

A MADHUMITA DAS AND ORS.
v.
STATE OF ORISSA AND ORS.
(Writ Petition (C) No. 254 of 2008)

June 11, 2008

B [DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ]

JUDICIARY:

C *Higher Judicial Service – Direct recruitment of Additional District Judges – Advertisement No.1 of 2008 issued by Orissa High Court for 16 posts – Writ Petitions before Supreme Court by 9 ad-hoc Additional District Judges appointed to function as Fast Track Courts* - HELD: Process of selection pursuant to the advertisement may continue, but that shall only be in*
D *respect of 7 posts and not in respect of 9 posts held by the petitioners – Petitioners shall continue to hold the posts until further orders of the High Court – It is made clear that as and when regular vacancies arise, cases of petitioners shall be duly considered – There shall not be any need for them to*
E *appear in any examination meant for recruitment to the cadre of District Judge.*

**Brij Mohan Lal Vs. Union of India and Ors. (2002 (5) SCC 1 – referred to.*

F CIVIL ORIGINAL JURISDICTION : Writ Petition (CIVIL) No. 250 of 2008

Under Article 32 of the constitution of India

WITH

G W.P. (C) No. 254 of 2008

Uday U. Lalit, Rachana Srivastava for the Petitioners.

The following Order of the Court was delivered

Issue notice.

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Challenge in these writ petitions is to the Advertisement No.1 of 2008 issued by the Orissa High Court. The petitioners have been selected to function as ad-hoc Additional District Judges in terms of the

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judgment of this Court in *Brij Mohan Lal Vs. Union of India and Ors.* (2002 (5) SCC 1). It is their grievance that 16 posts advertised also include the 9 posts presently held by the petitioners in the two writ petitions. It is pointed out that the eligibility criterion fixed in the advertisement rules out the present petitioners. Firstly, some of them are above the maximum age of 45 years and secondly, being Judicial Officers, they cannot apply for posts advertised for members of the Bar. It is also pointed out that in terms of what has been stated by this Court in Brij Mohan's case (*supra*), at paragraph-10, direction No.4, they are to be continued (in the ad-hoc posts) belonging to Fast Track Courts, and, thereafter, in respect of regular posts available, after the Fast Track Courts cease to function. Their cases are to be considered subject to their performance being found satisfactory. Their stand is that they have been continued from time to time. Obviously, their performance was found to be satisfactory. Presently, we are not concerned with that question which may have relevance only at the time of considering their absorption in respect of the regular vacancies. It is submitted by Mr. Uday U. Lalit, learned senior counsel that while assessing the performance, there cannot be different yardsticks, i.e. same parameters have to be adopted while judging the performance of the petitioners viz-a-viz. those which are recruited from another source, i.e. from amongst the Judicial Officers. We find substance in this plea also. Therefore, we direct that the process of selection pursuant to the Advertisement No.1 of 2008 may continue but that shall only be in respect of 7 posts, and not in respect of 9 posts presently held by the petitioners. It is pointed out that the High Court, after the advertisement has been issued, has issued certain letters regarding the non-disposal of adequate number of cases. The

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- A petitioners have given reasons as to why there could not be adequate disposal of the cases. Needless to say, the High Court shall consider the stand taken in the responses while judging their suitability for appointment on regular basis. The petitioners shall continue to hold the posts until further orders, for which
- B necessary orders shall be passed by the High Court. It is made clear that as and when regular vacancies arise, cases of the petitioners shall be duly considered. There shall not be any need for them to appear in any examination meant for recruitment to the cadre of District Judge.

List these matters in the first week of September, 2008.

In the meantime, counter and rejoinder affidavits, if any, shall be filed.

R.P.