and Others**⁴ and **Chandra Mohan v. State of Uttar Pradesh and Others**⁵.

10. It is submitted that in view of the order dated 23rd January, 2018 since the Reference was made by the Chief Justice of India to a Bench comprising of three learned Judges, the Bench has only laid down the law relying upon the earlier Constitution Bench judgments and therefore, a fresh Reference would not be necessary.

11. Various other issues on the merits of the matter(s) have also been pressed by the learned counsel. However, we do not find it necessary to refer to them inasmuch as, at this stage, we are only concerned with the question as to whether the issue involving interpretation of Article 233(2) requires to be referred to a Constitution Bench of this Court or not?

12. Insofar as the reliance placed by the learned counsel opposing the Reference on the judgment of the Constitution Bench of this Court in the case of **Rameshwar Dayal** (supra) is concerned, this Court was considering the question with regard to the

² Writ Petition (Civil) No. 316 of 2017

³ (2018) 4 SCC 619

⁴ (1960) SCC OnLine SC 123; (1961) 2 SCR 874

⁵ (1966) SCC OnLine SC 35; (1967) 1 SCR 77

candidates who had been enrolled as the advocates of the Lahore High Court on various dates between 1933 and 1940. The contention raised was that after the partition of the country which led to the establishment of a High Court of Judicature for the Province of East Punjab i.e., Punjab High Court on 15th August, 1947, since the said candidates did not have 7 years' standing as advocates in the Courts in India, they did not fulfil the requirement of Article 233(2) when they were appointed as district judges. The question, therefore, was as to whether the years of practice that the said candidates had in Lahore High Court before the partition of the country and before the establishment of the Punjab High Court would also be taken into consideration for the purpose of counting of the period of 7 years. To answer the said question, the Constitution Bench of this Court placed reliance on Clause 6(2) of the High Court (Punjab) Order, 1947 read with Section 8(3) of the Bar Council Act, 1926 to hold that an Advocate of the Punjab High Court was entitled to count the period of his practice in the Lahore High Court for determining his standing in the Bar.

13. Insofar as the judgment of the Constitution Bench in **Chandra Mohan** (supra) is concerned, the question that arose for consideration before this Court was whether the Governor can appoint as district judges, persons from services other than judicial service, that is to say, whether the Governor can appoint a person who is in the police, excise, revenue or such other services as a district judge? Answering the said question, this Court observed that acceptance of this position would take us back in the pre-independence days and that too to the conditions prevailing in the Princely States when appointments in the judicial service were made from police and other departments. This Court observed that this would hit the very principle of judiciary being an independent service.

14. The Constitution Bench in **Chandra Mohan** (supra) observed that though Article 233(1) of the Constitution is nothing more than a declaration of the general power of the Governor in the matter of appointment of district judges, it does not lay down the qualifications of the candidates to be appointed or denote the sources from which the recruitment has to be made. It was further observed that the sources for the appointment of district judges were indicated in Clause (2) of Article 233 which provided two sources, namely, (i) persons in the service of the Union or of the State, and (ii) advocate or pleader. The Court was posed with a question as to whether the service of the Union or of the State would mean any service of the Union or of the State or does it mean the judicial service of the Union or of the State. The Court observed that sources indicated that the term "service" mentioned therein is the service pertaining to the court. The Constitution Bench also relied on Article 236(b) which defines the expression "judicial service" to mean a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge. The Constitution Bench, therefore, held that the term "service" mentioned under Article 233(2) of the Constitution can only mean the judicial service.

15. As such, the questions that came up for consideration before both the Constitution Benches in the cases of **Rameshwar Dayal** (supra) and **Chandra Mohan** (supra) are different from the one which arises for consideration in the present matters.

16. At this juncture, it will be apposite to refer to Article 145(3) of the Constitution which reads thus:

"145. **Rules of Court, etc** xxxx xxxx xxxx

(3) The minimum number of Judges who are to sit for the purpose of deciding any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any Reference under Article 143 shall be five:

Provided that, where the Court hearing an appeal under any of the provisions of this Chapter other than Article 132 consists of less than five Judges and in the course of the hearing of the appeal the Court is satisfied that the appeal involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the appeal, such Court shall refer the question for opinion to a Court constituted as required by this clause for the purpose of deciding any case involving such a question and shall on receipt of the opinion dispose of the appeal in conformity with such opinion.”

[emphasis supplied]

17. It can thus be seen that Article 145(3) of the Constitution provides that the minimum number of Judges, for the purpose of deciding any case involving a substantial question of law as to the interpretation of the Constitution or for the purpose of hearing any Reference under Article 143 shall be five.

18. A Bench of three learned Judges of this Court in the case of ***Janhit Abhiyan v. Union of India and Others***⁶ to which one of us, B.R. Gavai, J (as he then was) was a member, has observed thus:

“**21.** As such, we are of the view that such questions do constitute substantial questions of law to be considered by a Bench of five Judges.

22. It is clear from the language of Article 145(3) of the Constitution and Order XXXVIII Rule 1(1) of the Supreme Court Rules, 2013, the matters which involve substantial questions of law as to interpretation of constitutional provisions they are required to be heard by a Bench of five Judges....”

19. Being conscious of the position as emanates from Article 145(3), as also of the fact that the issues involved require interpretation of Article 233(2) of the Constitution, this Court *vide* order dated 23rd January, 2018 had directed the matter to be placed before the Chief Justice of India in which subsequently ***JUR*** was pronounced.

20. Ordinarily, in view of the question involving interpretation of Article 233(2), the matter ought to have been placed before a Bench of five learned Judges. However, it appears that the same was placed before the Bench of three learned Judges and the ***JUR*** was delivered.

21. We are, therefore, of the considered view that the issues involved in the present batch of petitions ought to have been decided by a Constitution Bench of not less than five Judges.

22. At this stage, it will also be relevant to refer to Article 233(2) of the Constitution which reads thus:

“233. Appointment of district judges

xxxx xxxx xxxx

(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.”

23. Upon a perusal of the text of Article 233(2) and in light of the submissions advanced by the learned counsel for the parties on the interpretation of the provision, we are of the considered view that the following two issues are substantial question of law as to the interpretation of Article 233(2) of the Constitution:

⁶ (2021) 11 SCC 78

(i) Whether a judicial officer who has already completed seven years in Bar being recruited for subordinate judicial services would be entitled for appointment as Additional District Judge against the Bar vacancy?

(ii) Whether the eligibility for appointment as a District Judge is to be seen only at the time of appointment or at the time of application or both?

24. In view of the discussion above, we pass the following order:

i. We refer the aforesaid issues for consideration of a Constitution Bench of five Judges of this Court;

ii. The Registry is directed to place the matter before the Chief Justice of India on the administrative side for obtaining appropriate orders; and

iii. This batch of petitions would be heard after the Reference is decided by the Constitution Bench.

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