

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NOS. 8216-8217 OF 2018

(Arising out of SLP (C) No(s). 24328-24329/2015)

K. ANBAZHAGAN & ANR. ... APPELLANT(S)

VERSUS

**THE REGISTRAR GENERAL
HIGH COURT OF MADRAS & ANR. ... RESPONDENT(S)**

WITH

CIVIL APPEAL NOS. 8218-8221 OF 2018

(Arising out of SLP (C) No(s). 26929-26932/2015)

R. RADHA & ANR. ... APPELLANT(S)

VERSUS

STATE OF TAMIL NADU & ORS. ... RESPONDENT(S)

AND

CIVIL APPEAL NO.8222 OF 2018

(Arising out of SLP (C) No. 5467/2016)

P.G. RAJAGOPAL ... APPELLANT(S)

VERSUS

**THE REGISTRAR GENERAL
HIGH COURT AT MADRAS & ANR. ... RESPONDENT(S)**

J U D G M E N T

ASHOK BHUSHAN, J.

Leave granted.

2. These three appeals have been filed against the common

judgment of Madras High Court dated 01.04.2015 by which judgment, writ petitions filed by the appellants have been dismissed. The questions of facts and law raised in the appeals being similar all the appeals have been heard together and are being decided by this common judgment.

3. There are five appellants in these three appeals, who were appointed as Fast Track Judges from the Bar in the State of Tamil Nadu, consequent to creation of Fast Track Courts under the Eleventh Finance Commission Report of the Government of India. This Court vide its judgment dated 06.05.2002 in ***Brij Mohan Lal Vs. Union of India & Ors., (2002) 5 SCC 1*** had issued various directions with regard to appointment and other matters pertaining to Fast Track Courts under Eleventh Finance Commission for setting up of 1734 Fast Track Courts in various States of the country.

4. After creation of Fast Track Courts under Eleventh Finance Commission, the Madras High Court vide its order dated 21.11.2001 issued an order pertaining terms and conditions for the Additional District Judges for the Fast Track Courts and the instructions thereon. The High Court vide its Notification dated 19.12.2001 invited applications from the

practicing Advocates for the post of Additional District Judges (Fast Track Court) on *ad hoc* basis for a period of five years. The terms of the notification provided that applicants should have completed 45 years of age and shall not have reached 55 years as on 01.01.2002.

5. The High Court vide its order dated 14.02.2002 appointed the appellants, who all were advocates as Additional District and Sessions Judge (Fast Track Courts) on *Ad hoc* Basis. The initial *ad hoc* appointment of all the appellants was for five years, which was extended. All the appellants were subsequently relieved from their assignments. In the year 2011/2012, appellants also filed different writ petitions for their absorption as Additional District and Sessions Judge in the regular cadre, which writ petitions were dismissed by the High Court. After the orders rejecting the claim of the appellants for absorption in regular cadre of Additional District Judges, the appellants filed representations praying for grant of pension and other retiral benefits, which were rejected by the High Court. Second round of litigation was initiated by the appellants claiming retiral benefits including pension, gratuity, and leave encashment, which has been dismissed by the High Court by its common judgment dated

01.04.2015. Apart from above common facts regarding the appellants, few individual facts pertaining to their period of working and some other facts need to be separately noted in each appeal, which are as follows:-

Civil Appeal Nos. _____ of 2018
(arising out of SLP (C) Nos. 24328-24329 of 2015)

6. There are two appellants namely, (i) K. Anbazhagan and (ii) G. Savithri in this appeal. Both were appointed as *Ad hoc* Fast Track Judges by the High Court order dated 14.02.2002. The appellant No.1 joined on 23.02.2002 and appellant No.2 joined on 24.02.2002. The appellant No.1, before joining as Fast Track Judge, was working as Additional Public Prosecutor since 1996. The appellant No.1 resigned from his post of Additional Public Prosecutor for joining as Fast Track Judge. The appointment of appellant No.1 was extended upto 31.05.2011, on which date he was attaining 60 years of age. The appellant No.1 was relieved from his assignment w.e.f. 31.05.2011 after putting in total period of 9 years, 5 months and 5 days to his credit. The appellant No.2 was relieved from services by the Registrar General of the High Court by order dated 25.04.2012. Appellant No.2 thus had put in service of more than 10 years as Additional District Judge (Fast Track Court). The appellant No.1 having submitted

representation for grant of pension and other retiral benefits, an order dated 11.10.2012 was issued by the Registrar General of High Court of Madras by which the claim of appellant No.1 for grant of pension and other retiral benefits has been rejected. The appellant No.2 had also made a representation for grant of pension and other retiral benefits, which too was rejected. Writ Petition No. 5187 of 2014 was filed by appellant No.2 whereas Writ Petition No. 23532 of 2014 was filed by the appellant No.2, which has been dismissed by the common judgment dated 01.04.2015.

Civil Appeal Nos. _____ of 2018
(arising out of SLP (C) Nos. 26929-26932 of 2015)

7. This appeal has been filed by two appellants namely R. Radha and A.S. Hassina. Both the appellants were appointed by the same appointment order dated 14.02.2002. Both the appellants joined on 23.02.2002. Both the appellants were relieved by order dated 25.04.2012 of the Registrar General. After unsuccessfully challenging the relieving order dated 25.04.2012 in the High Court, they also submitted representation dated 14.08.2014 claiming pension and other retiral benefits. The representations of the appellants were rejected on 06.11.2014. The appellant No.1 filed Writ Petition No. 2756 of 2015 whereas appellant No.2 filed a Writ Petition

No. 2755 of 2015. Both the writ petitions have been dismissed on 01.04.2015.

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(arising out of SLP (C) No. 5467 of 2016)

8. The appellant was also appointed by the same order dated 14.02.2002, in pursuance of which, he joined on 24.02.2002. On 28.10.2010, the appellant was relieved of his position as Additional District Judge (Fast Track Court) w.e.f. 31.10.2010 on which date he was attaining 60 years of age. The petitioner's claim for pension was rejected on 13.07.2011 by the High Court. Writ Petition No. 4276 of 2013 was filed by the appellant praying for quashing the order dated 13.07.2011 and praying for direction to pay pension and other retiral benefits, which petition has also been rejected on 01.04.2015.

9. We have heard Shri A. Mariarputham, learned senior counsel for the appellants and learned counsel appearing for the High Court as well as the State of Tamil Nadu.

10. Learned senior counsel for the appellants contends that High Court committed error in rejecting the claim of the appellants for pension, gratuity and leave encashment on wrong premise that appellants were contract appointees and they are not borne on pensionable establishment. He submits that

appointment of appellants by direct recruitment from Bar was on adhoc basis, which is clear from the advertisement inviting applications for filling the post. He submits that appellants are not contract employees and on that ground denial of retiral benefits is unsustainable. He further submits that Fast Track Court Judges were in the same establishment as the regular Additional District Judges. They being not in a separate or independent establishment, they were clearly borne on pensionable establishment. It is further submitted that *ad hoc* appointments of Fast Tract Courts were made by both the sources i.e. by promotion of judges from lower division as well as from the bar. There cannot be any dispute that cadre of Additional District Judges is borne on pensionable establishment, hence there cannot be any differentiation with regard to establishment in which both *ad hoc* appointees were borne. All the appellants have completed qualifying service of ten years under the Tamil Nadu Pension Rules, 1978 (hereinafter referred to as "1978 Rules") and were clearly entitled for pension and gratuity. It is further submitted that before High Court both the claim of gratuity and leave encashment were also raised by the appellants but the High Court did not advert to the claim of gratuity or leave encashment. The appellant K. Anbazhagan was relieved on

31.05.2011 after attaining the age of sixty years, hence he was clearly entitled for superannuation benefits under the 1978 Rules. Learned senior counsel for the appellants further submits that all the Fast Track Court Judges, who were appointed from bar were entitled to add additional period to their service as per Rule 27 as well as in accordance with judgment of this Court in ***Govt. of NCT of Delhi and Ors. Vs. All India Young Lawyers Association (Regd.) and Ors., (2009) 14 SCC 49.*** It is contended that entitlement for gratuity is completion of five years of service and none of the appellants could have been denied the gratuity. It is further submitted that there was GPF deduction from the salary of all the appellants, which also proves that they were part of the pensionable establishment and entitled for payment of pension.

11. With regard to appellant K. Anbazhagan, it is further submitted that he has earlier worked as Additional Public Prosecutor, which was not a pensionable post. Rule 11(3) of 1978 Rules, provides that 50% of service in a non-pensionable post would be added in his service. Thus, all the appellants have completed ten years of qualifying service.

12. Learned counsel appearing for the High Court supporting

the judgment and the order contends that the appellants were appointed on Fast Track Courts on contract basis. Fast Track Courts cannot be said to have been created in pensionable establishment hence the writ petition of the appellants have rightly been dismissed. It is further submitted that appellant's claim for regularisation on post of Additional District Judge had been rejected, which was upheld by the High Court vide its judgment dated 20.07.2012. The appellants functioned purely on adhoc basis and were not appointed under the Tamil Nadu State Judicial Service (Cadre and Recruitment) Rules, 1995 nor were absorbed in any regular vacancy hence they are not eligible for any retiral benefits, which are available to those who were appointed by due recruitment process under the above 1995 Rules. Tenure of the Fast Track Courts was initially for only five years under the Eleventh Finance Commission and subsequently extended for another five years. Government of Tamil Nadu had further extended the tenure of courts for a period of one year upto 31.03.2012. Thereafter vide Government Order dated 26.08.2011, Government of Tamil Nadu had sanctioned retention of 49 Fast Track Courts in the cadre of District Judge functioning in the State of Tamil Nadu. The appellants having accepted the purely temporary nature of the post to which they were appointed,

they now cannot contend claiming all the benefits available to those, who have been appointed to a substantive post by a recruitment process.

13. Learned counsel appearing for the State of Tamil Nadu while adopting the submissions of the learned counsel for the High Court has submitted that appellants did not fulfill the conditions for grant of pension and other retiral benefits under the 1978 Rules, hence their claim was rightly rejected.

14. We have considered the submissions of the learned counsel for the parties and have perused the records.

15. Before we proceed to examine the respective contentions of the parties, it is necessary to notice the relevant background facts for creation of Fast Track Courts in the country and manner and nature of appointments made.

16. The Eleventh Finance Commission allocated funds for the purpose of setting up of 1734 Courts in various States to deal

with the long pending cases particularly sessions cases. Consequent to allocation of funds by the Finance Commission, the State Governments were required to take necessary steps to establish such courts. Finance Commission had suggested that States may consider re-employment of retired judges for limited period for the disposal of pending cases. Fast Track Courts scheme was challenged in different High Courts primarily on the ground that there was no constitutional sanction for employment of retired judges and effective guidelines have not been issued. This Court considered the controversy after transferring various writ petitions pending in the different High Courts under Article 139A of the Constitution of India. The issues pertaining to Fast Track Courts were decided by this Court in ***Brij Mohan Lal Vs. Union of India and Others, (2002) 5 SCC 1***. After noticing the funds allocated under the Eleventh Finance Commission and other respective contentions, this Court issued various directions in Para 10. With regard to recruitment on Fast Track Courts, directions 1 to 4 were given in Para 10, which are as follows:-

"10. Keeping in view the laudable objectives with which the Fast Tract Courts Scheme has been conceived and introduced, we feel the following directions, for the present, would be sufficient to take care of initial teething problems highlighted by the parties:

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.

2. The second preference in appointments to Fast Track Courts shall be given to retired judges who have good service records with no adverse comments in their ACRs, so far as judicial acumen, reputation regarding honesty, integrity and character are concerned. Those who were not given the benefit of two years extension of the age of superannuation, shall not be considered for appointment. It should be ensured that they satisfy the conditions laid down in Article 233(2) and 309 of the Constitution. The High Court concerned shall take a decision with regard to the minimum-maximum age of eligibility to ensure that they are physically fit for the work in Fast Track Courts.

3. No Judicial Officer who was dismissed or removed or compulsorily retired or made to seek retirement shall be considered for appointment under the Scheme. Judicial Officers who have sought voluntary retirement after initiation of Departmental proceedings/inquiry shall not be considered for appointment.

4. The third preference shall be given to members of the Bar for direct appointment in these Courts. They should be preferably in the age group of 35-45 years, so that they could aspire to continue against the regular posts if the Fast Track Courts cease to function. The question of their continuance in service shall be reviewed periodically by the High Court based on their performance. They may be absorbed in regular vacancies, if subsequent recruitment takes place and their performance in the Fast Track Courts is found satisfactory. For the initial selection, the

High Court shall adopt such methods of selection as are normally followed for selection of members of the Bar as direct recruits to the Superior/Higher Judicial Services.

XXXXXXXXXXXXXXXXXXXXX"

17. One more direction, which needs to be noticed is Direction No. 16 where this Court directed that persons appointed under the Scheme will be governed for service benefits by the rules and regulations, which are applicable to the members of the judicial services of the State of equivalent status.

Direction No. 16 is as follows:-

"16. Persons appointed under the Scheme shall be governed, for the purpose of leave, reimbursement of medical expenses. TA/DA and conduct rules and such other service benefits, by the rules and regulations which are applicable to the members of the Judicial Services of the State of equivalent status."

18. In Para 12, States were directed to ensure compliance in following words:-

"12. Copies of the judgment be sent by the Registry of this Court to each High Court and the State Government concerned for ensuring compliance with our directions."

19. Even before the aforesaid directions were issued on 06.05.2002, different High Courts in the country in pursuance of Eleventh Finance Commission allocation proceeded to take steps for setting up of the Fast Track Courts. On the recommendations received from the High Court of Madras, the Government of Tamil Nadu granted sanctions of post by two Government orders, for 30 posts (dated 03.08.2001) and 19 posts (dated 18.12.2001) respectively. In the present appeals, we are concerned with appointment of the appellants, which were made on 19 sanctioned posts, hence we need to notice the Government Order dated 18.12.2001, by which 19 more Fast Track Courts were sanctioned. Para 3 of the Government Order dated 18.12.2011 provides for sanction of posts which is as follows:-

"3. The proposals of the High Court has been examined by the Government and they have decided to accept them. The Government accordingly direct that as proposed by the High Court, 19 Fast Track Courts be constituted in the places mentioned in the Annexure to this order. The Government also accord sanction for the creation of the following posts temporarily for a period of one year from the date of appointment.

| Sl. No. | Designation of the post | Scale of pay |
|---------|--|--------------|
| 1. | District Judge (Addl District Judge cadre) | 15000-18600 |
| 2. | Translator | 5500-9000 |
| 3. | Assistant | 4000-6000 |
| 4. | Steno Typist | 4000-6000 |
| 5. | Typist | 3200-4900 |
| 6. | Office Assistants | 2550-3200 |

The Presiding Officers of these courts would be the pay drawing officers."

20. After creation of the posts, High Court issued a Notification dated 19.12.2001 inviting applications from the practicing advocates for being considered for the post of Additional District Judge for Fast Track Courts on *ad hoc* basis. Notification dated 19.12.2001 reads as under:-

"Notification No. 159/2001

Applications are invited from the practicing Advocates possessing the following qualifications for being considered for the post Additional District Judge (Fast Track Court) on *Ad hoc* basis for a period of 5 years. The post carries a Scale of Pay of Rs.15000-400-18600.

xxxxxxxxxxxxxxxxxxxxxxxxxxxxx"

21. The appellants who were all practicing advocates and fulfilling the eligibility as required in the notification submitted the applications. The High Court after calling the appellants to appear in interview sent a proposal to the Government recommending 15 names for appointment as Additional District Judge. The State Government by order dated 14.02.2002 appointed all the appellants. Paragraphs 4 and 5 of the order of the State Government dated 14.02.2002 is as follows:-

"4. The Government in consultation with the High Court Madras, hereby appoint the following 15 (Fifteen) Advocates as Additional District and Sessions Judges (Fast Track Courts) on *Ad hoc* Basis subject to the terms and conditions fixed by the High Court, Madras:-

Thiru/Tmt/Selvi

1. K. Anbazhagan
2. G.K. Bharathi
3. Bhagirathi R Angarajan
4. V.B. Chinnappan
5. R. Duraisamy
6. A. Devaki
7. A.S. Hassina
8. V. Meganathan
9. S. Mani
10. P. Pandurangan
11. K. Pandurangan
12. R. Radha
13. P.G. Rajagopal
14. M. Sekar &
15. G. Savithri

5. The above Additional District and Sessions Judges will draw a pay of Rs.15,000/- in the scale of Rs.15000-400-18600- and other usual allowances."

22. We may first notice the reasons given by the High Court for rejecting the claim of pension of the appellants. The High

Court has mainly given following reasons for rejecting the claim:

1) The Fast Track Courts created under Eleventh Finance Commission cannot be said to have been created in a 'pensionable establishment'.

2) Rule 11 of 1978 Rules, which provides for commencement of qualifying service does not cover appointment on contractual basis. The appointments of appellants were appointments on contract basis, hence they are not covered by Rule 11 of 1978 Rules.

3) Division Bench of High court in its judgment dated 20.07.2012 rendered in Writ Petition No.13703-13705 of 2012 treated the appointment of appellants as contractual appointment.

23. The first issue to be answered is as to whether the appointments of appellants were appointment on 'pensionable establishment' or not. The expression 'pensionable establishment' is not defined under the 1978 Rules. Rule 2 of 1978 Rules which provides for application of Rules is as follows:-

"2. Application:- Save as otherwise provided in these rules, these Rules shall apply to all Government Servants appointed to Services and posts

in connection with the affairs of the State which are borne on pensionable establishments, whether temporary or permanent, but shall not apply to-

a) Persons in casual and daily rated employment;

b) Persons paid from contingencies;

c) Persons employed on contract except when the contract provides otherwise;

d) Members of the All-India Services;

e) Persons who are entitled to the benefits under the Factories Act, 1948 and the Employees Provident Fund Act, 1952 excluding those who are governed by Statutory Services Rules and belong to pensionable service."

24. The expression 'pensionable establishment' has been used in Rule 2. Rule 11 sub-Rule (3) also uses the expression 'non-pensionable establishment'. An indication in chapter 12 of the Rules i.e. Rule 84 is given that service paid for from a Local Fund does not qualify for pension which indicates that services paid for from a Local Fund are services in 'non-pensionable establishment'. For the purposes of this case, we have to only consider as to whether the establishment where appellants were appointed and working was a 'pensionable establishment' or 'non-pensionable establishment'.

25. We have noticed above the Government Order dated 18.12.2001 by which the State Government created nineteen Fast

Track Courts of District Judges(Additional District Judges) in the pay scale of Rs.15000-18600. The appellants in their appointment Order dated 14.02.2002 were also referred to as having been appointed as Additional District and Sessions Judges (Fast Track Courts) on ad-hoc basis. The appointment order further provided that the appellants as Additional District and Sessions Judges will draw a pay in the scale of Rs.15000-400-18600 and other usual allowances. The appellants were appointed in the Judicial establishment of the district and were part of the Subordinate Courts under the control of the High Court. Clause 9 of the Government Order dated 18.12.2001 read as follows:

"9. The expenditure involved in the proposal shall be debited to 2014.00 Administration of Justice -800-other Expenditure-II State Plan - JA Eleventh Finance Commission- Upgradation and Special Problem Grant setting up of additional courts for disposal of long pending cases 0.9 Grants in Adl.03. Other grants for Specific Scheme (D.P.C.No.2014.00 800 JA 0934)"

26. The payment of salary to the appellants were made from same sources by which other Additional District Judges and other Judicial Officers of the State were being paid. There is no indication from any of the material produced before us that the appellants were appointed on any different establishment

than the Judicial establishment of the District.

27. We have noticed above that this Court in ***Brij Mohan Lal Vs. Union of India and others*** in paragraph 10 of the judgment has directed that persons appointed under the Scheme (Fast Track Courts Scheme) shall be governed, for the purposes of leave, reimbursement of medical expenses, TA/DA and conduct rules and such other service benefits, by the rules and regulations which are applicable to the members of the judicial services of the State of equivalent status.

28. By direction 10(16), this Court had directed the State Governments to ensure compliance, hence, the terms and conditions of service of appellants were same as those of other judicial officers of the State as per Order of this Court. High Court in its judgment although observed that Fast Track Courts cannot be said to have been created in 'pensionable establishment' but said conclusion has been arrived without considering relevant materials and without giving any cogent reasons. We thus are of the view that appointment of appellants was in 'pensionable establishment'.

29. Now, we come to the second reason given by the High Court that the appointments of the appellants were contractual appointments. We have already noticed that the appointments of the appellants were made against nineteen sanctioned posts of Additional District Judges by Government Order dated 18.12.2001. The notification which was issued by the High Court inviting applications from practising Advocates mentioned that applications are invited from practising Advocates for being considered for the post of Additional District Judge (Fast Track Court) on ad-hoc basis for a period of five years. It further mentioned that the post carries a Scale of Pay of Rs.15000-400-18600. Thus, the notification inviting applications never mentioned that it is a contractual appointment. Further, the appointment order issued to the appellants dated 14.02.2002, in paragraph 3 stated as follows:

"3. Accordingly, the High Court, Madras, has called for applications from eligible Advocates for filling up of 15 posts of Additional District Judges (Fast Track Courts), conducted interview and sent proposals to Government recommending 15 names of Advocates for appointment as Additional District and Sessions Judges(Fast Track Courts) on ad hoc basis."

The appointment order thus clearly mentioned that the appointment is on ad-hoc basis.

30. In service jurisprudence, the appointments are made by employer with different nomenclature/characteristics. Appointments are made both on permanent or temporary basis against permanent post or temporary post. The appointment can also be made on ad-hoc basis on permanent or temporary post. There is one common feature of appointments of permanent, temporary or ad-hoc appointment i.e. those appointments are made against the post whether permanent or temporary. On the contrary, for contractual appointment, there is no requirement of existence of any post. A contractual appointment is not normally made against a post. Further, contractual appointments are also not normally on Pay Scale. On the mere fact that the advertisement as well as the appointment was made initially for a period of five years, the nature of appointment of the appellants cannot be termed as contractual appointment. When a Government servant is contemplated to hold a certain post for a limited period it is a Tenure Post.

31. The Fundamental Rules of the Tamil Nadu Government defines Tenure Post. Fundamental Rule 9(30-A) defines the Tenure post in following manner:

*"30-A. **Tenure Post** means a permanent post which an*

individual Government servant may not hold for more than a limited period."

32. The fact that the advertisement limited the appointment for a period of five years only because the posts were contemplated for five years only, the appointment of the appellants at best can be said as "Tenure appointment". Although temporary, ad-hoc and contractual appointments are used in contradiction to a regular and permanent appointment but between ad-hoc appointment and contract appointment, distinction is there in service jurisprudence and both the expressions cannot be interchangeably used. When the advertisement against which the appellants were appointed and the appointment order mentions the appointment as ad-hoc appointment, we cannot approve the view of the High Court that the nature of the appointment of the appellants was only a contractual appointment.

33. Now, we come to the third reason given by the High Court. The Division Bench of the High Court vide its judgment dated 20.07.2012 in W.P.No.13703-13705/2012 held that the appointment of the petitioners was on contract basis, hence, the appointment has to be treated as appointment on contractual basis. The judgment of Division Bench of Madras

High court in above writ petition has been brought on record as Annexure P-11. Three Writ Petitioners namely R.Radha, A.S.Hassina and G.Savithri had filed three writ petitions challenging the Order dated 25.04.2012 by which they were relieved from the post of Additional District Judge(Fast Track Courts). The writ petition was filed by those writ petitioners, questioning the Order dated 25.04.2012 and further seeking direction to consider the writ petitioners for absorption and regularization of their services as Additional District Judges. The Court in the aforesaid writ petitions was thus concerned with the challenge to Order relieving the appellants on 25.04.2012 and the question as to whether the appellants were entitled to be absorbed as Additional District Judges. The Division Bench upheld that the discontinuation by the High court on the ground that Fast Track Courts itself came to an end, the appellants could not have been allowed to continue. Further, the High Court did not accept the claim of the writ petitioners that they are entitled for regularization and absorption. In the above context, the High Court observed in paragraph 16 that the discontinuation and relieving of the services of the writ petitioners are not coming within the meaning of dismissal, removal or termination. The High Court observed that the ad-hoc appointments given to the petitioners

on contract basis were discontinued and they were relieved without any stigma. The High court in the above writ petitions was not concerned with the claim of the appellants with the nature of the appointment of the appellants for the purposes of grant of pension. As noted above Rule 2 of 1978 Rules excludes certain categories from application of rules. One of such category is "persons employed on contract except when the contract provides otherwise". Whether the case of the appellants was covered by the excluded category under Rule 2(C) is a question which has arisen in these proceedings and was not subject matter of earlier writ petitions decided on 20.07.2012.

34. Thus, any observation made by the High Court while dismissing the writ petitions on 20.07.2012 challenging their relieving orders and claim of absorption as regular District Judges has to be read in context of the aforesaid writ petitions and cannot be accepted as any expression regarding entitlement or dis-entitlement of the appellants with regard to claim of pension. We, thus, are of the view that High Court instead of referring to Rule 78 and especially Rule 2 did not advert to the nature of appointment in the above reference and

followed the judgment dated 20.07.2012 which was rendered in different context. In above view of the matter, all the three reasons given by the High Court for dismissing the writ petitions are unsustainable. But the question still remains as to whether appellants are entitled for pension, gratuity and leave encashment as claimed by them in their writ petitions.

35. We thus now proceed to examine the above claim in accordance with 1978 Rules, which governs the grant of pension and other relevant aspects.

36. Now, we revert to 1978 Rules to find out as to whether the appellants were entitled for grant of pension. We have already noticed Rule 2, which provides for application of the rules to all Government servants appointed to Services and posts in connection with the affairs of the State which are borne on pensionable establishments. We having already held that appellants were borne on pensionable establishment and they were not employed on contract basis, Rule 2 is clearly applicable on them. There is another category which is excepted from application of the rule - Rule 2(e), i.e. "persons entitled to the benefit of a Contributory Provident Fund". In

the present case, the appellants were not covered by any Contributory Provident Fund Scheme rather covered by General Provident Fund Scheme. The fact that appellants were covered by General Provident Fund Scheme is apparent from the materials brought on record. In Civil Appeal arising out of SLP (c) No. 24328-29 of 2015- Annexure P10 is a letter of Assistant Registrar, High Court of Madras dated 17.10.2012 addressed to the Principal District and Sessions Judge, Tiruvallur, which was on the subject "GPF-Final Closure applications of Selvi G. Savithri, the then Additional District and Sessions Judge, Tiruvallur, (FTC III, Tiruvallur)- Discontinued from service on 25.04.2012-Particulars called for-Regarding." It is useful to extract the aforesaid letter, which is as follows:-

"From

Tmt. P. Sandhiya, M.A. B.Ed.,B.L.,
Assistant Registrar (Per. Admn.)
High Court, Madras

To
The Principal District and Sessions Judge,
Tiruvallur (w.e)

Sir,

Sub: GPF-Final Closure applications of Selvi G. Savithri, the then I Additional District and Sessions Judge, Tiruvallur, (FTC III, Tiruvallur)-Discontinued from service on 25.04.2012-Particulars called for-Regarding."

Ref: Your letter D.No.4308/A/2012, dated 01.10.2012.

I am herewith enclosing a copy of the combined application and to request you to obtain the same in Triplicate from Selvi G. Savithri, then I Additional District and Sessions Judge Tiruvallur, now discontinued from service on 25.04.2012, for sanction of General Provident Fund, and the same may kindly be forwarded to the High Court, early, for taking further action in the matter.

Yours faithfully,

Sd/-

Asst. Registrar (Per.Admn.)"

37. The General Provident Fund (Tamil Nadu) Rules relates to all Government Servants, whether permanent, temporary or officiating other than re-employed servants, who shall join the Fund. Learned counsel for the appellants has also brought on record alongwith additional written submissions, details of pay drawn by Selvi G. Savithri for the period April, 2011 to April, 2012, which indicate that General Provident Fund subscription was Rs. 33,000/- in each month. Rule 3(o) defines 'qualifying service' to the following effect:-

"3(o) 'qualifying service' means permanent or officiating service (including temporary service under emergency provisions) rendered in a post included in a pensionable establishment."

38. Rule 11(1) provides for commencement of qualifying service in following manner

"11. Commencement of qualifying services. - (1) Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. In the case of a Government servant retiring on or after the first October 1969, temporary or officiating service in the pensionable post whether rendered in a regular capacity or not shall count in full as qualifying services even if it is not followed by confirmation.

NOTE.- In the case of the employees of the former Pudukkottai State and persons transferred from the former Travancore-Cochin State consequent on the reorganisation of States, temporary or officiating service rendered in a regular capacity under the former Pudukkottai State or the former Travancore-Cochin State shall count in full for purposes of pension.

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11(2) Half of the service paid from contingencies shall be allowed to count towards qualifying service for pension along with regular service subject to the following conditions:-

- (i) Service paid from contingencies shall be in a job involving whole time employment and not part-time for a portion of the day.
- (ii) Service paid from contingencies shall be in a type of work or job for which regular posts could have been sanctioned, for example Chowkidar.
- (iii) Service shall be for which the payment is made out on monthly or daily rates computed and paid on a monthly basis and which, though not analogous to the regular scale of pay, shall bear some relation in the matter of pay to those being paid for similar jobs being performed by staff in regular establishments.
- (iv) Service paid from contingencies shall be continuous and followed by absorption in regular employment without a break.
- (v) Subject to the above conditions being fulfilled, the weightage for past service paid from contingencies shall be limited to the period after the 1st January 1961 for which authentic records of service may be available.
- (vi) Pension or revised pension admissible as the case shall be paid from, the 23rd June, 1988.]

11(3) Half of the service rendered by a Government servant under non-pensionable establishment shall be counted for retirement benefits along with regular service under pensionable establishment subject to the following conditions:-

- (i) Service under non-pensionable establishment shall be in a job involving whole time employment.
- (ii) Service under non-pensionable establishment shall be on time scale of pay and
- (iii) Service under non-pensionable establishment shall be continuous and followed by absorption in pensionable establishment without a break.

Provided that in respect of those who retired prior to the 14th February, 1996, the retirement benefit or revised retirement benefit, as the case may be, admissible to them shall be paid from the 14th February, 1996 and there shall be no claim for arrears in any case, for the period up to the 13th February, 1996.]”

39. As per Rule 11(1) qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. The appellants, who were appointed on *ad hoc* basis shall be clearly covered by nature of appointment as contemplated in Rule 11(1). Rules 11(2) and 11(3) also clearly provided that even half of the service paid from contingencies are allowed to count towards qualifying service and a half of the service rendered by a Government servant under non-pensionable establishment is counted for retirement benefits along with regular service with certain conditions. The Scheme delineated by Rule 11 indicate a liberal scheme of recognition of service as pensionable and to accept the submission of the respondent that *ad hoc* appointment of the appellants are not covered by Rule 11 is to strain the meaning and extent of the Rule 11. Rule 21 provides for forfeiture of service on dismissal or removal.

40. Chapter V of the Rules deals with "Classes of Pension and conditions governing their grant". Rule 32 deals with "Superannuation Pension". A Superannuation pension is granted to a Government servant entitled or compelled, by rule, to retire at a particular age. Rule 33 deals with Retiring pension, which provides that a retiring pension shall be granted to a Government servant who retires, or is retired, in advance of the age of compulsory retirement, in accordance with the provisions of Rule 42. Rule 38(1) deals with Compensation pension. Rule 38(1) is as follows:-

"38. Compensation pension:- (1) If a Government servant is selected for discharge owing to the abolition of his permanent post, he shall, unless he is appointed to another post, the conditions of which are deemed by the authority competent to discharge him to be at least equal to those of his own, have the option -

- (a) of taking compensation pension to which he may be entitled for the service he had rendered, or
- (b) of accepting another appointment on such pay as may be offered and continuing to count his previous service for pension."

41. Rule 39 deals with Compulsory retirement pension. Sub-rule(1) of Rule 39 provides that a Government servant compulsorily retired from service as a penalty may be granted by the authority competent to impose such penalty, pension or gratuity, or both at a rate not less than two-thirds and not more than full compensation pension or gratuity or both admissible to him on the date of his compulsory retirement. Rule 40 contemplates that a Government servant who is dismissed or removed from service although shall forfeit his pension and gratuity but the authority competent to dismiss or remove him from service may, if the case is deserving of special consideration, sanction a compassionate allowance not exceeding two-thirds of pension or gratuity or both which would have been admissible to him if he had retired on medical certificate. The scheme as delineated by Chapter V of the Rules indicate that rules framing authorities have adopted a liberal and flexible approach in sanctioning the pension. Even the Government servant, who is dismissed or removed, is also given a window to get compassionate allowance, if the case is deserving a special consideration. A Government servant, who retires voluntarily or is compulsorily retired, is entitled to a retiring pension by virtue of Rule 42(1), which is as follows:-

"42(1). A Government servant, who, under Fundamental Rule 56(d), retires voluntarily or is required by the appointing authority to retire in the public interest shall be entitled to a retiring pension."

42. Rule 43(1) deals with amount of pension, which is to the following effect:-

"43(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the uniform rate of half-month's emoluments for every completed six monthly period of service."

43. Rule 43(2) provides that in the case of a Government servant, retiring in accordance with the provisions of these rules after completing qualifying service of not less than ten years, the amount of pension shall be as set out in the sub-rule(2). Thus, the qualifying service not less than ten years is a condition for grant of pension. At this juncture, let us revert back to the facts of the present case to find out as to whether all the appellants have completed ten years of qualifying service? From the record before us, following is the service rendered by the appellants as Additional District Judge (Fast Track Court):-

| Sl. No. | Name | Date of Joining | Date of Relieving | Total Period |
|---------|---|-----------------|-------------------|--------------------------------------|
| 1. | K. Anbazhagan- Appellant No.1 | 13.02.2002 | 31.05.2011 | 09 Years 05 Months and 05 Days |
| 2. | Selvi G. Savithri- Appellant No.2 | 24.02.2002 | 25.04.2012 | 10 Years 02 Months and 02 Days |
| 3. | R. Radha - Appellant No.3 | 23.02.2002 | 25.04.2012 | 10 Years 02 Months and 03 Days |
| 4. | A.S. Hassina - Appellant No.4 | 23.02.2002 | 25.04.2012 | 10 Years 02 Months and 03 Days |
| 5. | P.G. Rajagopal Appellant No.5 | 24.02.2002 | 31.10.2010 | 08 Years 08 Months and 08 Days |

From the above, it is clear that apart from K. Anbazhagan and P.G. Rajagopal, other three appellants have completed ten years of qualifying service.

44. Now, we have to find out as to whether as per Rules, K. Anbazhagan and P.G. Rajagopal are entitled to add any service for the purpose of completing qualifying service. Rule 27 of the Rules is a clear answer to the aforesaid issue. Both K. Anbazhagan and P.G. Rajagopal were relieved on A/N of 31.05.2011 and 31.10.2010 respectively, on attaining the age of sixty years. Rule 27 provides for addition in their service qualifying for Superannuation pension, the actual period not exceeding one-fourth of the length of service or actual period by which his age at the time of recruitment exceeds thirty years or a period of five years, whichever is less. Rule 27(1) which is relevant for the present case is as follows:-

"27(1) Any person appointed to a service or post and who retires from service on or after the 1' July 1960 may add to his service qualifying for superannuation pension (but not for any other class of pension) the actual period not exceeding one fourth of the length of his service or the actual period by which his age at the time of recruitment exceeds thirty years or a period of five years, whichever is less, if the service or post is one-

- (a) for which post-graduate research or specialist qualification or experience in scientific, technological or professional fields is prescribed not merely as desirable but as obligatory qualification; and
- (b) for which the age of recruitment prescribed in the service rules applicable to the service or post concerned is above thirty years.

XXXXXXXXXXXXXXXXXXXXXXXXXX"

45. Rule 27(1) proviso specifically mentions that the age limit prescribed in sub-rule(!) above viz. thirty years shall be lowered to twenty seven years in so far as Judicial Officers who are directly recruited as Magistrates, District Munsifs and District Judges. The appellants are clearly covered by the proviso to sub-rule(1) of Rule 27. As per Rule 27(1), out of three periods mentioned therein, whichever is lesser, has to be accepted. To the actual service, the period of one-fourth of the length of the service of the above appellants is a lessor period, which needs to be added in their service. By addition of one-fourth period of the actual service of K.Anbazhagan and P.G. Rajagopal, their qualifying service become more than ten years. The above appellants also thus have qualifying service of more than ten years, we thus conclude that all the appellants before us have qualifying service of more than ten years. Another relevant rule, which needs to be looked into is Rule 78. Rule 78 provides for the date from which pension becomes payable. Rule 78(1) is as follows:-

"78(1) Except in the case of a Government servant to whom the provision of rule 34 apply and subject to the provisions of rule 9, 60 and 69 a pension other than family pension shall become payable from the date on which a Government servant ceases to be borne on the establishment."

46. The crucial words in Rule 78 are "shall become payable from the date on which a Government servant ceases to be borne on the establishment." In the present cases, dates on which appellants were relieved is the date from which they cease to be borne on the establishment. Two appellants K.Anbazhagan and P.G. Rajagopal were relieved on account of attaining age of sixty years hence they were clearly entitled for superannuation pension. Other three appellants were relieved by the High Court due to the reasons that Fast Track Courts came to an end by converting the Fast Track Courts into Permanent Courts of Additional District Judge by Government order dated 26.08.2011. 49 Fast Track Courts, which were created under Eleventh Finance Commission were retained on permanent basis as the post of District Judge/Additional District Judge. The central funding for Fast Track Courts was ceased on 31.03.2011 but the State of Tamil Nadu has allowed to continue the said Courts for one more year w.e.f. 01.04.2011, i.e. upto 31.03.2012. The State Government has continued the post till 01.04.2012. 49 Fast Track Courts become the Permanent Courts of Additional District Judges. The relieving of other three appellants on 25.04.2012 was on the ground that since Fast Track Courts have been discontinued, A.S. Hassina, R. Radha and Selvi G. Savithri are relieved from their services. Rule 38 provides for a

compensation pension. The discontinuance of the posts held by the above three appellants, w.e.f. 01.04.2012 and consequently relieving of the aforesaid appellants, we are of the view that above three appellants are also entitled for compensation pension. We, thus, conclude that K. Anbazhagan and P.G. Rajagopal are entitled for superannuation pension and other three appellants namely A.S. Hassina, R. Radha and Selvi G. Savithri are entitled for compensation pension. High Court fell in error in rejecting their claim of pension.

47. With regard to compensation pension as contemplated by Rule 38 there can be one aspect which also needs to be considered. Rule 38 sub-rule (1) contemplates discharge owing to the abolition of his permanent post. It may be contended that Fast Track Courts as per order dated 18.12.2001 were not the permanent posts and initially Fast Track Court Scheme was only for five years which subsequently got extended to another five years and one year. The discontinuance of Fast Track Court cannot be treated as permanent abolition of post. The present case is a case where the appellants had allowed to work for 10 years and the post of Fast Track Court (Additional District Court) held by the appellants was discontinued with effect from 01.04.2012. It cannot be said that relieving of the appellants was due to abolition of

permanent post but the basis for allowing compensation pension in the circumstances as mentioned in sub-rule (1) of Rule 38 can be said to be very much present in the present case. The appellants who worked for 10 years and were discontinued due to discontinuation of posts which were held by them, the equity and justice demands that they should also be given compensation pension. Thus, in the present case even if technically abolition of permanent post may not be involved but for doing complete justice, direction for giving compensation pension to the appellants is just and proper.

48. Learned senior counsel for the appellants has also placed reliance on the judgment of this Court in ***Mahesh Chandra Verma Vs. The State of Jharkhand and ors., 2018 (7) Scale 343***. The question which arose in the aforesaid appeals for consideration has been noted in the paragraph 1 of the judgment which is to the following effect:

"1. The sole question, which arises for consideration in these appeals is whether the services rendered by the appellants/Judicial Officers as Fast Track Court Judges is liable to be counted for their pensionary and other benefits, the appellants having joined the regular judicial service thereafter."

49. The appellants in the aforesaid case were directly

recruited from the Bar as Fast Track Court Judges. This Court in paragraphs 15, 17 and 18 has held the following:

"15. The appellants were not appointed to the Fast Track courts just at the whim and fancy of any person, but were the next in line on the merit list of a judicial recruitment process. They were either part of the select list, who could not find a place given the cadre strength, or those next in line in the select list. Had there been adequate cadre strength, the recruitment process would have resulted in their appointment. We do believe that these Judges have rendered services over a period of nine years and have performed their role as Judges to the satisfaction, otherwise there would have been no occasion for their appointment to the regular cadre strength. Not only that, they also went through a second process for such recruitment. We believe that it is a matter of great regret that these appellants who have performed the functions of a Judge to the satisfaction of the competent authorities should be deprived of their pension and retiral benefits for this period of service. The appellants were not pressing before us any case of seniority over any person who may have been recruited subsequently, nor for any other benefit. In fact, we had made it clear to the appellants that we are only examining the issue of giving the benefits of their service in the capacity of Fast Track court Judges to be counted towards their length of service for pensionary and retiral benefits. To deny the same would be unjust and unfair to the appellants. In any case, keeping in mind the spirit of the directions made Under Article 142 of the Constitution of India in Brij Mohan Lal-[II] and in Mahesh Chandra Verma, the necessary corollary must also follow, of giving benefit of the period of service in Fast Track courts for their pension and retiral benefits. The methodology of non-creation of adequate regular cadre posts and the consequent establishment of Fast Track courts manned by the appellants cannot be used as a ruse to deny the dues of the appellants.

17. The position in respect of the appellants is really no different on the principle enunciated, as there was need for a regular cadre strength keeping in mind the inflow and pendency of cases. The Fast Track Court Scheme was brought in to deal with the exigency and the appellants were appointed to the Fast Track courts and continued to work for almost a decade. They were part of the initial select list/merit list for recruitment to the regular cadre strength but were not high enough to be recruited in the existing strength. Even at the stage of absorption in the regular cadre strength, they had to go through a defined process in pursuance of the judgment of this Court and have continued to work thereafter.

18. We are, thus, unhesitatingly and unequivocally of the view that all the appellants and Judicial Officers identically situated are entitled to the benefit of the period of service rendered as Fast Track court Judges to be counted for their length of service in determination of their pension and retiral benefits."

50. Although in the above case of **Mahesh Chandra**, Fast Track Court Judges were ultimately absorbed in the regular cadre strength but the fact that period of services as Fast Track Court Judges had been directed to be added for their pensionary benefits, does support the claim of the appellants in the present case.

51. Another judgment on which reliance was placed by the appellants is a judgment of this Court in **Government of NCT of Delhi and others Vs. All India Young Lawyers Association (Registered) and another, (2009) 14 SCC 49**. Learned counsel

submits that this Court in the above case had directed for addition of 10 years or actual period of judicial service, whichever is less, as qualifying service to the direct recruits to Delhi Higher Judicial Service. In the above case direct recruits to the Delhi Higher Judicial Service were under 25% quota. The appellants were regularly recruited in Delhi Higher Judicial Service in accordance with Delhi Higher Judicial Service Rules, 1970. Direct recruits had filed writ petition before the High Court of Delhi seeking a mandamus to the appellants that the actual period of practice at the Bar subject to a maximum of fifteen years, should be added to the total pensionable service while computing the pension. The High Court allowed the writ petition while giving weightage of 15 years of practice or such other number of years of practice at the Bar, whichever is less. The Government of NCT of Delhi filed an appeal. It has been noted by this Court in the aforesaid judgment that the High Court after taking decision on the Administrative side wrote to the Delhi Government and it was only on 02.02.2006 by a letter, the Government has indicated that it was agreeable to give weightage of seven years of practice. The above fact is noted in paragraphs 6 and 7 which is to the following effect:

"6. The High Court, on the administrative side, brought this fact to the notice of the Government

by writing a letter in the year 1987. Though repeated reminders were sent to the Government, no decision was taken by the Government till the end of 2005 and only on 2-2-2006 by a letter, the Government has indicated that it was agreeable to give weightage of seven years of practice at the Bar while computing the pension and other retiral benefits for direct recruits.

7. Learned counsel appearing for the State contended that the reason why the Government has agreed to give weightage of seven years' practice at the Bar is that because in the case of direct recruitments to the Delhi Higher Judicial Service, a member should have seven years' practice at the Bar and that is why the Government thought it fit to give weightage of seven years."

52. This Court while allowing the appeal partly, directed the Government of NCT to give weightage of ten years of practice at the Bar or such number of years of actual service, whichever is less. The above case is distinguishable due to two reasons. Firstly, the direct recruits were Advocates appointed in accordance with Delhi Higher Judicial Service Rules, 1970. Secondly, the Government of NCT of Delhi has agreed for giving weightage of seven years in their service period. It was the concession given by the Government of NCT of Delhi which was relied by this Court while issuing direction. Thus, benefit of the above case is not available to the appellants in the present case.

53. Now we come to the entitlement of gratuity by the

appellants. The definition of pension as given under Rule 3(m) provides as follows:

"3(m) 'pension' includes gratuity except when the term pension is used in contradistinction to gratuity but does not include dearness allowance."

54. When the appellants are entitled for grant of pension, they are obviously entitled for grant of gratuity. Rule 45 of the 1978 Rules provided that a Government servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under Rule 43, shall be granted gratuity. Rule 45 sub-rule (1)(a) is as follows:

"45. Death-cum-Retirement Gratuity.-(1)(a)A Government servant, who has completed five years' qualifying service and has become eligible for service gratuity or pension under rule 43, shall, on his retirement be granted death-cum-retirement gratuity as in the table below for each completed six monthly period of qualifying service, subject to a maximum of fifteen times, the emoluments:-"

55. We, thus, are of the view that appellants are also entitled for gratuity which may be computed in accordance with 1978 Rules.

56. Now remains the issue of leave encashment. The Tamil Nadu Leave Rules, 1933 govern all aspects of the leave. Rule 7 deals with leave at the credit of a Government servant. Rule 7

also provides in respect of the benefit of encashment of earned leave at the credit of a Government servant. Rule 7(i) and (ii) are as follows:

"7.(i) Leave at the credit of a Government servant in his leave account, other than earned leave and leave on private affairs shall lapse on the date of retirement or on the date of termination of the extension of service, as the case may be. The competent authority (leave sanctioning authority) shall suo motu draw and disburse the cash benefits of encashment of earned leave and leave on private affairs at the credit of the Government servants in Groups B, C and D without formal sanction orders on the date of retirement or on the date of termination of extension of service, as the case may be, or on the next working day, following the date of retirement or the date of termination of extension of service, if the date of retirement or the date of termination of extension of service happens to be a holiday. In respect of Group A Officers, the Accountant General or Pay and Accounts Officer, as the case may be, shall, suo motu issue the pay slips for encashment of earned leave and leave on private affairs, as aforesaid, at the credit of the Government servants without formal sanction orders, on the date of retirement or on the date of termination of extension of service, as the case may be, or on the next working day, following the date of retirement or the date of termination of extension of service if the date of retirement or the date of termination of extension of service happens to be a holiday.

(ii) The benefit of encashment of earned leave at the credit of a Government servant on the date of retirement or on the date of termination of extension of service, as the case may be, shall be subject to a maximum of 240 days and shall be eligible for cash equivalent of full leave salary which shall be based on Pay, Dearness Allowance, House Rent Allowance and City Compensatory Allowance for the entire period of leave at

credit.”

57. The appellants claimed earned leave to their credit on the date when they retired/relieved. The appellants were clearly entitled for encashment of leave subject to a maximum of 240 days.

58. In view of the foregoing discussions, we allow these appeals in the following manner:

(1) The judgment of the High Court dated 01.04.2015 is set aside and the Civil Appeals filed by the appellants are allowed.

(2) The respondents are directed to sanction superannuation pension to appellants K. Anbazhagan and P.G. Rajagopal in accordance with 1978 Rules.

(3) The respondents are directed to sanction compensation pension to the appellants, namely, Selvi G. Savithri, R. Radha and A.S. Hassina.

(4) All the appellants are entitled for payment of gratuity in accordance with 1978 Rules.

(5) The respondents are also directed to permit encashment of earned leave to the credit of the appellants subject to a maximum of 240 days.

(6) All above retiral benefits be computed and paid to the appellants within a period of two months from today. In the event payments are made after two months, the appellants shall be entitled for such payments alongwith the simple interest @ 7% per annum.

(7) The parties shall bear their own costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI,
AUGUST 13,2018.