

(2014) 03 CAL CK 0077

In the Calcutta High Court

Case No : W.P. Nos. 22579(W), 22581(W), 22582(W) of 2013 and 4832(W) of 2014

Dwijendranath Roy Barman

APPELLANT

Vs

Registrar General-cum-Secretary
 Siddhartha Roy
Chowdhury Vs The Hon''ble High Court

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 21

Citation : (2014) 2 CALLT 100 : (2014) 3 CHN 577 : (2014) LabIC 2513

Hon'ble Judges : S. Banerjee, J

Bench : Single Bench

Advocate : Pratik Dhar, Mr. Ritwik Pattanyak and Mr. Samir Halder, Advocate for the Appellant; L.K. Gupta, Sr. Advocate and Mr. Arjun Roy Mukherjee for the Respondent Nos. 1 to 3, Advocate for the Respondent

Judgement

Sanjib Banerjee, J.—Fellow judicial officers from another jurisdiction appeal to the judicial side of the High Court to right the perceived wrongs committed by the High Court in its administrative side. Since there is an element of commonality in these matters, the four petitions have been taken up for hearing together. The issues which arise in the latest of the four petitions are somewhat different from those in the three other matters. The three other matters are more or less identical. The petitioner in the matter recorded first above complains of being unfairly treated in the matter of promotion from Civil Judge (Senior Division) to the West Bengal Higher Judicial Service. The three other petitioners claim seniority as District Judges for varying periods prior to their promotion in the West Bengal Higher Judicial Service on the ground of their having discharged functions as District Judges in presiding over fast track courts. All the petitioners rely on the Supreme Court dictum in the judgment reported at Brij Mohan Lal Vs. Union of India (UOI) and Others, . According to the petitioner in the first recorded matter above, paragraph 207.13 of such Supreme Court judgment required weightage to be given to the petitioner, for the petitioner

having functioned as a fast track court judge for several years, at the time of considering his promotion as a District Judge in the Higher Judicial Service. The three other petitioners rely on the same direction at paragraph 207.13 of the Supreme Court judgment to claim notional seniority prior to their promotion as District Judges in the Higher Judicial Service.

2. The High Court defence in the case of the petitioner who has not been promoted to the Higher Judicial Service and has been reverted to his post as Civil Judge (Senior Division) upon the abolition of fast track Courts is two-fold: that the judgment in Brij Mohan Lal (2) does not cover judicial officers in this State; and, that the petitioner was aware of the rules as to promotion, and the petitioner having participated in the process, he cannot question the same after failing to obtain promotion. Curiously, the High Court has not urged the first ground in dealing with the applicability of the relevant direction in the judgment in Brij Mohan Lal (2) in the cases of the three other petitioners. The High Court contends in the cases of the three promoted officers that the relevant direction at paragraph 207.13 of the judgment may be said to apply at the time of a candidate being considered for promotion to the Higher Judicial Service, but it provides for no weightage by way of seniority upon a judicial officer being promoted as a District Judge.

3. The first of the petitioners above named (hereinafter referred to as the first petitioner) does not indicate in the petition as to when he joined the service. His petition begins with a reference to a notification of August 18, 2006 issued by this court pursuant to an order of May 12, 2006 passed by the Supreme Court in the Brij Mohan Lal case. By such notification, 32 officers in the rank of Civil Judge (Senior Division) were named "for appointment on ad hoc promotion to West Bengal Higher Judicial Service to fill up 32 Fast Track Courts ..." The first petitioner was the 19th named in the notification. The first petitioner next refers to a Supreme Court order of January 4, 2007 passed in Malik Mazhar Sultan and Another Vs. U.P. Public Service Commission and Others, . In the light of the directions issued by the Supreme Court in All India Judges' Association and Others Vs. Union of India (UOI) and Others, , directions were issued for filling up vacancies in the cadre of District Judge and a calendar was set indicating specific milestones to be achieved by certain dates every year. For filling up vacancies in the cadre of District Judge by regular promotion, the Supreme Court directed the assessment to be made on the basis of the Annual Confidential Reports of the last five years; the evaluation of judgments furnished by the eligible officers; and, the performance at the oral interview.

4. The petitioner next refers to the directions issued by the Supreme Court in the first Brij Mohan Lal Vs. Union of India (UOI) and Others, . That judgment was in connection with the establishment and functioning of fast track courts set up pursuant to a special allocation made by the Eleventh Finance Commission to deal with long-pending cases, particularly, sessions cases. The grant was for setting up 1734 fast track courts all over the country. Paragraph 10 of the report

contains the 18 specific directions issued by the Court. The directions ranged from requiring preference for appointment of judges in the fast track courts to be given by ad hoc promotions from eligible judicial officers to suggesting measures for monitoring the setting up and smooth functioning of the fast track courts. It must be noticed at this stage that unlike in several other States where retired judicial officers and practicing advocates were appointed on ad hoc basis to preside over fast track courts, in West Bengal only judicial officers were given ad hoc appointments as fast track court judges.

5. The first petitioner has relied on the 14th direction issued by the Supreme Court under paragraph 10 of the judgment:

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.

6. The first petitioner next places a notification of May 14, 2010, a copy whereof appears as annexure P-5 to his petition. Such notification named 135 judicial officers as having "come under the zone (of) consideration for promotion in the cadre of District Judge (Entry Level), provisionally subject to fulfillment of eligibility criteria ..." The named eligible judicial officers were requested to send ten judgments delivered by them in contested matters in the year 2010. The first petitioner's name figured as the 64th in the list disclosed by such notification.

7. The first petitioner argues that in the light of the Supreme Court order in Malik Mazhar Sultan (3) and the 14th direction in the Brij Mohan Lal (1), all judicial officers who had officiated as fast track court judges and were eligible to be promoted to the West Bengal Higher Judicial Service had to be assessed, for the purpose of their promotion, on the basis of their judgments furnished, their ACR for the five years preceding - the time of consideration and their performance at the oral interview after giving due weightage to the fact that they had officiated as fast track court judges. The first petitioner suggests that the 14th direction in Brij Mohan Lal (1) had to be read into the specific directions issued by the Supreme Court in Malik Mazhar Sultan (3) and emphasises that such position was confirmed in the judgment in Brij Mohan Lal (2) at paragraph 207.13 of the report. Paragraph 207.13 of the judgment in Brij Mohan Lal(2), which is the fundamental plank of argument and sheet-anchor of both sets of petitioners, provides as follows:

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:

...

207.13. 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), 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....

8. The first petitioner and the other set of petitioners rely on clause (c) of paragraph 207.13 of the judgment in Brij Mohan Lal (2) to assert that in view of such direction by the Supreme Court, due weightage has to be given to the years of service put in by a judicial officer as a fast track court judge both at the time of considering his candidature for promotion to the Higher Judicial Service and for the purpose of reckoning seniority once such officer is promoted to the Higher Judicial Service.

9. It is necessary first to notice the pleadings, particularly what has been stated by the High Court administration in the two sets of proceedings. The case of the first petitioner is short and sweet. He claims that the judgment in Brij Mohan Lal (2) required due weightage to be given to judicial officers who had served as fast track court judges while considering their candidatures for promotion to the Higher Judicial Service. He relies on a copy of the minutes of the meeting of the Administrative Committee of this court of July 11, 2012 where the first item of business and the manner in which such matter was dealt with are reflected from the following:

10. According to the first petitioner, the proposal that was made by the registry to the Administrative Committee and accepted by the Administrative Committee was that one year of weightage would be given for rendering three years' service in the fast track courts by a Civil Judge (Senior Division) at the time of consideration for promotion in the Higher Judicial Service as District Judge (Entry

Level). There is a digression, bemusing as it is, that must be made at this stage. Paragraph 15 of the petition filed by the first petitioner asserts that on July 11, 2012 the High Court adopted a resolution at its Administrative Committee meeting which was duly approved by the Full Court "where it was settled that the officers who are already promoted to Higher Judicial Service in normal category the weightage for one year of this service in the Fast Track Court for every 3 years to be given." A true copy of the relevant resolution was said to be appended to the petition as annexure P-6 thereto. The document which is marked as annexure P-6 to the petition and is spread over pages 33 to 45 thereof is unsigned and such document is not a true copy of the minutes of the meeting of the Administrative Committee held on July 11, 2012, though item No. 1 of the business transacted at such meeting and the manner in which the matter was dealt with are accurately reflected at page 33 of the petition. It was only on the penultimate date of hearing, on March 11, 2014, that counsel for the High Court administration handed over a copy of the Registrar General's note of July 23, 2012 enclosing a copy of the minutes of the meeting of the Administrative Committee held on July 11, 2012.

11. What is baffling is that the High Court's affidavit, while dealing with paragraph 15 of the first petition at paragraph 11 thereof, does not question the document marked as annexure P-6 to the first petition which such petitioner claims to be the minutes of the meeting of the Administrative Committee held on July 11, 2012. The High Court stand in the affidavit filed in the case of the first petitioner is somewhat puzzling. Paragraph 7 of the High Court affidavit declares the stand of the High Court relevant for the purpose of considering the case. The 19 sub-paragraphs of paragraph 7 spread over nearly 10 pages do not advert to the resolution adopted by the Administrative Committee at its meeting of July 11, 2012 or the unanimous acceptance thereof by the Full Court by circulation. In dealing with paragraph 15 of the petition at paragraph 11 of the High Court's affidavit, it has been, inter alia, stated as follows:

11. ... I say that in the meeting of the Administrative Committee held on 11th July, 2012, the relevant agenda was to consider the proposal of the registry for establishment of new Courts and regularization of services of Fast Track Courts as per directions of the Hon'ble Apex Court passed in Brij Mohan Lal vs. Union of India. I say that on such agenda, keeping in view the directions passed by the Hon'ble Apex Court, a proposal was made for enhancement of number of Courts in the cadre of District Judge (Entry Level) and consequent fitment of the Judicial Officers working in Fast Track Courts. I say that in the said meeting held on 11th July, 2012, it was resolved, inter alia, that the vacancies, as proposed, would be filled up in accordance with the statutory Rules regulating recruitment and keeping in view the observations made and directions passed by the Hon'ble Apex Court. I repeat and reiterate that the said Rules do not provide for giving weightage to seniority, as has been sought to be contended in the paragraphs under reference. I most humbly submit that the judgment reported in (2009) 17 SCC 530 was passed in relation to promotion of Civil Judges (Senior Division) to

the posts of District Judges in the State of Bihar and such judgment has no manner of application in the present proceedings. I emphatically deny that the list of 48 Judicial Officers was whimsically published in disregard to the observations made by the Hon''ble Apex Court, as untruly alleged or at all....

12. Paragraph 7 of the High Court's affidavit read with paragraph 11 thereof would imply that the matter as to whether weightage was to be given to fast track court judges while considering their candidature for promotion to the Higher Judicial Service may not have been considered at all at the Administrative Committee meeting of July 11, 2012. Indeed, the same averment as to the purport of the relevant business transacted at the Administrative Committee meeting of July 11, 2012 is reflected in paragraph 16 of the affidavit filed by the High Court in the first of the other set of three petitions. The manner in which the relevant item of business was disposed of by the Administrative Committee is quoted at the foot of the paragraph. However, nothing more is said in such affidavit as to what was the proposal of the registry that was accepted by the Administrative Committee as recorded in the second paragraph of the minutes of the Administrative Committee meeting of July 11, 2012. The relevant petition spells out the substance of the resolution at paragraph 9 thereof, Paragraph 26 of the High Court's affidavit-in-opposition to such petition deals with the contents of paragraph 2 to 9 of the petition by stating, "I deny every statement which is contrary to and/or inconsistent with the records.

13. It is disturbing that despite both sets of petitions referring to the Administrative Committee meeting of July 11, 2012 having resolved to give due weightage to fast track court judges in line with the judgment in Brij Mohan Lal (2), the High Court did not indicate with any degree of clarity in its affidavits as to what was considered by the Administrative Committee and which proposal was accepted. It is equally distressing to notice that while the High Court has questioned the applicability of the judgment in Brij Mohan Lal (2) in opposing the claim of the first petitioner, in the affidavit filed by the High Court in the first of the other lot of three petitions, the following unambiguous statement has been made at paragraph 28 thereof:

28. ... I once again state that the Hon''ble Supreme Court in Brij Mohan Lal Vs. Union of India (UOI) and Others, proposed to give weightage to the officers working in Fast Track Courts while considering their promotion to the higher judicial service in the cadre of District Judge Entry Level. It has nothing to do with the seniority of such officers in the cadre of District Judge Entry Level.

14. On the penultimate date of hearing, on March 11, 2014, simultaneously with the copy of the Administrative Committee meeting's minutes of July 11, 2012, a note-sheet dated July 3, 2012, that was prepared by then Registrar General and placed before the Chief Justice, has been made over to court by counsel representing the High Court. The opening sentence of the note and paragraphs 10 and 11 thereof need to be reproduced, particularly in the context of the seemingly equivocal stand reflected in the two sets of affidavits filed by the High

Court in the present proceedings:

This relates to the direction given by the Hon''ble Supreme Court of India in the case of "Brij Mohan Lal v. Union of India and Ors." on April 19, 2012 in transferred case (civil) No. 22 of 2001....

10. It is necessary to bring to the notice to Your Lordship that the method of recruitment to fill up the posts of Judicial Officers in the cadre of District Judge was prepared and the rules were framed as per direction of the Hon''ble Supreme Court in All India Judges' Association case. The provisions laid down in the West Bengal Judicial (Condition of Service) Rules, 2004 have not given any weightage to the Civil Judge (Senior Division) promoted to the rank of District Judge (Entry Level) for rendering service in the Fast Track Courts. In view of the direction of the Hon''ble Supreme Court in the present case of "Brij Mohan Lal v. Union of India" there is now need to give weightage to the officers of Civil Judge (Senior Division) at the time of promotion to the cadre of District Judge for rendering service as the Judge of Fast Track Courts with effect from their joining to the Fast Track Courts. Accordingly, the policy decision is to be taken by the Hon''ble High Court to decide how much weightage is to be given to the officers of Civil Judge (Senior Division) for rendering their service as Judge of Fast Track Courts. It is proposed that one year of weightage may be given for rendering three years of service in the Fast Track Courts by Civil Judge (Senior Division) while promoted to the rank of District Judge (Entry Level) as recommended by the Shetty Commission, but rejected by the Hon''ble Supreme Court in All India Judges Association Case, (2002).

11. Subject to the decision of Your Lordship, if the policy decision is taken for giving weightage at the time of giving promotion to the Presiding Officer of Fast Track Courts to the cadre of District Judge (Entry Level), the due weightage may be given to the officers who have already been promoted to the regular cadre and to this effect the existing rules are also required to be amended and recommendation for such amendment must be forwarded to the Government. A copy of the relevant portion of the West Bengal Judicial (Condition of Service) Rules, 2004 is placed and marked as Flag - J for favour of consideration of your Lordship.

15. What is now apparent from the documents grudgingly disclosed on the penultimate date of hearing by the High Court is that the registry understood in the year 2012 that in the light of the directions issued by the Supreme Court in Brij Mohan Lal (2), "there is now need to give weightage to the officers of Civil Judge (Senior Division) at the time of promotion to the cadre of District Judge for rendering service as the Judge of Fast Track Courts with effect from their joining to the Fast Track Courts." The question next posed in the lay-note was, "how much weightage is to be given to the officers of Civil Judge (Senior Division) for their rendering service as Judge of Fast Track Courts." The question was answered with a suggestion in the next sentence that "one year of weightage may be given for rendering 3 years of service in the Fast Track Courts by Civil

Judge (Senior Division) while promoted to the rank of District Judge (Entry Level) as recommended by the Shetty Commission, but rejected by the Hon"ble Supreme Court in "All India Judges" Association Case, (2002)".

16. That was not all. The registry also perceived the relevant direction in the judgment in Brij Mohan Lal (2) to necessitate "due weightage (being) given to the officers who have already been promoted to the regular cadre ..." The lay-note also reveals that the Chief Justice's approval was sought to place such note before the Administrative Committee which the Chief Justice accorded on July 4, 2012.

17. It is now that the second paragraph of the resolution of the Administrative Committee at its meeting of July 11, 2012 ("The proposal of the Registry is accepted.") is fleshed out and given due meaning. There was a proposal before the Administrative Committee as is reflected from paragraph 10 of the lay-note. There was no proposal in paragraph 11 of the lay-note, but a suggestion was made that a policy decision may be taken to give weightage to fast track court judges who had already been promoted. It may be presumed that such weightage pertained to notional seniority being accorded to fast court judges promoted as District Judges on the basis of their years of service in the fast track Courts.

18. Paragraph 10 of the lay-note as accepted by the Administrative Committee and, subsequently, by the Full Court by circulation, is the basis for the first petitioner's assertion of discrimination in due weightage not been given to him for the years of service he rendered as a fast track court judge while his candidature for promotion to the Higher Judicial Service was taken up for consideration. Equally, it is the suggestion in paragraph 11 of the lay-note that is the inspiration for the other set of petitioners to claim seniority in the District Judge cadre on the basis of the relevant direction in the judgment in Brij Mohan Lal (2).

19. The first petitioner refers to a draft gradation list circulated by the High Court under cover of a letter dated April 4, 2013. The first petitioner questions the draft gradation list that was prepared as at December 31, 2011 and circulated 15 months thereafter. Counsel for the first petitioner emphasises that only one of the many judicial officers who perceives to have been discriminated against has had the courage to step up and question the system. Counsel laments, with the caveat that he does not have his client's instructions to comment on the system, that counsel's assessment on the basis of what has come to light indicates an alarming malaise. Again, by prefacing the submission as counsel's comment rather than client's instructions, counsel for the first petitioner wonders if the draft gradation list was deliberately dated back to December 31, 2011 to avoid the Brij Mohan Lal (2) direction which was issued on April 19, 2012 by the Supreme Court and the recognition by all the Judges of the High Court of the need to give due weightage to fast track court judges at the time of promotion as evident from the Administrative Committee resolution of July 11, 2012. It is

submitted that in the wake of the Supreme Court direction in Brij Mohan Lal (2) and the High Court's decision to give due weightage to fast track court judges at the time of promotion in accordance with the Supreme Court direction, no process of promotion could be subsequently undertaken in derogation of the Supreme Court direction or the High Court's resolution in consequence thereof.

20. On the ground of the flawed procedure adopted in considering the candidature of judicial officers in the cadre of Civil Judge (Senior Division) for promotion to the Higher Judicial Service, the first petitioner questions the propriety of the merit list issued by the High Court on August 13, 2013 and the promotion of 48 officers thereby. A copy of the merit list, where the petitioner ranks 84th among 144 judicial officers, appears as annexure P-8 to the petition at pages 53 to 57 thereof. The list has seven major columns: seniority position; name of the judicial officer; viva-voice (15 marks); marks obtained on evaluation of annual confidential report (35 marks); evaluation of judgment (50 marks); grand total; and, position according, to merit. The columns intituled viva-voice (15 marks) and evaluation of judgments (50 marks) have four sub-columns each. The first three sub-columns under either major column spell out the marks individually awarded at the interview and in the assessment of judgments, respectively. The fourth sub-column in either case is the average marks obtained by the judicial officer at the interview and the assessment of judgments, respectively. The highest ranked judicial officer has scored 65.60 marks and the 48th ranked officer has secured 57.67 marks. The first petitioner has been awarded 54.26 marks. The first petitioner says that at least three of the judicial officers whose names figured within the top 48 in the merit list are judges who have not presided over fast track courts at all. Such position is admitted by the High Court administration.

21. The first petitioner asserts that in the merit list not indicating any weightage having been given to the judicial officers who had functioned as fast track court judges, the list is illegal as it is in derogation of the Supreme Court direction at clause (c) of paragraph 207.13 of the judgment in Brij Mohan Lal (2) and not in consonance with the Administrative Committee resolution of July 11, 2012 as unanimously accepted by the Full Court.

22. The illegality is only too obvious and is apparent on the face of the merit wise list. It is in abject contravention of the Supreme Court direction issued under Article 142 of the Constitution and at variance with the High Court's resolution in line with the decision of the Administrative Committee of July 11, 2012. It must be recognized that the third paragraph of the Administrative Committee's resolution of July 11, 2012 required the vacancies to be filled up not only in accordance with the rules but also in accordance with the directions in the judgment in Brij Mohan Lal (2).

23. In the light of what is evident from the records, the High Court's defence to the case of the first petitioner on the ground that the judgment in Brij Mohan Lal (2) did not apply to this State cannot be comprehended. Equally, the

considerable time expended on behalf of the High Court to urge that the rules for recruitment or promotion did not permit any weightage to be given to judges who had officiated in fast track courts, cannot be appreciated. Neither line of argument was available to the High Court after the resolution adopted by the High Court as recommended by the Administrative Committee on July 11, 2012. In any event, a bare reading of the judgment in Brij Mohan Lal (2) would reveal that the directions contained therein were intended to be applicable to all High Courts and they were not confined to the High Courts pertaining to the petitions that were before the Supreme Court.

24. No explanation has been attempted to be proffered on behalf of the High Court administration as to how or why, despite the Full Court adopting the Administrative Committee's recommendation of July 11, 2012, the process of promotion to the Higher Judicial Service was conducted without giving judicial officers in the cadre of Civil Judge (Senior Division) any weightage in the cases of such judicial officers who had functioned as judges of fast track courts. In the merit-wise list not revealing any consideration having been given to judicial officers who had officiated as fast track court judges, such list is suspect, arbitrary and betrays hostile discrimination against the complaining first petitioner for he not having been given due weightage for the years that he officiated as a fast track court judge despite such criterion having been mandated by the Supreme Court and adopted by the High Court. That the High Court overlooked in amending the West Bengal Judicial (Conditions of Service) Rules, 2004 cannot be an excuse for disregarding the Supreme Court direction, particularly after its adoption by the High Court. It is in such context that the reference by the High Court to Rules 7 and 26 of the said Rules of 2004 is found to be of no relevance.

25. Two further grounds have been canvassed by the High Court to resist the first petitioner's claim and to justify the procedure adopted at the 2003 promotion to the Higher Judicial Service. It is suggested that the petitioner had been given out of turn seniority and pay as a superior senior judge in the grade of Civil Judge (Senior Division) and, as such, the petitioner was not eligible for promotion in 2013. It is also submitted that since the first petitioner was aware of the rules of the game involved in the process of promotion in 2013 and he took a chance in participating therein, the first petitioner cannot now be heard to challenge the procedure. In support of the second contention, a copy of the High Court notification of May 7, 2013 has been made over on behalf of the High Court on March 12, 2014. Such notification lists the names of 132 judicial officers eligible for promotion and the declares the following in its opening paragraph:

In terms of Notification No. 1478-R(JS) dated 12.04.2013, it is notified for information that the following Officers of the West Bengal Judicial Service, now posted as against each of their names in the following table, will come under the zone of consideration in the process of selection through Normal Promotion, 2013, for appointment to the cadre of District Judge (Entry Level) provisionally

subject to fulfillment of eligibility criteria in such manner as Hon''ble Court will deem fit and proper and subject to the result of the cases of Malik Mazhar Sultan (Civil Appeal No. 1867 of 2006), Writ Petition filed by the West Bengal Judicial Service Association (W.P. (C) No. 46/2007) and All India Judges'' Case (W.P. (C) 1022 of 1989), now pending in the Hon''ble Supreme Court of India.

26. The notification of May 7, 2013 was apparently posted on the High Court''s website and the High Court administration claims that the petitioner was, and must be seen to have been, aware thereof since he submitted three copies each of 10 judgments delivered by him in contested matters in the year 2012-13 in accordance with the direction at the foot of the notification. In furtherance of such argument, the High Court administration has referred to the judgments reported at Madan Lal and Others Vs. State of Jammu and Kashmir and Others, and Manish Kumar Shahi Vs. State of Bihar and Others, for the proposition that a candidate who takes a chance to get selected at a selection process but is unsuccessful cannot challenge the process of selection.

27. Neither of the final two grounds urged on behalf of the High Court administration appeals. If the first petitioner had not put in the requisite number of years to be eligible for promotion, his name would not have figured in the short-list prepared and circulated by the High Court. As to whether the first petitioner is ineligible to challenge the procedure adopted at the promotion to the Higher Judicial Service in 2013, the fact that he was aware of the contents of notification of May 7, 2013 is of no consequence. It must be kept in mind that the relevant direction contained in the judgment in Brij Mohan Lal (2) made it mandatory for due weightage to be given to judicial officers for the years they officiated as fast track court judges while considering their candidature for promotion to the Higher Judicial Service. The Supreme Court direction had also been accepted by the High Court - if any acceptance thereof was necessary, except to formalize the change - and the notification of May 7, 2013 did not spell out that the Supreme Court direction and the High Court''s adoption thereof would be disregarded at the promotion process of the year 2013. The matter has to be viewed from the perspective of the first petitioner as to whether he was aware of the rules of the game and submitted to such rules, before it can be assessed whether he is precluded from challenging the promotion process. Indeed, the notification of May 7, 2013 did not refer to the said Rules of 2004 for a possible excuse to be proffered by the High Court administration that since the rules did not incorporate the relevant direction of the Supreme Court in the judgment in Brij Mohan Lal (2) or of the High Court''s acceptance of the Administrative Committee''s recommendation of July 11, 2012, the promotion process was to be without giving weightage to judicial officers eligible for promotion who had officiated as fast track court judges. In any event, the said Rules of 2004 do not indicate the basis for assessment at the time of promotion or entry to the District Judge cadre.

28. The incidental argument put forth on behalf of the High Court administration

that it would not have mattered even if weightage had been given to the candidates eligible for promotion to the Higher Judicial Service who had officiated as fast track court judges since all or most of the candidates would have got such weightage, is equally fallacious and devoid of merit. For a start, at least three of the judicial officers who made the cut within the first 48 did not officiate as fast track court judges and would not have been entitled to any weightage. Second, it is not known whether all judicial officers who had officiated as fast track court judges and have made the cut presided over fast track courts for as long as the first petitioner has. Without there being a separate column in the merit list giving due weightage to those entitled thereto for their years of service as fast track court judges, the argument is meaningless. The judgment in Brij Mohan Lal (2) requires due weightage to be given; not uniform weightage, irrespective of the years of service as fast track court judges.

29. It is evident and undeniable that the process of regular promotion of judicial officers to the Higher Judicial Service in 2013 was faulty. The process did not take into account the weightage that ought to have been given to judicial officers for the years that they had served as fast track court judges. Whether or not the High Court had agreed to give due weightage to judicial officers eligible for regular promotion to the District Judge cadre on account of their officiating as fast track court judges, in the Supreme Court having directed due weightage to be given therefore in the judgment in Brij Mohan Lal (2), the eligible judicial officers, including the first petitioner herein, were legitimately entitled to expect that such weightage would be given. Upon the Supreme Court mandating such weightage to be given, it may not have been open to the High Court to disregard the same irrespective of whether the High Court had actually adopted it. Further, it is the admitted position that the ACR for the five preceding years were not taken into consideration. The five preceding years would have been calendar years 2008 to 2012. The ACR taken into consideration were for the years 2007 to 2011. The question that now arises is as to whether the entire process has to be set aside as illegal. The parties have been specifically permitted to submit on the reliefs that ought to be granted to the first petitioner in the circumstances. But, the discussion on the reliefs must await the assessment of the second lot of petitions.

30. The second bunch of petitioners had previously canvassed their entitlement to notional seniority in WP No. 13020(W) of 2009. That petition failed on the grounds indicated in the judgment and order thereon of July 24, 2009 which has been quoted in its entirety in the appellate order therefrom passed on December 22, 2011. The Division Bench held, in the unreported judgment rendered on December 22, 2011 in MAT No. 846 of 2009 (Tapan Kumar Das-II v. The High Court at Calcutta), that "the tenure of service in Fast Track Courts is not countable to determine the seniority in the rank of District Judge." The second set of petitioners refer to the submission attributed in the single Bench judgment to the High Court administration at paragraph 16 thereof to the effect that "if directions are issued in future for regularization the fast track court judges in the

cadre of district judge, the High Court administration would comply with such direction." The second lot of petitioners say that despite their previous failure in asserting their right to notional seniority by dint of their officiating as fast track court judges, the subsequent pronouncement of the Supreme Court in the judgment in Brij Mohan Lal (2) confers them such right that had been denied earlier.

31. The second set of petitioners rely on the judgments reported at Rudra Kumar Sain and Others Vs. Union of India and Others, and Debabrata Dash and Another Vs. Jatindra Prasad Das and Others, in support of the contention that they are entitled to seniority in the rank of District Judge on account of their tenure as fast track court judges. The judgment in Rudra Kumar Sain cannot be relied upon by the second lot of petitioners since the dictum therein was considered, or is deemed to have been considered, in course of the rejection of their earlier petition. The judgment in Debabrata Dash, delivered subsequent to the decision in Brij Mohan Lal (2), needs to be looked into to assess whether it gives the second lot of petitioners the right that they seek to assert.

32. In Debabrata Dash, a writ petition was filed before the Orissa High Court by a judicial officer claiming that the entirety of the service rendered by such officer in a fast track court as Additional District Judge ought to have been taken into account while fixing his seniority after regularization of his service in the Senior Branch Cadre under the Orissa Superior Judicial Service Rules, 1963. The Orissa High Court decided the issue in favour of the writ petitioner. Two of the respondents to the writ petition, who were direct recruits from the Bar in the Higher Judicial Service, challenged the decision before the Supreme Court on the ground, inter alia, that the Orissa High Court had not appropriately applied the dicta of the Supreme Court in several judgments including Rudra Kumar Sain, Brij Mohan Lal (1) and Brij Mohan Lal (2). The writ petitioner in that case was given ad hoc appointment as a fast track court judge and Additional District Judge on April 26, 2002. The appellants before the Supreme Court, the direct recruits, joined the District Judge cadre in February, 2003. By a notification of December 15, 2003, the writ petitioner was allowed to officiate in the Senior Branch of the Superior Judicial Service on regular basis on account of a vacancy that arose due to the retirement of an officer of the Senior Branch. The writ petitioner assumed his posting as Additional District and Sessions Judge on February 3, 2004 pursuant to the notification of December 15, 2003. The writ petitioner was substantially appointed in the cadre of District Judge with effect from January 17, 2007. The Orissa High Court allowed the writ petition by holding that the promotion of the writ petitioner to the Senior Branch had to be counted from April 26, 2002 which was the date of his joining as ad hoc Additional District Judge in a fast track court.

33. The Supreme Court allowed the appeal but gave the writ petitioner the seniority in the District Judge cadre with effect from December 15, 2003 which was the date of the notification by which the petitioner was allowed to officiate in

the Senior Branch of the Superior Judicial Service on regular basis on account of a vacancy that arose in the Senior Branch. The ratio decidendi of the Supreme Court judgment in Debabrata Dash is that upon a judicial officer being required to officiate on regular basis on account of a vacancy that arose in a superior cadre, his seniority in the superior cadre would date back to such date when he was allowed to officiate in the superior cadre on regular basis on account of a vacancy that arose in the superior cadre, provided that he continued in such position undisrupted till his regular promotion to the superior cadre. The judgment is of no assistance to the second lot of petitioners in their asserting their seniority in the District Judge cadre prior to their promotion as District Judge on account of their officiating as fast track court judges.

34. The attempt by the second lot of petitioners to interpret clause (c) of paragraph 207.13 of the judgment in Brij Mohan Lal (2) to imply that seniority has to be accorded to judicial officers who were promoted as District Judges on the basis of their officiating as fast court judges or from the date of their ad hoc promotion as fast track court judges, is equally unmeritorious. Clause (c) of paragraph 207.13 of the judgment in Brij Mohan Lal (2) governs only the promotion of the persons covered by clauses (a) and (b) thereof and cannot be stretched to imply that the direction accords seniority to judicial officers promoted as District Judges, whether from the date of their obtaining ad hoc promotion as fast track court judges or otherwise. The second set of petitioners have laboured on the word "promoted" in the opening line of paragraph 207.13 of the judgment in Brij Mohan Lal (2) and the expression "entitled, to be absorbed and remain promoted to the Higher Judicial Services" figuring therein to contend that the direction in clause (c) thereof covers not only the consideration at the time of the promotion but also reckons the seniority to be counted in the District Judge cadre by taking into account the services rendered by such promotee District Judges as fast track court judges. Such contention is unacceptable both on a plain reading of clause (c) and, in particular, by virtue of clause (d) which emphasises that promotion would not be automatic and upon the discontinuation of the fast track courts, the judges not promoted to the Higher Judicial Service "would revert to their respective posts in the appropriate cadre."

35. It must also be recognised that notwithstanding the second lot of petitioners' emphasis on the use of certain words and expressions in the opening limb of paragraph 207.13 of the judgment in Brij Mohan Lal (2), the directions in the relevant paragraph have to be seen in the context. In any event, the words of a judgment cannot be read or understood as words in a statute and the overall meaning of a judgment or a sentence therein has to be garnered without undue weightage being given to the words or expressions used therein.

36. Nothing that has happened subsequent to the second lot of petitioners' failure in their previous essay in WP No. 13020(W) of 2009 alters their position. Their attempt to clutch at clause (c) of paragraph 207.13 of the judgment in "Brij

Mohan Lal (2) is a desperate attempt to alter a position that has attained finality. Clause (c) of paragraph 207.13 of the judgment in Brij Mohan Lal (2) has to be confined to the time of promotion of fast track court judges to the Higher Judicial Service, notwithstanding the registry's somewhat different understanding thereof as evident from the lay-note of July 3, 2012 which has obviously fuelled the ambitions of the second lot of petitioners to reagitate an issue that was conclusively answered against them by the Division Bench judgment of December 22, 2011.

37. It must be appreciated that judges appointed on ad hoc basis to preside over fast track courts were required to be given artificial promotion to the District Judge cadre since fast track courts were designed to decide, inter alia, sessions triable cases and the Code of Criminal Procedure, 1973 mandates a class of officers to try such matters. The Supreme Court dictum in Debabrata Dash reiterates the settled position in service jurisprudence enunciated in the judgment reported at Nohiria Ram Vs. The Union of India (UOI) and Others, , which has been cited by the High Court, that only upon promotion of an employee to a particular cadre at the time that he was discharging the functions of an officer in that cadre would the rule of seniority apply, dating his seniority from the time of his officiating in the cadre on regular basis against a vacancy.

38. It is, thus, the relief that may be granted to the first petitioner that finally falls for consideration. That the procedure adopted for regular promotion to the District Judge cadre in the year 2013 was faulty, is beyond doubt. Yet, to set aside the entire process and require it to be conducted de novo in tune with the relevant direction of the Supreme Court judgment in Brij Mohan Lal (2) and the adoption thereof by the Full Court in its acceptance of the Administrative Committee's recommendation of July 11, 2012, it would be unsettling a position that has obtained for several months. A further consideration in assessing the nature of the relief that may be granted would be that the promotees, those judicial officers who have by now settled in their positions, are not parties to the first petition. It must also be kept in mind that only one of the judicial officers eligible for promotion to the Higher Judicial Service has stepped forward with a charge of arbitrariness, hostile discrimination and the violation of the ethos that is Article 14 of the Constitution.

39. The High Court administration has informed the court that the examinations conducted for direct recruitment to the post of District Judge in the year 2013 did not throw up the required number of personnel to fill up all the vacancies under Rule 26(a) of the said Rules of 2004. The High Court administration says that steps have been taken to fill up the vacancies that have not been met by direct recruitment from the judicial officers eligible for regular promotion or judicial officers found suitable after the jump promotion examination. The High Court administration has indicated that 14 posts in the District Judge (Entry Level) grade are proposed to be filled up by regular promotion or jump promotion, but the exercise has not been completed in view of the interim order passed on the

first petition on February 17, 2014.

40. There appears, therefore, a glint of light at the end of the tunnel. The petitioner can still be accommodated after giving him due weightage in terms of clause (c) of paragraph 207.13 of the judgment in Brij Mohan Lal (2) as adopted by the High Court in accepting the Administrative Committee's recommendation of July 11, 2012. Accordingly, it is directed that due weightage in accordance with the dictum in the judgment in Brij Mohan Lal (2) will be given to the petitioner and the petitioner's candidature for promotion to the Higher Judicial Service considered thereafter. Upon the exercise being completed, if the petitioner is found to have secured more marks than the 14 others short-listed to fill up the vacancies consequent upon inadequate number of suitable candidates being discovered for direct recruitment from the Bar, the petitioner will be dealt with in accordance with law. It leaves one area of uncertainty: as to how marks would be assigned to give appropriate weightage in accordance with the Supreme Court direction in the judgment in Brij Mohan Lal (2). That is left for the High Court to decide. Till such time that the exercise qua the petitioner is completed in terms of this order, the order subsisting on the first petition will continue to be operative.

41. In the light of what these matters have thrown up, the following suggestions are made for consideration by the High Court on its administrative side:

(a) The basis for assessment of regular promotees and jump promotees should be clearly defined in tune with the Supreme Court judgments and, in particular, with the direction in the judgment in Brij Mohan Lal (2) and the High Court's acceptance of the Administrative Committee's recommendation of July 11, 2012;

(b) For future regular promotion to the Higher Judicial Service, the relevant direction in the judgment in Brij Mohan Lal (2) as adopted by the High Court in its acceptance of the Administrative Committee's recommendation of July 11, 2012 must be strictly followed;

(c) Just as the Supreme Court has set a calendar for the process of direct recruitment and promotion to the Higher Judicial Service, an annual calendar should be set by the High Court for receipt of judgments of judicial officers and completion of their ACR;

(d) It may be worth considering that a High Court judge or a committee of two or three Judges may be required to oversee the stand of the High Court in judicial matters pertaining to officers of the district judiciary, if only to avoid wastage of precious judicial time and save the embarrassment of the High Court administration arguing against the records and against a Full Court resolution of the High Court;

(e) The relationship between the High Court and the judicial officers posted in the district judiciary under the superintendence of the High Court would warrant a petition filed by a judicial officer against the High Court administration to not

be treated as a war where anything goes. If a mistake has been committed, it would be appropriate to admit the same without much ado and chart out a constructive path for redressing the grievance, rather than attempting to obfuscate the issue by adopting a prevaricating stand.

42. WP No. 4832(W) of 2014 succeeds to the extent indicated above. WP No. 22579(W) of 2013, WP No. 22581(W) of 2013 and WP No. 22582(W) of 2013, which have been assigned this Bench, fail. The second lot of petitioners will pay costs assessed at 100 GM each directly to the first petitioner in lieu of the first petitioner's entitlement of assessed costs from the High Court. The Registrar General is requested to ensure that a copy of this judgment is placed before the Hon"ble Chief Justice.

Certified website copies of this judgment, if applied for, be urgently made available to the parties, subject to compliance with all requisite formalities.