
(2023) 09 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 1043, 5458 Of 2020

Desh Raj And Others

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision : 01-09-2023

Acts Referred:

High Court Of Himachal Pradesh (Original Side) Rules, 1997 — Rule 4

Citation : (2023) 09 SHI CK 0002

Hon'ble Judges : M.S. Ramachandra Rao, CJ; Vivek Singh Thakur, J

Bench : Division Bench

Advocate : Pooja Thakurm, L???. Mehta, Anup Rattan, Rakesh Dhaulta, Arash Rattan

Final Decision : Disposed Of

Judgement

M.S. Ramachandra Rao, CJ

1. We have perused the order dt. 25.08.2023 passed by DB-I in these CWPOAs. The said order states as under:-

"It appears that the CWPOAs which are in the nature of service matters are still being listed before the Principal Division Bench, as also the Division Bench No.II only on account of roster, whereas, in terms of the Notification dated 14.07.2023, whereby the High Court of Himachal Pradesh (Original Side) Rules, 1997 (for short 'Rules') came to be amended, these are required to be listed before the respective Single Benches of this Court.

Accordingly, the Registry is directed to list all CWPOAs before the appropriate Single Benches, unless otherwise ordered by Hon'ble the Chief Justice or where they are otherwise required to be listed before the learned Division Bench as per the Rules."

Thus the DB-1, in the above order, had directed the Registry to list all CWPOAs only before the appropriate Single Benches, contrary to the Roster dt.31.7.2023

prepared on the direction of one of us (Chief Justice) which permits listing of such matters also before the Principal Division Bench headed by one of us (the Chief Justice) and also DB-2 presided over by one of us (Justice Vivek Singh Thakur).

2. In State of Rajasthan Vs. Prakash Chand & other(1998) 1 SCC 1 in para 10 the Supreme Court has held 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; that 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. The Supreme Court declared that 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; and 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.

3. This principle of law has been reiterated in several decisions of the Supreme Court in Divine Retreat Centre vs. State of Kerala and others(2008) 3 SCC 542, High Court of Karnataka vs. Commissioner of Customs and another³, State of Uttar Pradesh and others vs. Neeraj Chaubey and others (2010) 10 SCC 320, State of Punjab vs. Davinder Pal Singh Bhullar and others (2011) 14 SCC 770, Kishore Samrite vs. State of Uttar Pradesh and others (2013) 2 SCC 398 , Kamini Jaiswal vs. Union of India and another (2018) 1 SCC 156 & Shanti Bhushan vs. Supreme Court of India through its Registrar and another. (2018) 8 SCC 396

4. We may also point out that the order dt. 25.08.2023 of DB-1 refers to an amendment to the High Court of Himachal Pradesh (Original Side) Rules, 1997 through a Notification dt. 14.07.2023, but as a matter of fact there was no amendment made through any Notification on that date to the said Rules regarding listing of cases.

5. However, there is a Notification issued on 14.07.2023 amending the High Court of Himachal Pradesh (Appellate Side) Rules, 1997 which states:

"...Provided that all the writ petitions which are to be heard and disposed of by a Division Bench shall be listed for admission before a Division Bench and all the writ petitions which are to be heard and disposed of by a Single Bench shall be listed for admission before a Single Bench. Notwithstanding the above, the Chief Justice may direct listing of any matter from the Division Bench to the Single Bench and vice versa."

Thus, even as per the second para of the amended Appellate Side Rules, power vests in the Chief Justice to direct listing of any matter which could be listed before a Single Judge before a Division Bench or vice versa.

6. Likewise Rule 4 of the same Rules states as under:-

“Provided that it shall be open to the Chief Justice to direct, by a general or special order that notwithstanding anything to the contrary contained in this Chapter or anywhere else in these Rules, any matter or case or a class or classes of cases shall be heard and disposed of by a Single Bench or a Bench of two or more judges.”

Thus, this Rule also permits the Chief Justice to list a case or class of cases either before a Single Judge or a Division Bench.

7. Having regard to the above legal position, which does not appear to have been noticed by the DB-1 which passed the order dt.25.8.2023, prima-facie it appears that the said order's legal validity requires to be considered.

8. Therefore, Registry is directed to place these matters before one of us (Chief Justice) for reference to a Full Bench to consider the following questions of law:

“(a) When admittedly the Chief Justice is the Master of the Roster, whether it is permissible for any Bench (other than the Bench presided over by the Chief Justice) such as DB-1 to give any direction to the Registry for listing of any case or any category of cases in a particular manner contrary to the directions given by the Chief Justice as contained in the Roster prepared on his direction as has been done in the order dt. 25.08.2023 in these Writ petitions?

(b) Whether the order dt. 25.08.2023 is valid and sustainable in law?”