

Farewell Speech by Hon'ble Mr. Justice Manindra Mohan Shrivastava, Judge, Rajasthan High Court on the occasion of elevation of Hon'ble Mr. Justice Pankaj Mithal, The Chief Justice, Rajasthan High Court as the Judge, Supreme Court of India, on 04<sup>th</sup> February, 2023 in the Court Hall of the Chief Justice at Rajasthan High Court, Jaipur Bench through Video Conferencing.

1. Chief Justice of Rajasthan High Court, Mr. Justice Pankaj Mithal
2. My esteemed Brother and Sister Judges on the Bench at Jodhpur and Jaipur
3. Mr. Mahendra Singh Singhvi, Advocate General, Rajasthan
4. Mr. Ghanshyam Singh Rathore, Chairman, Bar Council of Rajasthan, Jodhpur/Jaipur
5. Mr. Nathu Singh Rathore, President, Rajasthan High Court Advocates Association, Jodhpur.
6. Mr. Ravi Bhansali, President, Rajasthan High Court Lawyers Association, Jodhpur
7. Mr. Mahendra Shandilya, President, Rajasthan High Court Bar Association, Jaipur
8. Mr. Kamal Kishore Sharma, President, The Jaipur Bar Association, Jaipur
9. Learned Senior Advocates
10. Learned Members of the Bar
11. Members of Judicial Service and Registry
12. Revered Madam Smt. Kanika Mithal and other dignified family members,
13. Ladies & Gentlemen,

We have assembled today to bid heartfelt farewell to Hon'ble Chief Justice Shri Pankaj Mithal as His Lordship is leaving this august institution towards his upward journey on his appointment as the Judge of the Supreme Court of India. It is a moment of pride, glory and honour to the judicial fraternity in the State of Rajasthan, Uttar Pradesh and Jammu & Kashmir and Ladakh where His Lordship worked as Judge and then as the Chief Justice.

His Lordship was born on 17<sup>th</sup> June, 1961 in Meerut in an illustrious family of lawyers and legal professionals.

His grand-father, Shri Babu Brij Nath Mithal was a lawyer of Western U.P. He was the Honorary Head of the Law Department at the Meerut College. The Boys Hostel of the Law Department at Meerut College, was named 'B.N.M. Hostel' (Brij Nath Mithal Hostel) in his honour.

His uncle Shri Raghuvar Dayal Mithal and the eldest son of Brij Nath Mithal was also a stalwart of the Meerut Bar, who dominated the civil side for over four decades.

His father, Justice Narendra Nath Mithal was also a leading civil lawyer of the District Court, Meerut. He served as the District Government Counsel (Civil) for several years before being elevated

to the Bench at the High Court of Judicature at Allahabad in the year 1978.

Having received his early education at St. Mary's Academy, Meerut, His Lordship graduated in Commerce from prestigious Allahabad University. Later, he joined Meerut College for his legal studies and obtained his law degree from Chaudhary Charan Singh University, Meerut and got enrolled as lawyer in the year 1985, stepping in the noble legal profession. His Lordship practised in the High Court of Judicature at Allahabad, initially under the guidance of a Senior Lawyer Shri Sudheer Chandra Verma, later a Judge of Allahabad High Court. His Lordship's versatility earned him name, fame and success in almost all branches of profession including civil, constitution, land acquisition, rent control, education, service, labour and other miscellaneous cases.

His Lordship served as Standing Counsel for the Uttar Pradesh Awas avam Vikas Parishad, Dr. B.R. Ambedkar University, Agra and many other institutions.

As a lawyer he had written an article "Birth and History of the Allahabad High Court" which was widely published in the local newspapers and law journals. One of his articles on "Code of Conduct of Lawyers" was twice published in a law magazine Laws published from New Delhi.

His Lordship's valuable contribution to the cause of justice, knowledge and competence was soon acknowledged and he was elevated to the Bench as Additional Judge of the High Court of Allahabad on 7<sup>th</sup> July, 2006 and later as Permanent Judge on 2<sup>nd</sup> July, 2008.

His Lordship's devoted and dedicated service as Judge of the High Court of Allahabad is not only reflected from his untiring judicial functions but also undertaking important administrative assignments. He was associated with several important committees of the High Court of Allahabad and was the Chairman of several of them including the Library Committee, Higher Judicial Services Committee and the Committee to supervise the construction of the High Court Museum. He was instrumental in revising the quota of work for the subordinate judiciary of Uttar Pradesh as Chairman of that Committee. He was member of the Sub-Committee on Coins and Postage Stamps of the Sesquicentennial Committee. He worked as Chairman, State Advisory Board under the National Security Act while posted at Lucknow. He was also the Chairman of La Martiniere College (both boys and girls wing, Lucknow).

His Lordship was as nominated by the Governor of Uttar Pradesh, as a Member of the Executive Council of Mahatma Gandhi Kashi Vidyapith, Varanasi as also Member of the Executive Council of Chaudhary Charan Singh University, Meerut.

Having rendered devoted service for a long period of more than fourteen years, His Lordship was appointed as the Chief Justice of Jammu & Kashmir and Ladakh High Court on 4<sup>th</sup> January, 2021.

His Lordship was thereafter transferred as Chief Justice of Rajasthan High Court on 14<sup>th</sup> October, 2022.

During his long and illustrious career as Judge and then as Chief Justice of two High Courts for more than 16 years, till now, His Lordship has decided more than 37000 cases including large number of land mark judgments reported in various law journals which bear testimony to His Lordship's hard work and relentless efforts to reach injustice wherever found and to protect life and liberty of citizens.

These land mark opinions, ranging from civil, constitutional, land acquisition, labour, service and many diverse jurisdictions reflect His Lordship's indepth knowledge of law and legal principles, first and fundamental principles of law; sensitivity to the cause at hand and justice oriented approach, overcoming technicalities.

Out of long list of land mark judgments, time constraint allows me to mention only a few of them.

In the case of Bank of Baroda Vs. The Chief Commissioner, CGST Department, while deciding an important issue of priority of discharge of bank dues as secured creditor as against the central excise dues, upon consideration of provisions of Section 11E of the Central Excise Act, 1944 and Section 35 of the Securitisation and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, it was held that where the land, building, plant and machinery etc. have been mortgaged or hypothecated to a secured creditor, the secured creditor will have the first charge on the secured assets and thus, will take priority over the central excise dues.

In the case of M/s. Rama Kishan Ashok Kumar Vs. Union of India, dealing with an issue as to whether a person is deprived from seeking any arbitration or raising any dispute having signed no claim certificate, after survey of various judicial pronouncements of the Apex Court, it was held that once a person has invoked the arbitration clause, arbitration proceedings are deemed to have commenced by virtue of Section 21 of the Arbitration and Conciliation Act, 1996 and signing of no claim certificate subsequent to invocation of arbitration clause would not be material to affect the progress of the proceedings and it was not open for the railways to withhold the demand for appointment of an arbitrator.

In the case of Ruchi Pandey Vs. Kendriya Vidyalaya Sangathan, it was held that the possession of the additional qualification is not a disqualification and further that after the process of selection had commenced with the issuance of the advertisement, it was not open for the recruiting agency to change the rules of the game by

providing additional qualification for the post by clarification. It was also held that in the absence of any statutory provision laying down any other essential qualification for the post, other than those specified in the advertisement, it was not permissible to change the eligibility condition.

In the case of Rama Vs. State of Rajasthan, while entertaining writ petition challenging constitutional validity of a rule of compassionate appointment including married daughter as one of the dependents, placing interpretation on the rules and its constitutional validity on the touchstone of Articles 14 and 16 of the Constitution of India, it has been held that though married daughter has been included in the definition of dependent of the deceased government servant for the purpose of securing compassionate appointment, but she is entitled only if other categories of dependents are not available as married daughter does not stand on equal footing with other dependents of the deceased government servant. It was also held that such a benefit would be available only when married daughter establishes that she was wholly dependent upon the deceased government servant at the time of his/her death.

In another important decision in the case of Smt. Shail Bhargava Vs. Smt. Shanti Devi deciding an issue of maintainability of an intra court appeal against an order passed in first appeal

pending before the High Court, it has been held that the order under challenge having the nature of judgment passed in exercise of appellate jurisdiction in respect of a decree or order passed by the court subject to the superintendence of the High Court, therefore, the order is falling in the category of excepted matter and as such not amenable to special appeal under Rule 134 of the Rajasthan High Court Rules, 1952.

In another important judgment in the case of Khalid Ahmed Ghilan Amra Vs. The State of Rajasthan, dealing with an issue with regard to scope and extent of right of a foreign national to overstay in India and the power of the Central Government to expel a foreigner, it has been held that the Foreigners Act, 1946 confer power to expel foreigners from India. It has been held that it vests the Central Government with absolute and unfettered discretion in this regard as there is no provision contained in the Act, nor any provision in the Constitution of India, imposing fetter on the said discretion. It has also been held that the Government has unrestricted right to expel a foreigner and that opportunity of hearing in such matters is not a hard and fast rule and where opportunity of hearing would not result in the change of opinion, non-affording of opportunity of hearing would not violate the order.

His Lordship is also a Trustee of Etawah Hindi Sewa Nidhi founded for promotion of Hindi and other Indian languages, rendering great service to the cause of Indian languages for the last over twenty four years.

Though His Lordship had a short tenure of three and a half months as Chief Justice of Rajasthan High Court, his quality as human being, as Judge, as companion and as patron of the State Judiciary has impressed and inspired each of us in the judicial fraternity.

His utmost humility, simplicity, respect to one and all alike, concern and compassion for everyone associated with him, add gravity and greatness to his persona and have also won him friends, followers and admirers.

We all will cherish memorable moments with His Lordship, for all times to come.

I, on my own behalf and on behalf of all Brother and Sister Judges of the Rajasthan High Court and the entire judiciary of the State of Rajasthan, extend best wishes and hearty congratulations on His Lordship's elevation to the Supreme Court of India and also best of health and happiness.

Thank you.

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