IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

PRESENT : **Hon'ble Justice Dipankar Datta**

W.P. No. 22564(W) of 2011

Sri Samar Roy & ors.
v.
The Hon'ble High Court at Calcutta & ors.

For the petitioners	: Mr. Partha Sarathi Sengupta, Sr. Advocate, Mr. Soumya Majumder, Advocate, Mr. Sunny Nandy, Advocate,
For the respondents 1 to 3	: Mr. Joydeep Kar, Sr. Advocate, Mr. Siddhartha Banerjee, Advocate
For the respondent no.4	: Mr. Jaharlal De, Advocate, Mr. Shyamal Kumar De, Advocate,
For the respondents 5 to 10	: Mr. Bikash Ranjan Bhattacharya, Sr. Advocate, Mr. Rahul Karmakar, Advocate
For the respondents 11 & 12	: Ms. Debasree Dhamali, Advocate

Hearing concluded on : August 12, 2016

Judgment on : August 16, 2016

1. This writ petition dated December 22, 2011 is at the instance of 22 (twenty two) disgruntled members of the West Bengal Judicial Service (hereafter the W.B.J.S.), presented on December 23, 2011. While complaining of perceived step motherly treatment accorded by the administration of this Court to them, the petitioners have prayed for ameliorative relief to restore their seniority thereby enabling them discharge their judicial and administrative functions without any sense of deprivation. It is noted that by the time this Bench had the occasion to consider applications for addition of parties filed in connection with the writ petition on July 15, 2016 and thereafter proceeded with final hearing, the petitioners 1 – 3, 8 and 9 had retired from service on attaining the age of superannuation while the petitioner no.10 proceeded on voluntary retirement w.e.f. September 20, 2014. It is also noted that a couple of petitioners and one of the added respondents are now members of the registry of this Court.

2. Tracing the genesis of the controversy raised by the petitioners would necessitate walking down memory lane when the Fast Track Court Scheme (hereafter the scheme) was conceived and introduced for clearing backlog of cases in courts, mainly long pending cases in the Sessions Courts and cases of under-trial prisoners, by the Central Government based on the recommendation of the Eleventh Finance Commission. The scheme, envisaging creation of 1734 (seventeen hundred thirty four) Fast Track Courts (hereafter FTCs) in the country with funds to be provided by the Ministry of Finance, was to continue initially for 5 (five) years i.e. till March 31, 2005. It was the primary responsibility of the State Governments to establish the FTCs in consultation with the respective High

Courts. However, the scheme viz. the constitution of the FTCs and policy of appointment of its Presiding Officers came to be challenged in the Punjab and Haryana High Court as well as the Andhra Pradesh High Court in writ petitions, primarily on the ground that there was no constitutional sanction for employment of retired judges to man the FTCs and effective guidelines were not in operation. It was also highlighted that infrastructural facilities were not available so as to make the scheme a reality. Several other deficiencies were also pointed out. A plea was raised that instead of retired officers, eligible members of the Bar should be considered for appointment. The Union of India had approached the Supreme Court seeking transfer of such cases and by its order dated August 3, 2001 reported in (2012) 6 SCC 580 (Union of India vs. Brij Mohan Lal), the Supreme Court transferred such cases for consideration by it. By the same order, the Court permitted intervention by other parties who might have filed similar writ petitions in different High Courts. Thereafter, the Court proceeded to hear and dispose of the same by a common judgment dated May 6, 2002 reported in (2002) 5 SCC 1 (Brij Mohan Lal vs. Union of India). The Court was of the opinion, keeping in view the laudable objects of the scheme, that certain directions for taking care of the initial teething problems highlighted by the parties are necessary and accordingly, issued several directions. A few of the directions, which are considered relevant, are reproduced below:

> "Directions by the Court
>
> *1*. The first preference for appointment of judges of the Fast Track Courts is to be given by ad hoc promotions from amongst eligible judicial officers. While giving such promotion, the High Court shall follow the procedures in

force in the matter of promotion to such posts in Superior/Higher Judicial Services.

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

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."

3. Although the cases were treated as closed, the State Governments and the High Courts were directed to submit quarterly status reports for consideration before the Bench to be fixed by the Chief Justice of India. The Court had been monitoring the functioning of the FTCs through the case of Brij Mohan Lal (supra). It was observed that the scheme of the FTCs should not be disbanded all of a sudden and by its order dated March 31, 2005 reported in (2007) 15 SCC 614 (Brij Mohan Lal vs. Union of India), the Court directed the Union of India to continue the FTCs. In compliance therewith, the Central Government accorded its approval for the continuation of the 1562 (fifteen hundred sixty two) FTCs that were operational as on March 31, 2005 for a further period of 5 (five) years, i.e. till March 31, 2010. Quarterly reports, as directed, were filed from time to time regarding the functioning of the FTCs in the entire country. Meanwhile, some

writ petitions under Article 32 of the Constitution were presented before the Court and some special leave petitions were also filed against various judgments of different High Courts. As opposed to the initial writ petitions filed before the Punjab and Haryana High Court and the Andhra Pradesh High Court, the petitioners in the two Article 32 writ petitions, *inter alia*, prayed that the Court should issue appropriate writ or direction to the respondents to extend the scheme for FTCs till March 31, 2015 and to release necessary funds for such purpose. Such writ petitions and the special leave petitions were ultimately disposed of by the Supreme Court by its decision reported in (2012) 6 SCC 502 (Brij Mohan Lal vs. Union of India) with directions issued under Article 142 of the Constitution.

4. The High Court administration has pleaded in its affidavit-in-opposition that the FTCs started functioning in the State w.e.f. August 1, 2001, but it appears from one of the gradation lists annexed to the administration's additional affidavit dated August 9, 2016, which was filed in compliance with an order of this Bench dated July 25, 2016, that at least from March 28, 2001, posting of judicial officers in the FTCs as judges was made. Unfortunately, however, not a single Government order creating the FTCs has been placed for consideration of this Bench.

5. Adverting attention now to the pleaded case in the writ petition, the affidavit-in-reply and the supplementary affidavit dated August 10, 2016 of the petitioners, the chronological sequence of events are set out briefly hereafter.

6. This Court in a Full Court meeting held on December 17, 2002 had resolved (vide Item No.8) to approve the recommendation of the Administrative Committee dated November 27, 2002 in connection with formation of a panel of officers of the West Bengal Higher Judicial Service (hereafter the W.B.H.J.S.) by promotion from the post of Civil Judge (Senior Division)/Sub-divisional Judicial Magistrate with modification that the name of the petitioner no.5 be included in the list of officers found suitable for promotion to the posts of W.B.H.J.S. Such panel containing names of 27 (twenty seven) officers, including the petitioners 1 – 7 herein, was forwarded by the Registrar (Judicial Service) by letter dated December 23, 2002 to the Principal Secretary, Judicial Department, Government of West Bengal, for appointment on promotion to the W.B.H.J.S., since they had been found *"fit to officiate"* in the W.B.H.J.S. by the Full Court. A request was accordingly made to move the Government for issuance of necessary orders for appointing the said officers in the W.B.H.J.S. By further letters dated July 25, 2003 and December 24, 2003 names 30 (thirty) judicial officers, including the petitioners 8 – 17, and 50 (fifty) judicial officers, including the petitioners 19 – 22, respectively, were forwarded by the Registrar (Judicial Service) to the Principal Secretary, Judicial Department, Government of West Bengal for issuance of necessary orders to appoint such officers on promotion to the W.B.H.J.S. It is not in dispute that consequent upon the Government issuing appropriate orders, each of the petitioners on promotion to the W.B.H.J.S. were issued posting orders by the Registrar (Judicial Service) to man the FTCs in the various district and sub-divisional courts of the State. The posting orders issued by the Registrar (Judicial

Service) bear substantially similar contents and it is considered profitable to reproduce the one issued in favour of the petitioner no.1 below. It reads as follows:

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NOTIFICATION

Calcutta No. 1545 A. The 10th March, 2003

Shri Samar Roy, a member of the W.B.C.S. (Judicial), now posted as Deputy, A.G.O.T., West Bengal is appointed on promotion to W.B.H.J.S. as Addl. District & Sessions Judge, 2nd Fast Track Court, Bichar Bhavan at Calcutta, created under G.O. No.98/J/X, dated 13.02.2003 on adhoc basis."

7. As revealed from the pleadings of the petitioners (writ petition, affidavit-in-reply and the supplementary affidavit), there are at least 5 (five) instances of the petitioners apparently being posted in regular courts to be manned by the Additional District and Sessions Judges although they had been discharging judicial duty as judges of the FTCs/Chief Judicial Magistrate. The first of such instance was occasioned when the Registrar (Judicial Service) issued an order in June, 2003, thereby appointing the petitioner no.1, who was then Additional District & Sessions Judge, Fast Track Court, Calcutta, as Additional District & Sessions Judge, Darjeeling. The second instance also relates to the same petitioner. By an order dated July 27, 2005, he was posted as Additional District & Sessions Judge, Burdwan. The third instance could be traced looking into an order dated August 10, 2005 issued by the Registrar (Judicial Service), whereby the petitioner no.13, then posted as Additional District & Sessions Judge, Fast Track Court, Sealdah, was appointed as Additional District & Sessions Judge, Burdwan. The fourth instance arose because of an order dated April 18, 2006 of the Registrar (Judicial Service) appointing the petitioner no.11, who was then

posted as Additional District & Sessions Judge, Fast Track Court, Barrackpore, as Additional District & Sessions Judge, Barrackpore. Lastly, the petitioner no.6 while posted as Chief Judicial Magistrate, Paschim Medinipur was *"redesignated and appointed Addl. Dist. & Sess. Judge of the same district to be ordinarily stationed at Midnapore from 1.7.2005"*.

8. There may have been other such instances but the same are not referred to in detail, being unnecessary.

9. What were the rules prevalent in 2003 for granting promotion to judicial officers like the petitioners have also not been placed. It is indeed unfortunate that Mr. Kar, learned senior advocate for the High Court administration was put in some embarrassment when called upon by the Bench to produce the same. The petitioners also did not fare any better. Mr. Sengupta, learned senior advocate representing the petitioners could throw little light on such aspect. However, both of them were *ad idem* that seniority-cum-merit was the policy that was followed for granting promotion. However, in the absence of the rules, it is difficult ~ if not impossible ~ to examine whether assessment of the suitability of those who were promoted in 2003/2004, including the petitioners, was in accordance with such rules or not.

10. Be that as it may, the Government of West Bengal, Judicial Department vide notification dated September 28, 2004 published in the Kolkata Gazette dated October 1, 2004, promulgated the West Bengal Judicial (Conditions of Service) Rules, 2004 (hereafter the Rules). The said rules, *inter alia*, defined appointing authority, cadre, service, District Judge, etc., described cadre for the judicial officers other than the District Judges as well as for the members of the higher judicial officers in the

rank of District Judge, prescribed gradation for the judicial officers other than the District Judges, provided for the mode/method of recruitment in the W.B.J.S., seniority, pay and allowances, posting and transfer, etc. The cadre strength of the higher judicial officers in the rank of District Judges was mentioned in Schedule IV appended to the Rules, in terms of rule 24(2) thereof, as 185 (one hundred eighty five) posts, excluding 119 (one hundred nineteen) Fast Track Court judges temporarily appointed from Civil Judge (Senior Division) referred to in Schedule I. Schedule I provided the cadre strength of the judicial officers other than District Judges in terms of rule 6 of the Rules, ~ Civil Judge (Junior Division) - 351 (three hundred fifty one) posts and Civil Judge (Senior Division) - 152 (one hundred fifty two) posts. Since the Government reserved the right to vary the strength of the cadre from time to time, it stands to reason that the cadre strength stood crystallized at least as on October 1, 2004, i.e. the date on and from which the Rules became effective. Other provisions of the Rules shall be referred to, if necessary, at a later stage of this judgment and order.

11. To facilitate direct recruitment to 51 (fifty one) vacant posts of District Judge, an advertisement dated November 24, 2006 was issued inviting applications from members of the Bar having requisite qualification as mentioned therein. Such process of recruitment was challenged before the Supreme Court in March, 2007 by the West Bengal Judicial Service Association by presenting a writ petition under Article 32 of the Constitution. An interim order was made thereon restricting recruitment to 16 (sixteen) posts instead of the 51 (fifty one) posts advertised. No clarification has been

provided by any of the parties to the proceedings regarding the fate of such litigation or the fate of the balance 35 (thirty five) posts.

12. However, despite the Rules relating to conditions of service of the members of the W.B.J.S. being put in place, which without doubt was a most desirable and significant development, the Administrative Committee in its meetings held on July 10 and 11, 2016 resolved (vide Item No.3) that *"(k)eeping in view the spirit of the Judgement of the Hon'ble Supreme Court of India in Brij Mohan Lal's case and also in consideration of the performance of the Officers as reflected in last three years' A.C.Rs"*, 64 (sixty four) officers included in the approved list *"who were appointed on ad-hoc basis as Additional District & Sessions Judges by the Government between 01.08.2001 and 30.09.2004 on the recommendation of this Court be absorbed/regularized against 67 vacancies in the regular cadre of W.B.H.J.S. which occurred between 01.08.2001 and 30.09.2005 (sic 2004) and such absorption/regularization shall take effect from the date as shown against the names of the officers...."*. Interestingly, the officers at the tail-end of such list, i.e. figuring at sl. nos. 61, 62, 63 and 64 [hereafter the said 4(four) judicial officers], had figured at the top of the panel, i.e. at sl. nos. 1, 2, 3 and 4, approved by the Full Court in its meeting held on December 17, 2002, whereby 27 (twenty seven) officers including the petitioners 1 – 7 were promoted to the W.B.H.J.S.

13. The aforesaid vacancies having been filled up by absorption/regularization, the High Court administration by a notification dated March 31, 2009 notified for general information that *"keeping in view future vacancies that may arise due to retirement, elevation to the High Court, death, deputation to other departments etc."* 131 (one hundred thirty one) vacancies *"in the cadre of District Judges (entry level) would be*

filled up in 2009 by direct recruitment from the Bar and from amongst the eligible members of the West Bengal Judicial Service in accordance with the directions given by the Hon'ble Supreme Court of India from time to time in Malik Mazhar Sultan's Case (Civil Appeal No.1867 of 2006) and in Writ Petition No.46 of 2007 filed by the West Bengal Judicial Service Association". It was also notified that further details would follow on April 15, 2009 on the official website and elsewhere.

14. The notification dated March 31, 2009 was followed by 3 (three) notifications issued in quick succession bearing nos. 5952-RG dated April 15, 2009, 5954-RG dated April 15, 2009 and 6745-RG dated May 15, 2009. Relevant portion of each of the notifications is set out below one after the other:

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NOTIFICATION

No. 5952-RG Dated, Calcutta, the 15th April, 2009

Applications are invited from the members of the West Bengal Judicial Service belonging to the cadre of Civil Judge (Sr. Division) having not less than 5 years qualifying service for filling up some posts of Higher Judicial Service in the rank of District Judge by promotion strictly on the basis of merits through limited competitive examination of such Judicial Officers other than District Judges as mentioned in clause (b) of sub-rule (1) of Rule 6 of the West Bengal Judicial (Conditions of Service) Rules, 2004. The Panel will be prepared for filling up 55 vacant posts but the number may vary consequent upon the result of pending Writ Petition (Civil) No. 46/2007 filed by the West Bengal Judicial Service Association and Malik Mazhar Sultan Case (C.A. No. 1867/2006) and without any prejudice to the rights of the officers claimed therein.

The details of the time schedule for such examination will be available in our website www.calcuttahighcourt.nic.in."

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N O T I F I C A T I O N

No. 5954-RG Dated, Calcutta, the 15th April, 2009.

It is notified for general information that out of total 131 vacancies in the cadre of District Judge Entry Level in the West Bengal Judicial Service, as declared on 31-03-2009 by this Office Notification No. 5632-R(JS), 26 posts will be filled in 2009 against 50% of the cadre strength meant for promotion of the Judicial Officers in the cadre as mentioned in Rule 6(b) read with Rule 26(b) of the West Bengal Judicial (Conditions of Service) Rules, 2004. This exercise of undertaking of promotion is subject to the result of Malik Mazhar Sultan's case (Civil Appeal No. 1867 of 2006) and W.P. (C) 46 of 2007 filed by the West Bengal Judicial Service Association now pending before Hon'ble Supreme Court of India and without any prejudice to the rights of any other person. The panel for such selection by promotion will be made on the basis of merit cum seniority and on passing of a suitability test in terms of said Rule 26(b) from amongst such Judicial Officers other than District Judges as mentioned in clause (b) of Sub-rule (1) of rule 6 of the said rules and in accordance with the solemn order dated 4.1.07 passed by Hon'ble Supreme Court in Civil Appeal No. 1867 of 2006 as subsequently modified. The number of such vacancy may vary consequent upon direction to be given by the Hon'ble Supreme Court in both the aforesaid cases.

Time Schedule:

1.	Publication of list of eligible Officers	15-05-2009
2.	Receipt of Judgment from the elig Officers	30-05-2009
3.	Suitability Test including Viva Voce.	15-07-2009 to 31-07-2009
4.	Declaration of Final select list (Should be double the number of vacan notified)	31-08-2009.
5.	Issue of appointment letter by Govt. for existing vacant posts as on date.	30-09-2009
6.	Last date for joining.	31-10-2009.

The eligible candidates will be duly intimated through their respective Heads of Office."

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N O T I F I C A T I O N

NO. 6745-RG Friday, May 15, 2009

It is notified for general information that 55 posts of District Judges Entry Level will be filled up by Limited Departmental Examination as per time schedule mentioned in the decision of Malik Mazhar Sultan's Case. In terms of the Judgment in Brij Mohan Lal's Case, the Additional District Judges appointed on ad hoc promotion from the rank of Civil Judge (Sr. Div) will belong to the cadre of Civil Judge (Sr. Div) till their appointment is regularized in the permanent cadre and in that case their seniority will counted from the date of ad hoc promotion. Accordingly, in connection with filling up of 26 vacant posts from the 50% cadre, all the Judicial Officers now posted on ad hoc promotion as Additional District Judge in the Fast Track Court will come up under the zone of consideration in due course. Moreover, since all the 150 Fast Track Court Judges belong to the permanent cadre of Civil Judge (Sr. Div), they may apply for appearing in the Limited Departmental Examination for 2009 along with those who have already applied for.

Accordingly, the willing Judicial Officers having eligibility criteria may apply along with 10 copies of their judgment five Civil and five Criminal delivered in May and June, 2008 by 30.05.2009.

This notification shall abide by the judgments/orders passed in Malik Mazhar Sultan's case (Civil Appeal no. 1867 of 2006) and W.P.(C) 46 of 2007 now pending before the Hon'ble Supreme Court."

15. Vide notification no.7919-RG dated June 30, 2009, the Registrar General notified for general information that 78 (seventy eight) judicial officers in the cadre of Civil Judge (Senior Division) named therein, presently posted in the FTCs on ad-hoc basis, are *"called for viva-voce test for promotion in the cadre of District Judge"* and that admit cards in favour of such eligible officers had been issued. All the officers figuring in such notification were directed to immediately send 10 (ten) copies of their judgments in triplicate, in contested matters, delivered in May and June, 2008. The dates of interview for the respective candidates were also informed thereby. Names of all the petitioners figured in such notification.

16. There was an immediate reaction to Notification Nos. 6745-RG and 7919-RG from only the petitioner no.15. Referring to the former notification dated May 15, 2009, the

petitioner no.15 addressed a representation dated May 18, 2009 to the Registrar General. The same is reproduced in its entirety for facility of appreciation:

" Ref : Hon'ble High Court's Notification No.6745-RG dated 15.5.2009

With profound respect I apprise the Hon'ble Court that presently I man the Fast Track Court of Additional District & Sessions Judge, Jhargram, Paschim Medinipore. From the Notification No. 6745-RG dated 15.05.09 as above I came to learn for the first time from the Hon'ble Court that being a Judge of Fast Track Court I belong to the permanent cadre of Civil Judge (Senior Division). Such Notification is contrary to the Notification No. 4954 A dated 25.7.2003 of the Hon'ble Court by which I, among other Judicial Officers, was promoted on regular basis to West Bengal Higher Judicial Service i.e. the District Judges entry level from the cadre of Civil Judge (Senior Division). By the Notification dated 25.7.2003 the Hon'ble Court was pleased to hold that thirty Judicial Officers including myself were found suitable for empanelment in the rank of West Bengal Higher Judicial Service and accordingly we were promoted to West Bengal Higher Judicial Service. Needless to mention that such recommendation of the Hon'ble Court to promote us to West Bengal Higher Judicial Services under Article 233 of the constitutions shall be deemed to have been accepted by the government. There is no word in the Notification that thirty Judicial Officers including myself were promoted as Additional District & Sessions Judges on ad hoc basis for the Fast Tract Courts in view of the decision of Brij Mohan Lal's Case. I enclosed herewith a Xerox copy of Notification No. 4954 A dated 25.7.2003 for perusal of the Hon'ble Court.

Among the Judicial Officers empaneled in the rank of W.B.H.J.S. vide Notification dated 25.7.2003 Shri Debi Prasad Mallick, Tapan Kumar Das-I, Bankim Chandra Chattapadhaya, Partha Sarathi Roy, Suubhabrata Chowdhury, Animesh Chakraborty and some others were posted as Additional District & Sessions Judges of permanent cadre of W.B.H.J.S. owing to dearth of regular courts of Additional District & Sessions Judges the rest Judicial Officers including myself were placed in charge of Fast Track Courts created under G.O. No. 7492(20)-J……..dated 1.12.03 on adhoc basis. I enclosed herewith a Xerox copy of Notification No. 8214 A dated 16.12.2003 of the Hon'ble Court as regards placing me in charge of Fast Track Court at Baruipore, South 24 Parganas created on adhoc basis. This Notification does not mean that I was promoted to W.B.H.J.S. on adhoc basis.

All those indicate that the Hon'ble Court never contemplated that the promotion of said thirty Judicial Officers to W.B.H.J.S. vide Notification No. 4954 A dated 25.7.2003 was on adhoc basis for Fast Track Courts. Such promotion was made on merit-cum-seniority basis like the promotion of Judicial Officers to W.B.H.J.S. who are now manning the courts of District Judges of permanent cadre.

I was promoted to W.B.H.J.S. on regular basis long before the West Bengal Judicial (Conditions of Service) Rules, 2004 came into force. The valuable right accrued to me as a member of W.B.H.J.S., now District Judges entry level, gets prejudiced by the Notification as referred.

Humbly I submit that I have been discharging duties as Additional District & Sessions Judge with efficiency, devotion and reputation since 22.12.2003. According to Hon'ble Court's recent Notification No. 5632-R(JS) dated 31.3.09 at present there are 131 vacancies of the permanent cadre of District Judge entry level. In view of the principles enunciated by the Hon'ble Apex Court in recent decision reported in B. S. Mathur-Vs-Union of India, AIR 2009 S.C. 137 and Smt. Madhumita Das's Case I deserve to be a member of permanent cadre of District Judges.

So, I appeal to the Hon'ble Court to place me in the permanent cadre of District Judges modifying Notification No. 6745-RG dated 15.5.09 at an early date and oblige."

17. The petitioner no.15 is said to have addressed another representation dated July 2, 2009 to the Registrar General, consequent upon perusal of the notification dated June 30, 2009, whereby he forwarded copies of judgments delivered by him for consideration by the High Court *"without prejudice to my right as submitted in my said representation".* This representation is neither on record nor is there any evidence to prove its dispatch to/service on the addressee.

18. At pages 74 – 76 of the writ petition is available copy of an undated unsigned representation addressed to the Registrar General by 10 (ten) judicial officers, of whom 9 (nine) are petitioners herein. Having regard to the contents of such representation, it is clear that the same was submitted, if at all, after perusal of Notification No.7919-RG dated June 30, 2009 referred to above. A case was sought to be set up that only on publication of such notification the representationists came to learn that they had been categorized at par with other officers of different batches who were promoted on adhoc basis and that they (the representationists) had been directed to undergo viva-voce test along with them (other officers). The

representationists prayed for regularization in the cadre of District Judge by citing the cases of the said 4 (four) judicial officers [promoted to the W.B.H.J.S. along with them vide resolution of the Full Court dated December 17, 2002 and as notified to the Government by the Registrar (Judicial Service) by his letter dated December 23, 2002] who were absorbed/regularized pursuant to the resolution of the Administrative Committee dated July 10 and 11, 2006 without being made to undergo any further screening and viva-voce test. In the penultimate paragraph of such representation, it was observed by the representationists that they were *"appearing in the viva-voce test without prejudice to our position, which we have already earned"*.

19. There is another representation at pages 77 – 78 of the writ petition which, however, does not disclose the identity of the representationist(s).

20. Notwithstanding reservations, if any, that they had in regard to the course of action taken by the High Court administration, each of the petitioners participated in the selection process initiated vide Notification No.5954-RG dated April 15, 2009 by forwarding their judgments for examination by the Selection Committee constituted by the High Court as per requirement of Notification No. 7919-RG dated June 30, 2009, and took the viva-voce test by appearing at the interview. The Registrar General by Notification No. 9900-RG dated September 1, 2009 published the result in respect of candidates who were called for viva voce test for normal promotion to the cadre of District Judge (Entry Level) in July, 2009. It appears therefrom that 52 (fifty two) judicial officers, upon due consideration of their Annual Confidential Reports and judgments as well as performances at the viva-voce test, were placed in order of merit. It is not in dispute that thereafter they were posted as regular Additional

District & Sessions Judges in two different phases. It is also not in dispute that 16 (sixteen) officers had been recruited in the cadre of District Judge (Entry Level) from the Bar and 5 (five) officers were promoted to the cadre of District Judge (Entry Level) from the channel of limited competitive examination (paragraph 23 of the writ petition).

21. In the backdrop of the aforesaid developments, the petitioners claim to have come across a *"gradation list prepared by the High Court in respect of officers appointed/posted in the cadre of District Judge (Entry Level) by way of 3 channel recruitment process for the year 2009, 2010 and so on"*. To their utter shock and dismay, the petitioners noticed that judicial officers promoted in the cadre of District Judge and posted in the FTCs since March 2003 – January, 2004 had been shown as junior to the officers who had been promoted through limited competitive examination as well as the process of direct recruitment from the Bar in pursuance of the process initiated in May, 2009. In the process, the service rendered by the petitioners upon their promotion to the W.B.H.J.S. by the High Court vide notifications dated December 23, 2002, July 25, 2003 and December 24, 2003 had been completely ignored. The petitioners perceived a raw deal being given to them because judicial officers who were never borne in the cadre of District Judge at the time of the petitioners' promotion to the W.B.H.J.S. in 2003/2004 were allowed to steal a march and placed over and above them in the gradation list by the High Court.

22. Feeling aggrieved thereby, the petitioners by this writ petition prayed, *inter alia*, the following relief:

> "a) A writ of and/or in the nature of Certiorari commanding the respondents and each one of them their men, agents, assigns and subordinates to certify and transmit to this Hon'ble Court the records of the case including the Gradation List, being annexure 'P-11' herein, so that conscionable justice may be administered by quashing the same;"

23. After several preliminary hearings, a coordinate Bench admitted the writ petition on April 26, 2012. While calling for affidavits, prayer for interim relief was refused but it was made clear that if any is step taken during the pendency of the writ petition the same shall abide by its result.

24. The High Court administration contested the writ petition by filing an affidavit-in-opposition as well as an additional affidavit. It is the version of the High Court administration that the petitioners were promoted on adhoc basis to the W.B.H.J.S. to man the FTCs that had been created pursuant to the policy of the Central Government to clear the backlog of long pending cases, mainly sessions cases. That the promotions were granted on adhoc basis had been clearly mentioned in the first posting orders issued to the petitioners and that each of the petitioners' first posting upon adhoc promotion to the W.B.H.J.S. was as a judge of a Fast Track Court. It was also the version of the administration that immediately prior to being tested pursuant to the notifications dated April 15, 2009 and June 30, 2009, all the petitioners were Presiding Officers of FTCs and that no illegality had been committed in preparing the gradation list in the manner required by the Rules.

25. At the first hearing on July 25, 2016 before this Bench, Mr. Sengupta submitted that during the pendency of the writ petition the Registrar (Judicial Service) by his letter dated April 4, 2013 had invited views/objections in respect of the impugned gradation list within 15 (fifteen) days and that the petitioners are desirous of submitting their

views/objections. He prayed for disposal of the writ petition with liberty to the petitioners to submit the same in terms of such invitation.

26. The writ petition on that date, after 4 (four) years of its pendency on the file of this Court, was ripe for hearing upon exchange of affidavits. The petitioners, it was felt, could have obtained an order of disposal of the writ petition in 2013 itself with liberty to exercise their right of offering their views/objections in respect of the impugned gradation list. Granting liberty to the petitioners, as prayed for by Mr. Sengupta, would have been the easiest way of disposal of the writ petition; but, at the same time, it was perceived by the Bench that treading such easy route would amount to abdication of its duty to adjudicate, apart from sowing the seed for generating further litigation. Without, however, recording any formal order on such prayer, the Bench requested Mr. Sengupta to proceed with the merits of the writ petition for having a judicial determination instead of adjudication on the administrative side and thereby put the matter at rest.

27. Appearing in support of the writ petition, Mr. Sengupta contended that the petitioners being members of the W.B.J.S. have utmost respect and thorough regard for the decisions taken by the High Court administration but, facing the prospect of being made to render service by discharging judicial duty under officers who are juniors, were driven to a corner and had no other option open to them but to seek redress from the court of writ once the High Court administration neglected to protect the interest of the petitioners and the gradation list was improperly drawn up. Referring to the notifications dated December 23, 2002, July 25, 2003 and December 24, 2003, he contended that there was no whisper therein that the petitioners along with others

were being granted promotion to the W.B.H.J.S. on adhoc basis; as such, it is incorrect to proceed on the premise that the petitioners were adhoc promotees. Inviting the attention of the Bench to the detailed particulars of postings of the petitioners prepared by the High Court administration and placed by Mr. Kar for consideration of the Bench, Mr. Sengupta contended that some of the petitioners having been posted in the courts of Additional District and Sessions Judges to discharge judicial duties, which were not FTCs, it is clear that the High Court administration treated the petitioners as regular promotees and it was not open to such administration, after extracting service from the petitioners as regular promotees, to brand them as adhoc promotees in 2009. It was his categorical contention that postings given to the petitioners as judges of the FTCs do not take away their entitlement to be regarded as members of the W.B.H.J.S., upon their promotion to the W.B.H.J.S. by virtue of the Full Court resolutions. In this connection, Mr. Sengupta contended that some of the petitioners between 2003 and 2009 had even been assigned the duties to function as judges of Special Courts under specific enactments, which ordained that no one shall be qualified for appointment as a judge of a Special Court unless he was, immediately before such appointment, an Additional District & Sessions Judge. It was argued that if at all the petitioners were adhoc promotees, they could not have been assigned duty to man the special courts. Mr. Sengupta was also heard to submit that since there was no prohibition to appoint regular promotees to the W.B.H.J.S. from functioning as judges of the FTCs, the petitioners had formed an impression, and legitimately so, that despite being posted as judges of the FTCs, their promotions to the W.B.H.J.S. were regular and not on

adhoc basis. Referring to the decision reported in (2002) 5 SCC 1 (supra), it was urged that the Supreme Court itself was of the view that in case a judicial officer is promoted to higher grade in the parent cadre during his tenure in the FTCs, the service rendered by him in such courts will be deemed to be service in such grade; and, as such, service rendered in the FTCs has always been reckoned for the purpose of counting seniority in the higher grade. Certain provisions of the Rules were further referred to in support of the contention that the petitioners were entitled to claim seniority from the dates they served as judges of the FTCs. It was also contended that until publication of the impugned gradation list, the petitioners had no reason to believe that the administration had not accepted their representations seeking seniority over and above the direct recruits from the Bar and those who qualified in the limited competitive examination. While concluding his submission on the first point, Mr. Sengupta reiterated that once an officer is promoted on regular basis, such promotion cannot subsequently be regarded as a promotion on adhoc basis.

28. It was next contended by Mr. Sengupta that the petitioners and the said 4 (four) judicial officers had been selected for promotion to the W.B.H.J.S. by the High Court administration by a common process and that the said 4(four) officers having been conferred the benefit of absorption/regularization in the W.B.H.J.S. on the date they assumed charge of the FTCs where they had been first posted without being subject to any screening or suitability test, there was no apparent reason to subject the petitioners to hostile discrimination and to require them participate in a further process of promotion to the W.B.H.J.S. In other words, different standards could not

have been applied in regard to judicial officers placed on similar footing. Accordingly, he prayed for parity of treatment.

29. An alternative submission was advanced by Mr. Sengupta referring to Notification No.6745-RG dated May 19, 2009 issued by the Registrar General. According to him, such notification made a clear representation that judicial officers appointed on adhoc basis from the rank of Civil Judge (Senior Division) as Additional District Judges in terms of the decision in (2002) 5 SCC 1 (supra) would belong to the cadre of Civil Judge (Senior Division) till their appointment is regularized in the permanent cadre and in that case their seniority will be counted from the date of adhoc promotion. Once the petitioners had been found fit for promotion to the cadre of District Judge pursuant to their participation in the process of recruitment that was initiated and conducted in the year 2009, they were entitled to their seniority being counted from the respective dates of adhoc promotion to the W.B.H.J.S. Anticipating a submission from the High Court administration that the said notification dated May 15, 2009 contains a representation which should not have been made, Mr. Sengupta relied on the decision reported in 1972 SLR 44 (State of Assam v. Raghava Rajgopalachari) for the proposition that the respondent to a writ petition cannot be allowed to attack its own order as a respondent.

30. Insofar as participation of the petitioners in the process of 2009 for promotion by selection is concerned, Mr. Sengupta contended that such participation was without prejudice to their rights and contentions as expressed in the representations forming part of Annexure P-12 to the writ petition.

31. Responding to a query of the Bench as to whether the undated unsigned representation of 10 (ten) judicial officers referred to above was at all received by the office of the Registrar General, it was submitted by referring to the affidavit-in-opposition of the High Court administration that there is no specific pleading that the office did not receive the same and in view of the doctrine of non-traverse, the Bench ought to proceed on the premise that such representation had in fact reached the office of the Registrar General.

32. Confronted next with the observation of the Bench that the first posting orders of some of the petitioners annexed to the supplementary affidavit clearly reveal that their promotions were on adhoc basis, Mr. Sengupta responded by submitting that it was really the creation of the FTCs that was on adhoc basis and not the petitioners' promotion.

33. Mr. Sengupta concluded by submitting that the High Court administration ought to be directed to extend to the petitioners their rightful dues by redrawing the seniority list and placing the petitioners above the direct recruits from the Bar and those judicial officers who succeeded in the limited competitive examination in the year 2009.

34. Per contra, Mr. Kar urged that absolutely no case for interference had been set up by the petitioners. According to him, the scheme did not envisage enlargement of the cadre of District Judge by increasing the number of posts at the entry level. It was contended that a careful reading of the decision of the Supreme Court in (2002) 5 SCC 1 (supra) would reveal that the existing strength of District Judges was found to be inadequate to cope up with the burden of long pending criminal cases and with a

view to decide as many cases as possible, the scheme was conceived for dealing with such cases by the FTCs. Although initially the FTCs were to exist for 5 (five) years, by virtue of orders passed by the Supreme Court the scheme was extended even beyond the initial five-year period. The so-called promotion of the petitioners in 2003/2004 to the W.B.H.J.S. was really a measure to facilitate their postings in the FTCs and not on sanctioned permanent vacant posts of District Judge. By the very nature of appointment on promotion that was offered, the same could not have given rise to any right to appointees for claiming seniority in the cadre of District Judge from the dates of their appointments as judges of the FTCs. The first premise on which the petitioners have proceeded, i.e. that they were promoted to the W.B.H.J.S. on regular basis, according to Mr. Kar, is misconceived and each one of the petitioners having been posted as judges of the FTCs, no additional right accrued in their favour.

35. Referring to the decision of the Full Court to accept the resolution of the Administrative Committee adopted in its meetings held on July 10 and 11, 2006, the justification that has been provided in support of absorption/regularization of the 64 (sixty four) judicial officers who had been promoted to the W.B.H.J.S. on adhoc basis is that 67 (sixty seven) vacancies were available as on September 30, 2014, i.e. the last day before the Rules became effective and those considered suitable were consequently absorbed/regularized. It was submitted that such promotion was granted based on the policy of seniority- cum-merit. According to Mr. Kar, the classification that was made by the High Court administration is based on an intelligible differentia and the petitioners can claim no right based on

absorption/regularization of the 4 (four) judicial officers (whose names figured at Sl. Nos. 61, 62, 63 and 64 of the approved list) alleging discrimination.

36. Mr. Kar admitted that there have been occasions when the decision of the Supreme Court reported in (2002) 5 SCC 1 (supra) was misread by the High Court administration and that certain gradation lists were prepared in 2001 and 2006 ~ disclosed in the additional affidavit because the Bench had required the same to be disclosed ~ may not have been proper. It was pointed out that the gradation list of 2006 contained names of 279 (two hundred seventy nine) judicial officers in the rank of District Judge, which is erroneous because 279 (two hundred seventy nine) posts had never been created. However, he hastened to add that such lists were never circulated to the members of the W.B.H.J.S./W.B.J.S. and, therefore, not acted upon.

37. Answering the contention of Mr. Sengupta that a respondent cannot in a judicial proceeding challenge its own order and contend that the notification dated May 15, 2009 is bad, Mr. Kar argued that reference to such notification by the petitioners is entirely misplaced. They had never responded to such notification and consequently did not participate in the limited competitive examination but had elected to participate in the recruitment process set in motion by the notification dated April 19, 2009. Question of the petitioners being entitled to benefits flowing from the representation that was made by the notification dated May 15, 2009, therefore, does not and cannot arise.

38. It was next contended that there being no evidence proving service of the so-called representations allegedly made by the petitioners on the Registrar General and the petitioners having participated in the process of promotion in 2009 without demur,

took a chance of selection and were ultimately successful in their pursuit, but being well and truly aware of the fact that they were being considered for promotion to the W.B.J.S. (entry level of District Judge) from the cadre of Civil Judge (Senior Division), they cannot turn around at this distant point of time and claim their seniority to be counted from the dates of first posting as members of the W.B.H.J.S. in the FTCs. According to him, the High Court administration is duty-bound to faithfully implement the directions of the Supreme Court in its decision reported in (2002) 5 SCC 1 (supra) and the decision in Raghava Rajgopalachari (supra), on facts and in the circumstances, has no manner of application.

39. Mr. Kar further placed in extenso the decision of the Supreme Court reported in (2012) 6 SCC 502 (supra) to contend that the petitioners not having any right to post, cannot claim seniority from the respective dates of their postings as judges of the FTCs.

40. Mr. Kar also relied on an unreported Division Bench decision of this Court dated December 22, 2011 in MAT No. 846 of 2009 (Shri Tapan Kumar Das – II & ors. v. The High Court at Calcutta & ors.) to contend that the petitioners are not entitled in law to claim seniority as members of the W.B.H.J.S. from the dates they started discharging duty as judges of the FTCs.

41. Mr. Kar, accordingly, prayed for dismissal of the writ petition.

42. Mr. Bikash Ranjan Bhattacharya, learned senior advocate appearing for the added respondents (judicial officers appointed as District Judge by promotion on the basis of merit through limited competitive examination) contended that the writ petition, in its present frame, ought to be held not maintainable. It was contended by him that

the petitioners not having prayed for any declaration that their seniority should be counted from 2003/2004, when they were appointed as judges of the FTCs, setting aside of the gradation list impugned in this writ petition with a direction to re-draw it, without indication of the manner in which it has to be re-drawn, would not serve any effective purpose.

43. It was next urged that with the introduction of the Rules with effect from October 1, 2004, the High Court administration has to take every step in accordance therewith and any action in deviation thereof would be susceptible to judicial interdiction. According to Mr. Bhattacharya, the first chapter of the present dispute stood closed with the filling up of vacancies in the cadre of District Judge that had occurred prior to October 1, 2004 by reason of implementation of the resolution of the Administrative Committee dated July 10 and 11, 2016, since approved by the Full Court. By not challenging such decision and taking a chance to participate in the process of promotion by selection initiated in 2009, the petitioners had forfeited their right, if any, to seniority to be counted from 2003/2004.

44. That apart, it was argued that the petitioners elected not to face the limited competitive examination conducted in 2009 but elected to avail the channel of normal promotion, which envisaged appearance at a suitability test and consideration of ACRs and judgments in contested matters delivered by the officers. It was reiterated that the petitioners while not participating in the process pursuant to the notification dated May 15, 2009, which required them to appear at a written examination, are not entitled to claim the beneficial effect of such notification.

45. Since according to Mr. Bhattacharya the petitioners were not entitled to maintain the writ petition itself, he prayed for its dismissal.

46. Mr. De, learned advocate representing the State Government submitted that the gradation list prepared by the High Court administration in 2011 is under challenge in the writ petition and since there is no challenge to any action of the State Government, he would adopt the submissions advanced by Mr. Kar and Mr. Bhattacharya and prayed for dismissal of the writ petition.

47. In reply, Mr. Majumder, learned advocate for the petitioners urged that the rights of the petitioners were protected by the Rules and, therefore, there was no question of challenging the same. He reiterated that the petitioners were entitled to claim seniority over the direct recruits as well as the officers who succeeded in the limited competitive examination held in 2009 owing to the petitioners' promotion to the W.B.H.J.S. in 2003/2004 and continuous officiation, as provided in rule 31 of the Rules. He, thus, appealed to the Bench to protect the interest of the petitioners.

48. The parties have been heard at length and the decisions cited at the Bar duly considered.

49. Having regard to the factual narrative leading to presentation of the writ petition vis-à-vis the contentions that have been raised, broadly the following points emerge for determination:

(i) Whether the writ petition is maintainable because appropriate relief has not been prayed?

(ii) Whether the promotions of the petitioners to the W.B.H.J.S. in 2003/2004 were adhoc or regular?

(iii) Whether the petitioners have a legitimate claim for counting of seniority in the cadre of District Judge (Entry Level) from the dates they took charge as judges of the FTCs?

(iv) Whether the petitioners can claim parity with the said 4 (four) judicial officers?

(v) Whether the petitioners can legitimately claim any benefit flowing from the representation contained in Notification No. 6745-RG dated May 15, 2009?

(vi) Whether the petitioners, by reason of their conduct, can at all raise any grievance at this distant point of time with regard to counting of their seniority from the dates they have been serving as judges of the FTCs?

(vii) To what relief, if any, are the petitioners entitled?

Point (i)

50. It is true, as contended by Mr. Bhattacharya, that the petitioners have not prayed for any declaratory relief that their seniority in the cadre of District Judge (Entry Level) ought to be counted from the respective dates of assumption of charge as judges of the FTCs; nevertheless, this Bench is of the view that the writ petition ought not to be dismissed on such technical ground. After all, the petitioners while asking for Certiorari to set aside the gradation list, have untiringly sought to demonstrate that if at all they are not entitled to counting of seniority from the respective dates they have been judges of the FTCs, they should have been absorbed/regularized in the same manner as the said 4 (four) judicial officers. Counting seniority from 2003/2004 or absorption/regularization forms the bedrock of the petitioners' claim and since as a

court of writ this Bench has power to mould the relief if facts and circumstances of a given case so demand, the objection of Mr. Bhattacharya is overruled and this point is answered in favour of the petitioners.

Points (ii) and (iii)

51. These points being inter-related are taken up for consideration together.

52. Much has been argued by Mr. Sengupta to impress the Bench that the petitioners' promotion to the W.B.H.J.S. could not have been regarded as adhoc in the absence of any whisper in that behalf in the resolutions of the Administrative Committee, since approved by the Full Court, and any indication in the letters issued by the Registrar (Judicial Service) requesting the Government to appoint the concerned judicial officers as Additional District & Sessions Judges.

53. There cannot be any doubt that the resolutions and the request letters could have been couched in better and clearer language but nothing really turns on it.

54. A hierarchy of posts comprising higher and lower posts is invariably found in public as well as private service. To put it very plainly, promotion in the context of service law is the vertical advancement of an officer/employee from a lower post to the immediate higher post. In service law parlance, the lower post is often referred to as the feeder post. The other concepts regarding promotion need not be considered in any great detail here. Suffice it to note that promotion from the lower post to the higher post would presuppose a vacancy in the higher post where the incumbent sought to be promoted can be accommodated. In the absence of any vacancy in a higher post, it is difficult to comprehend regular promotion from a lower post unless of course a new post at the higher level is created for accommodating the incumbent.

55. It is a well-known concept that apart from regular promotion, exigencies of service occasioned by administrative necessity may require a promotion to be granted on an officiating basis for discharge of duties normally attached to higher posts in the absence of officially sanctioned posts. A promotion given to an officer/employee on officiating basis does not normally confer upon him a right to hold the post and unless regularized, he is liable to be reverted to the substantive post from which he was given officiating promotion, at the end of such officiation. Once regularized, the service rendered during the officiating period may be reckoned for determination of seniority in the promoted post subject to the qualification that the initial officiating promotion was against a sanctioned post. Service rendered on promotion on officiating basis outside the cadre is not reckoned for determining seniority. The characteristics of adhoc promotions are substantially the same as officiating promotions. Promotions are given on adhoc basis, *inter alia*, due to administrative exigencies or to meet emergent or unusual situations. If an adhoc promotee is subsequently not regularized, he does not have any substantive right as such promotee and the entire length of service as an adhoc promotee cannot be counted for seniority.

56. The Supreme Court, bearing these well-recognized principles in mind, must have observed in the decision reported in (2002) 5 SCC 1 (supra) that the promotions to the judges of the FTCs would be adhoc, since the scheme did not envisage creation of posts.

57. In the present case, it is seen that the aforesaid decision was delivered on May 6, 2002. What did the Supreme Court in paragraph 10 of such decision, more

particularly by directions 1 and 14 therein, seek to lay down for guidance by the High Courts and the State Governments? It is clear that in the matter of manning the FTCs, first preference was to be given to eligible judicial officers by adhoc promotions and while so promoting, the procedures in force for promotion to such posts in Superior/Higher Judicial Service were required to be followed. Since the scheme contemplated creation of FTCs for early disposal of long pending sessions cases, it is only the Sessions Judges who could, according to the provisions of the Criminal Procedure Code, deal with the same. Obviously for manning the FTCs, judicial officers in the cadre of Civil Judge (Senior Division) and Sub-divisional Judicial Magistrate/Chief Judicial Magistrate, being the feeder posts, were required to be promoted to the W.B.H.J.S. to be eligible to deal with sessions cases. But in terms of direction no.1 read with direction no.14, the promotions were required to be effected on adhoc basis without conferring any right on the judicial officers in service for claiming any regular promotion on the basis of his/her appointment on adhoc basis under the scheme. Directions 1 and 14 in paragraph 10 of the decision, thus, in unmistakable terms made it clear that the judicial officers of the subordinate judiciary would enjoy adhoc promotions only without any right being conferred based on such appointment on adhoc basis under the scheme for claiming regular promotion.

58. The petitioners had not showed in the writ petition that they were promoted in 2003/2004 to vacant sanctioned posts of District Judge. The same had also not been shown by reference to evidence when hearing of the writ petition commenced.

59. By an order of this Bench dated July 25, 2016, the petitioners were required to bring on record their first posting orders on promotion to the W.B.H.J.S. in 2003/2004. The supplementary affidavit filed in compliance with such order contains first posting orders of some of the petitioners, viz. the petitioners 1, 2, 5, 6, 9, 12, 13, 14, 15, 16 and 17. It appears on perusal thereof that each of such petitioners was posted as a judge of a Fast Track Court on adhoc basis on promotion. The first posting orders issued to the petitioners appointing them as judges of the FTCs, to the extent available, also do not express anything contrary to and/or inconsistent with what have been said in directions 1 and 14 of paragraph 10. The petitioners having been appointed as judges of the FTCs long after May 6, 2002, it would not be unreasonable to assume that as responsible judicial officers they had read the said decision as well as their first posting orders. Apparently, there could be no confusion at all. Even if there was any confusion as to their status arising out of user of the expressions 'promotion' and 'adhoc basis' in their first posting orders, they ought to have immediately raised an issue and obtained clarification. That, they did not. They accepted the position all throughout till the 3 (three) notifications between March 31, 2009 and May 15, 2009, extracted supra, were issued. That apart, in paragraph 8 of their affidavit-in-reply the petitioners admitted that they were selected for appointment to the posts of Additional District and Sessions Judges for the FTCs. Having been selected as such, and the orders of posting having in clear terms expressed the promotions to be on adhoc basis, can the petitioners legitimately claim on the face of the decision reported in (2002) 5 SCC 1 (supra) that they are regular

promotees and not adhoc promotees? The answer cannot possibly be in the affirmative.

60. The argument that 'adhoc basis' in the first posting orders referred to creation of the FTCs, has been raised to be rejected. The scheme was initially operative for a fixed tenure, and has thereafter been extended from time to time on the orders of the Supreme Court. Given the situation, it was not the creation of the FTCs but the promotions of the petitioners that were on 'adhoc basis'. Assuming that the petitioners are correct in contending that creation of the FTCs was adhoc, there cannot be any valid reason for holding in their favour that their promotions were not adhoc. Not only did the Supreme Court hold that the promotions would be adhoc, the letter of the Registrar (Judicial Service) dated December 24, 2002 made it clear that, *inter alia*, the petitioners 1 – 7 were found *"fit to officiate"* in the W.B.H.J.S. What transpired was an officiating promotion and not a regular promotion. The mere circumstance that the words *"fit to officiate"* do not appear in the subsequent letters dated July 25, 2003 and December 24, 2003, hardly makes any difference. It has also not been contended by the petitioners that *inter se*, the petitioners 8 – 22 should be regarded as senior to the petitioners 1 – 7 because of absence of such words in the letters dated July 25, 2002 and December 24, 2002.

61. Mr. Sengupta's argument about the impression that the petitioners had formed, does not cut any ice. Not a single instance of a regularly promoted member of the W.B.H.J.S. being assigned the duty of manning a Fast Track Court, has been brought to the notice of this Bench. It is, accordingly, held that the petitioners did not form the impression rationally.

62. Also, the circumstance of some of the petitioners being put in charge of Special Courts does not enure to their benefit. It could, at best, be termed as an aberration of the High Court administration in asking some of the petitioners to discharge duty as regular Additional District & Sessions Judges although they may not have been eligible therefor. The judgments delivered by such judicial officers would be saved by application of the defacto doctrine but such assignment by itself would not change the situation brought about by introduction of the scheme and adhoc promotions granted to judicial officers to man the FTCs.

63. What would require consideration next is the observation in direction no.14 by the Supreme Court relating to treatment of the service rendered by the judges of the FTCs. The petitioners, labouring under a misconception of law and facts, have raised the plea that service as judges of the FTCs would count towards seniority. A grave misreading of the second and the third sentences of direction no.14 seems to be the real reason for their own undoing. To the mind of this Bench, what the Supreme Court intended was that the adhoc promotions to the higher judicial service would not alter the parent cadre of the officers who are given adhoc promotions to function as judges of the FTCs : the service rendered as judges of the FTCs would be deemed to be service rendered in the parent cadre, meaning thereby the feeder cadre i.e. Civil Judge (Senior Division) and Sub-divisional Judicial Magistrate/Chief Judicial Magistrate, as the case may be, and that in case of promotion to a higher grade in the parent cadre during the tenure in the FTCs, the service rendered in the FTCs would be deemed to be service in such higher grade. Since rules governing the conditions of service of judicial officers prior to promulgation of the Rules have not been placed, it

is difficult to proceed meaningfully for demarcating the area of operational effect of the observations made by the Court vide the last two sentences of direction 14. However, it is clear from rule 7 of the Rules that it speaks of gradation of Civil Judge (Senior Division) at intermediary level into (a) Senior Civil Judge, (b) Upper Senior Judge, and (c) Superior Senior Judge. The relevant observations would have a bearing and can meaningfully be given effect in view of the Rules. Should a judicial officer in the grade of Upper Senior Judge be granted adhoc promotion for presiding over a Fast Track Court and while rendering service as a Fast Track Court judge progresses to the grade of Superior Senior Judge, his service in the Fast Track Court would be deemed to be service in the grade of Superior Senior Judge. However, the petitioners have faltered in proper reading of what the Supreme Court meant to say and have raised a frivolous claim that their service as judges of the FTCs should be regarded as service rendered in the W.B.H.J.S./cadre of District Judge (Entry Level).

64. Reliance placed by the petitioners on rules 25(2) and 31 of the Rules would not bring about any change in their fortunes owing to the clear direction given by the Supreme Court in its decision reported in (2002) 5 SCC 1 (supra), that such adhoc promotions would not confer any right on the promotees.

65. In view of the clear directions/observations of the Supreme Court in the decisions reported in (2002) 5 SCC 1 (supra) and (2012) 6 SCC 502 (supra) as well as the decision in Tapan Kumar Das – II (supra), and the relevant stipulations in the first posting orders given to the petitioners, the conclusion is inescapable that the promotions of the petitioners were adhoc and not regular, and that the petitioners

cannot claim that their seniority in the cadre of District Judge (Entry Level) ought to be counted from the respective dates they took over as judges of the FTCs.

66. These points are accordingly answered.

Point (iv)

67. Yet again, the petitioners must fail in their contention. From what Mr. Kar has argued, an intelligible differentia is indeed discernible that led to grouping of the said 4 (four) judicial officers with other officers for absorption/regularization in the W.B.H.J.S. and leaving out of the petitioners 1 – 7 from such group. The 67 (sixty seven) vacancies that arose in the W.B.H.J.S. till September 30, 2004 were filled up by granting regular promotion on the basis of seniority-cum-merit in terms of the resolution of the Administrative Committee dated July 10 and 11, 2006, since approved by the Full Court. Noticeably, the words used by the Administrative Committee are *"spirit of the Judgment of the Hon'ble Supreme Court in Brij Mohan Lal's case"* and not in terms of any direction or observation given/made in such case. A line of judicial decisions permit filling up of a vacancy that has arisen prior to amendment of rules in accordance with the rules that existed prior to amendment. It seems that the Administrative Committee proceeded in such direction and while holding that no illegality was committed, it is further held that the petitioners' claim for parity lacks substance.

Point (v)

68. Despite having the opportunity to participate in the limited competitive examination, the petitioners elected not to respond to Notification No. 6745-RG dated May 15, 2009; instead, they responded to Notification No.5954-RG dated April 19, 2009,

submitted copies of their judgments in contested matters, appeared at the interview and on being declared successful, joined as regular Additional District & Sessions Judges.

69. Queerly, in paragraph 21 of the writ petition, referring to the notification dated May 15, 2009, it has been pleaded as follows:

> "Your petitioners state that as a result of such notification, most of the Officers holding the Fast Track Courts at that time did not offer their candidature for appointment as District Judge (Entry Level) through limited competitive examination."

70. The reason as to why the petitioners did not take the limited competitive examination is not too clear. In any event, even without deciding as to whether the Registrar General was justified in making the representation to the judicial officers vide notification dated May 15, 2009 that service in the FTCs would be counted towards seniority, it stands to reason that the petitioners voluntarily not having taken the said examination, there is no question of the administration being bound by the representation that had been made vide the notification dated May 15, 2009 and the petitioners can by no stretch of imagination feel aggrieved if the said representation was not honoured. The plea is one of desperation and hence, warrants outright rejection.

Point (vi)

71. Determination of this point must start with quoting of a passage from the decision of the Supreme Court reported in (1988) 4 SCC 534 (Bharat Singh vs. State of Haryana). In paragraph 13, the Supreme Court succinctly laid down how a point of law that is required to be substantiated by facts has to be proved by observing thus:

> "13. *****In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the Code of Civil Procedure and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable.*****"

72. No pleading in the writ petition that the petitioners participated in the process of promotion by selection in 2009 without prejudice to their rights and contentions to challenge the administrative action of not conferring on them any benefit arising out of service rendered in the FTCs, could be brought to the notice of this Bench by Mr. Sengupta. In the absence of the necessary pleading, it is clear that the petitioners participated in such process without demur.

73. Reference to the representation of the petitioner no.15 and the other representations forming part of Annexure P-12 to the writ petition does not also advance the cause of the petitioners. Apart from the first of the 2 (two) representations submitted by the petitioner no.15, there is no evidence proving service of such representations on the addressee. Whether or not the representations were served on the office of the Registrar General is an issue of fact. There is want of evidence that the representations were actually served. The petitioners could have made up the deficiency by at least pleading that the representations were duly served on the Registrar General. There is no such pleading even and viewed in this light, application of the doctrine of non-traverse would not arise.

74. Despite the above position warranting that the representations need to be discarded outright, this Bench proposes not to discard it for reasons that would follow.

75. In none of the representations is a claim set up that the petitioners objected to Schedule IV of the Rules. As on October 1, 2004, the cadre strength of higher judicial officers in the rank of District Judge (Entry Level) was mentioned and that excluded 119 (one hundred nineteen) judges of the FTCs temporarily appointed from Civil Judge (Senior Division). The contents of the particulars of postings of the petitioners produced by Mr. Kar reveals that almost all, except a couple of petitioners, were judges of the FTCs as on October 1, 2004. None of the petitioners questioned Schedule IV at the relevant time when it came into existence or even thereafter till now. If indeed the petitioners were really aggrieved, they ought to have laid a challenge and contend that being part of the cadre of higher judicial officers in the rank of District Judge (Entry Level), the strength ought to have been shown as 304 (185 + 119). There being no objection to Schedule IV, the petitioners are now estopped from contending to the contrary and to claim that they were promoted to the W.B.H.J.S. in 2003/2004.

76. Besides the above, accepting for the sake of argument that the representations were received by the addressee, nothing prevented the petitioners from challenging the administrative action by presenting a writ petition in 2009. The submission made on their behalf that noticing the impugned gradation list they came to learn of non-consideration of their grievance is nothing but a ruse to cover up the laches in not moving Court earlier. There is overwhelming material against the petitioners to suggest that, the writ petition is a clear product of 'after thought'.

77. This point is also answered against the petitioners.

Point (vii)

78. For the foregoing discussions, the petitioners are not entitled to any relief on this writ petition.

CONCLUSION

79. In the result, the writ petition stands dismissed. Considering the fact that the petitioners have raised a thoroughly frivolous claim, they ought to bear costs of this proceeding. However, since the petitioners are judicial officers and the High Court is in the position of *parens patriae*, this Bench refrains from imposing costs.

Urgent photostat certified copy of this judgment and order, if applied, may be furnished to the applicant at an early date.

(DIPANKAR DATTA, J.)