

HIGH COURT OF JUDICATURE AT ALLAHABAD

The Uttar Pradesh Higher Judicial Service – 2023

Suitability Test

NOTICE

No. 166 /S & A Cell/2026

Dated : September 25 , 2026

**Subject : Notice in furtherance to earlier Notice No. 163 / S & A
Cell dated 25.09.2026 regarding the Suitability Test of
U. P. Higher Judicial Service – 2023**

The order dated 25.09.2026 of this Hon'ble Court passed in Writ - A
No. 14469 of 2026 titled Ashutosh Tiwari and 39 Ors. vs. State of Uttar
Pradesh and Anr. is annexed herewith for information.

Sd/-

**Pawan Kumar Sharma, HJS,
Registrar (J) (Computer)
I/c Selection & Appointment/Seniority**

for Be
25/9-2027
D.R. (LS2A)



HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A No. - 14469 of 2026

Ashutosh Tiwari And 39 Others

.....Petitioner(s)

Versus

State Of Uttar Pradesh And Another

.....Respondent(s)

Counsel for Petitioner(s)	:	Siddharth Khare, Sr. Advocate
Counsel for Respondent(s)	:	Ashish Mishra, C.S.C.

Court No. - 21

**HON'BLE ARINDAM SINHA, J.
HON'BLE SATYA VEER SINGH, J.**

1. Pursuant to the writ petition moved and order made on 23rd September, 2026, the High Court Administration has filed affidavit of date on advance copy served. Mr. Shashi Nandan, learned senior advocate assisted by Mr. Chandan Sharma, learned advocate appear on behalf of the administration (respondent no. 2). Mr. Nandan draws attention to paragraph 8 in the counter carrying a table showing cadre strength in the senior division. He stresses on suitability at 166 officers and vacant posts at 17, reckoned from cut off date 31st December, 2024. He submits, keeping that in mind three resolutions taken by the concerned committee of the High Court require perusal. The resolutions are dated 23rd January, 2023, 8th May, 2026 and 5th August, 2026. He submits, first resolution was, inter-alia, determination of the cut off date for direct recruitment. The exercise was duly done for it to be fixed at 31st December, 2024 for reckoning of vacancies as on that date and to arise in following two years.

2. The High Court administration thereafter consistently took steps for the purpose of recruitment by promotion. By resolution dated 8th May, 2026 cut off date for determining qualifying service of the officers in the cadre to take the accelerated promotion test also was determined to be as on 31st December, 2024. Resolution dated 5th August, 2026 was reiteration of the cut off date for the officers in the cadre, who would be eligible to take the suitability test for determination of merit, to obtain promotion. In this context he relies on article 233 in the Constitution. He lays emphasis that appointment of District Judges are to be made by the Governor in consultation with the High Court. The High Court had recommended qualifying service for candidates for promotion long before. After the recommendation was made the deliberations of cut off date for the recruitment process undertaken happened and the resolutions taken. There was delay in notifying the amendment as on 4th July,

2025. He relies on judgment of the Supreme Court in **Dr. Kavita Kamboj vs. High Court of Punjab and Haryana** reported in **2024 (7) SCC 103**, paragraph 7. He submits, there was declaration of law that where the rules do not provide, the High Court can by resolution act. Fixing the cut off date to apply to all feeders for appointment as District Judge necessarily has to be uniform. The circumstances warranted action of the High Court on the administrative side, by resolutions duly taken as filling up the gap in the meantime the rule was not notified. He submits, no interference is warranted. The writ petition be dismissed.

3. Mr. Ashok Khare, learned senior advocate assisted by Mr. Siddharth Khare, learned advocate appear for petitioners. Mr. Ashok Khare relies on judgment of the Supreme Court in **Harshit Harish Jain vs. State of Maharashtra** reported in **2025 (3) SCC 365**, paragraphs 16, 17, 18. He submits, on parity of reasoning where there is application of limitation, it has to be reckoned from date of the amendment. As on that date (4th July, 2025), all his clients had the period of qualifying service, of 5 years. By causing a reckoning from a date prior to the requirement of the qualifying service brought in by the amendment, his clients have been rendered ineligible. He reiterates, on being 18 days short of the period. His clients have no dispute on the number of vacancies. The cut off date needs to be interfered with in allowing his clients to compete on merit, for the promotion. He seeks interference.

4. Mr. Shashikant Shukla, learned senior advocate assisted by Mr. Rajiv Trivedi, learned advocate appear and submit, their clients have filed writ petition as similarly placed with petitioners. It has been filed today.

5. Mr. Pankaj Govil, learned advocate appears and submits, his client is also similarly placed with petitioners and has filed petition. On query we are told, the prospective petitioners had the qualifying service as on date of the amendment.

6. Complex questions of law are involved. Submission on behalf of administration has also been that duly undertaken administrative exercise cannot be undone by shifting the cut off date. However, we see that in fixation of the cut off date, earlier cut off date fixed was recalled as would appear from minute dated 23rd January, 2023. Last paragraph from the resolution (dated 23rd January, 2023) is reproduced below.

*"Thus, the Committee resolves to recall its resolution dated **24.11.2022 with regard to determination of vacancies for recruitment to U.P. Higher Judicial Service 2022**. It is further resolved that the vacancies occurring as on date and likely to occur*

upto 31.12.2024 be called for from Joint Registrar (J)(Services) and be placed before the Committee in the next meeting for determining the vacancies for UPHJS-2023. The necessary steps be taken immediately so as to ensure compliance with the directions of Apex Court in Malik Mazhar Sultan's case in letter and spirit."

(emphasis supplied)

We have something before us to show that there may be an exigency that requires change of cut off date. We do not say at this stage the exigency exists but we have to deal with the controversy on retrospective application of the requirement by the amended rule, applied to petitioners from a date preceding notification of the amendment. Mr. Nandan submits, any interference may also lead to postponement of the test, scheduled for Sunday (27th September, 2026).

7. We have to do the best we can. There will be interim direction to allow petitioners and all those who have the qualifying service as on 4th July, 2025 to be allowed to take the test scheduled on Sunday (27th September, 2026). This direction is without prejudice to contention of the High Court Administration and taking the test will not accrue any equity in favour of those, who do it as empowered by this direction.

8. Mr. Piyush Shukla, learned advocate, Standing Counsel appears for State. Rejoinder, if any, will be accepted on adjourned date upon advance copy served. The writ petitions filed in the meantime, upon service will entitle the High Court Administration to deal with them on counters to be accepted on adjourned date, upon advance copy served.

9. List on 9th October, 2026, as fresh.

September 25, 2026
Jaswant

(Arindam Sinha,J.)

(Satya Veer Singh,J.)