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IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7739 of 2020

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Prof. (Dr.) Shlok Kumar Chakravarti

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Bhola Prasad, Advocate
For the State	:	Mr. Anjani Kumar, AAG-4 Mr. Jitendra Kr. Roy, SC-13
For BPSC	:	Mr. Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

13 24-05-2021 This matter has been taken up online because of COVID-19 pandemic restrictions.

As per this High Court’s calendar, annual vacation of this Court commenced from 23.05.2021 and the Court is scheduled to reopen on 21.06.2021. It would be apt to mention that the annual calendar of this Court is decided by the Judges at a meeting of the Full Court in terms of Item (vii) of sub-rule (1) of Rule 13 of the Patna High Court Rules, 1916 (hereinafter referred to as ‘the Rules’).

This writ application, filed under Article 226 of the Constitution of India, has been listed before me today, during annual vacation, evidently as a vacation judge. There is no gainsaying that the working days of the High Court are

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regulated by the said Rules which have statutory character, in view of Article 225 of the Constitution of India. Article 225 of the Constitution of India reads thus :-

“225. Jurisdiction of existing High Courts:

Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution: Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution shall no longer apply to the exercise of such jurisdiction.”

Rule 4 of Chapter II of the Rules lays down powers which a Single Judge, while acting in a long vacation as a vacation judge, may exercise, and reads as under :-

“4. Notwithstanding anything to the contrary contained in these Rules, a Single Judge, while acting in long vacation as a vacation Judge, may issue

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notice or Rule, as the case may be, in any criminal matter, and in such other matters, civil or under the Constitution, as he may consider emergent, and may also pass interim orders regarding stay, injunction, bail and other reliefs, as may be deemed fit.”

There appears to be no notice issued by the High Court on its administrative side re-scheduling the annual vacation. This observation is being made to reiterate that the matter has been placed before this Court during the annual vacation before a vacation judge. The language of Rule 4 of Chapter II of the Rules is crystal clear which begins with a *non-obstante* clause. Apparently, a Single Judge, while acting in long vacation as a vacation judge, may issue notice or Rule, as the case may be, in any criminal matter, and in such other matters, civil or under the Constitution ‘as he may consider emergent’, and may also pass interim orders regarding stay, injunction, bail and other reliefs, as may be deemed fit. Apparently thus, a vacation judge may grant bail in criminal matters and pass ‘interim orders’ only regarding stay, injunction and other reliefs in such other matters, civil or under the Constitution ‘as he may consider emergent’ but cannot decide and dispose of a case, other than bail applications, on merits.

Neither, learned Senior Counsel appearing on behalf of

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the petitioner nor learned counsel representing the State of Bihar nor the Bihar Public Service Commission appear to have made any mention for emergent hearing of this application during the vacation. The parties have already entered appearance. Even the pleadings are complete.

However, in view of the provisions of Rule 4 of Chapter II of the Rules, the matter cannot be taken up and decided during the annual vacation.

In response to a query made by this Court as to whether there is any decision taken re-scheduling the annual vacation, this Court has been informed that no such decision has been taken and such matters, which were listed before this Bench on 17.05.2021, have been directed to be listed before this Bench. Possibly, the provisions under Rule 4 of Chapter II of the Rules have not been brought to the notice of Hon'ble the Chief Justice.

Let this order be placed before Hon'ble the Chief Justice.

The Court is not unmindful of the situation arising out of unprecedented COVID-19 pandemic and in a given situation, the Court, on its administrative side, could take a decision in accordance with law, to overcome the limitation under Rule 4 of Chapter II of the Rules but, in no case, statutory provisions

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prescribing limitations on a vacation judge sitting during long
vacation can be breached.

List this case on 21.06.2021.

(Chakradhari Sharan Singh, J)

Rajesh/-

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