
(2012) 07 MAD CK 0089

In the Madras High Court

Case No : Writ Petition No. 13703 to 13705 of 2012

P. Radha and Others

APPELLANT

Vs

State of Tamilnadu and Others

RESPONDENT

Date of Decision : 20-07-2012

Acts Referred:

Constitution of India, 1950 — Article 233, 234, 235, 239(a)(a)(iv)

Citation : (2012) 7 MhLj 40 : (2012) 7 MLJ 40 : (2012) WritLR 1122

Hon'ble Judges : S. Manikumar, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : N.R. Chandran, for K.J. Parthasarathy, for the Appellant; V. Subbiah, Special Government Pleader and R. Sureshkumar, for the Respondent

Final Decision : Dismissed

Judgement

N. Paul Vasanthakumar, J.—The prayer in these writ petitions are to quash the proceedings of the Registrar General, High Court of Madras, 4th respondent herein, issued in R.O.C. No. 21/2012-Con. B2, dated 25.4.2012 and direct the respondents to consider absorption and regularisation of the petitioners' services as Additional District Judges, following the guidelines laid down in the decision Brij Mohan Lal Vs. Union of India (UOI) and Others, The brief facts necessary for disposal of these writ petitions are as follows:

(a) The Government of India with a view to expeditiously clearing the large number of pending cases in the Subordinate Courts, proposed to constitute Fast Track Courts (hereinafter referred to as "FTCs") throughout India and pursuant to that decision, totally 1734 FTCs were constituted under the Central Government funded scheme. As per the scheme, an average of five FTCs were constituted per district and State-wise distribution was made according to the volume of pending cases and the average rate of disposal.

(b) In the state of Tamil Nadu, 49 FTCs were constituted under the aforesaid scheme of the Government of India. Appointment of Judges of the FTCs were

made on ad hoc basis from among the retired Sessions Judges, Additional Sessions Judges, Judges promoted on ad hoc basis from subordinate judiciary and from among the members of the Bar. The selection of Judges for the FTCs was done by the respective High Courts.

(c) The appointment of retired District and Sessions Judges as ad hoc basis for FTCs was challenged before various High Courts and the said writ petitions were transferred to the Hon'ble Supreme Court and the same were numbered as Transfer Case (Civil) Nos. 22 and 23 of 2001 etc. On 6.5.2002, the Supreme Court issued several directions including the direction to recruit FTC Judges from the Bar.

(d) In the State of Tamil Nadu, for the 49 FTCs to be constituted under the Central Scheme, 34 vacancies were proposed to be filled up by promotion on ad hoc basis and the remaining 15 posts of the Additional District Judges, FTC were proposed to be filled up by direct recruitment from the Bar on ad hoc basis. Based on the same, applications were invited from the members of the Bar for filling up 15 posts of Additional District Judges, FTCs on ad hoc basis.

(e) The petitioners having enrolled as advocates on 10.4.1981, 3.9.1980 and 15.4.1981 respectively and practised as advocates in the State of Tamil Nadu, applied for the said selection and were selected and appointed as Additional District Judges in FTCs on ad hoc basis by the order of the Government in G.O. Ms. No. 158 Public (Special. A) Department dated 14.2.2002 along with 12 others. A consequential notification was issued by the Registrar General of the High Court, Madras, constituting FTC Courts in Notification No. 19 of 2002 dated 18.2.2002. Petitioners assumed office as Additional Sessions Judges in Vellore Sessions Division (FTC-III, Vellore at Tiruppathur); Additional Sessions Judge, Villupuram Session Division (FTC-II Villupuram with headquarters at Tindivanam); and Additional Sessions Judge in Metropolitan Area of Chennai (FTC-V at Chennai) pursuant to the postings issued in the proceedings of the 4th respondent in R.O.C. No. 14 of 2002 dated 19.2.2002.

(f) According to the petitioners, out of the 15 ad hoc FTC Judges selected from the Bar, 7 FTC Judges were terminated by the 4th respondent after paying their salary in lieu of notice period as their services were found not satisfactory and four FTC Judges were allowed to serve upto 60 years of age and the remaining four FTC Judges alone were allowed to continue in their posts. Their services were continued as ad hoc FTC Judges till the impugned order was passed on 25.4.2012.

(g) The Government of India issued a communication and expressed before the Supreme Court that they would not fund the FTCs beyond 31.3.2011 stating various reasons. The Government of Tamil Nadu, on the request made by the High Court of Madras, ordered permanent retention of all 49 FTCs through G.O. Ms. No. 475 Home (Courts-II) Department, dated 26.8.2011 and sanctioned constitution of Additional District Courts in the place of FTCs. The High Court,

Madras through its notification No. 52 of 2012 dated 11.4.2012 re-designated the 49 FTCs as Additional District and Sessions Courts. Petitioners were permitted to continue in service in the re-designated Courts.

(h) On 25.4.2012, the 4th respondent issued the impugned order and discontinued the petitioners and relieved them from their services, even though their services are extended upto 30.6.2012 by order of the 4th respondent dated 26.11.2011. The said order i.e., discontinuance and relieving of the petitioners by order dated 25.4.2012 is challenged by the petitioners in these writ petitions contending that the order of discontinuance and relieving could be issued only by the Governor of Tamil Nadu on the recommendation of the High Court in terms of Article 233 of the Constitution of India and the impugned order has not referred any such order passed by the Governor of Tamil Nadu and the High Court itself passed the order, which is impermissible. It is further contended that the discontinuation and relieving of the petitioners from the contractual services is having the effect of termination of their services and therefore the High Court is not competent to pass the order. The petitioners having been allowed to continue in the permanent posts, the same would give them permanent status and on any event petitioners are entitled to continue upto 30.6.2012. Therefore, according to the petitioners, discontinuance and relieving of the petitioners by order dated 25.4.2012 is arbitrary and the same is liable to be set aside and also prayed for to consider absorption and regularisation as Additional District Judges.

2. The Registrar General, High Court of Madras, 4th respondent herein has filed counter affidavit tracing history of the constitution of FTCs and contending as follows:

(i) 15 judges were directly recruited from the Bar on ad hoc basis during the year 2002 and their performances were reviewed periodically from the year 2007 as per the guidelines issued by the Supreme Court and the ad hoc basis appointment was extended from time to time and it was lastly extended upto 30.6.2012. Out of 15 judges selected from the Bar to function as Additional District Judges, FTCs, on ad hoc basis, the Committee of Judges while reviewing their performances ordered to terminate the services of seven Judges as their performance were not satisfactory and they were terminated from service vide G.O. Ms. No. 83 Public (Spl. A) Department, dated 12.1.2007. Against four FTC Judges directly recruited from the Bar on ad hoc basis were screened at the time of attaining the age of 58 years and their performance having been found satisfactory, they were allowed to continue upto 60 years and they were relieved on attaining the age of 60 years. Afterwards, only four FTC Judges were allowed to serve on ad hoc basis.

(ii) The Government of India in their letter dated 17.8.2010 has stated that there will be no Central funding for FTCs beyond 31.3.2011. The High Court requested the Government of Tamil Nadu to retain the Courts on permanent basis as Additional Sessions Court and the Government issued Government order for the permanent retention of 49 FTCs with 346 temporary posts vide G.O. Ms. No. 475

Home (Courts-II) Department dated 26.8.2011 as Additional Sessions Courts and all the 49 FTCs were re-designated as Additional District Courts by proceedings of the High Court dated 11.4.2012.

(iii) Petitioners herein, who were recruited from the Bar on contract basis and functioning as Additional District Judges, FTCs as on the dates in their Courts, which were made permanent as Additional Sessions Courts and one Sekar, who was also recruited, who was under suspension, were discontinued and they were relieved from their contractual services by the impugned order dated 25.4.2012. 40 Judicial Officers of the Tamil Nadu (promotees functioning as Additional District Judges, FTCs) on ad hoc basis were appointed as Additional District Judges, FTCs on regular basis by G.O. (D) No. 10 Public (Spl-A) Department, dated 19.1.2012 and all the 49 FTCs were re-designated as Additional District Courts and the Officers were re-designated as District Judges, Entry Level by the proceedings of the High Court dated 11.4.2012. Thus, the post of Additional District Judge, FTC, where the petitioners were appointed on ad hoc basis is not an existence.

(iv) In view of the said situation, the Administrative Committee of the High Court in its meeting held on 16.4.2012 considered the matter of the petitioners along with one Sekar, who was under suspension and resolved that the services of the said officers, who were appointed as FTC Judges on contract basis are to be discontinued and they are to be relieved from their contractual services forthwith and consequently the four officers were relieved from their contractual service by the impugned order dated 25.4.2012. The said decision was taken prior to the subsequent order passed by the Supreme Court in Transferred Case (Civil) No. 22 of 2001 dt. 19.4.2012, which was communicated to the High Court only on 3.5.2012.

(v) In the order of the Supreme Court dated 19.4.2012, several directions were issued by the Supreme Court and according to direction No. 4, serving FTC Judges cannot claim any regular promotion as a matter of right for selection as Additional District Judges and they would be absorbed in regular cadre only on their appearing in the written test conducted by the High Court followed with interview by Selection Committee consisting of the Hon'ble Chief Justice and four senior-most Judges of the High Court and they can be given only relaxation of age for submitting application for recruitment, if they are age barred. It is further stated in the counter affidavit that as the appointment of the petitioners on ad hoc basis as Additional District Judges, FTCs came to an end, relieving of the petitioners was ordered by the impugned order of the High Court and the said action of the High Court is in no way contrary to the Constitution of India, particularly when the term of their services came to an end due to non-functioning of FTC Courts.

3. Mr. N.R. Chandran, learned senior counsel appearing for the petitioners argued that treating the petitioners as appointed on contract basis is incorrect and ad hoc appointment having been extended upto 30.6.2012, their discontinuance and

relieving by the impugned order dated 25.4.2012 is not valid. The discontinuance and relieving of the petitioners is having the effect of removing them from service and for passing such an order, the Governor of Tamil Nadu alone is competent and the impugned order passed by the High Court is not valid. In any event, according to the learned senior counsel, discontinuance and relieving of the petitioners before 30.6.2012 by the 4th respondent is without jurisdiction and hence, the impugned order is bound to be set aside and the petitioners are to be regularised as Additional Sessions Judges by absorbing them.

4. Mr. R. Sureshkumar, learned counsel appearing for the High Court on the other hand submitted that the appointment order issued to the petitioners by order of the Government dated 14.2.2002 itself was on ad hoc basis subject to the terms and conditions fixed by the High Court. In the said order itself the orders regarding posting and training, if any was ordered to be issued by the High Court. While permitting the petitioners to join duty as ad hoc Judges of the FTCs, the High Court issued terms and conditions specifically stating that their appointment shall be initially for a period of two years renewable for further period and the maximum period being five years from the date of assumption of office as FTC Judge. Regardless of the appointment of a Judge of FTC, his/her services can be terminated at any time even without notice; reverting him/her to substantive post of subordinate judge in the event of the High Court forming an opinion of such FTC Judge not functioning conforming to the standards and objectives and intend of the Fast Track Scheme. The learned counsel also submitted that at any time they can be reverted to the said position in the event the High Court is of the view that their services are no longer required and therefore, the petitioners have no right, much less any legal right to challenge the order of the 4th respondent. The learned counsel heavily relied on the judgments of the Supreme Court in Rajendra Singh Verma (Dead) through L.Rs Vs. Lt. Governor of NCT of Delhi and Another, and the order of the Supreme Court passed on 19.4.2012 in Transfer Case (Civil) No. 22 of 2011 and submitted that the petitioners were not terminated/removed from their services and they were discontinued and relieved without any stigma. The petitioners were discontinued and relieved from their contractual services due to the closure of the FTCs and sanction of 49 Additional District and Sessions Judge Courts pursuant to the sanction order issued by the Government of Tamil Nadu in G.O. Ms. No. 475 Home (Courts-II) Department, dated 29.8.2011. The Courts having been converted as Additional District and Sessions Courts, the petitioners, who were selected only as ad hoc Judges in FTC Courts cannot discharge the functions of Additional District and Sessions Judges, unless they were regularly selected by following the Tamil Nadu State Judicial Services (Cadre and Recruitment) Rules, 2007 as directed by the Supreme Court in its order dated 19.4.2012. Therefore, the learned counsel submitted that there is no illegality in the impugned order as contended by the petitioners. The learned counsel further submitted that if the petitioners are willing to be selected as Additional District Judges, they have to wait for such selection if and when the High Court issues

any notification calling for applications.

5. We have also heard Mr. V. Subbiah, learned Special Government Pleader for respondents 1 to 3.

6. We have considered the rival submissions made by the learned senior counsel appearing for the petitioners and respective counsel for respondents.

7. The points arise for consideration in these cases are as to whether the petitioners are right in contending that their services can be discontinued and they be relieved before 30.6.2012 without the order of Governor and by the order of the Registrar General, High Court, Madras and whether they can demand regularisation and absorption as Additional District Judges as a matter of right.

8. It is not in dispute that the petitioners were directly recruited from the Bar on ad hoc basis for the post of Additional District Judge, FTC subject to the terms and conditions fixed by the High Court, Madras by G.O. Ms. No. 158 Public (Spl. A) Department, dated 14.2.2002. Petitioners and two others selected from the Bar were posted as Additional District and Sessions Judges, FTCs on ad hoc basis in the newly sanctioned FTCs by the order of the 4th respondent dated 18.2.2002 and they were directed to take charge of their respective post on 23.2.2002 i.e., the date of inauguration of the new FTCs. Performance of the petitioners were reviewed and the petitioners were permitted to continue as Additional District Judges, FTCs on ad hoc basis for further periods and last of such order to continue as FTC Judges on ad hoc basis upto 30.6.2012 was passed on 27.6.2011 in ROC. No. 23 of 2011. Con. B2.

9. Petitioners' services were not regularised at any point of time. The Government of India discontinued funding for FTCs beyond 31.3.2011 and a communication to that effect was issued on 17.8.2010. Thereafter, 49 FTCs, which were functioning as on 31.3.2011, were retained as Additional District and Sessions Courts by the Government of Tamil Nadu vide G.O. Ms. No. 475 Home (Courts-II) Department, dated 26.8.2011 on the recommendations of the High Court. The FTCs were also re-designated by the High Court in its Notification No. 52 of 2012 dated 11.4.2012. Thus, it is evident that the Courts presided over by the petitioners as FTCs, became Additional District and Sessions Courts from 11.4.2012.

10. It is true that even after conversion of the Courts on 11.4.2012 till the impugned order was passed, the petitioners were allowed to preside over the Courts upto 25.4.2012, i.e., for 15 days. The said 15 days gap arose due to administrative reasons alone.

11. The Administrative Committee of this Court, on 16.4.2012 considered the said facts and resolved that the services of the four officers including one officer under suspension, who were serving on contract basis are to be discontinued and they are to be relieved from contractual services. The said decision of the Administrative Committee was implemented by the 4th respondent vide the

impugned order dated 25.4.2012. From the above undisputed facts it is clear that FTC Judges cannot function after re-designation of the Courts as Additional District and Sessions Courts and therefore a necessity arose to discontinue and relieve the services of the petitioners by operation of law.

12. At this juncture, it is to be noted that even though initial appointments were made by the Government through G.O. Ms. No. 158 Public (Special-A) Department dated 14.2.2002 for a specified period, subsequent extension of service of the petitioners were given only by the High Court and not by way of any Government Order, i.e., order of the Governor of Tamil Nadu. The order of extension of service having been granted by the High Court, the discontinuation and relieving can also be made by the High Court. Petitioners are not justified in contending that the Government alone can discontinue and relieve them from their services. It is well settled principle of law that having accepted the extension order issued by the High Court, the petitioners are not entitled to argue that the High Court has no jurisdiction to discontinue/relieve them from their services as long as their services are not regularised.

13. The discontinuation and relieving the services of the petitioners are not coming within the meaning of dismissal, removal or termination. No motive of any kind is also attributed by the petitioners against the 4th respondent. The main grievance of the petitioners is that they should have been permitted to continue as FTC Judges till 30.6.2012. As long as the discontinuation and relieving of the petitioners are not coming within the meaning of dismissal, removal or termination, the High Court is having jurisdiction to relieve the petitioners on the recommendation of the Administrative Committee. In fact, the power exercised by the High Court is only administrative power under Article 235 of the Constitution of India and not disciplinary power.

14. The jurisdictional issue raised by the petitioners was already considered by the Honourable Supreme Court in the decision *Rajendra Singh Verma v. Lt. Governor (NCT of Delhi)* (supra). In the said judgment, the Supreme Court while analysing the power of the High Court held that even though the High Court retains the power of disciplinary control and impose punishments, the question of dismissal/removal or reduction in rank or termination of service of Judicial officer on any count, the High Court becomes the recommending authority and cannot itself pass the orders. In paragraphs 99 and 100, the Supreme Court held thus,

99. The scheme envisaged by the Constitution does not permit the State to encroach upon the area reserved by Articles 233, 234 and the first part of Article 235 either by legislation or rules or executive instructions. Article 235 has no concern with the conferring of jurisdiction and powers on the Court but it only relates to administrative and disciplinary jurisdiction over the subordinate Courts. Therefore, the conferment of power of the prescribed authority by the State Legislature on the judicial officers cannot be construed to mean that the power of the High Court under Article 235 is inoperative or inchoate as the High Court alone is the sole authority competent to initiate disciplinary proceedings against

the subordinate judicial officers or to impose various punishments including passing of order of compulsory retirement on verification of the service record. The State is least competent to aid and advise the Governor on such subjects.

100. While the High Court retains the power of disciplinary control over the subordinate judiciary including power to initiate disciplinary proceedings, suspend them during enquiries and impose punishment on them, but when it comes to the question of dismissal, removal or reduction in rank or termination of services of judicial officers on any count whatsoever, the High Court becomes the recommending authority and cannot itself pass the orders. The formal order to give effect to such a decision has to be passed by the State Governor on the recommendations of the High Court. In disciplinary proceedings if an action is taken by the High Court against the judicial officer the recommendations made by the High Court bind the Governor and he is left with no discretion except to act according to the recommendations. The Governor, under the scheme of Articles 233, 234 and 235 of the Constitution cannot refuse to act in terms of the recommendations made by the High Court on the ground that he is not aided and advised by the Council of Ministers and this is the true import of total control of the High Court over the subordinate judiciary.

In the said Judgment, compulsory retirement order issued against the judicial officer was challenged on the ground that the High Court is not competent to pass the order and the Governor alone was competent to issue such an order. The said contention was negated by applying the constitutional provisions viz., Articles 233, 234, 235, 239(a)(a)(iv). From the above narrated portion of the judgment of the Supreme Court, it is crystal clear that only in case of dismissal, removal, reduction in rank or termination of services of judicial officers, the High Court becomes the recommending authority and formal order based on the recommendation of the High Court shall be passed by the State Governor.

15. In the case on hand, petitioners' services are neither dismissed nor removed or terminated. The ad hoc appointment given to the petitioners on contract basis are discontinued and they were relieved without attaching any stigma. The State Government issued an order sanctioning 49 Additional District and Sessions Courts and the Fast Track Courts were designated by the Government and High Court. The petitioners having been appointed as ad hoc FTC Judges on temporary basis, the High Court discontinued and relieved the petitioners. Thus, the arguments advanced on behalf of the petitioners that the Governor alone is competent to order discontinuation and relieve the petitioners, cannot hold good in the light of cited judgment of the Supreme Court.

16. Insofar as regularisation and permanent absorption of the petitioners as Additional District and Sessions Judges is concerned, the Supreme Court in Transfer Case (Civil) No. 22 of 2011 order dated 19.4.2012, held that all sitting or former FTC Judges, who were directly appointed from the Bar and are desirous of taking Test and interview for regular appointment shall be given age relaxation and they are bound to undergo the process of recruitment by

appearing in the written examination, followed with interview, which are to be conducted in accordance with the relevant rules, in this case the Tamil Nadu State Judicial Services (Cadre and Recruitment) Rules, 2007. The operative portion of the order of the Supreme Court reads as follows:

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

(a) The direct recruits to the 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 per cent aggregate for general candidates and 35 per cent 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 Government 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.

(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 who, on any other ground, disciplinary action had been taken, shall not be eligible to the benefits stated in clause 5 of the judgment.

17. Thus, petitioners are not entitled to contend that they are entitled to continue as FTC Judges, even after conversion of the Courts as Additional District and Sessions Courts, without going through the process of selection as stated supra. Petitioners are aged 57 years and whether or not they are willing to undergo the process of selection, if conducted is not known. The FTCs having been converted as regular Additional Sessions Courts, the petitioners cannot continue to function as FTC Judges. Hence the High Court is justified in discontinuing and relieving the petitioners by passing the impugned order dated 25.4.2012. The extension/continuation of the services of petitioners granted upto 30.6.2012 by order dated 27.6.2011 was prior to the re-designation of the FTCs as Additional District and Sessions Courts. The re-designation order having been passed and given effect to from 11.4.2012, the consequential order passed by the 4th respondent discontinuing and relieving the petitioners are perfectly in order. On the above facts and circumstances, we are of the firm view that the order of the 4th respondent dated 25.4.2012 is justified and no case is made out to upset the said order. No direction as to regularisation and absorption of the petitioners as Additional District and Sessions Judges can be ordered as they are not selected as regular Additional District and Sessions Judges and they were permitted to continue only as ad hoc FTC Judges.

There is no merit in these writ petitions and consequently the writ petitions are dismissed. No costs. Connected miscellaneous petitions are also dismissed.