HIGH COURT OF JUDICATURE FOR RAJASTHAN A

*v.*

P.P. SINGH AND ANR.

JANUARY 27, 2003

[V.N. KHARE, CJ, S.B. SINHA AND DR. AR. LAKSHMANAN, JJ.] B

*Service Law:*

*Rules of High Court of Judicature of Rajasthan, 1952—Rules 14, 15 and 21(2)—Rajasthan Higher Judicial Services Rules, 1969—Rule 23—Constitution of India, 1950—Article 235—Higher Judicial Services—Administrative powers of High Court—Full Court constituting committee of two Judges for consideration of individual merit of judicial officers for appointment to selection scale—Committee making recommendations—Full Court by resolution taking decision—Acting Chief Justice thereupon constituting committee of two Judges—Full Court on considering the report, approving the names of officers—Justification of—Held: Chief Justice has jurisdiction to constitute a Committee—Further Rule 15 does not postulate the prior approval of the Full Court in relation to any action which may be initiated by the Chief Justice, thus High Court erred in holding constitution of the committee illegal.* C D E

**Full Court constituted committee of two Judges for the purpose of consideration of individual merit of the judicial officers of Higher Judicial Service for appointment to selection scale. Committee recommended that last five years of ACRs to be considered in the merit criteria therefor. Full Court by resolution took decision to take three good ACRs out of five into consideration and regarding grant of super time scale to Rajasthan Judicial Service it adopted the criteria of five good ACRs out of seven for grant of super time scale. Acting Chief Justice of High Court constituted a committee of two Judges to make recommendations for formation of officiating promotee RHJS officers for their substantive appointment in their service and for promotion of RHJS officers in the ordinary scale to selection scale. Committee submitted its report and the Full Court approved the names of officers who were found fit for grant of selection scale and deferred the case of respondents. Governor then issued notification and appointed the officers to the post of selection grade. Respondents challenged the non-grant of selection grade to them. High Court without disturbing the appointment of the officers held that** F G H

A the Acting Chief Justice was not authorized to constitute the two Judges Committee and also all the judges were not consulted, Committee appointed by the Acting Chief Justice alone could not evolve the merit criteria; and the earlier policy adopted by the Full Court could not be changed as it provides for prior consultation of judges and the subsequent approval thereof could not cure the illegality.

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Appellant contended that the Acting Chief Justice had the jurisdiction to constitute a Committee and the decision of the said Committee was approved by the Full Court, the earlier policy decision must be held to have been varied by High Court.

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It was contended for the first respondent that as the power of the Chief Justice to constitute a Committee is governed by a statutory rule, he acted without jurisdiction in appointing the said Committee.

Allowing the appeals, the Court

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HELD: 1.1. A Reading of the Rules of High Court of Judicature of Rajasthan, 1952 shows that the Chief Justice has the requisite jurisdiction to constitute a Committee and its report upon consultation of all the Judges of High Court in terms of Rule 15 shall become a decision of the Court. Further Rule 29(2) and Rule 32 shows that irregularity which might have taken place E in the procedure laid down in Chapter III shall not affect the validity of the order passed or anything done in the Rules and shall be deemed to be disposed of by the Court. Also the legal fiction created must also be given its full effect. [605-E, F]

1.2 The powers of the Chief Justice under Articles 235 and 229 of the F Constitution are different and distinct. Whereas control over the subordinate courts vests in the High Court as whole, the control over High Court vests in the Chief Justices only. However, it does not mean that a Full Court cannot authorize Chief Justice in respect of any matter whatsoever in relation to certain matters keeping the rest of it in itself by the Full Court, authorization G to act on its behalf in favour of the Chief Justice on a Committee of Judges is permissible in law. How far and to what extent such power has been or can be delegated would be discernible only from the rules. Such a power by the Full Court can also be exercised from time to time. [606-B-D]

*High Court of Judicature for Rajasthan* v. *Ramesh Chand Paliwal,* [1998] H 3 SCC 72; *District Judge Baradakanta Mishra* v. *High Court of Orissa,* [1976] 3

SCC 327; *High Court of Punjab* v. *State of Haryana,* [1975] 1 SCC 843; *Yoginath D. Bagde* v. *State of Maharashtra,* [1999] 7 SCC 739; *State of Haryana* v. *Inder Prakash Anand,* [1976] 2 SCC 977; *State of Assam* v. *S.N. Sen,* [1971] 2 SCC 9 and *All India Judges' Association* v. *Union of India,* [1992] 1 SCC 119, referred to. A

1.3. Judges of High Court under Rule 21(2) authorized the Chief Justice to constitute a committee which having been made in terms of the rules must be held to have been made by High Court itself. Such authorization is not a limited one, as thereby the extent to which such authorization can be exercised has not been spelt out. Furthermore, authorization in terms of Rule 21(2) having been laid down in Chapter III which relates to the Administrative Business of the Court, there cannot be any doubt whatsoever even in the matter of control of the High Court in terms of Article 235 of the Constitution, the Chief Justice of the High Court had the jurisdiction to exercise the said power. Once such a resolution authorizing the Chief Justice to constitute a committee has been passed; there cannot be doubt whatsoever that the exercise of power by the Chief Justice was absolutely valid. Therefore, it cannot be accepted that the Chief Justice could appoint the two-Judges committee only with the approval of the Full Court and High Court erred in holding that the constitution of the committee was illegal. [606-E-H; 607-B] B C D

*High Court of Judicature of Bombay* v. *Shirish Kumar Rangrao Patil,* [1997] 6 SCC 339, referred to. E

1.4. Laying down the merit criteria for appointment to the selection grade also was within the domain of the High Court and it could amend or modify the same from time to time. For the said purpose Chief Justice could appoint a committee, the recommendation whereof was to be subject to the approval of the Full Court. Rule 15 does not say that before an action can be initiated in that behalf by the Chief Justice all the Judges are to be consulted. It postulates a final decision in the matter specified therein and not initiation of process therefor. Therefore, it cannot be accepted that the matter relating to fixation of criteria for the purpose of appointment to the selection grade, the two-Judges committee could not be made without consulting all the Judges. It is based on a total misconception. Further the submission that all the Judges of the High Court are required to be consulted at a time is incorrect. Also the submission that the two-Judges Committee was not justified in evolving a merit criteria different from the one approved by Full Court is incorrect. Two-Judges Committee did not take any final decision in that behalf. Having regard to the facts and circumstances of the case, upon consideration of the F G H

A extant rules and the earlier decisions of the Full Court it applied certain principles and criteria which inevitably was subject to approval of the Full Court. [607-B-F]

1.5. Rule 15 provides that all the judges shall be consulted in the matters. In the event, however, such consultation is to be effected by placing the matter B before a Full Court, all the Judges are therefor invited but the same would not mean that in the event, one or more Judge(s) does/do not attend the Full Court, the resolution passed by it shall be invalid. Rule 29 provides for a quorum. In the case of a meeting of the Judges of the court, the quorum will be complete if one-half or more of the Judges attend the same. Consultation C with all the Judges would, thus, not mean that even if some of the Judges do not choose to make themselves available in a Full Court meeting, consultation with all the Judges shall not be complete. Question of consultation with the Judges would not arise unless the subject matter therefor is identified. It is for Hon'ble Chief Justice of the High Court to identify such matters and place the same before the Full Court with relevant papers and documents. D Furthermore, the terminology 'consultation' used in Rule 15 having regard to purport and object thereof must be given its ordinary meaning. By giving an opportunity to consultation or deliberation the purpose thereof is to enable the Judges to make their respective points of view known to the others and discuss and examine the relative merits of their view. It is neither in doubt E nor in dispute that the Judges present in the meeting of the Full Court were supplied with all the requisite documents and had full opportunity to deliberate upon the agenda in question. [608-A, B, G, H; 611-B-D]

*Permanent Edition, 1960, Volume 9, page 3 and Corpus Juris Secundum Volume 16A, Ed. 1956, p. 1242,* referred to.

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1.6. The Committee was constituted for the purpose of considering the cases of the eligible judicial officers. It was absolutely not necessary to place the matter before the Full Court. The Acting Chief Justice constituted the Committee for a specific purpose. The Committee merely submitted its opinion G which was subject to approval by the Full Court. Once the opinion of the matter is approved by the Full Court, it must be held that there had been a compliance of Rule 15. It is, therefore, axiomatic that not only the Chief Justice of High Court was free to initiate any proceedings and obtain the opinion of a Committee of Judges on such matters and the only legal requirement therefor is to place such proposals together with the opinion of the Committee H before the Judges of the High Court so that the matter can be fully thrashed

**out. Once the Full Court approves the recommendations made by the Committee of Judges, it becomes decision of the Court which could be sent to the Governor for acting thereupon. [608-D, E, G; 609-A-B]**

*State of Uttar Pradesh* **v.** *Batuk Deo Pati Tripathi and Anr.* **[1978] 2 SCC 102 and** *Registrar, High Court of Madras* **v.** *R. Rajiah,* **[1988] 3 SCC 211, referred to.**

**1.7. In the instant case for all intent and purport the report of the two-Judges Committee has been approved by the Full Court. Once approved, it terminated into a decision of the Full Court itself. Even the Governor has acted upon the recommendations of the High Court. Writ petitioners-first respondents did not question the appointments of the appointees in the High Court. Therefore, High Court, committed a manifest error in arriving at its conclusion in so far as it failed to take into consideration that Rule 15 does not postulate the prior approval of the Full Court in relation to any action which may be initiated by the Chief Justice. [611-E, F]**

**1.8. When an approval is required, an action holds good. Once if it disapproved it losses its force. Only when a permission is required, the decision does not become effective till permission is obtained. In the instant case, both the aforementioned requirements have been fulfilled. In terms of Rule 2(2) of the Rules, the decision of the Full Court would have retrospective effect and retroactive operation. Further, in any view of the matter, even in a case where the initial action is illegal, the same can be ratified by a body competent therefor. [611-G, H; 612- A, B]**

*U.P. Avas Evam Vikas Parishad and Anr.* **v.** *Friends Coop. Housing Society Ltd. and Anr.,* **[1995] 3 SCC 456, referred to.**

*Sri Parmeshwari Prasad Gupta* **v.** *The Union of India,* **[1973] 2 SCC 543;** *Marathwada University* **v.** *Seshrao Balwant Rao Chavan,* **[1989] 3 SCC 132;** *Babu Verghese and Ors.* **v.** *Bar Council of Kerala and Ors.,* **[1999] 3 SCC 422;** *Orissa Small Industries Corpn. Ltd. and Anr.* **v.** *Narasingha Charan Mohanty and Ors.,* **[1999] 1 SCC 465 and** *Brij Nath Pandey* **v.** *State of U.P. & Ors.,* **JT (2000) 9 SC 464, referred to.**

*Barnard* **v.** *National Dock Labour Board,* **[1953] 1 All ER 1113, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 59 of 2001.

From the Judgment and Order dated 23.11.2000 of the High Court of Rajasthan in DBCWP 671/2000.

WITH

C.A. Nos. 60, 61, 62, 63 and 64/2001.

Dipankar P. Gupta, Raj Kumar Gupta, Sheo Kumar Gupta, A.N. Baradaiyar, Sandhya Goswami (NP), Sushil Balwada, Surya Kant, Devendra Singh (NP) and S.K. Bhattacharya (NP), for the appearing parties.

The Judgment of the Court was delivered by

**S.B. SINHA, J.** The effect of the recommendations of a Committee of two Judges as regards criteria for grant of selection scale appointed by an Acting Chief Justice which have subsequently been approved by a Full Court of the High Court is in question in these appeals which arise out of a judgment and order passed by a Division Bench of Rajasthan High Court dated 23rd November, 2000 in D.B. Civil Writ Petitions No. 671 of 2000, 987 of 2000 and 1263 of 2000.

The High Court of Rajasthan in exercise of its power conferred upon it under Section 46 of the Rajasthan High Court Ordinance 1949 read with Article 225 of the Constitution of India and all other powers enabling it in that behalf made Rules known as Rules of the High Court of Judicature for Rajasthan, 1952 (hereinafter called and referred to as "the Rules").

The Rules came into force on or about 1st October, 1952. Chapter 3 of the said Rules refers to Administrative Business of the High Court.

The Rules of the High Court were amended by a Resolution of the Full Court of the High Court on 26.11.1966; and the relevant portion of the Minutes thereof are as under :-

"Minutes of the proceedings of the Full Court Meeting held on Saturday, the 26th November, 1966, at 11 A.M. in the Chamber of the Hon'ble the Chief Justice.

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AGENDA :

I. Amendment in the High Court Rules relating to the Administrative

Business of the Court. A

II. Any other matter which Hon'ble the Chief Justice may like to be discussed.

DECISIONS :

ITEM NO. II :- B

The amendments proposed by the Hon'ble Administrative Judge in Chapter III of the High Court Rules relating to the administrative and executive business of the Court were considered.

Resolved that in exercise of the powers conferred by Section 46 of the Rajasthan High Court Ordinance, 1949, and Articles 225, 227, 233, 234 and 235 of the Constitution of India and all other powers enabling the Court in that behalf, the following changes and amendments in Chapter III of the High Court Rules relating to the administrative and executive business of the Court be effected :- C

1. The words "Executive and" occurring in the heading of Chapter III shall be omitted; D

2. For rules 14 to 22 the following rules shall be substituted :-

"14. *Administrative business relating to control over subordinate courts and to superintendence over courts and tribunals.*—All administrative business of the Court relating to the control over subordinate courts vested in the Court under Article 235 of the Constitution or otherwise and to the superintendence over the courts and tribunals vested in the Court under Article 227 of the Constitution or otherwise shall be disposed of as provided hereinafter. E F

15. *Matters on which all Judges shall be consulted.*—On the following matters all the Judges of the Court shall be consulted, namely :-

(c) proposals as to changes in or the issue of new rules for the guidance of subordinate courts; G

(d) appointment, promotion and seniority of Judicial offices;

(e) withholding of promotion, supersession or reduction of Judicial Officers;

(f) removal or dismissal of any Judicial Officer; H

(g) compulsory retirement of Judicial Officers otherwise than by way of punishment;

(h) important questions of policy or those affecting the powers and status of the Court laid before the Court by the Chief Justice or any other Judge;

(i) any matter which the Chief Justice or the Administrative Committee, as constituted under Rule 16, may consider fit to be laid before them for consideration.

16. *Administrative Committee* - (1) A Committee of Judges shall be formed composed of the Chief Justice, the Administrative Judge and such other Judge or Judges as the Chief Justice may, from time to time, appoint. This Committee shall be called the Administrative Committee.

(2) Subject to these Rules, the Administrative Committee shall act for the Court in its administrative business in respect of the matters enumerated in rule 17.

17. *Matters on which the Administrative Committee shall be consulted.* The Administrative Committee shall be consulted on the following matters, namely -

(a) the issue of general letters to subordinate courts;

(b) the issue of directions regarding the preparation of returns and statements; and

(c) any other matter which the Chief Justice or the Administrative Judge may desire to be brought before it.

18. *Consultation how made.*- The consultation with the Judges and the Administrative Committee, referred to in Rules 15 and 17 respectively, shall be made either by circulating the papers connected with the matter among the Judges or the Administrative Committee, as the case may be, or by laying the matter before a meeting of the Judges or the Administrative Committee called by the Chief Justice.

19. *Decision in case of difference of opinion.*-All the matters referred to in Rules 15 and 17 shall be disposed of in accordance with the views of the majority, and in case the Judges, including the Chief Justice, are equally divided, in accordance with the views of the

Chief Justice.

20. *Administrative business to be disposed of by the Chief Justice.*- Subject to Rules 15 and 17, the administrative business referred to in Rule 14 shall be disposed of by the Chief Justice.

21. *Appointment of Administrative Judge and allocation of work.*- (1) The Chief Justice shall appoint a Judge to carry on the general administration of the Court. Such Judge shall be called the Administrative Judge and shall dispose of the administrative business in accordance with rule 22.

(2) The Chief Justice may also, by a general or special order, allocate specified business for disposal to any other Judge or a Committee of Judges, and such Judge or Committee of Judges shall dispose of the same, subject to any special directions of the Chief Justice.

"26. *Papers to be submitted to the Chief Justice after circulation.*- After any papers have been circulated for opinion, they shall be submitted again to the Chief Justice, who shall examine the matter and issue orders in accordance with Rule 19."

*"29.- Quorum.*- The quorum necessary for the transaction of business shall be not less than two-third of the Members in the case of a meeting of the Administrative Committee and not less than one-half of the Judges in the case of a Judges' meeting."

1. The existing Rule 32 shall be re-numbered as Sub-Rule (1) of that Rule, and the following new Sub-Rule (2) shall be added :-

"(2) For the removal of doubt, it is hereby mentioned that all administrative work disposed of by the Chief Justice, the Administrative Judge or any other Judge or Judges to whom the work has been assigned by the Chief Justice for disposal shall be deemed to be disposed of by the Court."

Rule 32 of the said Rules is as under:

32. *Effect of any irregularity in or omission to follow the procedure laid down in this* Chapter :-

(1) No irregularity in, or omission to follow, the procedure laid down in this Chapter shall affect the validity of any order passed or

A anything done under these Rules.

(2) For the removal of doubt, it is hereby mentioned that all administrative work disposed of by the Chief Justice, the Administrative Judge or any other Judge or Judges to whom the work has been assigned by the Chief Justice for disposal shall be deemed
B to be disposed of by the Court.

On or about 17.1.1969 Rajasthan Higher Judicial Service Rules, 1969 came into being which *inter alia* contained a provision relating to grant of selection scale in terms of Rule 23 thereof which reads as under :-

C "Appointments to posts in the Selection Grade :- Appointments to the posts in the selection grade of the service shall be made by the Governor in consultation with the Court on the basis of merit."

On or about 30th of April, 1990 a Committee of two Hon'ble Judges of the said Court was constituted by the Full Court for the purpose of
D consideration of individual merit of the judicial officers of Rajasthan Higher Judicial Service (RHJS) relating to appointment to selection scale. Pursuant to or in furtherance thereof a Committee of two Judges considered the same and suggested that last five years of ACRs to be considered in the merit criteria therefor. However, the Full Court by Resolution dated 5th October,
E 1990 took a decision to take into consideration three good ACRs out of five ACRs only for the said purpose. As regards grant of super time scale to Rajasthan Judicial Service, the Full Court of the High Court by a Resolution dated 14.8.1997 adopted the criteria of five good ACRs out of seven ACRs for grant of super time scale.

F The Acting Chief Justice of the High Court, however, constituted a Committee consisting of two Judges of the said Court to consider/ examine and to make recommendations for formation of officiating promotee RHJS officers for their substantive appointment in their service and for promotion of RHJS officers in the ordinary scale to selection scale by an order dated
G 26th March, 1998. The Committee submitted its report on 30th March, 1998, upon considering the cases of all eligible candidates in the light of the existing Rules as also the Full Court Resolutions. With a view to arrive at its finding, the Committee, however, found those officers fit and meritorious for grant of selection grade who obtained at least five outstanding/ very good/ good ACRs out of seven and where no adverse entry was recorded. As regards those,
H whose ACRs have not been recorded for one reason or the other, the Committee

deferred consideration of their cases for the time being. The Committee, however filed an additional report on 27.4.1999 whose cases were deferred earlier.

The matter was placed before the Full Court on 30th April, 1999 by the Chief Justice. Twenty Hon'ble Judges of the High Court participated therein. By Resolution dated 30th April, 1999, the Full Court considered the report submitted by the said two Judges Committee and approved the name of 26 officers who were found fit for grant of selection scale. The cases of the respondents herein along with four others, however, were deferred. The matter relating to the additional report of the said two Judges' Committee was again placed before the Full Court on 27-11-1999. It accepted the report of the Committee and declined to grant selection scale to the respondents herein. Pursuant to or in furtherance of the aforementioned recommendations made by the High Court, the Governor by a notification dated 5.2.2000 made appointment to the officers of Higher Judicial Service named therein to the post of selection grade with effect from the date mentioned against their names respectively.

The first respondent in each of these appeals filed writ petitions questioning non-grant of selection grade to them by filing writ petitions before the Jaipur Bench of the Rajasthan High Court.

By reason of the impugned judgment the High Court *inter alia* held :

(1) The Acting Chief Justice was not authorised to constitute the two Judges Committee, and, thus, it could not make/ lay down any merit criteria.

(2) As all the Judges of the High Court have not been consulted, the Committee appointed by the Acting Chief Justice alone could not evolve the merit criteria in view of sub-rule (h) of Rule 15 of 1952 Rules.

(3) The earlier policy decision adopted by the Full Court could not be changed as Rule 15 of 1952 provides for prior consultation of the Judges of the High Court and as all Judges were not consulted in the matter subsequent approval thereof could not cure illegality.

The said writ petitions were disposed of with the following directions:-

(i) We direct the respondents to consider the cases of all the three petitioners afresh against the vacancies occasioned in 1998 and 1999

A in view of the merit criterion evolved and approved by the Full Court in the year 1990 and 1994. If they are found eligible for promotion to selection scale of the RHJS, they can be accorded the selection scale by creating supernumerary posts in terms of Rule 18 of the Rajasthan Service Rules.

B (ii) This decision shall not affect the order dated February 5, 2000 whereby selection scale of the RHJS was granted to twenty six officers.

(iii) The fresh consideration as directed above is expected to be done as expeditiously as possible, in the meanwhile three posts in the selection scale of the RHJS shall be kept vacant.

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However, it was observed:

"It is however made clear that though we have declared the entire exercise of the respondents in granting selection scale as illegal yet we do not intend to unsettle the grant of selection scale to twenty six D judicial officers as they are not before us. We, therefore, direct that this decision shall not affect the order dated February 5, 2000 of the respondent whereby selection scale was granted to twenty six judicial officers. But if the petitioners, after consideration of their service record from 1993 to 1997 and from 1994 to 1998 are found eligible E for selection scale, they shall be considered with reference to the selection of 1998 and 1999 when their junior colleagues were promoted. The petitioners in that event can be accorded the selection scale of the RHJS by creating supernumerary posts in terms of Rule 18 of the Rajasthan Service Rules."

F Learned counsel appearing on behalf of the appellant, would submit that having regard to the provisions of the Rules, the High Court must be held to have committed an error in holding that the Acting Chief Justice had no jurisdiction to constitute the Committee. It was contended that once it is held that the Acting Chief Justice had the jurisdiction to constitute a Committee G and the decision of the said Committee was approved by the Full Court, the earlier policy decision must be held to have been varied by the High Court. The learned counsel in support of the said contentions has placed strong reliance in *State of Uttar Pradesh* v. *Batuk Deo Pati Tripathi and Anr.*, reported in [1978] 2 SCC 102, *Brij Nath Pandey* v. *State of U.P. & Ors.*, JT (2000) 9 SC 464, *Registrar, High Court of Madras* v. *R. Rajiah*, [1988] H 3 SCC 211.

Mr. Surya Kant, learned counsel appearing on behalf of the first respondent in each case, would, on the other hand, submit that as the power of the Chief Justice to constitute a Committee is governed by a statutory rule, he must be held to have acted without jurisdiction in appointing the said Committee. Strong reliance in support of the said contention has been placed in *Orissa Small Industries Corpn. Ltd. and Anr.* v. *Narasingha Charan Mohanty and Ors.*, [1999] 1 SCC 465.

The term "Chief Justice" will include the Judges authorised to act on his behalf in view of interpretation clause contained in Rule 3. Chapter III of the Rules provides for administrative business of the Court. In terms of Rule 14 of the Rules, Administrative Business of the Court relating to control over subordinate courts vested either under Article 235 or 227 of the Constitution of India were to be disposed of as provided therein.

The Rules have been made by the High Court. The High Court, therefore, can also amend the rules. It is not the case of the writ petitioners-First respondents herein that the High Court had no jurisdiction to evolve the criteria for grant of selection scale to the officers of the Rajasthan Judicial Service or Rajasthan Higher Judicial Service. It may be true that by reason of Resolution dated 5th October, 1990 the Full Court *inter alia* opined that for the purpose of grant of selection scale three good ACRs out of five ACRs were to be taken into consideration but the said decision of the Full Court was subject to amendment/modification thereof.

A reading of the aforementioned rules clearly goes to show that the Chief Justice has the requisite jurisdiction to constitute a Committee and the report of the Committee upon consultations of all the Judges of the High Court in terms of Rule 15 shall become a decision of the Court. Rule 29(2) and Rule 32 as quoted (supra) also clearly show that even *an* irregularity which might have taken place in the procedure laid down in Chapter III shall not affect the validity of the order passed or anything done in the Rules and the same shall be deemed to be disposed of by the Court. The legal fiction created must also be given its full effect.

It is beyond any pale of controversy that the control over the subordinate courts within the meaning of Article 235 of the Constitution of India is that of the High Court. Such control of the High Court includes general superintendence of the working of the subordinate courts, disciplinary control over the Presiding Officers, disciplinary proceedings, transfer, confirmation and promotion and appointment etc. Such control vested in the High Court

A is complete. [See *High Court of Judicature for Rajasthan* v. *Ramesh Chand Paliwal,* [1998] 3 SCC 72, *District Judges Baradakanta Mishra* v. *High Court of Orissa,* [1976] 3 SCC 327, *High Court of Punjab* v. *State of Haryana,* [1975] 1 SCC 843, *Yoginath D. Bagde* v. *State of Maharashtra,* [1999] 7 SCC 739, *State of Haryana* v. *Inder Prakash Anand,* [1976] 2 SCC 977 and *State of Assam* v. *S.N. Sen,* [1971] 2 SCC 9.

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It is also true that the powers of the Chief Justice under Articles 235 and 229 of the Constitution of India are different and distinct. Whereas control over the subordinate courts vests in the High Court as a whole, the control over the High Court vests in the Chief Justices only. [See *All India Judges' Association* v. *Union of India,* [1992] 1 SCC 119]. However, the same does not mean that a Full Court cannot authorise the Chief Justice in respect of any matter whatsoever. In relation to certain matters keeping the rest of it in itself by the Full Court, authorization to act on its behalf in favour of the Chief Justice on a Committee of Judges is permissible in law. How far and to what extent such power has been or can be delegated would be discernible only from the rules. Such a power by the Full Court can also be exercised from time to time.

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The Judges of the Rajasthan High Court, as noticed hereinbefore, in terms of sub-rule (2) of Rule 21 of the Rules authorised the Chief Justice to constitute a committee. Such constitution of the committee by the Chief Justice having been made in terms of the rules must be held to have been made by the High Court itself. Such authorization is not a limited one as thereby the extent to which such authorization can be exercised has not been spelt out. Furthermore, authorization in terms of sub-rule (2) of Rule 21 of the Rules having been laid down in Chapter III which relates to the Administrative Business of the Court, there cannot be any doubt whatsoever even in the matter of control of the High Court in terms of Article 235 of the Constitution of India, the Chief Justice of the High Court had the jurisdiction to exercise the said power.

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Once such a resolution authorising the Chief Justice to constitute a committee has been passed; having regard to the decision of this Court in the *High Court of Judicature of Bombay* v. *Shirish Kumar Rangrao Patil,* [1997] 6 SCC 339, there cannot be doubt whatsoever that the exercise of power by the Chief Justice in that behalf was absolutely valid. It is, therefore, not correct to contend that the Chief Justice could appoint the two-Judges committee only with the approval of the Full Court.

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Exercise of power by the Chief Justice, however, indisputably must be made in terms of the rules. The questions raised in these appeals must, therefore, be considered from that angle. A

The High Court, in our opinion, therefore, clearly erred in arriving at the aforementioned finding that the constitution of the committee was illegal. B

The submission on behalf of the respondents to the effect that in the matter relating to fixation of criteria for the purpose of appointment to the selection grade, the two-Judges committee could not be made without consulting all the Judges is stated to be rejected. The said submission is based on a total misconception. Laying down the merit criteria for appointment to the selection grade also was within the domain of the High Court. It could not only lay down such criteria but also amend or modify the same from time to time. For the said purpose also the Chief Justice could appoint a committee, the recommendation whereof was to be subject to the approval of the Full Court. Rule 15 of the Rules does not say that before an action can be initiated in that behalf by the Chief Justice all the Judges are to be consulted. Rule 15 of the Rules postulates a final decision in the matter specified therein and not initiation of process therefor. C D

It is also incorrect to contend that all the Judges of the High Court are required to be consulted at a time. E

The learned counsel appearing on behalf of the respondents is again not correct in contending that the two-Judges Committee was not justified in evolving a merit criteria different from the one approved by the Full Court. The two-Judges Committee did not take any final decision in that behalf. It having regard to the facts and circumstances of the case and upon consideration of the extant rules as well as the earlier decisions of the Full Court applied certain principles and criteria which inevitably was subject to approval of the Full Court. F

The procedure for holding a Full Court meeting as quoted supra would clearly show that the meeting which had requisite quorum as contemplated under Rule 29 would amount to compliance of the Rules. G

Although Rule 15 provides that all the Judges shall be consulted in the matters enumerated therein but Rule 18 provides for the mode and manner thereof. H

A If such consultation is to be made by circulation, undoubtedly, the relevant documents are required to be circulated to all the Judges. In the event, however, such consultation is to be effected by placing the matter before a Full Court, all the Judges are therefor invited but the same would not mean that in the event, one or more Judge (s) does/do not attend the Full Court, the resolution passed by it shall be invalid. Rule 29 provides for a B quorum. In the case of a meeting of the Judges of the court, the quorum will be complete if one-half or more of the Judges attend the same. Consultation with all the Judges would, thus, not mean that even if some of the Judges do not choose to make themselves available in a Full Court Meeting, consultation with all the Judges shall not be complete.

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We may notice that even in the Full Court meeting held on 26th November, 1966 all the Hon'ble Judges of the High Court were not present.

The Committee was constituted for the purpose of considering the cases of concerned officers. It is not and cannot be the case or the contention of D the writ petitions that even for the purpose of considering the case of the eligible judicial officers at the threshold, it was absolutely necessary to place the matter before the Full Court. The Acting Chief Justice constituted the Committee for a specific purpose. The Committee merely submitted its opinion which was subject to approval by the Full Court. Once the opinion of the matter is approved by the Full Court, in our opinion, it must be held that E there had been a compliance of Rule 15 of the Rules.

Interpretation of a Statute depends upon the text and context thereof. A Statute should be interpreted having regard to the purpose and object for which the same was made. The Chief Justice of a High Court although first F amongst the Judges, by the nature of office he holds, he is the head of the State Judiciary. Authorisation by the Full Court in favour of the Chief Justice to constitute a Committee and/or take actions for the subordinate judiciary must be viewed from that context. Rule 15 of the Rules provides for such matters which require consultations with the other Judges of the High Court.

G Question of consultation with the Judges would not arise unless the subject matter therefor is identified. It is for Hon'ble the Chief Justice of the High Court to identify such matters and place the same before the Full Court with relevant papers and documents.

It is, therefore, axiomatic that not only the Chief Justice of High Court H was free to initiate any proceedings and obtain the opinion of a Committee

of Judges on such matters and the only legal requirement therefor is to place such proposals together with the opinion of the Committee before the Judges of the High Court so that the matter can be fully thrashed out. Once the Full Court approves the recommendations made by the Committee of Judges, it becomes decision of the Court which could be sent to the Governor for acting thereupon.

An almost identical question came up for consideration whether the High Court can delegate its power to a Judge or a small Committee of the Judges of the Court so as to authorise it to act on this behalf in State of Uttar Pradesh v. Batuk Deo Pati Tripathi and Another (supra). In no uncertain terms it was held :-

> ".....The control vested in the High Courts by that article comprehends, according to our decisions, a large variety of matters like transfers, subsequent postings, leave, promotions other than initial promotions, imposition of minor penalties which do not fall within Article 311, decisions regarding compulsory retirements, recommendations for imposition of major penalties which fall within Article 311, entries in character rolls and so forth. If every Judge is to be associated personally and directly with the decision on every one of these matters, several important matters pertaining to the High Court's administrative affairs will pile into arrears like court arrears. In fact, it is no exaggeration to say that the control will be better and more effectively exercised if a smaller committee of Judges has the authority of the court to consider the manifold matters falling within the purview of Article 235. Bearing in mind therefore the nature of the power which that article confers on the High Court, we are of the opinion that it is wrong to characterize as 'delegation' the process whereby the entire High Court authorises a Judge or some of the Judges of the Court to act on behalf of the whole Court. Such an authorization effectuates the purpose of Article 235 and indeed without it the control vested in the High Court over the subordinate courts will tend gradually to become lax and ineffective. Administrative functions are only a part, though an important part, of the High Court's constitutional functions. Judicial functions ought to occupy and do in fact consume the best part of a Judge's time. For balancing these two-fold functions it is inevitable that the administrative duties should be left to be discharged by some on behalf of all the Judges. Judicial functions brook no such sharing of responsibilities by any

A instrumentality."

In *Registrar, High Court of Madras* v. *R. Rajiah* (supra), it was observed:

"23. In Rajiah's case, a Review Committee consisting of three judges was appointed by a resolution of the High Court. In the meeting of
B the Review Committee held on June 25, 1979 to consider the case of the respondent Rajiah, only two judges of the High Court were present. The two judges came to the conclusion that the respondent, Rajiah, should be compulsorily retired with effect from April 2, 1980. The Division Bench found that the third judge had no notice of the meeting held on June 25, 1979, but he agreed with the view expressed by the
C two judges with a slight modification that the respondent would retire with effect from March 3, 1980 under Rule 56(d) of the Fundamental Rules. The Division Bench of the High Court took the view that as all the three judges had not sat together and considered the question of compulsory retirement of respondent Rajiah, and that, further the
D third judge having also modified the decision of the two judges, namely, that the respondent would be compulsorily retired with effect from March 3, 1980, the impugned order of compulsory retirement of the respondent, Rajiah, was vitiated. It is true that the members of the Review Committee should sit together and consider the question of compulsory retirement, but simply because one of them did not
E participate in the meeting, and subsequently agreed with the view expressed by the other two judges, it would not vitiate the decision of the Committee to compulsorily retire the respondent. The third judge might (sic not) be justified in correcting the date with effect from which the respondent would compulsorily retire, but that is a
F very minor issue and would not, in our opinion, make the decision invalid.

24. In regard to the case of the other respondent, namely, K. Rajeswaran, the High Court took the view that the constitution of the Review Committee by the Chief Judge and not by the Full Court was
G illegal. We are unable to accept the view of the High Court. We fail to understand why the Chief Justice cannot appoint a Review Committee or an Administrative Committee. But in one respect the High Court is, in our opinion, correct, namely, that the decision of the Review Committee should have been placed before a meeting of the judges. In the case of the respondent, K. Rajeswaran, the decision
H and recommendation of the Review Committee was not placed before

the Full Court Meeting. Nor is there any material to show that the same was circulated to the judges. In that sense, the recommendation of the Review Committee was not strictly legal." A

Furthermore, the terminology 'consultation' used in Rule 15 having regard to purport and object thereof must be given its ordinary meaning. In Words and Phrases (Permanent Edition, 1960, Volume 9, page 3) to 'consult' B is defined as 'to discuss something together, to deliberate'. Corpus Juris Secundum (Volume 16A, Ed. 1956, page 1242) also says that the word 'consult' is frequently defined as meaning 'to discuss something together, or to deliberate'. By giving an opportunity to consultation or deliberation the purpose thereof is to enable the Judges to make their respective points of C view known to the others and discuss and examine the relative merits of their view. It is neither in doubt nor in dispute that the Judges present in the meeting of the Full Court were supplied with all the requisite documents and had full opportunity to deliberate upon the Agenda in question.

There is another aspect of the matter which may require consideration. D For all intent and purport the report of the two Judges Committee has been approved by the Full Court. Once approved, it terminated into a decision of the Full Court itself. In the instant case even the Governor has acted upon the recommendations of the High Court. The writ petitioners-first respondents herein did not question the appointments of the appointees before the High Court. Thus, there cannot be any doubt whatsoever that for all intent and E purport the opinion of the two Judges Committee received approval at the hands of the Full Court.

The High Court, in our opinion, further committed a manifest error in arriving at its conclusion in so far as it failed to take into consideration that F Rule 15 does not postulate the prior approval of the Full Court in relation to any action which may be initiated by the Chief Justice.

When an approval is required, an action holds good. Only if it disapproved it losses its force. Only when a permission is required, the decision does not become effective till permission is obtained. (See *U.P. Avas Evam* G *Vikas Parishad and Anr.* v. *Friends Coop. Housing Society Ltd and Anr.*, [1995] Supp. 3 SCC 456). In the instant case both the aforementioned requirements have been fulfilled.

There is another aspect of the matter. In terms of Rule 2(2) of the Rules, the decision of the Full Court would have a retrospective effect and H

retroactive operation.

In any view of the matter, even in a case where the initial action is illegal, the same can be ratified by a body competent therefor. This aspect of the matter has not been considered by the High Court at all. In *Sri Parmeshwari Prasad Gupta* v. *The Union of India,* [1973] 2 SCC 543 this Court held :

> ".....Even if it be assumed that the telegram and the letter terminating the services of the appellant by the Chairman was in pursuance to the invalid resolution of the Board of Directors passed on December 16, 1953 to terminate his services, it would not follow that the action of the Chairman could not be ratified in a regularly convened meeting of the Board of Directors. The point is that even assuming that the Chairman was not legally authorised to terminate the services of the appellant, he was acting on behalf of the Company in doing so, because, he purported to act in pursuance of the invalid resolution. Therefore, it was open to a regularly constituted meeting of the Board of Directors to ratify that action which, though unauthorized, was done on behalf of the Company. Ratification would always relate back to the date of the act ratified and so it must be held that the services of the appellant were validly terminated on December 17, 1953....."

(See also *Marathwada University* v. *Seshrao Balwant Rao Chavan,* [1989] 3 SCC 132 para 28, *Babu Verghese and Ors.* v. *Bar Council of Kerala and Ors.,* [1999] 3 SCC 422 para 35 and *Barnard* v. *National Dock Labour Board,* [1953] 1 All ER 1113).

In *Orissa Small Industries Corpn. Ltd. And Anr.* v. *Narasingha Charan Mohanty and Ors.,* (supra) where upon the learned counsel has placed strong reliance, this Court held :

> ".....That apart, the Court is not entitled to assess the respective merit of the candidates for adjudging their suitability for being promoted and the only right the employee has is a right of consideration. The said right of consideration not having been infringed in the present case, the High Court was not justified in issuing the impugned direction for reconsideration of his case....."

The said decision, therefore, militates against the contentions of the respondents.

Furthermore, the first respondent herein in these cases Shri P.P. Singh, Shri G.P. Pandey has been granted selection scale in RHJS with effect from 1.8.2000 and Shri P.K. Bhatia has been given with effect from 29.3.2000. Shri P.P. Singh has also retired from service on superannuation. A

We are of the opinion that impugned judgment of the High Court cannot be sustained which is set aside accordingly. The appeals are allowed but in the facts and circumstances of the case, there shall be no order as to costs. B

N.J. Appeals allowed.