
(2015) 10 JH CK 0037
In the Jharkhand High Court
Case No : WP(S) No. 2219 of 2013

Manoj Kumar Jha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-10-2015

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 142, 16, 226
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2015) 4 JLJR 672

Hon'ble Judges : Virender Singh, C.J. and P.P. Bhatt, J.

Bench : Division Bench

Advocate : Ashish Verma and Sanjay Kumar Singh, for the Appellant; Binod Poddar and Ajit Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, C.J.

1. Challenge thrown in this writ petition is to the Notice Inviting Application dated 5.3.2013, whereby applications had been invited by the Jharkhand High Court from respondent Nos. 9 to 30 (hereinafter referred as private respondents), who were earlier appointed by way of Direct Recruitment from Bar as Judges to preside over FTCs under FTC Scheme, for their appointment in the regular Cadre of District Judge. For better appreciation of the case, it is necessary to go into the brief background of the case.

2. After the creation of the State of Jharkhand, on 10.5.2001 the Governor of Jharkhand in consultation of the High Court, framed Jharkhand Superior Judicial Service (Recruitment, Appointment and Conditions of Service) Rules, 2001 and in pursuant thereto on 23.5.2001 the High Court of Jharkhand advertised the vacancies for the post of DJs. The private respondents herein among others were applied for the post and after the written exam, and interview a panel was prepared. Thereafter, out of the list of selected candidates, 17 candidates were appointed as ADJs in the regular cadre of Jharkhand Superior Judicial Services

and rest candidates from Sr. Nos. 18 to 42 including the private respondents were appointed as FTC Judges and they joined accordingly.

3. In the year 2009 some members of subordinate judiciary of the State of Jharkhand challenged the appointment of the private respondents before this court in W.P.S. No. 2872 of 2009 and by order dated 7.3.2011 the appointment, of the private respondents who were appointed as a FTC Judges" was declared invalid and quashed w.e.f. the date on which their tenure of appointment ended i.e. 31.3.2011.

4. The private respondents, thereafter, preferred appeal before the Hon"ble Supreme Court by filing SLPs and the same were converted into Civil Appeal Nos. 6647-49 of 2012 and by a judgment dt. 19.9.2012 in Mahesh Chandra Verma and Others Vs. State of Jharkhand and Others, , the Hon"ble Apex Court, however, concurred with the view of this court, directed for appointment of the petitioners therein in the manner laid down in Brij Mohan Lal Vs. Union of India (UOI) and Others, .

5. In compliance to the order passed by the Hon"ble Supreme Court, Jharkhand High Court invited an application from the private respondents by way, of a notice inviting application dt. 5.3.2013. Hence, the present writ has been filed.

6. Learned counsel appearing for the petitioner, Mr. Ajay Kumar, Advocate with assisting counsel Mr. Ashish Verma, Advocate has assailed the aforesaid notice on the ground that the norms for the appointment of Fast Track Judges" in the regular cadre as provided in B.M. Lal-II (supra) has not been followed while issuing the aforesaid notification. It is further submitted that as per B.M. Lal-II (supra) and Mahesh Chandra Verma (supra) the High Court was required to hold an examination in terms of the provisions of Rules, 2001 and the only leverage given to the Fast Track Judges" is that they will be given weightage point for each year of their past services and they cannot be given close door competition by which the petitioner was deprived from being participated in the examination. It is further submitted that the proposition laid down in B.M. Lal-II case has been applicable to all over India including the State of Gujarat and an open competition and due weightage was given to Fast Track Judges". It is further submitted that in the public employment high level transparency is required so that the public may have faith in the matter of judicial appointment.

7. The notification is also challenged on the count that by the notification the services of the respondent herein were regularized which was not the correct intention in the judgment of B.M. Lal-II. It is further submitted that the impugned Notice Inviting Application is not only contrary to Rule 9 of the Recruitment Rules of 2001 but also in violation of law settled qua public appointment and compliance of Arts. 14 and 16 of the Constitution and that recalling of vacancies, available for direct recruitment from Bar to accommodate Fast Track Judges", amounts to violation of Arts, 14 and 16 . It is further submitted that as per the direction of B.M. Lal-II additional posts were required

to be called for from the Government to accommodate the Fast Track Judges".

8. In support of his submissions, Mr. Ajay Kumar, has cited the following judgments:--

i. State of M.P. vs. Md. Abraham reported in (2009) 15 SCC 214 wherein it is held that in making offers of public appointment, it is necessary to follow constitutional scheme laid down in Arts. 14 and 16 and relevant rules.

ii. Renu and Others Vs. District and Sessions Judge, Tis Hazari and Another, wherein it is held that appointment in Judicial Institution must be made on touch stone of equality of opportunity enshrined in Art. 14 read with Art. 16 of the Constitution of India.

iii. State of Bihar Vs. Upendra Narayan Singh and Others, wherein, it is held that any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under Article 16 of the Constitution.

iv. State of Bihar and Another Vs. Bal Mukund Sah and Others, , wherein, it is held that so far as recruitment to the judicial services of the State is concerned, the same being provided for specifically in Chapter VI under Articles 233 to 237 , it is those provisions of the Constitution which would override any law made by the appropriate legislature in exercise of power under Article 309 of the Constitution. The State legislature undoubtedly can make law for regulating the conditions of services of the officers belonging to the judicial wing but cannot make law dealing with recruitment to the judicial services since the field of recruitment to the judicial service is carved out in the Constitution itself in Chapter-VI under Articles 233 to 236 of the Constitution.

v. Official Liquidator Vs. Dayanand and Others, , wherein, it is held that when a person applied for and accepted employment/engagement as company paid staff with fixed tenure superimposed by a stipulation that they will have no right to continue in service or to be absorbed in the regular cadres, the respondents are estopped from seeking a direction for their absorption against the posts sanctioned by the Government of India and the High Courts committed a serious error in granting their prayer.

vi. Mr. Kumar has also relied upon the judgment of B.M. Lal-II which need not to be referred here as the same has already been referred earlier.

9. The learned counsel appearing for the Respondent-Jharkhand High Court, Mr. Rajesh Shankar has submitted that after having received the certified copy of the judgment passed in Mahesh Chandra Verma (supra) the Hon"ble Chief Justice sent the matter to the Appointment Committee who in turn recommended for creation of 22 posts for consideration of appointment of private respondents. Thereafter, the request was sent to the State for creation of posts and after

creation of the posts a meeting of Appointment Committee was held on 25.2.2013 to consider the mode of appointment and thereafter it was resolved that in the light of mandate of para 49 of the Judgment of Hon''ble Supreme Court, the private respondents are to be appointed in the regular cadre as per Rule 4(a) of the Jharkhand Superior Judicial Service Rule, 2011 i.e. by way of direct appointment. It is further recommended to issue Notice and upload in the Website inviting application from the appellants of the Civil Appeals in the prescribed format. The aforesaid recommendation was approved by the Hon''ble Full Court and finally the same was uploaded in the website of the court on 5.3.2013. It is further submitted that whatever action has been taken by the High Court, it is in strict compliance with the order passed in both B.M. Lal-II (supra) and Mahesh Kumar Verma (supra) and as such the writ filed by the petitioner is devoid of any merit and as such liable to be dismissed. It is further submitted that the direction given under Arts. 142 of the Constitution of India cannot be challenged in a writ under Ar. 226 and 227 before the High Court.

10. In support of his contention Mr. Rajesh Shankar has relied upon, para 23 of the judgment passed in Shahid Balwa Vs. Union of India (UOI) and Others, wherein it is held as under:--

23. Article 136 read with Article 142 of the Constitution of India enables this Court to pass such orders, which are necessary for doing complete justice in any cause or matter pending before it and, any order so made, shall be enforceable throughout the territory of India. Parties, in such a case, cannot invoke the jurisdiction under Article 226 or 227 of the Constitution of India or under Section 482 Cr.P.C. so as to interfere with those orders passed by this Court, in exercise of its constitutional powers conferred under Article 136 read with Article 142 of the Constitution of India. Or, else, the parties will move Courts inferior to this Court under Article 226 or Article 227 of the Constitution of India or Section 482 Cr.P.C., so as to defeat the very purpose and object of the various orders passed by this Court in exercise of its powers conferred under Article 136 read with Article 142 of the Constitution of India.

11. Mr. Manoj Tandon, learned counsel appearing for some of the private respondents, submitted that the private respondents were appointed strictly in compliance of the order of the Hon''ble Supreme Court in B.M. Lal-II (supra) and Mahesh Chandra Verma (supra) and as such the writ deserves to be dismissed. It is further submitted that in the State of Gujarat the fact situation was different and cannot be compared with the case in hand. It is further submitted that in para 207.9(e) of B.M. Lal-II it was specifically mentioned that the written examination and interview module should be framed keeping in mind the peculiar facts and circumstances of these cases, thus it is very much clear that examination was not a competitive examination open to the all eligible members of the Bar, rather the respondents were treated as a distinct class by the Hon''ble Supreme Court. It is further submitted that the Hon''ble Supreme court had specifically held in B.M. Lal-II that if for any reason vacancies are not available in

the regular cadre, the State Government would create such additional vacancies and thus normal recruitment process was not required to follow in the present case.

12. The learned Counsel appearing for the State also submitted that in compliance of the order dt. 19.9.2012 of the Hon"ble Supreme Court the Jharkhand High Court conducted written examination and interview and they were recommended for appointment and finally appointed as DJs. by the State Government vide notification Nos. 5630 to 5651 dated 25.6.2013.

13. The issue involves in this case, whether the notice inviting applications from the Fast Track Judges" (private respondents herein) only was in contravention of the direction passed in Brij Mohan Lal-II (supra) and Mahesh Chandra Verma (supra)?

14. Before coming to the issues raised in this case the propositions laid down in the aforesaid two judgments of the Hon"ble Supreme Court shall be looked into.

Para 207.9 of Brij Mohan Lal (supra) reads as follows:--

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

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

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

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

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

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

(f) The candidates who qualify the written examination and obtain consolidated

percentage as afore-indicated shall be appointed to the post of Additional District Judge in the regular cadre of the State.

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

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

Para 64 of the case of Mahesh Chandra Verma and Others Vs. State of Jharkhand and Others, ,--

64. We are not prepared to entertain the grievance of the contesting respondents that if the appellants are absorbed in regular cadre their promotional avenues will get affected or they will suffer monetary loss. Their locus to challenge the appellants' appointments has been questioned. But, even if it is assumed that they have locus in view of Brij Mohan Lal-II such grievances cannot be entertained. The directions given by this Court in Brij Mohan Lal-II are under Article 142 of the Constitution, to do complete justice and while issuing directions, obviously this Court has considered the entire issue in its proper perspective. We, therefore, reject this submission. In the view that we have taken we dispose of these appeals by recording that we concur with the view taken by the High Court and see no reason to interfere with it. We direct the State of Jharkhand and the High Court of Jharkhand to comply with the directions to appoint the appellants in the regular cadre in Higher Judicial Service in the State of Jharkhand strictly in the manner laid down in Brij Mohan Lal-II within a period of six months from the date of receipt of this order by it.

Thus, the Hon''ble Apex Court treated the earlier appointment of the respondents as temporary not under Rule but looking to the various aspect of the matter and also to improve the Justice Delivery System as well as to do complete justice to the lis, the Hon''ble Supreme Court exercised the jurisdiction under Ar. 142 of the Constitution and laid down guidelines for appointment of the Fast Track Judges to the regular cadre-of Higher Judicial Services of the State.

15. The first ground for challenge to the notice dated 5.3.2013 is that as per the judgment of the Hon''ble Supreme Court in B.M. Lal-II (supra) the High Court was required to hold an examination in terms of the provisions of Rules 2001 and the only leverage given to the private respondents herein is that they will be given weightage point for each year of their past services and they cannot be given close door competition by which the petitioner was deprived from being participated in the examination.

16. We have perused the direction passed by the Hon''ble Supreme Court in para 207 and from conjoint reading of para 207 and its sub-paras especially in 207.9

it reveals that the Hon"ble Supreme Court, while exercising the jurisdiction under Art. 142 had laid down the entire procedure for taking back the Fast Track Judges in the regular cadre. The Hon"ble Supreme Court in the aforesaid judgment has fixed the marks of written examination and interview for taking back the Fast Track Judges" and also in a clear and explicit term has pointed out that the module for written examination and interview should be framed keeping in mind of the peculiar fact of the present case and as such it is not justified to say that any person shall be allowed to compete with the special candidates. Had there been any intention of the Hon"ble Supreme Court that the FTC Judges" will have to compete with others in open vacancy, the same would come in the judgment itself.

17. So far the argument of the learned counsel for the petitioner that as per the directives of B.M. Lal-II (supra), the Fast Track Judges" shall not be accommodated out of the posts available for Direct Recruitment from Bar, we are of the view that para 207.9(g) clearly mandates that the Fast Track Judges" shall be accommodated from the vacancies available and if the vacancies are not available the State was directed to create additional number of vacancies as is necessary and from the procedure adopted by the High Court it reveals that looking to the available posts of Superior Judicial Services, 17 additional posts were created and thereafter vacancy was advertised for total number of 22 posts. Thus, we are of the view that the High Court has complied with the direction, given in B.M. Lal-II case in its true perspective and as such it needs no interference.

18. The second ground for challenge to the notice dated 5.3.2013 that the notice is contrary to Rule 9 of the Recruitment Rules of 2001 and also in violation of law settled qua public appointment and compliance of Arts. 14 and 16 of the Constitution is also not sustainable for the reason that the Hon"ble Supreme Court treated the case of the Fast Track Judges as unequal from others and while invoking jurisdiction under Art. 142 laid down the procedure for their appointment. It is a settled proposition of law that under Arts. 14 and 16 , question of unequal treatment does not arise if there are different sets of circumstances and equality of opportunity for unequal can only mean aggravation of inequality.

19. Much stress has been given by learned counsel for the petitioner about the procedure adopted by the State of Gujarat in the matter of appointment of FTC Judges" in the regular cadre wherein an open competition was conducted and due weightage was given to Fast Track Judges. We have no concern of the procedure adopted by the other States because neither they are under challenge before this court nor we are bound by the same procedure. We have the only concern with the question as to whether this High Court in the administrative side has truly interpreted the direction laid down in B.M. Lal-II while issuing notice dated 5.3.2013. The judgment relied upon by Mr. Kumar are on the general principle of law and the same will not apply to the individual facts of the

case in hand where the Hon''ble Supreme Court, having regard to the peculiar facts and circumstances of the cases of the Fast Track Judges'' had laid down the special procedure applicable to them. However, in the case of Sahid Balwa vs. Union of India (supra) the Hon''ble Supreme Court has held that no writ under Articles 226 and 227 shall lie so as to interfere any of the order passed under Art. 142 of the Constitution of India.

20. For the detailed reasons mentioned hereinabove, we are of the view that the Jharkhand High Court while issuing the notice inviting application from the private respondents has complied with the judgment of the Hon''ble Apex Court laid down in B.M. Lal-II case in its true perspective. The net result is that the present writ petition deserves to be dismissed having no merit in it but without any order as to cost. Ordered accordingly.