

THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.02.2015
Delivered on : 26.02.2015

CORAM

THE HONBLE MR.JUSTICE V.RAMASUBRAMANIAN
and
THE HON'BLE MR.JUSTICE P.R.SHIVAKUMAR

Writ Petition No.20069 of 2014

1. G.Chandrasekharan
2. B.Sarojini Devi
3. Su.Willyahm
4. R.Pongiappan
5. R.Hemalatha
6. R.Selvakumar
7. A.Nakkiran
8. V.Sivagnanam
9. Alamelu Natarajan
10.G.Ilangovan
11.M.Sarvamangala

... Petitioners

Vs.

1. The Registrar General
High Court, Madras.

2. R.Sakthivel
3. A.Kanthakumar
4. T.S.Nandakumar
5. A.Nazeem Babu
6. R.Anburaj
7. S.Subadevi
8. R.Poornima
9. P.Dhanabal
10.C.Kumarappan
11.M.Jothiraman
12.M.D.Sumathi
13.P.Murugan
14.M.Suresh Viswanath
15.A.K.A.Rahmaan
16.K.Rajasekar
17.K.H.Elavazhagan

.. Respondents

Petition under Article 226 of the Constitution of India
praying for a writ of Certiorarified Mandamus calling for the
records relating to the annual list fixing the seniority of
District and Sessions Judge as on 31.3.2014 and the Official

Memorandum dated 01.02.2013 in ROC No.905/2012/RG/B1/Special Cell of the first respondent herein and quash the same and refix the inter as seniority of the petitioners and the respondents 2 to 17.

For Petitioners : Mr.AR.L.Sundaresan, S.C.
For Mrs.AL.Ganthimathi

For Respondent-1 : Mr.B.Vijay
For Respondents 2,3,9&13 : Mr.M.Gnanasekar
For Respondent-4 : Mr.P.T.Perumal
For Respondents 5, 8 & 15 : Mrs.P.Mahalakshmi
For Respondent-7 : Mr.H.Mohammed Farook
For Respondent-10 : Mr.N.Manokaran
For Respondent-11 : Mr.V.P.Rajendran
For Respondent-12 : Mr.E.C.Ramesh
For Respondent-14 : Mr.M.Devaraj
For Respondent-16 : Mr.G.Krishnakumar
For Respondent-17 : Mr.M.Kandasamy

O R D E R

V.RAMASUBRAMANIAN, J

The petitioners, who are working as District Judges on regular basis, have come up with the above writ petition challenging the rejection of their request for fixation of their seniority, over and above the contesting respondents 2 to 17.

2. We have heard Mr.AR.L.Sundaresan, learned senior counsel appearing for the petitioners, Mr.B.Vijay, learned counsel appearing for the first respondent, Mr.M.Gnanasekaran, learned counsel appearing for respondents 2, 3, 9 and 15, Mr.P.T.Perumal, learned counsel appearing for the fourth respondent, Mrs.P.Mahalakshmi, learned counsel appearing for respondents 5, 8 and 15, and Mr.H.Mohammed Farook, Mr.N.Manokaran, Mr.V.P.Rajendran, Mr.E.C.Ramesh, Mr.M.Devaraj, Mr.G.Krishnakumar and Mr.M.Kandasamy, learned counsel respectively appearing for respondents 7, 10, 11, 12, 14, 16 and 17.

3. The petitioners 1 and 3 to 11 were all appointed originally as District Munsif cum Judicial Magistrate on 01.7.1991. The second petitioner was appointed as such on 08.7.1992.

4. With the grant-in-aid made by the 11th Finance Commission, the Government of Tamil Nadu issued orders, accepting the recommendations of the High Court, Madras, for the constitution of 30 Fast Track Courts in the first phase under G.O.Ms.No.739, Home dated 03.8.2001 and 19 Fast Track Courts in the second phase under G.O.Ms.No.1254 dated 18.12.2001. The objective was to clear the backlog of cases pending in the Sessions Courts. Posts were created to man these Courts, initially for a period of five years

and persons were appointed on contract basis.

5. Subsequently, in a meeting of the Selection Committee held on 28.01.2010 and 02.02.2010, it was recommended that Senior Civil Judges could be promoted to the post of Additional District Judges, Fast Track Court, purely on ad hoc basis, to fill up the existing as well as anticipated vacancies.

6. Pursuant to the said decision, the petitioners 1 to 5 and 7 were appointed as District Judges on ad hoc basis in the Fast Track Court with effect from 24.3.2010. The 6th petitioner and petitioners 8 to 11 were similarly appointed on 06.01.2011.

7. In the meantime, a notification for filling up 17 posts of District Judges by direct recruitment, was issued on 24.6.2010 and 10.7.2010. This was under the 25% quota reserved for direct recruitment.

8. Several persons applied in response to the notification and after a process of selection, the contesting respondents 2 to 17 were appointed by the State of Tamil Nadu under G.O.Ms.No.16, Public, dated 05.01.2011. Since these appointees had to undergo training for a period of six months in the category of District Munsifs cum Judicial Magistrates and six months in the category of Sub Judges, before they are appointed to discharge the functions of the post of District Judges, the Government also created 17 supernumerary posts under G.O.Ms.No.170, Public, dated 18.02.2011.

9. Pursuant to the aforesaid orders, notifications were also issued under G.O.Ms.No.236, Home Department, dated 19.4.2011, altering the number of Judges to be appointed for each of the Districts, in terms of the provisions of Section 4 of the Tamil Nadu Civil Courts Act, 1873.

10. After the contesting respondents started undergoing training, proposals were sent by the Registry of the High Court to the Government of Tamil Nadu pointing out that the Fast Track Courts created under the 11th Finance Commission would cease to receive Central Fund beyond 31.3.2011 and that they were ordered to continue with the State Fund for a period of one year under G.O.Ms.No.162 dated 01.3.2011 with effect from 01.4.2011. The Registry also informed the Government that there is huge pendency in the Subordinate Courts as on 31.3.2011 and that therefore, those 49 Fast Track Courts created under the 11th Finance Commission be made permanent and retained. Accepting the said proposal, the State Government issued G.O.Ms.No.475, Home dated 26.8.2011, according sanction for the permanent retention of 49 Fast Track Courts, along with 346 temporary posts created for those Courts.

11. In pursuance of the said order making the Fast Track Courts permanent, the writ petitioners herein were appointed on regular basis as District Judges (Entry Level) under the 65% quota reserved for promotion on the basis of merit cum seniority and suitability. This was done under G.O.Ms.No.10, Public Department dated 19.01.2012. Consequently, the writ petitioners, who were

earlier appointed on ad hoc basis as District Judges with effect from 24.3.2010/06.01.2011 got absorbed on a regular basis in the cadre of District Judges (Entry Level) with effect from 19.01.2012.

12. After about three months of the absorption of the writ petitioners on regular basis as District Judges (Entry Level), the contesting respondents completed their training. Therefore, by an Office Memorandum issued on 27.4.2012, the contesting respondents, who were to complete their entire period of training on 28.4.2012, were directed to take charge as District Judges (Entry Level) on or before 30.4.2012. They did so.

13. Thereafter, the writ petitioners and a few others joined together and made a representation to the High Court seeking fixation of their seniority over and above the contesting respondents, on the ground that the writ petitioners were appointed as District Judges, before the appointment of the contesting respondents as District Judges. This representation was rejected by the High Court by an Official Memorandum dated 01.02.2013. Therefore, aggrieved by the said Official Memorandum, the petitioners have come up with the above writ petition.

14. The refusal of the High Court to treat the writ petitioners as seniors to the contesting respondents, is assailed by Mr.AR.L.Sundaresan, learned senior counsel for the petitioners, primarily on two grounds. They are (i) that when an ad hoc appointment is made of a qualified candidate, selected by a proper procedure prescribed by law and the ad hoc appointment is followed without any interruption by a regular appointment, the appointee is entitled to fixation of seniority with effect from the date of ad hoc appointment; and (ii) that in any case, the contesting respondents merely underwent training for a period of six months as District Munsifs cum Judicial Magistrates and for another six months as Sub Judges, before they were actually appointed to discharge the functions of the District Judge on 28.4.2012 and that therefore, they cannot be treated as seniors to the writ petitioners, who were appointed on regular basis with effect from 19.01.2012.

15. In support of the above contentions, the learned senior counsel for the petitioners rely upon three decisions of the Supreme Court and a decision of the Division Bench of this Court. They are:

- (a) Rudra Kumar Sain v. Union of India [AIR 2000 SC 2808];
- (b) Brij Mohanlal v. Union of India [AIR 2002 SC 2096];
- (c) Maharashtra State Judicial Service Association v. High Court of Judicature at Bombay [(2002) 3 SCC 244]; and
- (d) S.Pandiarajan v. The Government of Tamil Nadu [WP(MD) No.739 of 2012 dated 16.7.2012].

16. In response to the contentions of the learned senior counsel for the petitioners, it is contended by Mr.B.Vijay, learned counsel appearing for the High Court (i) that the

appointment of the writ petitioners on ad hoc basis as District Judges would not confer any benefit upon them, in view of the fact that such appointments were not preceded by the creation of any new posts; and (ii) that the moment a person is selected by way of direct recruitment for appointment to the post of District Judge, he is deemed to have been appointed to the very same post and hence, the date from which he discharges the duties of the post, is of no consequence. In support of his contentions, Mr.B.Vijay, learned counsel appearing for the High Court relies upon a decision of the Supreme Court in Debabrata Dash v. Jatindra Prasad Das [(2013) 3 SCC 658].

17. We have carefully considered the rival contentions.

18. As stated earlier, the first contention of the petitioners is that their appointment on ad hoc basis was followed without interruption by a regular appointment. They were selected for appointment on ad hoc basis, as per the statutory rules. All the petitioners fulfilled all the qualifications and eligibility criteria fixed even for regular appointment. Therefore, the petitioners claim that their seniority is to be counted with effect from the dates of their ad hoc appointment, namely 24.3.2010 and 06.01.2011.

19. But, the said contention is hardly acceptable. As pointed out earlier, 49 Fast Track Courts were created under the 11th Finance Commission, initially for a period of five years, just for the purpose of clearing the backlog of cases. Initially, 30 Fast Track Courts were sanctioned under G.O.Ms.No.739, Home dated 03.8.2001. The terms and conditions of service of these Fast Track Court Judges were determined by the Full Court on 10.10.2001. Condition Nos.(3) and (4), subject to which persons were appointed as Fast Track Judges, read as follows:

"(3) His/her appointment to man the Fast Track Court shall be initially for a period of two years, renewable for further period, the maximum period being five years from the date of assumption as Judge, Fast Track Court.

(4) Promotion to the post of District Judge under regular cadre shall be purely on merit cum seniority basis and it is made clear that his/her performance as the Presiding Officer of the Fast Track Court shall be taken into consideration while selecting to the regular District Judge cadre post."

20. Condition No.12 relating to the appointment of Judges to the fast Tract Courts, reads as follows:

"12. Regardless of the appointment as Judge, Fast Track Court, his/her services can be terminated, at any time, even without notice, reverting him/ her to the substantive post of Subordinate Judge in the event of the High Court

forming an opinion of such Fast Track Court Judge not functioning conforming to the standards and objectives and intendment of the Fast Track Court Scheme."

21. On the very same lines and on the very same terms and conditions, 19 more Fast Track Courts were sanctioned under G.O.Ms.No.1254, Home dated 18.12.2001.

22. Since 49 posts of District Judges were created to man these 49 Fast Track Courts, on ad hoc basis, these posts did not form part of the cadre strength of District Judges. These posts were created under the 11th Finance Commission, with the hope and intention that they would be wound up after the object was served. This is why all these 49 posts, which were earlier filled up on contract basis directly from the Bar, were filled up by promoting the petitioners, after the contractual employment of those persons got terminated.

23. As seen from The Schedule under Rule 5 of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, a quota is fixed for appointment to the post of District Judge (Entry Level). While 65% of the posts of District Judges (Entry Level) are to be filled up by promotion, from amongst senior Civil Judges etc., on the principle of merit cum seniority and suitability, 10% of the total number of posts in the cadre of District Judges are to be filled up by way of promotion strictly on the basis of merit to be adjudged through a Limited Competitive Examination as well as quality of judgments and annual confidential reports. The remaining 25% of the posts of District Judges are to be filled up by direct recruitment from the open market.

24. When 49 Fast Track Courts were created in the year 2001, they were actually filled up by appointing persons from the Bar, on contract. Since these Courts were created for a short duration of time, they did not form part of the cadre strength. Consequently, the promotion of the writ petitioners on ad hoc basis with effect from 24.3.2010 and 06.01.2011 cannot give them the benefit of seniority. From the date of their appointment on ad hoc basis (namely 24.3.2010 and 06.01.2011), up to the date of their regular promotion on 19.01.2012, the writ petitioners were not holding any sanctioned posts. They were actually holding posts that were not supposed to last long or last forever. Therefore, persons who were not appointed against sanctioned posts, but were appointed on ad hoc basis to temporary posts, cannot claim the benefit of seniority with effect from the date of their ad hoc appointment.

25. It is true that in a few cases, Courts have taken a view that (i) where the appointments are made of qualified hands, (ii) where the appointments were not through the back door, and (iii) where such appointments were followed by regular absorption, a claim for seniority with effect from the date of ad hoc

appointment, was justified. Those are the cases on which reliance is placed by the petitioners.

26. In Rudra Kumar Sain v. Union of India [AIR 2000 SC 2808], the Supreme Court pointed out that the expressions "ad hoc, fortuitous and stop-gap" have to be given the dictionary meaning, in the absence of definition of these terms. But, the meaning to be assigned to these terms will depend upon the provisions of the Rule and the context in and the purpose for which the expressions are used. The Supreme Court held in paragraph 19 of the said report that when a person who possesses the requisite qualification for being appointed to a particular post is appointed with the approval and consultation of the appropriate authority and he continues in the post for a fairly long period, then, such appointment cannot be held to be stop-gap or fortuitous or ad hoc.

28. But, unfortunately for the petitioners, the said decision may not be of any avail to them. There are two situations which may give rise to a dispute of this nature. One situation is where an appointment of a qualified hand is made by the appropriate authority to a sanctioned post, but on ad hoc basis. Another situation is where such appointment is made to a post which is not sanctioned, but is created as a temporary measure. Rudra Kumar Sain did not deal with the latter situation.

29. In Brij Mohanlal v. Union of India [AIR 2002 SC 2096], the Supreme Court issued certain directions as to how appointment of judges to Fast Track Courts is to be made. The direction No.14 in paragraph 10 of the said decision reads as follows:

"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."

30. Heavy reliance is placed by Mr.AR.L.Sundaresan, learned senior counsel for the petitioners on the latter part of paragraph 10.14. Since the petitioners were regularly promoted to the post of District Judges (Entry Level) during their tenure in the Fast Track Courts, it is the contention of the learned senior counsel for the petitioners that the petitioners are entitled to count those services.

31. But, unfortunately for the petitioners, direction No.14 contained in paragraph 10 of the decision in Brij Mohanlal, came to be considered in a later judgment of the Supreme Court in Debabrata Dash v. Jatindra Prasad Das [(2013) 3 SCC 658]. As seen from paragraph 2 of the said decision, the question that arose in

Debabrata Dash was whether the service rendered in the Fast Track Court as Additional District Judge is to be taken into account while fixing the seniority after regularisation of service. In paragraph 42 of the said decision, the Supreme Court considered the effect of the decision in Rudra Kumar Sain. In paragraph 43, the Supreme Court referred to Brij Mohanlal and direction No.14 contained therein. In order to understand the scope of the direction No.14 contained in paragraph 10 of the decision in Brij Mohanlal, the Supreme Court paraphrased the said direction, in paragraph 43 of its decision in Debabrata Dash and thereafter, answered the issue in paragraph 44 squarely against the petitioners herein.

32. Paragraphs 43 and 44 of its decision in Debabrata Dash may be usefully extracted as follows:

"43. In Brij Mohan Lal a three-Judge Bench of this Court, inter alia, considered the Fast Track Courts Scheme. In para 10 of the judgment, this Court gave various directions. Direction 14 in that paragraph is relevant which can be paraphrased as follows:

(i) 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.

(ii) The service rendered in the Fast Track Courts will be deemed as service rendered in the parent cadre.

(iii) 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.

44. The learned Senior Counsel for the writ petitioner heavily relied upon the third part of Direction 14. As a matter of fact, this part has been relied upon in the impugned judgment as well. It is submitted on behalf of the writ petitioner that on promotion to the Senior Branch Cadre of Superior Judicial Service during his tenure in the Fast Track Courts, the writ petitioner is entitled to the counting of the service rendered by him in the Fast Track Court as a service in Superior Judicial Service (Senior Branch). The submission overlooks the first two parts of Direction 14, one, no right will be conferred in judicial service for claiming any regular promotion on the basis of his/her appointment on ad hoc basis under the scheme; and two, the service rendered in Fast Track Courts will be deemed as service rendered in the

parent cadre. In our opinion, until the vacancy occurred in the cadre of Superior Judicial Service (Senior Branch) which was to be filled up by promotion, the service rendered by the writ petitioner in the Fast Track Court cannot be deemed to be service rendered in the Superior Judicial Service (Senior Branch). Rather until then, he continued to be a member of the parent cadre i.e. Superior Judicial Service (Junior Branch). The third part of Direction 14, in our view, does not deserve to be read in a manner that overrides the 1963 Rules."

33. After analysing Brij Mohanlal to a great extent, the Supreme Court pointed out in paragraph 46 of its decision in Debabrata Dash that even while appointing Fast Track Court Judges, it was clearly stipulated that such appointments would be ad hoc and temporary and that the appointees shall not derive any benefit from such appointments. Consequently, the Supreme Court held in Debabrata Dash that on the date on which the petitioner therein was posted as Fast Track Court Judge, there was no vacancy in the cadre of Superior Judicial Service (Senior Branch) for being filled up by promotion. Therefore, the Supreme Court held that the decision of the High Court holding otherwise was erroneous. Hence, the decisions in Rudra Kumar Sain and Brij Mohanlal relied upon by the learned senior counsel for the petitioners, may not be of any avail to them any more.

34. More over, Rule 8(1) of the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007, also stands against the writ petitioners. As per Rule 8(1) of these Rules, "the seniority of a person appointed to the category of District Judge (Entry Level) shall be with reference to the date of appointment to the said service". This Rule is not under challenge by the petitioners. As per this Rule, what counts for seniority is the date of appointment to the service. The petitioners were appointed to the service only on 19.01.2012 and not on 24.3.2010, since the post of Fast Track Court Judge on ad hoc basis, cannot be construed as an appointment to the service. Therefore, the first contention of the learned senior counsel for the petitioner deserves to be rejected. Accordingly, it is rejected.

35. The second contention of the petitioners is that the contesting respondents were actually appointed to discharge the duties of the post of District Judge (Entry Level) only on 30.4.2012 and that therefore, their seniority has to be considered only from that date. In this connection, the learned senior counsel for the petitioners places reliance upon the decision of the Supreme Court in Maharashtra State Judicial Service Association v. High Court of Judicature at Bombay [(2002) 3 SCC 244].

36. There is no dispute on facts that the contesting respondents were actually appointed by G.O.Ms.No.16, Public dated 05.01.2011 and that after undergoing training for a period of six months as District Munsifs and for a period of six months as Sub Judges, the contesting respondents started discharging the duties of the post of District Judge (Entry Level) only from 29.4.2012 or 30.4.2014.

37. In Maharashtra State Judicial Service Association case, the Supreme Court was concerned with a writ petition filed under Article 32 of the Constitution, by promotee District Judges, questioning the decision of the Bombay High Court on the administrative side regarding fixation of seniority of promotees vis-a-vis those appointed from the Bar. The Bombay High Court took note of the statutory rules and the decision of the Supreme Court in Balasaheb Vishnu Chavan v. State of Maharashtra [(1984) 2 SCC 675] and came to the conclusion that the direct recruits would reckon their seniority in the cadre from the date of appointment, even though they were asked to work as Additional District Judges. While reversing the said decision, the Supreme Court was faced with Rule 5(2)(ii) of the Bombay Judicial Service Recruitment (Second Amendment) Rules, 1992. There were three methods of recruitment prescribed under the said Rule. Originally, the Rule prescribed only two methods of recruitment and clause (b) provided for a quota between promotees and direct recruits in the ratio of 50:50. But, when an amendment was made inserting one more method of appointment, a confusion got created. The result was that there was no rule for fixation of seniority of District Judges who were appointed by the third method, namely nomination on the recommendation of the High Court. It was due to this confusion that the Supreme Court reversed the decision of the Bombay High Court and held that the seniority of direct recruit District Judges would reckon only from the date, they are appointed to work as District Judges. Rule 5(2)(iii)(c), on the basis of which the Supreme Court took such a view, read as follows:

"Seniority in the cadre of District Judges in case of persons appointed under sub-clauses (a) and (b) of clause (ii) shall be determined on the basis of their dates of appointment to work as District Judges."

38. The Supreme Court found that the expression "to work as" appearing in two places, namely 5(2)(iii) and 5(2)(iii)(c) must carry the same connotation and that on a conjoint reading of the provisions, District Judges appointed directly from the Bar by nomination, can take seniority only from the date on which they are appointed to work as District Judges. One more factor that was taken note of by the Supreme Court in Maharashtra State Judicial Service Association was that direct recruits appointed to work initially as Additional District Judges on probation for two years, get lesser pay than the pay of a District Judge. Therefore,

the Supreme Court held that they were not entitled to seniority from a date prior to the date they started working as District Judges.

39. But, insofar as Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 2007 are concerned, the position is completely different from the Maharashtra Rules. Rule 8(1) of our State Rules makes it clear that "the seniority of a person appointed to the category of District Judge (Entry Level) shall be with reference to the date of appointment to the said service". The Tamil Nadu Rules uses the expression "the date of appointment to the said service" and not the expression "to work as".

40. The expression "date of appointment" appearing in Rule 8 (1) has the same connotation as the expression "appointed" in Rule 6(1)(a). As per Rule 6(1)(a), "every person appointed to the category of District Judges (Entry Level) by direct recruitment shall undergo training as Civil Judge for a period of not less than six months, training as Senior Civil Judge for a period of not less than six months and training in Forensic Science for a period of not less than two months".

41. Even Rule 6(2) uses a similar expression by providing that "every person appointed to the categories of District Judge (Entry Level) etc. by direct recruitment shall pass the account test for the Executive Officers within the period of probation". Rule 11, which deals with probation also indicates under Sub-rule (1) that every person appointed to the post of District Judge (Entry Level) by direct recruitment shall from the date of joining duty be on probation for a total period of two years on duty within a continuous period of three years, including the period of training as prescribed by the High Court.

42. Moreover, under the second part of Rule 6(1)(c) of the Tamil Nadu Rules, the District Judges (Entry Level) appointed by direct recruitment, are to be paid the minimum of the time scale of pay applicable to the post of District Judge/Civil Judge during the period of training and should also be allowed annual increment during the period of training.

43. Therefore, there are two distinguishing features in the Tamil Nadu Judicial Service (Cadre and Recruitment) Rules, 2007, that make the ratio decidendi in Maharashtra State Judicial Service Association case inapplicable to the case on hand. These distinguishing features are (i) that our Rules use the expression "appointed", whereas the Maharashtra Rules use the expression "to work as", and (ii) our Rules make the direct recruits entitled to the same pay scale together with annual increments even during the period of training, while the Maharashtra Rules prescribed a lower scale of pay during the period of training. Hence, we are of the considered view that the decision of the Supreme Court in Maharashtra State Judicial Service Association is of no assistance to the petitioners.

44. Drawing our attention to an unreported decision of a Division Bench of this Court in S.Pandiarajan v. The Government of Tamil Nadu [WP(MD) No.739 of 2012 dated 16.7.2012], it is contended by Mr.AR.L.Sundaresan, learned senior counsel for the petitioners that this Court had already taken a view that a direct recruit is deemed to be appointed to the service only from the date on which he started discharging the functions of the District Judge. Therefore, the learned senior counsel contended that a different view is not possible.

45. But, a careful look at the decision of the Division Bench in S.Pandiarajan would show that what was under consideration before the Division Bench in that case was totally different. A group of about 17 persons were selected for appointment to the post of District Judges (Entry Level) by the method of direct recruitment in the year 2010-11. Subsequently, it was brought to the notice of the Government and the Hon'ble Chief Justice that one of those 17 candidates, by name S.Pandiarajan, was involved in a criminal case and that he had suppressed information about the same in his application. Therefore, the said candidate was dropped out of select list and was not administered the oath of office. In his place, yet another candidate was selected and appointed. When the candidate challenged the action of the Government in dropping his name, he relied upon the expression "posting" appearing in Articles 233 and 235 of the Constitution and contended that he was already appointed to the post and that therefore, there was no jurisdiction for the High Court to drop his name subsequently. It was in that context that the Division Bench observed that a mere order of appointment does not confer any right upon the selectee and that it would not become operative until the appointee joins the services. Therefore, the said decision does not really support the contention of the petitioners, for the purpose of deciding the meaning to be assigned to the expression "appointed". As a matter of fact, the expression "appointed to a service" is defined in Rule 2(1) of the General Rules for Tamil Nadu State and Subordinate Services. These General Rules are applicable even to those appointed as District Judges (Entry Level). The definition under Rule 2(1) of the General Rules, reads as follows:

"A person is said to be "appointed to a service" when in accordance with these Rules or in accordance with the Rules applicable at the time, as the case may be, he discharges, for the first time, the duties of a post borne on the cadre of such service or commences the probation, instruction or training prescribed for members thereof."

46. Therefore, it is clear that a person can be said to be appointed to a service, either from the date on which he discharges, for the first time, the duties of a post borne on the cadre of such service or on the date on which he commences the

probation, instruction or training. In the light of such a clear provision in the General Rules, the contention that the direct recruits of the year 2011 can be said to have been appointed only from 30.4.2012, the date on which they completed the period of training and started discharging the duties of the post of District Judges (Entry Level) cannot hold water. In other words, the second contention of the petitioners stares against the express provisions of the Special Rules as well as the General Rules and hence, the same is liable to be rejected.

47. In fine, the claim of the petitioners cannot be sustained in law. Hence, the writ petition is liable to be dismissed. Accordingly, it is dismissed. There will be no order as to costs. Consequently, M.P.No.1 of 2014 is also dismissed.

kpl

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1. The Registrar General
High Court, Madras

2. The Section Officer
Legal Cell
High Court, Madras

1 cc to M/s.P.T. Perumal, Advocate, sr. 10705
1 cc to M/s. M. Kandasamy, Advocate, sr. 10488
1 cc to M/s.P. Mahalakshmi, Advocate, sr. 10500

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W.P.No.20069 of 2014.

RK (CO)
kk 10/3