

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

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

And

HON'BLE SRI JUSTICE T. AMARNATH GOUD

+ W.P.No.24413 of 2017

%Date: 15-06-2018

Between:

1. Dr. S.S.S. Jaya Raju, S/o. Jaya Rao, IX Addl. District & Sessions Judge, Machilipatnam, Krishna District, Andhra Pradesh.
2. B. Srinivasa Rao, S/o. late Appanna, IV Addl. District & Sessions Judge, Nellore, Potti Sriramulu Nellore District, Andhra Pradesh.
3. K. Ranga Rao, S/o. Poornachandra Rao, XII Additional District & Sessions Judge, Vikarabad, Vikarabad District, Telangana State.
4. N. Solomon Raju, S/o. Yesupadam, V Additional District & Sessions Judge, L.B. Nagar, Ranga Reddy District, Telangana State.
5. A. Bharathi, W/o. K. Nanda Kishore, Special Judge for Trial of Cases under SCs & STs (POA) Act-cum-VII Additional District Judge, L.B. Nagar, Ranga Reddy District, Telangana State.
6. Y.V.S.B.G. Pardha Saradhi, S/o. Subba Rao, IX Additional District & Sessions Judge, Kovvur, West Godavari District, Andhra Pradesh.
7. G.V.N. Bharatha Lakshmi, W/o. N. Ramakrishna, Special Judge for Trial of Cases under SCs & STs (POA) Act-cum-V Additional District Judge, Adilabad, Adilabad District, Telangana State.

... Petitioners

Vs.

1. The State of Andhra Pradesh, Law (LA & JSCF) Department, rep. by its Chief Secretary, Secretariat Buildings, Velagapudi, Guntur District, Andhra Pradesh.
2. The State of Telangana, Law (LA & JSCF) Department, rep. by its Chief Secretary, Secretariat Buildings, Hyderabad, Telangana State.
3. High Court of Judicature at Hyderabad, for the State of Telangana and the State of Andhra Pradesh, rep. by Registrar (Vigilance) High Court Buildings, Hyderabad.
4. The State of Andhra Pradesh, rep. by its Principal Secretary, Home Department, Secretariat Buildings Velagapudi, Guntur District, Andhra Pradesh.
5. The State of Telangana, rep. by its Principal Secretary, Home Department, Secretariat Buildings, Hyderabad. Telangana State.

... Respondents

! For the Petitioners : Mr. Y.V. Ravi Prasad (Sr. counsel)

^ For the Respondent No.1 & 4 : G.P. for Home (A.P)

^ For the Respondent No.2 & 5 : G.P. for Home (T.G)

^ For the Respondent No.3 : Ms. V. Uma Devi. S.C.

< GIST:

> HEAD NOTE:

? Cases referred

1. (2002) 5 SCC 1
2. (2012) 6 SCC 502



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

HON'BLE SRI JUSTICE T. AMARNATH GOUD

W.P.No.24413 of 2017

ORDER: (per VRS,J)

The petitioners, who were originally appointed as ad hoc District Judges to man Fast Track Courts in the State and who were later regularly appointed to cadre posts, have come up with the above writ petition.

2. Heard Mr. Y.V. Ravi Prasad, learned Senior Counsel appearing for the petitioners, the learned Government Pleader for Home (A.P), the learned Government Pleader for Home (Telangana) and Ms. Uma Devi, learned Standing Counsel for the Registry.

3. It is a matter of historical fact that pursuant to the allocation of a sum of Rs.502.90 crores by the 11th Finance Commission under Article 275 of the constitution, for the purpose of setting up 1734 Courts in various States for dealing with long pending cases, the State Governments created Fast Tract Courts. At about the same time, the State of Andhra Pradesh issued a set of rules known as A.P. State Higher Judicial Service Special Rules for Ad hoc Appointments 2001.

4. In terms of Rule 2 of these Ad hoc Appointments Rules 2001, the petitioners herein were selected and appointed as ad hoc District Judges to preside over Fast Track Courts, under G.O.R.T.No.1798, Law dated 06.10.2003. Under Clause-3 of the said Government Order, the petitioners were to be paid a consolidated pay besides 20% HRA and Rs.2000 per month towards conveyance charges. Clause-4 of the said Government Order made it clear that the ad hoc appointments may cease on 31.03.2005.

5. It must also be pointed out at this Stage that Rule 7 (1) (B) of the Andhra Pradesh State Higher Judicial Service Special rules for Ad hoc Appointments, 2001 made it clear that persons appointed under these Rules were not to be regarded as members of the permanent cadre covered by a separate set of special rules. Therefore, the appointments of the petitioners herein were subject to Rule 7(1) (B) and also subject to Clauses-3 & 4 of G.O.Rt.No.1798, Law dated 06.10.2003.

6. A challenge was made to the Fast Track Courts Scheme, but the same was rejected by the Supreme Court in Brij Mohan Lal v. Union of India¹, which came to be known as Brij Mohan Lal-1. The decision of the Supreme Court contained certain directions to the State Governments, which included a direction 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 was found to be satisfactory.

7. Within a few months of the appointment of the petitioners, the High Court issued a notification on 28.05.2004 inviting applications for direct recruitment. Instead of applying in response to the said notification, the petitioners herein as well as some of their batch mates filed a writ petition in W.P.No.11273 of 2004, challenging the direct recruitment notification and seeking absorption against regular vacancies. But the writ petition was dismissed by a Bench of this Court and the matter was taken to the Supreme Court in S.L.P.(Civil).No.17338 of 2004. The Supreme Court granted leave and passed an interim order on 09.03.2006 to the effect that the appointments made pursuant to the notification for direct recruitment, will be subject to the result of the appeal.

¹ (2002) 5 SCC 1

8. By the time leave was granted and an interim order was passed by the Supreme Court in the Special Leave Petition, the FTC scheme itself had come to an end on 31.03.2005. Therefore, two writ petitions came to be filed directly before the Supreme Court under Article 32. These writ petitions were taken up along with Civil Appeal filed by the petitioners herein in Civil Appeal No.1276 of 2005 and they were disposed of by a common order passed on 19.04.2012. This decision of the Supreme Court in Brij Mohan Lal V. Union of India² came to be known as Brij Mohan Lal-2.

9. In Brij Mohan Lal-2, the Supreme Court rejected the prayer of the petitioners herein for quashing the notification for direct recruitment and for absorption. But the Supreme Court issued a set of directions in paragraph 146 of the report. Direction No.9 contained in paragraph-146 of the decision in Brij Mohan Lal-2 enabled persons like the petitioners to be appointed to the regular cadre of the higher judicial service of the State subject to certain conditions, which included the conduct of a written examination followed by interview. Pursuant to the directions issued by the Supreme Court in Brij Mohan Lal-2, the High court issued a notification on 13.08.2012. A written examination and viva voce followed, on the basis of the performance in which, the petitioners herein were appointed as District Judges (Entry Level) on regular basis under G.O.Ms.No.68, Law dated 02.07.2013. It is relevant to note that under G.O.Ms.No.68, dated 02.07.2013, the petitioners were placed on probation for a period of two years from the date of joining duty. The petitioners herein accepted the orders of appointment made in G.O.Ms.No.68. However, one officer viz., Kum. C. Yamini, who was appointed along with the writ petitioners herein,

² (2012) 6 SCC 502

came up with a challenge to condition Nos.5 & 6 contained in G.O.Ms.No.68 dated 012.07.2013. But the said writ petition W.P.No.13022 of 2017 filed by the said Kum. C. Yamini was dismissed by a Bench of this Court by a judgment dated 17.04.2017.

10. The said officer Kum. C. Yamini also filed another writ petition in W.P.No.3359 of 2017 seeking fixation of seniority in the cadre of District Judge, by taking into consideration the length of service rendered as an ad hoc Judge in the Fast Track Courts. But the said writ petition was dismissed by this Court by an order dated 27.04.2018.

11. Another officer, by name Ch. Ramesh Babu, who was also similarly placed like the petitioners herein, also filed a writ petition in W.P.No.18988 of 2017 praying for counting the service rendered as Fast Track Court Judge for the purpose of fixation of seniority. The said writ petition was also dismissed by this Court by an order dated 27.04.2018.

12. In the light of the above, Mr. Y.V. Ravi Prasad, learned Senior Counsel for the petitioners conceded that the first prayer made by the petitioners in this writ petition (for counting the service rendered as a FTC judge for the purpose of seniority) is squarely covered against the petitioners, by the previous decision of this Court. In other words, the prayer for counting the services rendered as ad hoc judges in Fast Track Courts, for the purpose of seniority, cannot be granted, since the batch mates of the petitioners have earlier come up with writ petitions praying for the very same relief and lost the battle before this Court. Therefore unless and until the decision of this Court in the cases of Kum. C. Yamini and Ch. Ramesh Babu are reversed by the Supreme Court, the first prayer made by the petitioners for counting the services rendered as Fast Track Court Judges for the purpose of seniority cannot be granted.

13. However, the learned Senior Counsel for the petitioners contended that the service rendered by the petitioners as ad hoc judges in the Fast Track Courts should at least be counted for the purpose of fixation of pensionary benefits. It is the contention of the learned Senior Counsel that this part of the prayer made by the petitioners in this writ petition, is not covered by any decision of this Court either in favour of or against the persons similarly placed.

14. We have carefully considered the above submissions. The second part of the prayer made by the petitioners for counting the service rendered as Fast Track Court Judges at least for the purpose of fixation of pensionary benefits appears to be in a virgin territory, not covered by any earlier decision. Therefore, the same requires a detailed consideration.

15. As we have pointed out earlier, the State of Andhra Pradesh issued a set of Rules known as the Andhra Pradesh State Higher Judicial Service Special Rules for Ad hoc Appointments 2001, under G.O.Rt.No. 286, dated 05.03.2002. But these rules were deemed to have come into force with effect from 01.03.2001.

16. In accordance with Rule 2 of the aforesaid 2001 Rules, the petitioners were appointed as ad hoc Judges to preside over Fast Track Courts, under G.O.Rt.No.1798, Law dated 06.10.2003.

17. Within 7 months of their appointment, a notification for direct recruitment was issued on 28.05.2004. The petitioners could have applied in response to the said notification and participated in the process of selection. Instead, the petitioners filed a writ petition in W.P.No.11273 of 2004 on the file of this Court challenging the notification dated 28.05.2004 for direct recruitment and also seeking absorption.

18. In the meantime, the Government came up with a new pension scheme known as "Contributory Pension Scheme" with effect from 01.09.2004. Therefore, the A.P. Revised Pension Rules, 1980 were amended under G.O.Ms.No.653, Finance, dated 22.09.2004. By this amendment, Clause (g) was inserted under Rule 2. This Clause (g) of Rule 2 reads as follows:

"2(g) (i) These rules shall not apply to all the Government Servants appointed on or after 1-9-2004, to services and posts in connection with the affairs of the State which are borne on pensionable establishment, whether temporary, or permanent.

(ii) These rules shall not apply to all appointments, whether temporary or permanent, made on or after 01-09-2004 in all the State Public Sector Undertakings, whose pay and allowances are drawn from the Consolidated Fund of the State or not.

(iii) These rules shall not apply to all appointments, whether temporary or permanent, made on or after 01-09-2004 of all the tiers of the Rural and Urban Local Bodies such as the Gram Panchayats, Mandal Parishads, Zilla Parishads, Municipalities, Municipal Corporations, Urban Development Authorities, Co-operative and Urban Local Bodies, Zilla Grandhalaya

Samsthas, Agriculture Marketing Committees, including all the Universities in the State, including all the Institutions functioning under the Universities, whose pay and allowances are drawn from the Consolidated Fund of the State or not.

(iv) These Rules shall not apply to appointments, whether temporary or permanent made on or after 01-09-2004 into all the Institutions receiving Grant-in-Aid from the Government.

(v) These rules shall not apply to appointments, whether temporary or permanent, made on or after 01-09-2004 to all Co-operative Institutions, Autonomous Corporations, whose pay and allowances are drawn from the Consolidated Fund of the State or not."

19. Therefore, persons appointed after the cut off date even on regular basis to a post borne on the cadre, became disentitled to pension under the A.P. Revised Pension Rules 1980, if their appointment had

taken place on or after 01.09.2004. In other words, the distinction between (1) those appointed on ad hoc basis and later regularized in service; (2) those appointed on ad hoc basis and later regularly appointed afresh; and (3) those appointed directly on regular basis, disappeared with effect from 01.09.2004 insofar as the claim for pension under the A.P. Revised Pension Rules, 1980 is concerned. Persons, who are appointed on or after 01.09.2004, irrespective of whether they were appointed on ad hoc or regular basis, do not come within the purview of the A.P. Revised Pension Rules, 1980. All persons appointed either on ad hoc basis or on regular basis on or after 01.09.2004 were to become members of the Contributory Pension Scheme. The Andhra Pradesh Revised Pension Rules, 1980 do not even apply to such persons.

20. Keeping the above fundamental premise in mind, if we go back to the case of the petitioners herein, it can be seen – (1) that the petitioners were appointed under the Special Rules for Adhoc Appointments, 2001, by a Government Order dated 06.10.2003 on ad hoc basis to man Fast Track Courts; (2) that within a few months of their appointment, a regular recruitment was notified on 28.05.2004; (3) that without applying for direct recruitment under the said notification, the petitioners challenged the notification unsuccessfully up to the Supreme Court; and (4) that eventually, by virtue of the directions issued by the Supreme Court in Brij Mohan Lal-2, the petitioners were allowed to write a special qualifying examination and appointed on regular basis to the cadre posts, under G.O.Ms.No.68, dated 02.07.2013.

21. As we have pointed earlier, the appointment of the petitioners to the State Higher Judicial Service was only under G.O.Ms.No.68 dated 02.07.2013. The expression “appointed to a service” is defined in

Rule 3(1) of the A.P. State and Subordinate Services Rules, 1962. Rule

3(1) reads as follows:

“3(1) Appointed to a service: 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.

Explanation:-- The appointment of a person holding a post borne on the cadre of one service to hold additional charge of a post borne on the cadre of another service or to discharge the current duties thereof does not amount to appointment to the latter service.”

22. Therefore, two distinctive requirements are to be satisfied for a person to be deemed to have been appointed to a service. They are (1) he should have started discharging the duties of a post borne on the cadre of such service; or (2) he should have commenced the probation prescribed for the members of the service.

23. In the case on hand, the petitioners admittedly got placed on probation only under G.O.Ms.No.68, dated 02.07.2013. The petitioners commenced probation only after 02.07.2013. They also started discharging the duties of the post of District Judge “*borne on the cadre of the service*” for the first time after 02.07.2013. Therefore, the petitioners were obviously appointed in the year 2013, i.e. after nine years of the A.P. Revised Pension Rules 1980 getting amended with effect from 01.09.2004, consequent upon the introduction of the Contributory Pension Scheme.

24. Since the petitioners were “appointed to a service” in terms of Rule 3(1) of the A.P. State and Subordinate Services Rules 1962, only in the year 2013, the provisions of the A.P. Revised Pension Rules will not apply to them, in view of Rule 2(g) of the Revised Pension Rules, 1980. Therefore, the petitioners cannot claim the benefit of the A.P. Revised

Pension Rules, 1980. In fact, on account of their appointment to the service for the first time in the year 2013, the petitioners have already been enrolled in the Contributory Pension Scheme. Therefore, it is not possible now to direct the respondents to switch over the petitioners, especially when the A.P. Revised Pension Rules 1980 do not apply to these persons.

25. Interestingly, the Supreme Court had an occasion to consider an identical claim made by judicial officers from the State of Jharkhand, in *Mahesh Chandra Verma v. State of Jharkhand* (Civil Appeal No.4782 of 2018, decided on 11.05.2018). In that case, persons, who were appointed first as ad hoc Judges to man Fast Track Courts and who later, became regular District Judges pursuant to the directions issued in *Brij Mohan Lal-2* sought to count the services rendered by them in the Fast Track Courts for the purpose of pensionary benefits. The High Court rejected their claim on the ground that with effect from the year 2004, a new Contributory Pension Scheme has come into force. When the matter was taken to the Supreme Court, the Supreme Court allowed their claim on the ground *inter alia* (1) that the appellants before the Supreme Court actually applied in response to a notification for direct recruitment to cadre posts, but were not accommodated on the ground of want of vacancies; (2) that the very Scheme of creation of Fast Track Courts was to tide over the crisis of non-filling up of posts and non-creation of adequate Courts; and (3) that therefore, the services rendered as Fast Track Court Judges cannot go a waste.

26. At first blush, one may be tempted to follow the aforesaid judgment of the Supreme Court in *Mahesh Chandra Verma* and allow the claim of the petitioners herein. But on a deeper scrutiny, it can be seen

that the said judgment of the Supreme Court cannot be applied to the case of the petitioners for a variety of reasons.

27. There are lot of differences between the appellants in *Mahesh Chandra Verma* and the petitioners herein. They are as follows:

(i) The petitioners in *Mahesh Chandra Verma* applied for direct recruitment to cadre posts. Though 27 vacancies were notified, only 17 were appointed. The remaining 10 in the select list and a few who were next in the order of the merit though not in the select list, were appointed as fast track court judges. In other words the petitioners in *Mahesh Chandra Verma* did not participate in a selection for appointment as ad hoc judges to Fast Track Courts. They bargained for something else and settled for something less. But in the case on hand, the petitioners applied only in response to a Notification for recruitment to Fast Track Courts, created temporarily under the 11th Finance Commission. Therefore they knew what they bargained for;

(ii) Despite knowing the nature of their appointment and its fixed tenure, the petitioners deliberately failed to participate in a process of direct recruitment to cadre posts, when a notification was issued on 26.05.2004. The petitioners were just 7 months old in service at that time, having been appointed to Fast Track Courts in October 2003. Their tenure was to expire on 31.03.2005. Therefore they could have applied for direct recruitment in response to the notification dated 26.05.2004. Instead of doing that, the petitioners challenged the direct recruitment and failed before this court as well as before the Supreme Court. Therefore unlike the petitioners in *Mahesh Chandra Verma*, the petitioners herein did not want to participate in a process of direct recruitment, but chose to take a chance by pursuing their claim only for absorption or regularisation. To

some extent the petitioners in this case were successful in getting a reprieve from the Supreme Court in Brij Mohan Lal- II for the conduct of a special selection in the form of a written examination and interview. It must be remembered that this written examination and interview was not a competitive examination but a qualifying examination. Hence the petitioners herein cannot compare themselves with those who participated in a process of direct recruitment and actually came out successful;

(iii) Apart from the fact that the petitioners were appointed to ex-cadre posts created under the 11th Finance Commission, their appointments to the Fast Track Courts were in terms of statutory rules known as A.P. Ad hoc Appointment Rules, 2001. The appointment of the appellants in *Mahesh Chandra Verma* was not under any such statutory rule relating to ad hoc appointments. In other words the petitioners in this case applied for and appointed to the posts which did not form part of the cadre strength. But the petitioners in *Mahesh Chandra Verma* applied for the posts within the cadre strength, participated in the selection, got short-listed, but appointed to posts outside the cadre;

(iv) The appointment of the petitioners herein were regulated by Rule 7(1)(B) of the A.P. Special Rules for Ad-hoc Appointments, 2001. In addition they were also regulated by Clause 4 of G.O. Ms. No.1798 dated 06.10.2003. But there were no such restrictions on the appointment of the appellants in *Mahesh Chandra Verma*;

(v) When the petitioners were subjected to a special qualifying examination in the year 2013 and were appointed against regular vacancies, G.O. Ms No. 68 made it clear that the petitioners will be placed on probation from the date they joined duty. In other words, the appointment orders issued in 2013 made it clear that the petitioners

became members of the service only from that date. We do not know what was the position in the case of *Mahesh Chandra Verma*.

28. A careful look at the decision of the Supreme Court in *Mahesh Chandra Verma* would show that the Supreme Court found fault with the establishment for not making a proper estimate of the vacancies and not providing for adequate number of posts, which led to the appointment of ad hoc judges. But in this case within seven months of the appointment of the petitioners as ad hoc judges, a notification for regular recruitment was issued. Instead of participating in the said direct recruitment, the petitioners challenged the notification itself. Eventually they lost.

29. Persons, who were appointed to the service on regular basis pursuant to the notification for direct recruitment dated 28.05.2004, themselves came into the service only after 01.09.2004. Therefore, even those directly recruited pursuant to the notification dated 28.05.2004 are not covered by A.P. Revised Pension Rules, 1980. Therefore, if we grant the benefit of the A.P. Revised Pension Rules, 1980 to the petitioners, they will be counted as having been appointed even before those directly recruited on regular basis pursuant to the notification dated 28.05.2004. This will lead to an anomalous situation where persons who are appointed on regular basis pursuant to the notification dated 28.05.2004 will not have the benefit of the Revised Pension Rules, but those who failed to take part in the process of selection and who unsuccessfully challenged the notification will get the benefit of the Revised Pension Rules. By our judgment, we cannot create such an anomaly.

30. It is to be pointed out at this stage that even in *Mahesh Chandra Verma*, the Supreme Court denied to the appellants before the Supreme Court, the benefit of seniority over and above those regularly

appointed to the service. We have also rejected the claim of the petitioners for the grant of seniority to the petitioners, over and above those appointed pursuant to the direct recruitment notification dated 28.05.2004. In such circumstances, if we grant relief to the petitioners, their seniors will not be covered by the Revised Pension Rules, but the petitioners will get a benefit that even the direct recruits could not get.

31. We must always keep in mind one important aspect. Under the A.P. Revised Pension Rules, 1980 (or the Pension Rules of any other State or the Centre for that matter), a period of qualifying service is fixed for a person to become eligible for the grant of pension. Rule 14 of these Rules prescribe the conditions subject to which service qualifies. Under this Rule a leverage is available for the Court to order certain types of services to be counted along with the qualifying service, for the purpose of determination of either the eligibility or the quantum of pension. The Courts, by virtue of the power of interpretation conferred upon them, may be able to grant relief in individual cases, where some portion of a service rendered by an individual does not qualify in terms of Rule 14.

32. But the leverage or the elbow space available to a Court to interpret Rule 14 for the purpose of determining the different types of services that qualify for pension, is not available to Courts in cases where the very Pension Rules do not apply. We must always keep in mind, the distinction between the interpretation of qualifying service and the question of the very applicability of the Revised Pension Rules to a person.

33. In cases where the service rendered by a person falls short of the qualifying service as stipulated by the Rules, the Court may have the power to find out if there are certain types of services rendered by the

individual that can be counted as qualifying service or not. But in cases where the Revised Pension Rules 1980 do not at all apply to the case of a person on account of that person having been appointed after 01.09.2004, the question of the Court having any elbow space in the interpretation of the Rules, does not arise.

34. To put it differently, we cannot grant the relief of sanction of pension to the petitioners, unless we hold that the petitioners were appointed to the service before 01.09.2004. To hold that the petitioners were appointed to the service before 01.09.2004 exclusively for the purpose of pensionary benefits, even while holding that they cannot be taken as having been appointed to the service before 01.09.2004 for all other purposes including seniority, will be a contradiction in terms.

35. If the new Contributory Pension Scheme had not come into force on 01.09.2004, making all persons appointed thereafter, ineligible to pension under the Rules, we would have had no difficulty in directing the period of service rendered by the petitioners as ad hoc judges to be counted along with the regular service rendered by them for the purpose of calculation of pensionary benefits. Today we cannot do that since even the regular service rendered by them from the year 2013 does not count for pension. If even the regular service rendered by the petitioners after 2013 does not entitle them to come under the purview of the Revised Pension Rules, the question of clubbing the service with the ad hoc service, does not arise. Therefore, the second part of the relief claimed by the petitioners also cannot be granted. Hence the writ petition is dismissed.

As a sequel, the miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

V. RAMASUBRAMANIAN, J.

T. AMARNATH GOUD, J.

15th June, 2018

Js.

L.R. Copy to be marked



HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE T. AMARNATH GOUD

W.P.No.24413 of 2017

(Per VRSJ)



15th June, 2018

Js.