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(ii) Statutory discretion - Exercise of the discretion must be based on reasonable grounds and cannot lapse into the arbitrariness or caprice anathema to the rule of law envisaged under Art.14 of the Constitution - However, onus to prove the discrimination is on complainant - Abkari Act - s.14 - Foreign Liquor (Compounding Blending, Bottling) Rules, 1975 - r.4. - Constitution of India, 1950 - Art. 14 - Evidence Act, 1872 - s.10 - Onus to prove.

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(Also see under: Service Law)

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(Also see under: Liquor)

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- (1) Acquisition of land owned by Government -
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but if some private rights have been created in
such land or the land has some encumbrances,
such land can be acquired - In the instant case, the
subject land though owned by Government,
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rights to the private party and, as such, could have
been acquired under Land Acquisition Act - Land
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- (2) Release of land from acquisition - Agreement
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- Application for licence for setting up distillery unit
- Non-consideration of - After intervention of the
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distillery licence by issuing writ of mandamus -
Grant of the same was within the discretionary
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SERVICE LAW:

(1) Appointment/Recruitment/Selection: Allocation of certain marks for NCC/Sports and computer course certificates - The certificate marks were made component of Interview marks - Unsuccessful candidates challenging the bifurcation of the marks of the interview - Single Judge of High Court held the same as arbitrary and violative of Art. 14 - Division Bench of High Court upholding the order of Single Judge further recommended that proficiency in NCC/Sports or Computer should have been adjudged by the Interview Board and marks therefor should have been added in the range of 0 to 5 instead of 7 - Held: The method applied by the selecting authority was not wrong - The selection process was not discriminatory and there was no breach of provisions of Arts. 14 and 16 of the Constitution - High Court has imposed its own reading of the requirements of the selection process on the Interview Board - It is not the job of the Court to substitute what it thinks appropriate for that which selecting authority decided as desirable - Proposal of High Court amounts to re-

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writing the rules for selection, which is impermissible while exercising the power of judicial review - Judicial Review - Scope of.

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(2) Ex-cadre post - Created on the basis of a proposal under a Scheme - Appointment on - Plea of appointee to make it ex-cadre - Held: The post was treated as ex-cadre from the very inception and it was well within the knowledge of the appointee - An appointment outside the cadre cannot be considered to be made to temporary post borne on the cadre.

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(3) Pension - Calculation of - Government order - While calculating pension, classified the employees retiring before and after 1.6.1988 - Lower component of 'dearness pay' was extended to the employees retiring after 1.6.1988 vis-à-vis the employees who retired prior thereto - Held: Such classification is arbitrary and discriminatory and is liable to be set aside as violative of Arts. 14 and 16 of the Constitution - Constitution of India, 1950 - Arts. 14 and 16 - Tamilnadu Pension Rules, 1976 - r.30.

Kallakurichi Taluk Retired Official Association, Tamilnadu, etc. v. State of Tamilnadu 883

(4) Termination of service - By State or State instrumentality - As per clause in appointment letter providing sole discretion to employer to terminate

the services of employees - Held: State itself or a State instrumentality cannot impose unconstitutional conditions in statutory rules/regulations vis-à-vis its employees, in order to terminate the services of its permanent employees in accordance with such terms and conditions - The alleged clause of appointment letter is unconscionable and thus Service Condition Rules held violative of Art.14 of the Constitution to this extent.

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WORDS AND PHRASES:

(1) 'Control' and 'pervasive control' - Meaning of.

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(2) 'Dearness Pay' - Meaning of.

Kallakkurichi Taluk Retired Official Association, Tamilnadu, etc. v. State of Tamilnadu 883

(3) 'Encumbrance' - Meaning of.

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(4) 'Void', 'discrimination' - Meaning of.

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WRITS:

(1) Mandamus - A Writ of Mandamus can be issued only when a legal right is established against an authority who has legal duty emanating in discharge of public duty or operation of law - Court to issue the writ of mandamus keeping in mind the legislative scheme, its object and purpose, subject matter, evil sought to be remedied, State's exclusive privilege etc.

(Also see under: Constitution of India, 1950; and Liquor)

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(2) (i) Purpose, nature and grant of - Held: Primary purpose of writ is to protect and establish rights and to impose corresponding imperative duty existing in law - It cannot be granted unless an existing legal right of the applicant and existent duty of the respondent is established - Writ does not create or establish a legal right, but enforces one which stood already established - The writ is equitable in nature and thus its issuance is governed by equitable principles - Grant of writ is at the discretion of the Court - Courts to exercise such discretion on the ground of public policy, public interest and public good.

(ii) Writ of Mandamus - Grant of - Criteria, discussed.

(Also see under: Constitution of India, 1950)

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