

न्यायाधीशों के रिक्त पदों को भरे जाने के लिए सुप्रीम कोर्ट का निर्देश

\*364. श्री विजय जे० दर्डा: ††

श्रीमती शोभना भरतिया:

क्या विधि और न्याय मंत्री यह बताने की कृपा करेंगे कि:

(क) क्या सुप्रीम कोर्ट ने 3 अप्रैल 2006 को यह टिप्पणी की थी कि अधिकांश राज्य न्यायपालिका के सभी स्तरों पर न्यायाधीशों की रिक्तियों का शीघ्र निर्धारण करने और उन्हें भरने के लिए एक तंत्र विकसित करने में असफल रहे हैं;

(ख) यदि हां, तो क्या केन्द्रीय सरकार ने इसे गंभीरता से लिया है और राज्यों से न्यायपालिका के सभी स्तरों पर न्यायाधीशों की रिक्तियों का शीघ्र निर्धारण करने और उन्हें भरे जाने हेतु तंत्र विकसित करने की सिफारिश करने का अनुरोध किया है; और

(ग) यदि हां, तो केन्द्र सरकार न्यायाधीशों की रिक्तियों को भरे जाने में किस हद तक राज्यों की सहायता करने के लिए सहमत हुई है?

विधि और न्याय मंत्री (श्री हंसराज भारद्वाज): (क) से (ग) एक विवरण सदन के पटल पर रख दिया गया है।

### विवरण

(क) से (ग) जी हां। उच्चतम न्यायालय ने वर्ष 2006 के सी० ए० संख्या 1867 (वर्ष 2005 की एसएलपी(सी) संख्या 22523 से उद्भूत होने वाले)-मलिक मजहर सुल्तान और अन्य बनाम उत्तर प्रदेश लोक सेवा आयोग और अन्य के मामले में अपने तारीख 3.4.2006 के हाल ही के निर्णय में सभी राज्यों/संघ राज्य क्षेत्रों तथा उच्च न्यायालयों को रिक्त पदों का समय पर भरा जाना सुनिश्चित करने के लिए समय-सूची का कड़ाई से पालन करने का निदेश दिया है।

पूर्वोक्त निर्णय में, माननीय उच्चतम न्यायालय ने सभी राज्य सरकारों/संघ राज्य क्षेत्रों तथा उच्च न्यायालयों को यह अनुदेश दिया है कि वे एक समय-सूची उपलब्ध कराएं जिससे कि प्रत्येक वर्ष होने वाले रिक्त पदों को समय पर भरा जा सके। उच्चतम न्यायालय ने उन्हें यह और निदेश दिया है कि वे इस प्रकार नियत की गई समय-सूची के ब्यौरे तथा वह तारीख जिससे इस प्रकार नियत की गई समय-सूची प्रवर्तन में आएगी, तीन मास के भीतर फाइल करें।

†† सभा में यह प्रश्न श्री विजय जे० दर्डा द्वारा पूछा गया।

जहां तक अधीनस्थ न्यायालयों में रिक्त पदों को भरे जाने का संबंध है, यह विषय राज्य सरकारों के अधिकार क्षेत्र के अंतर्गत आता है। राज्य सरकारों को आवधिक अंतरालों पर स्मरण कराते हुए यह अनुरोध किया गया है कि वे रिक्त पदों को शीघ्रता से भरें। किसी भी राज्य सरकार ने इस विषय पर संघ सरकार की सहायता की वांछा नहीं की है। केन्द्रीय सरकार उच्चतर न्यायपालिका में रिक्त पदों का तुरंत भरा जाना सुनिश्चित करती है जिससे कि न्यायाधीशों की अपर्याप्त संख्या के कारण प्रशासन पर प्रतिकूल प्रभाव न पड़े।

### **Supreme Court's direction on filling up of vacant posts of judges**

\*364. SHRI VIJAY J. DARDA:††  
SHRIMATI SHOBHANA BHARTIA:

Will the Minister of LAW AND JUSTICE be pleased to state:

(a) whether the Supreme Court directed on April 3, 2006 that most of the States have so far failed to put in place a mechanism to speedily determine and fill up vacancies of judges at all levels of judiciary;

(b) if so, whether the Union Government has taken up this seriously and has urged the States to recommend the mechanism for speedy determination and filling up of vacancies of judges at all levels of judiciary; and

(c) if so, to what extent the Union Government has agreed to help and assist the States in filling up the vacancies of the judges?

THE MINISTER OF LAW AND JUSTICE (SHRI H.R. BHARDWAJ):  
(a) to (c) A Statement is laid on the Table of the House.

### **Statement**

(a) to (c) Yes, Sir. The Supreme Court in its recent judgment dated 3.4.2006 in C.A. No 1867 of 2006 [arising out of SLP(C) No. 22523 of 2005]—in the matter of Malik Mazhar Sultan & Anr. Vs U.P. Public Service Commission & Ors. has directed all the States/UTs and High Courts to strictly adhere to time schedule ensuring timely filling up of vacancies.

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††The question was actually asked on the floor of the House by Shri Vijay J. Darda.

In the aforesaid judgment, the Hon'ble Supreme Court has given instruction to all the State Government/UTs and High Courts to provide for time schedule so that every year vacancies that may occur are timely filled. The Supreme Court has, further directed them to file with in three months details of the time schedule so fixed and date from which time schedule so fixed would be operational.

In respect of filling up of vacancies in the Subordinate Courts, the matter falls within the domain of the State Governments. State Governments have been reminded at periodic intervals urging them to fill up the vacant posts expeditiously. No State Government has sought Union Government's assistance in this matter. The Central Government ensures prompt filling up of vacancies in the superior judiciary so that justice administration does not suffer from inadequate number of judges.

श्री विजय जे० दर्डा: धन्यवाद सर, मैं आपके माध्यम से माननीय मंत्री जी से जानना चाहूंगा कि आज जो सुप्रीम कोर्ट, हाई कोर्ट एवं अन्य कोर्टों में जजिज़ की कमी है, उसके बारे में सुप्रीम कोर्ट के 6 अक्टूबर 1993 के निर्णय तथा 28 अक्टूबर 1998 को इस विषय पर दिए गए एडवाइज़री ओपिनियन के अनुसार सुप्रीम कोर्ट में जजिज़ की नियुक्ति की प्रक्रिया को सुप्रीम कोर्ट के चीफ जस्टिस करते हैं तथा हाई कोर्ट में जजिज़ की नियुक्ति की प्रक्रिया हाई कोर्ट के चीफ जस्टिस करते हैं। क्या यह प्रक्रिया ही देरी का कारण नहीं है? तमाम हाई कोर्ट्स में अभी कुल कितने पद भरे जाने हैं एवं नियुक्ति की प्रक्रिया को पूरा करने में कितना समय लग सकता है? यह प्रक्रिया अभी सुप्रीम कोर्ट के आदेशों पर आधारित होती है, लेकिन संसद को भी इस पर कानून बनाने का पूरा अधिकार है। क्या सरकार इस विषय पर कानून बनाने का विचार रखती है? अगर नहीं तो क्यों?

SHRI H.R. BHARDWAJ: Sir, the hon. Member is aware that the appointments to the Supreme Court and High Courts are made in accordance with the provisions of the Constitution, and by a very well established procedure of consultation. Sir, we have been able to make appointments within a reasonable time by following this procedure. After this Government came to power, we had 330 vacancies in various High Courts. I can derive satisfaction by informing the House that we have been able to fill up 270 vacancies out of 330 vacancies. Some proposals are still pending with us. The Chief Justice of India, Chief Ministers and Chief Justices, met in a Joint Conference and devised a method by which we could speed up these appointments. The results have been very encouraging. With regard to the Supreme Court also the same procedure

is followed. The Chief Justice of India and his colleagues make recommendations and then appointments are made within a week or two. So, there is no delay because the appointments have to be approved by the President of India. We have picked up speed. During my earlier tenure, I remember, we could appoint 60 to 65 judges per year. Now we have been able to appoint more than 100 judges per year. We are speeding it up. The loose hands are being tied up because Chief Ministers respond quickly and Chief Justices send their proposals quickly. This procedure is within the Constitution. It cannot be changed without an amendment of the Constitution or by a review of the earlier order of the court. So, it is doing very well. I am fully satisfied that there are not many vacancies left unfilled.

श्री विजय जे० दर्डा: महोदय, क्या सरकार ने अभी ऐसी कोई स्टडी कराई है जिससे पता चले कि 10 वर्षों में कितना वर्क लोड बढ़ा है तथा तमाम हाई कोर्ट्स एवं न्यायपालिकाओं के स्तर पर कितने पदों की आवश्यकता है? यदि हां, तो क्या सरकार इस तरह का अध्ययन कराएगी क्योंकि आप जानते हैं कि जस्टिस डिलेड इज जस्टिस डिनाइड, इसी बात को ध्यान में रखते हुए?

SHRI H.R. BHARDWAJ: Sir, there is no doubt that we have made these studies. With the help of information technology, we are now having this data. I would like to inform the august House that in our country, normally, every judge has to dispose of 2,300 cases. In every High Court, we expect that every judge will decide this number of cases. The High Courts are deciding so many cases. More and more cases are coming before high courts. More and more laws are being enacted. Because of more awareness among the citizens of India, the number of cases is bound to increase. But there should be no alarm on this. These cases must be disposed of within a reasonable timeframe. Therefore, we have an arrangement with States to have a review of the strength of High Court judges every third year. This is the third year. We have already done a review. In that review, we have found that more than 100 judges would be required in high courts. As this is a quasi-federal matter, we have written to the Chief Ministers and the Chief Justices that according to our review, their High Courts would require that much additional strength of judges. Once they agree, these posts will be created. I cannot create these posts without consulting the States because funds are to be given by the States. Therefore, a mechanism has been put in place. There are various other steps which were not taken earlier. Justice administration was the most neglected aspect in States. Now with this Joint Conference being held every second

year, Chief Ministers are paying attention to it. The previous Government through the Finance Commission gave some money for Fast Track Courts. That proved to be very successful. We continued with that through the budget of our Ministry. Then we needed these broken typewriters of courts to be replaced with computers. Now we are seeing that there is a revolution in the judiciary because of information technology and by the use of other modern methods. Therefore, this is a continuous process of reforms in the judiciary. I hope, within a couple of years, this country will have a magnificent modern judiciary.

SHRIMATI SHOBHANA BHARTIA: Sir, the hon. Minister said in his reply that he is quite satisfied that a lot of vacancies were getting filled up. But, in the year 2002, the hon. Supreme Court had, in its judgement in All India Judges' Association vs. Union of India, directed that all the vacancies at the State level be filled up. Those were never done. This year again, the Supreme Court directed that these vacancies be filled up. Three months' period has passed by. The Amicus Curiae has submitted certain proposals, and the Court is yet to pass a judgement.

That apart, out of the 726 vacancies for various positions in High Courts, only 603 have been filled up. Sir, here, I would like to mention that the Law Commission, in its 127th Report, had said that India really lagged behind in terms of its Judge to Population Ratio, whereas in most developed countries, for every 10 lakh population, you have over 50-60 judges. In India, we have, as of now, only 10 to 12 judges. Is the hon. Minister thinking of increasing or recommending to increase the Judge to Population Ratio, because not only do we have vacancies, but we also have shortages of judges?

SHRI H.R. BHARDWAJ: You will notice from the question itself that it talks of appointment of Judges at all levels in judiciary. So there are various levels; one level is the Magisterial Court; then, there is the Sessions Court, then the High Court and the Supreme Court. So far as I am concerned, I deal with High Courts and the Supreme Court. The other levels come under the administrative control of High Courts, and they are funded by States. There are vacancies in the subordinate judiciary, and the Supreme Court's order speaks of that also. We have taken it up with Chief Ministers and the High Court that there are so many vacancies. I can give you the full data, State-wise, where vacancies in the District Courts have not been

filled up. And I cannot appoint them; I can only request that they fill up these vacancies. So, the orders passed by the Chief Justice and other Judges dealt with various levels of appointment. So far as the Union of India is concerned, it has done its job. We are also collaborating with the States, and some States have filled up their vacancies, and some of them are being filled up. These orders are only guidelines. Actually, in the Supreme Court itself, vacancies sometimes remain pending; four vacancies were there. We received very late proposals. Now we will be appointing them. Therefore, these judgements are not that nobody is doing their work. These are only reminding them to do them faster, and the speed is the measure; we cannot neglect these matters because pending vacancies can contribute to increasing arrears. Therefore, we are making efforts to see to it that there is zero vacancy position in the Courts in which the Supreme Court, the Union of India and the States are joint partners; and we will see to it that vacancies are filled up in anticipation of the vacancies that arise.

SHRI RAM JETHMALANI: Sir, the hon. Minister recognises the fact that the number of judges has to be increased. But I hope that he would assure the House that he is also concerned about the quality of judges who are being appointed, and I hope we will find out some method of rewarding those good judges like the one who, this morning, has acquitted your colleague, the Railway Minister, and his wife. Have you got some method of rewarding these judges?

SHRI H.R. BHARDWAJ: Sir, my friend, for whom I have a great admiration as a lawyer, had also been the Law Minister. We cannot reward anybody. The merits of Judges are reflected by the orders he passes, and the only satisfaction is that it is the public confidence that matters in a Judge. And all Judges, who have given service to the society, will be remembered, and they are being remembered. So far as I am concerned, my duty is that Judges should be appointed in time, on which nobody can have any complaint because now it is a new type of system that we are putting in position.

SHRI RAM JETHMALANI: You need not attempt a long answer because I wanted to inform the House as to what has happened.

MR. CHAIRMAN: Shri Ravi Shankar Prasad ... (*Interruptions*)...

श्री वीरेन्द्र भाटिया: सभापति जी, आप सामने देख लीजिए। ... (व्यवधान)...

श्री सभापति: देखिए, आप एक काम करिए। ... (व्यवधान) ... आप इधर आ जाइए। आप यहां आ जाइये। ... (व्यवधान)...

श्री वीरेन्द्र भाटिया: मुझे शिकायत है कि जूनियर मेम्बर्स को कभी मौका नहीं मिलता है। सीनियर मेम्बर्स को ही मौका मिलता है, जो हमेशा बोलते हैं। ... (व्यवधान)...

श्री सभापति: मेरे पास 18 नाम हैं। ... (व्यवधान) ... आप मेरी बात सुन लीजिए। मेरी बात सुन लीजिए। ... (व्यवधान) ... एक मिनट। ... (व्यवधान)...

श्री वीरेन्द्र भाटिया: सबसे पहले मैंने हाथ उठाया है और उसके बाद मैं लगातार ... (व्यवधान) ... या तो हम लोग भी वही करें जो दूसरे लोग करते हैं। ... (व्यवधान)...

श्री सभापति: एक मिनट, पहले मेरी बात सुन लीजिए। ... (व्यवधान) ... पहले आप मेरी बात सुन लीजिए। आपको शायद संदेह यह है कि यहां के मैबर्स का नाम नहीं आता। इस एक क्वेश्चन के मामले में 18 के करीब नाम हैं। ... (व्यवधान)...

श्री वीरेन्द्र भाटिया: सबसे पहले हाथ मैंने उठाया है। ... (व्यवधान)...

श्रीमती वृंदा कारत: सर, आपने इधर से किसी को नहीं बुलाया है। ... (व्यवधान)...

श्री सभापति: आप बैठिए ... (व्यवधान) ... पहले बैठिए। ... (व्यवधान) ... Please take your seat. Please, take your seat. ... (Interruptions) ... Let him reply. ... (Interruptions) ... अब ये 16 नाम हैं। अभी जो क्वेश्चन ... (व्यवधान) ... देखिए, पहले एक बुलेटिन निकला है। ... (व्यवधान) ... एक मिनट सुन लीजिए फिर हमेशा के लिए संकट मिटेगा। 30 नवम्बर 2006 को एक बुलेटिन निकला है। बिज़िनेस एडवाइज़री कमेटी में सब पार्टीज़ के लीडर्स ने मिलकर यह शिकायत की कि क्वेश्चंस बहुत कम आते हैं। सारे मैबर्स ने, जिन्होंने क्वेश्चन किए, उनका नम्बर आना चाहिए। वहां यह प्रश्न आया कि एक प्रश्न पर कई बार दस-दस सप्लीमेंटरी क्वेश्चंस होते हैं, उसको कर्टेल करके सबने तय किया है, यह अकेले का नहीं है, सारी पार्टीज़ के लीडर्स ने मिलकर तय किया है...

श्रीमती वृंदा कारत: सर, लेकिन सबको बुलाना चाहिए। ... (व्यवधान)...

श्री सभापति: एक मिनट, आप ठहरिए। "Henceforth, not more than two Members may be allowed to ask supplementaries on a Starred Question, apart from the Member(s) against whose name the question is listed, so that maximum number of questions could be covered for oral answers".

श्री वीरेन्द्र भाटिया: मैं यही कह रहा हूँ।... (व्यवधान)...

श्री सभापति: आप यही कह रहे हैं... (व्यवधान)...

श्री वीरेन्द्र भाटिया: नियम मुझे भी पता हैं, नियम मैंने पढ़ लिया, लेकिन मैं यह इसलिए कह रहा हूँ कि लगातार कई बार मैंने हाथ उठाया, लेकिन उन्हीं लोगों को अवसर मिलता है, हम लोगों को अवसर नहीं मिलता है।... (व्यवधान)...

श्री सभापति: यह नहीं होता है।... (व्यवधान)...

श्री रवि शंकर प्रसाद: सर, मैं अपना सवाल पूछ लूँ?

SHRI RAVI SHANKAR PRASAD: Hon. Law Minister, now it is more than thirteen years since we have had the collegium system of appointment for High Courts and the Supreme Court. Do you think it is high time — when most of the collegiums are having differences all over the country which you know and I also know — you, at least, referred to this House the status report of the working of the collegium? Do you propose to seek a review of that judgement in the Supreme Court in the light of your experience of the last thirteen years?

SHRI H.R. BHARDWAJ: I am very happy that a very pertinent question has been put by the hon. Member. You know very well that we were very happy with S.P. Gupta's case and, thereafter, Subhash Sharma's case. But, this judgment by the nine Judges arose out of the Advocates on Record. Eminent lawyers — I do not want to name them — made arguments and they said that this power should be placed in the judiciary. Now, the same lawyers are saying that the system is not working properly. Even the same judges who gave that judgment also said so. One of them, very eloquently came out to say, "I was wrong in giving this judgement". I told that Judge, "Well, I am happy that we stand exonerated, with regard to this allegation of political appointments". You know, you had been, for a long time, the Law Minister — Shri Arun Jaitley has also been — there is hardly any scope for the Executive to do anything in these appointments because the process is initiated by the Courts. But, yes, the Government could very well say, in bad appointments, that we do not agree here. Even that has been snatched away and the Nine Judges Bench, one of the judges said that the Cabinet advice to the President is circumscribed by the judicial advice. We are standing at crossroads of history where the



Cabinet decision is circumscribed by the judicial advice. I do not agree with this philosophy. The Cabinet governs the country and I would very much like that the Cabinet should have the final say. But this is either by way of review by a larger Bench, and I am prepared, if a consensus emerges from both sides that we should restore that 1993 position. ... (Interruptions)... But there again, it should not be a fight like that on the Office of Profit Bill. We should be sincere.

श्री शरद यादव: किस कंसेंसस की जरूरत है? कौन से कंसेंसस की जरूरत है? आपोज़िशन की सबसे बड़ी पार्टी के बहुत एमीनेंट मੈबर हैं, उन्होंने कहा है, अब कौन सी बात आप कह रहे हैं। सबकी आम सहमति है, आपकी आम सहमति है।

श्री हंसराज भारद्वाज: यादव जी, आप सुनिए। मेरा तजुर्बा आम सहमति का बहुत खराब रहा है। पिछले दिनों मुझसे कहा कुछ और हुआ कुछ। श्री अमर सिंह जी ने कहकर मुझे let down किया, office of profit में ... (व्यवधान)... मैं आगे दोबारा ... (व्यवधान)...

श्री अमर सिंह: सभापति जी, इन्होंने मेरा नाम लिया है, इसलिए मुझे सफाई देने का मौका मिलना चाहिए ... (व्यवधान)... देखिए, उत्तर प्रदेश में office of profit का ... (व्यवधान)...

MR. CHAIRMAN: Question Hour is over.

श्री अमर सिंह: पहले कांग्रेस ने मुझे let down किया है, उत्तर प्रदेश में बिल पास नहीं होने दिया। श्रीमती जया बच्चन को निकालकर, मुझे let down किया ... (व्यवधान)...

MR. CHAIRMAN: Question Hour is over. Papers to be laid on the Table.

## WRITTEN ANSWERS TO STARRED QUESTIONS

### Lowest literacy districts in A.P.

\*365. SHRIMATI N.P. DURGA: Will the Minister of HUMAN RESOURCE DEVELOPMENT be pleased to state:

(a) whether it is a fact that eight districts of Andhra Pradesh have been identified as having the lowest literacy rate;

(b) if so, the details of such districts;

(c) whether the above districts have been identified under Special Literacy Drive launched in April, 2005; and