



# SJA NEWSLETTER

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Jammu & Kashmir State Judicial Academy

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July, 2010

## Topic of the Month

### **Chief Patron**

Hon'ble Dr. Justice  
Aftab H. Saikia  
**Chief Justice**

### **Judge-In-Charge**

Hon'ble Mr. Justice  
Hakim Imtiyaz Hussain

### **Editor**

Rajeev Gupta  
**I/c Director SJA**

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**Deputy Registrar**

Ours is a vibrant democracy, which not only has a strong and independent judiciary but also integrates with a society that recognizes the existence of the rule of law. For the continued existence and sustenance of a truly democratic State, administration of justice should be in the hands of not only competent but also impartial, independent and conscientious persons so that justice is rendered and rule of law is upheld, both of which are imperative for a free society.

We have given ourselves a beautiful Constitution with a high tone. However, it is widely accepted that it is not the letters of the Constitution but the people who manage it, that make it successful. India has been a great country with one of the greatest and oldest civilizations to boast about. This is not what we say about ourselves; it is the perception of many scholars of foreign origin as well. I will quote Friedrich Muller, a German scholar, in this behalf:

"If I were to look over the whole world to find out the country most richly endowed with all the wealth, power and beauty that nature can bestow; in some parts a very paradise on earth; I should point to India. If I were asked under what sky the human mind has most fully developed some of its choicest gifts, has most deeply pondered on the greatest problems of life, and has found solutions of some of them which well deserve the attention even of those who have studied Plato and Kant; I should point to India. And if I were to ask myself from what literature we, here in Europe, we who have been nurtured almost exclusively on the thoughts of Greeks and Romans, and of one Semitic race, the Jewish, may draw that corrective which is most wanted in order to make our inner life more perfect, more comprehensive, more universal, in fact more truly human, a life, not for this life only, but a transfigured and eternal life; again I should point to India."

However, that is what India was once upon a time. We cannot, with equal authority, claim this to be present-day India. In our country the judiciary has been entrusted with the task to ensure actualisation of the rights granted to citizens, and also with the task of seeing that the other limbs of the Government function within the constitutionally ordained parameters, especially when dealing with rights of citizens. It is, therefore, imperative that the judicial system is effective and efficient so that the laws conferring rights, and prescribing norms for the functioning of the executive are not rendered ornate phrases, meaningless in content.

[Taken from 'Judiciary and Training', Speech delivered by Hon'ble Mr. Justice S.B. Sinha at JTRI, Lucknow on 18th September, 2004, reported as (2004) 7 SCC (J) 39]

## ACADEMY NEWS

Publication of SJA Newsletter commenced on January 2008 and since then it is being published regularly. Some Judicial Officers and other subscribers have intimated that they have not received few issues of Newsletter. Academy has prepared PDF versions of all the Issues of the Newsletter published so far and the required Issues of the Newsletter can be obtained from the Academy. Apart from this, Academy has uploaded all the Issues on its Website which will officially be launched shortly.

A request was made earlier also to the learned Judicial Officers to contribute articles and other material of legal interest to the Newsletter. Academy has been trying to mould the Newsletter in such a manner where every Judicial Officer could relate himself with the Newsletter. It also provides a platform to the Judicial Officers to share their knowledge with the brother/sister colleagues.

Keeping in view the interest of Judges, Academy intends to make further improvement in the contents of the Newsletter. Many of the Judicial Officers, apart from doing their regular court works, also have creative impulse and that creative side of the Judicial Officers needs to be explored. In this perspective, the Academy intends the Judicial Officers to send their creative writings to the Academy so that the Academy could publish them appropriately. This will enable the Judicial Officers to keep alive their intellectual and literary interests.

## NEWS AND VIEWS

### SC to review working condition of the subordinate courts

Supreme Court Chief Justice S.H. Kapadia directed that a special bench will sit on every Monday in a bid to improve the working condition of the subordinate courts across the country.

The decision was taken by a three-judge bench headed by Chief Justice Kapadia and Justices K S Radhakrishnan and Swapanter Kumar during the hearing of a PIL seeking directions to the government to improve the working conditions in consumer courts of the country.

The court directed that the Chief Secretary of every state as well as the Registrar General of the concerned High Court will be summoned one by one and suggestions will be sought from them to improve the working conditions of the lower judiciary in the country.

The lower judiciary is already overburdened and has to take care of a backlog of over 3.5 crore

cases.

In a large number of district courts, judicial officers have to function under appalling conditions, sometimes facing long power cuts and sometimes even without fans.

Justice Kapadia had said at the time of his appointment as Chief Justice that the improvisation and development of basic infrastructure in the district courts of the country was his first priority.

(UNI/07.06.2010)

### Justice Krishnayar demands for Hospital Patient Protection Bill

Former minister for law in Kerala, Justice V.R. Krishnayar demanded passing of the draft of Hospital patient protection bill recommended by a committee chaired by him.

Mr. Krishnayar was speaking at a press conference along with IMA (Indian Medical Association) members which they were on the path of stir demanding passing of the proposed bill.

On the bill, Mr. Krishnayar added that there were recommendations suggesting actions against the people those who found guilty in attack on doctors and hospitals.

Doctor K.E. Paulose, former National President with IMA, pointed out that the bill was carried out in 11 states in the country so far. Despite the failure of discussion on the bill, doctors said they would observe hospital patient protection day on Wednesday after refrain from practicing duty.

District President with IMA N.S. D. Raju, N B Marcose were present on the occasion.

(UNI/29.06.2010)

### Orissa HC orders probe on farmers suicide by Human Rights Commission

Orissa High Court has directed the Human Rights Commission to probe into the alleged incidents of farmers' suicide in the state and give compensations to the next of kin of the deceased farmers after verifying the causes of the deaths.

A Division Bench of the High Court comprising Chief Justice Venkategowda Gopalagowda and Justice Indrajit Mohanty directed the Orissa Human Rights Commission (OHRC) to conduct an inquiry after registering cases and ascertain the cause of deaths of all the farmers who have committed suicide.

The direction came while adjudicating over a PIL seeking a CBI probe into all the sordid incidents which pushed the poor farmers to take such extreme step.

The petitioner had also sought direction for ban on all loans to all farmers for agricultural

purposes which are not covered under adequate insurances and regulate private Financiers and that District Collectors should have a control over all the private Financiers in their respective Districts.

The Division Bench has also directed the State Government to file a report if such measures could be taken at District level to improve the condition of poor and illiterate farmers.

(UNI/02.07.2010)

### **Allahabad HC directs state government to pay compensation to the students**

The Allahabad High Court awarded compensation to each student payable by colleges, state government and Deen Dayal Upadhyay University Gorakhpur for running B Ed course without National Council for Teacher Education (NCTE) recognition.

This order was passed by Justice V K Shukla on the writ petition filed by several students complaining running of B Ed course by the private colleges without grant of recognition by NCTE.

The HC awarded a compensation of Rs one lakh to each student out of which 50 thousand will be paid by the management of such private institution within two months and remaining 50 thousand amount shall be borne by state government and DDU University Gorakhpur in equal proportion within the same period.

(UNI/06.07.2010)

## **LEGAL JOTTINGS**

### **Legal briefs from Supreme Court**

**(Case No. Civil Appeal No. 4728 of 2010 arising out of S.L.P. (C) No. 23869 of 2009)**

**‘K’ A Judicial Officer versus Registrar General, High Court of A.P.**

**Date of Judgment : 24-05-2010**

**Judge(s): Hon’ble Mr. Justice G.S. Singhvi and Hon’ble Mr. Justice C.K. Prasad, JJ.**

Subject Index: Remarks against the Judicial Officers by the Superior Courts - Plaintiffs filed suit for grant of permanent injunction to Defendants from interfering with the plaint schedule properties. They also filed application for grant of temporary injunction. The defendants asserted that the plaintiffs had no right over the suit property and that in the suits filed by them temporary injunction was already granted by the trial Court restraining the plaintiffs from interfering with their possession. By an order dated 12.3.2009, the appellant, Principal District Judge, Kadapa, granted temporary injunction in

favour of the plaintiffs and restrained the defendants from interfering with the plaint schedule property. Simultaneously, he enjoined the plaintiffs from intermeddling with the suit property. While passing the order of injunction, the appellant did take cognizance of the fact that the defendants had filed two suits against the plaintiffs and the concerned courts had passed order of injunction in their favour and that this fact was against the plaintiffs, but still he directed the parties to maintain status quo – Defendants, by way of Appeal, challenged the order of Status Quo so passed by the Principal District Judge - Appeal allowed and order quashed. While allowing the appeal, the Division Bench of the High Court made scathing criticism of the appellant as a Judicial Officer and recorded highly disparaging remarks in paragraphs 10 and 11. Remarks sought to be expunged by way of this appeal – Observed by the Hon’ble Supreme Court - Although, the order of injunction passed by the appellant may not be legally correct or justified and he may have committed an error in not taking serious view of the conduct of the plaintiffs who had apparently concealed the factum of injunction orders having been passed in favour of the defendants in the suits filed by them and, therefore, the Division Bench of the High Court may be fully justified in setting aside the order of injunction, but there was absolutely no justification for the Division Bench to make highly disparaging remarks against the appellant as a judicial officer casting doubts on his ability to decide the cases objectively. The use of the words ‘out of sheer arrogance and disrespect to the lawful order’ and the expression ‘judicial authoritarianism’ in paragraph 10 shows that the Division Bench ignored the words of caution administered by this Court in several judgments including those referred to hereinabove and castigated the appellant without any justification. The observations and remarks made by the Division Bench of the High Court are bound to adversely affect the image of the appellant in the eyes of the public, his credibility as a judicial officer and also affects his career - Remarks expunged.

**(Case No. Civil Appeal No. 2808 of 2008)**

**State of Orissa & Anr. Versus Rajkishore Nanda & Ors.**

**Date of Judgment : 03-06-2010**

**Judge(s) : Hon’ble Dr. Justice B.S. Chouhan and Hon’ble Mr. Justice Swatanter Kumar**

Subject Index: Selection List - In order to fill up 15 posts of Junior Clerks in District Sonapur, applications were invited by an advertisement dated 25.06.1995. The advertisement made it clear that number of vacancies could be increased. The

respondents applied along with large number of persons and written examination was held in accordance with the Orissa Ministerial Service (Method of Recruitment to Posts of Junior Clerks in the District Offices) Rules, 1985. Before the selection process could complete, the number of vacancies were increased from 15 to 33 and as per the requirement of Rules, 1985, a merit list of 66 candidates was published on 6.11.1995. The appointments were made on the said posts. The respondents, whose names appeared in the merit list and could not be offered appointment, being much below in the merit list, filed applications before the Tribunal praying for a direction to the State to offer them appointments. The Tribunal directed to offer appointment to all left over candidates in the select list of 1995.

State preferred the writ petition. High Court, vide Judgment and order dated 26.10.2005, modified the order of the Tribunal issuing direction to the appellants to offer appointment to those persons who had approached the Tribunal – Further appeal to Supreme Court – Contention of the State that number of vacancies cannot be filled up over and above the number of vacancies advertised. Once the advertised vacancies are filled up, the selection process stands exhausted and the selection process comes to an end. - Observed by the Supreme Court - A person whose name appears in the select list does not acquire any indefeasible right of appointment. Empanelment at the best is a condition of eligibility for purpose of appointment and by itself does not amount to selection or create a vested right to be appointed - Select list cannot be treated as a reservoir for the purpose of appointments, that vacancy can be filled up taking the names from that list as and when it is so required - It is the settled legal proposition that no relief can be granted to the candidate if he approaches the Court after expiry of the Select List - Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law - The appeal allowed - Judgments and orders of the Tribunal and the High Court set aside.

**(Case No. Civil Appeal No. 973 of 2007)**

**Manohar Lal (Dead) by Lrs. Versus Ugrasen (Dead) by Lrs. & Ors.**

**Date of Judgment : 03-06-2010**

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

Subject Index: Land Acquisition – Exercise of Revisional Power by the State in the guise of Administrative Action – Land acquired by the Govt. belonging to the predecessors in interest of the parties, somewhere in mid Sixties. As per the existing policy,

the persons whose big chunk of land was acquired, they were given 40% of land in developed area. Both the parties stated to have applied for allotment in lieu of the acquired land, however the application of Manohar Lal was suspicious. Ugrasen was offered certain land. Manohar Lal's application was pending. He moved application to the Govt. Chief Minister directed, on his application, for allotment of certain land which was already given to Ugrasen. Ugrasen had already moved the High Court by way of Writ Petition and the Court had issued order interim injunction. After a round of litigations in High Court, matter reached the Supreme Court - Three substantial questions of law for consideration of the Court were:

(a) Whether the State Government - a Revisional Authority under the Statute, could take upon itself the task of a lower statutory authority?;

(b) Whether the order passed or action taken by a statutory authority in contravention of the interim order of the Court is enforceable?; and

(c) Whether Court can grant relief which had not been asked for?

Held respectively as - No higher authority in the hierarchy or an appellate or revisional authority can exercise the power of the statutory authority nor the superior authority can mortgage its wisdom and direct the statutory authority to act in a particular manner. If the appellate or revisional Authority takes upon itself the task of the statutory authority and passes an order, it remains unenforceable for the reason that it cannot be termed to be an order passed under the Act.

Any order passed by any authority in spite of the knowledge of the interim order of the court is of no consequence as it remains a nullity.

The Court cannot grant a relief which has not been specifically prayed by the parties.

As a consequence, appeal of Manohar Lal dismissed – allotment of Ugrasen confirmed.

**(Case No. Civil Appeal Nos. 2395 of 2008**

**Improvement Trust, Ludhiana versus Ujagar Singh & Ors.**

**Date of Judgment : 09-06-2010**

**Judge(s): Hon'ble Mr. Justice Deepak Verma and Hon'ble Mr. Justice K.S. Radhakrishnan.**

Subject Index: Section 5 Limitation Act - Land belonging to Respondent Nos. 1 to 4 was acquired by the appellant, for development scheme popularly known as "550 Acres Scheme". Reference Court had passed the Award and fixed the amount of compensation at Rs. 4,27,068.20 together with interest at the rate of 9% per annum from the date of the issuance of the notification in favour of

Respondent Nos. 1 to 4. The appellant did not deposit the amount. Respondent Nos. 1 to 4 approached Executing Court for recovery of the amount awarded. Property of the Respondents was attached for realisation of the decretal amount. Later a notice under Order 21 Rule 66 CPC was issued to the appellant. Despite service of notice, none appeared on behalf of the appellant /judgment debtor. The property was put to an auction sale. Respondent No. 5 being highest bidder, sale confirmed in its favour.

The appellant filed objections under Order 21 Rule 90 CPC. Executing Court framed issues. The case was fixed for recording of the evidence of judgment-debtor. However, none appeared on behalf of the appellant. Consequently, the evidence of appellant/judgment debtor was closed, appellant's objections came to be dismissed in default.

The appellant thereafter filed miscellaneous appeal challenging the validity of the orders passed. Said appeal was barred by limitation by two months and few days. Application under Section 5 of the Limitation Act was filed to condone delay but was dismissed by the Appellate Court as no good and sufficient grounds were shown. Consequently the appeal was also dismissed. Appellant under some mistaken advice filed execution second appeal in the High Court. Learned Single Judge converted the appeal into civil revision and proceeded to decide as such. High Court also dismissed the Revision – Appeal to Supreme Court – Contended that the Advocate representing the Appellants had not kept them duly informed about the proceedings and the dismissal of objections by the Executing Court, for that reason the appellants could not file the appeal in time. Held - Unless *mala fides* are writ large on the conduct of the party, generally as a normal rule, delay should be condoned. In the legal arena, an attempt should always be made to allow the matter to be contested on merits rather than to throw it on such technicalities – Appeal allowed – costs Rs. 50000/-. Merits of the matter to be decided by the Executing Court.

**(Case No. Cr. Appeal No. 2496 of 2009  
Nanhar & Ors. Versus State of Haryana  
Date of Judgment: 11-06-2010**

**Judge(s) : Hon'ble Mr. Justice Deepak Verma and  
Hon'ble Mr. Justice K.S. Radhakrishnan.**

Subject Index: Sections 302/149 IPC – Appreciation of evidence - Accused were alleged to have caused death of one Vijay Kumar, by administering poisonous substance mixed in alcohol. Deceased was suspected to be having illicit relations with wife of one of the accused. Brother of deceased, who came to know about the death, lodged report with

police. Inquest was conducted by police. During inquest, one pocket telephone index was recovered. In evidence a dying declaration stated to have been recorded by deceased on Match Box, was proved by the marginal witnesses. Trial court convicted the accused and sentenced them to life imprisonment - High Court confirmed the conviction and sentence – Appeal to Supreme Court – observed by the Supreme Court that the recovery of dying declaration appears to be improbable – during inquest no Match Box was recovered, though pocket telephone index was stated to have been recovered – moreover it was not proved if the alleged dying declaration was in the handwriting of deceased, even though it was opined by the Handwriting expert that dying declaration and pocket telephone index were in the same handwriting – Held - When the case is based on circumstantial evidence, it has now been well settled by several authorities of this Court that the chain of circumstances should be complete in all respect and the pointer of guilt should continuously be on the accused only. Any deviation of the pointer of guilt on the accused would enure him the benefit of doubt – Appeal allowed – conviction and sentence set aside.

### **Legal briefs from High Court of J&K**

**(Case No. LPA(SW) No. 246 of 2004)**

**Union of India & Ors. v. Narinder Pal Singh**

**Date of Judgment : 01-06-2010**

**Judge(s) : Hon'ble Dr. Justice Aftab H. Saikia,  
Chief Justice and Hon'ble Mr. Justice Sunil Hali**

Subject Index : Service Law - Promotion - Respondent was recruited as Sub-Inspector in the year 1984 and promoted as Inspector on 1990. On the basis of seniority, he became eligible for promotion as Asstt. Commandant in the year 1996. Promotion was denied for the reason that he had not undergone the mandatory Platoon Weapon Course and Company Commander Course. He was sent on deputation and request was made for relieving him for undergoing training course which request was declined by the borrowing department. In a meanwhile, another person junior to him was promoted in the year 2001. Finally, he was also promoted in the year 2002. In the writ petition, the respondent herein stated that despite being senior and eligible for promotion, he was not sent for undergoing training, as such, fault lies with the department and he should have been promoted ahead of his junior. Writ court directed the Union of India and others to grant promotion to him w.e.f. the date his junior was promoted. Appeal by Union of India and others - Held - The writ court has allowed the writ petition solely on the ground that the

writ petitioner was senior to the private respondent and was required to be promoted ahead of the junior. However, the Writ court had not addressed the issue regarding eligibility for promotion having undergone training before the crucial date for determining the eligibility - Appeal allowed - Matter remanded for determination the issue regarding eligibility.

**(Case No. LPA No. 168/2008)**

**Ms. Shaheena Masarat v. State and ors.**

**Judge(s): Hon'ble Mr. Justice Virender Singh and Hon'ble Mr. Justice Muzaffar Hussain Attar**

**Date of Judgment: 13-04-2010**

Subject Index: Rehbar-i-Taleem Scheme / Article 37 CSR – Age - The age which is prescribed for seeking employment under the Govt. as direct recruits is applicable to the posts under Rehbar-i-Taleem Scheme, as also the Sarva Shiksha Abhiyan Scheme. The words 'as far as possible' fulfill the age qualification as prescribed by the Govt., has to be in line with, and has to be declared to be the same which is fixed by the Govt., for appointment as direct recruit. The provisions of the Scheme and the Government order(s) are thus held to provide that the lower and upper age limit fixed by the Government in respect of making selection/appointment to the post(s) under the Government is also applicable to the posts under the R-e-T Scheme. – Article 37 of the CSR is held to be applicable to the engagements under the (Rehbar-i-Taleem) Scheme as well.

**(Case No. SWP No. 1268/1999)**

**Irshada Banoo v. State & ors.**

**Date of Judgment : 03-04-2010**

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

Subject Index : Service Law – Regularisation of Service – Petitioner appointed Knitting Instructor on daily wages, in the year 1994. In terms of SRO 64 of 1994, her services regularised as Helper. Respondents no. 3&4 had obtained interim direction from High Court for consideration for regularisation as Knitting Instructors. Petitioner claimed parity with respondents no. 3&4. Writ Petition filed in the year 1999. Held – While going through the rules applicable, one comes to the irresistible conclusion that the post of Knitting Instructor is a direct recruitment post. If anyone has been appointed or promoted against the said post without adhering to the rules, the said appointment/promotion cannot give a cause for any person for seeking the same relief – Writ Petition dismissed.

**(Case No. SWP No. 1673 of 2008)**

**SC/ST Welfare Association v. Union of India & Ors.**

**Date of Judgment : 20-05-2010**

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

Subject Index : Administrative Tribunal Act, 1985 - Section 14(3)(b) and Notification S.O.(E) of October 31, 2008 - SC/ST Welfare Association filed writ petition seeking direction against the BSNL to consider its members for promotion against the posts in senior time scale in accordance with the reservation policy and rules in vogue. Maintainability of writ petition challenged on the ground that with the issuance of Government of India, Ministry of Personal, Public Grievances and Pension, (Department of Personnel and Trainings) Notification S.O.(E) of October 31, 2008, BSNL was covered under the provisions Administrative Tribunal Act, 1985, as such, matter could be considered by Central Administrative Tribunal - held - After coming into force of Notification S.O.(E) of October 31, 2008, the provision of Section 14(3) of the Administrative Tribunal Act, 1985 would apply to BSNL in relation to the disputes mentioned in Section 14(3)(a) and (b) of the Act - Writ petition dismissed as not maintainable.

**(Case No. OWP No. 198/2001)**

**Abdul Rehman v. State of J&K and Ors.**

**Date of Judgment : 06-04-2010**

**Judge(s): Hon'ble Mr. Justice Mohammad Yaqoob Mir**

Subject Index: Constitutional Law – Legitimate Expectation – SDA invited bids for allotment of Shops in a Shopping Complex, at Doodh Ganga. It was stipulated that in case 60% of Shops were not booked, the SDA shall not construct the Shopping Complex. Petitioner and others gave bids for allotment of shops and deposited earnest money. 60% booking was not received as such SDA re-advertised. Still response was poor. SDA canceled the bids and decided to go ahead with construction of Shopping Complex out of its own resources. Petitioner filed Writ Petition, claiming to have 'legitimate expectation' of allotment of certain shop in the Shopping Complex. Held – (T)he position of the instant case is un-susceptible to the claim of the legitimate expectation because bid of the petitioner has not been accepted obviously for the reason of poor response to the auction notice and when offer for 60% of shops were not received, the respondents could not be forced to accept the offer of the petitioner. So, expectation was dependent upon the satisfaction of the conditions incorporated in the auction notice itself as well as in terms and conditions governing the same. No indefeasible right had accrued to the petitioner so as to claim allotment of shop no. 19, when the Shopping Complex was not constructed on the basis of bid amount or on the basis of installments of the

amounts as were to be received from successful bidders.

**Cr. Revision No. 84 of 2006)**

**Shakeel Ahmed v. Fida Hussain & Ors.**

**Date of Judgment : 01-01-2010**

**Judge(s) : Hon'ble Mr. Justice Sunil Hali**

Subject Index : Section 307, 323, 325, 326, 341, 34 RPC - Framing of charge - Respondents were directed to be tried u/s 323, 325, 326, 341, 34 RPC and were discharged u/s 307 RPC. Challan was directed to be tried by the Judicial Magistrate. Complainant/victim challenged the discharge of accused u/s 307 RPC by contending that merely on the basis of medical opinion the court had discharged accused u/s 307 RPC and the statement of witnesses were not considered which reveal the intention of accused who kill the complaint. Held - While framing charge, the courts will not act as post office, it is required to peruse the record and come to a prima facie opinion that there are sufficient grounds for framing the charge against the accused. The statements of eyewitnesses cannot be overlooked by relying exclusively on the report of the expert evidence. However, the nature of the injuries which are inflicted on the body of the complainant can only be confirmed by the medical evidence. The nature of injuries will reveal the weapon of offence used. - no infirmity in framing of charge by the court below - Revision dismissed.

**(Case No. SWP No. 192/2006)**

**Ghulam Mohammad Makroo v. State of J&K and Ors.**

**Date of Judgment: 25-03-2010**

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

Subject Index: Service Law – Probation – J&K Jails (Subordinate) Service Recruitment Rules, 1985 – Petitioner appointed Warden in J&K Prisons Department. He had to undergo probation for two years and had to undergo basic training course successfully. Petitioner was deputed twice for Training course, but abstained on the grounds of illness. Probation was terminated and was discharged from service – Challenged in Writ Petition – Contended that the order impugned was passed on the basis of unauthorized absence from service, which required holding of enquiry. Held – A person when appointed against a permanent post, on the terms and conditions of his appointment order and the rules governing his service, he does not member of the service but is only on trial during the period of probation. The provision under Section 126 of Constitution of J&K and Article 311 of the

Constitution of India will not be attracted to the case of the probationer except, of course, in the circumstances the probationer is discharged on his alleged misconduct – Petitioner failed to undergo basic training course, as such invited the enforcement of Rule 21(2)(a) of Civil Services (Classification, Control and Appeal) Rules, 1956.

**(Case No. C. Rev. No. 12/2010)**

**Khursheed Ahmed Nath v. National Insurance Co. Ltd. and Ors.**

**Date of Judgment: 19-04-2010**

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

Subject Index: Motor Accident Claim – Jurisdiction of Tribunal – Jurisdiction of the Tribunal was challenged in a claim petition, on the ground that a case under Section 304 RPC was registered and there was no accidental death. Held – The claim petition is based on the allegation that accident has arisen out of the use of the Motor Vehicle which resulted in death of the person. The proceedings in Criminal investigation and in Criminal trial may not, in all circumstances, deter a civil court/tribunal to proceed with the trial/enquiry of a case. The procedure provided for conducting investigation and trying a criminal case is different than that of conducting of enquiry by the learned MACT for arriving at a just and lawful conclusion. The two proceedings may be overlapping in certain areas but that does not mean that a civil Court/Tribunal loses its jurisdiction to enquire into the matter and pass appropriate orders in accordance with law - Tribunal has jurisdiction to entertain and try the claim.

**(Case No. Cr. Rev. No. 17/2007)**

**Ghulam Hassan Shah v. Saima Hassan and Ors.**

**Date of Judgment : 08-04-2010**

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

Subject Index: Section 488 CrPC – Maintenance allowance – Bona-fide offer – In a petition for grant of maintenance allowance to wife and children, trial Magistrate passed order for grant of maintenance. Order upheld in Revision by Session Judge. Further Revision against order of Session Judge, on the ground that bona-fide offer was made by the Husband to maintain wife and children, if they reside with him, and the said offer was not considered by both the Courts below. Held – A mere offer by the husband to maintain his wife on condition of her living with him does not ipso facto help the husband wriggle out of his responsibility to pay maintenance allowance to his wife. The husband has to convince the court that the offer is sincere and bona-fide and that the wife does not have sufficient cause to refuse

to live with him. The wife in turn has right to persuade the Magistrate that she has a valid ground to refuse to live with her husband. The Magistrate has to apply his mind to the case set up before him by the husband as well as the wife and thereafter make an order including, an order for maintenance notwithstanding such offer. The Magistrate in the later case has to record his satisfaction that there is just ground for making an order under Section 488 CrPC - Order of Courts below upheld.

## CASE COMMENTS

**Sunderlal Kanaiyalal Bhatija**

v.

**State of Maharashtra & Ors.**

**AIR 2010 SC 1666**

In this case, the Hon'ble Supreme Court has ruled that confessional statement recorded in terms of provisions under TADA Act shall be valid for the offences under other laws being tried together, however, where the offences are mainly under other laws, such statement is not valid. The observations of Hon'ble Court are as under :-

“.....A confessional statement, duly recorded by a police officer in a case related to TADA Act and the rules framed thereunder would continue to remain admissible for the offences under any other law, which were tried along with TADA offences under Section 12 read with Section 15 of the Act in the same trial. But here is a case, where the allegation was mainly for the offences under the IPC and some offences under the TADA Act were also incorporated initially, but later on the same were dropped. Consequently, charges in the said case were framed only for offences under the IPC, and not under the TADA Act and the trial is also only for offences under the IPC and not under the TADA Act. Therefore such confessional statement made by the respondent no. 4 under the TADA Act, in a different case, cannot be used utilised by the prosecution in the present case, as the charges were framed only for the offences under the Indian Penal Code.”

**Jitender Kumar Singh v. State of U.P.**

**AIR 2010 SC 1851**

In this case, the Hon'ble Supreme Court has held that the observation of a Court in a judgment are not to be taken in isolation of facts and circumstances of the case. A judgment in order to be a precedent has to be read in given facts and circumstances. It has been observed by the Hon'ble Court as follows :

“..... merely quoting the isolated observations in a judgement cannot be treated as a precedent *dehors* the facts and circumstances in which the aforesaid observation was made.”

**Punjab & Haryana High Court at Chandigarh**

v.

**Megh Raj Garg and another**

**2010 (4) Supreme 464**

Many a times a claim is made by the employee to change date of birth recorded in the service record, even at the fag end of the service carrer. In this regard, the Hon'ble Supreme Court has observed that such claims at belated stage cannot be entertained. It has been held as under :

“Claim for modification/correction in the date of birth, recorded in the service record, made by the employees, long after entering into service cannot be entertained.”

**Dinesh Kumar v. Yusuf Ali**

**2010 (4) Supreme 481**

Hon'ble Supreme Court has cautioned the trial courts to adopt a balanced approach as regards the eviction of tenant on the ground of personal necessity of the land-lord. This approach should be neither pro land-lord nor pro-tenant. It has been observed as under :

“The land-lord is the best judge of his *bona fide* needs - Courts should not dictate how the landlord should live - However, the need must be genuine and honest as distinguished from mere desire - The courts should adopt a balanced approach.”

**S.P. Gupta v. Ashutosh Gupta**

**2010 (4) Supreme 510**

There are certain disputes which involve the civil as well as criminal consequences. In those matters civil and criminal proceedings can be launched simultaneously. The sure test as regards the maintainability of criminal proceedings is that from the very beginning, the intention was to commit some wrong which is covered under any law as an offence. If from the circumstances, it appears that initially the intention was not to commit the offence, the matter would fall only under civil dispute. It has been held as under :-

“A dispute may have civil as well as criminal connotations. If at the very initiation of the negotiations it was evident that there was no intention to cheat, the dispute would be of a civil nature and if from the very initiation intention to cheat is evidenced, criminal complaint would be competent. But such a conclusion would depend on the evidence to be led at the time of trial.”