SUPREME COURT OF INDIA

Mahesh Chandra Verma

Vs.

State of Jharkhand

C.A.No.4782 of 2018

(Jasti Chelameswar and Sanjay Kishan Kaul,JJ.,)

11.05.2018

JUDGMENT

Sanjay Kishan Kaul,J.,

SLP(C)No.31167 of 2015

1. The sole question, which arises for consideration in these appeals is whether the services rendered by the appellants/Judicial Officers as Fast Track court Judges is liable to be counted for their pensionary and other benefits, the appellants having joined the regular judicial service thereafter.

2. The question of law arising as aforesaid, it is not necessary to delve into the facts of each case. Thus, only the facts which are relevant for the determination of this question are being set out. The Jharkhand State was carved out from the State of Bihar under the Bihar Reorganisation Act, 2000 on 25.11.2000. Soon thereafter the Jharkhand High Court, respondent No.2, issued an advertisement on 23.5.2001 to fill up the vacancies for the post of Additional District Judges in the Jharkhand Superior Judicial Service. The appellants also took part in the recruitment process and post conduct of examination and interview, a select list was prepared of 27 candidates, who were eligible for appointment to the Superior Judicial Service. None of the appellants, however, figured in the final select list. A parallel development was the allocation by the 11th Finance Commission of Rs.502.90 crores under Article 275 of the Constitution of India, for the establishment of courts described as the Fast Track courts.1,734 courts in various States were envisaged to deal with long-pending cases, specifically, Sessions cases. The funds allocated by the Finance Commission were to be utilized in a time bound schedule of five years, and the State Governments were required to take necessary steps to establish such courts.

3. A challenge was laid to this Scheme, known as the Fast Track Courts Scheme, in various High Courts primarily on the ground that there was no constitutional sanction for employment of retired Judges, nor were there effective guidelines in operation. These matters were transferred to the Supreme Court and all these matters were dealt with in the judgment

in *Brij Mohan Lai v. Union of India & Ors*[1].. The Scheme was analysed by the Supreme Court and keeping in mind the laudable objects with which the Fast Track Courts Scheme was set up, the constitution of these courts was upheld but with certain directions. In terms of these directions, the first preference for appointment to these courts was to be given by ad hoc promotions from amongst eligible Judicial Officers, while the second preference was to be given to retired Judges who had good service records. The third preference envisaged was to the members of the Bar for direct appointment to these courts. The fourth direction in this behalf is as under:

> "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."

4. It is in furtherance of the aforesaid Fast Track Courts Scheme that the State of Jharkhand/respondent No.1 is stated to have constituted more than 80 such Fast Track courts at the level of Additional District Judges vide Notification dated 29.11.2001. In order to fill these posts expeditiously, the process of examination having been conducted immediately before this Notification, a decision was taken to accommodate the persons from the select list, who could not be accommodated in the regular cadre of Superior Judicial Service, to the Fast Track courts. The first 17 candidates out of the 27 candidates in the select list were appointed to the regular cadre on 15.12.2001, while the remaining 10 candidates were appointed to the Fast Track courts on 2.2.2002. Since the Fast Track court's vacancies could not be filed in by this process, 15 more candidates, under the category of direct recruitment from the Bar, were appointed from amongst the candidates who participated in the selection process pursuant to the advertisement dated 23.5.2001, but were not on the select list. This process was followed strictly in accordance with the merit of the candidates beyond the select list. These 15 candidates were appointed on 23.9.2002.

5. We may also notice that the existing system of pension and General Provident Fund ceased to exist for Government servants who joined in service on or after 1.12.2004 and in lieu of the same a new Contributory Pension Scheme was introduced for Government officials, who joined service on or after 1.12.2004. These Government officials joining on or after 1.12.2004 were mandatorily required to procure a new Permanent Retirement Account Number (TRAN').

6. In the year 2008, the High Court issued a new selection process for 34 posts of Additional District Judges through a limited competitive examination to be held on 31.8.2008. Thereafter began a legal battle between the persons who were working in the Fast Track courts and those who would be beneficiaries under the limited competitive examination. The

challenge laid before the Jharkhand High Court impugning the aforesaid selection process succeeded on 29.8.2008 but in the Special Leave Petition ('SLP') filed, the judgment of the Jharkhand High Court was set aside in *Srikant Roy v. State of Jharkha*nd[2]. The Judicial Officers assailed the appointment of persons to the post of Fast Track courts and suffice to say that the contest was carried right till this Court, decided in Mahesh Chandra *Verma v. State of Jharkhand*[3].

7. Prior to the judgment in Mahesh Chandra Verma the issue of what is to be done with the Judges appointed to the Fast Track court after the funding was stopped by the Central Government, and when the State Government also had a problem of funding, formed subject matter of directions in *Brij Mohan Lal v. Union of India* [4]. The relevant paragraphs are as under:

> "207.9. All the persons who have been appointed by way of direct recruitment from the Bar as Judges to preside over FTCs under the FTC Scheme shall be entitled to be appointed to the regular cadre of the Higher Judicial Services of the respective States only in the following manner:
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> (a) The direct recruits to FTCs who opt for regularisation 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.
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> (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.
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> (c) There shall be 150 marks for the written examination and 100 marks for the interview. The qualifying marks shall be 40% aggregate for general candidates and 35% 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.
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> (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.
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> (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.
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> (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 Governments 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. 207.10. 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 para 207.9 of the judgment."

8. The aforesaid judgment was taken note of in Mahesh Chandra Verma and it was, thus, observed in para 63 as under:

"63. The State of Jharkhand will now have to take steps to comply with directions issued in Brij Mohan LaI -[II], if it has not complied with them so far. The State of Jharkhand and the High Court will have to work in sync to ensure that the directions to appoint the appellants in the regular cadre in Higher Judicial Service are complied with strictly in the manner laid down in Brij Mohan Lal -[II']"

9. The effect of the aforesaid judgment was that an examination for regularization and absorption was conducted and the appellants before this Court were successful and were thus, appointed to the Jharkhand Superior Judicial Service. However, they were treated as fresh recruits.

10. The appellants were aggrieved on account of them being treated as fresh recruits and requested for benefits of pay protection and other benefits of continuance of service. This request was, however, rejected by the State Government. This resulted in the writ petitions being filed in the High Court where some interim protection was granted but ultimately, the writ petitions have been dismissed by the common impugned order dated 14.10.2015.

11. A perusal of the impugned order shows that other than the reference to the judgments referred to aforesaid, the only aspect examined is that the initial appointment was temporary on the ex-cadre post, the appointment being so made for the temporary scheme for speedy disposal of cases. However, in view of the judgment in Brij Mohan Lal -[II] and Mahesh Chandra Verma they were appointed through a process to the regular post. The High Court reasoned that since these two judgments have not dealt with the post appointment situation of the appellants, the High Court would not be able to give anything which has not been granted by the Supreme Court under Article 142 of the Constitution of India. The Supreme Court had taken recourse to Article 142 of the Constitution of India to deal with the issue of the methodology for recruitment of the Fast Track court Judges to the regular posts.

12. In the course of arguments, learned counsel appearing for the State Government sought to emphasise that by its very nature, the Fast Track courts were constituted for a limited period of time and, thus, the persons so appointed were conscious of the fact that they would have a limited tenure. Since the funding from the Central Government stopped, the State Governments did continue these courts for some years, but that again would not give any right to the appellants to claim the benefit of the service rendered as Fast Track court Judges for the purposes of computation of pensionary and retiral benefits. He also sought to emphasise that this Court has taken recourse to Article 142 of the Constitution of India to issue directions and the High Court had rightly observed that what was not done by the Supreme Court under Article 142 of the Constitution of India could not be done by the High Court.

13. We put a specific query to the learned counsel as to whether this Court had, in the two judgments in question, prohibited any such grant? Learned counsel after some initial hesitation could not dispute the position that there was no such prohibition. We also put to the learned counsel whether the existing cadre strength was sufficient to sub-serve the justice delivery process, i.e., could it be said that there were enough courts in existence to try the relevant cases? The only answer, which came forth was that the State had been carved out recently and had taken immediate steps to fill the vacancies. However, to our mind, the important aspect is that the State was no exception to the general position prevalent of inadequate judicial posts to deal with the existing inflow of cases. It is only through subsequent directions that a periodic increase in judicial strength has been envisaged. In Brij Mohan Laln-[II], it was observed as under:

> "207.11. 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% 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."

14. The need to set up Fast Track courts arose on account of delays In the judicial process, targeting certain priority areas for quicker adjudication. In fact, had there been adequate cadre strength, there would have been no need to set up these Fast Track courts.

15. The appellants were not appointed to the Fast Track courts just at the whim and fancy of any person, but were the next in line on the merit list of a judicial recruitment process. They were either part of the select list, who could not find a place given the cadre strength, or those next in line in the select list. Had there been adequate cadre strength, the recruitment process would have resulted in their appointment. We do believe that these Judges have rendered services over a period of nine years and have performed their role as Judges to the satisfaction, otherwise there would have been no occasion for their appointment to 11(supra) the regular cadre strength. Not only that, they also went through a second process for such recruitment. We believe that it is a matter of great regret that these appellants who have performed the functions of a Judge to the satisfaction of the competent authorities should be

deprived of their pension and retiral benefits for this period of service. The appellants were not pressing before us any case of seniority over any person who may have been recruited subsequently, nor for any other benefit. In fact, we had made it clear to the appellants that we are only examining the issue of giving the benefits of their service in the capacity of Fast Track court Judges to be counted towards their length of service for pensionary and retiral benefits. To deny the same would be unjust and unfair to the appellants. In any case, keeping in mind the spirit of the directions made under Article 142 of the Constitution of India in Brij Mohan LaI -[II] and in Mahesh Chandra Verma , the necessary corollary must also follow, of giving benefit of the period of service in Fast Track courts for their pension and retiral benefits. The methodology of non-creation of adequate regular cadre posts and the consequent establishment of Fast Track courts manned by the appellants cannot be used as a ruse to deny the dues of the appellants.

16. In a different factual context but on the principle laid down, we take note of the judgment in *Nihal Singh & Ors. v. State of Punjab & Ors*[5]. of a Bench of this court to which one of us was a member. The State of Punjab in the 1980s was faced with large scale disturbance and was not in a position to handle the prevailing law and order situation with the available police personnel and, hence, resorted to recruitment under Section 17 of the Police Act, 1861 (hereinafter referred to as the 'Act') for appointing Special Police Officers ('SPOs'). The SPOs were assigned the duty of providing security to banks, for which the financial burden was to be borne by the banks, with the clear understanding that, as per the provisions of the Act, such police officers were to be under the discipline and control of the Senior Superintendent of Police of the District concerned. Such SPOs provided yeoman service in difficult times but when their case was considered for regularization subsequently, it met with an unfavourable response by an order passed in the year 2002. This Court while recognizing that the creation of a cadre or sanctioning of posts was exclusively within the authority of the State, opined that if the State did not choose to create a cadre but chose to make appointments of persons creating contractual relationship only, such action would be categorized as arbitrary nature of exercise of power. In this context, it was observed by the Bench, thus: "Sanctioned posts do not fall from heaven. The State has to create them by a conscious choice on the basis of some rational assessment of the need." Thus, the facts found showed that there was the existence of a need for creation of posts and the failure to create such posts or having a stop gap arrangement, which lasted for years cannot be used to deny in an arbitrary manner, the absorption benefit to people who had worked for long years. A direction was issued to regularise the services of such SPOs and they were held entitled to the benefits of service similar in nature to the existing cadre of police service of the State.

17. The position in respect of the appellants is really no different on the principle enunciated, as there was need for a regular cadre strength keeping in mind the inflow and pendency of cases. The Fast Track Court Scheme was brought in to deal with the exigency and the appellants were appointed to the Fast Track courts and continued to work for almost a decade. They were part of the initial select list/merit list for recruitment to the regular cadre strength but were not high enough to be recruited in the existing strength. Even at the stage of absorption in the regular cadre strength, they had to go through a defined process in pursuance of the judgment of this court and have continued to work thereafter.

18. We are, thus, unhesitatingly and unequivocally of the view that all the appellants and Judicial Officers identically situated are entitled to the benefit of the period of service rendered as Fast Track court Judges to be counted for their length of service in determination of their pension and retiral benefits.

19. The appeals are accordingly allowed leaving the parties to bear their own costs.

Judgment Referred.

[1]*(2002) 5 SCC 0001*
[2]*(2017) 1 SCC 0457*
[3]*(2012) 11 SCC 0656*
[4]*(2012) 6 SCC 0502*
[5]*(2013) 14 SCC 0065*