



IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP Nos. 1337 of 2010 & 9396 of 2013

Reserved on: 11th March, 2025

Date of Decision: July 07, 2025

1. CWP No. 1337 of 2010

Rajesh Kumar VermaPetitioner
Versus
Hon'ble High Court of HPRespondents.

2. CWP No. 9396 of 2013

Madan KumarPetitioner
Versus
Hon'ble High Court of HPRespondents

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

The Hon'ble Mr. Justice Sandeep Sharma, Judge.

*Whether approved for reporting?*¹Yes

CWP No. 1337 of 2010

For the Petitioner: Mr. Sanjeev Bhushan, Senior Advocate with
Mr. Sparsh Bhushan, Advocate.

For the Respondents: Mr. Chandernarayana Singh, Advocate for
respondent No.1.
Mr. Sanjeev Kuthiala, Sr. Advocate with
Mr. Diwan Singh Negi, Advocate vice Ms. Rachna
Kuthiala, Advocate for respondent No.2.

CWP No. 9396 of 2013

For the Petitioner: Mr. Ajay Sharma, Sr. Advocate with Mr. Atharv
Sharma, Advocate.

For the Respondents: Mr. J.L. Bhardwaj, Sr. Advocate with Mr. Sanjay
Bhardwaj, Advocate for respondent No.1.
Mr. Sunil Mohan Goel, Sr. Advocate with
Mr. Abhijeet Singh Chauhan and Mr. Abhinav
Mohan Goel, Advocate for respondent No.2.

Vivek Singh Thakur, J

These petitions, for adjudication of common questions of law
and similar facts, in the similar circumstances, are being decided by this
common judgment.

¹Whether reporters of the local papers may be allowed to see the judgment?

2 These petitions have been filed seeking direction to amend Clause 6(i) of Himachal Pradesh Judicial Service (Promotion from amongst Civil Judges, (Sr. Division) to the posts of District/Additional District Judges on the basis of limited Competitive Examination) Regulations, 2005, for reducing the qualifying criteria in the written examination from minimum of 60% in each individual paper and minimum aggregate of 66% marks in all papers, for becoming eligible for accelerated promotion/appointment to the post of Additional District Judge through the mode of limited competitive examination; and instead to provide minimum of 50% in each individual paper and minimum aggregate of 55% marks in all papers put together on the ground that criteria provided for direct recruitment to the same post i.e. Additional District Judge for becoming eligible to be called for interview is minimum 50% in each individual paper and minimum aggregate of 55% marks in all papers put together, alleging that provision providing such different criteria for recruitment through two different modes i.e. direct recruitment and limited competitive examination, is irrational, unreasonable, arbitrary, discriminatory and, thus, violative of Constitutional mandate.

3 Vide pronouncement in ***All India Judges' Association and others vs. Union of India and others*** reported in **(2002)4 SCC 247** the Supreme Court had directed as under:-

“27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The Subordinate Judiciary is the foundation of the edifice of the Judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the Judicial system essentially rests on the Subordinate Judiciary. While we have accepted the recommendation of the Shetty

Commission which will result in the increase in the pay scale of the Subordinate Judiciary, it is at the same time necessary that the Judicial officers, hard-working as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a Judicial Academy which is very necessary. At the same time, we are of the opinion that there has to be certain minimum standards, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges. While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge Cadre from amongst the advocate should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the Subordinate Judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned: 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum- seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case law. The remaining 25 per cent of the posts in the Service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.

28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:

(1) (a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a 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 five years' qualifying service; and

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible Advocates on the basis of the written and viva voce test conducted by respective High Courts.

(2) Appropriate rules shall be framed as above by the High Courts as early as possible."

4 In sequel to aforesaid judgment, High Court of Himachal Pradesh framed the 'Himachal Pradesh Judicial Service Rules, 2004' incorporating the directions for filling-up 25% posts of District Judges/Additional District Judges by promotion from amongst Civil Judges (Senior Division) on the basis of merit through limited competitive examination as well as in respect of filling-up 25% posts by direct recruitment, in furtherance to aforesaid mandate of the Supreme Court.

5 Thereafter, vide Notification dated 19.5.2005, Himachal Pradesh Judicial Service (Promotion from amongst Civil Judge(Sr. Division) to the post of District Judge/Additional District Judge on the basis of limited Competitive Examination) Regulation, 2005 were notified prescribing syllabus for limited competitive examination and allocation of marks for filling-up 25% posts through promotion by limited competitive examination, wherein apart from other conditions, it was provided that no candidate shall be considered to have qualified in written test unless he

obtains minimum of 60% marks in each individual paper and minimum aggregate of 66% marks in all papers put together.

6 Similarly, vide Notification dated 24th August, 2005 Regulations for holding competitive examination for appointment to the cadre of District Judges/Additional District Judges by direct recruitment were notified providing therein that no candidate shall be considered to have qualified in written test unless he obtains minimum of 60% marks in each individual paper and minimum aggregate of 66% marks in all papers put together.

7 Aforesaid regulations for direct recruitment were amended vide Notification dated 28th March, 2009 whereby aforesaid condition was modified by providing that no candidate shall be considered to have qualified in written test unless he obtains minimum of 50% marks in each individual paper and minimum aggregate of 55% marks in all papers put together.

8 In aforesaid circumstances, H.P. Judicial Officers Association vide representation dated 5.2.2009, had requested the High Court to provide identical criteria for passing the written examination for direct recruit as well as in-service candidates through limited competitive examination by reducing the minimum qualification marks from 60% to 50% in individual paper and 66% to 55% in aggregate in all papers put together. The similar representation dated 17.8.2009 was also submitted to the High Court but the criteria was not amended.

9 **DETAILS OF WRIT PETITIONS**

CWP No. 1337 of 2010

(A) Petitioner in this petition participated in process undertaken by the High Court in the year 2009 for promotion by way of limited competitive examination in which written examination was held on 30.6.2009. Petitioner scored 169 and 116 in Paper-1 and Paper-2 respectively and in aggregate 285 marks, but he failed to obtain minimum

60% marks in Paper-2 and therefore, despite having obtained more than 66% marks in aggregate, he was declared not qualified. Respondent No.2, in this petition, had obtained 150 and 126 marks in Paper-1 and Paper-2 respectively and 276 in aggregate but for fulfilling the criteria of 60% marks in each paper and 66% in aggregate, he was declared qualified.

(B) After declaration of result, petitioner submitted a representation to the Registrar with prayer to grant him 1% as grace marks in relaxation of Rules as permissible under Rules i.e. 4 marks in Paper-2 so as to declare him qualified in the written examination with submission that there were two posts available for promotion through limited competitive examination and grant of such 1% grace marks would not have any impact on respondent No.2 who has been declared selected despite scoring less marks in aggregate than the petitioner, but for meeting the criteria laid down in the Regulation. The representation of petitioner was considered and rejected by the High Court. Whereafter, petitioner preferred this petition on 25th March, 2010.

CWP NO. 9396 OF 2013

(C) In the year 2013, vide Advertisement dated 26.7.2013 process was initiated for filling-up two posts through direct recruitment and to fill-up one vacancy in the cadre of District Judge/Additional District Judge on the basis of merit by limited competitive examination.

(D) Petitioner participated in process and was declared not qualified in written examination as he obtained 120 marks in Paper-1 and 109 marks in Paper-2 and 229 marks in aggregate, because he failed to score 60% marks in Paper-2 and 66% in aggregate. Thereafter, on 2nd December, 2013 petitioner preferred present petition on the same grounds as taken in CWP No. 1337 of 2010.

(E) The additional plea, taken in this petition, is that more than dozen questions were having either the wrong answers or the same were wrongly framed and as the question paper of Paper-1 was not permitted to

be retained, petitioner was not in a position to pin-point the questions with specific numbers, which were wrong or wrongly framed or from outside the syllabus being asked from the Constitution of India, and thus it was requested to direct the respondents to produce the question papers of Paper-1 along with answer key for verifying the fact as to how many questions were wrong and outside the syllabus. Further that Paper-2 containing subjective type questions was pertaining to Clause 4 of the Regulation wherein Constitution of India was not a part of prescribed syllabus for written examination but in this paper, questions for 45 marks were pertaining to the Constitution of India. Similarly, Question Paper-1 was also containing many objective questions on Constitution of India.

(F) In this examination, no candidate through limited competitive examination was declared qualified.

(G) In this petition, in prayer, quashing of criteria providing 60% marks in each paper and 66% in aggregate to qualify limited competitive examination for the post of District Judge/Additional District Judge has been made with further prayer to direct the respondents to lower down the minimum qualifying marks criteria through limited competitive examination bringing it at par with minimum qualifying marks criteria prescribed for direct recruitment and to prepare the result of limited competitive examination in reference on the basis of aforesaid reliefs and to declare the petitioner as qualified in limited competitive examination as he scored 50% marks in each paper and more than 55% in aggregate.

(H) Prayer to direct the respondents to produce the Question paper-1 and Question Paper-2 of limited competitive examination has also been made with further prayer to delete from the consideration all those questions along with their marks which were outside the prescribed syllabus and to prepare the result afresh on the basis of re-marking and re-adjustment of marks of petitioner as well as total marks viz-a-viz total

percentage finally arrived after deducting the marks of questions which were outside the syllabus.

10 Learned counsel for petitioner, to substantiate the plea of petitioner, has referred the pronouncements of the Supreme Court i.e. **All India Judges' Association and others vs. Union of India** reported in **(2002)4 SCC 247**; **All India Judges Association vs. Union of India** reported in **2010(5) SCALE 712**; **Civil Appeal No. 2897 of 2006 titled State of Punjab and others vs. Jagdish Kaur decided on 26.8.2011**; **State of Andhra Pradesh and another vs. Nalla Raja Reddy** reported in **AIR 1967 SC 1458**; **Civil Appeal No. 7439-7440 of 2004 titled Tata Chemicals Ltd. vs. Commissioner of Customs (Preventive) Jamnagar decided on 14.5.2015**; **Appeal (Civil) No. 1313 of 2008 titled K.Manjusree vs. State of Andhra Pradesh decided on 15.2.2008**; **Hemani Malhotra vs. High Court of Delhi along with connected matters** reported in **(2008)7 SCC 11**; **Writ Petition (C) No. 449 of 2012 titled Gunjan Sinha Jain vs. Registrar General, High Court of Delhi decided on 9.4.2012**; **S.B. Civil Writ Petition No. 2142 of 2013 titled Kamlesh Kumar Sharma vs. State of Rajasthan decided on 31.5.2013**; **CWP No. 10309 of 2012 titled Jitender Kumar vs. Haryana Public Service Commission decided on 30.8.2012**; **Kanpur University and others vs. Samir Gupta and others** reported in **(1982)4 SCC 309**.

11 Learned counsel for respondent No.1 i.e. High Court of Himachal Pradesh has cited judgment passed by the Supreme Court in **Civil Appeal Nos. 2164-2172 of 2023 titled Tajvir Singh Sodhi and others vs. State of Jammu and Kashmir and others on 28th March, 2023** and **Civil Appeal No. 5049 of 2023 titled Union of India vs. K. Pushpavanam and others passed on 11th August, 2023**.

12 We have heard learned counsel for parties at length and have also gone through record as well as the case law cited by learned counsel for parties.

13 In both petitions, petitioners, in response to Advertisement, participated in selection process without any protest knowing fully well that there was different criteria provided for qualifying written examination for direct recruits and in-service candidates through limited competitive examination.

14 Petitioners in both petitions have been agitating and criticizing the criteria providing higher bench marks for promotion through limited competitive examination after being declared not qualified. Before that, they were not aggrieved at all. Rather, they were taking chance of getting selected through process as existing and as notified.

15 Petitioner in CWP No. 1337 of 2010, even after declaring him unqualified had submitted the representation, but not for providing criteria for qualification, written examination at par with direct recruits, however for grant of 1% grace marks.

16 Petitioner in CWP No. 9396 of 2013 was well aware of filing of CWP No. 1337 of 2010 and also knowing about different bench marks provided for qualifying the written examination for two modes i.e. through direct recruitment and through limited competitive examination. However, instead of filing an application in CWP No. 1337 of 2010 for its early hearing or representing before participating in process for providing criteria of qualifying the examination at par with direct recruitment to in-service candidates through limited competitive examination, he participated in process and was aggrieved only after being declared unqualified in written examination for not obtaining the marks as per bench-mark fixed for in-service candidates through limited competitive examination.

17 It is also apt to record that petitioner in CWP No. 9396 of 2013 did not raise any grievance regarding wrong question or wrongly framed questions or question from outside the syllabus i.e. beyond the syllabus immediately after appearing in paper or even thereafter but before being declared unqualified.

18 For challenging the criteria only after being declared unsuccessful, petitioners are estopped by their act and conduct from assailing the Regulation in question and on this sole ground, petitions deserve to be rejected particularly when the petitioners belong to class of Judicial Officers who are supposed and expected to be well versed with consequences of participating in the selection process without any protest and filing the petitions only after failing in qualifying the written examination. **(See: Anupal Singh and others vs. State of Uttar Pradesh through Principal Secretary, Personnel Department and others reported in (2020)2 SCC 173 and Dr.G. Sarana vs. University of Lucknow and others reported in (1976)3 SCC 585).**

19 Otherwise also, in view of judgment of the Supreme Court in **Dr. Kavita Kamboj vs. High Court of Punjab & Haryana** reported in **(2024)7 SCC 103**, plea of unreasonableness, irrationality, arbitrariness, discrimination, violation of Constitutional mandate, for providing different bench marks to two categories i.e. direct recruits and in-service candidates through limited competitive examination, is not sustainable. The relevant observations of the Supreme Court are as under:-

“38. The scope of recruitment through regular promotion under Rule 6(1)(a) read with Rule 8 is different from recruitment through promotion based on limited competitive examination under Rule 6(1)(b) read with Rule 9. As we have already noted, the purpose of a limited competitive examination, as set out in the judgment of this Court in All India Judges’ Association (supra), was to provide an avenue for in-service officers to compete inter se for

accelerated promotion on fulfilling a higher benchmark of competition based on merit. Moreover, this Court also recognised that the criteria and method of testing the suitability of judicial officers should be different:

“27. ... Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned : 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.”

(emphasis supplied)

39. The submission of the unsuccessful officers, that there is no valid basis in law to impose a minimum eligibility cut-off of obtaining 50% marks individually in the written test and the viva voce, when such a requirement is not imposed either for direct recruitment or for the limited competitive examination cannot hold substance. This argument is premised on the fact that the three different modes of recruitment are meant for the same post. It is argued that since the purpose of all the three sources is to recruit

persons for the same post, a different requirement such as the 50% cut- off requirement for the viva voce in one of the three modes, is arbitrary. Though the recruitment is meant to fill vacancies in the same post in the higher judicial service, the candidates taking the three routes to reach that post are placed differently and thus must be tested differently. In-service candidates seeking recruitment through promotions cannot be considered on par with the candidates seeking direct recruitment or for that matter with candidates seeking accelerated promotion through a limited competitive test.

40. Even among the candidates seeking promotion, there is a clear distinction between those who are recruited under Rule 6(1)(a) based on merit-cum-seniority and those who are recruited under Rule 6(1)(b) based strictly on merit, in order to avail of a quicker promotion. This Court in All India Judges' Association (3) clearly noted that the rationale for accelerated promotions was to afford an incentive to those who were relatively junior but desirous of promotion. Similarly, in Dheeraj Mor v. High Court of Delhi, (2020)7 SCC 401 a three-Judge Bench of this Court held that the purpose of promotion through a limited competitive examination is to ensure that in- service candidates are able to "take march to hold the post of District Judges on the basis of their merit."

41. The Rules prescribe different criteria for assessing the in-service judicial officers eligible for promotion - while one is based on merit-cum-seniority, the other is based strictly on merit de hors seniority. This difference justifies the distinct methods of evaluation prescribed under Rules 8 and 9. A comparison of Rules 8 and 9 would show that the written examination under Rule 9 carries 600 marks and is much more elaborate and rigorous, as opposed to the 75 marks' objective test under Rule 8. The first proviso to Rule 9 mandates that the High Court shall, in addition to competitive examination mentioned in Rule 9, consider any criteria as specified under Rule 8. As we shall advert to later in this judgment, the ultimate discretion vests with the High Court regarding how they conduct the examinations

under the Rules. The proviso while recognising the power of the High Court to import “any of the criteria” specified in Rule 8 to Rule 9, retains the other differences about the manner in which the two processes of promotion under Rule 8 and Rule 9 would operate. Thus, even though candidates seeking promotions under Rules 6(1)(a) and 6(1)(b) are drawn from in-service judicial officers, there is a rational basis of treating them differently - while some candidates among the in-service officers can seek regular promotions based on their seniority, those relatively junior have an incentive to opt for accelerated promotion by taking a limited competitive examination by demonstrating their merit. Bearing in mind the distinct nature of the test under Rule 8, it cannot be gainsaid that there is a valid basis for imposing a distinct requirement, in this case, of an eligibility cut-off both in the written test and the viva voce independently. The fundamental point is that each of the three avenues for appointment to the Higher Judicial Service are distinct and are based on classifications having a nexus to the object and purpose sought to be achieved. Whether such a requirement is violative of Articles 233 and 235 of the Constitution is a separate matter which would have to be adjudicated independently, which we will do in the subsequent part of this judgment.

44. It is important to bear in mind that the Higher Judicial Services require the selection of judicial officers of mature personality and requisite professional experience. In-service judicial officers are expected to have a greater familiarity with the law and the procedure based on their experience as judicial officers. While an objective written examination can be the best gauge of the legal knowledge of a candidate, the viva voce offers the best mode of assessing the overall personality of a candidate.

20 In CWP No. 9396 of 2013 though additional ground has been taken that more than dozen questions were having either wrong answers or some were wrongly framed but there is no whisper except one line in the entire petition and even there is no prayer made to exclude the so called questions having wrong answers or wrongly framed.

21 In rejoinder petitioner by giving details of certain questions of Paper-1 has tried to build-up a case with respect to his allegation of wrong answers or wrongly framed questions. However, even if it is considered that at the time of filing the petition, the petitioner was not having the knowledge about details of questions, but after obtaining the knowledge of these questions, petitioner had to amend the petition by adding the details which has been narrated in rejoinder and also for making prayer in consonance with such amended pleadings.

22 It is also settled that replication or rejoinder is not a substitute for amendment. A new cause of action or plea or a new fact should be incorporated in the original petition/plaint itself and the material facts and particulars stated in rejoinder/replication for the first time which were not forming the part of averment made in main petition cannot be tried and cannot be made the subject matter for adjudicating the rival contentions of parties.

23 The plea that the questions from Constitution of India in Paper-1 and Paper-2 as well as in paper of General Knowledge were beyond syllabus is also misconceived for the discussion herein-after.

24 Though, it is true that vide Notification dated 19th May, 2005, Annexure P-3 (CWP No. 9396 of 2013) subject and syllabus was notified in Clause 4 by detailing the subjects and syllabus for written examination including the local laws of Himachal Pradesh in Paper-1, Paper-2 and Paper-3 by providing that Civil law including local law of Himachal Pradesh in syllabus of Paper-1, Criminal law including Special laws in syllabus of Paper-2 and General Knowledge including English Composition in syllabus of Paper-3, however, vide Notification dated 28th March, 2009, Annexure P-4, (CWP No. 9396 of 2013) amendments were carried out in Regulation, 2005 though Regulation 2009 whereby along with other amendments words Paper-1, Paper-2, Paper-3 and Note was deleted from the 'subject and syllabus'. Therefore, 'subject and syllabus' notified in Notification

dated 19th May, 2005 in Regulation 2005 providing separate syllabus for each papers was modified and Civil law, Criminal law, local law, Special laws and General Knowledge became the common syllabus for all papers and therefore, the questions could be asked from any of the provisions of the Acts notified as subject and syllabus in any of the paper. Thus in view of aforesaid amendment carried out vide Notification dated 28th March, 2009, plea that certain questions were outside the syllabus of papers is also misconceived.

25 With respect to plea of petitioner that Constitution of India has not been prescribed and notified in the subject and syllabus and thus questions related to Constitution of India were beyond the syllabus is also not tenable for the plausible response of the High Court putforth in reply stating that perusal of syllabus categorically reflects that under the Heading of General Knowledge, the knowledge of candidate is tested with respect to History, Geography, current affairs, development in the recent past, science and technology etc. etc. and knowledge of the Constitution would come within the purview of expression "General Knowledge" as is contemplated in the syllabus; and for deletion of words Paper-1, Paper-2, Paper-3 and Note appended along with Clause-4, as contained in Notification dated 19.5.2005, stands deleted vide Notification dated 28.3.2009, questions pertaining to General Knowledge can be asked in any one of question paper and as knowledge of the Constitution is also part of General Knowledge, the questions asked in Paper-1 or Paper-2 from the Constitution cannot be considered beyond the syllabus, because after above referred deletion vide Notification dated 28th March, 2009, there was no separate syllabus for any of the papers. Any question from any enactment can be asked in either of papers. Hence plea of petitioner in CWP No.9396 of 2013 in this regard is also not tenable.

26 Therefore, in view of above findings, judgments relied upon by learned counsel for parties, in our opinion, have no relevancy and thus not required to be discussed.

27 In view of above discussion, we are of considered opinion that there is no merit in petitions.

Accordingly, petitions are dismissed.

(Vivek Singh Thakur),
Judge.

July 07, 2025
(ms)

(Sandeep Sharma)
Judge