

**IN THE HIGH COURT OF MADHYA PRADESH  
AT JABALPUR**

**BEFORE**

**HON'BLE SHRI JUSTICE SHEEL NAGU,  
ACTING CHIEF JUSTICE**

**&**

**HON'BLE SHRI JUSTICE AMAR NATH (KESHARWANI)**

**ON THE 28<sup>th</sup> OF MAY, 2024**

**WRIT PETITION No. 28550 of 2023**

**BETWEEN:-**

**.....PETITIONER**

**(BY SHRI UDAY KUMAR - ADVOCATE)**

**AND**

1. UNION OF INDIA THROUGH SPECIAL SECRETARY, MINISTRY OF LAW AND JUSTICE, DEPARTMENT OF JUSTICE APPOINTMENT DIVISION, JAISALMER HOUSE 26 MAN SINGH ROAD, NEW DELHI - 110011
2. HONBLE SUPREME COURT OF INDIA THROUGH REGISTRAR GENERAL, BHAGWANDAS ROAD, NEW DELHI -110001
3. HONBLE HIGH COURT OF MP, PRINCIPLE SEAT AT JABALPUR THROUGH ITS REGISTRAR GENERAL, HIGH COURT COMPOUND, JABALPUR (MADHYA PRADESH) 482001
4. STATE OF MADHYA PRADESH THROUGH SECRETARY, GENERAL ADMINISTRATION DEPARATMENT, MANTRALAYA, VALLABH

**BHAWAN, BHOPAL (MADHYA PRADESH)**

5. SHRI VINAY SARAF, ADDRESS IS NOT IN THE KNOWLEDGE OF PETITIONER, THEREFORE, THROUGH R/3 REGISTRAR GENERAL OF MP HIGH COURT AT JABALPUR (MADHYA PRADESH)
6. SHRI VIVEK JAIN, ADDRESS IS NOT IN THE KNOWLEDGE OF PETITIONER, THEREFORE, THROUGH R/3 REGISTRAR GENERAL OF MP HIGH COURT AT JABALPUR (MADHYA PRADESH)
7. SHRI RAJENDRA KUMAR VANI, ADDRESS IS NOT IN THE KNOWLEDGE OF PETITIONER, THEREFORE THROUGH R/3 REGISTRAR GENERAL OF MP HIGH COURT AT JABALPUR (MADHYA PRADESH)
8. SHRI PRAMOD KUAMR AGRAWAL ADDRESS IS NOT IN THE KNOWLEDGE OF PETITIONER, THEREFORE, THROUGH R/3 REGISTRAR GENERAL OF MP HIGH COURT AT JABALPUR (MADHYA PRADESH)
9. SHRI BINOD KUMAR DWIVEDI ADDRESS IS NOT IN THE KNOWLEDGE OF PETITIONER, THEREFORE THROUGH R/3 REGISTRAR GENERAL OF MP HIGH COURT AT JABALPUR (MADHYA PRADESH)
10. SHRI DEV NARAYAN MISHRA ADDRESS IS NOT IN THE KNOWLEDGE OF PETITIONER, THEREFORE, THROUGH R/3 REGISTRAR GENERAL OF MP HIGH COURT AT JABALPUR (MADHYA PRADESH)
11. SHRI GAJENDRA SINGH ADDRESS IS NOT IN THE KNOWLEDGE OF PETITIONER, THEREFORE, THROUGH R/3 REGISTRAR GENERAL OF MP HIGH COURT AT JABALPUR (MADHYA PRADESH)

**.....RESPONDENTS**

**(RESPONDENT NO.4/STATE BY SHRI B.D. SINGH – DEPUTY ADVOCATE GENERAL )**

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*This petition coming on for admission this day, **Hon'ble Shri Justice Sheel Nagu, Acting Chief Justice** passed the following:*

**ORDER**

Present petition filed under Article 226 of the Constitution of India challenges legality and validity of Notification dated 02.11.2023 (Annexure P/1) issued by the Department of Justice, Ministry of Law & Justice, Government of India, whereby the President of India invoking the power under Article 217(1) of the Constitution of India appointed respondents No.5 to 11 as Judges of the Madhya Pradesh High Court.

2. Learned counsel for petitioner is heard on the question of admission so also final disposal.
3. The aforesaid challenge is based on the following grounds:
  - (i) Despite the petitioner being eligible under Article 217 (2)(b) of the Constitution of India for having completed 10 years of practice in the High Court has not been considered for appointment as Judge of the High Court.
  - (ii) No advertisement was issued prior to appointments made of respondents No.5 to 11.
  - (iii) None of the SC/ST, OBC or EWS candidates were considered thereby denying adequate representation of all these categories on the Bench.
  - (iv) There is over representation of the forward class not only among members of the collegium but also among appointments made of respondents No.5 to 11.

4. For ready reference and convenience, relevant Article 217 (2) (b) of the Constitution of India is reproduced below :

**“217. Appointment and conditions of the office of a Judge of a High Court.-**

- (1) xxx xxx xxx
- (2) A person shall not be qualified for appointment as a Judge of a High Court unless he is a citizen of India and –
- (a) xxx xxx xxx
- (b) has for at least ten years been an advocate of a High Court or of two or more such courts in succession;”

5. A bare reading of the aforesaid provision reveals that minimum requisite eligibility criteria for an advocate to be elevated as a High Court Judge is that of practice as an advocate for a period at least of 10 years.

**5.1** The aforesaid does not imply that all advocates who have practiced in the High Court for at least 10 years or more are to be necessarily considered by the collegium of the High Court and as well as of the Supreme Court.

**5.2** The concept of collegiums is not found in the Constitution, but came to be recognized as principal selecting body for appointment of a High Court Judge by Judge-made law in series of judgments of Apex Court in **S.P. Gupta Vs. Union of India and another, 1981 (Supp) SCC 87; Supreme Court Advocates-on-Record Association and others Vs. Union of India, (1993) 4 SCC 441; Special Reference No.1 of 1998, RE; (1998) 7 SCC 739; and Supreme Court Advocates-on-Record Association and another v. Union of India, (2016) 5 SCC 1.** Relevant extracts of decision in **Supreme Court Advocates-on-Record Association and others**

**Vs. Union of India, (1993) 4 SCC 441** are reproduced below for ready reference and convenience:

*“175. It is beyond controversy that merit selection is the dominant method for judicial selection and the candidates to be selected must possess high integrity, honesty, skill, high order of emotional stability, firmness, serenity, legal soundness, ability and endurance. Besides the above, the hallmarks of the most important personal qualifications required are moral vigour, ethical firmness and imperviousness to corrupting or venal influences, humility and lack of affiliations, judicial temperament, zeal and capacity to work. In Texas Law Review, (Vol. 44) 1966 at pp. 1068 and 1071, the following passages are found emphasising the desirable qualities of the Judges:*

*“It is easy to understand why the active Judges deem noble inner qualities highly desirable. It is also natural that they should give the highest ratings to good repute. ‘Good name in man or woman ... is the immediate jewel’ of their souls, Shakespeare said, ‘and Judges share with you and me a taste for such treasures’. As for good health, is there anyone who does not prize it? Nobility and virtue, good name and well-being — these are never out of place. In a man who wields the power and enjoys the standing of a judge, they are more than welcome. No one seeking judicial office would boast that he lacked any of them, and no appointing authority would look for men without them.”*

*While qualities of the mind were not named as frequent, as qualities of the heart and spirit, intellectual power was not entirely neglected. In the judges' own words, ‘a capacity for abstract thought’, ‘imagination’, ‘learning’, ‘a retentive memory’, ‘quick thinking’, ‘intellectual curiosity’, and ‘ability to analyze and articulate’ deserve attention.”*

**183.** *One should not lose sight of the important fact that appointment to the judicial office cannot be equated with the appointment to the executive or other services. In a recent judgment in All India Judges' Association v. Union of India [(1993) 4 SCC 288, 295-97 : JT (1993) 4 SC 618] rendered by a three-Judge Bench presided over by M.N. Venkatachaliah, C.J. and consisting of A.M. Ahmadi and P.B. Sawant, JJ., the following observations are made : (SCC pp. 295 e-h, 296 a and c-d, 297 b, paras 7 and 9)*

*"The judicial service is not service in the sense of 'employment'. The judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the Council of Ministers and the members of the legislature. When it is said that in a democracy such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State power are the ministers, the legislators and the judges, and not the members of their staff who implement or assist in implementing their decisions. The Council of Ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly, the legislators are different from the legislative staff. So also the judges from the judicial staff. The parity is between the political executive, the legislators and the judges and not between the judges and the administrative executive. In some democracies like the USA, members of some*

*State judiciaries are elected as much as the members of the legislature and the heads of the State. The judges, at whatever level they may be, represent the State and its authority unlike the administrative executive or the members of other services. The members of the other services, therefore, cannot be placed on a par with the members of the judiciary, either constitutionally or functionally.*

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*... It is high time that all concerned appreciated that for the reasons pointed out above there cannot be any link between the service conditions of the judges and those of the members of the other services. ... As pointed out earlier, the parity in status is no longer between the judiciary and the administrative executive but between the judiciary and the political executive. Under the Constitution, the judiciary is above the administrative executive and any attempt to place it on a par with the administrative executive has to be discouraged."*

(emphasis supplied)

**195.** When an argument was advanced in Gupta case to the effect that where there is difference of opinion amongst the constitutional functionaries required to be consulted, the opinion of the CJI should have primacy, since he is the head of the Indian Judiciary and paterfamilias of the judicial fraternity, Bhagwati, J. rejected that contention posing a query, as to the principle on which primacy can be given to the opinion of one constitutional functionary, when clause (1) of Article 217 places all the three constitutional functionaries on the same pedestal so far as the process of consultation is concerned. The learned Judge by way of an answer to the above query has placed the opinion of the CJI on a par with the opinion of the other constitutional functionaries. The above answer, in our

*view, ignores or overlooks the very fact that the judicial service is not the service in the sense of employment, and is distinct from other services and that “the members of the other services... cannot be placed on a par with the members of the judiciary, either constitutionally or functionally”.*

**5.3** Thus, the collegium ows it's existence and legal sanctity to Judge-made law which under Article 141 of the Constitution is the law of the land and is binding not only on every court but also the executive and the legislature.

**5.4** As regards the second ground of challenge [para 3(ii) above], it appears that petitioner is labouring under misconception that the office of a High Court Judge is akin to a civil post under the executive. This is far from reality as the office of High Court Judge is a Constitutional office, which is filled up only and solely by the procedure prescribed in the Constitution and not elsewhere. No statute or statutory rule or executive instruction can supplant or for that matter supplement the procedure prescribed in the Constitution for appointment of High Court Judge. Accordingly, since the Constitution does not prescribe issuance of any advertisement or conduction of any selection by way of written test or viva voce, the procedure being followed presently cannot be found fault with.

**5.5** In ground No.3(iii) the petitioner contends that in appointment of High Court Judge, adequate and proper representation of all categories i.e. SC/ST, OBC or EWS has not been made. In this regard, it is seen that neither the Constitution nor the Judge-made law as aforesaid prescribe for any reservation or adequate/proportionate representation of all categories in the process of appointment. Thus, providing for any such reservation or

adequate/proportionate representation of all categories, would not only be *dehors* to the Constitutional provision but also the Judge-made law vide aforesaid decisions of Apex Court. Thus, this ground of petitioner also does not hold any water.

**5.6** The ground contained in para 3(iv) is that the collegium at the High Court as well as Supreme Court level has a very large representation of forward class (unreserved category), of Judges. As already held above, the Constitution not prescribing for any reservation or adequate or proportionate representation of all categories, any such attempt to accede to the prayer of petitioner would amount to violating the constitutional provisions.

**6.** In the conspectus of above discussion, this Court has no manner of doubt that the relief sought by petitioner cannot be granted and, therefore, the petition is dismissed in *limine*.

**(SHEEL NAGU)**  
**ACTING CHIEF JUSTICE**

**(AMAR NATH (KESHARWANI))**  
**JUDGE**

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