2025 INSC 1208

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL/INHERENT JURISDICTION

CIVIL APPEAL NO. 3947 OF 2020

REJANISH K.V. **...APPELLANT**

VERSUS

K. DEEPA AND OTHERS **...RESPONDENTS**

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) NO. 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

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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
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WRIT PETITION (C) NO. 608 OF 2018

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J U D G M E N T

B.R. GAVAI, CJI

A. INTRODUCTION

1. A three-Judge Bench of this Court in this batch of matters, *vide* order dated 12th August 2025, had referred the following substantial questions of law for consideration of a Constitution Bench:

(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?

2. When this batch of matters was listed for directions on 12th September 2025, the following additional questions were also framed by the Constitution Bench:

(iii) Whether there is any eligibility prescribed for a person already in the judicial service of the Union or State under Article 233(2) of the

Constitution of India for being appointed as District Judge?

(iv) Whether a person who has been Civil Judge for a period of seven years or has been an Advocate and Civil Judge for a combined period of seven years or more than seven years would be eligible for appointment as District Judge under Article 233 of the Constitution of India?

3. For ease of convenience, the parties that support the proposition and contend that the questions framed be answered in favour of in-service candidates and they be permitted to participate in direct recruitment for the post of district judges will be referred to as the *Petitioners* and those opposing the proposition and contending that the direct recruitment should be only from the category of advocates with seven years' practice will be referred to as the *Respondents*.

B. SUBMISSIONS

4. We have extensively heard Mr. Jayant Bhushan, Mr. Arvind P. Datar, Mr. P.S. Patwalia, Mr. V. Giri, Ms. Vibha Datta Makhija, Mr. Jaideep Gupta, Dr. Manish Singhvi, Mr. Dama Seshadri Naidu, Mr. George Poonthottam, Mr. Gopal

Sankaranarayanan, Dr. Menaka Guruswamy, Mr. Rajive Bhalla, Mr. Anil Kaushik, Mr. Amit Anand Tewari, Mr. B.H. Marlapalle, Mr. Narendra Hooda and Mr. Anand Sanjay M. Nuli learned Senior Counsel appearing on behalf of the Petitioners.

5. We have also extensively heard Mr. C.U. Singh, Mr. Nidhesh Gupta, Mr. Vijay Hansaria, Mr. Ravindra Shrivastava, Mr. Rajiv Shakdher learned Senior Counsel along with Mr. Amit Gupta, Mr. Kanhaiya Singhal, Mr. Rashid N. Azam, Mr. Sandeep Sudhakar Deshmukh, Ms. Sindoora VNL, Mr. Yashvardhan, Ms. Kavya Jhawar and Ms. Nandini Rai learned counsel for the Respondents and Mr. Siddharth Gupta and Mr. Satyam Chand Soriya for the intervenors.

6. We have also perused the material painstakingly put together by Mr. Ajay Kumar Singh and Mr. John Mathew who assisted the Court as Nodal Counsel for the Parties.

7. The gist of the arguments advanced by the learned Senior Counsel appearing for the Petitioners is that:

i. The judgment of this Court in ***Dheeraj Mor v. High Court of Delhi***[1] misreads Article 233(2) of the Constitution.

ii. The construction given by ***Dheeraj Mor*** (supra) to the effect that a person has to be presently an advocate or a pleader makes the words *"a person not already in the service of Union or State"* totally superfluous and redundant which cannot be permitted.[2]

iii. A plain reading of Article 233(2) of the Constitution indicates that there are two sources/streams *i.e.*, either a person has to be in service of the Union or State (which has been held to be judicial service[3]) or he has to be an advocate or pleader for seven years. Once the person is already in judicial service, no further eligibility is prescribed for being appointed as a district judge as held by this Court

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[1] **(2020) 7 SCC 401**
[2] ***Union of India and Another v. Hansoli Devi and Others*** **(2002) 7 SCC 273.**
[3] ***Chandra Mohan v. State of Uttar Pradesh and Others*** **1966 SCC OnLine SC 35.**

in the case of ***Rameshwar Dayal v. The State of Punjab and Others***[4].

iv. The interpretation excluding Civil Judges from being eligible to be appointed directly as district judges is unreasonable and against the interest of administration of justice. A person in judicial service would certainly be more experienced and more suitable for appointment. Any exclusion by the relevant rules would be violative of Articles 14 and 16 of the Constitution.

v. There is no requirement of any period of time or experience that a Civil Judge must possess to be eligible for direct recruitment as a district judge. Article 233 does not lay down any such requirement. In any case, if this Court deems it fit that there is such a requirement then seven years' experience as a Civil Judge or combined experience of seven years as an advocate and a Civil Judge would be sufficient. Reliance is also made in this

[4] **1960 SCC OnLine SC 123**

respect on *Explanation* (aa) of Article 217(2) of the Constitution.

vi. The use of the words *"has been"* in Article 233(2) of the Constitution means a state of affairs which had existed in the past and need not to be continuing in the present. The words *"has been"* without being followed by participle of the verb is the present perfect tense of *"to be"* and cannot be the present perfect *continuous* tense.[5] Further, a reading of the Hindi version of the Constitution would show that the expression used is *"pleader raha hain"* and not *"pleader hain"*.

vii. All the petitioners in the case of ***Deepak Aggarwal v. Keshav Kaushik and Others***[6], had claimed themselves to be advocates on the date of their application for the post of district judge by way of direct recruitment and thus this Court in the said case was not dealing with the issue as to whether

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[5] ***Mubarak Mazdoor v. Mr. K.K. Banerji*** **1957 SCC Online All 196,** ***Harbhajan Singh v. Press Council of India and Others*** **(2002) 3 SCC 722** and ***Surendra Singh s/o Ram Shanker Singh and Another v. State of U.P. through Secretary Home and Another*** **2012 SCC Online All 37.**

[6] **(2013) 5 SCC 277**

being an advocate on the date of application and appointment is a necessary criterion or not. In spite of this, this Court in ***Deepak Aggarwal*** (supra) held that one of the essential requirements of Article 233(2) is that the candidate must be continuing as an advocate on the date of application. This finding, therefore, is in the nature of an *obiter dicta* and not *ratio decidendi*.

8. The gist of the arguments advanced by the learned Senior Counsel/counsel appearing for the Respondents is that:

i. For the last 60 to 65 years, the interpretation of Article 233 of the Constitution has been uniform and has stood the test of time. What was held by the two Constitution Bench judgments of this Court in the cases of ***Rameshwar Dayal*** (supra) and ***Chandra Mohan*** (supra) has been further interpreted by several three-judge bench judgments of this Court. It is given that there are two sources/streams of recruitment to the post of district judges and that direct recruitment is *only*

from the stream of practicing advocates. Reliance in this respect has been placed on the judgments of this Court in the cases of ***Mahesh Chandra Gupta v. Union of India and Others***[7] and ***Deepak Aggarwal*** (supra).

ii. *Stare decisis et non quieta movere* or to "stand by decisions and not to disturb what is settled", is a doctrine which clearly applies to the present reference. The questions raised by serving judicial officers in the present matter are covered by over six decades of *stare decisis.* The directions issued by this Court in paragraphs 27 and 28 of ***All India Judges' Association and Others v. Union of India and Others***[8]**,** directing a quota of 75:25 for recruitment to the posts of district judges in all States, with 25% being exclusively reserved for eligible advocates, was entirely in tune with the decisions of this Court in 1960, 1965, 1985 and 1998.

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[7] **(2009) 8 SCC 273**
[8] **(2002) 4 SCC 247**

iii. The term "service" has been held to mean *judicial service* in the case of ***Chandra Mohan*** (supra). The wording of Article 233(2) is unequivocal in distinguishing those who are already in service and placing them in a separate category. It is, therefore, evident that the said provision applies only to those who are not in judicial service either of the Union or of the State. Nowhere does it provide an eligibility condition for the appointment of in-service candidates merely because they had completed 7 years of practice as an advocate prior to their appointment.

iv. Once an individual joins the stream of service, he/she ceases to be an advocate. A person in judicial service cannot simultaneously also be a practicing advocate and is, therefore, not eligible for being appointed as against the *quota* reserved for advocates. The requirement of having seven years of practice refers to a continuous state of affairs.

v. Clause (2) of Article 233 of the Constitution does not specifically provide for direct recruitment for those

in service. If direct recruitment is to be contemplated, this Court would be reading into the clause what is not mentioned therein. It would result in an incongruous situation, wherein, while qualifications for one source of direct recruitment (*i.e.*, practicing advocates) are prescribed, there is no qualification for those who are in service. If direct recruitment for in-service candidates is read into clause (2) of Article 233, it would mean that any Civil Judge (even with one day's experience) can seek appointment as district judge by way of direct recruitment.

vi. In the case of ***Rameshwar Dayal*** (supra) Harbans Singh and P.R. Sawhney (Respondents therein) did not cease to be advocates at any time after 15th August 1947 and continued to be advocates till they were appointed as judges. Further, they had a standing of seven years.

vii. With respect to the two sources of recruitment, those in service are appointed in *"consultation"* with the High Court and those from the bar are

appointed on the *"recommendation"* of the High Court. The observations relied on by the Petitioners in the lower part of paragraph 89 of ***Chandra Mohan*** (supra) are only *qua* the question whether the Governor can appoint from services other than judicial services. It is in that context that two sources of recruitment being "indicated" in clause (2) is mentioned. This is so because when clause (2) speaks of those who are not in service, there is obviously a second source, *i.e.*, of those who are in service.

C. ISSUE FOR CONSIDERATION

9. The present batch of matters arises for consideration in view of the interpretation given to Article 233 of the Constitution of India by a three-Judge Bench of this Court in the case of ***Dheeraj Mor*** (supra). It will be pertinent to reproduce the finding of the said three-Judge Bench, *in paragraph 45*, which reads thus:

> "**45.** In view of the aforesaid discussion, we are of the opinion that for direct recruitment as District Judge as against the quota fixed for the advocates/pleaders, incumbent has to be practising advocate and must be in practice as on the cut-off date and at the time of appointment he must not be

in judicial service or other services of the Union or State. For constituting experience of 7 years of practice as advocate, experience obtained in judicial service cannot be equated/combined and advocate/pleader should be in practice in the immediate past for 7 years and must be in practice while applying on the cut-off date fixed under the rules and should be in practice as an advocate on the date of appointment. The purpose is recruitment from Bar of a practising advocate having minimum 7 years' experience."

10. As such, what has been held by this Court, reads thus:

"Under Article 233 (2), an advocate…

(i) Should be in practice in the immediate past for seven years;

(ii) Must be in practice while applying on the cut-off date; and

(iii) Should be in practice as an advocate on the date of appointment."

11. We are, therefore, called upon to consider the correctness of the said finding.

D. PROVISION OF LAW AND PRECEDENTS

i. Text of Article 233 of the Constitution

12. Article 233 of the Constitution of India reads thus:

"**233. Appointment of district judges**.—

(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

> (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."

13. Applying the first principle of interpretation *i.e.*, the rule of literal interpretation, we propose to analyse the provisions contained in Article 233 of the Constitution.

14. Clause (1) of Article 233 of the Constitution deals with the appointments of persons to be, and the posting and promotion of, district judges in any State. It can thus be seen that Article 233(1) of the Constitution is a provision providing for appointments of persons as district judges in a State so also for posting and promotions thereof. It further provides that such appointments shall be made by the Governor of the State concerned in consultation with the High Court exercising jurisdiction in relation to such State.

15. Article 233(2) of the Constitution deals with the eligibility of the persons for appointment to the post of district judge. A plain reading of clause (2) of Article 233 of the Constitution would reveal that for appointment of a person to the post of district judge, two streams are provided:

(i) a person not already in the service of the Union or of the State; and

(ii) an advocate or a pleader if he has been an advocate or a pleader for not less than seven years.

16. It can thus be seen that the words "a person not already in the service of the Union or of the State" is the *first part* of Article 233(2) of the Constitution. The *second part* is "shall only be eligible to be appointed if he has been for not less than seven years as an advocate or a pleader".

17. The first clause of Article 233 speaks of appointment, posting and promotion of district judges in a State which shall be made by the Government of the State in consultation with its High Court. Clause (2) of Article 233 does not restrict appointment of persons employed in the Union or the State to the post of district judges but enables, in addition advocates or pleaders who have seven years' practice, to be appointed as district judges. The appointment or promotion and the consequential posting has to be made under Clause (1) of Article 233, while Clause (2) provides for two sources of appointment. The plain meaning coming out of the words employed does not provide any restriction to judicial officers

from direct recruitment. On the other hand, it enables a judicial officer to be appointed as a district judge by direct recruitment even without the prescription of a period of practice.

18. As already discussed hereinabove, this Court in the case of ***Dheeraj Mor*** (supra) has held that clause (2) of Article 233 of the Constitution does not provide for a qualification of a person who is already in service of the Union or of the State. It provides qualifications only insofar as an advocate or a pleader is concerned. This Court, in the case of ***Dheeraj Mor*** (supra), held that for a person to be eligible to be appointed as district judge it is required that he has been for not less than seven years an advocate or a pleader. The requirement of recommendation of the High Court is common to both streams *i.e.*, in-service candidates and an advocate or a pleader. With this analysis, we propose to deal with the judgments of this Court which are concerned with the issues raised in the present reference.

ii. Case Laws

a. Rameshwar Dayal v. The State of Punjab and Others

19. The issue with regard to interpretation of Article 233 of the Constitution came up for consideration before a Constitution Bench of this Court in the case of ***Rameshwar Dayal*** (supra).

20. In the said case, a petition came to be filed before the High Court of Punjab contending that five persons (Respondents No. 2 to 6 therein) were not qualified to be appointed as district judges under Article 233 of the Constitution at the time they were appointed by the State Government. The writ petitioner before the High Court had *inter-alia* sought for a writ of *quo-warranto* thereby seeking to oust them from their office and for restraining them from exercising the powers, duties and functions of the posts they were holding. The writ petition was summarily dismissed by the High Court on 21st September 1959. An application for a certificate of fitness was rejected by the High Court. The writ petitioner, therefore, prayed for a special leave from this Court which was granted on 19th August 1960.

21. The appointment of the three respondents was challenged on the ground that they did not have the requisite experience of seven years' practice in the High Court of Punjab and that their experience before the Lahore High Court, prior to partition, could not be taken into consideration for counting the total experience. Insofar as the other two respondents are concerned, it was contended that, one of them was working as a Chairman, Jullundur Improvement Trust and the other one was working as a Deputy Custodian, Evacuee Property on the date of their appointment as District & Sessions Judges and as such they were not qualified.

22. This Court recorded that the contentions raised on behalf of the appellant therein ranged over a wide field, however, the point for consideration is that whether clause (2) of Article 233 of the Constitution provides that a person not already in the service of the Union or of the State shall *only* be eligible to be appointed as a district judge if he *(i)* has been for not less than seven years an advocate or a pleader and *(ii)* is recommended by the High Court for appointment.

23. This Court further recorded the following arguments which were raised on behalf of the appellant therein:

(i) That the expression *"advocate or pleader"* is an expression of legal import and must be given its generally accepted meaning at the time the Constitution was adopted, and that the said expression means an advocate or pleader entitled to appear and plead for another in a Court in India but does not include an advocate or pleader of a foreign Court;

(ii) That the use of the present prefect tense *"has been"* in clause (2) of Article 233 of the Constitution require that the person eligible for appointment must not only have been an advocate or pleader before but must be an advocate or pleader at the time he is appointed to the office of district judge;

(iii) That the period of seven years referred to in clause (2) of Article 233 must be counted as the standing of the advocate or pleader with reference to his right of practice in a court in the territory of India *i.e.*, any right of practice in a court which was in India before the partition of the country in 1947 but which is not in India since partition, cannot be taken into

consideration for the purpose of counting the period of seven years.

24. Answering the questions that arose for consideration before it, the Constitution Bench observed thus:

> "**12.** .....Article 233 is a self contained provision regarding the appointment of District Judges. As to a person who is already in the service of the Union or of the State, no special qualifications are laid down and under clause (1) the Governor can appoint such a person as a district judge in consultation with the relevant High Court. As to a person not already in service, a qualification is laid down in clause (2) and all that is required is that he should be an advocate or pleader of seven years' standing. ....."

25. It can thus be seen that this Court has held that Article 233 of the Constitution is a *self-contained provision* regarding the appointment of district judges. It has been held that for a person who is already in the service of the Union or of the State, no special qualifications are laid down and under clause (1) of Article 233 of the Constitution, the Governor can appoint such a person as a district judge in consultation with the relevant High Court. It has also been held that for a person not already in service, qualifications are laid down in clause (2) of Article 233 of the Constitution and all that is required is

that he/she should be an advocate or pleader of seven years' standing.

26. It is thus clear that the source of appointment for both an in-service candidate and a directly recruited candidate is provided in clause (1) of Article 233 of the Constitution. Clause (2) of Article 233 of the Constitution deals with the two aspects *viz.*, (i) qualification of an advocate or a pleader and (ii) necessity of the recommendation by the High Court.

27. Insofar as the issue with regard to counting the experience of an advocate or a pleader in the Lahore High Court for counting the years of service as an advocate of High Court of Punjab is concerned, we may observe that the same is not relevant for adjudication of the present reference inasmuch as it is not an issue before us.

28. This Court in that respect, however, in ***Rameshwar Dayal*** (supra) made a reference to the consequences that would follow if the interpretation canvassed on behalf of the appellant therein was to be accepted. The Court recorded that if the same is accepted, then for seven years beginning from 15th August 1947, no member of the Bar of the Punjab High Court would be eligible for appointment as a district judge.

29. It will be relevant to refer to the following observations of this Court:

> "**13.** .....It is perhaps necessary to add that we must not be understood to have decided that the expression 'has been' must always mean what learned counsel for the appellant says it means according to the strict rules of grammar. It may be seriously questioned if an organic Constitution must be so narrowly interpreted, and the learned Additional Solicitor-General has drawn our attention to other Articles of the Constitution like Article 5(*c*) where in the context the expression has a different meaning. Our attention has also been drawn to the decision of the Allahabad High Court in *Mubarak Mazdoor* v. *K.K. Banerji* [AIR 1958 All 323] where a different meaning was given to a similar expression occurring in the proviso to sub-section (3) of Section 86 of the Representation of the People Act, 1951. We consider it unnecessary to pursue this matter further because the respondents we are now considering continued to be advocates of the Punjab High Court when they were appointed as district judges and they had a standing of more than seven years when so appointed. They were clearly eligible for appointment under clause 2 of Article 233 of the Constitution."

30. It can thus be seen that with respect to the submission advanced on behalf of the learned counsel for the appellant therein, the Constitution Bench of this Court observed that it is necessary to add that they must not be understood to have decided that the expression *"has been"* must always mean what the learned counsel for the appellant says it to mean. The Constitution Bench further observed that they may be

seriously questioned if an *organic constitution* must be so narrowly interpreted. However, this Court did not find it necessary to pursue the matter in this regard since Respondents No. 2, 4 and 5 were considered to be continuing as advocates of the Punjab High Court when they were appointed as district judges and they had a standing of more than seven years when so appointed (which was inclusive of their practice as an advocate in the Lahore High Court).

31. This Court in ***Rameshwar Dayal*** (supra) thereafter considered the cases of Respondents No. 3 and 6 whose names were not on the roll of advocates at the time they were appointed as district judges. This Court observed thus:

> "**14.** We now turn to the other two respondents (Harbans Singh and P.R. Sawhney) whose names were not *factually* on the roll of Advocates at the time they were appointed as district judges. What is their position? We consider that they also fulfiled the requirements of Article 233 of the Constitution. Harbans Singh was in service of the State at the time of his appointment, and Mr Viswanantha Sastri appearing for him has submitted that clause (2) of Article 233 did not apply. We consider that even if we proceed on the footing that both these persons were recruited from the Bar and their appointment has to be tested by the requirements of clause (2), we must hold that they fulfilled those requirements. ....."

32. It is thus clear that in spite of the fact that Respondents No. 3 and 6 were factually *not* on the roll of advocates at the time of their appointment as district judges and they were in service of the State, they were considered eligible for appointment. This Court specifically observed that Harbans Singh (Respondent No. 3) and P.R. Sawhney (Respondent No. 6) were in service of the State at the time of his appointment.

33. No doubt that the learned Senior Counsel/counsel appearing for the Respondents before us in the present batch of matters are right in contending that the Constitution Bench in ***Rameshwar Dayal*** (supra) while interpreting Section 8(2)(a) of the *Bar Councils Act, 1926* and Clause 6 of the *High Courts (Punjab) Order, 1947* held that the concerned Respondents therein did not cease to be advocates at any time or stage after August 15, 1947 and they continued to be advocates of the Punjab High Court till they were appointed as district judges. However, the position is clear that both Respondents No. 3 and 6 therein were in service of the State at the time of their appointment. It is also not in dispute that

on 6th May 1949, Respondent No. 6 therein had got his licence to practise as an advocate suspended.

b. Chandra Mohan v. State of Uttar Pradesh and Others

34. The next judgment of this Court which requires our consideration is that of ***Chandra Mohan*** (supra). Before we proceed to consider the observations of the Constitution Bench in the said case, a brief narration of the facts would be necessary.

35. In the said case, in the year 1961-62, the Registrar of the Allahabad High Court called for applications for recruitment to ten vacancies in the Uttar Pradesh Higher Judicial Service from Barristers, Advocates, Vakils and Pleaders of more than seven years' standing and from judicial officers.

36. It will be relevant to refer to Rule 14 of the *U.P. Higher Judicial Service Rules* which reads thus:

> "**Rule 14. Direct Recruitment**.—
>
> (1) Applications for direct recruitment to the service shall be called for by the High Court and shall be made in the prescribed form which may be obtained from the Registrar of the Court.
>
> (2) The applications by barristers, advocates, vakils or pleaders, should be submitted through the District

> Judge concerned, and must be accompanied by certificates of age, character, nationality and domicile, standing as a legal practitioner, and such other documents as may be prescribed in this behalf by the Court. Applications from Judicial Officers should be submitted in accordance with the rules referred to in clause 2(b) of rule 5 of these Rules. The District Judge or other officer through whom the application is submitted shall send to the Court, along with the application, his own estimate of the applicant's character and fitness for appointment to the service."

37. The Selection Committee constituted under the *U.P. Higher Judicial Service Rules*, in accordance with the provisions of the said Rules, selected six candidates from the said applicants as suitable for appointment to the said service. Respondents No. 2, 3 and 4 therein were advocates and respondents No. 5, 6 and 7 therein were "judicial officers". Their appointments were challenged before the High Court on the ground that the said candidates were not the members of the judicial service. There was difference of opinion between the judges of the Division Bench of the High Court. As such, the matter came to be referred to a third Judge. The third Judge agreed with the view that the recruitment from both the sources was good. As such, the writ petitions were dismissed. Pursuant to the certificate given by the High Court under

Articles 132(1) and 133(1)(c) of the Constitution, the appeal came to be filed before this Court.

38. It is pertinent to note that the Constitution Bench of this Court in ***Chandra Mohan*** (supra) observed that the expression "judicial officers" is a *euphemism* for the members of the Executive department who discharge some revenue and magisterial duties.

39. Though several issues were raised for consideration before the Constitution Bench in the case of ***Chandra Mohan*** (supra), it would suffice to refer to the following contentions:

> " …(3) The Governor has no power to appoint district judges from judicial officers as they are not members of the judicial service. (4) The exclusion of the members of the judicial service in the matter of direct recruitment offends Arts. 14 and 16 of the Constitution; or, alternatively, the exclusion of the members of the judicial service in the matter of direct recruitment to the post of district judges while permitting "judicial officers" to be so recruited offends the said articles….."

40. It will be relevant to specifically refer to the third point which has been considered by this Court in ***Chandra Mohan*** (supra), which reads thus:

> "The third point raised is one of far-reaching importance. Can the Governor, after the Constitution, directly appoint persons from a service

> other than the judicial service as district judges in consultation with the High Court? Can he appoint "judicial officers" as district judges? The expression "judicial officers" is a misleading one. It is common case that they belong to the executive branch of the Government, though they perform certain revenue and magisterial functions."

41. It can thus be seen that the main issue that fell for consideration before this Court in the said case was as to whether the judicial officers belonging to the executive branch of the Government could be appointed as district judges?

42. It will also be relevant to the following observations of this Court in the case of ***Chandra Mohan*** (supra):

> "Before construing the said provisions, it should be remembered that the fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an Act of Parliament, namely, that the court will have to find out the expressed intention from the words of the Constitution or the Act, as the case may be. But, "if, however, two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory."

43. It can thus be seen that the Constitution Bench held that though the fundamental rule of interpretation is the same whether one construes the provisions of the Constitution or an

Act of Parliament, namely, that the Court will have to find out the expressed intention from the words of the Constitution or the Act. However, if two constructions are possible then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of existing law nugatory.

44. The Court in the said case thereafter examined the entire scheme of Articles 233 to 237 of the Constitution.

45. After examining the scheme, this Court observed thus:

> "The gist of the said provisions may be stated thus : **Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State. There are two sources of recruitment, namely, (i) service of the Union or of the State, and (ii) members of the Bar. The said judges from the first source are appointed in consultation with the High Court and those from the second source are appointed on the recommendation of the High Court.** But in the case of appointments of persons to the judicial service other than as district judges, they will be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the Public Service Commission. But the High Court has control over all the district courts and courts subordinate thereto, subject to certain prescribed limitations."
>
> [Emphasis supplied]

46. It can thus be seen that this Court has held that the appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State. This Court further held that there are two sources of recruitment, namely, *(i)* service of the Union or of the State, and *(ii)* members of the Bar. It has been held that the said judges from the first source are appointed in consultation with the High Court and those from the second source are appointed on the recommendation of the High Court. This Court further held that in the case of appointments of persons to the judicial service other than as district judges, the same shall be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the Public Service Commission. It has been further held that the High Court has control over all the district courts and courts subordinate thereto, subject to certain prescribed limitations.

47. This Court held that under Article 236(b) of the Constitution, "judicial service" has been defined 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. This Court thereafter observed thus:

> "If this definition, instead of appearing in Art. 236, is placed as a clause before Art. 233(2), **there cannot be any dispute that "the service" in Art. 233(2) can only mean the judicial service.** The circumstance that the definition of "judicial service" finds a place in a subsequent Article does not necessarily lead to a contrary conclusion. **The fact that in Art. 233(2) the expression "the service" is used whereas in Arts. 234 and 235 the expression "judicial service" is found is not decisive of the question whether the expression "the service" in Art. 233(2) must be something other than the judicial service, for, the entire chapter is dealing with the judicial service.** The definition is exhaustive of the service. Two expressions in the definition bring out the idea that the judicial service consists of hierarchy of judicial officers starting from the lowest and ending with district judges. **The expressions "exclusively" and "intended" emphasise the fact that the judicial service consists only of persons intended to fill up the posts of district judges and other civil judicial posts and that is the exclusive service of judicial officers.** Having defined "judicial service" in exclusive terms, having provided for appointments to that service and having entrusted the control of the said service to the care of the High Court, the makers of the world *(sic)* Constitution not have conferred a blanket power on the Governor to appoint any person from any service as a district judge."
>
> [Emphasis supplied]

48. This Court, therefore, after examining the scheme held that having defined "judicial service" in exclusive terms and having provided for appointments to that service and having

entrusted the control of the said service to the care of the High Court, the makers of the Constitution could not have conferred a blanket power on the Governor to appoint any person from any service as a district judge. Subsequently, after referring to the observations of this Court in the case of ***Rameshwar Dayal*** (supra), this Court in the case of ***Chandra Mohan*** (supra) observed thus:

> "This passage is nothing more than a summary of the relevant provisions. The question whether "the service" in Art. 233(2) is any service of the Union or of the State did not arise for consideration in that case nor did the Court express any opinion thereon.
>
> We, therefore, construe the expression "the service" in d. (2) *(sic)* of Art. 233 as the judicial service."

49. It can thus be seen that the question whether "*the service*" in Article 233(2) of the Constitution "*is any service of the Union or of the State*" did not arise for consideration in ***Rameshwar Dayal*** (supra). This Court, therefore, in ***Chandra Mohan*** (supra) construed the expression *"the service"* in clause (2) of Article 233 of the Constitution as the judicial service.

50. This Court, in the result, held that the *U.P. Higher Judicial Service Rules* providing for the recruitment of district

judges are constitutionally void and therefore the appointments made thereunder were illegal.

51. A perusal of both these Constitution Bench judgments would reveal that this Court does not hold that in case of direct recruitment, it is only the advocates having practice of seven years who could be appointed. Neither does either of the judgment prohibit the judicial officers to be considered for appointment by way of direct recruitment.

52. If we accept the construction as put forth by the Respondents, then the first part of clause (2) of Article 233 of the Constitution *i.e.*, "*a person not already in service of the Union or of the State*" will be rendered redundant and superfluous.

53. It is, however, more than a settled position of law that it is presumed that the legislature has inserted each and every word with an intention to give the provision an effective meaning.

54. If the Constituent Assembly desired that when the recruitment is made directly, only the advocates having seven years of practice would be considered for appointment, it would not have put the words "*a person not already in service*

of the Union or of the State" in the first part of clause (2) of Article 233 of the Constitution. It is, therefore, to be presumed that the Constituent Assembly has used the said words with a purpose.

55. As already discussed hereinabove, the source of appointment of district judges is clause (1) of Article 233 of the Constitution. Even if the selection of such a person is made through promotions or through the mode of direct recruitment, the appointment will have to be made by the Governor of the concerned State in consultation with the High Court. At the cost of repetition, we observe that the second part of clause (2) of Article 233 of the Constitution only enables and provides for qualifications for advocates or pleaders who are desirous of competing for the post of district judge.

c. State of Assam and Another v. Kuseswar Saikia and Others

56. Coming next to the case of ***State of Assam and Another v. Kuseswar Saikia and Others***[9].

57. In the said case, a writ petition was filed before the High Court of Assam by Respondents No.1 to 3 therein seeking

[9] **(1969) 3 SCC 505**

the issuance of a writ of *quo-warranto* challenging the appointment of one Upendra Nath Rajkhowa, who was the District and Sessions Judge, Darrang at Tazpur. The Respondents No. 1 to 3 therein had been convicted by Rajkhowa in a Sessions Trial, as a result they had challenged their conviction *inter-alia* on the ground that Rajkhowa was not entitled to hold the post of District and Sessions Judge. The High Court held that the "promotion" of Rajkhowa by the Governor as Additional District Judge by notification LJJ 74/66/65 dated 19th June 1967 purporting to act under Article 233 of the Constitution was *void* because he could only be promoted by the High Court acting under Article 235 of the Constitution. As a consequence, his further appointment as District Judge by the Governor was also declared by the High Court to be void. Aggrieved, the judgment of the High Court was challenged before this Court.

58. While deciding the appeal, this Court, after referring to clause (1) of Article 233 of the Constitution, observed thus:

> "**4.** .....The language seems to have given trouble to the High Court. The High Court holds:
>
> > "(1) 'appointment to be' a District Judge is to be made by the Governor in

consultation with the High Court vide Article 233; and

(2) 'promotion' of a District Judge and not promotion 'to be a District Judge' is also to be made by the Governor in consultation with the High Court vide Article 233."

The High Court gives the example of selection grade posts in the cadre of District Judges which according to it is a case of promotion of a District Judge."

59. It will also be apt to refer to the following observations of this Court in the case of ***Kuseswar Saikia*** (supra):

"**6. It means that appointment as well as promotion of persons to be District Judges is a matter for the Governor in consultation with the High Court and the expression "District Judge" includes an Additional District Judge and an Additional Sessions Judge. It must be remembered that District Judges may be directly appointed or may be promoted from the subordinate ranks of the judiciary. The article is intended to take care of both. It concerns initial appointment and initial promotion of persons to be either District Judges or any of the categories included in it. Further, promotion of District Judges is a matter of control of the High Court.** What is said of District Judges here applies equally to additional District Judges and Additional Sessions Judges. **Therefore when the Governor appointed Rajkhowa an Additional District Judge, it could either be an "appointment" or a promotion under Article 233. If it was an appointment it was clearly a matter under Article 233. If the notification be treated as "promotion" of Rajkhowa from the junior service to the senior service it was a "promotion" of a person to be a District Judge which expression, as shown above, includes an Additional District Judge. In our opinion, it was the latter.** Thus there is no doubt

> that the appointment of Rajkhowa as Additional District Judge by the Governor was a promotion and was made under Article 233. It could not be made under Article 235 which deals with posts subordinate to a District Judge including an Additional District Judge and an Additional Sessions Judge. The High Court was in error in holding that the appointment of Rajkhowa to the position of an Additional District Judge was invalid because the order was made by the Governor instead of the High Court. The appointment or promotion was perfectly valid and according to the Constitution."
>
> [Emphasis supplied]

60. It is thus clear that this Court, in unequivocal terms, held that appointment as well as promotion of persons to be District Judges is a matter for the Governor in consultation with the High Court and the expression "District Judge" includes an Additional District Judge and an Additional Sessions Judge. This Court further observed that the District Judges may be directly appointed or may be promoted from the subordinate ranks of the judiciary. It has been observed that Article 233(1) is intended to take care of both *i.e.*, it concerns with initial appointment as well as promotion of persons to be either District Judges or any of the categories included in it. This Court further held that the promotion of District Judges is a matter under the control of the High Court. It has been held that when the Governor appointed Rajkhowa

an Additional District Judge, it could either be an "appointment" or a "promotion" under Article 233 of the Constitution. It has been held that if it was an appointment, it was clearly a matter under Article 233 of the Constitution. This Court held that there is no doubt that the appointment of Rajkhowa as Additional District Judge by the Governor was a promotion and the same was made under Article 233 of the Constitution. This Court, therefore, held that the promotion could not be made under Article 235 which deals with posts subordinate to a District Judge including an Additional District Judge and an Additional Sessions Judge and that the High Court was in error in holding that the appointment of Rajkhowa to the position of an Additional District Judge was invalid because the order was made by the Governor instead of the High Court.

d. A. Panduranga Rao v. State of Andhra Pradesh and Others

61. Next is the case of ***A. Panduranga Rao v. State of Andhra Pradesh and Others***[10], where the Government of Andhra Pradesh was requested by the High Court to take

[10] **(1975) 4 SCC 709**

necessary steps for filling up six vacancies by notifying six posts of District & Sessions Judge, Grade-II for direct recruitment. The State Government informed the High Court *vide* D.O letter dated 14th September 1972 that six vacancies were being notified for direct recruitment and they were actually notified in the Gazette on the very same date. The advertisement was therefore published on 1st August 1972. Totally 381 applications were received. Out of 381, 26 applications were found to be not in order and were therefore rejected. The remaining 355 candidates were called by the Selection Committee of the High Court for interview. The appellant therein, A. Panduranga Rao, was one of the candidates interviewed by the Selection Committee. After completion of selection procedure, the High Court made its recommendation in order of merit and Panduranga Rao was 5th out of the 6 names recommended. It, however, appears that the recommendations were leaked and the Bar Association City Civil Court, Hyderabad and the High Court Bar Association passed certain resolutions/sent certain memoranda to the Government and made some adverse comments against some of the persons recommended by the

High Court. The State Government addressed a D.O. letter dated 24th July 1973 to the High Court expressing concern over the leakage of secret information but at the same time invited comments from the High Court. It appears that there was an exchange of communication and thereafter, the Government appointed two persons from the list of the candidates who were interviewed by the Selection Committee excluding the appellant therein. Several writ petitions were filed before the High Court challenging the said appointments. A writ petition was also filed by the appellant challenging the said appointments so also his non-selection. The writ petition filed by the appellant before the High Court was dismissed. In appeal, this Court, after considering the provisions of Article 233 of the Constitution and the judgment in the case of ***Chandra Mohan*** (supra), observed thus:

> **"8.** A candidate for direct recruitment from the Bar does not become eligible for appointment without the recommendation of the High Court. He becomes eligible only on such recommendation under clause (2) of Article 233. The High Court in the judgment under appeal felt some difficulty in appreciating the meaning of the word "recommended". But the literal meaning given in the *Concise Oxford Dictionary* is quite simple and apposite. It means "suggest as fit for employment". In case of appointment from the Bar it

> is not open to the Government to choose a candidate for appointment until and unless his name is recommended by the High Court."

62. Finally, this Court allowed the appeal and set aside the judgment of the High Court. It can thus clearly be seen that the question before the Court was as to whether the State Government was empowered to make appointment of a candidate not recommended by the High Court. This Court, in unequivocal terms, held that a candidate becomes eligible for appointment only on such recommendation under clause (2) of Article 233 of the Constitution. The writ petition filed by the appellant before the High Court succeeded only to the extent that the appointment of the candidates whose names were recommended by the High Court was quashed.

63. Relying on the said observations, it is sought to be submitted by the learned Senior Counsel/counsel appearing on behalf of the Respondents that direct recruitment is reserved for the members of the Bar.

64. It is, however, to be noted that in the said case of ***A. Panduranga Rao*** (supra), the question as to whether a candidate already in the judicial service of the Union or the

State was eligible for being considered for appointment as a district judge by way of direct recruitment did not fall for consideration.

e. Satya Narain Singh v. High Court of Judicature at Allahabad and Others

65. A heavy reliance is also placed by the Respondents on the judgment of this Court in the case of ***Satya Narain Singh v. High Court of Judicature at Allahabad and Others***[11] rendered by a Bench of three learned Judges.

66. In the said case, the appellants therein, who were members of the Uttar Pradesh Judicial Service, in response to an advertisement by the High Court of Allahabad, applied to be appointed by direct recruitment to the Uttar Pradesh Higher Judicial Service. They claimed that each of them had completed seven years of practice at the Bar even before their appointment to the Uttar Pradesh Judicial Service and as such, eligible to be appointed by direct recruitment to the Higher Judicial Service. The writ petitions filed by them before the High Court were dismissed. The Civil Appeal filed thereagainst and some of the writ petitions filed before this

[11] **(1985) 1 SCC 225**

Court were dismissed on 11th October 1984. However, thereafter, three writ petitions were heard by a three-Judge Bench which came to be dismissed by this Court on 27th November 1984.

67. It will be relevant to refer to the arguments advanced by both the sides, which read thus:

> "**2.** The submission of Shri Lal Narain Sinha and Shri K.K. Venugopal was that there was no constitutional inhibition against members of any Subordinate Judicial Service seeking to be appointed as District Judges by direct recruitment provided they had completed 7 years' practice at the bar. The submission of the learned counsel was that members of the Subordinate Judiciary, who had put in 7 years' practice at the bar before joining the Subordinate Judicial Service and who had gained experience as Judicial Officers by joining the Subordinate Judicial Service ought to be considered better fitted for appointment as District Judges because of the additional experience gained by them rather than be penalised for that reason. The learned counsel submitted that a construction of Article 233 of the Constitution which would render a member of the Subordinate Judicial Service ineligible for appointment to the Higher Judicial Service because of the additional experience gained by him as a Judicial Officer would be both unjust and paradoxical. It was also suggested that it would be extremely anomalous if a member of the Uttar Pradesh Judicial Service who on the present construction of Article 233 is ineligible for appointment as a District Judge by direct recruitment, is nevertheless eligible to be appointed as a Judge of the High Court by reason of Article 217(2)(*aa*). On the other hand Shri Gopal Subramanium, learned counsel for the respondent,

> urged that there was a clear demarcation in the Constitution between two sources of recruitment namely: (*1*) those who were in the service of a State or Union, and (*2*) those who were not in such service. He contended that the second clause of Article 233 was attracted only to the second source and in respect of candidates from that source the further qualification of 7 years as an advocate or a pleader was made obligatory for eligibility. According to Mr Gopal Subramanium, a plain reading of both the clauses of Article 233 showed that while the second clause of Article 233 was applicable only to those who were not already in service, the first clause was applicable to those who were already in service. He urged that any other construction would lead to anomalous and absurd consequences such as a junior member of the Subordinate Judicial Service taking a leap, as it were, over senior members of the Judicial Service with long records of meritorious service. Both sides relied upon the decisions of this Court in *Rameshwar Dayal* v. *State of Punjab* [AIR 1961 SC 816 : (1961) 2 SCR 874 : (1961) 2 SCJ 285] and *Chandra Mohan* v. *State of Uttar Pradesh* [AIR 1966 SC 1987 : (1967) 1 SCR 77 : (1967) 1 LLJ 412]"

68. Since a heavy reliance is placed on behalf of the Respondents on the said judgment, it will be relevant to refer to the entire reasoning as recorded in the said judgment, which reads thus:

> "**3.** …Two points straightway project themselves when the two clauses of Article 233 are read: The first clause deals with "appointments of persons to be, and the posting and promotion of, District Judges in any State" while the second clause is confined in its application to persons "not already in the service of the Union or of the State". We may mention here that "service of the Union or of the State" has been

interpreted by this Court to mean Judicial Service. Again while the first clause makes consultation by the Governor of the State with the High Court necessary, the second clause requires that the High Court must recommend a person for appointment as a District Judge. It is only in respect of the persons covered by the second clause that there is a requirement that a person shall be eligible for appointment as District Judge if he has been an advocate or a pleader for not less than 7 years. In other words, in the case of candidates who are not members of a Judicial Service they must have been advocates or pleaders for not less than 7 years and they have to be recommended by the High Court before they may be appointed as District Judges, while in the case of candidates who are members of a Judicial Service the 7 years' rule has no application but there has to be consultation with the High Court. A clear distinction is made between the two sources of recruitment and the dichotomy is maintained. The two streams are separate until they come together by appointment. Obviously the same ship cannot sail both the streams simultaneously. The dichotomy is clearly brought out by S.K. Das, J. in *Rameshwar Dayal* v. *State of Punjab* [AIR 1961 SC 816 : (1961) 2 SCR 874 : (1961) 2 SCJ 285] where he observes:

> "Article 233 is a self contained provision regarding the appointment of District Judges. As to a person who is already in the service of the Union or of the State, no special qualifications are laid down and under clause (1) the Governor can appoint such a person as a district judge in consultation with the relevant High Court. As to a person not already in service, a qualification is laid down in clause (2) and all that is required is that he should be an advocate or pleader of seven years' standing."

Again dealing with the cases of Harbans Singh and Sawhney it was observed:

> "We consider that even if we proceed on the footing that both these persons were recruited from the Bar and their appointment has to be tested by the requirements of clause (2), we must hold that they fulfilled those requirements."

Clearly the Court was expressing the view that it was in the case of recruitment from the Bar, as distinguished from Judicial Service that the requirements of clause (2) had to be fulfilled. We may also add here earlier the Court also expressed the view:

> "... we do not think that clause (2) of Article 233 can be interpreted in the light of Explanations added to Articles 124 and 217"

4. In *Chandra Mohan* v. *State of Uttar Pradesh* [AIR 1966 SC 1987 : (1967) 1 SCR 77 : (1967) 1 LLJ 412] Subba Rao, C.J. after referring to Articles 233, 234, 235, 236 and 237 stated:

> "The gist of the said provisions may be stated thus: Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State. *There are two sources of recruitment, namely, (i) service of the Union or of the State, and (ii) members of the Bar.* The said judges from the first source are appointed in consultation with the High Court and those from the second source are appointed on the recommendation of the High Court. But in the case of appointments of persons to the judicial service other than as district judges, they will be made by the Governor of the State in accordance with rules framed by him in consultation with the High Court and the Public Service Commission. But the High Court has control over all the District

> Courts and courts subordinate thereto, subject to certain prescribed limitations."
>
> (emphasis supplied)

Subba Rao, C.J. then proceeded to consider whether the Government could appoint as District Judges persons from services other than the Judicial Service. After pointing out that Article 233(1) was a declaration of the general power of the Governor in the matter of appointment of District Judges and he did not lay down the qualifications of the candidates to be appointed or denoted the sources from which the recruitment had to be made, he proceeded to state:

> "But the sources of recruitment are indicated in clause (2) thereof. *Under clause (2) of Article 233 two sources are given, namely, (i) persons in the service of the Union or of the State, and (ii) advocate or pleader.*"

5. Posing the question whether the expression "the service of the Union or of the State" meant any service of the Union or of the State or whether it meant the Judicial Service of the Union or of the State, the learned Chief Justice emphatically held that the expression "the service" in Article 233(2) could only mean the Judicial Service. But he did not mean by the above statement that persons who are already in the service, on the recommendation by the High Court can be appointed as District Judges, *overlooking* the claims of all other seniors in the Subordinate Judiciary contrary to Article 14 and Article 16 of the Constitution.

6. Thus we see that the two decisions do not support the contention advanced on behalf of the petitioners but, to the extent that they go, they certainly advance the case of the respondents. We therefore, see no reason to depart from the view already taken by us and we accordingly dismiss the writ petitions."

69. With due respect, we may state that the said judgment does not lay down the correct position of law. The finding of this Court in the said case that the second clause of Article 233 is confined in its application to persons "*not already in the service of the Union or of the State*" is, in our view, erroneous. The finding that there is a clear distinction between the two sources of recruitment and the dichotomy is maintained, in our view, is not correct. Further, the finding that the two streams are separate until they come together by appointment and the *"same ship cannot sail both the streams simultaneously"* does not lay down the correct law.

70. No doubt that this Court in ***Satya Narain Singh*** (supra) correctly held that in ***Rameshwar Dayal*** (supra), this Court had expressed the view that it was in the case of recruitment from the Bar, as distinguished from judicial service, that the requirements of clause (2) of Article 233 of the Constitution of having seven years' practice had to be fulfilled. However, it is pertinent to note that though this Court notices that no such qualification is provided in the case of candidates who are members of the judicial services, it is not clear from the judgment as to whether the Court finds that

those who were appointed from the service in ***Rameshwar Dayal*** (supra) was wrong or not. However, from the judgment in ***Rameshwar Dayal*** (supra), it is obviously clear that the Court notices that Harbans Singh and P.R. Sawhney (Respondents therein) were appointed when they were in service of the State.

71. This Court, in ***Satya Narain Singh*** (supra), after referring to ***Chandra Mohan*** (supra), stated that in ***Chandra Mohan*** (supra), the Court observed that the expression *"the service"* in Article 233(2) of the Constitution could only mean the judicial service. However, it further held that this Court in ***Chandra Mohan*** (supra) did not mean by the above statement that persons who are already in the service, on the recommendation by the High Court can be appointed as district judges, *overlooking* the claims of all other seniors in the Subordinate Judiciary contrary to Articles 14 and 16 of the Constitution.

72. We find that the abovesaid observations made in ***Satya Narain Singh*** (supra) that if a person who is already in service is appointed as a district judge on the recommendation of the High Court, thereby overlooking the claims of all other seniors

in the subordinate judiciary, would violate Articles 14 and 16 of the Constitution is not correct. On the contrary we find that it will enable the more meritorious candidates amongst the judicial officers to compete with the advocates and only if they are found to be more meritorious, will they be selected and appointed. Not only that but Articles 14 and 16 of the Constitution would require that an *equal treatment* be given to all eligible candidates. In fact, the observations which amount to creating a *"quota"* for advocates, having practice of seven years, in the matter of direct recruitment for the post of district judges would violate the provisions of Articles 14 and 16 of the Constitution.

73. We, therefore, find that barring a person, who is otherwise eligible but at the time of advertisement, is in judicial service of the Union or of the State and is prevented from competing with the candidates who are advocates having practice of seven years, for appointment(s) in the stream of direct recruitment would result in denial of an equal treatment. When the appointments are made solely on the basis of merit, then the claim of meritorious judicial officers

cannot be overlooked. It is only merit and merit alone that shall matter.

f. Sushma Suri v. Govt. of National Capital Territory of Delhi and Another

74. The learned Senior Counsel/counsel appearing for the Respondents also placed reliance on the case of ***Sushma Suri v. Govt. of National Capital Territory of Delhi and Another***[12]**.** In the said case, the appellant therein who was appointed as Assistant Government Advocate and thereafter was promoted to the post of Additional Government Advocate in this Court, had applied, in response to the advertisement issued for recruitment to the Delhi Higher Judicial Service. When she was not called for the interview, she filed a writ petition before the High Court, which was dismissed. While considering the provision contained in Article 233 of the Constitution, this Court observed thus:

> "**3.** …Obviously, this Rule has been framed to be in conformity with Article 233 of the Constitution. Article 233(1) thereof provides for appointments of persons who are already in service while Article 233(2) provides that a person not already in service is eligible for appointment if he has been for not less than seven years an advocate or a pleader and is recommended for the purpose by the High Court. Referring to the expression "service" in Article 233(2)

[12] **(1999) 1 SCC 330**

> it has been held by this Court in *Chandra Mohan* v. *State of U.P.* [AIR 1966 SC 1987 : (1967) 1 LLJ 412] and *Satya Narain Singh* v. *High Court of Judicature at Allahabad* [(1985) 1 SCC 225 : 1985 SCC (L&S) 196 : AIR 1985 SC 308] that it means "judicial service". However, it is not the contention either before the High Court or before us that the appellant is in judicial service. On the other hand the contention is that she has more than seven years' experience as an advocate and, therefore, is fully eligible to be appointed to the Higher Judicial Service and the High Court was not justified in not considering her case for appointment. Hence we have to examine the only question whether the appellant is an "advocate" for the purpose of Article 233(2) of the Constitution and "from the Bar" as envisaged in Rule 7 of the Rules."

75. For the reasons that are recorded by us hereinabove, we find that the finding in the case of ***Sushma Suri*** (supra) that Article 233(1) of the Constitution provides for appointments of persons who are already in service, while Article 233(2) of the Constitution provides that a person not already in service is eligible for appointment if he has been for not less than seven years an advocate or a pleader and is recommended for the purpose by the High Court, is again contrary to the provisions of Article 233 of the Constitution.

76. This Court, in the said case, observed thus:

> "**6.** If a person on being enrolled as an advocate ceases to practise law and takes up an employment, such a person can by no stretch of imagination be termed as an advocate. However, if a person who is

> on the rolls of any Bar Council is engaged either by employment or otherwise of the Union or the State or any corporate body or person practises before a court as an advocate for and on behalf of such Government, corporation or authority or person, the question is whether such a person also answers the description of an advocate under the Act. That is the precise question arising for our consideration in this case."

77. It can thus be seen that this Court in the case of ***Sushma Suri*** (supra) has held that if a person on being enrolled as an advocate ceases to practise law and takes up an employment, then such a person can by no stretch of imagination be termed as an *"advocate"*. This Court further posed a question for its consideration that if a person who is on the roll of any Bar Council is engaged either by employment or otherwise of the Union or the State or a body corporate or person practises before a Court as an advocate for and on behalf of such Government, corporation or authority or person, whether such a person also answers the description of an advocate under the Act.

78. To answer the said question, this Court considered the provisions under the *Advocates Act, 1961* and observed that for the purpose of the Advocates Act and the rules framed thereunder, the Law Officer (Public Prosecutor or Government

Counsel) will continue to be an advocate. It was observed that the intention of the relevant rules is that a candidate eligible for appointment to Higher Judicial Service should be a person who regularly practices before the Court or tribunal, appearing for a client.

79. This Court, in the said case, thereafter observed thus:

> "**9.** In *Oma Shanker Sharma case* [CWP No. 1961 of 1987] the Delhi High Court approached the matter in too pedantic a manner losing sight of the object of recruitment under Article 233(2) of the Constitution. Whenever any recruitment is conducted to fill up any post, the area of recruitment must be as broad-based as the Rules permit. To restrict it to advocates who are not engaged in the manner stated by us earlier in this order is too narrow a view, for the object of recruitment is to get persons of necessary qualification, experience and knowledge of life. A Government Counsel may be a Public Prosecutor or Government Advocate or a Government Pleader. He too gets experience in handling various types of cases apart from dealing with the officers of the Government. Experience gained by such persons who fall in this description cannot be stated to be irrelevant nor detrimental to selection to the posts of the Higher Judicial Service. The expression "members of the Bar" in the relevant Rule would only mean that particular class of persons who are actually practising in courts of law as pleaders or advocates. In a very general sense an advocate is a person who acts or pleads for another in a court and if a Public Prosecutor or a Government Counsel is on the rolls of the Bar Council and is entitled to practise under the Act, he answers the description of an advocate."

80. It can thus be seen that this Court has clearly held that the object of the recruitment under Article 233 of the Constitution should not be approached in a *"pedantic manner"*. It has been observed that whenever a recruitment is conducted, the area of recruitment must be *"as broad-based as the rules permit"*. It has been held that the object of recruitment is to get persons of necessary qualification, experience and knowledge of life. This Court held that a Government Counsel may be a Public Prosecutor or Government Advocate or a Government Pleader who too gets experience in handling various types of cases apart from dealing with the officers of the Government. It has been held that experience gained by such persons who fall in this description cannot be stated to be irrelevant nor detrimental in selection to the posts of the Higher Judicial Service. This Court observed that the expression *"members of the Bar"* in the relevant rule would only mean that particular class of persons who are actually practising in courts of law as pleaders or advocates. This Court held that if a Public Prosecutor or a Government Counsel is on the roll of the Bar Council and is entitled to practise under the Act, he answers

the description of an advocate. This Court clearly held that an advocate employed by the Government or a body corporate as its law officer, even on terms of payment of salary would not cease to be an advocate in terms of Rule 49 of the Bar Council of India Rules.

81. It can thus be seen that the observations of this Court in ***Sushma Suri*** (supra) rather than fully supporting the contention of the Respondents, *to some extent*, support the contentions of the Petitioners. This Court in the said case has emphasized that the object of recruitment is to get persons of necessary qualification, experience and knowledge of life. It has been observed that the Government Advocate gets experience in handling various types of cases apart from dealing with the officers of the Government. It has been held that the experience gained by such persons who fall in this description cannot be stated to be irrelevant nor detrimental to selection to the posts of the Higher Judicial Service.

g. Deepak Aggarwal v. Keshav Kaushik and Others

82. Again, in the case of ***Deepak Aggarwal*** (supra), relied upon by the learned Senior Counsel/Counsel for the

Respondents, the five appellants therein who were working as Assistant District Attorney, Deputy Advocate General and Public Prosecutor, *etc.*, were selected by direct recruitment to the post of Additional District & Sessions Judge in the Haryana Superior Judicial Service. The High Court had quashed their appointment on the ground that they did not have the requisite criteria to qualify for the recruitment as contemplated in Article 233 of the Constitution. This Court, after considering the Constitution Bench judgments in the cases of ***Rameshwar Dayal*** (supra) and ***Chandra Mohan*** (supra) and other judgments dealing with the similar issue, observed thus:

> "**89.** We do not think there is any doubt about the meaning of the expression "advocate or pleader" in Article 233(2) of the Constitution. This should bear the meaning it had in law preceding the Constitution and as the expression was generally understood. The expression "advocate or pleader" refers to legal practitioner and, thus, it means a person who has a right to act and/or plead in court on behalf of his client. There is no indication in the context to the contrary. It refers to the members of the Bar practising law. In other words, the expression "advocate or pleader" in Article 233(2) has been used for a member of the Bar who conducts cases in court or, in other words acts and/or pleads in court on behalf of his client. In *Sushma Suri* [(1999) 1 SCC 330 : 1999 SCC (L&S) 208], a three-Judge Bench of this Court construed the expression "members of the Bar" to mean class of persons who were actually

> practising in courts of law as pleaders or advocates. A Public Prosecutor or a Government Counsel on the rolls of the State Bar Council and entitled to practise under the 1961 Act was held to be covered by the expression "advocate" under Article 233(2). We respectfully agree."

83. It can thus be seen that the meaning given to the term "advocate or pleader" in the case of ***Sushma Suri*** (supra) has been affirmed by this Court in the case of ***Deepak Aggarwal*** (supra). This Court further observed thus:

> "**99.** …The factum of employment is not material but the key aspect is whether such employment is consistent with his practising as an advocate or, in other words, whether pursuant to such employment, he continues to act and/or plead in the courts. If the answer is yes, then despite employment he continues to be an advocate. On the other hand, if the answer is in the negative, he ceases to be an advocate."

84. It can thus be seen that this Court has reiterated the position laid down in the case of ***Sushma Suri*** (supra) that the factum of employment is not material but the key aspect is whether such employment is consistent with his practising as an advocate or, in other words, whether pursuant to such employment, he continues to act and/or plead in the courts. This Court held that despite employment he continues to be an advocate.

85. Therefore, the question that is required to be considered by us is if the purpose of recruitment is to get persons of necessary qualification, experience and knowledge of life, then as to whether the judicial officer who is in judicial service could be denied an opportunity to be recruited in the posts meant to be filled by way of direct recruitment. In that respect, we are of the considered view that it cannot be denied that the experience a judicial officer gets by working as a judge can only work to the betterment of the district judiciary. The question that we would have to therefore consider in present case is as to whether such experienced persons having rich judicial experience can be permitted to participate in the process of direct recruitment for the post of district judge.

h. Vijay Kumar Mishra and Another v. High Court of Judicature at Patna

86. In ***Vijay Kumar Mishra and Another v. High Court of Judicature at Patna***[13], a case specifically relied upon by the learned Senior Counsel appearing on behalf of the Petitioners, the appellants therein had appeared in the recruitment for the Subordinate Judicial Service of Bihar as

[13] **(2016) 9 SCC 313**

well as District Judge Entry Level (Direct from Bar). It will be relevant to note that in the said case the process for both the recruitments was held simultaneously. The writ petitioners before the Patna High Court appeared in the preliminary and mains examination of District Judge Entry Level (Direct from Bar). In the meantime, they were declared qualified for the Subordinate Judicial Service in 28th Batch and accordingly joined the Subordinate Judicial Service of the State of Bihar in August 2015. Subsequently, the result of the Mains Examination of the District Judge Entry Level (Direct from Bar) was published in January 2016. Both the writ petitioners were declared qualified in the Mains Examination. The High Court had published schedule for interview and issued call letters to both of them. One of the conditions mentioned therein was furnishing of a *'No Objection Certificate of the Employer'*. Therefore, the writ petitioners filed a representation before the Registrar General, Patna High Court seeking to appear in the said interview. The request was declined on the ground that they were already in the State Judicial Subordinate Service. It was further informed to the writ petitioners that if they desire to appear in the interview, they

may choose to resign before participating in the interview and that the said resignation, once tendered, would not be permitted to be withdrawn. The rejection of their representation was the subject matter of a challenge before the High Court. The High Court rejected the writ application. Hence, the writ petitioners came before this Court.

87. It will be gainful to refer to the following observations in the judgment delivered by Jasti Chelameshwar, J.:

> **"5.** For any youngster, the choice must appear very cruel, to give up the existing employment for the uncertain possibility of securing a better employment. If the appellant accepted the advice of the High Court but eventually failed to get selected and appointed as a District Judge, he might have to regret his choice for the rest of his life. Unless providence comes to the help of the appellant to secure better employment elsewhere or become a successful lawyer, if he chooses to practise thereafter, the choice is bound to ruin the appellant. The High Court we are sure did not intend any such unwholesome consequences. The advice emanated from the High Court's understanding of the purport of Article 233(2). Our assay is whether the High Court's understanding is right.
>
> **6.** Article 233(1) stipulates that appointment of District Judges be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. However, Article 233(2) declares that only a person not already in the service of either the Union or of the State shall be eligible to be appointed as District Judge. The said Article is couched in negative language creating a bar for the appointment of certain class of persons

> described therein. It does not prescribe any qualification. It only prescribes a disqualification."

88. It can thus be seen that this Court once again went on to interpret Article 233(2) to mean that only a person not already in the service of either the Union or the State shall be eligible to be appointed as District Judge. The Court observed that the said Article is couched in *"negative language"* creating a bar for the appointment of certain class of persons described therein. It was further observed that it does not prescribe any qualification but only prescribes disqualification. With due respect, we may observe that the said observations of this Court are contrary to the law laid down by this Court in the Constitution Bench judgment of ***Chandra Mohan*** (supra).

89. The Court in the case of ***Vijay Kumar Mishra*** (supra) goes on the premise that there is a distinction between selection and appointment. It was held by this Court that every person who is successful in the selection process undertaken by the State for the purpose of filling up of certain posts under it, does not acquire any right to be appointed automatically. This Court noted that Article 233(2) only prohibits the

appointment of a person who is already in the service of the Union or the State, but not the selection of such a person.

90. After referring to the judgments of this Court in the cases of ***Satya Narain Singh*** (supra) and ***Deepak Aggarwal*** (supra), the two-Judge Bench in the said case observed that the question as to at what stage the bar comes into operation was not an issue before the Court nor did it go into that question. The Court, therefore, allowed the appellants therein to participate in the selection process without insisting upon their resignation from their current employment. The Court further directed that if the appellants therein were found suitable, it was open to them to resign from the current employment and opt for the post of District Judge, if they so desire.

91. Abhay Manohar Sapre, J., in his separate concurring judgment in the case of ***Vijay Kumar Mishra*** (supra) observed thus:

> "**22.** This submission though looks attractive, is not acceptable. Neither the text of Article and nor the words occurring in Article 233(2) suggest such interpretation. Indeed, if his argument is accepted, it would be against the spirit of Article 233(2). My learned Brother for rejecting this argument has narrated the consequences, which are likely to arise

in the event of accepting such argument and I agree with what he has narrated.

23. In my view, there lies a subtle distinction between the words "*selection*" and "*appointment*" in service jurisprudence. (See *Prafulla Kumar Swain* v. *Prakash Chandra Misra* [*Prafulla Kumar Swain* v. *Prakash Chandra Misra*, 1993 Supp (3) SCC 181 : 1993 SCC (L&S) 960 : (1993) 25 ATC 242] .) When the Framers of the Constitution have used the word "*appointed*" in clause (2) of Article 233 for determining the eligibility of a person with reference to his service then it is not possible to read the word "*selection*" or "*recruitment*" in its place. In other words, the word "*appointed*" cannot be read to include the word "*selection*", "*recruitment*" or "*recruitment process*".

24. In my opinion, there is no bar for a person to apply for the post of District Judge, if he otherwise, satisfies the qualifications prescribed for the post while remaining in service of the Union/State. It is only at the time of his appointment (if occasion so arises) the question of his eligibility arises. Denying such person to apply for participating in selection process when he otherwise fulfils all conditions prescribed in the advertisement by taking recourse to clause (2) of Article 233 would, in my opinion, amount to violating his right guaranteed under Articles 14 and 16 of the Constitution of India.

25. It is a settled principle of rule of interpretation that one must have regard to subject and the object for which the Act is enacted. To interpret a statute in a reasonable manner, the Court must place itself in a chair of reasonable legislator/author. So done, the rules of purposive construction have to be resorted to so that the object of the Act is fulfilled. Similarly, it is also a recognised rule of interpretation of statutes that expressions used therein should ordinarily be understood in the sense in which they best harmonise with the object of the statute and which effectuate the object of the legislature. (See *Interpretation of Statutes*, 12th Edn., pp. 119

> and 127 by G.P. Singh). The aforesaid principle, in my opinion, equally applies while interpreting the provisions of Article 233(2) of the Constitution."

i. Dheeraj Mor v. High Court of Delhi

92. That brings us to the decision of this Court in the case of ***Dheeraj Mor v. High Court of Delhi***[14] wherein a two-Judge Bench found that in view of the various decisions of this Court, the major issue that arises for its consideration is as to whether the eligibility for appointment as district judge is to be seen at the time of appointment or at the time of application or both. The matter was, therefore, directed to be placed before the then Chief Justice of India so as to constitute a larger Bench of this Court. On reference, this Court decided the matter on 19th February 2020 in ***Dheeraj Mor*** (supra).

93. The learned three-Judge Bench in the said case, upon interpretation of Article 233 of the Constitution, held that the only mode provided for the appointment of in-service candidates to the post of district judge was by way of promotion. According to the three learned Judges, this

[14] **(2018) 4 SCC 619**

interpretation has already been laid down by the Constitution Bench in the case of ***Chandra Mohan*** (supra).

94. It will be relevant to refer to *paragraph 19* of ***Dheeraj Mor*** (supra) which reads thus:

> "**19.** It is apparent from the decision in *Chandra Mohan* v. *State of U.P.* [*Chandra Mohan* v. *State of U.P.*, (1967) 1 SCR 77 : AIR 1966 SC 1987] that this Court has laid down that concerning District Judges recruited directly from the Bar, the Governor can appoint only advocates recommended by the High Court and Rule 14 which provided for judicial officers to be appointed as direct recruits was struck down by this Court to be ultra vires. Thus, the decision is squarely against the submission espoused on behalf of in-service candidates. In the abovementioned para 11 of *Chandra Mohan* [*Chandra Mohan* v. *State of U.P.*, (1967) 1 SCR 77 : AIR 1966 SC 1987] , the position is made clear. In *Chandra Mohan* [*Chandra Mohan* v. *State of U.P.*, (1967) 1 SCR 77 : AIR 1966 SC 1987] the Court held that only advocates can be appointed as direct recruits, and inter alia Rule 14 providing for executive officers' recruitment was struck down. This Court has held that the expression "service of State or Union" means judicial service, it only refers to the source of recruitment. Dichotomy of two sources of recruitment/appointment has been culled out in the decision."

95. It can thus be seen that the three learned Judges held that in ***Chandra Mohan*** (supra), this Court has laid down that insofar as district judges recruited directly from the Bar are concerned, the Governor can appoint only advocates recommended by the High Court and Rule 14 therein which

provided for the judicial officers to be appointed as direct recruits was struck down by this Court as *ultra vires.* The Court noted that the position was squarely against the submissions espoused on behalf of the in-service candidates. The Court further reiterated that it was only the advocates who could be appointed as district judges by way of direct recruitment. The three-Judge Bench also held that the law laid down in the case of ***Rameshwar Dayal*** (supra) was also against the submissions raised on behalf of the in-service candidates.

96. This Court in the said case, thereafter, referring to the judgments in ***Satya Narain Singh*** (supra), ***Deepak Aggarwal*** (supra) and ***Vijay Kumar Mishra*** (supra), held that an in-service candidate cannot apply against the posts reserved for advocates/pleaders as he has to be in *continuous practice* in the past and at the time when he has applied and is appointed. This Court, therefore, held that the law laid down in ***Vijay Kumar Mishra*** (supra) was not correct.

97. An argument was placed before this Court in ***Dheeraj Mor*** (supra) with regard to denial of equal opportunity. While rejecting the said argument, the Court observed thus:

"**43**……We find that there is no violation of equal opportunity. There is a wide search for talent for inducting in the judicial service as well as in direct recruitment from Bar, and the best candidates are identified and recruited. Persons from unusual places are also given the opportunity to stake their claim in pursuit of their choice. In *State of Bihar* v. *Bal Mukund Sah* [*State of Bihar* v. *Bal Mukund Sah*, (2000) 4 SCC 640 : 2000 SCC (L&S) 489] , this Court has observed that onerous duty is cast on the High Court under the constitutional scheme. It has been given a prime and paramount position in the matter with the necessity of choosing the best available talent for manning the subordinate judiciary. Thus, we find that there is no violation of any principle of the Universal Declaration of Human Rights, 1948 and the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights."

98. In conclusion, this Court observed thus:

"**45.** In view of the aforesaid discussion, we are of the opinion that for direct recruitment as District Judge as against the quota fixed for the advocates/pleaders, incumbent has to be practising advocate and must be in practice as on the cut-off date and at the time of appointment he must not be in judicial service or other services of the Union or State. For constituting experience of 7 years of practice as advocate, experience obtained in judicial service cannot be equated/combined and advocate/pleader should be in practice in the immediate past for 7 years and must be in practice while applying on the cut-off date fixed under the rules and should be in practice as an advocate on the date of appointment. The purpose is recruitment from Bar of a practising advocate having minimum 7 years' experience.

46. In view of the aforesaid interpretation of Article 233, we find that rules debarring judicial officers

from staking their claim as against the posts reserved for direct recruitment from Bar are not ultra vires as rules are subservient to the provisions of the Constitution."

99. The answers to the reference in the main judgment of Arun Mishra, J. is as under:

"**47.** We answer the reference as under:

47.1. The members in the judicial service of the State can be appointed as District Judges by way of promotion or limited competitive examination.

47.2. The Governor of a State is the authority for the purpose of appointment, promotion, posting and transfer, the eligibility is governed by the Rules framed under Articles 234 and 235.

47.3. Under Article 232(2) *(sic)*, an Advocate or a pleader with 7 years of practice can 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.

47.4. For the purpose of Article 233(2), an Advocate has to be continuing in practice for not less than 7 years as on the cut-off date and at the time of appointment as District Judge. Members of judicial service having 7 years' experience of practice before they have joined the service or having combined experience of 7 years as lawyer and member of judiciary, are not eligible to apply for direct recruitment as a District Judge.

47.5. The rules framed by the High Court prohibiting judicial service officers from staking claim to the post of District Judge against the posts reserved for Advocates by way of direct recruitment, cannot be said to be ultra vires and are in conformity with Articles 14, 16 and 233 of the Constitution of India.

47.6. The decision in *Vijay Kumar Mishra* [*Vijay Kumar Mishra* v. *High Court of Patna*, (2016) 9 SCC

> 313 : (2016) 2 SCC (L&S) 606] providing eligibility, of judicial officer to compete as against the post of District Judge by way of direct recruitment, cannot be said to be laying down the law correctly. The same is hereby overruled."

100. Thereafter, in the judgment delivered by Arun Mishra, J. for himself and Vineet Saran, J., *in paragraph 48*, the Court held that wherever such in-service candidates have been appointed by way of direct recruitment against the posts reserved for Bar, they shall be discontinued and be reverted to their original post.

101. In his separate concurring judgment, S. Ravindra Bhat, J., after correctly narrating as to what was laid down by the Constitution Bench in ***Rameshwar Dayal*** (supra), distinguished it on the reasoning that this Court had no occasion to deal with any rules framed under Article 233/234 in relation to the appointment for the post of district judge.

102. Bhat, J., further correctly referred to the *ratio* of ***Chandra Mohan*** (supra) as under:

> "**67**. Thereafter, the Court held that the expression "*not already in the service*" of the Union or any State meant that those holding civil posts, or members of civil services i.e. occupying non-judicial posts, were ineligible to compete for selection and appointment as District Judge; thus, only those in service as

> Judges, or members of judicial services could be considered for appointment."

103. It can thus be seen that Bhat, J., noticed that in ***Chandra Mohan*** (supra), the Constitution Bench held that only those in service as judges or members of judicial services could be considered for appointment. However, after noticing the same and noticing the judgments in the case of ***Satya Narain*** (supra) and ***Deepak Aggarwal*** (supra), he observed thus:

> "**71.** It is clear that what this Court had to consider was whether Public Prosecutors and Government Advocates were barred from applying for direct recruitments (i.e. whether they could be considered to have been in practice) and whether—during their course of their employment, as Public Prosecutors, etc. they could be said to have "*been for not less than seven years*" practising as advocates. The Court quite clearly ruled that such Public Prosecutors/Government Counsel (as long as they continued to appear as advocates before the court) answered the description and were therefore eligible."

104. In conclusion, Bhat, J., considered ***Rameshwar Dayal*** (supra) and ***Chandra Mohan*** (supra) in the following words:

> "**75.** It is thus evident, that *Rameshwar Dayal* [*Rameshwar Dayal* v. *State of Punjab*, (1961) 2 SCR 874 : AIR 1961 SC 816] was mainly concerned with the question whether practice as a pleader or advocate, in pre-Partition India could be reckoned, for the purpose of calculating the seven-year period,

> stipulated in Article 233(2). No doubt, there are some observations, with respect to appointments being referable to Article 233(1). However, the important aspect which is to be kept in mind, is that no rules were discussed; the experience of the Advocates concerned, who were appointed as District Judges, was for a considerable period, in pre-Partition India, in the erstwhile undivided Punjab. *Chandra Mohan* [*Chandra Mohan* v. *State of U.P.*, (1967) 1 SCR 77 : AIR 1966 SC 1987] , on the other hand is a clear authority—and an important judgment, on the aspect that those in the service of or holding posts, under the Union or States,—if they are not in judicial service—are ineligible for appointment as District Judges, under Article 233(2) of the Constitution. The corollary was that those holding judicial posts were not barred *as holders of office or posts under the Union or the State*. Significantly, this Court in *Chandra Mohan* [*Chandra Mohan* v. *State of U.P.*, (1967) 1 SCR 77 : AIR 1966 SC 1987] , invalidated a rule which rendered both officers holding executive positions, under the State, and those holding judicial posts, eligible to apply for appointment under Article 233(2)…."

105. Bhat J., with due respect, went wrong while holding that ***Chandra Mohan*** (supra) invalidated Rule 14 therein, rendering both executive officers under the State and persons holding judicial posts ineligible to apply under Article 233(2). In fact, ***Chandra Mohan*** (supra) only held the rules empowering recruitment of District Judges from "judicial officers" to be unconstitutional. "Judicial Officers" as noticed in the Rule was held in the decision itself to be misleading

since: *"it is common case that they belong to the executive branch of the Government, though they perform certain revenue and magisterial functions" (sic)*. It was held in ***Chandra Mohan*** (supra):

> "……. But Art. 233(1) 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. But the sources of recruitment are indicated in cl. (2) thereof. Under Cl. (2) of Art. 233 two sources are given, namely, (i) persons in the service of the Union or of the State, and (ii) advocate or pleader……"

106. The reference is answered by Bhat, J., in the following terms:

> "**76.** A close reading of Article 233, other provisions of the Constitution, and the judgments discussed would show the following:
>
> **76.1.** That the Governor of a State has the authority to make "*appointments of persons to be, and the posting and promotion of, District Judges in any State* [Article 233(1)].
>
> **76.2.** While so appointing the Governor is bound to consult the High Court [Article 233(1) : *Chandra Mohan* [*Chandra Mohan* v. *State of U.P.*, (1967) 1 SCR 77 : AIR 1966 SC 1987] and *Chandramouleshwar Prasad* v. *High Court of Patna* [*Chandramouleshwar Prasad* v. *High Court of Patna*, (1969) 3 SCC 56 : (1970) 2 SCR 666.

76.3. Article 233(1) cannot be construed as a source of appointment; it merely delineates as to who is the appointing authority.

76.4. In matters relating to initial posting, initial appointment, and promotion of District Judges, the Governor has the authority to issue the order; thereafter it is up to the High Court, by virtue of Article 235, to exercise control and superintendence over the conditions of service of such District Judges. (See *State of Assam* v. *Ranga Mohd.* [*State of Assam* v. *Ranga Mohd.*, (1967) 1 SCR 454 : AIR 1967 SC 903] ,

76.5. Article 233(2) is concerned only with *eligibility* of those who can be considered for appointment as District Judge. The Constitution clearly states that one who has been for not less than seven years, "an advocate or pleader" and one who is "*not already in the service of the Union or of the State*" (in the sense that such person is not a holder of a civil or executive post, under the Union or of a State) can be considered for appointment, as a District Judge. Significantly, the eligibility—for both categories, is couched in negative terms. Clearly, all that the Constitution envisioned was that an advocate with not less than seven years' practice could be appointed as a District Judge, under Article 233(2).

76.6. Significantly, Article 233(2) ex facie does not exclude judicial officers from consideration for appointment to the post of District Judge. *It, however, equally does not spell out any criteria for such category of candidates*. This does not mean however, that if they or any of them, had seven years' practice in the past, can be considered eligible, because no one amongst them can be said to answer the description of a candidate who "*has been for not less than seven years*" "*an advocate or a pleader*" (per Deepak Agarwal i.e. that the applicant/candidate should be an advocate fulfilling the condition of practice on the date of the eligibility condition, or applying for the post). The sequitur clearly is that a

judicial officer is not one who *has been for not less than seven years*, an advocate or pleader."

107. While rejecting the argument with regard to denial of equal opportunity to the in-service candidates, Bhat J., observed thus:

"**82.** In the opinion of this Court, there is an inherent flaw in the argument of the petitioners. The classification or distinction made—between advocates and judicial officers, per se is a constitutionally sanctioned one. This is clear from a plain reading of Article 233 itself. Firstly, Article 233(1) talks of both appointments and *promotions*. Secondly, the classification is evident from the description of the two categories in Article 233(2) : one *"not already in the service of the Union or of the State" and the other "if he has been for not less than seven years as an advocate or a pleader"*. Both categories are to be "*recommended by the High Court for appointment*". The intent here was that in both cases, there were clear exclusions i.e. advocates with less than seven years' practice (which meant, conversely that those with more than seven years' practice were eligible) and those holding civil posts under the State or the Union. The omission of judicial officers only meant that such of them, who were recommended for promotion, could be so appointed by the Governor. The conditions for their promotion were left exclusively to be framed by the High Courts.

83. In view of the above analysis, since the Constitution itself makes a distinction between advocates on the one hand, and judicial officers, on the other, the argument of discrimination is insubstantial. If one examines the scheme of appointment from both channels closely—as Mishra, J. has done—it is evident that a lion's share of posts are to be filled by those in the judicial service. For the past two decades, only a fourth (25%) of the posts in

> the cadre of District Judges (in every State) are earmarked for advocates; the balance 75% to be filled exclusively from amongst judicial officers. 50%, (out of 75%) is to be filled on the basis of seniority-cum-merit, whereas 25% (of the 75%) is to be filled by departmental examination. This examination is confined to members of the judicial service of the State concerned. The decision of this Court in *All India Judges' Assn.* v. *Union of India* [*All India Judges Assn.* v. *Union of India*, (2010) 15 SCC 170 : (2013) 1 SCC (L&S) 548] , reduced the limited departmental examination quota (out of turn promotion quota) from 25% to 10% which took effect from 1-1-2011. Thus, cumulatively, even today, judicial officers are entitled to be considered for appointment, by promotion, as District Judges, to the extent of 75% of the cadre relating to that post, in every State. It is therefore, held that the exclusion—by the rules, from consideration of judicial officers, to the post of District Judges, in the quota earmarked for Advocates with the requisite standing, or practice, conforms to the mandate of Articles 233-235, and the rules are valid."

108. Bhat, J., went to the extent of saying that if rules of any State permit judicial officers to compete against the advocates' quota for appointment as district judges, they are susceptible to challenge. He observed that enabling judicial officers to compete in the *quota earmarked for advocates* would potentially result in no one from the stream of advocates with seven or more years' practice being selected. He held that this will be contrary to the mandate of Article 233(2). Bhat, J., therefore, held that ***Vijay Kumar Mishra*** (supra), to the extent

that it is contrary to ***Ashok Kumar Sharma and Others v. Chander Shekhar and Another,***[15] as regards participation in the selection process of candidates who are members of the judicial service, for appointment to the post of district judge, from amongst the quota earmarked for advocates with seven years' practice, was wrongly decided and in the result overruled the same.

j. All India Judges Association and Others v. Union of India and Others

109. Reliance was also placed by the learned Senior Counsel/counsel appearing on behalf of the Respondents on the following observations made by three learned Judges of this Court in the case of ***All India Judges Association and Others v. Union of India and Others***[16].

> "**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

[15] **(1997) 4 SCC 18**
[16] **(2002) 4 SCC 247**

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.

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.

29. Experience has shown that there has been a constant discontentment amongst the members of the Higher Judicial Service in regard to their seniority in service. For over three decades a large number of cases have been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to the Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle “merit-cum-seniority”, 25 per cent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment.

Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, insofar as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in *R.K. Sabharwal* v. *State of Punjab* [*R.K. Sabharwal* v. *State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548] . One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in *R.K. Sabharwal case* [*R.K. Sabharwal* v. *State of Punjab*, (1995) 2 SCC 745 : 1995 SCC (L&S) 548] as early as possible. We hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31-3-2003."

110. In addition to the reliance placed on the judgment of this Court in the case of ***All India Judges Association*** (supra), it is submitted by the learned Senior Counsel/counsel appearing on behalf of the Respondents that understanding the provisions of Article 233 of the Constitution in the correct perspective, the *First National Judicial Pay Commission* under the Chairmanship of Justice K. Jagannatha Shetty, a former Judge of this Court,[17] itself recommended bringing out an amendment to Article 233(2) so as to permit in-service candidates to compete in the posts reserved for direct recruitment. On the contrary by also placing reliance on the Shetty Commission, the correctness of the aforesaid view in ***Dheeraj Mor*** (supra) is sought to be reconsidered by the learned Senior Counsel appearing on behalf of the Petitioners.

111. It is also the case of the Respondents that the judgments of the Constitution Bench of this Court in the cases of ***Rameshwsar Dayal*** (supra) and ***Chandra Mohan*** (supra) have been correctly considered by this Court in various subsequent decisions including in the cases of ***Satya Narain*** (supra), ***Deepak Aggarwal*** (supra) and ***Ashok Kumar***

[17] **Hereinafter, "Shetty Commission".**

Sharma (supra). It is further submitted that the law laid down in ***Dheeraj Mor*** (supra) only reiterates the earlier position as laid down in various judgments of this Court. It is, therefore, submitted that this position is in hold for decades together and no interference would be warranted for the same.

E. CONSIDERATION

112. We now propose to deal with the rival submissions.

i. Textual and Contextual Interpretation

113. We have already referred to the principles of plain and literal interpretation hereinabove.

114. We may also gainfully refer to the following observations of this Court in the case of ***Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Others***[18]:

> "**33.** Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker,

[18] **(1987) 1 SCC 424**

> provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasonsfor it that the Court construed the expression "Prize Chit" in *Srinivasa* [(1980) 4 SCC 507 : (1981) 1 SCR 801 : 51 Com Cas 464] and we find no reason to depart from the Court's construction."

115. It can thus be seen that the interpretation which makes the textual interpretation match the contextual one has to be preferred. A statute is best interpreted when the reason and purpose for its enactment is ascertained. The statute must be read first as a whole, and then section by section, clause by clause, phrase by phrase and word by word. It has been held that if the statute is looked at in the context of its enactment with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With

these *"glasses"* we must look at the Act as a whole and discover what each section, each clause, each phrase and each word means and what it is designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation.

116. The law laid down by this Court in ***Peerless General Finance and Investment Co. Ltd.*** (supra) has been followed in a catena of judgments including in the Constitution Bench judgment of this Court in the case of ***Vivek Narayan Sharma and Others (Demonetisation Case – 5 J) v. Union of India and Others***[19], of which one of us (Gavai, J., as he then was) was a member.

ii. Scheme of Article 233 of the Constitution

117. In that view of the matter, we will have to examine the entire scheme of Article 233 of the Constitution. We will also have to give meaning to each and every word used in the said provision.

118. As already discussed hereinabove, all provisions relating to appointment of a person to be a district judge and the posting and promotion thereof are contained in clause (1)

[19] **(2023) 3 SCC 1**

of Article 233 of the Constitution. Such appointments have to be made by the Governor in consultation with the High Court exercising jurisdiction in relation to such a State. As such, the contention as sought to be placed on behalf of the Respondents that clause (1) of Article 233 of the Constitution deals with promotions and the only manner in which in-service candidates could be appointed as district judges is by way of promotion and further that the appointments made under clause (2) of Article 233 of the Constitution have to be restricted only to the advocates or a pleader having seven years' practice in our view, is not in consonance with the textual and contextual meaning of Article 233 of the Constitution.

119. As already discussed hereinabove, clause (1) of Article 233 of the Constitution deals with all the aspects regarding appointment to be made, promotion and posting to the post of district judge. Further, as held by the Constitution Bench of this Court in the case of ***Kuseswar Saikia*** (supra), even appointment on promotion of a subordinate judicial officer would be traceable to clause (1) of Article 233 of the Constitution.

120. Not only that but as held by this Court in the case of ***Rameshwar Dayal*** (supra), clause (2) of Article 233 of the Constitution deals with the qualification of a person to be appointed as district judge. However, it is held by this Court in the case of ***Rameshwar Dayal*** (supra), that clause (2) of Article 233 does not provide a qualification for a person who is already in service of the Union or of the State. As clarified in the case of ***Chandra Mohan*** (supra), such a service of the Union or the State has to be only judicial service.

121. Though clause (2) of Article 233 of the Constitution begins in a negative manner, if the interpretation as sought to be given in the judgments of this Court in the cases of ***Satya Narain Singh*** (supra) till ***Dheeraj Mor*** (supra) is to be accepted, it will render the first part of clause (2) of Article 233 of the Constitution redundant.

122. It will be relevant to refer to the following observations of Constitution Bench of this Court in the case of ***Union of India and Another v. Hansoli Devi and Others***[20]:

> "**9.** .....Patanjali Sastri, C.J. in the case of *Aswini Kumar Ghose* v. *Arabinda Bose* [(1952) 2 SCC 237 : AIR 1952 SC 369 : 1953 SCR 1] had held that it is not a sound principle of construction to brush aside

[20] **(2002) 7 SCC 273**

> words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. In *Quebec Railway, Light Heat & Power Co. Ltd.* v. *Vandry* [AIR 1920 PC 181] it had been observed that the legislature is deemed not to waste its words or to say anything in vain and a construction which attributes redundancy to the legislature will not be accepted except for compelling reasons……."

123. We are of the considered view, and particularly in view of what has been held in the case of ***Rameshwar Dayal*** (supra), that clause (2) of Article 233 of the Constitution contains provisions with regard to qualification for appointment of district judge wherein it provides that for anyone who is not already in service of the Union or of the State, such a person will be eligible to be appointed as district judge only if he has been for not less than seven years an advocate or a pleader. However, if a person is already in judicial service of the Union or of the State, no such requirement is provided for.

124. We are also of the considered view that if clause (2) of Article 233 of the Constitution is not read in the aforesaid manner, then the words *"a person not already in the service of the Union or of the State"* will be rendered redundant and

otiose. Such an interpretation of clause (2) of Article 233, in our view, would not be permissible in law.

125. We are further of the considered view that if the principle of textual and contextual interpretation is applied to the provisions of Article 233 of the Constitution, it would require that the first part of clause (2) of Article 233 of the Constitution be read as "*other than a person already in the service of the Union or of the State*" or "*except the person already in the service of the Union or of the State*" so as to avoid rendering the first part of clause (2) of Article 233 being rendered redundant and otiose. This interpretation of ours derives support from the judgment of this Court in the case of ***Rameshwar Dayal*** (supra) wherein the Constitution Bench clearly held that clause (2) of Article 233 provides qualification for a candidate who is an advocate whereas it does not provide qualification for an in-service candidate.

126. A combined reading of clauses (1) and (2) of Article 233 of the Constitution would, therefore, reveal that the Constitution under clause (2) of Article 233 does not provide for qualification for an in-service candidate for direct recruitment.

127. Insofar as the reliance placed on the recommendations of the Shetty Commission and the directions issued in ***All India Judges' Association*** (supra) by the Respondents are concerned, it will be relevant to note that the recommendations were made by the Shetty Commission when the judgment of this Court in the case of ***Satya Narain*** (supra) was holding the field.

iii. Recommendations of the Shetty Commission

128. It will be relevant to refer to the following recommendations made in the Shetty Commission's report:

> "11.50 We have given our anxious consideration to the views and comments expressed by the respondents to our Questions 8.3 and 8.4.
>
> 11.51 The majority of the High Courts and the Service Associations barring a couple of them are for giving an opportunity to the Service judges for direct recruitment as District Judges. Even, some of the Governments are in favour of such a move. The reasons given in support of the proposal are that it would promote efficiency, improve discipline in judicial service and make the officers to work more efficiently, diligently and sincerely.
>
> 11.52 We are highly impressed by the reasons given by the High Courts of Allahabad, Bombay, Punjab & Haryana and All India Judges' Association. If meritorious young blood should be introduced in the mixed cadre, there is no reason why merited serving judges should be excluded from consideration for direct recruitment. In such selection the High Court will have an opportunity to assess the merit of serving judges as against the merits of the competent

advocates. The Bombay High Court has rightly observed that the High Court in such selection will have an added advantage of assessing the service judges on the basis of their work and confidential records.

11.53 We agree that if an opportunity is afforded, it would make the Officers to work more efficiently, diligently and sincerely.

11.54 We do not understand why such an opportunity should create indiscipline, heart-burn and jealousy amongst the judicial officers as the Karnataka High Court has stated. We are equally unable to appreciate that it may lead to frustration amongst the Seniors who are not selected for direct recruitment as indicated by the Delhi High Court.

11.55 It may be noted that we are not recommending for accelerated promotion to Service judges. The accelerated promotion to a junior judge may lead to heart-burn and jealousy in the Service. Though we have formulated a question on that aspect and though some of the High Courts and Associations are in favour of introducing the system of accelerated promotion, we do not consider it desirable to have that system since it is likely to lead to bitterness and jealousy amongst the officers.

11.56 The Commission considers that if an opportunity for direct recruitment is afforded to in service judges, it would, to a great extent, remove the frustration which is presently dogging them. Such an opportunity would add lustre to their career and enable them to outshine with their merit, hard work and sincerity.

11.57 The contention urged by the directly recruited District Judges that those who have got the promotional channel should be allowed to make a move only through that channel does not sound to reason. In All India Administrative Service, there is no bar for any person in any service for applying, subject to the age prescribed. It is a common experience that many of the successful IAS and IPS

> candidates initially belonged to one or the other service.
>
> 11.58 The Commission, therefore, considers that it is reasonable and also necessary to provide eligibility for service judges for direct recruitment of District Judges."

129. It can thus clearly be seen that the Shetty Commission has recorded that a majority of the High Courts and the Service Associations were of the view that the service judges should be given an opportunity for direct recruitment as district judges. The reasoning given in support of the said recommendation by the Commission was to promote efficiency, improve discipline in judicial service and make the officers work more efficiently, diligently and sincerely. It has been observed that if meritorious young blood should be introduced in the mixed cadre, there is no reason as to why merited serving judges should be excluded from consideration for direct recruitment.

130. It has been further observed that, in such a selection, the High Court will have an opportunity to assess the merit of serving judges as against the merits of the competent advocates. The Shetty Commission also referred to the view of the Bombay High Court wherein it was stated that the High Court in such selection will have an added advantage of

assessing the service judges on the basis of their work and confidential records.

131. The argument with regard to indiscipline, heartburn and jealousy amongst the judicial officers as put in by the Karnataka High Court has been specifically rejected by the Shetty Commission. The Commission further found that if such an opportunity is provided for direct recruitment to the in-service judges, it would, to a great extent, remove the frustration which is presently dogging them. It has been observed that such an opportunity would add lustre to their career and enable them to outshine with their merit, hard work and sincerity.

132. The Shetty Commission further observed that when there is no such restriction in All India Services, there is no reason as to why the service judges should be forced to enter to judicial service only through promotional channel and not be permitted to enter through the direct recruitment. It has been observed that it was common experience that many of the successful IAS and IPS candidates initially belonged to one or the other service. The Shetty Commission, therefore, recommended amending Article 233 of the Constitution by

insertion of clause (3) in it. The Shetty Commission also recommended an age limit between 35 years and 45 years for advocates and the serving judges to apply for direct recruitment to the post of district judge.

133. It is to be noted that the recommendations for amendment of the Constitution as made by the Shetty Commission are on the basis of the interpretation of clause (2) of Article 233 of the Constitution in the judgment of this Court in the case of ***Satya Narain Singh*** (supra). We have already held that the interpretation as placed in the case of ***Satya Narain Singh*** (supra) and followed subsequently is not a correct interpretation.

134. We are, therefore, in full agreement with those observations made by the Shetty Commission, according to which in order to promote efficiency in the cadre of district judges, the young talented meritorious judicial officers should not be denied an opportunity.

iv. Experience of a Judicial Officer

135. As a matter of fact, some of the observations made in the subsequent three-Judge Bench judgments of this Court in the cases of ***Sushma Suri*** (supra) and ***Deepak Aggarwal***

(supra) would support the view that we have taken. In both the said cases, this Court held that merely because by virtue of being Government Advocates, the candidates who were in employment, their rich experience of working as a lawyer for the Government cannot be ignored. It has further been held that since they continue to appear for the Government either on the civil side or on the criminal side, their rich experience would benefit the judiciary.

136. Rule 49 of the Bar Council of India Rules as originally framed, reads as follows:

> "An advocate shall not be a full-time salaried employee of any person, Government, firm, corporation or concern, so long as he continues to practise and shall, on taking up any such employment, intimate the fact to the Bar Council on whose roll his name appears, and shall thereupon cease to practise as an advocate so long as he continues in such employment.
>
> Nothing in this rule shall apply to a law officer of the Central Government or of a State or of any Public Corporation or body constituted by statute who is entitled to be enrolled under the rules of his State Bar Council made under Section 28(2)(d) read with Section 24(1)(e) of the Act despite his being a full-time salaried employee.
>
> Law Officer for the purpose of this Rule means a person who is so designated by the terms of his appointment and who, by the said terms, is required to act and/or plead in Courts on behalf of his employer."

137. As already referred to hereinabove, in ***Sushma Suri*** (supra), the question arose as to whether the word "Advocate" in Article 233(2) includes a law officer of the Central or State Government, public corporation or of a body corporate, who is enrolled as an advocate under exception to Rule 49, who is practicing before Courts or Tribunal for his employer. A three-Judge Bench held positively, permitting a Public Prosecutor and Government Counsel who is on the rolls of the Bar Council, as entitled to practice under the Act, who would also answer the description of an Advocate under Article 233(2) of the Act.

138. The very same question arose in a different context in ***Satish Kumar Sharma v. Bar Council of H.P.***[21]. The appellant therein was appointed as Assistant (Legal) by the Himachal Pradesh State Electricity Board, who later enrolled with the State Bar Council at the expense of the Board. After his appointment, the appellant therein continued in the Board as a regular employee, was given promotions with change in designations and was also appearing for the Board in the Courts. The certificate of enrolment issued in the year 1984

[21] **(2001) 2 SCC 365**

was withdrawn by the Bar Council of the State in the year 1996 after due notice and opportunity of hearing. Looking at the nature of the duties of the appellant who was a full-time salaried employee, it was found that his work was not mainly or exclusively to act or plead in Courts and he had to attend to many more duties, which were quite substantial and predominant. The appellant therein was also found to be amenable to disciplinary jurisdiction of his employer and mere occasional appearances in some Courts on behalf of the employer could not bring the employer within the meaning of "Law Officer" under paragraph 3 of Rule 49 was the finding. The decision in ***Sushma Suri*** (supra) was specifically noticed and distinguished on the ground that in that case the court was concerned with the definition of the word "Advocate" as appearing in Article 233(2), which was held to include a law officer of the Central or State Government who is enrolled as an advocate falling under exception to Rule 49. It was found so in paragraph 20 of ***Satish Kumar Sharma*** (supra):

> "**20.** As stated in the above para the test indicated is whether a person is engaged to act or plead in a court of law as an Advocate and not whether such person is engaged on terms of salary or payment by remuneration. The essence is as to what such Law Officer engaged by the Government does."

139. Satish Kumar Sharma, however, was found to be not coming within the exception under Rule 49 especially when there was no rule framed by the State Bar Council entitling law officers to enrol as an Advocate even if they were full time employees. The contention that after such a long time his certificate of enrolment could not have been cancelled was negated on the finding that even at the threshold, he was not entitled to be enrolled under Rule 49. On the same premise an alternative contention that he may be permitted to resign and retain his enrolment from the date on which the certificate was issued was also negated. Finding no reason to maintain his seniority on the rolls of the State Bar Council, on the basis of an enrolment certificate which at its very issuance was barred, the claim was rejected.

140. We have to specifically notice that both these decisions were taken based on Rule 49 as it existed then. The exceptions provided by paragraphs 2 and 3 have now been removed and have been substituted with the following:

> "That as Supreme Court has struck down the appearance by Law Officers in Court even on behalf of their employers the Judgment will operate in the case of all Law Officers. Even if they were allowed to appear on behalf of their employers all such Law Officers who are till now appearing on behalf of their

> employers shall not be allowed to appear as advocates. The State Bar Council should also ensure that those Law Officers who have been allowed to practice on behalf of their employers will cease to practice. It is made clear that those Law Officers who after joining services obtained enrolment by reason of the enabling provision cannot practice even on behalf of their employers.
>
> That the Bar Council of India is of the view that if the said Officer is a whole time employee drawing regular salary, he will not be entitled to be enrolled as an advocate. If the terms of employment show that he is not in full time employment he can be enrolled."

141. As of now, an employee cannot get enrolled in the rolls of the State Bar Council without giving up his employment. A law graduate who is enrolled as an Advocate on taking up regular employment as full time salaried employee is obliged to intimate the fact to the Bar Council in which he is enrolled and would then seize to practice as an Advocate so long as he continues such employment. Failure to make such intimation can result in his name being struck off from the Rolls. Reading Sections 29, 30 and 33 of the Advocates Act, 1961 together with Rule 49 of the Bar Council of India Rules, an employee, even if he is in the Rolls of the State Bar Council, as long as he remains a fully salaried employee, on intimation of the regular employment would be prohibited from carrying on practice of law as an Advocate.

142. It is further to be noted that Bar Council of India Rules "Part VI – Rules Governing Advocates" came to be amended by the Bar Council of India by incorporating Chapter III "*Conditions for Right to Practice*" in 2010. In the said newly added Chapter III, Rule 5 deals with voluntarily suspension of practice as well as resumption of practice. Under this Rule, an advocate upon joining the judicial service is expected to intimate to the concerned State Bar Council that he has joined the judicial service as a result of which his right to practice stands voluntarily suspended. Therefore, an advocate who joins the judicial service on his resignation or retirement is entitled to resume his practice after the Enrolment Committee of the concerned State Bar Council orders the resumption of his practice and returns the certificate to him with the necessary endorsement.

143. It is thus clear that an advocate who joins the judicial service only suspends his right to practice and continues to be on the roll of the State Bar Council.

144. In the case of ***Rameshwar Dayal*** (supra), the Constitution Bench has found that Harbans Singh and P.R. Sawhney, Respondents No. 3 and 6 therein, were entitled to

be appointed as district judges though they were in service of the State on the date of their appointment. Though, their names were not found on the roll of the Bar Council, it was held by the Constitution Bench while interpreting Section 8(2)(a) of the *Bar Councils Act, 1926* and Clause 6 of the *High Courts (Punjab) Order, 1947* that the said Respondents did not cease to be advocates at any time or stage after August 15, 1947 and they were deemed to be continued as advocates of the Punjab High Court till they were appointed as district judges.

145. At the cost of repetition, we may state that as per the provisions contained in the Bar Council of India Rules, an advocate even upon his selection and joining as a judicial officer, he/she continues to be on the roll of the Bar Council.

146. As already discussed hereinabove, the experience the judicial officers gain while working as judges is much greater than the one, a person gains while working as an advocate. Apart from that, before commencing their work as judicial officers, the judges are also required to undergo rigorous training of at least one year.

147. When Government pleaders and Assistant Public Prosecutor who were still practicing in courts were held to be competent to apply for direct recruitment to the post of district judge, can the judicial officers before whom they practice, considered to be inferior. In fact, there is an anomaly insofar as an Assistant Public Prosecutor being entitled to participate in the direct recruitment of district judges, while the judicial officers before whom they argue case are disabled; as interpreted in ***Dheeraj Mor*** (supra).

148. We, therefore, see no reason to deny an opportunity to such young talented judicial officers to compete with the advocates/pleaders having seven years' practice in the matter of direct recruitment to the post of district judge.

149. We may also gainfully refer to the case of ***Leela Dhar v. State of Rajasthan and Others***[22], where a three-Judge Bench of this Court has observed thus:

> "**4.** The object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be

[22] **(1981) 4 SCC 159**

> accepted almost universally as the gateway to public services…."

150. It can thus be seen that the object of any process of selection for entry into a public service should be to secure the best and the most suitable person for the job.

151. The view taken in the case of ***Leela Dhar*** (supra) has been approved by the Constitution Bench in the case of ***Tej Prakash Pathak and Others v. Rajasthan High Court and Others***[23]. This Court, in the said case, observed thus:

> "**49.** The ultimate object of any process of selection for entry into a public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So, open competitive examination has come to be accepted almost universally as the gateway to public services. [*Lila Dhar* v. *State of Rajasthan*, (1981) 4 SCC 159, para 4 : 1981 SCC (L&S) 588] It is now well settled that while a written examination assesses a candidate's knowledge and intellectual ability, an interview test is valuable to assess a candidate's overall intellectual and personal qualities."

[23] **(2025) 2 SCC 1**

v. Interpretation of a Constitutional Provision cannot be pedantic

152. Insofar as the reliance placed by the Respondents on the judgment of this Court in the case of ***All India Judges' Association and Others*** (supra) is concerned, wherein this Court observed that the recruitment to the higher judicial service from amongst the advocates should be 25% and that the recruitment should be by way of a competitive examination including both written examination and *viva voce*, we may again state that the said observations are in light of the view taken by this Court in the case of ***Satya Narain Singh*** (supra) and subsequent judgments relying on ***Satya Narain Singh*** (supra).

153. As observed by this Court in a catena of cases, the interpretation of the constitutional provisions cannot be pedantic. It has to be organic. A purposeful interpretation has to be adopted. If the appointment to the district judges cadre is to be made directly for the purpose of enhancing the efficiency of district judiciary, any interpretation which restricts the competition and prohibits the otherwise meritorious candidates from zone of consideration will have to be eschewed. The interpretation which advances the purpose

of bringing in efficiency in the district judiciary and permitting a broad-based competition amongst all the eligible candidates will have to be accepted.

154. We are, therefore, of the considered view that the judgments of this Court right from ***Satya Narain Singh*** (supra) till ***Dheeraj Mor*** (supra) do not lay down a correct proposition of law.

vi. Eligibility of a Judicial Officer for Direct Recruitment

155. That leaves us with the question as to whether there should be no qualifications at all for a member of judicial service in the service of the State or the Union, for participating in the selection process for the post of district judge by direct recruitment.

156. As already discussed hereinabove, all matters pertaining to appointment of a person to the post of a district judge, his posting and promotion are covered under clause (1) of Article 233 of the Constitution. As held by the Constitution Bench in ***Kuseswar Saikia*** (supra), even the appointment as a district judge by promotion is covered by Article 233(1) of the Constitution. As such, the State Governments in consultation

with the respective High Courts will have to frame rules providing eligibility for in-service candidates to apply for the post of district judge which would be filled by direct recruitment. We are in full agreement with the view taken by this Court in the case of ***All India Judges' Association*** (supra) that the recruitment rules in all the States will have to be uniform as far as possible. Therefore, while maintaining the proportion of 50:25:25 for the posts of district judges as provided by the judgment of this Court in ***All India Judges' Association*** (supra) which was reiterated by this Court in the recent judgment in the case of ***All India Judges' Association and Others v. Union of India and Others***[24], we propose to issue directions to the State Governments for framing rules in consultation with the respective High Courts providing the eligibility for candidates who are already in judicial service to apply for the post of district judge to be filled through direct recruitment process.

157. In that respect, we are of the considered view that for bringing the advocates and the in-service candidates at the same level, it will be appropriate that the rules provide that an

[24] **2025 SCC OnLine SC 1184**

in-service candidate should be eligible for recruitment to the post of district judge directly only if he has a combined experience of seven years as an advocate and a judicial officer. Similarly, if an advocate is participating in the selection process and he was a member of judicial service in the past, then his experience as a judicial officer also cannot be ignored. His experience as an advocate prior to joining judicial service, his experience as a judicial officer and his experience as an advocate after leaving the judicial service will all have to be taken together. Such a candidate will be eligible only if he has a combined experience as an advocate and as a judicial officer for seven years.

158. We are also of the considered view that in order to make available a level playing field for all the candidates, whether from in-service or advocates/pleaders, the minimum age as on the date of application should be 35 years as recommended by the Shetty Commission.

159. Insofar as the contention regarding the heartburn amongst the judicial officers in a situation where a junior gets promoted before the senior is concerned, in our view, the said contention is without any merit. The in-service candidates,

though junior, will have to compete before being selected with the advocates as also their seniors, who also will be qualified, and only meritorious candidates would be selected and appointed. If a person is meritorious and on account of merit and merit alone gets selected directly as a district judge, there can be no question of heartburn for those who are not as meritorious as persons selected.

160. Insofar as the contention that if the in-service candidates are permitted to participate in the recruitment process as direct recruit, then the advocates/pleaders would not be in a position to get selected is concerned, the same is also without any merit.

161. In the selection process, as observed by the Shetty Commission, the selection would be on the basis of competitive examination, including both written examination and *viva voce*, and the majority of the marks would be for the written examination. The advocates/pleaders as well as in-service candidates would compete together and only the best/most meritorious amongst them will be selected with no weightage being conferred on in-service candidates. If such a restriction is not applicable in All India Services, we see no reason to

import such an artificial restriction in the appointment of district judges by way of direct recruitment.

vii. Break in practice of a prospective candidate

162. Insofar as the contention advanced by the learned Senior Counsel on behalf of some of the Petitioners that even if there is a break in the number of years of practice of a candidate, such break should be ignored and such persons who are having a total of seven years of practice should be considered eligible for appointment insofar as the direct district judges is concerned, we are not inclined to accept the said contention.

163. We say so because say if a person has practised for five years and thereafter, he takes a break of ten years and thereafter practises for two years, there will be a disconnect with the legal profession. We are, therefore, inclined to hold that only such persons working either as an advocate/pleader including Government Pleaders and Public Prosecutors or as a judicial officer who, on the date of application, have a *continuous experience* of either an advocate/pleader or a judicial officer or a combination thereof shall only be eligible

to be considered for appointment as district judges through the stream of direct recruitment.

viii. Quota for Advocates under Article 233(2)

164. We are also not inclined to accept the contention on behalf of the respondents that 25% quota of direct recruitment is reserved only for practising advocates. We are of the view that if the contention in this respect is accepted, it will amount to providing a *"quota"* for the advocates having seven years' practice. A plain and literal reading of Article 233(2) does not contemplate such a situation. Therefore, the contention as canvassed in that regard does not hold water.

ix. Doctrine of *stare decisis*

165. Before we proceed to answer the questions that are framed for our consideration, it will be necessary to consider the submission on behalf of the Respondents that in view of the doctrine of *stare decisis*, since the law laid down by this Court in ***Satya Narain Singh*** (supra) has been followed for a period of over 40 years, the same should not be disturbed.

166. We are, however, unable to accept the said contention. In this respect, we may gainfully refer to a recent judgment of

this Court in the case of ***Property Owners Association and Others v. State of Maharashtra and Others***[25]:

> "**107.** We are not inclined to accept this submission. In *Sita Soren* v. *Union of India* (2024) 5 SCC 629, a Constitution Bench of this Court, speaking through one of us (DY Chandrachud, J) had occasion to clarify that the doctrine of *stare decisis* is not an inflexible rule of law. This Court may review its earlier decisions if it believes that there is an error, or the effect of the decision would harm the interests of the public or if "it is inconsistent with the legal philosophy of the Constitution". In cases involving the interpretation of the Constitution, this Court would do so more readily than in other branches of law because not rectifying a manifest error would be harmful to the public interest and the polity. The period of time over which the case has held the field is not of primary consequence."

167. We are of the considered view that all the judgments right from ***Satya Narain Singh*** (supra) onwards till ***Dheeraj Mor*** (supra) have incorrectly applied the law laid down by the Constitution Benches of this Court in ***Rameshwar Dayal*** (supra) and ***Chandra Mohan*** (supra). As a result, by applying the law laid down by this line of judgments, injustice was meted out to the members of the judicial services, thereby

[25] **2024 SCC OnLine SC 3122**

depriving them from participating in the selection process for the post of district judges by way of direct recruitment.

168. The interpretation placed by the judgments right from ***Satya Narain Singh*** (supra) onwards till ***Dheeraj Mor*** (supra), in our view, is totally inconsistent with the provisions of clause (2) of Article 233 of the Constitution. Having thus found that the law laid down by this Court in the aforementioned cases does not correctly interpret the provisions of Article 233, if we fail to correct the legal position, we will be perpetuating the injustice that has been meted out for decades.

169. It is further to be noted that the judgments of this Court in ***Satya Narain Singh*** (supra) onwards have taken an incorrect view. Even after noticing the factual position in the case of ***Rameshwar Dayal*** (supra) that two of the persons selected and whose appointments were challenged were in-service candidates, the judgment in ***Satya Narain Singh*** (supra) and other judgments held that the post of district judge to be filled by direct recruitment are not available to in-service candidates and can be filled in only by the advocates having requisite number of years of practice. Even in the case of

Chandra Mohan (supra), a rule that fell for consideration was dealing with the direct recruitment of district judges. The said rule provided for applications for direct recruitment to be made by Barristers, Advocates, Vakils and Pleaders of more than seven years' standing, as well as judicial officers, who were admittedly from the executive branch of the State. We are, therefore, of the considered view that even after noticing these aspects in the Constitution Bench judgments of this Court, the subsequent judgments holding that filling the post of district judge by direct recruitment could be filled in only by advocates/pleaders, are not only inconsistent with the literal interpretation of Article 233 but also inconsistent with the factual position as it emanated for consideration of this Court in the cases of ***Rameshwar Dayal*** (supra) and ***Chandra Mohan*** (supra). We, therefore, reject the argument on *stare decisis* as raised by the Respondents.

170. In any case, we clarify that what we have held in this judgment will be applicable only from the date of this judgment and in no case, any selection process completed, or any appointment made prior to this judgment would be affected, except in cases wherein any interim order(s) were passed by

the High Courts or this Court. In such cases, the issue would now be governed by the orders to be passed by the Bench hearing the matters.

F. CONCLUSION AND DIRECTIONS

171. In view of the answer which we propose to give for Question No. 4, it may not be necessary to deal with the other questions, however, since the questions are framed by this Court, we propose to answer all the questions.

172. In the result, we answer the questions as under:

(i) Judicial Officers who have already completed seven years in Bar before they were recruited in the subordinate judicial service would be entitled for being appointed as a District Judge/Additional District Judge in the selection process for the post of District Judges in the direct recruitment process;

(ii) The eligibility for appointment as a District Judge/Additional District Judge is to be seen at the time of application;

(iii) Though there is no eligibility prescribed under Article 233(2) for a person already in judicial service of the

Union or of the State for being appointed as District Judge, in order to provide a level playing field, we direct that a candidate applying as an in-service candidate should have seven years' combined experience as a Judicial Officer and an advocate;

(iv) A person who has been or who is in judicial service and has a combined experience of seven years or more as an advocate or a Judicial Officer would be eligible for being considered and appointed as a District Judge/Additional District Judge under Article 233 of the Constitution;

(v) In order to ensure level playing field, we further direct that the minimum age for being considered and appointed as a District Judge/Additional District Judge for both advocates and Judicial Officers would be 35 years of age as on the date of application.

(vi) It is held that the view taken in the judgments of this Court right from ***Satya Narain Singh*** (supra) till ***Dheeraj Mor*** (supra), which take a view contrary to

what has been held hereinabove do not lay down the correct proposition of law.

173. The reference is answered accordingly.

174. Consequently, all such rules framed by the State Governments in consultation with the High Courts which are not in accordance with the aforesaid answers shall stand quashed and set aside. It is directed that all the State Governments in consultation with the High Courts shall frame/amend the rules in accordance with what has been held by us hereinabove, within a period of three months from today.

175. The Registry is directed to obtain the necessary orders from Hon'ble the Chief Justice of India, on the administrative side, to place the matters part of the present batch before an appropriate bench for deciding the same in the light of what has been held hereinabove.

176. Before we conclude, we place on record our sincere appreciation for all the learned Senior Counsel/counsel, so also their junior counsel, for assisting us in such meticulous manner. Our task was made easier by the assistance rendered by them. We also place on record our appreciation for all the

learned counsel for strictly adhering to the time-limits, as a result of which this Court was able to complete the hearing in the prescribed time period. We would be remiss if we do not place on record our appreciation for the Nodal Counsel in collating all the material in an organized manner.

.....CJI
(B.R. GAVAI)

.....J
(ARAVIND KUMAR)

.....J
(SATISH CHANDRA SHARMA)

.....J
(K. VINOD CHANDRAN)

NEW DELHI;
OCTOBER 09, 2025.

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE/ORIGINAL/INHERENT JURISDICTION

CIVIL APPEAL NO. 3947 OF 2020

REJANISH K.V. …APPELLANT(S)

VERSUS

K. DEEPA AND OTHERS …RESPONDENT(S)

WITH

CONNECTED MATTERS

J U D G M E N T

M. M. Sundresh, J.

1. I have gone through the detailed analysis made by Hon'ble the Chief Justice of India in rendering the judgment. While I am in absolute agreement with the reasoning and the ultimate conclusion arrived at, along with the directions issued therein, I would only add my views on the interpretation of Article 233 of the Constitution of India, 1950 (hereinafter referred to as "**the Constitution**").

2. We are dealing with a situation where this Court, in its subsequent decisions in **Satya Narain Singh v. High Court of Judicature at Allahabad and Others, (1985) 1 SCC 225** and **Dheeraj Mor v. High Court of Delhi, (2020) 7 SCC 401** has misconstrued the law as laid down by the larger benches of this Court in **Rameshwar Dayal v. The State of Punjab and Others, 1960 SCC OnLine SC 123** and **Chandra Mohan v. State of Uttar Pradesh and Others, 1966 SCC OnLine SC 35**.

3. Chapter VI of the Constitution deals exclusively with appointment, recruitment and control *qua* the Subordinate Courts. It is rather significant to note that this Chapter starts from the top with the appointment of district judges, followed by recruitment of persons other than district judges to the judicial service, moves on to control over Subordinate Courts, defines the expression "district judge" and "judicial service" and thereafter ends with the application of provisions of this Chapter to certain classes of Magistrates.

CHAPTER VI
SUBORDINATE COURTS

Article 233 of the Constitution

> **"233. Appointment of district judges.**—(1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be

made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.

(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."

Article 233-A of the Constitution

"233-A. Validation of appointments of, and judgments, etc., delivered by, certain district judges.—Notwithstanding any judgment, decree or order of any court, —

(*a*)(*i*) no appointment of any person already in the judicial service of a State or of any person who has been for not less than seven years an advocate or a pleader, to be a district judge in that State, and

(*ii*) no posting, promotion or transfer of any such person as a district judge,

made at any time before the commencement of the Constitution (Twentieth Amendment) Act, 1966, otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or void or ever to have become illegal or void by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions;

(*b*) no jurisdiction exercised, no judgment, decree, sentence or order passed or made, and no other act or proceeding done or taken, before the commencement of the Constitution (Twentieth Amendment) Act, 1966 by, or before, any person appointed, posted, promoted or transferred as a district judge in any State otherwise than in accordance with the provisions of article 233 or article 235 shall be deemed to be illegal or invalid or ever to have become illegal or invalid by reason only of the fact that such appointment, posting, promotion or transfer was not made in accordance with the said provisions."

Article 234 of the Constitution

"234. Recruitment of persons other than district judges to the judicial service.—Appointments of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State."

Article 235 of the Constitution

> **"235. Control over subordinate courts.**—The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.**"**

Article 236 of the Constitution

> **"236. Interpretation.—**In this Chapter—
>
> (*a*) the expression "district judge" includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge and assistant sessions judge;
>
> (*b*) the expression "judicial service" means 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.**"**

Article 237 of the Constitution

> **"237. Application of the provisions of this Chapter to certain class or classes of magistrates.—**The Governor may by public notification direct that the foregoing provisions of this Chapter and any rules made thereunder shall with effect from such date as may be fixed by him in that behalf apply in relation to any class or classes of magistrates in the State as they apply in relation to persons appointed to the judicial service of the State subject to such exceptions and modifications as may be specified in the notification.**"**

4. As per Article 233 and Article 234 of the Constitution, while an appointment to the post of a district judge, and to posts in the judicial service other than that of a district judge shall be made by the Governor

of the State, the consultation is only with the High Court for the former, while it additionally extends to the State Public Service Commission for the latter. The exclusion of the State Public Service Commission in the process of appointment to the post of a district judge shows that added importance is given to the said post.

5. Article 233 of the Constitution deals with two modes of appointment to the post of a district judge. Clause (1) of Article 233 of the Constitution speaks of appointments to be made to the post of a district judge. These appointments are to be made either by way of a promotion or through direct recruitment.

6. The procedure for appointment, posting and promotion to the post of a district judge, *qua* a person in the judicial service, is one and the same with respect to the appointing authority, namely, the Governor, and the same is to be done in consultation with the High Court. Promotion is obviously meant only for a person in the judicial service. One has to be promoted first by the Governor, in consultation with the High Court, and thereafter appointed as a district judge. Therefore, promotion is a precursor to appointment as a district judge *qua* a person in the judicial service. Such an appointment is nothing but a resultant consequence.

To make this position clear, one has to read Article 233(1) of the Constitution with respect to appointments as "appointments of persons to be district judges". Similarly, for posting, it has to be read as "posting of district judges" and promotions of persons in the judicial service as "promotion and appointment as district judges." One cannot ignore the word "persons" which would only mean persons from two modes of appointment. Therefore, Article 233(1) of the Constitution deals with both, the modes and the sources of appointment.

7. Article 233(2) of the Constitution is a continuation of Article 233(1) of the Constitution. This provision, in fact, reiterates the fact that an appointment by way of direct recruitment can be done from two sources, namely, 'judicial service' and 'an advocate or a pleader'. While doing so, it declares the eligibility criteria only for the latter. Hence, it is made abundantly clear that no such eligibility criteria are fixed for a person in the judicial service. Clause (1) along with Clause (2) of Article 233 of the Constitution, is a complete code by itself, and therefore does not leave any room for interpretation otherwise.

DOCTRINE OF SEPARATION OF POWERS VIS-À-VIS INDEPENDENCE OF THE JUDICIARY

8. Montesquieu's words of wisdom in **'The Spirit of Laws'** become relevant in this context**:**

> "**There can be no liberty... there is no liberty if the powers of judging are not separated from the legislative and executive... there would be an end to everything if the same man or the same body... were to exercise those three powers.**"
>
> (emphasis supplied)

9. Article 50 of the Constitution forms the basis for the applicability of the doctrine of separation of powers. It deals with the separation of the judiciary from the executive, and imposes an obligation on the State to take steps to separate the judiciary from the executive in the public services of the State.

Article 50 of the Constitution

> "**50. Separation of judiciary from executive.—**The State shall take steps to separate the judiciary from the executive in the public services of the State."

Hence, the concept of 'independence of the judiciary' finds both, its genesis and sustenance, in the doctrine of separation of powers. Dr. Rajendra Prasad, President of the Constituent Assembly and later President of India, in his speech to the Constituent Assembly of India, preceding the motion to adopt the Constitution, in **Constituent Assembly Debates, Volume XI (debate of 26-11-1949),** stated thus:

> "We have **provided in the Constitution for a judiciary which will be independent. It is difficult to suggest anything more to make the Supreme Court and the High Courts independent of the influence of the executive. There is an attempt made in the Constitution to make even the lower judiciary independent of any outside or extraneous influence.**"
>
> (emphasis supplied)

It is such independence that allows each and every judge to make decisions, uninfluenced by any factor. Thus, the independence of the judiciary and the separation of powers between the three organs of the State, which form an integral part of the basic structure doctrine, ensure a vibrant and flourishing institution.

10. Under Article 233 of the Constitution, the primacy given to the High Courts, insofar as the mandate for its consultation in appointments to the post of a district judge, along with the control exercised by it over Subordinate Courts under Article 235 of the Constitution, is a classic exhibition of the doctrine of separation of powers.

11. Judging is an independent sovereign function. The function of the presiding officer of a Court is purely judicial, and not even quasi-judicial. For instance, in a criminal case, the prosecuting agency would invariably be either the State, the Union or their instrumentalities, who become mere litigants before the Court, though the presiding officer's post may be connected to them only for administrative purposes. No

employee can be an adjudicator of an employer. To say that such a judge is their employee, and therefore debarred from competing for the vacancies earmarked to be filled through direct recruitment, would be contrary to the principle of independence of the judiciary.

12. In the context of the aforesaid discussion, the views of M.P. Singh in his article titled, 'Securing the Independence of the Judiciary – The Indian Experience' published in the Indiana International & Comparative Law Review, IU Robert H. McKinney School of Law, gain significance**:**

> **"**…Although the nature of the Indian Constitution-whether it is federal or unitary-is doubtful, basically it provides for a federal structure of government consisting of the Union and the States. The Union and the States have their distinct powers and organs of governance given in the constitution. **While the Union and States have separate legislatures and executives, they do not have a separate judiciary. The judiciary has a single pyramidal structure with the lower or subordinate courts at the bottom, the High Courts in the middle, and the Supreme Court at the top. For funding and some administrative purposes, the subordinate courts are subject to regulation by the respective States, but they are basically under the supervision of the High Courts**….**The unitary character of the judiciary is not an accident but rather a conscious and deliberate act of the constitution makers for whom a single integrated judiciary and uniformity of law were essential for the maintenance of the unity of the country and of uniform standards of judicial behavior and independence**…."
>
> (emphasis supplied)

13. Judicial service is a distinct service by itself, owing allegiance to the judiciary alone. Therefore, it is kept away from the hands of the other two organs, except to a limited extent. Any attempt to dilute such judicial

independence, by giving a rigid interpretation, would be against the constitutional ethos. The said view gets fortified by the judgment of this Court in the case of **State of Bihar and Another v. Bal Mukund Sah and Others, (2000) 4 SCC 640**

> "**32.** It is true, as submitted by learned Senior Counsel, Shri Dwivedi for the appellant State that under Article 16(4) the State is enabled to provide for reservations in services. But **so far as "Judicial Service" is concerned, such reservation can be made by the Governor, in exercise of his rule-making power only after consultation with the High Court. The enactment of any statutory provision dehors consultation with the High Court for regulating the recruitment to the District Judiciary and to the Subordinate Judiciary will clearly fly in the face of the complete scheme of recruitment and appointment to the Subordinate Judiciary and the exclusive field earmarked in connection with such appointments by Articles 233 and 234. It is not as if that the High Courts being constitutional functionaries may be oblivious of the need for a scheme of reservation if necessary in appropriate cases by resorting to the enabling provision under Article 16(4). The High Courts can get consulted by the Governor for framing appropriate rules regarding reservation for governing recruitment under Articles 233 and 234. But so long as it is not done, the Legislature cannot, by an indirect method, completely bypassing the High Court and exercising its legislative power, circumvent and cut across the very scheme of recruitment and appointment to the District Judiciary as envisaged by the makers of the Constitution. Such an exercise, apart from being totally forbidden by the constitutional scheme, will also fall foul on the concept relating to "separation of powers between the Legislature, the Executive and the Judiciary" as well as the fundamental concept of an "independent Judiciary". Both these concepts are now elevated to the level of basic structure of the Constitution and are the very heart of the constitutional scheme.**
>
> **33. In the case of *Kesavananda Bharati* v. *State of Kerala* [(1973) 4 SCC 225] a twelve-Member Constitution Bench of this Court had occasion to consider this question regarding the basic structure of the Constitution which, according to the Court, could not be tinkered with by Parliament in exercise of its amending power under Article 368 of the Constitution. Sikri, C.J., in para 247 of the Report referred with approval the decision of the Judicial Committee in *Liyanage case***

[*Liyanage* v. *R.*, (1967) 1 AC 259 : (1966) 1 All ER 650 : (1966) 2 WLR 682 (PC)] for culling out the implied limitations on the amending power of the competent Legislature like Parliament of Ceylon with which that case was concerned. The relevant observations are found in SCC paras 253 to 255 of the Report at pp. 357 and 358, which read as under:

"*253*. The case, however, furnishes another instance where implied limitations were inferred. After referring to the provisions dealing with 'Judicature' and the Judges, the Board observed:

'These provisions manifest an intention to secure in the Judiciary a freedom from political, legislative and executive control. They are wholly appropriate in a Constitution which intends that judicial power shall be vested only in the Judicature. They would be inappropriate in a Constitution by which it was intended that judicial power should be shared by the Executive or the Legislature. The Constitution's silence as to the vesting of judicial power is consistent with its remaining, where it had lain for more than a century, in the hands of the Judicature. It is not consistent with any intention that henceforth it should pass to or be shared by, the Executive or the Legislature.'

***254*. The Judicial Committee was of the view that there 'exists a separate power in the Judicature which under the Constitution as it stands cannot be usurped or infringed by the Executive or the Legislature'. The Judicial Committee cut down the plain words of Section 29(1) thus:**

'*Section 29(1) of the Constitution says.*—"Subject to the provisions of this Order Parliament shall have power to make laws for the peace, order and good government of the Island." These words have habitually been construed in their fullest scope. Section 29(4) provides that Parliament may amend the Constitution on a two-thirds majority with a certificate of the Speaker. Their Lordships however cannot read the words of Section 29(1) as entitling Parliament to pass legislation which usurps the judicial power of the Judicature — e.g., by passing an Act of attainder against some person or instructing a Judge to bring in a verdict of guilty against someone who is being tried — if in law such usurpation would otherwise be contrary to the Constitution.' (p. 289)

255. In conclusion the Judicial Committee held that there was interference with the functions of the Judiciary and it was not only the likely but the intended effect of the impugned enactments, and that was fatal to their validity."

The ultimate conclusion to which Chief Justice Sikri reached are found in paras 292 to 294 at p. 366 of the Report which read as under:

"*292*. The learned Attorney General said that every provision of the Constitution is essential; otherwise it would not have been put in the Constitution. This is true. But this does not place every provision of the Constitution in the same position. The true position is that every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same. The basic structure may be said to consist of the following features:

(1) Supremacy of the Constitution;

(2) Republican and democratic form of Government;

(3) Secular character of the Constitution;

***(4) Separation of powers between the Legislature, the Executive and the Judiciary*;**

(5) Federal character of the Constitution.

***293*. The above structure is built on the basic foundation, i.e., the dignity and freedom of the individual. This is of supreme importance. This cannot by any form of amendment be destroyed.**

***294*. The above foundation and the above basic features are easily discernible not only from the Preamble but the whole scheme of the Constitution, which I have already discussed."**

The other learned Judges constituting the Constitution Bench had nothing inconsistent to say in this connection. Thus separation of powers between the Legislature, the Executive and the Judiciary is the basic feature of the Constitution.

34. It has also to be kept in view that judicial independence is the very essence and basic structure of the Constitution. We may also usefully refer to the latest decision of the Constitution Bench of this Court in *Registrar (Admn.), High Court of Orissa* v. *Sisir Kanta Satapathy* [(1999) 7 SCC 725 : 1999 SCC (L&S) 1373] wherein K. Venkataswami, J., speaking for the Constitution Bench, made the following pertinent observations in the very first two paras regarding Articles 233 to 235 of the Constitution of India: (SCC Headnote)

"An independent Judiciary is one of the basic features of the Constitution of the Republic. Indian Constitution has zealously

guarded independence of Judiciary. Independence of Judiciary is doubtless a basic structure of the Constitution but the said concept of independence has to be confined within the four corners of the Constitution and cannot go beyond the Constitution."

The Constitution Bench in the aforesaid decision also relied upon the observations of this Court in *All India Judges' Assn.* [(1993) 4 SCC 288 : 1994 SCC (L&S) 148 : (1993) 25 ATC 818 : AIR 1993 SC 2493] wherein on the topic of regulating the service conditions of the Judiciary as permitted by Article 235 read with Article 309, it had been observed as under: (SCC p. 297, para 10)

"[T]he mere fact that Article 309 gives power to the Executive and the Legislature to prescribe the service conditions of the Judiciary, does not mean that the Judiciary should have no say in the matter. It would be against the spirit of the Constitution to deny any role to the Judiciary in that behalf, for theoretically it would not be impossible for the Executive or the Legislature to turn and twist the tail of the Judiciary by using the said power. Such a consequence would be against one of the seminal mandates of the Constitution, namely, to maintain the independence of the Judiciary."

In view of this settled legal position, therefore, even while operating in the permissible field of regulating other conditions of service of already-recruited judicial officers by exercising power under Article 309, the authorities concerned have to keep in view the opinion of the High Court of the State concerned and the same cannot be whisked away.

35. In order to fructify this constitutional intention of preserving the independence of the Judiciary and for fructifying this basic requirement, the process of recruitment and appointment to the District Judiciary with which we are concerned in the present case, is insulated from outside legislative interference by the Constitution-makers by enacting a complete code for that purpose, as laid down by Articles 233 and 234. Consultation with the High Court is, therefore, an inevitable essential feature of the exercise contemplated under these two articles. If any outside independent interference was envisaged by them, nothing prevented the Founding Fathers from making Articles 233 and 234 subject to the law enacted by the Legislature of States or Parliament as was done in the case of other articles, as seen earlier…."

(emphasis supplied)

PRINCIPLE OF CONSTITUTIONAL SILENCE

14. While taking note of the doctrine of separation of powers and independence of the judiciary, coupled with the maintenance and enhancement of the quality of judging which forms part of the basic structure doctrine, a decision was consciously taken by the makers of the Constitution to fix the eligibility criteria only for the category of 'an advocate or a pleader.' At this juncture, the concept of 'constitutional silence' comes into play as the makers of the Constitution deliberately left certain areas open-ended, keeping in mind the evolving needs of the society. This concept is invoked to give effect to the essence of the Constitution. The spirit of this principle has been captured by Thomas Carlyle, a Scottish Philosopher and Historian, when he famously stated:

> "**Under all speech and writing that is good for anything, there lies a silence that is better**...."
>
> (emphasis supplied)

This Court had the occasion to deal with the aforesaid principle in the case of **Bhanumati and Others v. State of U.P. and Others, (2010) 12 SCC 1.**

> "**49.** Apart from the aforesaid reasons, **the arguments by the appellants cannot be accepted in view of a very well-known constitutional doctrine, namely, the constitutional doctrine of silence. Michael Foley**

> **in his treatise on *The Silence of Constitutions* (Routledge, London and New York) has argued that in a Constitution "abeyances are valuable, therefore, not in spite of their obscurity but because of it. They are significant for the attitudes and approaches to the Constitution that they evoke, rather than the content or substance of their strictures"**. (P. 10)
>
> **50.** The learned author elaborated this concept further by saying, "**Despite the absence of any documentary or material form, these abeyances are real and are an integral part of any Constitution. What remains unwritten and indeterminate can be just as much responsible for the operational character and restraining quality of a Constitution as its more tangible and codified components.**" (P. 82)
>
> **51. Many issues in our constitutional jurisprudence evolved out of this doctrine of silence. The basic structure doctrine vis-à-vis Article 368 of the Constitution emerged out of this concept of silence in the Constitution. A Constitution which professes to be democratic and republican in character and which brings about a revolutionary change by the Seventy-third Constitutional Amendment by making detailed provision for democratic decentralisation and self-government** on the principle of grass-root democracy cannot be interpreted to exclude the provision of no-confidence motion in respect of the office of the Chairperson of the panchayat just because of its silence on that aspect."
>
> (emphasis supplied)

15. One must appreciate the constitutional silence on the eligibility criteria *qua* a person in the judicial service, which has accordingly been left to the discretion and wisdom of the High Court and the Governor of the State, as per Articles 233 and 235 of the Constitution. Therefore, such an omission was done consciously, as a person in the judicial service has already been recruited by way of an appointment by the orders of the Governor, in consultation with the High Court and the State Public Service Commission.

16. As discussed, Article 233 of the Constitution does not place any fetters on the power of the appointing authority *qua* the fixation of eligibility criteria for persons in the judicial service, as circumstances might evolve over time, and the wisdom of the Constitutional Courts would take care of it.

ELIGIBILITY VIS-À-VIS QUALIFICATION TO THE POST OF A DISTRICT JUDGE

17. Provisions in the Constitution use the words "qualification" and "eligibility" interchangeably. Examples of such provisions are Article 58 of the Constitution, which provides for the qualifications for election as President, Article 66 of the Constitution, which provides for election of Vice-President and Article 84 of the Constitution, which provides for qualification for membership of the Parliament.

18. The word "eligible" used in Article 233(2) of the Constitution must be read as "qualified." Thus, a person who has been an advocate or a pleader for not less than seven years, along with the recommendation of the High Court is one qualification, and a person in the judicial service is the other qualification. Both of these qualifications are nothing but mere gateways for being appointed to the post of a district judge, facilitating a threshold for entry. However, there is no bar on the High

Court to fix the qualification, *qua* persons in the judicial service, with the approval of the Governor. These qualifications are meant only for consideration for appointment, subject to the successful completion of the recruitment process.

19. Accordingly, we are inclined to hold that there is no bar on persons in the judicial service from competing for the vacancies intended to be filled through direct recruitment. Any interpretation contrary to the aforesaid view, would amount to a reservation in favour of 'an advocate or a pleader,' which is not only not contemplated under the Constitution, but also violates the very spirit enshrined thereunder.

20. Another lens through which the aforesaid proposition can be viewed is Article 233-A of the Constitution, which provides for the validation of appointments made at any time before the commencement of the Constitution (Twentieth Amendment Act), 1966. Clause (a)(i) of Article 233-A of the Constitution encompasses the validation of appointments from both sources, i.e., a person already in the judicial service and a person who has been an advocate or a pleader for 7 years or more. The express reference to both the sources, within the same clause, indicates the constitutional intent to place the persons in the judicial service at par

with those from the Bar and thus, they are fully entitled to participate in the direct recruitment process. The use of the phrase "any such person" in Clause (a)(ii) of Article 233-A of the Constitution, which deals with the validation of posting, promotion, or transfer, further strengthens their entitlement to such participation.

CONCLUSION

21. While interpreting a constitutional provision, a Court of law must be conscious not to violate the basic structure of the Constitution, and is duty-bound to give it a vibrant and organic interpretation. Article 14 of the Constitution forms an integral part of the basic structure. Though it provides for equality before the law, it allows for a reasonable classification, based upon an intelligible differentia, having a rational nexus to the object sought to be achieved. Therefore, construing Article 233(2) of the Constitution to be a provision meant only for the category of 'an advocate or a pleader' would certainly be violative of Article 14 of the Constitution, for the purpose of its interpretation. In other words, a *contra* view would amount to creation of a quota for 'an advocate or a pleader.' An absolute bar on persons in the judicial service would certainly prevent meritorious candidates from competing for the

vacancies earmarked for direct recruitment, which would be an affront to the constitutional spirit.

22. A vibrant and qualitative judiciary fosters greater trust in the institution. Thus, it is vital to build a strong foundation. Maintaining and enhancing the quality at the bottom of the judicial pyramid would strengthen the faith of the public in the subordinate judiciary, which in turn would reduce the filing of appeals before the High Courts and the Supreme Court, and therefore considerably reduce the overall pendency.

23. Building a strong foundation and ensuring that the base is of pristine quality is only possible when the best talent is attracted. Letting go of emerging talent, by not identifying and nurturing them at the earliest, would lead to mediocrity as against excellence, which would weaken the foundation and undermine the entire judicial structure. It is obvious that greater competition would result in better quality. Excluding a group of persons from competing for a post, which is meant to serve the public, would certainly be unconstitutional, especially when the Constitution itself facilitates such participation. It is my fervent hope that our judgement empowers the institution to emerge stronger and maintain the

highest standards of justice, as it is the interest of the institution that must prevail above all.

.....J.
(M. M. SUNDRESH)

NEW DELHI;
OCTOBER 09, 2025