HIGH COURT OF JUDICATURE FOR RAJASTHAN

v.

RAMESH CHAND PALIWAL AND ANR.

FEBRUARY 19, 1998

[S. SAGHIR AHMAD AND G.B. PATTANAIK, JJ.]

Constitution of India, 1950 :

Articles 226, 229, 235 and 146—Powers of Chief Justice and other Judges of High Court—Posts above Deputy Registrar filled up by bringing officers from Rajasthan Higher Judicial Service on deputation—Directions by Division Bench to the Registrar to prepare a report whether the posts can be manned by High Court staff and to place the report before Full Court—Validity of—Held, such a direction is contrary to Article 229 and also overrides Rule 2-A—Chief Justice of High Court is the supreme authority in the matter of appointment of High Court staff—Judges of High Court individually and all the Judges collectively cannot alter a constitutional provision or the rules made by the Chief Justice—Power of Chief Justice of High Court under Article 229 is akin to the powers of Chief Justice of India under Article 146—Rajasthan High Court (Conditions of Service of Staff) Rules, 1953 : Rule 2A.

Articles 235 and 229—Control over Subordinate Courts and High Court administration—Distinction between—Held, control over Subordinate Courts vests in the 'High Court' but High Court administration vests in the 'Chief Justice'.

Respondent No. 1 filed a writ petition challenging the promotion of respondent No. 2 on the post of Deputy Registrar. During the course of hearing, a point was raised by Respondent No. 2 that the High Court staff were not promoted above the post of Deputy Registrar and the higher posts were filled up by bringing officers of Rajasthan Judicial Service/Rajasthan Higher Judicial Service on deputation, causing frustration amongst the establishment of the High Court. The Court, though of the opinion that the point raised was not necessary for disposal of the writ petition, issued a direction to the Registrar to prepare a report whether the posts on which officers belonging to Rajasthan Judicial Service were appointed could be manned by the High Court staff, and to place the said report before the Full

A Court. Aggrieved by the said direction, the present appeal was preferred.

The contention of the appellant was that the Judges of the High Court were not competent while deciding the main controversy to issue the impugned directions which was contrary to the provisions of Article 229 of the Constitution and purports to undermine the authority of the Chief Justice.

B

Allowing the appeal, this Court

HELD : 1.1. The impugned direction issued to the Registrar to prepare a report, as to whether the posts in the High Court on which Officers on deputation are appointed, can be manned by the High Court staff is patently C contrary to the mandate of Article 229 vesting High Court Administration in the Chief Justice and purports to encroach upon his authority.

[979-D-E]

1.2. Under Article 229 of the Constitution, Chief Justice of the High Court is the supreme authority in the matter of appointments of the High Court Officers and servants. This Article also confers rule-making power D on the Chief Justice for regulating the conditions of service of officers and servants of the High Court subject to the condition that if the rules relate to salaries, allowances, leave or pensions, they have to have the approval of the Governor of the State. If the Legislature of the State has made any law, the rules made by the Chief Justice would operate subject to the conditions made in that law. However, if the Legislature has not made any law referred E to in this Article or the Governor has not made any rule requiring the State Public Service Commission to be consulted, the rules made by the Chief Justice would operate independently and the Chief Justice will also not be under any obligation to consult the State Public Service Commission.

[971-C-D-G; 971-G]

F *Pradyat Kumar Bose* v. *Hon'ble Chief Justice of Calcutta High Court,* AIR (1956) SC 285 = [1955] 2 SCR 1331; *M. Gurumoorthy* v. *Accountant General, Assam and Nagaland & Ors.,* AIR (1971) SC 1850 = [1971] Supp. SCR 420; *State of Assam* v. *Bhubhan Chandra Datta & Anr.,* AIR (1975) SC 889, [1975] 4 SCC 1 = [1975] 3 SCR 854; *State of Andhra Pradesh & Anr.* v. *T. Gopalakrishnan Murthi & Ors.,* AIR (1976) SC 123 = [1976] 1 SCR G 1008; *Supreme Court Employees Welfare Association* v. *Union of India,* AIR (1990) SC 334 = [1989] 3 SCR 488 = [1989] 4 SCC 187 and *State of Rajasthan* v. *Prakash Chand,* JT (1997) 9 SC 492 = [1998] 1 SCC 1, relied on.

Sanjay Kumar Srivastava v. *Acting Chief Justice & Ors.,* (1996) H Allahabad Weekly Cases 644, approved.

2. The impugned directions to the Registrar are not only contrary to Article 229, but also have the effect of negativing the impact of the Rajasthan High Court (Conditions of Service of Staff) Rules, 1953 made by the Chief Justice in exercise of power conferred by Article 229. Method of recruitment specified in Rule 2A, contemplates that the Chief Justice may fill certain posts by appointing officers on transfer from sub-ordinate courts. The Rules made under Article 229 of the Constitution have, thus specified the posts on which officers of the Rajasthan Higher Judicial Service or Rajasthan Judicial Service are to be appointed. The method of recruitment has also been indicated. All appointments on these posts are to be made by the Chief Justice. These rules can be altered, amended or rescinded only by the Chief Justice who alone has the rule-making power. Thus the real purport of the directions is to override not only the constitutional provisions contained in Article 229 but also the rules made in exercise of powers available to the Chief Justice under that Article. [975-C-D; 976-C-E-F]

3.1. A Judge of the High Court individually or all the Judges sitting collectively as in the Full Court, cannot either alter the constitutional provisions or the rules made by the Chief Justice. They have no jurisdiction even to suggest any constitutional amendment or amendment in the rules made by the Chief Justice nor can they create any avenue of promotion for the High Court Staff so as to be appointed on posts meant for officers from Rajasthan Higher Judicial Service or Rajasthan Judicial Service. The Chief Justice has been vested with wide powers to run the High Court administration independently so as not to brook any interference from any quarter, not even from his brother Judges who, however, can scrutinise his administrative action or order on the judicial side like the action of any other authority. [976-H; 977-A-C]

3.2. Even if the Registrar, in compliance of the impugned direction, is to report that the posts on which officers of the Rajasthan Higher Judicial Service or Rajasthan Judicial Service are appointed on deputation, can well be manned by the High Court staff itself or that when the officers are brought from the District Courts to the High Court for appointment on the aforesaid posts, some of the subordinate courts become vacant as the Presiding Officers having been sent on deputation to High Court are not available to hear and dispose of cases pending in those courts and even if such report is placed before the Full Court, the Full Court cannot give a direction to the Chief Justice not to fill up those posts by bringing officers on deputation but to fill up those posts by promotion from amongst the High Court staff.

A 3.3. If under the High Court Rules, it has been provided that certain posts shall be manned by the officers of the Rajasthan Judicial or Higher Judicial Service who would be appointed on those posts on deputation, the other Judges of the High Court cannot, nor can the employees of the court raise, possibly or legitimately, any grievance. Since power of appointment which vests absolutely in the Chief Justice cannot be exercised by any other B Judge of the High Court, the latter, namely, other Judge or Judges, cannot exercise that power even indirectly as has been attempted to be done in the instant case. By directing the Registrar of the court to submit a report whether the posts on which officers from the Rajasthan Judicial Service are appointed on deputation can be manned by the High Court staff and further C directing such report to be placed before the Full Court for the consideration of other Judges on the administrative side, the Judges have attempted to indirectly exercise the power of appointment on certain posts in the High Court establishment on which appointment can be made only by the Chief Justice. [977-D-G]

D 4. Under Article 235, the control over Subordinate Court is vested in the 'High Court'. However, under Article 229 the word 'Chief Justice' has been used. The Constitution, therefore, treats them as two separate entities in as much as "control over Subordinate Courts" vests in the High Court, but High Court administration vests in the Chief Justice. [979-D]

E

State of Haryana v. *Inder Prakash Anand,* AIR (1976) SC 1841 = [1976] Supp. SCR 603 = [1976] 2 SCC 977; *State of Gujarat* v. *Ramesh Chandra Mashruwala,* AIR (1977) SC 1619 = [1977] 2 SCR 710 = [1977] 2 SCC 12; *Chief Justice of Andhra Pradesh & Anr.* v. *L.V.A. Dikshitulu,* AIR (1979) SC 193 = [1979] 1 SCR 26 = (1979) 2 SCC 34; *State of West Bengal* F v. *Nripendra Nathe Bagachi,* AIR (1966) SC 447 = [1966] 1 SCR 771; *Tejpal Singh (Dead) by Lrs.* v. *State of U.P. & Anr.,* AIR (1986) SC 1814 = [1986] 3 SCR 428 = [1986] 3 SCC 604; *G.S. Nagmoti* v. *State of Mysore,* [1969] 3 SCC 325 = (1970) SLR 911; *Registrar, High Court of Madras* v. *R. Rajiah,* AIR (1988) SC 1388 = [1988] Supp. 1 SCR 332 = [1988] 3 SCC 211 and G *State of U.P.* v. *Batuk Deo Patil Tripathi,* [1978] 2 SCC 102 = [1978] 3 SCR 131, relied on.

5. The power available to the Chief Justice of the High Court, under Article 229, is akin to the power of the Chief Justice of India under Article 146 of the Constitution. Just as Chief Justice of India is the supreme H authority in the matter of Supreme Court Establishment including its office

staff and officers, so also the Chief Justice of the High Court is the sole authority in these matters and no other Judge or officer can legally usurp those administrative functions or power. [972-B-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 835 of 1994.

From the Judgment and Order dated 28.9.93 of the Rajasthan High Court in SB. C.W.P. No. 2215 of 1992.

Arvind Varma and S.K. Mehta for the Appellant.

S.K. Bhattacharya for the Respondent. No. 1.

Pallav Shisodia and A.P. Medh for Instervenors.

The Judgment of the Court was delivered by

S. SAGHIR AHMAD, J. The Authority which has been dispensing justice to others, is, today before us seeking itself justice on being aggrieved by the judgment passed by two of its Judges on 28.9.93 in a Writ Petition filed by respondent No. 1 (Ramesh Chand Paliwal) challenging the promotion of respondent No. 2 (Sankal Chand Mehta) on the post of Deputy Registrar. Not only that respondent No. 1 wanted the Chief Justice's order dated 6.3.92 by which Sankal Chand Mehta was promoted to the post of Deputy Registrar to be quashed, he also prayed that the order of the Chief Justice dated 28.2.92 by which the earlier establishment order dated 11.5.90 was amended, be also quashed.

2. The Chief Justice, in exercise of powers available to him under Article 229 of the Constitution, has made Rules known as Rajasthan High Court (Conditions of Service of Staff) Rules, 1953 which have been amended by him from time to time by administrative orders. The promotion on the post in question is regulated by these Rules.

3. The vacancy, on which Sankal Chand Mehta was promoted as Deputy Registrar, had occurred on the retirement of Shambhu Chand Mehta on 31st of January, 1992. The post of Deputy Registrar, therefore, became vacant on 1st of February, 1992. It has been held that this vacancy could be filled up only in accordance with the rules which were prevalent on that date and since respondent No.2 had been promoted to that post in accordance with the rules as amended on 28.2.92, and, not in accordance with the rules prevalent on

A 1.2.92, the said promotion was bad. The Hon'ble Judges proceeded to say that ordinarily they would have quashed the appointment of respondent No.2 on the post of Deputy Registrar but since he was to retire on 30th of September, 1993, they did not do so but directed that the vacancy occurring on 1.10.93 shall be treated to be a vacancy available on 1.2.92 and that vacancy would be filled up in accordance with the rules set out in the B administrative order dated 11.5.90 by considering the eligible officers belonging to the cadre of Private Secretaries only. It was further directed that the appointment made on the post of Deputy Registrar would be deemed to have been made w.e.f. 6.3.92 when respondent No.2 was illegally promoted to that post. The Judges did not decide the question of validity of the amendments C made by the Chief Justice in the rules by order dated 28.2.92.

4. We are informed that so far as appointment to the post of Deputy Registrar is concerned, the directions set out in the impugned judgment have since been complied with and the promotion on the post of Deputy Registrar has been made in accordance with those directions. In this appeal, therefore, D we are not now concerned with the promotion made on the post of Deputy Registrar nor are we concerned with the validity of amendments introduced in the Rajasthan High Court (Conditions of Service of Staff) Rules, 1953 by order dated 28.2.92.

5. During the course of the judgment, the learned Judges digressed from E the main course and wrote out two pages as under:-

> "An argument has been raised on behalf of the respondent No.2 that all the posts on the establishment of the High Court can be manned by the officers belonging to be establishment of the High Court, but F the officers belonging to the establishment of the High Court are not promoted to any posts above the post of the Dy. Registrar and even two posts of Dy. Registrars designated as Dy. Registrar (Judl.) and one post of Principal Private Secretary to the Hon'ble Chief Justice are being filled in by bringing the officers of the Rajasthan Judicial Service and/or of Rajasthan Higher Judicial Service on deputation, in spite of G the fact that many courts are lying vacant in the various districts of the State. It has been submitted that this results is not only causing frustration amongst the officials belonging to the establishment of the High Court but also deprives the litigating public of the State of their services for decision of their cases.
>
> H We feel that this point raised by the respondent No.2 in an additional

affidavit filed on record, is not required to be decided for the decision of this writ petition and, even otherwise, in absence of sufficient material, we should not go into it.

We are, however, of the view that it requires examination as to whether the abovesaid posts or any of them are such which cannot be manned by the officers belonging to the establishment of the High Court and are required to be filled in by bringing the judicial officers on deputation to the High Court by depriving the litigating public of their judicial service and experience, we, therefore, direct the Registrar of the respondent No. 1 to prepare a detailed report in this respect as soon as possible and put it up before the Hon'ble Chief Justice for being placed before the Full Court for consideration and decision as to whether the officers belonging to the judicial services should be spared to man such posts in the High Court especially when many courts in various districts of this State remain vacant."

6. These passages show that there were certain posts in the establishment of the High Court on which officers of the Rajasthan Higher Judicial Service were being appointed on deputation which was objected to by certain staff of the High Court on the ground that they were competent to man those posts and, therefore, officers belonging to Rajasthan Judicial Service or Higher Judicial Service should not be inducted on those posts specially when their appointment causes dislocation of judicial work in the District Courts and more specially as the High Court staff does not get any promotion beyond the post of Deputy Registrar. The learned Judges did not decide this question as they were of the opinion that this question was not required to be decided for the effective disposal of the Writ Petition filed by respondent No. 1. They also thought that it would not be proper for them to go into that question as sufficient material was not available on record. They, nevertheless, issued the direction to the Registrar to prepare a report whether the posts on which officers belonging to Rajasthan Judicial Service were being appointed could be manned by the High Court staff and whether the appointment of those officers on deputation causes dislocation of judicial work in the District Courts as the litigating public is deprived of their services and the courts presided over by them become, and remain, vacant for long. This report was directed to be placed before the Full Court so that the matter could be discussed and a decision taken thereon.

7. Learned counsel appearing on behalf of the appellant has contended that the Judges of the Rajasthan High Court were not competent while

A deciding the main controversy raised in the petition, to slide to this side of the matter and to issue the impugned direction particularly when such direction is contrary to the provisions of Article 229 of the Constitution of India and purports to undermine the authority of the Chief Justice.

8. In order to appreciate and understand the status, powers and authority
B of the Chief Justice as also his constitutional position qua other Judges of the High Court, it would be necessary to delve into archives.

9. The British Government established the Supreme Court of Calcutta by a Charter issued in 1774. Clause 10 of the Charter, *inter alia*,

C "authorised and empowered from time to time, as occasion may require, to appoint so many and such clerks and other ministerial officers as shall be found necessary for the administration of justice."

10. The Supreme Court of Calcutta was replaced by the High Courts established under the High Courts Act, 1861. Section 9 of the Act provided
D as under:-

"Each of the High Courts to be established under the Act shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the courts abolished under the Act."

E 11. Letters Patent was granted to the Calcutta High Court in 1865. Clauses 4 and 8 of the Letters Patent, as amended in 1919, provided as under:-

"4. We do hereby appoint and ordain, that every clerk and ministerial officer of the High Court of Judicature at Fort William in Bengal appointed by virtue of the said Letters Patent of the Fourteenth of
F May, One thousand eight hundred and sixty-two, shall continue to hold and enjoy his office and employment with the salary thereunto annexed, until he be removed from such office and employment; and he shall be subject to the *like power of removal, regulations, and provisions as if he were appointed by virtue of these Letters Patent.*

G "8. We do hereby authorize and empower the Chief Justice of the said High Court of Judicature at Fort William in Bengal from time to time, as occasion may require, and subject to any rules and restrictions which may be prescribed by the Governor-General in Council, to appoint so many and such clerks and other ministerial officers as shall
H be found necessary for the administration of justice, and due execution

of all the powers and authorities granted and committed to the said High Court by these our Letters Patent and it is our further will and pleasure and we do hereby, for us, our heirs and successors give, grant, direct and appoint, that all and every the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice shall, from time to time appoint for each office and place respectively, and as the Governor-General in Council shall approve of....."

12. These Clauses, thus, gave power of appointment and removal of the staff to the Chief Justice. The power was to be exercised subject to such rules and restrictions as may be made by the Governor-General in Council.

13. When Government of India Act, 1915 was enacted, the above position was continued by virtue of Section 106 of the Act which, inter alia, provided as under:-

"The several High Court.....have.....all such powers and authority over or in relation to the administration of justice, including the power to appoint clerks and other ministerial officers of the court, as are vested in them by letters patent....."

14. This position was not altered even by the Government of India Act, 1935. It may be mentioned that Section 241 of this Act specified the various authorities who could make appointments of persons holding civil posts under the Crown in India and frame rules relating to their conditions of service but Section 242(4) specifically provided as under:-

"(4) In its application to appointments to, and to persons serving on, the staff attached to the Federal Court or the staff attached to a High Court, the last preceding section shall have effect as if, in the case of the Federal Court, for any reference to the Governor-General in paragraph (a) of sub-section (1), in paragraph (a) of sub-section (2) and in sub-section (5) there were substituted a reference to the Chief Justice of India and as if, in the case of a High Court, for any reference to the Governor in paragraph (b) of sub-section (1), in paragraph (b) of sub-section (2) and in sub-section (5) there were substituted a reference to the Chief Justice of the court:

Provided that -

(a) the Governor may in his discretion require that in such cases as

A he may in his discretion direct no person not already attached to the court shall be appointed to any office connected with the Court save after consultation with the Provincial Public Service Commission ;

(b) rules made under the said sub-section (2) by a Chief Justice shall, so far as they relate to salaries, allowances, leave or pensions, require
B the approval of the Governor-General or, as the case may be, the Governor."

15. Thus, Chief Justice continued to be the highest authority so far as High Court staff was concerned.

C 16. When Constitution came into existence, the powers and status of the Chief Justice, as available under both the Acts, namely, Government of India Acts 1915 and 1935, were maintained.

17. Chapter V of the Constitution relates to "the High Courts in the States". Under the constitutional scheme, there has to be a High Court for
D each State (see: Article 214). Article 216 provides that every High Court shall consist of a Chief Justice and such other Judges as may be appointed by the President from time to time. Article 223 provides that when the office of Chief Justice of a High Court is vacant or any Chief Justice, by reason of absence or otherwise, is unable to perform the duties of his office, such duty shall be
E performed by such one or the other Judges of the court as the President may appoint. Article 229 provides as under:-

"229. Officers and servants and the expenses of High Courts. - (1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the
F court as he may direct:

Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule no person not already attached to the court shall be appointed to any office connected with
G the court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief
H Justice of the Court or by some other Judge or officer of the court

authorised by the Chief Justice to make rules for the purpose : A

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, B allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State, and any fees or other moneys taken by the court shall form part of that Fund."

18. This Article makes Chief Justice of the High Court the supreme C authority in the matter of appointments of the High Court officers and servants. This Article also confers rule-making power on the Chief Justice for regulating the conditions of service of officers and servants of the High Court subject to the condition that if the rules relate to salaries, allowances, leave or pensions, they have to have the approval of the Governor of the State. If the Legislature of the State has made any law, the rules made by the Chief Justice D would operate subject to the conditions made in that law.

19. The rule-making power of the Chief Justice is subject to three restrictions:-

(i) If the rules relate to salaries, allowances, leave or pensions, they E have to be approved by the Governor of the State.

(ii) If the Legislature of the State has made any law, the rules made by the Chief Justice will operate subject to that law.

(iii) If the Governor of the State has, by rule, provided that no person not already attached to the Court, shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission, the Chief Justice while making appointment on such post shall first consult the State Public Service Commission."

20. It is obvious that if the Legislature has not made any law referred G to in this Article or the Governor has not made any rule requiring the State Public Service Commission to be consulted, the rules made by the Chief Justice would operate independently and the Chief Justice will also not be under any obligation to consult the State Public Service Commission.

21. Under Article 229, power of appointment can also be exercised by H

A such other Judge or officer of the court as may be directed by the Chief Justice. So also the rule-making power can be exercised by some other Judge or officer of the court provided he is authorised in that behalf by the Chief Justice.

B 22. The power available to the Chief Justice of the High Court, under Article 229, is akin to the power of the Chief Justice of India under Article 146 of the Constitution, which is quoted below :

"146. Officers and servants and the expenses of the Supreme Court.- (1) Appointments of officers and servants of the Supreme Court shall be made by the Chief Justice of India or such other Judge or Officer of the court as he may direct:

C

Provided that the President may by rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court, save after consultation with the Union Public Service Commission.

D

(2) Subject to the provisions of any law made by Parliament, the conditions of service of officers and servants of the Supreme Court shall be such as may be prescribed by rules made by the Chief Justice of India or by some other Judge or officer of the court authorised by the Chief Justice of India to make rules for the purpose :

E

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the President.

F

(3) The administrative expenses of the Supreme Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of India, and any fees or other money taken by the court shall form part of that Fund."

G 23. Just as Chief Justice of India is the supreme authority in the matter of Supreme Court Establishment including its office staff and officers, so also the Chief Justice of the High Court is the sole authority in these matters and no other Judge or officer can legally usurp those administrative functions or power.

H 24. The power to appoint an officer or servant of the High Court also

includes the power to dismiss as was held in *Pradyat Kumar Bose* v. *Hon'ble Chief Justice of Calcutta High Court,* AIR (1956) SC 285 = [1955] 2 SCR 1331. It was also held in that case that it was not necessary for the Chief Justice to consult the State Public Service Commission before dismissing the Registrar of the original side of the High Court. In *M. Gurumoorthy* v. *Accountant General, Assam and Nagaland & Ors.,* AIR (1971) SC 1850 = [1971] Supp. SCR 420, it was held that in the matter of appointment of the High Court officers and servants, the Chief Justice is the supreme authority and there can be no interference by the executive except to the limited extent indicated in Article 229. If, however, the matter relates to pay fixation, it has to have the approval of the Governor of the State. See: *State of Assam* v. *Bhubhan Chandra Datta & Anr.,* AIR (1975) SC 889, [1975] 4 SCC 1 = [1975] 3 SCR 854.

25. Since, under the Constitution, Chief Justice has also the power to make rules regulating the conditions of service of the officers and servants of the High Court, it is obvious that he can also prescribe the scale of salary payable for a particular post. This would also include the power to revise the scale of pay. Since such a rule would involve finances, it has been provided in the Constitution that it will require the approval of the Governor which, in other words, means the State Government. This Court in *State of Andhra Pradesh & Anr.* v. *T. Gopalakrishnan Murthi & Ors.,* AIR (1976) SC 123 = [1976] 1 SCR 1008, had expressed the hope that "one should accept in the fitness of things and in view of the spirit of Article 229 that the approval, ordinarily and generally, would be accorded." This was reiterated by this Court in *Supreme Court Employees Welfare Association* v. *Union of India,* AIR (1990) SC 334 = [1989] 3 SCR 488 = [1989] 4 SCC 187. We again reiterate the hope and feel that once the Chief Justice, in the interest of High Court administration, has taken a progressive step specially to ameliorate the service conditions of the officers and staff working under him, the State Government would hardly raise any objection to the sanction of creation of posts or fixation of salary payable for that post or the recommendation for revision of scale of pay if the scale of pay of the equivalent post in the Government has been revised.

26. The status, functions and duties of the Chief Justice qua other Judges of the High Court was considered by a Full Bench of the Allahabad High Court of which one of us (*S. Saghir Ahmad. J.*) was a member, in *Sanjay Kumar Srivastava* v. *Acting Chief Justice & Ors.,* (1996) Allahabad Weekly Cases 644, in which it was, *inter alia,* observed as under:-

"The Chief Justice may constitute a Bench of two or more Judges to

A decide a case or any question of law formulated by a Bench hearing a case. In the latter event the decision of such Bench of the question so formulated shall be returned to the Bench hearing the case and that Bench shall follow that decision on such question and dispose of the case after deciding the remaining questions, if any, arising therein."

B 27. It was further observed:-

"Under Rule 6 of Chapter V of the Rules of Court, it can well be brought to the notice of the Chief Justice through an application or even otherwise that there was a case which is required to be heard by a larger Bench on account of an important question of law being C involved in the case or because of the conflicting decisions on the point in issue in that case. If the Chief Justice takes congnizance of an application laid before him under Rule 6 of Chapter V of the Rules of Court and constitutes a Bench of two or more Judges to decide the case, he cannot be said to have acted in violation of any statutory D provisions.

28. The Full Bench also observed:-

"In view of the above, it is clear that the Chief Justice enjoys a special status not only under Constitution but also under Rules of Court, E 1952 made in exercise of powers conferred by Article 225 of the Constitution. The Chief Justice alone can determining jurisdiction of various Judges of the Court. He alone can assign work to a Judge sitting alone and to the Judges sitting in Division Bench or to Judges sitting in Full Bench. He alone has the jurisdiction to decide which case will be heard by a Judge sitting alone or which case will be heard F by two or more Judges.

The conferment of this power exclusively on the Chief Justice is necessary so that various Courts comprising of the Judges sitting alone or in Division Bench etc., work in a co-ordinated manner and the jurisdiction of one court is not over-lapped by other Court. If the G Judges were free to choose their jurisdiction or any choice was given to them to do whatever case they may like to hear and decide, the machinery of the Court would collapse and the judicial functioning of the Court would cease by generation of internal strife on account of hankering for a particular jurisdiction or a particular case. The nucleus H for proper functioning of the Court is the "self" and "judicial" discipline

of judges which is sought to be achieved by Rules of Court by placing in the hands of the Chief Justice full authority and power to distribute work to the Judges and to regulate their jurisdiction and sittings. A

29. This decision has been approved by this Court in *State of Rajasthan* v. *Prakash Chand*, JT (1997) 9 SC 492 = [1998] 1 SCC 1, which incidentally is a case originating in the Rajasthan High Court from where this appeal has come before us. B

30. Apart from the fact that the impugned directions to the Registrar are contrary to Article 229, they also have the effect of negativing the impact of the Rajasthan High Court (Conditions of Service of Staff) Rules, 1953 made by the Chief Justice in exercise of power conferred by Article 229. Rule 2 specifies the strength of staff. It provides that the staff shall consist of the posts specified in the second column of Schedule I attached to the rules. It also provide that the Chief Justice may, from time to time, leave unfilled or hold in abeyance any vacant post. The rules also provide that the Chief Justice may increase or reduce the strength of staff. Method of recruitment has been specified in Rule 2A as under:- C D

"2A. *Method of recruitment*:- (1) Recruitment to a post or category of posts specified in the second column of Schedule I shall be made by one or more of the following methods, namely, E

(a) by direct recruitment, or

(b) by promotion of a person already employed in the High Court, or

(c) by transfer from subordinate courts or offices of the State Government. F

Provided that the Chief Justice or subject to any general or special order of the Chief Justice, the Registrar may order transfer of any member of the ministerial or class IV staff serving on the establishment of the High Court to any Court subordinate to the High Court and vice versa on such terms and conditions as may be deemed proper. G

(2) The Chief Justice may, from time to time, by general or special order:-

(a) specify the method by which recruitment to a post or category of posts shall be made, H

A (b) determine the proportion of vacancies to be filled by each method in case of recruitment by more than one method, and

(c) specify the manner in which such recruitment shall be made in the case of direct recruitment.

B (3) Recruitment to the post of Court Officer shall be made & (by selection from the staff or) by direct recruitment in accordance with such method as may be prescribed by the Chief Justice.

31. This rule contemplates that the Chief Justice may fill certain posts by appointing officers on transfer from sub-ordinate courts. Schedule I C indicates that against the post of Registrar, Registrar (Vigilance), Additional Registrar, Additional Registrar (Vigilance), Additional Registrar (Writs), Officer on Special Duty (Rules), Principal Private Secretary to Hon'ble Chief Justice and Deputy Registrar (Judicial), the words "R.H.J.S. Cadre" have been mentioned which means that officers belonging to Rajasthan Higher Judicial Service alone can be appointed on these posts. The rules made under Article D 229 of the Constitution have, thus, specified the posts on which officers of the Rajasthan Higher Judicial Service or Rajasthan Judicial Service are to be appointed. The method of recruitment has also been indicated. All appointments on these posts are to be made by the Chief Justice. These rules can be altered, amended or rescinded only by the Chief Justice who alone has the rule-E making power.

32. If the impugned directions are analysed in this background, it will be seen that the real purport of the directions is to over-ride not only the constitutional provisions contained in Article 229 but also the rules made in exercise of powers available to the Chief Justice under that Article. Even if F the Registrar, in compliance of the impugned directions, is to report that the posts on which officers of the Rajasthan Higher Judicial Service or Rajasthan Judicial Service are appointed on deputation, can well be manned by the High Court staff itself or that when the officers are brought from the District Courts to the High Court for appointment on the aforesaid posts, some of the sub-ordinate courts become vacant as the Presiding Officers having been sent on G deputation to High Court are not available to hear and dispose of cases pending in those courts and even if such report is placed before the Full Court, can the Full Court give a direction to the Chief Justice not to fill up those posts by bringing Officers on deputation but to fill up those posts by promotion from amongst the High Court staff? The answer is an emphatic H "No, it cannot be done". A Judge of the High Court individually or all the

Judges sitting collectively, as in the Full Court, cannot either alter the constitutional provisions or the rules made by the Chief Justice. They have no jurisdiction even to suggest any constitutional amendment or amendment in the rules made by the Chief Justice nor can they create any avenue of promotion for the High Court staff so as to be appointed on posts meant for Officers from Rajasthan Higher Judicial Service or Rajasthan Judicial Service. The Chief Justice has been vested with wide powers to run the High Court Administration independently so as not to brook any interference from any quarter, not even from his Brother Judges who, however, can scrutinise his administrative action or order on the judicial side like the action of any other authority. It should not be lost sight that Registrars, under Rules of various High Courts, have also to perform some limited judicial functions which cannot be done by an officer other than a Judicial Officer in the High Court establishment.

33. There is yet another aspect. If under the High Court Rules, it has been provided that certain posts shall be manned by the officers of the Rajasthan Judicial or Higher Judicial Service who would be appointed on those posts on deputation, the other Judges of the High Court cannot, nor can the employees of the court raise, possibly or legitimately, any grievance. Since power of appointment which vests absolutely in the Chief Justice cannot be exercised by any other Judge of the High Court, the latter, namely, other Judge or Judges, cannot exercise that power even indirectly as has been attempted to be done in the instant case. By directing the Registrar of the court to submit a report whether the posts on which officers from the Rajasthan Judicial Service are appointed on deputation can be manned by the High Court staff and further directing such report to be placed before the Full Court for the consideration of other Judges on the administrative side, the Hon'ble Judges have attempted to indirectly exercise the power of appointment on certain posts in the High Court establishment on which appointment can be made only by the Chief Justice. The learned Judges who disposed of the matter were themselves of the opinion that this question was not required to be decided for the effective decision of the Writ Petition pending before them. As such, they should have stopped there and should not have proceeded to give the impugned direction to the Registrar of the High Court particularly as it is difficult to believe that the Cadre strength of Rajasthan Judicial Service or Higher Judicial Service is so weak or depleted that no substitute can be provided for eight officers (maximum under Rules) placed on deputation in the High Court.

34. Learned counsel made a feeble attempt to invoke Article 235 and contended that "High Court" does not mean mere "Chief Justice" but "all Judges collectively" and, therefore, impugned directions could be validly issued. We reject this contention for reasons set out hereinbelow.

35. Chapter VI deals with sub-ordinate courts. Article 233 provides for the appointment of District Judges. A District Judge is to be appointed by the Governor of the State in consultation with the High Court. Article 234 provides that appointment of persons, other than District Judges, to the Judicial Service of a State shall be made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and the High Court. Article 235 provides as under:-

> "235. Control over subordinate courts. - The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law."

36. This Article shows that the High Court has to exercise its administrative, judicial and disciplinary control over the members of the Judicial Service of the State. The word "control", referred to in this Article, is used in a comprehensive sense to include general superintendence of the working of the sub-ordinate courts, disciplinary control over the Presiding Officers of the sub-ordinate courts and to recommend the imposition of punishment of dismissal, removal and reduction in rank or compulsory retirement. "Control" would also include suspension of a manner of the Judicial Service for purposes of holding a disciplinary enquiry, transfer, confirmation and promotion. See: *State of Haryana* v. *Inder Prakash Anand*, AIR (1976) SC 1841 = [1976] Supp. SCR 603 = [1976] 2 SCC 977; *State of U.P.* v. *Batuk Deo Pati Tripathi*, [1978] 2 SCC 102 = [1978] 3 SCR 131. In *State of Gujarat* v. *Ramesh Chandra Mashruwala*, AIR (1977) SC 1619 = [1977] 2 SCR 710 = [1977] 2 SCC 12, it was held that the "control" in Article 235 means exclusive and not dual control. (See also: *Chief Justice of Andhra Pradesh & Anr.* v. *L.V.A. Dikshitulu.*,

AIR (1979) SC 193 = [1979] 1 SCR 26 = [1979] 2 SCC 34; *State of West Bengal* v. *Nripendra Nath Bagchi*, AIR (1966) SC 447 = [1966] 1 SCR 771. A

37. In *Tejpal Singh (Dead) by Lrs.* v. *State of U.P. & Anr.*, AIR (1986) SC 1814 = [1986] 3 SCR 428 = [1986] 3 SCC 604 as also in *G.S. Nagmoti* vs. *State of Mysore*, [1969] 3 SCC 325 = 1970 SLR 911, it was held that the "control", referred to in Article 235, vests in the High Court and not in any Judge or Judges or any Committee thereof. In a subsequent decision in *Registrar, High Court of Madras* v. *R. Rajiah*, AIR (1988) SC 1388 = 1988 Supp., 1 SCR 332 = [1988] 3 SCC 211, it was held that there is no bar to have an enquiry made by a Committee of several Judges against a member of the sub-ordinate judiciary provided the report of the Committee is circulated to all the Judges and the ultimate decision is taken in the meeting of the Full Court. B C

38. What is, therefore, of significance is that although in Article 235, the word "High Court" has been used, in Article 229, the word "Chief Justice" has been used. The Constitution, therefore, treats them as two separate entities in as much as "control over Sub-ordinate Courts" vests in the High Court, but High Court administration vests in the Chief Justice. D

39. The impugned direction whether the posts in the High Court on which Officers on deputation are appointed can be manned by the High Court staff is patently contrary to the mandate of Article 229 vesting High Court Administration in the Chief Justice and purports to encroach upon his authority. E

40. As pointed out above, under the constitutional scheme, Chief Justice is the supreme authority and the other Judges, so far as officers and servants of the High Court are concerned, have no role to play on the administrative side. Some Judges, undoubtedly, will become Chief Justice in their own turn one day, but it is imperative under constitutional discipline that they work in tranquility. Judges have been described as "hermits". They have to live and behave like "hermits" who have no desire or aspiration, having shed it through penance. Their mission is to supply light and not heat. This is necessary so that their latent desire to run the High Court administration may not sprout before time, at least, in some cases. F

41. For the reasons stated above, this appeal is allowed. The judgment dated 28.09.93 passed by the two learned Judges, in so far as it relates to the direction to the Registrar, set out in the earlier part of the judgment, is set aside. The judgment in all other respects is upheld. There will be no order as to costs. G

S.V.K.I. Appeal allowed. H