

Rajesh Kumar and Ors Vs. Personnel and Adminis Reform

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Court : Jharkhand

Decided On : Mar-03-2016

Appellant : Rajesh Kumar and Ors

Respondent : Personnel and Adminis Reform

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P.(S) No. 5186 of 2014

1. Rajesh Kumar, son of Shri Ram Lal Prasad, resident of Mohalla Malikana, P.O. Singhrawa, P.S. Choparan, District- Hazaribagh-825406(Jharkhand)

2. Kamal Ranjan, son of Shri Gangadhar Bhagat, resident of Khamiya Amba Toli, Post Aarangi, P.S. Ghaghra, District- Gumla (Jharkhand)

3. Pratap Chandra, son of Shri Gupteshwar Ram, resident of Mohalla Bhai Bigha, Post Haidernagar, P.S. Haidernagar, District-Palamau (Jharkhand)

4. Manoranjan Kumar, son of Shri Rajbansh Dwivedi, resident of Village Amapokhar, Post-Nonhar, P.S. Surajpura, District- Rohtas-802212 (Bihar)

5. Purushottam Goswami, son of Shri Surendra Mohan Goswami, resident of Officers Colony, Mirchae Badi, P.O. and P.S. Katihar, District-Katihar-854105 (Bihar)

6. Rajiv Tripathi, son of Shri Balram Tripathi, resident of Village Srikant Ka Purwa, P.O. Pandavwasi, P.S. Jenwara, District Patapgarh-230001, (Uttar Pradesh)
7. Sandeep Kumar Bertam, son of Shri Faudi Ram, resident of Village-Soherkalan, Post-Edla (Simariya), P.S. Simariya, District-Chatra-825401 (Jharkhand)
8. Vimal Johnson Kerketta, son of late Wilson Kerketta,, resident of Holding No. 16A Blcok, Line No. 2, Tueela Dungri, P.O. Golmuri, P.S. Golmuri, Jamshedpur, District-East Singhbhum (Jharkhand)
9. Manju Kumari, daughter of Shri Babulal Sharma, resident of Kapuriya More, Post Bhelatand, P.S. Katras, District- Dhanbad 828103 (Jharkhand)
10. Rajshree Aparna Kujur, daughter of Jai Sukumar Kujur, resident of Chatra Up Sarna, P.O. and P.S. Gumla 835207, District-Gumla (Jharkhand)
11. Divya Mishra, daughter of Shri Kaushalendra Mishra, resident of Mohalla Etoja, P.O. and P.S. Etoja, District-Lucknow 227205, (Uttar Pradesh)
12. Bishwanath Bhagat, son of Shri Birsae Bhagat, resident of Village Pugu Dhantha Toli, Post-Armaee, P.S. Gumla, District- Gumla-825307 (Jharkhand)
13. Kumari Jiv, daughter of Shri Sadhu Singh, resident of Mohalla Tueela Dungri, House No. 52, Line No. 4, A Block, P.O. and P.S. Golmuri, Jamshedpur, 831003, District East Singhbhum (Jharkhand)
14. Bishwanath Oraon, son of Shri Karma Oraon, resident of Village Bhadaee, P.O. Beyasi, P.S. Chanho, District Ranchi- 835301 (Jharkhand)
15. Kamla Kumari, daughter of late Chote Mohra, resident of Village Liludih, P.O. Punasi, P.S. Jasidih, District-Deoghar 814152 (Jharkhand)
16. Richa Srivastava, daughter of Shri Vinod Kumar Srivastava, resident of Madhu Niwas Shivpur Marg, Village-Singhdhiya, Post Kudaghat, P.S. Cantt, District-Gorakhpur-273008 (Uttar Pradesh) 2

17. Anup Tirky, son of Shri Ohma Tirky, resident of Village Simdega, Ghochi Toli, P.O. and P.S. Simdega, District-Simdega 835223 (Jharkhand)
18. Shweta Kumari, daughter of Shri Anand Mohan Prasad, resident of Mohalla Shri Rameshwar Modi, Bishunpur Road, Behind Jawahar Talkies, P.O. and P.S. Jhumri Telaiya, District- Koderma-825409 (Jharkhand)
19. Manoj Kumar Sharma, son of Shri Awadh Bihari Sharma, resident of Mohalla Maulabagh, Daudnagar, P.O. and P.S. Daudnagar, Pin 824113, District-Aurangabad (Bihar)
20. Parth Sarthi Ghosh, son of Jimut Vadhan Ghosh, resident of Village-Nilgiri Tola, Bundu, P.O. and P.S. Bundu, District- Ranchi-835402 (Jharkhand)
21. Arbind Kachchap, son of Shri Jayasu Kachchap, resident of Village Devgami, Post Hethudami, P.S. Hatia, District-Ranchi (Jharkhand)
22. Manoranjan Kumar, son of Shri Sharan Dev Singh, resident of Gangra, P.O. Gangra, P.S. Giddhaur, District-Jamui-811305 (Bihar)
23. Aarti Mala, daughter of Shri Nand Kishore Ram, resident of near Kashyap Eye Hospital, Dangra Toli, P.O. and P.S. Lower Bazar, Ranchi-834001, District-Ranchi (Jharkhand)
24. Mohammad Umar, son of Shri Mohammad Alamgir,, resident of Mohalla Saraiya, Ward No. 5, P.O. and P.S. Gopalganj, District-Gopalganj-841428 (Bihar)
25. Ashok Kumar, son of Shri Sant Prasad Upadhyay, resident of Civil Court Campus, P.O. and P.S. Sitaramdera, Jamshedpur, District-East Singhbhum (Jharkhand)
26. Sindhu Nath Lamay, son of late Mangal Singh Lamay, resident of Civil Court Campus, P.O. and P.S. Sitaramdera, Jamshedpur, District-East Singhbhum (Jharkhand)
27. Lucy Soren Tigga, daughter of Shri Xavier Tigga, resident of Gayatri Nagar, Post and P.S. Bedo, District-Ranchi Pin No. 835202 (Jharkhand).

28. Arjun Saw, son of Shri Dugi Saw, resident of Village and Post Gangpacho, P.S. Barkattha, District Hazaribagh-825323 (Jharkhand).
29. Kuldip, son of Shri Jai Prakash, resident of village & Post Nirojpur Gurjar, P.S. Baghpat, District Baghpat, Pin-250601, (Uttar Pradesh) 30. Santosh Anand Prasad, son of Shri Vinodanand Prasad, resident of Mohalla PTC Road, Matwari Meena Kutir, P.O. Hazaribagh, P.S. Sadar, District Hazaribagh, Pin 825301 (Jharkhand).
31. Laxmikant, son of Dr. N.P. Dwivedi, resident of Kotwali Chouk, Near Naka No. 5, Post Darbhanga, P.S. Town Thana, Darbhanga, Pin No.-846004 (Bihar) 32. Md. Fahim Kirmani, son of Md. Nasim Wasti, resident of Mohalla A/49, Teachers Colony, P.O. Khanalmpura, P.S. Janakpuri, District- Saharanpur, Pin Code No. 247001 (Uttar Pradesh) 33. Nishant Kumar, son of Shri Manikant Choudhari, resident of Brindavan Cooperative Colony, Gol Building, P.O. and P.S. Saraidhela, District-Dhanbad 3 34. Manoj Kumar Ram, son of Shri Ramdas Ram, resident of Village- Khardiha, P.O. and P.S. Haidernagar, District- Palamau, Pin Code No. 821105 (Jharkhand).
35. Md. Naeem Ansari, son of Phool Mohammad, resident of Village Bhagwanpur Baniya, Post Chakram Das, P.S. Saraiya, District-Muzaffarpur, Pin No. 844128 (Bihar) 36. Binod Kumar, son of Shri Baijnath Singh, resident of Mohalla Shivpuri Dipwa, Post and P.S. Garhwa, District Garhwa, Pin Code No. 822114 (Jharkhand).
37. Krishna Kant Mishra, son of late Virendra Prasad Mishra, resident of 21/3 Saryu Market, Moti Lal Nehru Road, P.S. Deoria, District-Deoria, Pin code No. 274001, (Uttar Pradesh) 38. Manoranjan Kumar, son of Shri Ashok Kumar, resident of Nagar Untari, Near S.B.I. P.O. and P.S. Nagar Untari, District Garhwa-700012, Jharkhand 39. Sandeep Nishit Bara, son of late Thewdar Bara, resident of Village and P.O. Tumdeji, P.S. Simdega, District-Simdega, Pin Code No. 835223 (Jharkhand) ... Petitioners Versus 1. The State of Jharkhand through the Principal Secretary, Personnel, Administrative Reforms and Rajbhasha Department, Jharkhand Mantralaya, Project Building, P.O. and P.S. Dhurwa, Ranchi, 834004, District-Ranchi 2. Hon'ble High Court of Jharkhand through its Registrar General, Doranda, P.O. and P.S. Doranda, Ranchi 834002, District-

Ranchi ... Respondents ----- For the Petitioners : Mr. Sumeet Gadodia, Advocate
Mr. Prem Pujari Roy, Advocate Mr. Ramiz Zafar, Advocate For the State : Mr. Ajit
Kumar, A.A.G. For the High Court : Mr. Rajesh Shankar, Advocate ----- CORAM:
HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HON'BLE MR.
JUSTICE SHREE CHANDRASHEKHAR ----- C.A.V. On:

18. 02.2016 Pronounced On:

03. 03.2016 Virender Singh, C.J.

& Shree Chandrashekhar, J.: Aggrieved by order contained in Memo No. 8290 dated 24.07.2014 issued by the Registrar-General of the High Court of Jharkhand communicating the decision of the Court that passing the Hindi Examination as well as Departmental Examination 4 are conditions precedent for confirmation in service and grant of increments, the trainee Civil Judges (Junior Division) have filed the present writ petition. FACTS:

2. The petitioners are the probationary Civil Judge (Junior Division) Trainees-(Munsif) appointed in terms of Jharkhand Judicial Service (Recruitment) Rules, 2004 vide, Notifications dated 05.01.2011 and 28.03.2011. The petitioners were initially posted in the judgeships and they have undergone training for one year under Syllabus of the Induction Training Programme in the respective judgeships at the Judicial Academy, Ranchi. The petitioners assert that they appeared in the examinations conducted by the Judicial Academy under the direction and guidance of the High Court and they successfully completed their training and passed the examinations conducted at the Judicial Academy, and thereafter, the Director, Judicial Academy, Jharkhand issued letter dated 30.03.2012 instructing the trainee Civil Judges (Junior Division) to report to the Principal District Judge/Principal Judicial Commissioner of their place of posting by 02.04.2012. After their joining, the petitioners were conferred power of the Judicial Magistrate, I st Class w.e.f. 02.04.2012 vide, Notification dated 30.03.2012 issued by the High Court of Jharkhand. However, inspite of 5 successful completion of training and probation for three years, when they were not confirmed in service, a representation was submitted to the Registrar-General for their confirmation in service and for grant of increments. Vide, letter dated 24.07.2014 the impugned

communication was issued by the Registrar-General stating that passing of Hindi Examination and Departmental Examination are conditions precedent for confirmation in service and for grant of increments.

3. Heard the learned counsel for the parties and perused the documents on record.

4. Mr. Sumeet Gadodia, the learned counsel for the petitioners submitted that Bihar Civil Service (Judicial Branch) Training and Departmental Examination Rules, 1963 is not applicable to the Civil Judge (Junior Division) appointed under Jharkhand Judicial Service (Recruitment) Rules, 2004. He contended that in view of Sections 84 and 85 of Bihar Reorganisation Act, 2000 the Training and Departmental Examination Rules, 1963 were deemed to have been operating in the newly created State of Jharkhand, however the said Rules have been repealed after the framing of Jharkhand Judicial Service (Recruitment) Rules, 2004 and therefore, 1963 Rules cannot be made a condition precedent for confirmation of the petitioners in service and grant of increments. 6 5. Per contra, Mr. Rajesh Shankar, the learned counsel for the High Court of Jharkhand submitted that the Jharkhand Judicial Service (Recruitment) Rules, 2004 have superseded only the Rules on the subject, and since provision under Rule 27(a)(iii) of 1963 Rules are not the Rules on the subject, the same have not been superseded by 2004 Rules.

6. Before examining the rival contentions the ambit and extent of Sections 84 and 85 need to be examined. On 15.11.2000, State of Jharkhand was created under the Bihar Reorganisation Act, 2000. Section 84 made the law inforce in the existing State of Bihar immediately before the appointed day applicable in the newly created State of Jharkhand, until otherwise provided by the competent legislature or other competent authority. Section 85 provided that the appropriate Government may make such adaptations and modifications of the law, either by way of repeal or amendment and such law shall be effected in the State of Jharkhand subject to repeal or amendment by a competent legislature or other competent authority. In *Rattan Lal & Co. & Anr. Vs. Assessing Authority, Patiala & Anr.* (1969) 2 SCR544 the Hon'ble Supreme Court while examining the contention that the new State after the reorganisation cannot amend the original Act from a

date interior to the appointed date, held that the original Act 7 would apply as an independent Act to each of the States and, the new State is within its legislative competence to amend the original Act in relation to the area of the new State. It is thus, apparent that the pre-existing laws which were applicable in the unified State of Bihar would continue to apply to the new State created under Bihar Reorganisation Act, 2000 however, only until otherwise provided by the competent legislature or other competent authority.

7. In the unified State of Bihar for recruitment on the post of Munsifs and Subordinate Judges, Bihar Civil Service (Judicial Branch) Recruitment Rules, 1955 were framed under Article 234 of the Constitution of India. Subsequently, for the training and departmental examination of the officers of the Judicial Branch of the Bihar Civil Service, in exercise of powers conferred by proviso to Article 309 of the Constitution of India, the State of Bihar framed Bihar Civil Service (Judicial Branch) Training and Departmental Examination Rules, 1963. Under Rule 27(a) every probationer is required to pass examination in, (i) High Court's General Rules and Circular, (ii) Procedural Law and Law of Evidence and, (iii) Hindi by the lower and higher standards as described in Appendix-I of the Rules.

8. There is no dispute that Bihar Civil Service 8 (Judicial Branch) Training and Departmental Examination Rules, 1963 were applicable to the Munsifs and Subordinate Judges appointed in terms of 1955 Rules which, in terms of Sections 84 and 85 of the Bihar Reorganisation Act were applicable in the State of Jharkhand. Subsequently, in view of the urgent need for filling up vacancies in the Jharkhand Judicial Service, in the year, 2001 in exercise of powers conferred by Article 234 read with Article 309 of the Constitution of India, Jharkhand Judicial Service (Recruitment) Rules, 2001 were framed. The Jharkhand Judicial Service (Recruitment) Rules, 2001 do not specifically provide that before confirmation of the service a Munsif appointed under the said Rules must pass Hindi test. However, Rule 22 of Jharkhand Judicial Service (Recruitment) Rules, 2001 provides that a Munsif appointed on temporary basis shall be eligible for permanent appointment to the service subject to the conditions that; (i) he completes 2 years of service from the date of his first appointment, (ii) he has passed such tests as may from time to time be prescribed in the Departmental

Examination Rules and, (iii) he has been recommended by the High Court for such permanent appointment. Rule 22(ii) thus, has a reference to the Departmental Examination Rules. The Bihar Civil Service (Judicial Branch) Training and Departmental Examination Rules, 1963 are the Departmental Rules applicable to the 9 Munsifs, and whiles, 1963 Rules must be held to be applicable to the appointments made in terms of Jharkhand Judicial Service (Recruitment) Rules, 2001. Resultantly, it must be held that 1963 Rules are the Rules on the subject which are referable to under Rule 22(ii) of Jharkhand Judicial Service (Recruitment) Rules, 2001 however, 1963 Rules cannot be said to be superseded by the new Rules of 2001. Both the Rules have been framed for different purposes and both operate in different fields though, both overlap each other to a certain extent. However, insofar as passing of examinations as may be provided under the Departmental Examination Rules are concerned, there is no overlapping.

9. Rule 27 of Jharkhand Judicial Service (Recruitment) Rules, 2004 repealed the Rules of 2001 and, in fact, Rule 27 of the Rules of 2001 also provided that these Rules shall cease to exist and operate and the Governor may frame new Rules, in supersession of these Rules in consultation with the Jharkhand Public Service Commission and the High Court de novo. Though, there is no reference of Bihar Civil Service (Judicial Branch) Training and Departmental Examination Rules, 1963 in the 2004 Rules nor does a reference of Departmental Examination Rules as was referred to under Rule 22(ii) of 2001 Rules is found in the 2004 Rules, it cannot be 10 contended that Bihar Civil Service (Judicial Branch) Training and Departmental Examination Rules, 1963 which were applicable under Jharkhand Judicial Service (Recruitment) Rules, 2001 have been rendered inoperative or superseded or repealed after the framing of Jharkhand Judicial Service (Recruitment) Rules, 2004.

10. What requires to be examined now is, whether the High Court can make the Rules of 1963, a condition-precedent for confirmation in service and grant of increments or not. Stressing on the word alone occurring in Rule 21(b) of 2004 Rules which provides that successfully passing of the examination conducted by the Judicial Academy under the direction and guidance of the High Court shall alone be the condition precedent for confirmation of the trainees as Civil Judges,

Junior Division (Munsif), the learned counsel for the petitioners submitted that the conditions mentioned in communication dated 24.07.2014 vide, Annexure-7 being alien to 2004 Rules, cannot be enforced as conditions precedent for confirmation in service and for grant of increment to the petitioners. For examining this contention, Rule 21 and Rule 22 need to be noticed. Rule 21: (a) The appointee in the first instance shall be called as a Civil Judge, Junior Division (Munsif)-trainee/Civil Judge, Senior Division (Subordinate Judge)- trainee. The appointment order issued by the government shall accordingly also refer him as a Civil Judge, Junior Division 11 (Munsif)- trainee/Civil Judge, Senior Division (Subordinate Judge)-trainee. (b) For a period of one year from the date of appointment or from such other date as the High court may prescribe, that the civil Judge, Junior Division (Munsif)/Civil Judge, Senior Division (Subordinate Judge) shall be admitted in the one year training course at the Judicial Academy of Jharkhand at Ranchi or such other place as the High Court may prescribe. After completion of one year training course, the Civil Judge, Junior division (Munsif)-trainee/Civil Judge, Senior Division (Subordinate Judge)- trainee shall appear in the examination to be conducted by the Judicial Academy under the directions and guidance of the High Court and the successful passing of this Examination shall alone be the condition precedent for confirmation of the trainees as Civil Judge, Junior Division (Munsifs)/Civil Judges, Senior division (Subordinate Judges). (c) The Judicial Academy, in consultation with the High Court, shall evolve and prescribe the syllabus for the one year training course including the field-training and also decide about the nature of examination, the papers and subjects and the duration as also the aggregate marks and the qualifying marks in the said examination for the success of the trainees therein. (d) The High court may in its discretion, extend the duration of the training course for more than one year, but not more than two years or may issue such other directions as may be in conformity with the spirit of training and the need for the same. (e) The cases of such trainees who have not qualified in the Examination as required in clause (b) and who make appropriate representations, may be considered by the High Court with a view to suitably dispose of such representations and decide whether to afford them another chance of taking the Examination or not, and if so on what terms. Rule 22: A person appointed as Civil Judge, Junior Division (Munsif)/Civil

Judge, Senior Division (Subordinate Judge) under these Rules shall be on probation for a period of three years, the probation period starting from the date of his appointment as a trainee civil Judge, Junior 12 division (Munsif)/Civil Judge, Senior Division (Subordinate Judge). The probation period may be extended by the High court in individual cases, depending upon the performance and other parameters as may be fixed by the High Court from time to time, or depending upon the passing of such examination during service as may be prescribed for this purpose by the High Court.

11. The Jharkhand Judicial Service (Recruitment) Rules, 2004 lays down an elaborate procedure for recruitment to the posts of Civil Judge, Junior Division (Munsif). At every stage in the recruitment process consultation with the High Court is envisaged. The minimum qualifying marks for the preliminary entrance test and for the main examination are fixed in consultation with the High Court. The viva-voce test is conducted by the Board of 3 members, two of whom shall be sitting Judges of the High Court nominated by the Chief Justice. The merit list is prepared by the Jharkhand Public Service Commission in consultation with the High Court. Rule 18 provides that from the Select List, the Commission, after consultation with the High Court, shall recommend to the Government the candidates for appointment as Civil Judges, Junior Division (Munsif). Rule 19 restricts the enquiry/investigation by the Government to determine the suitability of the candidates recommended for appointment, to the credentials of the candidates with respect to their involvement in criminal case or anti-social or anti-national activities. 13 12. Under Rule 21 passing of the examination to be conducted by the Judicial Academy under the direction and guidance of the High Court shall be the condition precedent for confirmation of the trainees as Civil Judges (Junior Division) (Munsif)/Civil Judges, Senior Division (Subordinate Judges) whereas, Rule 22 provides that a Civil Judge, Junior Division (Munsif)/Civil Judge, Senior Division (Subordinate Judge) shall be on probation for a period of 3 years however, in individual cases the probation period may be extended by the High Court, depending upon the performance and other parameters as may be fixed by the High Court. The important distinction in these two rules is that, while Rule 21 deals with the training period, Rule 22 concerns the probation period which includes the period of one year training course. The important expression

occurring in Rule 22 is depending upon the performance and other parameters as may be fixed by the High Court from time to time and depending upon the passing of such examination during service as may be prescribed for this purpose by the High Court. At the first glance, after expiry of probation for 3 years confirmation of a Civil Judge, Junior Division (Munsif)/Civil Judge, Senior Division (Subordinate Judge) appears to be automatic on passing of examination conducted by the Judicial Academy under the direction and guidance of the High Court, however, on deeper scrutiny it is revealed that, that is not so, rather, confirmation of the trainees is dependent upon parameters fixed by the High Court. Rule 22 has reference of individual cases however, if Rule 22 is confined to individual cases only, reference to other parameters and passing of examination would be rendered superfluous. The period of probation for a trainee Civil Judge (Junior Division) can be extended subject to the condition that he/she successfully clears the examination conducted by the Judicial Academy under the direction and guidance of the High Court, a condition which is applicable to other trainees who have successfully passed the examination conducted by the Judicial Academy whereas, other parameters and passing of such examination as may be prescribed by the High Court are not the conditions, which may be imposed by the High Court, confined to individual cases only. On a meaningful reading of the 2004 Rules, it is manifest that the Legislature did not intend to prescribe additional condition of passing of other examination as may be prescribed by the High Court, for extending the period of probation in individual cases only. In fact, Rule 21(d) also prescribes that the period of training may be extended by High Court however, the training period shall not be extended beyond 2 years. Now, if Rule 21 is read in the context of conditions mentioned under Rule 22, it becomes evident that the High Court may fix parameters and prescribe examinations, successful completion of which would be conditions precedent for confirmation in service and for grant of increments.

13. It is also not a case of automatic confirmation in service. In High Court of M.P. through Registrar & Ors. Vs. Satya Narayan Jhavar, (2001) 7 SCC161 it has been held that ordinarily a deemed confirmation of a probationer arises when the letter of appointment so stipulates or the Rules governing service conditions so indicate. Referring to decisions in Samsher Singh Vs. State of Punjab & Anr., (1974) 2

SCC831 and other cases, the Hon'ble Supreme Court held that, It cannot be said that merely because a maximum period of probation has been provided in the service rules, continuation of the probationer thereafter would ipso-facto must be held to be a deemed confirmation. In *Kazia Mohammed Muzzammil Vs. State of Karnataka & Anr.*, (2010) 8 SCC155 taking note of two diametrical opposite views in the judgments of the Hon'ble Supreme Court, after analysing the previous decisions on the subject, the Hon'ble Supreme Court held that, 46.The pith and substance of the stated principles of law is that it will be the facts and the rules, which will have to be examined by the courts as a condition precedent to the application of the dictum stated in any of the line of cases aforenoticed.

14. In the light of the aforesaid principles emanating 16 from the judgment of the Hon'ble Supreme Court, it has to be held that the confirmation of the petitioners in service is not automatic on completion of probation period and passing of examination conducted by the Judicial Academy as mentioned in Rule 21 of the Jharkhand Judicial Service (Recruitment) Rules, 2004, rather, the confirmation is subject to the examination as may be prescribed by the High Court.

15. This question may also be examined in the context of the control exercised by High Court over the Subordinate Judiciary. In *The State of West Bengal & Anr. Vs. Nripendra Nath Bagchi* AIR 1966 SC447 rejecting the contention that the word control in Article 235 of the Constitution of India must be given a restricted meaning, the Hon'ble Supreme Court held that the word control which is accompanied by the word vest shows that the High Court is made the sole custodian of the control over the judiciary. In *Thakur Jugal Kishore Sinha Vs. The Sitamarhi Central Co-operative Bank Ltd. & Anr.*, AIR 1967 SC1494 it has been held that Article 235 of the Constitution gives the High Court the control over District Courts and Courts sub-ordinate thereto by providing for powers like the posting and promotion, and the grant of leave to persons belonging to the judicial service of a State. Viewed thus, the control of High Court extends to 17 prescribing passing of Hindi Examination and Departmental Examination for the members of Subordinate Judiciary.

16. The learned counsel for the petitioners next contended that it was never brought to the notice of the petitioners that Bihar Government Servant (Hindi Examination) Regulation, 1968 is a condition precedent for confirmation of their service and grant of increments. It is further contended that what hits the petitioners most is, Regulation 7 which provides that unless a Government servant passes Hindi Examination, he would not be granted increments and, Regulation 8 provides that increment would be granted only from the date of passing of Hindi Examination and arrears of increment would not be paid prior to the date of passing of Hindi Examination.

17. The Bihar Government Servant (Hindi Examination) Regulation, 1968 provides that benefit of increment would not be granted till a Government servant successfully passes Hindi Examination. These Rules are applicable to all Government servants. Clause 7 and Clause 8 read as under; In Hindi

7. fti ljdkjh lsod dks nsoukxjh fyfi esa fgUnh fy[kus&i<+us dh ijh{kk ;k nsoukxjh fyfi esa fgUnh fvli.kh vkSj izk:i.k dh ijh{kk] vFkok nksuksa ijh{kkvksa esa mRrh.kZ gksuk gS mls rc rd u rks osru&o`f) nh tk;sxh] u lEiq"V fd;k tk;sxk] u n{krkjksd gh ikj djus fn;k tk;sxk] tc rd og misf{kr fgUnh ijh{kk ;k ijh{kkvksa esa mRrh.kZ u gks tk;sA188. osru&o`f) dks jksd lap;kRed ugha gksxkA lEc) ljdkjh lsod visf{kr ijh{kk ;k ijh{kkvksa esa mRrh.kZ gks tkus ds ckn] fti vfUre ijh{kk esa og lfEefyr vkSj mRrh.kZ gqvk gks] ml ijh{kk dh rkjh[k ds ckn iM+usokyh rkjh[k ls dkyeku ds fu,e 6 ds v/khu mudh osru&o`f);k jksd nh x;h ugha gksrh] jksdh xbZ osru&o`f) ds cdk;s dk Hkqxrku ugha fd;k tk;sxkA In English

7. The government employees who are required to pass Hindi reading-writing examination or Hindi noting and drafting examination in Devnagri script or both the examinations, shall not be granted increment nor shall be confirmed or permitted to cross the efficiency bar till, they pass the Hindi examination or examinations.

8. Stoppage of increment shall not be cumulative. After passing of the required examination or examinations by the concerned government employee, the arrears of increment shall not be payable for the period, till the last examination in which he has appeared and passed, as if the increment was not stopped under Rule 6.

18. Having regard to the letter of appointment of the petitioners dated 05.01.2011, the contention raised on behalf of the petitioners is liable to be rejected. Paragraph 2 of the letter of appointment dated 05.01.2011 makes it apparent that petitioners were appointed as probationers and confirmation of their service is, subject to Rule 21 of Jharkhand Judicial Service (Recruitment) Rules, 2004 and recommendation of the High Court. It is not in dispute that High Court has not recommended by issuing an order for confirmation of service of the petitioners and, vide letter dated 24.07.2014 the decision of the High Court that passing of Hindi Examination and the Departmental 19 Examination by Civil Judge (Junior Division) are conditions precedent for confirmation for service and grant of increment in terms of Rule 21(b) of the Jharkhand Judicial Service (Recruitment) Rules, 2004, Rule 7 of the Bihar Government Servant (Hindi Examination) Regulation, 1968 and, Rule 27(a) of the Bihar Civil Service (Judicial Branch) Training and Departmental Examination Rules, 1963, has been communicated by the Registrar-General. The stipulation in the appointment letter dated 05.01.2011 that confirmation in service is subject to recommendation of the High Court makes it obligatory on the part of the petitioners to comply with the conditions contained in communication dated 24.07.2014. The recommendation of High Court would take within its sweep a recommendation that passing Hindi Examination and Departmental Examination are conditions precedents for confirmation of service and grant of increments. This is not a case in which High Court has prescribed a condition for which no rules have been framed. Though, Jharkhand Judicial Service (Recruitment) Rules, 2004 do not refer to Bihar Civil Service (Judicial Branch) Training and Departmental Examination Rules, 1963 and Bihar Government Servant (Hindi Examination) Regulation, 1968, the High Court in exercise of its administrative control over the members of Subordinate Judiciary which includes, posting, promotion, transfer etc. can make the aforesaid Rules/Regulations 20 applicable to the members of Subordinate Judiciary. The learned counsel appearing for the High Court of Jharkhand submitted that the probationary Civil Judges (Junior Division) Trainees-(Munsif) appointed earlier and subsequent to 2011 batch have appeared in the Hindi Examination and, only on passing of Hindi Examination and the Departmental Examination, they were confirmed in service.

19. The contention that Bihar Government Servant (Hindi Examination) Regulation, 1968 which were framed under proviso to 309 of the Constitution of India cannot override Jharkhand Judicial Service (Recruitment) Rules, 2004, is misconceived. The conditions under the Bihar Government Servant (Hindi Examination) Regulation, 1968 have been made applicable, and a condition precedent for confirmation and grant of increment by the High Court. The imposition of such a condition is contemplated in the letter of appointment and Rule 22 of Jharkhand Judicial Service (Recruitment) Rules, 2004 also permits imposition of such conditions. The question whether 1968 Regulations are repugnant to 2004 Rules and both need to be harmoniously construed, do not arise in the facts of the case. The condition that the Trainee Civil Judge, Junior Division must pass Hindi Examination conducted under Bihar Government Service (Hindi Examination) Regulation, 21 1968 is a condition imposed by the High Court.

20. No doubt, hardship has visited the petitioners in as much as, they would be dis-entitled for grant of increment till, they pass Hindi Examination and the Departmental Examination however, it cannot be a ground to interfere with the decision of the High Court communicated through the Registrar-General vide, letter dated 24.07.2014. The learned counsel for the petitioners contended that had the conditions indicated in letter dated 24.07.2014 been made known to the petitioners, they would have appeared in Hindi Examination and Departmental Examination and, after the petitioners successfully completed the probation period such conditions cannot be imposed upon the petitioners. The fact that the petitioners successfully completed the probation period and they were under an impression that successful passing of the examination to be conducted by the Judicial Academy under the directions and guidance of the High Court alone is the condition precedent for confirmation in service and, thus they are entitled for confirmation without further stipulation, in view of the stipulation in the letter of appointment dated 05.01.2011, was a mere expectation of the petitioners. The expectation of the petitioners is de-hors the condition of their appointment. 22 21. It is to be noticed that the State of Jharkhand is a Hindi speaking State and the judicial officers in the district courts are required to be proficient in Hindi. It has been brought to our notice that Hindi Examination is held twice every year and passing of Hindi Examination is mandatory for all Government servants posted in

the State of Jharkhand, whether they belong to the State of Jharkhand or any other State.

22. In the result, the writ petition fails and accordingly, it is dismissed. (Virender Singh, C.J.) (Shree Chandrashekhar, J.) Jharkhand High Court, Ranchi Dated:

03. 03/2016 Manish/Satyarthi/Amit/R.K./A.F.R.

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