



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 480/2024

The High Court of Judicature for Rajasthan, through Registrar
General, Jodhpur, Rajasthan. -----Appellant

Versus

1. State of Rajasthan, through the Secretary, Department of Education, Government of Rajasthan, Secretariat, Jaipur.
2. Director, Secondary Education Department, Bikaner, Rajasthan.
3. Mitthan Lal Samariya S/o Chhagan Lal Samariya, Resident of Samariyon Ka Mohalla, 42, Arniyawas, Riyabadi, Nagaur, Presently Posted At Ggsss Ladpura, Riyabadi, Nagaur.
4. Baldev Choudhary S/o Narsingh Choudhary, Resident of Chundiya, Tehsil Riyabadi, District Nagaur, Presently Posted at Gups Leeliya, District Nagaur.

-----Respondents

For Appellant(s) : Dr. Sachin Acharya, Sr. Advocate
assisted by Mr. Chayan Bothra and
Mr. Samyak Dalal

For Respondent(s) : --

HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI

HON'BLE MR. JUSTICE MUNNURI LAXMAN

Order

16/04/2024

1. For the reasons mentioned in the application for permitting the appeal to be filed alongwith other writ petition, the same is allowed.
2. The present Special Appeal Writ has been preferred claiming the following relief:

“It is therefore, most respectfully prayed that this application may kindly be allowed and the appellant may be granted leave to prefer the present special appeal against the impugned order dated 27.03.2024 passed by the Hon’ble Single Judge in S.B. Civil Writ Petition No.17254/2023 filed before this Hon’ble Court.”

3. Learned Senior Counsel for the appellant Dr. Sachin Acharya assisted by Shri Chayan Bothra has drawn attention of this Court towards the paragraphs 5 & 6 of the impugned order dated 27.03.2024 which reads as follows: -

"5. In the premise, certain preemptive measures are needed to forestall such crises in the future and ensure the seamless operation of the Court.

6. Accordingly, the Registry is directed that henceforth, when cases from another Bench are listed before a substitute Bench, the two cause lists must be distinctly delineated. The two cause lists shall not be merged. Illustratively, cases shall be listed in two segregated lists i.e. Cause List (I) and Cause List (II) with specific note in the respective cause lists by designating it as the routine list of the substitute Bench and the additional cause list of the Bench not holding court, respectively. Alternatively, terms Cause List (A) and (B) may be employed for clarity, with corresponding annotations. Both lists shall thus be published same way as before, except that the substitute court room number and name of the substitute Judge would be mentioned on the second cause list."

4. Learned Senior Counsel for the appellant has drawn the attention of this Court towards the provision of the Rules of the High Court of Judicature for Rajasthan 1952 (hereinafter referred to as 'the Rules of 1952') and the Rajasthan High Court Ordinance, 1949 (hereinafter referred to as 'the Ordinance of 1949'). Learned Senior Counsel for the appellant has also referred to the Rule 73 of the Rules of 1952 which is regarding preparation of the cause list and which reads as follows: -

"73. Daily Cause List. - The Registrar shall subject to such directions as the Chief Justice may give from time to time cause to be prepared for each day on which the Court sits, a list of cases which may heard by the different Benches of the Court. The list shall also state the hour at which and the room in which each Bench shall sit. Such list shall be known as the Day's List."

5. Learned Senior Counsel for the appellant has also referred to Para 44 of the Ordinance of 1949 which deals with the provisions of distribution of business and administrative control which is also reproduced as follows: -

"44. Distribution of business and administrative control.

- (1) The High Court may, by its own rules, provide as it thinks fit for the exercise by one or more Judges, or by Division Courts constituted by two or more Judges of the High Court, of its original and appellate jurisdiction.

(2) The Chief Justice shall be responsible for the distribution and conduct of the business of the High Court, and shall determine which Judge in each case will sit alone and which Judges of the Court will constitute a Bench.

(3) The administrative control of the High Court shall vest in the Chief Justice who may exercise it in such manner and after such consultation with the other Judges as he may think fit or may delegate such of his functions, as he deems fit to any other Judge of the High Court."

6. Learned Senior Counsel for the appellant thereafter has drawn the attention of this Court towards the distinct law laid down by the Hon'ble Apex Court in the matter of **State of Rajasthan Vs. Prakash Chand reported in 1998(1) SCC 1** wherein paragraph 10 and paragraph 59 are reproduced as follows: -

"10. A careful reading of the aforesaid provisions of the Ordinance and Rule 54 (supra) shows that the administrative control of the High Court vests in the Chief Justice of the High Court alone and that it is his prerogative to distribute business of the High Court both judicial and administrative. He alone, has the right and power to decide how the Benches of the High Court are to be constituted: which Judge is to sit alone and which cases he can and is required to hear as also as to which Judges shall constitute a Division Bench and what work those Benches shall do. In other words the Judges of the High Court can sit alone or in Division Benches and do such work only as may be allotted to them by an order of or in accordance with the directions of the Chief Justice. That necessarily means that it is not within the competence or domain of any Single or Division Bench of the Court to give any direction to the Registry in

that behalf which will run contrary to the directions of the Chief Justice. Therefore in the scheme of things judicial discipline demands that in the event a Single Judge or a Division Bench considers that a particular case requires to be listed before it for valid reasons, it should direct the Registry to obtain appropriate orders from the Chief Justice. The puisne Judges are not expected to entertain any request from the advocates of the parties for listing of case which does not strictly fall within the determined roster. In such cases, it is appropriate to direct the counsel to make a mention before the Chief Justice and obtain appropriate orders. This is essential for smooth functioning of the Court. Though, on the judicial side the Chief Justice is only the "first amongst the equals", on the administrative side in the matter of constitution of Benches and making of roster, he alone is vested with the necessary powers. That the power to make roster exclusively vests in the Chief Justice and that a daily cause list is to be prepared under the directions of the Chief Justice as is borne out from Rule 73.

"59. From the preceding discussion the following broad CONCLUSIONS emerge. This, of course, is not to be treated as a summary of our judgment and the conclusion should be read with the text of the judgment:

(1) That the administrative control of the High Court vests in the Chief Justice alone. On the judicial side, however, he is only the first amongst the equals.

(2) That the Chief Justice is the master of the roster. He alone has the prerogative to constitute benches of the court and allocated cases to the benches so constituted.

(3) That the puisne Judges can only do that work as is allotted to them by the Chief Justice or under his directions.

(4) That till any determination made by the Chief Justice lasts, no Judge who is to sit singly can sit in a Division Bench and no Division Bench can be split up by the Judges constituting the bench can be split up by the Judges constituting the bench themselves and one or both the Judges constituting such bench sit singly and take up any other kind of judicial business not otherwise assigned to them by or under the directions of the Chief Justice.

(5) That the Chief Justice can take cognizance of an application laid before him under Rule 55 (supra) and refer a case to the larger bench for its disposal and he can exercise this jurisdiction even in relation to a part-heard case.

(6) That the puisne Judges cannot "pack and choose" any case pending in the High Court and assign the same to himself or themselves for disposal without appropriate orders of the Chief Justice.

(7) That no Judge or Judges can give directions to the Registry for listing any case before him or them which runs counter to the directions given by the Chief Justice.

(8) That Shethna, J. had no authority or jurisdiction to send for the record of the disposed of writ petition and

make comments on the manner of transfer of the writ petition to the Division Bench or on the merits of that writ petition.

(9) That all comments, observations and findings recorded by the learned Judge in relation to the disposed of writ petition were not only unjustified and unwarranted but also without jurisdiction and make the Judge coram-non-judice.

(10) That the "allegations" and "comments" made by the learned Judges against the Chief Justice of the High Court, the Advocate of the petitioner in the writ petition and the learned Judges constituting the Division Bench which disposed of Writ Petition No. 2949 of 1996 were uncalled for, baseless and without any legal sanction.

(11) That the observations of the learned Judge against the former Chief Justices of the High Court of Rajasthan to the effect that they had "illegally" drawn full daily allowance while sitting at Jaipur to which they were not entitled, is factually incorrect, procedurally untenable and legally unsustainable.

(12) That the "finding" recorded by the learned Judge against the present Chief Justice of India Mr. Justice J.S. Verma, that till his elevation to the Supreme Court, he had, as Chief Justice of the Rajasthan High Court, "illegally" drawn a daily allowance of Rs. 250/- while sitting at Jaipur and had thereby committed "Criminal misappropriation of public funds" lacks procedural propriety, factual accuracy and legal authenticity. The finding is wholly incorrect and legally unsound and makes the motive of the author not above personal pique so wholly taking away dignity of the judicial process.

(13) That the disparaging and derogatory comments made in most intemperate language in the order under appeal do no credit to the high office of a High Court Judge.

(14) That the direction of Shethna, J. to issue notice to the Chief Justice of the High Court to show cause why contempt proceedings be not initiated against him, for transferring a part-heard writ petition from his Bench to the Division bench for disposal, is not only subversive of judicial discipline and illegal but is also wholly misconceived and without jurisdiction."

7. Learned Senior Counsel for the appellant further submits that it is a settled preposition that Hon'ble Chief Justice is the master of the roster and as per the Rules of 1952, preparation of the cause list and other administrative issues are dealt by the Registry under the direction of Hon'ble Chief Justice of the Court. Learned Senior Counsel for the appellant further submits that the issue of listing and designating cause list to

the substitute Benches and additional cause list to a Bench are issues which directly falls under the law mentioned above.

8. The matter requires consideration, due to long list and paucity of time the matter cannot be finally heard today, therefore, the matter be re-notified in the second week of July, 2024.

9. In the meanwhile, effect and operation of the order dated 27.03.2024 so far as the directions given in paragraph 6 shall remain stayed.

10. It is however, made clear that it will be open for the Registry to place before Hon'ble the Chief Justice the inconvenience expressed by the learned Single Judge of this Hon'ble Court in the impugned order for consideration.

(MUNNURI LAXMAN),J

(DR.PUSHPENDRA SINGH BHATI),J