

ITEM NO.2

COURT NO.4

SECTION XIV

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No(s). 14156/2015

(Arising out of impugned final judgment and order dated 19-02-2015
in WPC No. 9303/2014 passed by the High Court Of Delhi At New
Delhi)

DHEERAJ MOR

Petitioner(s)

VERSUS

HONBLE HIGH COURT OF DELHI

Respondent(s)

([Only IA no. 49518 of 2019 application for stay in w.p. (C) no.
414/2016 to be listed])

WITH

W.P.(C) No. 414/2016 (X)

(Only IA no. 49518 of 2019 application for stay to be listed)

Date : 10-05-2019 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ARUN MISHRA

HON'BLE MR. JUSTICE NAVIN SINHA

Counsel for the parties:-

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UPON hearing the counsel the Court made the following
O R D E R

In these matters, it is in dispute as to whether the incumbents who have joined the services as Civil Judge can stake their claims for the posts meant for direct recruitment from the Bar reserved for practicing advocates for appointment as District

Judges. Since there is a quota in the direct recruitment of Bar Members, in order to attract talent from the Bar out of practicing advocates. There are separate quota of promotional posts for the incumbents who have joined the services as Civil Judge to the post of District Judge. There is a set procedure for that and there is a merit promotion quota which has to be made by virtue of the limited departmental examination as held in *All India Judges' Association & Ors. v. Union of India and Ors.* (2002) 4 SCC 247 and followed in *All India Judges' Association & Ors. v. Union of India And Ors.* - (2010) 15 SCC 170. Nowhere it is provided that such in-service incumbents can stake their claim as against posts which are reserved for direct recruitment from the Bar.

It was contended that in certain cases, interim relief has been granted by this Court and by virtue of the interim directions issued, certain in-service incumbents participated in the exam and other process by staking claim to be appointed in the quota which is basically meant for lawyers. Since the entitlement of Civil Judges to occupy posts of Bar quota is yet to be decided by hearing matter finally and in case such interim orders are continued to be granted and the Civil Judges from the judiciary are permitted to be appointed as against the quota which basically meant for practicing lawyers, serious prejudice may be caused to the Bar incumbents. In the past, for the last 65-66 years no person from the Civil Judge cadre were permitted to stake their claims as against the posts which are reserved for direct recruitment from the Bar.

It is settled proposition of law that final relief cannot be granted by way of interim measure. When direct recruitment has to be from Bar, we cannot continue to grant interim order of final nature leaving the situation virtually irreversible, an incumbent from Bar has to be deprived of the post given to in-service candidate which is reserved for Bar, question of seniority would also arise and in case relief is not finally granted several other complications would arise. In any case such ad-hoc arrangements by appointing such incumbents is not at all warranted that too in higher judiciary unless and until the case is decided in favour of in-service candidates.

It was also contended that in *Dheeraj Mor* case, certain interim orders have been passed allowing the members of the judicial service to stake their claims for the posts which are meant to be filled by the direct recruitment from the Advocates. In the circumstances, for years together such interim orders cannot be granted nor interim orders can be treated as a precedent. As they are creating more complications and the question of entitlement of in-service candidates has been referred to Larger Bench which will take call on it. It is considered appropriate that quota meant for the Bar no more filled by in-service candidates. However, the recruitment from Bar shall be subject to the final outcome of the matter which has been referred. We are of the considered opinion that we cannot direct any more appointment by way of interim orders of Civil Judges as against posts meant for practicing advocates or

allow the judiciary members to participate in such examination to make position worse. Serious complications would arise in case ultimately in-service candidates are not found eligible for such quota. As such we are not inclined to pass any further interim orders either by permitting in service candidates to stake their claims in the examination or for being appointed as against the quota reserved for Bar. It would not be proper to stop all recruitments for years together, so as to prevent complications as to seniority as well as the quota which is required to be maintained.

It was submitted that if such an anomaly is permitted to be continued, the posts reserved for the Bar members in the High Court too will have to be filled even from the District Judges who might have earlier practiced for 10 years. Be that as it may, as we are not on that issue, in the facts and circumstances of the case, we find that it is not appropriate to pass such interim orders any more. As the matter is urgent, we request Hon'ble The Chief Justice to post the matter before appropriate Bench for hearing it finally as early as possible.

We make it clear that we are not disturbing the appointments which have been made so far by virtue of such interim orders. However, no new appointments be made from now onwards of in-service candidates against quota reserved for Bar. In case even if in-service candidate has been selected in the examination held earlier as against the Bar quota no further appointment to be made of such candidates. However, the practicing advocates who have been

found selected for appointment, their result be declared and they be appointed subject to the outcome of the pending matter.

(ASHA SUNDRIYAL)
COURT MASTER

(JAGDISH CHANDER)
BRANCH OFFICER