



*attached to the Court shall be appointed to any office connected with 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 Justice of the Court or by some other Judge or officer of the Court authorized by the Chief Justice to make rules for the purpose:*

*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, 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."*

3. The matter eventually went to the desk of the Finance Secretary of the Government of Rajasthan who wrote a dissenting note and the Government of Rajasthan declined to accept the upgradation of 16 posts of Private Secretaries. As a result, the government communicated the non-acceptance to the Rajasthan High Court by letter dated 30.04.1998. Apparently, the recommendations of the Chief Justice of the Rajasthan High Court were never sent to the Governor.

4. The affected Private Secretaries challenged the decision before the High Court by way of filing a writ petition. The Division Bench of the High Court took the view that the powers of the Chief Justice in relation to the appointments, conditions of services which include

strength of staff and promotional avenues etc., are supreme. The High Court held that that it is the Chief Justice alone who has the power to determine these matters having regard the requirement of the High Court and for better administrative efficiency. The outside agency would have no say in the matter. While so observing, the High Court however held that the salary paid to the staff of the High Court is chargeable to the Consolidated Fund of India and there can be no Executive interference.

5. In effect, the High Court held that the decision of the Chief Justice to upgrade the posts is part of the power to increase or reduce the strength of the staff attached to the High Court and there was no requirement of approval of the Governor under the proviso to Article 229(2) of the Constitution of India. The High Court therefore set aside the letter dated 30.04.1998 declining to accept the decision of the Chief Justice of Rajasthan High Court and directed that the letter cannot be an impediment in exercise of such authority. The result is that the High Court has held that the approval of the government to the proposal is not necessary.

When the matter was heard in this Court, this Court passed an order directing the State Government to put up the matter before the Government of Rajasthan since the proposal of the Chief Justice had not been put up before

the Governor.

6. It appears that the dissent note of the Finance Secretary of the Government of Rajasthan was put up before the Governor who has approved the dissent. No reasons have been recorded.

7. We find that the judgment of the High Court is undoubtedly correct to the extent that it holds that the decision to upgrade any post can be taken only by the Chief Justice and the said decision cannot be questioned by any authority.

8. However, it is clear from the proviso to Article 229(2) of the Constitution of India that where any decision of the Chief Justice affects or relates to salaries, allowances, leave or pensions, it would require the approval of the Governor of the State.

Article 229 of the Constitution of India does not require a prior approval. Therefore, an ex post facto approval may also be valid.

9. We have no doubt that the decision in question of the Chief Justice of Rajasthan High Court affected the salaries and allowances which should be payable to the upgraded posts. The matter clearly had financial implications which would require the approval of the Government of the State. To that extent the observations

of the High Court are not in accordance with Article 229 of the Constitution of India.

10. We however find that the matter has not been properly processed by the State Government. In the first instance, the government did not even forward the decision of the Chief Justice for approval to the Governor of the State. They were indeed bound to do so. They merely returned the proposal to the High Court as "not acceptable". No reasons were given by the Governor.

11. The present case raises an important question of law, viz., what is the meaning, scope and ambit the word "approval" appearing in the proviso 229(2)?

The issue goes to the very heart of judicial functioning, for without desirable condition of service of officers and servants of the constitutional courts, the administrative side courts may become highly inefficient. The Constitution-makers, recognizing that the officers and servants of constitutional courts require special protection, included the aforementioned provision in the Constitution itself.

12. The provision in the first draft constitution read differently from the present Art. 229(2). Further, the clause for the Supreme Court (Clause 104) and the High Courts were *pari materia*. Clause 170, which was adopted from Section 228 of the Government of India Act, 1935

read:

*"170. The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court and the salaries and allowances of the judges of the court shall be charged upon the revenues of the Province, and any fees or other moneys taken by the court shall form part of those revenues."*

13. However, Section 228 of the Government of India Act, 1935 contained an additional sub-clause whereby the Governor controlled the expenditures of the High Court. Section 228(2) of the Government of India Act, 1935 read:

*"(2) The Governor shall exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature"*

14. Departing from this, the clause was amended by the drafting committee to the following form, seemingly to ensure that the executive does not interfere with the functioning of the High Court:

*"205. (2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the court or by some other judge or officer of the court authorized by the Chief Justice to make rules for the purpose:*

*Provided that the salaries, allowances and pensions payable to or in respect of such officers and servants shall be fixed by the Chief Justice of the Court in consultation with the Governor of the state in which the High Court has its principal seat."*

15. A similar change was carried out in respect of Draft Article 122 (3), i.e., the provision relating to the

Supreme Court.

The Article took its final form on 27.05.1949 when in the Constituent Assembly, Dr. Ambedkar moved an amendment to Draft Article 122(2) to the state:

*"(2) Subject to the provisions of any law made by Parliament, the conditions of services 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:*

*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."*

16. Shri M. Ananthasayanam Ayyangar and Shri Pandit Thakur Das Bhargava raised objections to the amendment of the article on the grounds that it impedes the independence of the judiciary. In reply, Dr. Ambedkar stated that the real object of the provision is to create uniformity in pay scales across all civil services. He stated:

*"But it seems to me that there is another consideration which goes to support the proposition that we should retain the phrase "with the approval of the President" and it is this. It is undoubtedly a desirable thing that salaries, allowances and pensions payable to servants of the State should be uniform, and there ought not to be material variations in these matters with regard to the civil service. It is likely to create a great deal of heart-burning and might impose upon the treasury an unnecessary burden. Now, if you leave the matter to the Chief Justice to decide, it is quite conceivable- I do not say that it will happen-but it is quite conceivable that the Chief Justice might fix scales of allowances, pensions and salaries very different from those fixed for civil servants who are working in other department, besides the Judiciary, and I*

*do not think that such a state of things is a desirable thing, and consequently in my judgment, the new draft, the new amendment which I have tabled contains the proper solution of this matter, and I hope the House will be able to accept that in place of the original proviso."*

17. On a reading of the constituent assembly debates, it is clear that the real object of the proviso is to ensure that the pay-scales between officers of constitutional courts and civil services are kept equal. In the present case, this purpose has not been violated. *It is not open to the government to reject a proposal which is not in violation of this object.* In other words, the only ground on which the Government may refuse the proposal of the Chief Justice is that the proposal is not in conformity with the pay scales in civil services.

18. In *Supreme Court Employees' Welfare Assn. v. Union of India*, (1989) 4 SCC 187 it was held that the conditions of service of officers and servants of the Supreme Court in relation to salaries, allowances, leave or pensions are to be decided by the Chief Justice and his proposal will ordinarily be accepted by the President. It was held:

*"62. Thus, as delegated legislation or a subordinate legislation must conform exactly to the power granted. So far as the question of grant of approval by the President of India under the proviso to Article 146(2) is concerned, no such conditions have been laid down to be fulfilled before the President of India grants or refuses to grant approval. By virtue of Article 74(1) of the Constitution, the President of India shall, in exercise of*



his functions, act in accordance with the advice of the Council of Ministers. In other words, it is the particular department in the Ministry that considers the question of approval under the proviso to Article 146(2) of the Constitution and whatever advice is given to the President of India in that regard, the President of India has to act in accordance with such advice. On the other hand, the Chief Justice of India has to apply his mind when he frames the rules under Article 146(2) with the assistance of his officers. In such circumstances, it would not be unreasonable to hold that the delegation of the legislative function on the Chief Justice of India and also on the President of India relating to the salaries, allowances, leave and pensions of the officers and servants of the Supreme Court involve, by necessary implication, the application of mind. So, not only that the Chief Justice of India has to apply his mind to the framing of rules, but also the Government has to apply its mind to the question of approval of the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions. This condition should be fulfilled and should appear to have been so fulfilled from the records of both the Government and the Chief Justice of India. The application of mind will include exchange of thoughts and views between the Government and the Chief Justice of India and it is highly desirable that there should be a consensus between the two. The rules framed by the Chief Justice of India should normally be accepted by the Government and the question of exchange of thoughts and views will arise only when the Government is not in a position to accept the rules relating to salaries, allowances, leave or pensions."

19. It seems to us that the proviso to 229(2) (as also Article 146), does not reflect an architecture of hierarchy. We think that the correct constitutional approach is one of comity between different institutions working under the *Constitution*. The emphasis is not on the supremacy of one institution or demarcating the boundaries of the other. It is about ensuring

institutional integrity of one while respecting the functional domain of the other. These provisions are meant to facilitate a dialogue of governance between high constitutional functionaries. A healthy dialogue, perhaps, even a debate is necessary for an efficient constitutional polity. The constitutional vision is not to draw "*lakshman rekhas*" between constitutional functionaries; its command is for the constitutional functionaries to efficiently coordinate to best achieve constitutional goals. It is this constitutional essence that was ignored when the request of the Ld. Chief Justice was not even placed before the Governor.

20. That independence of Judiciary is part of the basic structure of the Constitution is now well entrenched. The Constitution has insulated the Judiciary from outside influences both by the Executive and legislature. Article 223 to 234 in Chapter VI in part VI of the Constitution dealing with the Courts below the High Courts also show that the Constitution makers were equally keen to insulate even Subordinate Judiciary. Independence of Judiciary takes within its sweep independence of the individual Judges in relation to their appointments, tenure, payment of salaries and also non-removal except by way of impeachment. An integral part of 'Independence of Judiciary', as a constitutional value is the 'Institutional Independence' i.e. the aspect concerning

the financial freedom or autonomy which the judiciary must possess and enjoy. This effective involvement of the judicial branch in budgeting, staff and infrastructure has also been recognized by the international community.

21. The United Nations Sub Committee in its preliminary reports in 1980, (Committee of Jurist and the International Commission of Jurist at Syracuse) emphasized the "Institutional Safeguards" for Independence of the Judiciary and the need for collaboration with the Judiciary in the preparation of budget. The relevant clauses are as under:-

"Financial Provisions:

*Article 24:- To ensure its independence the Judiciary should be provided with the means and resources necessary for the proper fulfillment of its Judicial Function.*

*Article 25:- The budget of the Judiciary should be established by the competent authority in collaboration with the judiciary. The amount allotted should be sufficient to enable each court to function without an excessive workload. The judiciary should be able to submit their estimate of their budgetary requirements to the appropriate authority.*

*[Note: - An inadequate provision in the budget may entail an excessive workload by reason of an insufficient number of budgetary posts, or of inadequate assistance, aids and equipments, and consequently by the cause of unreasonable delays in adjudicating cases, thus bringing the judiciary into discredit.]"*

22. The Universal Declaration of the independence of Judges has resolved as follows:

*"2.40: The main responsibility for court administration shall vest in the judiciary.*

*2.41: It shall be a priority of the highest order of the state to provide adequate resource to allow for the due administration of justice, including physical facilities appropriate for the maintenance of Judicial independence, dignity and efficiency, judicial and administrative personnel; and operating budget.*

*2.42: The budget of the courts shall be paid by the competent authority in collaboration with the judiciary. The Judiciary shall submit their estimate of the budget requirement to the appropriate authority."*

23. The Seventh UN Congress on the prevention of Crime and treatment of offenders, Milan adopted the following resolutions:-

*" 7. It is the duty of each member state to provide adequate resources to enable the Judiciary to properly perform its function."*

24. The Lusaka Seminar 1986 noted as follows:-

*"23. Resources.*

*The executive shall ensure that the courts are adequately supplied with Judicial Officers and supporting staff.*

*49. Administration of the Post.*

*The Judiciary being a separate branch of Government should fall under the sole responsibility of the Chief Justice. Problem may arise when the Judicial Branch is considered as a department of a Ministry. Condition should therefore be created whereby the Judiciary has a greater say in the allocation of funds for the Judiciary."*

25. Adequate budgeting so as to meet the judiciary's work demands, so as to ensure proper, infrastructure and facilities is integral to judicial functioning. In that sense, it is an aspect of judicial independence. That independence of Judiciary is part of the basic structure of the Constitution is by now well entrenched. An

integral part of 'Independence of Judiciary', as a constitutional value is the 'Institutional Independence' i.e. the aspect concerning the financial freedom or autonomy which the judiciary must possess and enjoy.

26. The scheme of Article 229 of the Constitution of India obviously requires a joint consideration of the proposal which the Chief Justice may make in regard to appointments, conditions of services, etc., in accordance with the Rules. Undoubtedly, if the Chief Justice takes a decision which has financial implications and that decision cannot be questioned by any authority, the financial implications which such decision may have imposed, should receive due consideration at the hands of the State Government and eventually the Governor. In this regard, this Court in the case of Supreme Court Employees Welfare Association (Supra), observed the following in relation to an identical constitutional scheme:

*"57. So far as the Supreme Court and the High Courts are concerned, the Chief Justice of India and the Chief Justice of the concerned High Court are empowered to frame rules subject to this that when the rules are framed by the Chief Justice of India or by the Chief Justice of the High Court relating to salaries, allowances, leave or pensions, the approval of the President of India or the Governor, as the case may, is required. It is apparent that the Chief Justice of India and the Chief Justice of the High Court have been placed at a higher level in regard to the framing of rules containing the conditions of service. It is true that the President of India cannot be compelled to grant approval to the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions, but it is equally true that when such rules have been*

framed by a very high dignitary of the State, it should be looked upon with respect and unless there is very good reason not to grant approval, the approval should always be granted. If the President of India is of the view that the approval cannot be granted, he cannot straightway refuse to grant such approval, but before doing so, there must be exchange of thoughts between the President of India and the Chief Justice of India.

62. Thus a delegated legislation or a subordinate legislation must conform exactly to the power granted. So far as the question of grant of approval by the President of India under the proviso to Article 146(2) is concerned, no such conditions have been laid down to be fulfilled before the President of India grants or refuses to grant approval. By virtue of Article 74(1) of the Constitution, the President of India shall, in exercise of his functions, act in accordance with the advice of the Council of Ministers. In other words, it is the particular Department in the Ministry that considers the question of approval under the proviso to Art. 146(2) of the Constitution and whatever advice is given to the President of India in that regard, the President of India has to act in accordance with such advice. On the other hand, the Chief Justice of India has to apply his mind when he frames the rules under Art. 146(2) with the assistance of his officers. In such circumstances, it would not be unreasonable to hold that the delegation of the legislative function on the Chief Justice of India and also on the President of India relating to the salaries, allowances, leave and pensions of the officers and servants of the Supreme Court involve, by necessary implication, the application of mind. So, not only that the Chief Justice of India has to apply his mind to the framing rules, but also the Government has to apply its mind to the question of approval of the rules framed by the Chief Justice of India relating to salaries, allowances, leave or pensions. This condition should be fulfilled and should appear to have been so fulfilled from the records of both the Government and the Chief Justice of India. The application of mind will include exchange of thoughts and views between the Government and the Chief Justice of India and it is highly desirable that there should be a consensus between the two. The rules framed by the Chief Justice of India should normally be accepted by the Government and the question of exchange of thoughts and

*views will arise only when the Government is not in a position to accept the rules relating to salaries, allowances, leave or pensions."*

27. We are in agreement with the above observations and find that in the present case, the State Government has not considered the issue in accordance with the spirit and letters of the Constitution of India.

28. Having regard to the importance of the matter, we consider it appropriate to set aside the decision of not accepting the proposal of the Chief Justice and remand the matter back to the State Government for appropriate consideration. Undoubtedly, in case the State Government considers it necessary, it may hold a meeting with the concerned officers of the Rajasthan High Court as may be appropriate for resolving the issue.

29. Order accordingly.

30. The instant appeal is disposed of in the above terms.

.....J  
[S.A. BOBDE]

.....J  
[R. SUBHASH REDDY]

.....J  
[ B.R. GAVAI]

New Delhi,  
JULY 11, 2019

ITEM NO.102

COURT NO.2

SECTION XV

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Civil Appeal No(s).4517/2004

STATE OF RAJASTHAN AND ORS.

Appellant(s)

VERSUS

SHRI RAMESH CHANDRA MUNDRA & ORS.

Respondent(s)

( [ TO GO BEFORE THREE HONBLE JUDGES ] )

Date : 11-07-2019 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE  
HON'BLE MR. JUSTICE R. SUBHASH REDDY  
HON'BLE MR. JUSTICE B.R. GAVAI

For Appellant(s)

Dr. Manish Singhvi, Sr. Adv. (AAG)  
Mr. Satyendra Kumar, Adv.  
Mr. Shailja Nanda Mishra, Adv.  
Mr. Milind Kumar, AOR

For Respondent(s)

Mr. Gaurav Aggarwal, Adv.  
Mr. Mukesh Verma, Adv.  
Mr. Pawan Kumar Shukla, Adv.  
Mr. Yash Pal Dhingra, AOR  
  
Mr. Sunil Kumar Jain, AOR  
Mr. Abhishek Jain, Adv.  
Ms. Anusha Agarwal, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

The instant appeal is disposed of in terms of the signed order.

Pending interlocutory applications, if any, stand disposed of.

(SANJAY KUMAR-II)  
COURT MASTER (SH)

(INDU KUMARI POKHRIYAL)  
ASSISTANT REGISTRAR

(Signed Order is placed on the file)