

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

Writ Petition No.4754 of 2015

Between

Jinka Venkata Ramana, Occ: Advocate
[Earlier worked as III ADJ (FTC),
Nizamabad], Cuddapah, A.P.

... Petitioner

and

1. The State of A.P.,
Law (LA & J SC.F) Dept.,
Rep. by its Chief Secretary to
State of A.P.,
Secretariat, Hyderabad;
and 3 others

... Respondents

DATE OF JUDGMENT PRONOUNCED: 27-4-2017

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

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[Earlier worked as III ADJ (FTC),
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... Petitioner

Vs.

\$ The High Court of Judicature at Hyderabad
for the State of Telangana and the State of A.P.,
Rep. by its Registrar (Vigilance),
High Court Buildings, Hyderabad; and 3 others

... Respondents

! Counsel for the Petitioners: Mr. A.K. Jayaprakash Rao,
Representing Mr. B.Harinath Rao

Counsel for Respondents: Mr. Posani Venkatewarlu,
Standing Counsel for High Court

< Gist:

> Head Note:

? Cases referred:

1. 2015 (3) ALT 628

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

Delivered on: 27-4-2017

Coram :
The Honourable Mr. Justice V.RAMASUBRAMANIAN
and
The Honourable Ms. Justice J.UMA DEVI

Writ Petition No.4754 of 2015

Jinka Venkata Ramana, Occ: Advocate
[Earlier worked as III ADJ (FTC),
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... Petitioner

Vs.

1. The State of A.P.,
Law (LA & J SC.F) Dept.,
Rep. by its Chief Secretary to
State of A.P.,
Secretariat, Hyderabad;
and 3 others

... Respondents

For Petitioner : Mr. A.K. Jayaprakash Rao,
Representing Mr. B.Harinath Rao

For Respondents 1to4 : Mr. Posani Venkatewarlu,
Standing Counsel for High Court

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

Writ Petition No.4754 of 2015

Order: (per V.Ramasubramanian, J.)

The petitioner has come up with the above writ petition challenging the refusal of the respondents to absorb him in the post of District and Sessions Judge (Entry Level) on par with other candidates, who were so absorbed.

2. Heard Mr. A.K. Jayaprakash Rao, learned counsel, representing Mr. B.Harinath Rao, learned counsel for the petitioner and Mr. Posani Venkateswarlu, learned Standing Counsel for the respondents.

3. The petitioner was appointed as a Fast Track Court Judge in the category of District and Sessions Judge (Entry Level), on 14-10-2003, pursuant to a selection conducted by the High Court as per the notification dated 13-8-2002. After working for nearly about 10 months as the 3rd Additional District Judge (FTC), Nizamabad, up to 24-8-2004, the petitioner resigned. Pursuant to the directions issued by the Supreme Court in TC (C) No.22 of 2001, dated 19-4-2012, reported in *Brij Mohan Lal v. Union of India* [(2012) 6 SCC 502], the High Court issued a notification dated 13-8-2012 for absorption of *ad hoc* Fast Track Court Judges in the regular vacancies. The petitioner applied and appeared for a written examination on 16-9-2012.

4. The notification stipulated that the qualifying marks in the written examination would be 40% aggregate for General Category candidates and 35% for SC/ST/BC candidates.

5. Out of 19 candidates who appeared in the written examination, 17 candidates secured the qualifying marks. The petitioner was one among them.

6. All candidates who secured qualifying marks in the written examination were invited for interview on 17th and 18th December, 2012. When the results were declared on 28-3-2013 it was found that only 12 candidates got selected. Therefore, the Government issued G.O.Ms.No.68, Law Department, dated 02-7-2013 absorbing 12 Fast Track Court District Judges as District Judges (Entry Level) under the quota reserved for direct recruitment.

7. Three of the unselected candidates filed a writ petition in W.P.No.38252 of 2014 and one unselected candidate filed W.P.No.38687 of 2013 on the file of this Court contending that the prescription of minimum qualifying marks in the viva voce was illegal and that therefore their non-selection on the ground of not securing minimum marks either in the viva voce or in the aggregate was illegal.

8. By a judgment reported in *P.Murali Mohan Reddy v. State of Andhra Pradesh*¹, a Division Bench of this Court upheld the aforesaid contention and allowed the writ

¹ 2015 (3) ALT 628

petitions, directing the High Court to appoint the petitioners as well as everyone who had qualified in the written examination and also appeared for the viva voce.

9. For reasons which we are unable to decipher, the present writ petition did not form part of the said batch, though this writ petition was filed on 16-02-2015 and notice was ordered on 27-02-2015. The decision in *P.Murali Mohan Reddy* was pronounced on 25-3-2015. But nevertheless, the petitioner was not extended the benefit of the said judgment also.

10. It is admitted on both sides that the decision of the Division Bench of this Court in *P.Murali Mohan Reddy*, has been taken on appeal to the Supreme Court and the Supreme Court has ordered notice in the special leave petition. Since there was no stay, the petitioners in those cases have been appointed by the High Court as District Judges and they are now working.

11. Therefore, the claim of the petitioner in the present writ petition is that admittedly he had secured the minimum qualifying marks in the written examination and that his non-selection was only due to his not securing minimum qualifying marks in the viva voce. Therefore, the petitioner claims that he should be extended the benefit of the judgment in *P.Murali Mohan Reddy*.

12. There is no dispute about the fact that the petitioner belongs to BC-B category and that he had secured 61.5

marks out of the maximum of 150 marks in the written examination. It means he had secured little more than 40%, as against the qualifying marks of 35% for BC candidates. His contention is that he was not selected only due to the fact that he was awarded 10.2 marks out of a maximum of 100 marks in the viva voce. Therefore, the petitioner claims that his case would squarely fall within the dicta of the Division Bench of this Court in *P.Murali Mohan Reddy*. Since the decision in *P.Murali Mohan Reddy* was not stayed by the Supreme Court, the petitioner, seeks appointment on par with his colleagues.

13. But the High Court has taken a stand that the case of the petitioner stands on a different footing than the others, for 2 reasons, namely (i) that he worked only for 10 months and resigned and (ii) that he did not secure 35% marks in the aggregate as required by the decision of the Supreme court. Therefore, the respondents claim that the benefit of the decision in *P.Murali Mohan Reddy* cannot be extended to the petitioner.

14. On the first issue raised by the Registry, it is contended by the petitioner in his reply affidavit that one T.Srinivasa Rao who worked for one and half years and resigned and another person Smt. B.Swapna who worked for 4 years and resigned, have all been appointed. Therefore, the contention of the petitioner is that resignation cannot per se be put against him. On the second issue raised by the

Registry, the petitioner places reliance upon the observations of this court in paragraphs 21 and 22 of the decision in *P.Murali Mohana Reddy*.

15. In the light of the rival contentions, 2 issues arise for consideration in the present writ petition. They are: (a) whether a candidate who had already resigned is entitled to the benefit of the decision in *P.Murali Mohan Reddy* and (b) whether a candidate who failed to secure 35% marks in the aggregate in the written examination and viva voce, is entitled to be selected.

16. Let us first take up the first issue, which could be disposed of without much ado. In para-4 of the reply affidavit, the petitioner has submitted that one Mr. T.Srinivasa Rao who worked for 1½ years and one Smt. B.Swapna who worked for 4 years and who later resigned, were selected as regular District Judges. Therefore, he claims parity of treatment with those two persons.

17. Admittedly, the petitioner, who was a member of the Bar was appointed as a Fast Track Court Judge on 14-10-2003. He resigned on 24-08-2004 within 10 months of his appointment. Therefore, we have to see whether such a person can suddenly take advantage of the decision of the Supreme Court in ***Brij Mohan Lal – II* [(2012) 6 SCC 502]** and seek absorption, despite his resignation 8 years before.

18. In order to find an answer to the above question, it is necessary to look into the historical background. Under

the 11th Finance Commission, the Government of India allotted a sum of Rs.502.90 crores under Article 275 of the Constitution for the establishment of 1734 Courts in various States to deal with long pending cases. The Finance Commission suggested the reemployment of the retired Judges for a limited period, since these Courts were to be *ad hoc*. But this scheme came to be challenged before various Courts and eventually all those cases were transferred by the Supreme Court to itself in what came to be known as *Brij Mohan Lal-I*.

19. By a decision rendered on 06-05-2002, a 3 Member Bench of the Supreme Court issued about 18 directions in *Brij Mohan Lal-I*. In sum and substance, the directions were to the following effect:

- 1) first preference for appointment as Fast Track Court Judges shall be given by way of *ad hoc* promotions;
- 2) second preference shall be given for the appointment of retired Judges;
- 3) third preference shall be given to members of the Bar, for direct recruitment.

20. Direction No.4 contained in *Brij Mohan Lal-I* was to the effect that the members of the Bar appointed by way of direct recruitment as Fast Track Court Judges, may be in the age group of 35 to 45 years, so that they could aspire to continue against regular posts, if the Fast Track Courts cease to function. The question of their continuance in service was to be reviewed periodically.

21. Though the transferred case was disposed of in *Brij Mohan Lal-I*, the Supreme Court nevertheless directed quarterly status reports to be filed from time to time about the functioning of Fast Track Courts. Therefore, in effect the transferred case was treated as alive, if not pending. While so, a couple of writ petitions came to be filed in the year 2005 and 2007 before the Supreme Court seeking the extension of the Fast Track Courts scheme for another 5 years. A group of Special Leave Petitions also came to be filed as against the judgments of some of the High Courts challenging the termination of the services of persons appointed as Fast Track Court Judges. Similarly, one set of writ petitions were filed seeking absorption against the regular vacancies. Therefore, all of them were grouped together, heard and disposed of by the Supreme Court by a decision which came to be known as ***Brij Mohan Lal-II***, reported in **(2012) 6 SCC 502**. In the said decision, the Supreme Court issued certain directions in para-207 of the decision. Direction No.9 contained in Para 207 of the decision in *Brij Mohan Lal-II* is extracted as follows:

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

(a) The direct recruits to the FTCs who opt for regularization shall take a written examination to be conducted by the High Courts of the respective States for determining their suitability for absorption in the regular cadre of Additional District Judges.

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

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

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

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

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

(g) *If, for any reason, vacancies are not available in the regular cadre, we hereby direct the State 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.*

22. It is only by virtue of the above direction that persons working as Fast Track Court Judges became eligible to be absorbed/appointed. The very scheme formulated by the Supreme Court in *Brij Mohan Lal-II*, was to ensure that persons who had crossed over from the Bar to the Bench and who had spent considerable length of time on the Bench, need not be made to go back, but allowed to continue. This is why one of the directions contained in direction No.9 extracted above, is to award one mark for every year of service. **Brij Mohan Lal-II never contemplated a hop on and hop off facility to enable a person who resigned in the**

year 2004, within 10 months of appointment, to bounce back in the year 2012 and seek absorption/appointment.

Therefore, the respondents were right in rejecting the claim of the petitioner on the ground that he had resigned and gone back long long ago.

23. It may be true that two persons by name Srinivasa Rao and Swapna who had also resigned and gone, came back. But the benefit granted to them was not in accordance with the ratio in *Brij Mohan Lal-II*. If some one has been granted a benefit, not flowing out of the ratio laid down by the Supreme Court, the same cannot be cited as a precedent to follow. There cannot be equality in illegality. Though we would not put the appointment of those two persons as illegal appointments, we certainly think that it was a benefit mistakenly conferred upon them. Therefore, the same cannot be a ground for extending the benefit to a person who just worked for 10 months and resigned way back in 2004, to come up with a claim in 2012. Hence, the first question arising for consideration has to be answered against the petitioner.

24. Let us now take up the second issue for consideration. As can be seen from the Direction No.9 (c), the Supreme Court prescribed 150 marks for the written examination and 100 marks for the interview and stipulated that the qualifying marks shall be 40% aggregate for General Candidates and 35% for SC/ST/OBC candidates.

25. In other words the absorption of Fast Track Court Judges against the regular vacancies was directed to be made by the Supreme Court only through a process of selection comprising of a written examination followed by interview and the ultimate selection was directed to be made subject to the candidates securing the qualifying marks stipulated in Direction No.9 (c) of para 207 of *Brij Mohan Lal-II*. ***It must be emphasized here that Direction No.9 (c) used the expression “aggregate”.***

26. But what happened in this Court in the year 2013, which led to 4 candidates filing writ petitions challenging their non-selection was that the Selection Committee prescribed separate minimum qualifying marks for written examination and viva voce. Therefore, in *P. Murali Mohana Reddy (cited supra)*, a Bench of this Court held that the prescription of minimum qualifying marks in the viva voce after the written test was over, was contrary to law. Instead of stopping with that, this Court made an observation in paragraphs 21 and 22, which has given rise to a claim by the writ petitioner herein. Paragraphs 21 and 22 of the decision in *P. Murali Mohana Reddy* read as follows:

“21. Therefore, we are of the view that the Selection Committee should not have adopted the norm of securing a minimum qualifying mark in the viva voce test or for that matter, minimum aggregate qualifying marks.

22. Moreover, it is rightly contended by the learned counsel for the petitioners, relying on the aforesaid judgment of Supreme Court in *Umesh Chandra Shukla v. Union of India* (3 supra) and *A.A. Calton v. Director of Education* (2 supra), that the respondents and each of them cannot act contrary to the norms as published in the advertisement or the Rules and admittedly, the advertisement does not stipulate a minimum qualifying mark for the viva voce test or that of aggregate marks both in written and viva voce test.

As the petitioners and each of them, in terms of the advertisement as well as the rules, have acted upon and that they acquired a vested right to be considered in terms of the advertisement and the rules.....”

27. It appears from the decision of the Division Bench of this Court in *P. Murali Mohana Reddy* that by and large this Court proceeded on the basis of the stipulation contained in the A.P. State Judicial Service Rules, 2007, which did not speak about the minimum qualifying marks in the aggregate. After extracting Rule 6 of the A.P. State Judicial Service Rules, 2007 in paragraph 16 of its judgment, the Division Bench of this Court concluded in para 17 of the decision in *P. Murali Mohana Reddy* that there was no stipulation either in the advertisement or in the Rules, for securing minimum qualifying marks in the viva voce. To this extent, the observation in para 17 of *Murali Mohana Reddy* was correct. But in the last line of para 17, the Division Bench stated in *P. Murali Mohan Reddy* as follows:

“Even in the Rules, there is no mention about minimum aggregate qualifying marks.”

28. The Division Bench drew support for its above conclusion from the second part of Direction No.9 (c) contained in para 207 of the decision in *Brij Mohan Lal-II*, overlooking the fact that the second part of Direction No.9 (c) cannot eclipse or swallow the first part. In the first part of Directions 9 (c), the Supreme Court stipulated very clearly that qualifying marks shall be 40% aggregate for General Candidates and 35% for SC/ST/OBC candidates. What was prescribed in the second part of Direction No.9 (c) was only

procedural and it is confined only to the method of conduct of examination and interview. The A.P. State Judicial Service Rules, 2007 stipulate the syllabus for examination and the procedure for conduct of examination.

29. Therefore, the correct method of understanding Direction No.9 (c) of *Brij Mohan Lal-II* is to split it into two, the first part containing the substantive requirement and the second part containing the procedural aspect.

30. If the intention behind Direction No.9 (c) of the decision in *Brij Mohan Lal-II* was to allow the relevant Rules of Recruitment to take precedence, then even the first part of the Direction No.9 (c) would have to be given a go-bye. For instance, under the 2007 Rules, the maximum marks for written examination is 80 and the maximum marks for viva voce is 20. Rule 6 of the 2007 Rules lays down the elaborate methodology for conducting examination for selection. Sub-rule (4) of Rule 6 States that the written examination shall invariably carry 80 marks limiting viva voce to remaining 20 marks. Therefore, if the logic adopted in *P. Murali Mohana Reddy* is accepted, there could not have been a maximum of 150 marks for written examination and 100 marks for viva voce. Such an understanding will make the first part of Direction No.9 (c) of *Brij Mohan Lal-II* a dead letter in view of the second part.

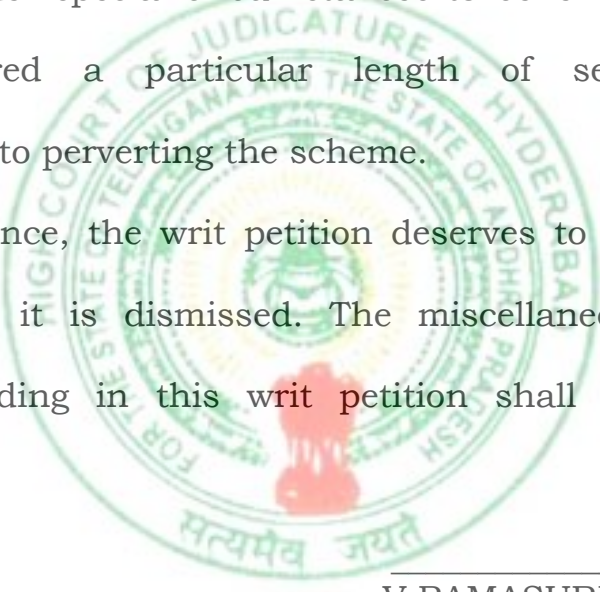
31. It must be remembered that the process of absorption/appointment of Fast Track Court Judges as

regular District Judges, was not strictly in accordance with the Rules of Recruitment. ***All the Fast Track Court Judges never had any right flowing out of the 2007 Rules for absorption or regularisation. They acquired a right for consideration for appointment only by virtue of the directions issued by the Supreme Court in Brij Mohan Lal-II. Therefore, once it is found that Direction No.9 (c) of Brij Mohan Lal-II mandates a General Category candidate to secure 40% marks in the aggregate and other category candidates to secure 35% marks in the aggregate, neither those candidates nor this Court can give a go-bye to the said prescription, either on the basis of the advertisement or on the basis of the Rules.*** When the very right to be appointed/absorbed flowed only out of the directions contained in *Brij Mohan Lal-II*, the exercise of the right should also be only as per the directions contained in the same decision and not as per the recruitment rules. Therefore, we are of the considered view that securing 40% marks in the aggregate for a general category candidate and 35% marks in the aggregate for other candidates was a mandatory requirement flowing out of direction No.9 (c) in *Brij Mohan Lal-II*. The petitioner admittedly did not secure 35% marks in the aggregate. The petitioner secured only 61.5 marks out of a maximum of 150 marks in the written examination and he secured 10.2 marks out of a maximum of 100 marks in the viva voce. It works out to 71.7 out of

a maximum of 250. As a candidate belonging to the Backward Class community, he must have secured at least 87.5% marks in the aggregate. Since he did not secure the minimum qualifying marks in the aggregate as stipulated by the Supreme court, he is not entitled to be appointed.

32. It must be pointed out that the writ petitioner herein served as *ad hoc* Judge only for a period of about 10 months from 23-10-2003 to 24-8-2004. Therefore, to grant him the benefit of absorption on the basis of a process of selection adopted under special circumstances to benefit persons who had rendered a particular length of service, would tantamount to perverting the scheme.

33. Hence, the writ petition deserves 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.

27th April, 2017.

Ak/Ksn

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.4754 of 2015
(per VRS, J.)



27th April, 2017.
(Ak)