

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.11698 OF 2018**

**UTTAM KUMAR SHAW**

**...APPELLANT**

**VERSUS**

**PARTHA SARATHI SEN & ORS.**

**...RESPONDENTS**

**J U D G M E N T**

**M.M. SUNDRESH, J.**

1. Heard Mr. Jayanth Nath, learned senior counsel for the appellant. Neither the counsel for the High Court nor that of the contesting respondents would want to make their submissions. While the counsel for the High Court submitted that any decision of this Court would be duly implemented, it is the say of the counsel for the contesting respondents that they have no desire to pursue the matter further. Counsel for the State have stated that appropriate orders may be passed based on the position it has taken.

2. The appellant joined the Judicial Service in 1989 as a Civil Judge, Junior Division. With the approval of the Full Court, he was deemed suitable for empanelment in the rank of West Bengal Higher Judicial Services. Accordingly, a communication was sent by the High Court to the Principal Secretary to the Government of West Bengal and by the proceeding dated 24.12.2003. The relevant part of the aforesaid is appositely reproduced herein:

“I am directed to say that the following officers have been found suitable for empanelment in the rank of West Bengal Higher Judicial Service in this meeting held on 13.12.2003 and approved by the full court by circulation dated 23.12.2002:-

Sl. No.	Name of the Officer	Designation
xxx	xxx	xxx
28.	Shri Uttam Kumar Shaw	S.D.J.M. Kalna
xxx	Xxx	xxx

I am to request that Government may be moved to issue necessary orders in the matter of appointment of the aforesaid officers, on promotion to the West Bengal Higher Judicial Services after replacing the service of the concerned officers who are holding / are in deputation post in Government or in the other Institution already communicated under court's letter No. 8553-A, dated 23.12.2003.

I am to add that on receipt of orders / notification from the Government the orders will be issued.

This may be treated as extremely urgent.”

The Appellant was posted as a Fast Track Judge, accordingly.

3. New rules in the form of the West Bengal Judicial (Conditions of Service) Rules, 2004 came into effect from 01.10.2004. Under these rules, three modes of recruitment and appointment with the appropriate percentage were prescribed, and seniority shall be fixed with respect to the 40-Point Roster System against the vacancies that arise. The purpose of these regulations was to fill all vacancies in the District Judge cadre as they occur.
4. The learned counsel for the appellant submitted that there were several vacancies which arose from 2004 to 2008, against which the appellant was eligible. The High Court was unsuccessful in its efforts to fill the vacant posts. In 2009, vacancies were finally filled both through direct recruitment and the selection of jump promotees through a limited competitive examination among qualified Senior Judges in the cadre of Civil Judge, Senior Division.
5. A draft notification was published by the High Court in the year 2011 by which the promotees just like the appellant were placed below the above two categories recruited/promoted in the year 2009. Noting that such persons were entitled to be considered in the vacancies arose between 01.10.2004 to 31.12.2008, the earlier draft notification was superseded by subsequent one dated 29.11.2016, as could be seen from the following paragraphs:

**“Sub: Publication of fresh draft Gradation List for the officers covered in the list belonging to the cadre of District Judge (Entry Level) against the vacancies for the period from 01.10.2004 to 31.12.2008.**

Sir,

I am directed to inform that the Hon'ble Court has been pleased to prepare a fresh Draft Gradation List for the officers covered in the list belonging to the cadre of District Judge (Entry Level) of the WSJS, against the vacancies occurred during the period from 01.10.2004 to 31.12.2008, in supersession of the previous Draft Gradation List duly published on 04.04.2013, and to direct for publishing the same inviting views/objections, if any, from the officers covered in the list within a period of 15 days time from the date of its publication. I am, accordingly, to request you to cause circulation of the same amongst all the officers appearing in the enclosed list, posted in your judgeship/on deputation, at the earliest enabling them to submit views/objections, if any, so that the same is reached at this end positively by the stipulated 15 days' time.

xxx

xxx

xxx”

**“DRAFT GRADATION LIST OF THE OFFICERS BELONGING TO THE CADRE OF DISTRICT JUDGE (ENTRY LEVEL) OF THE WBJS AGAINST THE VACANCIES OCCURRED FROM 01.10.2004 TO 31.12.2008, IN SUPPRESSION OF EARLIER DRAFT GRADATION LIST PUBLISHED ON 04.04.2013**

Sl. No.	Name of the Officers	Reasons of occurrence of vacancy, viz. Date of Retirement (R)/Elevation (E) / Death of the Officer (D)/ Voluntary Retirement (VR)/ Compulsory Retirement (CR)	Date of occurrence of vacancy	Merit Position as per A.O.	Batch	Remark
xxx	xxx	xxx	xxx	xxx	xxx	xxx
71.	Sri Uttam	Due to retirement of	01.03.2008	NP/17 <sup>th</sup> / 2010	1988	

	Kumar Shaw	Sri Dulal Chandra Dey w.e.f. 29.02.2008				
xxx	xxx	xxx	xxx	xxx	xxx	xxx

6. Incidentally, it has been stated that the gradation list of officer promotions beginning in 2009 will be published in due time. Thus, in its wisdom, the High Court deems it appropriate to consider the names, including that of the appellant, for appointment in the cadre prior to 2009, by placing above two other categories i.e. recruited/promoted. Apparently, this is for the reason that the mistake at the hands of the High Court needs to be remedied. We may note, the others appointed in the year 2009 were not *born* in the cadre at that relevant point of time.
7. The aforesaid being a draft gradation list merely calling for objections, if any, was put into challenge before the High Court on the judicial side. The Writ Petition filed was allowed as rules have come to *vogue*, and thus, 40-Point Roster has to be followed. On a challenge, the Division Bench while concurring with the views of the learned Single Judge in part, followed its earlier order in declining the relief to the appellant.
8. The learned counsel appearing for the appellant submitted that the fact that he was promoted to the rank of West Bengal Higher Judicial Service in the year 2003 by the proceeding dated 24.12.2003, has been overruled. It is only

an administrative act in posting him to function as a Fast Track Court Judge as there was no bar to posting to any other post in the cadre of a District Judge. The mistake was that of the High Court which was sought to be rectified by the impugned draft list which was published by the Registrar (Judicial Service), High Court, Appellate Side, Calcutta, dated 29.11.2016 against the vacancies which were available from the year 2004 to 2008. No promotion whatsoever took place during that period. It is not as if all the promotees would get seniority on a particular date but the date on which a vacancy is made available against each of them is sought to be reckoned as the date of appointment. If that is so, the date of appointment of the appellant as a District Judge (Entry Level) would be 01.03.2008. The direct recruits or the jump promotees were admittedly recruited and promoted in the year 2009 alone. As a District Judge he was merely asked to man the Fast Track Court. The position prior to the 2004 Rules is that there was only one channel of promotion to the post of District Judge (Entry Level). As facts not being considered in the correct perspective, the orders passed are required to be overturned.

9. We have already recorded the stated position taken by the counsel appearing for the respondents. At the outset, we do believe that the Writ Petition, as filed, ought not to have entertained on draft gradation list calling for

objections. Be that as it may, we would like to decide the matter on merits, particularly, when a specific stand has already been taken by the High Court also.

**10.** We do not find any error in the administrative decision taken by the High Court in facilitating the issuance of the impugned communication calling for objection on the premise that eligible officers will have to be fitted against the vacancies for the period from 1.10.2004 to 31.12.2008. It is the fair acknowledgment on the part of the High Court to redeem the mistake committed in not promoting the officers at the appropriate time. One cannot withhold the due promotion of the promotees till the date of recruitment of the direct recruits or appointment of the jump promotes. The consequence would obviously be disastrous.

**11.** We have also noted that, it is not as if all the promotees were fitted in the vacancies of the year 2004 but it was spread over between 2004 to 2008. This is notwithstanding the fact that a decision was taken way back in the year 2003 to promote as District Judges. In such view of the matter, the orders passed by the High Court may require interference. However, we make it clear that giving effect to the impugned draft gradation list, cannot be made applicable to other officers who are not before us. As any

implementation might have a serious civil consequence, we are inclined to observe so.

12. We have also been informed by the counsel appearing for few of the contesting respondents that names of some of them have already been cleared by the Collegium of the High Court as well as this Court, and therefore, we make it clear that this judgment will not have any bearing on such persons.

13. The appeal stands allowed. The judgments rendered by the learned Single Judge and that of the Division Bench of the High Court of Calcutta stand set aside. The High Court and the State Government are directed to give effect to the impugned draft gradation list insofar as the appellant alone is concerned, within a period of 12 weeks from the date of the receipt of the copy of this judgment. Pending application(s), if any, stand(s) disposed of.

.....J.  
(SANJAY KISHAN KAUL)

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

**New Delhi,  
September 13, 2022**