

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

W.P.No.13022 of 2017

Between

Kum C.Yamini, D/o.C.R. Krishna,
Aged 45 years, Mahila Sessions Judge
cum V Addl. Dist. & Sessions Judge,
Vijayawada, Krishna District

... Petitioner

and

1. The State of A.P., Law (LA&JSCF) Dept.,
Rep. by its Chief Secretary,
Secretariat, Velagapudi, Amaravathi,
Guntur District

2. High Court of Judicature at Hyderabad,
Rep. by its Registrar General,
High Court Buildings, Hyderabad

... Respondents

DATE OF JUDGMENT PRONOUNCED: 17-4-2017

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

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| 1 | Whether Reporters of Local newspapers
may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be
marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? | Yes/No |

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

+ Writ Petition No.13022 of 2017

% 17-4-2017

Kum C.Yamini, D/o.C.R. Krishna,
Aged 45 years, Mahila Sessions Judge
cum V Addl. Dist. & Sessions Judge,
Vijayawada, Krishna District

... Petitioner

Vs.

\$ 1. The State of A.P., Law (LA&JSCF) Dept.,
Rep. by its Chief Secretary,
Secretariat, Velagapudi, Amaravathi,
Guntur District

2. High Court of Judicature at Hyderabad,
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... Respondents

! Counsel for the Petitioner: Mr. Ram Kumar,
representing Smt. Kota Kalpana

Counsel for Respondents: Mr. Abhinand Kumar Shavili,
Standing Counsel for High Court

< Gist:

> Head Note:

? Cases referred:

1. (2012) 6 SCC 502
2. (2013) 3 SCC 658
3. 2002 (5) Bom. C.R. 221
4. AIR 1993 SC 267
5. (2002) 4 SCC 247

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

Delivered on : 17-4-2017

Coram :

Honourable Mr. Justice V.RAMASUBRAMANIAN
and
Honourable Ms. Justice J.UMA DEVI

W.P.No.13022 of 2017

Kum C.Yamini, D/o.C.R. Krishna,
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1. The State of A.P., Law (LA&JSCF) Dept.,
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... Respondents

For the Petitioner

: Mr. Ram Kumar,
representing Smt. Kota Kalpana

For Respondents

: Mr. Abhinand Kumar Shavili,
Standing Counsel for High Court

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.13022 of 2017

Order: (per V. Ramasubramanian, J.)

Challenging 2 conditions subject to which she was appointed regularly to the post of District Judge, the petitioner has come up with the above writ petition.

2. Heard Mr. Ram Kumar, representing Smt. Kota Kalpana, learned counsel for the petitioner.

3. The petitioner was appointed as an *ad hoc* District Judge in the year 2003 to a Fast Track Court. The petitioner was practising as an Advocate at that time and the appointment was pursuant to a process of selection.

4. After the petitioner joined duty on 25-10-2003 as a Fast Track Court Judge, the High Court issued a notification on 28-5-2004 inviting applications for regular appointment to the post of District and Sessions Judge. The notification was challenged by a set of *ad hoc* Judges appointed to Fast Track Courts in a writ petition W.P.No. 11273 of 2004. All the *ad hoc* Judges who were the petitioners in the said writ petition prayed for absorption against regular vacancies. But the writ petition was dismissed by an order dated 13-7-2004.

5. As against the dismissal of the writ petition, the petitioners in the said writ petition filed a special leave petition in S.L.P.(Civil).No.17338 of 2004. The Supreme Court

granted leave and passed an interim order on 09-3-2006 in Civil Appeal No.1276 of 2005 to the effect that any appointments made pursuant to the regular selection, will be subject to the result of the writ petition.

6. In its decision in *Brij Mohan Lal v. Union of India*¹ (known as Brij Mohan Lal-II) filed by the *ad hoc* Fast Track Court District Judges, the Supreme Court issued certain directions on 19-4-2012. In accordance with those directions, a process of selection was conducted and the High Court recommended the appointment of about 12 persons including the petitioner herein as a regular District Judge. Accordingly, the Government issued G.O.Ms.No.68, Law Department, dated 02-7-2013, appointing the petitioner along with 11 others as District Judges on regular basis under the quota for direct recruitment. Paragraphs 4 to 6 of the order of appointment under G.O.Ms.No.68, dated 02-7-2013, read as follows:

“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

¹ (2012) 6 SCC 502

prescribed in schedule A appended to the Andhra Pradesh State Judicial Service Rules, 2007.”

7. Realising, after 4 years of the issue of the Order of appointment that the service rendered by her as a Fast Track Court Judge may not be counted for the purpose of fixation of seniority, the petitioner has come up with the above writ petition challenging paragraphs 5 and 6 of the Government Order.

8. The grounds on which the petitioner challenges paragraphs-5 and 6 of the impugned Government Order are as follows:

(i) that as per the decision of the Supreme Court in *Brij Mohan Lal-II*, persons working as *ad hoc* District Judges were only to be absorbed and not appointed and hence the seniority has to be automatically counted from the date of appointment;

(ii) that even as per the judgment of the Supreme Court in *Debabrata Dash v. Jatindra Prasad Das*², the seniority of *ad hoc* Judges has to be considered as and when regular vacancies arose and hence the seniority of the petitioner should be counted at least from the year 2004 when regular vacancies arose;

(iii) that the seniority of the petitioner cannot be determined on the basis of the Special Rules issued in 2007,

² (2013) 3 SCC 658

which took effect only prospectively and not from the date of the appointment of the petitioner in the year 2003;

(iv) that the decision of the Supreme Court in *Maharashtra State Judicial Service Association v. High Court of Judicature at Bombay*³ is not applicable to the case of *ad hoc* Judges appointed in this State, since the Maharashtra Rules were completely different;

(v) that the Special Rules for A.P. State Judicial Service do not contain any prescription with regard to the fixation of seniority of *ad hoc* District Judges, after their absorption;

(vi) that as per the decision of the Supreme Court in *M.B. Joshi v. Satish Kumar Pandey*⁴, the seniority of persons holding the same post in the same cadre has to be determined on the basis of the length of service in the absence of any Rules to the contrary; and

(vii) that therefore the seniority of the petitioner should be fixed from the date of her appointment as *ad hoc* Judge.

9. We have carefully considered the above submissions.

10. At the outset, it should be pointed out that what the petitioner challenges in this writ petition is a Government Order by which she was regularly appointed as District Judge, subject to the terms and conditions contained therein. The petitioner very conveniently took up the appointment subject to those conditions and in fact underwent probation

³ 2002 (5) Bom. C.R. 221 (SC)

⁴ AIR 1993 SC 267

for two years in terms of para-5 of the impugned Government Order. After getting a declaration of successful completion of probation and after ensuring a berth in the Judiciary, the petitioner has chosen to come up with a challenge to the very Government Order by which she was appointed. Therefore, the challenge cannot be sustained.

11. In any case, the petitioner has come up nearly after 4 years of the issue of the impugned Government Order. The impugned Government Order was issued on 02-7-2013. The petitioner has come up with a challenge to the order in April, 2017. It is well settled that in matters relating to seniority, persons who sleep over their rights, will not be granted any relief. Therefore, the writ petition is liable to be dismissed even on the ground of delay and laches.

12. The question as to whether the persons appointed as *ad hoc* Judges in Fast Tract Courts are entitled to count such service for the purpose of seniority, is no longer *res integra*. Even in *Brij Mohan Lal-I*, the Supreme Court made it clear that no right will be conferred on judicial officers, for claiming regular promotion, on the basis of his or her appointment on *ad hoc* basis. In *Brij Mohan Lal-II*, the Supreme Court made it clear that absorption in service is not a right and regularisation also is neither a statutory right nor a legal right enforceable in law. In para-175 of its decision in *Brij Mohan Lal-II*, the very claim of persons appointed on *ad hoc* basis for absorption against regular vacancies and for

quashing the notification for direct recruitment was rejected by the Supreme Court.

13. After considering in detail the ratio laid down in all such cases especially with reference to the category of Judicial Officers, the Supreme Court finally clinched the issue in *V.Venkata Prasad v. High Court of A.P.* in Civil Appeal No.6105 of 2013 by holding in paragraph-19 of its decision dated 29-6-2016 as follows:

“From the aforesaid two authorities, it is quite clear that the appointments in respect of the 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 Fast Track Court Judges were appointed under a separate set of rules than the rules governing the regular appointment in the State Higher Judicial Services.”

14. Interestingly, an argument was advanced before the Supreme Court in *V.Venkata Prasad*, to the effect that Rule 2 of the A.P. State Higher Judicial Services Rules would clinch the issue. While rejecting the said contention, as fundamentally fallacious in paragraph-22 of its decision in *V.Venkata Prasad*, the Supreme Court cited a passage from its decision in *O.P. Singla v. Union of India* [(1984) 4 SCC 450] that was relied upon by the Supreme Court in *Debabrata Dash*. In the said passage, the Supreme Court had pointed out clearly that to have the benefit of seniority, a person should first become a member of the service. To become a member of the service, 2 conditions are to be satisfied,

namely, (a) the appointment should have been made in a substantive capacity and (b) the appointment should have been to a post in the service. In the case of *ad hoc* appointment to Fast Track Courts, the appointees do not become members of the service. Therefore, the question of their getting seniority from the date of appointment as *ad hoc* Judges would not arise.

15. As a matter of fact, one of the directions contained in the decision of the Supreme Court in *Brij Mohan Lal-I* created a little space for persons promoted on *ad hoc* basis to claim seniority with effect from the date of such *ad hoc* promotion, if such *ad hoc* service was followed by the regular service. Direction No.14 contained in para-10 of the decision in *Brij Mohan Lal-I* reads as follows:

“No right will be conferred on judicial officers in service for claiming 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.**”

16. But the aforesaid direction No.14 contained in para-10 of the decision in *Brij Mohan Lal-I* came to be explained in *Debabrata Dash*. Paragraphs-46 and 47 of the decision in *Debabrata Dash* read as follows:

“46. In *Brij Mohan Lal-I*, a three-Judge Bench of this Court, *inter alia*, considered the Fast Track Courts scheme. In paragraph 10 of

the judgment, this Court gave various directions. Direction no. 14 in that para 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 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.

47. Learned senior counsel for the writ petitioner heavily relied upon the third part of direction no. 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 no. 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 no. 14, in our view, does not deserve to be read in a manner that overrides the 1963 Rules.

17. Therefore, the issue is now clinched once and for all and the petitioner, after 4 years of accepting appointment on the terms and conditions contained in the appointment order, cannot come up with a challenge to the same.

18. As we have indicated earlier, the petitioner challenges paragraphs 5 and 6 of the impugned order. Paragraph-5 of the impugned Government order deals with probation in terms of the 2007 Special Rules. The claim of the petitioner is that she was appointed under the Special Rules for A.P. Higher Judicial Service in the year 2003 and that

therefore, the 2007 Special rules will not apply to her case. But this contention is completely misconceived for 2 reasons. They are: (i) the appointment of the petitioner in the year 2003 was not to be considered as an appointment as a member of the service to a substantive vacancy and (ii) Under rule 26(2) of the Special Rules for A.P. Judicial Service, 2007, all appointments made prior to the issue of the 2007 Rules are deemed to have made in terms of the 2007 Rules. Therefore, her appointment to a substantive vacancy took place only under the impugned Government order dated 2-7-2013 and hence she was actually or at least deemed to have been appointed only under the 2007 Rules.

19. The challenge of the petitioner to paragraph 6 of the impugned order has no iota of any legal basis. Paragraph-6 of the impugned order merely states that the seniority of a person appointed there under shall be determined as per the roster found in Schedule-A of the 2007 Rules. The roster in Schedule-A to the 2007 Rules was incorporated only in pursuance of a direction issued by the Supreme court in paragraph 29 of its decision in *All India Judges' Association v. Union of India*⁵. Paragraph-29 of the said decision reads as follows:

“29. Experience has shown that there has been a constant discontentment amongst the members of the Higher Judicial Service in regard to their seniority in service. For over three decades a large number of cases have been

⁵ (2002) 4 SCC 247

instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotes and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to the Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle “merit-cum-seniority”, 25 per cent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, insofar as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in *R.K. Sabharwal v. State of Punjab* (1995) 2 SCC 745. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in *R.K. Sabharwal* case as early as possible. We hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31-3-2003.”

20. It is only pursuant to the above directives of the Supreme Court in *All India Judges' Association* case, that the Government of Andhra Pradesh issued under G.O.Ms.No.119, Law Department, dated 02-8-2008, a new set of Special Rules known as Andhra Pradesh State Judicial Service Rules, 2007, incorporating Rule 13. Rule 13 (a) of these Rules reads as follows:

“13. Seniority:

- (a) **District Judges:** 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 forty point roster prescribed in Schedule-A.

21. Therefore, the petitioner cannot challenge paragraph-6 of the impugned order, as the same is nothing but a reproduction of Rule 13(a) of the 2007 Rules, whose genesis can be traced to the decision of the Supreme court. Hence none of the grounds of challenge are sustainable in law and the writ petition is liable to be dismissed. Accordingly, it is dismissed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

17th April, 2017.

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Note:-

L.R. Copy to be marked.

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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE Ms. JUSTICE J.UMA DEVI

Writ Petition No.13022 of 2017
(per VRS, J.)



17th April, 2017.
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