

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

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
and
*THE HON'BLE SRI JUSTICE N. BALAYOGI**

+Writ Petition No.3359 of 2017

% 27-04-2018

Between:

#Kum. C. Yamini, D/o C.R. Krishna, aged 45 years,
Mahila Sessions Judge-cum-V Additional District
and Sessions Judge, Vijayawada, Krishna District.

... Petitioner

Vs.

#High Court of Judicature at Hyderabad,
represented by its Registrar (Vigilance),
High Court Buildings, Hyderabad and 2 others

.. Respondents

! Counsel for the Petitioner : Mr. Ashok Ram Kumar

^ Counsel for the respondents : Mr. Swaroop Oorilla, standing
counsel for the High Court

< Gist:

> Head Note:

? Cases referred:

- 1) (2002) 5 SCC 1
- 2) (2012) 6 SCC 502
- 3) 2017 (3) ALT 663
- 4) (2013) 3 SCC 658
- 5) (2002) 3 SCC 244
- 6) (2000) 8 SCC 25

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE N. BALAYOGI**

Writ Petition No.3359 of 2017

ORDER: *(V. Ramasubramanian, J)*

The petitioner has come up with the above writ petition seeking a mandamus to direct the respondents to fix her seniority after one Ch. K. Durga Rao taking into consideration the length of service rendered in Fast Track Court as *Adhoc* District and Sessions Judge.

2. Heard Mr. Ashok Ram Kumar, learned counsel for the petitioner and Mr. Swaroop Oorilla, learned standing counsel for the High Court.

Brief Prelude

3. The 11th Finance Commission allocated Rs.502.90 Crores for the purpose of setting up 1,734 Courts in various States throughout India, to deal with long pending cases, particularly Sessions Cases. The allocation of funds mandated the utilisation of the funds within a period of five years. Actually the Finance Commission suggested the re-employment of retired Judges for a limited period of time, since the Courts created in terms of the recommendations, were to be *ad hoc*, in the sense that they would not be a permanent addition to the number of Courts within a particular State.

4. A challenge was made to the scheme so floated by the 11th Finance Commission and which came to be known as “Fast Track Courts Scheme”. The challenge was on the ground that there was no Constitutional sanction for the employment of retired Judges. While dealing with the challenge so made, a 3-member Bench of the Supreme Court, in ***Brij Mohan Lal v. Union of India***¹ issued certain directions on 06-5-2002. This decision, which came to be known later as *Brij Mohan Lal-I*, made it clear (Direction No.14) that 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. This decision also made it clear (Direction No.4) that the Members of the Bar directly appointed to these Courts, may be absorbed in regular vacancies, if subsequent recruitment takes place and their performance in the Fast Track Courts was found satisfactory.

5. Even before the issue of the directions in *Brij Mohan Lal-I*, the Government of Andhra Pradesh issued a set of rules known as “The Andhra Pradesh Higher Judicial Service Special Rules for *Ad hoc* Appointments, 2001” under G.O.Rt.No.286, Law (LA&J SC.F) Department, dated 05-3-2002. Rule 2 of these Rules prescribed three different methods of recruitment viz., (i) Direct recruitment from the Bar, (ii) Appointment by transfer from among the Senior Civil Judges and (iii) Re-employment of retired District Judges. But Rule

¹ (2002) 5 SCC 1

2(4) of these Rules made it clear that all appointments made under the rule from time to time shall cease on 31-3-2005.

6. Rule 7(1)(B) of these Special Rules for *Ad hoc* Appointments made it clear that a person directly recruited to the post, will not be regarded as a member of the permanent cadre. The Rule went further by declaring that the appointment so made, will also not be a bar for appointment to the posts covered by the Special Rules for Andhra Pradesh State Higher Judicial Service.

Rule 7(1)(B) reads as follows:

“7(1)(B) A person appointed under Rule 2(i) shall not be regarded as a Member of Permanent cadre covered under Rule 2 of the Special Rules for Andhra Pradesh State Higher Judicial Service, 1958, and shall not be entitled to any preferential right to any other appointment to this service or any other service and their service shall not be treated as regular or permanent under the State Government nor shall be a bar for appointment to the posts, covered by the Special Rules for Andhra Pradesh State Higher Judicial Service, 1958 or the Andhra Pradesh State Judicial Rules, 1962.”

Adhoc appointment of the petitioner

7. In accordance with the Special Rules for *Ad hoc* Appointments, 2001, a selection was made, and a group of about 20 persons were directly recruited as District Judges under G.O.Rt.No.1798, Law (LA&J SC.F) Department, dated 06-10-2003. These appointments were made under rule 2 of the Special Rules for *Ad hoc* Appointments, 2001 and paragraph-5 of the order made it clear that these appointments will cease on 31-3-2005.

8. The petitioner was one of those 20 persons who were so appointed under G.O.Rt.No.1798, dated 06-10-2003. The petitioner as well as the others accepted the appointments, knowing fully well (as practising advocates are expected to) the implications of Rule 7(1)(B) of the Special Rules for *Ad hoc* Appointments, 2001.

Litigation (first round) begins

9. Within a few months of the appointment of the petitioner and others, the High Court issued a Notification on 28-05-2004, inviting applications for direct recruitment to regular vacancies. Instead of applying in response to the said Notification and participating in a process of selection, 17 persons appointed along with the petitioner herein filed a writ petition in W.P.No.11273 of 2004 challenging the recruitment notification dated 28-5-2004 and seeking absorption of their services against the regular vacancies, on the basis of Direction No.4 contained in *Brij Mohan Lal-I*.

10. But the said writ petition was dismissed by a Bench of this Court by an order dated 13-7-2004. Challenging the said order, those 17 persons filed SLP (Civil) No.17338/2004 on the file of the Supreme Court. The Supreme Court granted leave and passed an interim order on 09-3-2006 to the effect that the appointments made pursuant to the regular selection, will be subject to the result of the writ petition.

11. In the meantime, the tenure of appointment of Fast Track Court Judges in the State of Andhra Pradesh and elsewhere came

to an end on 31-3-2005. Therefore, two writ petitions, one by All India Judges' Association and another by All Media Journalists' Association came to be filed directly before the Supreme Court under Article 32 of the Constitution of India seeking the issue of appropriate directions to extend the Fast Track Courts Scheme beyond 2005. One of the issues raised in those writ petitions was that the Advocates appointed as direct recruits to man the Fast Track Courts had become over-aged for regular appointment in permanent posts and that they have also become ineligible to practice in any Court lower than the High Court, by virtue of the Bar Council of India Rules.

12. Those writ petitions as well as several special leave petitions arising out of the decisions of certain High Courts, were taken up by the Supreme Court along with Civil Appeal No.1276/2005 which arose out of the decision of this Court. All the writ petitions, special leave petitions and civil appeals including the civil appeal filed by the writ petitioner herein were disposed of by the Supreme Court by a decision in ***Brij Mohan Lal v. Union of India***², dated 19-4-2012. This decision came to be known later as *Brij Mohan Lal-II*. In paragraphs-27 and 32 of its decision, in *Brij Mohan Lal-II*, the Supreme Court specifically took note of the Special Rules of *Ad hoc* Appointments, 2001 issued by the State of Andhra Pradesh. The first question that was taken up for consideration and decision in *Brij Mohan Lal-II* as seen from paragraph-51 of the

² (2012) 6 SCC 502

decision was whether the *ad hoc* appointees like the petitioner had a right to the post. In order to find an answer to this question, the Supreme Court referred to Rules 2 and 7(1)(B) of the Special Rules for *Ad hoc* Appointments, 2001 and categorically held in paragraph-69 that these appointees did not have an absolute right to the post. Despite holding so, the Supreme Court proceeded further to examine whether the petitioners in the cases before the Supreme Court were entitled to some relief.

13. The Supreme Court took up for consideration in *Brij Mohan Lal-II*, the contention advanced by the appellants that by virtue of Rule 7 of the Bar Council of India Rules, they had lost a right to practise. In paragraph-84, the contention was rejected. Eventually, in paragraph-125 of its decision, the prayer of the appellants in Civil Appeal No.1276/2005 for quashing the Notification for direct recruitment dated 28-5-2004 and for absorption was rejected. However, the Supreme Court issued certain directions in paragraph-146 of its decision in *Brij Mohan Lal-II*, with a view to improve the justice delivery system. One of the directions contained in paragraph-146 of the decision in *Brij Mohan Lal-II* related to persons appointed from the Bar to preside over the Fast Track Courts and the question of absorption of these persons against regular vacancies. This was in Direction No.9 under paragraph-146. It reads 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."

Regular Appointment of the Petitioner

14. Pursuant to the directions so issued by the Supreme Court in *Brij Mohan Lal-II*, a process of selection was conducted by the High Court and on the basis of the performance of the candidates, the High Court recommended the regular appointment of 12 persons out of 20 candidates who were originally appointed in the year 2003 on *ad hoc* basis. Accepting the recommendations of the High Court, the Government issued G.O.Ms.No.68, Law (LA&J-SC.F) Department, dated 02-7-2013, appointing 12 persons. The petitioner was one among those 12 persons. Paragraph-4 of the said Government Order G.O.Ms.No.68, dated 02-7-2013, reads as follows:

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

15. The petitioner and others, under paragraph-5 of the Government Order, were placed on probation with effect from the date of joining duty. Paragraph-6 of G.O.Ms.No.68 made it clear that the seniority of persons appointed thereunder will be fixed as per the roster prescribed in Schedule-A appended to the Andhra Pradesh State Judicial Service Rules, 2007.

Present Litigation

16. It must be pointed out that the writ petitioner herein was not one of the 17 candidates who filed the writ petition W.P.No.11273 of 2004 before this court. She was also not a party to Civil Appeal No. 1276 of 2005 before the Supreme Court. But the

fact remains that 17 of her colleagues (out of a total of 20) approached the court and failed to get any relief of regularization. Therefore, the case of the petitioner cannot be seen in isolation. Keeping this in mind we shall see what the petitioner did.

17. After accepting the order of appointment along with the conditions stipulated therein and keeping quiet for 4 years, the petitioner came up first with the above writ petition seeking a mandamus to direct the respondents to fix her seniority by taking into consideration the length of service rendered in the Fast Track Court. On 06-02-2017, notice on admission was ordered in the above writ petition.

18. Subsequently, the petitioner came up with another writ petition in W.P.No.13022 of 2017 challenging conditions 5 and 6 of G.O.Ms.No.68, dated 02-07-2013. Substantially the prayer of the petitioner in the said writ petition was also aimed at having the service rendered as Fast Track Court *ad hoc* Judge counted for the purpose of seniority.

19. It should be pointed out at this stage that while the present writ petition was the first one in point of time, filed with a prayer, which is very plain and simple, the second writ petition in W.P.No.13022 of 2017 was obviously filed to overcome the conditions contained in the order of appointment, which stood in the way of the substantial relief that the petitioner wanted.

20. But, the second writ petition came up for hearing earlier and by a judgment dated 17-04-2017 reported in **Kum. C. Yamini v. State of A.P.**³, a Bench of this Court to which one of us was a party, (VRSJ) dismissed the writ petition. This Court had pointed out in its decision in W.P.No.13022 of 2017 that a person cannot claim the benefit of seniority unless he or she had first become a member of the service. Quoting from a judgment of the Supreme Court in **V. Venkata Prasad v. High Court of A.P. in Civil Appeal No.6105 of 2013 dated 29-06-2016**, the Bench pointed out in the very case of the writ petitioner (already disposed of) that the *adhoc* appointees to Fast Track Court did not become the members of service and that therefore, they cannot claim counting of the service rendered as *adhoc* Judges for the purpose of seniority. Therefore, the relief sought by the petitioner in her writ petition, has to be rejected, as a consequence of the dismissal of the writ petition in other writ petition in W.P.No.13022 of 2017.

Contentions of the Petitioner

21. Despite the dismissal of the other writ petition of the very same petitioner, the learned counsel for the petitioner contended: (1) that as per the decision of the Supreme Court in **Debabrata Dash v. Jatindra Prasad Das**⁴, *adhoc* appointees should be considered for absorption as against regular vacancies and since regular vacancies in this case arose in the year 2004, her appointment should be counted as against the regular vacancies that arose in 2004; (2) that

³ 2017 (3) ALT 663

⁴ (2013) 3 SCC 658

the order in G.O.Ms.No.68 should not be considered as an order of appointment but an order of absorption; (3) that since the High Court of Judicature at Hyderabad did not prescribe any rule for fixation of seniority of *adhoc* District Judges upon their absorption, no reliance can be placed upon the decision of the Supreme Court in **Maharashtra State Judicial Service Association v. High Court of Judicature at Bombay**⁵ and (4) that as per the decision of the Supreme Court in **Rudra Kumar Sain v. Union of India**⁶, any person appointed with the approval and consultation of the appropriate authority, cannot be considered to have been appointed as a stop gap arrangement or purely on *adhoc* basis if he has continued for a fairly long time.

22. We have carefully considered the above submissions.

Analysis

23. The first submission is that the High Court issued a notification for direct recruitment on 28-05-2004, thereby making it clear that certain vacancies arose in 2004. Since the Supreme Court held in **Debabrata Dash** that the seniority of *adhoc* appointees need to be considered as and when regular vacancies arose for such posts, the learned counsel for the petitioner claims that the petitioner is entitled to seniority with effect from the date on which vacancies arose.

24. But the above contention is completely misconceived. The very order of appointment on *adhoc* basis made it clear that it was

⁵ (2002) 3 SCC 244

⁶ (2000) 8 SCC 25

an appointment on consolidated pay with a fixed tenure that was to expire on 31-03-2015. Therefore, when a notification for direct recruitment was issued on 28-05-2004, nothing prevented the petitioner from making an application and participating in a regular process of selection to the post of District Judge. Instead of attempting to gain an entry right royally, the *adhoc* appointees like the petitioner (though the petitioner did not join them) chose to file a writ petition challenging the direct recruitment. In other words, the petitioner and others were not willing to compete along with other candidates and come out successful on their own merit, pursuant to the notification for direct recruitment issued on 28-05-2004. In fact, after the dismissal of their writ petition challenging the notification for direct recruitment, the *adhoc* appointees (not including the petitioner) went to the Supreme Court. The Supreme Court refused to stay the notification, and hence, the process of recruitment went on. Eventually, persons, who participated in a regular process of selection, were selected and appointed. In such circumstances, to grant the relief sought by the petitioner would be to equate persons who refused to participate in a process of selection, with those who ran the race and came out successfully. The first principle underlying Article 14 is that unequals cannot be treated as equals.

25. The petitioner cannot place reliance upon the decision of the Supreme Court in **Debabrata Dash**, for the simple reason that the fight before the Supreme Court in that case was between (1) persons regularly appointed to the post of Civil Judges (Junior

Division) who were later promoted regularly as Senior Civil Judges and subsequently appointed only on *adhoc* basis as Additional District Judges to man the Fast Track Courts; and (2) those directly recruited to the post of District Judges. In other words, the fight in **Debabrata Dash** was between an *adhoc* promotee and a direct recruit. The tussle was not between an *adhoc* recruit and a regular direct recruit.

26. In **Debabrata Dash v. Jatindra Prasad Das**, the Supreme Court was not concerned with a case of *adhoc* appointment directly made to the post of District Judges to man Fast Track Courts pursuant to a scheme introduced by the Government at the instance of the Supreme Court. More over the proviso to Rule 17 of the Orissa Judicial Service Rules (with which the Supreme court was concerned in that case) made it clear that a promotee officer, who is allowed to officiate continuously from a date prior to the date of appointment of a direct recruit, shall take his seniority over and above such direct recruit, if he is subsequently substantially appointed.

27. Therefore, the petitioner cannot place reliance upon **Debabrata Dash v. Jatindra Prasad Das** at least for three reasons: (1) the Supreme Court was concerned in **Debabrata Dash v. Jatindra Prasad Das** with a dispute between an *adhoc* promotee and a direct recruit and not an *adhoc* appointee vis-à-vis a direct recruit; (2) the case of an *adhoc* promotee will stand on a different footing, from that of an *adhoc* appointee, since an *adhoc* promotee,

by virtue of holding of a substantive post, would already be a member of the service, while an *adhoc* appointee, would not become a member of the service till he is regularly appointed; and (3) that in any case, the Orissa Rules provided for counting of *adhoc* service in the case of promotions, for the purpose of seniority. Therefore, the first contention based upon the decision in **Debabrata Dash v. Jatindra Prasad Das** is completely misplaced.

28. The second contention of the petitioner is that what was ordered by the Supreme Court in **Brij Mohan Lal-II** pursuant to which the petitioner was appointed under G.O.Ms.No.68, was only absorption and not a fresh appointment and that therefore, the service rendered as *adhoc* Judge should count for seniority. As this Court has pointed in Para 12 of its decision in the very case of the petitioner decided on 17-04-2017, the Supreme Court had made it clear in **Brij Mohan Lal-II** that no right is conferred upon Judicial Officers on the basis of the appointment on *adhoc* basis. ***The Court indicated that absorption or regularization is neither a statutory right nor a legal right enforceable in law.*** Therefore, the services rendered as *adhoc* Judge, outside the cadre, without becoming a member of the service, cannot count for seniority merely because of the use of the expression “absorption”.

29. In **Maharashtra State Judicial Service Association v. High Court of Judicature at Bombay**, the Supreme Court made it clear that *adhoc* appointment will not confer a right to be counted for seniority. This decision is sought to be distinguished by the learned

counsel for the petitioner on the ground that the said decision was rendered in the context of specific Rules found in the Bombay Judicial Service Recruitment Rules.

30. But we do not think that the distinction sought to be made out is valid in law. In **Maharashtra State Judicial Service Association**, the tussle was between persons appointed as District Judges by way of nomination from the Bar and those who are promoted as District Judges. The Rules allowed the service of a person to be counted only from the date of appointment. In the case on hand also, the 2007 Rules stipulate very clearly that *ad hoc* appointees do not become members of the service. Unless a person becomes a member of the service, the question of counting the seniority does not arise.

31. The last contention is based upon the decision in **Rudra Kumar Sain v. Union of India**. The contention of the learned counsel for the petitioner is that the decision in **Rudra Kumar Sain v. Union of India** arose out of a claim for seniority between promotees and direct recruits. The promotees claimed seniority on the basis of continuous officiation for a long time. The post concerned with such continuous officiation for a long time, was actually a cadre post. **Rudra Kumar Sain v. Union of India** did not deal with an appointment made to a post outside the cadre under a scheme for a particular tenure to clear huge backlog of cases. Therefore, **Rudra Kumar Sain v. Union of India** cannot be taken to throw any light on the issue raised.

32. As a matter of fact, a case came up before the Madras high court, in which persons holding the substantive post of Senior Civil Judges, who were promoted on *ad hoc* basis as District Judges to man Fast Track courts created under the Eleventh Finance Commission, sought seniority over and above the direct recruits who were appointed subsequent to them. Their case was that though they were initially promoted on *ad hoc* basis, the Government subsequently converted those Fast Track courts into regular courts and the *ad hoc* promotees were promoted to these posts under the 65% quota reserved for them. Such promotions were ordered on regular basis, even when the direct recruits were undergoing training. Therefore, the case of the *ad hoc*-turned-regular appointees before the Madras high Court was that they gained seniority over and above the direct recruits. But the said claim was turned down by the Division Bench of the Madras High Court, to which one of us (VRS) was a party, in **G. Chandrasekharan v. The Registrar General**, by a judgment dated 26-2-2015 rendered in W.P.No.20069 of 2014.

33. Heavy reliance was placed even before the Madras High court on the decision of the Supreme Court in **Rudra Kumar Sain**. But it was turned down by the Madras High court. The relevant portion of the said decision is as follows:

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.A.R.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. In fact the petitioners before the Madras High court were better placed than the petitioner herein. Their first appointment was to a substantive post from which they were promoted on *ad hoc* basis and appointed in Fast Tract courts. If they cannot seek the benefit of seniority over direct recruits, we do not think the petitioner can.

35. In any case, as we have pointed out earlier, the very case of the writ petitioner herein in W.P.No.13022 of 2017, where the

prayer was substantially the same as in this case, was rejected by the Court. Therefore, the petitioner cannot seek any benefit.

36. Moreover, the petitioner was one of the 20 candidates appointed under G.O.Rt.No.1798 dated 6-10-2003. She was one among the 12 candidates eventually selected for regular appointment under G.O.Ms.No.68 dated 2-7-2013. Seventeen persons appointed along with her made a claim and lost up to the Supreme Court. Though the petitioner did not join the bandwagon at that time, she came up with a writ petition after her regular appointment and that writ petition was already dismissed. A person who accepted the terms and conditions of appointment cannot later turn around and make a claim.

37. Another important aspect is that under G.O.Ms.No.68, dated 02-07-2013, the petitioner as well as the other selected candidates were placed on probation only with effect from the date they joined duty pursuant to the regular selection in the year 2013. Therefore, the probation of the petitioner itself was completed only in the year 2015. A person, who was placed on probation in July, 2013 and whose probation got declared in 2015, cannot claim seniority with effect from the year 2003.

38. In short, the claim of the petitioner is (i) contrary to the Special Rules for *ad hoc* appointments 2001, (ii) contrary to the clauses 5 and 6 of the order of appointment; (iii) contrary to the Special Rules of the year 2007 and (iv) contrary to the law declared

by the Supreme Court in Brij Mohanlal-II. Therefore, the writ petition is devoid of merits and hence, it is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V. RAMASUBRAMANIAN, J

Date: 27-04-2018

Ksn

Note: L.R. copy to be marked.

B.O./Ksn

N. BALAYOGI, J

