

# SUPREME COURT OF INDIA

Kum C.Yamini

Vs.

State of Andhra Pradesh

C.A.No.6296 of 2019

(S.A.Bobde,J., R.Subhash Reddy and B.R.Gavai, JJ.,)

14.08.2019

## JUDGMENT

**R.Subhash Reddy,J.,**

SLP(C)No.20990 of 2017

1. Leave granted.
2. Relief claimed in these matters is same, as such they are heard together and disposed of by this common judgment and order. For the purpose of disposal, we refer to the facts stated in the civil appeal arising out of S.L.P.(C)No.20990 of 2017.
3. This civil appeal is filed, aggrieved by the impugned judgment and final order dated 17.04.2017 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh whereby writ petition filed by the appellant in Writ Petition No.13022 of 2017 was dismissed. In the writ petition, appellant has questioned paragraph nos.5 and 6 of G.O.MS. No.68 dated 02.07.2013 of Law (LA & J-SC.F) Department as unconstitutional and illegal.
4. The appellant was appointed to a Fast Track Court, as an ad hoc District Judge in the year 2003. The appellant was practising as an advocate at the relevant time, and the appointment was made pursuant to selections made for appointment to the post of ad hoc District Judges. Pursuant to her selection to preside over a Fast Track Court, she joined duty on 25.10.2003. On 28.05.2004, the second respondent-High Court issued notification, inviting applications for regular appointments to the posts of District & Sessions Judges in the A.P. Higher Judicial Service. A set of ad hoc District Judges appointed to the Fast Track Courts filed writ petition in W.P.No.11273 of 2004 questioning such notification. In the aforesaid writ petition all the ad hoc District Judges who were selected to preside over the Fast Track Courts, prayed for absorption against regular vacancies. The writ petition was dismissed by the High Court by order dated 13.07.2004. Aggrieved by the aforesaid judgment, a Special Leave Petition (C)No.17338 of 2004 was filed by the ad hoc District

Judges. While granting leave, this Court, by interim order dated 09.03.2006 passed in Civil Appeal No.1276 of 2005, has observed that any appointments that would be made in regular selections, will be subject to the result of the civil appeal. Subsequently, the above said civil appeal was disposed of along with a batch of matters, which were decided on 19.04.2012 which is reported as *Brij Mohan Lal (2) v. Union of India & Ors*<sup>1</sup>. . While considering the validity of notification dated 28.05.2004, which was issued for making appointments to the posts of District & Sessions Judges and the claim of absorption made by the ad hoc District Judges, who are appointed to preside over Fast Track Courts, this Court in paragraph 175 has observed as under :

"175. The petitioners from the State of Andhra Pradesh have also prayed for identical relief claiming that the advertisement dated 28-5-2004 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."

5. In the aforesaid judgment, while considering their claim for absorption in the regular cadre, while declining to grant the relief of absorption certain directions were issued as contained in paragraph 207.9. The directions issued in the aforesaid paragraph read 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 :

(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.

(b) Thereafter, they shall be subjected to an interview by a Selection Committee consisting of the Chief Justice and four seniormost 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% 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.

(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 aforeindicated 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."

6. In compliance of directions issued in the judgment in the case of Brij Mohan Lal (2) v. Union of India & Ors. (supra) as referred above, the second respondent- High Court has issued notification dated 13.08.2012 inviting applications, to fill up the posts of District Judges in regular cadre from the working/former ad hoc Fast Track Court District Judges. All the appellants herein who responded to the aforesaid notification, were selected and appointed by the Government to the posts of regular District Judges (Entry Level) vide G.O.MS. No.68 dated 02.07.2013 issued by Law (LA & J-SC.F) Department. Paragraphs 4,5 and 6 of the aforesaid Order read as under :

"4. The appointments ordered above will take effect from the dates on which the respective officers assume charge.

5. The probation of the officers will be governed by rule 9 of the A.P. State Judicial Service Rules, 2007, and they will be on probation for a period of two years from the date of joining duty as decided by the High Court of Andhra Pradesh.

6. The seniority of the persons appointed to the category of District Judges by direct recruitment as well as recruitment by transfer shall be fixed as per the roster prescribed in schedule A appended to the Andhra Pradesh State Judicial Service Rules, 2007."

The appellant availed the benefit of such appointment and completed probation of two years from the date of joining duty. Nearly after four years of her appointment, she has filed the present writ petition, before the High Court questioning paragraphs 5 and 6 of the notification dated 02.07.2013, which resulted in the impugned order rejecting claim of her seniority from the date of her initial appointment as ad hoc District Judge. In the impugned order, the High Court has observed that the

appellant very conveniently took up the appointment subject to conditions and after getting a declaration of successful completion of probation and after ensuring berth in the judiciary, has chosen to come up with a challenge to the very Government Order by which she was appointed. Further, taking note of the rejection of the claim of the appellant and similarly placed persons for their absorption and their challenge to the notification dated 28.05.2004 for selection to the regular cadre of District Judges, the High Court has opined that in view of the rules which govern the appointment to the post of ad hoc District Judge, the appellant is not entitled to claim seniority from the date of initial appointment.

7. We have heard Kum. C. Yamini, appellant-in-person in civil appeals arising out of S.L.P.(C)Nos.20990 of 2017 and 12535 of 2018; Sri R. Venkataramani, learned senior counsel appearing for the appellant in civil appeal arising out of S.L.P.(C)No.13046 of 2018; Sri Sridhar Potaraju, learned counsel appearing for the appellants in civil appeal arising out of S.L.P. (C)No.28302 of 2018; and Ms. Uttara Babbar, learned counsel appearing for the then High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh.

8. Kum. C. Yamini, appellant appearing in person has mainly contended that when the appellant was appointed to the very same post of District Judge in the year 2003 by following the procedure as applicable to the regular appointments and when the appellant was selected and appointed pursuant to the notification issued on 02.07.2013, there is no reason or justification for denying her seniority in the cadre of District Judges from initial date of appointment in the year 2003. She has relied on a judgment of this Court in the case of *Rudra Kumar Sain & Ors. v. Union of India & Ors*<sup>2</sup>. Learned senior counsel Sri R. Venkataramani, by referring to the directions issued by this Court in the case of *Brij Mohan Lal (1) v. Union of India & Ors*<sup>3</sup>., has submitted that, when the appellants were appointed to the post of District Judges by following the procedure akin to that of regular District Judges, there is no reason or justification for denying seniority to them from the date of initial appointment. Learned senior counsel also relied on the judgment of this Court in the case of *Debabrata Dash & Anr. v. Jatindra Prasad Das & Ors*<sup>4</sup>. and also the judgment in the case of *Brij Mohan Lal (2) v. Union of India & Ors.* (supra).

9. On the other hand, learned counsel Ms. Uttara Babbar, appearing for the High Court has submitted that the very appointment of the appellants as ad hoc District Judges was only to preside over the Fast Track Courts under the special rules framed for recruitment of ad hoc Judges. It is submitted that in the very same rules, it is made clear that they have no claim against regular vacancies. Further it is contended that when their claim for absorption is rejected by the High Court and confirmed by this Court, it is not open for the appellants to claim seniority from the date of initial appointment. It is further submitted that all the persons who will be affected, in the event of grant of relief as claimed by the appellants are not even made party respondents. Learned counsel has submitted that similar issue i.e. claim of seniority over persons who are appointed against the substantive posts is considered and rejected by this Court in the case of *V. Venkata Prasad & Ors. v. High Court of Andhra Pradesh & Ors.* . It is submitted that in the aforesaid judgment Rules 2, 6

and 7 of Andhra Pradesh State Higher Judicial Service Special Rules for Ad Hoc Appointments, 2001 were considered. In the aforesaid judgment, this Court has categorically held that appointments in respect of Fast Track Courts are ad hoc in nature and no right accrues to such appointees.

10. Having heard the appellant appearing in person and learned senior counsel appearing for the appellant in Civil Appeal arising out of S.L.P(C) No.13046 of 2018 and other counsels, we have perused the written submissions and other material placed on record.

11. When the Fast Track Courts were established in the State of Andhra Pradesh out of the grants made available by the 11th Finance Commission, for making appointments to preside over such courts, a separate set of rules, namely, Andhra Pradesh State Higher Judicial Service Special Rules for Ad Hoc Appointments, 2001 were issued. The said rules were framed in exercise of powers conferred by Article 233 and the proviso to Article 309 of the Constitution of India. The appellant was initially appointed as per the aforesaid Rules. Rule 1 of the said Rules deals with the constitution of service and Rule 7 lays down the terms and conditions of the appointment. Rule 7(1)(B) states that a person appointed under Rule 2(i) shall not be regarded as a member of permanent cadre covered under Rule 2 of Special Rules and is not entitled to any preferential right to any other appointment. The said Rules are framed only for the purpose of selecting District Judges on ad hoc posts for presiding over Fast Track Courts. The Fast Track Courts were established initially for a limited period of five years as per the grant provided in the 11th Finance Commission. All these selections which were made on ad hoc basis, are not for any posts in the regular cadre of A.P. Higher Judicial Service. After the appointment of the appellant in the year 2003, when the second respondent has issued notification inviting applications for recruitment to the posts in regular vacancies of District Judges, certain Fast Track Court Judges have questioned the very notification by claiming absorption in the regular vacancies. Such plea of the appellants was rejected and confirmed by this Court, in clear terms, while disposing of the matter in Brij Mohan Lal (2) (supra) para 175. Their challenge to the notification issued in the year 2004 for recruitment to the regular cadre posts of District Judges is also rejected.

12. While rejecting the claim for their absorption and challenge to the notification issued for the recruitment in the regular cadre posts, certain directions were issued in Brij Mohan Lal (2) (supra) for considering the claims of ad hoc judges appointed to Fast Track Courts into regular cadre posts. Following the directions only, the second respondent has issued notification inviting applications for appointments to the regular cadre of District Judges and appellants and others responded to such notification and totally 12 of them were selected for regular vacancies. In the appointment order dated 02.07.2013 in G.O.MS. No.68 issued by Law (LA & J-SC.F) Department, they were put on probation for a period of two years and after the declaration of successful probation and nearly after four years of appointment, the present claim is made claiming seniority from the date of their initial appointment, as ad hoc District Judges.

13. The claim of the appellants that they were appointed as ad hoc District Judges by

following the procedure which is similar to the procedure for appointments to the sanctioned posts in the regular cadre, is no ground to accede to their request to reckon their seniority in the permanent cadre of District Judges, from their initial appointment as the District Judges for the Fast Track Courts. The appointments which came to be made for selecting District Judges for Fast Track Courts sanctioned under the 11th Finance Scheme are totally different and distinct, compared to appointments which are to be made for regular vacant posts of District Judges covered under A.P. Higher Judicial Service. If a person is not appointed to any post in the cadre, such person cannot claim any seniority over the persons who are appointed in vacant posts in the cadre. The Fast Track Courts which were sanctioned initially for five years from the grants of 11th Finance Commission, were continued in some States beyond such period with the assistance, from States and such Fast Track Courts were discontinued in some other States. Merely on the ground that they were selected by following the same procedure akin to that of regular selections, is no ground to consider their claim for grant of seniority from the date of initial appointment. When their claim for regularisation/absorption and challenge to notification issued in the year 2004 for making selections to the vacant regular posts of District Judges is rejected by the High Court and confirmed by this Court, we are of the view that the appellants have no basis to claim seniority from the date of initial appointment. In any event, having applied in response to the notification issued by the High Court in the year 2013 after availing the benefit of appointment, it is not open to the appellants to question the conditions imposed in the order which is in conformity with rules. Undisputedly, appellant was appointed as ad hoc District Judges to preside over the Fast Track Courts only. Initially when she was not appointed to a post or category of posts, forming part of cadre strength in such category, appellant cannot claim any seniority over the persons regularly appointed in the category of posts forming part of cadre strength. There is yet another ground to reject the claim of the appellant. Though the appellant claims seniority over the persons who are appointed in regular vacant posts forming part of cadre strength but they are not even made parties. On this ground also, the claim of the appellants deserves rejection.

14. We have perused the judgment relied on by the appellant party in person, in the case of Rudra Kumar Sain & Ors. v. Union of India & Ors. (supra). In the aforesaid case, issue relates to claim of seniority between direct recruits and promotees. Learned senior counsel Sri Venkataramani, has also relied on the judgments of this Court in the case of Brij Mohan Lal (1) v. Union of India & Ors. (supra); in the case of Debabrata Dash & Anr. v. Jatindra Prasad Das & Ors. (supra); in the case of V. Venkata Prasad & Ors. v. High Court of Andhra Pradesh & Ors. (supra) and in the case of Brij Mohan Lal (2) v. Union of India & Ors. (supra). We have looked into the judgments referred above by the learned senior counsel Sri Venkataramani and the party in person. Having regard to issue involved in the present appeals, we are of the view that the ratio decided in the aforesaid cases would not render any assistance in support of their claim in these cases. The claim of seniority will depend upon several factors, nature of appointment, rules as per which the appointments are made and when appointments are made, were such appointments to the cadre posts or not etc. When the appellants were not appointed to any regular posts in the A.P. Judicial Service, appellants cannot claim seniority based on their ad hoc appointments to preside

over Fast Track Courts. We are of the view that the ratio decided in the said judgments relied on by the appellants would not render any assistance in support of their case.

15. On the other hand, the judgment in the case of V. Venkata Prasad & Ors. v. High Court of Andhra Pradesh & Ors. (supra), this Court has, in clear terms, while considering A.P. State Higher Judicial Service Special Rules for Ad Hoc Appointments, 2001 held that such appointments in respect of Fast Track Courts are ad hoc in nature and no right accrues to such appointees. The aforesaid view of this Court clearly supports the case of the respondents. Paragraph 25 of the said case which is relevant for the purpose of these cases reads as under :

"25. From the aforesaid two authorities, it is quite clear that the appointments in respect of Fast Track Courts are ad hoc in nature and no right is to accrue to such recruits promoted/posted on ad hoc basis from the lower judiciary for the regular promotion on the basis of such appointment. It has been categorically stated that FTC Judges were appointed under a separate set of rules than the rules governing the regular appointment in the State Higher Judicial Services."

16. In the civil appeal arising out of S.L.P. (C)No.28302 of 2018, learned counsel for the appellants has submitted that the appellants be at least given the benefit of counting the service rendered by them in Fast Track Courts for pensionary and other benefits. In support of his claim, learned counsel placed reliance on the judgment of this Court in *Mahesh Chandra Verma v. State of Jharkhand & Ors*<sup>6</sup>. wherein this Court has considered the very same issue and held that the service rendered as Fast Track Court Judges is to be counted for their length of service, for the purpose of determining their pension and other retiral benefits.

17. We have perused the aforesaid judgment and we are in agreement with the view taken by a two Judge Bench of this Court. Resultantly, while rejecting their claim for grant of seniority from the date of their initial appointment as Fast Track Court District Judges and other reliefs, we direct that the appellants and all others who are similarly placed are to be given benefit of counting their service rendered as Fast Track Judges, for the purpose of pensionary and other retiral benefits. With the above directions and observations the civil appeals are disposed of with no order as to costs.

Judgment Referred.

<sup>1</sup>(2012) 6 SCC 0502

<sup>2</sup>(2000) 8 SCC 0025

<sup>3</sup>(2002) 5 SCC 0001

<sup>4</sup>(2013) 3 SCC 0658

<sup>5</sup>(2016) 11 SCC 0656

<sup>6</sup>(2018) 7 SCC 0270