

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6647 OF 2012

[Arising out of Special Leave Petition (Civil) No. 8091 of 2011]

Mahesh Chandra Verma & Ors. ... Appellants

Versus

State of Jharkhand & Ors. ... Respondents

WITH

CIVIL APPEAL NO. 6648 OF 2012

[Arising out of Special Leave Petition (Civil) No. 8102 of 2011]

Alok Kumar Dubey & Ors. ... Appellants

Versus

State of Jharkhand & Ors. ... Respondents

WITH

CIVIL APPEAL NO. 6649 OF 2012

[Arising out of Special Leave Petition (Civil) No. 9587 of 2011]

Rajesh Kumar Pandey & Anr. ... Appellants

Versus

State of Jharkhand & Ors. ... Respondents

JUDGMENT

(SMT.) RANJANA PRAKASH DESAI, J.

1. Leave granted.
2. These appeals, by special leave, are directed against the judgment dated 07/03/2011 delivered by the Division Bench of the Jharkhand High Court. They involve the same questions of law and facts and hence can be disposed by a common judgment. The appellants in these appeals were posted as Additional District Judges, Fast Track Courts. They are direct recruits from the bar. By the impugned order, the High Court disposed of the Writ Petition filed by the Judicial Officers who are members of the Subordinate Judiciary of the State of Jharkhand, challenging the appointment of the appellants to the posts of Additional District Judge (for short, **“ADJ”**), Fast Tract Courts (for short, **“FTC”**). The writ petitioners before the High Court, inter alia, claimed that they were eligible for being appointed as ADJs and that they are directly affected persons in monetary terms as well as in terms of their future promotional avenues because of the appellants’ appointments. They sought a declaration that the entire selection process for appointment of the appellants to the post

of ADJs, FTCs pursuant to advertisement dated 23/5/2001 is illegal. They prayed that the Notifications dated 2/2/2008 and 12/8/2002 whereby the appellants were appointed be quashed. They are respondents before this court. The High Court by the impugned judgment allowed the writ petition.

3. It is necessary to state case of respondents 5 to 35 before the High Court for better appreciation of the issues involved in these appeals.

On 15/11/2000 Bihar Reorganisation Act, 2000 was passed, whereby the State of Jharkhand was carved out of the State of Bihar. By Notification dated 22/02/2001, 90 Superior Judicial Officers (ADJs and District Judges) were transferred from the State of Bihar to the State of Jharkhand. Out of these 90 Judicial Officers, 62 were promotees and 28 were direct recruits. On 10/05/2001 the Governor of Jharkhand, in consultation with the High Court, framed Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Rules, 2001 under Article 233 read with proviso to Article 309 of the Constitution of India (**“Rules of**

2001”, for brevity). Rule 9 thereof prescribed the eligibility for appointment as an ADJ in the State of Jharkhand, which reads as under:

“9. **Eligibility:** A candidate shall be eligible to be appointed as an ADJ under these Rules, if:-

- (a) he is above the age of 35 years and below the age of 45 years as on the last day of January preceding the year in which the examination is held; provided that in the case of a candidate belonging to scheduled caste or scheduled tribe, there may be a relaxation of upper age limit by three years;
- (b) is a graduate in law from a University recognized for the purpose of enrolment as an Advocate under the Advocates’ Act, 1961;
- (c) has an experience of more than seven years at the Bar as a practicing Advocate after having been duly enrolled as such under the Advocates Act, 1961;
- (d) possesses good health, is of sound moral character and is not involved in, or related to any criminal case of any type involving moral turpitude.”

4. In order to bring all the facts on record, it would be necessary to state here that Rule 5 of Rules of 2001 was amended on 20/08/2004, whereby the percentage from

different sources was modified in terms of the direction of this Court in ***All India Judges Association & Ors. v. Union of India & Ors.***¹ and it was fixed as 50% by promotion, 25% by promotion through a limited competitive examination and 25% by direct recruitment.

5. On 23/05/2001 the High Court of Jharkhand issued an advertisement inviting applications in the prescribed format from the eligible candidates to fill-up the vacancies in the post of ADJs. The prescribed eligibility criteria was as under:

- “(i) **Qualification** – Graduate in law from University recognized for the purpose of enrolment as an Advocate under the Advocates Act, 1961.
- (ii) **Age** – above 35 years, but below 45 years as on 31st January, 2001. The upper age limit is relaxable by three years in the case of SC/ST candidates.
- (iii) **Experience** – more than 7 years at the Bar as a practicing advocate after having been duly enrolled as such.”

6. The advertisement, however, did not disclose as to how many posts in the regular cadre of ADJs were sought to be

¹ (2002) 4 SCC 247

filled. The number of vacancies was not mentioned. On 19/08/2001 written examination was held in which approximately 4,000 candidates appeared. On 20/09/2001 a list of successful candidates who were qualified to appear for oral interview was published. The list contained names of candidates upto merit serial number 134.

7. According to the respondents, the number of candidates called for the interview was much higher than the legally recognized ratio. Ultimately, out of the candidates whose names appeared in the list of successful candidates, 17 candidates were appointed as ADJs in the regular cadre of Higher Judicial Services. Upon issuance of their appointment letters the selection process pursuant to the advertisement dated 23/05/2001 should have come to an end, but 10 candidates from Sr. Nos.18 to 27 of the merit list were appointed as FTC Judges. No such panel was ever published by the respondents therein. In August, 2002, without any advertisement, 15 persons were appointed as FTC Judges from the Bar vide Notification dated 12/08/2002. Names of these

persons were not mentioned in the select list prepared by the High Court pursuant to the advertisement dated 23/05/2001. The subsequent appointments of 10 & 15 ADJs in FTCs in February and August, 2002 by way of direct recruitment from amongst the members of the Bar were in violation of the rules of fairness, equality and fair play as enshrined in Articles 14 and 16 of the Constitution of India. They were also in derogation of directions given by this Court in **Brij Mohan Lal v. Union of India & Ors. (Brij Mohan Lal-I)**². The respondents pointed out that in the counter affidavit filed by the Jharkhand High Court in WP (S) No. 5613 of 2001, it was stated that the Full Court of the High Court in the meeting held on 18/10/2001 recommended the names of 17 candidates for regular appointments as ADJs in FTCs. FTCs were constituted in the State of Jharkhand vide Notification dated 29/11/2001. But even before creation of the FTCs, 10 names were recommended in October, 2001 for making appointments against non-existent posts. On 23/05/2001 when advertisement was issued, Fast Track Courts Scheme

² (2002) 5 SCC 1

was not in vogue. Some of those appointed as ADJs, FTCs were working as Assistant Public Prosecutors in terms of Section 25 of the Code of Criminal Procedure, 1973 (for short, **“the Code”**). They could not have been appointed ADJs as they were not advocates within the meaning of Section 2 (1) (a) of the Advocates Act and they cannot be said to have fulfilled the mandatory eligibility criteria of having experience of more than 7 years at the Bar. While deciding eligibility criteria, Rule 9 (a) of the Rules of 2001 was breached. The candidates who were not above the age of 35 years on the last day of January of the preceding year in which the examination was held were selected. It was contended that though there was no provision for preparation of a panel for future appointment, a panel was prepared.

8. The case of respondents 3 to 35 found favour with the High Court. The High Court *inter alia* held that the appointments which were offered to the members of the Bar pursuant to the advertisement dated 23/05/2001 were meant for ADJs. On that day, whatever posts were existing or

contemplated could have been made the subject matter of selection. On that day, there was no sanction from the State Government for those posts, therefore, those posts were not contemplated vacancies which can be covered by the advertisement in question. The High Court observed that the appellants were appointed on ex-cadre posts created for a temporary purpose and for a temporary period for an entirely different objective which was not the dominant object of Rules of 2001. The High Court further held that selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated vacancies but not for future vacancies. That is exactly what was done in this case. The High Court, in the circumstances, quashed the appointments.

9. The impugned order of the High Court has been severely criticized by the counsel for the appellants. By and large the counsel are unanimous on grounds of attack. We shall therefore, avoid repetition. Written submissions have been filed which reflect the submissions of the counsel. We shall give a gist thereof. On behalf of some of the appellants, senior

advocate Mr. Choubey submitted that the appellants have been appointed under Rule 4(a) of the Rules of 2001. Placing heavy reliance on Rule 25 thereof, he submitted that the appellants are entitled to be treated on par with the first list of 17 appointees. Counsel submitted that the appellants have already, a decade back, passed the rigorous examination comprising preliminary test, main written test, viva-voce test and orientation course. The 17 persons who have undergone the same course are working as District Judges in the cadre. Counsel submitted that the appellants should not, therefore, be made to undergo any more tests. Relying on the **Central Inland Water Transport v. Brojo Nath Ganguly**³; **O.P. Singla v. Union of India**⁴; **Rudra Kumar Sain v. Union of India**⁵ and **D. Ganesh Rao Patnaik v. State of Jharkhand**⁶, counsel submitted that the appellants are performing the same duties as are being performed by the regular ADJs. Therefore, their description as ex-cadre, temporary or *ad hoc* is unjustified. The appellants did not

³ AIR 1986 SC 1571

⁴ (1984) 4 SCC 450

⁵ (2000) 8 SCC 25

⁶ (2005) 8 SCC 454

agitate the same issue as their names were shown in the seniority list consistently. Counsel submitted that from the record produced by the High Court, it is clear that the appellants were appointed on anticipated and contemplated vacancies and their appointments were legal. Counsel submitted that the impugned judgment is based on case laws relating to specified vacancies. The impugned judgment, therefore, deserves to be set aside. Besides, there is inordinate delay and laches in filing the petition in the High Court and on that ground alone, the High Court should have rejected the petition. Counsel's criticism about the High Court's conduct was trenchant. It was submitted that unfortunately the High Court has chosen to take prevaricating and even inconsistent stand at different stages of the proceedings. In this connection counsel relied on **B. Prabhakar Rao and others v. State of Andhra Pradesh and others**⁷ and **Hari Bansh Lal v. Sahadar Prasad Mahto and others**⁸. Finally, counsel submitted that in light of **Brij Mohan Lal v. Union**

⁷ 1985 (Suppl) SCC 432

⁸ (2010) 9 SCC 655

of India & Ors. (Brij Mohan Lal-II)⁹, the services of the appellants must be regularized.

10. Mr. Sharma, learned counsel appearing for some of the appellants, submitted that from the documents, copies of which have been produced by the High Court and also from the submissions of the State of Jharkhand, it is clear that the vacancies of FTCs were anticipated and contemplated and that the appellants were in the select list of the examination process conducted in pursuance to advertisement dated 23/05/2001. The process of appointment cannot be said to have been completed after appointment of first lot of 17 as the posts of FTC Judges was still to be filled-up and the panel was valid for a year. Counsel submitted that the High Court never intended that the appointments would be ex-cadre appointments. Selection letters issued by the High Court state that names of the appellants have been included in the select list of Jharkhand Superior Judicial Service for appointment as ADJs, but appointment shall, initially be on *ad hoc* basis in the regular scale of ADJ. The selection letters further state

⁹ (2012) 6 SCC 502

that the appointments were likely to continue and in the first instance they will be posted as Presiding Officers of the FTCs. Counsel submitted that from the selection letters it is clear that the appointments were *ad hoc* initially, but were likely to continue and were, in fact, substantive appointments.

11. Counsel pointed out that the notification of creation of the posts of FTCs does not state that these posts will be *ex-cadre* posts. Notification of appointments which mentions the word *ex-cadre* was issued subsequently. The appellants have left their jobs, attended the orientation course and completed it successfully. Counsel urged that this court should go by the rules of appointment, the manner of appointment and the nature of work performed by the appointees and not by the subsequent nomenclature of deployment occurring in the letters of appointment which fall within the exclusive domain of the employer against which the appointees had no bargaining power.

12. Counsel submitted that the case of the appellants is on much better footing than those FTC Judges who were before

this Court in **Brij Mohan Lal-II** because those FTCs were not appointed after completing the process stipulated in the rules for regular ADJs. Their appointments were under special schemes. They were appointed either after they took cursory written examination followed by an interview or only on the basis of interview and none of them underwent the orientation course. Counsel pointed out that the appellants in this case were selected after exhaustive process provided in the Rules of 2001 for appointment of regular ADJs. In addition to sessions trial, they were also doing the work of civil appeals, criminal appeals, revisions and MACT cases etc. The 17 officers who underwent the same process of selection are still in the service and are holding the posts of District Judges in selection grade. It will not be, therefore, proper to make the appellants take the written examination or viva voce for their confirmation. Counsel submitted that this court should direct the State of Jharkhand and the High Court of Jharkhand to regularize the services of the appellants with all consequential benefits.

13. Shri Amrendra Sharan, senior counsel on behalf of appellant-Sanjay Kumar Chandhariyavi, submitted that finding of the High Court that there was no anticipated vacancy as on the date of advertisement is ex-facie wrong. He submitted that from the Full Court Resolution dated 07/10/2001 and affidavit of the High Court dated 07/08/2012 it is clear that the High Court was conscious of anticipated vacancies. Because the High Court wanted to take into account the anticipated vacancies, it deliberately did not mention the number of vacancies in the advertisement. Counsel submitted that cadre division was not finalized between the State of Bihar and State of Jharkhand, therefore, quota of direct recruits and vacancy of direct recruits could not be ascertained. Counsel pointed out that as per Rule 21 of the Rules of 2001 the select list is valid for a period of one year from the date of the notification. Counsel submitted that unless the number of vacancies is certain, it cannot be held that examination process started only for 17 posts of ADJs and with recruitment of 17 ADJs, recruitment process came to an end. Counsel submitted that the contesting respondents

who are from Subordinate Services could not participate in the process of direct recruitment from Bar and hence, they had no locus to file petition in the High Court. Relying on **Narender Chandha & Ors. v. Union of India & Ors.**¹⁰, **N.K. Chauhan & Ors. v. State of Gujrat & Ors.**¹¹ and **G.S. Lamba & Ors. v. Union of India & Ors.**¹², counsel submitted that as per Rule 5 of the Rules of 2001 quota can be deviated in either direction. As the appointments have been made on the recommendation of the High Court by the Jharkhand Government, there is deemed relaxation of quota. Counsel submitted that this is supported by the averment made by the High Court in its affidavit to the effect that total number of vacancies sought to be filled through advertisement dated 23/5/2001 was 46. Counsel pointed out that as initially appointment of Shri Chandhariyavi was not for fixed period of five years but appointment was with further stipulation to the effect that regarding continuity further order would be passed, appointment in real sense was not a pure temporary

¹⁰ (1986) 2 SCC 157

¹¹ (1977) 1 SCC 308

¹² (1985) 2 SCC 604

appointment. Relying on **Rudra Kumar Sain v. Union of India**¹³ it was urged that Shri Chandhariyavi was appointed after going through the entire selection process for regular appointment after recommendation of the High Court under Article 233. He tried all types of cases which is sufficient to establish that he was not appointed for particular purpose. His appointment was not on *ad hoc* basis. Counsel submitted that as per Rule 3 of the Rules of 2001, cadre strength and composition of the service along with pay-scale of different categories have not been specified by the State Government in consultation with the High Court. Seniority of 20 promotees and 10 direct recruits has been fixed which is sufficient to establish that Shri Chandhariyavi is holding cadre post. Counsel submitted that it was not the intention of the Jharkhand State to create courts only for sessions trial, if that was so, there would have been no mention of Sections 13 and 14 of the Bengal Agra and Assam Civil Court Act, 1887, which deals with powers of ADJ to deal with civil matters. The notification contains the words “**in supersession of all**

¹³ (2008) 8 SCC 25

previous orders issued on the subject”. Pertinently, all previous orders are regarding regular courts. Besides, the notification did not mention that 89 posts would be ex-cadre posts. Counsel submitted that Public Prosecutor can apply for the post in the Higher Judicial Services. They are eligible for recruitment under Article 233. In support of this submission he relied on **Satya Narain Singh v. High Court of Judicature at Allahabad & Ors.**¹⁴, **Sushma Suri v. Govt. of National Capital Territory of Delhi & Anr.**¹⁵ and **Satish Kumar Sharma v. Bar Council of H.P.**¹⁶. Counsel submitted that as per Rule 9 of the Rules of 2001 age should be counted from 21st January of preceding year of examination, however, year of examination has not been mentioned anywhere. There was specific date mentioned in the advertisement which is 31/01/2001, therefore, the date should be calculated from that date. Counsel submitted that Shri Chandhariyavi figured at Serial No. 22 of the select list. On the date of advertisement 46 vacancies were required to be

¹⁴ (1985) 1 SCC 225

¹⁵ (1999) 1 SCC 330

¹⁶ (2001) 2 SCC 365

filled up. Rule 22 of the Rules of 2001 states that the High Court shall recommend to the State Government the names for appointment of ADJs from the select list depending upon the number of vacancies available or those required to be filled up. Appointment letters were issued to all 27 persons. Seventeen persons were directed to join permanent courts whereas, Shri Chandhariyavi was directed to assume the charge as ADJ and posted in FTC at Hazaribagh at first instance along with other nine candidates. The appointment was made under Rule 4 of the Rules of 2001. Counsel pointed out that Notification dated 02/02/2002 was issued by the government to appoint these 10 remaining candidates initially in the FTCs. Counsel submitted that Shri Chandhariyavi took written examination and was called for interview in the first list. He was selected and offered appointment as ADJ and given posting as FTC Judge. He has put in 9 years dedicated and unblemished service. In the circumstances, his services deserve to be regularized.

14. On behalf of some of the appellants it was submitted by learned counsel Shri T.N. Singh that appointments of the appellants were quashed without properly deciding the preliminary issues with regard to the *locus standi* and maintainability of the writ petition. The writ petition before the High Court was barred by delay and laches of 7 years and as such the writ petitioners were not eligible to challenge the selection of the appellants at the belated stage. It was submitted that appointments of the appellants have been made by the High Court in accordance with the Rules of 2001 on merit. The appellants were not only duly qualified but selected on merit by the High Court after they successfully passed the written examination as well as viva-voce test. They are working as ADJs since 2002 and as such they have legitimate expectation to be confirmed and made permanent as ADJs. The appointments have been made against anticipated/contemplated vacancies to fill up 89 vacancies. Counsel submitted that appointments of the appellants have been quashed after more than 8 years of continuous service rendered by the appellants as ADJs, FTCs. They were

practicing as advocates at the Allahabad High Court. Their appointments have been made by way of direct recruitment from the Bar strictly in accordance with the provisions of the Rules of 2001. They left their legal practice and joined judicial services. Cancellation of their appointments is an example of travesty of justice inasmuch as the entire career of the appellants is ruined. It is, therefore, necessary to set aside the impugned judgment. In support of his submissions, counsel relied on **Prem Singh & Ors. v. Haryana State Electricity Board & Ors.**¹⁷; **Hemani Malhotra v. High Court of Delhi**¹⁸; **Uttar Pradesh Public Service Commission v. Satya Narayan Sheohare & Ors.**¹⁹; **Rakhi Ray & Ors. v. High Court of Delhi & Ors.**²⁰; **Ravinder Kumar v. State of Haryana & Ors.**²¹; **Bhakra Beas Management Board v. Krishan Kumar Vij & Anr.**²²; and **Girjesh Shrivastava & Ors. v. State of Madhya Pradesh & Ors.**²³

¹⁷ (1996) 4 SCC 319

¹⁸ (2008) 7 SCC 11

¹⁹ (2009) 5 SCC 473

²⁰ (2010) 2 SCC 637

²¹ (2010) 5 SCC 136

²² (2010) 8 SCC 701

²³ (2010) 10 SCC 707

15. On behalf of respondent - the High Court of Jharkhand, it is submitted that vide advertisement dated 23/05/2001, applications were invited for appointment to the post of ADJs to be recruited from the Bar. The exact vacancies available, at the time of advertisement, were not notified as the cadre bifurcation was not finalized between the State of Bihar and State of Jharkhand and new posts were being created. However, on the date of advertisement, 13 clear cut vacancies existed for regular appointment from the Bar and on the date of recommendation to the State Government i.e. on 18/10/2001, 17 clear cut vacancies existed for regular appointment directly from the Bar. Admittedly, the appointments of the appellants were made beyond the vacancies available on the date of advertisement i.e. 23/05/2001 and/or during the period of selection. In the impugned judgment it is rightly held that these *ad hoc*, temporary, ex-cadre appointments are beyond the ambit of Rules of 2001 because the said rules deal only with regular appointments in superior judicial service cadre. The appointments of the appellants were ex-cadre and made on *ad*

hoc basis for FTCs for a particular period of time. As per the recommendation of the Eleventh Finance Commission, the Central Government had created 1734 additional courts for fast disposal of long pending cases, out of which 89 posts were created for the State of Jharkhand. Vide letter dated 15/10/2001, the Law Minister, Government of India, Shri Arun Jaitley had informed the then Chief Justice Shri V.K. Gupta that the FTCs need to be created. After bifurcation of the State of Bihar and Jharkhand suitable number of retired judges were not available for appointment in FTCs. The Chief Justice, Jharkhand High Court, had pointed out this fact to the Law Minister, Government of India and the Law Minister vide his letter dated 22/05/2001 had conveyed his approval to the Chief Justice for making appointments from the Bar as per the rules applicable in respect of the Jharkhand High Court. Only 70 officers were available in the Sub Judge Cadre. The number of FTCs created was 89 and, therefore, the FTCs could not have been filled up by ad hoc promotion of service cadre. As the State of Jharkhand was lagging behind the other States as regards FTCs and there was persistent

request from the Central Government to establish the FTCs as soon as possible and if fresh examination was conducted for appointments to be made to the FTCs from the Bar, that would have consumed a lot of time, the Jharkhand High Court decided to appoint officers from the merit list, who had appeared in the examination for the recruitment of regular ADJs. There were only 17 vacancies in the regular cadre at the time of recommendation of the names of officers who had successfully passed in the recruitment exam and the names of 25 officers (including the present 22 appellants) were recommended for their appointment in the FTCs which was ex-cadre, *ad hoc* post and the appointment of the appellants was subject to continuation of the post. The appellants have no legal or statutory or vested right which could be enforced by law and they are bound by the terms and conditions of their appointment letters. As per the direction of this court in **Brij Mohan Lal-II**, the Jharkhand High Court has requested the State to create 31 permanent FTCs and also for expansion of the cadre strength by 10 per cent. The Jharkhand High Court may consider the case of the appellants afresh subject

to the creation of necessary posts/FTCs by the State of Jharkhand in the light of decision of this court in **Brij Mohan Lal-II** and the decision in these appeals.

16. On behalf of State of Jharkhand, it is submitted that the FTCs were constituted in the State of Jharkhand as per the Fast Track Court Scheme envisaged by the Central Government for which funds were allocated by the Central Government. The Scheme was to continue for five years. The State of Jharkhand issued Notification dated 12/08/2002 for appointment of *ad hoc* ADJs, FTCs on the recommendation of the High Court. The recommendation was based on an evaluation of *inter se* merit of the competing candidates who had taken a written test and interview. The appointments were co-extensive with the duration of FTCs and *ad hoc* nature of the appointment was clearly indicated in the notification of appointment. The appointees had no right to claim regular appointment or continue as *ad hoc* Additional District & Sessions Judges, FTCs beyond the duration of FTCs. Relying on **Brij Mohan Lal-I**, it is submitted that the relevant

notification pertaining to the appointment of *ad hoc* ADJs, FTCs indicate that the appointments of ADJs, FTCs were not appointments in the Jharkhand Superior Judicial Service. In **Brij Mohan Lal-I**, the distinction between appointments under the Fast Track Court Scheme and the State Judicial Service was clearly stated. The rules and regulations which applied to members of the Jharkhand Superior Judicial Service did not *ipso facto* apply to the ADJs under the Scheme. The word “preference” used in **Brij Mohan Lal-I** has to be viewed in the overall context of the FTC Scheme and it cannot mean absolute *en bloc* preference akin to reservation. The word “preference” is capable of different shades of meaning taking colour from the context, purpose and object of its use under the Scheme of things envisaged (**Secy. A.P. Public Service Commission v. Y.V.V.R. Srinivasulu & Ors.**²⁴). The appointment of ADJs, FTC was to be made not against a vacancy in the Jharkhand Superior Judicial Service, but against temporary posts under a Scheme by following the method of selection as is normally followed for selection of

²⁴ (2003) 5 SCC 341

members of the Bar as direct recruits to the Superior Judicial Services and the Full Court of the Jharkhand High Court in discharge of its constitutional obligation took a decision to utilize the list of candidates who had taken a written test and appeared for interview for FTC Judges. The said decision of the Full Court cannot be faulted. Respondents 5 to 35 belong to the category of Sub Judge in the Judicial Service of the State. As per **Brij Mohan Lal-II**, the vacancies in question cannot go to them and, therefore, they cannot challenge the legality of the appointments of the appellants.

17. On behalf of respondents 5 to 35, it is contended that FTCs were established in view of the Eleventh Finance Commission Report in the year 2000 which accepted the recommendation of Shri N.C. Jain. The recommendation was that only retired Sessions & Addl. Sessions Judges should be appointed for two years on ad-hoc basis in FTCs. Judgment of this court in **Brij Mohan Lal-I** came on 06/05/2002, by which 3rd preference was to be given to the direct recruits from the members of the Bar. In this case, on 02/02/2002 i.e. before

Brij Mohan Lal-I, appointments of 10 persons were made by direct recruitment contrary to recommendations of Shri N.C. Jain. On 12/08/2002, further 15 direct recruits were appointed as *Ad hoc* ADJs, FTCs which is in contravention of **Brij Mohan Lal-I** because sufficient number of eligible serving judicial officers were available and without considering their case, appointments of direct recruits were made. The said appointments were illegal also because the advertisement was not for the post of FTCs, there was no vacancy in FTCs, advertisement was only for regular cadre and the process came to an end after the regular direct ADJs were appointed. Appointment of *ad hoc* ADJs in FTCs on the basis of merit list prepared on the basis of the said advertisement was *per se* illegal. There was no notified select list for the appointment of fifteen persons on 12/08/2002. Some of the appointees were Public Prosecutors and, as such, were not eligible to be appointed as ADJs (**State of Uttar Pradesh v. Johri Mal**²⁵). Some of the appointees did not fulfill the age criteria (**Malik Mazhar Sultan and another v. U.P. Public Service**

²⁵ (2004) 4 SCC 714

Commission and others.²⁶). Respondents 5 to 35 are directly affected in monetary terms. Their promotional avenues are also affected by the appointments. As the initial appointment of the appellants itself was illegal, they cannot get benefit of **Brij Mohan Lal-II**. If any extra posts are created as per **Brij Mohan Lal-II**, Rule 5 of the Rules of 2001 would come into play and 75% of the extra posts created would be required to be filled-up by the quota of promotees. Otherwise, it would disturb the quota fixed for promotees. It is submitted that no interference is called for with the impugned order. In any case, adjustment, if any, can be made only against 25% quota.

18. Mr. Hansaria, learned senior advocate appearing for private respondents has assailed the appointment of the appellants on similar grounds. In addition to the grounds quoted, he added that it is well settled that appointments on posts which were neither advertised nor in existence on the date of issuance of advertisement could not be filled from select list prepared on the basis of such advertisement. Pertinently, though number of vacancies has not been

²⁶ (2006) 9 SCC 507

mentioned in the advertisement, the High Court in its affidavit has stated that only 17 posts of ADJs were available on the date of advertisement. The posts of FTC Judges were created on 29/11/2001. On the date of advertisement dated 23/05/2001, the said posts were not even in anticipation of the High Court to be filled by direct recruitment. The advertisement dated 23/05/2001 and the select list prepared pursuant thereto which was duly notified as per the Rules of 2001 could not have been used for filling up of FTC Judges. The selection process comes to an end with the filling of vacancies for which advertisements have been issued. In any case, candidates in the select list have no right to be appointed beyond the number of posts to be filled. In this connection, reliance was placed on **State of Bihar v. Madan Mohan**²⁷, **Rakhi Ray, State of Orissa v. Rajkishore Nanda**²⁸, **Smt. K. Lakshmi v. State of Kerala**²⁹, **Arup Das v. State of Assam**³⁰ and **Surinder Singh v. State of Punjab**³¹.

²⁷ 1994 Supp. (3) SCC 308

²⁸ (2010) 6 SCC 777

²⁹ (2012) 4 SCC 115

³⁰ 2012(5) SCC 559

³¹ (1997) 8 SCC 488

19. We have given anxious consideration to the submissions advanced by learned counsel. Certain facts can be gathered from the various affidavits on record, oral submissions of the counsel and written submissions filed in the court. It would be appropriate to note them while examining the grievance of the appellants and the case of the respondents.

20. On 25/11/2000, Bihar Reorganization Act, 2000 was passed whereby State of Jharkhand was carved out from the State of Bihar. On 15/01/2001, the then Law Minister Shri Jaitley wrote to Shri Gupta, the then Chief Justice of Jharkhand High Court, about the scheme of creation of 1734 additional courts for faster disposal of pending cases based on the recommendations of the Eleventh Finance Commission. He requested the Chief Justice to execute the scheme effectively and efficiently so that the courts start functioning from 01/04/2001. On 22/02/2001, notification was issued transferring 90 superior judicial officers from the State of Bihar to the State of Jharkhand out of which 62 were promotees and 28 direct recruits. From the note of the then

Chief Justice dated 23/02/2001, it appears that issue whether in-service judges should be promoted on *ad hoc* basis or whether retired judges should be considered was debated upon. It was noted that the State of Jharkhand may not have sufficient number of retired judges. Decision was taken to discuss all the issues in the Chief Justices' conference to be held on 30/03/2001. Thereafter, letter dated 12/03/2001 was addressed by the then Chief Justice Shri Gupta to Shri Jaitley, the then Law Minister regarding the difficulties experienced by the Jharkhand High Court in appointing officers for FTCs so as to make them functional from 01/04/2001. It was stated that cadre division of the Judicial Officers between the two States of Bihar and Jharkhand had not been completed except in respect of judicial officers belonging to Higher Judicial Service and the cadre division in the rank of Sub Judge for which the Government had issued Notification dated 22/02/2001. It was stated that the cadre division in respect of the judicial officers in the ranks of sub-judges and munsiffs had not so far been effected. This had resulted in the High Court Registry being ill-equipped. The letter further stated

that whether the Presiding Officers of the FTCs are to be appointed from amongst District/ADJs or by granting *ad hoc* promotions to the serving judicial officers is also an important issue. It was further communicated to the Law Minister that only a handful of retired District Judges/ADJs were residing in the State of Jharkhand and they were of advanced age. As far as appointing Presiding Officers by granting *ad hoc* promotion to serving judicial officers is concerned, that can only be done after the Cadre Division is effected and the judicial officers belonging to Jharkhand Cadre take positions. Apart from this, problems of shortage of accommodation and other infrastructural problems were also communicated. It was stated that by Notification dated 22/02/2001 issued by Government of India only allocation of officers was finalized and not the strength/posts. This letter of the Chief Justice of Jharkhand High Court reflects several genuine difficulties faced by the High Court and his anxiety that as desired by the Law Ministry Fast Track Courts Scheme cannot be made functional in the State because of those difficulties. We need to

view the High Court's actions, which have come under heavy criticism against the background of these facts.

21. By letter dated 22/05/2001 addressed to the then Chief Justice Shri Gupta, the Union Law Minister, considering the difficulties expressed by the Chief Justice in his letter dated 22/02/2001, communicated to him that he may make appointments to FTCs from the Bar as per the rules applicable to the High Court. There is no dispute that there were no rules for appointment of FTC Judges and the Rules of 2001 were not amended so as to make provision for appointment of FTC Judges.

22. On 23/05/2001, the High Court issued the advertisement to fill up vacancies for the post of ADJs. Number of vacancies was not stated in the advertisement. The stand of the State of Jharkhand in the affidavit filed by Shri A. Khaury, Chief Administrative Officer is that at the time of the advertisement there was no provision for appointment of Judicial Officers in the FTCs as those courts were created on 29/11/2001 and the advertisement was restricted to regular

appointments in the cadre of Superior Judicial Officer. On behalf of the High Court supplementary affidavit is filed by Shri Nath, Registrar (Admn.) High Court. It is stated in the affidavit that at the time of advertisement the States of Bihar and Jharkhand were newly bifurcated and cadre strength was not finalized. The High Court was waiting for more officers to be allocated to Jharkhand cadre. New Posts were also under the process of creation and therefore, in the advertisement exact number of vacancies was not stated. It is further submitted however that on the date of advertisement 13 clear cut vacancies existed for appointment of ADJs directly from the Bar and when the names were recommended on 20/10/2001, there were clear cut 17 vacancies for appointment of regular ADJs directly from the Bar.

23. As regards age criteria, it was mentioned in the advertisement that the candidate should be above 35 years but below 45 years as on 31/01/2001. Upper age limit was relaxable by three years in case of SC/ST candidates. Qualification necessary was Graduate in Law from University

recognized for the purpose of enrollment as an advocate under Advocates Act, 1961. Required experience was 7 years practice at the bar as an advocate after enrolment. The advertisement clearly stated that the written examination shall be conducted, entire selection process shall be undertaken and the appointments shall be finalized as per the Rules of 2001. Thus, important features of this advertisement are that it was an advertisement to fill-in the posts of ADJs; that the vacancies were not mentioned in the advertisement and that the appointments were to be finalized as per the Rules of 2001. Thus, the advertisement was not and could not have been for FTC Judges. In fact, the posts of FTC Judges were not even in anticipation of the High Court so as to be filled by direct recruitment because such posts were not sanctioned at that time. The Rules of 2001 were rightly mentioned in the advertisement because they deal with regular appointments in Superior Judicial Service cadre and the advertisement was for appointments of ADJs in regular cadre.

24. From the affidavit of Shri Nath, Registrar(Admn.) it appears that in the meantime letter dated 14/6/2001 was received from Joint Secretary, Government of India L & J, D. to the Secretary of the Chief Justice of the High Court forwarding the necessary material on the Fast Track Court scheme. In the state-wise break-up 89 additional courts are shown against the State of Jharkhand. However, the posts were not sanctioned. It is the case of the High Court, stated on affidavit, that at that time only 70 officers were available in the sub-judge cadre and as such the FTCs could not have been filled-up by *ad hoc* promotion from service cadre. There is no reason to disbelieve this stand of the High Court.

25. On 19/08/2001, written examination was held in which approximately 4000 candidates appeared. On 20/09/2001, list of successful candidates who were qualified to appear for oral interview was published. The list contained names of candidates upto merit list serial number 134. In this connection it is necessary to state that Rule 21 of the Rules of 2001 to which our attention is drawn by the counsel speaks of

arranging the candidates in order of merit. Rule 21 says that from the said list the High Court shall prepare a select list and have it duly notified in a manner as specified in the regulations and such select list shall be valid for a period of one year from the date of being notified. Rule 22 states that out of the aforesaid select list, depending upon the number of vacancies available or those required to be filled up, the High Court shall recommend to the government the names for appointment as ADJs.

26. Minutes of the Full Court Meeting of the High Court dated 07/10/2001 indicate that the meeting was held to consider the question of calling more candidates for viva voce test for appointment in the Jharkhand Superior Judicial Service as per Rules of 2001. The minutes note that having considered the trends in the viva voce test already going on and in view of large number of vacancies to be filled up, it is decided to expand the list of candidates to include more candidates so that wider spectrum and ambit of selection process is covered with a view to achieving the optimum level

of suitable candidates for appointment in the service. It was resolved that more candidates from the merit list are required to be called. It was further resolved that candidates from Sr. No.135 to Sr. No.217 be called for viva voce test (upto this point candidates upto Sr.No.134 were called). The Registrar General was directed to fix up dates of viva voce test, staggering the list of candidates on three occasions. First session was to be held on 14/10/2001. The remaining two sessions were to be held on 15/10/2001 and 16/10/2001. Oral interviews were conducted of the remaining candidates upto Sr. No.217.

27. In the meantime, on 8/10/2001, the High Court wrote a letter to the State Government, *inter alia*, stating that at the time of bifurcation of the State under the Bihar Reorganisation Act, 90 officers of Superior Judicial Services were allocated to Jharkhand Higher Judicial Cadre, out of which 62 were promotees and 28 direct recruits. It was stated that the 42 vacancies will be apportioned in the ratio of 67% and 33% i.e. 28 posts for promotee officers and 14 posts for direct recruits.

28. On 18/10/2001, the High Court in its Full Court meeting took a decision to begin with 30 FTC Judges out of which 20 would be from service and 10 by direct recruitment as per quota of 2/3rd and 1/3rd. Moreover, by this date the entire selection process i.e. preliminary written examination, main written examination and viva voce was completed. It is important to note that posts of FTC Judges were created only when Government of Jharkhand issued notification dated 29/11/2001. Thus, on the date when advertisement dated 23/5/2001 was issued, FTCs were not even sanctioned and hence were not even in anticipation of the High Court. There can be no debate over this.

29. By letter dated 20/10/2001, the High Court recommended 20 sub-judges for promotion to the rank of ADJs keeping 2/3rd ratio. The High Court stated in that letter that out of 89 earmarked FTCs, it has created 30 FTCs. It was made clear that their promotion shall be on *ad hoc* basis and until further orders depending on continuation of FTCs and that the promotion shall be ex-cadre. It was stated that the

said 20 sub-Judges on their appointment shall rank above, 10 direct recruits on *ad hoc* basis. We have already noted that in the affidavit of Shri Nath, Registrar (Admn.), High Court it is stated that on the date of recommendation there were clear cut 17 vacancies for appointment of regular ADJs directly from Bar.

30. After written exams, oral interviews were conducted in pursuance to the advertisement dated 23/5/2001, in October, 2001 the High Court prepared a select list of 27 candidates for superior judicial services which was duly notified as per Rule 21 of the Rules of 2001 to which we have already made a reference.

31. As already noted, on 29/11/2001, vide notification of the same date, the State Government constituted 89 FTCs of Additional District & Sessions Judges for 5 years with immediate effect. On 14/12/2001, 20 promotee officers whose names were recommended by the High Court on 20/10/2001 were appointed by the State as FTC Judges on ex cadre temporary posts. On 15/12/2001, 17 candidates whose

names were found at Sr.Nos.1 to 17 of the merit list were appointed as ADJs in the regular cadre of Higher Judicial Services. Appointments of these persons cannot be faulted, because it is stated on oath that there were 17 clear cut vacancies.

32. Serious exception is however taken to appointments made on 02/02/2002 and 12/08/2002 and we are of the opinion that there is merit in the criticism levelled against the said appointments. On 02/02/2002, 10 candidates from Sr.Nos.18 to 27 of the merit list were appointed as FTC Judges. It is disclosed from the affidavit of Shri Nath, Registrar (Admn.), High Court, Jharkhand that in the Full Court meeting held on 02/07/2002, it was resolved to fill the remaining 45 posts of ADJs to preside over FTCs in addition to 30 FTCs already functioning in the State. Thirty were to be by promotion from sub-judges and 15 were to be by direct recruitment from the panel prepared during selection process of regular District Judges. On 12/08/2002, 15 persons were appointed as FTC Judges from the bar on ad hoc basis in ex-

cadre post. The names of these 15 persons do not find place in the select list prepared by the High Court pursuant to advertisement dated 23/05/2001.

33. Since a select list of 27 persons was duly notified as per Rules of 2001, after candidates from Sr. No. 1 to 17 were appointed as regular ADJs on 15.12.2001 the select list came to an end because as per the affidavit filed on behalf of the High Court though vacancies were not mentioned in the advertisement only 13 posts of ADJs were available on the date of advertisement i.e. on 23/05/2001 and 17 posts of ADJs were available on the date of recommendation i.e. on 20/10/2001. On the appointment of 17 regular ADJs, the selection process for appointment of regular ADJs came to an end. The unexhausted select list was wrongly used for appointment of 10 FTC Judges. Again, out of list of unsuccessful candidates, 15 persons were appointed as FTC Judges. Their names were not there in the select list. The whole procedure was irregular. Reliance placed by the High Court in the impugned judgment of this Court in **Rakhi**

Ray v. High Court of Delhi³² and **Surinder Singh v. State of Punjab**³³ is apt. It must be mentioned at the cost of repetition that on 23/05/2001 when the advertisement was issued, the posts for FTCs were not sanctioned. Therefore, these posts were not even in contemplation. They cannot be termed as vacancies contemplated or anticipated by the High Court. Undoubtedly, the correspondence between the Law Ministry and the High Court indicates that the High Court was informed about the need for creation of FTCs and that Fast Track Court Scheme may be brought into action in Jharkhand but, till the posts for FTCs were sanctioned, there was no question of taking into account any anticipated vacancies. When advertisement is for specific number of posts, the State cannot appoint more than the number of posts advertised. The select list gets exhausted when all the advertised posts get filled. In **Rakhi Ray** and in a long line of other cases to which reference need not be made, this Court has clarified that appointments beyond the number of posts advertised would amount to filling up future vacancies and the

³² (2010) 2 SCC 637

³³ (1997) 8 SCC 488

said course is impermissible in law. There is no substance in the contention that appellants were appointed under Rule 4(a) of the Rules of 2001 or that they can get advantage of Rule 25 thereof. The Rules of 2001 and the regulations which are meant for Jharkhand Superior Judicial Service do not apply to ad hoc ADJs appointed under a scheme of temporary duration like Fast Track Court scheme. The Rules of 2001 were not amended to make them applicable to FTCs. The appellants were appointed in ex-cadre post for a temporary period. This is clear from their appointment letters. Therefore, their appointments were not under Rules of 2001. Merely because they were made to take written examination and viva voce their appointments cannot be termed as substantive appointments nor can the nature of work done by them make their appointments substantive. .

34. We are, however, not inclined to hold that, however improper, the High Court's decision is in any way, vitiated by mala fides. We have already noted that when letter dated 14/06/2001 was received by the High Court from the Law and

Judiciary Department of the State giving state-wise break-up showing 89 FTCs against State of Jharkhand, only 70 officers from sub-judge cadre were available and, as such, FTCs could not have been filled up by *ad hoc* promotion from service cadre. The situation does not appear to have improved. It is the case of the High Court that since the State of Jharkhand was lagging behind in so far as creation of FTCs is concerned and there was persistent request from the Central Government to establish the FTCs as soon as possible, it was felt that if fresh examination was conducted for appointments to be made to the FTCs from the Bar, much time would have been consumed and, therefore, it was decided to appoint officers from the merit list who had appeared in the examination for the recruitment of regular ADJs. The Full Court Resolutions of the Jharkhand High Court and the correspondence of the Chief Justice with the Law Ministry also indicate that the High Court was ill-equipped to put the Fast Track Court Scheme in action in the State of Jharkhand because of several difficulties, prominent amongst them being cadre bifurcation not having been completed and unavailability of officers from

service cadre. It is, therefore, not necessary for us to refer to cases cited before us in support of the contention that the High Court has taken prevaricating and inconsistent stand. We are of the opinion that the High Court was *bona fide* trying to comply with the Central Law Ministry's desire and in that it overstepped its limits.

35. In the ultimate analysis we are of the view that the appointments made on 02/02/2002 and 12/08/2002 are irregular, made in ignorance of settled principles underlying service law, in an anxiety to comply with the desire expressed by the Law Ministry and to set up FTCs to deal with the problem of pendency of cases. This conclusion of ours draws support from **Brij Mohan Lal-I and Brij Mohan Lal-II**. **Brij Mohan Lal-II** also offers a possible solution to the problem. We shall soon advert to these judgments.

36. Several other judgments have been cited on behalf of the petitioners. Quite frankly most of them have no application to

the instant case and some of them need not be referred to as **Brij Mohan Lal-II** now holds the field. We shall, however, make a brief reference to them lest it is said that we overlooked some points.

37. In **Central Inland Water Transport Corporation Ltd. & Anr. v. Brojo Nath Ganguly & Anr.**³⁴, this court was *inter alia*, considering whether unconscionable clause in a contract of employment is void under Section 23 of the Indian Contract Act as being opposed to public policy. In our opinion, this case turns on its own facts and has no application to the facts of the instant case at all.

38. So far as judgments in **O.P. Singla; Rudra Kumar Sain** and **D. Ganesh Rao Patnaik** are concerned, in these cases, this court was considering the question of seniority between promotees and direct recruits appointed under specific rules. These judgments can have no application to the case on hand, where the appointments are made on *ad hoc* basis in a temporary scheme.

³⁴ AIR (1986) SC 1571

39. In **Naseem Ahmad & Ors. v. State of Uttar Pradesh & Anr.**³⁵, this court while dealing with U.P. Subordinate Civil Courts Inferior Establishment Rules, 1955 considered what is wait list, select list and panel. It was held that wait list is not a selection list prepared for specific number of vacancies and wait list is exhausted only when all duly selected candidates are given appointments. This case will have no application to the instant case. Once it is held that the appointments of the appellants were *ad hoc*, ex-cadre and not made as per the Rules of 2001 and that they were made in a scheme of temporary duration, wait list prepared while selecting regular ADJs cannot be used to appoint FTC Judges. In this case, select list got exhausted when 17 ADJs were appointed and persons from select list prepared for recruitment to the post of regular ADJs cannot be appointed as FTC Judges.

40. In **Prem Singh v. State of Haryana**³⁶, this court held that selection process by way of requisition and advertisement can be started for clear vacancies and also for anticipated

³⁵ (2011) 2 SCC 734

³⁶ (1996) 4 SCC 319

vacancies but not for future vacancies. We have already held that as on the date of advertisement, FTCs were not sanctioned. Therefore, there were no anticipated vacancies.

Prem Singh will have no application to the facts of this case.

For the same reasons, **State of Jammu & Kashmir & Ors.**

v. Sanjeev Kumar & Ors.³⁷ is also not applicable to the present case.

41. Since we have held that appointments were not made under Rules of 2001, cases cited on deviation of quota or deemed relaxation of quota as per Rule 5 can have no application to this case. It must be borne in mind that appointments of ADJ FTCs in this case were made on ad hoc ex-cadre basis in a scheme of temporary duration. The fact that the High Court recommended the names makes no difference. Their appointments were irregular.

42. Arguments were advanced on delay and laches. It is true that there is some delay on the part of respondents 5 to 35 in approaching the High Court. A possible explanation has been

³⁷ (2005) 4 SCC 148

given. Their *locus standi* has also been challenged. Looking to the importance of the question involved and having regard to the authoritative pronouncement of this Court in **Brij Mohan Lal-II**, we have examined the grievances of the parties, without going into this aspect.

43. In **Brij Mohan Lal-II**, this court has, after considering the entire matter in its proper perspective, held that the FTCs were holding ex-cadre post. We cannot reopen the settled position now. Certain judgments cited in this regard need not, therefore, be discussed. Besides, they have no application to this case. It was argued that certain Assistant Public Prosecutors were appointed as FTC Judges. It was also urged that the age criteria was not abided by. We do not propose to go into those submissions because in the peculiar circumstances of this case, in **Brij Mohan Lal-II**, this court has given certain directions in terms of Article 142 of the Constitution to improve justice delivery system, to attain the constitutional goals and to do complete justice. One of the directions pertains to for the regularization of the appellants in

the manner laid down therein. It is impossible to hold that the appellants' case is not governed by the said judgment.

44. Indeed, the appellants have referred to their long standing services as FTC Judges. They have left their practice at the Bar. Some of them have become age-barred. Certain judgments have been cited before us in support of the submission that these facts need to be considered and they must be absorbed in the regular services. **Brij Mohan Lal-II** considers this grievance. Hence, it is not necessary to refer to the cases cited on this point.

45. We have repeatedly referred to **Brij Mohan Lal-I** and **Brij Mohan Lal-II**. It is now necessary to see what they lay down. The Eleventh Finance Commission allocated funds for the purpose of setting up of 1734 courts in various States to deal with the long-pending cases. The Finance Commission suggested that States may consider re-employment of retired judges for a limited period since these courts were to be *ad hoc* courts in the sense that they would not be a permanent addition to the existing courts. The Fast Track Courts Scheme

was challenged on various grounds. The said challenge was dealt with by this Court in **Brij Mohan Lal-I**. This Court issued number of directions in relation to establishment and functioning of FTCs. It was made clear that while making appointments, third preference should be given to direct recruits from the Bar. The following direction is material in this behalf:

“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.”

This Judgment made it clear that FTCs were to be *ad hoc* courts.

46. The Fast Track Courts Scheme was in operation till 31/03/2011. But thereafter the Union of India took a decision

not to continue the financing of the Fast Track Courts Scheme beyond 31/03/2011. Some States decided to continue the Fast Track Courts Scheme and some States decided not to continue it. Several writ petitions were filed thereafter *inter alia* praying that necessary directions be given to the respondents to extend the Fast Track Court Scheme and release necessary funds for that purpose. Some of the petitioners who were direct recruits claimed absorption in the regular cadre.

47. While dealing with the points raised in the petitions, this Court in **Brij Mohal Lal-II** traced the history of the Fast Track Courts Scheme. This Court considered the notifications issued by various States appointing direct recruits, relevant rules of different States and methodology adopted for appointment to the FTCs and came to the conclusion that the said posts were temporary and the appointees cannot be said to have any legal right to the posts. It was observed that the appointments were governed under the separate set of rules than the rules governing the regular appointments to the

States Higher Judicial Services. This court observed that the cumulative effect of the notifications appointing the petitioners therein to the said posts under the Fast Track Court Scheme and the relevant rules governing them clearly demonstrate that those were temporary and, in some cases, even time-bound appointments terminable without prior notice and, therefore, it is difficult to accept the contention that the appointees were entitled to be absorbed regularly in those posts. It was observed that where neither the post is sanctioned nor is it permanent and, in fact, the entire arrangement is ad hoc or is for an uncertain duration, it cannot create any rights and obligations in favour of the appointees, akin to those of permanent employees. It is necessary to quote relevant paragraphs of the said judgment:

“172. *The prayer for regularisation of service and absorption of the petitioner appointees against the vacancies appearing in the regular cadre has been made not only in cases involving the case of the State of Orissa, but even in other States. Absorption in service is not a right. Regularisation also is not a statutory or a legal right enforceable by the persons appointed under different rules to different posts. Regularisation shall depend upon the facts and circumstances of a given case as*

well as the relevant rules applicable to such class of persons.

173. *As already noticed, on earlier occasions also, this Court has declined the relief of regularisation of the persons and workmen who had been appointed against a particular scheme or project. A Constitution Bench of this Court has clearly stated the principle that in matters of public employment, absorption, regularisation or permanent continuance of temporary, contractual or casual daily wage or ad hoc employees appointed and continued for long in such public employment would be de hors the constitutional scheme of public employment and would be improper. It would also not be proper to stay the regular recruitment process for the posts concerned. [Refer to Umadevi (3)7]*

174. *It is not necessary for us to deliberate on this issue all over again in view of the above discussion. Suffice it to notice that the petitioner appointees have no right to the posts in question as the posts themselves were temporary and were bound to come to an end by efflux of time. With reference to the letters of their appointment and the Rules under which the same were issued, it is clear that these petitioners cannot claim any indefeasible right either to regularisation or absorption.”*

48. While dealing with the peculiar situation created by the decision taken by the Union of India to discontinue the Fast Track Courts Scheme, this Court noticed that with the help of funds allotted by the Eleventh Finance Commission, the

States have already established the additional courtrooms for FTCs. The relevant aspects were not considered by the Union of India before taking decision to discontinue the Fast Track Courts Scheme but since the policy decision has already been taken and given effect to, this Court made it clear that it was not inclined to strike it down. This Court, however, noted that the Thirteenth Finance Commission had in its recommendations stated that there are 3 crore pending cases in various courts in the country and there is enormous delay in disposing of the cases resulting in immense hardship to people. This Court observed that if the FTC *ad hoc* direct recruits who have over the years gained a lot of judicial experience are regularized and absorbed in the regular cadre of ADJs in different States, the problem of arrears of cases can be handled to some extent. This Court observed that the Union of India as well as the State Governments of their own extended the Fast Track Courts Scheme till 2010 and thereafter, by another year. The Union of India ultimately took the decision not to finance the Fast Track Courts Scheme w.e.f. 30/03/2011. Even thereafter, a number of States have

taken the decision to continue the Fast Track Courts Scheme while retaining the appointees thereto till 2012, 2013 and even till 2016. This Court observed that the cumulative effect of all these factors is that the petitioners have legitimate expectation that either their services would be continued as the Fast Track Courts Scheme would be made a permanent feature of the justice administration in the State concerned or they would be absorbed in the regular cadre. This Court, however, clarified that mere expectation or even legitimate expectation of absorption cannot be a cause of action for claiming the relief of regularization, particularly when the same is contrary to the rules and letters of appointment. While considering the claim of the appointees who were directly appointed as FTC Judges from the Bar for regularization of their services and absorption in the regular cadre this Court observed that the relief of regularization/absorption cannot be granted to these petitioners in the manner in which they have prayed. They have no right to the post. They did not pass any written competitive examination and were solely appointed on the basis of an interview and,

therefore, must now undergo the requisite examination. Making it clear that it had no intention to interfere with the policy decision taken by the Union of India this Court gave certain directions under Article 142 of the Constitution. We may quote the directions which have relevance to this case.

“207.4. *It is directed that all the States, henceforth, shall not take a decision to continue the FTC Scheme on ad hoc and temporary basis. The States are at liberty to decide but only with regard either to bring the FTC Scheme to an end or to continue the same as a permanent feature in the State.*

207.5. *The Union of India and the State Governments shall reallocate and utilise the funds apportioned by the 13th Finance Commission and/or make provisions for such additional funds to ensure regularisation of the FTC Judges in the manner indicated and/or for creation of additional courts as directed in this judgment.*

207.8. *We hereby direct that it shall be for the Central Government to provide funds for carrying out the directions contained in this judgment and, if necessary, by reallocation of funds already allocated under the 13th Finance Commission for judiciary. We further direct that for creation of additional 10% posts of the existing cadre, the burden shall be equally shared by the Centre and the State Governments and funds be provided without any undue delay so that the courts can be established as per the schedule directed in this judgment.”*

49. So far as persons like the appellants, who are appointed by way of direct recruitment from the Bar are concerned, this court made it clear that they shall be entitled to be appointed to the regular cadre. Following directions are material in this behalf:

“207.9. *All the persons who have been appointed by way of direct recruitment from the Bar as Judges to preside over FTCs under the FTC Scheme shall be entitled to be appointed to the regular cadre of the Higher Judicial Services of the respective States only in the following manner:*

(a) The direct recruits to FTCs who opt for regularisation shall take a written examination to be conducted by the High Courts of the respective States for determining their suitability for absorption in the regular cadre of Additional District Judges.

(b) Thereafter, they shall be subjected to an interview by a Selection Committee consisting of the Chief Justice and four senior most Judges of that High Court.

(c) There shall be 150 marks for the written examination and 100 marks for the interview. The qualifying marks shall be 40% aggregate for general candidates and 35% for SC/ST/OBC candidates. The examination and interview shall be held in accordance with the relevant Rules enacted by the States for direct appointment to Higher Judicial Services.

(d) Each of the appointees shall be entitled to one mark per year of service in the FTCs, which shall form part of the interview marks.

(e) Needless to point out that this examination and interview should be conducted by the respective High Courts keeping in mind that all these applicants have put in a number of years as FTC Judges and have served the country by administering justice in accordance with law. The written examination and interview module, should, thus, be framed keeping in mind the peculiar facts and circumstances of these cases.

(f) The candidates who qualify the written examination and obtain consolidated percentage as aforeindicated shall be appointed to the post of Additional District Judge in the regular cadre of the State.

(g) If, for any reason, vacancies are not available in the regular cadre, we hereby direct the State Governments to create such additional vacancies as may be necessary keeping in view the number of candidates selected.

(h) All sitting and/or former FTC Judges who were directly appointed from the Bar and are desirous of taking the examination and interview for regular appointment shall be given age relaxation. No application shall be rejected on the ground of age of the applicant being in excess of the prescribed age.

207.10. The members of the Bar who have directly been appointed but whose services were either dispensed with or terminated on the ground of doubtful integrity, unsatisfactory work or against whom, on any other ground, disciplinary action had been taken, shall not be eligible to the benefits stated in para 207.9 of the judgment.

207.11. Keeping in view the need of the hour and the constitutional mandate to provide fair and

expeditious trial to all litigants and the citizens of the country, we direct the respective States and the Central Government to create 10% of the total regular cadre of the State as additional posts within three months from today and take up the process for filling such additional vacancies as per the Higher Judicial Service and Judicial Services Rules of that State, immediately thereafter.”

50. Indisputably, the appellants were not appointed on any permanent post. The notification of their appointment dated 12/08/2002 clearly states they were appointed against temporary and ex-cadre posts on *ad hoc* basis. They were not appointed under the Rules of 2001. Their appointment was made for a temporary purpose in a temporary Scheme created for speedy disposal of cases. Their case is, therefore, clearly covered by **Brij Mohan Lal-II**. The directions given therein, particularly those contained in paragraph 207.9 which we have quoted above, will clearly apply to them. In **Brij Mohan Lal-II**, this court even considered the contention that the direct recruits had taken all the tests and, therefore, they should not be made to undergo them again. After considering this argument, this court directed that they will have to take written examination and they must also be interviewed. It

must be noted at this stage that on behalf of the High Court of Jharkhand a statement is made that subject to the creation of necessary post/FTCs by the State of Jharkhand, the High Court will consider the appellants' case afresh in terms of the decision of this court in **Brij Mohan Lal-II**. The High Court has also taken-up the matter with the State Government. Relevant portion from the affidavit of Shri Ambuj Nath, Registrar (Administration), High Court of Jharkhand, needs to be quoted.

“19. That as per the recommendation of 13th Finance Commission the Jharkhand High Court has requested the State Government to constitute 31 alternative Courts, in the cadre of Superior Judicial Service co-terminus with the holiday courts/shift Court scheme of the 13th Finance Commission as the terrain and deteriorating the law and other situation was not congruent for holding Morning / Evening / Shift Courts. However, after the direction of the Hon'ble Apex Court in B.M. Lal Case (Tr. Civil Case No.22 of 2001), the Jharkhand High Court has taken up the matter with the State Government for creation of 31 permanent Fast Track Courts instead of 31 alternative court's co-terminus with the morning and evening shift courts and an expansion of 10% of Cadre strength as per the direction of the Hon'ble Apex Court in B.M. Lal Case (Tr. Civil Case No.22 of 2001) in response to the direction dated 19th April, 2012.”

51. The State of Jharkhand will now have to take steps to comply with directions issued in **Brij Mohan Lal-II**, if it has not complied with them so far. The State of Jharkhand and the High Court will have to work in sync to ensure that the directions to appoint the appellants in the regular cadre in Higher Judicial Service are complied with strictly in the manner laid down in **Brij Mohan Lal-II**.

52. We are not prepared to entertain the grievance of the contesting respondents that if the appellants are absorbed in regular cadre their promotional avenues will get affected or they will suffer monetary loss. Their locus to challenge the appellants' appointments has been questioned. But, even if it is assumed that they have locus in view of **Brij Mohan Lal-II** such grievances cannot be entertained. The directions given by this Court in **Brij Mohan Lal-II** are under Article 142 of the Constitution, to do complete justice and while issuing directions, obviously this Court has considered the entire issue in its proper perspective. We, therefore, reject this submission. In the view that we have taken we dispose of

these appeals by recording that we concur with the view taken by the High Court and see no reason to interfere with it. We direct the State of Jharkhand and the High Court of Jharkhand to comply with the directions to appoint the appellants in the regular cadre in Higher Judicial Service in the State of Jharkhand strictly in the manner laid down in **Brij Mohan Lal-II** within a period of six months from the date of receipt of this order by it.

.....J.
(AFTAB ALAM)

.....J.
(RANJANA PRAKASH DESAI)

NEW DELHI,
SEPTEMBER 19, 2012.

JUDGMENT