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(2001) 01 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1218 of 1990

Rikhab Raj Kumbhat — APPELLANT

Vs

State of Rajasthan and Orthers — RESPONDENT

Date of Decision : 03-01-2001

Acts Referred:
Constitution of India, 1950 — Article 14, 146, 16, 226, 229
High Court Service Rules, 1970 — Rule 35
Rajasthan Civil Services (Revised Pay Scale) Rules, 1989 — Rule 60

Citation : (2001) 2 RLW 705 : (2001) 2 WLC 66 : (2001) 2 WLN 451

Hon'ble Judges : Rajesh Balia, J;A.R. Lakshmanan, J

Bench : Division Bench

Advocate : M.S. Singhvi, for the Appellant; R.P. Dave, for the Respondent

Judgement

Lakshmanan, CJ.

1. Heard Mr. Singhvi for the petitioner and Mr. R.P. Dave for respondents No. 2 and 3. The petitioner after his retirement on 31.12.1988 as Dy. Registrar (Admn.) has filed this writ petition on 15.3.1990 to direct the respondents fo fix the pay of the petitioner on the post of Addl. Registrar with effect from 30-8.1988 in the old pay-scale of Rs. 2750-5000 which has been given to Deputy Registrar (Judl.) and, thereafter with effect from 1.9.1988 in the pay-scale of Rs. 4500-5700 of the Rules of 1989 which has been given to Addl. Registrar (Judl.) with all consequential benefits. A further prayer for direction to be issued to respondents directing them to change; the nomenclature and grade of the posi of Deputy Registrar (Admn.) equivalent to that of Addl. Registrar (Judl.) with effect from 30.8.1988 has also been made.

(2). The petitioner entered in the service of the Rajasthan High Court in October 1951. He was promoted to the post of Deputy Registrar in officiating capacity by order dated 19.1.1988 (Annex. 1). He retired as Deputy Registrar on 31.12.1988. According to the petitioner there were 7 posts of Deputy Registrar in the High Court, 2 posts of Deputy Registrar has to be filled up from among the

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members of the Rajasthan Judicial Service of the rank of Chief Judicial Magistrate and that these posts were designated as Deputy Registrar (Judl.) and remaining 5 posts were to be manned by members of the staff of the High Court designated as Deputy Registrar (Admn./Protocol). It is the case of the petitioner that pursuant to the judgment of this Court in the writ petition filed by Rajasthan Judicial Service Officers Assocn, the State of Rajasthan introduced following four time- scales of pay for the members of the Rajasthan Judicial Service with effect from 13.8.1987:

(a) Ordinary Scale 1720-3350 (b) Senior Scale 2540-3900 (c) Selection Scale 2975-4700 (d) Super-time Scale 3900-5300 (3). According to the petitioner, these scales are at par with the 4 Time Scales admissible to the members of the Rajasthan Administrative Service. Apart from the above, the members of the Rajasthan Higher Judicial Service had the following 2 Time Scales of pay with effect from 1.9.1986:

(a) Ordinary Scale 2750-5000 (b) Selection Scale 4275-5500 (4). In response to letter dated 4.6.88 of the Registrar of this Court, the State of Rajasthan vide its order No.F.8 GO Jud/88 dated 21.7.88 conveyed sanction to change two posts of Deputy Registrar (Judl.) in the pay-scale of Rs. 2600-4150 to !he pay-scale of Rs. 2750-5000 by changing the nomenclature as Additional Registrar (Judl.), The Government revised the pay-scales of various categories of posts which included the pay-scale of Deputy Registrars of this Court. According to the petitioner, the perusal of the details furnished in the writ petition would reveal that the pay-scales of the holders of the posts of Deputy Registrar (Admn.) and Deputy Registrar (Judl.) have been the same throughout except for a brier period from 1.4.1974 to 1.5.1977 which is as under:

Date

Dy, Registrar (Adm.)

Dy. Registrar (Judl.)

Rank

1.4. 966

360-900

360-900

Civil Judge

1.9. 968

500-1000

500-1000

Civil Judge

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1.4. 974

500-1000

800-1300

C.J.M,

1.9. 976

930-1500

1250-1700

C.J.M.

1.6. 977

1250-1700

1250-1700

C.J.M.

1.9.1981

1600-2325

1600-2325

C.J.M,

1.9. 1986

2600-4150

2600-4150

C.J.M.

(5). When disparity arose between the holders of the posts of Dy. Registrar (Admn.) and Dy. Registrar (Judl.), it was brought to the notice of the then Hon''ble Chief Justice who took up the matter with the Government for keeping parity in the pay-scales of all categories of Deputy Registrars viz., Deputy Registrar (Admn.) and Deputy Registrar (Judl.) A high-level meeting was convened by the Chief Justice on 13.5.1977 which was attended by the then Administrative Judge and Advisor to the Governor of Rajasthan and Law Secretary to the Government. It was agreed in the said meeting that the posts of Secretary to the Chief Justice and Deputy Registrar (Admn.) - I and II be equated with the posts of Deputy Registrar (Judl.) i.e. of the cadre of the Chief Judl. Magistrate and the posts of Asstt. Registrar be equated with the posts of Civil Judge. In pursuance of the above communication, the State of Rajasthan vide its order dated 20.6.77 revised the pay-scale of Deputy Registrar (Admn.) and brought it at par with the pay-scale of Deputy Registrar (Judl.) (Annex. 2).

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(6). According to the petitioner, in view of the decision taken by the Government to keep parity in the matter of scales of pay among Deputy Registrars of this Courl, there appears to be equation of the post of Deputy Registrar (Admn.) qua Deputy Registrar (Judl.), But, discrimination was perpetuated even in the Revised Pay Scales brought into effect by the Rajasthan Civil Services (Revised Pay Scales) Rules, 1989 vv.e.f. 1.9.1988. The following details of pay-scales revised in various categories of posls under the Rules of 1989 is extracted hereunder:

RAJASTHAN HIGHER JUDICIAL SERVICE

Existing

Revised

(a) Ordinary

2750-5000

4500-5700

(b) Selection

4275-5500

5 i 00-6300

RAJASTHAN JUDICIAL SERVICE

(a) Ordinary Scale

1720-3350

2200-1000

(b) Senior Scale

2540-3900

3000-4500

(c) Selection Scale

2975-4700

3700-5000

(d) Superlime Scale

3900-5300

4500-5700

RAJASTHAN HIGH COURT

(a) Asstt. Registrars

2100-3550

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2500-4250

(b) Dy. Registrars

2600-4150

3200-4625

(c) Addl. Registrars

2750-5000

4500-5700

(7). In view of the above revision, the petitioner made a representation on 9.11.1989 to respondent No. 3 for removal of the disparity in the category of Deputy Registrars in regard to pay and grade by changing the nomenclature of the posts of Deputy Registrar (Admn.) to Addl. Registrar (Admn.) with effect from the date the post of Deputy Registrar (Judl.) has been changed. On 8.1.90, the petitioner received a reply from respondenl No. 2 that the mailer was under consideration of the Government. In the aforesaid circumstances, the writ petition was filed. Alongwith !he writ petition, the petitioner placed on record Annex. 1 to 4.

(8). A reply was filed on behalf of the respondents No. 2 & 3. It is submitted that the prayer made in the writ petition is not maintainable in the changed circumstances and, therefore, is liable to be dismissed as such. It is further alleged that the petitioner is guilty of suppression of material facts inasmuch as much has been said in the writ petition about the pay-scales of various posts which are alleged to be equal to the post of Deputy Registrar (Admn.) and, at the same time, with the redesignation of the post of Deputy Registrar (Judl.) to the post of Addl. Registrar (Judl.) the petitioner is claiming re-designation of the post of Deputy Registrar (Admn.) as Addl, Registrar (Admn.) carrying the same pay-scale. According fo the respondents,the petitioner in making these averments has deliberately suppressed the fact that it was not a case of mere redesignation of the post of Deputy Registrar (Judl.) as Addl. Registrar (Judl.) but, on the other hand, administrative decision was taken to upgrade the post of Deputy Registrar (Judl.) to the pos of Addl. Registrar (Judl.) and to man it by an Officer in the Rajasthan Higher Judicial Service cadre as against the post of Deputy Registrar (Judl.) which was manned by a senior-scale RJS Officer in the rank of Chief/Addl. Chief Judl. Magistrate. In such circumstances, it has been prayed that the petitioner is disentitled to maintain the writ petition.

(9). On merits, it is submitted that persons manning different posts are of different qualifications and criteria and mere fact that persons occupying two posts are discharging identical duties cannot entitle them to claim identical salary.

(10). We have heard Mr. M.S. Singhvi for the petitioner and Mr. R.P. Dav for the High Court.

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(11). Mr. Singhvi submitted that the action of the respondents in changing the grade of 2 posts of Deputy Registrar (Judl.) only and leaving out the posts of Deputy Registrar (Admn.) is highly discriminatory so as to he violative of Articles 14 and 16 of the Constitution. According to him, these posts have been treated at par and it has been decided to keep both the categories of posts at par way back in 1977, therefore, it is not open for the respondents to mete out unfavourable treatment to the holders of the posts of Deputy Registrar (Admn.). He has, therefore, contended that the petitioner is entitled to the benefit as has been given to the holders of the post of Deputy Registrar (Judl.) by changing the nomenclature with effect from the date it was given to them with all consequential benefits.

(12). It is further argued by Mr. Singhvi that the impugned action of the respondents is unreasonable and, therefore, is liable to he interfered with. It is urged that no change in the circumstances of duties which were discharged by the Deputy Registrar (Judl.) had occurred and, therefore, it was not open to change the grade of the posts of Deputy Registrar (Judl.) only leaving out the remaining 5 posts of Deputy Registrar (Admn./Protocol). In view of the impugned action of the respondents the petitioner has suffered immense financial loss and, therefore, the petitioner is entitled for a direction to the respondents as prayed for in the writ petition.

(13). Mr. R.P. Dave, learned counsel appearing for the Rajasthan High Court, has taken us through the reply filed by the respondents No. 2 and 3 and submitted that the petitioner is not entitled to any relief as prayed for. According to Mr. Dave, the persons manning the two categories of the posts of Deputy Registrar are from two different sources with different eligibilities. With upgradation of the posts of Deputy Registrar (Judl.) to Addl. Registrar (Judl.), the persons manning the post of Addl. Registrar (Judl.) also belonged to Rajasthan Higher Judicial Service whereas the persons manning the posts of Deputy Registrar (Judi.) belonged to Rajasthan Judicial Service.

(14). We have carefully gone through the pleadings at the lime of hearing and also considered the rival submissions made by the respective counsel. At a particular point of time the post of Deputy Registrar (Judl.) was upgraded as Addl. Registrar (Judl.) and, correspondingly, instead of being manned by a Chief/ Add!. Chief Judl. Magistrate belonging to RJS cadre it was manned by RHJS cadre Officer. Taking into account the administrative exigencies it was administratively decided to again downgrade the post of Addl. Registrar (Judl.) to Deputy Registrar (Judl.) and to man to post again by an officer in the RJS cadre instead of RHJS cadre officer. In such circumstances, we are of the opinion that the recommendations made by the High Court to the State Government earlier became meaningless apart from the fact that as a necessary formality the recommendations have already been withdrawn. In this view of the matter, the grievance of the petitioner does not survive and no relief can be granted to him in the writ petition. As a matter of fact, the post of Deputy Registrar (Admn.) is,

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on the other hand, carrying higher pay- scale being Rs. 3200-4625 as against the one carried by Deputy Registrar (Judl.) which is Rs. 3000-4500. In view of this factor, it is submitted that no cause of action survives to the petitioner.

(15). We have carefully analysed the rival submissions. It is established law that it is the exclusive prerogative of the employer to provide the rules and principles for filling up particular posts, assigning responsibilities and providing promotion channels. Under such circumstances, it is not open to this Court in exercise of Article 226 to interfere in this matter and to direct as to upgradation of any particular post. It has been submitted that the order of respondent No. 1 purporting to sanction of scale and nomenclature was an administrative decision and was taken by the respondents considering the administrative requirements. The Slate Government was moved to create 2 additional posts of Addl. Registrar (Judl.) or, in the alternative, to upgrade the existing 2 posts of Deputy Registrar (Judl.) to Addl. Registrar (Judl.). If the Government did not think it proper to create additional posts due to financial constraint and instead vide communication dated 21.7.1988 conveyed the sanction for upgrading the existing 2 posts of Deputy Registrar (Judl,) to that of Addl. Registrar (Judl.) it was a subject-matter of administrative decision considering the administrative exigencies; and, out of two alternatives proposed, the respondent No. 1 agreed to one proposal viz., upgradation of the posts to be manned by the officers in Rajasthan Higher Judicial Service cadre.

(16). In this context, we may usefully refer to Article 229 of the Constitution of India and the object of the said Article. Article 229 reads as follows:

"229(1) Appointments of officers and servants of a High Court or such other Judge or officer of the 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 the Court save after consultation with the Stale 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 authorised 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 pension 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 money taken by the Court shall form part of that Fund."

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(17). Courts have held that the object of the above Article is to secure the independence of the High Court which is essential for the working of the democratic form of Government in this country by giving the High Court absolute control over its staff, subject only to the limitations imposed by the Article itself and fee from interference by the Government, as held by the Supreme Court in Gurumoorthy vs. Accountant General (1). It is also held in Puttaswamy vs. Chief Justice (2), that the object of Article 229 is to secure independence of the High Court which is not possible unless the authority to appoint supporting staff with complete control over them is vested in the Chief Justice of the Court, The Supreme Court has held that the power to appoint includes the power to suspend, dismiss, remove or compulsorily retire a member of the High Court staff. In State of Orissa vs. Misra A (3), the Supreme Court has held that the post of Registrar can be filled up only by the Chief Justice. Likewise, subject to the provisions of any law made by the legislature of the State, the Chief Justice is the sole authority for fixing the salaries etc. of and controlling the High Court employees who are thus taken out of the purview of Article 309.

(18). The Madras High Court (Dr. AR, Lakshmanan, CJ., as he then was) while considering the scope of Article 229 of the Constitution in the judgment reported in M.S. Saraswathi & Others vs. The Slate of Tamil Nadu & Another (4), has observed as follows:

"Art. 229 of the Constitution vests in the High Court the control over its staff in order to free the court from any interference from the Government in relation to the administration of the Court. The nature of the work performed by the officials in the court is best known to the court and not to the Government and when a recommendation is made by the Hon''ble the Chief Justice to the effect that the work performed by the petitioners employed in court is similar to that of the persons similarly placed in the Secretariat and the scale of pay of the two posts should be identical, it is not permissible for the Government to disregard the recommendations and persist in holding a contrary view. Such an attitude of the Government is wholly impermissible having regard to the object of Art. 229. In such circumstances of the case, it is also violative of the petitioners rights under Art. 14 of the Constitution inasmuch as it has denied to them similar treatment insofar as their emoluments are concerned on par with that of the persons similarly placed in the Secretariat services."

(19). The Madras High Court, on number of occasions, had directed the Government to apply its mind and consider the matter in the hope that the Government after such consideration would recognise the just claims of the petitioners and act in accordance with the recommendations that had been made by the Chief Justice of the said Court. The Government in fact accepted the recommendations of the Chief Justice and fixed the pay and other emoluments of 132 Asstt. Section Officers in the High Court service on par with the Asstt. Section Officers of the Secretariat Service. This judgment is reported in 1993 (2) L.W. 159 (5). The writ-appeal filed against the said judgment was also dismissed

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by the Division Bench by issuing a direction that the Government is bound to give effect to the recommendations of the Chief Justice.

(20). In The Tamil Nadu Civil Courts Senior Bailiffs Assocn. vs. The Secretary to Government (6), the High Court (Dr. AR. Lakshmanan, CJ, as he then was) held that the Governor in the exercise of the powers under the proviso to clause (1) of Article 229 of the Constitution is not required to act under the aid and advice of the council of Ministers and hence ought to give his approval to the recommendations of the Chief Justice. At para 17, it is observed as follows:

"Art. 229 of the Constitution provides that any appointment of officers and servants of the High Court shall be made by the Chief Justice of the Court or by such other Judge of Officer of the court as he may direct and subject to the provisions of any law made by the Legislature of the Slate, the conditions of service of officers and servants of the High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judges or Officers of the Court authorised by the Chief Justice to make rules for the purpose, provided further, that the rules made under these clauses shall, so far as it relates to salaries, allowances, leave or pension, required the approval of the Governor of the Slate. Mr. N.R. Chandran therefore, submitted that unlike Art. 309 of the Constitution, which gives to the Executive Government of the State the power to make rules, Art. 229 gives power to the Hon''ble Chief Justice of the High Court to make rules and the role of the Governor of the State comes only for approval of the rules made by the Hon''ble Chief Justice insofar as they relate to salary, allowance, leave or pension. In this connections, it is contended that the rule assigned to the Governor under the Proviso to Clause I of Art. 229 of the Constitution is exclusive to him and he is not required to act with the aid and advice of the Council of Ministers as in Art. 163 of the Constitution, wherein it is stated that there shall be a council of Ministers with the Chief Minister at the Head to aid and advise the Governor in the exercise of his functions. Therefore, I am of the view, that insofar as the High Court is concerned, there cannot be any interference whatsoever by the Executive Government of the powers of the Hon''ble Chief Justice by interfering with the independence of the Judiciary or with the service conditions of the employees of the High Court. In this view of the matter, it is to be noticed that in exercise of the powers under the proviso to Clause 1 of Art. 229 of the Constitution, the Governor is not required to act with the aid and advice of the Council of Ministers and hence ought to give his approval to the recommendations of the Hon''ble Chief Justice."

(21). At para 19 of the above judgment, it has been observed as follows:

"The Supreme Court in Stale of Tamil Nadu vs. K.V. Seshadri, J.T. (1998) 1 SC 262, while considering the claim of the Personal Assistants and judgment. Writers attached to the Judges at par with the Reporters in the Legislative Assembly, has directed the Government of Tamil Nadu to pay a special pay of Rs. 100 in addition to the special pay already being received by them. The Supreme Court has also held that they are entitled to special pay from 1.4.8-1. The

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reasoning is this:

"Heard learned counsel for the parties. We find that the learned Chief Justice of the High Court of Madras had recommended to the State Government to put the Personal Assistants and the judgment Writers attached to the Judges at par with the Reporters in the Legislative Assembly in regard to payability of the special pay of Rs. 100 per month in addition to pay. While disposing of the writ petition, the High Court had directed that the respondents would get special pay of Rs. 100 in addition to the special pay which they have been received already. This obviously was not the recommendation of the learned Chief Justice. On the basis of the recommendation the respondents become entitled to Rs. 100 as by way of special pay and Mr. Shanti Bhushan appearing for State has no objection to accept that part of the decision relating to monthly payment of Rs. 100 as special pay to each of the respondents. We accordingly modify the decision of the High Court and direct that the special pay admissible to the respondents shall be confined to Rs. 100 per month from 1.4.1984. It is open to the respondents to give any further representation they like to make in this regard and if and when made, the same may be disposed of on its own merit."

(22). The Kerala High Court in the judgment reported in M.V.K. Nambiar vs. State of Kerala (7), while considering the authority of the Chief Justice under Article 229 of the Constitution has observed as under:-

"The Chief Justice is the only authorily who can issue an order retaining an employee of the High Court after he attained the age of 55 years as provided under Rule 60(a) of Part I K.S.R. in the light of the power given under Art. 229 of the Conslitution read with Rules 35 of the High Court Service Rules, 1970. An order passed under Rule 60(a) retaining an employee beyond the age of 55 years may make him eligible to salary, allowances, leave, pension etc., in respect of the period in which he was thus allowed to work after attaining the age of 55 years. The salary, allowances, leave etc., of an employee of the High Court will be affected if he is suspended, dismissed, removed or compulsorily retired from service. But still, it is only the Chief Justice who has got the power to suspend, dismiss, remove or compulsorily retire an employee of the High Court. No concurrence is necessary from the Government respondent in enforcing the above order issued by the Chief Justice.))

(23). Very recently, a Division Bench of this Court comprising Hon''ble Mr. Justice Rajesh Balia and Hon''ble Mr. Justice S.K. Garg, in Ramesh Chandra Mundra vs. State of Rajasthan & Others (8), while considering the scope of Art. 229 has observed as follows:

"A perusal of the aforesaid Rule reveals that in contrast of Article 235 of the Constitution of Indian, the power u/Art.229 is vested in the Chief Justice alone or some other Judge or officer of the Court to whom such authority is delegated by the Chief Justice. The expression used by the Constitution further is clear indication of exalted position assigned to Chief Justice of the High Court in the

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matter of staffing of the High Court. It has not been even left to the Court as has been envisaged u/Art. 235 of the Constitution so as to require a collective decision but is left to only to the Chief Justice or any of his delegate. The organisational structuring of staff of High Court as per its requirement and efficient functioning and that power includes number of manpower and different posts required and their manning."

(24). In High Court of Judicature of Rajasthan vs. Ramesh Chantt Paliwal (9), the Supreme Court has observed as follows:

"Article 229 makes the Chief Justice the Supreme authority in the matter of appointment of High Court officers and servants. The Article also confers rule making power on the Chief Justice for regulating the condition of service of officers and servants of the High Court subject to condition that if the rules relate to salaries, allowances, leave or pensions, they have to have the approval of the Governor of the State. The power available to the Chief Justice of the High Court under Article 229 of the Constitution of India is akin to the power of the Chief Justice of India under Article 116 of the Constitution of India just as the Chief Justice of India is the supreme authority in the matter of Supreme Court Establishment including its office staff and officers, so also the sole authority in these matters and no other Judge or officer can usurp those administrative functions or power."

(25). Hon''ble Rajesh Balia, J. in the above judgment, speaking for the Bench, has observed as follows:

"..... the Chief Justice reigns supreme. The condition of service of officers and servants would include strength of staff, promotional avenues available to the staff of the Court as per requirement of the High Court and for better administrative efficiency. So far as these matters are concerned, any outside agency has no say."

(26). In the State of U.P. vs. C.I.. Agarwal (10), the position in regard to creation of posts within the High Court and the power of the Chief Justice has been considered. In the said case, the Supreme Court has held that the power of the Chief Justice has been placed beyond the pell of doubt.

(27). Thus it is seen that in the matter of creation of posts the Chief Justice is supreme and in the matter of appointment of the posts within the Court also the Chief Justice''s authority is supreme to be interrupted by any outside agency. Likewise, the upgradation of the posts amongst existing staff, in re- structuring exercised by the Chief Justice which fell within his exclusive domain for which no sanction was required. We have already noticed that when creation of new posts within the existing staff does not require the approval of the Governor, therefore, the question of upgrading some of the existing posts within the existing strength also would not fall outside the authority of the Chief Justice and within the authority of the Governor.

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(28). Thus it is seen that the authority of the Chief Justice is supreme and the constitutional mandate is devised to secure and maintain the independence of the High Court and anxiety of the Constitution makers is to achieve this object is manifested in Article 229 of the Constitution of India. Likewise, yet another principle now well settled need be noticed while reorganising or restructuring the staffing of the High Court, it is not only open for the Chief Justice to create new posts whether in addition to existing strength or by upgrading some of the pots within the existing strength.

(29). In the result, the writ petition fails and is dismissed. No order as to costs.

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