SUPREME COURT OF INDIA

Brij Mohan Lal

Vs.

Union of India

Transferred Case (Civil) No.22 of 2001

(A.K. Patnaik and Swatanter Kumar JJ.)

19.04.2012

JUDGMENT

SWATANTER KUMAR, J.

1. Leave granted in the all the above SLPs..

2. The Writ Petition being CWP No. 5740 of 2001 titled Brij Mohan Lal v. Union of India and Ors.was filed in the High Court of Punjab and Haryana at Chandigarh under Article 226/227 of the Constitution of India praying for issuance of a writ in the nature of quo warranto and prohibition, requiring the respondents to stop the scheme and policy of appointment of the retired District and Sessions Judges as ad hoc Judges of the Fast Track Courts (hereinafter referred to as the b FTCsb) in the State Judicial Services. It was also prayed in that petition that in order to maintain the standards of judicial system, the scheme of appointing the retired Judges, as opposed to the regular appointment of Judges to the posts of District and Sessions Judges from the members of the Bar or from the lower judiciary, should be given up. The principal submission made in the writ petition was that the constitutional scheme contained under Articles 233 to 235 read with Articles 308 and 309 of the Constitution do not contemplate and permit appointment of retired judges as ad hoc District and Sessions Judges. Even otherwise, there is no constitutional provision which empowers the authorities concerned to make such appointments. The purpose of this petition obviously was to ensure that only the members of the Bar are appointed by direct recruitment to the post of ad hoc District and Sessions Judges.

3. A writ petition being Writ Petition No.8903 of 2001 titled Bar Council of Andhra Pradesh v. Union of India also came to be filed before the High Court of Andhra Pradesh at Hyderabad praying that the Court may issue appropriate order, writ or direction declaring that constitution of the FTCs and 32 presiding officers in the State of Andhra Pradesh and the G.O.M. Nos. 38 Law (LA J. Courts.C) Department, dated 27th March, 2001 and G.O. Rt. No. 412, Law (LA J. SC.F) Department dated 27th March, 2001 was unconstitutional and consequently should be set aside.

4. The Union of India filed two transfer petitions before this Court being Transfer Petition Nos.331-332 of 2001 for transfer of both the Brij Mohan Lal case and the Bar Council of Andhra Pradesh case (supra) from the High Courts of Punjab and Haryana and Andhra Pradesh respectively, to the Supreme Court. These petitions came to be allowed vide order dated 3rd August, 2001. By the same order, a Bench of this Court even permitted the intervention by other parties who might have filed similar petitions in different High Courts of the country.

5. Both these writ petitions upon transfer to this Court were numbered as Transferred Cases Nos. 22 and 23 of 2001, respectively.

6. On 6th May, 2002, a detailed order was passed by this Court in Transferred Case No.22 of 2001 and the directions issued therein read as under:

> 1. The first preference for appointment of judges of the Fast Track Courts is to be given by ad-hoc promotions from amongst eligible judicial officers. While giving such promotion, the High Court shall follow the procedures in force in the matter of promotion to such posts in Superior/Higher Judicial Services.
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> 2. The second preference in appointments to Fast Track Courts shall be given to retired judges who have good service records with no adverse comments in their ACRs, so far as judicial acumen, reputation regarding honesty, integrity and character are concerned. Those who were not given the benefit of two years extension of the age of superannuation, shall not be considered for appointment. It should be ensured that they satisfy the conditions laid down in Article 233(2) and 309 of the Constitution. The concerned High Court shall take a decision with regard to the minimum-maximum age of eligibility to ensure that they are physically fit for the work in Fast Track Courts.

3. No Judicial Officer who was dismissed or removed or compulsorily retired or made to seek retirement shall be considered for appointment under the Scheme. Judicial Officers who have sought voluntary retirement after initiation of Departmental proceedings/inquiry shall not be considered for appointment.

4. The third preference shall be given to members of the Bar for direct appointment in these Courts. They should be preferably in the age group of 35-45 years, so that they could aspire to continue against the regular posts if the Fast Track Courts cease to function. The question of their continuance in service shall be reviewed periodically by the High Court based on their performance. They may be absorbed in regular vacancies, if subsequent recruitment takes place and their performance in the Fast Track Courts is found satisfactory. For the initial selection, the High Court shall adopt such methods of selection as are normally followed for selection of members of the Bar as direct recruits to the Superior/Higher Judicial Services.

5. Overall preference for appointment in Fast Track Courts shall be given to eligible officers who are on the verge of retirement subject to they being physically fit.

6. The recommendation for selection shall be made by a Committee of at least three Judges of the High Court, constituted by the Chief Justice of the concerned High Court in this regard. The final decision in the matter shall be taken by the Full Court of the High Court.

7. After ad-hoc promotion of judicial officers to the Fast Track Courts, the consequential vacancies shall be filled up immediately by organizing a special recruitment drive. Steps should be taken in advance to initiate process for selection to fill up these vacancies much before the judicial officers are promoted to the Fast Track Courts, so that vacancies may not be generated at the lower levels of the subordinate judiciary. The High Court and the State Government concerned shall take prompt steps to fill up the consequential as well as existing vacancies in the subordinate Courts on priority basis. Concerned State Government shall take necessary directions within a month from the receipt of the recommendations made by the High Court.

8. Priority shall be given by the Fast Track Courts for disposal of those Sessions cases which are pending for the longest period of time, and/or those

involving under-trials. Similar shall be the approach for Civil cases i.e. old cases shall be given priority.

9. While the staff of a regular Court of Additional District and Sessions Judge includes a Sessions Clerk and an office Peon, work in Fast Track Courts is reported to be adversely affected due to shortage of staff as compared to regular Courts performing same or similar functions. When single Orderly or Clerk proceeds on leave, work in Fast Track Courts gets held up. The staff earmarked for each such Court are a Peshkar/ Superintendent, a Stenographer and an Orderly. If the staff is inadequate, the High Court and the State Government shall take appropriate decision to appoint additional staff who can be accommodated within the savings out of the existing allocations by the Central Government.

10. Provisions for the appointment of Public Prosecutor and Process Server have not been made under the Fast Track Courts Scheme. A Public Prosecutor is necessary for effective functioning of the Fast Track Courts. Therefore, a Public Prosecutor may be earmarked for each such Court and the expenses for the same shall be borne out of the allocation under the head b Fast Track Courtsb . Process service shall be done through the existing mechanism.

11. A State Level Empowered Committee headed by the Chief Secretary of the State shall monitor the setting up of earmarked number of Fast Track Courts and smooth functioning of such Courts in each State, as per the guidelines already issued by the Government of India.

12. The State Governments shall utilize the funds allocated under the Fast Track Courts Scheme promptly and will not withhold any such funds or divert them to other uses. They shall send the utilization certificates from time to time to the Central Government, who shall ensure immediate release of funds to the State Governments on receipt of required utilization certificates.

13. At least one Administrative Judge shall be nominated in each High Court to monitor the disposal of cases by Fast Track Courts and to resolve the difficulties and shortcomings, if any, with the administrative support and cooperation of the concerned State Government. State Government shall ensure requisite cooperation to the Administrative Judge.

14. No right will be conferred on Judicial Officers in service for claiming any regular promotion on the basis of his/her appointment on ad-hoc basis under the Scheme. The service rendered in Fast Track Courts will be deemed as service rendered in the parent cadre. In case any Judicial Officer is promoted to higher grade in the parent cadre during his tenure in Fast Track Courts, the service rendered in Fast Track Courts will be deemed to be service in such higher grade.

15. The retired Judicial Officers who are appointed under the Scheme shall be entitled to pay and allowances equivalent to the pay and allowance they were drawing at the time of their retirement, minus total amount of pension drawn/payable as per rules.

16. Persons appointed under the Scheme shall be governed, for the purpose of leave, reimbursement of medical expenses, TA/DA and conduct rules and such other service benefits, by the rules and regulations which are applicable to the members of the Judicial Services of the State of equivalent status.

17. The concerned High Court shall periodically review the functioning of the Fast Track Courts and in case of any deficiencies and/or shortcoming, take immediate remedial measures, taking into account views of the Administrative Judge nominated.

18. The High Court and the State Government shall ensure that there exists no vacancy so far as the Fast Track Courts are concerned, and necessary steps in that regard shall be taken within three months from today. In other words, steps should be taken to set up all the Fast Track Courts within the stipulated time.

7. As is evident from the above directions, the appointments to FTCs were to be made on ad hoc basis. Primarily, there were three sources of recruitment, firstly by promotion from amongst the eligible judicial officers, secondly by appointment of retired judges with good service records and lastly by direct recruitment from amongst the members of the Bar between the age group of 35 to 45 years. In the last category, the selection was to be made in the manner similar to that of direct recruitment to the Higher Judicial Services. It was also considered desirable that the eligible officers on the verge of retirement, be appointed with overall preference, subject to their physical fitness and as recommended by a Committee of at least three judges, constituted by the Chief Justice of the concerned High Court and as approved by the Full Court of that High Court. This Court had

foreseen the possibility of the closure of the Fast Track Courts Scheme (FTC Scheme). It directed that the service in the FTCs will be deemed as service of promoted Judicial Officers rendered in the parent cadre. However, no right would accrue to such recruits promoted/posted on ad hoc basis from the lower judiciary for regular promotion on the basis of such appointment. For direct recruits, continuation in service will be dependant on review by the High Court and there could be possibility of absorption in the regular vacancy if their performance was found to be satisfactory. Besides these two aspects, the directions also dealt with the management of FTCs, timely and appropriate utilization of funds and monitoring of smooth functioning of the FTCs by the State Level Empowered Committee headed by the Chief Secretary of the State; the disposal of cases was to be monitored by one Administrative Judge, nominated by the High Court. It was expected that each FTC will at least have one Public Prosecutor earmarked. This was the sum and substance of the directions issued by this Court while disposing of both these transferred cases. However, this Court still directed regular filing of quarterly status reports before this Court and held that the matter would remain alive to that extent.

8. The quarterly status reports have been filed from time to time about the functioning of the FTCs in the entire country. In the meanwhile, some writ petitions came to be filed directly before this Court under Article 32 of the Constitution and some special leave petitions were also filed against various judgments of different High Courts. Thus, it will be useful for us to at least take a note of all the cases which are pending before this Court.

9. As opposed to the prayer made in the cases of Brij Mohan Lal (supra) and Bar Council of Andhra Pradesh (supra), two separate writ petitions were filed in this Court being Writ Petition (Civil) No. 152 of 2011, All India Judgesb Ors. and Writ Petition (Civil) No. 140 of 2005, All Media Journalists Association v. Union of India with the prayer that the Court should issue appropriate writ or direction to the respondents to extend the FTC Scheme for another five years or even till 31.03.2015 and to release the necessary funds for that purpose.

10. It was also prayed in the latter petition that five yearsb time to utilize the funds should be considered from the date of actual starting of the first FTC and also that a Committee should be appointed to make suggestions with respect to further strengthening the FTC Scheme to get better results.

11. In both these writ petitions, the prayer was similar that the FTC Scheme should be continued for a further period of five years, from 2005 in one and from 2011 in the other.

12. It is the case of the petitioners in these writ petitions that the FTC Scheme has proven a success in Tamil Nadu and even in other States and, therefore, the extension of the FTC Scheme is necessary. Another issue that has been raised in these petitions is that the persons who were appointed as direct recruits from the Bar were, at the relevant time, in the age group of 35-45 years and while serving in the FTCs have become overage for re-employment in permanent posts. Also, as per the Bar Council of India Rules (Rule 7), they would now be ineligible to practice in any Court lower than the High Court. Therefore, this would seriously jeopardize the interests of the persons appointed as ad hoc judges of the FTCs and it would be an additional and appropriate reason for further continuing the FTC Scheme.

13. On somewhat similar lines is another writ petition filed in this Court, being Writ Petition (Civil) No. 28 of 2011 titled Ors., wherein the petitioner has raised a challenge to a part of the letter dated 11th March, 2010. Vide this letter, though the extension of the petitioner as FTC Judge was recommended by the Chief Justice of the High Court of Punjab and Haryana, yet it was said that if the recommendation to continue the FTC Scheme is accepted, the services of the officer would be liable to be terminated only on 7th March, 2011 and if the scheme was discontinued, he would be terminated on 31st March, 2010 itself.

14. In that very Writ Petition, challenge was also raised to the decision of the Union of India to discontinue the FTC Scheme beyond 31st March, 2011. This decision was said to be arbitrary, discriminatory and violative of the fundamental rights under Article 21 of the Constitution.

15. The appointment of the judicial officers in that case had been made under Rules 8 and 9 of the Punjab Superior Judicial Service Rules, 1963 and selections were made under Rule 5 of the Haryana Additional District and Sessions Judges Ad hoc Services Rules, 2001. The petitioners, therefore, claimed a right to the post and prayed that the FTC Scheme be continued.

16. There are a bunch of Special Leave Petitions which are directed against the judgments of the Gujarat High Court. All the petitioners before the High Court were direct recruits from the Bar and were appointed to the posts of ad hoc Additional District Judges under the FTC Scheme on different dates, all between

2002 to 2004. The term of some of them had initially been extended but later their services were terminated. For example, vide order dated 25th September, 2009 their services were extended but vide order dated 14th December, 2009, services of the same officers stood terminated. For either of these orders, one hardly finds any reason recorded on the file.

17. As per the facts noticed by the High Court in the impugned judgment, services of 53 FTC Judges came to be terminated. By orders dated 12th October, 2006 services of six Judicial Officers were terminated on the ground of b having not been found suitableb , by orders dated 8th February, 2007, services of seven other officers were terminated on the same ground, by orders dated 28th April, 2008, the services of 2 FTC Judges were discontinued again on the same ground. Still vide order dated 25th September, 2009, the services of 12 directly recruited FTC ad hoc Additional District Judges were terminated by the State with effect from 30th September, 2009, on the recommendation of the High Court. Vide order dated 8th October, 2009, services of another 11 Judicial Officers working under the FTC Scheme were terminated by the State on the recommendation of the High Court, w.e.f 15th October, 2009 and, lastly, vide order dated 14th December, 2009, services of 13 officers were terminated on the recommendation of the High Court on the ground of b having not been found suitableb . By these orders, services of only the direct recruits were terminated. Out of the 66 persons appointed as direct recruits, some persons had either left or died and only these 53 remained in service. The High Court, vide its judgment dated 11th August, 2010 dismissed the writ petition as far as 18 officers were concerned, returning a finding that in the face of the service record of these officers, the recommendation of the High Court and the consequent order issued by the State Government cannot be faulted with. With regard to the six Judicial Officers whose services were terminated vide order dated 12th October, 2006, the High Court came to the conclusion that they had no right to the post and those petitioners could not derive any benefit from the provisions of Article 311(2) of the Constitution of India and declined to interfere with the order of termination. Thus, only with respect to 12 officers did the High Court remand the matter to the administrative side of the High Court for reconsideration with reference to the service records of these officers. The High Court also noticed that certain complaints which had been received against these officers had been dropped, after conducting fact finding enquiry or because the allegations were found to be vague. For these reasons, the High Court concluded that the decision on the administrative side of the High Court was not based on record and was prima facie illogical and, therefore, referred the matter back to the High Court. Rest of the writ petitions also came to be dismissed by the High Court.

18. In furtherance to the judgment of the High Court, the Full Court of the Gujarat High Court reconsidered the matter on the administrative side. It found that only the cases of six petitioners deserved favourable reconsideration, while the remaining six were without merit and its earlier decision, in recommending termination of their services needed to be reiterated. The six officers who were dismissed being dissatisfied with the order of the High Court as communicated to them by the Principal District Judge vide order dated 5th March, 2011, again approached the Gujarat High Court on its judicial side, praying for quashing the said order and continuation of their services under the FTC Scheme. When these writ petitions came up before the High Court for hearing, the argument was that there was no adverse remarks against these officers and, therefore, they were entitled to continue in employment on the basis of the decision of this Court in the case of Smt. Madhumita Das Ors. v. State of Orissa Ors. [2008 AIR SCW 4274], wherein this Court had held that yardstick for assessing the performance of direct recruit FTC Judges on the one hand and the members of the regular judicial services on the other, could not be different as they discharge similar functions.

19. The High Court, while declining the relief prayed for, concluded as under:

10. Having heard the learned counsel for the parties, as we find that the central Government Scheme for Fast Track Court has come to an end from 1.4.2011 and the petitioners cannot be accommodated against the regular post in the regular cadre of the District Judges, including the 100 Courts of Additional District Judges created for one year in the regular cadre, which are to be filled up on the basis of a separate rules, we are of the view that no relief can be granted in favour of the petitioners, the scheme of Fast Track Court having abolished.

11. So far as their appointment in the regular service post of the Additional District Judge including 100 posts of Additional District Judge is concerned, we may only mention that as per the earlier judgment rendered in the case of the petitioners dated 11.8.2010 in SCA No.148 of 2010 and analogous cases, it having observed that the petitioners cannot be absorbed in the regular service of the State and in absence of any provision made in the Gujarat Judicial Services Rules for appointment by way of absorption from amongst the Fast Track Court Judge, as they cannot be absorbed, we hold that the petitioners cannot even claim straightway absorption in the regular service of Gujarat Judicial Services including the temporary posts of Additional District Judges created by resolution dated 30.3.2011. However, as per the decision of the Supreme Court in the case of Brij Mohanlal (Supra) (AIR 2002 SC 2096), the petitioners may apply for appointment

by selection, if normal rule is followed for selection of members from Bar as direct recruits to the Superior/Higher Judicial services, subject to their eligibility.

20. Thus, the petitioners whose writ petitions were originally dismissed by the Gujarat High Court vide its judgment dated 11th August, 2010 and those whose petitions were subsequently dismissed vide judgment dated 21st June, 2011, have challenged the same before this Court in the above- mentioned Special Leave Petitions.

21. Now, we may notice another group of cases where the prayer made is diametrically opposite to that made in the case of Brij Mohan Lal (supra). The petitioners in Writ Petition (C) No.261 of 2008 titled Sovan Kumar Dash Ors. v. State of Orissa Anr. have approached this Court directly under Article 32 of the Constitution with a prayer that they should be absorbed against vacant posts in the regular cadre as per the directions contained in Brij Mohan Lal Case (supra). They further made a prayer that the notification dated 11th April, 2008 issued by the State of Orissa calling for applications from eligible candidates for direct recruitment from the Bar to the cadre of the District Judge be quashed. These petitioners have taken the plea that they have already crossed the eligibility condition of age. Similarly, another set of petitioners have also filed Writ Petition (C) No.250 of 2008 titled Madhumita Das Ors v. State of Orissa Ors. The petitioners therein were working as FTC Judges. While invoking the writ jurisdiction of this Court under Article 32 of the Constitution, they prayed that they be absorbed against the regular vacancies of the State cadre of District Judges. They further prayed that the abovementioned advertisement dated 11th April, 2008, inviting applications for all the posts of District Judges including the posts against which the petitioners were working, be quashed. It is the contention of the petitioners in this petition that they have already attained an age more than the higher age limit prescribed while working as ad hoc Judges of the FTCs. Also, while judging the performance of the FTC Judges, the condition of completion of eight sessions trials per month cannot be imposed as it has not so been imposed against the judges who are forming the regular cadre of the State services.

22. In this petition, no final order has been passed by this Court. However, at the interim stage, when the Writ Petition came up for hearing on 11th June, 2008, this Court passed the following order:

> Issue notice.

Challenge in these writ petitions is to the Advertisement No.1 of 2008 issued by the Orissa High Court. The petitioners have been selected to function as ad hoc Additional District Judges in terms of the judgment of this Court in Brij Mohan Lal vs. Union of India and Ors. [(2002) 5 SCC 1]. It is their grievance that 16 posts advertised also include the 9 posts presently held by the petitioners in the two writ petitions. It is pointed out that the eligibility criterion fixed in the advertisement rules out the present petitioners. Firstly, some of them are above the maximum age of 45 years and secondly, being Judicial Officers, they cannot apply for posts advertised for members of the Bar. It is also pointed out that in terms of what has been stated by this Court in Brij Mohanb s case (supra), at paragraph 10, direction No.4, they are to be continued (in the ad hoc posts) belonging to Fast Track Courts, and, thereafter, in respect of regular posts available, after the Fast Track Courts cease to function. Their cases are to be considered subject to their performance being found satisfactory. Their stand is that they have been continued from time to time. Obviously, their performance was found to be satisfactory. Presently, we are not concerned with that question which may have relevance only at the time of considering their absorption in respect of the regular vacancies. It is submitted by Mr. Uday U. Lalit, learned senior counsel that while assessing the performance, there cannot be different yardsticks, i.e. same parameters have to be adopted while judging the performance of the petitioners viz-a-viz those which are recruited from another source, i.e. from amongst the Judicial Officers. We find substance in this plea also. Therefore, we direct that the process of selection pursuant to the Advertisement No.1 of 2008 may continue but that shall only be in respect of 7 posts, and not in respect of 9 posts presently held by the petitioners. It is pointed out that the High Court, after the advertisement has been issued has issued certain letters regarding the non-disposal of adequate number of cases. The petitioners have given reasons as to why there could not be adequate disposal of the cases. Needless to say, the High Court shall consider the stand taken in the responses while judging their suitability for appointment on regular basis. The petitioners shall continue to hold the posts until further orders, for which necessary orders shall be passed by the High Court. It is made clear that as and when regular vacancies arise, cases of the petitioners shall be duly considered. There shall not be any need for them to appear in any examination meant for recruitment to the cadre of District Judge.

23. As is evident from the above order, the cases of the petitioners were directed to be considered as and when the regular vacancies arose and they did not need to appear in any examination meant for recruitment to that post. This order of the Court has been relied upon by all the petitioners in different matters before this Court who are or were working as FTC Judges and are praying for their regularization in the service. This was an interim order subject to the final order that the Court would pass while disposing of the writ petition finally.

24. Writ Petition (C) No. 254 of 2008 titled Prakash Kumar Rath v. State of Orissa is again a petition invoking the writ jurisdiction of this Court under Article 32 of the Constitution, wherein the petitionerb s case is that he had been selected as per the Judicial Services Rules of the State but had later been appointed as ad hoc Additional District and Sessions Judge to the FTC. Having been selected in the regular cadre and as per the regular process, his services could not be dispensed with and the communication dated 4th April, 2008 and the advertisement dated 11th April, 2008 seeking to fill up vacancies in the regular cadre, are liable to be quashed and the petitioner is entitled to be absorbed regularly in the State service cadre.

25. Writ Petition (C) No. 203 of 2010 titled M.K. Sharma Ors. v. Rajasthan High Court Anr. involves the cases where the members of the regular service cadre, i.e., Civil Judge, Senior Division, had been promoted as ad hoc FTC Judges and had worked for more than five years in that post. The State of Rajasthan issued a Notification dated 15th April, 2010 inviting applications for promotion to 22 posts in the cadre of District Judges, by limited competitive examination, in accordance with the provisions of the Rajasthan Judicial Services Rules, 2010. The respondents, vide this notification, required the petitioners also to appear in the limited competitive examination for promotion to the cadre. According to the petitioners, they had already been promoted in accordance with the 2010 Rules as Additional District Judges and, therefore, they are not liable to take the limited competitive examination. It is the case of the petitioners that they be treated as regular members of the State Judicial Service and be given equal treatment with other Judicial Officers as in the case of Smt. Madhumita Das (supra).

26. Civil Appeal No. 1276 of 2005 titled Smt. G.V.N. Bharatha Laxmi Ors. v. State of Andhra Pradesh Ors. is an application questioning the correctness of the judgment of the High Court of Andhra Pradesh dated 13th July, 2004, passed in Writ Petition (C) No.11273 of 2004, wherein the High Court declined to grant the prayer of the petitioners, who were appointed as the Presiding Officers in the FTC

under the Andhra Pradesh State Higher Judicial Service Special Rules for Ad hoc Appointments, 2001, that they be granted absorption in the regular cadre of District and Sessions Judges created in the State of Andhra Pradesh. The plea of the petitioners was that they had been appointed under the Rules and have gained sufficient experience as ad hoc Judges under the FTC Scheme and are liable to be regularized in that scale.

27. It is appropriate for us to refer to the Rules before we venture to discuss the merits of various cases. It is undisputed that there are Rules in place in all the States, with which we are concerned, for appointment to the Superior Judicial Services, as for example, the Punjab Superior Judicial Services Rules, 2007 in the State of Punjab. Besides these Rules, some of the States like, Andhra Pradesh, Gujarat, Orissa and Jharkhand had enacted separate sets of Rules for appointment as ad hoc Judges under the FTC Scheme or otherwise. The State of Andhra Pradesh framed the Rules which were called as The Andhra Pradesh State Higher Judicial Service Special Rules for Adhoc Appointments, 2011 (Andhra Rules). Orissa enacted Orissa Judicial Service (Special Scheme) Rules, 2001 (Orissa Rules), Jharkhand enacted Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Rules 2001 (Jharkhand Rules) and Gujarat framed Gujarat State Judicial Service Rules, 2005 (Gujarat Rules) which were applicable only to the officers in service.

28. Appointments to the post of ad hoc Judges under the FTC Scheme have been made by different States in different manners either with the aid of the regular Rules for appointment to the Higher Judicial Services/Superior Judicial Services without following the due and complete process under those Rules or under the temporary rules enacted by the respective States for this purpose. Some of the States have not taken recourse to any of these Rules, but have made appointments by issuing general orders.

29. It will be useful to refer to the Rules solely enacted for this purpose and relating to temporary appointments. In the case of Orissa, Rule 3 of the Orissa Rules provides that notwithstanding anything contained in the Orissa Superior Judicial Service Rules, 1963 and Orissa Judicial Service Rules, 1994, the appointment of Additional District Judges on ad hoc and purely temporary basis for implementation of the FTC Scheme will be made under these Rules. Rule 4 contemplates that the appointment made under these Rules shall be purely on ad hoc and temporary basis and was liable to be terminated at any time without any prior notice. This was amended by the Orissa Judicial Service (Special Scheme) Amendment Rules, 2003 to permit the selection of members from the Bar by way

of direct recruitment. The amendments of 2003 were necessitated by virtue of the directions issued by this Court on 6th May, 2002 in the -case of Brij Mohan Lal (supra). According to all these Rules, the retired District Judges, retired Additional District Judges, in-service Chief Judicial Magistrates having three years of service remaining and the members from the Bar who were eligible to be considered for appointment as FTC Judges by direct recruitment or judicial officers eligible for promotion, as the case may be may be, appointed to the FTCs. All these Rules provided that the appointment shall be purely on ad hoc and temporary basis. Rule 7 clearly stated that in-service judicial officers shall not claim regular promotion in the regular cadre on the basis of his/her appointment made under the FTC Scheme. These Rules also provided for disqualification, pay and other allowances payable to the FTC Judges.

30. These Rules clearly indicate that the appointment to the post of FTC Judges under the FTC Scheme was purely ad hoc and temporary, without giving any right to the persons so appointed.

31. Similarly, the Legal Department of the State of Gujarat also issued a notification bringing into force the Rules for ad hoc and purely urgent temporary appointment of Judicial Officers and the members of staff in the State of Gujarat for implementing the FTC Scheme. The committee for selection of such officers was, again, a committee of Judges constituted by the Chief Justice of the concerned High Court. The nature of the appointment and eligibility criteria were provided for under this Notification as follows:

> 4. The appointment made under these Rules shall be purely on ad hoc and urgent temporary basis and such appointments shall be liable to be terminated at any time without any notice.
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> 5. (i) The appointments on ad hoc basis for the posts of District and Sessions Judges as the Presiding Officer of the Fast Track Courts shall be made by the Governor on recommendation of the High Court either by promotion or transfer or by recruitment from amongst
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> > (a) Retired District Sessions or retired Assistant Judges/retired City Civil and Sessions Judges or
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> > (b) Judicial Officers eligible to be appointed as Assistant Judges, or
> >
> > (c) Advocates eligible to be appointed as District and Sessions Judges,

> (ii) District and Sessions udges or City Civil and Sessions judges or Assistant Judges, who retired on attaining the age of superannuation or who took voluntary retirement in normal course but have not attained the age of 63 years at the time of appointment shall be eligible to be considered for such ad hoc appointment subject to fitness and suitability.
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> 6. No right is conferred on any Judicial officer in service for claiming any regular promotion on the basis of his appointment on ad hoc basis under the Scheme and these Rules.

32. The State of Andhra Pradesh, in exercise of the powers conferred under Article 233 and proviso to Article 309 of the Constitution, framed Rules which were called the Andhra Pradesh State Higher Judicial Service Special Rules for Ad hoc Appointments, 2001 (Andhra Rules). In terms of Rule 2, notwithstanding anything contained in the Special Rules of Andhra Pradesh State Higher Judicial Services, 1958, the appointment of District and Sessions Judges on ad hoc basis shall be made by direct recruitment from the members of the Bar, by transfer from amongst Senior Civil Judges in the State Service or by re-employment of retired District Judges, provided that 33B9/3 per cent of the total number of ad hoc posts shall be filled by direct recruitment. The rule of reservation of posts was to apply to direct recruitment. The qualification prescribed for appointment of persons from the Bar to category II post under Rule 3 of the Special Rules for Andhra Pradesh State Higher Judicial Services, 1958 was to apply mutatis mutandis to the direct recruitment from the Bar under the Andhra Rules. Nevertheless, in terms of Rule 7(1)(b), a person appointed under Rule 2(i) shall not be regarded as a member of the permanent cadre covered under Rule 2 of the Special Rules for Andhra Pradesh State Higher Judicial Service, 1958 and shall not be entitled to any preferential right to any other appointment to this service or any other service and their service shall not be treated as regular or permanent under the State Government. The Andhra Pradesh Civil Services (CCA) Rules, 1991 were applicable to all the services under these Rules.

33. In the case of State of Rajasthan, this Court is primarily concerned with the officers who were members of the Judicial Services of the State and who had been appointed as Additional District Judges in terms of Rule 22 of the Rajasthan Higher Judicial Services Rules, 1969 (Rajasthan Rules). These Rules provided for temporary or officiating appointments. Relying upon the Rajasthan Rules, the petitioners claim regularization without taking the written examination.

34. We may also notice the challenge to the various Rules by the petitioners from different States. As is evident, the petitioners are praying for absorption and regularization of their services as members of the regular service cadre of that State with reference to the Rules of the respective States. However, there is also a challenge raised to the constitutional validity of Rules 4 and 6 of the Gujarat Rules, under which the candidates were appointed as ad hoc Judges for the FTC Scheme. Rule 4 provided for the pure ad hoc and urgent temporary nature of these posts and specified that their services were terminable without any notice while Rule 6 put an embargo upon the petitioners from claiming any regularization on the basis of such ad hoc service. The High Court had repelled the challenge to both these provisions and, in fact, had come to a positive conclusion that the petitioners had no right to these posts.

35. We may now summarise the contentions which have been raised before us in this bunch of cases by the petitioners, States and the Union of India. Wherever the services of the petitioners have been terminated, they have argued that such termination is arbitrary and without any basis. The contention by the petitioners from the State of Gujarat is that, in fact, the termination is stigmatic inasmuch as their services have been dispensed with on the ground of their b having not been found suitableb . Such discontinuation in the service, therefore, amounts to termination which itself is punitive in nature. It is also the contention of these petitioners that there was nothing adverse in their record which could justify the taking of such decision. Besides acting in such an arbitrary manner, the State Government and the High Court have added insult to the injury, as the Bar Council of India Rules debar the petitioners from practicing in the District Courts and Courts equivalent or lower to the FTCs where they had been practicing prior to their appointment as ad hoc Judges under the FTC Scheme. Now, except in the High Courts and the Supreme Court, all doors of practicing law are closed for them. To demonstrate their plea of arbitrariness in termination, they argued that the chart of confidential report shown at page 31 to 32 of SLP (C) No.26148 of 2011 against the name of P.D. Gupta has been marked as b goodb under the column b knowledge of law and procedureb but then a note has been made that she should improve. Similarly, the remarks recorded against others also do not tally with what has been stated in the main chart. There appear to be some mistakes, typographical or otherwise, in relation to entries in the Confidential Reports and even the grades of the persons to whom they refer.

36. In other cases, the contention is that the advocates had been appointed by following the due procedure prescribed under the Rules/Notification and, therefore,

keeping in view the judgments of this Court in the cases of Brij Mohan and Madhumita Das (supra), the petitioners are entitled to continue in service and to be regularized in the service. In fact, their rights under Articles 14 and 16 of the Constitution have been violated. It is also contended that as a one-time exercise, the regularization can take place, as was directed by this Court in the case of Secretary, State of Karnataka Ors. v. Uma Devi (3) Ors. [(2006) 4 SCC 1].

37. In addition to these contentions raised on the factual matrix of the case, challenge to the constitutional validity of Rules 4 and 6 of the Gujarat Rules was made by the appointees whose cases, even upon reconsideration by the Full Court of the Gujarat High Court, were not favourably considered.

38. The State of Gujarat and other States have taken the stand that they are not prepared to take upon themselves the financial burden of continuation of the FTC Scheme, particularly when the Central Government has decided not to extend the Scheme any further beyond 31st March, 2011. Though they conceded that provision of fair and expeditious trial is the obligation of the State, which nevertheless is subject to financial limitations of the State. On behalf of the State of Gujarat, the main contender, it has been argued that the petitioners have no right to the post and in terms of the Gujarat Rules also, no right is vested in the petitioners. Discontinuation of services of these petitioners had not caused any stigma upon the petitioners as they have not been held guilty of any misconduct.

39. The stand of the Union of India is that it had initially created the FTCs for a limited period of five years. However, subsequently with the intervention of this Court, it was extended by another five years and finally, it stood extended upto March, 2011. Till that date, the Central Government has discharged all its liabilities relating to infrastructure and finances. In fact, the Central Government has principally taken these financial liabilities on its shoulders while the appointments and all the other matters fall in the domain of the State Governments. The 13th Finance Commission has provided Rs.5,000 crores under different heads relating to the Judiciary. This amount is inclusive of allocations for Gram Nyayalayas and Evening Courts. Under the 11th Finance Commission, 1734 FTCs were created and there has been a successful reduction in total number of cases. Nevertheless, because of more legislations, there has been an increase in pendency. The Finance Commission and its functions are duly provided under Articles 264, 280 and 281 of the Constitution. The sharing of expenditure at the end of every five years is to be declared by the Finance Commission.

40. The fact that this financial aid and the responsibility of the Central Government to run the FTC Scheme would eventually come to an end was a fact known to all the State Governments and the High Courts right from the inception of the FTC Scheme and as such, the action of the Central Government in not continuing the FTC Scheme cannot be faulted with. The Cabinet Note was prepared on 7th July, 2010 in relation to continuation of the Scheme of Central assistance to the States for FTCs for another one year and the same was approved vide letter dated 9th August, 2010 and the said letter read as under:

> 1. I am directed to say that the matter of continuation of central assistance to the State Governments for the operation of the Fast Track Courts was under consideration of Government. In this regard, attention is invited to Shri S.C. Srivastava, Joint Secretaryb s D.O. letter No.15017/5/2008-JUS(M) dated 31.3.2010 to Law Secretaries of all the State Governments.
>
> 2. Government has now decided to continue providing central assistance for funding the Fast Track Courts all over the country for one more year beyond 31.3.2010 i.e. up to 31.3.2011 at the rate of Rs.4.80 lakh per court for meeting the recurring expenditure on these courts. Any expenditure in excess of this amount will have to be borne by the State Government out of their own resources.
>
> 3. It has also been decided that there will be no central funding for Fast Track Courts beyond 31.3.2011.
>
> 4. The central assistance for Fast Track Courts for 2010-11 will be made available to a maximum of 1562 Fast Track Courts that were reported operational on 31.3.2005 when the scheme of central assistance was continued beyond 31.3.2005 for a further period of five years. Accordingly, the maximum number of Fast Track Courts for which central assistance will be provided to Arunachal Pradesh will be 3.

41. Having taken this decision, the Union of India does not wish to continue the FTC Scheme beyond the specified period. The two important aspects which emerge from the submissions of the parties, with particular reference to the Union of India, are, firstly, that the Ministry of Law and Justice, Union of India declared a Vision Statement on 24th October, 2009. In that statement, it was declared publicly that the Ministry of Law and Justice shall ensure that 15,000 judge positions are established within two years to dispose of the cases expeditiously and to provide speedy trial. Secondly, one aspect which has been heavily relied upon by the

petitioners is that even in the Chief Justices and Chief Ministers Conference held on August 16, 2009 at New Delhi, the work of expeditious disposal of cases by the FTCs under the FTC Scheme was highly appreciated and it was assured that the said Scheme shall continue till 2015 and neither any of the States nor the Centre raised the plea of financial limitations at that time. Once this was the definite view of such a high level meeting, it was expected of the Central Government as well as the State Governments, to follow the said directive. But, on the contrary, they have taken a decision to discontinue the Scheme with effect from 31th March, 2011. Some of the States have urged before this Court that they can continue with the FTC Scheme only if the Central Government continues to provide 100 per cent funding for the same. In response, the Union of India has also stated that it has no objection, if, within their own means, each State Government carries on with the FTCs already established in the respective States. Consequently, there is a state of impasse, which has emerged from these opposing stands taken by the State Governments, on the one hand and the Central Government, on the other.

42. However, the State and the Centre, both, have taken the stand that it is not permissible for this Court to issue a mandamus directing either the State Governments or the Central Government to either continue the FTC Scheme or to provide the funds for the FTC Scheme. Articles 112, 264, 280 and 281 of the Constitution detail the budgeting provisions and presentation of annual financial statements before the Parliament. Thus, it will not be appropriate for this Court to step into the functions of the Executive, as specific powers under the Constitution are vested with the latter in relation to finances of the States.

43. Learned Amicus Curiae, Mr. P.S. Narsimha, Senior Advocate contended with some vehemence that there are various decisions of this Court to support the proposition that the writ of mandamus could be issued by this Court in such circumstances. However, the formulation of such directions would be a point of fine construction by the Court. A large number of cases are pending, so this Court would have to take judicial notice of such heavy pendency and it will be well within its jurisdiction to pass orders and directions with respect to reduction of pendency. What should be the strength of judges in the country is again a matter where the Courts may not directly comment as there may be many policy considerations that would influence the Governmentb s decision. The Court can express a hope that the Government of India will periodically review the strength of Judges in each State and appoint as many Judges as required for the purpose of disposing of the arrears of pending cases. However, the Court, while exercising restraint, with minimum encroachment on the Executive field and within the contours of the reasonable extent of jurisdiction even in the given circumstances,

may issue mandamus directing the States to incur expenditure in order to maintain the independence of judiciary and to ensure fair trial. It is also contended by the learned amicus that even under the American justice delivery system, the Courts have gone to the extent of passing such directions, for example, in the case of Commonwealth ex rel. Carroll v. Tate et al. (442 Pa.45; 274 A.2d 193) where Judge Montgomery issued a mandamus order against the defendants therein to appropriate and pay an amount of US $2,458,000 and made final his injunctive order dated 27th July, 1970 against adjustment. The Court took the above view in exercise of its inherent powers, it being a basic precept of the Constitutional form of Republic Government that the Judiciary is an independent and co-equal branch of Government along with the Executive and Legislative Branches. On the strength of this American case and various judgments of this Court in the cases of All India Judgesb Ors. [(1992) 1 SCC 119]; All India Judgesb Ors. [(1993) 4 SCC 288]; Ors. [(1993) 4 SCC 441]; and All India Judgesb Ors. [(2002) 4 SCC 247], the contention is that this Court should direct continuation of the FTC Scheme as the expenses have already been incurred and 1562 Courts are functional.

44. The First National Judicial Pay Commission, in the year 1999, noticed the statistics of pending cases in the country. It mentioned that nearly 1.30 crore cases are disposed of while 1.45 crore fresh cases are filed every year. Thus, the backlog of cases increases every year. To put it simply, the existing backlog was stated to be two crores, increased by nearly 12 to 15 lakh cases per year. This Commission took note of the fact that there were nearly 340 Central legislations which created offences and matters allied thereto, triable by the Court of Magistrate. These legislations were also increasing with the passage of time. It was felt desirable that, at the minimum, double the present number of judicial officers were required to handle the problem of pendency of cases in the country.

45. The 120th Report of the Law Commission, 1987 brought out another very significant drawback in the justice administration system of the country. In terms of this report, the proportion of judicial officers in India was 10.5 officers per million population, in the year 1987. This percentage, in comparison to other developed countries in the world, was probably the lowest. Australia had 41.6 judicial officers per million population, Canada 75.2, England 50.9 and the United States of America 107 per million population.

46. The National Crime Record Bureau, Ministry of Home Affairs, also published a Report on Crime in India. According to this report, approximately 49 lakh criminal cases under the IPC and 36 lakh criminal cases under the special or local laws were pending at the end of the year 2000. Realizing the gravity of the

problem, the then Minister of Law and Justice, Government of India had evolved the FTC Scheme, primarily to deal with the pendency of sessions cases. This was termed as a b long-term road map for judicial reforms that was being chattered out by the Government. The FTC Scheme originally contemplated establishment of five Courts per district in approximately 600 districts, thus making a total of 3000 Courts in the country. Instead of employing new Judges, services of retired Judges were to be utilised. The supporting staff was to be appointed on re- employment basis and it was estimated that Rs. 2.16 lakhs annual expenditure was likely to be incurred while taking only 50 per cent of the normal salary for the serving employees. The recurring cost per Court per year was Rs.3.32 lakhs and non-recurring cost was Rs.4.6 lakh per court per year. However, this proposed FTC Scheme was curtailed to some extent, by the 11th Finance Commission which only recommended 1,734 Courts at the rate of Rs.29 lakh expenditure per court. Out of this, non-recurring expenditure per Court was estimated at Rs.5,00,000/- and recurring expenditure at Rs.4.8 lakhs. The total expenditure estimated for the period of five years was Rs.509 crores. The purpose primarily was to reduce the pendency of criminal cases pending in the respective courts. The anticipated benefits of the FTC Scheme, as projected, were b speedy trial, elimination of pendency in the district courts, enormous saving of expenses incurred on under-trials, etc. There was a further possibility of saving of funds on account of public prosecutors, manpower for running jails and even on behalf of the under-trials with regard to fees that they spend on advocates. In the case of All India Judges Association v. Union of India (1993) 4 SCC 288, this Court took note of the fact that the Judiciary had been included as a plan subject by the Planning Commission. The Court directed that the infrastructure, including the Courts and residential complexes for the Judges should be built in consultation with the respective High Courts and the High Courts should take due interest in such construction. In compliance with the said judgment, the Eighth, Ninth and Tenth Plan earmarked Rs.110 crores, Rs.385 crores and Rs.700 crores, respectively, for infrastructure for the Judiciary. It may be usefully noticed here that on the one hand, the Central Government has taken the decision to discontinue the FTC Scheme for reasons best known to it and, on the other hand, it has sanctioned funds of Rs.2500 crores as per the 13th Finance Commission Report for commencement and running of Morning/Evening/Special/Judicial/Metropolitan/Shift Courts for the period 2010-11 to 2014-15, amongst other heads of expenditure. But no funds appear to have been allocated for judicial infrastructure.

47. The 11th Finance Commission under Article 275 of the Constitution allocated Rs.502.90 crores in the year 2000 for the FTC Scheme. It was stipulated that there

shall be a time-bound utilization of these funds within the five years of the FTC Scheme, the term of which was to end on 31st March, 2005.

48. The FTC Scheme was challenged by different persons before various High Courts. The Union of India took a clear stand that appointment of retired judges was not a mandatory requirement and additionally, the FTC Scheme also contemplated ad hoc appointment of Judicial Officers, as well as direct recruitment from the Bar. Though the FTC Scheme was contemplated to be for a definite period of five years, it came to be extended and remained into force under the judgment of this Court in the case of Brij Mohan Lal (supra) and even under certain other directions passed in the case of Madhumita Das (supra). It is the conceded position before us that the Central Government had decided not to finance the FTC Scheme beyond 31st March, 2011. Out of the funds of Rs.502.90 crores, which were allocated by the 11th Finance Commission, a balance of Rs. 83.87 crores was lying with the Central Government, as only Rs. 420.03 crores had been disbursed as on 31st March, 2005. It was ordered by this Court that this amount will not lapse and will be disbursed for the implementation of the FTC Scheme. But from the record before us, it appears that neither the amount has been disbursed nor spent under the FTC Scheme. On the recommendation made by the Chief Justices and the Chief Ministers Conference, the Cabinet Committee on Economic Affairs vide its decision dated 7th April, 2005 extended the FTC Scheme for a period of another five years with 100 per cent Central funding. Again, the FTC Scheme was extended by the decision of the Central Government till 31st March, 2011 but thereafter the Union of India had taken a conscious decision not to extend the financing of FTC Scheme beyond 31st March, 2011.

49. Despite discontinuation of the FTC Scheme by the Union of India, a number of States have decided to continue with the FTC Scheme, at least for the present. This decision of the concerned States needs to be noticed with appreciation. In the State of Orissa, the State Government has taken a decision to keep the FTC Scheme in force till 31st March, 2013, however, the State has not taken any decision as to what would happen thereafter. The State of Gujarat, on the other hand, has decided not to continue with the Scheme beyond 31st March, 2011 and the Judicial Officers appointed directly from the Bar on a temporary basis have been relieved. As already noticed, a number of writ petitions have been filed challenging the above- mentioned actions of the State.

50. The State of Andhra Pradesh, on the recommendation of the High Court, has also taken a conscious decision to continue the FTC Scheme till 31st March, 2012. State of Haryana has taken a tentative view to continue the FTC Scheme till March

2016, subject to a final decision to be taken by the competent authority in the State hierarchy. The State of Rajasthan has decided to continue the FTC Scheme till 29th February, 2013.

> Whether any of the appointees to the post of ad hoc judges under the FTC Scheme have a right to the post in context of the facts of the present case?

51. The first and foremost question that requires the consideration of this Court at this very stage is whether the appointees have a right to the post. In order to answer this question, we must first refer to the letters of appointment which were issued to the appointees, particularly the appointees in the States of Gujarat, Rajasthan, Orissa, Andhra Pradesh and, on somewhat similar lines, even in other States.

52. In the State of Gujarat, the Notification dated 12th November, 2003 and other notifications vide which advocates were appointed directly as ad hoc Judges, FTCs under the FTC Scheme, are similarly worded. The relevant part of the Notification dated 12th November, 2003 reads as under:-

> No. Fast Track Court/102002/270/ 270/D :- Following practicing Advocates who are selected for the appointment of Ad-hoc basis under rule 5(1) (C) of The ad-hoc and purely urgent temporary appointment of Judicial Officers and members of the Staff in the State of Gujarat for implementing the Special Scheme of Fast Track Courts (Sponsored by Central (Govt.) for elimination of arrears Rule, 201 are appointment for a period of two years from the day they over charge of the said posts as on Ad-hoc and purely temporary basis as Joint District Judges to preside over the Fast Track Courts.

53. A bare reading of the above Notification clearly shows that they were appointed under the FTC Rules, on ad hoc basis and on purely urgent temporary appointment, for a period of two years from the date they took over the charge of the said posts. The entire emphasis of the Notification was on the appointments being temporary, ad hoc and terminable at any time. These appointments were made under the b Ad hoc and purely urgent temporary appointment of Judicial Officers and the members of staff in the State of Gujarat for implementing the Special Scheme of Fast Track Courts (sponsored by the Central Government) for elimination of arrears Rules 2001. These Rules, in turn, referred to the expression b Committee which means the Committee of the Judges of the High Court constituted by the High Court or the Chief Justice. b Fast Track Courtb means the Court created under the FTC Scheme as sponsored by the Central Government and

for all other words and definitions, one has to refer to the Gujarat Judicial Services Recruitment Rules, 1961. Rule 3 of the said Rules prescribed that the appointments were on ad hoc and on purely urgent temporary basis for implementing the FTC Scheme and the Rules were notwithstanding the Gujarat Judicial Service Recruitment Rules, 1961. These appointments were made by the Governor on the recommendation of the High Court either by promotion or transfer of Judicial Officers or by recruitment from amongst retired District and Sessions Judges/Judicial Officers and advocates eligible to be directly appointed as District and Sessions Judges. The selection of the candidates for such ad hoc appointment was to be made by the Committee on the basis of the procedure and criteria laid down. Rule 6 of the Gujarat Rules clearly stated that no right is conferred on any Judicial Officer in service for claiming any regular promotion on the basis of his appointment on ad hoc basis under the Scheme. Further, Rule 4 of the Gujarat Rules provided for termination of their services.

54. For all other conditions of service, these officers were to be governed by the conditions of service applicable to the Judicial Officers of the State.

55. In the State of Orissa, advocates were appointed temporarily as ad hoc Additional District Judges in the pay scale of Rs. 10,650-325-15350 by direct recruitment to the FTCs which had been established under the grant of 11th Finance Commission. In terms of the notification of appointment, their service conditions were to be governed by the Orissa Rules, as amended from time to time. All other appointees were appointed by similar notification of different dates. Therefore, reference to the Orissa Rules becomes necessary.

56. These Rules were pari materia to the Judicial Service Rules framed by the Orissa State except that the appointments were initially for a period of one year and subject to termination without notice. Clause 4 of the said Rules reads as under:-

> 4(1) The appointment made under these rules shall be on ad hoc and temporary basis.
>
> (2) The appointment shall be made initially for a period of one year and shall be liable to be terminated at any time without any prior notice.
>
> (3) During the term of such appointment the appointees will be under the administrative and disciplinary control of the High Court.

57. These Rules were framed by the State of Orissa notwithstanding the Orissa Superior Judicial Services Rules, 1963 and the Orissa Judicial Service Rules, 1994. Any right to regular promotion in the regular cadre was also specifically denied under Rule 7 of the Orissa Rules.

58. In the State of Andhra Pradesh also, under Rule 2 of the Andhra Rules, the advocates were directly appointed as Additional District Judges to preside over FTCs vide Notification dated 6th October, 2003. These appointments were also ad hoc and temporary, for a limited period. These Rules were framed notwithstanding anything contained in the Special Rules for Andhra Pradesh State Higher Judicial Service, 1958 and provided the same categories of recruitment to the FTCs as were provided under the -Rules of two above-mentioned States. It duly prescribed for the qualifications, seniority, posting and transfer of the appointees. Under the terms and conditions of service, Rule 7(1)(b) specifically contemplated that a person appointed under the Andhra Rules shall not be entitled to any preferential right to any other appointment to this service or any other service. It was also contemplated that their services shall neither be treated as regular or permanent under the State Government nor shall it be a bar for the appointment to posts covered by the other Rules in that State. Under Rule 2(4), all appointments made from time to time under the Andhra Rules were to cease on 31st March, 2005, i.e., the period for which the FTC Scheme was created at the first instance.

59. All the petitioners/candidates in the State of Rajasthan were members of the regular Judicial Services of that State. They were promoted on ad hoc basis to officiate as Additional District Judges (Fast Track) and they had been functioning as such for a considerable period. They were given extension of service vide Notification issued by the State. Now, they have been asked to take the Limited Competitive Examination for being promoted on regular basis to the Higher Judicial Services of the State. This has been challenged by them on different grounds, as already noticed above. But, we must notice that initially when they were appointed as Additional District Judges, they had not taken any written examination as prescribed under the Rules and the judgment of this Court in the case of All India Judges Association (supra). Further, in fact, they have not taken such an examination till date.

60. Upon an analysis of the above-stated Rules relating to the different States, the appointment letters issued to the appointees and the methodology that was adopted for appointment of the FTC Judges, it becomes clear that the appointees cannot be said to have any legal, much less an indefeasible, right to the posts in question. Firstly, the posts themselves were temporary, as they were created under and

within the ambit and scope of the FTC Scheme sponsored by the Union of India, which was initially made only for a limited period of five years. Now, financing of the FTC Scheme has already been stopped by the Central Government with effect from 31st March, 2011. No permanent posts were ever created. In other words, their appointments were temporary appointments against temporary posts. The relevant Rules of the States clearly postulate that the appointments made under the Rules were purely on ad hoc basis and urgent temporary basis and were terminable without notice. The Rules as well as the respective notifications of appointment issued to these appointees, unambiguously stated that no right would be conferred upon the appointees for regular promotion on the basis of working on ad hoc basis under the FTC Scheme. The notifications vide which the judges/candidates/petitioners were appointed, particularly in the State of Gujarat, clearly specified these appointments to be temporary and for a period of two years on ad hoc basis. The cumulative effect of the notifications appointing the petitioners to the said posts under the FTC Scheme and the relevant Rules governing them clearly demonstrate that these were temporary and, in some cases, even time-bound appointments, terminable without prior notice. It is difficult for the Court to accept the contention of these petitioners that there was any indication, in the above noted Rules or otherwise, that the said appointments were permanent and that the appointees were entitled to be absorbed regularly in those posts.

61. Normally, there are three kinds of posts that may exist in a cadre b (1) permanent posts; (2) temporary posts; and (3) quasi permanent posts. Accordingly, there can be a temporary employee, a permanent employee or an employee in quasi permanent capacity. In the case of Indian Drugs and Pharmaceuticals Ltd. v. Workmen [(2007) 1 SCC 408], this Court, while elucidating upon the distinction between temporary and permanent employees stated that such distinction is well settled. Whereas a permanent employee has a right to the post, a temporary employee has no right to the post. It is only the permanent employee who has a right to continue in service till the age of superannuation. As regards a temporary employee, there is no age of superannuation because he has no right to the post at all. Thus, it follows that for a person to have a right to the post, the post itself has to be a permanent post duly sanctioned in the cadre. The person should be permanently appointed to that post. Normally, it is only under these circumstances that such an employee gets a right to the post, but even when a temporary employee is appointed against a permanent post, he could get a right to the post provided he had at least acquired the status of a quasi permanent employee under the relevant Rules. Where neither the post is sanctioned nor is permanent and, in fact, the entire arrangement is ad hoc or is for an uncertain duration, it cannot create any rights and obligations in favour of the appointees, akin to those of

permanent employees. The appointees in the present case had been appointed not only on ad hoc and temporary basis but the entire FTC Scheme itself was ad hoc and for a duration of five years only as declared by the Central Government. Despite that, some of the States declared the FTC Scheme for two years only. In these circumstances, it is not possible for this Court to hold that the appointees had any right to the post.

62. Decades ago, this Court, in the case of Parshotam Lal Dhingra v. Union of India [AIR 1958 SC 36], was seized with a matter where the appellant had been granted promotion from Class III Service in the Indian Railways to Class II, but, in view of the adverse remarks in his Confidential Report, the same was not effected. The action of the State was challenged before the High Court. The learned Single Judge took the view that this action of the State was punitive. However, the judgment was reversed by the Division Bench of the High Court. A Constitution Bench of the Supreme Court allowed the appeal, while holding as under:

> 12. In the absence of any special contract the substantive appointment to a permanent post gives the servant so appointed a right to hold the post until, under the rules, he attains the age of superannuation or is compulsorily retired after having put in the prescribed number of yearsb service or the post is abolished and his service cannot be terminated except by way of punishment for misconduct, negligence, inefficiency or any other disqualification found against him on proper enquiry after due notice to him. An appointment to a temporary post for a certain specified period also gives the servant so appointed a right to hold the post for the entire period of his tenure and his tenure cannot be put an end to during that period unless he is, by way of punishment, dismissed or removed from the service. Except in these two cases the appointment to a post, permanent or temporary, on probation or on an officiating basis or a substantive appointment to a temporary, on probation or on an officiating basis or a substantive appointment to a temporary post gives to the servant so appointed no right to the post and his service may be terminated unless his service had ripened into what is, in the service rules, called a quasi-permanent service

63. In the case of Champaklal Chimanlal Shah v. Union of India [AIR 1984 SC 1854], this Court held that where a Government servant had completed three years service and the Rules provided for declaration of his service thereafter as a quasi-permanent employee, the Government servant would become a quasi-permanent employee only if such declaration was actually made. Similar view was also taken earlier in the case of Jaswant Singh v. State of Haryana [(1979) 4 SCC 440].

64. Therefore, the above principles clearly show that there should be a right vested in an employee, which is duly recognized and declared in accordance with the Rules governing the conditions of service of such employee before such relief is granted. Unless the Government employee holds any status as afore-indicated, it may not be possible to grant relief to the Government employee, particularly, when such relief is not provided under the relevant Rules.

65. We may even consider this from a different point of view. These Rules had been framed under Article 309 of the Constitution and had the force of law. Of course, in some of the petitions, i.e., in some of the matters relating to the State of Gujarat, there is challenge raised to the constitutional validity of Rules 4 and 6 of the Gujarat Rules, which we shall shortly proceed to discuss, but in all other cases arising from different States, there is no challenge to the validity of the Rules governing these appointments.

66. Right to a post is not a fundamental right but is a civil or a statutory right. That the creation of a post, absorption and payment of salaries on regular pay scales are purely Executive functions and under the Doctrine of Separation of Powers well left are these functions to the Executive, was the view expressed by this Court in the case of P.U. Joshi v. Accountant General [(2003) 2 SCC 632]. To take another example, where a person is sent on deputation to a post even after consultation with the Union Public Service Commission but for a limited period, after the expiry of the said period, the deputationist can neither claim a right to continue in that post, nor can he claim absorption on permanent basis as he had no right to the post. This view was stated by this Court, in the case of Union of India v. S.N. Panicker [(2001) 10 SCC 520]. It is primarily the nature of the post, the method and manner of appointment to the said post and the Rules governing the conditions of service of that post which would be the precepts to deal with such situations.

67. Article 310 of the Constitution is concerned with the tenure of office of persons serving the Union or a State. Except as expressly provided by the Constitution, every person who is a member of a defence service or a civil service of the Union or State or an all-India service or holds any post connected with defence or any civil post under the Union, holds such office during the pleasure of the President or during the pleasure of the Governor of the State, as the case may be. However, Article 311 of the Constitution carves out an exception to Article 310 and states that no person who is a member of a civil service of the Union shall be dismissed or removed by an authority subordinate to that by which he was appointed and then, only after holding of an enquiry and opportunity of being heard and making a

representation in respect of those charges and on penalty proposed. Proviso to Articles 311(2) and 311(3) provide further exceptions to the operation of Article 311 itself. The doctrine of pleasure, under our Constitution, deals with three different categories of posts. First, offices which are held during the pleasure of the President or Governor, as the case may be; second, offices held during pleasure of the President or Governor but subject to some restrictions against removal; and third, offices held for a specified term but with immunity against removal, except by impeachment. The third category of posts is not subject to the doctrine of pleasure. Having regard to the Constitutional scheme, it is not possible to extend the type of protection against removal granted to one category of officers, to another category. In India, contrary to the law in England, even the doctrine of pleasure has limitations and restrictions.

68. It is believed that, where Rule of Law prevails, there can be nothing like unfettered discretion or unaccountable action. The degree of reasoning required in support of the decision may vary. The degree of scrutiny during judicial review may vary. But the need for reasoning exists. As a result, when the Constitution of India provides that some offices will be held during the pleasure of the President, without any express limitations or restrictions, this power should, however, necessarily be read as being subject to the fundamentals of constitutionalism. {Refer B.P. Singhal v. Union of India [(2010) 6 SCC 331]}. We must also notice another settled position of law, stated by this Court in the case of Union of India Anr. v. Tulsiram Patel [(1985) 3 SCC 398], that the origin of Government services is contractual. There is an offer and acceptance in every case. But once appointed to his post or office, the Government servant acquires a status and his rights and obligations are no longer determined by the consent of both the parties, but by statute or statutory rules as framed and unilaterally altered by the Government. In other words, the legal position of a Government servant is more one of status than that of contract.

69. Therefore, the appointees do not have an absolute right to the post, but we would have to consider the effect of the judgments of this Court in the cases of Madhumita Das (supra) and Brij Mohan Lal (supra) to examine if the petitioners in these cases are entitled to any relief or not. Before we enter into discussion upon that aspect of the case, it will be necessary for us to deliberate on the question whether writ of mandamus can at all be issued in this case and, if so, its scope. Needless to say, the origin of the FTC Scheme was in a policy decision by the Central Government. The Central Government had taken a decision to implement the FTC Scheme, particularly to deal with the arrears of criminal cases in the country and it had taken unto itself the burden of financing the entire scheme. It

was to incur all infrastructural and recurring expenditures for implementation of the FTC Scheme. Examined from any point of view, it was a policy decision of the Union of India, which was accepted by the various State Governments, which in turn implemented this policy by appointing ad hoc Judges to preside over FTCs. These appointments were made by three different methods: from amongst the retired Judges, by promotion from Civil Judges (Senior Division), and by direct recruitment from the Bar.

70. The Central Government then has taken a decision not to finance the FTC Scheme beyond 31st March, 2011. However, some of the State Governments have still taken a decision at their own level to continue with the FTC Scheme, for the time being. None of the States appearing before us have stated that, as a matter of policy or otherwise, they have decided to continue the FTC Scheme at their own expense as a permanent feature of Justice Administration System. It is a settled principle of law that matters relating to framing and implementation of policy primarily fall in the domain of the Government. It is an established requirement of good governance that the Government should frame policies which are fair and beneficial to the public at large. The Government enjoys freedom in relation to framing of policies. It is for the Government to adopt any particular policy as it may deem fit and proper and the law gives it liberty and freedom in framing the same. Normally, the Courts would decline to exercise the power of judicial review in relation to such matters. But this general rule is not free from exceptions. The Courts have repeatedly taken the view that they would not refuse to adjudicate upon policy matters if the policy decisions are arbitrary, capricious or mala fide. In bringing out the distinction between policy matters amenable to judicial review and those where the Courts would decline to exercise their jurisdiction, this Court, in Bennett Coleman Co. and Others. v. Union of India and Others [(1972) 2 SCC 788], held as under:

> 100. The argument of the petitioners that Government should have accorded greater priority to the import of newsprint to supply the need of all newspaper proprietors to the maximum extent is a matter relating to the policy of import and this Court cannot be propelled into the unchartered ocean of Government policy.

71. We must examine the cases where this Court has stepped in and exercised limited power of judicial review in matters of policy. In Asif Hameed v. State of Jammu Kashmir and Anr. [1989 Suppl.(2) SCC 364], this Court noticed that, where a challenge is to the action of the State, the Court must act in accordance with law and determine whether the State has acted within the powers and

functions assigned to it under the Constitution. If not, it must strike down the action, of course, with due caution. Normally, the Courts do not give directions or advise in such matters. This Court held as under:-

> 19. When a State action is challenged, the function of the court is to examine the action in accordance with law and to determine whether the legislature or the executive has acted within the powers and functions assigned under the Constitution and if not, the court must strike down the action. While doing so the court must remain within its self-imposed limits. The court sits in judgment on the action of a coordinate branch of the Government. While exercising power of judicial review of administrative action, the court is not an Appellate Authority. The Constitution does not permit the court to direct or advise the executive in matters of policy or to sermonize qua any matter which under the Constitution lies within the sphere of legislature or executive, provided these authorities do not transgress their constitutional limits or statutory powers.
>
> (emphasis supplied)

72. It is also a settled cannon of law that the Government has the authority and power to not only frame its policies, but also to change the same. The power of the Government, regarding how the policy should be shaped or implemented and what should be its scope, is very wide, subject to it not being arbitrary or unreasonable. In other words, the State may formulate or reformulate its policies to attain its obligations of governance or to achieve its objects, but the freedom so granted is subject to basic Constitutional limitations and is not so absolute in its terms that it would permit even arbitrary actions. Certain tests, whether this Court should or not interfere in the policy decisions of the State, as stated in other judgments, can be summed up as:

> (I) If the policy fails to satisfy the test of reasonableness, it would be unconstitutional.
>
> (II) The change in policy must be made fairly and should not give impression that it was so done arbitrarily on any ulterior intention.
>
> (III) The policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc.

(IV) If the policy is found to be against any statute or the Constitution or runs counter to the philosophy behind these provisions.

(V) It is dehors the provisions of the Act or Legislations.

(VI) If the delegate has acted beyond its power of delegation.

73. Cases of this nature can be classified into two main classes: one class being the matters relating to general policy decisions of the State and the second relating to fiscal policies of the State. In the former class of cases, the Courts have expanded the scope of judicial review when the actions are arbitrary, mala fide or contrary to the law of the land; while in the latter class of cases, the scope of such judicial review is far narrower. Nevertheless, unreasonableness, arbitrariness, unfair actions or policies contrary to the letter, intent and philosophy of law and policies expanding beyond the permissible limits of delegated power will be instances where the Courts will step in to interfere with government policy.

74. In the case of Mohd. Abdul Kadir and Anr. v. Director General of Police, Assam and Ors.[(2009) 6 SCC 611], this Court, while declining regularization of the persons employed in a particular project under a temporary Scheme, though the same had been continued for a long time, commented upon the scope of interference in the policy relating to Prevention of Infiltration of Foreigners Additional Scheme, 1987 and considered it appropriate to draw the attention of the authorities to the issues involved in the case by directing as under: -

> 22. We are conscious of the fact that the issue is a matter of policy having financial and other implications. But where an issue involving public interest has not engaged the attention of those concerned with policy, or where the failure to take prompt decision on a pending issue is likely to be detrimental to public interest, courts will be failing in their duty if they do not draw attention of the authorities concerned to the issue involved in appropriate cases. While courts cannot be and should not be makers of policy, they can certainly be catalysts, when there is a need for a policy or a change in policy.

75. The correct approach in relation to the scope of judicial review of policy decisions of the State can hardly be stated in absolute terms. It will always depend upon the facts and circumstances of a given case. Furthermore, the Court would have to examine any elements of arbitrariness, unreasonableness and other Constitutional facets in the policy decision of the State before it can step in to interfere and pass effective orders in such cases. A challenge to the formation of a

State policy or its subsequent alterations may be raised on very limited grounds. Again, the scope of judicial review in such matters is a very limited one. One of the most important aspects in adjudicating such a matter is that the State policy should not be opposed to basic Rule of Law or the statutory law in force. This is what has been termed by the courts as the philosophy of law, which must be adhered to by valid policy decisions.

76. The independence of the Indian Judiciary is one of the most significant features of the Constitution. Any policy or decision of the Government which would undermine or destroy the independence of the judiciary would not only be opposed to public policy but would also impinge upon the basic structure of the Constitution. It has to be clearly understood that the State policies should neither defeat nor cause impediment to discharge of judicial functions. To preserve the doctrine of separation of powers, it is necessary that the provisions falling in the domain of judicial field are discharged by the Judiciary and that too, effectively.

77. This Court has consistently held that the writ of mandamus can be issued, perhaps not as regards the manner of discharge of public duty but with respect to the due exercise of discretion in the course of such duty. In the case of S.P. Gupta v. Union of India [(1981) Supp. SCC 87], this Court issued directions to the Union of India to determine, within a reasonable time, the strength of permanent Judges required for disposal of cases instituted in the High Courts and to take tests to fill up the vacancies after making such determination. While stating that the appointment of judges was considered to be a power coupled with duty, the Court in held as under:-

> In a parliamentary democracy with a written Constitution in which three organs of the Governments are clearly marked out, it becomes a primary duty of the State to provide for fair and efficient administration of justice. Justice must be within the easy reach of the lowest of the lowliest. Rancour of injustice hurts an individual leading to bitterness, resentment and frustration and rapid evaporation of the faith in the institution of judiciary. Two vital limbs of the Justice system are that Justice must be within the easy reach of the weaker sections of the society and that it must be attainable within a reasonably short-time, in other words, speedily. Leaving aside other factors contributing to the arrears in courts, it cannot be gainsaid that in each High Court adequate number of Judges must be appointed and the situation in each High Court must be regularly reviewed by the President so as to efficiently discharge the duty cast on him by Article 216. In the course of hearing a statement was made on behalf of the Union of India that the

Government is taking steps to review the strength of each High Court to determine the adequate strength of each High Court and then to take steps to make appointments according to the targets so devised. As this statement is a solemn undertaking to this Court, it may be reproduced in extenso:

The Union Government has decided to increase the number of posts of permanent judges in the various High Courts keeping in view the load of work, the guidelines prescribed and other relevant considerations. In fact in 1980 itself, on the basis of institution, disposal and arrears of cases and the guidelines prescribed, the Governments of seven States where the problem was more acute, had been addressed to consider augmentation of the Judge strengths of their High Courts. It has been decided that where necessary the guidelines prescribed will be suitably relaxed by taking into account local circumstances the trend of litigation and any other special or relevant factors that may need consideration. The Union Government will take up the matter with the various State Governments so that after consulting the Chief Justices of the High Courts, they expeditiously send proposals for the conversion of a substantial number of posts of Additional Judges into those of permanent judges.

2. The Union Government has also decided that ordinarily further appointments of Additional Judges will not be made for periods of less than one year.

But to say that a litigant who wants his case to be disposed of as early as possible being convinced that his case is not handled by the Court for want of adequate number of judges can bring an action to issue a mandamus to the Government to appoint adequate number of judges requires more elaborate arguments and in view of the statement it is not necessary to deal with the submission.

1251. Notwithstanding the principle of separation of powers found entrenched in the Constitution of the United States of America, as can be seen from the last part of para 141 of Vol. 52 of the American Jurisprudence 2d. under the title 'Mandamus' if it is the constitutional or statutory duty of a governor or the President to exercise his discretion with respect to a certain matter he may be required by mandamus to do so but the manner in which he has to discharge that duty cannot be directed by the courts. As observed in the English decisions referred to above it is manifest that a statutory discretion is not necessarily or indeed usually absolute, it may be qualified

> by express and implied legal duties to comply with substantive and procedural requirements before a decision . is taken, whether to act and how to act. I am of the view that the power conferred on the President by Article 216 of the Constitution to appoint sufficient number of Judges is a power coupled with a duty and is not merely a political function. In the instant case ordinarily the court would have been reluctant to issue any mandamus to the Government to comply with the duty of determination of the strength of Judges of High Courts. But having regard to the undisputed total inadequacy of the strength of Judges in many High Courts, it appears to be inevitable that the Union Government should be directed to determine within a reasonable time the strength of permanent Judges required for the disposal of cases instituted in them and to take steps to fill up the vacancies after making such determination.

78. Thereafter, even in the case of All India Judgesb Ors. (1992) 4 SCC 288, this Court not only issued a mandamus but even directed the acceptance of the Justice Shetty Commission Report and consequently ordered the State Governments to fix grades of pay, grant appropriate pay scales as well as make amendments in the age of retirement and other conditions of service, as necessary, in order to maintain the independence of judiciary. Again, in a subsequent judgment taken up in the year 2002, in the same case All India Judgesb Association v. Union of India [(2002) 4 SCC 247], this Court held as under:

> 21. The next question which arose for consideration is whether the Shetty Commission was justified in recommending that 50 per cent of the expense should be borne by the Central Government. It has been contended by the learned Advocate-General for the State of Karnataka as well as on behalf of the other States that the judicial officers working in the States deal not only with the State laws but also with the federal laws. They, therefore, submitted that, in fairness of things, the Central Government should bear half of the expenses of the judiciary.
>
> 25. An independent and efficient judicial system is one of the basic structures of our Constitution. If sufficient number of Judges are not appointed, justice would not be available to the people, thereby undermining the basic structure. It is well known that justice delayed is justice denied. Time and again the inadequacy in the number of Judges has adversely been commented upon. Not only have the Law Commission and the Standing Committee of Parliament made observations in this regard, but even the Head of the judiciary, namely, the Chief Justice of India has had more

> occasion than one to make observations in regard thereto. Under the circumstances, we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the Judge strength from the existing ratio of 10.5 or 13 per 10 lakh people to 50 Judges per 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. In order to have additional Judges, not only will the posts have to be created but infrastructure required in the form of additional courtrooms, buildings, staff etc., would also have to be made available. We are also aware of the fact that a large number of vacancies as of today from amongst the sanctioned strength remain to be filled. We, therefore, first direct that the existing vacancies in the subordinate courts at all levels should be filled, if possible latest by 31-3-2003, in all the States. The increase in the Judge strength to 50 Judges per 10 lakh people should be effected and implemented with the filling up of the posts in a phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today. Perhaps increasing the Judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary.

79. Such is not the practice in India alone, but it is prevalent even in the United States of America. In the case of Commonwealth ex rel. Carroll v. Tate et al. (supra), Judge Montgomery of the Supreme Court of Pennsylvania upheld the order of mandamus issued against the defendants for appropriation and payment of the amounts needed for infrastructure and other requirements for proper running of the Courts. The Court held that it is a basic precept of the Constitutional form of Republican Government that the Judiciary is an independent and co-equal Branch of the Government along with Executive and Legislative Branches and the amount that had been recommended by the Mayor for utilization by the Judiciary was found to be inadequate to meet the reasonable needs of the Court for the fiscal year. Thus, the Court, while reducing the amount originally ordered by Judge Montgomery, nevertheless upheld the issue of mandamus, affirming the earlier order earlier with some modification.

80. It is, thus, clear that it is the constitutional duty of this Court to ensure maintenance of the independence of Judiciary as well as the effectiveness of the Justice Delivery System in the country. The data and statistics placed on record, of which this Court can even otherwise take judicial notice, show that certain and effective measures are required to be taken by the State Governments to bring down the pendency of cases in the lower Courts. It necessarily implies that the Government should not frame any policies or do any acts which shall derogate from the very ethos of the stated basic principle of judicial independence. If the policy decision of the State is likely to prove counter-productive and increase the pendency of cases, thereby limiting the right to fair and expeditious trial to the litigants in this country, it will be tantamount to infringement of their basic rights and constitutional protections. Thus, we have no hesitation in holding that in these cases, the Court could issue a mandamus. The extent of such power, we shall discuss shortly hereinafter.

81. Thus, we have no hesitation in coming to the conclusion that in the cases at hand, this Court is possessed of the jurisdiction and is competent to issue a writ of mandamus and/or appropriate directions. However, the scope and dimensions of such directions is a matter of further deliberation, which we shall shortly proceed to discuss.

Right to Practice

82. Article 19(1)(g) of the Constitution provides a fundamental right to practice any profession or to carry on any occupation, trade or business. This right is subject to the limitations contained under Article 19(6) of the Constitution. The State is empowered to make any law imposing, in the interest of general public, reasonable restrictions on the exercise of the rights conferred by the said sub-clause. This power specifically refers to the professional or technical qualifications necessary for practicing any profession or carrying on any occupation. The right to practice law is not an absolute right and is subject to the possession of requisite qualifications as contemplated under the Advocates Act, 1961. This right to practice is further subject to the limitations prescribed in and the regulatory regime of the Bar Council of India Rules. Therefore, the argument that once a lawyer possesses the requisite qualifications, he has an unrestricted and unregulated right to practice, is not tenable.

83. The appointees in the present case argued that in terms of the Bar Council of India Rules, after they cease to be judges of the FTCs for any reason whatsoever, they shall be debarred from practicing in the district and subordinate courts. Their

right to practice is abridged with respect to the courts in which they acted as judges and courts of the equivalent or lower grade. They can still practice in the higher courts, i.e., permissible Tribunals, High Courts and the Supreme Court of India. Thus, there is no complete and absolute restriction on their right to practice. It is only a partial restriction which is based upon securing the larger public interest and the interest of ensuring transparency in the administration of justice. This by itself, therefore, cannot be a consideration for compelling the Government to continue their appointments, if they are otherwise not entitled under law to continuation. This question, in somewhat similar circumstances, came up for consideration of this Court when the retired members of the Custom, Excise and Service Tax Appellate Tribunal (for short the CESTAT) were not permitted to practice before the same Tribunal on the strength of Rule 7 Chapter III, Part VI of the Bar Council of India Rules. This Court not only upheld the validity of the said Rules, but also held that this did not amount to an absolute and unreasonable bar on the right to practice of the past members of the Tribunal. Upon an objective analysis of the principles stated therein, this Court held that except where a challenge is made on the grounds of legislative incompetence or the restriction imposed is ex facie unreasonable, arbitrary and violative of Part III of the Constitution, the restriction would be held to be valid and enforceable. We may refer to the following paragraph of the judgment of this Court, in the case of N.K. Bajpai v. Union of India Anr. (CA No. 2850 of 2012 arising out of SLP(C) No. 8479 of 2010), to which one of us, Swatanter Kumar, J was a member, decided on 15th March, 2012, which reads as under:-

> 29. An objective analysis of the above principles makes it clear that except where the challenge is on the grounds of legislative incompetence or the restriction imposed was ex facie unreasonable, arbitrary and violative of Part III of the Constitution of India, the restriction would be held to be valid and enforceable.

84. For the reasons afore-noticed and the law indicated above, we do not find any merit in the contention raised on behalf of the appointees/petitioners that they would suffer an irreparable loss by termination of their services as FTC judges and that the restriction contained in Rule 7 of the Bar Council of India Rules amounts to an absolute unreasonable restriction upon their right to practice in the event of such termination.

Scope of Judicial Review

85. The power of judicial review to examine the validity of a legislation falls within a very limited compass. It is treated by the Courts with greater restraint and on a much higher pedestal than examination of the correctness or validity of State policies. In the present case, the Union of India had framed a policy, which was termed as the FTC Scheme. This was a conscious policy decision taken by the appropriate Government, the implementation whereof in regard to financial infrastructure, capital or recurring expenditure was primarily that of the Union of India. Some of the State Governments framed Rules to fill up the posts of Judges who were to preside over the FTCs, while others just took a policy decision with respect to the existing statutory Rules for recruitment to the regular Higher Judicial Services cadre of that State. As already noticed, the FTC Scheme contemplated three different sources for recruitment of judges, i.e. by direct recruitment, promotion and appointment of retired Judges. The work done by the FTCs over long period had been appreciated by all concerned. To demonstrate this aspect, we may refer to certain statistics which have been placed on record by different States.

86. As per the latest data placed on record, the State of Andhra Pradesh had sanctioned 108 posts of FTC Judges, out of which 72 are stated to be in place as on the financial year 2010-2011. These courts disposed of 20,696 cases in the period from 01.01.2011 to 30.11.2011 and the pendency as on 30.11.2011 in these courts was 35,290 cases. In Bihar, 183 posts were created and 138 judges are presently in position. 18,222 cases have been disposed of in the period from 01.01.2011 to 31.12.2011, and 13,149 cases transferred to regular courts leaving arrears of 75,868. The State of Gujarat has claimed, for the same year, that 166 judicial posts were sanctioned and functioning, and they had disposed of 38,426 cases in the period from 01.01.2011 to 31.12.2011 leaving arrears/ pendency of 86,755 cases.

87. In Himachal Pradesh, there were nine judicial posts, out of which five are presently filled and 8607 cases were disposed of in the period from 01.01.2011 to 31.12.2011 leaving pendency of 5852 cases. Jharkhand had 39 presiding officers in place out of the 89 sanctioned posts and they had disposed of 1406 cases in the period from 01.01.2011 to 31.03.2011, leaving a pendency of 22,238 cases as on 31.03.2011.

88. In Kerala, 25 posts out of 38 sanctioned posts were functioning. 9,925 cases were disposed of in the period from 01.01.2011 to 31.12.2011, leaving a pendency of 13,809 cases.

89. In Karnataka, 92 out of 93 sanctioned posts are functioning. They have disposed of 39,800 cases in the period from 01.01.2011 to 31.12.2011, leaving a

pendency of 33,661 cases. In Madhya Pradesh, 44 out of 59 judicial posts are filled and they have disposed of 61,866 cases in the period from 01.01.2011 to 31.12.2011, leaving a pendency of 36,284 cases. In Maharashtra, out of 100 sanctioned posts, 91 judicial officers have been appointed. They have disposed of 25235 cases, leaving a balance of 54398 in the year 2010-2011. In Orissa, 34 courts out of 72 are functioning. They have disposed of 7007 cases leaving a balance of 5275 upto the year 2010-2011.

90. In Punjab and Haryana, out of 18 courts, 15 courts and out of 16 courts, seven courts are working. They have disposed of 7376 cases leaving a balance of 13202 cases. In Rajasthan, 42 courts out of 43 are functioning. They have disposed of 9680, having a total pendency of 17,474 cases upto the year 2010-2011. In Tamil Nadu, 43 out of 49 posts are functional. They have disposed of 65,877 cases in the period from 01.01.2011 to 31.12.2011 leaving arrears of 50,386. In Uttar Pradesh, 153 posts, out of the sanctioned 156 were functioning. They have disposed of 16,640 cases in the period from 01.01.2011 to 31.03.2011 leaving a pendency of 53,117 cases as on 31.08.2011. In West Bengal, 150 posts out of 151 sanctioned are in place and have disposed of 10,499 cases in the period from 01.01.2011 to 31.12.2011 leaving a pendency of 32,648 cases upto the year 2010-2011.

91. There were 1734 FTCs under the FTC Scheme out of which 1281 Courts are in place in the entire country. They have disposed nearly 32.34 lakh cases right from the date of their establishment till the year 2010-2011. The above stated pendency details of criminal cases in the country as on 30 March, 2011 is only with regard to Sessions cases. If we take the total figure of pendency of criminal cases before the Sessions Courts, as well as the Magisterial Courts, there shall be a total pendency of approximately 6.56 lakh cases.

92. The above data clearly shows that the pendency of criminal cases in the country has increased at a rapid pace, despite a good rate of disposal of cases being maintained by the FTCs. This experiment has been tried over a long period, i.e., it was started in the year 2001 for an initial period of five years. However, it was subsequently extended and the Central Government agreed to finance the FTC Scheme uptil 30th March, 2011. Thereafter, the various State Governments have either decided to wind up the FTC Scheme or have extended the FTC Scheme at their own expense. Thus, there is no unanimity between the Union Government and the States either on continuation or the closure of the FTC Scheme.

93. The Union of India, of course, has stated that it would not, in any case, finance expenditure of the FTC Scheme beyond 30th March, 2011 but some of the States

have resolved to continue the FTC Scheme upto 2012, 2013 and even 2016. A few States are even considering the continuation of the FTC Scheme as a permanent feature in their respective States. This, to a large extent, has created an anomaly in the administration of Justice in the States and the entire country. Some of the States would continue with the FTC Scheme while others have been forced to discontinue or close it because of non-availability of funds.

94. On the one hand, the Central Government has communicated its decision not to finance the FTC Scheme to the State Governments, but on the other hand and quite strangely, it has provided substantial funds for the starting of Evening Courts and Gram Nyalayas, etc. Again, this is a policy decision and though the Government has the jurisdiction to decide on such policy matters, there has to be some rationale and reasonableness in the same. They cannot be so arbitrary and patently erroneous that it becomes necessary for the Court to interfere with the same.

95. Some of the States, like the State of Gujarat, have decided to terminate the services of the appointees directly recruited from the Bar. However, in some cases, the High Court on its judicial side has quashed the notice of termination. In the case of Orissa, although the FTC Scheme is continuing upto 30th March, 2013, they have still dispensed with the services of some of the direct recruits from the Bar.

96. In Chhatisgarh, the FTC Scheme itself has been discontinued with effect from 1st April, 2011.

97. In some of the other States, the appointees have prayed for regularization of their services.

98. In some of the States, the FTC Scheme is being continued on ad hoc basis and without any final decision being taken in that behalf. The appointees have therefore, prayed for continuation of the FTC Scheme as well as regularization of their services in the regular cadre of the State Judicial Services.

99. The policy decision of the State should be in public interest and taken objectively. Adhocism or uncertainty in the State policy particularly relating to vital factors of governance, may not bring the requisite dividend. Reasons for taking a policy decision would squarely fall in the domain of the State, but it should be free from element of arbitrariness and mala fide. There are three basic pillars of our constitutional governance i.e. the Executive, the Legislature and the Judiciary. The doctrine of separation of powers demarcates the area of their

respective operation. Normally, the Government exercises various controls over its instrumentalities and the organizations involved in the governance of the State. This would be through financial, administrative or managerial and functional controls. These parameters of control may be applied to determine whether or not a particular organization or a body is a State within the meaning of Article 12 of the Constitution. We have noticed these aspects primarily with the purpose of demonstrating that judicial functions and judicial powers are one of the essential attributes of a sovereign State and on considerations of policy, the State transfers its judicial functions and powers, mainly to the courts established by the Constitution, but that does not affect competence of the State to, by appropriate measures, transfer a part of its judicial functions or powers to Tribunals or other such bodies. This view is expressed by this Court, in the case of Associated Cements Co. Ltd. v. P.N. Sharma [AIR 1965 SC 1595]. However, as far as functioning of the courts, i.e., dispensation of justice by Courts is concerned, the Government has no control whatsoever over the courts. Further, in relation to matters of appointments to the Judicial Services of the States and even to the Higher Judiciary in the country, the Government has some say, however, the finances of Judiciary are entirely under the control of the State. It is obvious that these controls should be minimized to maintain the independence of the Judiciary. The courts should be able to function free of undesirable administrative and financial restrictions in order to achieve the constitutional goal of providing social, economic and political justice and equality before law to its citizens.

100. Article 21 of the Constitution of India takes in its sweep the right to expeditious and fair trial. Even Article 39A of the Constitution recognizes the right of citizens to equal justice and free legal aid. To put it simply, it is the constitutional duty of the Government to provide the citizens of the country with such judicial infrastructure and means of access to Justice so that every person is able to receive an expeditious, inexpensive and fair trial. The plea of financial limitations or constraints can hardly be justified as a valid excuse to avoid performance of the constitutional duty of the Government, more particularly, when such rights are accepted as basic and fundamental to the human rights of citizens.

101. In the case of High Court of Judicature at Bombay, Through its Registrar v. Shirishkumar Rangrao Patil and Anr. [(1997) 6 SCC 339], this Court articulated the above-mentioned principles unambiguously in the following words:-

> 13. The question then is whether the High Court is justified in recommending to the Governor the respondent's dismissal from service on the basis of the material on record and whether the evidence on record was

not sufficient to conclude the misconduct of having demanded illegal gratification. In a democracy governed by rule of law, under a written constitution, judiciary is the sentinel on the qui vive to protect the fundamental rights and poised to keep even scales of justice between the citizens and the States or the States inter se. Rule of law and judicial review are basic features of the Constitution. As its integral constitutional structure, independence of the judiciary is an essential attribute of rule of law. Judiciary must, therefore, be free from pressure or influence from any quarter. The Constitution has secured to them, the independence. The concept of judicial independence is a wider concept taking within its sweep independence from any other pressure or prejudice. It has many dimensions, namely, fearlessness of other power centres, economic or political, and freedom from prejudices acquired and nourished by the class to which the Judge belongs. Independent judiciary, therefore, is most essential to protect the liberty of citizens. In times of grave danger, it is the constitutional duty of the judiciary to poise the scales of justice unmoved by the powers (actual or perceived), undisturbed by the clamour of the multitude. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of individual men and women who work primarily on their own. (Vide C. Ravichandran Iyer v. Justice A.M. Bhattacharjee) The Constitution of India has delineated distribution of sovereign power between the legislature, executive and judiciary. The judicial service is not service in the sense of employment. The Judges are not employees. As members of the judiciary, they exercise the sovereign judicial power of the State. They are holders of public offices in the same way as the members of the Council of Ministers and the members of the legislature. It is an office of public trust and in a democracy, such as ours, the executive, the legislature and the judiciary constitute the three pillars of the State. What is intended to be conveyed is that the three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. The Judges, at whatever level they may be, represent the State and its authority, unlike the bureaucracy or the members of the other service. [Vide All India Judges' Assn. v. Union of India [SCC paras 7 and 9] (second case).] The Judges do not do an easy job. They repeatedly do what the rest of us seek to avoid, i.e., make decisions. Judges, though are mortals, they are called upon to perform a function that is utterly divine in character. The trial Judge is the kingpin in the hierarchical system of administration of justice. He directly comes in contact with the litigant during the day-to-day proceedings in the court. On him lies the responsibility to build a solemn atmosphere in the dispensation

of justice. The personality, knowledge, judicial restraint, capacity to maintain dignity, character, conduct, official as well as personal and integrity are the additional aspects which make the functioning of the court successful and acceptable. Law is a means to an end and justice is that end. But in actuality, law and justice are distant neighbours; sometimes even strangely hostile. If law shoots down justice, the people shoot down the law and lawlessness paralyses development, disrupts order and retards progress. [Vide All India Judges' Assn. v. Union of India9) which quoted with approval the statement of law by Krishna Iyer, J.] Fourteenth Report of the Law Commission, extracted and approved by this Court in the above judgment (SCC p. 134, para 44), postulates thus:

If the public is to give profound respect to the judges the judges should by their conduct try and observe it; not by word or deed should they give cause for the people that they do not deserve the pedestal on which we expect the public to place them. It appears to us that not only for the performance of his duties but outside the court as well a judge has to maintain an aloofness amounting almost to self-imposed isolation.

14. Therein also, it was further observed that what is required of a Judge is a form of life and conduct far more severe and restricted than that of ordinary people and though unwritten, it has been most strictly observed. The judicial officers are at once privileged and restricted; they have to present a continuous aspect of dignity and conduct. If the rule of law is to efficiently function under the aegis of our democratic society, Judges are expected to nurture an efficient, strong and enlightened judiciary. To have it that way, the nation has to pay the price, i.e., to keep them above wants, provide infrastructural facilities and services. There was a time when a Judge enjoyed a high status in society. A Government founded on anything except liberty and justice cannot stand and no nation founded on injustice can permanently stand. Therefore, dispensation of justice is an essential and inevitable feature in the civilized democratic society. Maintenance of law and order requires the presence of an efficient system of administration of criminal justice. A sense of confidence in the court is essential to maintain the fabric of ordered liberty for free people and it is for the subordinate judiciary by its action and the High Court by its appropriate control of subordinate judiciary and its own self-imposed judicial conduct, on and off the bench, to ensure it. If one forfeits the confidence in the judiciary of its people, it can never regain its lost respect and esteem. The conduct of every judicial officer, therefore, should be above reproach. He should be

> conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamour, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity. If he tips the scales of justice, its rippling effect would be disastrous and deleterious. Obviously, therefore, this Court in All India Judges' Assn. attempted to ensure better uniform conditions of service for subordinate judiciary throughout the country, it recommended the superannuation of the subordinate judicial officers at the age of 60 years; and ensured amelioration of their service conditions by giving diverse directions. In 2nd All India Judges' Assn. this Court dealt with the status of the judicial officers as a class and held that they are above the personnel working in other constitutional functionaries, viz., the executive and the legislature. Directions were issued by this Court for ensuring due implementation for their better service conditions. Three years' minimum service at the Bar was recommended to be eligible to be a judicial officer in All India Judges' Assn. v. Union of India (third case). In All India Judges' Assn. v. Union of India (fourth case), direction was issued to ensure accommodation.

102. As is evident from the above extract, which makes reference to a number of other judgments of this Court, judicial review is recognized as a basic feature of the Constitution and independence of judiciary is integral to the constitutional structure, as an essential attribute of the Rule of law. Judiciary must, therefore, be free from pressure and influences from any quarter. The heart of judicial independence is judicial individualism. The judiciary is not a disembodied abstraction. It is composed of men and women who work primarily on their own. Thus, it can be stated with certainty that any impediments to the continued and independent functioning of the Judiciary would result in damaging the institution of Justice as well as adversely affecting the faith of the public in the functioning of the Courts/Tribunals. Only if continued judicial independence is assured, would the Courts/Tribunals be able to discharge their functions in an impartial manner. It is fundamental that members of the Courts/Tribunal be independent persons. They should resemble the courts and not bureaucratic Boards {Ref. Union of India v. R. Gandhi, President, Madras Bar Association [(2010) 11 SCC 1]}.

103. In the above-mentioned case, this Court also expressed the view that persons exercising quasi-judicial powers should be vested and possessed with the independence, security and capacity as is associated with the courts.

104. It is a frequently stated principle that making the Judiciary free from control of the Executive and the Legislature is essential, as there exists a right to have claims decided by Judges who are free from domination by other branches of the Government.

105. These principles have withstood the test of time and have been frequently applied by the courts. Even in the case of Union of India Ors. v. Pratibha Bonnerjea Anr. [(1995) 6 SCC 765], this Court stated that the Judicial Officers belonging to the subordinate services are placed under the protective umbrella of the High Court and that it had no hesitation in concluding that the relationship between the Government and the High Court is not that of master and servant. The Judicial Officers cannot be said to be holding a post under the Union or the State.

106. It is in this context that this Court, in the case of Ors. [(2008) 6 SCC 1], while dealing with Right to Education in terms of Article 21A of the Constitution, held that financial constraints upon the State cannot be a ground to deny fundamental rights to citizens.

107. On a proper examination of the above principles, it can be stated without hesitation that wherever the right which is being affected is a basic or a fundamental right, the State cannot be permitted to advance an argument of financial constraints in such matters. The policy of the State has to be in the larger public interest and free of arbitrariness. Adhocism and uncertainty are the twin factors which are bound to adversely affect any State policy and its results. The State cannot in, an ad hoc manner, create new systems while simultaneously giving up or demolishing the existing systems when the latter have even statistically shown achievement of results.

108. In reference to the cases at hand, the Central Government had taken a decision to stop financing and consequently to wind up the FTC Scheme. However, at the same time, it has allocated Rs.2500 crores for operation of the Morning, Evening and Shift Courts in the country besides providing funds under other heads, as per the 13th Finance Commission Report for the period 2010-2011 to 2014-2015.

109. It may not be appropriate for this Court to decide upon a comparative analysis of the policy decisions as to which policy has greater merit and which policy the

Government should adopt, but certainly whichever policy is eventually taken up by the State, it has to be fair, in public interest and also satisfy the constitutional limitation of ensuring independence of Judiciary.

110. Another very important aspect, which has often been noticed by this Court, is that the Legislature, in exercise of its power, has enacted various Central and State laws. The disputes arising under these laws are to be adjudicated upon by the Courts. It is a known fact that such legislations are not preceded by Judicial Impact Assessment by the concerned authorities.

111. To take an example, in 1988 the Legislature amended the provisions of the Negotiable Instruments Act, 1881, inserting Chapter XVII (Section 138 to Section 142) by the Amending Act 66 of 1988. Again, vide the Amending Act 55 of 2002, the punishment prescribed under Section 138 of that Act was amended and the period of notice was also reduced to 15 days from the one month period prescribed earlier. These amendments resulted in filing of unexpected number of cases in the courts of the learned Magistrate. As per the 213th Law Commission Report, the pendency in 2008 of Section 138 cases alone in the country is 3.8 million cases in the trial courts.

112. Similarly, with the passage of time, owing to the tremendous growth in the population of the country and greater awareness among citizens of their rights, civil and criminal litigation before the Courts have increased manifold, without there being an equivalent increase in the strength of Judges and enhancement in the infrastructure of the Courts. Thus, it is essential that some kind of consistent and systematized approach is adopted by all the concerned Governments, including the Union of India, so as to take effective measures to remedy this situation as well as to prevent further undesirable increase in the pendency of cases before the Courts. Expeditious disposal of cases is obviously the first answer to this multifarious problem.

> The Conference of the Chief Ministers of the States and the Chief Justices of the High Courts

113. In order to resolve various administrative and allied issues relating to the administration of justice in the States, it has been the practice to hold the Chief Justices and Chief Ministers Conference, which is presided over by the Chief Justice of India. In these meetings, various steps are discussed, for which an agenda is circulated and suggestions from the High Courts as well as the State Governments are invited. This Conference is normally attended by the Chief

Ministers and/or the Law Ministers of the State, Chief Justices of the High Courts and various other authorities from the bureaucracy and the High Courts. Upon due deliberations, decisions are taken, whereafter Minutes of the same are prepared and circulated. The decisions are recorded and circulated to the States and the Union of India specifically for their information and further action. Unfortunately, the practice has shown that these decisions have hardly been implemented by the concerned authorities.

114. One such Conference was held on 16th August, 2009 in which various matters were discussed. Item 3 of the Agenda and the decision taken thereunder reads as follows:-

> 3. Progress made in setting-up of fast track courts of magistrates and fast track civil courts and continuation of fast track courts.
>
> There was unanimity amongst all the participants that Fast Track Courts of Magistrates and Fast Track Civil Courts be set up on the lines of Fast Track Courts of Sessions for the purpose of expeditious disposal of cases pending in the Magisterial Courts. They were unanimous on the aspect that huge accumulation of arrears of cases cannot be arrested unless strength of Judicial Officers is raised. All the speaker were ad idem with the proposal of continuing Fast Track Courts of Sessions for a further period of five years beyond 31st March, 2010, as they were set-up with a laudable object and a large number of cases have been disposed of by these courts. However, the speakers cited financial constraints and desired that the allocation of funds for this purpose be made by the Central Government.
>
> DECISION
>
> > a] Fast Track Civil Courts and Fast Track Courts of Magistrates be set-up in order to arrest accumulation of arrears of cases in such courts.
> >
> > b] Fast Track Courts of Sessions be continued for a further period of five years beyond 31st March, 2010.
> >
> > c] Priority be given to the retired Judicial Officers for appointment to the Fast Track Courts having unblemished service record of integrity, probity and ability as also on the basis of physical and mental fitness.

A reasonable amount of remuneration be paid to the retired Judicial Officers appointed for the purpose.

115. The matter in regard to setting up of Evening, Morning and Shift Courts was also discussed and it was required that the State Government shall set up at least one Family Court in each district. Other items which may have some bearing on the matter before us are Item nos. 8 and 13 which read as under:-

8] Steps required to be taken for reduction of arrears and ensuring the speedy trial There was complete unanimity amongst the participants that cases are not being disposed of within a reasonable time- schedule and they were of the view that strength of Judges at all levels need to be enhanced in order to arrest accumulation of arrears of cases and to provide speedy, efficient and effective justice to the citizens. The speakers also stressed upon the need to evolve methods to arrest arrears of cases and to ensure speedy disposal of cases. The participants also impressed upon the fact that unfilled vacancies be filled up at the earliest which will contribute to reducing the backlog of cases.

DECISION

The High Courts will make scientific and rational analysis as regards accumulation of arrears and devise a roadmap for itself and jurisdictional courts to arrest arrears of cases taking into account average institution, pendency and disposal of cases and to ensure speedy trial within a reasonable time-schedule.

13] Judicial Impact Assessment

The proposal of b Judicial Impact Assessmentb was welcomed at the Conference and need was felt that it be assessed on a continual basis. It was suggested that a scientific study be made to estimate the additional case-load on the courts on account of a new legislation.

DECISION

A judicial impact office at the National and State levels on continual basis for making assessment of impact of legislations on judicial work load be constituted.

116. There is nothing placed on record before us to show that the FTCs at the level of the Magistrate Courts have no further efficacy. All the concerned governments, including the Union of India, which duly participated in the Conference, had decided to extend the FTCs for a period of five years beyond 31st March, 2010 i.e. till 31st March, 2015. It was further contemplated in the above decisions that other measures should also be taken by the respective State Governments and Union of India to tackle the problem of arrear of cases. Hardly any decision in that regard was implemented, but on the other hand, a decision contrary to the minutes has been taken with certainty and has been placed before us that the FTC Scheme would not be financed by the Central Government beyond 31st March, 2011. The question that arises is whether it is justified for the Central Government, or any other Government, to brush aside the above Minutes and recommendations of such a high level meeting in a most casual manner or whether such Minutes require favourable consideration by all concerned and proper and complete policy decisions taken in furtherance thereto and such minutes form the foundation for major policy decisions relating to judiciary.

117. The latter perspective demands an affirmative answer as these decisions and recommendations should be favourably considered by all concerned. Rather, they should form the basis of the policy decisions relating to the administration of justice. The Chief Justices and the Chief Ministers are the constitutional heads of the Judiciary and the Executive, respectively. The matters are discussed by all States, Union of India and Judiciary. The decisions are taken on the basis of the collective wisdom. One can hardly comprehend a constitutional body of a higher normative significance than the Chief Justices and the Chief Ministers of the respective High Courts/States to take such policy decisions at the National level. The meeting is held under the umbrella of the Union of India and is presided over by the Chief Justice of India, Union Minister for Law and Justice and other high dignitaries to deliberate upon issues which relate to the justice delivery system, ultimately affecting the basic and fundamental rights of the citizens of this country at large.

118. It will not only be unfair but unacceptable that these Minutes be placed in the shelves of the Government archives without attaching any significance to them. In our considered view, it will neither be fair nor proper for any level in the bureaucratic hierarchy of the Government to reject such suggestions at the threshold, that too, without any proper reasoning in support thereof. At least, the Cabinet of the Government of India or the State Government, as the case may be should take into consideration the decisions and recommendations of this meeting. We hasten to add that due weightage should be attached to these recommendations

and preferably, they should form the basis of the policy decision by the State or the Central Government in relation to the matters concerning Judicial administration.

Merits of the Respective Cases

119. We have already noticed that in the case of the State of Gujarat, a number of persons were appointed as Judicial Officers to preside over the FTCs by way of direct recruitment from the Bar. Their services have been terminated on the ground of unsatisfactory performance. The High Court had, vide its judgment dated 1st August, 2010, declined to set aside the termination of services of most officers, except 12 officers whose cases were remanded to the High Court for reconsideration on the administrative side. Out of these 12 officers, the High Court reinstated six officers and declined reinstatement of six others. In this way, 47 officers have challenged their termination orders. In the impugned judgment, the High Court has noted unsatisfactory performance as the cause for termination of their services. Entries of their service records have been reproduced in the judgment. All these officers had been appointed as ad hoc and temporary FTC Judges. At no point of time was anything done, directly or indirectly, by the State to give rise to a legitimate expectation of the appointees that their services will be regularized and they will be absorbed in the regular cadre. On the basis of the Confidential Records referred to by the High Court, in its judgment, it is difficult for us to take any different view, particularly when these judicial officers were only temporary and ad hoc appointees with no vested right to the post. Certainly, this is not a case of mala fide termination. In the subsequent writ petitions before the High Court only one reason has been given for the termination, i.e., the Central Government has refused to extend the FTC Scheme and so, the State Government of Gujarat has also decided not to extend the FTC Scheme beyond 31st March, 2011. This probably was not a valid reason to dismiss the Writ Petitions because the Court ought to have examined the prayer of those officers for regularization of their services and absorption against the regular cadre posts. This aspect of the Writ Petition was not even discussed by the High Court and the writ petitions were dismissed. However, the High Court, while noticing that 100 posts of Additional District Judges have been created, concluded that the FTC Judges would not be adjusted or absorbed against those vacancies and that the they could not claim absorption against those posts. The High Court merely granted leave to the petitioners to apply for selection to the new posts or the regular posts, in light of the judgment of this Court in the case of Brij Mohan Lal (supra).

120. These petitioners have also raised a challenge to Rules 4 and 6 of the Gujarat Rules under which they were appointed, on the ground that the same are arbitrary

and discriminatory. Firstly, the Rules under which the petitioners were appointed after 2001 themselves were to be in force only till 31st December, 2005. Till 2005, none of the appointees challenged these Rules. For these four years, they, in fact, took full advantage of their appointment under these Rules and received different service benefits thereunder. We are unable to appreciate the contention that these Rules were arbitrary or discriminatory. The Rules themselves were temporary and were enacted to meet an emergency situation. The appointments were made purely on ad hoc and urgent temporary basis for a period of two years, terminable without any prior notice. A temporary appointment, which itself was made for a period of two years, can hardly be equated to a tenure appointment and must be construed on such terms. These appointments were to come to an end by lapse of time. Such an appointment obviously cannot vest or confer any right upon the appointees to be absorbed in the permanent cadre, as they were not appointed in accordance with the provisions of the Gujarat Judicial Service Recruitment Rules, 1961. The expression b liable to be terminated at any time without any noticeb could be susceptible to objections if it was used in the case of a quasi permanent or permanent employee of a Government servant. However, we have already noticed that there were no permanent posts contemplated under the FTC Scheme. The entire FTC Scheme was ad hoc and formulated to operate only until the year 2005. It was continued beyond that period in accordance with the directions of this Court but now a decision has been taken not to continue the FTC Scheme beyond 31st March, 2011. Even if, for the sake of argument, we accept the contention that the expression b liable to be terminated at any time without any noticeb is arbitrary and opposed to the basic Rule of Law, it still has to satisfy the twin tests laid down in the case of Parshotam Lal Dhingra (supra), i.e., firstly, whether the Government servant being terminated or reduced in rank thereby had a right to the post or to the rank, as the case may be and, secondly, whether he had been visited with evil consequences. Both of these tests have to be answered in the negative, in the facts and circumstances of the present case. We have already held above that these officers had no right to their posts and, consequently, discontinuation of their services in the facts of the present case cannot be construed as punitive or one visiting the petitioners with civil consequences. This holds true even though in some cases, it has been recorded that the performance of these appointees was found to be unsatisfactory but that is not the lone reason given by the High Court for dispensing with their services. It is the discontinuation of the FTC Scheme itself that is the principal reason for terminating the services of all these officers. In the present case, the Rules themselves were temporary and were bound to cease to have force of law after 2005. The posts created were temporary and ad hoc. The appointments were made on ad hoc and urgent temporary basis for a limited period of two years and terminable without notice. In these circumstances, neither can it

be stated that there existed posts which had permanent or quasi-permanent character and were the duly sanctioned posts of the regular cadre of the State Government nor that the appointees had any right to these posts. Similar views were expressed by this Court in the case of Mohd. Abdul Kadir (supra) holding that the appointments made under a scheme, which was extended from time to time could still be terminated or discontinued as the temporary or ad hoc engagements or appointments were in connection with a particular project or a specific scheme only. Such appointments would come to an end with the scheme itself.

121. Writ Petitions have been filed by some of the appointees from the State of Orissa praying for quashing of the caution dated 4th April, 2008 issued to some officers, including Smt. Madhumita Das, which had informed them that they were required to dispose of eight sessions trials every month which, so far, they had not been able to achieve and that if they still failed to achieve the said target, their services would be liable to be terminated. The State of Orissa had issued an advertisement for direct recruitment to the Higher Judicial Services of the State dated 11th April, 2008. The appointees to the FTCs prayed that this advertisement be quashed and they be absorbed against the regular vacancies. Amongst others, one Shri Prakash Kumar Rath, petitioner in Writ Petition (C) No.254 of 2008 has approached this Court under Article 32 of the Constitution on the ground that he had earlier been placed in the waiting list of the candidates selected for regular appointment to the Higher Judicial Services of the State of Orissa under the Orissa Superior Judicial Service Rules, 1963 though after sometime, his appointment was made under the Orissa Judicial Service (Special Scheme) Rules, 2001 relating to temporary appointment for FTCs. According to this petitioner, he ought to be treated as a regular candidate as his selection was under the regular service cadre and, therefore, he should be absorbed against those vacancies.

122. The correctness of the above-mentioned caution is primarily challenged on the ground that it is violative of Articles 14 and 16 of the Constitution inasmuch as no such restriction or limitation of disposing eight Session Trials every month is applied to the members of the State Higher Judicial Services and that the same yardstick should uniformly be applied to the direct recruits appointed under the Rules as well as to the Judicial Officers promoted/transferred to the FTCs. This argument is misconceived. The Judicial Officers appointed under the regular cadre of the State Higher Judicial Services are subject to various restrictions and limitations of judicial conduct as imposed by the High Court and under the relevant Rules in force. Without exception, unit system for disposal of cases prevails and is applicable to the courts presided over by such officers. They are required to dispose of certain given number of cases as that is one of the main parameters for

recording the Annual Confidential Reports of the officers and placing them in the categories of b Outstandingb , b Very Goodb , b Goodb , b Averageb , etc. On the contrary, the FTC Judges are to deal only with session trials. This was the very purpose for which the Scheme was created and, as such, they cannot claim that the imposition of such a condition is ex facie unreasonable, arbitrary or discriminatory. In fact, in the writ petitions filed before us, no data has been provided to substantiate that it is neither practicable nor possible for these courts to dispose of eight Session Trials, as contemplated under this caution letter dated 4th April, 2008. It is not that every sessions trial requires examination of large number of witnesses and other evidence. There are a considerable number of sessions cases where the trial may not really take prolonged period for disposal. In the absence of any specific data and even otherwise, we are unable to accept this contention raised on behalf of the petitioners-appointees. Similarly, we also find no merit in the contention that this Court should quash the advertisement issued by the State of Orissa for making selections to the Orissa Higher Judicial Services on the basis of the claims for regularization of the petitioners against such posts. There are two different sets of Rules, applicable in different situations, to these two different classes of officers and further they are governed by different conditions of service. They cannot be placed at par. The process of their appointments is distinct and different. These petitioners have no right to the post. Thus, it would neither be permissible nor proper for the Court to halt the regular process of selection on the plea that these petitioners have a right to be absorbed against the posts in the regular cadre.

123. The prayer for regularization of service and absorption of the petitioners-appointees against the vacancies appearing in the regular cadre has been made not only in cases involving case of State of Orissa, but even in other States. Absorption in service is not a right. Regularization also is not a statutory or a legal right enforceable by the persons appointed under different rules to different posts. Regularization shall depend upon the facts and circumstances of a given case as well as the relevant Rules applicable to such class of persons. As already noticed, on earlier occasions also, this Court has declined the relief of regularization of the persons and workmen who had been appointed against a particular scheme or project. A Constitution Bench of this Court has clearly stated the principle that in matters of public employment, absorption, regularization or permanent continuance of temporary, contractual or casual daily wage or ad hoc employees appointed and continued for long in such public employment would be de hors the constitutional scheme of public employment and would be improper. It would also not be proper to stay the regular recruitment process for the concerned posts. [refer Uma Devi (3) (supra)].

124. It is not necessary for us to deliberate on this issue all over again in view of the above discussion. Suffice it to notice that the petitioner- appointees have no right to the posts in question as the posts themselves were temporary and were bound to come to an end by efflux of time. With reference to the letters of their appointment and the Rules under which the same were issued, it is clear that these petitioners cannot claim any indefeasible right either to regularization or absorption. It may also be noticed that under the Orissa Superior Judicial Services and Judicial Service Rules, 2007, there is no provision for absorption or regularization of ad hoc Judges.

125. The petitioners from the State of Andhra Pradesh have also prayed for identical relief claiming that the advertisement dated 28th May, 2004 issued for filling up the vacancies in the regular cadre should be quashed and not processed any further and the petitioners instead should be absorbed against those vacancies. In view of the above discussion, we find no merit even in these submissions.

126. We have already noticed that the FTC Judges were appointed under a separate set of Rules than the Rules governing the regular appointment to the State Higher Judicial Services. It has been clearly stipulated that such appointments would be ad hoc and temporary and that the appointees shall not derive any benefit from such appointments.

127. In the case of State of Rajasthan, it is the Judicial Officers from the cadre of Civil Judge, Senior Division, who were promoted as FTC Judges. They have continued to hold those posts for a considerable period. According to these petitioners, they were promoted to the Higher Judicial Services as per Rules and, therefore, keeping in view the order of this Court in the case of Madhumita Das (supra) as well as the very essence of the FTC Scheme, they should be absorbed as members of the regular cadre of Higher Judicial Services of the State of Rajasthan. The State Government had issued a directive that they should undertake the limited competitive examination for their regular promotion/absorption in the higher cadre. These officers questioned the correctness of this directive on the ground that they were promoted as Additional Sessions Judges (FTC) under the Rules and, therefore, there was no question of any further requirement for them to take any written examination after the long years of service that they have already put in in the Higher Judicial Services.

128. The Rajasthan Higher Judicial Service Rules, 2010 are in force for appointment to the Higher Judicial Services of the State. The judgment of this

Court in All India Judgesb Association case (2002) (supra) as well as the relevant Rules contemplate that a person who is to be directly appointed to the Higher Judicial Services has to undergo a written examination and appear in an interview before he can be appointed to the said cadre. As far as appointment by promotion is concerned, the promotion can be made by two different modes, i.e., on the basis of seniority-cum- merit or through out of turn promotion wherein any Civil Judge, Senior Division who has put in five years of service is required to take a competitive examination and then to the extent of 25 per cent of the vacancies available, such Judges would be promoted to the Higher Judicial Services. It was admitted before us by the learned counsel appearing for the petitioner that these officers who were promoted as ad hoc FTC Judges had not taken any written competitive examination before their promotion to this post under the Higher Judicial Services. In other words, they were promoted on ad hoc basis depending on the availability of vacancy in the FTCs. Once the Rules required a particular procedure to be adopted for promotion to the regular posts of the Higher Judicial Services, then the competent authority can effect the promotion only by that process and none other. In view of the admitted fact that these officers have not taken any written examination, we see no reason as to how the challenge made by these Judicial Officers to the directive issued by the State Government for undertaking of written examination may be sustained. Thus, the relief prayed for cannot be granted in its entirety.

129. In the case of the States of Punjab and Haryana, the appointees were directly appointed as FTC Judges by way of direct recruitment from the Bar and they prayed for regularization of their services and absorption in the regular cadre as well as for continuation of the FTC Scheme till their absorption. For the reasons already recorded by us in relation to other States mentioned above, we do not think that the relief of regularization/absorption can be granted to these petitioners also in the manner in which they have prayed. They too have no right to the post. Admittedly, these candidates also did not pass any written competitive examination and were appointed solely on the basis of an interview and must now undergo the requisite examination.

> The effect of Madhumita Das (supra) and Brij Mohan Lal (supra) and the directions that this Court is required to issue in light thereof

130. The issues arising for the consideration of this Court under this head, though ancillary, are of significant importance. Having held that the petitioners/appointees to the FTCs do not have any right to the post and such appointments were temporary, ad hoc and on urgent basis for a limited period, we have yet to examine

whether these petitioners would at all be entitled to some relief within the framework of law, with particular reference to certain constitutional provisions. The independence of the Judiciary forms part of the basic structure of our Constitution. In the Indian Democracy neither administration of justice nor functioning of the courts can be rendered irrelevant by actions of other organs of the State. Article 13 of the Constitution prescribes that if relevant laws are inconsistent with Part III of the Constitution, when enacted, they shall thereafter be held to be void to the extent of such inconsistency. The power of the Legislature, thus, is limited by the very fundamental restriction prescribing that it cannot enact laws inconsistent with the fundamental rights of the citizens. With the development of law, Article 21 has been given a very wide connotation. It covers various facets of life. Right to life encompasses the right to live with dignity. Life or personal liberty cannot be taken away except according to the procedure established by law. Such procedure established by law also has to be reasonable, fair and just. On failure to satisfy these parameters, such deprivation would be found violative of the fundamental right guaranteed under Article 21 of the Constitution and would be liable to be struck down. One such rudiment stated by this Court is the right to fair and speedy trial.

131. The right to speedy trial is an essential ingredient of such reasonable, fair and just procedure. The State cannot be permitted to deny the constitutional right to speedy trial to the accused on the ground that the State does not have adequate financial resources to incur the necessary expenditure needed, for improving the administrative and judicial apparatus to ensure speedy trial. Usefully, we can refer to the words of Judge Blackmum in Jackson v. Bishop [404 F Supp. 2d 571] who proclaimed that b humane considerations and constitutional requirements are not, in this day, to be measured by dollar considerationsb . In the case of Hussainara Khatoon and Others (IV) v. Home Secretary, State of Bihar, Patna [(1980) 1 SCC 98], this Court held that:

> 10. b .it is also the constitutional obligation of this Court, as guardian of the fundamental rights of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action such as augmenting and strengthening investigative machinery, setting up new courts, building new court houses, providing, providing more staff and equipment to the courts, appointment of additional Judges and other measures calculated to ensure speedy trial.

132. This Court, in the case of Sheela Barse (II) and Ors. v. U.O.I. and Ors. [(1986) 3 SCC 632], while expressing its anguish over mounting arrears of criminal cases, particularly in relation to retarded, abandoned or destitute children who were facing trial and lodged in protection homes for years, issued various directions and held as under:-

> 3. We are, therefore, firmly of the view that every State Government must take necessary measures for the purpose of setting up adequate number of courts, appointing requisite number of judges and providing them the necessary facilities. It is also necessary to set up an institute or academy for training of Judicial Officers so that their efficiency may be improved and they may be able to regulate and control the flow of cases in their respective courts. The problem of arrears of criminal cases in the courts of magistrates and Additional Sessions Judges has assumed rather disturbing proportions and it is a matter of grave urgency to which no State Government can afford to be oblivious. But, here, we are not concerned with the question of speedy trial for an accused who is not a child below the age of 16 years. That is a question which may have to be considered in some other case where this Court may be called upon to examine as to what is reasonable length of time for a trial beyond which the court would regard the right to speedy trial as violatedb .

133. It is a known fact that besides the above judgment, in a number of decisions including all the cases titled All India Judgesb Association (supra), the Salem Advocate Bar Association v. Union of India [(2003) 1 SCC 49] and various other public interest litigations, this Court has used all legally permissible judicial tools, to pass appropriate directions of a generic nature and required the Governments to duly take requisite policy decisions, in furtherance of public duties as would be the requirement of law and the Constitution. {Ref. Prakash Singh Badal v. State of Punjab and Others [(2006) 8 SCC 1]}. The Constitution confers certain rights upon the citizens and they are entitled to full enforcement of such rights.

134. The present case has two significant aspects with which the Court is concerned. One relates to the grant or refusal of the relief claimed by various writ petitioners in these petitions while the other enjoins a duty upon the Court to test the merits or otherwise of the policy decision taken by the Government as opposed to the rights of the under trials or accused as well as the right of the public at large to demand speedy and fair trial. The former may have limited but the later certainly has far reaching consequences. This Court would fail in its duty if it declines to exercise its jurisdiction in the latter class of cases, solely on the ground that it was

a policy decision and, thus, is beyond the limits of judicial review, being a matter primarily within the domain of the Government. Keeping in view its constitutional duty, the constitutional rights of citizens of this country at large and with reference to the facts of a given case, this Court may be duty bound to amplify and extend the arm of justice in accordance with the principle Est boni Judicls ampliare Justiciary non-Jurisdictionem. The argument that matters of policy are, as a rule, beyond the power of judicial review has to be dispelled in light of the consistent view of this Court. This Court would be required to take unto itself the task of issuing appropriate directions to ensure that the Rule of Law prevails and the constitutional goals are not defeated by inaction either when the law requires action or when the policy in question is so arbitrary that it defeats the larger public interest.

135. Now, we may examine certain essential features which have compelled us to state the directions with candour:

(a) The right of the citizens, undertrials or convicts to a speedy and fair trial.

(b) Persistent deadlock between the Union and the State Governments in regard to continuation or otherwise of the FTC Scheme.

(c) Uncertainty and adhocism in planning, implementation and financing of the FTC Scheme.

(d) The legitimate expectation of the large number of FTC Judges, that their services would be regularized in the Higher Judicial Service of the respective State or that the FTC Scheme would be made a permanent feature.

(e) The element of arbitrariness that appears to have crept into the decision-making process of the Government and its hierarchy.

(f) Why due weightage was not given to the decision and recommendation of the Minutes of the Chief Justices and Chief Ministers Conference held in the year, 2009 at New Delhi?

(g) Whether the decision of the Government was data based and taken objectively?

(h) There is an inbuilt contradiction in this policy decision inasmuch as, on the one hand, lack of finances is one of the grounds taken for discontinuance of the FTC Scheme, funds to the tune of Rs.2500 crore have been allocated for starting of the morning, evening and shift courts on the other.

136. These are the features of the case which stand out and oblige the Government of India to clarify its stand. The Union of India has failed to place any material on record to justify its decision taken vide letter dated 14th September, 2010 deciding to stop financing the FTC Scheme with effect from 31st March, 2011. We are quite prepared to accept the contention of the Union of India that it will not be a case where this Court should venture to issue a mandamus directing continuation of the Scheme and reverse the policy decision taken by the Union of India. While we are not oblivious of the principle that policy decisions should be interfered with rarely by the court, we are fully conscious of the fact that the present case is certainly one where the Court should issue certain directions to ensure that the fundamental rights and protections available to the citizens are not violated and at the same time, the decision of the Government of India does not undermine the independence of judiciary. It may not be mandatory, but is always desirable that the policy decision in relation to administration of justice should be made by Union of India in consultation with the Supreme Court and/or the respective High Courts of the State. The recommendation of bodies like the Law Commission of India or other special commissions appointed in relation to administration of justice delivery system ought to be taken into consideration. But, we are unable to accept the view that the recommendations given by one of the important organs of the State, the judiciary, are not given effective consideration and due weightage in framing and implementation of the policies making relating to matters of administration of justice.

137. It will neither be appropriate nor logical for the Union of India and/or the State Governments to raise an argument that this Court may not issue any directions or mandamus to the concerned Government, as it may have far reaching consequences. This argument does not impress us at all. Firstly, the Union of India and the State Governments are not expected to raise such issue and secondly, it can hardly be disputed that the Governments have not been able to successfully perpetrate any stable and result-oriented solution to reduce the huge pendency of criminal cases before the courts. The finances, infrastructure and existence of adequate posts are the prime considerations which would weigh with any Authority or Court while taking any policy decisions or passing necessary directions in that behalf.

138. What appears to have weighed with the Central Government for not continuing the FTC Scheme after 31.03.2011 is that the 13th Finance Commission has recommended a grant of Rs. 5,000 Crores to the States for improving the justice delivery system in the country with a specific objective of reducing the arrears significantly and out of this amount of Rs.5,000 crore a sum of Rs.2,500 crore has been allotted for morning/evening/shift courts and no amount has been allotted for FTCs. The recommendations of the 13th Finance Commission under the head b Improving

Justice Delivery which are relevant are extracted herein below:

12.76 The improvement of justice delivery is a critical component of the initiative to ensure better outputs and outcomes. This can be done by supporting the judiciary, while simultaneously strengthening the capacity of the law enforcement arm. We discuss here the support required to improve judicial outcomes. There are over 3 crore cases pending in various courts in the country today. At the very least, current filings need to be disposed off, to prevent accumulation of arrears. The enormous delay in disposal of cases results not only in immense hardship, including those borne by the large number of under-trials, but also hinders economic development.

12.77 The Department of Justice has identified a number of initiatives which are part of this action plan and need support. The first is increasing the number of court working hours using the existing infrastructure by holding morning/evening/shift courts. The second entails enhancing support to Lok Adalats to reduce the pressure on regular courts. The third initiative involves providing additional funding to State Legal Services Authorities to enable them to enhance legal aid to the marginalised and empower them to access justice. The fourth is promoting the Alternate Dispute Resolution (ADR) mechanism to resolve pat of the disputes outside the court system. The fifth is enhancing capacity of judicial officers and public prosecutors through training programmes. The sixth relates to supporting creation of a judicial academy in every state to facilitate such training.

12.78 The department has also proposed creation of the post of Court Managers in every judicial district to assist the judiciary in their administrative functions. A number of courts in each state are housed in heritage buildings, which reflect the cultural heritage of the arrears. It is proposed that a grant be provided for maintaining these buildings.

> 12.79 The Commission, after careful consideration has agreed to support the proposals made by the Department of Justice by approving a grant of Rs.5,000 Crores to be allocated as describe below. These allocations may be released in two annual instalments subject to accounts being maintained and Utilisation Certificates (UCs)/ Statements of Expenditure (SOEs) provided as per General Financial Rules (GFR 2005).
>
> 12.80 Operation of morning/ evening/ special judicial- metropolitan magistrate/ shift courts: The present 14,000 district and subordinate courts in the country are disposing off both important as well as petty cases. The pressure on judicial time on account of the petty cases can be relieved by allotting them to morning/evening courts/ courts of special judicial/metropolitan magistrates. These courts will be staffed either by the regular judiciary on payment of additional compensation, or by retired officers. The morning courts in Andhra Pradesh and the evening courts in Gujarat have demonstrated the feasibility of such models. It is expected that about 14,825 such courts can dispose off 225 lakh pending as well as freshly filed -cases of a minor nature within a year. This aggregates to 1125 lakh cases over the period 2010-2015. An amount of Rs.2,500 crore is being provided to facilitate setting up of such courts, which has been allocated to each state in accordance with the number of sanctioned courts.

139. It will be clear from the aforesaid extracts from the recommendations of the 13th Finance Commission that the recommendations were based on the proposals of the Department of Justice, Government of India for setting up morning/evening and shift courts because the morning courts in Andhra Pradesh and the evening courts in Gujarat had demonstrated the feasibility of morning and evening courts. The morning and evening courts, however, may not be feasible in the other States in India due to various local conditions prevailing in the States. Moreover, as mentioned in paragraph 12.77 of the recommendations of the 13th Finance Commission, the idea behind having morning/evening/ shift courts is that sufficient infrastructure such as court rooms were not available for regular courts and with the same infrastructure more hours of judicial work could be done through morning/evening and shift courts. The fact, however, remains that with the help of funds allotted by the 11th Finance Commission, the States have already established additional court rooms for the FTCs. These relevant aspects have not been considered by the Central Government while rejecting the recommendations in the Conference of Chief Ministers of the States and Chief Justices of the High Courts for continuing the FTC Scheme after 31.03.2010. The State Governments and the High Courts of different States should have been consulted and their views should

have been taken before the Central Government took the final decision to reject the proposal at the Conference of the Chief Ministers of States and Chief Justices of the High Courts to continue the FTC Scheme. We, however, find that the policy-decision of the Central Government to discontinue the FTC Scheme beyond 31.03.2011 in its letter dated 14.09.2010 has already been given effect to and for this reason we are not inclined to strike down the aforesaid policy-decision of the Union of India to discontinue the FTC scheme beyond 31.03.2011.

140. Nonetheless, it will be clear from paragraph 12.76 of the recommendations of the 13th Finance Commission that there are over 3 crores pending cases in various courts in the country and there is enormous delay in disposing of the cases resulting in immense hardship, including those borne by large number of under-trials. If the FTC ad hoc direct recruits who have over the years gained a lot of judicial experience are regularised and absorbed in the regular cadre of Additional District Judges in different States, the problem of arrear of cases can be handled to some extent. The State Governments, however, may not have the funds to bear the salary and allowances of additional posts of Additional District Judges and therefore may not be in a position to regularise the ad hoc FTC Judges. To meet the cost disability of some of the State Governments, the 13th Finance Commission has provided funds for different projects, grant-in-aid and infrastructural expenditure relating to establishment and running of courts. This will be clear from paragraphs 12.1 and 12.2 of the recommendations of the 13th Finance Commission which are quoted herein below:

> 12.1 Our terms of Reference (ToR) require us to make recommendations on the principles that should govern the grants- in-aid of the revenues of states out of the Consolidated Fund of India and the sums to be paid to states which are in need of assistance by way of grants-in-aid of their revenues under Article 275 of the Constitution, for purposes other than those specified in the provisos to Clause (1) of that article.
>
> 12.2 Grants-in-aid are an important component of Finance Commission transfers. The size of the grants has varied from 7.7 per cent of total transfers under FC-VII to 26.1 per cent of total transfers under FC-VI. Grants recommended by FC-XII amounted to 18.9 per cent of total transfers. In their memoranda to us, a few states have argued that grants should be restricted to only a small portion of the statesb share in FC transfers. They have argued that grants have been directed to particular sectors and with conditionalities that restrict the expenditure options of the states. In our assessment, grants-in- aid are an important instrument which enable the

> Commission to make its scheme of transfers more comprehensive and address various issues spelt out in the ToR. Grants also allow us to make corrections for cost disabilities faced by many states which are possible to address only to a limited extent in any devolution formula. The Commission has accordingly suggested several categories of grants-in-aid amounting in aggregate to Rs.3,18,581 crore which constitutes 18.03 per cent of total transfers.

141. To meet the expenses of the State Government for improving the Justice Delivery System, the 13th Finance Commission has, therefore, recommended a total grant of Rs.5,000 crores under the following specific heads:

> i) Operation of morning/ evening/ special judicial-metropolitan magistrate/ shift courts b Rs.2,500 crores
>
> ii) Establishing ADR Centres and training of mediators/conciliators b Rs.750 crores
>
> iii) Lok Adalat b Rs.100 crores
>
> iv) Legal Aid b Rs.200 crores
>
> v) Training of Judicial Officers b Rs.250 crores
>
> vi) State Judicial Academies b Rs.300 crores
>
> vii) Training of Public Prosecutors b Rs.150 crores
>
> viii) Creation of posts of Court Managers b Rs.300 crores
>
> ix) Maintenance of heritage court buildings b Rs.450 crores

142. On account of the aforesaid allocations of grants-in-aid to specific heads, the State Governments will not be able to utilise the allocations made in their favour for additional posts of Additional District Judges for regularising the FTC Judges. We are, thus, of the considered opinion that the Central Government should, in consultation with the State Governments and the High Courts of the different States, reconsider allocating some amount out of the grant of Rs.5000 crores and for such additional amount for meeting the initial expenses of increase in cadre

strength of Additional District Judges for absorbing the direct recruits of the FTC Scheme by way of regularisation.

143. In terms of Articles 141 and 144 of the Constitution, the law declared by the Supreme Court of India is binding on all Courts and all authorities which are to act in aid of the law so declared. The framers of the Constitution, in no uncertain terms, declared that the judgments of this Court are binding on all. In fact, there is a duty upon the Authorities and all other Courts to act in aid of such decisions. In the case of Brij Mohan Lal (supra), this Court vide its judgment dated 6th May, 2002 after noticing various judgments of this Court, issued number of directions in relation to establishment and functioning of the FTCs. It referred to the Report of the Eleventh Finance Commission. While repelling the challenge to the FTC Scheme, this Court directed that steps should be taken within three months from the date of that judgment. The modes of appointment of Judges to the FTCs were also provided in this judgment. The judgment itself said that no right will be conferred on the Judicial Officers in service for claiming any regular promotion on the basis of serving as FTC Judges. While stating the order of preference for appointment to these Courts, this Court held that the first preference would be given to judges from amongst the eligible judicial officers by ad hoc promotion, the second preference would be given to the retired judges with good service records and the third preference would be given to the members of the Bar by direct recruitment.

144. Thereafter, this Court passed a detailed order in the case of Madhumita Das (supra), finding some substance in the plea that while assessing the performance, there cannot be different yardsticks, i.e. the same parameters have to be adopted while judging the performance of the petitioners viz-a-viz. those which are recruited from another source, i.e. from amongst the Judicial Officers. However, in the interim order, this Court made a specific direction that the petitioners will continue to hold the post until further orders, which it directed the High Court to pass. It was also stated therein that as and when regular vacancies would arise, the cases of the petitioners shall be duly considered and there shall not be any need for them to appear in any examination meant for recruitment to the cadre of District Judge.

145. Thus, these two orders must be seen in light of the fact that the Union of India, as well as the State Governments of their own, extended the FTC Scheme for another five years i.e. till 2010 and thereafter, by another year. The Central Government ultimately took the decision not to finance the FTC Scheme with effect from 30th March, 2011. Even thereafter, a number of States have taken the

decision to continue the FTC Scheme while retaining the appointees thereto till 2012, 2013 and even till 2016. The State of Haryana has even thought of making it as a permanent feature of dispensation of justice in the State. The cumulative effect of all these factors is that the petitioners had a legitimate expectation that either their services would be continued as the FTC Scheme would be made a permanent feature of the justice administration in the concerned State or they would be absorbed in the regular cadre. But mere expectation or even legitimate expectation of absorption cannot be a cause of action for claiming the relief of regularization, particularly when the same is contrary to the Rules and letters of appointment. In Madhumita Das (supra), the protection was granted in an interim order and we also feel that such directions cannot be issued, if they are contrary to the enacted statute. When all these facts, circumstances and the judgments of this Court are harmoniously construed with an intention to do complete justice as well as to protect the fundamental rights and protections available to the public at large, it would appear necessary that this Court passes certain directions.

146. Without any intent to interfere with the policy decision taken by the Governments but, unmistakably, to protect the guarantees of Article 21 of the Constitution, improve the Justice Delivery System and fortify the independence of judiciary, while ensuring attainment of constitutional goals as well as to do complete justice to the lis before us, in terms of Article 142 of the Constitution, we pass the following orders and directions:

> 1. Being a policy decision which has already taken effect, we decline to strike down the policy decision of the Union of India vide letter dated 14th September, 2010 not to finance the FTC Scheme beyond 31st March, 2011.
>
> 2. All the States which have taken a policy decision to continue the FTC Scheme beyond 31st March 2011 shall adhere to the respective dates as announced, for example in the cases of States of Orissa (March 2013), Haryana (March 2016), Andhra Pradesh (March 2012) and Rajasthan (February 2013).
>
> 3. The States which are in the process of taking a policy decision on whether or not to continue the FTC Scheme as a permanent feature of administration of justice in the respective States are free to take such a decision.
>
> 4. It is directed that all the States, henceforth, shall not take a decision to continue the FTC Scheme on ad hoc and temporary basis. The States are at

liberty to decide but only with regard either to bring the FTC Scheme to an end or to continue the same as a permanent feature in the State.

5. The Union of India and the State Governments shall re-allocate and utilize the funds apportioned by the Thirteenth Finance Commission and/or make provisions for such additional funds to ensure regularization of the FTC judges in the manner indicated and/or for creation of additional courts as directed in this judgment.

6. All the decisions taken and recommendations made at the Chief Justices and Chief Ministers Conference shall be placed before the Cabinet of the Centre or the State, as the case may be, which alone shall have the authority to finally accept, modify or decline, implementation of such decisions and, that too, upon objective consideration and for valid reasons. Let the Minutes of the Conference of 2009, at least now, be placed before the Cabinet within three months from the date of pronouncement of this judgment for its information and appropriate action.

7. No decision, recommendation or proposal made by the Chief Justices and Chief Ministers Conference shall be rejected or declined or varied at any bureaucratic level, in the hierarchy of the Governments, whether in the State or the Centre.

8. We hereby direct that it shall be for the Central Government to provide funds for carrying out the directions contained in this judgment and, if necessary, by re-allocation of funds already allocated under the 13th Finance Commission for Judiciary. We further direct that for creation of additional 10 per cent posts of the existing cadre, the burden shall be equally shared by the Centre and the State Governments and funds be provided without any undue delay so that the courts can be established as per the schedule directed in this judgment.

9. All the persons who have been appointed by way of direct recruitment from the Bar as Judges to preside over the FTCs under the FTC Scheme shall be entitled to be appointed to the regular cadre of the Higher Judicial Services of the respective State only in the following manner:

> (a) The direct recruits to the FTCs who opt for regularization shall take a written examination to be conducted by the High Courts of the

respective States for determining their suitability for absorption in the regular cadre of Additional District Judges.

(b) Thereafter, they shall be subjected to an interview by a Selection Committee consisting of the Chief Justice and four senior-most Judges of that High Court.

(c) There shall be 150 marks for the written examination and 100 marks for the interview. The qualifying marks shall be 40 per cent aggregate for general candidates and 35 per cent for SC/ST/OBC candidates. The examination and interview shall be held in accordance with the relevant Rules enacted by the States for direct appointment to Higher Judicial Services.

(d) Each of the appointees shall be entitled to one mark per year of service in the FTCs, which shall form part of the interview marks.

(e) Needless to point out that this examination and interview should be conducted by the respective High Courts keeping in mind that all these applicants have put in a number of years as FTC Judges and have served the country by administering Justice in accordance with law. The written examination and interview module, should, thus, be framed keeping in mind the peculiar facts and circumstances of these cases.

(f) The candidates who qualify the written examination and obtain consolidated percentage as afore-indicated shall be appointed to the post of Additional District Judge in the regular cadre of the State.

(g) If, for any reason, vacancies are not available in the regular cadre, we hereby direct the State Goverments to create such additional vacancies as may be necessary keeping in view the number of candidates selected.

(h) All sitting and/or former FTC Judges who were directly appointed from the Bar and are desirous of taking the examination and interview for regular appointment shall be given age relaxation. No application shall be rejected on the ground of age of the applicant being in excess of the prescribed age.

10. The members of the Bar who have directly been appointed but whose services were either dispensed with or terminated on the ground of doubtful integrity, unsatisfactory work or against whom, on any other ground, disciplinary action had been taken, shall not be eligible to the benefits stated in clause 5 of the judgment.

11. Keeping in view the need of the hour and the Constitutional mandate to provide fair and expeditious trial to all litigants and the citizens of the country, we direct the respective States and the Central Government to create 10 per cent of the total regular cadre of the State as additional posts within three months from today and take up the process for filling such additional vacancies as per the Higher Judicial Service and Judicial Services Rules of that State, immediately thereafter.

12. These directions, of course, are in addition to and not in derogation of the recommendations that may be made by the Law Commission of India and any other order which may be passed by the Courts of competent jurisdiction, in other such matters.

13. The candidates from any State, who were promoted as FTC Judges from the post of Civil Judge, Senior Division having requisite experience in service, shall be entitled to be absorbed and remain promoted to the Higher Judicial Services of that State subject to :

> (a) Such promotion, when effected against the 25 per cent quota for out-of-turn promotion on merit, in accordance with the judgment of this Court in the case of All India Judgesb Association (2002) (supra), by taking and being selected through the requisite examination, as contemplated for out-of-turn promotion.
>
> (b) If the appointee has the requisite seniority and is entitled to promotion against 25 per cent quota for promotion by seniority- cum-merit, he shall be promoted on his own turn to the Higher Judicial Services without any written examination.
>
> (c) While considering candidates either under category (a) or (b) above, due weightage shall be given to the fact that they have already put in a number of years in service in the Higher Judicial Services and, of course, with reference to their performance.

(d) All other appointees in this category, in the event of discontinuation of the FTC Scheme, would revert to their respective posts in the appropriate cadre.

147. In view of these orders, Writ Petition (Civil) No. 152 of 2011 has been rendered infructuous and is dismissed as such.

148. We appreciate the valuable and able assistance rendered by learned Amicus Curiae and all other senior counsel and assisting counsel appearing in the present writ petition.

149. All interim orders passed in any of the above petitions shall automatically stand vacated in terms of this order. With the above directions, all the appeals and other writ petitions are partially allowed while leaving the parties to bear their own costs.