J&K SJA NEWSLETTER

Monthly Newsletter published by the Jammu & Kashmir State Judicial Academy

Volume- 5 Issue 2 February, 2012

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SUBSCRIPTION RATES

Single Copy : Rs. **20.00**
Annual : Rs. **240.00**
(Payment only through D.D. in favour of the Jammu & Kashmir State Judicial Academy)

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Topic of the Month

Judicial independence is one of the essential elements of Rule of Law. Every civilized society has seen the need for an impartial and independent judiciary. The principle of Judicial Independence has acquired renewed significance, since the Constitution of India has conferred on the Judiciary the power of judicial review. However, keeping in mind the doctrine of Separation of Powers, Judiciary has to exercise considerable restraint to ensure that the surcharged democracy does not lead to a breakdown of the working of the Parliament and the Government. The Judiciary needs to work in the area demarcated by the Constitution. Awareness about rights has grown while correspondingly redressal from the Executive has been reduced. The Executive has its own compulsions – huge population, lack of resources, high inflation, global economic region etc. As a consequence litigation has multiplied. Despite commendable achievements in terms of disposal which I will presently demonstrate, the challenge is and should be for Zero Pendency in which direction a lot needs to be done.

Today, the crisis of confidence in human institutions has come to the forefront. The deficiency of

every institution in tackling the growing and complicated social problems has become a common feature. It is a challenge for every institution. Every democratic institution needs to meet this challenge. The viability of judicial institutions depends upon their acceptability by the people. When the viability of the system gets into disrepute and ultimately the system becomes less and less useful to the community, the challenge lies in rejuvenating the system by restoring its credibility and people's faith in it. Thus, the foremost challenge to the Judiciary today is viability of the system. Citizens approach the Court only when there is confidence in the system and faith in the wisdom of the Judges. This is where the Public Trust doctrine comes in. The Institution stands on public trust.

I am an optimist. I do not share the impression that judicial system has collapsed or is fast collapsing. I strongly believe and maintain that with all the drawbacks and limitations with shortage of resources and capacity, we still have a time-tested system. This is no justification to discard the system by giving it bad name. Judiciary has performed a commendable job, which is indicated by the Status Report.

[Excerpts from Law Day speech by Hon'ble the Chief Justice of India Shri S. H. Kapadia on 26th November, 2011]

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ACADEMY NEWS

1. Pre-Recruitment training programme orngnized for aspirants for the post of Steno-Typists in subordinate Judiciary

Under the instruction of Hon'ble the Chief Justice (Patron-in-Chief) and Hon'ble Shri Justice Mansoor Ahmad Mir, (Judge Incharge), Jammu and Kashmir State Judicial Academy has taken an innovative step and initiative to familiarize candidates, who had applied for the post of Steno-Typists in the subordinate Judiciary, with the legal language and practice. This is for the first time in the history of Judiciary and other Institutions that pre-recruitment training is being provided to the aspirants for the job to equip them with professional skills and update their knowledge so as to attract better talent.

Training Programme in session

In this regard, Jammu and Kashmir State Judicial Academy has organized a special five days training programme with effect from 4th to 8th of January, 2012 for all those candidates who have applied for the post of Steno-Typists in the subordinate courts.

During these five days training programmes the aspiring candidates imparted practical training by giving dictation at different speed by the experts. Some beneficial tips were also provided to them for enhancing there speed in shorthand as well as in the typing by the experts Shri Pankaj Kumar, Deputy Registrar-State Judicial Academy, Shri Dinesh Kumar Maini, Retired Secretary and Shri O.P. Gupta, Retired C.E.O. On the occasion, a copy of legal glossary specially prepared for the aspirants by the Judicial Academy was provided to each one of them.

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2. Two days refresher course for the Bench Secretaries and Readers of the High Court

J&K State Judicial Academy organized a two days refresher course for Bench Secretaries and Readers of Hon'ble High Court, at High Court Complex, at Jammu. Shri B.L. Saraf, District & Sessions Judge (Retd.) and Shri Jagdish Raj, Bench Secretary (Retd.) were resource persons.

During the interactive sessions the participants exchanged their views on how to imbibe ethical values and improve work culture in better way and way to improve proficiency, which could effectively facilitate the dispensation of justice.

Shri B.L. Saraf shared with participants, his experiences of having worked in the Registry of High court, in different capacities. He impressed upon them the value of ethical conduct and discipline, which can bring about a qualitative change in their working, which in turn can lead to a greater personal satisfaction, besides ensuring excellence in working of institution.

Resource Person addressing the participants

Shri Jagdish Raj interacted with participants regarding the procedure of Court Proceedings and details of status report, by practically demonstrating the same with the help of record, which, he said, could be extremely useful for the court and also save its time. Various provisions of different relevant Acts were also discussed in the course.

Shri Suresh Kumar Sharma, Director-State Judicial Academy impressed upon Participants that they must feel proud to be a part of the Institution, engaged in dispensation of justice. He added that with discipline and ethical conduct their efficiency & performance can improve tremendously, which would contribute to the August Institution.

Meanwhile Shri Jagdish Raj Thakur, Faculty Member of the Academy provided training on the table to the staff of the High

Court deployed in the different sections such as LPA, SWP, OWP and counter etc. from 28th Dec. 2011 to 4th Jan. 2012. He practically demonstrated the officials about their duties with regard to maintenance of files and preparation of status report etc. and cleared the various doubts lurking in the minds of the officials on their respective tables itself.

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3. Workshop for Secretaries/Private Secretaries and Stenos of the High Court

In order to enhance the core skills of the personal staff of Hon'ble Judges of the High Court and to make them more efficient and professional in discharge of their duties, the State Judicial Academy organized two days workshop for Court Secretaries/Private Secretaries/Stenographers in the High Court Complex, Jammu.

The workshop covered all the aspects required to be possessed by the staff right from ethics, office discipline, time management, communication skills to computer education and office drafting.

Participants attending the session

Workshop in session

On the first day of the workshop, Shri B.L. Saraf, Retd. District Judge dealt with the topic "Ethics, Office Discipline and Accountability" while as Prof. Rajinder Mishra from Business school, University of Jammu interacted with the participants on 'Office Management and Time Management'. Prof. Mishra in a scholarly manner dealt in detail with the concept of Time Management and told the participants that instead of managing time only in a clock bound manner, it should be managed keeping in mind the compass also meaning thereby management of time with some specific direction in mind. He stressed upon the participants leave a 'legacy' because it is only virtue by which a man is recognized in the society. In the 2nd Session of day 1, the knowledge of the participants was updated in the computer education. Shri Rajneesh Raina from DOEACC delivered a lecture on day to day use of computer and gave a practical demonstration also with special emphasis on use of internet and email.

On the 2nd day of workshop, Shri Naveen Chopra dealt with the topic 'Communication Skills'. In his enthralling and enthusiastic address, Shri Chopra gave

Workshop in session

the participants various tips right from oration, confidence, sense of feel, to body language in order to make their communication as an effective communication so as to win the heart and confidence of every person with whom they have to communicate. In the 2nd Session, Mrs. Reeta Bhaskar, lecturer in English in Kendriya Vidyalaya dealt with the topic 'Improvement of English and Office Drafting'. She made the participants aware about the latest trends being followed in the English language with emphasis on different kind of drafting.

Resource Person addressing the participants

Participants and resource persons had intellectually stimulating interaction on different aspects of the topics with all the resource persons and were benefitted a lot.

Speaking on the occasion, Shri Suresh Kumar Sharma, Director State Judicial Academy told the participants that the Academy is trying to strengthen the each limb of the judicial institution by organizing such kind of workshops and at the same time it provide a plat form to share the thoughts and experiences of each other which in turn enables the institution to serve the society in a better way.

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NEWS & VIEWS

India should take lead in setting up of SAARC HR body : SC judge

Hon'ble Mr. Justice A.K. Ganguly, Judge Supreme Court of India had suggested that India should take the lead in establishing South Asian Human Rights Commission to deal with rights violation cases in the region.

He said violations of human rights are shared across all the countries in South Asia and there is a need for setting up a regional mechanism for protecting human rights for which India must take an initiative for establishing South Asian Human Rights Commission (SAHRC) convention.

"India also has the inescapable responsibility in the establishment of a Human Rights Convention for the South Asian Association For Regional Cooperation (SAARC) nations and therefore the country must take the lead," he said in his key-note address on the occasion of Human Rights day at Sonipat-based O.P. Jindal Global University.

Stressing the need for regional cooperation in human rights, he pointed out that "whatever may be the towering strength of the house, it will not remain so when devastating fire engulfs the adjoining rather surrounding areas".

Justice Ganguly said social deprivation, religious violence and political "insufficiency" are among the barriers in the development of human rights.

He said for meaningful growth of India and other countries, "there was a need to remove social deprivation, cultural backwardness, religious violence, legal lethargy and political insufficiency which dangerously assume devilish proportions of stumbling barriers against the blossom of full-blown human rights of individuals."

"It (establishment of SAHRC) is imperative for uplifting the lives of people," Justice Ganguly was quoted as saying in the statement issued by the University.

A positive and a more practical approach for India would be to persuade and urge SAARC for the setting up of a convention and a court exclusively dealing with human rights issues in SAARC countries, Justice Ganguly said, adding the proposed SAHRC would go a long way towards that.

He said though South Asian courts have played a critical role in upholding the rule of law and protecting human rights, the necessary safeguards for the betterment of individual nations and that of the SAARC forum be incorporated in the permeating articles, unilateral, bilateral and multilateral agreements among the constituents, protocols "without prejudice to our growth and for that of the cohesive nations".

Professor C. Raj Kumar, Vice Chancellor of the University emphasized on the importance of developing institutional mechanisms in South Asia for protecting human rights.

(PTI/10-12-2011)

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LEGAL JOTTINGS

[Civil Appeal No. 10178 of 2011]

Union Public Service Commission v. Gyan Prakash Srivastava

Date of Decision : 30-11-2011

Judges: Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya

Constitution of India, Art. 16 - Appointment - Post of - Legal Advisor-cum-Standing Counsel in Land and Building Department - Degree in Law essential qualification - Advertisement requiring candidates to submit alongwith their applications - Degree or Diploma certificate or other certificates in support of their educational qualifications - Respondent submitting certificate issued by Bar Council alongwith his application - Such certificate cannot be issued unless respondent had obtained degree in Law from recognized University - Cannot, therefore, be said that respondent had not enclosed with his application document to show that he had been awarded a degree in law by recognized

University - Rejection of his candidature is improper.

[Cr. Appeal No. 893 of 2005]

Ashish Chadha v. Asha Kumari & Anr.

Date of Decision : 02-12-2011

Judges: Hon'ble Mr. Justice Swatanter Kumar and Hon'ble Mrs. Justice Ranjana Prakash Desai

(A) Constitution of India, Art. 136 - SLP - Locus standi - Petition against illegal grabbing of Govt. forest land worth crores of rupees - Plea of respondent that as original complainant had expired , appellant had no locus to file appeal and also same is filed to settle political scores - However, there exist prima facie case against respondent - More so petition was not political motivated and even if assuming there exist political rivalry between parties since charge is about grabbing of Govt. land - In larger public interest SLP is maintainable.

(B) Criminal P.C. (2 of 1974) S. 401 - Revisional power - Scope of - Revision against order framing charge - Interference by entering into merits and forming opinion that there was no prima facie case against respondent by re-appreciating entire evidence - Improper.

(C) Criminal Procedure Code (2 of 1974), S. 303 - Constitution of India, Art. 22(1) - right to engage lawyer of choice of accused - refusal of, by Magistrate - on ground that respondent was already represented by lawyer - Moreover, manner in which proceedings were conducted respondent wanted to delay framing of charges - As some advocate had appeared for respondent and her husband - Cannot be concluded that respondent was not given chance to engage counsel of her choice.

(D) Criminal P.C. (2 of 1974), S. 407 - Transfer of case - Application for - Ground that respondent had reasonable apprehension that she will not get fair trial - Case wrongly transferred by High Court as it was evident from record of subordinate court, there were number of dates on which special Judge adjourned proceedings - And it was only when he was satisfied that respondent was purposely seeking adjournments that Special Judges refused to grant further adjournment - Thus, there was no material to substantiate fear expressed by respondent that she would not get fair trial - Transfer of case, not permissible.

(E) Criminal P.C (2 of 1974) S. 240 - Quashing of charge - Validity - High Court quashed charge not only against respondent but also against all accused when no such prayer was made - Improper - Because High Court cannot go beyond scope of prayer made by respondent and quash even charges framed against all other accused.

[Civil Appeal No. 10080-81 of 2011]

Raghbir Singh Sehrawat v. State of Haryana & Ors.

Date of Decision : 23-11-2011

Judges : Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice Sudhansu Jyoti Mukhopadhaya

(A) Land Acquisition Act (1 of 1894), Ss. 4, 6, 16 - Land with standing crop acquired - Taking of possession - Mode - Actual physical possession has to be taken - Paper possession is not sufficient for land to vest in State - Revenue records showing that crop was standing on land of appellant when possession was showing to be taken - No case made out by State that appellant has unauthorizedly taken possession - Not even case of respondents that any independent witness was present at time of taking possession - Record revealing that Appellant had also not been given opportunity of hearing as per mandate of Section 5 A(2) - Petition filed by appellant challenging requisition - Dismissal on ground that possession of acquired land has been taken and it has vested in State - Improper.

(B) Land Acquisition Act (1 of 1894), S.4 - Acquisition of land - Casual approach adopted by State in resorting to massive acquisition of agricultural land - would seriously affect availability of food in future - State directed to, as far as possible, use Govt. land for public purpose.

CASE COMMENT

Lok Adalat Settlement in Cheque Bounce Cases : Executable as Civil Court Decree

The Hon'ble Supreme Court of India in Civil Appeal No. 10209 of 2011 decided on 28 Nov. 2011 titled K.N. Govindan Kutty Menon Vs. C.D. Shaji was called upon to decide whether a settlement award passed by the Lok Adalat, recording the settlement, can be considered as a decree of a civil court and thus executable? The Court went on to hold that even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court.

The Hon'ble Apex Court after going through whole of the scheme under the Legal Services Authority Act and also after taking note of the earlier judgments rendered by the Hon'ble Supreme Court and different High Courts on the point had reached to the conclusion as under :-

1. In view of the unambiguous language of Section 21 of the Act, every award of the Lok Adalat shall be deemed to be a decree of a civil court and as such it is executable by that Court.

2. The Act does not make out any such distinction between the reference made by a civil court and criminal court.

3. There is no restriction on the power of the Lok Adalat to pass an award based on the compromise arrived at between the parties in respect of cases referred to by various Courts (both civil and criminal), Tribunals, Family court, Rent Control Court, Consumer Redressal Forum, Motor Accidents Claims Tribunal and other Forums of similar nature.

4. Even if a matter is referred by a criminal court under Section 138 of the Negotiable Instruments Act, 1881 and by virtue of the deeming provisions, the award passed by the Lok Adalat based on a compromise has to be treated as a decree capable of execution by a civil court.

Anoop K. Sharma
Munsiff

Due to some technical discrepancies erroneously over sighted in the past issues and to put them in order for future; Vol. 5 Issue 1 for Jan. 2012 is not being published. The inconvenience, if any is regretted. - *Editor*

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