

PETITIONER:
S. JAMALDEEN & ORS.

Vs.

RESPONDENT:
HIGH COURT OF MADRAS & ORS.

DATE OF JUDGMENT: 20/03/1997

BENCH:
CJI, SUHAS C. SEN, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:
[With Civil Appeal No. 2110 of 1997 arising out of S.L.P.
(C) No. 6584 of 1997 (CC No. 3647)]

J U D G E M E N T

SEN, J.
Leave granted.

The Tamil Nadu State subordinate judiciary originally consisted of two separate services, Tamil Nadu state Magisterial Service and Tamil Nadu judicial service. The Magisterial Service consisted of two categories. Subordinate Magistrates (later redesignated as Judicial Second Class Magistrates) and Additional First Class Magistrates (later redesignated as Judicial First Class Magistrates).

The Judicial Service also consisted of two categories, the Subordinate Judge and below the post of Subordinate Judge was the post of District Munsif.

The recruitment and promotions to the posts in the Tamil Nadu Judicial Service was governed by Tamil Nadu State Judicial service Rules (here in after referred to as 'the Rules') which came into force on 1.1.1955. Under these rules, recruitment to the post of Subordinate Judge was only by promotion from the post of District Munsif. The appointments to the post of District Munsif was by direct recruitment from the bar or by transfer from various posts in the State and Subordinate Services. There were as many as nine categories of posts which formed the feeder cadre for transfer to the post of District Munsif. Class 6 of feeder cadre comprised of Judicial Second Class Magistrates and Judicial First Class Magistrates in the Tamil Nadu State Magisterial Service.

In the Magisterial Service, appointment to the post of Judicial First Class Magistrates, was by promotion from the post of Judicial Second Class Magistrates or by transfer of service from Assistant Public Prosecutor Grade I and appointment to the post of Judicial Second Class Magistrates was by direct recruitment from the bar and by transfer from various departments of the Government in the ratio of 6|4.

In the Judicial Service, the recruitment could be made only through the Tamil Nadu Public Service Commission. The names recommended by the Tamil Nadu Public Service Commission in the year 1965 were exhausted in the year 1967.

Thereafter the vacancies which arose were filled up by making temporary appointments by transfer from the eligible services and by direct recruitment from the bar on the recommendation of the High Court. This inflow of temporary appointments on transfer was one of the reasons for the backlog in fixing seniority, regularisation and consequent promotions of the respective officers. During the years 1960-74, nearly 110 Judicial Second Class Magistrates were appointed on transfer on purely temporary basis. Out of the said 110 Judicial Second Class Magistrates, only about 37 were regularised by G.O. No. 1924, Home Department dated 22.10.1975. In the year, 1982 about 80 Judicial Second Class Magistrates were appointed temporarily by direct recruitment from among the bar.

These facts have been recorded in the judgement under appeal and are not in dispute.

The Chairman of the Bar Council of Tamil Nadu filed a Writ Petition No. 11604/81 and on 20.1.1982 orders of injunction were passed restraining the Government from regularising the services of all the temporary Second Class Magistrates. This had the effect of stalling the process of regularisation of temporary judicial officers. Two more writ petition were filed in the High Court (W.P. Nos. 3053 and 3294/1984). In these writ petitions, a direction was sought for filling up of all the vacancies in the posts of Magistrates and District Munsifs only in accordance with the Rules.

By an order dated 10.5.85, these writ petitions were allowed and directions were issued to regularise the appointments through the process of selection by Tamil Nadu Public Service Commission within four months and to put an end to the temporary arrangement.

While these proceedings were going on in the Madras High Court, petitions were made in this Court in which this Court ordered transfer of proceedings pending in the Madras High Court and both the writ petitions filed in the Madras High Court and the writ appeals were disposed of by an order dated 5.8.1986 in which it was inter alia directed as under:

"We find from the record that the High Court at a full Court meeting held on 30th April, 1986, passed the following resolution |

'Insofar as the suggestions made in the letter of Mr. Govind Swaminathan are concerned, the High Court is agreeable only for regularisation of such of the Second Class as are found fit on a proper scrutiny by a Committee of Judges. This regularisation will only be in the cadre of Judicial Magistrates of the Second Class. The High Court is not prepared to accept the suggestion that Judicial Magistrates of the Second Class who are officiating either as Judicial First Class Magistrates or as District Munsifs should be regularised as Judicial First Class Magistrates or District Munsifs, as the case may be. The regularisation will be within the limits of the ratio prescribed by the Recruitment Rules. The Government be also informed that such an arrangement

has been agreed to between the Chief Minister and the High Court will implement the same. The Magistrates Association has given to the Chief Justice in writing a letter that they are prepared to have the officers screened by a committee of Judges and such of those who are not found fit be sent back.'

Since the arrangement set out in this resolution is agreed to between the Chief Justice and the Chief Minister and the High Court has agreed to implement the same, we would direct that the class of temporary Judicial Magistrates, Second Class, shall be scrutinised by a Committee consisting of two or more learned Judges of the High Court and after scrutiny and assessment of their merits, ability and integrity by the Committee, the High Court will decide how many of them should be regularised as Judicial Magistrates, Second Class. This regularisation will be within the limits of the ratio prescribed by the recruitment rules. The seniority of those who are regularised will be fixed by the High Court in accordance with the quota prescribed by the rules, in other words, seniority will be fixed with effect from the respective dates on which each of them would have been regularly appointed, having regard to the quota rule. The temporary Judicial Magistrates, First Class or District Munsifs even if they have been promoted as such. They will, however, be entitled to be considered for promotion in accordance with the rules regulating promotions. They will also be entitled to compete for the posts of District Munsifs. We hope and trust that the question of regularisation will be taken up by the High Court at an early date, so that those who are to be regularised, are assured of their position."

A further order was passed by this Court on 14.11.1986 on application of some of the parties which was to the following effect:

"We directed by our order dated 5th August, 1986 that the cases of temporary Judicial Magistrates, 2nd Class shall be scrutinised by a Committee consisting of two or more Judges of the High Court and after scrutiny and assessment of their merits, ability and integrity by

the Committee, the High Court will decide how many of them should be regularised as Judicial Magistrates, 2nd Class. This regularisation will be within the limits of the ratio prescribed by the recruitment rules. We also directed that the temporary Judicial Magistrates, 2nd Class, will be regularised only in the cadre of Judicial Magistrates, 2nd Class and not as Judicial Magistrates, 1st Class or District Munsifs even if they have been promoted as such and that they will be entitled to be considered for promotion to the post of District Munsifs. We are informed by the Registrar of the High Court that the High Court has constituted a Committee of three Judges for scrutinising the cases of temporary Judicial Magistrates, 2nd Class, as provided in our order and that this particular task is expected to be completed within four months. Since we have directed that the temporary Judicial Magistrates, 2nd Class, after scrutiny and assessment of their merits, ability and integrity etc. should be regularised within the limits of the ratio prescribed by the recruitment rules, it is obvious that the regularisation of temporary Judicial Magistrates, 2nd Class who are found fit by the High Court should be made in accordance with the quota prescribed by the recruitment rules and if they cannot be regularised within their quota in a particular year in which they have been appointed, they would have to be pushed down in order that they may be absorbed within their quota in the subsequent years, if it is found that out of the temporary Judicial Officers, 2nd Class, who are found fit, any of them cannot be regularised within their quota by 31st March, 1987. (we are modifying this date on the basis that the High Court requires a period of four months to complete the scrutiny). We would suggest that such temporary Judicial Magistrates, 2nd Class, may be continued on supernumerary posts to be created by the State Government and they may continue in such supernumerary posts until such time as they are absorbed within their quota in the following years. But on no account should the quota be branched or violated in any manner

whatsoever."

Pursuant to the directions of this Court and the findings of the Screening Committee of the Madras High Court, the Government there upon regularised the temporary services of the Judicial Officers in question as Judicial Second Class Magistrates in two batches, vide G.O. Ms. No. 1053, Home dated 10.5.1988 and G.O. Ms. No. 1269, Home dated 2.6.1988, whereby 182 and 34 temporary Judicial Officers respectively were regularised.

The Tamil Nadu Public Service Commission in order to fill up vacancies in the posts of District Munsifs, started the selection process and ordered the appointment of 56 District Munsifs on 21.9.1988. It was at this stage that the Government passed an order introducing an amendment to the Tamil Nadu State Judicial Service Rules, providing for the manner of integration and fixation of inter se seniority of the members of the integrated service. The amendments were to come into force with effect from 6.10.1988. At that time the Tamil Nadu State Judicial Service consisted of three categories of District Munsifs -

- (1) those who were regularly appointed through the Tamil Nadu Public Service Commission on 26.3.1986 and 21.9.1988;
- (2) those who were selected and appointed by the Tamil Nadu Public Service Commission from out of the regularised Judicial Second Class Magistrates; and
- (3) those who became District Munsifs on 6.10.1988 consequent upon the principle of integration.

A Government Order G.O. Ms. No. 2196 was issued introducing several amendments to the Tamil Nadu State Judicial Service Rules besides rescinding the Tamil Nadu State Magisterial Service Rules.

The validity of these amendments was challenged by a number of writ petitions before the Madras High Court. The challenge, in particular, was to the third proviso which was added to Rule 20 by clause 7 of the said Government Order. The said proviso fixed the principle of fixation of inter se seniority of judicial officers. Rule 20 as amended is as follows|-

"20. Seniority.- The seniority of a person in the category of a service shall, unless he has been reduced to a lower rank as a punishment, be determined by the rank assigned to him in the list drawn by the Tamil Nadu Public Service Commission or the appointing authority as the case may be, subject to the rule of reservation where it applies. The date of commencement of his probation shall be the date on which he joins duty irrespective of his seniority in the list. In the case of member of category 2, such date shall be the date on which the approved candidate joins duty after training.

Provided that the seniority of any person in a service or post of the merged territory of Pudukkottai, who is absorbed in a service or

post under the Government of Tamil Nadu shall be determined as follows|-

(i) If he is absorbed in a post similar to that which he was formerly holding in the service of the merged territory of Pudukkottai, his seniority shall be determined by the date from which he was holding the former post continuously.

(ii) If he is absorbed in a post of higher scale of pay than that which he was formerly holding in the service, his seniority shall be determined by the date on which he joined the post under the Government of Tamil Nadu.

(iii) If he is absorbed in a post other than those specified in clauses (i) and (ii), which does not improve his cadre and scale of pay in the service, his seniority shall be determined on the basis of merit:

Provided further that the seniority in a category of the service of a person who immediately before the 1st November, 1956, was serving in connection with the affairs of the former State of Travancore-Cochin and who is allotted to the State of Tamil Nadu for absorption in a category of the service under the Government of Tamil Nadu be determined by the date from which he was continuously holding a post in the corresponding category in the former State of Travancore-Cochin; if the seniority of any such person and that of any other person in the said service or post has to be determined with reference to the same date, the older of the two shall be deemed to be senior.

Provided also that as on the date of coming into force of this proviso, all regular Judicial Magistrates of the First Class shall be placed according to their existing seniority below the order of seniority of the regular District Munsifs and below them all permanent Judicial Magistrates of the Second Class shall be placed according to their existing seniority and below them all the Judicial Magistrates of Second Class whose services have been regularised before the 31st January, 1976 shall be placed according to their existing seniority. All the Judicial Second Class Magistrates whose services

have been regularised during the year 1988 shall be placed below those Judicial Second Class Magistrates whose services were regularised prior to 31.1.1976 according to their existing seniority."

The writ petition was dismissed by the Single Judge on 5.10.1989. An appeal was preferred against the order of the learned Single Judge.

The appeal court held that the third proviso Rule 20 was valid, logical and reasonable. It further observed:-

"The mere fact that their services may be regularised in respect of some of them from such earlier dates of their temporary officiation under Rule 11(4) of the Rules is an irrelevant and extraneous consideration in so far as fixation of inter se seniority of the members of the service forming the integrated service is concerned. The inter se seniority shall have to be determined only by applying the principles contained in the **** proviso to Rule 20 of the Rules."

The appeal was accordingly dismissed.

Special Leave Petition (No. 10214/91) filed against the appellate order was dismissed by this Court on 5.12.94.

In the meantime, the Administrative Committee of the High Court comprising of the Chief Justice and two other learned Judges of the Madras High Court went into the question of fixing inter se seniority of District Munsif-cum-Judicial Magistrates and a provisional list was prepared which was circulated on 12.8.1994 and objections were invited to be filed on or before 24.8.1994. Subsequently, as requested by some of the Judicial Officers, the time for filing objections was extended till 12.9.1994. About 105 Judicial Officers submitted their objections/representations. These objections were placed before the Administrative Committee and duly taken into consideration. Ultimately, on 15.9.1994 the Administrative Committee after considering the various objections placed the recommendations before the Full Court on 23.9.1994. The following resolution was passed at the meeting of the Full Court:-

"It is resolved to overrule the objections raised by some of the officials and accept the seniority list, as approved by the Committee, subject to Thiru G. Mangapathy being placed at S.No. 76, Thiru G. Frederick Kanagaraj at S.No. 77, Thiru G. Namasivayam at S.No. 78 and Thiru J.D. Joseph at S.No. 79 and also subject to the decision of the Supreme Court in S.L.P. No. 10214 of 1991.

It is further resolved that the Registrar shall file an affidavit in S.L.P. No. 10214 of 1991 and produce the seniority list as determined as per this resolution following the judgement in W.A. No.

944 of 1989, which is subject matter of S.L.P. No. 10214 of 1991 and also produce the Resolutions of Administrative Committee No. III and the gist of objections filed by the District Munsifs, Which have been overruled."

The aforesaid facts relating to the proceedings of the Administrative Committee about the finalisation of the seniority list and the decision of the Full Court was stated by the Registrar of the Madras High Court by way of an additional counter affidavit filed in the pending Special Leave Petition No. 10214 of 1991. A Notification dated 5.10.1994 was also issued fixing the seniority list. This was published in the Tamil Nadu Government Gazette on 12.10.1994.

On 15.10.1994 a Writ petition No. 18121/94 was filed challenging the final list of seniority. On 19.10.1994 an interim order was passed by the learned Single Judge in the aforesaid Writ Petition, restraining the High Court from giving effect to the final list. Further Writ Petitions (nos. 18162 and 19938 of 1994) were filed on 22.10.1994. The entire group of Writ Petitions challenging the seniority list was heard by a Division Bench of the High Court which quashed the seniority list fixed by the Administrative Committee and the Full Court of the High Court by its judgement and order dated 7.2.1995. The Division Bench was of the view that the points in issue were substantially concluded by the judgement in the earlier Writ Petitions. It has been pointed out by the appellants that the High Court was clearly in error in coming to that conclusion because in the earlier Writ Petitions Particularly two points were considered:-

(a) The proviso to Rule 20 of Tamil Nadu State Judicial service Rules is arbitrary and violative of Articles 14 and 16 of the Constitution of India as the proviso is not based on the principle that in determining seniority, length of service in the particular category alone should be taken into account and those who have been holding the post of District Munsif for long period should not be denied the benefit of their service.

(b) That the temporary service rendered by the appellants as District Munsifs must be taken into consideration for fixing their inter se seniority as on 6.10.1988.

The Division Bench held that the power and authority of the employer to frame rules on seniority has to be recognised and the general principle of length of service in a particular grade is subject to specific rules and orders, if any, to the contrary. In the instant case, there were specific rules on the subject, namely, Rule 20 and the third proviso and the principle underlying the third proviso was necessitated to meet the extraordinary circumstances prevailing in the particular service in question and in the context of integration, there was nothing unreasonable or arbitrary in the formula contained in the third proviso to Rule 20. Therefore, the third proviso to Rule 20 was validly framed.

Therefore, the principal issue in the earlier writ petition was the validity of the third proviso to Rule 20. The challenge to the validity of this third proviso was rejected by the Division Bench. But the dispute in this appeal is not about the validity of the third proviso to Rule 20 or any other rule governing the service conditions of the Judicial Officers. The question in this case is whether the rules were correctly understood and implemented by the Administrative Committee or the Full Court by issuing the seniority list. Any other observation which was not germane to the dispute raised before the Division bench could not be treated as res judicata between the parties.

Moreover, the earlier writ petition was by a few persons and all the affected persons were not parties to that writ petition. That apart these writ petitions were filed before fixation of the Seniority List by the Administrative Committee or the Full Court. What is now under challenge is this Seniority List. the question of validity of this Seniority List could not have been an issue in the earlier writ petitions. The High Court was not right in invoking the principle of res judicata in the facts of this case. The High Court also overlooked the scope and effect of Rules 2(b)(i), 2(10) and 2(9) of Tamil Nadu State Judicial Service Rules:-

"Rule 2 (b)(i). 'Appointed to the service'

A person is to be appointed to the service when in accordance with these rules, he discharges for the first time the duties of the post borne on the cadre of the service or commences the probation prescribed for members thereof.

Rule 2(10). 'Member of the Service'

Member of the service means a person who has been appointed to the service and who has not retired, or resigned, had been removed or dismissed, been substantively transferred to another service or being discharged other than for want of a vacancy. He may be a probationer and approved probationer or a full member of the service.

Rule 2(9). 'Full member'

Full member of the service means a member of the service who has been appointed substantively to a permanent post borne on the cadre thereof."

The 75 recruits in 1988 including Respondents 4 to 14 became members of the service only after 31.10.88, namely, when they started discharging the duties of the post for the first time. They could not claim seniority over the persons who were already members of the service. The fact that they started discharging their duties after 31.10.1988 is not disputed.

The resolution of the Administrative Committee which was adopted by the Full Court Correctly states the position in law as under:-

"The expression "appointed to the Service" has been defined under Rule 2(b) of the Tamil Nadu State Judicial Service Rules, hereinafter

referred to as the Rules. According to the said definition, a person is said to be appointed to the service when , in accordance with the Rules, he discharges for the first time the duties of the post borne on the cadre of the service or commences the probation prescribed for the members thereof. It is from this date only he becomes a "member of the Service" as per the definition of that expression contained in Rule 2(10) of the Rules. Therefore, either the date of selection or the date of appointment cannot be considered as the date on which the appointee discharges for the first time the duties of the post to which he is appointed . It is only pursuant to the appointment, when the appointee reports to duty he can be said to have discharged his duties for the first time on the date he reports to duty and from that date only his period of probation commences. However, this will not affect the inter-se-seniority of the officers appointed under the same notification "of the Public Service Commission which make the selection. We are not now concerned with the inter-se- seniority of the candidates selected by the Public Service Commission under its notification dt. 21.9.1988, but we are concerned with the determination of the seniority between District Munsif-cum-Judicial Magistrates who came to be selected by the Public Service Commission under its Notification dt. 21.9.1988. The proviso to Rule 20 also does not give them seniority over the District Munsif-cum-Judicial Magistrates who were in service before their appointment. It provides for fixation of seniority as specified below:-

- (i) Regular District Munsifs.
- (ii) Regular Judicial First Class Magistrates.
- (iii) Permanent Judicial Second Class Magistrates.
- (iv) Regularised Judicial Second Class Magistrates whose services have been regularised before 31.1.1976.
- (v) Regularised Judicial Second Class Magistrates whose services have been regularised in the year 1988.

Out of the 128 candidates selected by the Public Service Commission

under its notification dated 21.9.88, 70 were recruited from the Bar and 53 were those who were already in Magisterial Service and whose services came to be integrated on 6.10.1988, and the remaining 5 were selected by way of transfer from other non-magisterial services. Thus, out of the 128 candidates selected, 53 candidates were already in service as Judicial Second Class Magistrates and their services came to be integrated in the cadre of District Munsif-cum-Judicial Magistrates under the order dated 6.10.1988. Thus, they became District Munsif-cum-Judicial Magistrates on 6.10.1988 and commenced to discharge their duties as such from 6.10.1988, as per the definition of the expression "appointed to the Service", referred to above. Consequently, they have to be ranked above the other 75 candidates selected by the Public Service Commission under its notification dated 21.9.1988 and who joined the service for the first time much later to 6.10.1988, i.e., during November, 1988."

According to the petitioners before the High Court who are now the respondents in this appeal, the judgement of the Division Bench of the Madras High Court must be upheld. Their contention is that the Tamil Nadu Public Service Commission selected 128 candidates as per the ratio of 11:9 prescribed by the Tamil Nadu Judicial Service Rules 1955. Out of the 128, 70 were from the Bar and 58 were from Feeder categories, that is Judicial Magistrate I Class and II Class and Non Magisterial cadre. The selection list was published by notification dated 7.6.1988. The above selectees were appointed in G.O. Ms. 2064 Home dt. 21.9.1988. In this G.O. the State Government requested the High Court in para 9 to give posting orders to the persons appointed as District Munsifs working temporarily. Before issuing respective posting orders to the individuals who were appointed as District Munsifs in the substantive vacancies, on the recommendation of the High Court, Madras, the state Govt. issued G.O. Ms. 2196 Home dt. 6.10.1988, upgrading the posts of Judicial Second Class Magistrates to Judicial First Class Magistrates and integrating them with District Munsifs. This G.O. had amended the Tamil Nadu State Judicial Service Rules by introducing proviso 3 to Rule 20 providing for the fixation of inter-se-seniority between the regular District Munsifs and the upgraded Magistrates, who could not get selected as District Munsifs in the selection by Tamil Nadu Public Service Commission, below the Regular District Munsifs selected and appointed for the substantial vacancies in the year 1988.

On behalf of the appellants, it has been urged that prior to 6.10.1988 when Tamil Nadu State Judicial Service Rules came into force by G.O.M. No. 1053 dated May 10, 1988, 182 temporary Judicial Second Class Magistrates were regularised. Similarly by subsequent G.O.M. No. 1269 dated 2.6.1988 services of 34 temporary Judicial Second Class Magistrates were regularised. Although on 21.9.1988, the

State Government approved a list of 125 candidates selected by the Tamil Nadu Public Service Commission for the post of District Munsifs, they were not appointed as District Munsifs. All these direct recruits whose selection by Tamil Nadu Public Service Commission was approved by the State Government on 21.9.1988, actually joined service only on 3.11.1988 which was after the appellants had acquired the status of District Munsifs when on 6.10.1988 Tamil Nadu State Judicial Service Rules were amended. Amongst them, 34 persons were already acting as District Munsifs on 6.10.1988 and the rest of them became District Munsifs by Virtue of integration brought into force on 6.10.1988. It has been submitted that under Rule 2(b) "Appointment to the service" is only when a person discharges for the first time the duties of the post borne on the cadre of the service and under Rule 2(10) "Member of the Service". It is thus clear that the direct recruits though selected by the Tamil Nadu Public Service Commissions for the post of District Munsif and approved by the state Government on 21.10.1988 were "appointed to the service" only on 3.11.1988 and at that point of time, all the appellants were already District Munsifs in view of the integration brought about by the amended Tamil Nadu State Judicial Service Rules.

We are of the view that the contentions of the appellants must be upheld. The Division Bench took the view that the third proviso to Rule 20 has to be taken into consideration for the purpose of determination of seniority, but in doing so overlooked Rule 2(b) and Rule 2(10). The question of res judicata cannot arise in this case because under the earlier writ petition, validity of proviso (3) to Rule 20 was under challenge was repelled by the earlier Division Bench, the Madras High Court took up the question of determination of seniority of the judicial officers in accordance with the rules. What was under challenge in the second batch of writ petitions was the determination of seniority by the Full Court. The language of Rules 2 (b) and 2 (10) is clear. The direct recruits were "appointed to service" only on 3.11.1988. It is only from this date that the direct recruits started discharging the duties for the first time. These direct recruits cannot be placed above the persons who were already discharging functions as District Munsifs on regular basis on and from 8.10.1988 when the Tamil Nadu Judicial Service Rules were amended to bring about integration of the Services. 34 persons were already acting as District Munsifs even before 6.10.1988. There is nothing in Rule 20 or the third proviso thereto which takes away the seniority of the persons who were "appointed to the service" before 3.11.1988.

In the affidavit filed by the Registrar of the High Court in Writ Petition No. 17737 of 1994 and Writ Petition No. 17738 of 1994, the principle followed by the Full Court in determining the seniority was explained which has been set out earlier in the judgment. The Seniority List was finalised after inviting objections, and making some amendments pursuant to the objections.

We are of the view that neither in principle nor in practice has the Full Court committed any error of law.

The appeals are allowed. The common judgment dated 7.2.1995 disposing of Writ Petitions Nos. 17737/94, 17738/94, 18121/94 of the High Court is set aside.

There will be no case as to costs.

CIVIL APPEAL NO. 2110 OF 1997

[ARISING OUT OF S.L.P. (C)

NO. 6584 OF 1995 (CC NO. 3647).]

I.A. allowed.

Leave granted.

In view of our judgment in Civil Appeal Nos. 2106-09 of 1997 (Arising out of S.L.P. (C) Nos. 11111-11114 of 1995) the above appeal is also allowed. There will be no order as to costs.

JUDIS