



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%

*Reserved on: 26th April, 2024
Pronounced on: 19th July 2024*

+

W.P.(C) 4075/2023 and CM APPL. 8026/2024

HEMANI MALHOTRA

.....Petitioner

Through: Dr. Aman Hingorani, Senior
Advocate with Mr. Himanshu Yadav
and Ms. Vidisha Jain, Advocates

versus

1. **HIGH COURT OF DELHI**
Through its Registrar General
Sher Shah Road,
New Delhi.

2. **Ms. SANTOSH SNEHI MANN**
D/o Late Mr. Charan Das
R/o 17/4, Rajpur Road,
Civil Lines, Delhi-110054.

3. **MR. PAWAN KUMAR JAIN**
S/o Late Mr. V.P. Jain
R/o C-11, Rangmahal Apartments,
Saraswati Vihar, Delhi-110034.

4. **MR. GURDEEP SINGH**
S/o Late Mr. Sujeet Singh
R/o 45/4, Rajpur road,
Delhi-110054.

5. **MR. BHARAT PARASHAR**
S/o Mr. J.C. Sharma
R/o D-2/177, Kaka Nagar,
New Delhi-110003.



.....Respondents

Through: Mr. Gautam Narayan, Ms. Asmita Singh, Mr. Harshit Goel and Mr. K.V. Vibu Prasad, Advocates for respondent No.1.

Mr. Nidesh Gupta, Senior Advocate with Ms. Pallavi Singh, Advocate for R-2 to 5

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J

1. The present *Writ Petition* has been filed under Article 226 of the Constitution of India, 1950 to challenge the *impugned decision dated 08.10.2022* of the Seniority Committee of the Respondent No. 1 (on its administrative side) and *impugned decision dated 16.12.2022* of the Full Court of the Respondent No. 1/ High Court, confirming the seniority of the petitioner. Relief is also sought for implementation of decision dated 25.05.2016 of the Seniority Committee of the Respondent No.1 and to grant the petitioner the Selection Grade, Super Time Scale as well as consequential promotion and seniority from such date as she is found entitled in terms of the said decision dated 25.05.2016.

2. **Briefly stated**, the Petitioner was appointed to the Delhi Higher Judicial Services (*hereinafter "DHJS"*) by direct recruitment against a permanent post on 16.07.2008, *vide Notification dated 09.07.2008*.



3. The respondent No. 1/Delhi High Court, *vide* Letter No. 22/DHC/Gaz/SG/VI.D10/2013 dated 02.09.2013, granted Selection Grade to 47 DHJS Officers, wherein the petitioners' name did not feature. Sl. No.2 of the Note to the said letter provided that “*Grant of Selection Grade to the officers from Sl. No.40 onwards is subject to finalisation of their seniority in DHJS cadre*”.

4. The petitioner has claimed that the following 27 Officers of Delhi Judicial Services (*hereinafter "DJS",*) were appointed to DHJS on temporary basis with effect from the date they assumed their charge *vide* Notification dated 07.12.2005 :-

1. Mr. Daya Parkash	15. Mr. Chandra Bose
2. Mr. Virender Kumar Bansal	16. Mr. Ajay Kumar Kuhar
3. Mr. Virender Kumar Goyal	17. Mr. Gurvinder Pal Singh
4. Ms. Seema Maini	18. Ms. Mamta Tayal
5. Ms. Anju Bajaj Chandna	19. Mr. Sunil Kumar Aggarwal
6. Mr. Rajnish Kumar Gupta	20. Mr. Mahesh Chander Gupta
7. Mr. Raj Kumar Chauhan	21. Mr. Harish Dudani
8. Ms. Kamini Lau	22. Mr. Alok Aggarwal
9. Ms. Sarita Birbal	23. Mr. Nivedita Anil Sharma
10. Mr. Surender Kumar Sharma	24. Mr. Laxmi Kant Gaur
11. Mr. Paramjit Singh	25. Mr. Sanjiv Jain
12. Mr. Vinay Kumar Khanna	26. Mr. Kanwal Jeet Arora
13. Mr. Sanjeev Jain	27. Mr. Sanjay Kumar Aggarwal
14. Ms. Pinki	

5. The same Notification dated 07.12.2005 further appointed 15 Officers of DJS (*appearing at Sl. Nos. 23 to 39 in List dated 02.09.2013*) on *ad-hoc* basis against *ex-cadre* posts meant for Fast Track Courts, w.e.f. 04.01.2006 subject to their furnishing an Undertaking that they will not claim seniority at the time of their appointment on regular basis in DHJS from the date they assume the charge. Subsequently, two more Officers (*appearing at Sl. No. 26 and 38 in List dated 02.09.2013*) were appointed on *ad-hoc* basis against



ex-cadre posts meant for Fast Track Courts *vide* Notification dated 08.06.2007 and 21.07.2011 respectively w.e.f. 04.01.2006. The details are mentioned hereinbelow:-

<i>Corresponding Sl. No. in List dated 02.09.2013</i>	<i>Corresponding Sl. No. in Notification dated 07.12.2005</i>	<i>Name of Officer</i>
23.	1.	Mr. SudeshKumar
24.	2.	Mr. Gulshan Kumar
25.	3.	Ms. Nisha Saxena
26.	-	Mr. Shahabuddin
27.	4.	Mr. Ashwani Kumar Sarpal
28.	5.	Mr. Sanjay Sharma
29.	6.	Mr. Rajender Kumar Shastri
30.	7.	Mr. Narinder Kumar
31.	8.	Mr. Inder Jeet Singh
32.	9.	Ms. Santosh Snehi Mann
33.	10.	Mr. Pawan Kumar Jain
34.	11.	Mr. Atul Kmar Garg
35.	12.	Mr. Gurdeep Singh
36.	13.	Mr. Bharat Parashar
37.	14.	Mr. Ram Bhagat Singh
38.	-	Mr. B.S. Chumbuk
39.	15.	Mr. Rakesh Kumar

6. It is claimed that aforementioned Officers were neither promoted in substantive capacity nor against the substantive vacancies. Consequently, the said Officers did not become members of DHJS to claim seniority w.e.f. 07.12.2005.

7. The petitioner has further claimed that from this list of 17 Officers, who had been posted on *ad-hoc* basis against *ex-cadre* posts meant for Fast Track Courts, 7 Officers (*Sl. No. 23-29*), namely *Mr. Sudesh Kumar, Mr. Gulshan Kumar, Ms. Nisha Saxena, Mr. Shahabuddin, Mr. Ashwani Kumar Sarpal, Mr. Sanjay Sharma and Mr. Rajender Kumar Shastri*, were promoted to DHJS against the regular vacancies *vide* Notification dated



11.02.2008 and thus, were entitled to seniority w.e.f. the said date of appointment.

8. It has been further submitted that the remaining 10 Officers, (*Sl. No. 30-39*) *Mr. Narinder Kumar, Mr. Inder Jeet Singh, Ms. Santosh Snehi Mann, Mr. Pawan Kumar Jain, Mr. Atul Kmar Garg, Mr. Gurdeep Singh, Mr. Bharat Parashar, Mr. Ram Bhagat Singh, Mr. B.S. Chumbak and Mr. Rakesh Kumar* got appointed against the substantive vacancies in DHJS *vide* Notification dated 06.08.2008 and are entitled to seniority from the date of such appointment.

9. The Seniority of DHJS officers appointed till December, 2006 was settled in Full Court Meeting dated 18.12.2008 and 18.11.2009 and modified *vide* Full Court decision dated 26.05.2011, was provided to the petitioner on 20.07.2016.

10. The Petitioner has asserted that she got appointed as a direct recruit to DHJS on 16.07.2008 i.e. before these 10 Officers (*Sl. No. 30-39*) mentioned above, and is, therefore entitled to be placed above these 10 Officers.

11. The Petitioner challenged the seniority of these Officers *vide* Representation dated 06.06.2014 to the respondent no. 1. The Full Court *vide* its decision dated 18.01.2016 recommended for constitution of a *Committee of Hon'ble Judges* to consider the matter.

12. The *Seniority Review Committee* was thus, constituted under the Chairmanship of Hon'ble Mr. Justice Pradeep Nandrajog (Retd.) by the Chief Justice. The Committee *vide* its decision dated 25.05.2016, recommended that the seniority of the petitioner be fixed above these 10 Officers who were appointed on 06.08.2008 after the Petitioner and below the earlier 7 who had got appointed against the substantive post on



11.02.2008 i.e. before she was appointed in the DHJS. Thus, she was to be placed below officer at Sl. No. 29 namely, Mr. Rajender Kumar and above the Officer at Sl. No. 30 namely, Mr. Narinder Kumar. This decision was approved by the Hon'ble Chief Justice of Delhi High Court on 27.05.2016. However, the same was neither communicated to her and was neither placed before the Full Court.

13. The respondent no. 1/ Delhi High Court on its administrative side, issued the letter bearing *No.2680-2690/DHC/Gaz./G-1/2016* dated 07.01.2016 attaching *Provisional Seniority List of Officer of DHJS appointed during the years 2007-2012 (which did not include the names of the 17 Officers, who had been notified on ad-hoc basis in December, 2005)* and invited objections from all the concerned Officers of DHJS. The petitioner was mentioned at Sr. No.210 of this List. *Note 2* appended to this List stated that the Representation dated 06.06.2014 of the petitioner requesting for fixation of her seniority above the Officers appointed against ex-cadre posts meant for Fast Track Courts, was pending consideration before the High Court. It, however, later transpired that this representation dated 06.06.2014 of the petitioner had already been decided in her favour on 25.05.2016 by the Seniority Review Committee.

14. The petitioner *vide* her letter dated 14.06.2016 through proper channel, requested for supply of seniority list as detailed therein. She again filed a second representation dated 18.07.2016 for fixing her seniority above the Officers posted against *ex-cadre* post of DHJS as she was not aware of the decision dated 25.05.2016 taken by Seniority Committee of the High Court.



15. When the petitioner was unable to get any response in respect of her representations, she sought information *vide* her Application dated 04.09.2019 under RTI Act, 2005 from Public Information Officer (PIO) of the respondent no. 1/ High Court. The PIO *vide* letter dated 14.10.2019 conveyed the Minutes of the Meeting of the Committee constituted to finalize *inter se* seniority of Officers of DHJS held on 25.05.2016 in the Chamber of the Chairperson of the Committee, *vide* letter dated 14.10.2019. For the first time, the petitioner became aware from this Letter dated 14.10.2019 that the Seniority Review Committee of the respondent no. 1/High Court had already allowed her representation dated 06.06.2014, *vide* its decision dated 25.05.2016.

16. Out of the 10 Officers (*Sl. No.30 to 39*), who had been placed below the petitioner by the Seniority Review Committee, 3 Officers at Sr. No.37 to 39 namely, *Mr. Ram Bhagat Singh, Mr. B.S. Chumbak and Mr. Rakesh Kumar* had been granted Selection Grade w.e.f 01.05.2013 and thereafter had retired. Likewise, the Officer at Sr. No. 31, *Mr. Inder Jeet Singh* was granted Selection Grade w.e.f 01.05.2013 and Super Time Scale w.e.f 01.08.2019 and has thereafter retired on 30.04.2020.

17. The respondent no. 1/Delhi High Court *vide* its Order dated 12.02.2020 has granted Super Time Scale to *16 Officers of DHJS* from the dates mentioned therein. These 16 names include the name of *6 Officers* (at *Sl. No.7 to 12*) whose names were mentioned at *Sr. No.30, 32 -36* in list of 02.09.2013 namely *Mr. Narendra Kumar, Mr. Inderjeet Singh, Ms. Santosh Snehi Mann, Mr. Pawan Kumar Jain, Mr. Gurdeep Singh and Mr. Bharat Prashar*.



18. The petitioner made another (third) Representation dated 17.02.2020 to the respondent no. 1/High Court stating that she cannot be deprived of not only the Selection Grade but also the Super Time Scale for all these years. She prayed for grant of Selection Grade and Super Time Scale from the dates she was found entitled as per Seniority List recommended by the Seniority Review Committee vide its decision dated 25.05.2016.

19. Again no response was received in respect of her representation which compelled her to file *Writ Petition (Civil) No.1310/2020* before Supreme Court seeking directions to the respondent no. 1/High Court to give effect to the decision of the Seniority Committee dated 25.05.2016. The Supreme Court *vide* its Order dated 13.07.2021 in the said Writ Petition permitted the petitioner to withdraw the Petition with liberty to file appropriate Petition under Article 226 of the Constitution of India before the respondent no. 1/High Court.

20. The petitioner thus, filed *W.P(C) No.7128/2021* seeking directions to the respondent no. 1/High Court to give effect to the decision of the Seniority Review Committee dated 25.05.2016. The respondent no. 1/High Court *inter alia* stated in its reply that the Writ Petition was pre mature as the outcome of the proceeding before the Seniority Review Committee where the objections of the petitioner had been placed, was pending consideration.

21. While this Writ was pending, the Seniority Committee of respondent High Court passed the impugned decision dated 08.10.2022 as under :

“As per the record the seniority of the members of the Delhi Higher Judicial Service appointed upto the year 2006 (including the officers appointed in 2006 on ad-hoc basis to the ex-cadre Fast Track Courts) has already



been settled vide Full Court decisions dated 18.12.2008 and 18.11.2009 on the basis of continuous length of service in terms of the directions dated 15.10.2006 of the Hon'ble Supreme Court in W.P. (C) No. 477/2007 B.S. Mathur and Anr. Vs Union of India and Ors.

As per the note put up by Registry the seniority list of the officers of DHJS promoted till 2006 was approved and finalized by Full Court on 18.11.2009 which was circulated vide letter dated 23.12.2009 of Registrar General, High Court of Delhi. The said seniority so finalized was reiterated by Full Court in the year 2011 and circulated again vide letter dated 13.09.2011 of Registrar General, Delhi High Court.

Seniority Committee headed by HMJ Pradeep Nandrajog vide minutes dated 25.05.2016 had directed the Registry to circulate provisional seniority list with respect to the officers appointed in the year 2007 onwards meaning thereby that seniority with respect to officers appointed till 2006 was also acknowledged by the said Committee as settled. Vide minutes of same date representation dated 06.06.2014 of Ms. Hemani Malhotra was also decided by the said Committee, thereby recommending her to be placed above the officers with respect to whom seniority has already been settled. The minutes of the said meeting regarding the decision on the representation of Ms. Hemani Malhotra were never ordered to be placed before the Full Court by Hon'ble the then Chief Justice.

*As far as the representation dated 06.06.2014 of Ms. Hemani Malhotra, an officer of DHJS, is concerned, this Committee is of the view that the report of HMJ Pradeep Nandrajog may have an impact of unsettling the seniority, which has been settled upto the year 2006 by the decision of the Full Court pursuant to the judgement of the Supreme Court in **B.S. Mathur (supra)**.*



Therefore, the report dated 25.05.2016 requires to be placed before the Full Court for appropriate decision as to whether this Committee can re-examine the seniority of Officers appointed in the year 2006 on ad-hoc basis to the ex-cadre Fast Track Courts, while deliberating on the issue of inter-se seniority of Officers of Delhi High Judicial Services, appointed during the years 2007-2012.”

22. Subsequently, the Full Court *vide* its decision dated 16.12.2022 rejected the Report dated 25.05.2016 of the Seniority Committee headed by Justice Pradeep Nandrajog (Retd.) and resolved to refer the matter back to the Seniority Committee for finalizing the inter-se seniority of the Officers of DHJS appointed from the year 2007 onwards, without disturbing the seniority of officers appointed till 2006.

23. In view of the decision of the Full Court dated 16.12.2022, the petitioner again withdrew her Writ Petition, with liberty to file a fresh petition on the new cause of action.

24. Thus, the present petition has been filed against the above decision dated 08.10.2022 and decision of the Full Court dated 16.12.2022, essentially on **the Grounds** that *firstly*, the subsequent Seniority Committee could not have “re-examined” the matter of seniority of the Petitioner as the decision dated 25.05.2016 of the earlier Seniority Committee stood approved by Hon’ble the Chief Justice and was consistent with the settled principles of law pertaining to ad-hoc appointments to the ex-cadre Fast Track Courts and *with the principle of continuous length of service*. It was not open to the respondent no. 1/High Court (on its administrative side) to not give effect to the decision of its own Seniority Committee fixing the



seniority of the Petitioner when it has been approved by Hon'ble the Chief Justice.

25. *Secondly*, the administrative lapse of not placing the decision dated 25.05.2016 before the Full Court, is attributable to the respondent no. 1/High Court and has been detrimental to the Petitioner.

26. *Thirdly*, disturbing the existing seniority cannot be a reason to deny relief of seniority, promotional avenues and consequential benefits to an entitled Officer.

27. *Fourthly*, she is entitled to Super Time Scale on the grounds of parity with the 16 officers, who have been already granted the same by the respondent no. 1/High Court and these include 6 officers who are below the rank of the Petitioner.

28. *Fifthly*, deprivation of seniority and consequential benefits is in violation of her fundamental rights guaranteed under Article 14, 19 and 21 of the Constitution of India as the impugned decisions are vitiated with infirmities and factual inconsistency and the decision dated 25.05.2016 already considered the issues raised by the Petitioner and after due consideration placed her above the 10 officers.

29. Hence, the present Writ Petition has been filed seeking **the Relief** as under :-

“PRAYER

In the circumstances, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a. issue an appropriate writ, order or direction and in particular an order quashing and setting aside the decision dated 08.10.2022 of the Hon'ble Seniority



Committee of the Respondent High Court (on its administrative side);

- i. an order quashing and setting aside the decision dated 16.12.2022 of the Hon'ble Full Court of the Respondent High Court (on its administrative side);*
- ii. a direction to the Respondent High Court (on its administrative side) to give effect to the decision dated 25.05.2016 passed by the Hon'ble Seniority Committee of the Respondent High Court (on its administrative side) and approved by Hon'ble the Chief Justice; and*
- iii. a direction to the Respondent High Court (on its administrative side) to consider granting to the Petitioner the Selection Grade as well as Super Time Scale from such date as she is found entitled pursuant to the said decision dated 25.05.2016.*
 - b. pass such further order(s) as this Hon'ble Court may deem fit and proper. “*

30. **The Respondent no. 1/Delhi High Court in its detailed reply** explained that the seniority of the Officers appointed to the ex-cadre post for Fast Track Courts had been determined on the basis of the principle of *continuous length of service* laid down by the Supreme Court in the case of BS Mathur vs. Union of India (2008) 10 SCC 271 and was approved by the decision of the Full Court of the respondent no. 1/High Court in its Meeting held on 18.11.2009.

31. The claim of the petitioner is primarily based on the recommendation dated 25.05.2016 of the Seniority Committee of this Court which was never placed and approved by the Full Court.

32. The initial *Writ Petition (C) No.7128/2021* of the petitioner had raised the issue of inter-se seniority of Officers appointed between 2007-2012. Since this issue was pending consideration before the Seniority Committee,



on the request of the counsel for petitioner made on 30.09.2021, it was directed that the case of the petitioner be considered by the Seniority Committee.

33. Subsequently, the Seniority Committee in its meeting held on 08.10.2022 came to the conclusion that implementation of the recommendations dated 25.05.2016 would result in unsettling the seniority till 2006 which had already been settled and therefore, the recommendations dated 25.05.2016 were required to be placed before the Full Court to decide whether the Committee could re-examine the Officers appointed till 2006 on ad-hoc basis to the ex-cadre Fast Track Courts, while deciding the inter-se seniority of the Officers appointed from 2007-2012.

34. Pursuant to the recommendation dated 08.10.2022 of the Seniority Committee, the Full Court in its Meeting held on 16.12.2022, rejected the Seniority Committee Report dated 25.05.2016 and referred back the matter to the Seniority Committee to consider the inter-se seniority of the Officers appointed from the year 2007 onwards, without unsettling the seniority till 2006.

35. The respondent no. 1/High Court has explained that the Scheme for setting-up Fast Track Courts was pending challenge before the Hon'ble Supreme Courts. However, only DJS officers who were eligible for promotion to DHJS were promoted and appointed to Fast Track posts and the post was described as an "*ad hoc ex cadre*" post only because at that time there was no clarity regarding whether the Scheme will be continued or not. It has been emphasised that the appointments to DHJS against vacancies sanctioned for Fast Track Courts were made from amongst officers eligible for promotion to DHJS and they were never sought to be reverted to the DJS



prior to being appointed against regular vacancies in the DHJS on 11.02.2008 and 06.08.2008.

36. The issue was decided by the Supreme Court in Brij Mohan Lal vs. Union of India & Ors. (2002) 5 SCC 1 whereby the Scheme was upheld and directions were passed. Thus, 15 Officers from DJS were appointed to DHJS on ad hoc basis against ex-cadre posts meant for Fast Track Courts vide Notification dated 07.12.2005 subject to their furnishing of an Undertaking that they would not claim any seniority at the time of their appointment on regular basis in DHJS from the date on which they assume the charge of their office.

37. The petitioner is claiming seniority over 9 of these Officers who were appointed in temporary capacity as well as 1 more officer, appointed in temporary capacity on 06.08.2008; whereas 7 Officers were already appointed in temporary capacity on 11.02.2008 vide Notification No.F.6/31/97-Judl./LJ/08/1048 i.e. before the date of appointment of the petitioner. She, therefore, cannot claim seniority over these 7 officers on any ground.

38. The petitioner has been appointed in DHJS vide Notification dated 09.07.2008 and has joined the service on 16.07.2008. 9 of these Officers were appointed in DHJS on a temporary basis vide Notification dated 06.08.2008.

39. The Full Court settled the Final Seniority List of the Officers of DHJS as on 01.01.2007. This list was challenged before the Supreme Court in the case of BS Mathur (Supra). The Supreme Court explicitly set aside the determination of inter se seniority on the basis of O.M. dated 03.07.1986



and directed that the seniority must be determined on “*continuous length of service*” basis i.e. from the date of appointment.

40. A Committee was constituted by the respondent no. 1/High Court for implementation of the decision of BS Mathur (Supra) on 20.10.2008. The Registry on the directions of the Committee prepared the Draft Seniority List for appointments made till 2006.

41. The Committee was of the view that the promotee Officers, who were appointed to DHJS against existing vacancies going to their share, should be treated as regular and not ad hoc appointees, even if they were appointed as an ad hoc, because they were being treated as an *ad hoc* merely because their contemporary direct recruits had not been appointed, though steps had already been taken.

42. The Full Court vide decisions dated 12.07.2000 and 22.07.2000 recommended promotions of *15 Officers to DHJS* after due selection. The Resolution noted the existence of 23 vacancies going to the share of the *promotee officers* and that since immediate steps were being taken to fill up the corresponding fifteen posts of direct recruits, the promote officers selected against regular vacancies should be treated as ad hoc promotes till the recruitment was made. They were appointed on ad hoc basis vide Notification dated 07.08.2000 and assumed charge w.e.f 16.08.2000. The subsequent Full Court Resolution dated 18.01.2003 treated these *Promotee officers* as being on probation w.e.f 18.01.2003 and they were confirmed subsequently vide the Full Court decision of 19.11.2005. The Committee accordingly recommended finalization of the draft Seniority List annexed with their Report.



43. The Full Court Meeting of the respondent no. 1/High Court held on 27.11.2008 resolved to add names of the Officers who were appointed to the DHJS Fast Track Courts in 2006 as per their date of appointment, to the list prepared in consonance of the decision of BS Mathur (Supra) on the basis of the principle of *continuous officiation* and circulated the list inviting objections from the judicial Officers.

44. The Full Court meeting was held on 18.12.2008 and the list was finalized till *Sr. No.57*, as no objections were received from the Officers appointed till 1996, except for two Officers which was resolved by the Full Court. All other objections were also resolved in the said Meeting dated 18.12.2008. All the relevant papers were circulated for the benefit of the Committee on 23.01.2009.

45. On 27.01.2009 the Committee had called all the Officers who had filed their objections to the provisional Seniority List for personal hearing, which were dismissed vide its Report dated 22.09.2009 with a dissenting report by Justice S.N. Aggarwal (Retd.) in regard to the objections filed by Mr. Vinod Goel (as he then was). Both the Reports were placed before the Full Court, which, in its Meeting dated 18.11.2009, approved the majority view.

46. The inter se Seniority List from *Sr. No.59 to 191*, including the Officers over whom the Petitioner is claiming seniority, was approved by the Court and the list was directed to be circulated as the final seniority list of the remaining Officers.

47. Pertinently, the DHJS Rules, 1970 were also amended in accordance with the decision of the Apex Court in BS Mathur (Supra) and Rule 8 which provided for determination of seniority in accordance with the principle of



continuous length of service in Sub-Rule (4), explicitly notes by way of a Footnote that the amendment was made applicable retrospectively w.e.f 01.01.2007, in view of the fact that inter se seniority of the Officers of the DHJS up to 2006 had already been settled. Pertinently, the definition of “*cadre post*” under Rule 2(b) included temporary posts carrying the same designation which is in accordance with the change in the definition of “*Member of Service*” under the Rules as noticed in BS Mathur (Supra).

48. Subsequently, the Selection Grade was granted to the Officers over whom the Petitioner is claiming seniority *vide* Order dated 02.09.2013.

49. The Representation of the petitioner was forwarded by District & Sessions Judge (HQ) on 06.06.2014 for fixation of her seniority and grant of selection grade. Since the petitioner was claiming her seniority over the Officers appointed against ex cadre posts in Fast Track Courts whose seniority had already been finalized by the decision of the Full Court on 18.11.2009, whereas the matter of finalization of seniority of Officers appointed in 2007 till 2012 was under consideration by the Full Court, it was decided on 30.07.2014 to place the Representation of the petitioner before Hon’ble the Chief Justice.

50. The Representation of the petitioner was taken up by the Full Court on 18.01.2016 when it was decided to be placed before the Committee of Judges, headed by Justice Pradeep Nandrajog (Retd.), constituted to consider the issue. The Committee was accordingly constituted on 09.02.2016, which held a Meeting on 25.05.2016 and decided that the provisional Seniority List of Officers appointed between 2007-2012 would be notified and circulated to all the Judicial Officers concerned for filing their objection within six weeks. The Committee also decided that the



petitioner was entitled to be placed above *Mr. Narender Kumar (Sr. No.30) of the List dated 02.09.2013 granting Selection Grade to the DHJS Officers*. The claim of Mr. S.S. Malhotra was dismissed. The Committee did not express any view with regard to the main issue namely inter se seniority of the Officers appointed between 2007 till 2012.

51. The Report of the Committee was placed before Hon'ble the Chief Justice but no orders was passed to place it before the Full Court. The recommendations of the Committee never got approved by the respondent no. 1/High Court on its Administrative side.

52. The respondent no. 1/High Court has asserted that the Seniority List upto 2006 is settled and includes Officers upto *Sr. No.192*. The draft Seniority List pertained to the Officers starting from *Sr. No.193 upto 257*. The petitioner was placed at *Sr. No.210* while the Committee had recommended her name to be placed above Mr. Narender Kumar who was at *Sr. No.183* in the Seniority List of DHJS Officers which already stood settled by the Full Court on 18.11.2009. Moreover, in the draft Seniority List Officers from *193 to 209* were the direct recruit Officers who had joined DHJS Services before the petitioner between 2007 to 2008.

53. The *Provisional Seniority List* for 2007-2012 was accordingly circulated for finalization vide Letter dated 07.06.2016. However, 38 Officers including the petitioner filed their objections which were considered by the Seniority Committee and was decided to call the representationists for a personal hearing. The respondent no. 1/High Court granted Super Time Scale to six persons over whom the petitioner is claiming seniority who are mentioned at *Sr. No.7 to 12*, namely *Mr. Narinder Kumar, Mr. Inder Jeet Singh, Ms. Santosh Snehi Mann, Mr.*



Pawan Kumar Jain, Mr. Gurdeep Singh and Mr. Bharat Parashar, in the Order dated 12.02.2020 granting them Super Time Scale.

54. The petitioner submitted another Representation dated 17.02.2020 wherein she requested that the decision of Seniority Committee dated 25.05.2016 be placed for approval before the Full Court and she may be considered for grant of Selection Grade and Super Time Scale.

55. The said Representation was eventually considered by the reconstituted Committee in its Meeting held on 08.10.2022 which recommended that the erstwhile Committee had failed to notice that the Seniority List of the Officers appointed till 2006 had already been finalized and the matter be put up before the Full Court to decide whether the Seniority of these Officers appointed till 2006 in ad hoc capacity to ex cadre posts in Fast Track Courts, was required to be re-examined.

56. Accordingly, the Full Court in its Meeting held on 16.12.2022 rejected the recommendations dated 25.05.2016 and referred back the matter to the Seniority Committee to decide the seniority of the Officers appointed after 2007.

57. The respondent no. 1/High Court has thus, asserted that since the seniority upto 2006 already stood finalized to which the petitioner made no representation, it has to be held that she acquiesced to the decision of the Full Court Meeting held on 18.11.2009.

58. The respondent no. 1/High Court has taken an objection that in the draft Seniority List for 2007-2012 the Officers placed from 193 to 209 are all recruits who have joined the DHJS during the year 2007 and 2008 before the joining of the petitioner. Those DHJS Officers have not been impleaded in the present petition even though any decision in the present petition, is



liable to cause prejudice to them. The present petitioner is, therefore, *bad for non-joinder of necessary parties*.

59. It is further contended that the relief sought by the petitioner is contrary to the decision of the Apex Court in BS Mathur (supra).

60. **On merits**, similar explanation as detailed in the Preliminary Objections have been given. In the end, it is stated that in the light of the decision of the Full Court Meeting held on 16.12.2022, the relief claimed by the petitioner on the basis of the recommendations of the Seniority Committee dated 25.05.2016, is without merit and is liable to be rejected.

61. However, in pursuance of Order dated 18.09.2023, the effected parties namely *Ms. Santosh Snehi Mann, Mr. Pawan Kumar Jain, Mr. GurdeepSingh and Mr. Bharat Parashar* were also impleaded as Respondent Nos. 2 to 5.

62. **The Counter Affidavit on behalf of Respondent No. 2-5** is essentially on the same lines as the Reply filed by the Respondent No. 1/ High Court. It is argued that the issue of *inter se* seniority between direct recruits and promotes, as raised by the Petitioner, has been settled and crystallized by a catena of Judgments of the Supreme Court and it has been continuously held that the appointments of Fast Track Judges on *ad hoc* basis is a part of the cadre and that they are members of service. The judgments relied upon by the petitioner are inapplicable in the present case because those cases pertain to the State Service Rules which are distinct from the Service Rules of the DHJS.

63. Further, the seniority of the answering Respondents was fixed by the Hon'ble Supreme Court in the case of B.S. Mathur (supra) and was reiterated by the Seniority Committee in 2009 and 2011, but she took no steps to



challenge the same and hence, the Petition is hopelessly delayed. Additionally, the Full Court Orders dated 23.12.2009, 13.09.2011 and 02.09.2013 have not been challenged by the Petitioner. Hence, the Petitioner now cannot be allowed to reopen settled matters and reagitate the same claims before this Court.

64. In the **Rejoinder on behalf of the Petitioner**, she has reagitated the stand taken by her in the Petition and it is rebutted that the stand of the Respondents and reliance on judgments placed on record, is totally misplaced and misconceived. It is reargued that judicial officers appointed against ex-cadre posts are not entitled to seniority from the date of their initial appointment against ex-cadre posts but are entitled from the date of appointment against vacancy in the cadre and thus, she is entitled to be placed above the respondents for the reasons stated in the Petition. It is further explained that the Petition does not suffer from delay and laches because Petitioner has been consistently agitating her grievance. Her Representation dated 06.06.2014 was even allowed *vide* decision dated 25.05.2016 of the Seniority Committee though it was not communicated to her. Therefore, there was no necessity for her to challenge the Full Court decisions of 2009, 2011 and 2013.

65. **Learned counsel on behalf of the petitioner in the written submissions**, have reiterated the averments made in the petition. It is contended that Rule 2 (b) of the 1970 Rules defined “*Cadre Posts*” inter-alia to mean any post specified in the Schedule. The Schedule, as it then stood, did not include Fast Tack Courts.

66. Additionally, the detailed decision dated 25.05.2016 referred to the case laws for the proposition that seniority in a cadre will not accrue unless



the candidate becomes a member of the service in which seniority is claimed. Members at Sl. no. 30-39 cannot be entitled to seniority as they were never promoted in substantive capacity.

67. On the objection of non-joinder of necessary parties, it is rebutted by asserting that the Petitioner is seeking implementation of decision dated 25.05.2016 and the same does not involve dispute inter se seniority in the background of any specific judicial officers who would be impacted. The criteria adopted by the respondent no. 1/High Court is the issue and thus, only those against whom the relief is sought, have been impleaded.

68. To buttress the arguments advanced, the petitioner has placed reliance on the judgments of Debabrata Dash vs. Jatindra Prasad Das (2013) 3 SCC 658, V. Venkata Prasad vs. High Court of A.P. (2016) 11 SCC 656, C Yamini vs. State of Andhra Pradesh & Anr. (2019) 17 SCC 228; Brij Mohan Lal vs. Union of India (2012) 6 SCC 502, Dinesh Kumar Gupta vs. High Court of Rajasthan (2020) 19 SCC 604, A. Janardhana v Union of India (1983) 3 SCC 601; G.M., South Central Railway, Secunderabad & Anr. etc. v. A.V.R. Sidhanti (1974) 4 SCC 335; and State of Himachal Pradesh & Anr. v Kailash Chand Mahajan & Ors. 1992 Supp (2) SCC 351.

69. **Learned counsel on behalf of the respondent no. 1/High Court**, while reiterating the grounds as taken in the **Reply/Counter Affidavit**, has argued that the appointment of the DHJS Officers on vacancies sanctioned on Fast Track Court is deemed to be an appointment to a cadre post under Rule 2(b) of the DHJS Rules, 1970. Reliance has been placed on O.P. Singla vs. Union of India (1984) 4 SCC 450; Rudra Kumar Sain & Ors. vs. Union of India & Ors. (2000) 8 SCC 25; Delhi Judicial Services Association vs. Delhi High Court & Ors. (2001) 5 SCC 145; Brij Mohan Lal vs. Union



of India & Ors. (2002) 5 SCC 1 and BS Mathur & Anr. vs. Union of India & Ors. (2008) 10 SCC 271.

70. Further, the petitioner failed to challenge the Seniority List dated 18.11.2009 and Modified List on 26.05.2011 finalizing the seniority of the officers appointed to DHJS till 2006. She has thereby acquiesced into the Seniority List. Moreover, her challenge by way of present Writ Petition suffers from *delay and laches*. The reliance has been placed on P.S. Sadashivaswami vs. State of Tamilnadu (1975) 1 SCC 152; Vijay Kumar Kaul vs. Union of India (2012) 7 SCC 610.

71. It is further claimed that the direct recruit Officers who have joined the DHJS in the year 2008 prior to the petitioner have not been impleaded and therefore, the *petition is bad for non-joinder of necessary party*. Reliance has been placed on Indu Shekhar Singh vs. State of U.P (2006) 8 SCC 129, State of Rajasthan vs. Uchhablal Chhanwal (2014) 1 SCC 144 and Ranjan Kumar vs. State of Bihar (2014) 16 SCC 187.

72. In the end, it is argued that the judgments on which reliance has been placed by the petitioner is misplaced as all the judgments are on the basis of the Rules framed by the specific States and are not applicable to the present case.

73. **Learned Counsels on behalf of Respondent No. 2 -5** have filed their **Written Submissions** which are on the same lines as their Counter Affidavit as well as the Reply of Respondent No. 1. Reliance is placed upon all the judgments placed on record by the Respondent no. 1. in their written submissions.

74. **Submissions heard and the record along with the judgments relied upon by the parties have been perused.**



75. Legitimate aspirations of career progression and promotion in the service of any member who joins the Service is understandable and appreciable, but when such aspirations are based on misconception and misplaced understanding of Service jurisprudence and established principles of law, the repeated attempts of such member are bound to meet rejection as has happened in the present case. The induction of the petitioner in DHJS as a direct recruit itself commenced with a bump start as it was only by the Orders of the Apex Court in the case of Himani Malhotra vs. High Court of Delhi (2008) 7 SCC 11 she was directed to be appointed as the DHJS Officer; however with a clarification that she would neither be entitled to seniority or salary with retrospective effect. The seniority was directed to be reckoned from the date of her appointment and salary as allowed to be paid from that date only. *Thus, the petitioner got appointed vide Notification dated 09.07.2008 and joined DHJS on 16.07.2008.*

76. The sum and substance of the Petitioner's case is that the 17 Officers appointed on *ad-hoc* basis in *ex-cadre* posts in Fast Track Court were never appointed in the *cadre* of DHJS as they were not promoted against substantive vacancies. Since, 7 out of 17 Officers were appointed against regular vacancies only 11.02.2008, which is prior to her recruitment on 09.07.2008 w.e.f. 16.07.2008, though she should have been placed below these 7 officers, but was entitled to be placed above the other remaining 10 officers in the List dated 02.09.2013, as they were appointed against regular vacancies only on 06.08.2008 i.e. after the recruitment of the Petitioner.

77. Thus, the entire controversy revolves around the 17 DJS Officers who were appointed on *ad hoc* basis in *ex cadre* posts in Fast Track Courts w.e.f. 04.01.2006, by Notifications dated 07.12.2005, 08.06.2007 and 21.07.2011.



Findings and Analysis :-

I. Whether the appointments made to DHJS on vacancies sanctioned for fast track courts is actually an appointment to a "cadre post" as per DHJS Rules, 1970?

78. The basic question raised by the petitioner is that these *ad hoc* appointments to Fast Track Courts was not against the substantive/regular posts and, therefore, their appointment cannot be deemed to be in the DHJS service w.e.f. December, 2005.

79. Thus, an appraisal of the framework of the DHJS Rules, 1970 is warranted to effectively deal with the issue of *inter-se seniority* between the Promotee Officers and the Direct recruits, as has arisen in the present case.

80. *Section 2(b) of the Delhi Higher Judicial Service Rules, 1970* defined *cadre post* to mean any post specified in the Schedule and to include a temporary post carrying the same designation as that of any of the posts specified in the Schedule or any other temporary post declared as *ex cadre* post by the Administrator. *Rule 7* pertains to the Recruitment to the Service by way of promotion amongst the Officers who had completed not less than 10 years in DJS or by direct recruitment from the Bar. This Rule further provided that not more than 1/3rd substantive posts shall be held by direct recruits. *Rule 8(2)* pertained to the Seniority of the Direct Recruits viz a viz Promotees. *Rule 16* empowered the Administrator to make temporary appointments. *Rule 17* allows filling up of substantive vacancies by making temporary appointments under Rule 16.

81. The definition of *Cadre Post* and its implications in the light of the service rules were considered in detail in the case of *O.P. Singla* (Supra). In



this case while considering the *DHJS Appointment Rules*, the Apex Court interpreted that *Rule 2(b) defining Cadre post* meant that the post specified in the Schedule and included a temporary post carrying the same designation as that of any of the posts specified in the Schedule. It was observed that the first part of the definition says that the *Cadre Post* means a post specified in the Schedule. *Posts*, therefore, by reason of first part of the definition, are the posts in the service are cadre posts. The second part of the definition includes a temporary post carrying the same designation as that of any of the posts specified in the Schedule. Since it was permissible under this Rule to create temporary posts in service, such posts were also designated as Cadre Posts. It was observed that it would be anomalous to treat a post in service as an ex-cadre post merely for the reason that the post is temporary. Normally, an ex-cadre post means post outside the cadre post comprised in a service. ***Therefore, all posts in the service whether permanent or temporary, are generally regarded as cadre posts.***

82. *Rule 2(d)* provides that a member of service means a person appointed in substantive capacity to the service under the provisions of the Rules. It shows that two conditions must co-exist in order that a person can become the *member of the service*. *First*, appointment has to be in substantive capacity and *secondly*, the appointment has to be to the service i.e. to a post in the service. Persons who hold posts bearing designation similar to the designation of posts comprised in the service cannot for that reason alone become member of a service and only when they are appointed against a substantive post they become the members of the service.

83. In the case of *O.P. Singla* (Supra), it was further explained that the pre-requisite of the right to inclusion in a common list of seniority, is that all



those who claim that right must broadly bear the same characteristics. The persons who are appointed or promoted on *ad hoc basis* or for *fortuitous reasons* or by way of *stop gap arrangement*, cannot be ranked for purpose of seniority with those who are appointed to their posts in strict conformity with the rules of recruitment, whether such latter class of posts are temporary or permanent. The Rules do not require that person belonging to the permanent category had to satisfy any particular prescription like consultation with the High Court. It was clarified that in certain cases, there would be a distinction between the process of consultation with the High Court and the screening of the promotees done by the High Court, may be at the instance of the authorities, when their names are considered for appointment as Additional District and Sessions Judges on an *ad hoc*, *fortuitous* or *stopgap* basis and thus, persons belonging to DHJS who were appointed to temporary posts of Additional District & Sessions Judges on a purely *ad hoc* basis or for *fortuitous* reasons or as *stop gap* arrangement constitute a class which is separate and distinct from those who are appointed in posts in the service in strict conformity with the rules of recruitment. In this context it was thus, held that such promotee Officers cannot be included in the list of seniority of Officers belonging to the service.

84. It was, however, emphasised that it is difficult to appreciate that in the matter of seniority, any distinction can be made between the direct recruits who are appointed to substantive vacancies in the services with the recommendation of the High Court under Rule 5(2) and the promotee Officers who were appointed in consultation with the High Court to the post in service under Rule 16 and 17, which provided for appointment of



promotees to temporary posts and substantive vacancies in the service on a temporary basis respectively. It was observed that :-

*28. Promotees who are appointed to the Service under either of these two Rules **must be considered as belonging to the same class as direct recruits appointed under Rule 5(2). They perform similar functions, discharge identical duties and bear the same responsibilities as direct recruits.** They are appointed on a regular basis to posts in the Service in the same manner as direct recruits are appointed, **the only distinction being that whereas the latter are appointed on the recommendation of the High Court, promotees are appointed in consultation with the High Court. Therefore, no distinction can be made between direct recruits on one hand and promotees appointed to the Service on the other, in the matter of their placement in the seniority list. Exclusion from the seniority list of those promotees who are appointed to posts in the Service, whether such appointment is to temporary posts or to substantive vacancies in a temporary capacity, will amount to a violation of the equality rule since, thereby, persons who are situated similarly shall have been treated dissimilarly in a matter which constitutes an important facet of their career.**"*

85. It was thus, concluded that exclusion from the seniority list of those promotes, who were appointed to the posts in the service and whose appointment was to temporary posts or to substantive vacancies, would amount to discrimination and unfairness because those situated similarly cannot be treated dissimilarly. It was further reiterated that promotee Officers, who had been appointed under Rule 16 and had been *officiating continuously* without a break, cannot be subjected to unfairness by placing the direct recruits who are appointed 5 to 10 years later, because the promote



officers were officiating continuously in the post created in the service even though such posts were temporary. It would be unjust to disregard their years of service rendered merely because the appointments were made to temporary posts and then even allow junior officers to supprecede them. The observations are as under:-

*“30.The appointments were neither ad hoc, nor fortuitous, nor in the nature of a stopgap arrangement. Indeed, **no further orders have ever been passed recalling the four promotees and, others similarly situated, to their original posts in the subordinate Delhi Judicial Service.** Promotees who were appointed under Rule 16 have **been officiating continuously, without a break, as Additional District and Sessions Judges for a long number of years.** It is both unrealistic and unjust to treat them as aliens to the Service merely because the authorities did not wake up to the necessity of converting the temporary posts into permanent ones, even after some of the promotees had worked in those posts from five to twelve years. Considering the history of the Delhi Higher Judicial Service, it is clear that the phrase 'till further orders' is only a familar official device to create and perpetuate temporary posts in the Service when the creation of permanent posts is a crying necessity. The fact that temporary posts created in the Service under Rule 16(1) had to be continued for years on end shows that the work assigned to the holders of those posts was, at least at some later stage, no longer of a temporary nature. And yet, instead of converting the temporary posts into permanent ones, the authorities slurred over the matter and imperilled, though unwittingly, the reasonable expectations of the promotees. 'Unwittingly' because, **no one appears to have been interested in belittling the contribution of the promotees who held temporary posts in the Service or in consciously jeopardising their prospects.** The tragedy is that no*



one was interested in anything at all. Or else, why was direct recruitment not made from time to time, at regular intervals? If that were done, the undesirable situation which confronts us today could have been easily avoided. The proviso to Rule 7 prescribes a system of quota and rota. Why was that Rule put in cold storage by creating temporary posts in the Service when permanent posts were clearly called for? Permanent posts could have been allocated to direct recruits and promotees in the ratio of one to two. In these circumstances, it will be wholly unjust to penalise the promotees for the dilatory and unmindful attitude of the authorities. It is not fair to tell the promotees that they will rank as juniors to direct recruits who were appointed five to ten years after they have officiated continuously in the posts created in the Service and held by them, though such posts may be temporary. This Court, at least, must fail them not.”

86. In the above case of O.P. Singla (Supra), it was thus concluded that those promotee Officers being *ad hoc* appointees, cannot be considered to be not holding a cadre post if they have been appointed after consultation with the High Court and also have the requisite qualification of 10 years as prescribed under the rules; their appointments cannot be termed as *ad hoc* appointments. The relevant extract of the judgment is as under:-

“ 32. That is why, it would be hyper-technical to make a sub-classification between promotees appointed under Rule 16 and those appointed under Rule 17, with the object of denying to the latter the equality of status and opportunity with the former and with direct recruits. It is true that under Rule 16, promotees are appointed to temporary posts in the Service while, under Rule 17 they are appointed in a temporary capacity to substantive vacancies in the Service. But this kind of service jargon clouds the real issue as to



*whether persons appointed under different rules necessarily belong to different classes and tends to produce inequalities by an artful resort, dictated by budgetary expediency, to the familiar device of fixing dissimilar labels of posts which carry the same duties and responsibilities and are subject to similar pre-appointment tests. **It may even be that in the process of consultation, the High Court exercises greater vigilance in regard to appointments proposed under Rule 16 than in regard to appointments which are proposed under Rule 17. But, the fact that the High Court chooses to adopt, of its own volition, any particular approach in the matter of appointments made under different rules, cannot justify the proposition that persons appointed under different rules necessarily belong to different classes. The requirement for appointments under both the rules is, equally, that they must be made in consultation with the High Court. The High Court is, therefore, expected to apply the same standard and adopt the same approach whether appointments are proposed to be made under Rule 16 or Rule 17. Any attempt to subdivide the promotees according as to whether they are appointed under Rule 16 or Rule 17 will result in the creation of a distinction where no difference exists. The object of classification is to find a remedy to such situations, not to create or perpetuate them.***

33. It may bear emphasis that promotees appointed under Rules 16 and 17 to the Higher Judicial Service can rank for seniority along with direct recruits only if they are appointed in consultation with the High Court as required by those Rules and if they satisfy the requirement laid down in Rule 7(a) that they must have completed not less than ten years of service in the Delhi Judicial Service.



34. The best solution to the situation which confronts us is to apply the rule which was adopted in S.B. Patwardhan v. State of Maharashtra It was held by this Court in that case that all other factors being equal continuous officiation in a non-fortuitous vacancy ought to receive due recognition in fixing seniority between persons who are recruited from different sources, so long as they belong to the same cadre, discharge similar functions and bear the same responsibilities. Since the rule of quota and rota ceases to apply when appointments are made under Rules 16 and 17, the seniority of direct recruits and promotees appointed under those Rules must be determined according to the dates on which direct recruit were appointed to their respective posts and the dates from which the promotees have been officiating continuously either in temporary posts created in the Service or in substantive vacancies to which they were appointed in a temporary capacity. “

87. Following the judgment of O.P. Singla (Supra), the DHJS Rules, 1970 were amended w.e.f 17.03.87, whereby “in substantive capacity” occurring in Rule 2(d) stood deleted and Rule 16(2) and 17 were substituted. The purport of the amendment was to allow filling up of posts created under Rule 16(1) i.e. Temporary Posts even by way direct recruitment from the Bar in addition to from promotion from the Delhi Judicial Service.

88. At this juncture, to determine whether the nomenclature of a post would be determinative of that post, it becomes imperative to understand the **concept of ad hoc appointments.**

89. The terms “ad hoc”, “fortuitous”, “stop gap” appointments was detailed which was explained by the Apex Court in the case of Rudra Kumar Sain and Others (Supra), which reads as under :



“16. The three terms ***ad hoc***, ***stop gap*** and ***fortuitous*** are in frequent use in service jurisprudence. In the absence of definition of these terms in the rules in question we have to look to the dictionary meaning of the words and the meaning commonly assigned to them in service matters. The meaning given to the expression ***fortuitous*** in ***Strouds Judicial Dictionary*** is accident or fortuitous casualty. This should obviously connote that if an appointment is made accidentally, because of a particular emergent situation and such appointment obviously would not continue for a fairly long period. But an appointment made either under Rule 16 or 17 of the Recruitment Rules, after due consultation with the High Court and the appointee possesses the prescribed qualification for such appointment provided in Rule 7 and continues as such for a fairly long period, then the same cannot be held to fortuitous. In ***Blacks Law dictionary***, the expression ***fortuitous*** means ***occurring by chance***, a ***fortuitous event*** may be ***highly unfortunate***. It thus, indicates that it occurs only by chance or accident, which could not have been reasonably foreseen. The expression ***ad hoc*** in ***Blacks Law Dictionary***, means ***something which is formed for a particular purpose***. The expression ***stop-gap*** as per ***Oxford Dictionary***, means ***a temporary way of dealing with a problem or satisfying a need***.

17. In ***Oxford Dictionary***, the word ***ad hoc*** means for a particular purpose; specially. In the same Dictionary, the word ***fortuitous*** means happening by accident or chance rather than design.

18. In ***P. Ramanatha Aiyers Law Lexicon (2nd Edition)*** the word “***ad hoc***” is described as “For particular purpose, Made, established, acting or concerned with a particular (sic) and or purpose”. The meaning of word “***fortuitous event***” is given as an event which happens by a cause which we cannot resist; one which is unforeseen



and caused by superior force, which it is impossible to resist; a term synonymous with Act of God.

19. The meaning to be assigned to these terms while interpreting provisions of a Service Rule will depend on the provisions of that Rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter-se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as “ad hoc” or “stop-gap”. If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as fortuitous in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a stop-gap arrangement and appointment in the post as ad hoc appointment. It is not possible to lay down any straight-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stop-gap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the question of inter se seniority of officers in the cadre.



20. In the Service Jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such appointment cannot be held to be stop-gap or fortuitous or purely ad hoc.”

90. Thus, in the case of Rudra Kumar Sain (Supra), when again the question of seniority between direct recruits and promotes came to be considered, it was reiterated that those promotee Officers who have continuously held the post of Addl. District and Sessions Judge cannot be treated as hoc or fortuitous or stop gap appointees and therefore, made junior to the direct recruit who get appointed after them. ***It is only when the promotions are made without consultation with or approval of the High Court or the promotees lack the requisite qualifications of minimum ten years or any such short term appointment made in the exigencies of the particular situation, can it be termed as ad hoc, fortuitous or stop gap appointment.*** The seniority has to be determined *according to the length of continuous officiation* regardless of whether an appointee held the temporary post or permanent post.

91. Again, the question of *inter se* seniority in DHJS *inter se* the promotee Judges and direct recruits again came up for consideration in B S Mathur, (supra). After discussing all the previous judgments referred to endorsing the principles enunciated in OP Singla, (supra) and Rudra Kumar Sain, (supra), it was ***held that inter se seniority is to be determined on the basis of continuous length of service which was equitable for both, the***



promotees as well as the direct recruits. The relevant part of the judgment in *B S Mathur*, (supra) read as under :

“51. Further, it has to be kept into consideration that seniority even by one day may materially affect the future prospects and career of an officer. The person appointed even one day earlier may reach a position which the person appointed one day later may not be able to reach due to reasons such as limited number of higher posts or his becoming age-barred by the time next vacancy arises. The only advancement in the career of a member of the Delhi Higher Judicial Service is elevation to the High Court. Therefore, it will not be fair and equitable to give march to a later appointee over a prior appointee of the same year, even if that march is for a few months or even for a few days. It, therefore, cannot be disputed that the application of the OM dated 3-7-1986 which does not ipso facto apply to officers of the Delhi Higher Judicial Service would produce inequity for officers from one or the other source and therefore, has to be avoided if a better principle, which is fair and reasonable to all can be applied.

52. As observed earlier, perusal of the seniority list prepared on the basis of the principle of "continuous length of service" clearly demonstrates that in case the seniority of the officers of DHJS is fixed by reference to their date of appointment, then nobody would suffer any injustice. Each and every officer would get due weightage of the service rendered by him or her in the cadre of DHJS. If inter se seniority is finally decided by applying the principle of "continuous length of service", it may bring an end to litigation between the officers of the two groups. Therefore, the principle of "continuous length of service" should be applied for determining the inter se seniority of the officers of the Delhi Higher Judicial Service appointed up to the year 2006. In case of officers appointed on the same date,



whether the direct appointees or the promotees, the seniority should be fixed on the principles as stated in the OM dated 3-7-1986 since it cannot be determined on the basis of length of service alone in case of appointment from two different sources on the same date.

*53. As far as the inter se seniority of the officers to be appointed in DHJS after the year 2006 is concerned, this Court in its judgment in All India Judges Assn. (III) v. Union of India [(2002) 4 SCC 247 : 2002 SCC (L&S) 508] has directed all the High Courts to make necessary amendment in the Rules providing for determining the inter se seniority on the basis of 40-point roster considered and approved in R.K. Sabharwal v. State of Punjab [(1995) 2 SCC 745 : 1995 SCC (L&S) 548 : (1995) 29 ATC 481]. **The necessary amendment relating to inter se seniority for future be made in the DHJS Rules in consonance with the directions of this Court as referred in the abovementioned cases. Till such time the principle of "continuous length of service" i.e. date of appointment should be applied for determining the inter se seniority of the officers of the Delhi Higher Judicial Service.***

92. This decision of Apex Court in BS Mathur (Supra) settled the issue of seniority between promotes and direct recruits by laying down the principle that service or “continuous length of service” is the determinative factor. Pertinently, in BS Mathur (Supra) Officers promoted to Fast Track Courts on ad-hoc basis were considered to be the part of cadre strength of the DHJS in accordance with the change in the definition of “Member of Service” under DHJS Rules, 1970.

93. Keeping in mind the extensive law laid in the above judicial pronouncement with respect to recruitment procedure and determination of inter se seniority of officers appointed under the DHJS Rules, 1970, the



present case may be considered.

94. *The controversy now is that what is the status of the officers posted on ad hoc basis against ex-cadre posts meant for Fast-track Courts.*

95. The genesis of these courts lies in the recommendations of the 11th Finance Commission. It allocated Rs. 502.90 crores under Article 275 of the Constitution of India for the purpose of setting up of 1734 courts in various courts to deal with the long-pending cases, particularly the sessions cases. Since the funds were stipulated to be utilised in time-bound manner within a period of five years, therefore, various States were required to take necessary steps to establish such courts. The Fast-track Court Scheme originally contemplated establishment of five courts per district in approximately in 6,000 districts, thus making a total of 3,000 courts in the country. The Finance Commission had suggested that the States may consider re-employment of retired Judges for limited period for the disposal of the pending cases, since these courts were to be on ad hoc basis in the sense that they would not be a permanent addition to the number of Courts within a particular State. A note was prepared by the Department of Justice, Government of India stating that there was no mandatory requirement for appointment of retired Sessions/Additional Sessions Judges or other officers and *Ad hoc* promotion of judicial officers was also contemplated. It was pointed out that consequential vacancies created on account of ad hoc promotions can be filled up by a special drive so that there is no shortfall in the personnel of the lower Courts. The High Court which has to play a pivotal role in the implementation of the scheme for its effective implementation and achievement of the above objectives, of course, complying with the constitutional requirements embodied in relevant



provisions of Chapter VI of the Constitution. This Scheme of establishing Fast Track Courts was challenged before various High Court primarily on the ground that there was no constitutional sanction for employment of retired judges.

96. The issue was finally settled by the Supreme Court in Brij Mohan Lal vs. Union of India & Ors. (2002) 5 SCC 1, wherein the Supreme Court upheld the Scheme and passed various directions for appointment of Judicial Officer to Fast Track Courts. While considering the said recommendations for setting up of Fast-track Courts, the Apex Court in Brij Mohan Lal (supra) observed that keeping in view the laudable objectives with which the Fast Tract Courts Scheme has been conceived and introduced, the following directions, for the present, would be sufficient to take care of initial teething problems highlighted by the parties: -

“1. The first preference for appointment of judges of the Fast Track Courts is to be given by ad-hoc promotions from amongst eligible judicial officers. While giving such promotion, the High Court shall follow the procedures in force in the matter of promotion to such posts in Superior/Higher Judicial Services.

2. The second preference in appointments to Fast Track Courts shall be given to retired judges who have good service records with no adverse comments in their ACRs, so far as judicial acumen, reputation regarding honesty, integrity and character are concerned. Those who were not given the benefit of two years extension of the age of superannuation, shall not be considered for appointment. It should be ensured that they satisfy the conditions laid down in Article 233(2) and 309 of the Constitution. The concerned High Court shall take a decision with regard to the minimum-maximum age of eligibility to ensure that they are physically fit for the work in Fast Track Courts.

3. No Judicial Officer who was dismissed or removed or



compulsorily retired or made to seek retirement shall be considered for appointment under the Scheme. Judicial Officers who have sought voluntary retirement after initiation of Departmental proceedings/inquiry shall not be considered for appointment.

4. The third preference shall be given to members of the Bar for direct appointment in these Courts. They should be preferably in the age group of 35-45 years, so that they could aspire to continue against the regular posts if the Fast Track Courts cease to function. The question of their continuance in service shall be reviewed periodically by the High Court based on their performance. They may be absorbed in regular vacancies, if subsequent recruitment takes place and their performance in the Fast Track Courts is found satisfactory. For the initial selection, the High Court shall adopt such methods of selection as are normally followed for selection of members of the Bar as direct recruits to the Superior/Higher Judicial Services.

5. Overall preference for appointment in Fast Track Courts shall be given to eligible officers who are on the verge of retirement subject to they being physically fit.”

97. It was observed in the Brij Mohan Lal, (supra) 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. 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.*** Thus, essentially two directions are of relevance : (a) Preference for appointment in the Fast Track Courts be given to the existing judicial officers by way of *ad hoc* promotions; and (b) Such appointment would not



give rise to any claim for seniority and service rendered in the ad hoc post had to be counted as a service in the parent cadre.

98. The cadre strength of DHJS as on 31.12.1991 was of 60 officers. The said strength, later on, stood increased by addition of more and more new posts from time to time. As on the date of considerations, cadre strength was of 174 officers. The details of recruitment by promotion and direct recruitment made to the service from 1992 to 2006 are as under:-

Appointments under promotion quota

<i>Year</i>	<i>No. of promotees</i>	<i>Date of promotion</i>
1992	7	17-12-1992
1994	7	28-4-1994
1995	9	(4 on 25-2-1995 and 5 on 24-8-1995)
1996	21	(5 on 24-8-1995, 5 on 6-1-1996, 10 on 24-7-1996, 5 on 16-11-1996 and 1 on 20-11-1997)
1997	14	22-11-1997
2000	23	(8 on 26-5-2000 and 15 on 16-8-2000)
2003	24	6-8-2003
2006	28+15 (Fast Track promotion on ad hoc basis)	4-1-2006

Appointments under direct recruitment quota

<i>Year</i>	<i>No. of direct recruits</i>	<i>Date of promotion</i>
1992	1	9-12-1992
1995	9	7/9-3-1995
1997	8	21-4-1997
2000	7	26-5-2000
2002-2003	12	26-11-2002



99. It is quite evident that ex-cadre posts meant for Fast-track Courts had been reflected separately in the cadre strength, as had been observed in the case of OP Singhla (supra) and that such posts specified in the Schedule is a *cadre post*; whether such post is comprised in the service or not. It, therefore, needs no reiteration that these Fast-track Courts were the part of the cadre.

100. The second aspect is *whether their appointments, though on ad hoc basis w.e.f. 07.12.2005, can be termed as an appointment to posts which would not constitute an appointment in DHJS cadre*. This again, as has been explained in the case of Rudra Kumar Sain, (supra) by the Apex Court that these appointments were neither *ad hoc*, *fortuitous* nor *by way of stop-gap arrangement*. These were the appointments made against the posts on which the promotee officers had been in continuous officiation.

101. Furthermore, their appointment by the High Court had been made under Rule 16 or Rule 17 after due consultation and approval of the High Court and they were qualified to hold the promotional post inasmuch as they all had completed their ten years in continuous service in DJS, in accordance with the principles as enunciated in OP Singla, (supra) and Rudra Kumar Sain, (supra). By no stretch of interpretation can it be said that their appointments were not made in DHJS Cadre because though these appointments were defined as appointments on ad hoc basis against ex-cadre posts meant for Fast-track Courts, the said *posts were cadre posts, these officers were the ones who were eligible for promotion to DHJS, they were appointed to posts carrying the same designation as Additional District & Sessions Judge and had been appointed by the High Court after following*



the regular promotional process, including the eligibility conditions.

102. Therefore, the claim of the petitioner that these appointments were not made *in cadre posts*, is totally untenable.

II. Whether the present petition suffers from delay and laches ?

103. The fact that these were regular appointments, is further corroborated by the fact that on 20.10.2008, a Committee of three Judges was constituted which prepared a draft list which did not include the names of the Judges over whom the petitioner was seeking her seniority. However, the Full-Court Meeting held on 27.11.2008 resolved to add the names of the officers who were appointed to the Fast-track Courts in the year 2005 and to circulate this list as a *provisional seniority list*, calling for the objections. The names of these officers over whom the petitioner is claiming the seniority, were included in this draft seniority list from *Serial No. 182 to 191*. The objections were invited against the draft seniority list and the Committee considered the objections received and submitted its Report which was considered in the Full-Court Meeting held on 18.11.2009 and the seniority list of the officers from *Serial No. 58 to 191* which included the officers appointed against the Fast-track Courts, was directed to be circulated as a final seniority list of officers.

104. This final seniority list got approved in the Full-Court Meeting held on 23.12.2009. The seniority list was modified from Serial No. 179 on the basis of the Full-Court Meeting held on 26.05.2011. The revised seniority list was again circulated on 13.09.2011. It is, therefore, not in dispute that the seniority list containing the names of the officers who had been posted for Fast-track Courts *vide* Notification dated 07.12.2005 and who joined on



04.01.2006, was finalised.

105. Pertinently, the petitioner had joined DHJS as a direct recruit on 16.07.2008 and the proposed seniority list was circulated after she had joined the services, but she chose not to take any objection then.

106. The list got finalised and the final seniority list got duly circulated, firstly on 18.11.2009 and the modified Seniority list was again circulated on 13.09.2011. The petitioner did not challenge this seniority list even thereafter, even though she kept filing the writ petitions for claiming her own seniority.

107. In the case of P.S. Sadasivaswamy, (supra), it was observed that a person aggrieved by an order of promoting a junior over his head should approach the court at least within six months or at the most a year of such promotion. Though there is no period of limitation for the courts to exercise their jurisdiction under Article 226 of the Constitution of India nor is it that there can never be a case where the courts cannot interfere with any matter after a passage of certain length of time, but it would be a sound and wise exercise of discretion of the courts to refuse to exercise their extraordinary powers under Article 226 of the Constitution of India in a case where persons do not approach it expeditiously for relief and who standby and allow things to happen and then approach the court to put forward stale claims and try to unsettle the settled matter. It was held that the delay of 14 years in filing the writ petition was nothing but a waste of time of the court and the writ petition was dismissed *in limine*.

108. Similarly, in the case of Vijay Kumar Kaul (supra), it was held that the claims of seniority must be put forth at the earliest or within reasonable time. Belated approach is impermissible as in the meantime, the interest of



third party ripen and any interference is likely to cause anarchy. We may, therefore, observe that the present petition also suffers from delay and laches and is liable to be dismissed on this ground itself.

109. In the present case, the Petitioner preferred a representation against the aforesaid list circulated way back in 2011 only on 06.06.2014 i.e. after a period of 4 and a half years without stating any reason for the delay. Moreover, the Petitioner was admittedly supplied the Seniority List finalized by the Full Court *vide* its decision dated 18.11.2009 as modified on 26.05.2011 *vide* letter dated 18.07.2016 yet, she preferred the first writ petition before the Supreme Court on 26.10.2020.

110. *Thus, the Petitioner now cannot be allowed to supersede officers who are above her in the seniority list approved by the Hon'ble Full Court on 18.11.2009 and unsettle the list, without challenging or raising objections against the same within reasonable time.*

III. Whether the impugned decisions dated 08.10.200 of the Seniority Committee and the decision dated 16.12.2002 of the Full Court, are erroneous for rejecting the Report/recommendation dated 25.05.2016 of the Previous Seniority Committee?

111. *The third aspect* is that the petitioner is seeking the implementation of the recommendations given by a Seniority Committee in its Report dated 25.05.2016, wherein the name of the petitioner was proposed to be placed above Shri Narendra Kumar whose name appeared at Serial No. 182 in the final seniority list of 18.11.2009.

112. It is not in dispute that the recommendations had been made by the Seniority Committee but the recommendations were overruled by the Full-



Court in its decision dated 16.12.2022.

113. A recommendation which is not accepted by the Full Court, cannot be a basis for claiming any substantive rights. A recommendation is merely a recommendation and does not create any vested right till it is accepted by the Full Court.

114. Thus, the petitioner cannot seek implementation of a recommendation which was never approved by the Full Court, and which now has the effect of upsetting the settled rights and seniority of DHJS Officers.

IV. Whether the officers over whom the Petitioner is claiming seniority, are necessary party to the present petition ?

115. Pertinently, there were 17 Officers of DJS which got promoted on ad hoc basis against ex-cadre posts meant for Fast-track Courts as mentioned above.

116. *Vide* Notification No. F.6/31/97-Judl./ dated 11.02.2008, the following seven Officers were appointed on temporary basis: -

“

NOTIFICATION

*No.F.6/31/97-Judl./ – In pursuance of the provisions of rule 7(a) read with rule 16(2) of the Delhi Higher Judicial Service Rules, 1970, the Lt. Governor of the National Capital Territory of Delhi, in consultation with the High Court of Delhi is pleased to appoint **Mr. Sudesh Kumar, Mr. Gulshan Kumar, Ms. Nisha Saxena, Mr. Shahabuddin, Mr. Ashwani Kumar Sarpal, Mr. Sanjay Sharma and Mr. Rajender Kumar Shastri** on temporary basis to the Delhi Higher Judicial Service and for appointment of Mr. Narinder Kumar on adhoc basis against regular vacancy subject to the outcome of the departmental inquiry pending against Mr. J.P. Narain, from the date they assume charge of their office.*



*By order and in the name of the
Lt. Government of National
Capital Territory of Delhi.
S/d
(G.P. Mittal),
Pr. Secretary (Law, Jus. & L.A.)”*

117. Therefore, the first seven officers, out of 17 appointments to Fast Track Courts were placed against regular vacancy on 11.02.2008. Therefore, even if the contentions of the petitioner are to be accepted, these seven officers joined DHJS against the regular vacancies, prior to petitioner's appointment in DHJS on 16.07.2008. The petitioner cannot have any claim against them.

118. Pertinently, 3 Officers (Sr. No. 193-195), namely, *Ms. Aditti Chaudhary, Mr. Prem Kr. Barthwal and Mr. Manmohan Sharma* were directly recruited in DHJS vide Notification dated 11.06.2007 in DHJS cadre and they joined on 11.06.2007.

119. Thereafter, 14 Officers (Sr. No. 196-209), namely *Mr.Dinesh Bhatt Mr.Arun Bhardwaj , Mr.Arvind Kumar, Mr.Pitamber , Mr.Sanjay Garg-II, Mr.Pankaj Gupta., Mr.Jirender Kr. Mishra , Mr.Sanjeev Kumar, Mr.Vijay Kumar Dahiya, Mr.Umed Singh, Mr.Virender Bhat, Mr.Sunil Rana, Mr.Nikhil Chopra and Mr.Pawan Kumar Matto*, were also directly recruited in DHJS vide Notification dated 03.04.2008, who joined on 04.04.2008 while two Officers Mr. Vijay Kumar Dahiya and Mr. Umed Singh joined on 05.04.2008 and 10.04.2008 respectively.

120. It is evident that the Petitioner not only seeks to supersede promotees appointed to Fast Track Courts (*Sr No.183 to 192 as modified by the Full Court Decision dated 26.05.2011*) but also these 17 officers who are



indisputably senior to her, but junior to the 17 promotee officers.

121. The petitioner pertinently claims her seniority above *Shri Narinder Kumar* but significantly does not mention about the 17 direct recruits who got appointed in June 2007 and May, 2008 i.e., before the petitioner. The petitioner as per her own case, has no claim of seniority over them.

122. Obliquely, the petitioner is trying not to claim her seniority above *Shri Narinder Kumar*, but is indirectly trying to downscale and bring the seven officers below her seniority, even though they had been appointed against the cadre posts and have been notified in December, 2005 and joined in January, 2006. The petitioner's endeavour is not to scale up her seniority which remains where it is, but it is to bring down the seven officers who validly stood promoted much prior to the petitioner, on the basis of their continuous length of service of more than ten years.

123. In this context, the objection taken on behalf of the respondent No.1/High Court that those officers have not been a party whose seniority would be impacted in case the claim of the petitioner is allowed, has merit. The petitioner should have made all the officers a party over whom she is claiming seniority.

Conclusion:-

124. It is, therefore, held that seniority of 17 officers of DJS who got appointed on *ad hoc* basis against ex-cadre posts meant for Fast-track Courts in DHJS *vide* Notification dated 07.11.2005 and joined on January, 2006 stood finalised *vide* List Dated 18.11.2009 and modified seniority List dated 13.09.2011. Therefore, their seniority stands above the seniority of the petitioner.



2024:DHC:5344-DB



125. *We find no merit in the present petition which is hereby dismissed along with pending application(s), if any.*

(NEENA BANSAL KRISHNA)
JUDGE

(SURESH KUMAR KAIT)
JUDGE

JULY 19, 2024

VA/S.Sharma