

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 22ND DAY OF AUGUST 2022 / 31ST SRAVANA, 1944

WA NO. 314 OF 2021

WP(C) 32617/2019 OF HIGH COURT OF KERALA

APPELLANT/S:

- 1 VIDYA GOPAN, D/O. K.GOPAKUMAR, LAKSHMI NIVAS,
RESIDENCY ROAD, AKSHAYA NAGAR-9, KADAPPAKADA P.O.,
KOLLAM-691 008
- 2 MS.JINI B.G., AGED 39 YEARS
D/O. LATE P.BAHULEYA PANICKER, PEZHUVILA VEEDU,
ANTHIYOORKONAM, KOLLODE P.O., THIRUVANANTHAPURAM-
695 571

BY ADV S.AJITH (PALAKKAD)/ADV.K PARAMESWAR

RESPONDENT/S:

- 1 HIGH COURT OF KERALA, ERNAKULAM-682 031,
REPRESENTED BY THE REGISTRAR GENERAL
- 2 STATE OF KERALA, REPRESENTED BY THE ADDITIONAL
CHIEF SECRETARY TO THE GOVERNMENT, HOME
DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001
- 3 UNION OF INDIA, REPRESENTED BY SECRETARY TO THE
GOVERNMENT, DEPARTMENT OF JUSTICE, MINISTRY OF LAW
AND JUSTICE, JAISALMER HOUSE, NEW DLEHI-400 011

BY ADVS.SRI.ELVIN PETER P.J., SRI.GANESH (B/O)
SRI.SUVIN R.MENON, CGC (CG-364)-5386
SHRI.N.MANOJ KUMAR, STATE ATTORNEY()

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
22.08.2022, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

**S.V.BHATTI
& BASANT BALAJI, JJ.**

Writ Appeal No.314 of 2021

JUDGMENT

(Dated this the 22nd day of August 2022)

Basant Balaji J.,

The appellants are the petitioners in W.P.(C) No.32617 of 2019. The learned single Judge, by the impugned judgment, dismissed the writ petition.

2. The writ petition was filed by the appellants for the following reliefs:

“(i) declare that Ext. P12 order of the Hon'ble Supreme Court of India takes in Court Managers of the District Courts and the High Court appointed pursuant to Exts. P1 to P5 and that the petitioners are entitled to the benefits flowing therefrom;

(ii) issue a writ of mandamus or any other appropriate writ, order or direction, directing Respondents 1 and 3 to implement Ext. P12 order of the Hon'ble Supreme Court of India by regularizing the petitioners herein in service;

(iii) issue a writ of certiorari or any other appropriate writ, order or direction calling for the records leading up to Ext. P19

and quashing the same;

(iv) grant such other reliefs as this Hon'ble Court may deem fit and proper to grant in the light of the facts and circumstances of the case and in the interests of justice.”

3. The appellants were selected and appointed as Court Managers in this court on a temporary basis pursuant to notification dated 17.02.2014. The post of Court Managers in the High Court and District Courts were created pursuant to the recommendations of the 13th Finance Commission. Ext.P5 notification was issued on 17.02.2014 inviting applications from qualified Indian citizens for temporary appointment to the post of Court Managers in the High Court of Kerala, pursuant to which, the appellants applied for the post, and Ext.P6 rank list was brought into force exclusively for the High Court of Kerala. The 1st appellant was ranked No.1 and the 2nd

appellant was ranked No.5. They were appointed on a temporary basis and later the tenure was extended from time to time for a successive one year each. By proceedings dated 25.2.2021, the appellants were terminated with effect from 26.2.2021. On the very same day, another official memorandum was also issued seeking willingness of the appellants for considering them for re-engagement as Court Managers on contract basis for a further period of one year with effect from 1.3.2021. On the basis of the willingness, an order was passed by the Registrar (General) appointing the appellants as Court Managers on contract basis with effect from 12.3.2021 and they executed agreement Annexures A11 and A12.

4. On 31.03.2017, the 2nd respondent issued Ext.P11 order, according sanction for the creation of two posts of

Court Managers in the High Court in the pay scale of Rs.42,500-87,000/- and granted an extension to the two temporary posts for the period from 01.04.2017 till the permanent posts of Court Managers is created and filled in accordance with the Rules. While so, I.A.No.279 of 2010 filed in W.P.(C)No.1022 of 1989 before the Apex Court came up for consideration and the Apex Court passed Ext.P12 order.

Direction No.(ix) in the order reads as follows:

“ix) Professionally qualified court managers, preferably with an MBA degree, must also be appointed to render assistance in performing the court administration. The said post of Court managers must be created in each judicial district for assisting Principal District and Sessions Judges. Such Court Managers would enable the District Judges to devote more time to their core work, that is, judicial functions. This, in turn, would enhance the efficiency of the District Judicial System. These

court managers would also help in identifying the weaknesses in the court management systems and recommending workable steps under the supervision of their respective judges for rectifying the same. The services of any person already working as a Court Manager in any district should be regularised by the State Government as we are of the considered view that their assistance is needed for a proper administrative set up in a Court.”

5. In view of the direction of the Apex Court, the Registrar Subordinate judiciary of this Court addressed a letter dated 07.11.2018 to the Additional Chief Secretary to the Government of Kerala to comply with the direction of the judgment of the Apex Court and to regularise 14 Court Managers in each of the 14 Principal District Courts in the State. Since the 2nd respondent did not regularise the services of the Court Managers in the District Judiciary,

writ petitions were filed by the Court Managers appointed on temporary basis in District Courts, as W.P.(C) No.1629 and 1893 of 2020 and this Court by judgment dated 22.7.2020 directed that the said appellants shall be regularised in service. In compliance with the said judgment, the 2nd respondent passed Annexure-D order dated 05.06.2021, and regularised the Court Managers in the District Court.

6. On 22.10.2018, the appellants submitted a representation before the Hon'ble Chief Justice of this Court praying that they may also be absorbed against the two sanctioned posts of Court Managers as one-time arrangement, in view of the direction in Ext.P12 order of the Apex Court. On 07.12.2018, a meeting of the

Committee for framing High Court Rules and High Court Service Rules was held, and the question of regularisation of the appellants as Court Managers was taken up and the Rules Committee decided that the representations submitted by the appellants for their one-time absorption cannot be considered and decided to go on with fresh recruitment for the post. In the meanwhile, the appellants approached the Apex Court with an interlocutory application for impleadment in W.P.(C)No.1022 of 2019, which was disposed of by the Apex Court on 07.11.2019, giving liberty to the appellants to challenge the decision of the Administrative Committee in accordance with the law.

7. A statement has been filed on behalf of the 1st respondent, in which it was denied that the interview

conducted on 21.06.2014 for recruitment of Court Managers in 14 District Courts and for this Court was not a common interview. The appellants were appointed on temporary basis on 24.07.2014 and 27.10.2014 and the subsequent extensions of the tenure were also made on a contractual basis subject to the terms and conditions stipulated in the contract agreement executed with the High Court and the appellants from time to time. In Clause 11 of Ext.P7, P8, Annexure A11 and A12, it was specifically agreed by the appellants that they will not be entitled to any other right/privilege/preferential claim for appointment or re-appointment to any service, any claim for pension or any sort of benefit by virtue of their appointment under the said agreement.

8. The Apex Court in I.A.No.279 of 2010 in

W.P.(C)No.1022 of 1989 had directed the State Government to regularise Court Managers in the District Court alone. The State Government has sanctioned two permanent posts of Court Managers in the High Court and the Hon'ble Chief Justice of this Court in the exercise of the power conferred under Article 229 of the Constitution of India, referred the matter for prescribing methods of appointment and qualifications for the post of Court Managers of the High Court to the Committee for framing High Court Service Rules (Rules Committee) in order to incorporate the post in the Kerala High Court Service Rules, 2007. The Rules Committee considered the representation of the appellants for a one time absorption as Court Managers and held that the same cannot be accepted and rejected the same. Thereafter, the Rules

Committee resolved to resort to direct recruitment to fill up two permanent posts of Court Managers in the High Court. Article 229 of the Constitution of India confers rule making power on the Chief Justice for regularising the conditions of service of officers and staff of the High Court subject to the condition that if the Rule relates to salaries, allowance, leave or pension, require the approval of the Governor of the State. The discretion exercised by the Chief Justice cannot be challenged and the decision for direct recruitment to the post of Court Manager is not violative of Articles 14 or 16 of the Constitution of India.

9. A reply affidavit was filed by the appellants to the statement filed on behalf of the 1st respondent, wherein it was stated that, the Court managers in the High Court and

the District Court were appointed through a common selection process, indicating that the nature of their responsibilities and duties were similar in nature. In Ext.P5 it is specifically mentioned that the interview will be common for the candidates who apply in response to the said notification as well as the one for recruitment for Court managers in the District Courts. By refusing to treat equals equally, the 1st respondent has acted in a discriminatory, unfair and arbitrary manner, and contravened Article 14 of the Constitution. No explanation is forthcoming from the 1st respondent as to why it has chosen to treat Court Managers in the High Court alone as a separate class and denied the appellants the opportunity of regularization, which otherwise they seem willing to extend

to the Court managers appointed on a temporary basis to the District Judiciary. It was submitted that even if it is conceded for the sake of argument that the directive in Ext.P12 order was passed while considering the issues relating to the District judiciary, nothing precludes the 1st respondent from treating appellants on an equal footing. There is no reason to deny regularisation to the Court Managers appointed on a temporary basis in the High Court even when regularizing the services of Court managers appointed on a temporary basis to the District Judiciary. The orders of the Karnataka High Court, regularising the Court Managers who were working as one time measure was also produced as Ext.P-26, to show that various High Courts have given effect to the judgment of the Apex Court, even though the same related to Court Managers of

District judiciary, hence the minutes of the Administrative Committee rejecting their representation is improper.

10. It is thereafter, challenging the minutes of the Committee for framing High Court Rules and High Court Service Rules, the Writ Petition was filed. The learned single Judge, on going through the judgment of the Apex Court (produced as Ext.P12), held that, Ext.P12 was specific with regard to the appointment of the Court Managers in the District Court and the same cannot be extended to the appellants' case for regularisation. The learned single Judge also found that the appointments in the High Court are made by the Hon'ble Chief Justice in terms of Article 229 of the Constitution of India, which is absolute and subject only to the provisions of the Article. The direction of the Apex Court was in respect of the Court

Managers appointed in the subordinate judiciary, the same cannot be said to be binding in respect of the Court Managers of this Court. Therefore, the learned single Judge held that the decision of the Committee does not suffer any merit and the writ petition was dismissed.

11. On 25.02.2022, this Court passed an order directing the 1st respondent to take necessary steps to ensure that the appellants are temporarily allowed to continue on contract basis, till the disposal of the writ petition.

12. Heard Sri.K.Parameswar, learned counsel for the appellants, Sri.Elvin Peter and Sri.Ganesh, learned standing counsel for the 1st respondent and Sri.Manoj Kumar, learned State Attorney for the 2nd respondent.

13. The main contention raised by the counsel for the appellants is that the appellants were appointed as Court Managers pursuant to the notification dated 17.02.2014 issued by the 1st respondent. The post of Court Managers was created pursuant to the recommendations of the 13th Finance Commission. The appointment was made pursuant to an interview conducted for the Court Managers of this Court as well as of the District Courts through a common interview, though the notifications were different. The Apex Court in I.A.No.279 of 2010 in W.P.(C)No.1022 of 1989 passed an order dated 02.08.2018 in which it was directed that the Court Managers in any district should be regularised by the State Government and their assistance is needed for a proper administrative set up in a court. On the

basis of the said direction and of this Court, the Court Managers of the District Court were regularised as a one-time measure. When the Court Managers of the District Court were regularised, the appellants who were also selected on the very same selection method and the procedure stands on the same footing, ought to have been regularised, but the Administrative Committee took the view that the direction of the Apex Court is in relation to the Court Managers of District Courts and not the Court Managers of this Court and thereafter the representations were rejected. He also pointed out that on 15.4.2019, Government of Tamil Nadu passed an order regularising 35 posts of court managers including that of High Court of Madras and Madurai Bench of Madras High Court in line with the direction of the Apex court.

14. Annexure- A18 is the Odisha senior Court Managers and court managers of High Court and District Courts, Recruitment Conditions of Service Rules 2020 issued on 7.3.2020, wherein as per the Rule it was stated that the existing court managers, who were recruited on contractual basis pursuant to the resolution of the Government of Odisha in Home Department No.31978/HS, dated 21st July 2011 and completed six years of service in the said post, can be considered for absorption in the newly created posts of court managers, on commencement of these rules, subject to their continued utility and passing of suitability tests to be conducted by the Committee constituted for the purpose by the Chief Justice. It was also clarified that absorption of the existing court managers under Sub-rule (1) shall be for one time only.

15. Similar view was taken also by the High Court of Hyderabad in W.P.(C) No.41256 of 2016 and connected cases, the Division Bench in which one of us (S. V. Bhatti J.) was a party to the order, held that ends of justice requires that all persons, who were working as Court Managers in terms of 2010 Rules as on 27.9.2016, and whose services were discontinued on the basis of the resolution of the Administrative Committee dated 27.9.2016, are entitled to be re-admitted to duty forthwith without fail, on the same terms on which they stood employed as on the date of the discontinuance of each of that person from being engaged, in terms of 2010 Rules and in compliance with the said order, a notification was issued on 15.11.2018 by the High court of Judicature at Hyderabad and they were directed to join duty.

16. The counsel for the appellants has submitted a tabular column which shows the Rule/Relevant Extract of Government Notifications and amendment of the Rule of various High Courts in relation to the regularization of the court managers of high court and that of the District Judiciary. The tabular column is extracted below.

HIGH COURT	High court Rule/ Govt. Notification	RELEVANT RULE
Gauhati	Govt. Notification	5(b) – The existing court Managers, who were earlier recruited, on a contractual basis, following the procedure of recruitment as provided under Gauhati High Court (Appointment and Condition of Service of Court Managers) (Assam) Rules, 2012, and who have completed 2 (two) years of service may be absorbed in the newly created posts of court Managers, on the commencement of these Rules subject to their continued utility and suitability (to be assessed by the High Court) and they shall be entitled to pay and allowances and other facilities as admissible to the post of court managers provided under these Rules. (c) – The exercise for absorption of the existing Court Managers, shall be for one time only.

Madras	Govt. Notification	Para 5 – The Government has examined the proposal of the Registrar General, High Court of Madras. The Government sanction further continuance of the 35 posts of Court Managers in the High Court and District Courts (Which were lastly continued up to 31/03/2019 in G.O.)2D) No 281, Home (Court V) Department, dated 23/05/2016) for a period of three years from 01/04/2019.
Chhattisgarh	Amendment of the rule	Third Schedule Sl. No 3 at Column 5 “2” – By absorption of the court managers presently employed as a time measure, against the 75% direct recruitment quota
Rajasthan	Amendment of the rule	(13-C) – Recruitment to the post of Court managers shall be made as follows:- (i) – Initially the recruitment shall be made by screening from the existing court managers working in Rajasthan High Court, Principal Seat, Jodhpur and Bench, Jaipur on contract basis under the 13 th Finance Commission , in accordance with Rule 30B as a one time arrangement The preamble of the amendment of “The Rajasthan High Court Staff Service (Amendment) Rules 2021 reads as Pursuant to the above direction of the Hon’ble Supreme Court it is very clear, wherein it has been directed that the services of any person already working as a court Manager in any District and High Court shall be regularized by the state government as Hon’ble Supreme Court was of the considered view that their assistance is needed for a proper administrative set up in a court.
Orissa	Govt. Notification	R 6. The existing court managers who were recruited on a contractual basis pursuant to the resolution of the government of Odisha in Home Department No 31978/HS, dated the 21 st July 2011, and completed 6 (six) years of service in the said post may be considered for absorption in the newly created posts of Court managers

Jharkhand	Order in WPC 1421 of 2015	Para 4 - The various orders passed in the present proceedings would disclose that the State has taken a decision in-principle to regularize services of the Court managers and an affidavit has been filed bringing on record the decision taken in this regard. Para 7 – The learned counsel for the Accountant General state that a formal letter for regularization of the Court managers working in the High Court is required to be issued.
Hyderabad	Order in IA 1 of 2016 WPC 41256 OF 2016 and Connected cases	10. Therefore, we are of the view that, ends of justice requires that all persons, who were working as Court Managers in terms of 2010 Rules as on 27.9.2016, and whose services were discontinued on the basis of the resolution of the Administrative Committee dated 27.9.2016, are entitled to be re-admitted to duty forthwith without fail, on the same terms on which they stood employed as on the date of the discontinuance of each of those person from being engaged, in terms of 2010 Rules.

17. The counsel for the High court Adv. Ganesh submitted that the selection to the post of Court Mangers in High Court is under Article 229 of the Constitution of India and the Chief Justice of the concerned High Court is vested with the power for the appointment and thus there is clear distinction between the appointment of Court managers in High Court as well as the Court Managers in District

Judiciary. Moreover the Committee for framing High Court Rules and High Court Service Rules also felt that the qualifications originally prescribed for appointment of the appellants has to be amended suitably to incorporate MBA (Regular) from a recognized University also to be a minimum qualification plus L.L.B (Regular) to be a desirable qualification in order to have a better-qualified person as Court managers of High Court. Experience for five years was also incorporated. The selection as submitted by the counsel for the appellants that it was one and the same is not factually correct. At the time of joining as court managers the appellants were put to notice that the appointment is purely temporary and the question of regularization does not arise at any point of time. Moreover, in the agreement executed by them with the

Registrar General of this court it is clearly stated that the appointment will not confer any right to them.

18. The State Attorney appearing on behalf of the State, without expressing any opinion, submitted that the question of regularization of court managers rests with 2nd respondent and will abide by any direction issued by this court. The argument seems to be a stand of a neutral and in his words noted the discrimination for a change is by this High Court. The Government is implementing the orders of the Supreme Court and High Court.

19. The contention raised is; the non-absorption of the appellants as a one time measure would result in treating equals 'unequally', hence violation of Article 14 of the Constitution of India. The counsel also submitted that the finding of the learned single Judge that the appointment

of Court Managers in this Court is under Article 229 of the Constitution of India by the Hon'ble Chief Justice and it stands on a separate footing, hence the judgment of the Apex Court cannot be made applicable to the Court Managers is wrong. He pointed out that, around 12 of the High Courts in the country have chosen to treat the Court Managers in the District Court as well as the High Courts on equal footing in view of the judgment of the Apex Court and various High Courts, have regularised the Court Managers were appointed on contract basis as per the 13th Finance Commission guidelines as a one time measure, hence prayed that the judgment of the learned single Judge be set aside and the appellants may be regularised into the sanctioned post of Court Managers as a one time measure.

20. It is not a fact in dispute that the selection of

Court Managers of the District judiciary as well as this Court was through a single interview, though based on two different notifications. The Apex Court in Ext.P12 order directed the State Governments to regularise the Court Managers in any District working on temporary basis as their assistance is needed for proper administrative set up in the court. On the basis of the direction of the Apex Court, many of the High Courts have regularised their existing court managers who have been appointed on contract basis as per the 13th Finance Commission guidelines, taking note of the fact that the Court Managers of High Court as well as that of the District judiciary were appointed on a single selection method and there is no difference between the Court Managers of the High Court as well as the District Judiciary. Though the appellants approached the Apex

Court with an interlocutory application impleaded themselves in W.P.(C)No.1022 of 1989 and it was disposed of giving liberty to the appellants to approach this Court under Article 226 of the Constitution of India, to independently challenging the decision of the Administrative Committee rejecting their representation for regularisation. Liberty given to the appellants to approach this Court by challenging the decision of the Committee was due to the fact that the question of regularisation of Court Managers of District Judiciary was alone the subject matter before the Apex Court and also due to the fact that a decision is already taken by the Committee to go for fresh recruitment. The learned single Judge by the impugned judgment was of the opinion that, Ext.P12 order of the Apex Court was in respect of Court Managers of District

Courts alone and the appointment of Court Managers in the High Court is stands on different footing and the power is given to the Hon'ble Chief Justice of the High Court under Article 229 of the Constitution of India and therefore the directions contained in Ext.P12 order cannot be made applicable to the Court Managers of this Court. On the said finding, the learned single Judge dismissed the petition, holding that the decision of the Committee does not suffer any infirmity.

21. On 30.1.2018, the Chief Justice of Chhattisgarh High Court passed an order absorbing nine court Managers as one time measure of which one was a Court Manager in the High Court.

22. Similarly, on 15.10.2018, the High Court of Gauhati issued Appointment and conditions of service of

Court Managers in the State of Assam, Rules 2018, in which Rule 5(b) related to existing court managers, who were recruited on a contractual basis.

Rules 5(b) and (c): **Method of recruitment** are extracted hereunder:

“(b) The existing Court Managers, who were on contractual basis, provided under following the procedure of recruitment as Gauhati High Court (Appointment and Condition of Service of Court Managers) (Assam) Rules, 2012, and who have completed 2 (two) years of service, may be absorbed in the newly created posts of Court Managers, on the commencement of these rules, subject to their continued utility and suitability (to be assessed by the High Court) and they shall be entitled to the pay and allowances and other facilities as admissible to the post of Court Managers provided under these rules.

c) The exercise for absorption of the existing Court Managers, shall be for one time only,”

23. The Rajasthan High Court Staff Service Rules

2002 was also amended as per gazette notification dated 22.7.2021 and inserted Rule 30B as follows:

"1. Short Title and Commencement:-

- (i) These Rules may be called as "The Rajasthan High Court Staff Service (Amendment) Rules 2021"
- (ii)

2. **Insertion of Rule 30B:-** After the deleted Rule 30A following new Sub Rule 30B shall be inserted:-

"30B - SCREENING OF EXISTING COURT MANAGERS: The existing Court Managers as on the date of amendment, working on contract basis under the grant of 13th Finance Commission, shall be screened as a one time arrangement for being appointed on the posts of Court Manager in High Court, Principal Seat, Jodhpur and Bench, Jaipur."

24. Though Ext.P12 order of the Apex Court was in respect of the Court Managers of District Judiciary, the same yardstick can be applied in the case of Court Managers of High Court also, since all the Court Managers

were selected through a common selection procedure, by way of an interview. Merely because the notifications of the District Judiciary for Court Managers of District Courts as well as this Court were different, it cannot be said that the selection to the District Court was different and selection to the High Court was under Article 229 of the Constitution of India. When the selection is through the same procedure, there cannot be a discrimination between the Court Managers appointed in this Court as well as in the District Courts. Moreover, a few of the High Courts in India have understood the order of the Apex Court to be applied for all the Court Managers irrespective of whether they are working in the District Court or in the High Court and consequently the Court Managers working in different High Courts were also regularised as a one time measure.

Moreover, the (ix)th direction in Ext.P12 states that the service of any person already working as a Court Manager in any District should be regularised. On going through the tabular column incorporated in the argument note submitted by the counsel for the appellants, we do not find any reason to take a different stand as submitted by the counsel for the appellants. Thus, the Apex Court did not give any distinction between the Court Managers of High Court as well as that of District Court. But going through the judgment of the learned single Judge as well as the judgment of the Apex Court together with various orders passed by different High Courts, we are of the considered opinion that there are grounds to interfere with the judgment of the learned single Judge and we do so. The judgment of the learned single Judge is therefore set aside.

It is therefore declared that, in view of the order of the Apex Court dated 02.07.2018 in I.A.No.279 of 2012 in W.P.(C)No.1022 of 1989, the appellants are entitled for regularisation as Court Managers of this Court as a one time measure.

Writ Appeal is allowed as indicated above.

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**S.V.BHATTI,
JUDGE**

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**BASANT BALAJI,
JUDGE**

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