

\$~15

\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

**Date of Decision: 13.03.2019**

+ **W.P.(C) No.9912/2016**

MANMEET SINGH & ORS ..... Petitioners  
Through Mr.Arvind K. Nigam, Sr. Adv. with  
Ms.Jyoti Dutt Sharma, Adv.,  
Mr.Rahul Sharma, Adv., Mr.C.K.  
Bhatt, Adv., Mr.Mehtaab Singh  
Sandhu, Adv. & Mr.Pratisht  
Kaushal, Adv.

Versus

THE DELHI HIGH COURT THROUGH  
REGISTRAR GENERAL ..... Respondent  
Through Mr.Sanjoy Ghose, Adv. with  
Mr.Rhishabh Jetley, Adv. for Delhi  
High Court.  
Mr.Arvind K. Sharma, Adv. for R-3  
& 4.

**CORAM:**  
**HON'BLE MR. JUSTICE VIPIN SANGHI**  
**HON'BLE MS. JUSTICE REKHA PALLI**

**VIPIN SANGHI, J (ORAL)**

1. The present petition was initially preferred by twelve petitioners. However, the same survives only in respect of two of them namely Mr.Manmeet Singh, who is petitioner no.1 and Mr.Vijay Kumar Sharma, who is petitioner no.6 in the Amended Memo of Parties dated 2<sup>nd</sup> November, 2018. Both the petitioners joined the service of respondent no.1 as Junior Judicial Assistant (JJA) on regular basis. The petitioner no.1 was appointed as JJA on 6<sup>th</sup>

October, 2004 and the petitioner no.6 was appointed as JJA on 4<sup>th</sup> March, 2005. The next promotional post is that of a Judicial Assistant (JA). Under the then applicable Recruitment Rules (RRs), the post of JA could be filled by promotion from members of the Establishment of the High Court who were Graduate with five years' service, or from those who were High School/Matric with ten years' service in categories of 21 & 22 of Class – III mentioned in Schedule - 1. Categories 21 & 22 of Class - III mentioned in Schedule 1 are “Lower Division Clerk” (LDC) & “Restorer”. It may be noted that the post of JJA is that of an LDC.

2. It appears that as a large number of vacancies in the post of JA were lying vacant and requisite number of JJAs were not available – who could be promoted as JAs, on account of their not having the requisite experience as prescribed in the RRs. A Committee of three Hon'ble Judges of this Court was appointed to examine the issue, and make its recommendations. The Committee in its meeting held on 25<sup>th</sup> April, 2008, resolved that *“keeping in view the large number of vacancies in the cadre of Judicial Assistant and the fact that sufficient number of officials are not eligible (having not put in requisite service of 5 years) in the feeder category, we recommend that one time relaxation in the Recruitment Rule for Judicial Assistant may be granted by reducing the qualifying service for Graduates from 5 to 3 to three years”*. For those having Matric/Higher Secondary qualification, the Committee recommended the reduction of experience from 10 years to 5 years. However, we are not concerned with the reduction in experience qua Matriculates, as both petitioner

no.1 and petitioner no.6 are graduates. We may observe that the said recommendation was made by the Committee, in the light of the power to relax the requirement of the Rules vested in Hon'ble the Chief Justice under Rule 12 of the Delhi High Court Establishment (Appointment & Conditions of Service) Rules, 1972 which states that *“The Chief Justice may, by order, dispense with or relax the requirements of any rule to such extent with respect to such conditions as he may consider necessary in any particular case”*.

3. Upon consideration of the Committee's recommendations, Hon'ble the Acting Chief Justice on 07.05.2008 passed the following order:-

*“The Committee has recommended a one-time relaxation of the Rules requiring experience of five years for Graduates and ten years for matriculates as Jr. Judicial Assistant/Restorer to facilitate appointments against the available vacancies in the cadre of Judicial Assistants. While there can be no denial of the fact that there is need for immediate filling up of the available vacancies to provide one Judicial Assistants to each court in addition to the staff already provided to it, the proposed relaxation need not be for purposes of making a substantive appointment. The better course would be to relax the requirement of the Rule only to facilitate appointments against the available vacancies on `ad hoc basis` to tide over the current stalemate that has arisen on account of the number of eligible candidates being less than the number of available vacancies. This would mean that as and when the candidates appointed on ad hoc basis complete the requisite experience/length of service stipulated under the Rules, they can be considered by the Committee*

*for a substantive appointment. Needless to say that the experience which the ad hoc appointees may acquire in the higher cadre of Judicial Assistant could be considered as experience as Junior Judicial Assistant/Restorer for purposes of their substantive appointments. I am also satisfied that it is a fit case in which the power vested in the Chief Justice under Rule 12 of the Delhi High Court Establishment (Appointment & Conditions of Service) Rules, 1972 needs to be exercised to the limited extent indicated above.*

*I, accordingly, in exercise of the said power relax the requirement of five years' experience in case of Graduates and ten years' experience in the case of non-Graduates to the extent that the said experience shall for purposes of ad hoc appointments against the post of Judicial Assistant, on one time basis stand reduced from 5 years to 3 years and from 10 years to 5 years respectively."*

(emphasis supplied)

4. Thus, Hon'ble the Acting Chief Justice did not accept the proposal of the Committee aforesaid in its entirety to grant one time relaxation of experience, so as to make regular promotions to the post of JA, and all that was granted by way of relaxation was that JJA/LDC with three years experience could be appointed on ad hoc basis as JA to tide over the current stalemate. In his order, Hon'ble the Acting Chief Justice also emphasised that, as and when the candidates appointed on ad hoc basis complete the requisite experience/length of service stipulated under the Rules, they could be considered by the Committee for substantive appointment

5. On the basis of the aforesaid decision taken by Hon'ble the Acting Chief Justice, the petitioners along with 56 others were

promoted on ad hoc basis as JAs w.e.f. 18.07.2008 vide order dated 22.07.2008. It was specifically stated in the order, that the appointment of officials at serial nos.18 to 58, was purely on ad hoc basis and that it would not confer upon them any right of regular appointment as such, or for claiming seniority or any other consequential benefits. In the said list, the names of petitioner nos.1 & 6 were placed at serial nos.36 & 52 respectively.

6. Petitioner nos.1 & 6 acquired the requisite experience of five years as regular JJAs on 12<sup>th</sup> October, 2009 and 4<sup>th</sup> March, 2010 respectively and, therefore, became eligible on the said dates for consideration for regular promotion as JAs. A meeting of the Selection Committee comprising of three Hon'ble Judges of this Court was held on 18.01.2011 to consider the matter regarding regularization of the services of the officials who were earlier appointed as ad hoc JAs. The Committee, inter alia, observed that out of 41 JJAs appointed as ad hoc JAs pursuant to relaxation granted to them, 32 JAs were still working on ad hoc basis. 24 of them had already completed the requisite length of service in the feeder cadre for appointment to the post of JA. The Committee further observed that it had considered their service records and ACRs and had found them fit for regular appointment. Consequently, the Committee recommended the names of 24 ad hoc JAs for being made temporary Judicial Assistant. Based on these recommendations, order dated 05.02.2011 was issued by the respondent appointing, inter alia, petitioner nos.1 & 6 as Temporary Judicial Assistant w.e.f. 02.02.2011.

7. With passage of time, the two petitioners mentioned hereinabove were further promoted as Senior Judicial Assistants(SJA) on 24.02.2014 February, 2014 and 27.10.2016 respectively.

8. In September, 2016, the Recruitment Rules for promotion to the post of Administrative Officers (Judicial) (AOJ)/Court Master were amended vide notification dated 24.09.2016. The material part of the said amendment was that, now, Graduates with seven years regular service (Law Graduate to be preferred) in the post of Judicial Assistant/Judicial Translator /Personal Assistant/Assistant Librarian/ Chief Cashier or its equivalent post or combined service in any of these posts and the posts of Assistant Accounts Officer/Senior Judicial Assistant/Senior Judicial Translator/Reader/Senior Personal Assistant/Senior Assistant Librarian/Court Officers and/or its equivalent posts (as mentioned in Clause B(i)) also became eligible for promotion to the posts of Administrative Officer(Judicial)/Court Master.

9. Upon applications being invited for the post of AOJ/Court Master, the petitioners offered their candidatures by claiming that they had experience of seven years in the post of JA—having been appointed to the said post on ad hoc basis w.e.f. 18.07.2008 vide order dated 22.07.2008. The respondent, however, did not accept this submission on the premise that the service rendered by the petitioners on ad hoc basis could not be treated as regular service, and that their service as JA could be counted only from the date when they had been appointed on temporary basis by order dated 05.02.2011 of Hon'ble the Acting Chief Justice, pursuant to recommendations of the

Selection Committee constituted for considering their cases for temporary appointment as JA.

10. Aggrieved by the refusal of the respondent to count their service as JA from the date of their ad hoc appointment, vide order dated 18.07.2008, the petitioners have preferred this petition.

11. As the examination for selection of candidates for promotion to the post of AOJ and Court Master was scheduled to be held on 13<sup>th</sup> August, 2017, the Court vide its order dated 17<sup>th</sup> May, 2017 permitted the petitioners to participate in the selection process, subject to outcome of the petition. The respondent nos.3 & 4 also participated in the said examination along with the petitioners. From the results of the examinations so held, it emerges that the names of the petitioners figure in the merit list, while the names of respondent nos.3 & 4 have been placed in the wait list.

12. In support of the petition the submission of Mr.Arvind Nigam, learned senior counsel for the petitioners, is that Hon'ble the Acting Chief Justice having invoked his power of relaxation under the of rules, and granted one time relaxation of the required experience as JJA while promoting the petitioners as JAs, the service rendered by them as JAs in ad hoc capacity is bound to be treated as regular service, as their ad hoc appointment was followed by regular appointment. In support of this submission, Mr.Nigam places reliance on *A. Janardhana Vs. Union of India & Ors. (1983) 3 SCC 601*. He further submits that, in any event, the service rendered by the petitioners as JAs from the date when they acquired the requisite experience of five years as substantive JJAs - should be

counted/treated as regular service as JAs. Mr.Nigam submits that even if the above method of computation of the Regular Service as JAs were to be adopted, they would qualify with seven years regular service as JAs on the cut off date.

13. In support of his submission—that in the aforesaid circumstances, the services rendered by the petitioner on ad hoc basis ought to be counted as regular service, Mr.Nigam has placed reliance on the decision of the Supreme Court in *Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra & Ors. (1990) 2 SCC 715* and, in particular, on paragraphs 13 & 47 thereof. We extract paragraph 13, and the relevant portion of paragraph 47 hereunder:-

*“13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan case was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that **the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without***

*following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary. This principle has been followed in innumerable cases and has been further elaborated by this Court in several judgments including those in Baleshwar Dass v. State of U.P. and Delhi Water Supply and Sewage Disposal Committee v. R.K. Kashyap with which we are in agreement. In Narender Chadha v. Union of India the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service.”*

XXX

XXX

XXX

**47. To sum up, we hold that:**

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

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

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

14. Mr.Nigam also places reliance on a decision of this Court in ***Union of India Vs. Jai Singh & Anr.*** in WP (C) No.11660/2015 decided on 14<sup>th</sup> July, 2017 to submit that once the initial appointment of the petitioners as JA, albeit on ad hoc basis, was done after granting them relaxation in accordance with the power available under the Recruitment Rules, their promotion as JAs on ad hoc basis, vide order dated 18<sup>th</sup> July, 2008 was valid and ought to be treated as regular appointment.

15. On the other hand, Mr.Ghose, who appears for the respondent/Delhi High Court, submits that the present petition is clearly barred by delay and laches. He submits that the petitioners never raised their grievance that their promotion-effected in 2011, should be reckoned from either the date of initial appointment, or from the date that they became eligible for regular

appointment/promotion as JA, for nearly five years. It was only in 2016, when the Recruitment Rules for the post of AOJ and Court Master were amended, that the petitioners started to claim that they meet the eligibility criteria for consideration for promotion to the said post, on the ground that their qualifying service as JAs had to be counted from the date of their ad hoc promotion on 18<sup>th</sup> July, 2008 itself. Mr.Ghose, thus, submits that the claim of the petitioners being highly belated, is liable to be rejected outrightly.

16. Learned counsel for the respondent nos.3 & 4 also seeks dismissal of the petition. He submits that similar relief sought in the case of *Anil Yadav & Ors. Vs. Delhi High Court* in WP (C) No.6232 of 2017 already stands rejected by this Court. He, therefore, submits that the petitioners cannot claim benefit of their service as JA on ad hoc basis, and contends that their service as JA can be counted only from the date of their temporary appointment vide order dated 5<sup>th</sup> February, 2011.

17. We have heard the learned counsel for the parties at length and perused the record.

18. The submission of Mr. Nigam, learned Senior counsel for the petitioner is that the ad hoc service of the petitioners as JA's from 18.07.2018 should count as regular service, since Hon'ble the Acting Chief Justice relaxed the Recruitment Rules with regard to the extent of experience required by the JJA's for being considered for promotion to the post of JA's. The submission of Mr. Nigam is that Hon'ble the Chief Justice exercised the power to relax the Rules under Rule 12 of the Delhi High Establishment (Appointment &

Conditions of Service) Rules, 1972. He further submits that the ad hoc appointment of the petitioners having been made in accordance with the Rules, as relaxed, and it having been followed by temporary appointment (which is considered as regular appointment by the respondent), the period of service rendered on ad hoc basis should count towards regular service in the light of the decision in ***Direct Recruit Class II*** (supra). As noticed above, in respect of this submission, he has also placed reliance on ***A. Janardhana*** (supra) and ***Jai Singh*** (supra).

19. We do not find merit in the aforesaid submission of Mr. Nigam. This is for the reason that, firstly, Hon'ble The Acting Chief Justice did not approve the recommendations of the Committee of Judges made on 25.04.2008 as extracted hereinabove. Hon'ble The Acting Chief Justice did exercise power of relaxation contained in Rule 12 of the Delhi High Establishment (Appointment & Conditions of Service) Rules, 1972. However, the relaxation granted in the present case was conditional and not blanket in nature. What the petitioners are seeking to do is to ignore the condition upon which the relaxation was granted, which is not permissible.

20. Secondly, the relaxation of experience as JJA's was granted only to make ad hoc promotions, and it was specifically decided by Hon'ble the Acting Chief Justice that "*as and when the candidates appointed on ad hoc basis complete the requisite experience/ length of service stipulated under the Rules, they can be considered by the Committee for a substantive appointment.*"

21. Thirdly, since at the time of their ad hoc appointment, the

petitioners were specifically informed that their ad hoc appointment would not count towards regular service or seniority as JA, they could not claim that they should get the benefit of their ad hoc service as JA from the date of their ad hoc appointment. It is trite law that the parties are bound by the terms of their appointment and, therefore, there is merit in the respondent's plea that the petitioners having been specifically informed about the fact that their ad hoc service as Judicial Assistant would not be counted towards their seniority, they cannot claim that their service be counted as regular from the date of their ad hoc appointment.

22. Now coming to the petitioners' submission that their service as JAs be counted, at least, from the date they completed the period of substantive service as JJAs as required for promotion to the post of JAs. In this regard, the foremost fact which needs to be noted is that the petitioners appointment as Judicial Assistant on 18<sup>th</sup> July, 2008 was not by way of an ad hoc arrangement, but was an appointment in accordance with the Recruitment Rules after giving them conditional relaxation permissible under the Rules. No doubt, the same was an ad hoc appointment, but Hon'ble the Acting Chief Justice had—while considering the recommendation of the three member Committee of the Hon'ble Judges, categorically directed that they could be considered for substantive appointment, once they complete the requisite period of service. The petitioner nos.1 & 6, admittedly, completed the required substantive service of five years as JJAs on 6<sup>th</sup> October, 2009 and 4<sup>th</sup> March, 2010 respectively but, despite availability of vacancies, they were not granted substantive

appointment till 5<sup>th</sup> February, 2011. This inaction on the part of the respondent, in our view, was not only unfair, but also contrary to the very basis of their ad hoc appointment, which was meant to remain ad hoc only till they acquired the requisite experience of five years as Junior Judicial Assistant. Their initial ad hoc appointment was only on account of the fact that they did not have the qualifying service as JJA. Otherwise, there was no impediment either on account of their qualification or suitability. Thus, the petitioners were certainly entitled to be considered for, and granted regular appointment as Judicial Assistant immediately upon completing the requisite five years service as Junior Judicial Assistant. The delay in holding of the Selection Committee Meeting was attributable to the respondent. There was no impediment in holding the same earlier i.e. as soon as the petitioners completed the qualifying service as JJAs. Pertinently, under the Recruitment Rules, the promotion to JAs is made on “*Seniority-cum-suitability*” basis alone. Thus, unless a candidate is found to be “unsuitable” for a specific reason, on the basis of his seniority he would normally be promoted in his turn. When the petitioners were granted ad hoc promotions as JAs, obviously, there was nothing to say that they were found “unsuitable”. Otherwise, they would not have been promoted, even on ad hoc basis. Even when they were made “temporary” by the Selection Committee on 18.01.2011, they were found “suitable”, since nothing adverse was found against them. In these circumstances, we are of the considered view that it would be unjust for the respondent to deny to the petitioners “temporary” status as JAs from the dates they became

eligible for consideration for regular promotion on acquiring the requisite qualifying service as JJAs.

23. We may deal with the decision relied upon by the learned counsel for the respondent nos.3 & 4 in *Anil Yadav* (supra). In that case, the petitioners had placed reliance on the Office Memorandum dated 25<sup>th</sup> March, 1996 issued by the Department of Personnel & Training, wherein it had been stated that whenever juniors are eligible and are considered for promotion, the seniors who do not have the qualifying eligibility service, could be considered provided they have half of the qualifying/eligibility service. The submissions raised by the petitioners in the present petition were not considered by the Division Bench while disposing of the writ petition in *Anil Yadav* (supra) case. In fact, para 17 of the decision states that the Court has not expressed any opinion on merits of the petitioners' claim for any other relief, premised on their plea that they were not promoted on ad hoc basis, but were actually regularly promoted as Judicial Assistants. Thus reliance placed on *Anil Yadav* (supra) by learned counsel for the respondent nos.3 & 4 is misplaced and is of no avail.

24. The matter, however, does not end here. Even though we have found merit in the petitioners' plea that they ought to have been granted regular appointment as Judicial Assistant from the date they completed five years service as Junior Judicial Assistants—as had been decided by Hon'ble the Acting Chief Justice at the time of granting conditional relaxation of the Rules, we cannot simply ignore the respondent's plea that the petitioners having approached this Court after a delay of almost five years, their claim is barred by delay and

laches. In our view the petitioners ought to have promptly approached the Court for claiming regular promotion/seniority as Judicial Assistant from October, 2009/March, 2010, as the case may be. Having not done so, there is undoubtedly delay on the petitioners' part in approaching the Court. In view of the aforesaid, this Court is not inclined to direct that the two petitioner Nos.1 & 6 should be treated as regular/substantive Judicial Assistant from 6<sup>th</sup> October, 2009 and 4<sup>th</sup> March, 2010 respectively, as claimed. However, the said delay on their part in approaching the Court, does not prevent the respondent No.1 from undoing the wrong and injustice done to the petitioners, and to grant them the benefit of their service from the dates when they completed the requisite service of five years as substantive JJAs.

25. In our view, this aspect needs to be considered by the respondent No.1. We are of the view that the respondent should consider all the relevant factors and then arrive at their conclusion as to whether, or not, seniority should be granted to the petitioners as claimed by them.

26. Thus, while finding merit in the submission of the petitioners that they ought to have been granted benefit of their service as Judicial Assistant from the respective dates when they completed five years regular service as Junior Judicial Assistant, we are constrained to decline them relief, but deem it appropriate to refer the matter to the respondent No.1 for taking a considered decision in a time bound manner, in the light of our observations hereinabove. It is hoped that while doing so, the respondent will also consider the fact that the names of both the petitioners, who were permitted to take part in the

selection process for the post of AOJ/Court Master, have been placed on the merit list and two unfilled vacancies of AOJ are still available. The reasoned decision in this regard be conveyed to the petitioner Nos.1 & 6 within twelve weeks from today.

27. The writ petition is disposed of in the above terms with no order as to costs.

**(VIPIN SANGHI)  
JUDGE**

**(REKHA PALLI)  
JUDGE**

**MARCH 12, 2019/aa.**

