

[2008] 9 S.C.R. 1126

Madhumita Das and Ors.

v.

State of Orissa and Ors.

(Writ Petition (C) No. 254 of 2008)

June 11, 2008

[Dr. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ]

The following Order of the Court was delivered

Issue notice.

Challenge in these writ petitions is to the Advertisement No.1 of 2008 issued by the Orissa High Court. The petitioners have been selected to function as ad-hoc Additional District Judges in terms of the

judgment of this Court in Brij Mohan Lal Vs. Union of India and Ors. (2002 (5) SCC 1). It is their grievance that 16 posts advertised also include the 9 posts presently held by the petitioners in the two writ petitions. It is pointed out that the eligibility criterion fixed in the advertisement rules out the present petitioners. Firstly, some of them are above the maximum age of 45 years and secondly, being Judicial Officers, they cannot apply for posts advertised for members of the Bar. It is also pointed out that in terms of what has been stated by this Court in Brij Mohan's case (supra), at paragraph-10, direction No.4, they are to be continued (in the ad-hoc posts) belonging to Fast Track Courts, and, thereafter, in respect of regular posts available, after the Fast Track Courts cease to function. Their cases are to be considered subject to their performance being found satisfactory. Their stand is that they have been continued from time to time. Obviously, their performance was found to be satisfactory. Presently, we are not concerned with that question which may have relevance only at the time of considering their absorption in respect of the regular vacancies. It is submitted by Mr. Uday U. Lalit, learned senior counsel that while assessing the performance, there cannot be different yardsticks, i.e. same parameters have to be adopted while judging the performance of the petitioners viz-a-viz. those which are recruited from another source, i.e. from amongst the Judicial Officers. We find substance in this plea also. Therefore, we direct that the process of selection pursuant to the Advertisement No.1 of 2008 may continue but that shall only be in respect of 7 posts, and not in respect of 9 posts presently held by the petitioners. It is pointed out that the High Court, after the advertisement has been issued, has issued certain letters regarding the non-disposal of adequate number of cases. The petitioners have given reasons as to why there could not be adequate disposal of the cases. Needless to say, the High Court shall consider the stand taken in the responses while judging their suitability for appointment on regular basis. The petitioners shall continue to hold the posts until further orders, for which necessary orders shall be passed by the High Court. It is made clear that as and when regular vacancies arise, cases of the

petitioners shall be duly considered. There shall not be any need for them to appear in any examination meant for recruitment to the cadre of District Judge.

List these matters in the first week of September, 2008.

In the meantime, counter and rejoinder affidavits, if any, shall be filed.