

RAJASTHAN HIGH COURT ORDINANCE, 1949

15 of 1949

[21st June, 1949.]

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RAJASTHAN HIGH COURT ORDINANCE, 1949

15 of 1949

[21st June, 1949.]

An Ordinance to provide for the establishment of a High Court of Judicature for Rajasthan. Whereas of the peace and good government of the United State of Rajasthan, it is expedient to erect and establish a High Court of Judicature for the said State; Now, therefore, in exercise of the powers conferred by paragraph (3) of Article X of the Covenant and all other Powers enabling him in this behalf. His Highness the Raj Pramukh is pleased to make and promulgate the following Ordinance, and to erect and establish for Rajasthan a High Court of Judicature which shall be called "the High Court of Judicature for Rajasthan" or shortly "the Rajasthan High Court", and to constitute the said Court to be a Court of Record:-

1. Short title, extent and commencement :-

(1) This Ordinance may be called the Rajasthan High Court Ordinance, 1949.

(2) It extends to the whole of Rajasthan.¹

(3) It shall come into force on the date which the Raj Pramukh may

appoint by notification in the Rajasthan Gazette for the inauguration of the High Court erected and established by and under this Ordinance.

1. Including Abu, Ajmer and Sunel areas with effect from 1-11-1956-See Act 27 of 1956 Ss. 10 and 49(2)

2. Definitions :-

In this Ordinance, unless there is anything repugnant in the subject or context,-

(a) "the Court" or "the High Court" means the High Court of Judicature for Rajasthan erected and established by this Ordinance;

(b) "Chief Justice" means the Chief Justice of the High Court and includes a person appointed to act as Chief Justice;

(c) "Government" means the Government of the United State of Rajasthan;

(d) "Judge" includes the Chief Justice, a Judge other than the Chief Justice, an Additional Judge and an Acting Judge of the High Court; and

(e) "State" means the United State of Rajasthan.

3. Composition of the High Court :-

(1) The High Court shall consist of Chief Justice and such number of other Judges, as the Raj Pramukh may deem necessary to appoint.

(2) The first Chief Justice of the High Court shall be Shri Kamalakanta Verma at present chief Justice of the High Court of the former Rajasthan State. In future the Chief Justice shall be appointed by the Raj Pramukh in consultation with Chief Justice of India.

(3) Other Judges of the High Court shall be appointed by the Raj Pramukh in consultation with the Chief Justice.

(4) Every appointment of the Chief Justice or other Judges shall be by a warrant under the hand and seal of the Raj Pramukh.

4. Qualifications of a Judge :-

(1) A person shall not be qualified to be a Judge of the High Court unless he-

(a) has, for at least five years, held a judicial office in the State, or outside it, not inferior to that of a District Judge; or

(b) has, for at least ten years, held a judicial office in the State or outside it, not inferior to that of a Civil Judge of a Small Cause Court; or

(c) has, for at least ten years, been a pleader or advocate of the High Court or of any Court of equal status of any Covenanting State or any other State or Province of the Indian Union or two or more such Courts in succession and is a Barrister of England or Ireland or a Member of the Faculty of Advocates in Scotland or a Law Graduate of the Rajputana University or of any recognised University in the Union of India.

(2) In computing, for the purposes of sub-section (1) the standing of a Barrister or a Member of the Faculty of Advocates or the period during which a person has been a pleader or an advocate, any period during which the person has held judicial office after he became a Barrister, a Member of the Faculty of Advocates, or a pleader, or an advocate, as the case may be shall be included.

(3) Notwithstanding anything hereinbefore contained no person who has attained the age of 60 years shall be entitled to be appointed a Judge of the High Court: Provided that persons, who have retired as Judges of any Provincial High Court established by Royal Charter or Letters Patent, may be so appointed if they have not attained the age of sixty-five years.

5. Oath of office :-

Every person appointed to be a Judge of the High Court shall, before he enters upon his office, make and subscribe before the Raj Pramukh or some person appointed by the Raj Pramukh in this behalf, a declaration in the following form:- "I..... A B having been appointed Chief Justice (or a Judge) of the High Court of Judicature for Rajasthan do solemnly and sincerely promise and declare that I will bear true faith and allegiance to the Constitution of the United State of Rajasthan as by law established, that I will duly and faithfully and to the best of my ability, knowledge and judgment, perform the duties of my office without fear or favour, affection or ill-will, and that I will uphold the Constitution and the laws."

6. Tenure of Judges :-

(1) Subject to the provisions of sub-sections (2) and (3) every Judge of the High Court shall hold office until he attains the age of 60 years, except in the case of a Judge appointed under the proviso to sub-section (3) of section 4 , who may hold office until he attains the age of sixty-five years.

(2) A Judge may by resignation under his hand addressed to the Raj Pramukh resign his office.

(3) A Judge may be removed from his office by an order of the Raj Pramukh on the ground of misbehaviour or infirmity of mind or body if an independent tribunal composed of persons not below the rank of a Judge of a High Court appointed by the Raj Pramukh in consultation with the Government of India reports that the Judge ought on any such ground to be removed.

7. Temporary and Additional Judges :-

(1) If the office of the Chief Justice becomes vacant or if the Chief Justice is by reason of absence, or for any other reason, unable to perform the duties of his office, those duties shall, until some person appointed by the Raj Pramukh to the vacant office has entered on the duties thereof, or until the Chief Justice has resumed, his duties, as the case may be, be performed by such one of the other Judges of the High Court as the Raj Pramukh may think fit for the purpose.

(2) If the office of any other Judge of the High Court becomes vacant or if any such Judge is appointed to act temporarily as the Chief Justice, or is by reason of absence, or for any other reason, unable to perform the duties of his office, the Raj Pramukh may appoint a person duly qualified for appointment as a Judge to act as a Judge of the High Court and the person so appointed shall, unless the Raj Pramukh thinks fit to revoke his appointment, be deemed to be a Judge of the High Court until some person appointed by the Raj Pramukh to the vacant office has entered on the duties thereof or until the permanent Judge has resumed his duties.

(3) If by reason of any temporary increase in the business of the High Court or by reason of arrears of work in the High Court, it appears to the Raj Pramukh that the number of the Judges of the Court should be for the time being increased, the Raj Pramukh may appoint persons duly qualified for appointment as Judges to be Additional Judges of the Court for such period not exceeding two

years as he may specify.

8. Precedence of Judges of High Court :-

The Chief Justice whether permanent or acting, shall have rank and precedence before the other Judges of the High Court. All other Judges shall have rank and precedence according to the seniority of their appointments to the High Court.

9. Salaries etc., of Judges :-

The Judges of the High Court shall be entitled to such salaries and allowances, including allowances for expenses in respect of equipment and travelling upon appointment, and to such rights in respect of leave and pension, as may from time to time be fixed by the Raj Pramukh: Provided that there shall not be any variation in the salary and other conditions of service of a Judge during the tenure of his office.

10. Place of sitting :-

(1) The High Court shall sit at Jodhpur and such other place or places if any, as the Raj Pramukh may from time to time appoint, either permanently or for a specified period.

(2) One or more of such Judges of the High Court, as the Chief Justice may nominate shall thereupon sit at such place or places accordingly.

11. Seal of the High Court :-

The High Court shall have and use as occasion may require a seal bearing a devise and impression of the Coat of Arm of Rajasthan with an exergue or label surrounding the same with the inscription. "The Seal of the High Court of Judicature for Rajasthan". The said seal shall be delivered to and kept in the custody of the Chief Justice or of an Officer of the Court from time to time nominated by the Chief Justice : Provided that until such a seal is prepared the High Court may use a rubber stamp bearing the said inscription.

12. Writs, etc., to issue in name of the Raj Pramukh and under seal :-

All writs, summonses, precepts, rules, orders and other mandatory process to be used, issued or awarded. by the High Court shall run and be in the name and style of His Highness the Raj Pramukh and shall be sealed with the seal of the High Court.

13. Appointment of officers :-

(1) The Chief Justice shall have the power and authority from time to time, as occasion may require and subject to any rules and restrictions which may be prescribed from time to time by the Raj Pramukh, to appoint so many and such clerks and other ministerial officers as may be found necessary for the administration of justice and the due execution of all the powers and authorities granted and committed to the High Court, by this Ordinance. And, all and every, the officers and clerks to be appointed as aforesaid shall have and receive respectively such reasonable salaries as the Chief Justice may from time to time appoint for each office and place respectively and as the Raj Pramukh may approve of.

(2) Any such officer may be suspended or dismissed from his office by the order of the Chief Justice.

14. Expenses of the High Court :-

(1) The administrative expenses of the High Court including all the salaries, allowances and pensions payable to or in respect of the officers of the Court and the salaries and allowances of the Judges of the Court shall be charged to the revenues of the State, and any fees or other monies taken by the Court shall form part of those revenues.

(2) The amount to be included in respect of such expenses as aforesaid in any estimates of expenditure shall be such as may be approved by the Raj Pramukh.

15. Powers of High Court in admitting Advocates :-

Stands repealed by virtue of S.50 of the Advocates Act, 1961 (25 of 1961).]

16. Power of High Court in making Rules for the qualifications etc., of the advocates :-

Stands repealed by virtue of S.50 of the Advocates Act, 1961 (25 of 1961).]

17. Extraordinary original civil jurisdiction :-

The High Court shall have power to remove, and to try and determine as a Court of extraordinary original jurisdiction, any suit being or falling within jurisdiction of any Court subject to its superintendence when the High Court shall think proper to do so either on the agreement of the parties to that effect, or for purposes of justice the reasons for so doing being recorded on the proceedings of the High Court.

18. Appeal to the High Court from Judges of the Court :-

(1) An appeal shall lie to the High Court, from the judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court and not being an order made in the exercise of revisional jurisdiction and not being a sentence or order passed or made in the exercise of the power of superintendence under section 43 or in the exercise of criminal Jurisdiction) of one Judge of the High Court.

(2) Notwithstanding anything hereinbefore provided, an appeal shall lie to the High Court from a judgment of one Judge of the High Court made in the exercise of appellate jurisdiction in respect of a decree or order made in the exercise of appellate jurisdiction by a Court subject to the superintendence of the High Court where the Judge who passed the judgment declares that the case is a fit one for appeal.

19. Appeal from other Civil Courts in the State :-

The High Court shall be a Court of Appeal from the Civil Courts of the State and from -all other Courts subject to its superintendence and shall exercise appellate jurisdiction in such cases as are at the commencement of this Ordinance or may thereafter be declared subject to appeal, to the High Court by virtue of any law for the time being in force.

20. Hearing of referred cases and Revision in Civil cases :-

The High Court shall be a Court of Reference and Revision from the Civil Courts subject to its appellate jurisdiction and shall have power to hear and determine all such cases referred to it by: the subordinate civil courts authorised by any law for the time being in force to refer cases to the High Court and to revise all such cases tried by any subordinate Civil Court possessing civil jurisdiction within the State as were, immediately before the coming into effect of this Ordinance, subject to reference to or revision by any of the High Courts or Courts of equal status of the Covenating States having jurisdiction therein.

21. High Court may direct the transfer of a case from one Court to another :-

The High Court shall have the power to direct the transfer of any civil case or appeal from any Court to any other Court or equal or superior jurisdiction. .

22. Extraordinary original criminal jurisdiction :-

The High Court shall have extra- ordinary original criminal jurisdiction over all persons residing in places within the jurisdiction of any Court subject to its superintendence, and shall have authority to try at its discretion any such persons brought before it on charges preferred by any Magistrate or other officer; specially empowered by the Government in that behalf. '

23. No appeal from High Court exercising extraordinary original jurisdiction, Court may reserve points of law :-

There shall be no appeal to the High Court from any sentence or order passed or made in any criminal trial before the Court of extraordinary original criminal jurisdiction which may be constituted by one or more Judges of the High Court.'But it shall be at the discretion of any such Court to reserve any point or points of law for the opinion of the High Court.

24. High Court to review on points reserved :-

On such point or points of law being so . reserved as aforesaid, the High Court shall have full power and authority to review the case, or such part of it as may be necessary, and finally determine such point or points of law, and thereupon to alter the sentence passed by the Court of original jurisdiction, and pass such judgment, and sentence as to the High Court shall seem right.

25. Appeals from other Criminal Courts in the State :-

The High Court shall be a Court of Appeal from the Criminal Courts of the State and from all other Courts subject to its superintendence and shall exercise appellate jurisdiction in such cases as are at the commencement of this Ordinance, or may thereafter be declared, subject to appeal to the High Court by virtue of any law in force for the time being.

26. Hearing of referred cases and Revision of Criminal Trials :-

The High Court shall be a Court of reference and revision from the criminal Courts subject to its appellate jurisdiction and shall have power to hear and determine all such cases referred to it by the Sessions Judges or by any other officers authorised by law for the time being in force to refer cases to the High Court, and to revise all such cases tried by any officer or Court possessing- Criminal Jurisdiction, as are now subject to reference to or revision by any of the High Courts or Courts of equal status of the Covenanted States.

27. High Court may direct the transfer of a case from one Court to another :-

The High Court shall have power to direct the transfer of any criminal case or appeal from any Court to any other Court of equal or superior jurisdiction, and also to direct the preliminary investigation or trial of any criminal case by any officer or Court otherwise competent to investigate or try it though such case belongs in ordinary course to the jurisdiction of some other officer or Court.

28. Power to issue writs :-

The High Court shall have jurisdiction and power throughout the State to issue directions or orders in the nature of the writs of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of such rights as are given by any law for the time being in force.

29. Testamentary and intestate jurisdiction :-

The High Court shall have power and authority in relation to the granting of probates of last wills and testaments, and letters of administration of the goods, chattels, credits and all other effects whatsoever of persons dying intestate within the State: Provided always that nothing in this Ordinance contained shall interfere with the provisions of any law which may for the time being be in force in the whole or any part of the State, by which power is given to any other Court to grant such probates and letters of administration.

30. Particular jurisdiction as to infants and persons of unsound mind :-

The High Court. Shall have power and authority with respect to the persons and estates of infants, idiots, and lunatics within the State subject to the provisions of any law for the time being in force.

31. Matrimonial jurisdiction :-

The High Court shall have jurisdiction within the State in matters matrimonial between the subjects of the State professing the Christian Religion: Provided always that nothing herein contained shall be held to interfere with the exercise of any jurisdiction in matters matrimonial by any Court lawfully possessed of that jurisdiction by virtue of any law for the time being in force.

32. Jurisdiction to determine the validity of any law :-

(1) The High Court shall have power to determine the validity or otherwise of any law for the time being in force in any part of the

State. . .

(2) If, on an application made by the Advocate-General, the High Court is satisfied that a case pending in a Court subject to its superintendence and control involves or is likely to involve any such question as is referred to in sub-section (1) the High Court may transfer such case to its own file for trial.

33. By the High Court in the exercise of extra ordinary original civil Jurisdiction :-

With respect to the law or equity to be applied to each case coming before the High Court in the exercise of its extraordinary original civil jurisdiction, such law or equity shall, until otherwise provided, be the law or equity which would have been applied to such case by any local Court having jurisdiction therein.

34. By the High Court in the exercise of appellate and other civil jurisdiction :-

With respect to the law or equity and the rule of good conscience to be applied by the High Court to each case coming before it in the exercise of its jurisdiction as a Court of Appeal, Revision or Reference, such law or equity and the rule of good conscience shall be the law or equity and rule of good conscience which the Court in which the proceedings in such case were originally instituted ought to have applied to such case.

35. Offenders not to be punished except under laws in force :-

All persons brought for trial before the High Court either in the exercise of its extraordinary original criminal jurisdiction, or in the exercise of its jurisdiction as a Court of Appeal, Reference or Revision charged with any offence for which provision is made by any law analogous to the Indian Penal Code, 1860, or by any other enactment for the time being in force in the State, shall be liable to punishment under the said law or enactment and not otherwise:

36. Single Judges and Division Courts :-

Any function which is hereby directed to be performed by the High Court in the exercise of its original or appellate jurisdiction may be performed by any Judge, or by any Division Court thereof, appointed or constituted by the Chief Justice for the purpose, and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point such point shall be decided according to the opinion of the

majority of the Judges if there be a majority, but, if the Judges are equally divided, they shall follow the procedure prescribed in that behalf in the Codes of Civil or Criminal Procedure according as the case is Civil or Criminal, and the case shall then be heard and disposed of in accordance with the provisions of the appropriate Code.

37. Regulation of Civil Procedure :-

It shall be lawful for the High Court from time to time to make rules and orders for regulating the practice of the Court and for the purposes of adopting as far as possible the provisions of the law analogous to the Code of Civil Procedure, 1908, of the Indian Legislature, for the time being in force in the State to all proceedings in its testamentary, intestate and matrimonial jurisdiction respectively.

38. Regulation of Criminal Procedure :-

The proceedings in all criminal cases brought before the High Court from the territories of the State shall be regulated by the law analogous to the Code of Criminal Procedure, 1898, of the Indian Legislature, for the time being in force in the particular territory of the State from which the particular case originates or by such other law in relation to Criminal procedure as may be made by competent legislative authority.

39. Establishment of a Court to hear appeals from the High Court :-

The Raj Pramukh may, whenever it seems to him expedient so to do by an Ordinance or order constitute a Court to hear appeals from the judgments, decrees or orders of the High Court and may make such consequential or incidental provisions as may be necessary, . .

40. No appeal :-

Until a Court is constituted in pursuance of section 39 of this Ordinance, or of any other law relating to the establishment of a Court superior to the High Court, to hear appeals therefrom, the High Court shall be the highest Court of appeal, reference and revision in the state and shall have jurisdiction to entertain and dispose of such appeals, revisions, references, cases and other proceedings as it is empowered to entertain and dispose of under this Ordinance or any enactment or law in force in the State and no appeal shall lie from any judgment, decree, or order of the High Court

41. Power to delegate duties :-

The High Court may, from time to time, make rules for delegating to the Registrar or Deputy Registrar or other official of the Court any judicial, quasi-judicial and non-judicial duties.

42. High Court to comply with requisition from Government for records, etc :-

The High Court shall comply with such requisitions as may be made by the Government for records returns and statements, in such form and manner as: may be prescribed in that behalf, by the Government.

43. Power to call for returns, etc :-

The High Court shall have superintendence over all Courts, civil or criminal, in the State for the time being subject to its appellate jurisdiction, and may, among other things do any of the following things, that is to say,-

- (a) provide for their inspection and supervision of their work;
- (b) call for returns;
- (c) make and issue general rules and prescribe forms for regulating the practice and proceedings of such Courts;
- (d) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts and returns submitted by them;
- (e) settle tables of fees to be allowed to Amins (Kariks or Nazirs) and all clerks and officers of Courts;
- (f) regulate all such matters as it may think fit with a view to the promoting of their efficiency and the maintaining of proper discipline: Provided that such rules, forms and tables shall not be inconsistent with the provisions of any law for the time being in force and shall have been approved by the Raj Pramukh.

44. Distribution of business and Administrative control :-

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

(2) The Chief Justice shall be responsible for the distribution and conduct of the business of the High Court, and shall determine

which Judge in each case will sit alone and which Judges of the Court will constitute a Bench.

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

45. Jurisdiction and powers to be subject to legislation :-

The jurisdiction, powers and authority of the High Court shall be subject to the legislative powers of any authority competent to legislate for the time being for the State.

46. Power to make rules :-

The High Court may consistently with the laws for the time being in force make rules-

- (a) to regulate the sittings of the Court;
- (b) to regulate the practice of the Court;
- (c) to provide for the forms to be used in the Court for proceedings, and prescribe forms in which books) entries statistics and accounts shall be kept by its officers;
- (d) to settle tables of fees to be charged on documents filed in the Court and to be allowed to all officers and clerks of the Court and Advocates practising therein;
- (e) to regulate all such matters as it may think fit with a view to the promoting of the efficiency of the High Court and the maintaining of proper discipline.

47. Language of the Court :-

All proceedings in the High Court shall be in Hindi written in Devnagri script which will be the language of the Court: Provided that where a Judge hearing a case is not familiar with Hindi, the proceedings may be conducted by him in English.

48. Saving jurisdiction of a Judge of the High Court :-

Notwithstanding anything provided in any enactment to the contrary-no Judge of the High Court sitting in a Full Bench thereof shall, by reason of his having decided or dealt with any case, be barred from hearing and deciding the case.

49. Abolition of High Court in Covenanted States :-

(1) On the date appointed in the notification issued under sub-section (3) of section 1 of this Ordinance, every Tribunal functioning as the High Court of a Covenanting State or any authority exercising the powers of a High Court in such State shall cease to exist, and all cases pending before the said High Court or authority at that date shall be transferred to and heard by the High Court constituted by this Ordinance, and all the records and documents of the several Courts which so cease to exist shall become, and be, the records and documents of the High Court.

(2) Notwithstanding anything hereinbefore contained, cases (not being proceedings for the issue of directions or orders in the nature of 5prerogative writs as provided for in section 28) pending before the High Court of any Covenanting State or any authority exercising the powers of a High Court in such State on its original side may be transferred by the High Court to the subordinate Court having jurisdiction therein or may be kept on its own File and tried by it and for the purposes of the trial, hearing and disposal of such cases the High Court shall have ordinary original jurisdiction.

50. Repeals of laws, etc :-

All laws and rules having the force of law in any of the Covenanting States shall be deemed to be repealed or amended to the extent to which they are repugnant to the provisions made in or under this Ordinance:

Provided that such repeal or amendment shall not invalidate anything done or action taken under any such laws and rules prior to the coming into force of this Ordinance.