

Mahesh Chandra Verma and Others Vs State of Jharkhand and Others

Court: Supreme Court of India

Date of Decision: Sept. 19, 2012

Acts Referred: Advocates Act, 1961 " Section 2(1)

Bengal, North- Western Provinces, Agra and Assam Civil Courts Act, 1887 " Section 13, 14

Constitution of India, 1950 " Article 14, 142, 16, 233, 309

Contract Act, 1872 &mdash

Citation: AIR 2013 SC 862 : (2012) AIRSCW 5273 : (2012) 135 FLR 1049 : (2012) 4 JCR 151 : (2012) 4 JLJR 192 : (2012) 9 JT 334 : (2012) 7 MLJ 720 : (2012) 4 PLJR 105 : (2012) 9 SCALE 113 : (2012) 11 SCC 656 : (2013) 1 SCC(L&S) 1 : (2013) 1 SCT 153 : (2012) 6 Supreme

Hon'ble Judges: Ranjana Prakash Desai, J; Aftab Alam, J

Bench: Division Bench

Advocate: Nidesh Gupta, Kamal Nayan Choubey, Amarendra Sharan, Sunil Kumar, Vijay Hansaria, K.K. Rai and Ajit Kumar Sinha, Amit Kumar, Atul Kumar, Ashish Kumar, Rekha Bakshi, Rituraj Kumar, Anil Kumar, Ritu Priyadarshany, Madhusmita Bora, Shiv Ram Sharma, Sweety Singh, Archana Kumari, N. Batray, T.N. Singh, V.K. Singh, H.L. Srivastava, Jayesh Gaurav and Chhaya Kumari, for Anil K. Jha, Sneha Kalia, Akhilesh Kumar Pandey, Ajay Amrit Raj, Rajeev Singh, Shiv Ram Sharma, Asha Gopalan Nair and Ambhoj Kumar Sinha, for the Appellant;

Final Decision: Allowed

Judgement

Ranjana Prakash Desai, J.

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 and Ors. v.

Union of India and Ors. (2002) 4 SCC 247 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 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* and Ors. (Brig

Mohan Lal-I) (2002) 5 SCC 1 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 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 AIR 1986 SC 1571 O.P. Singla v. Union of India (1984) 4 SCC 450 Rudra Kumar Sain

v. Union of India (2000) 8 SCC 25 and D. Ganesh Rao Patnaik v. State of Jharkhand (2005) 8 SCC 454 , 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 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 Ors. v. State of Andhra Pradesh and Ors. 1985 (Suppl) SCC 432 and Hari Bansh Lal v. Sahadar Prasad

Mahto and Ors. (2010) 9 SCC 655 . Finally, counsel submitted that in light of Brij Mohan Lal v. Union of India and Ors. (Brij Mohan Lal-(II))

(2012) 6 SCC 502, , 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 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 Narender Chandha and Ors. v. Union of India and Ors. (1986) 2 SCC 157, N.K. Chauhan and Ors. v. State of Gujarat and

Ors. (1977) 1 SCC 308 and G.S. Lamba and Ors. v. Union of India and Ors. (1985) 2 SCC 604 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 Chandharyavi 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 appointment. Relying on Rudra Kumar

Sain v. Union of India (2008) 8 SCC 25 it was urged that Shri Chandharyavi 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

Chandharyavi 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 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 and Ors. (1985) 1 SCC 225, Sushma Suri

v. Govt. of National Capital Territory of Delhi and Anr. (1999) 1 SCC 330 and Satish Kumar Sharma v. Bar Council of H.P. (2001) 2 SCC 365.

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 Chandharyavi figured at Serial No. 22 of the select list. On the date of

advertisement 46 vacancies were required to be 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

Chandharyavi 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 Chandharyavi 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 and Ors. v. Haryana State Electricity Board and Ors.

(1996) 4 SCC 319 Hemani Malhotra v. High Court of Delhi (2008) 7 SCC 11 Uttar Pradesh Public Service Commission v. Satya Narayan

Sheohare and Ors. (2009) 5 SCC 473 ; Rakhi Ray and Ors. v. High Court of Delhi and Ors. (2010) 2 SCC 637 ; Ravinder Kumar v. State of

Haryana and Ors. (2010) 5 SCC 136 Bhakra Beas Management Board v. Krishan Kumar Vij and Anr. (2010) 8 SCC 701 and Girjesh

Shrivastava and Ors. v. State of Madhya Pradesh and Ors. (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 and Ors. (2003) 5 SCC 341) . 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 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 (2004) 4 SCC 714) . Some

of the appointees did not fulfill the age criteria (Malik Mazhar Sultan and Anr. v. U.P. Public Service Commission and Ors. (2006) 9 SCC 507) .

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 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 - Rakhi Ray 1994

Supp. (3) SCC 308 State of Orissa v. Rajkishore Nanda (2010) 6 SCC 777, Smt. K. Lakshmi v. State of Kerala(2012) 4 SCC 115 , Arup Das

v. State of Assam 2012(5) SCC 559 and Surinder Singh v. State of Punjab (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 Delhi* (2010) 2 SCC 637 and *Surinder Singh v. State of Punjab*

(1997) 8 SCC 488 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 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 our's 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. and Anr. v. Brojo Nath Ganguly and Anr. AIR (1986) SC 1571 this Court was inter alia,

considering whether unconscionable clause in a contract of employment is void u/s 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.

39. In Naseem Ahmad and Ors. v. State of Uttar Pradesh and Anr. (2011) 2 SCC 734, 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* (1996) 4 SCC 319, this Court 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. 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 and Kashmir and Ors. v. Sanjeev Kumar and Ors.* (2005) 4 SCC 148 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 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 afore indicated 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.