

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2025:PHHC:038430-DB



Civil Writ Petition No. 22297 of 2021 (O&M)

Reserved on: 10.12.2024

Date of Decision: 20.03.2025

Neelam Arora

.....Petitioner

versus

Punjab and Haryana High Court, Chandigarh and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE
HON'BLE MR. JUSTICE ANIL KSHETARPAL, JUDGE**

Present : Mr. D.S.Patwalia, Senior Advocate with
Mr. Gaurav Rana, Advocate and
Mr. A.S.Chadha, Advocate, for the petitioner.

Mr. R.S.Kalra, Advocate with
Ms. Mona Yadav, Advocate and
Mr. Karan Sharma, Advocate, for respondent-High Court.

SHEEL NAGU, CHIEF JUSTICE

The petitioner who is serving as a Judicial Officer being member of the Punjab Superior Judicial Services has filed this petition assailing notification dated 15.12.2020 (Annexure P-8) showing inter-se seniority of officers promoted to the Punjab Superior Judicial Services in the years 2009, 2010 and 2011 under the promotee quota as per Rule 7(3)(a) of the Punjab Superior Judicial Services Rules, 2007 (for short 'Rules of 2007'). The aforesaid challenge is based on the following grounds:-

- i) The impugned notification/seniority list (Annexure P-8) does not reflect the name of petitioner, despite petitioner having been

promoted as Additional District & Sessions Judge (Adhoc/Fast Track Court) vide order dated 06.04.2009 (Annexure P-3).

- ii) The impugned notification/seniority list (Annexure P-8) reflects the name of private respondents No. 2 to 16 despite the said private respondents having been appointed subsequent to the petitioner as Additional District Judge.
- iii) The petitioner is denied the benefit of counting of services rendered as Additional District & Sessions Judge (Adhoc/FTC) from April-2009 to 31.03.2011 and from 09.06.2011 till regular promotion as Additional District & Sessions Judge on 02.06.2012, for the purpose of computing seniority in regular cadre of Punjab Superior (Judicial) Services.

2. After hearing learned counsel for the rival parties at length, perusing the pleadings on record and the relevant citations relied upon by learned counsel, this Court for the purpose of clarity seeks to delineate the relevant events which took place in the present case in a chronological and tabular manner as follows: -

DATES AND EVENTS

08.06.1992	Petitioner joined Punjab Civil Services (Judicial Branch), as Civil Judge (Junior Division).
2000	11 th Finance Commission recommends the scheme for constitution of Fast Track Courts (FTCs) for eliminating mounting arrears.
Recruitment Rules of 2001	Rules were framed for appointment of Judges in FTCs.
2001	Petitioner was promoted as Chief Judicial

	Magistrate.
06.04.2009	The petitioner is promoted as Additional District Judge (Adhoc/FTC) and posted at Fatehgarh Sahib.
04.02.2011	Advertisement is issued for promotion to the post of Additional District Judge under the quota as per Rule 7(3)(a) of Punjab Superior Judicial Services Rules-2007. The petitioner appeared in suitability test but was not promoted for being lower down in merit.
2011	FTC Scheme discontinued.
31.03.2011	The petitioner is repatriated from Additional District Judge (FTC) to his parent cadre as Chief Judicial Magistrate and posted at Tarn-Taran (Punjab).
2011	Fast Track Court Scheme revived.
09.06.2011	The petitioner is reappointed as Additional District Judge (FTC).
02.06.2012	The petitioner is promoted in the regular cadre of Additional District Judge under the quota prescribed in Rule 7(3)(a) of Rules of 2007.
06.10.2019 and 15.02.2020	The petitioner preferred representations to High Court against tentative seniority list dated 18.09.2020 for fixation of proper seniority in the cadre of Punjab Superior Judicial Services seeking counting of services rendered as ADJ (FTC) and placement above private respondents.
15.12.2020	The impugned notification/seniority list assigning

	inter-se seniority of members of Punjab Superior Judicial Services promoted/appointed in the years 2009, 2010 and 2011 under Rule 7 of Rules of 2007, also mentioning names of private respondents, is published. The name of the petitioner did not figure in this notification. Hence the present petition.
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3. Thus the entire submission of learned counsel for petitioner is founded upon counting of services rendered by petitioner as ADJ (FTC) from April-2009 to 31.03.2011 and from 09.06.2011 to 02.06.2012 for the purpose of computing seniority in the regular cadre of Additional District Judge to which petitioner was promoted on 02.06.2012 (Annexure P-7).

4. The question as to whether, the services rendered as ADJ (Adhoc-FTC) while substantively holding post of Chief Judicial Magistrate, can be counted for assigning seniority in the regular cadre of Additional District Judge, is no more res-integra in view of the following decisions of the Apex Court, which have since long settled the said controversy in the following terms:-

i) ***Brij Mohan Lal vs. Union of India and others, 2002(5) SCC 1:-***

“10 (14). No right will be conferred on judicial officers in service for claiming any regular promotion on the basis of his/her appointment on ad hoc basis under the Scheme. The service rendered in Fast Track Courts will be deemed as service rendered in the parent cadre. In case any judicial officer is promoted to higher grade in the parent cadre during his tenure in Fast Track Courts, the service rendered in Fast Track Courts will be deemed to be service in such higher grade.”

ii) ***Brij Mohan Lal vs. Union of India and others, 2012(6) SCC 502:-***

“76. 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 31-3-2011. No permanent posts were ever created. In other words, their appointments were temporary appointments against temporary posts.

77. 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.

iii) ***Debabrata Dash and another vs. Jatinder Prasad Das and others 2013(3) SCC 658:-***

“45. In *Brij Mohan Lal (2)* [(2012) 6 SCC 502 : (2012) 2 SCC (L&S) 177] , inter alia, the controversy centred around the closure of Fast Track Courts Scheme and the appointment of retired District and Sessions Judges as ad hoc Judges of the Fast Track Courts. In one of the writ petitions filed before this Court, the relief was intended to ensure that only the members of the Bar were appointed by direct recruitment to the post of ad hoc District and Sessions Judges under the Fast Track Courts Scheme. The Court considered the directions given by this Court in *Brij Mohan Lal (1)* [(2002) 5 SCC 1 : 2002 SCC (L&S) 615] . The Court observed in *Brij Mohan Lal (2)* [(2012) 6 SCC 502 : (2012) 2 SCC (L&S) 177] , that this Court had foreseen the possibility of the closure of the Fast Track Courts Scheme. The Court noted the directions given in *Brij Mohan Lal (1)* [(2002) 5 SCC 1 : 2002 SCC (L&S) 615] , inter alia, in the following manner: (SCC p. 523, para 7)

“7. ... that the service in FTCs will be deemed as service of the promoted judicial officers rendered in the parent cadre. However, no right would accrue to such recruits promoted/posted on ad hoc basis from the lower judiciary for regular promotion on the basis of such appointment. For direct recruits, continuation in service will be dependent on review by the High Court and there could be possibility of absorption in the regular vacancy if their performance was found to be satisfactory.”

iv) ***V.Venkata Prasad and others vs. High Court of A.P. and others 2016(11) SCC 656:-***

“25. From the aforesaid two authorities, it is quite clear that the appointments in respect of Fast Track Courts are ad hoc in nature and no right is to accrue to such recruits promoted/posted on ad hoc basis from the lower judiciary for the regular promotion on the basis of such appointment. It has been categorically stated that FTC Judges were appointed under a separate set of rules than the rules governing the regular appointment in the State Higher Judicial Services.”

v) ***Kum C.Yamini vs. State of Andhra Pradesh and another, 2019(17) SCC 228:-***

“14. We have perused the judgment relied on by the appellant party in person, in Rudra Kumar Sain v. Union of India [Rudra Kumar Sain v. Union of India, (2000) 8 SCC 25 : 2000 SCC (L&S) 1055] . In the aforesaid case, issue relates to claim of seniority between direct recruits and promotees. The learned Senior Counsel Sri Venkataramani, has also relied on the judgments of this Court in Brij Mohan Lal (1) v. Union of India [Brij Mohan Lal (1) v. Union of India, (2002) 5 SCC 1 : 2002 SCC (L&S) 615] ; in Debabrata Dash v. Jatindra Prasad Das [Debabrata Dash v. Jatindra Prasad Das, (2013) 3 SCC 658 : (2013) 1 SCC (L&S) 751] ; in V. Venkata Prasad v. High Court of A.P. [V. Venkata Prasad v. High Court of A.P., (2016) 11 SCC 656 : (2016) 2 SCC (L&S) 698] and in Brij Mohan Lal (2) v. Union of India [Brij Mohan Lal (2) v. Union of India, (2012) 6 SCC 502 : (2012) 2 SCC (L&S) 177] . We have looked into the judgments referred to above by the learned Senior Counsel Sri Venkataramani and the party in person. Having regard to issue involved in the present appeals, we are of the view that the ratio decided in the aforesaid cases would not render any assistance in support of their claim in these cases. The claim of seniority will depend upon several factors, nature of appointment, rules as per which the appointments are made and when appointments are made, were such appointments to the cadre posts or not, etc. When the appellants were not appointed to any regular posts in the A.P. Judicial Service, the appellants cannot claim seniority based on their ad hoc appointments to preside over Fast Track Courts. We are of the view that the ratio decided in the said judgments relied on by the appellants would not render any assistance in support of their case.”

vi) ***Ch. Ramesh Babu vs. State of A.P. and others 2018(3) ALT 564:-***

“31. But, unfortunately for the petitioners, direction No.14 contained in paragraph 10 of the decision in Brij Mohanlal, came to be considered in a later judgment of the Supreme Court in Debabrata Dash v. Jatindra Prasad Das [(2013) 3 SCC 658]. As seen from paragraph 2 of the said decision, the question that arose in Debabrata Das was

whether the service rendered in the Fast Track Court as Additional District Judge is to be taken into account while fixing the seniority after regularisation of service. In paragraph 42 of the said decision, the Supreme Court considered the effect of the decision in Rudra Kumar Sain. In paragraph 43, the Supreme Court referred to Brij Mohanlal and direction No.14 contained therein. In order to understand the scope of the direction No.14 contained in paragraph 10 of the decision in Brij Mohanlal, the Supreme Court paraphrased the said direction, in paragraph 43 of its decision in Debabrata Dash and thereafter, answered the issue in paragraph 44 squarely against the petitioners herein.”

vii) ***Uttaranchal Forest Rangers Association (Direct Recruits) and others vs. State of U.P. and others 2006(10) SCC 346:-***

“37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in Keshav Chandra Joshi v. Union of India [1992 Supp (1) SCC 272 : 1993 SCC (L&S) 694 : (1993) 24 ATC 545] held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one, it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship, but it is unavoidable and any construction otherwise would be illegal, nullifying the force of the statutory rules and would offend Articles 14 and 16(1) of the Constitution.”

viii) ***Panchanan Sharma vs. State of Bihar 2020(2) PLJR 472:-***

“4. We have examined the contents of all the aforesaid decisions and what can be culled out therefrom is that the period of service rendered as an Additional District & Sessions

Judge, Fast Track Court, cannot be counted for the purpose of seniority. However, such period having been rendered as Adhoc/Fast Track Court Judges by actually dispensing justice on the facts of the present case, would, obviously, be have to be construed that the petitioners had rendered service while retaining their parent cadre of Civil Judge (Senior Division) and therefore, the said period cannot be counted for the purpose of benefits as being member of their parent cadre”.

ix) ***State of Uttaranchal and another vs. Dinesh Kumar Sharma 2007(1) SCC 683:-***

“29. *In a recent judgment of this Court in Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P. [(2006) 10 SCC 346 : (2006) 9 Scale 577] (Dr. Ar. Lakshmanan and Tarun Chatterjee, JJ.), this Court was of the view that seniority has to be decided on the basis of rules in force on the date of appointment, no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre. Similar view was taken by this Court in Keshav Chandra Joshi v. Union of India [1992 Supp (1) SCC 272 : 1993 SCC (L&S) 694 : (1993) 24 ATC 545]” .*

5. In view of the aforesaid law laid down by the Apex Court on the issue of counting of seniority of Fast Track Court Judges, it is obvious that Fast Track Courts were established for distinct and temporary purposes under the recommendations of 11th Finance Commission. The appointments as ADJ (Adhoc/FTC) were made under separate set of Rules, namely, Punjab Additional District & Sessions Judges (Adhoc) Recruitment and Conditions of Service Rules, 2001, (hereinafter referred to as ‘2001 Rules’), which *inter-alia*, provided in clear terms, under proviso to Rule 3(1) that services rendered by appointees under 2001 Rules shall not be counted or added as service rendered by appointees under Punjab Superior Judicial Services Rules, 1963, later repealed and replaced by Rules of 2007. The relevant Rule 3(1) including the proviso of 2001 Rules is reproduced hereinbelow as under:-

*“3. **Constitution of Service:-** (1) On and with effect from the date of publication of these rules in the official Gazette, there shall be constituted a service to be known as Punjab Additional District & Sessions Judge (Ad hoc) Service.*

Provided that a member appointed to this service, shall not be deemed to be a member of the Punjab Superior Judicial Service regulated under the provisions of the Punjab Superior Judicial Service Rules, 1963 as amended from time to time.”

6. Thus, once it is clear that the appointment as ADJ (Adhoc/FTC) was under a separate set of Rules, 2001 i.e. 2001 Rules, which expressly prohibit treating of ADJ (Adhoc/FTC) as member of ADJ (substantive under 1963/2007 Rules, the question of petitioner seeking benefit of counting seniority rendered as ADJ (Adhoc/FTC) does not arise.

7. Another submission raised by learned senior counsel for the petitioner that private respondents ought to be shown junior to him in the regular cadre of Additional District Judge, also does not hold any water.

7.1 The private respondents No.2 to 16 were promoted substantively in the cadre of Additional District & Sessions Judges under the Rules of 2007 in the year 2011, whereas the petitioner was promoted in the said cadre as Additional District & Sessions Judge in the year 2012 (Annexure P-7). The petitioner thus cannot claim seniority in the cadre of Additional District Judge over and above the private respondents from the date when he was not even born in that cadre. Granting relief to the petitioner in the attending facts and circumstances would be going against all established canons of service jurisprudence.

8. In view of the above conspectus facts and circumstances and discussion, this Court is of the considered view that no case for interference is made out.

9. The instant petition stands dismissed sans costs.

(SHEEL NAGU)
CHIEF JUSTICE

(ANIL KSHETARPAL)
JUDGE

20.03.2025

ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No