2023 INSC 532

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (C) NO. 432 OF 2023

Ravikumar Dhansukhlal Maheta & Anr. …Appellant(s)

Versus

High Court of Gujarat and Ors. …Respondent(s)

J U D G M E N T

M.R. SHAH, J.

1. By way of this writ petition under Article 32 of the Constitution of India, the writ petitioners have prayed for an appropriate writ, direction or order to declare the Select List dated 10.03.2023 issued by the High Court of Gujarat at Ahmedabad for the promotion of Senior Civil Judges to the Cadre of District Judge (65% quota) as being violative of Article 14 of the Constitution of India as well as Rule 5 of the Gujarat State Judicial Service Rules, 2005 (hereinafter referred to as “Rules, 2005”) as well as the

Recruitment Notice – District Judge (65%) dated 12.04.2022.

2. The facts leading to the present writ petition in nutshell are as under:-

2.1 That this Court in the case of **All India Judges' Association and Ors. Vs. Union of India and Ors., (2002) 4 SCC 247**, had directed that the recruitment to the Higher Judicial Services, i.e., the cadre of District Judges will be on the basis of principle of "merit-cum-seniority" and passing a suitability test. This Court also further directed that the appropriate Rules shall be framed as above by the respective High Courts.

2.2 In pursuance to the above directions, the High Court of Gujarat has framed the Gujarat State Judicial Service Rules, 2005, in which, 50 percent of the promotion from amongst the Senior Civil Judges (Senior Division) has been enhanced to 65 percent by way of amendment in the Rules, 2005 on 23.06.2011. Rule 5(1)(i) of the Rules, 2005 requires that 65 percent of the posts in the cadre of District Judges shall be filled in by way of promotion from amongst the Senior Civil Judges on the basis of "**principle of merit-cum-seniority and passing a suitability test"**.

2.3 The High Court of Gujarat at Ahmedabad issued an advertisement by way of Recruitment Notice – District Judge (65%) dated 12.04.2022 for the promotion to the cadre of District Judges from amongst the Senior Civil Judges on the basis of the principle of merit-cum-seniority and passing a suitability test to fill up 65 percent of the vacancies. The said Notification was issued alongwith list of 205 judicial officers in the cadre of Senior Civil Judges falling under the zone of consideration.

2.4 At this stage, it is required to be noted that in the Recruitment Notice itself, it was specifically mentioned that "promotion to the cadre of District Judge (65%) from amongst the Senior Civil Judges will be on the basis of principle of merit-cum-seniority and on passing a suitability test. In the Recruitment notice also, there was a reference to the suitability test, which comprised of four components for assessing the suitability of a judicial officer for promotion, which reads as under:-

Sr. No.	**Components of Suitability Test**	**Marks**
1.	Written Test (Objective Type - MCQs)	100
2.	Examination and Evaluation of Annual Confidential Reports for last five years.	20

3.	Assessment of Average Disposal of last five years of the Judicial Officer concerned.	20
4.	Evaluation of Judgments delivered by the Judicial Officer concerned during the period of last one year.	60

2.5 Written test was conducted by the High Court on 16.10.2022. The High Court declared a list on 17.11.2022 of 175 judicial officers, who appeared in the written test and qualified the written test. The petitioners were also declared qualified in the written test.

2.6 The High Court on 18.11.2022 called upon the month-wise list of judgments disposed of, civil and criminal cases, of the candidates, who have been declared qualified *vide* list dated 17.11.2022. The High Court declared on 10.03.2023, the Select List of Senior Civil Judges. The marks of the selected candidates were ranging between 148.50 to 100.50 marks. The petitioner No. 1 secured 135.50 out of 200 marks and the petitioner No. 2 secured 148.50 marks out of 200 and as though having higher marks, they were not appointed and/or their names were not recommended for promotion to the cadre of District Judge, the petitioners filed the present writ petition on 27.03.2023.

2.7 This Court issued the notice in the present writ petition on 13.04.2023 and passed a detailed speaking order, which reads as under:-

> "It is the case on behalf of the petitioner(s) that as per the Recruitment Rules, the post of District Judge is to be filled in by keeping 65% reservation on the basis of the principle of merit-cum-seniority and passing a suitability test. It is submitted that despite the above while making the appointments vide Notification dated 10.03.2023, the merit-cum-seniority principle has been given go-by and the appointments are made on the basis of the seniority-cum-merit. It is submitted that so far as petitioner no.1 is concerned, he has secured 135.5 marks out of 200 and petitioner no.2 has secured even the highest marks, i.e., 148.5 out of 200 and despite the above, the candidates who are having lower marks have been appointed.
>
> Issue notice returnable on 28.04.2023.
>
> Dasti service, in addition, is permitted.
>
> It will be open for the petitioners to serve copy of the petition on the standing counsel for respondent nos. 1 and 2."

2.8 Despite having been served with the copy of the present writ petition and though notice was made returnable on 28.04.2023 and pending the present writ petition, the State Government hurriedly issued the Notification dated 18.04.2023 notifying the appointment of 68 candidates, who were selected by Select List dated 10.03.2023, however, mentioned in the Notification that the appointments / promotions shall be subject to the outcome of the present writ petition.

3. Shri R. Basant, learned Senior Advocate has appeared with Shri Purvish Jitendra Malkan, learned counsel appearing on behalf of the writ petitioners. Shri S.V. Raju, learned ASG has appeared on behalf of the State and Ms. Deepanwita Priyanka, learned counsel has also appeared on behalf of the State. Shri Dushyant Dave, Ms. Meenakshi Arora, learned Senior Advocates/ counsel have appeared on behalf of the respective promotees.

4. Shri R. Basant, learned Senior Advocate appearing on behalf of the respective petitioners has vehemently submitted that the impugned selection / promotion to the post of District Judge (65%) *vide* selection list dated 10.03.2023 and the further promotion order dated

18.04.2023 issued by the Government of Gujarat is absolutely illegal and contrary to Rule 5(1)(i) of the Rules, 2005 as amended in 2011 as well as the Recruitment Notice – District Judge (65%) dated 12.04.2022.

4.1 It is submitted that as per the relevant Recruitment Rules and the Recruitment Notice, 65 percent of the posts in the cadre of District Judge shall have to be filled in by way of promotion from amongst the Senior Civil Judges on the basis of principle of merit-cum-seniority and passing a suitability test. It is submitted that despite the above, the High Court as well as the State Government have given the promotion by applying the principle of seniority-cum-merit and the principle of merit-cum-seniority has been given a go-by. It is submitted that the petitioner No. 1 has secured 135.5 marks out of 200 marks and the petitioner No.2 has secured even the highest marks, i.e., 148.5 out of 200 marks and despite the above, the candidates who are having lower marks have been promoted.

4.2 On the principle of "merit-cum-seniority" and "seniority-cum-merit", the learned Senior Advocate appearing on behalf of the petitioners has heavily relied upon the following decisions:-

(i) **B.V. Sivaiah and Ors. Vs. K. Addanki Babu and Ors., (1998) 6 SCC 720;**
(ii) **State of Kerala and Anr. Vs. N. M. Thomas and Ors., (1976) 2 SCC 310;**
(iii) **Shriram Tomar and Anr. Vs. Praveen Kumar Jaggi and Ors., (2019) 5 SCC 736**; and
(iv) Decision of this Court in the case of **Manoj Parihar and Others Vs. State of Jammu & Kashmir and Ors., SLP (C) No. 11039 of 2022** decided on June 27, 2022.

4.3 It is further submitted by Shri Basant, learned Senior Advocate appearing on behalf of the respective petitioners that the method adopted by the High Court in preparing the Select List for promotion to the post of District Judge is absolutely illegal and just contrary to the Rules, 2005 further amended in the year 2011. It is submitted that as per the High Court and so stated in the counter affidavit, explaining the procedure adopted for the selection of 68 candidates *vide* selection list dated 10.03.2023, it is stated as under:-

> "9. The suitability of candidate had for components which were duly reflected in the Recruitment Notice. The "Merit" eligibility required a Candidate to secure minimum 40% marks in each component with 50% marks aggregate. Upon achieving this, the final selection would be based on seniority.

Accordingly, a select list of 68 candidates was prepared."

4.4 It is submitted that by adopting the above method, the High Court has adopted the principle of "seniority-cum-merit". It is submitted that the High Court by following the standard method of seniority-cum-merit is to subject all the eligible candidates in the feeder grade (possessing the prescribed educational qualification and period of service) to a process of assessment of a specified minimum necessary merit and then promote the candidates who are found to possess the minimum necessary merit strictly in the order of seniority. It is submitted that though the High Court uses the nomenclature of above method as merit-cum-seniority, but actually has followed the principle of seniority-cum-merit. In support of his above submission, the learned Senior Advocate has heavily relied upon the decision of this Court in the case of **N.M. Thomas and Ors. (supra)** as well as in the case of **C.P. Kalra Vs Air India (1994) Supp. 1 SCC 454.** It is submitted that in the case of **C.P. Kalra (supra)**, this Court has ruled that though the Rules in the said case mention merit-cum-seniority, however, rules elaborately lay down method of seniority-cum-merit.

4.5 It is further submitted by the learned Senior Advocate appearing on behalf of the petitioners that as per the settled position of law, when promotion is to be based on “merit-cum-seniority” only, the basic qualified seniority has to be seen for eligible candidates and thereafter the selection for promotion has to be done on the basis of merit only. It is submitted that, however, the process adopted by the High Court and the State is in complete departure of the same. It is submitted that in the present case, the High Court has considered the seniority to be the least identified criteria for promotion, which cannot be sustained, if the principle of “merit-cum-seniority” as provided under the Rules, 2005 is to be followed.

4.6 It is submitted that in any case, in the present case, the appointment in the cadre of District Judge is governed by the Rules, 2005 as amended in the year 2011, which specifically provides for promotion to the post of District Judge on the basis of principle of merit-cum-seniority and passing a suitability test.

4.7 It is submitted that the High Court of Jharkhand at Ranchi in 2019 while making appointment to the Superior

Judicial Services has followed the principle of merit-cum-seniority, by the same method, which the petitioners are praying before this Hon'ble Court to direct High Court of Gujarat to follow. Reliance is placed on the decision of the High Court of Jharkhand in the case of **Writ Petition (S) No. 3771 of 2019** dated 29.06.2022. It is further submitted that the High Court of Calcutta has also followed the principle of merit-cum-seniority, by the same method, as petitioners are praying for. Merit-wise result of normal promotion-2020 to the cadre of District Judge issued by Calcutta High Court would go to show that the first 17 officers, who are in the merit, are selected and recommended for appointment to the post of District Judge.

4.8 It is submitted that from the Merit List produced by the High Court in the Counter Affidavit, it will satisfy that the petitioners ought to have been included in the first 68 candidates. It is submitted that if the High Court would have followed the principle of “merit-cum-seniority”, in that case, the petitioners would have been promoted to the post of District Judge being more meritorious and having more marks than the promoted candidates.

4.9 It is further submitted that even otherwise once the criteria for eligibility have been mentioned in the recruitment notice, namely, “merit-cum-seniority” and “suitability test”, thereafter, it was not open for the High Court and the State to include the additional requirement / qualification of seniority either during the process or after the selection process. Reliance is placed on the decision of this Court in the case of **Hemani Malhotra Vs. High Court of Delhi, (2008) 7 SCC 11.**

4.10 Making above submissions and relying upon the above decisions, it is prayed to allow the present writ petition.

5. A counter affidavit is filed on behalf of the State. The learned Advocate appearing on behalf of the High Court has submitted as under:-

(i) That the present writ petition under Article 32 of the Constitution of India may not be entertained and the petitioners may be relegated to first approach the High Court.;

(ii) That in the present case, the Select List was published on 10.03.2023 and the State

Government was moved on the very day to issue necessary appointment orders.;

(iii) That in the present case, a Selection Committee was constituted for the purpose of 2022 selection. A feeder cadre of 205 Senior Civil Judges was created with eligibility of those who have at-least two years of qualifying service. The list was uploaded on 12.04.2022 and the petitioners were enlisted in the said list.;

(iv) That the suitability of a candidate had four components, which were duly reflected in the Recruitment Notice. The "Merit" eligibility required a candidate to secure minimum of 40% marks in each component with 50% marks aggregate. Upon achieving this, the final selection would be based on seniority. Accordingly, a Select List of 68 candidates was prepared, which was in consonance with the decision of this Court in the case of **C.P. Kalra (supra).;**

(v) That the Select List was placed before the Full Court meeting and upon approval, was published on the website of the High Court on 10.03.2023.;

(vi) That the methodology, which has been followed by the High Court is being followed since the year 2011.;

(vii) That the methodology pointed out by the writ petitioners only points out to selection based on merit. It is submitted that once the feeder cadre includes the candidates who have just two years of experience and the only Marks Criterion is to be seen, the same becomes a selection based only on Merits giving a complete go-by to the principle of seniority.;

(viii) That in the present case, for the selection, merit is given preference in as much as senior candidates pave way for meritorious candidates, if at the first instance, they fail to qualify the suitability test and thereafter the remaining candidates fail to secure minimum marks in each of the components and fail to secure aggregate 50% marks out of total 200 marks. It is submitted that, therefore, once merit is determined, seniority takes over. It is submitted that, therefore, the principle of “merit-cum-seniority” has been followed.;

(ix) That the petitioners were aware of this procedure and participated in it without any demur. It is submitted that therefore, the writ petitioners are estopped from making the present challenge.;

(x) That the same formula was applied when the present petitioners were promoted from their respective posts to the cadre of Senior Civil Judge. It is submitted that therefore, the writ petitioners, thereafter, cannot make any grievance with respect to the same methodology adopted while considering the post of District Judge.;

(xi) That the Andhra Pradesh High Court and the Orissa High Court have also followed the same methodology of principle of merit-cum-seniority.;

6. Now, so far as the submission on behalf of the respondents not to entertain the present writ petition under Article 32 of the Constitution of India is concerned, the said objection is overruled. Taking into consideration the fact that the impugned decision of the High Court has been approved by the Full Court of the High Court and taking into consideration the earlier decision of this Court in the case of **All India Judges' Association and Ors. (supra)** and even thereafter also one another petition

under Article 32 of the Constitution has been entertained, the present writ petition under Article 32 of the Constitution is entertained.

7. Learned Senior Advocate appearing on behalf of the promotees, while opposing the present writ petition has made the following submissions:-

(i) That the Rules, 2005 have been framed in compliance of the directions issued by this Court in the case of **All India Judges' Association and Ors. (supra)**. It is submitted that in paragraph 27, this Court has held that there should be two methods for appointment by promotion, namely, (i) promotion on the basis of principle of merit-cum-seniority and (ii) by promotion strictly on the basis of merit. The distinction between two methods of promotions is that while in the second method, the merits obtained by the judicial officers in the examination alone will determine their position in the Select List whereas while promotion as per the first method, seniority in the feeder cadres has to be maintained.;

(ii) That in the case of **V.K. Srivastava and Ors. Vs. Government of Uttar Pradesh and Anr., (2008) 9 SCC 77**, this Court has also further clarified that even if the principle of merit-cum-seniority has to be applied, the principle is that if the candidates are eligible for promotion to the cadre of District Judges, the seniority in the feeder category has to be maintained as regards 50 percent of the promotions are concerned and in the case of 25 percent promotions, the test must be rigorous and strictly on merit and such candidate may supersede some of their colleagues in the feeder category, i.e., Civil Judges (Senior Division).;

(iii) That the very purpose for providing the channel of promotion under 10% quota through limited competitive examination is to provide an incentive to the officers amongst the relatively junior officers to improve and to compete with each other so as to excel and get quicker promotion. However, this method of promotion is not to be applied while filling up the vacancies under the 65% quota.;

(iv) That the merit-cum-seniority does not mean that the length of service has no relevance and a written examination that only tests academic knowledge, which is sometimes, gained without possessing overall qualities, practical experience of practicing law.;

(v) Learned counsel appearing on behalf of the promotees has further submitted that the decisions relied on behalf of the petitioners shall not be applicable for the recruitment of District Judges. It is further submitted that even the Rules in Jharkhand and West Bengal are distinct and different from the Rules applicable so far as the Gujarat is concerned. It is submitted that in proviso to Rule 5 in Jharkhand Rules, it is stated that seniority shall prevail only when the merit is concluded in all respects. However, no such provision is stated in the Rules applicable.;

(vi) Making above submissions, it is prayed to dismiss the present writ petition.

8. At the outset, it is required to be noted that as per the relevant Recruitment Rules, namely, The Gujarat State Judicial Service Rules, 2005 further amended in 2011, the promotion to the post of District Judge is to be

given on the basis of principle of merit-cum-seniority and passing a suitability test. The relevant rules read as under: -

> "……(1) Recruitment to the cadre of District Judge shall be as under:-
>
> (i) 65 percent of posts shall be filled in by promotion from amongst the Senior Civil Judge on the basis of principle of merit-cum-seniority and passing a suitability test.
>
> (ii) 10 percent of posts shall be filled in by promotion on the basis of merit through competitive examination from amongst Senior Civil Judges having not less than five years qualifying service:
>
> Provided that when candidates are not available for 10% seats or are not able to qualify in the competitive examination, then the vacant posts shall be filled in by regular promotion in accordance with clause (i) above,
>
> (iii) 25 percent of the posts shall be filled in by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test to be conducted by the High Court:
>
> Provided that all the vacancies shall be fled up in the particular year

and unfilled post shall not be carried forward.

xxxxxxxxxxxxxxxxx"

8.1 It is also required to be noted that even as per the Recruitment Notice – District Judge (65%), the promotion to the cadre of District Judge (65%) from amongst the Senior Civil Judges shall be on the basis of principle of merit-cum-seniority and passing a suitability test. The suitability of a judicial officer for promotion is also provided in the Recruitment Notice, which consists of four components reproduced hereinabove. Thus, as per the statutory Rules and even as per the Recruitment Notice, the promotion to the cadre of District Judge (65%) shall be on the basis of principle of merit-cum-seniority and passing a suitability test. At this stage, it is required to be noted that the Rules, 2005 further amended in the year 2011, have been framed by the High Court pursuant to the directions issued by this Court in the case of **All India Judges' Association and Ors. (supra).** It is required to be noted that prior to the decision of this Court in the case of **All India Judges' Association and Ors. (supra)**, the promotion in the cadre of Higher Judicial Service, i.e., District Judges and Additional District Judges were given on the basis of principle of seniority-cum-merit.

Emphasising the need for merit-based criteria for promotion in the cadre of Higher Judicial Service, i.e., District Judges and Additional District Judges, this Court observed in paragraph 27 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 the 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 scales 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 standard, 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 advocates 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."

8.2 Thereafter, this Court directed that the recruitment to the Higher Judicial Service, i.e., the cadre of District Judges will be 50 percent by way of promotion (which has been subsequently increased to 65 percent) from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test. Thus, this Court has categorically emphasised the merit-cum-seniority and passing a suitability test for promotion in the cadre of Higher Judicial Service. That this Court directed all the High Courts / States to amend the Rules / Regulations accordingly. Therefore, the High Court framed the Gujarat State Judicial Service Rules, 2005, in line with the directions issued by this Court in the case of **All India Judges' Association and Ors. (supra).**

8.3 In the present case and as per the case on behalf of the High Court, so stated in the counter, the High Court has considered the merit only for the purpose of achieving the benchmark and thereafter has switched to the seniority-cum-merit and has given the promotion on the basis of seniority only amongst those, who have achieved the benchmark of 50 percent. Thus, after conducting the

written test, which is one of the components to assess the suitability, the High Court has considered the merits only for the purpose of achieving benchmark and thereafter has switched to the principle of seniority-cum-merit and thereby has given a go-by to the principle of merit-cum-seniority. The method adopted by the High Court is just contrary to the observations made by this Court in paragraph 27 in the case of **All India Judges' Association and Ors. (supra)** and also contrary to the Gujarat State Judicial Service Rules, 2005 and the Recruitment Notice**.**

8.4 We do not find anything in the Recruitment Rules, 2005 and/or even the Recruitment Notice to consider the merit only for the purpose of achieving benchmark of 50 percent. The correct method would be to prepare the merit list on the basis of the four components as mentioned in paragraph 2 of the Recruitment Notice, from amongst those Senior Civil Judges (including ad-hoc Additional District Judges) having not less than two years of qualifying service in that cadre and thereafter to prepare the merit list on the basis of the aggregate marks obtained under different components and thereby to give the promotion solely on the basis of merit, then and then only, it can be said to be following the principle of merit-

cum-seniority. Therefore, in the present case, while giving the promotion in the cadre of District Judge, the High Court has given a go-by to the principle of merit-cum-seniority, which this Court has emphasised in the case of **All India Judges' Association and Ors. (supra)**. Therefore, the High Court has adopted the wrong method.

8.5 Now, insofar as the submission on behalf of the contesting respondents – promotees and the High Court that this procedure is being followed since 2011 and even the same is being followed in other High Courts and therefore, this Court may not interfere with such a method is concerned, the aforesaid cannot be accepted. Merely because, a wrong method is being adopted cannot be a ground to perpetuate the same, if it is found to be illegal and/or contrary to the directions issued by this Court, more particularly, in the case of **All India Judges' Association and Ors. (supra)**.

8.6 Even the objection on behalf of the promotees that as this Court is monitoring the process of recruitment to the post of District Judges and, therefore, the present writ petition may not be entertained and/or by this Bench, has no substance. What is being monitored is the process and not the methodology adopted for promotion to the

post of District Judge. This Court is monitoring whether the time schedule fixed by this Court in the case of **Malik Mazhar Sultan (supra)** is being followed or not and the posts are timely filled in or not. The mode and method of the promotion is not the subject matter.

8.7 Now, insofar as the reliance placed upon the decision of this Court in the case of **C.P. Kalra (supra)** relied upon on behalf of the promotees is concerned, at the outset, it is required to be noted that the said decision is prior to the decision of this Court in the case of **All India Judges' Association and Ors. (supra)**. In the present case, the Recruitment Rules specifically provides that the promotion shall be given by applying the principle of merit-cum-seniority, which is to be adhered to.

8.8 Now, insofar as the reliance placed upon the decision of this Court in the case of **V.K. Srivastava and Ors. (supra)** relied upon on behalf of the promotees is concerned, at the outset, it is required to be noted that in the said decision, of this Court is not observing that the principle of merit-cum-seniority is to be given a go-by. Before this Court, it was submitted on behalf of the petitioners that prior to the amendment of the Rules, promotion to the cadre of District Judge was based on the

principle of “seniority-cum-merit” and now, as per the amended Rules, pursuant to the directions issued by this Court, the principle has been changed to “merit-cum-seniority” and the same has seriously affected the rights of the Civil Judges (Senior Division). However, the amended Rules are applicable retrospectively and to that, this Court noted the contention on behalf of the State that in the process of promotion, merit alone was not being given importance. There was no direct controversy before this Court on the principle of “merit-cum-seniority” and/or what can be said to be the “merit-cum-seniority”. The law on the principle of “merit-cum-seniority is by now, settled by this Court in a catena of decisions. As observed, while applying the principle of “merit-cum-seniority”, greater emphasis is given on merit and ability and seniority plays a less significant role. As observed, while applying the principle of “merit-cum-seniority”, the seniority is to be given weight only when merit and ability are approximately equal (See **B.V. Sivaiah and Ors. (supra); Rajendra Kumar Srivastava and Ors. Vs. Samyut Kshetriya Gramin Bank and Ors., (2010) 1 SCC 335).**

8.9 It is required to be noted that in the present case and as per the merit list produced before the High Court, the candidates, who have secured much more marks are

denied promotion and the candidates / Civil Judge (Senior Division), who are having less marks / leas meritorious are promoted. In the present case, the petitioner No. 1 secured 135.50 out of 200 marks and the petitioner No. 2 secured 148.50 marks out of 200 against which a candidate having secured 101 marks have got the promotion, which is affecting the principle of "merit-cum-seniority".

9. Thus, we are more than satisfied that the impugned Select List dated 10.03.2023 issued by the High Court and the subsequent Notification dated 18.04.2023 issued by the State Government granting promotion to the cadre of District Judge are illegal and contrary to the relevant Rules and Regulations and even to the decision of this Court in the case of **All India Judges' Association and Ors. (supra)**. Therefore, we are more than *prima facie* satisfied that the same as such are not sustainable**.** Though, we were inclined to dispose of the writ petition finally**,** however, as Shri Dushyant Dave, learned Senior Advocate appearing on behalf of some of the respondents – promotees has prayed not to dispose of the writ petition finally and, therefore, may consider the question of interim relief, we are not disposing of the writ petition finally. Taking into consideration the fact that the State

Government has issued the impugned Notification dated 18.04.2023 during the pendency of the present writ petition and after the receipt of the notice issued by this Court in the present proceedings and, thus, despite in knowledge of the present proceedings, however, subject to the ultimate outcome of the present writ petition and as observed hereinabove, the State Government could have waited till the next date of hearing by this Court, which was on 28.04.2023 and at present the respective promotees have not assumed their posting on the promotional post and as such are sent for training, we stay the further implementation and operation of the Select List dated 10.03.2023 issued by the High Court of Gujarat and the subsequent Notification dated 18.04.2023 issued by the State Government. Meaning thereby, the respective promotees be sent to their original posts which they were holding prior to their promotion *vide* Select List dated 10.03.2023 and Notification dated 18.04.2023. However, it is clarified that the present stay order shall be confined with respect to those promotees whose names do not figure within the first 68 candidates in the Merit List on the basis of the merits, the copy of which is produced by the High Court along with the counter. Meaning thereby, the promotion of those promotees, whose names

otherwise do figure in the first 68 candidates in the Merit List shall be continued as even otherwise and even if the writ petition is allowed, in that case also, they will get the promotion on merits.

10. Looking to the importance of the matter and the observations made by this Court in the case of **All India Judges' Association and Ors. (supra)**, pursuant to which the High Court has amended the Rules and the Regulations, we are of the opinion that let the matter be heard by the Bench headed by Hon'ble the Chief Justice of India, however, subject to and after obtaining appropriate orders from the Hon'ble the Chief Justice of India on the administrative side. The Registry is directed to notify the present writ petition for final hearing on 08.08.2023.

…….J.
[M.R. SHAH]

NEW DELHI; …….J.
MAY 12, 2023. **[C.T. RAVIKUMAR]**