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(Also see under: Chandigarh Educational Service (Group A Gazetted) Government Arts and Science College Rules, 2000; and Service law).

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(i) s.2(f) - Repair and maintenance work of

machinery used in manufacturing the end product - Metal scrap and waste arising out of such repair and maintenance work - Held: Such repair and maintenance work would not amount to manufacturing activity in relation to production of end product - Therefore, scrap and waste cannot be said to be a by-product of end product - No excise duty payable on generation of such scrap and waste.

(ii) ss.2(f), 3 - Excisability of goods - Held: Goods have to satisfy the test of being produced or manufactured in India - Simply because a particular item is mentioned in the First Schedule, it cannot become exigible to excise duty - The charging section s.3 of the Act comes into play only when the goods are excisable goods u/s.2(d) of the Act falling under any of the tariff entry in the Schedule to the Tariff Act and are manufactured goods in terms of s.2(f) of the Act - Therefore, the conditions contemplated u/s.2(d) and s.2(f) have to be satisfied conjunctively in order to entail imposition of excise duty u/s.3 of the Act - Central Excise Tariff Act, 1985.

(iii) s.2(f) - Manufacture - Held: Process of manufacture in terms of s.2(f) includes any process incidental or ancillary to the completion of the manufactured product - The process in manufacture must have the effect of bringing change or transformation in the raw material and this should also lead to creation of any new or distinct and excisable product.

(Also see under: Interpretation of Statutes)

Grasim Industries Ltd. v. Union of India 1013

CENTRAL EXCISE TARIFF ACT, 1985:

(See under: Central Excise Act, 1944). 1013

CENTRAL RESERVE POLICE FORCE ACT, 1949:
 ss. 10 (n) and 12 (1).
 (See under: Service law)... 1189

CHANDIGARH EDUCATIONAL SERVICE (GROUP
 A GAZETTED) GOVERNMENT ARTS AND
 SCIENCE COLLEGE RULES, 2000:

Appellant-Chandigarh Administration notified 2000 Rules, framed in consultation with UPSC and sent to the Government of India for being issued in the name of President of India - Pending consideration of the Rules, advertisement in terms of 2000 Recruitment Rules issued prescribing Ph.D. as eligibility criteria for appointment to the post of Principal - Validity of the advertisement - Held: The advertisement in terms of 2000 Recruitment Rules was valid - Even in the absence of valid rules, the appellant, in exercise of its executive power, could issue administrative instructions from time to time in regard to all matters which were not governed by any statute or rules made under the Constitution or a statute. (Also see under: Administrative law; and Service law).

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 Director Public Instructions (Colleges),
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 and Ors.* 398

CODE OF CIVIL PROCEDURE, 1908:

(1) (i) s. 35(1), CPC read with Chapters 11, 5 and 23 of Delhi High Court Rules - Costs - Appeal against vacating of an interim order - Dismissed by High Court with costs of Rs. 45,28,000/- - Held: High Court could not have awarded costs exceeding the scale that was prescribed in the Schedule to the Rules - Doing so would be contrary

to the Rules and, as such, also contrary to s.35, CPC which makes it subject to the conditions and limitations as may be prescribed and the provisions of law for the time being in force - Awarding of realistic costs should be in accordance with law - The 'actual realistic cost' should have a correlation to costs which are realistic and practical - It is suggested that the Rules be amended to provide for 'actual realistic costs' - The object is to streamline the awarding of costs and to simplify the process of assessment, while making the cost 'actual and realistic' - *Salem Advocates Bar Association* case, explained.

(ii) ss. 35(1) and (2) - Costs - Discretion of court - Held: The discretion of the court is subject to such conditions and limitations as may be prescribed and to the provisions of law for the time being in force - Where the court does not direct that costs shall follow the event, it shall state the reasons in writing - The mandate of sub- s.(2) should be strictly followed.

(iii) s.35-A - Exemplary costs in respect of false or vexatious litigation - Held: In order to discourage false and vexatious claims, the compensatory costs has to be brought to a realistic level- A small sum of Rs. 3,000/- would not make much difference - The Court is of the view that the ceiling in regard to compensatory costs should be at least Rs. 1,00,000 - The description of the costs awardable u/s. 35 A "as compensatory costs" gives an indication that is restitutive rather than punitive - The costs awarded for false or vexatious claims should be punitive and not merely compensatory - In fact, compensatory costs is something that is contemplated in s. 35B and s.35 itself - Therefore,

the Legislature may consider award of punitive costs' u/s. 35 A.

(Also see under: Arbitration and Conciliation Act, 1996; Court Fee; and Legislation)

Sanjeev Kumar Jain v. Raghubir Saran Charitable Trust 744

(2) s. 92(1)(g) - Public charities - Trust created for public purpose of a charitable nature i.e. running the school - Allegations of mis-management - Suit for settling a scheme - Maintainability of - Held: As per s.92, two or more persons having interest in the Trust may institute such a suit where such persons make out a case of breach of any Trust created for public purpose - One of the purpose set out in sub-s.(1)(g) is settling a scheme - High Court realized that a proper scheme for administration of Trust was necessary and, therefore, rightly framed the scheme considering the object of the Trust.

(Also see under: Trusts)

Dr. T. Varghese George v. Kora K. George & Ors. 1070

(3) O. 6, r.17 - Purpose and object of - Held: Is to allow either party to alter or amend his pleadings in such manner and on such terms as may be just - Amendment cannot be claimed as a matter of right and under all circumstances, but, courts while deciding such prayers should not adopt a hyper-technical approach - Liberal approach should be the general rule particularly, in cases where the other side can be compensated with costs - Normally, amendments are allowed in the pleadings to avoid multiplicity of litigations - Pleadings.

(Also see under: Supreme Court Rules, 1966)

State of Madhya Pradesh v. Union of India & Anr. 140

(4) O. 21 r. 18.
(See under: Hindu Succession Act, 1956; and Partition.) 968

CODE OF CRIMINAL PROCEDURE, 1973:

(i) ss.211 to 215 - If the ingredients of the section charged with are obvious and implicit, conviction under such head can be sustained irrespective of the fact whether the said section has been mentioned or not in the charge - Omission or defect in framing of charge would not disable the court from convicting the accused for the offence which is found to have been proved on the evidence on record.

(ii) ss.211 to 215 - Framing a charge - Purpose of - Held: Is to give intimation to the accused of clear, unambiguous and precise notice of the nature of accusation that the accused is called upon to meet in the course of a trial - In the instant case, from the evidence led by the prosecution the charge of murder was brought home against the appellant - The accused had clear notice of what was alleged against him and he had adequate opportunity of defending himself - No prejudice was caused to him nor was there any failure of justice for non-mentioning of s.302 IPC in the charge since all the ingredients of the offence were disclosed - In the charge it was clearly mentioned that the accused has committed the murder - By mentioning that the accused committed the murder, all the ingredients of the charge were mentioned and the requirement of s.211 (2) was complied with.

(Also see under: Penal Code, 1860; Appeal and Plea)

Mohan Singh v. State of Bihar 327

CONSTITUTION OF INDIA, 1950:

(1) Article 30.

(See under: Trusts) 1070

(2) Article 32, 131 and 226.

(See under: Supreme Court Rules, 1966; Code of Civil Procedure, 1908; and Jurisdiction) 140

(3) Article 51 (j).

(See under: Service Law) 496

(4) (i) Article 136 - New plea - Held: Supreme Court would not entertain a new plea at the hearing of the appeal under Art. 136 when it is not raised in the High Court or in the petition seeking leave to appeal - However, there are exceptional cases in which the Court may permit a party to raise a new plea - The question sought to be raised in the instant matter is a pure question of law for which factual foundation is already laid - Therefore, having regard to the facts of the case, the Court has permitted the point to be raised.

(ii) Articles 233, 234, 235 - Subordinate Judiciary - Control over - Held: Art. 235 provides that control over the subordinate courts is vested in High Court of a State is exclusive in nature, comprehensive in extent and effective in operation and is a mechanism to ensure and subserve a basic feature of the Constitution, i.e. independence of judiciary - High Court alone is the sole authority competent to initiate disciplinary proceedings against subordinate Judicial Officers or to impose

various punishments including the order of compulsory retirement on verification of the service record - Basic structure theory.

(iii) Article 235 r/w Arts. 163 and 239AA - Recommendation of High Court to Governor - Nature of - Held: The Governor, under the scheme of Arts. 233, 234 and 235 cannot refuse to act in terms of the recommendations made by High Court on the ground that he is not aided and advised by the Council of Ministers - In the matter of compulsory retirement of a Judicial Officer, the Governor cannot act on the aid and advice of Council of Ministers but has to act only on the recommendation of the High Court - Order of Lt. Governor compulsorily retiring the Judicial Officers without seeking aid and advice of his Council of Ministers is neither ultra vires nor illegal.

(Also see under: Service law; and Administration of justice.)

Rajendra Singh Verma (Dead) Through Lrs v. Lt. Governor of Nct of Delhi 496

(5) Article 142.

(See under: Social Status Certificate). 986

(6) Article 142 - Held: Power under Article 142 is a constitutional power and not restricted by statutory enactments - However, no order would be passed which would amount to supplant the substantive law applicable or ignoring statutory provisions dealing with the subject - Supreme Court under Article 142 would not ordinarily direct quashing of a case involving crime against the society, particularly, when courts below found that the charge leveled against the accused under the Act was made out and proved.

(Also see under: Prevention of Corruption Act, 1988)

A.B. Bhaskara Rao v. Inspector of Police, CBI Visakhapatnam 718

(7) Article 226 - Illegal encroachments/constructions on footpaths and public streets in the market -Writ petitions - High Court issuing various directions to the Municipal Corporation for construction of a new market complex - Held: High Court did not overstep its legitimate and legal jurisdiction while continuing to pass orders constituting a Committee to supervise the construction of the shopping complex - Such directions can be issued by the High Court while exercising its powers under Article 226 - High Court passed various orders on the basis of consensus of the parties -- The directions issued by the High Court safeguard not only the interest of the Municipal Corporation and general public but also all the shopkeepers who are running their business in the market and, thus, cannot be faulted with - Town planning - Urban Development -- Public interest litigation.

Rakesh Sharma & Ors. v. State of M.P. & Ors. 351

(8) (i) Article 226 - Writ petition in public interest filed by the person engaged in the welfare of sewage workers, raising issues relating to safety and protection of sewage workers - Held: High Court, by entertaining the writ petition and issuing directions for protection of the persons employed to do the work relating to sewage operations, discharged its obligation to do justice to the disadvantaged and poor sections of the society - The superior courts will be failing in their

constitutional duty if they decline to entertain petitions filed by genuine social groups, NGOs and social workers for espousing the cause of those who are deprived of the basic rights available to every human being - Courts are not only entitled but are under constitutional obligation to take cognizance of the issues relating to the lives of the people who are forced to undertake jobs which are hazardous and dangerous to life.

(ii) Article 226 - Judicial interference - Plight of workers employed/engaged for doing work inherently hazardous and dangerous to life - Writ petition - Directions issued by High Court relating to safety and protection of sewage workers - Held: It cannot be said that by issuing directions, High Court assumed the legislative power of the State - What the High Court did was nothing except to ensure that those employed/engaged for doing the work which is inherently hazardous and dangerous to life are provided with life saving equipments and the employer takes care of their safety and health - The State and its agencies/instrumentalities cannot absolve themselves of the responsibility to put in place effective mechanism for ensuring safety of the workers employed for maintaining and cleaning the sewage system - Argument of choice and contractual freedom not available to appellant-public authority and the like for contesting the issues raised in the writ petition.

(iii) Article 142 and 136 - Enhancement of compensation - Exercise of power u/Article 142 - Death of sewage workers - Writ Petition - Interim directions of High Court directing payment of compensation of Rs.1.5 to 2.25 lakhs to families of deceased workers - Challenged by Jal Board - Held: Challenge not tenable - However, High

Court should have awarded compensation which could be treated as reasonable - High Court could have taken note of the increase in the cost of living and done well to award compensation of at least Rs.5 lakhs to the families of those who died due to negligence of Jal Board which did not take effective measures for ensuring safety of the sewage workers - Public Interest Litigation - Human Rights - Plight of sewage workers. (Also see under: Public Interest Litigation).

Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers & others 34

(9) Article 226 - Proceedings under - Power of High Court - Held: High Court does not sit as an appellate authority over the findings of the disciplinary authority - Where the findings of the disciplinary authority are supported by some evidence, High Court does not re-appreciate the evidence and come to a different and independent finding on the evidence - On facts, High Court re-appreciated the evidence and arrived at the conclusion that the Bank Manager was not guilty of any misconduct - Order of High Court quashing the dismissal of the Bank Manager, set aside. (Also see under: Service law).

State Bank of India v. Ram Lal Bhaskar & Anr. 1036

(10) Articles 226, 227. (See under: Service law) 1033

(11) (i) Article 226 - Writ petitions in public interest alleging illegal shifting of reservation of a primary school from a plot and granting permission to develop the plot for private residences - Held: The

development permission was granted by-passing the objections of the department of the Government and the Municipal Corporation, and flouting all relevant provisions of law - The Municipal Corporation was asked to withdraw the appeal against the judgment holding that acquisition has lapsed - It is a clear case of mala fide exercise of powers and, therefore, High Court was justified in canceling the development permission which was granted by the State Government - Consequently, the construction put up on the basis of such permission had to be held to be illegal - Maharashtra Regional and Town Planning Act, 1966.

(ii) Article 226 - Writ petitions - Strictures passed by High Court - Held: The then Minister of State acted clearly against the provisions of law though he was fully informed about the same - He was aware about the land owner's connection with the developer and latter's relationship with the then Chief Minister, and acted for the benefit of the developer at the instance of the Chief Minister, as has rightly been inferred by the High Court - Chief Minister's relationship with the developer is established - The basic order granting no objection to an illegal action is signed by the Chief Minister himself - The strictures passed by High Court against the then Chief Minister and the then Minister of State are maintained - However, though the acts of the Municipal Commissioner clearly amounted to failure on his part to discharge his duty correctly, but as he had no personal interest in the matter and was acting under the directions of his superior, the remarks against him are deleted.

(iii) Article 226 - Direction by High Court to initiate criminal proceedings against the persons responsible - Held: High Court itself did not attribute any personal motive to the Municipal Commissioner and the Minister of State - Therefore, direction for criminal investigation against them cannot be sustained - Though the conduct on the part of the then Chief Minister *prima facie* amounts to misfeasance, but as there is no *prima facie* finding in the judgment rendered way back in 1999, the direction of High Court to make criminal investigations through an impartial agency cannot be sustained and is set aside.

(iv) Articles 226 and 136 - High Court directing removal of illegal construction of residential apartments raised on a plot reserved for a primary school - Held: The building meant for private sale must be either demolished or put to a permissible use - The illegal construction has resulted into a legitimate primary school not coming up on the disputed plot of land - The loss suffered by the children and the cause of education is difficult to assess in terms of money, and in a way could be considered to be far more than the cost of construction of the building - It will, therefore, be open to the developer to redeem himself by offering the entire building to the Municipal Corporation for being used as a primary school or for the earmarked purpose, free of cost - Directions for taking the necessary steps in this behalf within the stipulated frame, given - As regards the tenants, they shall continue in the building as tenants of the Municipal Corporation for residential purpose.

(Also see under: Maharashtra Regional and Town Planning Act, 1966; Public Interest

Litigation; and Urban Development).

Shri Girish Vyas. v. State of Maharashtra 781

(12) Article 235 - Control of High Court over subordinate courts - Held: Includes general superintendence of the working of the subordinate courts and their staff - Word 'control' in Article 235 is used in the comprehensive sense - It includes the control and superintendence of the High Court over the subordinate courts and the persons manning them both on the judicial and administrative side - Control over the subordinate courts vests in the High Court as a whole - However, it does not mean that a Full Court cannot authorize the Chief Justice in respect of any matter whatsoever.

Registrar Gen., High Court of Judicature at Madras v. R. Perachi. 661

(13)(i) Article 338(5) (b) (as originally stood) and Article 338-A - National Commission for Scheduled Castes and Scheduled Tribes - Powers of - Held: The power under clause (5)(b) of Article 338 did not entitle the Commission to hold an inquiry in regard to the caste status of any particular individual, summon documents, and record a finding that his caste certificate is bogus or false - If such a complaint was received about the deprivation of the rights and safeguards, it will have to refer the matter to the State Government or the authority concerned with verification of caste/tribal status, to take necessary action - The scope of the duties of the Commission did not involve inquiry or adjudication in regard to the rights of parties or caste status of the parties - The same is the position under Article 328-A providing for a

separate commission for Scheduled Tribes with identical duties - In the instant case, though the Commission ultimately directed the State Government to conduct the verification of the genuineness of the Scheduled Tribe certificate, it categorically recorded a finding that the person concerned had secured a false certificate - The order of the Commission, therefore, cannot be sustained - High Court was justified in setting aside the said order - Social status certificate.

(ii) Article 226 r/ w Articles 338 and 338-A - Writ petitions alleging that the person complained against had obtained false certificates showing him as belonging to a Scheduled Tribe - Dismissed - Effect of - Held: The fact that two writ petitions were filed at some point of time, challenging the claim of the person complained against that he belonged to a Scheduled Tribe may not be conclusive as the first writ petition was dismissed on the ground that it involved disputed questions of fact which could not be gone into in a writ proceeding and the second writ petition was dismissed on the ground that investigation into the allegations of forged certificates was in progress - Therefore, even though the Commission was not entitled to hold an inquiry and record a finding that the person complained against did not belong to a Scheduled Tribe, having regard to clauses (5)(b) and (f) of Article 338, it had the power and authority to require the State Government or the caste verification Committee constituted by the State Government, to examine the caste status of the person concerned - High Court was, therefore, not justified in holding that in view of the disposal of earlier writ petitions, the dispute relating to tribal

status of the person concerned, had attained some kind of finality.

Collector, Bilaspur v. Ajit P. K. Jogi & Ors. 1045

COSTS:

(See under: Code of Civil Procedure, 1908; Arbitration and Conciliation Act, 1996; Court Fee; and Legislation.) 744

COURT FEE:

Litigation - Court fees - Held: Except in the case of few categories of suits where court fee is ad valorem, in majority of the suits/petitions and appeals arising therefrom, the court fee is a fixed nominal amount - The fixed fees that are payable, prescribed decades ago, have not undergone a change and in many cases, the fixed fee is not worth the cost of collection thereof - There is, therefore, a need for a periodical revision of fixed court fees that is payable in regard to suits/petitions/appeals filed in courts/tribunals at different levels.

(Also see under: Code of Civil Procedure, 1908; Arbitration and Conciliation Act, 1996; Court Fee; and Legislation)

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Motive - Significance of, and effect of its absence - Discussed.

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	CUSTOMS VALUATION (DETERMINATION OF PRICE OF IMPORTED GOODS) RULES, 1988: rr. 2(1)(f), 4(1)(2) and 10 - Transaction value - Import of crude sunflower seed oil - Actual shipment delayed - Meanwhile increase in price of imported goods - Held : s. 14(1) read with r. 4 provides that the price paid by the importer in the ordinary course of commerce shall be taken to be the value in the absence of any special circumstances indicated in s.14(1) - Therefore, what should be accepted as the value for the purpose of assessment is the price actually paid for the particular transaction, unless the price is unacceptable for the reasons set out in r.4(2) - In the instant case, though the commodity involved had volatile fluctuations in its price in the international market but having delayed the shipment, the suppliers did not increase the price of the commodity even after the increase in its price in the international market - Therefore, the revenue was not justified in rejecting the transaction value declared by the respondents in the invoices submitted by them - Customs Act, 1962 - s.14.	
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	DOCTRINES/PRINCIPLES: (1) Rule of estoppel - Held: A party cannot be permitted to "blow hot and cold", "fast and loose" or "approbate and reprobate" - Where one knowingly accepts the benefits of a contract or conveyance or an order, is estopped to deny the validity or binding effect on him of such contract or conveyance or order - This rule is applied to do equity, however, it must not be applied in a manner as to violate the principles of right and good conscience - The doctrine of election is based on the rule of estoppel - the principle that one cannot approbate and reprobate inheres in it - The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity - By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. (Also see under: Arbitration and Conciliation Act, 1996)	
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(See under: National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007)... 941

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Price and tariff of power - Fixation of - Power generated from bagasse, by-product of sugar industry run by appellant - Held: It would be more appropriate for the APERC, which is a regulatory commission with expertise in determination of price and tariff of power, to decide what would be the price for supply of power by the appellant to respondent no.1 during the disputed period and thereafter - Matter remitted to APERC.

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authentic - There is no doubt that they had duly affixed their signatures on the recovery memos, by which the revolver of the deceased, as also, the mobile handset of the victim were recovered at the behest of accused.

(ii) Circumstantial evidence - SIM/IMEI details - Penal Code, 1860 - s. 302
(Also see under: Penal Code, 1860; and Tele-communication).

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EVIDENCE ACT, 1872:

(1) ss. 3 and 30 - Extra-judicial confession of a co-accused - Evidentiary value of - Held: In dealing with a case against an accused, the court cannot start with the confession of a co-accused; it must begin with other evidence adduced by the prosecution and after it has formed its opinion with regard to the quality and effect of the said evidence, then it is permissible to turn to the confession in order to receive assurance to the conclusion of guilt which the judicial mind is about to reach on the said other evidence - In the instant case, except the evidence of alleged belated recovery of certain articles, which have been found to be doubtful, there is no other evidence on record to connect the accused to the offence - Therefore, he cannot be convicted on the basis of the alleged extra-judicial confession of the co-accused - Penal Code, 1860 - ss. 302 and 392. (Also see under: Penal Code, 1860)

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(2) s.32.
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(4) (i) Denial in evidence - Recovery of revolver and mobile of the victim from the accused - Signatures of the brother and father of the accused on the recovery memo - Denied by them - Held: Neither the brother nor the father of the accused disputed the veracity of their signatures on the recovery memos - It was, therefore, apparent that their signatures, on the recovery memos, were authentic - There is no doubt that they had duly affixed their signatures on the recovery memos, by which the revolver of the deceased, as also, the mobile handset of the victim were recovered at the behest of accused.

(ii) Circumstantial evidence - SIM/IMEI details - Penal Code, 1860 - s.302.
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(1) Property of a Hindu female.
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HINDU SUCCESSION ACT, 1956:

(1) s. 6 (as amended by Hindu Succession (Amendment) Act, 2005) - Devolution of interest in coparcenary property - Rights and liabilities of the daughter - Held: Daughter of a coparcener

becomes a coparcener by birth in her own rights and liabilities in the same manner as the son - This is effective from September 9, 2005 - Right accrued to a daughter in the property is absolute, except where disposition or alienation including any partition/testamentary disposition of property has taken place before December 20, 2004, as provided in the proviso to sub-s. (1) of s. 6.

(Also see under: Partition)

Ganduri Koteshwaramma & Anr. v. Chakiri Yanadi & Anr. 968

(2) s. 14 - Rights of female Hindu - Held: Any property of a female Hindu is her absolute property - She has full ownership over any property that she has acquired on her own or as stridhana - She may dispose of the same as per her wish, and the same shall not be treated as a part of the joint Hindu family property - There is no presumption that of joint family property, and there must be some strong evidence in favour of the same - On facts, trial court rightly held that lands other than the tenanted portion as occupied by propositior, were the absolute self-acquired properties of the Hindu female which she had purchased/acquired from the income and funds from the lands gifted to her.

Marabasappa (D) by LRs. & Ors. v. Ningappa (D) by LRS. & Ors. 435

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Plight of sewage workers - Constitutional obligation of the State and its agencies/instrumentalities or the contractors engaged by them.

(See under: Constitution of India, 1950). 34

INTERPRETATION OF STATUTES:

(1) Excise tariff - Section Note - Held: Has very limited purpose of extending coverage to particular items to the relevant tariff entry in the Schedule for determining the applicable rate of duty and it cannot be readily construed to have any deeming effect in relation to the process of manufacture as contemplated by s.2(f) of the Central Excise Act, 1944, unless expressly mentioned in the said Section Note - Central Excise Tariff Act, 1985. (Also see under: Central Excise Act, 1944).

Grasim Industries Ltd. v. Union of India 1013

(2) Reference to the Statement of Objects and Reasons - Held: The reference to the Statement of Objects and Reasons is for understanding the enactment and the purpose is to ascertain the conditions prevailing at the time the Bill was introduced and the objects sought to be achieved by the proposed amendment - The Statement of Objects and Reasons is not ordinarily used to determine the true meaning of the substantive provisions of the statute - As an aid to the construction of a statute, the Statement of Objects and Reasons appended to the Bill, ordinarily must be avoided - Wild Life (Protection) Act, 1972.

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(1) Identification of accused with the aid of IMEI number.

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(2) Incriminating articles recovered five months after the incident at the instance of accused - Held: The brother of the deceased has signed the discovery statements of all the accused - Articles which are stated to have been discovered are easily available in the market - Belated discovery of these articles raises a question about their intrinsic evidentiary value - The recovery of country made pistol is made more than about six months after the date of incident - The prosecution has not led any evidence to show as to in whose custody this pistol was during the period of six months after the incident - Accused, in his statement u/s. 313 Cr.P.C. has denied that any such recovery was made from him - The evidence relating to discovery of these articles must, therefore, be rejected - Penal Code, 1860 - ss. 302 and 392.

(Also see under: Penal Code, 1860)

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JUDICIAL DISCIPLINE:

Judges deciding a case overlooking the judgment of a co-ordinate Bench - Held: Judges are bound by the earlier decision - They are not expected to take a different view from point of view of judicial discipline.

(Also see under: Service law).

Registrar Gen., High Court of Judicature at Madras v. R. Perachi. 661

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JURISDICTION:

Constitutionality of Central laws - Power of judicial review of the writ courts - On facts, plaintiff-State sought to challenge the validity of a Central law in a proceeding (suit) initiated under Article 131 of the Constitution - Held: Normally, for questions relating to validity of Central or other laws, the appropriate forum is extraordinary writ jurisdiction under Article 32 and 226 of the Constitution in a writ petition and not an original suit filed under Article 131 which vests exclusive jurisdiction on Supreme Court as regards the dispute enumerated therein - Constitution of India, 1950 - Article 32, 131 and 226.

(Also see under: Supreme Court Rules, 1966; and Code of Civil Procedure, 1908).

State of Madhya Pradesh v. Union of India & Anr. 140

LAND ACQUISITION ACT, 1894:

(1) ss. 17(3A), 17(1), 17(4), 11A, 6 and 5A - In view of divergence of opinion, matter referred to the larger bench for consideration of the issues: (i) when land is acquired in exercise of emergency powers u/s. 17 and have since vested in the State, would the acquisition proceeding lapse and land be transferred to the owners/persons interested in case of non-compliance of s. 11A; (ii) whether the provisions of s. 17(3A) are mandatory or directory and in either event, would non-compliance of s. 17(3A) invalidate or vitiate the entire acquisition proceedings, even where the land has

vested in the State; (iii) whether the emergency provisions are to be construed strictly and the safeguards inbuilt in s. 17(3A) are construed as conditions precedent and mandatory for a valid exercise of emergency provisions; and (iv) whether the provisions of the Act are to be construed as a pre-constitutional law in consonance with the fundamental tenets of Article 14.

M/s. Delhi Airtech Services Pvt. Ltd. & Anr. v. State of U.P. & Anr. 191

(2) (i) Construction of dam in State of M.P. - Re-settlement and Rehabilitation policy for oustees - Entitlement of oustees to claim land or compensation in lieu of the land acquired - Order dated 7-6-1991 passed by Narmada Valley Development Department (NVDD) amending Clause 5.1 of the Re-settlement and Rehabilitation Policy, 1991 (R & R Policy) - Challenge to - Held: The amendment only facilitated those oustees who were not willing to take the land in lieu of the land acquired - This may be for the reason that an oustee may be willing to settle in another State or in urban area or want to adopt any other vocation/profession or want to start any other business - However, it did not take away the right of any oustee to claim land in lieu of the land acquired.

(ii) Re-settlement and Rehabilitation policy for oustees - Entitlement of landless labourers to agricultural land - Held: R & R Policy made it clear that there was no provision for allotment of agricultural land to the landless labourers - Even otherwise, it does not appear to reason that a landless labourer could be entitled for allotment of agricultural land admeasuring two hectares - Neither it had ever been contemplated nor it is

compatible with R & R Policy - Nor such land had ever been allotted to this class of persons. (Also see under: Administrative Law).

Narmada Bachao Andolan v. State of Madhya Pradesh 84

LEGISLATION:

Litigation - Costs and court fees - Held: The Law Commission of India, Parliament and the respective High Courts are suggested to make appropriate changes in the provisions relating to costs.

(Also see under: Code of Civil Procedure, 1908; Arbitration and Conciliation Act, 1996; and Court Fee)

Sanjeev Kumar Jain v. Raghubir Saran Charitable Trust 744

LIMITATION ACT, 1963:

Article 119(b) of the Schedule - Period of limitation for filing applications under the Arbitration Act, 1940 for setting aside an arbitral award - Starting point of - Held: An application for setting aside an award has to be filed within 30 days from "the date of service of the notice of the filing of the award" - The starting point of limitation is the date of service of the notice of the filing of the award and not the date of knowledge of the filing of the award - Arbitration Act, 1940.

Union of India & Anr. v. Deepak Electric & Trading Company & Anr. 1198

MADHYA PRADESH RE-ORGANISATION ACT, 2000:

s.58(3) and s.58(4).

(See under: Supreme Court Rules, 1966; Code of Civil Procedure, 1908; and

Jurisdiction) 140

MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966:

(i) s. 23 (1) read with s. 38 - Shifting of reservation of a primary school to a far off place - Held: If the statute provides for doing a particular act in a specified manner, it has to be done in that manner alone and not in any other manner - In the instant case, the shifting of reservation to a far off place, though effected under DC Rule 13.5, was in violation of the said rule and , as such, could not be justified - Once the State Government published the draft Development Plan reserving the plot for a primary school, any construction contrary thereto could not be permitted - Development Control Rule - r. 13.5.

(ii) s. 39 r/w ss. 59, 46 and 165 - Primacy of Development Plan over Town Planning Scheme - Held: Subsequent to the commencement of MRTP Act, as per s. 39 r/w s. 59 thereof, a TP Scheme will have to be in consonance with the DP Plan - s. 39, r/w s. 59 do indicate the superiority of DP Plan over TP Scheme - s. 46 indicates that the moment a draft Development Plan is proposed, permission for contrary development can no more be granted - Therefore, the right claimed under the erstwhile TP Scheme cannot be sustained.

(iii) ss. 50 and 154 - Deletion of reservation - Held: s. 50 provides for deletion of a reservation at the instance of the authority for whose benefit the reservation is made - In the instant case, the acquiring body is the Municipal Corporation, i.e., its general body, which has to be satisfied that the land is no longer required for the public purpose for which it is reserved - The application of the landowner was received directly at the level of the

Minister of State and it was on latter's direction that the Municipal Commissioner gave a report which was used by the State Government, and the Chief Minister approved the shifting of the reservation - Commissioner's opinion could not have been treated as the opinion of the Municipal Corporation, and the State Government could not have made any order sanctioning the deletion of reservation on the basis thereof - s. 154, cannot save the directions issued by the State Government or the actions of the Municipal Commissioner in pursuance thereof.

(iv) ss. 37 and 22A - Development Plan - Modification of - Held: The model of democratic planning involves the participation of the citizens, planners, administrators, Municipal bodies and the Government - The provisions of the Act indicate that once the plan is formulated, one has to implement it as it is, and it is only in the rarest of the rare cases that one can depart therefrom - There is no exclusive power given to the State Government, or to the planning authority, or to the Chief Minister to bring about any modification, deletion or de-reservation, and certainly not by a resort to any of the D.C. Rules - All these constituents of the planning process have to follow the mandate u/s. 37 or 22A, as the case may be, if any modification becomes necessary.

(v) s. 126 - Acquisition of land - Change of purpose during acquisition - Applicability of Land Acquisition Act - Held: MRTP Act is a self-contained code and in the scheme of said Act, substantive provisions of L.A. Act are not applicable - s. 126 (1) (c) specifically states that when an application is made to the State Government for acquiring the land under the L.A.

Act, the land vests absolutely with the Planning Authority - Though the civil court has held the acquisition for the changed purpose under the D.P Plan as bad in law, in the scheme of the MRTP Act, it is not necessary that the original public purpose should continue to exist till the award was made and possession taken - In the instant case, the acquisition cannot be said to be invalid on account of change of purpose during acquisition. (Also see under: Constitution of India, 1950; Public Interest Litigation; and Urban Development)

Shri Girish Vyas. v. State of Maharashtra 781

NATIONAL COUNCIL FOR TEACHER EDUCATION ACT, 1993:

ss. 12(k) 15 and 32 (2) (h).

(See under: National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009) 941

NATIONAL COUNCIL FOR TEACHER EDUCATION (RECOGNITION NORMS AND PROCEDURE) REGULATIONS, 2007:

(i) Regs. 8(4) and 8(5) - Institutions to be accredited with NAAC with a Letter Grade B - Held: In view of ss.12(k), 15 and 32(2)(h) of NCTE Act, the 'Council' is empowered to frame Regulations laying down 'conditions' for proper conduct of a new course or training under clause (a) of sub-s. (3) of s.15 - Under Reg. 8(4), the 'Council' having prescribed a 'condition' of accreditation and Letter Grade B by NAAC for recognition, it can not be held to be sub-delegation of power - National Council for Teacher Education Act, 1993 - ss. 12(k), 15, and 32(2)(h) - Administrative Law - Delegation / sub-delegation of power- National

Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2009-Regulations 8(4) and 8(5).

(ii) Reg. 8(5) - Institution granted additional intake, required to be accredited with NAAC with a Letter Grade B - Held: When Regulations 2007 were enacted, the Regs. 8(3) and 8(4) of Regulations 2005 were retained - In the circumstances, by Reg. 8(5) it was clarified that if any institution has been granted additional intake in B.Ed. and B.P.Ed. courses after enactment of Regulations 2005 i.e. 13.1.2006, such institution is required to be accredited with NAAC with a Letter Grade-B - Regs. 8(3) and 8(4) of Regulations 2005 having been retained, it was always open to NCTE to remind the institutions that they were required to follow Regs. 8(3) and 8(4), if were allowed additional intake after 13.1.2006 - Therefore, Reg. 8(5) cannot be held to be retrospective - Interpretation of Statutes - Retrospective operation of Regulations.

Swami Vivekanand College of Education & Ors. v. Union of India & Ors. 941

NATURAL JUSTICE:

Opportunity of hearing.
(See under: Service Law) 496

NATIONAL COUNCIL FOR TEACHER EDUCATION (RECOGNITION NORMS AND PROCEDURE) REGULATIONS, 2009:

Regs. 8(4) and 8(5).
(See under: National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007) 941

PARTITION:

Partition of coparcenary property - Suit for partition - Preliminary decree - Before passing of the final decree, s. 6 was amended in 2005 - Application by daughters seeking preliminary decree in their favour for partition of schedule property, allotting them one share each, allowed by the trial court - Held: s. 6 (as amended) is not applicable to partition effected before 20.12.2004 - On facts, in the suit for partition only the shares were determined by preliminary decree dated 19.03.1999 which was amended on 27.09.2003 - Commissioner had submitted the report as regards the division of the property and final decree for partition was yet to be passed - O. 21 r. 18 C.P.C. creates no impediment for more than one preliminary decree if after passing of the preliminary decree events have taken place necessitating the readjustment of shares as declared in the preliminary decree - Once a preliminary decree has been passed, it is capable of modification even if no appeal has been preferred from such preliminary decree - Order passed by trial court restored -Code of Civil Procedure, 1908 - O. 21 r. 18.
(Also see under: Hindu Succession Act, 1956).

Ganduri Koteshwaramma & Anr. v. Chakiri Yanadi & Anr. 968

PENAL CODE, 1860:

(1) s.302 - Conviction based on dying declaration - Acquittal by trial court - Conviction by High Court - Held: The dying declaration was totally in conflict with the version of the prosecution as to the time of her burning and the relation of the accused with the victim - There were serious omissions on part

of investigating officer in conducting investigation - The dying declaration was recorded in the absence of doctor - The victim was under the influence of injections and was not supposed to have normal alertness - As per the doctor's report, victim had suffered 95-97% burns injuries - Dying declaration did not carry a certificate by the Magistrate to the effect that it was a voluntary statement made by the victim and that he had read over the statement to her - Trial court rightly rejected the dying declaration - Inasmuch as the dying declaration was the only piece of evidence put forward against the accused, he is entitled to the benefit of doubt - Conviction set aside - Evidence Act, 1872 - s.32.

Surinder Kumar v. State of Haryana 1205

(2) ss.302, 302/34 and 392 - Four accused stated to have caused death of a tractor owner and taken away his tractor - Conviction by trial court - Life imprisonment to two accused and sentence of death awarded to the accused who was stated to have shot at the deceased - High Court commuting the death sentence to life imprisonment - Held: The extra-judicial confession made by one of the accused is the main plank of prosecution case - Five months delay in the extra-judicial confession creates a doubt about its credibility - There is discrepancy as to who shot at the deceased - Further, the accused, in his statement u/s. 313 CrPC denied to have made the said confessional statement - There being no credible evidence to uphold the conviction, the impugned judgments and orders are set aside - Evidence Act, 1872 - ss. 3 and 30 - Investigation - Recovery of incriminating articles.

(Also see under: Evidence Act, 1872 as also under Investigation)

Pancho v. State of Haryana 1173

(3) s.302 - Allegation against the accused that he strangled and killed the victim and buried his dead body - Circumstantial evidence - Conviction upheld by High Court -Held: There were number of incriminating circumstances pointing towards the guilt of the accused - The circumstances were not only established, but they formed a complete chain, that left no manner of doubt, that the crime with which the accused stood charged was committed by him and no one else - Conviction upheld - Circumstantial evidence. (Also see under: Criminal Law).

Amitava Banerjee @ Amit @ Bappa Banerjee v. State of West Bengal 160

(4) s.302 - Murder - Based on circumstantial evidence, conviction upheld by High Court - Held: The evidence produced by the prosecution was based on the irrefutable fact that every mobile handset has an exclusive IMEI number - The use of mobile handset of the victim on which the accused made calls from his own registered mobile phone (SIM) immediately after the occurrence of the murder was a legitimate basis for the identification of the accused - The nexus of the accused with the victim at the time of occurrence stood fully substantiated from the said SIM/IMEI details - The revolver of the victim was also recovered from the accused - Prosecution was able to prove the charges - Conviction upheld - International Mobile Equipment Identity (IMEI) -

Circumstantial evidence - Tele-communication.
(Also see under: Evidence).

Gajraj v. State (NCT) of Delhi 701

(5) s.302 - Murder - Conviction for conspiracy of murder and extortion of money - Upheld by High Court - Held: Courts below considered the evidence of the two investigating officers, apart from the evidence of informant and the other witnesses and the materials on record before coming to the conclusion that the appellant was guilty - Substantive evidence was placed to prove the meeting of minds and criminal conspiracy between the appellant and conspirator about the murder of the victim - There is no reason to interfere with the concurrent finding - Conviction upheld.

(Also see under: Code of Criminal Procedure, 1973; Appeal; and Plea)

Mohan Singh v. State of Bihar 327

(6) ss. 302, 304 (Part-I) - In view of divergence of opinion between the two Judges on the issue of conviction of appellant to be either u/s 302 or u/s 304(Part-I), matter referred to larger Bench.

Ajit Singh v. State of Punjab 375

PETROLEUM AND MINERALS, PIPELINES
(ACQUISITION OF RIGHT OF USER IN LAND)
ACT, 1962:

ss. 2(a), 6,10,11 and 12.

(See under: Administrative law) 1106

PLEA:

New plea - Plea relating to errors in framing of charge/misjoinder of charge raised before

Supreme Court for the first time - Held: Such plea not normally considered by Supreme Court.
(Also see under: Code of Criminal Procedure, 1973; Penal Code, 1860; and Appeal)

Mohan Singh v. State of Bihar 327

PLEADINGS:

(See under: Supreme Court Rules, 1966;
and Code of Civil Procedure, 1908) 140

PREVENTION OF CORRUPTION ACT, 1988:

ss. 7, 13(1)(d)(ii) r/w s. 13(2) - Conviction and sentence upheld by the High Court - Notice limited to question of sentence only - Held: When notice is issued confining to particular aspect/sentence, arguments would be heard only to that extent unless some extraordinary circumstance/material is shown to the Court - When the statute prescribes minimum sentence, long delay in disposal of appeal is not a ground for reduction of sentence - Imposing a lesser sentence than the minimum prescribed in the statute is not permissible under Article 142 - Substantive provisions of a statute cannot be ignored - Order passed by the trial judge imposing six months and one year's sentence under the two counts, as affirmed by the High Court is upheld - Constitution of India, 1950 - Article 142 - Sentence/Sentencing.
(Also see under: Constitution of India, 1950).

*Bhaskara Rao v. Inspector of
Police, CBI Visakhapatnam* 718

PREVENTIVE DETENTION:

Concept of - Held: The detention is not to punish detainee for something he has done but to prevent him from doing it.

(Also see under: Andhra Pradesh Prevention of Dangerous Activities of Boot Leggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986)

G. Reddeiah v. The Government of Andhra Pradesh & Anr. 454

PUBLIC INTEREST LITIGATION:

(1) (See under: Constitution of India, 1950) 351

(2) Human Rights - Issue relating to safety and protection of sewage workers and their entitlement to grant of compensation - Directions issued by High Court in its earlier order dated 20-8-2008 - Non-compliance with - Directions issued by Supreme Court to Jal Board to ensure compliance of clauses (a), (b), (d), (e), (f), (g), (i), (k), (m) and (n) of paragraph 9 of the said High Court order and also to ensure that the said directions are complied with by the contractors for execution of work relating to laying and maintenance of sewer system within the area of its jurisdiction - Jal Board further directed to ensure that directions given by the High Court are made part of all agreements which may be executed by it with contractors/private enterprises for doing work relating to sewage system - Constitution of India, 1950 - Article 136.

(Also see under: Constitution of India, 1950).

Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers & others 34

(3) Locus standi - Writ petition in public interest alleging illegal shifting of reservation for a primary school - Held: Public interest litigation, by its very

nature, is inquisitorial in character - When the cause or issue relates to matters of good governance in the Constitutional sense, and there are no particular individuals or class of persons who can be said to be injured persons, groups of persons who may be drawn from different walks of life, may be granted standing for canvassing the PIL and if the Government action is found to be contrary to law or affecting the rights of citizens, court is required to intervene - In the instant case, there was sufficient foundation in the petition for further steps to be taken by High Court - Constitution of India, 1950 - Article 226.

(Also see under: Maharashtra Regional and Town Planning Act, 1966; Constitution of India, 1950; and Urban Development)

Shri Girish Vyas. v. State of Maharashtra 781

RAJASTHAN TRANSPORT SERVICE RULES, 1979:

rr. 6,10 and 24 - Selection/promotion process - Validity of - Promotion to post of District Transport Officer (DTO) from the post of Motor Vehicle Inspectors - Selection/promotion order dated 8th July, 1994 - Action of the State Government in clubbing all the vacancies of more than 10 years (from 1983-84 till 1993-94) and giving promotions, challenged - Held: The services of the Transport Department in all relevant posts are covered under the provisions of the 1979 Rules and their purpose is to make promotions on merit or merit-cum-seniority in the prescribed proportion of 50:50 - Right from 1983-84 till 1993-94 no examination was conducted by the appropriate authority - Even after 1993-94, the process of selection adopted by the State Government cannot be accepted - The preparation of seniority list, method of

selection and clubbing of vacancies were apparently in violation of the statutory Rules - Selection/promotion order dated 8th July, 1994 accordingly set aside with further directions - Fresh process of selection to be held by the competent authority in accordance with Rules - Secretary (Transport), Government of Rajasthan directed to conduct an enquiry personally and fix responsibility on all the officers/officials responsible for not conducting qualifying examination in accordance with Rules from 1983 to 1994 and subsequent thereto in accordance with law.

(Also see under: Administrative Law).

Jagdish Prasad v. State of Rajasthan & Ors. 1

REFERENCE TO LARGER BENCH:

(1) (See under: Land Acquisition Act, 1894) 191

(2) (See under: Penal Code, 1860) 375

RETROSPECTIVE OPERATION:

Retrospective operation of Regulations.

See under: National Council for Teacher Education (Recognition Norms and Procedure) Regulations, 2007) 941

SENTENCE/SENTENCING:

(See under: Prevention of Corruption Act, 1988). 718

SERVICE LAW:

(1) Appointment/Recruitment/Selection:

(I) Appointment - Post of constable - Name of respondent found place in the provisional select list - Authorities did not appoint him as constable on the ground of concealment of the fact that he was involved in a criminal case involving offences

u/ss.148/323/380/448/427/506, IPC and in that case, charge sheet was also filed in the court and he had surrendered there and was granted bail - High Court directed the authorities to issue the letter of appointment - Held: High Court could not issue mandamus to the authorities to appoint the respondent as constable - Authorities entrusted with the responsibility of appointing constables were under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of constable and so long as the candidate was not acquitted in a criminal case of the charges u/ss.148/323/380/448/427/506, IPC, he could not possibly be held to be suitable for appointment to the post of constable - Order of the High Court set aside - Constitution of India, 1950 - Articles 226, 227.

State of West Bengal and Ors v. Sk. Nazrul Islam 1033

(II) Selection - Mode of selection - Held: It is for the rule-making authority or the appointing authority to prescribe the mode of selection and minimum qualification for any recruitment - Chandigarh Educational Service (Group A Gazetted) Government Arts and Science College Rules, 2000.

(Also see under: Chandigarh Educational Service (Group A Gazetted) Government Arts and Science College Rules, 2000; and Administrative law)

Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh v. Usha Kheterpal Waie and Ors. 398

(III) Selection by promotion.

(See under: Rajasthan Transport Service Rules, 1979)

1

(2) (i) Compulsory retirement - Challenge to - Held: Normally, an aggrieved civil servant can challenge the order of compulsory retirement on any of the grounds: (a) that the requisite opinion has not been formed, or (b) that the decision is based on collateral grounds, or (c) that it is an arbitrary decision - If the civil servant is able to establish that the order of compulsory retirement suffers from any of these infirmities, the court has jurisdiction to quash the same - Administrative Law - Judicial review.

(ii) Compulsory retirement - Held: Is not considered to be a punishment - Un-communicated adverse remarks can be taken into consideration while deciding the question whether an official should be made to retire compulsorily or not - Therefore the principles of natural justice are not attracted - Thus, the fact that the adverse A.C.R. was communicated but none of the officers had an opportunity to represent before the same was taken into consideration for passing order of compulsory retirement, cannot at all vitiate the order of compulsory retirement.

(iii) Compulsory retirement - Range of consideration of service record - Held: While considering the case of an officer as to whether he should be continued in service or compulsorily retired, his entire service record up to that date on which consideration is made has to be taken into account - The fact that an officer, after an earlier adverse entry, was promoted does not wipe out earlier adverse entry at all.

(iv) Compulsory retirement - Officers of Delhi Higher Judicial Service and Delhi Judicial Service - Rules applicable - Held: Rule 16(3) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 would be applicable to the officers of the Delhi Higher Judicial Service - Therefore, the matter regarding pre-mature retirement of officers of the Delhi Higher Judicial Service who have completed 30 years of qualifying service or attained 50 years of age, has to be reviewed in the light of r. 16(3) of the Rules of 1958 - As regards the Officers of Delhi Judicial Service, Fundamental Rule 56(j) shall regulate the matter of compulsory retirement of such Officers - All India Services (Death-cum-Retirement Benefits) Rules, 1958 - r.16(3) - Delhi Higher Judicial Service Rules, 1970 - Delhi Judicial Service Rules, 1970 - Fundamental Rule 56(j).

(v) Compulsory retirement - Stage of consideration - Officers of Delhi Higher Judicial Service and Delhi Judicial Service - Held: There is no rule prohibiting consideration of the case of an officer for compulsory retirement before he attains the age of 55 years, even if his case has earlier been considered at the age of 50 years - The report of the Screening Committee not recommending premature retirement "for the time being" was tentative and not final, which will not preclude the authority concerned from passing orders of compulsory retirement later on - Article 235 of the Constitution enables the High Court to assess the performance of any judicial officer and exercise the power of compulsory retirement at any time with a view to maintain discipline in the service - Constitution of India, 1950 - Article 235.

(vi) Annual Confidential Reports - Judicial Review

of - Held: Writing the confidential report is primarily and essentially an administrative function - Opportunity of hearing is not necessary before adverse remarks because adverse remarks by themselves do not constitute a penalty - Natural justice - Opportunity of hearing.

(vii) Annual Confidential Reports - Purpose of - Explained - Constitution of India, 1950 - Article 51 (j).

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

*Rajendra Singh Verma (Dead) Through
Lrs v. Lt. Governor of NCT of Delhi* 496

(3) Disciplinary proceedings - Charge-sheet issued against a Bank Manager alleging various acts of misconduct - Bank Manager dismissed from service after he had already retired from service - Held: It cannot be said that the order of dismissal was illegal and without jurisdiction - Under r. 19(3) in case disciplinary proceedings were initiated against an officer before he ceased to be in the Bank's service, the disciplinary proceedings, at the discretion of the Managing Director, could be continued and concluded by the authority concerned as if the officer continued to be in service which is only for the purpose of the continuance and conclusion of such proceedings - State Bank of India Officers' Service Rules, 1992 - r. 19(3).

(Also see under: Constitution of India, 1950).

*State Bank of India v. Ram Lal Bhaskar
& Anr.* 1036

(4) Termination/Removal/Dismissal:

(I) Dismissal from service - Constable in Central

Reserve Police Force in state of intoxication snatched rifle of the Assistant Commandant and pointed out barrel towards him - Conviction and sentence of imprisonment till the rising of the court u/s 10 (n) and dismissal from service by order passed u/s. 12 (1) - Held: For less heinous offences enumerated in s. 10, a person was liable for punishment with imprisonment and u/s. 12(1) every person sentenced under the Act to imprisonment was liable to be dismissed from the CRPF - On facts, the acts of indiscipline for which the respondent had been sentenced for imprisonment were serious and grave for a disciplined force - The competent authority was right in imposing the punishment of dismissal from service - Instant case is not where the punishment of dismissal was strikingly disproportionate or where on the face of it there was perversity or irrationality - Central Reserve Police Force Act, 1949 - ss. 10 (n) and 12 (1).

*Commandant, 22 Battalion, CRPF & Ors. v.
Surinder Kumar* 1189

(II) Dismissal from service - Charges against bank-Manager alleging grave lapses in sanction/disbursement in many loan accounts - Dismissal ordered - Held: Plea of the delinquent that non-furnishing/non-inspection of the documents showing irregularities committed by the previous manager of the bank, by the Enquiry Officer was violative of principle of natural justice, cannot be accepted - Enquiry Officer rightly took a view that the said documents had no relevance to the charges against the bank officer in the instant case - Findings of the Enquiry Officer which include serious acts of negligence as also acts of

dishonesty and lack of probity were based on adequate material, mainly bank records referred to in the inquiry report - As such, the High Court rightly did not interfere with the findings of the Enquiry Officer - It cannot be held that punishment of dismissal was shockingly or strikingly disproportionate to the gravity of charges proved against the bank officer.

Panchmahal Vadodara Gramin Bank. v. D.M. Parmar

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(III) Removal of Branch Manager from service for misappropriating part of the loan amount - Single Judge of High Court holding that there were no specific charges in the charge-sheet, quashed the order of removal and directed reinstatement of the employee with continuity in service - Held: Charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges - On facts, only vague allegations were made against the employee - No statement of imputations giving the particulars of the loan accounts or the names of the borrowers, the amounts of loans sanctioned, disbursed and misappropriated were furnished to the employee - Order of Single Judge restored - However, direction to pay Rs.1.5 lacs to the employee as compensation in lieu of arrears of salary set aside.

Anil Gilurker v. Bilaspur Raipur Kshetria Gramin Bank & Anr.

618

(IV) Termination of service - Post of civil judge reserved under category of Other Backward Classes for residents of State of Uttarakhand - Selection of appellant on basis of caste certificate

- Cancellation of caste certificate since the appellant obtained it by showing himself a resident of Uttarakhand in a mischievous manner, while he was actually not a permanent resident of the said State - Held: There was sufficient documentary evidence on record to prove that the appellant was ordinarily resident of U.P. - There is no infirmity in the order of the High Court upholding the order of the Tehsildar canceling the caste certificate of the appellant - Termination order of the appellant upheld - Social status certificate.

Arshad Jamil v. State of Uttarakhand & Ors.

414

(5) (i) Transfer - State Judicial Ministerial Service - Transfer of employee in the subordinate judiciary on administrative grounds - Held: Transfer is an incident of service - One cannot make grievance if transfer is made on administrative grounds, without attaching any stigma - District Judge had opined that retention of the employee concerned in his district was undesirable from the administrative point of view - Action of transfer was on the basis of the report of the Registrar (Vigilance) - Integrity of the officers functioning in the administration is of utmost importance to retain the confidence of the litigants in the fairness of the judicial system - If there is any complaint in this behalf, the Chief Justice is expected to act on behalf of the High Court to see to it that the stream of justice does not get polluted at any level - Thus, the decision of Chief Justice to transfer the employee outside the district could not be faulted.

(ii) Transfer of employee in the subordinate judiciary on administrative grounds - Passing of judicial orders by High Court - Scope of - Held: Is

limited.

(Also see under: Judicial Discipline)

Registrar Gen., High Court of Judicature at Madras v. R. Perachi. 661

SETTLEMENT:

Settlement of dues - PESCO taken over by BSEB - Dispute regarding payment of compensation to PESCO by BSEB in respect of the assets of PESCO resolved by Supreme Court - Non-compliance of directions for payment by BSEB - Interlocutory application disposed of with direction that PESCO was entitled to recover the specified amount from BSEB, since it has been able to prove that the amount had been paid by it to the Bank.

Bihar State Electricity Board v. The Patna Electric Supply Co. Ltd. & Ors. 393

SOCIAL STATUS CERTIFICATE:

(1) Issuance of caste certificate to appellant certifying that he belongs to 'Koli Mahadeo', recognized as a Scheduled Tribe in the State of Maharashtra - Order passed by the Caste Scrutiny Committee that appellant did not belong to 'Koli Mahadeo', Scheduled Tribe - Held: On facts, appellant belongs to Koli tribe which is not a Scheduled Tribe - However, since appellant had been appointed in the service of NABARD for nineteen years, his initial appointment in the service of NABARD not disturbed but he would not be granted any benefit as a member of the Scheduled Tribe - Constitution of India, 1950 - Article 142.

Raiwad Manojkumar Nivruttirao v. State of Maharashtra & Anr. 986

(2) (See under: Constitution of India, 1950). 1045

(3) (See under: Service law).. 414

SPECIFIC RELIEF ACT, 1963:

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challenges the fundamental character of the suit - Also, the amendment application was filed at a belated stage without assigning any reason for the delay - However, plaintiff given opportunity to put forth its stand that the Central Government issued impugned Notifications/Orders without proper guidelines and without affording opportunity to the parties concerned - In the interest of justice, plaintiff-State permitted to raise such objections at the time of trial - Pleadings - Constitution of India, 1950 - Article 131 - Madhya Pradesh Re-organisation Act, 2000 - s.58(3) and s.58(4). (Also see under: Code of Civil Procedure, 1908; and Jurisdiction).	
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