



CORRECTED COPY

(With modifications as set out in Order dated 29.09.2021 in MA No.101 of 2021 in W.P. (Civil) No.936 of 2018 [**Marked as ‘*’, at page nos.3, 60, 87, 96 & 99**], and Order dated 30.11.2021 in M.A. Nos.1729-1736 of 2021 in Review Petition Civil) Nos.1471 of 2020 Etc. [**Marked as ‘**’, at page no. 21 & 38**])

Reportable

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.936 OF 2018

Dinesh Kumar Gupta and others ...Petitioners

Versus

High Court of Judicature of Rajasthan others ...Respondent

WITH

WRIT PETITION (CIVIL) NO.967 OF 2018

WITH

WRIT PETITION (CIVIL) NO.1471 OF 2018

WITH

WRIT PETITION (CIVIL) NO.498 OF 2019

WITH

WRIT PETITION (CIVIL) NO.464 OF 2019

WITH

WRIT PETITION (CIVIL) NO. _____ OF 2020

(D.NO.13252/2019)

WITH

WRIT PETITION (CIVIL) NO.899 OF 2019

WITH

WRIT PETITION (CIVIL) NO.897 OF 2019

WITH

WRIT PETITION (CIVIL) NO.895 OF 2019

AND

WRIT PETITION (CIVIL) NO.1008 OF 2019

J U D G M E N T

Uday Umesh Lalit, J.

1. These Writ Petitions broadly fall in following three categories:-

A] Writ Petition (Civil) No. 936 of 2018 filed by four petitioners, prays for appropriate directions that after the promulgation of Rajasthan Judicial Service Rules, 2010 (“2010 Rules”, for short), all appointments ought to be in conformity with 2010 Rules and allocation of seniority must be in accordance with the Cyclic Order provided in Schedule VII to 2010 Rules. In terms of 2010 Rules, posts in the cadre of District Judges in the Higher Judicial Service in State of Rajasthan were required to be filled up in accordance with quota of 50% for Promotees, 25% for Direct Recruits and 25% by way of

Limited Competitive Examination (“LCE”, for short) in keeping with law laid down by this Court in *All India Judges Association vs. Union of India and Others*¹. This Writ Petition filed by candidates who were successful in LCE prays that they be allocated seniority in terms of the Cyclic Order in Schedule VII. In this group fall Writ Petition (Civil) No.498 of 2019* and Writ Petition Diary No.13252 of 2019 which pray that the *inter se* seniority between candidates who were successful in LCE must be determined on the basis of their merit in LCE and not by their erstwhile seniority.

B] Writ Petition (Civil) No. 967 of 2018 has been filed by 37 Direct Recruits challenging the Provisional Seniority List dated 16.08.2017 with regard to the cadre of District Judges in the Higher Judicial Service in the State, on the ground that the appointments made after 2010 Rules had come into effect, ought to be in accordance with the Cyclic Order; and the *inter se* seniority and placement of Direct Recruits and Promotees, promoted after 2010 Rules had come into effect must be in accordance with 2010 Rules.

¹ (2002) 4 SCC 247

C] Writ Petition (Civil) No.1471 of 2018 has been filed by Rajasthan Judicial Service Officers Association (“the Association”, for short) seeking benefit of ad-hoc/officiating service put in by Promotees who were promoted on ad-hoc basis as Fast Track Court Judges and also prays for re-determination of vacancies of Direct Recruits submitting that the vacancies earmarked for Direct Recruits were in excess of their quota. Writ Petition (C) Nos.464 of 2019, 895 of 2019, 897 of 2019, 899 of 2019 and 1008 of 2018 are filed by Judicial Officers seeking similar benefit in respect of ad-hoc/officiating service as Fast Track Court Judges in the State and pray that such candidates be placed above the Direct Recruits in the cadre of District Judges in the State.

2. Since the issues involved in all these matters pertain to appointments to and allocation of seniority in respect of, the cadre of District Judges in the State of Rajasthan and regarding effect of 2010 Rules, the petitions were heard together. Before we deal with the factual aspects, it would be necessary to consider certain decisions of this Court touching upon the establishment of Fast Track Courts as well as the concept of promotion through LCE and the respective quotas for candidates coming from three different streams in the Higher Judicial Service in various States.

2.1. In *All India Judges' Association v. Union of India and others*², the issues with regard to the working conditions of the members of the subordinate judiciary throughout the country came up for consideration. Number of directions were issued by this Court. However, review petitions were filed by Union of India seeking certain modifications/clarifications. These review petitions were disposed of by this Court while issuing further directions in *All India Judges' Association and others v. Union of India and others*³. In pursuance of said directions, First National Judicial Pay Commission under the Chairmanship of Mr. Justice K.J. Shetty (former Judge of this Court) was constituted on 21.03.1996. The terms of reference were thereafter modified on 16.12.1997 and the Commission was also empowered to consider and grant interim relief. By Report dated 31.01.1998 some interim relief was granted by Justice Shetty Commission. After due deliberations Justice Shetty Commission submitted a Report on 11.11.1999 and all the States/ Union Territories were directed by this Court⁴ to send their responses to Union of India so that all the issues could be deliberated upon and dealt with.

² (1992) 1 SCC 119

³ (1993) 4 SCC 288

⁴ (2002) 4 SCC 274

2.2 After considering all the submissions, this Court in its decision dated 21.03.2002 in *All India Judges' Association and others v. Union of India and others*¹ passed some directions. We are presently concerned with the observations made in paragraphs 24 to 29 in which reference was made to the 85th Report of the Standing Committee of Parliament recommending that there should be increase in the number of Judges. Said Committee had noted the Judges to Population ratio and in tune with 120th Report of the Law Commission, recommendations were made to increase the Judges' strength to 50 Judges per 10 lakh people in the first instance. Recommendations made by Justice Shetty Commission were also considered and recruitment to the Higher Judicial Service in the cadre of District Judges was also subject-matter of directions. Paragraphs 27 to 29 are quoted for ready reference:

“27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scales of the subordinate judiciary, it is at the same time necessary

that the judicial officers, hard-working as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a Judicial Academy, which is very necessary. At the same time, we are of the opinion that there has to be certain minimum standard, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges. While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned: 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be not less than five years. The High Courts will have to frame a rule in this regard.

(emphasis supplied)

28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:

- (1) (a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;
(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and
(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.
- (2) Appropriate rules shall be framed as above by the High Courts as early as possible.

29. Experience has shown that there has been a constant discontentment amongst the members of the Higher Judicial Service in regard to their seniority in service. For over three decades a large number of cases have been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to the Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle "merit-cum-seniority", 25 per cent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, insofar as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the service after their recruitment as per the quotas,

the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in *R.K. Sabharwal v. State of Punjab*⁵. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in *R.K. Sabharwal case* as early as possible. We hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31-3-2003.”

2.3. Soon thereafter, in its decision rendered on 06.05.2002 in *Brij Mohan Lal v. Union of India and others*⁶ this Court had an occasion to consider the issue relating to Fast Track Courts. The 11th Finance Commission had allocated Rs.502.90 crores for the purpose of setting up 1734 courts in various States to deal with long pending cases, particularly sessions cases. On the basis of said recommendations a note was prepared by the Department of Justice, Government of India to set up Fast Track

⁵ (1995) 2 SCC 745

⁶ (2002) 5 SCC 1

Courts. Challenges were raised in some High Courts to the constitution of such Fast Track Courts and the matters were dealt by this Court in Transfer Petitions. After considering rival submissions, directions were issued in para 10 and for the present purposes direction Nos.1 to 8, 14 and 18 are relevant:-

“10. Keeping in view the laudable objectives with which the Fast Track Courts Scheme has been conceived and introduced, we feel the following directions, for the present, would be sufficient to take care of initial teething problems highlighted by the parties:

Directions by the Court

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

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

3. No judicial officer who was dismissed or removed or compulsorily retired or made to seek retirement shall be considered for appointment under the Scheme. Judicial officers who have sought

voluntary retirement after initiation of departmental proceedings/inquiry shall not be considered for appointment.

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

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

6. The recommendation for selection shall be made by a committee of at least three Judges of the High Court, constituted by the Chief Justice of the High Court concerned in this regard. The final decision in the matter shall be taken by the Full Court of the High Court.

7. After ad-hoc promotion of judicial officers to the Fast Track Courts, the consequential vacancies shall be filled up immediately by organizing a special recruitment drive. Steps should be taken in advance to initiate process for selection to fill up these vacancies much before the judicial officers are promoted to the Fast Track Courts, so that vacancies may not be generated at the lower levels of the subordinate judiciary. The High Court and the State Government concerned shall take prompt steps to fill up the consequential as well as existing vacancies in the subordinate courts on priority basis. The State Government concerned shall take necessary decisions within a month from the receipt of the recommendations made by the High Court.

8. Priority shall be given by the Fast Track Courts for disposal of those sessions cases which are pending

for the longest period of time, and/or those involving undertrials. Similar shall be the approach for civil cases i.e. old cases shall be given priority.

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

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18. The High Court and the State Government shall ensure that there exists no vacancy so far as the Fast Track Courts are concerned, and necessary steps in that regard shall be taken within three months from today. In other words, steps should be taken to set up all the Fast Track Courts within the stipulated time.”

2.4. Thereafter in *Malik Mazhar Sultan and another v. U.P. Public Service Commission and others*⁷ the issues regarding timely declaration of vacancies in judicial service and timely appointments were considered by this Court as under:

“23. It is absolutely necessary to evolve a mechanism to speedily determine and fill vacancies of judges at all levels. For this purpose, timely steps are required to be

⁷ (2006) 9 SCC 507

taken for determination of vacancies, issue of advertisement, conducting examinations, interviews, declaration of the final results and issue of orders of appointments. For all these and other steps, if any, it is necessary to provide for fixed time schedule so that the system works automatically and there is no delay in filling up of vacancies. The dates for taking these steps can be provided for on the pattern similar to filling of vacancies in some other services or filling of seats for admission in medical colleges. The schedule appended to the regulations governing medical admissions sets out a time schedule for every step to be strictly adhered to every year. The exception can be provided for where sufficient number of vacancies do not occur in a given year. The adherence to strict time schedule can ensure timely filling of vacancies. All the State Governments, the Union Territories and/or the High Courts are directed to provide for time schedule for the aforesaid purposes so that every year vacancies that may occur are timely filled. All the State Governments, the Union Territories and the High Courts are directed to file within three months details of the time schedule so fixed and date from which the time schedule so fixed would be operational.”

2.5. After the disposal of the appeals in *Malik Mazhar Sultan and others v. U.P. Public Service Commission*⁷ suggestions were made by some of the State Governments and written submissions were also filed by the learned Amicus Curiae. In its order dated 04.01.2017⁸, this Court issued further directions and prescribed timelines. From paragraph 7 onwards directions were issued for filling up vacancies in various cadres including the cadre of District Judges.

⁸ (2008) 17 SCC 703.

2.6. By order dated 20.04.2010 passed in *All India Judges' Association v. Union of India and others*⁹ directions issued earlier with regard to 25% quota for Limited Departmental Competitive Examination were modified by this court as under:

“6. Having regard to various strategies available, we are of the considered view that suitable amendment is to be made for this 25% quota of limited departmental competitive examination. We are also of the view, with the past experience, that it is desirable that 25% quota be reduced to 10%. We feel so as the required result, which was sought to be achieved by this process could not be achieved, thus it calls for modification.

7. Thus, we direct that henceforth only 10% of the cadre strength of District Judges be filled up by limited departmental competitive examination with those candidates who have qualified service of five years as Civil Judge (Senior Division). Every year vacancies are to be ascertained and the process of selection shall be taken care of by the High Courts. If any of the post is not filled up under 10% quota, the same shall be filled up by regular promotion. In some of the High Courts, process of selection of these 25% quota by holding limited departmental competitive examination is in progress, such process can be continued and the unfilled seats, if meritorious candidates are available, should be filled up. But if for some reason the seats are not filled up, they may be filled up by regular promotion and apply the usual mode of promotion process. Thus we pass the following order.

8. Hereinafter, there shall be 25% of seats for direct recruitment from the Bar, 65% of seats are to be filled up by regular promotion of Civil Judge (Senior Division) and 10% seats are to be filled up by limited departmental competitive examination. If candidates are not available for 10% seats, or are not able to

⁹ (2010) 15 SCC 170

qualify in the examination then vacant posts are to be filled up by regular promotion in accordance with the Service Rules applicable.

9. All the High Courts are hereby directed to take steps to see that existing Service Rules be amended positively with effect from 1-1-2011. If the Rules are not suitably amended, this order shall prevail and further recruitment from 1-1-2011 shall be continued accordingly as directed by us. The time schedule prescribed in the order dated 4-1-2007 (in *Malik Mazhar Sultan case*⁸) shall be strictly adhered to for the purpose of selection. All the vacancies are to be filled up in that particular year and there shall not be any carry forward of the unfilled posts.”

3. In the State of Rajasthan, the matters relating to Constitution of Courts and Jurisdiction of Courts were dealt with by the Rajasthan Civil Courts Ordinance, 1950 which consolidated and amended the law relating to Civil Courts in the State. Clause 6 of said Ordinance dealt with Classes of Courts; Clause 8 dealt with Power to fix number of District Judges while Clause 10 dealt with the appointment of Additional Judges. In exercise of powers conferred by Article 233 and the Proviso to Article 309 of the Constitution of India, the Governor of Rajasthan made the Rajasthan Higher Judicial Service Rules, 1969 (“1969 Rules”, for short) in consultation with the High Court¹⁰ in respect of the Rajasthan Higher Judicial Service for

¹⁰ The High Court of Judicature for Rajasthan

making appointments, postings and promotions to the cadre of District Judges, and to provide for other ancillary matters.

The expressions '*Direct Recruitment*', '*District Judge*', '*Member of the Service*' and '*Service*' were defined in Rule 3 as under:-

“(c) “*Direct recruitment*” means recruitment in the matter prescribed by clause (ii) of rule 8;

(d) “*District Judge*” includes Additional District Judge, Sessions Judge and Additional Sessions Judge;

... ..

(f) “*Member of the Service*” means a person appointed in a substantive capacity to a post in the service;

... ..

(h) “*Service*” means the Rajasthan Higher Judicial Service”

3.1. Part-II and Part-III of 1969 Rules dealt with topics '*Cadre*' and '*Principles and Procedure of Recruitment and Promotion*'. Rules 6 to 9 under said Parts-II and III were as under:-

“6. Strength of the Service.-

(1) The strength of the Service shall, until orders varying the same have been passed under sub-rule (2), be as specified in Schedule I.

(2) The strength of the service may be varied by the Governor, from time to time, in consultation with the Court.

(3) Notwithstanding anything contained in sub-rule (1) and (2), the Governor may, in consultation with the Court, hold any appointment to the service in abeyance for such time as he deems fit, without thereby entitling any person to compensation.

7. Principles and procedure to be followed.- For the purpose of recruitment to the service, the following principles and procedure of recruitment and promotion laid down by the Court shall be followed.

8. Sources of Recruitment.- Recruitment to the service shall be made –

(i) by promotion from amongst the members of the Rajasthan Judicial Service; or

(ii) by direct recruitment from the advocates who have practiced in the Court or Courts subordinate thereto for a period of not less than seven years.

9. Appointment to the service.- (1) Subject to the provisions of these rules, appointment of persons to the service shall be made by the Governor on the recommendation of the Court made from time to time; provided that the number of persons appointed to the service by direct recruitment shall at no time exceed one third of the total strength of the service.

(2) Subject to the provisions of sub-rule (1), after every three persons appointed by promotion, the fourth person shall, as far as possible, be appointed by direct recruitment. If a suitable person is not available for appointment by direct recruitment, the post may be filled by promotion from amongst the members of the Rajasthan Judicial Service.”

3.2. Rules 22 and 23 in Part-III dealt with ‘*Temporary or officiating appointment*’ and ‘*Appointments to posts in the selection grade*’ as under:-

“22. Temporary or officiating appointment.- On the occurrence of temporary or permanent vacancies the Court shall recommend the Governor the names of the candidates from amongst the persons who are eligible for appointment to the service by promotion under clause (i) of rule 8, for temporary or officiating appointment.

23. Appointments to posts in the selection Grade.- Appointments to the posts in the selection grade of the service shall be made by the Governor in consultation with the Court on the basis of merit.”

3.3. Part IV of 1969 Rules dealt with ‘*Seniority*’, ‘*Probation*’ and ‘*Confirmation*’. Rule 24 dealt with issue of Seniority was as under:-

“24. Seniority.- Subject to the other provisions of these rules, seniority in the service shall be determined by the date of the order of substantive appointment in a permanent vacancy including appointment on probation under rule 25:

Provided that a promoted officer who may have been allowed to officiate continuously against a permanent vacancy in the cadre from a date, prior to the date of appointment of a direct recruit, shall, if he is subsequently selected and substantively appointed in the service, take his seniority in the cadre over such direct recruit:

Provided further that the seniority of candidates appointed to the service shall in the case of the appointment of more persons than one to the service by an order of the same date, follow the order in which their names have been recommended by the Court.”

Schedule-I to 1969 Rules dealt with ‘*Strength of Service*’, which was stated to be 89 in the post of District & Sessions Judge and Additional District Sessions Judge, which over a period of time got raised to 150.

4. However, appointments in excess of the strength indicated in Schedule I to 1969 Rules, were made on various occasions. By Notification dated 31.03.2001 issued under the provisions of the Ordinance and under Rule 6(2) of 1969 Rules, 40 Additional District and Sessions Courts were set up in the State for Fast Track disposal of cases pending before the District Judges. By Notification dated 12.07.2002, 13 more Additional District and Sessions Courts were set up under the aforesaid provisions of the Ordinance and 1969 Rules for Fast Track disposal of cases pending before the District Courts. Further, 30 Additional District and Sessions Courts were again set up on 17.04.2003 in pursuance of aforesaid powers for Fast Track disposal of cases pending before the District Judges. Thus 83 Courts were created between 31.03.2001 and 17.04.2003 which are commonly known as Fast Track Courts and officers from the cadre of Senior Civil Judges were promoted under Rule 22 of 1969 Rules to man these Fast Track Courts.

It may be mentioned that though the decision of this Court in *Brij Mohan Lal*⁶ had indicated three sources from which the candidates could be appointed to man the Fast Track Courts, in the State of Rajasthan candidates were drawn only from one source namely through ad-hoc/officiating promotions to the persons from the feeder cadre viz. Senior

Civil Judges Cadre. There was no appointment of any retired Judge or by way of recruitment from the Bar.

5. By Order dated 07.05.2003 issued in compliance of directions of this Court in *All India Judges Association and others versus Union of India and Others*¹ and in accordance with the recommendation of First National Judicial Pay Commission, 71 posts were acknowledged to be in “Selection Scale” while 29 posts were found to be in “Super Time Scale” in the Higher Judicial Service for the year 2002-2003.

6. On 20.10.2003, a Notification was issued by the High Court notifying 19 vacancies for Direct Recruitment to the Higher Judicial Service. Out of these 19 vacancies, 11 were shown as current vacancies while 8 were shown as backlog vacancies. A challenge was raised in this Court by way of Writ Petition (Civil) No.576 of 2003 by the Association submitting *inter alia* that there were no vacancies for Direct Recruits and as such the Notification dated 20.10.2003 was invalid. It was also submitted that as on the date, 220 officers were functioning in the cadre of District Judges and Additional District Judges.

7. On 13.12.2004, 22 Judicial Officers from the cadre of Senior Civil Judge were promoted as Additional District and Sessions Judges (Fast Track).

8. The matters concerning regular promotion to be granted to the level of District Judge including whether those who were promoted as Additional District and Sessions Judge (Fast Track) under Rule 22 of 1969 Rules were being considered by the High Court. A report of a Committee constituted to consider said issues was submitted on 23.08.2008. The matter was then placed before the Full Court on 29.11.2008 and thereafter the matter stood deferred to 13.02.2009, 31.10.2009 and to 20.03.2010** successively.

9. By order dated 11.01.2008, some Judicial Officers, including the petitioners in Writ Petition (Civil) No.464 of 2019, were promoted as Additional District and Sessions Judges on Ad-hoc basis to man the Fast Track Courts. The order stated as under:-

“On the recommendation of Rajasthan High Court, H.E. the Governor of State of Rajasthan is pleased to appoint/promote the following 37 officers in the cadre of R.H.J.S. as Additional District and Sessions Judges on purely ad-hoc basis to man the temporary Fast Track Courts”.

9.1 A consequential order was thereafter passed on 11.03.2008 directing transfer/posting of said Judicial Officers in the rank of Additional District and Sessions Judges (Fast Track).

9.2 In terms of the decision of Full Court in its Meeting dated 29.11.2008, the period of probation of 34 out of said 37 Judicial Officers appointed by Order dated 11.01.2008 was extended till further orders.

10. On 07.07.2009, the challenge raised by the Association in Writ Petition (Civil) No.576 of 2003 was decided by this Court vide its decision in *Rajasthan Judicial Service Officers' Association v. State of Rajasthan and Another*¹¹. It was observed by this Court that the sanctioned strength in terms of 1969 Rules was only 150 and as against 25% posts which could be filled up by Direct Recruitment, 41 Direct Recruits were already working in the Higher Judicial Service. It was, therefore, concluded that there was no substantive vacancy available for Direct Recruits. The petition was allowed and the Notification dated 20.10.2003 was set aside. The relevant observations of this Court were as under:-

“8. According to the petitioner, the total cadre strength of RHJS is 150 and there are already 41 direct recruits working in RHJS. Since the total cadre strength is 150 and since 25% of the posts were directed by the High Court to be filled in by direct recruitment, there were

¹¹ (2009) 14 SCC 656

no vacant posts available for direct recruits since 25% of 150 is 37, while 41 direct recruits were already working in RHJS. The petitioner also submitted that if 19 vacancies should be treated as 25% of the direct recruitment then there must be at least 57 fresh appointments in RHJS by promotion, but that has not been done.

... ..

11. In our opinion, as held by us in *Veena Verma case*, the cadre strength is only 150 and not 240 because the strength of the service is as per Rule 6(2) of the Rajasthan Higher Judicial Service Rules as mentioned in Schedule I to the Rules. Until and unless the Schedule is amended in accordance with Rule 6(2) the strength of the service cannot be varied, as held by us in *Veena Verma case*¹². As yet, we are told, no order has been passed under Rule 6(2).

12. We have also perused the counter-affidavit filed by the State of Rajasthan and also the rejoinder-affidavit filed in the case. It is stated in Para 3 of the rejoinder-affidavit that the impugned notification is in violation of the stay order dated 28-9-2000 in Special Leave Petition No. 9346 of 1999, staying the operation of the order dated 30-4-1999 in DB (C) Spl. Application No. 410 of 1998. It is stated in Para 6 of the rejoinder-affidavit that there are as on date 220 officers functioning in the cadre of District Judges and Additional District Judges and as such there are no existing vacancies.

13. In our opinion, this writ petition has to be allowed. In view of our decision in *Veena Verma case*¹² it has to be held that under the existing Rule the strength of the service of RHJS is 150 and since there are 41 direct recruits already working, there is no substantive vacancy. Hence the impugned notification is illegal and deserves to be quashed. The writ petition is allowed and the impugned notification is quashed. However, we make it clear that it is open to the State Government in consultation with the High Court to

amend Schedule I to the Rules in accordance with Rule 6(2) and thereby vary the strength of the service.

14. The petitioner has filed this writ petition seeking a direction to the respondents to complete the selection process initiated under Notification No. Estt.(RJS)/118/2003 dated 20-10-2003. As we have quashed the said notification in WP (C) No. 576 of 2003, this writ petition [WP (C) No. 275 of 2007] is dismissed as having become infructuous.”

11. On the same day, a decision was rendered by this Court in *High Court of Judicature For Rajasthan v. Veena Verma and another*¹², which *inter alia* considered whether Notification dated 21.12.1996 inviting applications for 11 posts in the Higher Judicial Service in the State of Rajasthan by Direct Recruitment was valid. It was observed that 11 posts were not available for Direct Recruitment. While dealing with the challenge, it was observed,

“33. It may be mentioned that posts can be created de hors the cadre of a service, and these are known as ex cadre posts. The posts created without a specific order under Rule 6(2) are ex cadre posts. Hence in our opinion the temporary or permanent vacancies or posts created beyond the number of posts in Schedule I without a specific order under Rule 6(2) varying Schedule I to the Rules are only ex cadre posts, and can only be filled in by promotees, and not by direct recruitment.

34. It may be noted that Rule 9(2) uses the words “as far as possible”. In our opinion, this means that there is no hard-and-fast rule that after every three persons

¹² (2009) 14 SCC 734

appointed by promotion, the fourth person has to be appointed by direct recruitment. In our opinion, the Division Bench of the High Court has given a wrong interpretation of Rule 9(2) of the Rules by observing:

“it does not give a licence to the respondents to refuse to appoint every fourth person by direct recruitment on the ground that it was not possible for any other reason than the maintenance of the limit of one-third of the total strength imposed by sub-rule (1) of Rule 9 on direct recruitment”.

In our opinion this is a wrong view taken by the Division Bench of the High Court as is evident from the words “as far as possible” in Rule 9(2). These words give a discretion to the authorities, and the Court cannot interfere with this discretion, unless it is palpably arbitrary.

[Emphasis supplied]

35. In our opinion, the Division Bench of the High Court erred in law in holding that for the purpose of direct recruitment the temporary or permanent posts created outside the cadre without amending Schedule I were also to be included while calculating the strength of the Service. The Division Bench also erred in holding that whenever posts are created, the strength of the Service is deemed to have been automatically increased although there is no order under Rule 6(2) in this connection amending Schedule I. In our opinion, there has to be a specific order under Rule 6(2) amending Schedule I otherwise it cannot be said that the strength of the cadre has been increased. Hence, in our opinion, the temporary or permanent posts created outside the cadre cannot be taken into consideration for determining the strength of the cadre.”

12. On 18.01.2010, in exercise of the powers conferred by Articles 233 and 234 read with proviso to Article 309 of the Constitution of India, the

Governor of Rajasthan in consultation with the Rajasthan Public Service Commission and the High Court made Rules for regulating recruitment to the posts in, and the conditions and other matters related to the service of persons appointed to the Rajasthan Judicial Service. The Rules are called Rajasthan Judicial Service Rules, 2010 (“2010 Rules”, for short).

12.1 The terms, “Cadre”, “Cadre Post”, “Member of the Service” and “Substantive appointment” are defined in clauses (b), (c), (g) and (l) of Rule 3 as under:

“Rule 3: Definitions

(b) “Cadre” means the cadre of District Judge, Senior Civil Judge and Civil Judge as provided under Rule 5 of Part-II of these Rules;

(c) “Cadre Post” means any post specified in Schedule-I;

(g) “Member of the Service” means a person appointed substantively to a post in the service under the provisions of these Rules; and

(l) “Substantive appointment” means an appointment made under the provisions of these rules to a substantive vacancy after due selection by any of the methods of recruitment prescribed under these Rules and includes an appointment on probation followed by confirmation on completion of the probation period.”

12.2 Part-II of 2010 Rules deals with “Cadre” and Rule 5 stipulates that on and from the date of commencement of the Rules, the Rajasthan

Judicial Service shall stand re-constituted and re-designated into following three cadres:

- (A) District Judges
- (B) Senior Civil Judge, and
- (C) Civil Judge.

Rule 6 deals with “Strength of the Service” and is to the following effect.

“(1) The Strength of the Service in each cadre and number of other posts shall be determined by the Government from time to time, in consultation with the Court and the existing posts in each cadre in the service shall be as specified in Schedule-I.

(2) The strength of other posts manned by the members of the service shall be as specified in Schedule-II unless any order varying the same is issued under sub-rule(1):

Provided that the State Government may, in consultation with the Court, create any permanent or temporary post from time to time as may be considered necessary and may abolish any such post or posts in the like manner without thereby conferring any right on any person for any type of claim.”

12.3. Part-III of 2010 Rules deals with subject “General Conditions” and

Rules 7, 8 and 15 are as under :-

“7. **Determination of vacancies:** (1) subject to the provisions of these rules, the Court shall determine and notify the actual number of existing and expected vacancies in each cadre as per the time schedule specified in Schedule-III.

(2) Where the vacancies in the cadre are to be filled in by a single method, the vacancies so determined shall be filled by that method.

(3) Where the vacancies in the cadre are to be filled in by more than one method, the apportionment of vacancies determined under sub-rule (1), to each such method shall be done maintaining the prescribed percentage for the particular method taking into account consideration the overall number of posts already filled in:

Provided that the apportionment for filling up vacancies in the cadre of District Judge, shall be made in a cyclic order of respective quota of each category, i.e. Promotee on the basis of merit-cum-seniority, Promotee on the basis of Limited Competitive Examination and the Direct Recruit.

8. Examination:- For filling up of vacancies in the cadre of District Judge and Civil Judge, examination shall be conducted by the Recruiting Authority as per the time Schedule specified in Schedule III.

... ..

15. Temporary or officiating appointments:- On occurrence of temporary or permanent vacancy, in the cadre of District Judge or the Senior Civil Judge, as the case may be, not taken into consideration at the time of determining the vacancies under Rule 7 and if in the opinion of the Court such vacancy is to be filled in immediately, the Court shall recommend to the Appointing Authority the names of the persons eligible for appointment maximum for a period of one year and such appointment shall not confer any rights upon the person so appointed.”

12.4. Part IV deals with “Methods of Recruitment” under which “Recruitment to the cadre of Civil Judge” and “Recruitment to the cadre of Senior Civil Judge” are dealt with in Rules 16 to 30 of sub-Parts A and B,

while “Recruitment to the cadre of District Judge” is dealt with under sub-

Part C. Rule 31 deals with source of recruitment, as under:-

“**31. Source of recruitment:** (1) Fifty percent posts in the cadre of District Judge shall be filled in by promotion from amongst Senior Civil Judges on the basis of merit-cum-seniority subject to passing of suitability test as provided under Schedule-IV.

(2) Twenty five percent posts in the cadre of District Judge shall be filled in by promotion from Senior Civil Judges strictly on the basis of merit through limited competitive examination conducted by the Court.

(3) Twenty Five percent posts in the cadre of District Judge shall be filled in by direct recruitment from amongst the eligible Advocates on the basis of written examination and interview conducted by the Court.

(4) For the purpose of proper maintenance and determination of seniority of persons appointed through the aforesaid sources, a roster for filling of vacancies based on quota of vacancies reserved here-in-above, as given in Schedule-VII shall be maintained. This roster shall operate prospectively.”

12.5. Thereafter the relevant subjects are dealt with under three sub-heads named as (I) Promotion, (II) Direct Recruitment and (III) Appointment.

Rule 32 dealing with the “Recruitment by Promotion” is as under:

“**32. Recruitment by promotion:-** (1) Fifty percent posts in the Cadre of District Judge shall be filled in by promotion from amongst Senior Civil Judges recommended by the Court, on the basis of merit-cum-seniority, subject to passing of suitability test as provided in Schedule-VI.

Explanation: “Qualifying the eligibility test shall not affect the inter-se-seniority of the officers in the Cadre of Senior Civil Judge.

(2) The recruitment in the cadre of District Judges under sub-rule (2) of rule 31 shall be made by a Limited Competitive Examination conducted by the Court in accordance with the scheme of the examination prescribed under Schedule-VIII.

(3) A Senior Civil Judge who has completed actual five years service as on the first day of January preceding the last date fixed for the receipt of the applications shall be eligible for appearing in the Limited Competitive Examination for promotion to the Cadre of District Judge.

(4) For the purpose of Limited Competitive Examination, applications shall be invited by the Court from all eligible Senior Civil Judges in such manner and in such form as may be specified by the Court.

(5) Candidates who have obtained minimum 50% marks in the Limited Competitive Examination shall be eligible for interview by a Committee consisting of Chief Justice, Administrative Judge and two other Judges nominated by the Chief Justice. The Committee taking into consideration the performance at examination, the service record and the performance at the interview shall assess the suitability and recommend the names of the offices for promotion.”

12.6 Part-D deals with “Probation”, “Confirmation” and “Seniority”.

Sub-heading dealing with “Appointment” deals with issue of combined

Select List as under:

“42. Combined Select List: The Court shall prepare a combined select list putting the names of candidates in cyclic as provided in Schedule-VII from the lit

prepared under sub-rule (1) and (5) of Rules 32 and 41 and send it to the Appointing Authority.”

12.7 The issue of seniority is dealt with by Rule 47 as under:

“47. Seniority: Subject to the other provisions of these Rules:

(1) Seniority in the service in the cadre of Civil Judge shall be determined from the date of the order of substantive appointment to the service:

Provided that the seniority of candidates appointed to the service shall, in the case of appointment of more persons than one follow the order in which they have been placed in the list prepared by the Recruiting Authority under Rule 24 of these Rules.

(2) Inter-se seniority of persons promoted to the Senior Civil Judge cadre in the same year shall be the same as it was in the post held by them at the time of promotion.

(3) Seniority of persons appointed to the Service in the District Judge cadre by direct recruitment shall be determined from the date of the order of substantive appointment in the cadre.

Provided that the seniority of direct recruitee to the cadre, in the case of appointment of more persons than one by an order of the same selection, shall follow the order in which they have been placed in the list prepared by the Court under rule 41.

(4) Inter-se seniority of persons promoted to the District Judge cadre in the same year shall be the same as it was in the post held by them at the time of promotion.

(5) The seniority of direct recruitee vis-a-vis the promote appointed to the cadre of District Judge shall be determined in the order of their names placed in the combined select list prepared under Rule 42:

Provided that the persons promoted under Rule 15 shall not be given seniority over the direct recruitee.”

12.8 Rule 57 repealed 1969 Rules and made provisions for saving certain actions as under:

“57. Repeal and savings: The Rajasthan Higher Judicial Service Rules, 1969 and the Rajasthan Judicial Service Rules, 1955, as amended from time to time, are hereby repealed:

Provided that such repeal shall not affect any order made, action taken, effects and consequences of anything done or suffered there under or any right, privilege, obligation or liability already acquired, accrued or incurred there under, or enquiry, verification, or proceedings in respect thereof made.”

12.9 Schedule I which is referable to Rule 3(c) and Rule 6(1) of the Rules deals with topic “Cadre Strength of the Service” and Part A deals with “District Judge Cadre” which enumerates various designations in said cadre aggregating to 223 and earmarks 10% reserve for leave, training, deputation etc.; thus taking the grand total to 245. Parts B and C of this Schedule deal with “Senior Civil Judge Cadre” and “Civil Judge Cadre” and set out the strength at 222 and 329 respectively.

12.10 Schedule II which is referable to Rule 6(2) of 2010 Rules deals with topic “Strength of the Service”. Part-A thereof enumerates various

designations and the appropriate strength for the concerned posts in “District Judge Cadre”, in which 102 posts are mentioned including 83 “Additional District Judges (Fast Tracks)”. In the same Schedule, Parts B and C deal with “Senior Civil Judge Cadre” and “Civil Judge Cadre” respectively and the strength noted against said two parts is 7 and 4 respectively.

12.11 Schedule VII which is referable to Rule 31(4) sets out the Roster for “filling up vacancies in the District Judge Cadre by direct recruitment and by promotion.” First four points in the Roster are as under:

1. By promotion-merit-cum-seniority
2. By promotion-merit-cum-seniority
3. By promotion-Limited Competitive Examination
4. By direct recruitment.

Said pattern is then followed in succession¹³.

13. On 31.03.2010 a Notification was issued by the High Court notifying 58 vacancies to be filled in the cadre of District Judge. Out of 58 vacancies so notified, 36 vacancies were to be filled by the Direct Recruitment from the Bar while remaining 22 vacancies were to be filled by promotion through LCE as provided in Rules 7, 8, 32(1) and 40(1) along

¹³ The pattern was thereafter modified vide Notification dated 31.08.2012 although the ratio between three sources was kept intact.

with Schedule-II to 2010 Rules. In this recruitment, no provision was made for 50% promotion quota meant for Promotees. Thereafter, a Notification was issued on 15.04.2010 inviting applications from Senior Civil Judges who had completed five years of actual service for being considered for 22 posts in the cadre of the District Judge to be filled by LCE and for filling up 36 vacancies through Direct Recruitment.

14. In *Malik Mazhar Sultan and others v. U.P. Public Service Commission*⁷, an affidavit was filed on behalf of the High Court in I.A. No. 73 of 2009. The stand taken by the High Court in said affidavit was as under:-

“2. It is submitted that in compliance of the directions of Hon’ble Court dated 21.03.2002 passed in All India Judges Association Vs. UOI & Ors. (AIR 2002 SC 1752 +2002 (4) SCC 247), new Rules for State Judicial Service, namely “Rajasthan State Judicial Service Rules 2003” (hereinafter referred to as draft Rules of 2003) were being framed, wherein provision of various modes of Recruitment/Promotion as approved and directed by this Hon’ble Court had been incorporated.

3. In the draft Rules, 2003 a time bound schedule for recruitment of the Judicial Officers was also provided, which was more or less on the same lines as directed by the Hon’ble Court in this matter. However, there was variation between dates specified in the calendar provided in Schedule-III of the draft Rules of 2003 and time schedule prescribed by the Hon’ble Court. As such, the time schedule prescribed by the Hon’ble Court could be implemented only after amending the Draft Rules, 2003 and due promulgation of the same. Amendment in the Draft Rules of 2003 would have

further required, approval of the Full Court of the High Court and consultation with the Rajasthan Public Service Commission resulting in further delay in due promulgation of the Draft Rules of 2003. Therefore, an application dated 11.07.2008 for direction and modification was preferred by the Rajasthan High Court before the Hon'ble Court and it was prayed that the Hon'ble Court may be pleased:-

(a) to allow the application and permit the applicant/Rajasthan High Court to follow the calendar as annexed in Schedule-III of the draft of Rules, 2003 after due promulgation thereof; and

(b) to grant exemption to the applicant from implementing the time Schedule as prescribed by the Hon'ble Court vide it's order dated 04.01.2007 till draft Rules 2003 are finalized and duly promulgated.

This application for directions and modification was registered as I.A. No.39. Copy of the same is annexed herewith and marked as Annexure-R1.

4. It is submitted that while I.A. No.39 preferred by the Rajasthan High Court was pending consideration, in pursuance of order dated 24.07.2008 passed by this Hon'ble Court, a factual report on behalf of Rajasthan High Court with regard to filling of vacancies in subordinate judiciary in the format prescribed by the Hon'ble Court was filed by the answering respondent through an affidavit dated 27.08.2008. True copy of the same is annexed herewith and marked as ANNEXURE-R-2.

5. It is submitted that while considering the factual report with regard to filling of vacancies in subordinate judiciary filed by the Rajasthan High Court through the affidavit dated 27.08.2008 (Annexure-R-2), the Hon'ble Court vide its order dated 23.09.2008 (Annexure-A-1) dismissed the I.A. No.39 preferred by the Rajasthan High Court.

6. It is submitted that meanwhile the Draft Rules 2003, incorporating the time schedule prescribed by the Hon'ble Court and other necessary amendments were renamed as "Rajasthan Judicial Service Rules, 2010" (hereinafter to be referred as Rules, 2010) and

the same have been duly promulgated and come into force w.e.f. the date of its publication in Rajasthan Gazette i.e.19.01.2010.

7. It is submitted that: on the date of submission of the IA i.e. 10.10.2009, there were 75 vacancies in the cadre of Rajasthan Higher Judicial Service and 33 vacancies in the cadre of Civil Judge (Sr. Division).

8. It is submitted that a report dated 23.08.2008 of a Committee of Hon'ble Judges, constituted by the Hon'ble Chief Justice to consider the matter regarding promotions in the cadre of District Judge on the post of Additional District & Sessions Judge (regular), Additional District & Sessions Judge (Fast Track) and from the post of Civil Judge (Jr. Division) to the post of Civil Judge (Sr. Division), recommending promotions in these cadres was placed before the Hon'ble Full Court in its meeting held on 29.11.2008, 13.02.2009 and 31.10.2009 but due to difference of opinion, the report of the Hon'ble Committee could not be approved by the Full Court. However, Hon'ble Full Court in its meeting held on 31.10.2009 approved the report of the Hon'ble Committee dated 23.08.2008 to the extent of making promotion of 33 officers from the post of Civil Judge (Jr. Division) to the post of Civil Judge (Sr. Division). Consequently, 33 officers have been promoted from the post of Civil Judge (Jr. Division) to that of Civil Judge (Sr. Division) vide order dated 30.11.2009. Copy of order dated 30.11.2009 is annexed herewith and marked as ANNEXURE-R/3.

9. It is submitted that the report dated 23.08.2008 of the Hon'ble Committee regarding grant of promotions to the post of Additional District & Sessions Judge (regular) and Additional District & Sessions Judge (Fast Track) was again placed for consideration before the Hon'ble Full Court in its meeting held on 20.03.2010. Whereupon it was Resolved that the report requires reconsideration by the Promotion Committee after considering the service record for subsequent period also and the report of the Promotion Committee be placed before the Hon'ble Full Court

by circulation. Pursuant to the Full Court Resolution, Hon'ble Committee convened its meeting on 05-06.04.2010 and submitted its report, suggesting amendment in Rule 15 of the Rajasthan Judicial Service Rules, 2010. This report of the Hon'ble Committee was placed before the Hon'ble Full Court in its meeting held on 10.04.2010 whereupon it was Resolved to defer the matter regarding amendment in Rule 15 of Rajasthan Judicial Service Rules, 2010 and also Resolved to again request the Committee to reconsider the matter regarding promotion as per Full Court Resolution dated 20.03.2010. It is submitted that pursuant to the aforesaid Resolution the meeting of Hon'ble Committee has been fixed on 12.04.2010 and 13.04.2010.

10. It is submitted that after the judgment dated 07.07.2009 rendered by the Hon'ble Supreme Court in Civil Appeal No.5699/2000 High Court of Judicature for Rajasthan vs. Veena Verma & Ors. and the judgment of the same date rendered by the Hon'ble Court in Writ Petition Civil No.576/2003 RJS Officers Asson. Vs. State of Rajasthan & Ors. the matter of determination of vacancies for direct recruitment in Rajasthan Higher Judicial Service was placed before the Hon'ble Full Court vide Circulation Case No.10/2009 on 18.07.2009 and on account of different opinion of Hon'ble Judges, on 16.09.2009 the Hon'ble Chief Justice directed to put up the file later. In the meanwhile, Rajasthan Judicial Service Rules, 2010 came into force w.e.f. 19.01.2010. Therefore, the matter regarding consideration of vacancies in each cadre under the Rules of 2010 was considered by the Hon'ble Full Court in its meeting held on 24.01.2010 and the same was resolved to be deferred. The matter was again placed before the Hon'ble Full Court in its meeting held on 20.03.2010 and as per Rajasthan Judicial Service Rules, 2010, the category wise vacancy in the District Judge Cadre upto 31.03.2011 has been resolved to be determined as under –

- | | | |
|--|---|----|
| (a) By promoting | - | 49 |
| (b) By limited competitive examination | - | 22 |
| (c) By direct recruitment | - | 36 |

... ..”

15. The matter in respect of consideration of the Report of the Committee with respect to promotion of Additional District and Sessions Judges, including those who were manning Fast Track Courts, was taken up by the Full Court on 20.03.2010**. In March-April 2010, the Report of the Committee and records of the services rendered by all the concerned candidates were considered by the High Court and substantive absorption of those who were promoted to Fast Track Court and promotion of some candidates to the cadre of District Judge on substantive basis was approved by the Full Court.

16. On 21.04.2010 a formal Order was issued by the State Government in view of the recommendation made by the High Court in its Resolution dated 12/13.04.2010 promoting 47 Judicial Officers who were manning Fast Track Courts to the level of Additional District Judges in accordance with the recommendation made by the Committee in its Report dated 23.08.2008 (“the 47 Judicial Officers”, for short). It must be noted that the 47 Judicial Officers were not intimated by the High Court that they could appear at LCE to be conducted in pursuance of the Notification dated 15.04.2010. The Order recited as under:-

“On the recommendation of Rajasthan High Court, H.E. the Government of State of Rajasthan is pleased to appoint/promote the following 47 officers as

Additional District and Sessions Judges in the District Judge Cadre.”

On the same day i.e. on 21.04.2010 another Order was issued promoting 49 Senior Civil Judges, including the petitioner in Writ Petition (Civil) No.1008 of 2019, as Additional District and Sessions Judges on ad-hoc basis to man the Fast Track Courts.

17. The candidates who had applied in pursuance of the Notification dated 15.04.2010 appeared at the written examination held on 30.06.2010 and the successful candidates were then called for interview. However, by communication dated 04.09.2010 interviews were postponed *sine die*. Later, by Notification dated 22.09.2010 which was issued in pursuance of the Resolution of the Full Court, the entire examination process for recruitment by Direct Recruitment and through LCE was directed to be held afresh.

18. A Notification was issued on 31.03.2011 renotifying the number of vacancies available for Direct Recruitment and for promotion through LCE. Said Notification was as under:-

“RAJASTHAN HIGH COURT JODHPUR

NOTIFICATION

As per the determination of vacancies for the current year & the strength of District Judge cadre being 245,

the vacancies in the District Judge cadre as hereby notified as under:-

Vacancies for Direct Recruitment	- 37
Vacancies for promotion by Limited Competitive Examination	- 22
Vacancies for promotion	- 24

In case the cadre strength is revised to 255, the vacancies would be as under:-

Vacancies for Direct Recruitment	- 39
Vacancies for promotion by Limited Competitive Examination	- 22
Vacancies for promotion	- 33”

18.1. On the same day i.e. on 31.03.2011 two Orders were passed by the High Court; one abolishing 40 Fast Track Courts while the other directed continuation of the others “on ad-hoc basis as against the available vacant posts” till the matter was considered for regular promotion. The Order stated:-

“Consequent upon abolition of 40 ADJ (FT) Courts vide Government Notification No.F.10(4) Nyay/98/Part dt. 31.3.2011, the following officers shown at SI. No.01 to 39 working as ADJ (FT) are continued on ad hoc basis as against the available vacant posts till the matter is considered for regular promotion in accordance with Rules and are transferred/ posted as mentioned below. The officers shown at S.No.40 to 53 are also transferred / posted as mentioned below:-....”

19. A Bench of three Judges of this Court after noting its earlier Judgment in *All India Judges’ Association vs. Union of India and Others*¹ modified certain directions contained therein by its Order dated 20.04.2010⁹.

The relevant paragraphs have already been quoted in paragraph 2.6 hereinabove.

20. On 10.06.2011, appropriate amendments were effected in 2010 Rules to fix the quota for Promotees at 65% in accordance with the aforesaid Order dated 20.04.2010⁹ issued by this Court and raising the cadre strength of District Judges from 245 to 255.

21. In *Brij Mohan Lal v. Union of India and Others*¹⁴, this Court *inter alia* dealt with two Transferred Cases, one arising from Writ Petition filed in the High Court of Punjab and Haryana seeking directions to stop the scheme and policy of appointment of retired District and Sessions Judges as Ad-hoc Judges of the Fast Track Courts and the other filed in the High Court of Andhra Pradesh seeking declaration that constitution of Fast Track Courts was unconstitutional and consequently be set aside. This Court considered the entire scheme as well as the relevant provisions in various States and considered diverse submissions. One of the questions raised by this Court was:-

“Whether any of the appointees to the post of ad hoc Judges under the FTC Scheme have a right to the post in the context of the facts of the present case?”

¹⁴ (2012) 6 SCC 502

21.1 Thereafter, the letters of appointment issued to various appointees including those from the State of Rajasthan were considered and while dealing with the issue of regularization of service rendered by the Judicial Officers' manning Fast Track Courts, it was observed:-

“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.”

21.2 In so far as the State of Rajasthan is concerned, it was observed:-

“177. In the case of State of Rajasthan, it is the judicial officers from the cadre of Civil Judge, Senior Division, who were promoted as FTC Judges. They have continued to hold those posts for a considerable period. According to these petitioners, they were promoted to the Higher Judicial Services as per the Rules and, therefore, keeping in view the order of this Court in *Madhumita Das*¹⁵ as well as the very essence of the FTC Scheme, they should be absorbed as members of the regular cadre of Higher Judicial Services of the State of Rajasthan. The State Government had issued a directive that they should undertake the limited competitive examination for their regular promotion/absorption in the higher cadre. These officers questioned the correctness of this directive on the ground that they were promoted as Additional Sessions Judges (FTC) under the Rules and, therefore, there was no question of any further requirement for them to take any written examination

¹⁵ (2008) 6 SCC 731

after the long years of service that they have already put in in the Higher Judicial Services.

178. The Rajasthan Judicial Service Rules, 2010 are in force for appointment to the Higher Judicial Services of the State. The judgment of this Court in *All India Judges' Assn. (3) case*¹ as well as the relevant Rules contemplate that a person who is to be directly appointed to the Higher Judicial Services has to undergo a written examination and appear in an interview before he can be appointed to the said cadre. As far as appointment by promotion is concerned, the promotion can be made by two different modes i.e. on the basis of seniority-cum-merit or through out-of-turn promotion wherein any Civil Judge, Senior Division who has put in five years of service is required to take a competitive examination and then to the extent of 25% of the vacancies available, such Judges would be promoted to the Higher Judicial Services.

179. It was admitted before us by the learned counsel appearing for the petitioners that these officers who were promoted as ad hoc FTC Judges had not taken any written competitive examination before their promotion to this post under the Higher Judicial Services. In other words, they were promoted on ad hoc basis depending on the availability of vacancy in FTCs. Once the Rules required a particular procedure to be adopted for promotion to the regular posts of the Higher Judicial Services, then the competent authority can effect the promotion only by that process and none other. In view of the admitted fact that these officers have not taken any written examination, we see no reason as to how the challenge made by these judicial officers to the directive issued by the State Government for undertaking of written examination may be sustained. Thus, the relief prayed for cannot be granted in its entirety.”

21.3 Finally, following directions were issued in paragraph 207:-

“**207.** Without any intent to interfere with the policy decision taken by the Governments, but unmistakably,

to protect the guarantees of Article 21 of the Constitution, to improve the justice delivery system and fortify the independence of judiciary, while ensuring attainment of constitutional goals as well as to do complete justice to the lis before us, in terms of Article 142 of the Constitution, we pass the following orders and directions:

207.1. Being a policy decision which has already taken effect, we decline to strike down the policy decision of the Union of India vide Letter dated 14-9-2010 not to finance the FTC Scheme beyond 31-3-2011.

207.2. All the States which have taken a policy decision to continue the FTC Scheme beyond 31-3-2011 shall adhere to the respective dates as announced, for example in the cases of States of Orissa (March 2013), Haryana (March 2016), Andhra Pradesh (March 2012) and Rajasthan (February 2013).

207.3. The States which are in the process of taking a policy decision on whether or not to continue the FTC Scheme as a permanent feature of administration of justice in the respective States are free to take such a decision.

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.

207.6. All the decisions taken and recommendations made at the Chief Justices and Chief Ministers' Conference shall be placed before the Cabinet of the Centre or the State, as the case may be, which alone shall have the authority to finally accept, modify or decline the implementation of such decisions and, that too, upon objective consideration and for valid reasons. Let the minutes of the Conference of 2009, at least now, be placed before the Cabinet within three months from the date of pronouncement of this judgment for its information and appropriate action.

207.7. No decision, recommendation or proposal made by the Chief Justices and Chief Ministers' Conference shall be rejected or declined or varied at any bureaucratic level, in the hierarchy of the Governments, whether in the State or the Centre.

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.

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 seniormost 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.

207.12. These directions, of course, are in addition to and not in derogation of the recommendations that may be made by the Law Commission of India and any other order which may be passed by the courts of competent jurisdiction, in other such matters.

207.13. The candidates from any State, who were promoted as FTC Judges from the post of Civil Judge, Senior Division having requisite experience in service, shall be entitled to be absorbed and remain promoted to the Higher Judicial Services of that State subject to:

(a) Such promotion, when effected against the 25% quota for out-of-turn promotion on merit, in accordance with the judgment of this Court in

All India Judges' Assn. (3) ¹, by taking and being selected through the requisite examination, as contemplated for out-of-turn promotion.

(b) If the appointee has the requisite seniority and is entitled to promotion against 25% quota for promotion by seniority-cum-merit, he shall be promoted on his own turn to the Higher Judicial Services without any written examination.

(c) While considering candidates either under Category (a) or (b) above, due weightage shall be given to the fact that they have already put in a number of years in service in the Higher Judicial Services and, of course, with reference to their performance.

(d) All other appointees in this category, in the event of discontinuation of the FTC Scheme, would revert to their respective posts in the appropriate cadre.”

22. In the selection process undertaken pursuant to the Notification dated 31.03.2011 for filling up vacancies through Direct Recruitment, LCE and Promotion, only 9 candidates could clear LCE against 22 vacancies meant for that category. This number got reduced to 8 as the candidature of one of the successful candidates was not accepted. Resultantly, the unfilled vacancies meant for LCE were added to the quota for Promotees and by Government Order dated 15.07.2013 appropriate Appointment Orders were issued. The text of the Order was as under:-

“In exercise of the powers conferred by Article 233(1) of the Constitution of India read with Rule 43 of the

Rajasthan Judicial Service Rules, 2010, the Governor of the State of Rajasthan on the recommendation of the Rajasthan High Court is pleased to appoint the following persons recruited by promotion, limited competitive examination and direct recruitment to the Rajasthan Judicial Service in the District Judge Cadre in the pay scale of Rs.51550-1230-58930-1380-63070 [District Judge (Entry Level)] with such allowances as are admissible as per rules and their pay shall be fixed as per rules. The persons appointed by direct recruitment shall be placed on probation for a period of two years from the date of assuming charge of their office as per Rule 44 of the Rajasthan Judicial Service Rules, 2010:...”

Thereafter, the names of 87 candidates were mentioned and the names of 8 successful candidates in LCE were at Sr. Nos. 10, 19, 30, 39, 50, 59, 65 and 68.

23. In the meantime, by Notification dated 31.03.2013 issued by the High Court, 58 vacancies were determined for the years 2012-13 and 2013-14 in the cadre of District Judge. This Notification also stated that in case the cadre strength was revised to 362, the vacancies in the cadre of District Judge would be 165. On 14.09.2013, the strength of District Judge cadre was revised to 372. By Notification dated 01.04.2014 issued by the High Court, 204 vacancies were determined in the cadre of District Judge for the years 2012-13, 2013-14 and 2014-15. The relevant portion of the Notification dated 01.04.2014 was as under:-

“In suppression of earlier notification No.Estt.(RJS)/06/2014 dated 15.01.2014, as per

schedule I of RJS rules 2010, the determination of vacancies in District Judge Cadre for the year 2012-2013, 2013-14 and 2014-15 is hereby notified as under:-

As per cadre strength – 372

Total vacancies – $186 + 18^* = 204$

Vacancies for district recruitment – 41

Vacancies for promotion by limited competitive examination – 29

Vacancies for promotion – 116

*Note:- 18 future vacancies (against 10% of the total Number of vacancies) are not assigned to any category for the present. However, these will be given as per roaster to the particular category wherein any vacancy(ies) on account of death elevation, dismissal etc. will arise.”

24. On 21.04.2014, 56 Senior Civil Judges were promoted as Additional District and Sessions Judges on Ad-hoc basis. The Order recited as under.

“On the recommendation of Rajasthan High Court, H.E. the Governor of State of Rajasthan is pleased to appoint the following 56 officers purely on ad-hoc basis as Additional District and Sessions Judge in the District Judge cadre under Rule 15 of the Rajasthan Judicial Service Rules, 2010:-”

The names of concerned 56 Judicial Officers were thereafter mentioned in the Order.

25. On 15.12.2014 a final seniority list of all the Judicial Officers who were then in service and appointed under the provisions of 1969 Rules prior to 2008 (from Serial Nos.1 to 205) was published. This seniority list is not under challenge and is accepted to be correct by all the concerned.

26. A Notification was issued on 31.03.2015 by the High Court determining cumulative vacancies in the cadre of District Judge for the years 2012-13, 2013-14, 2014-15 and 2015-16 as under:-

“In supersession of earlier Notification No.Estt.(RJS)/33/2014 dated 01.04.2014, as per Schedule-1 of RJS Rules, 2010, the cumulative vacancies in District judge cadre for the years 2012-13, 2-13-14, 2014-15 & 2015-16 are hereby determined and notified as under:-

As per cadre strength	372
Total Vacancies = 207+21	228
Vacancies for Direct Recruitment	44
Vacancies for promotion by Limited Competitive Examination	29
Vacancies for promotion	134

*Note:- 21 future vacancies (against 10% of the total Number of vacancies) are not assigned to any category for the present. However, these will be given as per roster to the particular category wherein any vacancy (ies) on account of death elevation, dismissal etc. will arise.”

26.1 Pursuant to the selection undertaken thereafter by Order dated 05.02.2016, 175 candidates were appointed to the cadre of District Judge, which included recruitment through Promotion, LCE and Direct Recruitment, . The Order stated :-

“i. This Select List in cyclic order has been prepared of the candidates being recommended for appointment while leaving one post unfilled for a candidate Shri. Akhilesh Kumar selected through Direct Recruitment. However, it is notified that this list shall remain subject to revision after receipt of

complete verification report from State Government with regard to Shri Akhilesh Kumar and on his being recommended by the Court for appointment, he shall occupy the roster point in the cyclic order as he would have occupied if included in the original list as per his position in order or merit.

ii. This Select List in cyclic order has been prepared of the candidates being recommended for appointment while leaving eight posts unfilled for eight Sr. Civil Judges, failing in the zone of consideration for promotion on merit-cum-seniority basis as their consideration has been deferred due to pendency of departmental enquiries against them. However, it is notified that this list shall remain subject to revision after outcome of the departmental enquiries with regard to the said eight Sr. Civil Judges and on their being recommended by the court for promotion; they shall occupy the roster point in the cycle order as they would have occupied if included in the original list as per their position in order of interest seniority in their feeder cadre.”

26.2. The petitioners in Writ Petition (Civil) No.895 of 2019, Writ Petition (Civil) No.897 of 2019 and Writ Petition (Civil) No.899 of 2019 were promoted to the cadre of District Judge by aforesaid order dated 05.02.2016.

27. Thereafter, a Provisional Seniority List was issued vide communication dated 16.08.2017 as regards Judicial Officers from Serial Nos. 206 onwards. The communication recited as under:-

“TENTATIVE DETERMINATION OF SENIORITY
OF THE OFFICERS OF DISTRICT JUDGE CADRE.

Final Seniority List of the officers of District Judge Cadre upto Shri Nagendra Pal Bhandari was published on 15.12.2014.

After taking into consideration, the representations received from the officers of different categories and all relevant provisions, the tentative/provisional seniority list of the officers of District Judge Cadre next to Shri Nagendra Pal Bhandari is reckoned/proposed:"

The names of all the concerned candidates were mentioned in the Provisional Seniority List. The candidates, who were successful in LCE were given the original order of Seniority in the feeder cadre without giving them any benefit for having successfully cleared the LCE. Further the 47 Judicial Officers promoted on 21.04.2010 were en-bloc placed above all the appointees pursuant to selection undertaken in 2011.

28. In August 2018, Writ Petition Nos.936 of 2018 and 967 of 2018 namely Writ Petitions in Categories A and B referred to in Para 1 hereinabove were filed in this Court submitting *inter alia* that post the coming into effect of 2010 Rules, all the appointments in the categories of selection through LCE and Direct Recruitment had to be in conformity with 2010 Rules and in tune with the Cyclic Order; that placement of the 47 Judicial Officers whose Appointment Orders were issued after the process was undertaken in the year 2010 for selection of candidates through LCE and Direct Recruitment, was not correct.

29. Notice was issued by this Court in aforesaid Writ Petition (Civil) Nos.936 of 2018 and 967 of 2018 on 20.09.2018. On 14.12.2018 the learned counsel for the High Court submitted that the objections to the Provisional Lists were pending consideration with the High Court. Therefore, at his request the petitions were adjourned. Thereafter, the entire matter was considered by the High Court and by its Report dated 15.03.2019 all the objections raised by the concerned candidates were dealt with. The report was thereafter placed on record. On 18.07.2019 when said Writ Petitions and all other connected matters were taken up, it was highlighted that the 47 Judicial Officers were not promoted in conformity with Rule 32(1) of 2010 Rules, and, in any case, the principle of Cyclic Order, in terms of Rule 42, was also not complied with and yet they were placed at Serial Nos.206 to 250. Since the 47 Judicial Officers were not parties to the present proceedings, notice was issued to them by Order dated 18.07.2019.

30. In the meantime, the Report of the Committee of five Judges of the High Court under the Chairmanship of the Chief Justice of the High Court which had considered all the representations was placed on record. The Committee had framed following four questions for its consideration in said Report dated 15.03.2019:-

- (1) Whether the officers, who were promoted on the post of Additional District Judge

(Fast Track) on ad-hoc basis under Rule 22 of the Rules of 1969, can claim seniority from the date of such ad-hoc promotion in view of the first proviso to Rule 24 of the Rules of 1969, by virtue of saving clause in Rule 57 of the Rules of 2010, which were enforced on 19.01.2010?

- (2) Whether the process of selection for direct recruitment against 36 posts determined in the year 2010-11 should be taken to have commenced from 15.04.2010 when initial advertisement for recruitment was issued or from 19.07.2011 when fresh advertisement was issued after earlier process was cancelled with the decision of the High Court to hold the process of recruitment afresh?
- (3) Whether seniority of officers of the same batch promoted to the District Judge cadre in the Limited Competitive Examination quota, should be prepared on the basis of their inter-se placement in the merit list of such examination under Rule 32(2) or should be, in view of Rule 47(4) of the Rules of 2010, the same as it was in Senior Civil Judge cadre?
- (4) Whether seniority of the officers promoted to the District Judge cadre in view of Rule 31(4), is required to be fixed in cyclic order as per roster given in Schedule V to Rules of 2010 with adherence to quota-rotta rule and what bearing in the facts of the case, the opening words "As far as possible" in Rule 42 of the Rules, would have on determination of seniority?

30.1 Before dealing with the aforesaid four questions, the scope of the matter was dealt with as under:-

“The Rajasthan High Court notified the provisional seniority list of the officers of the District Judge cadre next to Shri Nagendra Pal Singh Bhandari on 16.08.2017, inviting objections thereto. This seniority list started from Shri N.S. Dhaddha at serial no.206 and continued upto Shri Mohammad Arif at serial no.519. Recruitment to District Judge cadre is made by three methods – 65% by promotion, 10% by Limited Competitive Examination (for short, ‘LCE), both from amongst the Senior Civil Judges and 25% by direct recruitment from the members of the Bar. The officers from all the three streams submitted their written objections to the provisional seniority list. Meeting of the Committee was convened under the Chairmanship of the Chief Justice in the Committee Hall of the High Court premises at Jodhpur on 06.01.2019. Their oral submissions were also heard in support of the written objections already submitted.

... ..

We may at the outset make it clear that we do not wish to unsettle the seniority position which has attained finality insofar as final seniority list dated 15.12.2014 is concerned, because no one from any of the three streams of recruitment has ever challenged the same before any forum known to law. However, at the same time, we wish to make it clear at this stage itself that while deciding the objections as to correctness of the provisional seniority list dated 16.08.2017, we may not agree and may deviate from the principles on which the conclusions of the earlier seniority committee in its report are founded.”

30.2 With regard to *first* question the conclusion arrived at by the Committee was as under:-

“In view of the position of law discussed above, we are not persuaded to countenance the submission that the promotes against the posts outside the cadre should be taken to have been promoted from the date of their ad hoc promotion either in the fast track courts or any other court, for the purpose of grant of seniority with reference to proviso to Rule 24 even though their regular promotion has actually taken place after the Rules of 1969 were repealed and the Rules of 2010 were promulgated on 19.01.2010. We also cannot uphold the argument that any right stood crystalized in favour of such promotes by reason of prescription made in proviso to Rule 24 and such right, by virtue of the savings clause under Rule 57 of the Rules of 2010, would remain protected so as to entitle them to claim seniority from the date of initial promotion on ad hoc basis even if their regular promotion has taken place later than the promulgation of the Rules of 2010. We are not examining the correctness of the order granting selection scale to certain officers by counting the ad hoc service towards requisite period of five years, but that cannot justify giving the benefit of seniority on the basis of ad hoc promotion in view of the interpretation of the extant rules we have taken in the light of settled proposition of law. In our considered view, all those who were promoted on ad hoc basis earlier under the Rules of 1969, prior to promulgation of the Rules of 2010, can be given seniority only from the date of their substantive appointment, upon regular promotion, which took place after the Rules of 2010 came into force with effect from 19.01.2010. There is therefore no legal justification for en-bloc placement of such officers in the provisional seniority list on the basis of revision of cadre strength, when temporary/permanent posts included in the cadre with increase of its strength from 150 to 245 and every time later when the cadre strength was revised from 246 to 255, 256 to 265 and 266 to 372 respectively.”

30.3 With regard to *second* question the conclusion was as under:-

“In the case at hand, it should be noted that the process of recruitment was initially notified vide advertisement dated 15.04.2010, but the entire selection process both by direct recruitment as well by promotion through LCE was abandoned pursuant to decision of the Full Court, which is evident from the order of the Registrar General of the Rajasthan High Court dated 22.09.2010, whereby it was decided that recruitment process shall be initiated afresh. New process of selection/recruitment was started in both these categories by notification dated 19.07.2011. Out of 41 candidates, who were selected in the year 2013 by way of direct recruitment pursuant to the said notification, there are at least 15 such candidates, whose names did not find place either in the eligibility list or rejection list, as per the information furnished by the Examination Cell of the High Court. These names are – (1) Shri Malkhan Singh, (2) Shri Ram Suresh Prasad, (3) Shri Manchha Ram Suthar, (4) Shri Keshav Kaushik, (5) Shri Dinesh Tyagi, (6) Shri Hariom Sharma Attri, (7) Shri Arun Kumar Beriwal, (8) Shri Hukam Singh Rajpurohit, (9) Ms. Shivani Singh, (10) Shri Mashroor Alam Khan, (11) Ramesh Prashad Choudhary, (12) Ms. Meenakshi Sharma, (13) Ms. Anu Aggarwal, (14) Shri Kishan Chand, and (15) Shri Satish Kumar. This proves that either they were not eligible, or even if eligible, they did not apply in response to the earlier notification for recruitment dated 15.04.2010. We are therefore not inclined to uphold the claim of direct recruits that they should be conferred the benefit of seniority from the year 2010. In any event, the direct recruits cannot claim seniority earlier than initiation of fresh process of selection pursuant to notification dated 19.07.2011 during the year 2011-12. The result of this would be that these direct recruits would not be entitled to claim seniority over at least those 47 officers, who were promoted on

regular basis vide order dated 21.04.2010 in the year 2010-11 after the Rules of 2010 came into force. The direct recruits cannot therefore claim seniority above those officers, who were promoted on regular basis soon after promulgation of the Rules of 2010, when they were not even borne on the cadre.”

(emphasis supplied)

30.4 While dealing with *third* question the Committee concluded:-

“...We are therefore of the view that merit of those promoted through LCE should by virtue of Rule 32(2) be considered as the benchmark for promotion, inter-se seniority amongst them in the feeder cadre being maintained by prescription of Rule 47(4), subject to the exception that if an officer by regular method of promotion is able to otherwise secure promotion in the same year in the regular line on his turn and on that basis he gets a higher placement in the seniority, regardless of his selection in the LCE, he should not be put to a disadvantageous position and allowed to retain his position in the seniority based on his regular promotion. In other words, such officer would be entitled to retain seniority, either on the basis of LCE or on the basis of regular promotion, whichever is more beneficial to him.”

30.5 Finally, while dealing with *fourth* question, the Committee took into account that there was no actual recruitment in the years 2012-13, 2013-14 and 2014-15 and the recruitment process commenced by the Notification dated 26.04.2015 was with regard to vacancies of all four years i.e. 2012-13, 2013-14, 2014-15 and 2015-16. In the circumstances, it was concluded:-

“As far as the period subsequent to the roster order dated 15.07.2013 is concerned, the determination of vacancies was made every year fairly regularly as noticed above, but actual recruitment from none of the three modes could take place in any one of the years 2012-13, 2013-14 and 2014-15. Finally again the recruitment process commenced by notification dated 26.04.2015 in the year 2015-16. Since the vacancies of all four years, viz., 2012-13, 2013-14, 2014-15 and 2015-16, were combined, even if some of the officers were in between allowed to continue on the post of Additional District & Sessions Judge on ad hoc basis, they cannot in view of the afore-discussed provisions of the Rules claim seniority on that basis. The vacancies of all these four years having been determined as those of the year 2015-16, all the appointments, by direct recruitment, LCE or regular promotion, should be deemed to belong to the year 2015-16.

.....

Perusal of the provisional seniority list shows that all 56 officers starting from Shri Satish Kumar Vyas (S.No.369) upto Shri Jai Prakash Narain Purohit (S.No.423), promoted on ad hoc basis vide order dated 21.04.2014 as Additional District Judge in the DJ cadre under Rule 15 of the Rules of 2010, have been wrongly assigned higher seniority. Thereafter, 26 officers starting from Shri Paras Kumar Jain (S.No.424*) upto Shri Jagendra Kumar Agarwal (S.No.450), all promoted on ad hoc basis by order dated 21.04.2015 also have been wrongly assigned higher seniority in the provisional seniority list. The next slot of officers starting from Shri Ashok Kumar Agarwal (S.No.451) onwards though have been promoted on regular basis by order dated 05.02.2016, but they have been all placed en-bloc senior to those who were selected against direct recruitment quota. Surprisingly, the cadre strength was initially increased with the enforcement of the Rules of 2010 on 19.01.2010, but the High Court administration has applied the same analogy of revision of cadre strength even on three subsequent occasions for placing all the officers appointed on ad hoc basis en-bloc in the seniority

above those directly recruited. Some of the officers, who though got regular promotion vide order dated 05.02.2016, deviating from the roster point indicated in the order of promotion dated 05.02.2016, have been placed en-bloc above the officers of direct recruitment and LCE quota by wrongly applying the proviso to Rule 24 as if this repealed Rule would perpetually survive by mere reason of ad hoc promotions, for each succeeding year. Grant of benefit of seniority to officers promoted on ad hoc basis was thus contrary to the provisions contained in Rule 15 and 47(4).

Taking all the aforementioned circumstances into account, we are inclined to hold that each of the years 2012-13, 2013-14, 2014-15 for the purpose of operating the roster system should be treated as zero recruitment year and that the recruitment against combined 207 vacancies determined for these years and the year 2015-16, should be taken as the vacancies of the year 2015-16 so as to make the Rule 42 of the Rules of 2010 workable, which begins with the phraseology "As far as possible", a select list as provided in Schedule-V shall be prepared by the High Court. Such select list in the cyclic order as per the roster point was earlier prepared by order dated 15.07.2013 and also when the next regular selections took place vide order dated 05.02.2016 but this was not truly reflected in the seniority list. All the officers promoted on regular basis by order dated 05.02.2016 should be taken to have been substantively appointed from that date only. If this view is taken, no prejudice would be caused to any class of the officers as none of them would compete for promotion/appointment in their respective category in previous three years. Vacancies of all these three years having been clubbed with the vacancies of the year 2015-16 to be determined as the vacancies of that year, each one of them has had opportunity to compete with his fellow officers/candidates for substantive appointment by way of promotion/LCE/direct-recruitment, to the DJ cadre together."

31. Mr. Ranjit Kumar, learned Senior Advocate and Mr. A.D.N. Rao, learned Advocate for the petitioners in Writ Petition (Civil) No.936 of 2018, and Mr. P.S. Patwalia and Mr. Nitesh Gupta, learned Senior Advocates for the petitioners in Writ Petition (Civil) No.967 of 2018 submitted that in terms of the provisions of 2010 Rules, any appointments made after said Rules came into effect, had to be in conformity with the principles therein and in accordance with the percentages for three different sources set out therein. It was submitted that before 2010 Rules came into effect, the strength of the cadre of District Judge in the State was 150 and it got raised to 245 only after 2010 Rules came into effect. Relying on the decisions of this Court in *Debabrata Dash and Another v. Jatindra Prasad Das and Others*¹⁶, *V. Venkata Prasad and Others v. High Court of A.P. and Other*¹⁷ and in *Kum C. Yamini v. The State of Andhra Pradesh*¹⁸, it was submitted that no service rendered on ad-hoc basis as Fast Track Court Judges could be counted and that the rights of such candidates to be considered for promotion arose only after 2010 Rules and that since the Notification dated 31.03.2010 notified vacancies to be filled up by Direct Recruitment and through LCE, the High Court

¹⁶ (2013) 3 SCC 658

¹⁷ (2016) 11 SCC 656

¹⁸ (2019) 10 SCALE 834 = 2019(8) JT 365

could not have promoted the 47 Judicial Officers by Order dated 21.04.2010 so as to adversely affect the chances and status of the petitioners. It was submitted that the entire exercise must be taken to be one single package under which appointments through all three sources could be undertaken after the vacancies became available by enhancement of cadre strength; and that the entire exercise undertaken after issuance of the Notification on 31.03.2011 was nothing but continuation of what was contemplated by the Notification dated 15.04.2010. It was, therefore, submitted that the vacancies which were subject matter of Notification dated 31.03.2011 and the posting of the 47 Judicial Officers pursuant to Order dated 21.04.2010 must be considered as part of the same process. Resultantly, the placement of the concerned candidates ought to be governed by the Cyclic Order enumerated in Schedule VII to 2010 Rules. Reliance was placed on the decision of this Court in *Union of India and Others v. N. R. Parmar and Others*¹⁹.

Mr. Nikhil Singhvi, learned Advocate for the petitioners in Writ Petition (Civil) Diary No.13252 of 2019 added another dimension in respect of LCE candidates. It was submitted that in keeping with the directions issued by this Court in para 28 in *All India Judges' Association*¹

¹⁹ (2012) 13 SCC 340

the promotions through LCE must be “strictly on the basis of merit” and that Rule 31(2) of 2010 Rules translates the same principle and, therefore, the ranking of the candidates who had cleared LCE must be in accordance with merit and not in accordance with their *inter se* seniority in the erstwhile cadre.

32. On the other hand, Mr. R. Balasubramanian, learned Senior Advocate and Ms. Prerna Singh, learned Advocate appearing for the 47 candidates submitted that said candidates were promoted well before the initiation of selection process initiated pursuant to the Notification dated 31.03.2011; that said Notification was not in continuation of the process initiated in 2010; that number of candidates who were selected in the selection process pursuant to the Notification dated 31.03.2011 had not even participated in the process initiated in 2010 and the Committee of the High Court in its Report dated 15.03.2019 rightly answered Question No.2 in the negative. In their submission, the issue of regular promotion of those who were manning the Fast Track Court on ad-hoc basis was always under consideration right from 23.08.2008 when a Committee of the High Court had made its recommendations. In the process, the case of the 47 candidates stood on a completely different footing and the Committee of the High

Court in its Report dated 15.03.2019 rightly acknowledged their entitlement.

33. Mr. Vijay Hansaria, learned Senior Advocate appearing for the petitioners in Writ Petition (Civil) No.464 of 2019 submitted that all these petitioners were appointed on ad-hoc basis as Fast Track Court Judges in the year 2008 and as a matter of fact, 4 Judicial Officers who were also appointed along with these petitioners in the year 2008 were part of the list of the 47 candidates at Serial Nos.44 to 47 whereas these petitioners were not included in said list. These Petitioners, therefore, pray that the order dated 15.03.2019 be set aside to the extent it deprived said petitioners of their rightful due and they be given seniority from their initial appointment as Judges of the Fast Track Court that is from 11.01.2008 or, at least, above all LCE candidates and Direct Recruits as was given to the 47 candidates. It was further submitted that out of 83 Fast Track Courts which were mentioned in Part A of Schedule II to 2010 Rules, 40 Courts were abolished on 31.03.2011 and the petitioners were continued as Additional District Judges against vacant regular posts *vide* Order dated 31.03.2011. However, their substantive promotion to the Cadre of District Judge was made on 15.07.2013 along with the Direct Recruits and candidates through LCE. It was submitted that their initial appointments being under 1969 Rules and

the fact that they were occupying posts indicated in Part A of Schedule II as stated above, their case would be covered by Rule 57 of 2010 Rules. It was however accepted that some of the petitioners had participated in the LCE around that time.

34. Mr. Neeraj Jain, learned Senior Advocate for the Association in Writ Petition (Civil) No.1471 of 2018 submitted that as acknowledged in the decision of this Court in *Rajasthan Judicial Service Officers Association*¹¹ there were 41 Direct Recruits in the Cadre of District Judges in the year 2009 and as such it was incorrect to assess the vacancies for Direct Recruits in the Notifications dated 15.04.2010 and 31.03.2011 at the level of 36 and 37 respectively. In his submission the allocation of vacancies to Direct Recruits was in excess of their entitlement.

35. Mr. V.K. Shukla, learned Senior Advocate appeared for the petitioners in Writ Petition (Civil) No.899 of 2019, who were promoted on ad-hoc basis as Additional District and Sessions Judges to man the Fast Track Courts on 21.04.2010 i.e. after 2010 Rules had come into force and who were substantively promoted to the Cadre of District Judge by Order dated 05.02.2016. It was submitted that their services at the level of Additional District and Sessions Judge were continued even after abolition

of Fast Track Courts and thus said petitioners ought to be given the benefit of past service and be conferred appropriate seniority.

36. Dr. Sumant Bhardwaj, learned Advocate appeared for the petitioner in Writ Petition (Civil) No.1008 of 2019, where the petitioner stands on similar footing as in Writ Petition (Civil) No.899 of 2019, in that the ad-hoc promotion to the Cadre of District Judge was granted in the year 2012.

37. Dr. Manish Singhvi, and Mr. Sanjay Hegde, learned Senior Advocates appearing for the State and the High Court respectively supported the actions taken by the High Court on the administrative side.

38. In the backdrop of the facts and circumstances on record and the submissions of all the learned Counsel, following questions arise for our consideration:-

(A) Whether the judicial officers promoted on ad-hoc basis as Additional District and Sessions Judges to man the Fast Track Courts in the State and who were substantively appointed to the Cadre of the District Judge, are entitled to seniority from the date of their initial ad-hoc promotion?

(B) Whether the selection process initiated in terms of the Notification dated 31.03.2011 can be said to be in continuation of the process initiated under Notification dated 15.04.2010?

(C) Whether the substantive promotion granted to the 47 Judicial Officers must be taken to be part of the same selection process pursuant to the Notification dated 31.03.2011 and whether the 47 Judicial Officers could be placed en-bloc senior to the candidates selected in said selection process initiated pursuant to the Notification dated 31.03.2011, without applying the Cyclic Order in terms of 2010 Rules?

(D) Whether the *inter se* placement of candidates selected to the Cadre of District Judge in the State through Limited Competitive Examination, in the seniority list must be based on their merit in said examination or should it be based on their initial seniority in the erstwhile cadre?

(E) Whether the Report dated 15.03.2019 and the consequential Final Seniority List, otherwise calls for any modification or correction?

39. As regards question No. (A), the law on the point is well settled and though learned Counsel advanced submissions based on various decisions of this Court and the principles emanating therefrom, the following decisions in the context of ad-hoc appointments as Additional District and

Sessions Judges to man Fast Track Courts in the country, are sufficient to address the issue.

(A) In *Debabrata Dash and Another v. Jatindra Prasad Das and Others*¹⁶, a Bench of three Judges of this Court considered the case wherein respondent No.1 was initially appointed as Additional District Judge (Fast Track Court) on ad-hoc basis and later his service was regularized in the Senior Branch Cadre in Orissa Superior Judicial Service. His claim that service rendered as Judge of the Fast Track Court ought to be reckoned for seniority was accepted by the Orissa High Court. This Court, however, set aside the decision of the High Court. The question that came up for consideration was posed in para 28 as under:-

“28. The crucial question that arises for consideration in this appeal is:

whether promotion of the writ petitioner as an ad hoc Additional District Judge vide Notification dated 5-1-2002 to the Senior Branch of the Superior Judicial Service for being posted in the Fast Track Court established out of the Eleventh Finance Commission recommendations can be said to be an appointment in the Senior Branch Cadre of Superior Judicial Service?

The fate of the appeal depends upon the answer to this question. If the answer to this question is found in the affirmative, the appeal must fail. On the other hand, the appeal must succeed if the answer is in the negative.”

This Court thereafter considered the effect of 2001 Rules which were made to regulate the recruitment of Judicial Officers in the State to man Fast Track Courts on ad-hoc basis. Para 35 considered the effect of the Rules as under:-

“35. As noted earlier, 72 posts of ad hoc Additional District Judges were created under the 2001 Rules to meet its objectives. These posts were not part of cadre strength of Senior Branch Service in the 1963 Rules nor by creation of these posts under the 2001 Rules, the cadre strength of the Senior Branch of service got increased. The writ petitioner’s promotion as an ad hoc Additional District Judge vide Notification dated 5-1-2002 pursuant to which he joined the post of ad hoc Additional District Judge, Bargarh on 26-4-2002 is traceable wholly and squarely to the 2001 Rules. Merely because the writ petitioner was adjudged suitable on the touchstone of the 1963 Rules, we are afraid, it cannot be said that he was given appointment to the post of ad hoc Additional District Judge under the 1963 Rules. As noted above, there was no vacancy to be filled by promotion in the cadre strength of Senior Branch of the service under the 1963 Rules on that date.”

The decisions of this Court in *Direct Recruit Class II Engg. Officers’ Assn.*²⁰ and *Rudra Kumar Sain*²¹ as well as in *Brij Mohan Lal*⁶ were also considered as under:-

41. A five-Judge Bench of this Court in *Direct Recruit Class II Engg. Officers’ Assn.*²⁰ was concerned with a question of seniority in service between the direct recruits and promotees amongst Deputy Engineers in the State of Maharashtra. This Court considered previous decisions of this Court, including

²⁰ (1990) 2 SCC 715

²¹ (2008) 8 SCC 25

*S.B. Patwardhan v. State of Maharashtra*²² and *Baleshwar Dass v. State of U.P.*²³ and in para 47 of the Report summed up the legal position. Clauses (A), (B) and (C) of para 47 are relevant for the present purpose which read as follows: (*Direct Recruit Class II Engg. Officers' Assn.*²⁰, SCC p. 745, para 47)

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.”

The essence of direction in Clause (A) is that the seniority of an appointee has to be counted from the date of his appointment and not according to the date of his confirmation once a recruit is appointed to a post according to the rules. In other words, where initial appointment is only ad hoc and not according to the rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority. The writ petitioner's appointment as an ad hoc Additional District Judge is

²² (1977) 3 SCC 399

²³ (1980) 4 SCC 226

not traceable to the 1963 Rules. The simple reason leading to this consequence is that there was no vacancy available which was to be filled up by promotion on that date in the Superior Judicial Service (Senior Branch).

42. In *Rudra Kumar Sain*²¹ a five-Judge Bench of this Court was again concerned with the inter se seniority between the promotees and direct recruits in the Delhi Higher Judicial Service. The contention was whether the guidelines and directions given by this Court in *O.P. Singla*²⁴ have been followed or not. The Court considered the 3 terms “ad hoc”, “stopgap” and “fortuitous” in the context of the service jurisprudence and in para 20 of the Report held as under: (*Rudra Kumar Sain case*²¹, SCC p. 45)

“20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be ‘stopgap or fortuitous or purely ad hoc’. In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be ‘fortuitous/ad hoc/stopgap’ are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.”

The Division Bench in the impugned order²⁵ has quoted the above paragraph from *Rudra Kumar Sain*²¹ but applied it wrongly.

43. In *Brij Mohan Lal (I)*⁶ a three-Judge Bench of this Court, inter alia, considered the Fast Track Courts

²⁴ (1984) 4 SCC 450

²⁵ *Jatindra Prasad Das v. State of Orissa*, WP (C) No.21449 of 2011, decided on 15-11-2011 (Ori)

Scheme. In para 10 of the judgment, this Court gave various directions. Direction 14 in that paragraph is relevant which can be paraphrased as follows: (SCC p. 10)

(i) No right will be conferred on judicial officers in service for claiming any regular promotion on the basis of his/her appointment on ad hoc basis under the Scheme.

(ii) The service rendered in the Fast Track Courts will be deemed as service rendered in the parent cadre.

(iii) In case any judicial officer is promoted to higher grade in the parent cadre during his tenure in Fast Track Courts, the service rendered in Fast Track Courts will be deemed to be service in such higher grade.

44. The learned Senior Counsel for the writ petitioner heavily relied upon the third part of Direction 14. As a matter of fact, this part has been relied upon in the impugned judgment¹ as well. It is submitted on behalf of the writ petitioner that on promotion to the Senior Branch Cadre of Superior Judicial Service during his tenure in the Fast Track Courts, the writ petitioner is entitled to the counting of the service rendered by him in the Fast Track Court as a service in Superior Judicial Service (Senior Branch). The submission overlooks the first two parts of Direction 14, one, no right will be conferred in judicial service for claiming any regular promotion on the basis of his/her appointment on ad hoc basis under the scheme; and two, the service rendered in Fast Track Courts will be deemed as service rendered in the parent cadre. In our opinion, until the vacancy occurred in the cadre of Superior Judicial Service (Senior Branch) which was to be filled up by promotion, the service rendered by the writ petitioner in the Fast Track Court cannot be deemed to be service rendered in the Superior Judicial Service (Senior Branch). Rather until

then, he continued to be a member of the parent cadre i.e. Superior Judicial Service (Junior Branch). The third part of Direction 14, in our view, does not deserve to be read in a manner that overrides the 1963 Rules.”

(B) In *V. Venkata Prasad and Others v. High Court of A.P. and Others*¹⁷, a Bench of two Judges of this Court considered the case which arose in almost identical fact situation. The claim of the concerned Judicial Officer for reckoning the service rendered as Additional District Judge (Fast Track Courts) on ad-hoc basis was rejected. Reliance was placed on the decision of this Court in *Debabrata Dash*¹⁹ and the ratio in that decision was followed.

(C) In *Kum C. Yamini v. The State of Andhra Pradesh*¹⁸ a bench of three Judges of this Court considered the issue where the candidates from the Bar were appointed on ad-hoc basis and after their consideration, claim was raised to reckon their seniority from the date of initial ad-hoc appointment. The relevant observations are :-

“12. While rejecting the claim for their absorption and challenge to the notification issued for the recruitment in the regular cadre posts, certain directions were issued in Brij Mohan Lal (2) (supra) for considering the claims of ad hoc judges appointed to Fast Track Courts into regular cadre posts. Following the directions only, the second respondent has issued notification inviting applications for appointments to the regular cadre of District Judges and appellants and others responded to such notification and totally 12 of them were selected for regular vacancies. In the appointment order dated 02.07.2013 in G.O.MS. No.68 issued by Law (LA & J-SC.F) Department, they were put on

probation for a period of two years and after the declaration of successful probation and nearly after four years of appointment, the present claim is made claiming seniority from the date of their initial appointment, as ad hoc District Judges.

13. The claim of the appellants that they were appointed as ad hoc District Judges by following the procedure which is similar to the procedure for appointments to the sanctioned posts in the regular cadre, is no ground to accede to their request to reckon their seniority in the permanent cadre of District Judges, from their initial appointment as the District Judges for the Fast Track Courts. The appointments which came to be made for selecting District Judges for Fast Track Courts sanctioned under the 11th Finance Scheme are totally different and distinct, compared to appointments which are to be made for regular vacant posts of District Judges covered under A.P. Higher Judicial Service. If a person is not appointed to any post in the cadre, such person cannot claim any seniority over the persons who are appointed in vacant posts in the cadre. The Fast Track Courts which were sanctioned initially for five years from the grants of 11th Finance Commission, were continued in some States beyond such period with the assistance, from States and such Fast Track Courts were discontinued in some other States. Merely on the ground that they were selected by following the same procedure akin to that of regular selections, is no ground to consider their claim for grant of seniority from the date of initial appointment. When their claim for regularisation/absorption and challenge to notification issued in the year 2004 for making selections to the vacant regular posts of District Judges is rejected by the High Court and confirmed by this Court, we are of the view that the appellants have no basis to claim seniority from the date of initial appointment. In any event, having applied in response to the notification issued by the High Court in the year 2013 after availing the benefit of appointment, it is not open to the appellants to question the conditions imposed in the order which is in conformity with rules. Undisputedly, appellant was appointed as ad hoc District Judges to preside over the Fast Track Courts only. Initially when she was not appointed to a post or category of posts, forming part of cadre strength in such category, appellant cannot claim any seniority over the persons regularly appointed in the category of posts

forming part of cadre strength. There is yet another ground to reject the claim of the appellant. Though the appellant claims seniority over the persons who are appointed in regular vacant posts forming part of cadre strength but they are not even made parties. On this ground also, the claim of the appellants deserves rejection.

14. We have perused the judgment relied on by the appellant party in person, in the case of Rudra Kumar Sain & Ors. v. Union of India & Ors. (supra). In the aforesaid case, issue relates to claim of seniority between direct recruits and promotees. Learned senior counsel Sri Venkataramani, has also relied on the judgments of this Court in the case of Brij Mohan Lal (1) v. Union of India & Ors. (supra); in the case of Debabrata Dash & Anr. v. Jatindra Prasad Das & Ors. (supra); in the case of V. Venkata Prasad & Ors. v. High Court of Andhra Pradesh & Ors. (supra) and in the case of Brij Mohan Lal (2) v. Union of India & Ors. (supra). We have looked into the judgments referred above by the learned senior counsel Sri Venkataramani and the party in person. Having regard to issue involved in the present appeals, we are of the view that the ratio decided in the aforesaid cases would not render any assistance in support of their claim in these cases. The claim of seniority will depend upon several factors, nature of appointment, rules as per which the appointments are made and when appointments are made, were such appointments to the cadre posts or not etc. When the appellants were not appointed to any regular posts in the A.P. Judicial Service, appellants cannot claim seniority based on their ad hoc appointments to preside over Fast Track Courts. We are of the view that the ratio decided in the said judgments relied on by the appellants would not render any assistance in support of their case.

15. On the other hand, the judgment in the case of V. Venkata Prasad & Ors. v. High Court of Andhra Pradesh & Ors. (supra), this Court has, in clear terms, while considering A.P. State Higher Judicial Service Special Rules for Ad Hoc Appointments, 2001 held that such appointments in respect of Fast Track Courts are ad hoc in nature and no right accrues to such appointees. The aforesaid view of this Court clearly supports the case of the respondents. Paragraph 25 of the said case which is relevant for the purpose of these cases reads as under : “25. From the aforesaid two authorities, it is

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

The decisions in *Debabrata Dash*¹⁶, and *V. Venkata Prasad*¹⁷ were in the context where serving Judicial Officers were granted ad-hoc promotions as Fast Track Court Judges, while in *C. Yamini*¹⁸ the members of the Bar were appointed as Fast Track Court Judges and these decisions thus completely conclude the issue. As has been held in said decisions, the reckonable date has to be the date when substantive appointment is made and not from the date of the initial ad-hoc appointment or promotion. Question (A) is, therefore, answered in the negative.

40. As regards Question No.(B), it is relevant to note that the Notification dated 15.04.2010 had invited application for filling up 36 vacancies by Direct Recruitments and 22 vacancies by Promotion through LCE. This was preceded by determination of vacancies through Notification dated 31.03.2010. After the process initiated in terms of said Notification dated 15.04.2010 was cancelled, a fresh determination of the vacancies was undertaken and the Notification dated 31.03.2011 now found vacancies for

Direct Recruitments, for Promotion through LCE and for Regular Promotion at 37, 32 and 24 respectively. Thus, the vacancies which became available post the Notification dated 15.04.2010 were also taken into account. The Report dated 15.03.2019 shows that some of the selected candidates in the process pursuant to the Notification dated 31.03.2011 had not even participated in the earlier process of 2010. In the premises, if the submission that the process initiated under the Notification dated 31.03.2011 must be held to be in continuation of the earlier selection of 2010 is accepted, it would amount to conferring undue advantages upon persons who either had not participated in the process of 2010 or who were not even eligible in 2010. The Report dated 15.03.2019, therefore, correctly appreciated the fact situation on record and concluded that it would not be in continuation of the earlier process.

41. As regards Question No.(C), it must be noted that as on the date when 2010 Rules came into effect, the Additional District and Sessions Judges manning the Fast Track Courts had rendered service in ad-hoc capacity for almost 07 years. The question whether they be granted promotion on Regular Basis was subject matter of consideration of the High Court. The Report of the Committee of Judges given in 2008 had advised that they be granted Regular Promotion and the matter was getting deferred

at the level of the Full Court. It was at this stage that 2010 Rules became effective from 18.01.2010. Even thereafter, the Notification dated 31.03.2010 had published the vacancy situation only in respect of Direct Recruitment and Promotion through LCE. It was obviously so, as the issue regarding grant of Regular Promotion on substantive basis to those Fast Track Court Judges was simultaneously under consideration and on 21.04.2010 a formal Order was passed promoting the 47 Judicial Officers on substantive basis to the Cadre of District Judge. The grant of promotion to the 47 Judicial Officers and selection process pursuant to the Notification dated 15.04.2010 were not part of the same process and were completely independent. None of the 47 Judicial Officers had the occasion to compete in the LCE that was undertaken in terms of the Notification dated 15.04.2010. It is possible to say that the last of the 47 Judicial Officers could as well have been the first in the list of successful candidates through LCE and thus could possibly have been entitled to better placement. In any case, the process initiated pursuant to the Notification dated 15.04.2010 was cancelled for administrative reasons and the appointments in respect of process pursuant to the Notification dated 31.03.2011 could be effected only in the year 2013, i.e. more than 03 years after the 47 Judicial Officers were granted substantive appointment to the Cadre of District Judge. Further, if

grant of promotion to the 47 Judicial Officers is taken to be the part of the same process, some of the Direct Recruits may not even be having eligibility in the year 2010 and yet may be placed above some of the 47 Judicial Officers. In the circumstances, the assessment made by the High Court in its Report dated 15.03.2019 is without any infirmity and we have no hesitation in concluding that the substantive promotion granted to the 47 Judicial Officers cannot be taken to be part of the same selection process where Direct Recruits and candidates through LCE were appointed to the Cadre of District Judge on 15.07.2013.

If the substantive appointment of the 47 Judicial Officers to the Cadre of District Judge is separate and distinct from the selection process through which appointment were made after three years on 15.07.2017, there would be no question or occasion to apply the Cyclic Order. It is not the contention of anyone that appointment of the 47 Judicial Officers on the relevant date was either beyond the quota meant for Regular Promotion or that there was any serious infirmity in the process or that any of the candidates was completely ineligible. Since there was a difference of more than 03 years between these two modes of selection, the Report dated 15.03.2019 rightly concluded that the Cyclic Order ought not to get attracted.

It is true that the Cyclic Order and the quota for different streams ensure equitable treatment for three sources. However, the application of the Cyclic Order must depend upon the fact situations. It was precisely for this reason that the expression “as far as possible” has been used in the Rule. Other things being equal, certainly the quotas for different streams and the Cyclic Order must be adhered to. However, if such adherence itself is going to cause incongruous situation and inflict incalculable harm, insistence upon applicability of the Cyclic Order in such cases may not be appropriate. The expression “as far as possible” was, therefore, relied upon by this Court in Para 34 of its decision in *Veena Verma*¹². It would also be instructive to refer to a decision of this Court in *State of M.P. v. Narmada Bachao Andolan and Another*²⁶, where the expression “as far as possible” was explained:-

““As far as possible”

38. The aforesaid phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard-and-fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary. (Vide *Iridium India Telecom Ltd. v.*

²⁶ (2011) 7 SCC 639

*Motorola Inc.*²⁷ and *High Court of Judicature for Rajasthan v. Veena Verma*¹².) Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case.”

41.1. We must at this stage deal with submissions based on the decision of this Court in *N.R. Parmar*¹⁹. In that case a Bench of two Judges of this Court while considering O.N. dated 20.12.1999 and 02.02.2000 had concluded as under:-

“**31.2.** It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the appointees concerned in terms of the “rotation of quotas” principle, so as to arrange them with other appointees (from the alternative source), for vacancies of the same recruitment year.

...

34.1. If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held), and the selected candidates

²⁷ (2005) 2 SCC 145

joined in a further later year (than the one in which the result was declared), the selected candidates will be entitled to be assigned seniority, with reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion (expressed in the ON dated 2-2-2000) is, if the process of direct recruitment is initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection.”

Relying on the aforementioned observations, it was submitted that the candidates selected through Direct Recruitment and LCE on 15.07.2013 could not be prejudiced if the High Court on the administrative side had segregated the issue of promotion of the 47 Judicial Officers on one hand and the selection through Direct Recruitment and LCE on the other; and the time lag of three years between the appointments would, therefore, be of no consequence.

The decision in *N.R. Parmar*¹⁹ was thereafter relied upon by another Bench of two Judges of this Court in *Hon’ble Punjab and Haryana High Court v. State of Punjab and others*²⁸. In that case, the recruitment from three different sources to the cadre of District Judge was done on three different dates but in the same year. Paragraphs 50 to 53 of said decision may be extracted as under:-

²⁸ (2019) 12 SCC 496

50. At this juncture, one of the submissions, which has been emphatically pressed by the learned Counsel for the promotees is that for determination of seniority, continuous length of service is determinative. The direct recruits and out of turn promotees, who were not even born in the cadre when promotees were promoted, they have to take seniority after the promotees. In this reference, it is useful to refer to a judgment of this Court in Union of India and Ors. v. N.R. Parmar and Ors. (2012) 13 SCC 340, the issue in the said case was also an issue of determination of seniority between direct recruits vis-à-vis promotees and quota and rota principles. This Court had occasion to consider the office memorandum issued by the Government dated 22.12.1959. Noticing Para 6 of above office memorandum following was stated in Para 23 of the judgment:

23. The General Principles for determining seniority in the Central Services are shown to have been laid down in an annexure to an Office Memorandum dated 22-12-1959 issued by the Government of India, Ministry of Home Affairs (hereinafter referred to as "the OM dated 22-12-1959"). Para 6 of the annexure, referred to above, laid down the manner of determining inter se seniority between direct recruits and promotees. Para 6 is being extracted hereunder:

6. Relative seniority of direct recruits and promotees.--The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Department Rules.

It is apparent from the above extract of the OM dated 22-12-1959, that the "quota" between promotees and direct recruits was to be read into the seniority rule. The OM also provided for a definite rotation of seniority points ("rota") between promotees and direct recruits. The rotation provided for was founded on the concept of rotation of quotas between promotees and

direct recruits. It is therefore apparent, that under the OM dated 22-12-1959 inter se seniority between the promotees and direct recruits was based on the "quota" and "rota" principle. The same has been meaningfully described as "rotation of quotas" in some of these instruments.

51. There was further office memorandum on 07.02.1986 to take care of situation where it was decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who were already in position, would be dispensed with. This Court noticed office memorandum dated 07.02.1986 and observed that "when direct recruits or promotees become available through later examinations or selections", it clearly mean that the situation contemplated is one where, there has been an earlier examination or selection, and is then followed by a "later" examination or selection.

52. In the above context, this Court laid down following in Paragraph 31.2 that "it is not necessary, that the direct recruits of a particular recruitment year, should join within the recruitment year itself". It was held that date of joining would not be a relevant factor for determining seniority of direct recruits. In paragraph 31.2 and 34.1 following has been laid down:

31.2. It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for

recruitment within the recruitment year would be sufficient to assign seniority to the appointees concerned in terms of the "rotation of quotas" principle, so as to arrange them with other appointees (from the alternative source), for vacancies of the same recruitment year.

34.1. If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held), and the selected candidates joined in a further later year (than the one in which the result was declared), the selected candidates will be entitled to be assigned seniority, with reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion (expressed in the ON dated 2-2-2000) is, if the process of direct recruitment is initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection.

53. In the present case, process for all the three streams was completed in the year 2008 and all the officers of three streams had joined in the same year. The submission that quota rota Rule was broken or seniority will be affected because of joining of one category of officers earlier cannot be accepted. It is also relevant to notice that purpose of statutory Rules and laying down a procedure for recruitment was to achieve the certainty. Officers belonging to different streams have to be confident that they shall be recruited under their quota and get seniority as per their quota and roster. In event, the seniority is to be fixed with date of joining of particular stream, it will lead to uncertainty and making seniority depending on administrative authorities, which is neither in the interest of service nor serve the cause of justice. We, thus, conclude that roster is fully applicable for determination of seniority. Officers of different

streams selected in a particular year even though they were allowed to join the post on different dates shall not affect their inter se seniority, which is to be decided on the basis of roster.”

41.2 It must, however, be stated that the decision in *N.R*. Parmar*¹⁹ has since then been overruled by a Bench of three Judges of this Court in *K. Meghachandra Singh and Ors. vs. Ningam Siro and Others*²⁹. The relevant paragraphs of said decision are as under:

5. Before the Writ Court, the promotees contended that they entered the MPS Grade II Cadre on 01.03.2007 whereas the private Respondent Nos. 3 to 33 were appointed subsequently (on 14.08.2007 and 24.11.2007 respectively) and, therefore, they should be regarded as senior to the direct recruits.

6. The direct recruits on the other hand claimed seniority over the promotees by contending that seniority has to be decided in accordance with the year of the vacancy and not by the fortuitous date on which, the appointment could be finalized for the direct recruits.

...

13. It was also made clear that the promotees will naturally have seniority over the Appellants as they had entered the cadre of MPS Grade II, before the Writ Appellants were borne in the cadre.

...

17. The Senior Counsel cites *Union of India and Ors. v. N.R. Parmar*, (2012)13 SCC 340, to argue that when action was initiated for filling up the 2005 vacancies, the administrative delay in finalization of the recruitment leading to delayed appointment should not deprive the individual of his due seniority. By referring

²⁹ (2019) SCC Online SC 1494

to the rotation of quota principle, the counsel argues that initiation of action for recruitment in the year of the vacancy would be sufficient, to assign seniority from that year.

...

20. Representing the Respondents/promotees, the learned Senior Counsel, Shri Jaideep Gupta refers to the MPS Rules, 1965 to argue that the provisions of the Rules make it abundantly clear that inter-se seniority in the cadre of MPS Grade-III is to be determined by the order in which appointments are made to the service. The counsel pointedly refers to Rules 28 (i) where it is specified that the seniority in the service shall be determined by the order in which appointments are made to the service..... He also refers to the later part of Rule 28(iii), where again it is specified that the "seniority of the officer..... shall be counted from the date, he/she is appointed to the service..... . The provisions in Rule 16(iii) are pressed home by Mr. Gupta to argue that only when the person is appointed, he shall be deemed to have been appointed to the service from the date of encadrement.

21. The judgment in N.R. Parmar (Supra) is read with equal emphasis by Mr. Gupta to firstly point out that this case does not lay down the correct law in determination of seniority. The counsel highlights the incongruity in a situation where a person who entered service later will claim seniority above those who joined service at an earlier point of time. The applicability of the ratio in N.R. Parmar (Supra) to the litigants in the present case is also questioned by Mr. Gupta by pointing out that the provisions of MPS Rules, 1965 applicable for the officers in the Manipur Police Officers, was not the subject of consideration in N.R. Parmar (Supra), and, therefore, the said ratio relating to Income Tax Inspectors, with different Service Rules, will not apply to the present case.

...

29. Before proceeding to deal with the contention of the Appellants' Counsel vis-à-vis the judgment in N.R. Parmar (Supra), it is necessary to observe that the Law

is fairly well settled in a series of cases, that a person is disentitled to claim seniority from a date he was not borne in service. For example, in J.C. Patnaik (Supra)³⁰ the Court considered the question whether the year in which the vacancy accrues can have any bearing for the purpose of determining the seniority irrespective of the fact when the person is actually recruited. The Court observed that there could be time lag between the year when the vacancy accrues and the year when the final recruitment is made. Referring to the word "recruited" occurring in the Orissa Service of Engineers Rules, 1941 the Supreme Court held in J.C. Patnaik (Supra) that person cannot be said to have been recruited to the service only on the basis of initiation of process of recruitment but he is borne in the post only when, formal appointment order is issued.

30. The above ratio in J.C. Patnaik (Supra) is followed by this Court in several subsequent cases. It would however be appropriate to make specific reference considering the seniority dispute in reference to the Arunachal Pradesh Rules which are pari materia to the MPS Rules, 1965, (vide (2007) 15 SCC 406-Nani Sha and Ors. v. State of Arunachal Pradesh and Ors.). Having regard to the similar provisions, the Court approved the view that seniority is to be reckoned not from the date when vacancy arose but from the date on which the appointment is made to the post. The Court particularly held that retrospective seniority should not be granted from a day when an employee is not even borne in the cadre so as to adversely impact those who were validly appointed in the meantime.

31. We may also benefit by referring to the Judgment in State of Uttar Pradesh and Ors. v. Ashok Kumar Srivastava and Anr. (2014) 14 SCC 720. This judgment is significant since this is rendered after the N.R. Parmar (Supra) decision. Here the Court approved the ratio in Pawan Pratap Singh and Ors. v. Reevan Singh and Ors. (2011) 3 SCC 267, and concurred with the view that seniority should not be reckoned retrospectively unless it is so expressly provided by the

³⁰ (1998) 4 SCC 456

relevant service Rules. The Supreme Court held that seniority cannot be given for an employee who is yet to be borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime. The law so declared in Ashok Kumar Srivastava (supra) being the one appealing to us, is profitably extracted as follows:

24. The learned Senior Counsel for the Appellants has drawn inspiration from the recent authority in Pawan Pratap Singh v. Reevan Singh where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are produced below:

45. (ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

.....

45. (iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.

...

34. In the above context, it is also necessary to refer to the relevant advertisement issued in 2005 for direct recruitment which allowed the aspirants to apply even if, their result in the qualification examination is awaited. Even more intriguing and significant is the

relaxation that those proposing to appear in the qualifying examination are also allowed to respond to the advertisement. If such be the nature of the process initiated (in the year 2005) for making direct recruitment, we can easily visualize a situation where, in the event of granting seniority from the stage of commencing the process, a person when eventually appointed, would get seniority from a date even before obtaining the qualification, for holding the post.

...

38. When we carefully read the judgment in N.R. Parmar (Supra), it appears to us that the referred OMs (dated 07.02.1986 and 03.07.1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OMs had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process. But surprisingly, the judgment while referring to the illustration given in the OM in fact overlooks the effect of the said illustration. According to us, the illustration extracted in the N.R. Parmar (Supra) itself, makes it clear that the vacancies which were intended for direct recruitment in a particular year (1986) which were filled in the next year (1987) could be taken into consideration only in the subsequent year's seniority list but not in the seniority list of 1986. In fact, this was indicated in the two OMs dated 07.02.1986 and 03.07.1986 and that is why the Government issued the subsequent OM on 03.03.2008 by way of clarification of the two earlier OMs.

39. At this stage, we must also emphasize that the Court in N.R. Parmar (Supra) need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between initiation of process and appointment. Such observation is fallacious in as much as none can be identified as being a selected candidate on the date when the process of recruitment had commenced. On that day, a body of persons aspiring to be appointed to the vacancy intended for direct recruits was not in existence. The persons who might respond to an advertisement cannot

have any service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the Applicant morphs into a selected candidate and, therefore, unnecessary observation was made in N.R. Parmar (Supra) to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in Shankarsan Dash v. Union of India (1991) 3 SCC 47, where it was held even upon empanelment, an appointee does not acquire any right.

40. The Judgment in N.R. Parmar (Supra) relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar (Supra) had incorrectly distinguished the long-standing seniority determination principles propounded in, inter-alia, J.C. Patnaik (Supra), Suraj Prakash Gupta and Ors. v. State of J&K and Ors. (2000) 7 SCC 561 and Pawan Pratap Singh and Ors. v. Reevan Singh and Ors. (Supra). These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in J.C. Patnaik (Supra) and consequently we disapprove the norms on assessment of inter-se seniority, suggested in N.R. Parmar (Supra). Accordingly, the decision in N.R. Parmar is overruled. However, it is made clear that this decision will not affect the inter-se seniority already based on N.R. Parmar and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy/the date of advertisement.

41. As noted earlier, the Learned Single Judge based his judgment on two propositions but the Division Bench was of the view that result would be the same merely on the basis of one of the two propositions and, therefore, it was unnecessary to pronounce upon the

other proposition. Such an approach cannot therefore be described as a conflict (as has been suggested), between the two judgments. Both Benches were absolutely consistent in their conclusion that promotees would have to be given seniority over direct recruits. It cannot therefore be argued that by some convoluted reasoning, it is possible to come to the conclusion that the orders passed by the two Courts would result in diametrically opposite situation namely, that direct recruits would have to be given seniority over promotees.”

41.3 The facts noted in paragraph 5 of the decision in *Meghachandra Singh*²⁹ show that the promotees entered the relevant grade in March 2007 whereas the direct recruits were appointed in August and November 2007. While overruling the decision in *Parmar*¹⁹ it was also observed in paragraph 40 that in Service Jurisprudence, seniority cannot be claimed where the incumbent is yet to be borne in the cadre.

41.4 In the premises, the conclusion is inescapable that the candidates selected through LCE and Direct Recruitment vide Order dated 15.07.2013 cannot claim to be clubbed with the 47 Judicial Officers promoted in substantive capacity on 21.04.2010 and cannot claim appropriate placement in accordance with the Cyclic Order. We accordingly answer Question (C) and find that the 47 Judicial Officers were rightly placed en-bloc senior to all the candidates selected through the process initiated pursuant to

the Notification dated 31.03.2011. Writ Petition (Civil) Nos.936 of 2018 and 967 are, therefore, dismissed.

42. While considering Question (D), it is relevant to notice the emphasis placed by this Court in *All India Judges Association*¹ while directing that 25 per cent of the posts in the cadre of the District Judge be filled through LCE. It was stated in paragraph 27 that there should be an incentive amongst relatively junior and other officers to improve and to compete with each other so as to excel and get accelerated promotion. In paragraph 28 the relevant direction again stressed that 25 per cent quota for promotion through LCE be “strictly on the basis of merit.”

Rule 31(2) of 2010 Rules also uses the expression “strictly on the basis of merit” while dealing with posts to be filled in through LCE. The merit is to be assessed in terms of the scheme laid down in the relevant Schedule. After considering various parameters stated in said Schedule, the successful candidates are selected on the basis of merit. The list of successful candidates becomes the basis for final selection subject to qualifying parameters such as suitability, medical fitness etc.

However, placing reliance on Rule 47(4), the Committee in its Report dated 15.03.2019 held that the *inter se* seniority of persons promoted

to the District Judge Cadre in the same year ought to be the same as it was in the posts held by them at the time of promotion.

If the list is to be drawn up according to merit, it is possible that the last person in the list of selectees may be the senior most and going by the Report of the Committee, if all the selectees are promoted in the same year such last person may as well be at the top of the list of promotees through LCE. In that event, the seniority shall become the governing criteria and the excellence on part of a comparatively junior candidate may recede in the background. Instead of giving incentive to comparatively junior and other officers, the entire examination process will stand reduced to a mere qualifying examination rather than a competitive examination affording opportunity to meritorious candidates. The criteria shall then become seniority subject to passing the LCE.

The direction issued in *All India Judges Association*¹ to afford an incentive to meritorious candidates regardless of their seniority would not thus be carried out. The general principle appearing in Rule 47(4) must, therefore, give way to the special dispensation in Rule 31(2) of 2010 Rules.

In our view, the High Court in its Report dated 15.03.2019 completely failed to appreciate the true character of LCE and reservation of certain quota for that category.

We, therefore, accept the submissions made by the learned Advocate for the petitioners in Writ Petition (Civil) No.498 of 2019* and Diary No.13252 of 2019 and while answering Question (D) declare that the *inter se* placement of the candidates selected through LCE must be based on merit and not on the basis of the seniority in the erstwhile cadre. Said Writ Petitions are allowed to that extent.

43. We now deal with the submissions advanced in Writ Petition (Civil) Nos.464 of 2019 and 899 of 2019 and other similar matters.

It is true that as on the date when 2010 Rules came into effect, there were 83 Fast Track Courts functioning in the State and appropriate mention to that effect was made in Part A of Schedule II to 2010 Rules. It is also correct to say that the ad-hoc promotions granted to the concerned Judicial Officers were under 1969 Rules. But such promotions were on ad-hoc basis to man the Fast Track Courts and the law on the point is now well settled that the service rendered by such Judicial Officers as Fast Track Court Judges on ad-hoc basis cannot be taken into account while reckoning

seniority after such Judicial Officers were granted promotion on substantive basis and that their seniority has to be reckoned only from the date of their substantive appointment to the cadre of District Judge. Said 1969 Rules do not in any way confer any right which would be inconsistent with the law so laid down by this Court.

The further submission that four Judicial Officers out of the 47 Judicial Officers were also appointed on the same day along with the petitioners in Writ Petition (Civil) No.464 of 2019 also has no merit. The grant of promotion on substantive basis to said four Judicial Officers does not by itself entitle said petitioners to any similar treatment. The issue of grant of promotion on substantive basis may depend upon various issues including suitability of the concerned candidate and availability of posts. The record also shows that after grant of promotion on substantive basis to the 47 Judicial Officers, there were no vacancies for Regular Promotion which is why the selection process undertaken in the year 2010 did not earmark any vacancies for Regular Promotions and it was only in the year 2011, when adequate vacancies for said category became available, that the Notification dated 31.03.2011 contemplated filling up of certain vacancies by Regulation Promotion.

The petitioners in Writ Petition (Civil) No.464 of 2019 participated in the process initiated pursuant to said Notification dated 31.03.2011. Some of them also appeared in LCE and availed of the opportunity to stake their claim. Their regular promotions to the Cadre of District Judge must, therefore, be taken only as a result of selection process initiated in terms of the Notification dated 31.03.2011 which culminated in the Order dated 15.07.2013. In the circumstances, their substantive appointment to said cadre has to be reckoned from 15.07.2013 and not with any anterior effect.

Once the Regular Promotion was part of the same process along with other streams, namely, through Direct Recruitment and LCE, the Cyclic Order had to be applied and said petitioners cannot be given en-bloc placement above the candidates selected through Direct Recruitment and LCE in the same process of selection.

We, therefore, see no merit in Writ Petition (Civil) No. 464 of 2019 and said Writ Petition is dismissed.

The petitioners in Writ Petition (Civil) No.899 of 2019 and other connected matters came to be appointed on ad-hoc basis to man the Fast Track Courts after 2010 Rules came into effect. Even if their services were continued after abolition of Fast Track Courts, that by itself would not

confer any right on them. They came to be substantively promoted to the Cadre of District Judge only *vide* Order dated 05.02.2016. For the reasons stated hereinabove, their entitlement on substantive basis has to be reckoned only from 05.02.2016 and not from any earlier date. Writ Petition (Civil) No.899 of 2019 and other connected matters are, therefore, dismissed. Thus, while answering Question (E), we conclude that the Report dated 15.03.2019 does not call for any modification, except to the extent dealt with in answer to Question (D).

44. Concluding thus, we direct:-

(a) Writ Petition (Civil) No.498 of 2019* and Writ Petition (Civil) _____ of 2020 [D. No.13252 of 2019] are allowed to the extent indicated above.

(b) Consequently, the seniority list issued in terms of Report dated 15.03.2019 shall stand modified only to the extent that appropriate placement to the candidates selected through LCE be given on the basis of their merit in the examination and not on the basis of their seniority in the erstwhile cadre. Let the appropriate changes be made within four weeks of this Judgment.

(c) Except to the extent indicated in direction (b) above, the Report dated 15.03.2019 does not call for any modification or clarification.

(d) All other writ petitions are dismissed.

.....J.
[Uday Umesh Lalit]

.....J.
[Vineet Saran]

New Delhi;
April 29, 2020.

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION (CIVIL) NO.936 OF 2018

Dinesh Kumar Gupta and others ...Petitioners

Versus

High Court of Judicature of Rajasthan others ...Respondent

WITH

WRIT PETITION (CIVIL) NO.967 OF 2018

WITH

WRIT PETITION (CIVIL) NO.1471 OF 2018

WITH

WRIT PETITION (CIVIL) NO.498 OF 2019

WITH

WRIT PETITION (CIVIL) NO.464 OF 2019

WITH

WRIT PETITION (CIVIL) NO. _____ OF 2020
(D.NO.13252/2019)

WITH

WRIT PETITION (CIVIL) NO.899 OF 2019

WITH

WRIT PETITION (CIVIL) NO.897 OF 2019

WITH

WRIT PETITION (CIVIL) NO.895 OF 2019

AND

WRIT PETITION (CIVIL) NO.1008 OF 2019

J U D G M E N T

Uday Umesh Lalit, J.

1. These Writ Petitions broadly fall in following three categories:-

A] Writ Petition (Civil) No. 936 of 2018 filed by four petitioners, prays for appropriate directions that after the promulgation of Rajasthan Judicial Service Rules, 2010 (“2010 Rules”, for short), all appointments ought to be in conformity with 2010 Rules and allocation of seniority must be in accordance with the Cyclic Order provided in Schedule VII to 2010 Rules. In terms of 2010 Rules, posts in the cadre of District Judges in the Higher Judicial Service in State of Rajasthan were required to be filled up in accordance with quota of 50% for Promotees, 25% for Direct Recruits and 25% by way of Limited Competitive Examination

(“LCE”, for short) in keeping with law laid down by this Court in ***All India Judges Association vs. Union of India and Others***¹.

This Writ Petition filed by candidates who were successful in LCE prays that they be allocated seniority in terms of the Cyclic Order in Schedule VII. In this group fall Writ Petition (Civil) No.498 of 2018 and Writ Petition Diary No.13252 of 2019 which pray that the *inter se* seniority between candidates who were successful in LCE must be determined on the basis of their merit in LCE and not by their erstwhile seniority.

B] Writ Petition (Civil) No. 967 of 2018 has been filed by 37 Direct Recruits challenging the Provisional Seniority List dated 16.08.2017 with regard to the cadre of District Judges in the Higher Judicial Service in the State, on the ground that the appointments made after 2010 Rules had come into effect, ought to be in accordance with the Cyclic Order; and the *inter se* seniority and placement of Direct Recruits and Promotees, promoted after 2010 Rules had come into effect must be in accordance with 2010 Rules.

C] Writ Petition (Civil) No.1471 of 2018 has been filed by Rajasthan Judicial Service Officers Association (“the Association”,

1 (2002) 4 SCC 247

for short) seeking benefit of ad-hoc/officiating service put in by Promotees who were promoted on ad-hoc basis as Fast Track Court Judges and also prays for re-determination of vacancies of Direct Recruits submitting that the vacancies earmarked for Direct Recruits were in excess of their quota. Writ Petition (C) Nos.464 of 2019, 895 of 2019, 897 of 2019, 899 of 2019 and 1008 of 2018 are filed by Judicial Officers seeking similar benefit in respect of ad-hoc/officiating service as Fast Track Court Judges in the State and pray that such candidates be placed above the Direct Recruits in the cadre of District Judges in the State.

2. Since the issues involved in all these matters pertain to appointments to and allocation of seniority in respect of, the cadre of District Judges in the State of Rajasthan and regarding effect of 2010 Rules, the petitions were heard together. Before we deal with the factual aspects, it would be necessary to consider certain decisions of this Court touching upon the establishment of Fast Track Courts as well as the concept of promotion through LCE and the respective quotas for candidates coming from three different streams in the Higher Judicial Service in various States.

2.1. In *All India Judges' Association v. Union of India and others*², the issues with regard to the working conditions of the members of the subordinate judiciary throughout the country came up for consideration. Number of directions were issued by this Court. However, review petitions were filed by Union of India seeking certain modifications/clarifications. These review petitions were disposed of by this Court while issuing further directions in *All India Judges' Association and others v. Union of India and others*³. In pursuance of said directions, First National Judicial Pay Commission under the Chairmanship of Mr. Justice K.J. Shetty (former Judge of this Court) was constituted on 21.03.1996. The terms of reference were thereafter modified on 16.12.1997 and the Commission was also empowered to consider and grant interim relief. By Report dated 31.01.1998 some interim relief was granted by Justice Shetty Commission. After due deliberations Justice Shetty Commission submitted a Report on 11.11.1999 and all the States/ Union Territories were directed by this Court⁴ to send their responses to Union of India so that all the issues could be deliberated upon and dealt with.⁴

2 (1992) 1 SCC 119

3 (1993) 4 SCC 288

4 (2002) 4 SCC 274

2.2 After considering all the submissions, this Court in its decision dated 21.03.2002 in **All India Judges' Association and others v. Union of India and others**¹ passed some directions. We are presently concerned with the observations made in paragraphs 24 to 29 in which reference was made to the 85th Report of the Standing Committee of Parliament recommending that there should be increase in the number of Judges. Said Committee had noted the Judges to Population ratio and in tune with 120th Report of the Law Commission, recommendations were made to increase the Judges' strength to 50 Judges per 10 lakh people in the first instance. Recommendations made by Justice Shetty Commission were also considered and recruitment to the Higher Judicial Service in the cadre of District Judges was also subject-matter of directions. Paragraphs 27 to 29 are quoted for ready reference:

“27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of Higher Judicial Service i.e. District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the Higher Judicial Service, namely, by promotion from amongst the members of the Subordinate Judicial Service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scales of the

subordinate judiciary, it is at the same time necessary that the judicial officers, hard-working as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a Judicial Academy, which is very necessary. At the same time, we are of the opinion that there has to be certain minimum standard, objectively adjudged, for officers who are to enter the Higher Judicial Service as Additional District Judges and District Judges. While we agree with the Shetty Commission that the recruitment to the Higher Judicial Service i.e. the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the Higher Judicial Service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the Higher Judicial Service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the Higher Judicial Service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned: 50 per cent of the total posts in the Higher Judicial Service must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case-law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (Senior Division) should be

not less than five years. The High Courts will have to frame a rule in this regard.

(emphasis
supplied)

28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the Higher Judicial Service i.e. the cadre of District Judges will be:

- (1) (a) 50 per cent by promotion from amongst the Civil Judges (Senior Division) on the basis of principle of merit-cum-seniority and passing a suitability test;
(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (Senior Division) having not less than five years' qualifying service; and
(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.
- (2) Appropriate rules shall be framed as above by the High Courts as early as possible.

29. Experience has shown that there has been a constant discontentment amongst the members of the Higher Judicial Service in regard to their seniority in service. For over three decades a large number of cases have been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to the Higher Judicial Service. The quota for promotion which we have prescribed is 50 per cent by following the principle "merit-cum-seniority", 25 per cent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, insofar as seniority is concerned, is where a roster system is followed. For example, there

is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in *R.K. Sabharwal v. State of Punjab*⁵. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in *R.K. Sabharwal case* as early as possible. We hope that as a result thereof there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the Higher Judicial Service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31-3-2003.”

2.3. Soon thereafter, in its decision rendered on 06.05.2002 in ***Brij Mohan Lal v. Union of India and others***⁶ this Court had an occasion to consider the issue relating to Fast Track Courts. The 11th Finance Commission had allocated Rs.502.90 crores for the purpose of setting up

5 (1995) 2 SCC 745

6 (2002) 5 SCC 1

1734 courts in various States to deal with long pending cases, particularly sessions cases. On the basis of said recommendations a note was prepared by the Department of Justice, Government of India to set up Fast Track Courts. Challenges were raised in some High Courts to the constitution of such Fast Track Courts and the matters were dealt by this Court in Transfer Petitions. After considering rival submissions, directions were issued in para 10 and for the present purposes direction Nos.1 to 8, 14 and 18 are relevant:-

“10. Keeping in view the laudable objectives with which the Fast Track Courts Scheme has been conceived and introduced, we feel the following directions, for the present, would be sufficient to take care of initial teething problems highlighted by the parties:

Directions by the Court

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

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

the minimum-maximum age of eligibility to ensure that they are physically fit for the work in Fast Track Courts.

3. No judicial officer who was dismissed or removed or compulsorily retired or made to seek retirement shall be considered for appointment under the Scheme. Judicial officers who have sought voluntary retirement after initiation of departmental proceedings/inquiry shall not be considered for appointment.

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

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

6. The recommendation for selection shall be made by a committee of at least three Judges of the High Court, constituted by the Chief Justice of the High Court concerned in this regard. The final decision in the matter shall be taken by the Full Court of the High Court.

7. After ad-hoc promotion of judicial officers to the Fast Track Courts, the consequential vacancies shall be filled up immediately by organizing a special recruitment drive. Steps should be taken in advance to initiate process for selection to fill up these vacancies much before the judicial officers are promoted to the Fast Track Courts, so that vacancies may not be

generated at the lower levels of the subordinate judiciary. The High Court and the State Government concerned shall take prompt steps to fill up the consequential as well as existing vacancies in the subordinate courts on priority basis. The State Government concerned shall take necessary decisions within a month from the receipt of the recommendations made by the High Court.

8. Priority shall be given by the Fast Track Courts for disposal of those sessions cases which are pending for the longest period of time, and/or those involving undertrials. Similar shall be the approach for civil cases i.e. old cases shall be given priority.

9.

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

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18. The High Court and the State Government shall ensure that there exists no vacancy so far as the Fast Track Courts are concerned, and necessary steps in that regard shall be taken within three months from today. In other words, steps should be taken to set up all the Fast Track Courts within the stipulated time.”

2.4. Thereafter in *Malik Mazhar Sultan and another v. U.P. Public Service Commission and others*⁷ the issues regarding timely declaration of vacancies in judicial service and timely appointments were considered by this Court as under:

“23. It is absolutely necessary to evolve a mechanism to speedily determine and fill vacancies of judges at all levels. For this purpose, timely steps are required to be taken for determination of vacancies, issue of advertisement, conducting examinations, interviews, declaration of the final results and issue of orders of appointments. For all these and other steps, if any, it is necessary to provide for fixed time schedule so that the system works automatically and there is no delay in filling up of vacancies. The dates for taking these steps can be provided for on the pattern similar to filling of vacancies in some other services or filling of seats for admission in medical colleges. The schedule appended to the regulations governing medical admissions sets out a time schedule for every step to be strictly adhered to every year. The exception can be provided for where sufficient number of vacancies do not occur in a given year. The adherence to strict time schedule can ensure timely filling of vacancies. All the State Governments, the Union Territories and/or the High Courts are directed to provide for time schedule for the aforesaid purposes so that every year vacancies that may occur are timely filled. All the State Governments, the Union Territories and the High Courts are directed to file within three months details of the time schedule so fixed and date from which the time schedule so fixed would be operational.”

2.5. After the disposal of the appeals in *Malik Mazhar Sultan and others v. U.P. Public Service Commission*⁷ suggestions were made by

⁷ (2006) 9 SCC 507

some of the State Governments and written submissions were also filed by the learned Amicus Curiae. In its order dated 04.01.2017⁸, this Court issued further directions and prescribed timelines. From paragraph 7 onwards directions were issued for filling up vacancies in various cadres including the cadre of District Judges.

2.6. By order dated 20.04.2010 passed in *All India Judges' Association v. Union of India and others*⁹ directions issued earlier with regard to 25% quota for Limited Departmental Competitive Examination were modified by this court as under:

“6. Having regard to various strategies available, we are of the considered view that suitable amendment is to be made for this 25% quota of limited departmental competitive examination. We are also of the view, with the past experience, that it is desirable that 25% quota be reduced to 10%. We feel so as the required result, which was sought to be achieved by this process could not be achieved, thus it calls for modification.

7. Thus, we direct that henceforth only 10% of the cadre strength of District Judges be filled up by limited departmental competitive examination with those candidates who have qualified service of five years as Civil Judge (Senior Division). Every year vacancies are to be ascertained and the process of selection shall be taken care of by the High Courts. If any of the post is not filled up under 10% quota, the same shall be filled up by regular promotion. In some of the High Courts, process of selection of these 25%

8 (2008) 17 SCC 703.

9 (2010) 15 SCC 170

quota by holding limited departmental competitive examination is in progress, such process can be continued and the unfilled seats, if meritorious candidates are available, should be filled up. But if for some reason the seats are not filled up, they may be filled up by regular promotion and apply the usual mode of promotion process. Thus we pass the following order.

8. Hereinafter, there shall be 25% of seats for direct recruitment from the Bar, 65% of seats are to be filled up by regular promotion of Civil Judge (Senior Division) and 10% seats are to be filled up by limited departmental competitive examination. If candidates are not available for 10% seats, or are not able to qualify in the examination then vacant posts are to be filled up by regular promotion in accordance with the Service Rules applicable.

9. All the High Courts are hereby directed to take steps to see that existing Service Rules be amended positively with effect from 1-1-2011. If the Rules are not suitably amended, this order shall prevail and further recruitment from 1-1-2011 shall be continued accordingly as directed by us. The time schedule prescribed in the order dated 4-1-2007 (in *Malik Mazhar Sultan case*⁸) shall be strictly adhered to for the purpose of selection. All the vacancies are to be filled up in that particular year and there shall not be any carry forward of the unfilled posts.”

3. In the State of Rajasthan, the matters relating to Constitution of Courts and Jurisdiction of Courts were dealt with by the Rajasthan Civil Courts Ordinance, 1950 which consolidated and amended the law relating to Civil Courts in the State. Clause 6 of said Ordinance dealt with Classes of Courts; Clause 8 dealt with Power to fix number of District Judges

while Clause 10 dealt with the appointment of Additional Judges. In exercise of powers conferred by Article 233 and the Proviso to Article 309 of the Constitution of India, the Governor of Rajasthan made the Rajasthan Higher Judicial Service Rules, 1969 (“1969 Rules”, for short) in consultation with the High Court¹⁰ in respect of the Rajasthan Higher Judicial Service for making appointments, postings and promotions to the cadre of District Judges, and to provide for other ancillary matters.

The expressions ‘*Direct Recruitment*’, ‘*District Judge*’, ‘*Member of the Service*’ and ‘*Service*’ were defined in Rule 3 as under:-

“(c) “*Direct recruitment*” means recruitment in the matter prescribed by clause (ii) of rule 8;

(d) “*District Judge*” includes Additional District Judge, Sessions Judge and Additional Sessions Judge;

... ..

(f) “*Member of the Service*” means a person appointed in a substantive capacity to a post in the service;

... ..

(h) “*Service*” means the Rajasthan Higher Judicial Service”

10 The High Court of Judicature for Rajasthan

3.1. Part-II and Part-III of 1969 Rules dealt with topics 'Cadre' and 'Principles and Procedure of Recruitment and Promotion'. Rules 6 to 9 under said Parts-II and III were as under:-

“6. Strength of the Service.-

(1) The strength of the Service shall, until orders varying the same have been passed under sub-rule (2), be as specified in Schedule I.

(2) The strength of the service may be varied by the Governor, from time to time, in consultation with the Court.

(3) Notwithstanding anything contained in sub-rule (1) and (2), the Governor may, in consultation with the Court, hold any appointment to the service in abeyance for such time as he deems fit, without thereby entitling any person to compensation.

7. Principles and procedure to be followed.- For the purpose of recruitment to the service, the following principles and procedure of recruitment and promotion laid down by the Court shall be followed.

8. Sources of Recruitment.- Recruitment to the service shall be made –

(i) by promotion from amongst the members of the Rajasthan Judicial Service; or

(ii) by direct recruitment from the advocates who have practiced in the Court or Courts subordinate thereto for a period of not less than seven years.

9. Appointment to the service.- (1) Subject to the provisions of these rules, appointment of persons to the service shall be made by the Governor on the recommendation of the Court made from time to time; provided that the number of persons appointed to the

service by direct recruitment shall at no time exceed one third of the total strength of the service.

(2) Subject to the provisions of sub-rule (1), after every three persons appointed by promotion, the fourth person shall, as far as possible, be appointed by direct recruitment. If a suitable person is not available for appointment by direct recruitment, the post may be filled by promotion from amongst the members of the Rajasthan Judicial Service.”

3.2. Rules 22 and 23 in Part-III dealt with ‘*Temporary or officiating appointment*’ and ‘*Appointments to posts in the selection grade*’ as under:-

“22. Temporary or officiating appointment.- On the occurrence of temporary or permanent vacancies the Court shall recommend the Governor the names of the candidates from amongst the persons who are eligible for appointment to the service by promotion under clause (i) of rule 8, for temporary or officiating appointment.

23. Appointments to posts in the selection Grade.- Appointments to the posts in the selection grade of the service shall be made by the Governor in consultation with the Court on the basis of merit.”

3.3. Part IV of 1969 Rules dealt with ‘*Seniority*’, ‘*Probation*’ and ‘*Confirmation*’. Rule 24 dealt with issue of Seniority was as under:-

“24. Seniority.- Subject to the other provisions of these rules, seniority in the service shall be determined by the date of the order of substantive appointment in a permanent vacancy including appointment on probation under rule 25:

Provided that a promoted officer who may have been allowed to officiate continuously against a permanent

vacancy in the cadre from a date, prior to the date of appointment of a direct recruit, shall, if he is subsequently selected and substantively appointed in the service, take his seniority in the cadre over such direct recruit:

Provided further that the seniority of candidates appointed to the service shall in the case of the appointment of more persons than one to the service by an order of the same date, follow the order in which their names have been recommended by the Court.”

Schedule-I to 1969 Rules dealt with ‘*Strength of Service*’, which was stated to be 89 in the post of District & Sessions Judge and Additional District Sessions Judge, which over a period of time got raised to 150.

4. However, appointments in excess of the strength indicated in Schedule I to 1969 Rules, were made on various occasions. By Notification dated 31.03.2001 issued under the provisions of the Ordinance and under Rule 6(2) of 1969 Rules, 40 Additional District and Sessions Courts were set up in the State for Fast Track disposal of cases pending before the District Judges. By Notification dated 12.07.2002, 13 more Additional District and Sessions Courts were set up under the aforesaid provisions of the Ordinance and 1969 Rules for Fast Track disposal of cases pending before the District Courts. Further, 30 Additional District and Sessions Courts were again set up on 17.04.2003 in pursuance of aforesaid powers for Fast Track disposal of cases pending

before the District Judges. Thus 83 Courts were created between 31.03.2001 and 17.04.2003 which are commonly known as Fast Track Courts and officers from the cadre of Senior Civil Judges were promoted under Rule 22 of 1969 Rules to man these Fast Track Courts.

It may be mentioned that though the decision of this Court in **Brij Mohan Lal**⁶ had indicated three sources from which the candidates could be appointed to man the Fast Track Courts, in the State of Rajasthan candidates were drawn only from one source namely through ad-hoc/officiating promotions to the persons from the feeder cadre viz. Senior Civil Judges Cadre. There was no appointment of any retired Judge or by way of recruitment from the Bar.

5. By Order dated 07.05.2003 issued in compliance of directions of this Court in **All India Judges Association and others versus Union of India and Others**¹ and in accordance with the recommendation of First National Judicial Pay Commission, 71 posts were acknowledged to be in “Selection Scale” while 29 posts were found to be in “Super Time Scale” in the Higher Judicial Service for the year 2002-2003.

6. On 20.10.2003, a Notification was issued by the High Court notifying 19 vacancies for Direct Recruitment to the Higher Judicial

Service. Out of these 19 vacancies, 11 were shown as current vacancies while 8 were shown as backlog vacancies. A challenge was raised in this Court by way of Writ Petition (Civil) No.576 of 2003 by the Association submitting *inter alia* that there were no vacancies for Direct Recruits and as such the Notification dated 20.10.2003 was invalid. It was also submitted that as on the date, 220 officers were functioning in the cadre of District Judges and Additional District Judges.

7. On 13.12.2004, 22 Judicial Officers from the cadre of Senior Civil Judge were promoted as Additional District and Sessions Judges (Fast Track).

8. The matters concerning regular promotion to be granted to the level of District Judge including whether those who were promoted as Additional District and Sessions Judge (Fast Track) under Rule 22 of 1969 Rules were being considered by the High Court. A report of a Committee constituted to consider said issues was submitted on 23.08.2008. The matter was then placed before the Full Court on 29.11.2008 and thereafter the matter stood deferred to 13.02.2009, 31.10.2009 and to 23.03.2010 successively.

9. By order dated 11.01.2008, some Judicial Officers, including the petitioners in Writ Petition (Civil) No.464 of 2019, were promoted as Additional District and Sessions Judges on Ad-hoc basis to man the Fast Track Courts. The order stated as under:-

“On the recommendation of Rajasthan High Court, H.E. the Governor of State of Rajasthan is pleased to appoint/promote the following 37 officers in the cadre of R.H.J.S. as Additional District and Sessions Judges on purely ad-hoc basis to man the temporary Fast Track Courts”.

9.1 A consequential order was thereafter passed on 11.03.2008 directing transfer/posting of said Judicial Officers in the rank of Additional District and Sessions Judges (Fast Track).

9.2 In terms of the decision of Full Court in its Meeting dated 29.11.2008, the period of probation of 34 out of said 37 Judicial Officers appointed by Order dated 11.01.2008 was extended till further orders.

10. On 07.07.2009, the challenge raised by the Association in Writ Petition (Civil) No.576 of 2003 was decided by this Court vide its decision in ***Rajasthan Judicial Service Officers' Association v. State of Rajasthan and Another***¹¹. It was observed by this Court that the sanctioned strength in terms of 1969 Rules was only 150 and as against 25% posts which could

11 (2009) 14 SCC 656

be filled up by Direct Recruitment, 41 Direct Recruits were already working in the Higher Judicial Service. It was, therefore, concluded that there was no substantive vacancy available for Direct Recruits. The petition was allowed and the Notification dated 20.10.2003 was set aside.

The relevant observations of this Court were as under:-

“8. According to the petitioner, the total cadre strength of RHJS is 150 and there are already 41 direct recruits working in RHJS. Since the total cadre strength is 150 and since 25% of the posts were directed by the High Court to be filled in by direct recruitment, there were no vacant posts available for direct recruits since 25% of 150 is 37, while 41 direct recruits were already working in RHJS. The petitioner also submitted that if 19 vacancies should be treated as 25% of the direct recruitment then there must be at least 57 fresh appointments in RHJS by promotion, but that has not been done.

... ..

11. In our opinion, as held by us in *Veena Verma case*, the cadre strength is only 150 and not 240 because the strength of the service is as per Rule 6(2) of the Rajasthan Higher Judicial Service Rules as mentioned in Schedule I to the Rules. Until and unless the Schedule is amended in accordance with Rule 6(2) the strength of the service cannot be varied, as held by us in *Veena Verma case*¹². As yet, we are told, no order has been passed under Rule 6(2).

12. We have also perused the counter-affidavit filed by the State of Rajasthan and also the rejoinder-affidavit filed in the case. It is stated in Para 3 of the rejoinder-affidavit that the impugned notification is in violation of the stay order dated 28-9-2000 in Special Leave Petition No. 9346 of 1999, staying the operation of the order dated 30-4-1999 in DB (C) Spl. Application No. 410 of 1998. It is stated in Para 6 of

the rejoinder-affidavit that there are as on date 220 officers functioning in the cadre of District Judges and Additional District Judges and as such there are no existing vacancies.

13. In our opinion, this writ petition has to be allowed. In view of our decision in *Veena Verma case*¹² it has to be held that under the existing Rule the strength of the service of RHJS is 150 and since there are 41 direct recruits already working, there is no substantive vacancy. Hence the impugned notification is illegal and deserves to be quashed. The writ petition is allowed and the impugned notification is quashed. However, we make it clear that it is open to the State Government in consultation with the High Court to amend Schedule I to the Rules in accordance with Rule 6(2) and thereby vary the strength of the service.

14. The petitioner has filed this writ petition seeking a direction to the respondents to complete the selection process initiated under Notification No. Estt. (RJS)/118/2003 dated 20-10-2003. As we have quashed the said notification in WP (C) No. 576 of 2003, this writ petition [WP (C) No. 275 of 2007] is dismissed as having become infructuous.”

11. On the same day, a decision was rendered by this Court in ***High Court of Judicature For Rajasthan v. Veena Verma and another***¹², which *inter alia* considered whether Notification dated 21.12.1996 inviting applications for 11 posts in the Higher Judicial Service in the State of Rajasthan by Direct Recruitment was valid. It was observed that 11 posts were not available for Direct Recruitment. While dealing with the challenge, it was observed,

12 (2009) 14 SCC 734

“33. It may be mentioned that posts can be created dehors the cadre of a service, and these are known as ex cadre posts. The posts created without a specific order under Rule 6(2) are ex cadre posts. Hence in our opinion the temporary or permanent vacancies or posts created beyond the number of posts in Schedule I without a specific order under Rule 6(2) varying Schedule I to the Rules are only ex cadre posts, and can only be filled in by promotees, and not by direct recruitment.

34. It may be noted that Rule 9(2) uses the words “as far as possible”. In our opinion, this means that there is no hard-and-fast rule that after every three persons appointed by promotion, the fourth person has to be appointed by direct recruitment. In our opinion, the Division Bench of the High Court has given a wrong interpretation of Rule 9(2) of the Rules by observing:

“it does not give a licence to the respondents to refuse to appoint every fourth person by direct recruitment on the ground that it was not possible for any other reason than the maintenance of the limit of one-third of the total strength imposed by sub-rule (1) of Rule 9 on direct recruitment”.

In our opinion this is a wrong view taken by the Division Bench of the High Court as is evident from the words “as far as possible” in Rule 9(2). These words give a discretion to the authorities, and the Court cannot interfere with this discretion, unless it is palpably arbitrary.

[Emphasis supplied]

35. In our opinion, the Division Bench of the High Court erred in law in holding that for the purpose of direct recruitment the temporary or permanent posts created outside the cadre without amending Schedule I were also to be included while calculating the strength of the Service. The Division Bench also erred

in holding that whenever posts are created, the strength of the Service is deemed to have been automatically increased although there is no order under Rule 6(2) in this connection amending Schedule I. In our opinion, there has to be a specific order under Rule 6(2) amending Schedule I otherwise it cannot be said that the strength of the cadre has been increased. Hence, in our opinion, the temporary or permanent posts created outside the cadre cannot be taken into consideration for determining the strength of the cadre.”

12. On 18.01.2010, in exercise of the powers conferred by Articles 233 and 234 read with proviso to Article 309 of the Constitution of India, the Governor of Rajasthan in consultation with the Rajasthan Public Service Commission and the High Court made Rules for regulating recruitment to the posts in, and the conditions and other matters related to the service of persons appointed to the Rajasthan Judicial Service. The Rules are called Rajasthan Judicial Service Rules, 2010 (“2010 Rules”, for short).

12.1 The terms, “Cadre”, “Cadre Post”, “Member of the Service” and “Substantive appointment” are defined in clauses (b), (c), (g) and (l) of Rule 3 as under:

“Rule 3: Definitions

(b) “Cadre” means the cadre of District Judge, Senior Civil Judge and Civil Judge as provided under Rule 5 of Part-II of these Rules;

(c) “Cadre Post” means any post specified in Schedule-I;

(g) “Member of the Service” means a person appointed substantively to a post in the service under the provisions of these Rules; and

(l) “Substantive appointment” means an appointment made under the provisions of these rules to a substantive vacancy after due selection by any of the methods of recruitment prescribed under these Rules and includes an appointment on probation followed by confirmation on completion of the probation period.”

12.2 Part-II of 2010 Rules deals with “Cadre” and Rule 5 stipulates that on and from the date of commencement of the Rules, the Rajasthan Judicial Service shall stand re-constituted and re-designated into following three cadres:

- (A) District Judges
- (B) Senior Civil Judge, and
- (C) Civil Judge.

Rule 6 deals with “Strength of the Service” and is to the following effect.

“(1) The Strength of the Service in each cadre and number of other posts shall be determined by the Government from time to time, in consultation with the Court and the existing posts in each cadre in the service shall be as specified in Schedule-I.

(2) The strength of other posts manned by the members of the service shall be as specified in Schedule-II unless any order varying the same is issued under sub-rule(1):

Provided that the State Government may, in consultation with the Court, create any permanent or temporary post from time to time as may be considered necessary and may abolish any such post or posts in the like manner without thereby conferring any right on any person for any type of claim.”

12.3. Part-III of 2010 Rules deals with subject “General Conditions”

and Rules 7, 8 and 15 are as under :-

“7. Determination of vacancies: (1) subject to the provisions of these rules, the Court shall determine and notify the actual number of existing and expected vacancies in each cadre as per the time schedule specified in Schedule-III.

(2) Where the vacancies in the cadre are to be filled in by a single method, the vacancies so determined shall be filled by that method.

(3) Where the vacancies in the cadre are to be filled in by more than one method, the apportionment of vacancies determined under sub-rule (1), to each such method shall be done maintaining the prescribed percentage for the particular method taking into account consideration the overall number of posts already filled in:

Provided that the apportionment for filling up vacancies in the cadre of District Judge, shall be made in a cyclic order of respective quota of each category, i.e. Promotee on the basis of merit-cum-seniority, Promotee on the basis of Limited Competitive Examination and the Direct Recruit.

8. Examination:- For filling up of vacancies in the cadre of District Judge and Civil Judge, examination shall be conducted by the Recruiting Authority as per the time Schedule specified in Schedule III.

... ..

15. Temporary or officiating appointments:- On occurrence of temporary or permanent vacancy, in the cadre of District Judge or the Senior Civil Judge, as the case may be, not taken into consideration at the time of determining the vacancies under Rule 7 and if in the opinion of the Court such vacancy is to be filled in immediately, the Court shall recommend to the Appointing Authority the names of the persons eligible for appointment maximum for a period of one year and such appointment shall not confer any rights upon the person so appointed.”

12.4. Part IV deals with “Methods of Recruitment” under which “Recruitment to the cadre of Civil Judge” and “Recruitment to the cadre of Senior Civil Judge” are dealt with in Rules 16 to 30 of sub-Parts A and B, while “Recruitment to the cadre of District Judge” is dealt with under sub-Part C. Rule 31 deals with source of recruitment, as under:-

“**31. Source of recruitment:** (1) Fifty percent posts in the cadre of District Judge shall be filled in by promotion from amongst Senior Civil Judges on the basis of merit-cum-seniority subject to passing of suitability test as provided under Schedule-IV.

(2) Twenty five percent posts in the cadre of District Judge shall be filled in by promotion from Senior Civil Judges strictly on the basis of merit through limited competitive examination conducted by the Court.

(3) Twenty Five percent posts in the cadre of District Judge shall be filled in by direct recruitment from amongst the eligible Advocates on the basis of written examination and interview conducted by the Court.

(4) For the purpose of proper maintenance and determination of seniority of persons appointed

through the aforesaid sources, a roster for filling of vacancies based on quota of vacancies reserved here-in-above, as given in Schedule-VII shall be maintained. This roster shall operate prospectively.”

12.5. Thereafter the relevant subjects are dealt with under three sub-heads named as (I) Promotion, (II) Direct Recruitment and (III) Appointment. Rule 32 dealing with the “Recruitment by Promotion” is as under:

“32. Recruitment by promotion:- (1) Fifty percent posts in the Cadre of District Judge shall be filled in by promotion from amongst Senior Civil Judges recommended by the Court, on the basis of merit-cum-seniority, subject to passing of suitability test as provided in Schedule-VI.

Explanation: “Qualifying the eligibility test shall not affect the inter-se-seniority of the officers in the Cadre of Senior Civil Judge.

(2) The recruitment in the cadre of District Judges under sub-rule (2) of rule 31 shall be made by a Limited Competitive Examination conducted by the Court in accordance with the scheme of the examination prescribed under Schedule-VIII.

(3) A Senior Civil Judge who has completed actual five years service as on the first day of January preceding the last date fixed for the receipt of the applications shall be eligible for appearing in the Limited Competitive Examination for promotion to the Cadre of District Judge.

(4) For the purpose of Limited Competitive Examination, applications shall be invited by the Court from all eligible Senior Civil Judges in such

manner and in such form as may be specified by the Court.

(5) Candidates who have obtained minimum 50% marks in the Limited Competitive Examination shall be eligible for interview by a Committee consisting of Chief Justice, Administrative Judge and two other Judges nominated by the Chief Justice. The Committee taking into consideration the performance at examination, the service record and the performance at the interview shall assess the suitability and recommend the names of the offices for promotion.”

12.6 Part-D deals with “Probation”, “Confirmation” and “Seniority”.

Sub-heading dealing with “Appointment” deals with issue of combined

Select List as under:

“42. Combined Select List: The Court shall prepare a combined select list putting the names of candidates in cyclic as provided in Schedule-VII from the list prepared under sub-rule (1) and (5) of Rules 32 and 41 and send it to the Appointing Authority.”

12.7 The issue of seniority is dealt with by Rule 47 as under:

“47. Seniority: Subject to the other provisions of these Rules:

(1) Seniority in the service in the cadre of Civil Judge shall be determined from the date of the order of substantive appointment to the service:

Provided that the seniority of candidates appointed to the service shall, in the case of appointment of more persons than one follow the order in which they have been placed in the list prepared by the Recruiting Authority under Rule 24 of these Rules.

(2) Inter-se seniority of persons promoted to the Senior Civil Judge cadre in the same year shall be

the same as it was in the post held by them at the time of promotion.

- (3) Seniority of persons appointed to the Service in the District Judge cadre by direct recruitment shall be determined from the date of the order of substantive appointment in the cadre.

Provided that the seniority of direct recruitee to the cadre, in the case of appointment of more persons than one by an order of the same selection, shall follow the order in which they have been placed in the list prepared by the Court under rule 41.

- (4) Inter-se seniority of persons promoted to the District Judge cadre in the same year shall be the same as it was in the post held by them at the time of promotion.

- (5) The seniority of direct recruitee vis-a-vis the promote appointed to the cadre of District Judge shall be determined in the order of their names placed in the combined select list prepared under Rule 42:

Provided that the persons promoted under Rule 15 shall not be given seniority over the direct recruitee.”

12.8 Rule 57 repealed 1969 Rules and made provisions for saving certain actions as under:

“57. Repeal and savings: The Rajasthan Highter Judicial Service Rules, 1969 and the Rajasthan Judicial Service Rules, 1955, as amended from time to time, are hereby repealed:

Provided that such repeal shall not affect any order made, action taken, effects and consequences of

anything done or suffered there under or any right, privilege, obligation or liability already acquired, accrued or incurred there under, or enquiry, verification, or proceedings in respect thereof made.”

12.9 Schedule I which is referable to Rule 3(c) and Rule 6(1) of the Rules deals with topic “Cadre Strength of the Service” and Part A deals with “District Judge Cadre” which enumerates various designations in said cadre aggregating to 223 and earmarks 10% reserve for leave, training, deputation etc.; thus taking the grand total to 245. Parts B and C of this Schedule deal with “Senior Civil Judge Cadre” and “Civil Judge Cadre” and set out the strength at 222 and 329 respectively.

12.10 Schedule II which is referable to Rule 6(2) of 2010 Rules deals with topic “Strength of the Service”. Part-A thereof enumerates various designations and the appropriate strength for the concerned posts in “District Judge Cadre”, in which 102 posts are mentioned including 83 “Additional District Judges (Fast Tracks)”. In the same Schedule, Parts B and C deal with “Senior Civil Judge Cadre” and “Civil Judge Cadre” respectively and the strength noted against said two parts is 7 and 4 respectively.

12.11 Schedule VII which is referable to Rule 31(4) sets out the Roster for “filling up vacancies in the District Judge Cadre by direct recruitment and by promotion.” First four points in the Roster are as under:

1. By promotion-merit-cum-seniority
2. By promotion-merit-cum-seniority
3. By promotion-Limited Competitive Examination
4. By direct recruitment.

Said pattern is then followed in succession¹³.

13. On 31.03.2010 a Notification was issued by the High Court notifying 58 vacancies to be filled in the cadre of District Judge. Out of 58 vacancies so notified, 36 vacancies were to be filled by the Direct Recruitment from the Bar while remaining 22 vacancies were to be filled by promotion through LCE as provided in Rules 7, 8, 32(1) and 40(1) along with Schedule-II to 2010 Rules. In this recruitment, no provision was made for 50% promotion quota meant for Promotees. Thereafter, a Notification was issued on 15.04.2010 inviting applications from Senior Civil Judges who had completed five years of actual service for being considered for 22 posts in the cadre of the District Judge to be filled by LCE and for filling up 36 vacancies through Direct Recruitment.

¹³ The pattern was thereafter modified vide Notification dated 31.08.2012 although the ratio between three sources was kept intact.

14. In *Malik Mazhar Sultan and others v. U.P. Public Service Commission*⁷, an affidavit was filed on behalf of the High Court in I.A. No. 73 of 2009. The stand taken by the High Court in said affidavit was as under:-

“2. It is submitted that in compliance of the directions of Hon’ble Court dated 21.03.2002 passed in All India Judges Association Vs. UOI & Ors. (AIR 2002 SC 1752 +2002 (4) SCC 247), new Rules for State Judicial Service, namely “Rajasthan State Judicial Service Rules 2003” (hereinafter referred to as draft Rules of 2003) were being framed, wherein provision of various modes of Recruitment/Promotion as approved and directed by this Hon’ble Court had been incorporated.

3. In the draft Rules, 2003 a time bound schedule for recruitment of the Judicial Officers was also provided, which was more or less on the same lines as directed by the Hon’ble Court in this matter. However, there was variation between dates specified in the calendar provided in Schedule-III of the draft Rules of 2003 and time schedule prescribed by the Hon’ble Court. As such, the time schedule prescribed by the Hon’ble Court could be implemented only after amending the Draft Rules, 2003 and due promulgation of the same. Amendment in the Draft Rules of 2003 would have further required, approval of the Full Court of the High Court and consultation with the Rajasthan Public Service Commission resulting in further delay in due promulgation of the Draft Rules of 2003. Therefore, an application dated 11.07.2008 for direction and modification was preferred by the Rajasthan High Court before the Hon’ble Court and it was prayed that the Hon’ble Court may be pleased:-
(a) to allow the application and permit the applicant/Rajasthan High Court to follow the calendar as annexed in Schedule-III of the draft of Rules, 2003 after due promulgation thereof; and

(b) to grant exemption to the applicant from implementing the time Schedule as prescribed by the Hon'ble Court vide it's order dated 04.01.2007 till draft Rules 2003 are finalized and duly promulgated. This application for directions and modification was registered as I.A. No.39. Copy of the same is annexed herewith and marked as Annexure-R1.

4. It is submitted that while I.A. No.39 preferred by the Rajasthan High Court was pending consideration, in pursuance of order dated 24.07.2008 passed by this Hon'ble Court, a factual report on behalf of Rajasthan High Court with regard to filling of vacancies in subordinate judiciary in the format prescribed by the Hon'ble Court was filed by the answering respondent through an affidavit dated 27.08.2008. True copy of the same is annexed herewith and marked as ANNEXURE-R-2.

5. It is submitted that while considering the factual report with regard to filling of vacancies in subordinate judiciary filed by the Rajasthan High Court through the affidavit dated 27.08.2008 (Annexure-R-2), the Hon'ble Court vide its order dated 23.09.2008 (Annexure-A-1) dismissed the I.A. No.39 preferred by the Rajasthan High Court.

6. It is submitted that meanwhile the Draft Rules 2003, incorporating the time schedule prescribed by the Hon'ble Court and other necessary amendments were renamed as "Rajasthan Judicial Service Rules, 2010" (hereinafter to be referred as Rules, 2010) and the same have been duly promulgated and come into force w.e.f. the date of its publication in Rajasthan Gazette i.e.19.01.2010.

7. It is submitted that: on the date of submission of the IA i.e. 10.10.2009, there were 75 vacancies in the cadre of Rajasthan Higher Judicial Service and 33 vacancies in the cadre of Civil Judge (Sr. Division).

8. It is submitted that a report dated 23.08.2008 of a Committee of Hon'ble Judges, constituted by the

Hon'ble Chief Justice to consider the matter regarding promotions in the cadre of District Judge on the post of Additional District & Sessions Judge (regular), Additional District & Sessions Judge (Fast Track) and from the post of Civil Judge (Jr. Division) to the post of Civil Judge (Sr. Division), recommending promotions in these cadres was placed before the Hon'ble Full Court in its meeting held on 29.11.2008, 13.02.2009 and 31.10.2009 but due to difference of opinion, the report of the Hon'ble Committee could not be approved by the Full Court. However, Hon'ble Full Court in its meeting held on 31.10.2009 approved the report of the Hon'ble Committee dated 23.08.2008 to the extent of making promotion of 33 officers from the post of Civil Judge (Jr. Division) to the post of Civil Judge (Sr. Division). Consequently, 33 officers have been promoted from the post of Civil Judge (Jr. Division) to that of Civil Judge (Sr. Division) vide order dated 30.11.2009. Copy of order dated 30.11.2009 is annexed herewith and marked as ANNEXURE-R/3.

9. It is submitted that the report dated 23.08.2008 of the Hon'ble Committee regarding grant of promotions to the post of Additional District & Sessions Judge (regular) and Additional District & Sessions Judge (Fast Track) was again placed for consideration before the Hon'ble Full Court in its meeting held on 20.03.2010. Whereupon it was Resolved that the report requires reconsideration by the Promotion Committee after considering the service record for subsequent period also and the report of the Promotion Committee be placed before the Hon'ble Full Court by circulation. Pursuant to the Full Court Resolution, Hon'ble Committee convened its meeting on 05-06.04.2010 and submitted its report, suggesting amendment in Rule 15 of the Rajasthan Judicial Service Rules, 2010. This report of the Hon'ble Committee was placed before the Hon'ble Full Court in its meeting held on 10.04.2010 whereupon it was Resolved to defer the matter regarding amendment in Rule 15 of Rajasthan Judicial Service Rules, 2010 and also Resolved to again

request the Committee to reconsider the matter regarding promotion as per Full Court Resolution dated 20.03.2010. It is submitted that pursuant to the aforesaid Resolution the meeting of Hon'ble Committee has been fixed on 12.04.2010 and 13.04.2010.

10. It is submitted that after the judgment dated 07.07.2009 rendered by the Hon'ble Supreme Court in Civil Appeal No.5699/2000 High Court of Judicature for Rajasthan vs. Veena Verma & Ors. and the judgment of the same date rendered by the Hon'ble Court in Writ Petition Civil No.576/2003 RJS Officers Asson. Vs. State of Rajasthan & Ors. the matter of determination of vacancies for direct recruitment in Rajasthan Higher Judicial Service was placed before the Hon'ble Full Court vide Circulation Case No.10/2009 on 18.07.2009 and on account of different opinion of Hon'ble Judges, on 16.09.2009 the Hon'ble Chief Justice directed to put up the file later. In the meanwhile, Rajasthan Judicial Service Rules, 2010 came into force w.e.f. 19.01.2010. Therefore, the matter regarding consideration of vacancies in each cadre under the Rules of 2010 was considered by the Hon'ble Full Court in its meeting held on 24.01.2010 and the same was resolved to be deferred. The matter was again placed before the Hon'ble Full Court in its meeting held on 20.03.2010 and as per Rajasthan Judicial Service Rules, 2010, the category wise vacancy in the District Judge Cadre upto 31.03.2011 has been resolved to be determined as under –

(a) By promoting	-	49
(b) By limited competitive examination	-	22
(c) By direct recruitment	-	36

... ..”

15. The matter in respect of consideration of the Report of the Committee with respect to promotion of Additional District and Sessions Judges, including those who were manning Fast Track Courts, was taken

up by the Full Court on 23.03.2010. In March-April 2010, the Report of the Committee and records of the services rendered by all the concerned candidates were considered by the High Court and substantive absorption of those who were promoted to Fast Track Court and promotion of some candidates to the cadre of District Judge on substantive basis was approved by the Full Court.

16. On 21.04.2010 a formal Order was issued by the State Government in view of the recommendation made by the High Court in its Resolution dated 12/13.04.2010 promoting 47 Judicial Officers who were manning Fast Track Courts to the level of Additional District Judges in accordance with the recommendation made by the Committee in its Report dated 23.08.2008 (“the 47 Judicial Officers”, for short). It must be noted that the 47 Judicial Officers were not intimated by the High Court that they could appear at LCE to be conducted in pursuance of the Notification dated 15.04.2010. The Order recited as under:-

“On the recommendation of Rajasthan High Court, H.E. the Government of State of Rajasthan is pleased to appoint/promote the following 47 officers as Additional District and Sessions Judges in the District Judge Cadre.”

On the same day i.e. on 21.04.2010 another Order was issued promoting 49 Senior Civil Judges, including the petitioner in Writ Petition

(Civil) No.1008 of 2019, as Additional District and Sessions Judges on ad-hoc basis to man the Fast Track Courts.

17. The candidates who had applied in pursuance of the Notification dated 15.04.2010 appeared at the written examination held on 30.06.2010 and the successful candidates were then called for interview. However, by communication dated 04.09.2010 interviews were postponed *sine die*. Later, by Notification dated 22.09.2010 which was issued in pursuance of the Resolution of the Full Court, the entire examination process for recruitment by Direct Recruitment and through LCE was directed to be held afresh.

18. A Notification was issued on 31.03.2011 renotifying the number of vacancies available for Direct Recruitment and for promotion through LCE. Said Notification was as under:-

“RAJASTHAN HIGH COURT JODHPUR

NOTIFICATION

As per the determination of vacancies for the current year & the strength of District Judge cadre being 245, the vacancies in the District Judge cadre as hereby notified as under:-

Vacancies for Direct Recruitment	- 37
Vacancies for promotion by Limited Competitive Examination	- 22
Vacancies for promotion	- 24

In case the cadre strength is revised to 255, the vacancies would be as under:-

Vacancies for Direct Recruitment	- 39
Vacancies for promotion by Limited Competitive Examination	- 22
Vacancies for promotion	- 33”

18.1. On the same day i.e. on 31.03.2011 two Orders were passed by the High Court; one abolishing 40 Fast Track Courts while the other directed continuation of the others “on ad-hoc basis as against the available vacant posts” till the matter was considered for regular promotion. The Order stated:-

“Consequent upon abolition of 40 ADJ (FT) Courts vide Government Notification No.F.10(4) Nyay/98/Part dt. 31.3.2011, the following officers shown at SI. No.01 to 39 working as ADJ (FT) are continued on ad hoc basis as against the available vacant posts till the matter is considered for regular promotion in accordance with Rules and are transferred/ posted as mentioned below. The officers shown at S.No.40 to 53 are also transferred / posted as mentioned below:-....”

19. A Bench of three Judges of this Court after noting its earlier Judgment in *All India Judges’ Association vs. Union of India and Others*¹ modified certain directions contained therein by its Order dated 20.04.2010⁹. The relevant paragraphs have already been quoted in paragraph 2.6 hereinabove.

20. On 10.06.2011, appropriate amendments were effected in 2010 Rules to fix the quota for Promotees at 65% in accordance with the aforesaid Order dated 20.04.2010⁹ issued by this Court and raising the cadre strength of District Judges from 245 to 255.

21. In *Brij Mohan Lal v. Union of India and Others*¹⁴, this Court *inter alia* dealt with two Transferred Cases, one arising from Writ Petition filed in the High Court of Punjab and Haryana seeking directions to stop the scheme and policy of appointment of retired District and Sessions Judges as Ad-hoc Judges of the Fast Track Courts and the other filed in the High Court of Andhra Pradesh seeking declaration that constitution of Fast Track Courts was unconstitutional and consequently be set aside. This Court considered the entire scheme as well as the relevant provisions in various States and considered diverse submissions. One of the questions raised by this Court was:-

“Whether any of the appointees to the post of ad hoc Judges under the FTC Scheme have a right to the post in the context of the facts of the present case?”

21.1 Thereafter, the letters of appointment issued to various appointees including those from the State of Rajasthan were considered and while

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dealing with the issue of regularization of service rendered by the Judicial Officers' manning Fast Track Courts, it was observed:-

“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.”

21.2 In so far as the State of Rajasthan is concerned, it was observed:-

“177. In the case of State of Rajasthan, it is the judicial officers from the cadre of Civil Judge, Senior Division, who were promoted as FTC Judges. They have continued to hold those posts for a considerable period. According to these petitioners, they were promoted to the Higher Judicial Services as per the Rules and, therefore, keeping in view the order of this Court in *Madhumita Das*¹⁵ as well as the very essence of the FTC Scheme, they should be absorbed as members of the regular cadre of Higher Judicial Services of the State of Rajasthan. The State Government had issued a directive that they should undertake the limited competitive examination for their regular promotion/absorption in the higher cadre. These officers questioned the correctness of this directive on the ground that they were promoted as Additional Sessions Judges (FTC) under the Rules and, therefore, there was no question of any further requirement for them to take any written examination after the long years of service that they have already put in in the Higher Judicial Services.

178. The Rajasthan Judicial Service Rules, 2010 are in force for appointment to the Higher Judicial Services of the State. The judgment of this Court in *All India Judges' Assn. (3) case*¹ as well as the relevant Rules contemplate that a person who is to be directly appointed to the Higher Judicial Services has to undergo a written examination and appear in an interview before he can be appointed to the said cadre. As far as appointment by promotion is concerned, the promotion can be made by two different modes i.e. on the basis of seniority-cum-merit or through out-of-turn promotion wherein any Civil Judge, Senior Division who has put in five years of service is required to take a competitive examination and then to the extent of 25% of the vacancies available, such Judges would be promoted to the Higher Judicial Services.

179. It was admitted before us by the learned counsel appearing for the petitioners that these officers who were promoted as ad hoc FTC Judges had not taken any written competitive examination before their promotion to this post under the Higher Judicial Services. In other words, they were promoted on ad hoc basis depending on the availability of vacancy in FTCs. Once the Rules required a particular procedure to be adopted for promotion to the regular posts of the Higher Judicial Services, then the competent authority can effect the promotion only by that process and none other. In view of the admitted fact that these officers have not taken any written examination, we see no reason as to how the challenge made by these judicial officers to the directive issued by the State Government for undertaking of written examination may be sustained. Thus, the relief prayed for cannot be granted in its entirety.”

21.3 Finally, following directions were issued in paragraph 207:-

“**207.** Without any intent to interfere with the policy decision taken by the Governments, but

unmistakably, to protect the guarantees of Article 21 of the Constitution, to improve the justice delivery system and fortify the independence of judiciary, while ensuring attainment of constitutional goals as well as to do complete justice to the lis before us, in terms of Article 142 of the Constitution, we pass the following orders and directions:

207.1. Being a policy decision which has already taken effect, we decline to strike down the policy decision of the Union of India vide Letter dated 14-9-2010 not to finance the FTC Scheme beyond 31-3-2011.

207.2. All the States which have taken a policy decision to continue the FTC Scheme beyond 31-3-2011 shall adhere to the respective dates as announced, for example in the cases of States of Orissa (March 2013), Haryana (March 2016), Andhra Pradesh (March 2012) and Rajasthan (February 2013).

207.3. The States which are in the process of taking a policy decision on whether or not to continue the FTC Scheme as a permanent feature of administration of justice in the respective States are free to take such a decision.

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.

207.6. All the decisions taken and recommendations made at the Chief Justices and Chief Ministers' Conference shall be placed before the Cabinet of the Centre or the State, as the case may be, which alone shall have the authority to finally accept, modify or decline the implementation of such decisions and, that too, upon objective consideration and for valid reasons. Let the minutes of the Conference of 2009, at least now, be placed before the Cabinet within three months from the date of pronouncement of this judgment for its information and appropriate action.

207.7. No decision, recommendation or proposal made by the Chief Justices and Chief Ministers' Conference shall be rejected or declined or varied at any bureaucratic level, in the hierarchy of the Governments, whether in the State or the Centre.

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.

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 seniormost 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.

207.12. These directions, of course, are in addition to and not in derogation of the recommendations that may be made by the Law Commission of India and any other order which may be passed by the courts of competent jurisdiction, in other such matters.

207.13. The candidates from any State, who were promoted as FTC Judges from the post of Civil Judge, Senior Division having requisite experience in service, shall be entitled to be absorbed and remain promoted to the Higher Judicial Services of that State subject to:

(a) Such promotion, when effected against the 25% quota for out-of-turn promotion on merit, in accordance with the judgment of this Court in *All India Judges' Assn. (3)*¹, by taking and being selected through the requisite examination, as contemplated for out-of-turn promotion.

(b) If the appointee has the requisite seniority and is entitled to promotion against 25% quota for promotion by seniority-cum-merit, he shall be promoted on his own turn to the Higher Judicial Services without any written examination.

(c) While considering candidates either under Category (a) or (b) above, due weightage shall be given to the fact that they have already put in a number of years in service in the Higher Judicial Services and, of course, with reference to their performance.

(d) All other appointees in this category, in the event of discontinuation of the FTC Scheme, would revert to their respective posts in the appropriate cadre.”

22. In the selection process undertaken pursuant to the Notification dated 31.03.2011 for filling up vacancies through Direct Recruitment, LCE and Promotion, only 9 candidates could clear LCE against 22 vacancies meant for that category. This number got reduced to 8 as the candidature of one of the successful candidates was not accepted. Resultantly, the unfilled vacancies meant for LCE were added to the quota for Promotees and by

Government Order dated 15.07.2013 appropriate Appointment Orders were issued. The text of the Order was as under:-

“In exercise of the powers conferred by Article 233(1) of the Constitution of India read with Rule 43 of the Rajasthan Judicial Service Rules, 2010, the Governor of the State of Rajasthan on the recommendation of the Rajasthan High Court is pleased to appoint the following persons recruited by promotion, limited competitive examination and direct recruitment to the Rajasthan Judicial Service in the District Judge Cadre in the pay scale of Rs.51550-1230-58930-1380-63070 [District Judge (Entry Level)] with such allowances as are admissible as per rules and their pay shall be fixed as per rules. The persons appointed by direct recruitment shall be placed on probation for a period of two years from the date of assuming charge of their office as per Rule 44 of the Rajasthan Judicial Service Rules, 2010:...”

Thereafter, the names of 87 candidates were mentioned and the names of 8 successful candidates in LCE were at Sr. Nos. 10, 19, 30, 39, 50, 59, 65 and 68.

23. In the meantime, by Notification dated 31.03.2013 issued by the High Court, 58 vacancies were determined for the years 2012-13 and 2013-14 in the cadre of District Judge. This Notification also stated that in case the cadre strength was revised to 362, the vacancies in the cadre of District Judge would be 165. On 14.09.2013, the strength of District Judge cadre was revised to 372. By Notification dated 01.04.2014 issued by the High Court, 204 vacancies were determined in the cadre of District Judge

for the years 2012-13, 2013-14 and 2014-15. The relevant portion of the Notification dated 01.04.2014 was as under:-

“In suppression of earlier notification No.Estt. (RJS)/06/2014 dated 15.01.2014, as per schedule I of RJS rules 2010, the determination of vacancies in District Judge Cadre for the year 2012-2013, 2013-14 and 2014-15 is hereby notified as under:-

As per cadre strength – 372

Total vacancies – $186 + 18^* = 204$

Vacancies for district recruitment – 41

Vacancies for promotion by limited competitive examination – 29

Vacancies for promotion – 116

*Note:- 18 future vacancies (against 10% of the total Number of vacancies) are not assigned to any category for the present. However, these will be given as per roster to the particular category wherein any vacancy(ies) on account of death elevation, dismissal etc. will arise.”

24. On 21.04.2014, 56 Senior Civil Judges were promoted as Additional District and Sessions Judges on Ad-hoc basis. The Order recited as under.

“On the recommendation of Rajasthan High Court, H.E. the Governor of State of Rajasthan is pleased to appoint the following 56 officers purely on ad-hoc basis as Additional District and Sessions Judge in the District Judge cadre under Rule 15 of the Rajasthan Judicial Service Rules, 2010:-”

The names of concerned 56 Judicial Officers were thereafter mentioned in the Order.

25. On 15.12.2014 a final seniority list of all the Judicial Officers who were then in service and appointed under the provisions of 1969 Rules prior to 2008 (from Serial Nos.1 to 205) was published. This seniority list is not under challenge and is accepted to be correct by all the concerned.

26. A Notification was issued on 31.03.2015 by the High Court determining cumulative vacancies in the cadre of District Judge for the years 2012-13, 2013-14, 2014-15 and 2015-16 as under:-

“In supersession of earlier Notification No.Estt. (RJS)/33/2014 dated 01.04.2014, as per Schedule-1 of RJS Rules, 2010, the cumulative vacancies in District judge cadre for the years 2012-13, 2-13-14, 2014-15 & 2015-16 are hereby determined and notified as under:-

As per cadre strength	372
Total Vacancies = 207+21	228
Vacancies for Direct Recruitment	44
Vacancies for promotion by Limited Competitive Examination	29
Vacancies for promotion	134

*Note:- 21 future vacancies (against 10% of the total Number of vacancies) are not assigned to any category for the present. However, these will be given as per roster to the particular category wherein any vacancy (ies) on account of death elevation, dismissal etc. will arise.”

26.1 Pursuant to the selection undertaken thereafter by Order dated 05.02.2016, 175 candidates were appointed to the cadre of District Judge,

which included recruitment through Promotion, LCE and Direct Recruitment, . The Order stated :-

“i. This Select List in cyclic order has been prepared of the candidates being recommended for appointment while leaving one post unfilled for a candidate Shri. Akhilesh Kumar selected through Direct Recruitment. However, it is notified that this list shall remain subject to revision after receipt of complete verification report from State Government with regard to Shri Akhilesh Kumar and on his being recommended by the Court for appointment, he shall occupy the roster point in the cyclic order as he would have occupied if included in the original list as per his position in order or merit.

ii. This Select List in cyclic order has been prepared of the candidates being recommended for appointment while leaving eight posts unfilled for eight Sr. Civil Judges, failing in the zone of consideration for promotion on merit-cum-seniority basis as their consideration has been deferred due to pendency of departmental enquiries against them. However, it is notified that this list shall remain subject to revision after outcome of the departmental enquiries with regard to the said eight Sr. Civil Judges and on their being recommended by the court for promotion; they shall occupy the roster point in the cycle order as they would have occupied if included in the original list as per their position in order of interest seniority in their feeder cadre.”

26.2. The petitioners in Writ Petition (Civil) No.895 of 2019, Writ Petition (Civil) No.897 of 2019 and Writ Petition (Civil) No.899 of 2019

were promoted to the cadre of District Judge by aforesaid order dated 05.02.2016.

27. Thereafter, a Provisional Seniority List was issued vide communication dated 16.08.2017 as regards Judicial Officers from Serial Nos. 206 onwards. The communication recited as under:-

“TENTATIVE DETERMINATION OF SENIORITY
OF THE OFFICERS OF DISTRICT JUDGE
CADRE.

Final Seniority List of the officers of District Judge Cadre upto Shri Nagendra Pal Bhandari was published on 15.12.2014.

After taking into consideration, the representations received from the officers of different categories and all relevant provisions, the tentative/provisional seniority list of the officers of District Judge Cadre next to Shri Nagendra Pal Bhandari is reckoned/proposed:”

The names of all the concerned candidates were mentioned in the Provisional Seniority List. The candidates, who were successful in LCE were given the original order of Seniority in the feeder cadre without giving them any benefit for having successfully cleared the LCE. Further the 47 Judicial Officers promoted on 21.04.2010 were en-bloc placed above all the appointees pursuant to selection undertaken in 2011.

28. In August 2018, Writ Petition Nos.936 of 2018 and 967 of 2018 namely Writ Petitions in Categories A and B referred to in Para 1

hereinabove were filed in this Court submitting *inter alia* that post the coming into effect of 2010 Rules, all the appointments in the categories of selection through LCE and Direct Recruitment had to be in conformity with 2010 Rules and in tune with the Cyclic Order; that placement of the 47 Judicial Officers whose Appointment Orders were issued after the process was undertaken in the year 2010 for selection of candidates through LCE and Direct Recruitment, was not correct.

29. Notice was issued by this Court in aforesaid Writ Petition (Civil) Nos.936 of 2018 and 967 of 2018 on 20.09.2018. On 14.12.2018 the learned counsel for the High Court submitted that the objections to the Provisional Lists were pending consideration with the High Court. Therefore, at his request the petitions were adjourned. Thereafter, the entire matter was considered by the High Court and by its Report dated 15.03.2019 all the objections raised by the concerned candidates were dealt with. The report was thereafter placed on record. On 18.07.2019 when said Writ Petitions and all other connected matters were taken up, it was highlighted that the 47 Judicial Officers were not promoted in conformity with Rule 32(1) of 2010 Rules, and, in any case, the principle of Cyclic Order, in terms of Rule 42, was also not complied with and yet they were placed at Serial Nos.206 to 250. Since the 47 Judicial Officers were not

parties to the present proceedings, notice was issued to them by Order dated 18.07.2019.

30. In the meantime, the Report of the Committee of five Judges of the High Court under the Chairmanship of the Chief Justice of the High Court which had considered all the representations was placed on record. The Committee had framed following four questions for its consideration in said Report dated 15.03.2019:-

- (1) Whether the officers, who were promoted on the post of Additional District Judge (Fast Track) on ad-hoc basis under Rule 22 of the Rules of 1969, can claim seniority from the date of such ad-hoc promotion in view of the first proviso to Rule 24 of the Rules of 1969, by virtue of saving clause in Rule 57 of the Rules of 2010, which were enforced on 19.01.2010?
- (2) Whether the process of selection for direct recruitment against 36 posts determined in the year 2010-11 should be taken to have commenced from 15.04.2010 when initial advertisement for recruitment was issued or from 19.07.2011 when fresh advertisement was issued after earlier process was cancelled with the decision of the High Court to hold the process of recruitment afresh?
- (3) Whether seniority of officers of the same batch promoted to the District Judge cadre in the Limited Competitive Examination quota, should be prepared on the basis of their inter-se placement in the merit list of

such examination under Rule 32(2) or should be, in view of Rule 47(4) of the Rules of 2010, the same as it was in Senior Civil Judge cadre?

- (4) Whether seniority of the officers promoted to the District Judge cadre in view of Rule 31(4), is required to be fixed in cyclic order as per roster given in Schedule V to Rules of 2010 with adherence to quota-rotata rule and what bearing in the facts of the case, the opening words “As far as possible” in Rule 42 of the Rules, would have on determination of seniority?

30.1 Before dealing with the aforesaid four questions, the scope of the matter was dealt with as under:-

“The Rajasthan High Court notified the provisional seniority list of the officers of the District Judge cadre next to Shri Nagendra Pal Singh Bhandari on 16.08.2017, inviting objections thereto. This seniority list started from Shri N.S. Dhaddha at serial no.206 and continued upto Shri Mohammad Arif at serial no.519. Recruitment to District Judge cadre is made by three methods – 65% by promotion, 10% by Limited Competitive Examination (for short, ‘LCE), both from amongst the Senior Civil Judges and 25% by direct recruitment from the members of the Bar. The officers from all the three streams submitted their written objections to the provisional seniority list. Meeting of the Committee was convened under the Chairmanship of the Chief Justice in the Committee Hall of the High Court premises at Jodhpur on 06.01.2019. Their oral submissions were also heard in support of the written objections already submitted.

... ..

We may at the outset make it clear that we do not wish to unsettle the seniority position which has attained finality insofar as final seniority list dated 15.12.2014 is concerned, because no one from any of the three streams of recruitment has ever challenged the same before any forum known to law. However, at the same time, we wish to make it clear at this stage itself that while deciding the objections as to correctness of the provisional seniority list dated 16.08.2017, we may not agree and may deviate from the principles on which the conclusions of the earlier seniority committee in its report are founded.”

30.2 With regard to *first* question the conclusion arrived at by the Committee was as under:-

“In view of the position of law discussed above, we are not persuaded to countenance the submission that the promotes against the posts outside the cadre should be taken to have been promoted from the date of their ad hoc promotion either in the fast track courts or any other court, for the purpose of grant of seniority with reference to proviso to Rule 24 even though their regular promotion has actually taken place after the Rules of 1969 were repealed and the Rules of 2010 were promulgated on 19.01.2010. We also cannot uphold the argument that any right stood crystalized in favour of such promotes by reason of prescription made in proviso to Rule 24 and such right, by virtue of the savings clause under Rule 57 of the Rules of 2010, would remain protected so as to entitle them to claim seniority from the date of initial promotion on ad hoc basis even if their regular promotion has taken place later than the promulgation of the Rules of 2010. We are not examining the correctness of the order granting

selection scale to certain officers by counting the ad hoc service towards requisite period of five years, but that cannot justify giving the benefit of seniority on the basis of ad hoc promotion in view of the interpretation of the extant rules we have taken in the light of settled proposition of law. In our considered view, all those who were promoted on ad hoc basis earlier under the Rules of 1969, prior to promulgation of the Rules of 2010, can be given seniority only from the date of their substantive appointment, upon regular promotion, which took place after the Rules of 2010 came into force with effect from 19.01.2010. There is therefore no legal justification for en-bloc placement of such officers in the provisional seniority list on the basis of revision of cadre strength, when temporary/permanent posts included in the cadre with increase of its strength from 150 to 245 and every time later when the cadre strength was revised from 246 to 255, 256 to 265 and 266 to 372 respectively.”

30.3 With regard to *second* question the conclusion was as under:-

“In the case at hand, it should be noted that the process of recruitment was initially notified vide advertisement dated 15.04.2010, but the entire selection process both by direct recruitment as well by promotion through LCE was abandoned pursuant to decision of the Full Court, which is evident from the order of the Registrar General of the Rajasthan High Court dated 22.09.2010, whereby it was decided that recruitment process shall be initiated afresh. New process of selection/recruitment was started in both these categories by notification dated 19.07.2011. Out of 41 candidates, who were selected in the year 2013 by way of direct recruitment pursuant to the said notification, there are at least 15 such candidates, whose names did not find place either in the eligibility list or rejection list, as per the information furnished by the Examination

Cell of the High Court. These names are – (1) Shri Malkhan Singh, (2) Shri Ram Suresh Prasad, (3) Shri Manchha Ram Suthar, (4) Shri Keshav Kaushik, (5) Shri Dinesh Tyagi, (6) Shri Hariom Sharma Attri, (7) Shri Arun Kumar Beriwal, (8) Shri Hukam Singh Rajpurohit, (9) Ms. Shivani Singh, (10) Shri Mashroor Alam Khan, (11) Ramesh Prasad Choudhary, (12) Ms. Meenakshi Sharma, (13) Ms. Anu Aggarwal, (14) Shri Kishan Chand, and (15) Shri Satish Kumar. This proves that either they were not eligible, or even if eligible, they did not apply in response to the earlier notification for recruitment dated 15.04.2010. We are therefore not inclined to uphold the claim of direct recruits that they should be conferred the benefit of seniority from the year 2010. In any event, the direct recruits cannot claim seniority earlier than initiation of fresh process of selection pursuant to notification dated 19.07.2011 during the year 2011-12. The result of this would be that these direct recruits would not be entitled to claim seniority over at least those 47 officers, who were promoted on regular basis vide order dated 21.04.2010 in the year 2010-11 after the Rules of 2010 came into force. The direct recruits cannot therefore claim seniority above those officers, who were promoted on regular basis soon after promulgation of the Rules of 2010, when they were not even borne on the cadre.”

(emphasis supplied)

30.4 While dealing with *third* question the Committee concluded:-

“...We are therefore of the view that merit of those promoted through LCE should by virtue of Rule 32(2) be considered as the benchmark for promotion, inter-se seniority amongst them in the feeder cadre being maintained by prescription of Rule 47(4), subject to the exception that if an officer by regular method of promotion is able to otherwise secure promotion in the same year in the regular line on his turn

and on that basis he gets a higher placement in the seniority, regardless of his selection in the LCE, he should not be put to a disadvantageous position and allowed to retain his position in the seniority based on his regular promotion. In other words, such officer would be entitled to retain seniority, either on the basis of LCE or on the basis of regular promotion, whichever is more beneficial to him.”

30.5 Finally, while dealing with *fourth* question, the Committee took into account that there was no actual recruitment in the years 2012-13, 2013-14 and 2014-15 and the recruitment process commenced by the Notification dated 26.04.2015 was with regard to vacancies of all four years i.e. 2012-13, 2013-14, 2014-15 and 2015-16. In the circumstances, it was concluded:-

“As far as the period subsequent to the roster order dated 15.07.2013 is concerned, the determination of vacancies was made every year fairly regularly as noticed above, but actual recruitment from none of the three modes could take place in any one of the years 2012-13, 2013-14 and 2014-15. Finally again the recruitment process commenced by notification dated 26.04.2015 in the year 2015-16. Since the vacancies of all four years, viz., 2012-13, 2013-14, 2014-15 and 2015-16, were combined, even if some of the officers were in between allowed to continue on the post of Additional District & Sessions Judge on ad hoc basis, they cannot in view of the afore-discussed provisions of the Rules claim seniority on that basis. The vacancies of all these four years having been determined as those of the year 2015-16, all the appointments, by direct recruitment, LCE or regular promotion, should be deemed to belong to the year 2015-16.

.....

Perusal of the provisional seniority list shows that all 56 officers starting from Shri Satish Kumar Vyas (S.No.369) upto Shri Jai Prakash Narain Purohit (S.No.423), promoted on ad hoc basis vide order dated 21.04.2014 as Additional District Judge in the DJ cadre under Rule 15 of the Rules of 2010, have been wrongly assigned higher seniority. Thereafter, 26 officers starting from Shri Paras Kumar Jain (S.No.4224) upto Shri Jagendra Kumar Agarwal (S.No.450), all promoted on ad hoc basis by order dated 21.04.2015 also have been wrongly assigned higher seniority in the provisional seniority list. The next slot of officers starting from Shri Ashok Kumar Agarwal (S.No.451) onwards though have been promoted on regular basis by order dated 05.02.2016, but they have been all placed en-bloc senior to those who were selected against direct recruitment quota. Surprisingly, the cadre strength was initially increased with the enforcement of the Rules of 2010 on 19.01.2010, but the High Court administration has applied the same analogy of revision of cadre strength even on three subsequent occasions for placing all the officers appointed on ad hoc basis en-bloc in the seniority above those directly recruited. Some of the officers, who though got regular promotion vide order dated 05.02.2016, deviating from the roster point indicated in the order of promotion dated 05.02.2016, have been placed en-bloc above the officers of direct recruitment and LCE quota by wrongly applying the proviso to Rule 24 as if this repealed Rule would perpetually survive by mere reason of ad hoc promotions, for each succeeding year. Grant of benefit of seniority to officers promoted on ad hoc basis was thus contrary to the provisions contained in Rule 15 and 47(4).

Taking all the aforementioned circumstances into account, we are inclined to hold that each of the years 2012-13, 2013-14, 2014-15 for the purpose of operating the roster system should be treated as zero recruitment year and that the recruitment against

combined 207 vacancies determined for these years and the year 2015-16, should be taken as the vacancies of the year 2015-16 so as to make the Rule 42 of the Rules of 2010 workable, which begins with the phraseology "As far as possible", a select list as provided in Schedule-V shall be prepared by the High Court. Such select list in the cyclic order as per the roster point was earlier prepared by order dated 15.07.2013 and also when the next regular selections took place vide order dated 05.02.2016 but this was not truly reflected in the seniority list. All the officers promoted on regular basis by order dated 05.02.2016 should be taken to have been substantively appointed from that date only. If this view is taken, no prejudice would be caused to any class of the officers as none of them would compete for promotion/appointment in their respective category in previous three years. Vacancies of all these three years having been clubbed with the vacancies of the year 2015-16 to be determined as the vacancies of that year, each one of them has had opportunity to compete with his fellow officers/candidates for substantive appointment by way of promotion/LCE/direct-recruitment, to the DJ cadre together."

31. Mr. Ranjit Kumar, learned Senior Advocate and Mr. A.D.N. Rao, learned Advocate for the petitioners in Writ Petition (Civil) No.936 of 2018, and Mr. P.S. Patwalia and Mr. Nitesh Gupta, learned Senior Advocates for the petitioners in Writ Petition (Civil) No.967 of 2018 submitted that in terms of the provisions of 2010 Rules, any appointments made after said Rules came into effect, had to be in conformity with the principles therein and in accordance with the percentages for three different sources set out therein. It was submitted that before 2010 Rules

came into effect, the strength of the cadre of District Judge in the State was 150 and it got raised to 245 only after 2010 Rules came into effect. Relying on the decisions of this Court in *Debabrata Dash and Another v. Jatindra Prasad Das and Others*¹⁶, *V. Venkata Prasad and Others v. High Court of A.P. and Other*¹⁷ and in *Kum C. Yamini v. The State of Andhra Pradesh*¹⁸, it was submitted that no service rendered on ad-hoc basis as Fast Track Court Judges could be counted and that the rights of such candidates to be considered for promotion arose only after 2010 Rules and that since the Notification dated 31.03.2010 notified vacancies to be filled up by Direct Recruitment and through LCE, the High Court could not have promoted the 47 Judicial Officers by Order dated 21.04.2010 so as to adversely affect the chances and status of the petitioners. It was submitted that the entire exercise must be taken to be one single package under which appointments through all three sources could be undertaken after the vacancies became available by enhancement of cadre strength; and that the entire exercise undertaken after issuance of the Notification on 31.03.2011 was nothing but continuation of what was contemplated by the Notification dated 15.04.2010. It was, therefore, submitted that the vacancies which were

16 (2013) 3 SCC 658

17 (2016) 11 SCC 656

18 (2019) 10 SCALE 834 = 2019(8) JT 365

subject matter of Notification dated 31.03.2011 and the posting of the 47 Judicial Officers pursuant to Order dated 21.04.2010 must be considered as part of the same process. Resultantly, the placement of the concerned candidates ought to be governed by the Cyclic Order enumerated in Schedule VII to 2010 Rules. Reliance was placed on the decision of this Court in ***Union of India and Others v. N. R. Parmar and Others***¹⁹.

Mr. Nikhil Singhvi, learned Advocate for the petitioners in Writ Petition (Civil) Diary No.13252 of 2019 added another dimension in respect of LCE candidates. It was submitted that in keeping with the directions issued by this Court in para 28 in ***All India Judges' Association***¹ the promotions through LCE must be “strictly on the basis of merit” and that Rule 31(2) of 2010 Rules translates the same principle and, therefore, the ranking of the candidates who had cleared LCE must be in accordance with merit and not in accordance with their *inter se* seniority in the erstwhile cadre.

32. On the other hand, Mr. R. Balasubramanian, learned Senior Advocate and Ms. Perna Singh, learned Advocate appearing for the 47 candidates submitted that said candidates were promoted well before the

¹⁹ (2012) 13 SCC 340

initiation of selection process initiated pursuant to the Notification dated 31.03.2011; that said Notification was not in continuation of the process initiated in 2010; that number of candidates who were selected in the selection process pursuant to the Notification dated 31.03.2011 had not even participated in the process initiated in 2010 and the Committee of the High Court in its Report dated 15.03.2019 rightly answered Question No.2 in the negative. In their submission, the issue of regular promotion of those who were manning the Fast Track Court on ad-hoc basis was always under consideration right from 23.08.2008 when a Committee of the High Court had made its recommendations. In the process, the case of the 47 candidates stood on a completely different footing and the Committee of the High Court in its Report dated 15.03.2019 rightly acknowledged their entitlement.

33. Mr. Vijay Hansaria, learned Senior Advocate appearing for the petitioners in Writ Petition (Civil) No.464 of 2019 submitted that all these petitioners were appointed on ad-hoc basis as Fast Track Court Judges in the year 2008 and as a matter of fact, 4 Judicial Officers who were also appointed along with these petitioners in the year 2008 were part of the list of the 47 candidates at Serial Nos.44 to 47 whereas these petitioners were not included in said list. These Petitioners, therefore, pray that the order

dated 15.03.2019 be set aside to the extent it deprived said petitioners of their rightful due and they be given seniority from their initial appointment as Judges of the Fast Track Court that is from 11.01.2008 or, at least, above all LCE candidates and Direct Recruits as was given to the 47 candidates. It was further submitted that out of 83 Fast Track Courts which were mentioned in Part A of Schedule II to 2010 Rules, 40 Courts were abolished on 31.03.2011 and the petitioners were continued as Additional District Judges against vacant regular posts *vide* Order dated 31.03.2011. However, their substantive promotion to the Cadre of District Judge was made on 15.07.2013 along with the Direct Recruits and candidates through LCE. It was submitted that their initial appointments being under 1969 Rules and the fact that they were occupying posts indicated in Part A of Schedule II as stated above, their case would be covered by Rule 57 of 2010 Rules. It was however accepted that some of the petitioners had participated in the LCE around that time.

34. Mr. Neeraj Jain, learned Senior Advocate for the Association in Writ Petition (Civil) No.1471 of 2018 submitted that as acknowledged in the decision of this Court in ***Rajasthan Judicial Service Officers Association***¹¹ there were 41 Direct Recruits in the Cadre of District Judges in the year 2009 and as such it was incorrect to assess the vacancies for

Direct Recruits in the Notifications dated 15.04.2010 and 31.03.2011 at the level of 36 and 37 respectively. In his submission the allocation of vacancies to Direct Recruits was in excess of their entitlement.

35. Mr. V.K. Shukla, learned Senior Advocate appeared for the petitioners in Writ Petition (Civil) No.899 of 2019, who were promoted on ad-hoc basis as Additional District and Sessions Judges to man the Fast Track Courts on 21.04.2010 i.e. after 2010 Rules had come into force and who were substantively promoted to the Cadre of District Judge by Order dated 05.02.2016. It was submitted that their services at the level of Additional District and Sessions Judge were continued even after abolition of Fast Track Courts and thus said petitioners ought to be given the benefit of past service and be conferred appropriate seniority.

36. Dr. Sumant Bhardwaj, learned Advocate appeared for the petitioner in Writ Petition (Civil) No.1008 of 2019, where the petitioner stands on similar footing as in Writ Petition (Civil) No.899 of 2019, in that the ad-hoc promotion to the Cadre of District Judge was granted in the year 2012.

37. Dr. Manish Singhvi, and Mr. Sanjay Hegde, learned Senior Advocates appearing for the State and the High Court respectively supported the actions taken by the High Court on the administrative side.

38. In the backdrop of the facts and circumstances on record and the submissions of all the learned Counsel, following questions arise for our consideration:-

(A) Whether the judicial officers promoted on ad-hoc basis as Additional District and Sessions Judges to man the Fast Track Courts in the State and who were substantively appointed to the Cadre of the District Judge, are entitled to seniority from the date of their initial ad-hoc promotion?

(B) Whether the selection process initiated in terms of the Notification dated 31.03.2011 can be said to be in continuation of the process initiated under Notification dated 15.04.2010?

(C) Whether the substantive promotion granted to the 47 Judicial Officers must be taken to be part of the same selection process pursuant to the Notification dated 31.03.2011 and whether the 47 Judicial Officers could be placed en-bloc senior to the candidates selected in said selection

process initiated pursuant to the Notification dated 31.03.2011, without applying the Cyclic Order in terms of 2010 Rules?

(D) Whether the *inter se* placement of candidates selected to the Cadre of District Judge in the State through Limited Competitive Examination, in the seniority list must be based on their merit in said examination or should it be based on their initial seniority in the erstwhile cadre?

(E) Whether the Report dated 15.03.2019 and the consequential Final Seniority List, otherwise calls for any modification or correction?

39. As regards question No. (A), the law on the point is well settled and though learned Counsel advanced submissions based on various decisions of this Court and the principles emanating therefrom, the following decisions in the context of ad-hoc appointments as Additional District and Sessions Judges to man Fast Track Courts in the country, are sufficient to address the issue.

(A) In ***Debabrata Dash and Another v. Jatindra Prasad Das and Others***¹⁶, a Bench of three Judges of this Court considered the case wherein respondent No.1 was initially appointed as Additional District Judge (Fast Track Court) on ad-hoc basis and later his service was regularized in the Senior Branch Cadre in Orissa Superior Judicial Service.

His claim that service rendered as Judge of the Fast Track Court ought to be reckoned for seniority was accepted by the Orissa High Court. This Court, however, set aside the decision of the High Court. The question that came up for consideration was posed in para 28 as under:-

“28. The crucial question that arises for consideration in this appeal is:

whether promotion of the writ petitioner as an ad hoc Additional District Judge vide Notification dated 5-1-2002 to the Senior Branch of the Superior Judicial Service for being posted in the Fast Track Court established out of the Eleventh Finance Commission recommendations can be said to be an appointment in the Senior Branch Cadre of Superior Judicial Service?

The fate of the appeal depends upon the answer to this question. If the answer to this question is found in the affirmative, the appeal must fail. On the other hand, the appeal must succeed if the answer is in the negative.”

This Court thereafter considered the effect of 2001 Rules which were made to regulate the recruitment of Judicial Officers in the State to man Fast Track Courts on ad-hoc basis. Para 35 considered the effect of the Rules as under:-

“35. As noted earlier, 72 posts of ad hoc Additional District Judges were created under the 2001 Rules to meet its objectives. These posts were not part of cadre strength of Senior Branch Service in the 1963 Rules nor by creation of these posts under the 2001 Rules, the cadre strength of the Senior Branch of service got increased. The writ petitioner’s promotion as an ad hoc Additional District Judge vide Notification dated

5-1-2002 pursuant to which he joined the post of ad hoc Additional District Judge, Bargarh on 26-4-2002 is traceable wholly and squarely to the 2001 Rules. Merely because the writ petitioner was adjudged suitable on the touchstone of the 1963 Rules, we are afraid, it cannot be said that he was given appointment to the post of ad hoc Additional District Judge under the 1963 Rules. As noted above, there was no vacancy to be filled by promotion in the cadre strength of Senior Branch of the service under the 1963 Rules on that date.”

The decisions of this Court in *Direct Recruit Class II Engg. Officers' Assn.*²⁰ and *Rudra Kumar Sain*²¹ as well as in *Brij Mohan Lal*⁶ were also considered as under:-

41. A five-Judge Bench of this Court in *Direct Recruit Class II Engg. Officers' Assn.*²⁰ was concerned with a question of seniority in service between the direct recruits and promotees amongst Deputy Engineers in the State of Maharashtra. This Court considered previous decisions of this Court, including *S.B. Patwardhan v. State of Maharashtra*²² and *Baleshwar Dass v. State of U.P.*²³ and in para 47 of the Report summed up the legal position. Clauses (A), (B) and (C) of para 47 are relevant for the present purpose which read as follows: (*Direct Recruit Class II Engg. Officers' Assn.*²⁰, SCC p. 745, para 47)

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stopgap

20 (1990) 2 SCC 715

21 (2008) 8 SCC 25

22 (1977) 3 SCC 399

23 (1980) 4 SCC 226

arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterrupted till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.”

The essence of direction in Clause (A) is that the seniority of an appointee has to be counted from the date of his appointment and not according to the date of his confirmation once a recruit is appointed to a post according to the rules. In other words, where initial appointment is only ad hoc and not according to the rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority. The writ petitioner’s appointment as an ad hoc Additional District Judge is not traceable to the 1963 Rules. The simple reason leading to this consequence is that there was no vacancy available which was to be filled up by promotion on that date in the Superior Judicial Service (Senior Branch).

42. In *Rudra Kumar Sain*²¹ a five-Judge Bench of this Court was again concerned with the inter se seniority between the promotees and direct recruits in the Delhi Higher Judicial Service. The contention was whether the guidelines and directions given by this Court in *O.P. Singla*²⁴ have been followed or not. The Court considered the 3 terms “ad hoc”, “stopgap” and “fortuitous” in the context of the service jurisprudence

and in para 20 of the Report held as under: (*Rudra Kumar Sain case*²¹, SCC p. 45)

“20. In service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be ‘stopgap or fortuitous or purely ad hoc’. In this view of the matter, the reasoning and basis on which the appointment of the promotees in the Delhi Higher Judicial Service in the case in hand was held by the High Court to be ‘fortuitous/ad hoc/stopgap’ are wholly erroneous and, therefore, exclusion of those appointees to have their continuous length of service for seniority is erroneous.”

The Division Bench in the impugned order²⁵ has quoted the above paragraph from *Rudra Kumar Sain*²¹ but applied it wrongly.

43. In *Brij Mohan Lal (1)*⁶ a three-Judge Bench of this Court, inter alia, considered the Fast Track Courts Scheme. In para 10 of the judgment, this Court gave various directions. Direction 14 in that paragraph is relevant which can be paraphrased as follows: (SCC p. 10)

(i) No right will be conferred on judicial officers in service for claiming any regular promotion on the basis of his/her appointment on ad hoc basis under the Scheme.

(ii) The service rendered in the Fast Track Courts will be deemed as service rendered in the parent cadre.

25 *Jatindra Prasad Das v. State of Orissa*, WP (C) No.21449 of 2011, decided on 15-11-2011 (Ori)

(iii) In case any judicial officer is promoted to higher grade in the parent cadre during his tenure in Fast Track Courts, the service rendered in Fast Track Courts will be deemed to be service in such higher grade.

44. The learned Senior Counsel for the writ petitioner heavily relied upon the third part of Direction 14. As a matter of fact, this part has been relied upon in the impugned judgment¹ as well. It is submitted on behalf of the writ petitioner that on promotion to the Senior Branch Cadre of Superior Judicial Service during his tenure in the Fast Track Courts, the writ petitioner is entitled to the counting of the service rendered by him in the Fast Track Court as a service in Superior Judicial Service (Senior Branch). The submission overlooks the first two parts of Direction 14, one, no right will be conferred in judicial service for claiming any regular promotion on the basis of his/her appointment on ad hoc basis under the scheme; and two, the service rendered in Fast Track Courts will be deemed as service rendered in the parent cadre. In our opinion, until the vacancy occurred in the cadre of Superior Judicial Service (Senior Branch) which was to be filled up by promotion, the service rendered by the writ petitioner in the Fast Track Court cannot be deemed to be service rendered in the Superior Judicial Service (Senior Branch). Rather until then, he continued to be a member of the parent cadre i.e. Superior Judicial Service (Junior Branch). The third part of Direction 14, in our view, does not deserve to be read in a manner that overrides the 1963 Rules.”

(B) In *V. Venkata Prasad and Others v. High Court of A.P. and Others*¹⁷, a Bench of two Judges of this Court considered the case which arose in almost identical fact situation. The claim of the concerned Judicial Officer for reckoning the service rendered as Additional District

Judge (Fast Track Courts) on ad-hoc basis was rejected. Reliance was placed on the decision of this Court in **Debabrata Dash**¹⁹ and the ratio in that decision was followed.

(C) In **Kum C. Yamini v. The State of Andhra Pradesh**¹⁸ a bench of three Judges of this Court considered the issue where the candidates from the Bar were appointed on ad-hoc basis and after their consideration, claim was raised to reckon their seniority from the date of initial ad-hoc appointment. The relevant observations are :-

“12. While rejecting the claim for their absorption and challenge to the notification issued for the recruitment in the regular cadre posts, certain directions were issued in Brij Mohan Lal (2) (supra) for considering the claims of ad hoc judges appointed to Fast Track Courts into regular cadre posts. Following the directions only, the second respondent has issued notification inviting applications for appointments to the regular cadre of District Judges and appellants and others responded to such notification and totally 12 of them were selected for regular vacancies. In the appointment order dated 02.07.2013 in G.O.MS. No.68 issued by Law (LA & J-SC.F) Department, they were put on probation for a period of two years and after the declaration of successful probation and nearly after four years of appointment, the present claim is made claiming seniority from the date of their initial appointment, as ad hoc District Judges.

13. The claim of the appellants that they were appointed as ad hoc District Judges by following the procedure which is similar to the procedure for appointments to the sanctioned posts in the regular cadre, is no ground to accede to their request to reckon their seniority in the permanent cadre of District Judges, from their initial appointment as the District Judges for the Fast Track Courts. The appointments which came to be made for selecting District Judges for

Fast Track Courts sanctioned under the 11th Finance Scheme are totally different and distinct, compared to appointments which are to be made for regular vacant posts of District Judges covered under A.P. Higher Judicial Service. If a person is not appointed to any post in the cadre, such person cannot claim any seniority over the persons who are appointed in vacant posts in the cadre. The Fast Track Courts which were sanctioned initially for five years from the grants of 11th Finance Commission, were continued in some States beyond such period with the assistance, from States and such Fast Track Courts were discontinued in some other States. Merely on the ground that they were selected by following the same procedure akin to that of regular selections, is no ground to consider their claim for grant of seniority from the date of initial appointment. When their claim for regularisation/absorption and challenge to notification issued in the year 2004 for making selections to the vacant regular posts of District Judges is rejected by the High Court and confirmed by this Court, we are of the view that the appellants have no basis to claim seniority from the date of initial appointment. In any event, having applied in response to the notification issued by the High Court in the year 2013 after availing the benefit of appointment, it is not open to the appellants to question the conditions imposed in the order which is in conformity with rules. Undisputedly, appellant was appointed as ad hoc District Judges to preside over the Fast Track Courts only. Initially when she was not appointed to a post or category of posts, forming part of cadre strength in such category, appellant cannot claim any seniority over the persons regularly appointed in the category of posts forming part of cadre strength. There is yet another ground to reject the claim of the appellant. Though the appellant claims seniority over the persons who are appointed in regular vacant posts forming part of cadre strength but they are not even made parties. On this ground also, the claim of the appellants deserves rejection.

14. We have perused the judgment relied on by the appellant party in person, in the case of Rudra Kumar Sain & Ors. v. Union of India & Ors. (supra). In the aforesaid case, issue relates to claim of seniority between direct recruits and promotees. Learned senior counsel Sri

Venkataramani, has also relied on the judgments of this Court in the case of Brij Mohan Lal (1) v. Union of India & Ors. (supra); in the case of Debabrata Dash & Anr. v. Jatindra Prasad Das & Ors. (supra); in the case of V. Venkata Prasad & Ors. v. High Court of Andhra Pradesh & Ors. (supra) and in the case of Brij Mohan Lal (2) v. Union of India & Ors. (supra). We have looked into the judgments referred above by the learned senior counsel Sri Venkataramani and the party in person. Having regard to issue involved in the present appeals, we are of the view that the ratio decided in the aforesaid cases would not render any assistance in support of their claim in these cases. The claim of seniority will depend upon several factors, nature of appointment, rules as per which the appointments are made and when appointments are made, were such appointments to the cadre posts or not etc. When the appellants were not appointed to any regular posts in the A.P. Judicial Service, appellants cannot claim seniority based on their ad hoc appointments to preside over Fast Track Courts. We are of the view that the ratio decided in the said judgments relied on by the appellants would not render any assistance in support of their case.

15. On the other hand, the judgment in the case of V. Venkata Prasad & Ors. v. High Court of Andhra Pradesh & Ors. (supra), this Court has, in clear terms, while considering A.P. State Higher Judicial Service Special Rules for Ad Hoc Appointments, 2001 held that such appointments in respect of Fast Track Courts are ad hoc in nature and no right accrues to such appointees. The aforesaid view of this Court clearly supports the case of the respondents. Paragraph 25 of the said case which is relevant for the purpose of these cases reads as under : “25. From the aforesaid two authorities, it is quite clear that the appointments in respect of Fast Track Courts are ad hoc in nature and no right is to accrue to such recruits promoted/posted on ad hoc basis from the lower judiciary for the regular promotion on the basis of such appointment. It has been categorically stated that FTC Judges were appointed under a separate set of rules than the rules governing the regular appointment in the State Higher Judicial Services.”

The decisions in *Debabrata Dash*¹⁶, and *V. Venkata Prasad*¹⁷ were in the context where serving Judicial Officers were granted ad-hoc promotions as Fast Track Court Judges, while in *C. Yamini*¹⁸ the members of the Bar were appointed as Fast Track Court Judges and these decisions thus completely conclude the issue. As has been held in said decisions, the reckonable date has to be the date when substantive appointment is made and not from the date of the initial ad-hoc appointment or promotion. Question (A) is, therefore, answered in the negative.

40. As regards Question No.(B), it is relevant to note that the Notification dated 15.04.2010 had invited application for filling up 36 vacancies by Direct Recruitments and 22 vacancies by Promotion through LCE. This was preceded by determination of vacancies through Notification dated 31.03.2010. After the process initiated in terms of said Notification dated 15.04.2010 was cancelled, a fresh determination of the vacancies was undertaken and the Notification dated 31.03.2011 now found vacancies for Direct Recruitments, for Promotion through LCE and for Regular Promotion at 37, 32 and 24 respectively. Thus, the vacancies which became available post the Notification dated 15.04.2010 were also taken into account. The Report dated 15.03.2019 shows that some of the selected candidates in the process pursuant to the Notification dated

31.03.2011 had not even participated in the earlier process of 2010. In the premises, if the submission that the process initiated under the Notification dated 31.03.2011 must be held to be in continuation of the earlier selection of 2010 is accepted, it would amount to conferring undue advantages upon persons who either had not participated in the process of 2010 or who were not even eligible in 2010. The Report dated 15.03.2019, therefore, correctly appreciated the fact situation on record and concluded that it would not be in continuation of the earlier process.

41. As regards Question No.(C), it must be noted that as on the date when 2010 Rules came into effect, the Additional District and Sessions Judges manning the Fast Track Courts had rendered service in ad-hoc capacity for almost 07 years. The question whether they be granted promotion on Regular Basis was subject matter of consideration of the High Court. The Report of the Committee of Judges given in 2008 had advised that they be granted Regular Promotion and the matter was getting deferred at the level of the Full Court. It was at this stage that 2010 Rules became effective from 18.01.2010. Even thereafter, the Notification dated 31.03.2010 had published the vacancy situation only in respect of Direct Recruitment and Promotion through LCE. It was obviously so, as the issue regarding grant of Regular Promotion on substantive basis to those Fast

Track Court Judges was simultaneously under consideration and on 21.04.2010 a formal Order was passed promoting the 47 Judicial Officers on substantive basis to the Cadre of District Judge. The grant of promotion to the 47 Judicial Officers and selection process pursuant to the Notification dated 15.04.2010 were not part of the same process and were completely independent. None of the 47 Judicial Officers had the occasion to compete in the LCE that was undertaken in terms of the Notification dated 15.04.2010. It is possible to say that the last of the 47 Judicial Officers could as well have been the first in the list of successful candidates through LCE and thus could possibly have been entitled to better placement. In any case, the process initiated pursuant to the Notification dated 15.04.2010 was cancelled for administrative reasons and the appointments in respect of process pursuant to the Notification dated 31.03.2011 could be effected only in the year 2013, i.e. more than 03 years after the 47 Judicial Officers were granted substantive appointment to the Cadre of District Judge. Further, if grant of promotion to the 47 Judicial Officers is taken to be the part of the same process, some of the Direct Recruits may not even be having eligibility in the year 2010 and yet may be placed above some of the 47 Judicial Officers. In the circumstances, the assessment made by the High Court in its Report dated 15.03.2019 is

without any infirmity and we have no hesitation in concluding that the substantive promotion granted to the 47 Judicial Officers cannot be taken to be part of the same selection process where Direct Recruits and candidates through LCE were appointed to the Cadre of District Judge on 15.07.2013.

If the substantive appointment of the 47 Judicial Officers to the Cadre of District Judge is separate and distinct from the selection process through which appointment were made after three years on 15.07.2017, there would be no question or occasion to apply the Cyclic Order. It is not the contention of anyone that appointment of the 47 Judicial Officers on the relevant date was either beyond the quota meant for Regular Promotion or that there was any serious infirmity in the process or that any of the candidates was completely ineligible. Since there was a difference of more than 03 years between these two modes of selection, the Report dated 15.03.2019 rightly concluded that the Cyclic Order ought not to get attracted.

It is true that the Cyclic Order and the quota for different streams ensure equitable treatment for three sources. However, the application of the Cyclic Order must depend upon the fact situations. It was precisely for this reason that the expression “as far as possible” has been used in the

Rule. Other things being equal, certainly the quotas for different streams and the Cyclic Order must be adhered to. However, if such adherence itself is going to cause incongruous situation and inflict incalculable harm, insistence upon applicability of the Cyclic Order in such cases may not be appropriate. The expression “as far as possible” was, therefore, relied upon by this Court in Para 34 of its decision in *Veena Verma*¹². It would also be instructive to refer to a decision of this Court in *State of M.P. v. Narmada Bachao Andolan and Another*²⁶, where the expression “as far as possible” was explained:-

“As far as possible”

38. The aforesaid phrase provides for flexibility, clothing the authority concerned with powers to meet special situations where the normal process of resolution cannot flow smoothly. The aforesaid phrase can be interpreted as not being prohibitory in nature. The said words rather connote a discretion vested in the prescribed authority. It is thus discretion and not compulsion. There is no hard-and-fast rule in this regard as these words give a discretion to the authority concerned. Once the authority exercises its discretion, the court should not interfere with the said discretion/decision unless it is found to be palpably arbitrary. (Vide *Iridium India Telecom Ltd. v. Motorola Inc.*²⁷ and *High Court of Judicature for Rajasthan v. Veena Verma*¹².) Thus, it is evident that this phrase simply means that the principles are to be observed unless it is not possible to follow the same in the particular circumstances of a case.”

26 (2011) 7 SCC 639

27 (2005) 2 SCC 145

41.1. We must at this stage deal with submissions based on the decision of this Court in *N.R. Parmar*¹⁹. In that case a Bench of two Judges of this Court while considering O.N. dated 20.12.1999 and 02.02.2000 had concluded as under:-

“31.2. It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the appointees concerned in terms of the “rotation of quotas” principle, so as to arrange them with other appointees (from the alternative source), for vacancies of the same recruitment year.

...

34.1. If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held), and the selected candidates joined in a further later year (than the one in which the result was declared), the selected candidates will be entitled to be assigned seniority, with reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion (expressed in the ON dated 2-2-2000) is, if the process of direct recruitment is initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the

administrative delay, in completing the process of selection.”

Relying on the aforementioned observations, it was submitted that the candidates selected through Direct Recruitment and LCE on 15.07.2013 could not be prejudiced if the High Court on the administrative side had segregated the issue of promotion of the 47 Judicial Officers on one hand and the selection through Direct Recruitment and LCE on the other; and the time lag of three years between the appointments would, therefore, be of no consequence.

The decision in *N.R. Parmar*¹⁹ was thereafter relied upon by another Bench of two Judges of this Court in *Hon'ble Punjab and Haryana High Court v. State of Punjab and others*²⁸. In that case, the recruitment from three different sources to the cadre of District Judge was done on three different dates but in the same year. Paragraphs 50 to 53 of said decision may be extracted as under:-

50. At this juncture, one of the submissions, which has been emphatically pressed by the learned Counsel for the promotees is that for determination of seniority, continuous length of service is determinative. The direct recruits and out of turn promotees, who were not even born in the cadre when promotees were promoted, they have to take seniority after the promotees. In this reference, it is useful to

refer to a judgment of this Court in Union of India and Ors. v. N.R. Parmar and Ors. (2012) 13 SCC 340, the issue in the said case was also an issue of determination of seniority between direct recruits vis-à-vis promotees and quota and rota principles. This Court had occasion to consider the office memorandum issued by the Government dated 22.12.1959. Noticing Para 6 of above office memorandum following was stated in Para 23 of the judgment:

23. The General Principles for determining seniority in the Central Services are shown to have been laid down in an annexure to an Office Memorandum dated 22-12-1959 issued by the Government of India, Ministry of Home Affairs (hereinafter referred to as "the OM dated 22-12-1959"). Para 6 of the annexure, referred to above, laid down the manner of determining inter se seniority between direct recruits and promotees. Para 6 is being extracted hereunder:

6. Relative seniority of direct recruits and promotees.--The relative seniority of direct recruits and of promotees shall be determined according to the rotation of vacancies between direct recruits and promotees which shall be based on the quotas of vacancies reserved for direct recruitment and promotion respectively in the Department Rules.

It is apparent from the above extract of the OM dated 22-12-1959, that the "quota" between promotees and direct recruits was to be read into the seniority rule. The OM also provided for a definite rotation of seniority points ("rota") between promotees and direct recruits. The rotation provided for was founded on the concept of rotation of quotas between promo-tees and direct recruits. It is therefore apparent, that under the OM dated 22-12-1959 inter se seniority between the promotees and direct recruits was based on the "quota" and "rota" principle. The same has been meaningfully described as "rotation of quotas" in some of these instruments.

51. There was further office memorandum on 07.02.1986 to take care of situation where it was decided that in future, while the principle of rotation of quotas will still be followed for determining the inter-se seniority of direct recruits and promotees, the present practice of keeping vacant slots for being filled up by direct recruits of later years, thereby giving them unintended seniority over promotees who were already in position, would be dispensed with. This Court noticed office memorandum dated 07.02.1986 and observed that "when direct recruits or promotees become available through later examinations or selections", it clearly mean that the situation contemplated is one where, there has been an earlier examination or selection, and is then followed by a "later" examination or selection.

52. In the above context, this Court laid down following in Paragraph 31.2 that "it is not necessary, that the direct recruits of a particular recruitment year, should join within the recruitment year itself". It was held that date of joining would not be a relevant factor for determining seniority of direct recruits. In paragraph 31.2 and 34.1 following has been laid down:

31.2. It is not necessary, that the direct recruits for vacancies of a particular recruitment year, should join within the recruitment year (during which the vacancies had arisen) itself. As such, the date of joining would not be a relevant factor for determining seniority of direct recruits. It would suffice if action has been initiated for direct recruit vacancies, within the recruitment year in which the vacancies had become available. This is so, because delay in administrative action, it was felt, could not deprive an individual of his due seniority. As such, initiation of action for recruitment within the recruitment year would be sufficient to assign seniority to the appointees concerned in terms of the "rotation of quotas" principle, so as to arrange them with other

appointees (from the alternative source), for vacancies of the same recruitment year.

34.1. If the process of recruitment has been initiated during the recruitment year (in which the vacancies have arisen) itself, even if the examination for the said recruitment is held in a subsequent year, and the result is declared in a year later (than the one in which the examination was held), and the selected candidates joined in a further later year (than the one in which the result was declared), the selected candidates will be entitled to be assigned seniority, with reference to the recruitment year (in which the requisition of vacancies was made). The logic and reasoning for the aforesaid conclusion (expressed in the ON dated 2-2-2000) is, if the process of direct recruitment is initiated in the recruitment year itself, the selected candidate(s) cannot be blamed for the administrative delay, in completing the process of selection.

53. In the present case, process for all the three streams was completed in the year 2008 and all the officers of three streams had joined in the same year. The submission that quota rota Rule was broken or seniority will be affected because of joining of one category of officers earlier cannot be accepted. It is also relevant to notice that purpose of statutory Rules and laying down a procedure for recruitment was to achieve the certainty. Officers belonging to different streams have to be confident that they shall be recruited under their quota and get seniority as per their quota and roster. In event, the seniority is to be fixed with date of joining of particular stream, it will lead to uncertainty and making seniority depending on administrative authorities, which is neither in the interest of service nor serve the cause of justice. We, thus, conclude that roster is fully applicable for determination of seniority. Officers of different streams selected in a particular year even though they were allowed to join the post on different dates shall

not affect their inter se seniority, which is to be decided on the basis of roster.”

41.2 It must, however, be stated that the decision in *N.K. Parmar*¹⁹ has since then been overruled by a Bench of three Judges of this Court in *K. Meghachandra Singh and Ors. vs. Ningam Siro and Others*²⁹. The relevant paragraphs of said decision are as under:

5. Before the Writ Court, the promotees contended that they entered the MPS Grade II Cadre on 01.03.2007 whereas the private Respondent Nos. 3 to 33 were appointed subsequently (on 14.08.2007 and 24.11.2007 respectively) and, therefore, they should be regarded as senior to the direct recruits.

6. The direct recruits on the other hand claimed seniority over the promotees by contending that seniority has to be decided in accordance with the year of the vacancy and not by the fortuitous date on which, the appointment could be finalized for the direct recruits.

...

13. It was also made clear that the promotees will naturally have seniority over the Appellants as they had entered the cadre of MPS Grade II, before the Writ Appellants were borne in the cadre.

...

17. The Senior Counsel cites *Union of India and Ors. v. N.R. Parmar*, (2012)13 SCC 340, to argue that when action was initiated for filling up the 2005 vacancies, the administrative delay in finalization of the recruitment leading to delayed appointment should not deprive the individual of his due seniority. By referring to the rotation of quota principle, the counsel argues that initiation of action for recruitment

in the year of the vacancy would be sufficient, to assign seniority from that year.

...

20. Representing the Respondents/promotees, the learned Senior Counsel, Shri Jaideep Gupta refers to the MPS Rules, 1965 to argue that the provisions of the Rules make it abundantly clear that inter-se seniority in the cadre of MPS Grade-III is to be determined by the order in which appointments are made to the service. The counsel pointedly refers to Rules 28 (i) where it is specified that the seniority in the service shall be determined by the order in which appointments are made to the service..... He also refers to the later part of Rule 28(iii), where again it is specified that the "seniority of the officer..... shall be counted from the date, he/she is appointed to the service..... . The provisions in Rule 16(iii) are pressed home by Mr. Gupta to argue that only when the person is appointed, he shall be deemed to have been appointed to the service from the date of encadrement.

21. The judgment in N.R. Parmar (Supra) is read with equal emphasis by Mr. Gupta to firstly point out that this case does not lay down the correct law in determination of seniority. The counsel highlights the incongruity in a situation where a person who entered service later will claim seniority above those who joined service at an earlier point of time. The applicability of the ratio in N.R. Parmar (Supra) to the litigants in the present case is also questioned by Mr. Gupta by pointing out that the provisions of MPS Rules, 1965 applicable for the officers in the Manipur Police Officers, was not the subject of consideration in N.R. Parmar (Supra), and, therefore, the said ratio relatable to Income Tax Inspectors, with different Service Rules, will not apply to the present case.

...

29. Before proceeding to deal with the contention of the Appellants' Counsel vis-à-vis the judgment in N.R. Parmar (Supra), it is necessary to observe that

the Law is fairly well settled in a series of cases, that a person is disentitled to claim seniority from a date he was not borne in service. For example, in J.C. Patnaik (Supra)³⁰ the Court considered the question whether the year in which the vacancy accrues can have any bearing for the purpose of determining the seniority irrespective of the fact when the person is actually recruited. The Court observed that there could be time lag between the year when the vacancy accrues and the year when the final recruitment is made. Referring to the word "recruited" occurring in the Orissa Service of Engineers Rules, 1941 the Supreme Court held in J.C. Patnaik (Supra) that person cannot be said to have been recruited to the service only on the basis of initiation of process of recruitment but he is borne in the post only when, formal appointment order is issued.

30. The above ratio in J.C. Patnaik (Supra) is followed by this Court in several subsequent cases. It would however be appropriate to make specific reference considering the seniority dispute in reference to the Arunachal Pradesh Rules which are *pari materia* to the MPS Rules, 1965, (vide (2007) 15 SCC 406-Nani Sha and Ors. v. State of Arunachal Pradesh and Ors.). Having regard to the similar provisions, the Court approved the view that seniority is to be reckoned not from the date when vacancy arose but from the date on which the appointment is made to the post. The Court particularly held that retrospective seniority should not be granted from a day when an employee is not even borne in the cadre so as to adversely impact those who were validly appointed in the meantime.

31. We may also benefit by referring to the Judgment in State of Uttar Pradesh and Ors. v. Ashok Kumar Srivastava and Anr. (2014) 14 SCC 720. This judgment is significant since this is rendered after the N.R. Parmar (Supra) decision. Here the Court approved the ratio in Pawan Pratap Singh and Ors. v. Reevan Singh and Ors. (2011) 3 SCC 267, and

30 (1998) 4 SCC 456

concurrent with the view that seniority should not be reckoned retrospectively unless it is so expressly provided by the relevant service Rules. The Supreme Court held that seniority cannot be given for an employee who is yet to be borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime. The law so declared in Ashok Kumar Srivastava (supra) being the one appealing to us, is profitably extracted as follows:

24. The learned Senior Counsel for the Appellants has drawn inspiration from the recent authority in Pawan Pratap Singh v. Reevan Singh where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are produced below:

45. (ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

.....

45. (iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.

...

34. In the above context, it is also necessary to refer to the relevant advertisement issued in 2005 for direct recruitment which allowed the aspirants to apply even if, their result in the qualification examination is awaited. Even more intriguing and significant is the relaxation that those proposing to appear in the qualifying examination are also allowed to respond to the advertisement. If such be the nature of the process initiated (in the year 2005) for making direct recruitment, we can easily visualize a situation where, in the event of granting seniority from the stage of commencing the process, a person when eventually appointed, would get seniority from a date even before obtaining the qualification, for holding the post.

...

38. When we carefully read the judgment in N.R. Parmar (Supra), it appears to us that the referred OMs (dated 07.02.1986 and 03.07.1986) were not properly construed in the judgment. Contrary to the eventual finding, the said two OMs had made it clear that seniority of the direct recruits be declared only from the date of appointment and not from the date of initiation of recruitment process. But surprisingly, the judgment while referring to the illustration given in the OM in fact overlooks the effect of the said illustration. According to us, the illustration extracted in the N.R. Parmar (Supra) itself, makes it clear that the vacancies which were intended for direct recruitment in a particular year (1986) which were filled in the next year (1987) could be taken into consideration only in the subsequent year's seniority list but not in the seniority list of 1986. In fact, this was indicated in the two OMs dated 07.02.1986 and 03.07.1986 and that is why the Government issued the subsequent OM on 03.03.2008 by way of clarification of the two earlier OMs.

39. At this stage, we must also emphasize that the Court in N.R. Parmar (Supra) need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between initiation of

process and appointment. Such observation is fallacious in as much as none can be identified as being a selected candidate on the date when the process of recruitment had commenced. On that day, a body of persons aspiring to be appointed to the vacancy intended for direct recruits was not in existence. The persons who might respond to an advertisement cannot have any service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the Applicant morphs into a selected candidate and, therefore, unnecessary observation was made in N.R. Parmar (Supra) to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in Shankarsan Dash v. Union of India (1991) 3 SCC 47, where it was held even upon empanelment, an appointee does not acquire any right.

40. The Judgment in N.R. Parmar (Supra) relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar (Supra) had incorrectly distinguished the long-standing seniority determination principles propounded in, inter-alia, J.C. Patnaik (Supra), Suraj Prakash Gupta and Ors. v. State of J&K and Ors. (2000) 7 SCC 561 and Pawan Pratap Singh and Ors. v. Reevan Singh and Ors. (Supra). These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under Service Jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in J.C. Patnaik (Supra) and consequently we disapprove the norms on assessment of inter-se seniority, suggested in N.R. Parmar (Supra). Accordingly, the decision in N.R. Parmar is overruled. However, it is made clear that this decision will not affect the inter-se seniority already based on N.R. Parmar and the same is protected. This decision

will apply prospectively except where seniority is to be fixed under the relevant Rules from the date of vacancy/the date of advertisement.

41. As noted earlier, the Learned Single Judge based his judgment on two propositions but the Division Bench was of the view that result would be the same merely on the basis of one of the two propositions and, therefore, it was unnecessary to pronounce upon the other proposition. Such an approach cannot therefore be described as a conflict (as has been suggested), between the two judgments. Both Benches were absolutely consistent in their conclusion that promotees would have to be given seniority over direct recruits. It cannot therefore be argued that by some convoluted reasoning, it is possible to come to the conclusion that the orders passed by the two Courts would result in diametrically opposite situation namely, that direct recruits would have to be given seniority over promotees.”

41.3 The facts noted in paragraph 5 of the decision in **Meghachandra Singh**²⁹ show that the promotees entered the relevant grade in March 2007 whereas the direct recruits were appointed in August and November 2007. While overruling the decision in **Parmar**¹⁹ it was also observed in paragraph 40 that in Service Jurisprudence, seniority cannot be claimed where the incumbent is yet to be borne in the cadre.

41.4 In the premises, the conclusion is inescapable that the candidates selected through LCE and Direct Recruitment vide Order dated 15.07.2013 cannot claim to be clubbed with the 47 Judicial Officers

promoted in substantive capacity on 21.04.2010 and cannot claim appropriate placement in accordance with the Cyclic Order. We accordingly answer Question (C) and find that the 47 Judicial Officers were rightly placed en-bloc senior to all the candidates selected through the process initiated pursuant to the Notification dated 31.03.2011. Writ Petition (Civil) Nos.936 of 2018 and 967 are, therefore, dismissed.

42. While considering Question (D), it is relevant to notice the emphasis placed by this Court in *All India Judges Association*¹ while directing that 25 per cent of the posts in the cadre of the District Judge be filled through LCE. It was stated in paragraph 27 that there should be an incentive amongst relatively junior and other officers to improve and to compete with each other so as to excel and get accelerated promotion. In paragraph 28 the relevant direction again stressed that 25 per cent quota for promotion through LCE be “strictly on the basis of merit.”

Rule 31(2) of 2010 Rules also uses the expression “strictly on the basis of merit” while dealing with posts to be filled in through LCE. The merit is to be assessed in terms of the scheme laid down in the relevant Schedule. After considering various parameters stated in said Schedule, the successful candidates are selected on the basis of merit. The list of

successful candidates becomes the basis for final selection subject to qualifying parameters such as suitability, medical fitness etc.

However, placing reliance on Rule 47(4), the Committee in its Report dated 15.03.2019 held that the *inter se* seniority of persons promoted to the District Judge Cadre in the same year ought to be the same as it was in the posts held by them at the time of promotion.

If the list is to be drawn up according to merit, it is possible that the last person in the list of selectees may be the senior most and going by the Report of the Committee, if all the selectees are promoted in the same year such last person may as well be at the top of the list of promotees through LCE. In that event, the seniority shall become the governing criteria and the excellence on part of a comparatively junior candidate may recede in the background. Instead of giving incentive to comparatively junior and other officers, the entire examination process will stand reduced to a mere qualifying examination rather than a competitive examination affording opportunity to meritorious candidates. The criteria shall then become seniority subject to passing the LCE.

The direction issued in *All India Judges Association*¹ to afford an incentive to meritorious candidates regardless of their seniority would not

thus be carried out. The general principle appearing in Rule 47(4) must, therefore, give way to the special dispensation in Rule 31(2) of 2010 Rules.

In our view, the High Court in its Report dated 15.03.2019 completely failed to appreciate the true character of LCE and reservation of certain quota for that category.

We, therefore, accept the submissions made by the learned Advocate for the petitioners in Writ Petition (Civil) No.498 of 2018 and Diary No.13252 of 2019 and while answering Question (D) declare that the *inter se* placement of the candidates selected through LCE must be based on merit and not on the basis of the seniority in the erstwhile cadre. Said Writ Petitions are allowed to that extent.

43. We now deal with the submissions advanced in Writ Petition (Civil) Nos.464 of 2019 and 899 of 2019 and other similar matters.

It is true that as on the date when 2010 Rules came into effect, there were 83 Fast Track Courts functioning in the State and appropriate mention to that effect was made in Part A of Schedule II to 2010 Rules. It is also correct to say that the ad-hoc promotions granted to the concerned Judicial Officers were under 1969 Rules. But such promotions were on

ad-hoc basis to man the Fast Track Courts and the law on the point is now well settled that the service rendered by such Judicial Officers as Fast Track Court Judges on ad-hoc basis cannot be taken into account while reckoning seniority after such Judicial Officers were granted promotion on substantive basis and that their seniority has to be reckoned only from the date of their substantive appointment to the cadre of District Judge. Said 1969 Rules do not in any way confer any right which would be inconsistent with the law so laid down by this Court.

The further submission that four Judicial Officers out of the 47 Judicial Officers were also appointed on the same day along with the petitioners in Writ Petition (Civil) No.464 of 2019 also has no merit. The grant of promotion on substantive basis to said four Judicial Officers does not by itself entitle said petitioners to any similar treatment. The issue of grant of promotion on substantive basis may depend upon various issues including suitability of the concerned candidate and availability of posts. The record also shows that after grant of promotion on substantive basis to the 47 Judicial Officers, there were no vacancies for Regular Promotion which is why the selection process undertaken in the year 2010 did not earmark any vacancies for Regular Promotions and it was only in the year 2011, when adequate vacancies for said category became available, that

the Notification dated 31.03.2011 contemplated filling up of certain vacancies by Regulation Promotion.

The petitioners in Writ Petition (Civil) No.464 of 2019 participated in the process initiated pursuant to said Notification dated 31.03.2011. Some of them also appeared in LCE and availed of the opportunity to stake their claim. Their regular promotions to the Cadre of District Judge must, therefore, be taken only as a result of selection process initiated in terms of the Notification dated 31.03.2011 which culminated in the Order dated 15.07.2013. In the circumstances, their substantive appointment to said cadre has to be reckoned from 15.07.2013 and not with any anterior effect.

Once the Regular Promotion was part of the same process along with other streams, namely, through Direct Recruitment and LCE, the Cyclic Order had to be applied and said petitioners cannot be given en-bloc placement above the candidates selected through Direct Recruitment and LCE in the same process of selection.

We, therefore, see no merit in Writ Petition (Civil) No. 464 of 2019 and said Writ Petition is dismissed.

The petitioners in Writ Petition (Civil) No.899 of 2019 and other connected matters came to be appointed on ad-hoc basis to man the Fast Track Courts after 2010 Rules came into effect. Even if their services were continued after abolition of Fast Track Courts, that by itself would not confer any right on them. They came to be substantively promoted to the Cadre of District Judge only *vide* Order dated 05.02.2016. For the reasons stated hereinabove, their entitlement on substantive basis has to be reckoned only from 05.02.2016 and not from any earlier date. Writ Petition (Civil) No.899 of 2019 and other connected matters are, therefore, dismissed. Thus, while answering Question (E), we conclude that the Report dated 15.03.2019 does not call for any modification, except to the extent dealt with in answer to Question (D).

44. Concluding thus, we direct:-

(a) Writ Petition (Civil) No.498 of 2018 and Writ Petition (Civil) _____ of 2020 [D. No.13252 of 2019] are allowed to the extent indicated above.

(b) Consequently, the seniority list issued in terms of Report dated 15.03.2019 shall stand modified only to the extent that appropriate placement to the candidates selected through LCE be given on the

basis of their merit in the examination and not on the basis of their seniority in the erstwhile cadre. Let the appropriate changes be made within four weeks of this Judgment.

(c) Except to the extent indicated in direction (b) above, the Report dated 15.03.2019 does not call for any modification or clarification.

(d) All other writ petitions are dismissed.

.....J.
[Uday Umesh Lalit]

.....J.
[Vineet Saran]

New Delhi;
April 29, 2020.