



SJA NEWSLETTER

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Topic of the Month

Chief Patron Hon'ble Mr. Justice F.M. Ibrahim Kalifulla Chief Justice	
Judge Incharge Hon'ble Mr. Justice Mansoor Ahmad Mir	
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Today society's interaction with nature is so extensive that the environmental question has assumed proportions affecting all humanity. Industrialisation, urbanization, explosion of population, over-exploitation of resources, depletion of traditional sources of energy and raw materials and the search for new sources of energy and raw materials, the disruption of natural ecological balances, the destruction of a multitude of animal and plant species for economic reasons and sometimes for no good reason at all are factors which have contributed to environmental deterioration. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of the power, encroaching endlessly on nature. If man is able to transform deserts into oases, he is also leaving behind deserts in the place of oases. In the last century, a great German materialist philosopher warned mankind: "Let us not, however, flatter ourselves overmuch on account of our human victories over nature. For each such victory nature takes its revenge on us. Each victory, it is true, in the first place brings about the results we expected, but in the second and third places it has quite different, unforeseen effects which only too often cancel the first." Ecologists are of the opinion that the most important ecological and social problem is the wide-spread disappearance all over the world of certain species of living organisms. Biologists forecast the extinction of animal and plant species on a scale that is incomparably greater than their extinction over the course of millions of years. It is said that over half the species which became extinct over the last 2,000 years did so after 1900. The International Association for the Protection of Nature and Natural Resources calculates that now, on an average, one species or sub-species is lost every year. It is said that approximately 1,000 bird and animal species are facing extinction at present. So it is that the environmental question has become urgent and it has to be properly understood and squarely met by man. Nature and history, it has been said, are two component parts of the environment in which we live, move and prove ourselves.

In India, as elsewhere in the world, uncontrolled growth and the consequent environmental deterioration are fast assuming menacing proportions and all Indian cities are afflicted with this problem. ... if the Government is alive to the various considerations requiring thought and deliberation and has arrived at a conscious decision after taking them into account, it may not be for this Court to interfere in the absence of *mala fides*. On the other hand, if relevant considerations are not borne in mind and irrelevant considerations influence the decision, the Court may interfere in order to prevent a likelihood of prejudice to the public. Whenever a problem of ecology is brought before the Court, the Court is bound to bear in mind Article 48A of the Constitution, the Directive Principle which enjoins that "The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country," and Article 51A(g) which

proclaims it to be the fundamental duty of every citizen of India "to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures." When the Court is called upon to give effect to the Directive Principle and the fundamental duty, the Court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority. The least that the Court may do is to examine whether appropriate consideration are borne in mind and irrelevancies excluded. In appropriate cases, the Court may go further, but how much further must depend on the circumstances of the case.

[Taken from the judgment titled 'Shri Sachidanand Pandey & Anr. v. The State of West Bengal and Ors.', AIR 1987 SC 1109]

NEWS AND VIEWS

Justice Kalifulla sworn in as Chief Justice, High Court of Jammu and Kashmir

His Lordship Hon'ble Shri Justice F. M. Ibrahim Kalifulla, Chief Justice, High Court of Jammu and Kashmir was administered the oath of Office by His Excellency Sh. N. N. Vohra, Governor of Jammu and Kashmir, on 18th of Sept., 2011 at Raj Bhawan, Srinagar. The oath taking ceremony was attended by the Hon'ble Chief Minister, Hon'ble Speaker, Hon'ble Judges of the High Court of Jammu and Kashmir, Hon'ble Ministers, Senior Officers of the State and the Judicial Officers of the District Judiciary.



His Excellency the Governor while administering oath to Hon'ble the Chief Justice

On His Lordship's arrival to High Court complex, Srinagar after the oath ceremony, His Lordship was welcomed by all the Officers of the High Court including Registrar General, Principal Secretary to Hon'ble the Chief Justice, Registrar Judicial, High Court wing, Srinagar, Registrar Rules,

Director, State Judicial Academy and the staff of the High Court. Guard of Honour was also presented to His Lordship on the occasion.



Hon'ble the Chief Justice while receiving Guard of Honour in the High Court at Srinagar

SC orders reinstatement of 11 women army officers

Hon'ble Supreme Court directed the Army Chief to reinstate 11 short service commissioned (SSC) Women Army officers, who were removed from service after completing 14 years of service.

The Apex Court issued directions and came to the conclusion that women officers cannot be removed on gender basis.

The main contention of the Army was that these officers cannot be given field posting.

The Apex Court was, however, of the view that women officers can be given ministerial postings but they are entitled to confirmation in their post and their termination from service on gender basis violates their fundamental right to equality guaranteed under Article 14 of the Constitution.

(UNI/02-09-2011)

J&K High Court expects the Judicial Officers to follow high standards of Judicial Conduct and Ethics

In a judgment delivered by Hon'ble Mr. Justice Mohammad Yaqoob Mir on 24th of May, 2011 in LPA (SW) 91 of 2009 the Judicial Officers have been expected to follow the high standard of judicial conduct and behaviour and the judicial ethics. Relevant excerpts taken from the said judgment is reproduced hereunder for the information of Judicial Officers :

"The Judicial Officers have a divine job to discharge therefore, by conduct are required to supply light so as to embrace into its fold respect to the faith and confidence reposed in the system by the public. Conviction and commitment must be inherent to do the justice. When the trust and confidence is reposed

in the system, what is expected of a judicial officer is to be exemplary both in and outside the Court. Maintaining the highest standard of integrity can be more fragrant/cherished by maintaining the highest standard of sophistication, behaviour and attitude. Small deviation will make it ugly. When such deviation is noticed to be dangerous, removal of deviator becomes imperative so as to maintain the magnificence of the institution, lest tremendous faith reposed by the public in it will get eroded.”

Three Hon’ble Judges elevated to Supreme Court

Hon’ble Mr. Justice Sudhanshu Jyoti Makhopadhaya, Chief Justice of Gujarat High Court, Hon’ble Mrs. Justice Ranjana Prakash Desai, Judge of Bombay High Court and Hon’ble Mr. Justice Jagdish Singh Khehar, Chief Justice of Karantaka High Court elevated to Supreme Court. Hon’ble Judges assumed charge as Judge, Supreme Court of India on September 13, 2011.

With the elevation of Hon’ble Mrs. Justice Ranjana Prakash Desai, the strength of woman Judges in the Apex court has been raised to two. The other woman Judge is Justice Gyan Sudha Mishra. The Supreme Court got its first woman Judge, Justice Fatima Bibi in 1989.

Hon’ble Mr. Justice J.P. Singh, Judge, High Court of J&K was the key speaker. His Lordship in his key note address showed his concern about the happenings in the society with regard to the erosion of the faith among the common masses in the Justice delivery system and reminded the officers about the genuine expectations which the society has from the Judicial system. He told the participants that what a litigant expects from a court is *proper hearing* and *due justice*. It is not necessary that the relief sought by a litigant is given to him in all the circumstances but every litigant has a right to know whether he is entitled to relief claimed by him or not and the reasons thereof.



Participants in the workshop

ACADEMY NEWS

1. Workshop on “Importance of procedural laws in the speedy disposal of civil cases with special reference to civil laws (Amendment) Act, 2009 and Ethics for Judges”



Hon’ble Mr. Justice J.P. Singh while addressing the participants

A workshop on the topic “Importance of procedural laws in the speedy disposal of civil cases with special reference to civil laws (Amendment) Act, 2009 and Ethics for Judges” was organized on 24th Sept., 2011 by the State Judicial Academy for Sub-Judges and Munsiffs across the Jammu province at High Court complex, Jammu.

His Lordship while referring to the amendment incorporated in the Code of Civil Procedure has said that unfortunately the system has not been able to come up to the expectations of the society which has given an occasion to the legislature to bring such an amendment. He stressed upon the participants to implement the amendments so incorporated in its true spirit so that the object to bring such an amendment is achieved. His Lordship referred to various provisions of the Code of Civil Procedure and the amendment brought therein and explained how these provisions can facilitate and enable the Presiding Officer of a Civil Court in speedy disposal of the Civil matters. He gave special emphasis on the order dealing ‘adjournments’, ‘service of defendant(s)’ and ‘examination of witnesses’ and asked the participants to strictly adhere to the true intent and spirit of these provisions.

While dealing with Section 89 of the amended Code, His Lordship said that before striking the issues in a civil case, all the Judges must endeavour to refer the case for mediation, arbitration, conciliation and to the Lok Adalats where ever they find that there is any chance of having any kind of amicable settlement between the parties with the intervention of any of these ADRs.

His Lordship had a healthy discussion with

the participants and was kind enough to clear their doubts on many day to day aspects with which the Judicial Officers are confronted with while discharging their judicial function.

His Lordship also stressed upon the Judicial Officers to maintain high standards of moral values, judicial conduct and behaviour and to follow the principles of judicial ethics. His Lordship had culled out some principles of ethics titled as “Do’s and Don’ts” which ought to be followed by the Judicial Officers and a copy of the same was provided to each of the participant.

2. Workshop on ‘Plea Bargaining’

State Judicial Academy organized a workshop on "Plea Bargaining" for the Chief Judicial Magistrates and Judicial Magistrates of Jammu Province, at Jammu on 27th of August, 2011.

Resource persons for the programme were Prof V.K. Kapoor, Director, Dogra Law College and D.K. Kapoor, former District and Sessions Judge.



Workshop in session

Prof. Kapoor dealt with concept and overview of provisions of Plea Bargaining. He said that provisions contained in Central and State Procedure Code are substantially different from those applicable in American and British Jurisdictions. These provisions ensure that cases are disposed off in short time where accused voluntarily makes plea of guilt. In such a situation courts have been empowered to impose lesser punishment or to let off accused after admonition where cases are of trivial nature.

Important benefit of Plea Bargaining is that after receiving punishment and sentence under these provisions civil consequences arising are wiped off and any plea of guilt made cannot be used against accused in any other legal proceedings. These provisions also encourage the accused to honestly and voluntarily make clean breast and submit to the jurisdiction of law.

D.K. Kapoor apprised the participants about the practical and procedural aspects of provisions

relating to Plea Bargaining. It was told that since the provisions are comparatively new as such least attention is being paid to them by those involved in criminal justice system.

It was further told by Mr. Kapoor that there are certain anomalies in the State legislation which are to be cured by bringing State provisions at par with Central provisions. If it is done at an earliest provisions can be best utilized for betterment of criminal justice system.

While summing up the discussions Suresh Sharma, Director, State Judicial Academy highlighted the need to make proper and effective use of provisions of Plea Bargaining.

3. Orientation Programme on “Duties and Functions of Drawing and Disbursing Officers” and “Formulations, presentation of budget, including planning”

Orientation Programme on “Duties and Functions of Drawing and Disbursing Officers” and “Formulations, presentation of budget, including planning” was organized by the State Judicial Academy for the Sub-Judges and Munsiffs of Kashmir Province at Srinagar on 10th and 16th of September, 2011 respectively.



Orientation Programme in session

Resource person for the programme was Shri M.J. Najar, former Director Codes/Accounts.

Resource person Shri M.J. Najar in his address to Judges explained different provisions of Financial Code to be used by them while exercising their drawing and disbursing powers and properly maintaining of record. He said that the Judges should be sufficiently familiar with Financial Codes and Accounts Rules to keep an adequate check over the concern in the office under their control.

He explained different provisions of budget manuals and different kinds of funds and public Accounts, how they are formed and also elaborated different kinds of heads and their nature. He further

elaborated the process of preparation of budget and the role of the subordinate Judicial Officers, as drawing and disbursing officers, in preparing detailed estimates of each head of account with which they are concerned, on different forms and submit the same to the Head of Department.

Addressing the participants, Director, State Judicial Academy, Shri Suresh Kumar Sharma impressed upon the Judicial Officers to update their knowledge about the drawing and disbursing powers and become well conversant with provisions of Financial Code to exercise proper and effective control over the staff.



Participants in the Orientation Programme

These programmes were organized to acquaint Judges with rules and provisions of accounts and formulation of budget, so that proper estimates for preparation of the budget could be projected, which facilitate sanction of appropriate grants.

Molvi Javaid Ahmed, Retd. District Judge and a Faculty Member of the Academy presented vote of thanks.

4. Orientation programme for Bench Secretaries and Readers

State Judicial Academy in its endeavour to train the personal staff of Hon'ble Judges of High Court and to enhance their professional skills organized an Orientation programme for the Bench Secretaries and newly appointed Readers of Jammu wing of the High Court on 10th of September, 2011 at High Court complex, Jammu.

Shri Jagdish Raj Thakur, former Bench Secretary and Faculty Member of the Academy was the Resource person for the said programme. In his address, Shri Jagdish Raj Thakur gave various important tips to the participants which covered all the important components required to achieve the professional excellence. He stressed upon the participants to write down the status report in each case before the case is placed before the Hon'ble

Judge for consideration. He practically demonstrated about the mode and method as to how the status report is to be prepared in the case so that the Hon'ble Judge may get a proper assistance from the same.

The participants were benefitted a lot and appreciated the Academy's endeavour to organize such a programme.

LEGAL JOTTINGS

Legal briefs from Supreme Court

(Case No: Civil Appeal No.7334 of 2011)

Bharat Rasiklal Ashra v. Gautam Rasiklal Ashra & Anr.

Date of Decision: 25-08-2011.

Judge(s): Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice A.K. Patnaik.

Subject Index: Arbitration and Conciliation Act, 1996 - Section 11 - application filed under for appointment of arbitrator allowed hence, the appeal where the arbitration agreement between the parties is denied by the respondent, whether the Chief Justice or his designate, in exercise of power under section 11 of the Act, can appoint an arbitrator without deciding the question whether there was an arbitration agreement between the parties, leaving it open to be decided by the arbitrator no the Supreme Court held that where there is an arbitration agreement in the partnership deed dated 12.6.1988, but the dispute is raised and an appointment of arbitrator is sought not with reference to the said partnership deed, but with reference to another partnership deed dated 19.5.2000, unless the party filing the application under section 11 of the Act is able to make out that there is a valid arbitration clause as per the contract dated 19.5.2000, there can be no appointment of an arbitrator impugned order of the High Court set aside and the matter remitted to the High Court for deciding the questions whether the deed dated 19.5.2000 was forged or fabricated and whether there is a valid and enforceable arbitration agreement between the parties appeal allowed.

(Case No: Review Petition (Civil) No. 1292 of 2010 in Civil Appeal No. 973 of 2007)

Manohar Lal (D) by Lrs. v. Ugrasen (D) by

Lrs. & other

Date of Decision: 24-08-2011.

Judge(s): Hon'ble Dr. Justice B.S. Chauhan and Hon'ble Mr. Justice Swatanter Kumar.

Subject Index: Land Acquisition Act, 1894 - sections 4,6,11 and 17(1) - acquisition of land under the provisions of the Government of Uttar Pradesh framed the land policy for allotment of land in residential area to the extent of 40% of the area of the land acquired from the land owners Shri Manohar Lal-applicant made an application to allot him the land of his choice, which stood rejected by the Authority, however, he was allotted the land as per the direction of the Hon'ble Chief Minister in the commercial area - the Supreme Court quashed the said allotment review application filed the land Policy did not provide the allotment of land of the choice of the tenure-holder. It was not permissible for any Authority to make the allotment in commercial area, as allotment could be made only in residential area the applicant did not comply with the allotment letters rather he made attempts to get the land of his choice in commercial area and approached the Hon'ble Chief Minister, who was not the competent Authority under the law for allotment of the land - review application dismissed.

(Case No: Civil Appeal No. 7106 of 2011)

Ram Kumar v. State of U.P. & others

Date of Decision: 19-08-2011.

Judge(s): Hon'ble Mr. Justice R.V. Raveendran and Hon'ble Mr. Justice A.K. Patnaik.

Subject Index: Recruitment to the post of constable the appellant submitted an affidavit stating that no criminal case was registered against him the Senior Superintendent of Police, Ghaziabad, cancelled the order of selection of the appellant on the ground that he had submitted an affidavit stating wrong facts and concealing correct facts and his selection was irregular and illegal writ petition filed dismissed hence, the appeal the Supreme Court found that though Criminal Case under Sections 324/323/504 IPC had been registered against the appellant but he had been acquitted of the charges in the case. Instead of considering whether the appellant was

suitable for appointment to the post of male constable, the appointing authority mechanically held that his selection was irregular and illegal because the appellant furnished an affidavit stating the facts incorrectly at the time of recruitment impugned order of the High Court set aside and the order of the Senior Superintendent of Police, Ghaziabad quashed appeal allowed.

(Case No: Civil Appeal No. 7037-7038 of 2011)

Dr. Puneet Gulati & others etc. v. State of Kerala & others Etc.

Date of Decision: 17-08-2011.

Judge(s): Hon'ble Mr. Justice Altamas Kabir, Hon'ble Mr. Justice Cyriac Joseph and Hon'ble Mr. Justice Surinder Singh Nijjar.

Subject Index: Reservations for local students by the State for admission to Super Speciality Medical Courses in the State of Kerala constitutional validity of challenged the Id. Single Judge declared the provisions of the original prospectus and the revised prospectus providing for reservation for Kerala students only, as unconstitutional the Division Bench while technically allowing the claim of the candidates who were from outside Kerala, on the ground that 100% reservation was unconstitutional, chose not to give any relief to the said students on the ground that the course had commenced more than 6 months prior to the matter being heard by the Division Bench of the High Court hence, the appeals the Supreme Court held that since the appellant was not given admission to the aforesaid course, on the strength of an invalid policy, he deserves to be accommodated in the aforesaid course in some way appeal disposed.

(Case No: I.A. No. 4 of 2009 in Original Suit No. 6 of 2004)

State of Madhya Pradesh v. Union of India & another

Date of Decision: 17-08-2011.

Judge(s): Hon'ble Mr. Justice P. Sathasivam and Hon'ble Dr. Justice B.S. Chauhan.

Subject Index: Constitution of India, 1950 Article 131 - original suit filed under - Madhya Pradesh Re-organisation Act, 2000 sections

58(3) and 58(4) calling for the records relating to the impugned Notifications/Orders issued under application filed for amendment of plaint to the effect that Sections 58(3) and 58(4) of the MPR Act are violative of Article 14 of the Constitution of India inasmuch as it enables the Central Government to determine without any guidelines the manner of exercise of power while deciding the basis of apportionment of the assets and liabilities of the successor Boards the Supreme Court viewed that even when the Central laws can be challenged in the State High Courts as well and also before this Court under Article 32 no recourse can be permitted to challenge the validity of a Central law under the exclusive original jurisdiction of this Court provided under Article 131 plaintiff-State of M.P. is permitted to raise such objections at the time of trial interlocutory application disposed no costs.

(Case No: Civil Appeal No. 7030-7031 of 2011)

The Registrar General, High Court of Madras v. M. Manickam and others

Date of Decision: 17-08-2011.

Judge(s): Hon'ble Dr. Justice Mukundakam Sharma and Hon'ble Mr. Justice Anil. R. Dave.

Subject Index: Tamil Nadu State Judicial Service Rules Rule 30 procedure for alteration of date of birth Respondent No. 1 filed a suit for a mandatory injunction to enter his date of birth in his S.S.L.C. book and in the Service Records as 24.11.1950, instead of 19.03.1947 the Munsif Court decreed the suit in favour of Respondent No. 1. The High Court confirmed the judgment and decree of District Munsif Court hence, the appeals the application seeking for change of date of birth was filed after expiry of the period of five years and even not addressed to the government but it is addressed to the Registrar of the High Court the respondent while filing the application for alteration of birth date did not follow the mandate and requisites of Rule 30 of the Rules medical certificate was found to be unreliable the respondent No.1 also failed to discharge his onus in proving the authenticity of the horoscope on which reliance is placed impugned judgment and the decree passed by the Munsif Court affirmed by the High Court set aside appeals allowed.

Legal briefs from High Court of J&K

(LPANo. 37/2011 & IA(C) No. 56/2011)

Arshad Ahmad Parray v. State of J&K & Ors.

Date of Decision: 30-07-2011

Judge(s): Hon'ble Mr. Justice F.M. Ibrahim Kalifulla (Acting Chief Justice), Hon'ble Mr. Justice Virender Singh

Subject Index: J&K Public Safety Act, 1978 - Period of detention to be imposed u/s 8 read with Sec. 18 of the Act - petitioner detained by the order of District Magistrate, Pulwama for a period of 24 months under Sec. 8 of Public Safety Act as a preventive measure from acting in any manner, which is prejudicial to the maintenance of public order - the State Advisory Board constituted u/s 14 of the Act upheld the order of detention, whereafter Financial Commissioner (Home) on behalf of State confirmed the order of detention passed by District Magistrate - petitioner filed a writ petition and challenged his detention before Hon'ble High Court on various grounds - same was dismissed by Ld. Single Judge vide Judgment dated 4-02-2011 - petitioner filed LPA - one of the ground taken by the petitioner for allowing his petition was that he couldn't have been detained for more than 12 months - Held - that since the petitioner was detained on the ground of his having involved in the activities which are prejudicial to the maintenance of public order so the maximum period of detention imposed couldn't have been more than 12 months - the Government while confirming the initial order of detention could not change the complexion of the order and order the detention on the ground of 'security of state' instead of 'maintenance of public order' - the Government in its wisdom, if wanted to. change the complexion of the order, it could do so on the same set of facts but in turn it would be a fresh order resulting into a right to the detenu to respond to it - As the period of 12 months had elapsed so further detention held to be uncalled for - also held that whole of the material which form the basis of the detention alongwith the order of detention was required to be supplied to the detenu - non supply of all the relevant material is a serious flaw and makes the order of detention unsustainable in the eyes of law - the impugned judgment set aside and the detention order quashed - LPA allowed.

(Case No. Civil Revision No. 11 of 2007)

Badari Nath v. Banti Devi & Ors.

Date of Decision: 14-09--2011

Judge(s): Hon'ble Mr. Justice Mansoor Ahmad Mir

Subject Index: Code of Civil Procedure - Amendment of Plaint - Order 6 Rule 17 CPC -

Plaintiff moved an application to amend his plaint before trial court after the case was remanded back by the first Appellate Court for framing additional issues - trial court refused to allow the amendment on the ground that amendment sought was barred by time and pleas sought to be introduced are totally inconsistent to the original plaint - civil revision filed against the order - held - application for amendment can't be refused on the ground of plea of limitation or that the pleas taken are inconsistent to the original averments contained in the plaint or hit by doctrine of Order 2 Rule 2 CPC - all these matters are required to be gone through in the main suit and can't be a ground for refusing the permission to amend - the defendant can set up these grounds in the written statement - revision allowed.

(Criminal Revision No. 57 of 2006)

Sushant Bakshi v. Manju Ghosh

Date of Decision: 30-03--2011

Judge(s): Hon'ble Mr. Justice J.P. Singh

Subject Index: Negotiable Instrument Act, 1881 - Time barred complaint filed u/s 138 of Negotiable Instrument Act - Trial Court issued the process after condoning the delay - accused filed a revision against the trial court's order before Ist Addl. Sessions Judge, Jammu - revision petition dismissed - petitioner approached high court seeking quashing the orders of two courts on the ground that the complaint was entertained after having the respondents request for condonation of delay considered but without providing the petitioner an opportunity of hearing on the same which is violative of principle of natural justice - held - to condone the delay in filing a complaint u/s 138 of N.I. Act is a matter between the complainant and the court - the accused has not right to be heard before the process is issued against him - taking cognizance of a time barred complaint, without hearing the accused do not violates the principles of natural justice - the petition, however, was allowed as the trial court in its order has neither hinted at condoning the delay nor has spelt out any reasons justifying the same but passed a mechanical order - petition allowed.

(Case No.SWP 1234 of 2010)

Satish Kumar v. State and Ors.

Date of Decision: 10-08-2011

Judge(s): Hon'ble Mr. Justice Muzaffar Hussain Attar

Subject Index : J&K Migrants (Special Drive) Recruitment Rules, 2009 - petitioner, a Kashmiri migrant applied for the post of general line teacher against the post advertised under above special drive

rules - was not called for interview, as he was overage - petitioner filed the writ petition seeking a direction to the respondents to consider his case for relaxation of upper age limit - held - that in light of the fact that the petitioner belongs to that section of society who because of the circumstances beyond his control migrated from Kashmir and special drive is initiated to give employment to ensure their return to their home and hearth & keeping in view the policy decision of the Government and Govt. Order No. 1500-GAD of 2000 dated 21-12-2000 and the fact that the petitioner has secured requisite merit for being selected / appointed against the post of teacher, SSRB directed to recommend the case of the petitioner to GAD for consideration of his case for relaxation of his upper age limit - GAD directed to consider the same under the policy decision of the Government and the observations made in judgment - petition allowed.

(Case No. 561-A 249/2010, Cr.MP276 of 2010)

Ashok Singh Manhas v. Ajay Gandotra

Date of Decision: 30-08-2011

Judge(s): Hon'ble Mr. Justice Hasnain Masoodi

Subject Index : Section 499 RPC and Ninth exception - stage and scope thereof - petitioner filed a writ petition wherein present respondent figured as Respondent No. 4 - the Respondent file a criminal complaint u/s 499, 500 RPC on the ground that the allegation levelled against in the writ petition was a wilful act on the part of the petitioner to lower down his image in the society - trial magistrate issued the process against the petitioner - petitioner filed the petition u/s 561-A CrPC seeking quashment of the proceedings before trial magistrate on the ground that the allegations set out in the writ petition even if making imputation against the respondent, do not constitute the offence of defamation in as much as the case falls within the ambit of 9th Exception to Section 499 RPC - held - the magistrate cannot visualize at the outset that the case falls within one or more of the exceptions and in particular Exception 9th of Section 499 RPC and refuse to take cognizance where otherwise a case for taking the cognizance and issuance of process is made out - the accused during the course of trial may establish that the statement of amputation was made in good faith to protect his interest - the question whether the amputation is made in good faith or not can be determined only by the trial court after the parties lead the evidence and even could not be determined by the High Court while exercising inherent powers - the question whether the matter falls within 9th Exception to Section 499 RPC held not to be a threshold question - petition dismissed.