VIMAL KUMAR
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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of decision: 12.09.2019

CWP No.5582 of 2015 (O&M)

Nishant Rana & others ...Petitioners

Vs.

Union of India & others ...Respondents

CWP No.6612 of 2015

Preet Inder Singh Nagi ...Petitioner

Vs.

Union of India & others ...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. D.S.Patwalia, Senior Advocate, with
Mr. Saurabh Arora, Advocate, for the petitioners.

Ms. Ranjana Shahi, Advocate, Senior Panel Counsel,
for Union of India.

Mr. Ashwani Chopra, Senior Advocate, with
Ms. Eesha Khanna, Advocate, for respondent No.3.

Mr. Pankaj Jain, Senior Standing Counsel with
Mr. Jaivir S. Chandail, Advocate, for respondent No.4.

RAJIV NARAIN RAINA, J.

1. This order shall dispose of the two above captioned writ petitions, as the issue involved in all the petitions is identical. However, for facility of reference the facts are taken from CWP No.5582 of 2015.

Brief history regarding creation of the post of 'Court Manager'

2. The concept of Court Managers was initiated by Hon'ble the Chief Justice of India by his letter dated 26.05.2010. This was an experiment for the better management of justice in the subordinate courts. It was conceived that professional Court Managers should be appointed to assist the Judges. This was recorded in paragraph 8(n) [Annex P-1 at pp.50] as part of the Report of the Working Group for the Twelfth Five Year Plan (2012-2017), published in September, 2011 in the Department of Justice, Ministry of Law & Justice, Government of India.

3. This issue was taken up for consideration in the proceedings of the Thirteenth Finance Commission, which was discussed under the heading "Improving Justice Delivery" in paragraphs 12.76 to 12.78. It was recommended on the proposal of the Department that the posts of Court Manager should be created in every judicial district to assist the judiciary in their administrative functions to take the burden of judicial work of judges. The Commission agreed, after careful consideration, to support the proposal made by the Department of Justice to allocate budget. At paragraph 12.87 is the text of the report on the subject matter i.e. Creation of posts of Court Managers, which is reproduced as follows:

> "**12.87** *Creation of posts of court managers*: Enhancing the efficiency of court management would result in improving case disposal. Providing support to judges for performing their administrative duties would allow them more time for their judicial functions. Adopting an innovative approach, the Department of Justice has proposed that professionally qualified Court Managers, with MBA degrees, be employed to assist judges. These Court Managers will also be useful in feeding the proposed National Arrears Grid that would be set

> up to monitor disposal of cases in all the courts. We support this innovation, the impact of which may be evaluated after 2015. The post of a Court Manager would be created in each judicial district to assist the Principal, District and Sessions Judges in the administrative functioning of the courts. Similarly, posts of two Court Managers may be created for each High Court and one for each bench of the High Court. This is estimated to require Rs.60 crore per year and works out to Rs.300 crore for the period 2010-15. These amounts have been allocated to the states in proportion to the number of judicial districts in their jurisdiction."

4. The degree of Masters in Business Administration (MBA) was suggested as the suitable qualification not only to assist judges, but that they would also contribute in feeding the proposed National Arrears Grid that would be set up to monitor disposal of cases in all the courts. The 13th Finance Commission supported the innovation, however, with the caveat that the impact of the experiment may be evaluated after 2015. The stage was set for creation of the post pan India. The funds were allocated, but the modalities were not formalized and were on the anvil with the respective Chief Justices/State Governments whose services were requisitioned by the Chief Justice of India informing that a budget of Rs.5000 crores have been earmarked to improve the Justice Delivery System and that a Monitoring Committee comprising of one or two Hon'ble Judges in the High Court be set up. This was by letter of Chief Justice S.H.Kapadia dated 26.05.2010. The Chief Justices were asked to take up the matter with the State Government to create and fill these cadre posts on permanent basis at the earliest.

5. In the first instance, the proposal was placed before the Hon'ble Rule Committee of this Court in pursuance of the directions of Hon'ble the

Chief Justice of India. In its first meeting held on 30.06.2010 under the chairmanship of Hon'ble Mr. Justice Adarsh Kumar Goel, the Hon'ble Committee took certain decisions. The important ones which need adverting to were that a Monitoring Cell be set up headed by the Registrar (Rules), which Cell may be provided necessary staff to oversee progress of the projects to be taken up at quarterly halts. It was also directed that the profile of the job of Court Manager be prepared alongwith suggested qualifications, pay scales, promotional avenues and number of posts required to be forwarded to the Government concerned for necessary sanction of the cadre posts on permanent basis. On sanction being received, process to fill up the said posts may be initiated and the progress report be put up in the next meeting. The meeting was held on official noting dated 28.06.2010 on the subject 'Creation of posts of Court Managers in the Subordinate Courts in the State of Punjab, Haryana and Chandigarh'.

6. The next meeting of the Hon'ble Committee was convened on 04.08.2010. The Hon'ble Committee regarding Creation of posts of Court Managers in the Subordinate Courts in the State of Punjab, Haryana and Chandigarh resolved to recommend that the qualification for the post of Court Manager in the office of District & Sessions Judge should be as under:

> "B.Tech Computer Science/B.Tech IT with M.B.A. from a recognized University with two years managerial experience in an organization having a reasonable turnover or standing."

7. The pay scale was recommended at Rs.15600-39100 with Grade Pay of Rs.6600/-. Recommendation was also that after five years of service, Court Managers would be promoted as Senior Court Managers in the same pay scale with increased Grade Pay of Rs.7600/-. It was decided

that the selection of Court Managers would be entrusted to the High Court. There shall be short listing of the candidates and then a written examination followed by viva-voce. They were open to transfer from one to the other State within the jurisdiction of this Court under the orders of Hon'ble the Chief Justice. It was also recommended that the post of Court Manager be included in the Punjab Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997 and the Chandigarh Subordinate Courts Establishment (Recruitment and General Conditions of Service) Rules, 1997. Their service conditions, mode of selection, channel of promotion, pay scale etc. be also incorporated in the above said Rules. The age limit was prescribed between 25 years to 35 years on the last date of receipt of applications. The proposals were approved by Hon'ble the Chief Justice on 05.08.2010.

8. Following this emerging position, letters were addressed to the respective Governments forwarding the job profile for the post of Court Manager with a request to create 18 posts as cadre posts.

9. The Financial Commissioner and Principal Secretary to Government Haryana, Administration of Justice Department addressed letter dated 12.10.2010 to this Court intimating sanction of the Governor of Haryana for creation of posts for the Subordinate Courts in the State of Haryana (one post for each Judicial District) with immediate effect. The expenditure involved would be made from the sanctioned budget during the financial year 2010-11.

10. Since the stage was set for inviting applications, an Employment Notice (Annex P-11 at pp.97) was published in the newspapers

etc. inviting applications for 18 posts of Court Managers in the Subordinate Courts of Haryana and 16 posts of Court Managers in the Subordinate Courts of Punjab containing the prescribed qualifications, age limit and mode of selection, as referred to above. The employment notice stated that the posts have been created on temporary basis, which are likely to be continued. However, selections were made by departing from the prescribed mode of written examination by holding only an interview. Offers of appointments were issued to the successful candidates on 10.05.2012. The relevant terms and conditions mentioned in the offer of appointment are as follows:

> "1. That your appointment is purely on temporary basis under a scheme approved and funded by the Ministry of law and Justice, Government of India under the 13th Finance Commission till the financial year 2014-2015.
>
> xx xx xx
>
> 3. That your services shall be liable to be terminated with the termination of the scheme unless it is further continued by the Government of India/State Government."

11. The letter was signed off with the rider that if the candidates were willing to accept the appointment on the terms and conditions mentioned in the letter, they should report for joining duties in the Chandigarh Judicial Academy, Sector 43, Chandigarh on 01.06.2012 along with medical fitness certificate, attestation form (duly filled) and well as photocopies and originals of the testimonies in support of qualifications, experience etc. A total of 34 candidates were recruited. The petitioners accepted the terms and conditions and joined the service.

12. The Rule as proposed was approved by Hon'ble the Acting Chief Justice and duly notified on 24.08.2012 (Annex P-14 at pp.105) inserting the post of Court Manager at Rule 8 C (i) as recommended by the Committee.

13. Several District & Sessions Judges sought clarifications regarding the post of Court Managers and it was clarified by the High Court that the posts are purely temporary under a scheme approved and financed by the Ministry of Law and Justice, Government of India. The incumbents were not given benefit of New Contributory Pension Scheme in view of letter dated 19.10.2012 treating the post as purely contractual in nature in terms of the Scheme. The letter dated 19.10.2012 was annexed with CM No.4534 of 2015 as Annex A-1 (Colly.) at internal pp.23 of the application. There was a slight departure from the appointment letter which spoke of 'temporary', but not 'contractual'. Aggrieved by the alleged anomaly in fixing the terms and conditions of service in terms of letter dated 19.10.2012, the aggrieved petitioners made a representation to the respective District & Sessions Judge, which was declined on 28.01.2013.

14. On 02.12.2014, Government of India, Ministry of Law and Justice (Department of Justice), New Delhi addressed letter to all the Chief Secretaries of States on the subject of '*Employment of Court Managers under Thirteenth Finance Commission Award – Evaluation of the impact & non-availability of Central funds beyond 31st March, 2015*'. The letter highlighted that Rs.300 crores were allocated for employment of a professionally qualified Court Manager in each judicial district to assist the Principal District & Sessions Judge. In addition, two Court Managers for

each High Court and one for each bench of High Court were to be employed under the scheme. It was decided that in order to have a wider field of choice, in addition to direct recruitment, these posts may be filled up through deputation. It was only Rs.32 crore which could be released by the Central Government in the subsequent grant period. The primary reason for which was non-appointment of Court Managers by States/High Courts and non-submission of Utilization Certificates. As per the data then available, the Court Managers were functional only in 14 states totaling about 448 Court Managers against the anticipated more than 700 Court Managers. Government had also received a number of representations from the Court Managers stating that their roles have not been clearly defined or they were not being assigned functions as per the job description communicated to them. The States were reminded by the Government of India of the conditions in the 13th Finance Commission in its report that the impact of this innovation may be evaluated after 2015. The States and the High Courts were called upon to review the impact of deployment of Court Managers in the respective State and get an evaluation done regarding enhancement of efficiency of court management and resultant improvement in case disposal in consultation with the High Court concerned. Feedback from this evaluation, it was felt, will benefit both the State Government and the Central Government in planning such initiative in the future. However, the Central Government threw the spanner in the works informing it decision that the Central Government will be no longer be in a position to fund the scheme of Court Managers after the current financial year. Any commitment on account of Court Managers beyond 31.03.2015 shall be liability of the States from its own sources. In case, after evaluation, the State Government and the High Court concerned feels the need for continuation of these Court Managers, appropriate budgetary resources may be kept in the budget for the State from the FY 2015-16 onwards.

15. Faced with immanent dislocation depending on budgetary approvals, the petitioners feeling aggrieved at the prospect of being discontinued in service made a representation on 11.12.2014 claiming continuation and absorption from the date of their respective appointments and for allocation of funds from the respective States/UT Government. This matter was taken up by the Hon'ble Computer Committee under the Chairmanship of Hon'ble Mr. Justice Hemant Gupta on 17.12.2014. The Committee seized of the deadline up to 31.03.2015 was called upon to decide the fate of 16 sanctioned posts in State of Punjab and 21 posts in the State of Haryana and two temporary posts of Court Managers in the High Court. The Hon'ble Committee recommended that the Chandigarh Administration be asked to make these posts as permanent. Due to increase in number of districts to 22 in the State of Punjab, the Punjab Government be requested to bring one post of Court Manager for each district. Since no post of Court Manager exists in Chandigarh, the Chandigarh Administration be requested for creation of post for District Courts, Chandigarh. The State of Haryana was requested to make provisions for payment of salary of Court Managers in the newly carved districts Palwal and Nuh in Haryana after 31.03.2015.

16. A seminal decision was taken at the meeting held on 17.12.2014 recommending that since appointment of the existing Court Managers is in terms of scheme framed by Government of India, therefore,

applications be invited through public notice on the basis of criteria to be finalized by the Hon'ble Chairman, Computer Committee to fill up the available posts of Court Managers in the States of Punjab and Haryana as well as in the High Court.

17. Another meeting was held on 03.03.2015 regarding Extension of service of Court Managers in view of Central Government declaration that the scheme is not being extended after 31.03.2015. Therefore, situation arose that their services would stand dispensed w.e.f. 31.03.2015. A decision was taken that since the process of filling regular posts of Court Managers as sanctioned by the Punjab and Haryana Governments is under contemplation and process may take 3 to 6 months, it was resolved that till the process of regular appointments is completed, the State Governments be requested to approve the appointment of existing Court Managers on contract basis at consolidated salary of Rs.50,000/- per month. The Governments were also requested to inform whether the post of Court Manager is a State or District cadre post (single post) for application of the State reservation policy at the time of recruitment. The existing incumbents would be considered for regular appointment in terms of the rules and the conditions of advertisement. That is the decision against which the petitioners have approached this Court praying that it be set aside and the petitioners be treated as regular appointees or in the alternative to regularize and absorb them on the sanctioned posts. It is this decision dated 03.03.2015 (Annex P-20), which is challenged in these petitions as illegal and arbitrary and contrary to the scheme.

18. The consequence of the decision would be that the services of the petitioners would stand dispensed w.e.f. 31.03.2015. They claim benefits of regular employees including pay scales, seniority etc. w.e.f. the dates of their initial appointment. They also sought a stay on their appointments.

A gist of Court proceedings

19. Notice of motion was issued on 25.03.2015 for 30.03.2015. On 30.03.2015, appearances were put in by the respondents and time for filing separate replies was sought. It was ordered that the prayer for stay will be considered on the next date i.e. 27.04.2015.

20. In the meantime, an application bearing CM No.4534-CWP 22015 was moved by the petitioners as their services were formally dispensed with on 01.04.2015 w.e.f. 31.03.2015. Notice of the application was issued for the next day.

21. On 08.04.2015, it was stated on the face of the relieving orders by the State of Haryana that in the interregnum, the case permitting the petitioners to continue till such regular appointments are made has been put up before the Finance Minister, Haryana. On behalf of the State of Punjab, it was submitted that no decision has been taken by the Government and as regards the UT Chandigarh, the Central Government has not yet sanctioned the post. The Governments were called upon to take a final decision by 10.04.2015 failing which the Chief Secretaries of the States of Punjab and Haryana as well as the Secretary, Department of law and Justice, Government of India would appear to explain why no decision had been taken in the matter.

22. On the next date i.e. 10.04.2015, learned Law Officer for the State of Haryana submitted that the Government has taken a decision, whereby it had been agreed that till the posts are sanctioned and encadred in Service Rules, the Court Managers can be permitted to continue on the posts occupied by them on contractual basis on payment of consolidated salaries, whereas on behalf of the State of Punjab assurance was given to the Court that appropriate decision would be taken in next three working days, therefore, non-appearance of the officers was not seriously viewed.

23. On 27.04.2015, the Court was again seized of the matter and was informed by the learned senior counsel representing the High Court that during the pendency of this case another complication has arisen which was that the 13th Finance Commission has itself envisaged an Impact Assessment Study to examine the utility of the posts being claimed by the petitioners and that the matter was pending for 05.05.2015.

24. On 18.05.2015, the Court was informed that the Impact Assessment Study was underway and a short adjournment was required for the results of the study to be received and for the competent authority to take a decision thereon. The prayer for interim relief was still kept alive till the next date of hearing i.e. 07.07.2015.

25. On the next date, the detailed report which had been prepared by then, after considering the view points of all the stakeholders, has to be finally considered by the Committee appointed by the High Court for which reason three weeks further time should be granted. The prayer was opposed since parties were on interim stay. However, the Court while adjourning the matter to 21.07.2015, directed the High Court to take a decision before the

next date of hearing. On 21.07.2015, Minutes of the Meeting held on 15.07.2015 were handed over to the counsel for the petitioners, who sought short adjournment and the case was adjourned to 05.08.2015.

26. On the next date, it was pointed out by Mr. Patwalia that though the Minutes of the Meeting were handed over to him, but neither had they been placed on record nor an appropriate amendment was sought in the written statement. Learned senior counsel representing the High Court conceded that it would be appropriate to amend the written statement to incorporate the subsequent facts. The prayer was not opposed, which has led to the filing of the amended written statement by the High Court incorporating subsequent events. Matter was adjourned to 19.08.2015 for filing amended written statement. On the next date, amended written statement was filed and time was granted for replication to 03.09.2015. However, no stay was granted and the petitioners stood relieved on 01.04.2015.

27. The next effective date of hearing was 28.03.2016, when Mr. D.S.Patwalia, learned senior counsel appearing on behalf of the petitioners had argued subject to supply of judgments in support of his case. In the meanwhile, his office sought time to place on record documents shown to the court on the date of hearing. Mr. Vikas Behl, learned senior counsel representing the High Court, was asked to assist the Court by explaining the words posts “on temporary basis which are likely to be continued” used in the advertisement notice and the words “officiating Court Manager on temporary basis” used in the appointment letter and also the import of the terms and conditions stipulated in the appointment letter to see the areas of

convergence and divergence, if any. In other words, the High Court was asked to justify whether the terms in the employment notice and the terms in the appointment letter are in sync with each other and whether the petitioners have any actionable rights flowing from their appointment letters. The High Court was set at liberty to file an additional affidavit before the next date of hearing i.e. 21.04.2016 explaining the position in the background of the history of the scheme initiated on experimental basis.

28. Thereafter, on 07.02.2017, this Court by an interim order directed the respondents to verify as to why the post of Court Manager is being filled up on contract basis instead of filling it up on regular basis.

29. When the matter came up for hearing on 14.02.2019, UT Administration produced Minutes of the Meeting of the Hon'ble Executive Committee of the High Court dated 09.01.2019, wherein it has been revealed that the issue of creation of posts of Court Managers on permanent basis has been agreed to by the States of Punjab & Haryana as per minutes dated 15.07.2015. The Advisor to the UT Administration had consented before the Executive Committee to move the Union of India for creation of post of Court Manager for Sessions Court at Chandigarh. Accordingly, a direction was issued to the Officers of both the States of Punjab and Haryana as well as the Advisor to the UT Administration to expedite the issue of creation of posts and produce the final decision on or before the next date of hearing.

30. On 09.04.2019, arguments were concluded by Mr. Patwalia and synopsis was submitted, the copies of which have been handed over to the opposite side. Ultimately, as far as the main case is concerned, the matter was kept reserved on 30.04.2019 after hearing Mr. Ashwani Chopra, learned

senior counsel and it was ordered that the petitions will be taken up on 30.05.2019 for no reason other than on the creation of single post at Chandigarh.

31. On 19.08.2019, learned counsel for the UT Administration informed the Court that the proposal for creation of one post of Court Manager has been recommended to the Department of Expenditure, Ministry of Finance for their approval on 22.07.2019. Thus, it is expected that the Department of Expenditure, Ministry of Finance will act promptly in public interest so that the post of Court Manager can be made operational for Sessions Division, Chandigarh. It is pertinent to mention here that for this limited purpose, the cases are adjourned to 19.09.2019.

Arguments claiming reinstatement/regularisation

32. Mr. D.S.Patwalia, learned senior counsel, rallies for the petitioners pleading that merely because the Government of India pulled the supply plug and stopped funding the Scheme beyond 31.03.2015 cannot be considered relevant to the abrogation of the accrued and vested rights of the petitioners to be reinstated into service as Court Managers as their entry yo service was legal. He reiterates that the process of creation of posts of Court Manager was initiated by the Supreme Court and was taken up in the 13th Finance Commission, inter alia, for the creation of posts of Court Manager for the better administration of justice to bring in skilled professionals from the Engineering and Information Technology/ Management background on the promise of a temporary appointment likely to be continued as was the professed condition in the Employment Notice. The 13th Finance Commission had recommended the proposal of creation of post of Court

Manager in every judicial district to assist the judiciary in their administrative functions. This was subject to impact study for evaluation up to 2015 and, therefore, the feature cannot be said to be temporary in nature but a continuing one with an obligation of the States to take the scheme forward with the incumbents. Even the letter of Hon'ble the Chief Justice of India dated 26.05.2010 has envisaged the creation of cadre posts at the earliest, when his Lordship spoke on the important facet of appointment of Court Managers for the High Court and its benches and at the district level. The posts were to go a long way in reducing the administrative burden from the District & Sessions Judges and would enable them to concentrate more on judicial dispensation. The letter was circulated among the stakeholders to take up the matter with the State Governments to create and fill up the cadre posts on permanent basis at the earliest as is viewed by the High Court itself in Annex P-4. The Hon'ble Committee in its meeting dated 30.06.2010 (Annex P-5) had asked for preparation of job profile of Court Managers and forward them to Governments for necessary sanction of cadre posts on permanent basis, an argument duly underlined by Mr. Patwalia, as the stated policy of the High Court itself. If the cadre was to be treated on permanent basis and the rules of the game had been set and qualifications laid down, with the selection to be made by the High Court, then the Employment Notice was beyond the terms of reference and the avowed purpose, advertising the posts on temporary basis, with the clear and categorical condition that the posts were likely to be continued. The candidates were not at fault if written examination was not conducted and the selection process was based on interview and the criteria. Even the appointments were offered on temporary basis but mentioned as one under a scheme approved and funded by the Ministry of Law and Justice, Government of India as the appointment letter dated 10.05.2012 maintained to establish an independent cadre of Court Managers.

33. He continues that the State Governments were under a mandate to sanction posts for the petitioners to continue, then the appointment letters itself were a fraud committed on their aspirations when they offered themselves for the post being duly qualified inasmuch as in Clause 3, it was stipulated that the services of the petitioners can be terminated unless it is further continued by the Government of India or the State Government. The petitioners were compelled to sign on the dotted line and were compelled to accept the terms and conditions on, so to speak, on 'As is where is basis'. Besides, they were recruited even before the rules were amended with the insertion of Rule 8-C(i) after Rule 8-C and incorporated at Sr.No.4(b) in Schedule-I of the High Court Establishment (Appointment and Conditions of Service) Rules, 1973. The petitioners were qualified MBAs and Science Graduates and have worked to the satisfaction of the District & Sessions Judges they were posted with, with not a finger pointed to their work and conduct during the period of employment. It is argued that concept of contract employment was not contemplated in the appointment letter dated 10.05.2012 and that methodology has been surreptitiously and clandestinely introduced in the impugned decision taken by the Hon'ble Committee on 03.03.2015. This was a wrong committed on their future prospects and right to livelihood. This decision has no factual basis in the history of the creation of post of Court Managers as envisaged under the 13th Finance Commission. The mandate of the Supreme Court and the decisions of the respective State Governments which nowhere mentioned truncating the employment to

temporary or contract appointments against regular posts of Court Managers sanctioned by the respective Governments. The petitioners cannot be treated as non-regular appointments or back door entries. Moreover, they were appointed in the running pay scale with grade pay and their services could not be brought on consolidated salary on contract basis by the impugned decision. They were not the employees of the High Court but of the State Governments. The impugned decision dated 03.03.2015 flies in the face of the earlier decision of the Hon'ble Committee dated 17.12.2014. The decision taken on 17.12.2014 by the Hon'ble Computer Committee tasked by Hon'ble the Chief Justice had only called upon the respondents to fill up available posts of Court Managers in the States of Punjab and Haryana as well as for the High Court, which actually meant selection to newly carved out districts in the States of Punjab and Haryana, that is, in addition to the posts held by the petitioners. The deadline fixed by the Government of India on 31.03.2015 cannot be used as a whip to beat the petitioners with and denude their rights of appointment on permanent basis by way of absorption or regularization. Thus, the impugned decision dated 03.03.2015 deserves to be rescinded and the petitioners reinstated to service.

34. Mr. Patwalia submits that the State of Haryana had been asked to make provision for payment of salaries to the Court Managers at Palwal and Nuh after 31.03.2015 because there was already provision of payment of salaries in a running pay scale to the petitioners. It is contended that the same Hon'ble Committee could not have altered its decision so drastically as to convert their appointments on contractual basis on consolidated salary without notice of change in their conditions of service. Their conditions of service cannot be changed unilaterally and arbitrarily on a whim or fancy

beyond the objects of the Scheme. They had a legitimate expectation to be made permanent as their appointment was against temporary posts likely to be continued. If the posts of Court manager at the ground level were not continued, it is an ministerial act as the mandate of the Supreme Court runs still for the creation of posts or that the Government of India decided to discontinue funding the posts and leaving it to the respective State Governments to take a call on budgetary arrangements to continue with the posts is not a valid reason to dispense with their services in a unceremonious manner.

35. Mr. Patwalia relies on an order of the Supreme Court issued on 02.08.2018 in Interlocutory Application No.279 of 2010 in Writ Petition (Civil) No.1022 of 1989 titled '<u>All India Judges Association & others Vs. Union of India & others</u>', wherein direction (ix) re-affirms the terms and conditions of Court Managers that professionally qualified Court Managers, preferably with an MBA degree, must be appointed to render assistance in performing work in the court administration. This would enhance the efficiency of the District Judicial System. The Court Managers would help in identifying the weaknesses in the court management systems and recommending workable steps under the supervision of their respective judges for rectifying the same. He lays particular emphasis on the direction to the effect that '<u>*the services of any person already working as a Court Manager in any district should be regularized by the State Government as we are of the considered view that their assistance is needed for a proper administrative set up in a Court*</u>'.

36. Referring to these directions, Mr. Patwalia says that the letter and spirit of the direction should be read in favour of the petitioners and they should be deemed to be in service due to an illegal termination for giving effect to the purposes of the direction of the Supreme Court. However, the fact of the matter is that long before the direction was issued on 02.08.2018, the petitioners had ceased to hold office after 01.04.2015.

37. In this regard Mr. Patwalia also relies on Annex P-30, which are orders by the Governor of Assam notifying Rules called the "Gauhati High Court (Appointment and Conditions of Service of Court Managers for the State of Assam) Rules, 2018". There the Government of Assam had statutorily notified the 'method of recruitment' to the cadre of Court Managers to be made by direct recruitment only except as provided in clause (b). Clause (b) permitted existing Court Managers, who were earlier recruited, on contractual basis, following the procedure of recruitment as provided under the Gauhati High Court (Appointment and Condition of Service of Court Managers) (Assam) Rules, 2012, and who have completed two years of service, may be absorbed in the newly created posts of Court Managers, on the commencement of those rules, subject to their continued utility and suitability (to be assessed by the High Court) and they shall be entitled to the pay and allowances and other facilities as admissible to the post of Court Managers provided under the rules. The exercise of absorption of existing Court Managers shall be for one time only, as is the mandate in then statutory rules of service. The remaining vacant posts shall be filled up by direct recruitment following the procedure as laid down under rule 6. Thus, Mr. Patwalia prayed that the same treatment be given to the petitioners.

38. With these submissions, Mr. Patwalia concluded his arguments praying for setting aside the decision dated 03.03.2015 with the consequential relief of reinstatement of all the petitioners to the posts of Court Managers with all consequential benefits or in the alternative the services of the petitioners be availed till regular recruitment of Court Managers is not made where they could offer their services on permanent basis without prejudice to their existing rights to be determined in this case.

Defence/stand of the High Court

39. On the other hand, Mr. Ashwani Chopra, learned senior counsel representing the High Court has produced the record of the decisions taken by the High Court from time to time in this behalf. He submits that even the initial creation of posts on acceptance of the recommendation of Hon'ble the Chief Justice of India was for a limited period. Continuance on the post would be based on Impact Assessment Report carried out by the respective State Government/High Court about the functional necessity of continuing with the post. The High Court made such an effort through the Registrar (Computerization) to produce an Impact Assessment Report for the consideration of the Hon'ble Committee. The Impact Assessment Report prepared by the Registrar (Computerization) has been produced in Court for its perusal. The material taken in consideration for making assessment was based on (i) feedback of the learned District & Sessions Judge of Punjab and Haryana regarding role and efficiency of the Court Managers; (ii) material received/retrieved from National Judicial Data Grid; (iii) working of two Court Managers posted in Punjab and Haryana High Court, who were reporting to the author of the report; (iv) Monthly and quarterly reports

(general as well as related to computerization) from districts; (v) quarterly assessment of work by the District & Sessions Judges counter signed by Nodal Officers appointed for computerization; (vi) Interaction with Court Managers on a number of occasions through video conferencing; & (vii) evaluation of Court Managers being Central Project Coordinator-cum-Registrar (Computerization).

40. The assessment was made on cumulative appreciation of all the data available. The report throws up in its recommendations many interesting facets, such as; *(a)* experience shows that Court Managers have discharged their duties as regards to data management, e-Management and Website Management with the technical support from System Officers (SO) and System Assistants (SA) as well as District System Administrators (DSA) trained by Hon'ble e-Committee/Master Trainers, as per the expectations; *(b)* computerization of court records, backlog case entries, date & data up-gradation has been achieved with active participation of Court Managers, SOs, SAs and Court Staff; *(c)* nature of role played by Court Managers is more of managerial nature than technical and that technical role was mostly played by SOs assisted by SAs. In each district, there was one SO assisted by 2/3 SAs, who are technically qualified and have experience in technical field. The technical contribution of Court Managers was less than expected, as it was mostly provided by SOs and SAs; *(d)* in the matter of human resources, software and infrastructure management, their contribution is less than what is expected from them. Barring a few, most have facilitated the working being additional hands without there been much value addition; (e) in the matters relating to budget, stock, security and record management, they have played a limited role and have not used their

full managerial and technical potential; *(f)* impact of miscellaneous initiatives varies from district to district depending upon individual personality of Court Manager and his dependability and ability to assist District & Sessions Judge in court management. They may have been able to supervise SOs and SAs, but have taken few of miscellaneous initiatives.

41. The report states that the overall assessment regarding Court Managers can be termed as 'Average'. However, they alone cannot be blamed for average performance. Due to lack of domain knowledge i.e. court procedures and requirements, hierarchical confusion viz-a-viz existing staff (especially between Court Managers and Superintendents), contractual nature of employment and lack of refresher training has impacted working of Court Managers as is clear from feedback received from District & Sessions Judges. The recommendations in the report are to the following effect:

- There is urgent requirement of trained management personnel for Court Management. Existing system headed by Superintendent has outlived its utility and purpose.

- Court Managers have played less technical role than expected.

- Managerial abilities with working knowledge of computers are sufficient for effective court management in view of availability of SOs, SAs and DBAs (permanent court staff). The technology is changing rapidly, therefore, a person who is continuously and exclusively looking after technical aspects alone can keep pace with the changing technology. Working knowledge is, therefore, sufficient for effective management of court. Computerization in the courts is a centralized affair.

- There is confusion regarding role of Court Managers and existing Court staff. Their duties are overlapping, which has hindered the desired results. Hierarchy and reporting matrix needs to be settled for effective and cohesive court management. Clear work distribution is also required for synchronized working.

- The pay scale and promotional avenues of Court Managers also needs to be settled. The Court Managers were being appointed on contractual basis in the pay scale of RS.15600-39100 with grade pay of Rs.6600/-, whereas Court Superintendents in Haryana are getting pay scale of Rs.15600-39100 with grade pay of Rs.5400/- and Court Superintendents in Punjab are getting pay scale of Rs.10300-34800 with grade pay of Rs.5400/-. The report suggests that at the entry level, recruitment of Assistant Court Managers with pay scales equivalent to Superintendents in respective States is recommended. Suggestion of length of service for promotional scales have been recommended as 7 years service subject to 225% of cadre strength and further promotion be given to the post of Senior Court Manager after 12 years services subject to 10% of cadre strength.

42. These and other suggestions made in the Impact Assessment Report were placed in the Meeting Note. The report was considered in the meeting held on 15.07.2015 by the Hon'ble Executive Committee regarding role and efficiency of Court Managers. Upon a consideration of the Impact Assessment Report and working of Court Managers since 2012, the Committee was of the view that the office of Court Manager requires relook and accordingly, the Committee proceeded to recommend the following changes regarding Post, Qualification, Age limit, Pay Package, Promotional Avenues, Mode of Selection etc.:

Post: Initial induction shall be made as Court Manager Grade II.

Qualification: MBA (Master of Business Administration) with specialization in Human Resource or MBA with specialization in court management (in regular / face to face mode excluding distance education) from a recognized University with working knowledge of computers/ information technology.

Candidates having passed Post Graduate Diploma in Business Administration (PGDBA), PGDBM, PGDHR, PGDIT etc. shall not be eligible.

Preference shall be given to the candidates having Law Degree.

Age Limit: The candidates for the post of Court Manager Grade II should not be less than 25 years and more than 35 years on the last date of the receipt of applications.

Pay Package: Court Managers Grade II, Court Managers & Senior Court Managers be placed in the following pay bands:

State	**Post**	**Pay-band**	**Grade Pay**
Haryana	Court Managers Grade –II	Rs.9300/- - 34800/-	Rs.5400/-
	Court Managers	Rs.15600/- - 39100/-	Rs.5400/-
	Senior Court Managers	Rs.15600/- - 39100/-	Rs.6600/-
Punjab	Court Managers Grade –II	Rs.10300/- - 34800/-	Rs.4800/-
	Court Managers	Rs.10300/- - 34800/-	Rs.5400/-
	Senior Court Managers	Rs.15600/- - 39100/-	Rs.6600/-
High Court / Chandigarh Subordinate Courts	Court Managers Grade –II	Rs.10300/- - 34800/-	Rs.4800/-
	Court Managers	Rs.10300/- - 34800/-	Rs.5400/-
	Senior Court Managers	Rs.15600/- - 39100/-	Rs.6600/-

Promotional Avenues: Based on merit, performance and after completion of 5 years service Court Manager Grade II would be entitled to be promoted as Court Manager.

After completion of 12 years total service, Court Manager would be entitled to be promoted as Senior Court Manager.

Promotion to the post of Senior Court Manager shall be restricted to 25% of cadre strength.

Mode of Selection: The selection of the Court Managers Grade II would be made by the High Court or by any other mode as may be decided by High Court. There shall be short listing of the candidates and then a written examination followed by viva voce.

Duties: Senior Court Managers, Court Managers including Grade II shall perform duties assigned to them by High Court / District & Sessions Judge by general or special order passed from time to time.

Court Managers Grade II/ Court Managers/ Senior Court Managers shall report to District & Sessions Judge in Districts and to Registrar Computerization in High Court.

Misc.: Cadre of Court Managers Grade II, Court Managers & Senior Court Managers shall be State Cadre.

Every member of the Service shall be liable to transfer anywhere within the State or to High Court or any other place in India, where he may be required to proceed under the order of the High Court.

The reservation of posts shall be in accordance with the orders issued by the respective State Governments from time to time.

State of Punjab and Haryana be also requested to create two posts each over and above number of districts in respective State for appointment in High Court / Chandigarh District Courts on deputation."

43. The recommendations were approved by Hon'ble the Chief Justice on 20.07.2015. Accordingly, the hierarchical cadre has been created as Court Managers Grade II, Court Managers and Senior Court Managers. The mode of selection and appointment has been prescribed with the approval of the Hon'ble Chief Justice. The mode of selection has been retained as recommended earlier and has already been reduced into rules of service.

44. Mr. Chopra further submits that the creation of the post of Court Manager in the recommendations of the 13th Finance Commission was an experiment for 5 years supported by Central Government funding and it was made clear in the beginning that the success of the innovation and its continued utility would have to be evaluated, the impact of which would have to be evaluated after 2015. It was for this reason that applications were invited on 21.01.2011 for filling up posts on temporary basis, which were likely to be continued. No permanency was attached to the post nor could be since the experiment would terminate in 2015 with no future guidance at least at the hands of the Central Government. The petitioners were neither appointed on regular basis nor against any regular/cadre post. Rather their appointments were in the nature of contractual appointments under a time-bound centrally funded scheme, which remained in force to run till 31.03.2015 and not thereafter. The appointment itself narrated that it was under the 13th Finance Commission upto the financial year 2014-15. He would refer to Clauses (1) & (3) of the appointment letter to emphasize that no promise was made of continuing them after efflux of time. The words 'likely to be continued' deserves to be construed in this manner. The funds from the 13th Finance Commission were available only until 31.03.2015.

Neither the Government of India nor the respective State Governments chose on their own to continue with the scheme of employment of petitioners beyond the date fixed. The services of the petitioners were liable to be terminated w.e.f. 31.03.2015 as per the terms of the appointment letter/s and were accordingly terminated with effect from the said date. The terms and conditions of the offer of appointment were in the realm of contract and their having agreed to join service, they were bound by the contract and cannot claim, as a matter of right, absorption or regularization or to be made permanent employees or to continue in service beyond 31.03.2015 that too without any budgetary arrangements by the respective State Governments. The petitioners did not belong to the State cadre in view of the nature of their appointment based on innovation and experiment initiated by the Supreme Court and the thread taken up by the 13th Finance Commission for the better management of the Justice Delivery System.

45. He pointed out from the amended written statement that petitioner No.18, namely, Vivek Chauhan was initially posted in Punjab (Mansa). He was taken on deputation to the High Court and was transferred to Sessions Division, Yamunanagar (Haryana). Similarly, Ravish Kumar (since resigned) was transferred from Punjab (Mansa) to Haryana (Palwal). These inter-State transfers clearly show that the petitioners were never appointed against any permanent post in State cadre, but were employed on contractual basis under the 13th Finance Commission till 31.03.2015. The petitioners were paid salaries from the funds provided by the Central Government, which were available only till 31.03.2015.

46. Adverting to the nature of the selection process through which the petitioners were inducted would show that no written examination was taken while appointing them and the appointments were made solely on the basis of viva-voce, which was against the professed recommendations of the Hon'ble Committee on mode of selection from which the petitioners were appointed albeit Rule 8 C (i) was inserted after the appointments were made by incorporation in the rules of service. Since the appointments were temporary or contractual in nature, only 161 candidates had applied out of which only 76 candidates were found eligible. Had the appointments been on permanent basis, there would have been a flood of applications. He submits that no interim order was passed in favour of the petitioners even though they approached the Court before the end of the contract. Merely because they were placed in running pay scales and grade pay is not sufficient to conclude that their appointments were permanent in nature. By a subsequent order, the petitioners were held not entitled to the benefit of New Contribution Pension Scheme and GIS benefit. There was nothing illegal in converting pay scales to consolidated salary of Rs.50,000/- per month as an interim measure as per the impugned decision taken on 03.03.2015. They had no right to be heard before their conditions were altered given the contractual nature of their appointments. The petitioners have not been in service since reliving orders were passed on 01.04.2015 and 4 years have gone by. The Central Government was categorical in its letter dated 02.12.2014 addressed to the Chief Secretaries of the States that any commitment on account of Court Managers beyond 31.03.2015 shall be the liability of the State from its own sources. Continuation of scheme would depend on evaluation of the State Governments. For continuance of the

posts of Court Manager, the State Governments had been forewarned that appropriate budgetary resources may be kept by the State from the financial year 2015-16 onwards. The Central Government had washed its hands off the scheme and the ball was left at the court of the State Governments. In any case, the scheme has been transformed and the post of Court Manager itself has been converted into a three-layered hierarchical structure vide decision of the Hon'ble Executive Committee on consideration of the Impact Assessment Report furnished to it for consideration whereby the matter has been relooked and recommendations made to change the induction level to that of Court Manager Grade II, with the posts of Court Managers and Senior Court Managers being the promotional posts. Even the qualification for the post of Court Manager has been drastically changed from the earlier recommendations of the Hon'ble Committee regarding Creation of posts of Court Managers in the Subordinate Courts in the State of Punjab, Haryana and Chandigarh in its meeting held on 04.08.2010 to the recommendations in the meeting held on 15.07.2015 being aware of inadequacy with Engineering Degrees and emphasizing on Masters of Business Administration, as suggested by the CJI himself, with specialization in Human Resources and with working knowledge of computers/information technology as also suggested in the Impact Assessment Report picking up the cue, as reproduced above. In this changed qualifications, many of the petitioners fall out, as admitted by Mr. Patwalia.

47. However, the question which confronts us is that there has been a sea change in qualifications and criteria for the post of Court Manager and the entire scheme of appointment has suffered transformation and change to meet the new challenges. Accordingly, the High Court submits that these

recommendations have been approved by Hon'ble the Chief Justice on 20.07.2015 and any recruitment process would have to be based on the newly laid down criteria and job description. The past remains the past. Therefore the petitioners cannot harbour any legitimate expectation on continued employment by re-induction on the post of Court Manager, which post itself is a promotional post presently from Court Manager Grade II. The grade pay structures have also been altered, as seen in the tabulated form reproduced above. Legitimate expectation is a weak service right and the case cannot revolve on it.

48. In conclusion, Mr. Chopra relies on the decision of the Supreme Court in Brij Mohan Lal Vs. Union of India & others, 2012 (6) SCC 502. Referring to paras 19, 34, 38, 40, 46, 53, 60 & 145, Mr. Chopra submits that the Supreme Court had held that ad hoc temporary appointees under the Special Scheme of Fast Tract Courts (sponsored by Central Government) cannot have legal rights. The Supreme Court observed that mere expectation or legitimate expectation of absorption cannot be a cause of action for claiming relief of regularization particularly when the same is contrary to the rules and letters of appointment. He specially picks up for attention paras 53 & 60, wherein it is observed as follows:

> "53. A bare reading of the above Notification clearly shows that they were appointed under the FTC Rules, on ad hoc basis and on purely urgent temporary appointment, for a period of two years from the date they took over the charge of the said posts. The entire emphasis of the Notification was on the appointments being temporary, ad hoc and terminable at any time. These appointments were made under the "Ad hoc and purely urgent temporary appointment of Judicial Officers and the members of staff in the State of Gujarat for

implementing the Special Scheme of Fast Track Courts (sponsored by the Central Government) for elimination of arrears Rules 2001". These Rules, in turn, referred to the expression "Committee" which means the Committee of the Judges of the High Court constituted by the High Court or the Chief Justice. 'Fast Track Court' means the Court created under the FTC Scheme as sponsored by the Central Government and for all other words and definitions, one has to refer to the Gujarat Judicial Services Recruitment Rules, 1961. Rule 3 of the said Rules prescribed that the appointments were on ad hoc and on purely urgent temporary basis for implementing the FTC Scheme and the Rules were notwithstanding the Gujarat Judicial Service Recruitment Rules, 1961. These appointments were made by the Governor on the recommendation of the High Court either by promotion or transfer of Judicial Officers or by recruitment from amongst retired District and Sessions Judges/Judicial Officers and advocates eligible to be directly appointed as District and Sessions Judges. The selection of the candidates for such ad hoc appointment was to be made by the Committee on the basis of the procedure and criteria laid down. Rule 6 of the Gujarat Rules clearly stated that no right is conferred on any Judicial Officer in service for claiming any regular promotion on the basis of his appointment on ad hoc basis under the Scheme. Further, Rule 4 of the Gujarat Rules provided for termination of their services.

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60. Upon an analysis of the above-stated Rules relating to the different States, the appointment letters issued to the appointees and the methodology that was adopted for appointment of the FTC Judges, it becomes clear that the appointees cannot be said to have any legal, much less an indefeasible, right to the posts in question. Firstly, the posts themselves were temporary, as they were created under and within the ambit and scope of the FTC Scheme sponsored by the Union of India, which was initially made only for a

limited period of five years. Now, financing of the FTC Scheme has already been stopped by the Central Government with effect from 31st March, 2011. No permanent posts were ever created. In other words, their appointments were temporary appointments against temporary posts. The relevant Rules of the States clearly postulate that the appointments made under the Rules were purely on ad hoc basis and urgent temporary basis and were terminable without notice. The Rules as well as the respective notifications of appointment issued to these appointees, unambiguously stated that no right would be conferred upon the appointees for regular promotion on the basis of working on ad hoc basis under the FTC Scheme. The notifications vide which the judges/candidates/petitioners were appointed, particularly in the State of Gujarat, clearly specified these appointments to be temporary and for a period of two years on ad hoc basis. The cumulative effect of the notifications appointing the petitioners to the said posts under the FTC Scheme and the relevant Rules governing them clearly demonstrate that these were temporary and, in some cases, even time-bound appointments, terminable without prior notice. It is difficult for the Court to accept the contention of these petitioners that there was any indication, in the above noted Rules or otherwise, that the said appointments were permanent and that the appointees were entitled to be absorbed regularly in those posts."

49. Even in the case of Fast Track Court Scheme, it was a well known fact that the financial aid and the responsibility of the Central Government to run the scheme would eventually come to an end, was a fact known to all the State Governments and the High Courts right from the inspection of the FTC Scheme and as such, action of the Central Government in not continuing with the FTC Scheme cannot be faulted with.

50. On these premises, it is urged that the petitions deserve to be dismissed as there are no fundamental rights in favour of the petitioners which have been infringed and merely because the appointment was on temporary basis likely to be continued in the scenario presented on facts would not detract from the inherent nature of the appointment which was only contractual in nature even though the word has not been used, the effect remains throughout the period of employment. The petitioners are bound by their letters of appointment and cannot be heard to wriggle out of them.

51. On the argument advanced which is based on the Notification dated 15.10.2018 (Annex P-30) enacting Rules by the Assam Government, it is submitted on behalf of the High Court that the initial induction of the Court Managers in Assam was based on statutory Rules of 2012 i.e. the Gauhati High Court (Appointment and Condition of Service of Court Managers) (Assam) Rules, 2012 and in all possibility they had continued to serve as Court Managers and accordingly the Assam Government gave effect to the directions of the Supreme Court dated 02.08.2018 in *All India Judges Association case*. The situation in this Court and the two States is different and no parallel can be drawn from Assam. In the present case, the petitioners were not in service for three years till the directions came and the direction of the Supreme Court has to be read accordingly as protecting services of any person already working in any district on the date of the order should be regularized by the State Government.

52. I find there is a considerable, merit in the submissions of Mr. Chopra that neither would the Assam Rules nor do the directions of the Supreme Court apply to the present case. The appointment of the petitioners

were not based on any statutory rules as in Assam where they were recruited under the enactment of 2012 Rules and, therefore, their services were statutory in nature and not merely temporary/contractual appointments before they came under the rules notified in 2016.

53. Though the appointment of the petitioners is not through the back-door, but their selection was deficient inasmuch as the criteria of written examination was not adopted. This is inherent infirmity and normal rule is that the procedure laid down for selection should not be departed from. Thus, they cannot claim, as a matter of fact, continued employment by reinstatement into service. In view of this lacuna and for the variety of reasons mentioned above, while endorsing the view of the High Court and rejecting the case pleaded by the petitioners, I believe that there is no intrinsic merit in these petitions and the same are dismissed.

54. In case of direct recruitment, the petitioners who qualify the existing criteria would have a right of consideration and in this regard, it is for the High Court to consider the period spent by them in service keeping in mind the upper age limit.

12.09.2019 **[RAJIV NARAIN RAINA]**
Vimal **JUDGE**

Whether speaking/reasoned: *Yes*
Whether Reportable: *Yes*