CASE NO.:
Appeal (civil) 1867 of 2006

PETITIONER:
Malik Mazhar Sultan & Anr

RESPONDENT:
U.P. Public Service Commission & Ors

DATE OF JUDGMENT: 03/04/2006

BENCH:
Y.K. Sabharwal & C.K.Thakker

JUDGMENT:
(With Civil Appeal Nos.....\005\005\005\005\005\005of 2006
(Arising out of SLP(C) Nos. 23314, 23316,
23702, 25179 & 24732 of 2005)

J U D G M E N T

(Arising out of SLP(C) No.22523 of 2005)

Y.K.SABHARWAL, CJI.

Leave granted.

The main question to be determined in these matters, which relates to the recruitment to the posts of Civil Judge (Junior Division) under U.P Judicial Service Rules 2001 (for short 'the Rules'), is as to the eligibility of some candidates from the point of view of age.
The High Court by the impugned judgment has held only those candidates eligible who were of requisite age as on 1st July, 2003. Is the High Court right in its conclusion or 1st July, 2001 or 1st July, 2002 is the relevant date for determining the age as a condition of eligibility as contended on behalf of those candidates who stand excluded as a result of the impugned judgment? The other viewpoint urged is that even 1st July, 2003 held by High Court as a date for determining eligibility of age is wrong and on correct interpretation of the Rules, the relevant date for determining age is 1st July, 2004. The circumstances giving rise to these issues may first be stated.

The U.P. Public Service Commission (for short 'PSC') was informed by letter of Government of U.P. dated 23rd November, 2002 that it has been decided to make appointment of 347 candidates on the basis of competitive examination for recruitment on the post of Civil Judge (Junior Division) \026 2002 in U.P. Judicial Service in three phases of 100 + 100 + 147 candidates. The PSC was requested to take prompt action and after completion of selection, send its recommendations to the Government by 31st March, 2003. By another requisition dated 29th July, 2003 the Government informed PSC that the recruitment be conducted in two phases, first for 174 posts and later for 173 posts in second phase for which another requisition will be sent. By this requisition PSC was asked to advertise 174 posts in accordance with the provisions

contained in the Rules as amended. The Rules had been earlier amended by the Government in terms of its Notification dated 19th March, 2003 whereby the existing requirement of the requisite age as on '1st day of January' was substituted by '1st day of July'.

By third requisition dated 10th November, 2003 sent by the Government, PSC was informed that on the basis of recommendations of the High Court, it had been decided to hold selection together for 374 posts on the basis of competitive examination. Thus, the proposal for phased recruitment in the earlier requisitions was given up.

An advertisement dated 22-28th November, 2003 was issued by PSC for holding examinations to select candidates to fill 347 vacancies to the posts of Civil Judges (Junior Division). In respect of age limit, clause 5 of the advertisement stated that the candidates must have attained the age of 22 years and must not have attained the age of more than 35 years on 1st July, 2004 i.e. they must not have born before 2nd July, 1969 and not later than 1st July, 1982 but for Scheduled Caste of U.P., Scheduled Tribe of U.P. and Other Backward Class candidates of U.P., the age limit shall be five years more. In the same manner, it was stated that for dependants of freedom fighters of U.P., and for Ex-army Personnel of U.P., the age limit would be five years more. It was further stated in the advertisement that those candidates who were within age on 1st July, 2001 and 1st July, 2002 shall be treated within age for this examination.

Clause 12 of the advertisement states that the Commission may allow any candidate provisionally on summary checking of application but in later stages if it is found that the candidate was not eligible or his application was not fit for admission or he should have been rejected at initial stage, his candidature will be cancelled and his recommendations shall be withdrawn even if he has been recommended.

The preliminary and the main examinations were held and the successful candidates were called for interview between 14th April, 2005 and 26th April, 2005. A learned Judge of Allahabad High Court who was presiding over one of the Interview Boards in a letter dated 26th April, 2005 sent to the Chairman of PSC expressed the opinion that the age requirement benefit of period during which examination could not be held can be given only if statutory rules provide determination of vacancies every year on a particular date and this issue may be examined before declaration of the result.

The PSC, after examination of the issue, came to the conclusion that the provision of relaxation in age limit given in the advertisement seems to have been done due to misinterpretation of Rules and, therefore, on 18th May, 2005, it took the following decision:

(1) Due to non-availability of relaxation in age limit on 1st July, 2004, the candidature of the candidates who are over age on 1st July, 2004 are rejected.

(2) Result of the selection from examination be declared excluding the aforesaid candidates.

On 2nd May, 2005 the result of the U.P. Judicial Service, Civil judge (Junior Division) was declared excluding the candidates in terms of the aforesaid decision.

The aforesaid decision led to filing of various writ petitions by the excluded candidates before the High Court. The High Court by the impugned judgment held that the basic initiation of the recruitment process was when the first

requisition dated 23rd November, 2002 was sent and thus the recruitment year would be 1st July, 2002 to 30th June, 2003. Further it was held that for determining whether a candidate was eligible in that recruitment year it should be assumed that an advertisement pursuant to requisition dated 23rd November, 2002 was issued before 31st December, 2002. In this view, it was held that all candidates who were less than upper age limit according to their category (reserved or unreserved) on 1st July, 2003 would be eligible to appear at 2003 recruitment. However, the candidates who had crossed the upper age limit according to their respective categories upto 30th June, 2003 will not be eligible under the Rules. Those who stand excluded from consideration, though within age limit as per the advertisement, are one set of candidates who have questioned the correctness of the impugned judgment. The correctness of the judgment has also been challenged by PSC and those candidates who were eligible from the age criteria as on 1st July, 2004. They contend that on due application of the rules, the candidates who were less than the upper age limit according to their respective categories on 1st July, 2004 alone were eligible to appear in the process of recruitment and that the conclusion of the High Court extending the benefit to those who were less than the age limit as on 1st July, 2003 is erroneous.
The question is as to the interpretation of the Rules framed in exercise of the power conferred by the Article 234 and proviso to Article 309 of the Constitution of India, upon the Governor of Uttar Pradesh in consultation with PSC and the High Court of Judicature at Allahabad. The year of recruitment is defined in Rule 4(m) which states that in these rules unless the context otherwise requires \026 'year of recruitment' means a period of twelve months commencing from the first day of July of the calendar year in which the process of recruitment is initiated by the appointing authority. Rule 4 (m) reads as under:

"Rule 4(m) "Year of recruitment" means a period of twelve months commencing from the first day of July of the calendar year in which the process of recruitment is initiated by the appointing authority."

The High Court has held recruitment year to be from 1st July, 2002 to 30th June, 2003.
The strength of service is provided in Rule 6 which reads as under:
6. Strength of Service. \026 (1) the strength of the service and of each category of posts therein shall be such as may be determined by the Governor from time to time in consultation with the Court.

(2) Strength of service and each category of posts therein shall unless varied by order passed in this behalf under sub-rule (1) be as specified in Appendix I.

(3) The Governor may from time to time in consultation with the Court leave unfilled or hold in abeyance, any post without thereby entitling any person to compensation or may create

from time to time additional posts, temporary or permanent as found necessary.

Part III of the Rules relates to recruitment and Rule 7 therein provides for the source of recruitment. The said Rule reads as under:

7. Source of Recruitment. \026 Recruitment to the service shall be made on post of Civil Judge (Junior Division) by direct recruitment on the basis of competitive examination conducted by the Commission. Competitive examination shall be held in every year of recruitment, subject to availability of vacancies.

The age requirement is contained in Rule 10 which reads as under:

10. Age \026 A candidate for direct recruitment to the service must have attained the age of 22 years and must not have attained the age of more than 35 years on the first day of July next following the year in which the notification for holding the examination by the Commission inviting Applications, is published.

Provided that the upper age limit shall be higher by five years in the case of candidates belonging to Scheduled Castes, Scheduled Tribes and such other categories as may be notified by the Government from time to time.

Provided further that where a candidate was eligible in age to appear at the examination in any year of recruitment in which no such examination was held, he shall be deemed to be eligible in age to appear in the next following examination.

Provided also that the maximum number of chances a candidate is permitted to take will be four.

As already noted 'July' was substituted for 'January' by amendment of 19th March, 2003. The afore-noted Rule is as amended.

Part V of the Rules comprising Rules 15 to 19 deals with procedure for recruitment to the service. We are concerned with Rule 15 which reads as under:

15. Determination of vacancies. \026 The Governor shall, in consultation with the Court, determine and intimate to the Commission the number of vacancies in the posts of Civil Judge (Junior Division) to be filled in during the year of recruitment as also the number of vacancies to be reserved for candidate

belonging to Scheduled Caste, Scheduled Tribe and other categories.

The present controversy has arisen as the advertisement issued by PSC stated that the candidates who were within the age on 1st July, 2001 and 1st July, 2002 shall be treated within age for the examination. Undoubtedly, the excluded candidates were of eligible age as per the advertisement but the recruitment to the service can only be made in accordance with the rules and the error, if any, in the advertisement cannot override the Rules and create a right in favour of a candidate if otherwise not eligible according to the Rules. The relaxation of age can be granted only if permissible under the Rules and not on the basis of the advertisement. If the interpretation of the Rules by PSC when it issued the advertisement was erroneous, no right can accrue on basis thereof. Therefore, the answer to the question would turn upon the interpretation of the Rules.

The Rules postulate the timely determination of vacancies and timely appointments. The non-filling of vacancies for long not only results in the avoidable litigation but also results in creeping of frustration in the candidates. Further, non-filling of vacancies for long time, deprives the people of the services of the Judicial Officers. This is one of the reasons of huge pendency of cases in the courts.

It is absolutely necessary to evolve a mechanism to speedily determine and fill vacancies of Judges at all levels. For this purpose, timely steps are required to be taken for determination of vacancies, issue of advertisement, conducting examinations, interviews, declaration of the final results and issue of orders of appointments. For all these and other steps, if any, it is necessary to provide for fixed time schedule so that system works automatically and there is no delay in filling up of vacancies. The dates for taking these steps can be provided for on the pattern similar to filling of vacancies in some other services or filling of seats for admission in medical colleges. The schedule appended to the Regulations governing medical admissions sets out a time schedule for every step to be strictly adhered to every year. The exception can be provided for where sufficient number of vacancies do not occur in a given year. The adherence to strict time schedule can ensure timely filling of vacancies. All State Governments, Union Territories and/or High Courts are directed to provide for time schedule for the aforesaid purposes so that every year vacancies that may occur are timely filled. All State Governments, Union Territories and High Courts are directed to file within three months details of the time schedule so fixed and date from which time schedule so fixed would be operational.

Now, to the present case, the only dispute is in respect of the age requirement. The resolution of the dispute would depend upon implementation of Rule 10 of the Rules.

According to the main part of Rule 10, the minimum and maximum age requirement has to be as on 1st July next following the year in which the notification for holding the examination by PSC inviting applications is published. That publication inviting applications is dated 22-28th November, 2003. The next following year is ’2004’. Therefore, on the plain reading of the main part of Rule 10, the age requirement is to be seen as on 1st July, 2004.

The ’year of recruitment’ has been held by High Court as 1st July, 2002 to 30th June, 2003 after rightly coming to the conclusion that subsequent second and third requisitions were in continuation of the first requisition dated 23rd

November, 2002. The process of recruitment was initiated by the appointing authority on 23rd November, 2002. The year of recruitment has thus been rightly determined as 1st July, 2002 to 30th June, 2003, having regard to Rule 4(m).

Now, let us examine the second proviso to Rule 10. It stipulates that where candidate was eligible in age to appear at the examination in any year of recruitment in which no such examination was held, he shall be deemed to be eligible in age to appear in the next following examination. The benefit of proviso comes into operation if examination in any year of recruitment is not held so as to give relief to those candidates who would have been otherwise eligible in age but for not holding of the examination. There are two different categories dealt with under Rule 10 for the purpose of eligibility from age viewpoint. One \026 under main part of Rule 10 and two \026 under second proviso of Rule 10. Under first part, the determining factor for age is date of advertisement. Under second part, determining factor for age is as on year of recruitment. The age requirement under main part of Rule 10 is on the requisite date following the year in which Notification for holding examination inviting application is published. The expression 'Notification' in the context means issue of advertisement inviting applications. Under the first part, therefore, the relevant date for determining age would be 1st July, 2004, the advertisement having been issued on 22-28th November, 2003. The proviso, however, makes eligible, from the viewpoint of age, even those candidates to appear in the next following examination, who were eligible in age if examination was held in year of recruitment. That is the reason that under second proviso for determining age, the relevant fact is not the publication of notification as in main part of Rule 10, but is age of a candidate to appear at the examination in any year of recruitment in which examination was not held. The candidate shall be deemed to be eligible in age to appear in the next following examination. The year of recruitment has been held to be 1st July, 2002 to 30th June, 2003. The examination in year of recruitment was not held. The examination was held in March, 2004. In such a situation, candidates would be entitled to benefit of age requirement in terms of second proviso.

According to Rule 4(m), the year of recruitment means a period of twelve months commencing from the first day of July of the calendar year in which the process of recruitment is initiated by the Appointing Authority. The Appointing Authority within the meaning of the Rules means the Governor of Uttar Pradesh, in other words, the State Government of Uttar Pradesh. As already noted above, the process of recruitment was initiated on 23rd November, 2002. The determination of vacancies and procedure for recruitment to the service has been provided for in Rule 15. After the vacancies are determined, the same are required to be intimated to the Commission to be filled in during the year of recruitment. That process commenced by sending communication dated 23rd November, 2002. The second and third communications dated 29th July, 2003 and 11th November, 2003 by the Government to PSC were in continuation of the first one. The advertisement was published on 22-28th November, 2003 after the third communication. The relevant year for main part of Rule 10 is the one next following the year in which the publication for holding the examination is published. It would be 1st July, 2004. For the purpose of the proviso, the recruitment year is 1st July, 2002 to 30th June, 2003 and age requirement therein would be as on 1st July, 2002 in view of Rule 4(m) read with Rule 10 second proviso. Thus, those who were of requisite age

as on 1st July, 2002 would be eligible under second proviso and also those who were of requisite age as on 1st July, 2004 as per main part of Rule 10. However, it seems difficult to comprehend how candidates of requisite age on 1st July, 2001 would be eligible for the recruitment in question. Though Rule 10 is not happily worded yet we find it difficult to sustain the conclusion of the High Court that the advertisement issued on 22-28 November, 2003, can be assumed to be issued before 31st December, 2002. The interpretation of Rule 10 placed by us is also in accord with the object of the Rules.

On harmonious consideration of the Rules, it seems evident that Rule 10, its main part and the second proviso read with Rule 4(m), cater for two category of candidates. The later makes those eligible who are eligible in the recruitment year in which process of recruitment is initiated by the appointing authority. In this category, in the present case, would fall those who were eligible as on 1st July, 2002. In main part of Rule 10, those who become eligible on 1st July, 2004, would be eligible. In this view, those candidates who were eligible on 1st July, 2002 and also those who were eligible on 1st July, 2004 would be eligible to be considered for appointment to the posts of Civil Judge (Junior Division). In view of above, the appeals are allowed in the aforesaid terms. The remaining recruitment process shall be completed at the earliest. No costs.