Constitution of India

Art. 5 - Domicile of choice - The Person who claims to have acquired domicile of choice - Has to prove it

The right to change the domicile of birth is available to any person not legally dependant and such a person can acquire domicile of choice. It is done by residing in the country of choice with intention of continuing to reside there indefinitely. Unless proved, there is presumption against the change of domicile. Therefore, the person who alleges it has to prove that. Intention is always lodged in the mind, which can be inferred from any act, event or circumstance in the life of such person. Residence, for a long period, is an evidence of such an intention so also the change of nationality. **(Sondur Gopal v. Sondur Rajini; AIR 2013 SC 2678)**

Article 12, 226/227—Writ jurisdiction—Board of Control for Cricket in India (BCCI), not a State, is amenable to jurisdiction of the High Court since it discharges public functions

The proceedings that led to the setting-up of the Committee arose out of a public interest petition. The directions issued by this Court proceeded on a clear finding recorded by this Court that even when BCCI is not a state within the meaning of Article 12 of the Constitution of India, it is amenable to the jurisdiction of the High Court since it discharges public functions. That part of the controversy stands concluded by judgment of this Court in the earlier round and cannot be reopened. **Board of Control for Cricket vs. Cricket Assn. of Bihar, 2016 (7) SCALE 143**

Article 14 – Whether student passed in Class X examination of CBSE from Central School can be denied admission to Class XI in same school on ground that he failed to secure cut-off marks prescribed for admission – Held, "No".

One can have no objection to a school laying down cut off marks for selection of suitable stream/course for a student giving due regard to his/her aptitude as reflected from the class X marks where there are more than one stream. But it would be quite unreasonable and unjust to throw out a student from the school because he failed to get the cut off marks in the Class X examination. After all the school must share at least some responsibility for the poor performance of its student and should help him in trying to do better in the next higher class. The school may of course give him the stream/course that may appear to be most suitable for him on the basis of the prescribed cut off marks. (**Principal, Kendriya Vidyalaya and Others v. Saurabh Chaudhar and Others; 2009(1) AWC 163 (SC)**

Article 14 & 16 – Recruitment of constables in civil police, PAC etc. – Cancellation of entire selection – Validity of

The requirement of fairness demands that the body which has to enquire or decide on a issue which may affect individual right, the character of such body should be above board. Official bias is likely to arise when the person enquiring into a matter has a previous or personal knowledge of the material facts of the case before him by virtue of his dealing with those facts in some other capacity or context. The possibility of predisposition or prior

inclinations hovering over the mind of such a person into the matter, cannot always be ruled out. However, to vitiate such an enquiry it would be necessary to show a case of reasonable probability that the report was less than fair. But, there is an exception to this rule in the nature of doctrine of necessity when either under law or in certain exacting circumstances, but for the said person none else can be asked to conduct the enquiry. The fairness of the report would be commented upon later in this judgment, but, the necessity of inclusion of the two individuals in the enquiry has not been demonstrated before the Court. The State or DGP has a right to nominator anyone to conduct an enquiry but, in the present facts, there is no reason forthcoming why the two individuals were involved in the enquiry though several other officers were available. In fact, the DGP at the time of constituting the Mishra Committee appears to have been oblivious of the fact that Shailja Kant Mishra and Mohd. Javed Akhtar were a part of the recruitment process. This fact is apparent from the minutes of the meeting held under the Chairmanship of the DGP on 31.7.2007 where it was provided that any officer who was part of the recruitment process in the last three years should not be allowed even to assist the Mishra Committee in the enquiry. Thus, it can safely be deduced that the DGP without applying his mind constituted the four member Mishra Committee out of which at least two were part of the recruitment process and asking them to enquire into the process of which they had personal knowledge in their capacity as members of the recruitment process and, therefore, it can be said that the composition of the Mishra Committee itself was less than fair and vitiated. **(Pawan Kumar Singh and Others v. State of U.P. and Others; 2009(1) AWC 391)**

Articles 14, 16, 21 and 226 – Appointment – Time-bound appointment comes to end by efflux of time – Right to employment is not included in Article 21.

At this stage, it would also be appropriate to notice that earlier it was held by the Apex Court that right to earn livelihood is part and parcel of "right to life" under Article 21 of the Constitution and this was equated with the right to employment. However, the Apex Court in Secretary State of Karnataka and others (supra) has rejected this submission that Article 21 would include the right to employment and in para 42 of the judgment has held as under:

"The argument that the right to life protected by Article 21 of the

Constitution of India would include the right to employment cannot also be accepted at this juncture. The law is dynamic and our Constitution is a living document. May be at some future point of time, the right of employment can also be brought in under the concept of right of life or even included as a fundamental right. The new statute is perhaps a beginning. As things now stand, the acceptance of such a plea at the instance of the employees before us would lead to the consequence of depriving a large number of other aspirants of an opportunity to compete for the post or employment. Their right to employment, if it is a part of right to life, would stand denuded by the preferring of those who have got in casually or those who have come through the back door. The obligation cast on the State under Article 39 (a) of the Constitution of India is to ensure that all citizens equally have the right to adequate means of livelihood. It will be more consistent with that policy if the Courts recognize that an appointment to a post in Government service or in the service of its instrumentalities can only be by way of a proper selection in the manner recognized by the relevant legislation in the context of the relevant provisions of the Constitution. In the name of individualizing justice, it is also not possible to shut in the eyes

of the Court to the Constitutional scheme and the right of the numerous as against the few who are before the Court. The Directive Principles of State Policy have also to be reconciled with the rights available to the citizen under Part III of the Constitution and the obligation of the State to one and all not to a particular group of citizens. The Court, therefore, overrule the argument based on Article 21 of the Constitution." **(Gyanendra Veer Singh and Others v. State of U.P. and Others; 2009(1) AWC 676)**

Article 14 – Licence of fair price shop – Cancellation of – Licence for fair price shop cannot be cancelled on absolutely vague charges and without reply of licensee.

In the present case, the charges against the petitioner were absolutely vague. The reply submitted by the petitioner was not considered while passing the orders, either by the Sub-Divisional Officer or by the appellate authority and merely saying that there were irregularities, without specifying any kind of irregularity and without there being any evidence having been called for from the petitioner, would not be a ground for cancelling the licence of the petitioner. As such, the orders dated 11.9.2006 and 30.4.2008, passed by the Sub-Divisional Magistrate and the Commissioner respectively deserve to be set aside. **(Siyaram v. State of U.P and Others; 2009(2) AWC 1200 (All HC)**

Article 14 – Principle of Natural Justice – Cancellation of bail on ground that complainant was not heard and thus principles of natural justice were violated – Not proper.

It is well settled that bail granted to an accused with reference to bailable offence can be cancelled only if the accused (1) misuses his liberty by indulging in similar criminal activity, (2) interferes with the course of investigation, (3) attempts to tamper with evidence of witnesses, (4) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (5) attempts to flee to another country, (6) attempts to make himself scarce by going undergrounds or becoming unavailable to the investigating agency, attempts to place himself beyond the reach of his surety, etc. These grounds are illustrative and not exhaustive. However, a bail granted to a person accused of bailable offence cannot be cancelled on the ground that the complainant was not heard. As mandated by Section 436 of the Code what is to be ascertained by the officer or the Court is whether the offence alleged to have been committed is a bailable offence and whether he is ready to give bail as may be directed by the officer or the Court. When a police officer releases a person accused of a bailable offence, he is not required to hear the complainant at all. Similarly, a Court while exercising powers under Section 436 of the Code is not bound to issue notice to the complainant and hear him.

Having regard to the facts of the case the Court is of the firm opinion that the bail granted to the appellant for alleged commission of bailable offence could not have been cancelled by the High Court on the ground that the complainant was not heard and, thus, principles of natural justice were violated. A principle of natural justice is not a 'mantra' to be applied in vacuum in all cases. The question as to what extent, the principles of natural justice are required to be complied with, will depend upon the facts of the case. They are not required to be complied with when it, will lead to an empty formality. **(Rasiklal v. Kishore Khanchand Wadhwani; 2009 Cri.L.J. 1887)**

Art. 14 - Employment

Question arose before Hon'ble Supreme court that whether over-payment of amount due to wrong fixation of 5th and 6th pay scale of teachers/principals based on the 5th Pay Commission Report could be recovered from the recipients who are serving as teachers. The Division Bench of the High Court rejected the writ petition filed by the Appellants and took the view that since payments were effected due to a mistake committed by the District Education Officer, the same could be recovered. Aggrieved by the said judgment, this appeal has been preferred.

Held - that there is no proposition of law that only if the State or its officials establish that there was misrepresentation or fraud on the part of the recipients of the excess pay, then only the amount paid could be recovered. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment. (Chandi **Prasad Uniyal and Ors. Vs. State of Uttarakhand and Ors.; 2012 (5) AWC 5320 (SC)**

Art. 14 – Restricting a candidate to apply for only five districts in U.P. his chose is illegal and ultravires of the statute

It is well settled that in the matter of selection and appointment etc. the policy decisions can be taken by the State and the same are not lightly to be interfered by the Court in judicial review but if such policy decision is ex facie irrational, illogical and arbitrary, it can be axed by the Courts while going for judicial review. The respondents in the absence of the counter- affidavit had the opportunity to show deliberation available on record, if any, made while formulating the above policy to show justification or rationality for restricting a candidate in applying in only five districts but that option has not been availed by the respondents though they have opportunity to do so. No such request was made. It appears that on this aspect there is not even deliberation on the part of the respondents. In a sheer momentary flash this condition has been made part of the process of selection without applying mind to its logic and rationality. It is also not discernible as to whether any rational object the respondents intent to achieve by making this restriction. The said condition also fails ex facie to show any nexus with the undisclosed objectives sought to be achieved. It is well settled that any policy decision, which is ex facie arbitrary, irrational or illogical is violative of Article 14 and cannot sustain. (**Sarita Shukla v. State of U.P.; 2012 (2) ESC 963 (All HC)**

Art. 14 & 16 – Employment – Appointment – Bank – Appellant refused appointment despite having been selected on ground that three criminal case pending against him – Effect of

It is settled law that mere selection does not confer indefeasible right to claim appointment. In State of Haryana v. Subhash Chander Marwah and others; (1974) 1 SCR 165, the Apex Court held as under:

"... One fails to see how the existence of vacancies gives a legal right to a candidate to be selected for appointment. The examination is for the purpose of showing that a particular candidate is eligible for consideration. The selection for appointment comes later. It is open then to the Government to decide how many appointments shall be made. The mere fact that a candidate's name appears in the list will not entitle him to a mandamus that he be appointed."

A Division Bench of this Court in U. P. Public Service Commission, Allahabad and another v. State of U.P. and another, 2007 (5) ADJ 280 : 2007 (6) AWC 6486, took the similar view and observed as under;

"Moreover, even in the case of a select list candidate, the law is well settled that such a candidate has no indefeasible right to claim appointment merely for the reason that his name is included in the select list as the State is under no legal duty to fill up all or any of the vacancy and it can always be left vacant or unfilled for a valid reason."

Therefore, in the facts of the case, even if the appellant was selected, since the respondents have decided not to offer him appointment because of his involvement in criminal cases, we have no reason to differ with the view taken the learned Single Judge. **(Pankaj Pandey vs. State Bank of India and other; 2012(4) AWC 3818)**

Art. 14, 16(1) & 141 - Article 16(4) which protects the interest of certain Sections of the Society has to be balanced against the Article 16(1), which protects the interest of every citizen of the entire society - They should be harmonized because they are restatements of the principle of equity under Article 14 of the Constitution

From various decisions and their paragraphs court has mentioned following principles:

(i) Vesting of the power by an enabling provision may be constitutionally valid and yet 'exercise of power' by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure backwardness and inadequacy keeping in mind the efficiency of service as required under Article 335.

(ii) Article 16(4) which protects the interests of certain sections of the society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonized because they are re statements of the principle of equality under Article 14.

(iii) Each post gets marked for the particular category of candidates to be appointed against it and any subsequent vacancy has to be filled by that category candidate.

(iv) The appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that the upper ceiling-limit of 50% is not violated. Further roster has to be post-specific and not vacancy based.

(v) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4A). Therefore, Clause (4A) will be governed by the two compelling reasons- "backwardness" and "inadequacy of representation", as mentioned in Article 16(4). If the said two reasons do not exist, then the enabling provision cannot be enforced.

(vi) If the ceiling-limit on the carryover of unfilled vacancies is removed, the other alternative time-factor comes in and in that event, the time- scale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the time-scale is not

kept, then posts will continue to remain vacant for years which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact-situation.

(vii) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335, then this Court will certainly set aside and strike down such legislation.

(viii) The constitutional limitation under Article 335 is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case.

(ix) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercise depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment. Article 16(4), therefore, creates a field which enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist in Article 16(1). It is only when these reasons are satisfied i that a State gets the power to provide for reservation in the matter of employment. **(U.P. Power Corpn. Ltd. v. Rajesh Kumar; 2012 (2) ESC 233) (SC)**

Art. 14 - Restricting a candidate to apply for only five districts in U.P. in his or her choice is illegal and ultravires of the statute

It is well settled that in the matter of selection and appointment etc. the policy decisions can be taken by the State and the same are not lightly to be interfered by the Court in judicial review but if such policy decision is ex facie irrational, illogical and arbitrary, it can be axed by the Courts while going for judicial review. The respondents in the absence of the counter- affidavit had the opportunity to show deliberation available on record, if any, made while formulating the above policy to show justification or rationality for restricting a candidate in applying in only five districts but that option has not been availed by the respondents though they have opportunity to do so. No such request was made. It appears that on this aspect there is not even deliberation on the part of the respondents. In a sheer momentary flash this condition has been made part of the process of selection without applying mind to its logic and rationality. It is also not discernible as to whether any rational object the respondents intent to achieve by making this restriction. The said condition also fails ex facie to show any nexus with the undisclosed objectives sought to be achieved. It is well settled that any policy decision, which is ex facie arbitrary, irrational or illogical is violative of Article 14 and cannot sustain. (**Sarita Shukla v. State of U.P.; 2012(2) ESC 963 (All)**

Art. 14, 16(1) & 141 - Article 16(4) which protects the interest of certain Sections of the Society has to be balanced against the Article 16(1), which protects the interest of every citizen of the entire society - They should be harmonized because they are restatements of the principle of equity under Article 14 of the Constitution

Held -

(8) Vesting of the power by an enabling provision may be constitutionally valid and yet 'exercise of power' by the State in a given case may be arbitrary, particularly, if the State fails to identify and measure backwardness and inadequacy keeping in mind the efficiency of service as required under Article 335.

(9) Article 16(4) which protects the interests of certain sections of the society has to be balanced against Article 16(1) which protects the interests of every citizen of the entire society. They should be harmonized because they are restatements of the principle of equality under Article 14.

(10) Each post gets marked for the particular category of candidates to be appointed against it and any subsequent vacancy has to be filled by that category candidate.

(11) The appropriate Government has to apply the cadre strength as a unit in the operation of the roster in order to ascertain whether a given class/group is adequately represented in the service. The cadre strength as a unit also ensures that the upper ceiling-limit of 50% is not violated. Further roster has to be post-specific and not vacancy based.

(12) The State has to form its opinion on the quantifiable data regarding adequacy of representation. Clause (4A) of Article 16 is an enabling provision. It gives freedom to the State to provide for reservation in matters of promotion. Clause (4A) of Article 16 applies only to SCs and STs. The said clause is carved out of Article 16(4A).

Therefore, Clause (4A) will be governed by the two compelling reasons- "backwardness" and "inadequacy of representation", as mentioned in Article 16(4). If the said two reasons do not exist, then the enabling provision cannot be enforced.

2) If the ceiling-limit on the carryover of unfilled vacancies is removed, the other alternative time-factor comes in and in that event, the time-scale has to be imposed in the interest of efficiency in administration as mandated by Article 335. If the time-scale is not kept, then posts will continue to remain vacant for years which would be detrimental to the administration. Therefore, in each case, the appropriate Government will now have to introduce the duration depending upon the fact-situation.

3) If the appropriate Government enacts a law providing for reservation without keeping in mind the parameters in Article 16(4) and Article 335, then this Court will certainly set aside and strike down such legislation.

4) The constitutional limitation under Article 335 is relaxed and not obliterated. As stated above, be it reservation or evaluation, excessiveness in either would result in violation of the constitutional mandate. This exercise, however, will depend on the facts of each case.

5) The concepts of efficiency, backwardness and inadequacy of representation are required to be identified and measured. That exercise depends on the availability of data. That exercise depends on numerous factors. It is for this reason that the enabling provisions are required to be made because each competing claim seeks to achieve certain goals. How

best one should optimize these conflicting claims can only be done by the administration in the context of local prevailing conditions in public employment. Article 16(4), therefore, creates a field which enables a State to provide for reservation provided there exists backwardness of a class and inadequacy of representation in employment. These are compelling reasons. They do not exist in Article 16(1). It is only when these reasons are satisfied that a State gets the power to provide for reservation in the matter of employment. **(U.P. Power Corporation Ltd. v. Rajesh Kumar; 2012(2) ESC 233 (SC))**

Art. 14 – Constitutional validity of State Amendment to Art. 125

State Amendments enabling maximum maintenance which could be granted from Rs. 500 to higher figure are no longer valid being inconsistent to 2001 amendment to S. 125 by parliament Counsel for the appellant submitted that the amount which could be granted as maintenance under Section 125 Cr.P.C. in the State of Madhya Pradesh could at most be Rs. 3,000/- in view of the amendment to Section 125 Cr.P.C. by Madhya Pradesh Act 10 of 1998. It appears that Section 125 Cr.P.C. has been further amended in Madhya Pradesh by a subsequent amendment by Madhya Pradesh Act 15 of 2004 which does not contain any upper limit in the maintenance to be granted under Section 125 Cr.P.C. and it is left to the discretion of the Magistrate. Hence, there is no substance in the submission of the learned counsel for the appellant.

Moreover, the Court is of the opinion that after the amendment to Section 125 Cr.P.C., which is a Central Act, by the Code of Criminal Procedure (Amendment) Act, 2001 which deleted the words "not exceeding five hundred rupees in the whole", all State amendments to Section 125 Cr.P.C. by which a ceiling has been fixed to the amount of maintenance to be awarded to the wife have become invalid. **(Manoj Yadav v. Pushpa & Ors.; AIR 2011 SC 847)**

Arts. 14, 15 & 21 – S. 377 of IPC, insofar it criminalizes consensual sexual acts of adults in private is violative of Arts. 14, 15 & 21 of Constitution.

S. 377 IPC, insofar it criminalizes consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution. The provisions of S. 377, IPC will continue to govern non-consensual penile non-vaginal sex and penile non-vaginal sex involving minors. By „adult" means everyone who is 18 years of age and above. A person below 18 would be presumed not to be able to consent to a sexual act. This clarification will hold till, of course. Parliament chooses to amend the law to effectuate the recommendation of the Law Commission of India in its 172nd Report, which removes a great deal of confusion. Secondly, this judgment will not result in the re-opening of criminal cases involving S. 377, IPC that have already attained finality. (Naz Foundation v. Government of NCT of Delhi; 2010 Cri.L.J. 94 (Del HC)

Article 14 – Prohibition on employment of women in Hotels and Bars serving liquor would violate gender equality.

Section 30 of Punjab Act prohibiting employment of women in any part of premises in which liquor or intoxicating drug is consumed by the public results in an invidious discrimination.

Right to self-determination is an important off shoot of Gender Justice discourse. At the same time, security and protection to carry out such choice or option specifically, and state of violence-free being generally is another tenet of the same movement. In fact, the latter is apparently a more basic value in comparison to right to options in the feminist matrix. Privacy rights prescribe autonomy to choose profession whereas security concerns texture methodology of delivery of this assurance. But it is a reasonable proposition that the measures to safeguard such a guarantee of autonomy should not be so strong that the essence of the guarantee is lost. State protection must not translate into censorship. It is to be borne in mind that legislations with prononced „protective discrimination" aims, such as this one, potentially serve as double edged swords. Strict scrutiny test should be employed while assessing the implications of this variety of legislations. Legislation should not be only assessed on its proposed aims but rather on the implications and the effects. Secction 30 of Punjab Act suffers from incurable fixations of stereotype morality and conception of sexual role. The perspective thus arrived at is outmoded in content and stifling in means.

Instead of prohibiting women employment in the bars altogether the State should focus onfactoring in ways through which unequal consequences of sex differences can be eliminated. It is Stat's duty to ensure circumstances of safety which inspire confidence in women to discharge the duty freely in accordance to the requirements of the profession they choose to follow. Any other policy inference (such as the one embodied under S. 30) from societal conditions would be oppressive on the women and against the privacy rights.

International treaties vis-à-vis the rights of women was noticed by this Court in a large number of judgments, some of which we may notice at this stage. **(Anuj Garg & Ors. V. Hotel Association of India & Ors.; AIR 2008 SC 663)**

Article 14 – Notification by State Government fixing two different pay-scales for trained lecturers and untrained lecturers – Whether violative of Article 14?

Doctrine of equal pay for equal work – However equal pay would depend upon not only on nature or volume of work but also on its quality.

There was a clear distinction between a trained teacher and untrained teacher. Such a distinction was legal, valid, rational and reasonable. Trained lecturers and untrained lecturers, hence could neither be said to be similarly circumstanced nor they formed one and same class. Classification between trained lecturer and untrained lecturer is reasonable and based on intelligible differentia which distinguished one class included therein from other class which was left out.

Eventhough it is true that equal pay for equal work is a doctrine well established in service jurisprudence and is also a concomitment of Article 14 of the Constitution. However, equal pay would depend upon not only on nature or volume of work but also on the quality of the work as regards reliability and responsibility as well as different pay-scales may be described on the basis of such reliability and responsibility. **(State of Bihar & Ors. V. Bihar State + 2 Lecturers Associations & Ors.; 2007 (5) Supreme 557)**

Article 14 – Illegality or Irregularity – Benefit conferred on the basis of violation of prescribed procedure, reiterated, cannot be extended.

It is true that Article 14 of the Constitution embodies a guarantee against arbitrariness but it does not assume uniformity in erroneous actions or decisions. It is trite to say that guarantee of equality being a positive concept, cannot be enforced in a negative manner. To put it differently, if an illegality or irregularity has been committed in favour of an individual or even a group of individuals, others, though falling in the same category, cannot invoke the jurisdiction of the writ courts for enforcement of the same irregularity on the reasoning that the similar benefit has been denied to them. Any direction for enforcement of such claim shall tantamount to perpetuating an illegality, which cannot be permitted. (**State of Kerala & Others v. K. Prasad & Others; (2007) 7 SCC 140)**

Art. 14 & 226 – Even contractual matters are not beyond the realm of judicial review.

It is trite that if an action on the part of the State is violative the equality clause contained in Article 14 of the Constitution of India, a writ petition would be maintainable even in the contractual field. A distinction indisputably must be made between a matter which is at the threshold of a contract and a breach of contract; whereas in the former the Court‟s scrutiny would be more intrusive, in the latter the Court may not ordinarily exercise its discretionary jurisdiction of judicial review, unless it is found to be violative of Article 14 of the Constitution. While exercising contractual powers also, the Government bodies may be subjected to judicial review in order to prevent arbitrariness or favouritism on its part. Indisputably, inherent limitations exist, but it would not be correct to opine that under no circumstances a writ will lie only because it involves a contractual matter. **(Noble Resources Ltd. V. State of Orissa & Anr.; AIR 2007 SC 119)**

Article 14 – Natural Justice – Order of termination of service passed without giving opportunity of hearing to employee would not be illegal, if order procured by misrepresentation or fraud.

In such case where an order is obtained by misrepresentation or fraud, the principles of natural justice are not attracted to rectify the mistake, which the Authority had committed because of the fraud played by the applicant. In such eventualities, termination is automatic. **(Ramesh Prasad Patel v. Union of India; 2006 (4) ALJ 339 (DB))**

Article 14 & 16 – Validity of termination of service – Appointment made on purely temporary basis is liable to be terminate without any notice.

Where the appointment is totally irregular no opportunity is required while dispensing with his service. No doubt, it is mentioned in the impugned order that the working of the petitioner was not up to the mark, but that is not the foundation of the order. The foundation of the order is that the appointment was temporary which was terminable without notice and thus in accordance with the condition of appointment letter, the order has been passed and in this particular case the petitioner was not entitled to any opportunity as the order cannot be termed as stigmatic. It is also well-settled that a temporary employee does not have any right to the post and that too one whose appointment itself is hit by the

principles enshrined in Articles 14 and 16 of the Constitution. **(Man Mohan Bhatnagar v. VIIIth A.D. & S.J. Meerut; 2006 (3) AWC 2158)**

Article 14 – Equality – Article 14 has a positive concept – Nobody can claim equality in illegality.

The concept of equal treatment on the logic of Article 14 of the Constitution of India (in short "the Constitution") cannot be pressed into service in such cases. What the concept of equal treatment presupposes is existence of similar legal foothold. It does not countenance repetition of a wrong action to bring both wrongs on a par. Even if hypothetically it is accepted that a wrong has been committed in some other cases by introducing a concept of negative equality the respondents cannot strengthen their case. Moreover, Article 14 has a positive concept. Nobody can claim equality in illegality. (U.P. state Sugar Corpn. Ltd. & Anr. V. Sant Raj Singh & Ors.; 2006 (4) ALJ 590)

Arts. 14, 19 (1)(a) and Preamble—Representation of People Act, Ss. 97(d), 2(d), 62 and 128—Role of NOTA (—None of the Above)—Statutory right to vote and mechanism of negative rating serves a very fundamental and essential part of a vibrant democracy—Voter must be given an opportunity to choose NOTA button, which will indeed compel political parties to nominate sound candidates of integrity

Free and fair election is a basic structure of the Constitution and necessarily includes within its ambit the right of an elector to cast his vote without fear of reprisal, duress or coercion. Protection of elector's identity and affording secrecy is therefore integral to free and fair elections and an arbitrary distinction between the voter who casts his vote and the voter who does not cast his vote is violative of Article 14. Thus, secrecy is required to be maintained for both categories of persons.

Democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections would alone guarantee the growth of a healthy democracy in the country. The 'Fair' denotes equal opportunity to all people. Universal adult suffrage conferred on the citizens of India by the Constitution has made it possible for these millions of individual voters to go to the polls and thus participate in the governance of our country. For democracy to survive, it is essential that the best available men should be chosen as people's representatives for proper governance of the country. This can be best achieved through men of high moral and ethical values, who win the elections on a positive vote. Thus in a vibrant democracy, the voter must be given an opportunity to choose none of the above (NOTA) button, which will indeed compel the political parties to nominate a sound candidate. No doubt, the right to vote is a statutory right but it is equally vital to recollect that this statutory right is the essence of democracy. Without this, democracy will fail to thrive. Therefore, even if the right to vote is statutory, the significance attached with the right is massive. Thus, it is necessary to keep in mind these facets while deciding the issue at hand. Democracy is all about choice. This choice can be better expressed by giving the voters an opportunity to verbalize themselves unreservedly and by imposing least restrictions on their ability to make such a choice. By providing NOTA button in the EVMs, it will accelerate the effective political participation in the present state of democratic

system and the voters in fact will be empowered. in bringing out this right to cast negative vote at a time when electioneering is in full swing, it will foster the purity of the electoral process and also fulfill one of its objective, namely, wide participation of people. The mechanism of negative voting, thus, serves a very fundamental and essential part of a vibrant democracy. Various countries have provided for neutral/protest/negative voting in their electoral systems.

Giving right to a voter not to vote for any candidate while protecting his right of secrecy is extremely important in a democracy. Such an option gives the voter the right to express his disapproval with the kind of candidates that are being put up by the political parties. When the political parties will realize that a large number of people are expressing their disapproval with the candidates being put up by them, gradually there will be a systemic change and the political parties will be forced to accept the will of the people and field candidates who are known for their integrity. The directions issued herein, especially to incorporate can also be supported by the fact that in the existing system a dissatisfied voter ordinarily does not turn up for voting which in turn provides a chance to unscrupulous elements to impersonate the dissatisfied voter and cast a vote, be it a negative one. Furthermore, a provision of negative voting would be in the interest of promoting democracy as it would send clear signals to political parties and their candidates as to what the electorate thinks about them. **(People‘s Union for Civil Liberties vs. Union of India; (2013) 3 SCC (Cri) 769)**

Art. 14 - Observance of principles of natural Justice in service matter – Necessity of

To say that the Chief Justice can appoint a person without following the procedure provided under Articles 14 and 16 would lead to an indefinite conclusion that the Chief Justice can dismiss him also without holding any inquiry or following the principles of natural justice/Rules etc., for as per

Section 16 of General Clauses Act, 1897 power to appoint includes power to remove/suspend/dismiss. (Vide: Pradyat Kumar Bose v. The Hon‘ble Chief Justice of Calcutta High Court, 1956 SC 285; and Chief Justice of Andhra Pradesh & Anr. v. L.V.A. Dikshitulu & Ors., AIR 1979 SC 193).

But as no employee can be removed without following the procedure prescribed by law or in violation of the terms of his appointment, such a course would not be available to the Chief Justice. Therefore, the natural corollary of this is that the Chief Justice cannot make any appointment in contravention of the Statutory Rules, which have to be in consonance with the scheme of our Constitution. **[Renu and others v. District & Sessions Judge, Tis Hazari and another, AIR 2014 SC 2175]**

Arts. 14 and 245 - Equality clause facet of Article 14 - Breach of rule of Law can be

ground for invalidating legislation

Breach of rule of law, amounts to negation of equality under Art. 14. It cannot be said that rule of law is not above law and cannot be a ground for invalidating legislations since rule of law is a facet of equality under Art. 14 and breach of rule of law amount to breach of equality under Art. 14 and, therefore, breach of rule of law may be a ground for invalidating the legislation being in negation of Art. 14. **[Dr. Subramanian Swamy v. Director, Central Bureau of Investigation & Anr., AIR 2014 SC 2140 (Constitutional Bench)]**

Art. 14 – Contract to collect parking fees – Cancellation of - Validity

In the instant case the Court is of the view that demarcation of a particular area for parking, provision for male/female washroom, drinking water facilities and the waiting shade for the persons awaiting the arrival of the vehicles are the conditions precedent for any contract being granted in respect of collection of the parking fees. It cannot be other way round i.e. a contract for collection is granted and thereafter contractor is provided time to make provision for the aforesaid facilities. This flows from the Government Order dated 18th July, 1993.

Since in the facts of the case the Nagar Panchayat Raya had not demarcated any area for parking of the vehicles at Raya- Sadabad Road, Raya-Baldev Road, Raya-Mant Road and further since it could not be demonstrated before the Court that any of the facilities, as required under the Government Order dated 18th July, 1993 were in existence at the aforesaid places, the Court hold that the decision taken to cancel the contract need not be interfered with by the Court.

The Court may further record that under the terms of the contract itself it is provided that the contract shall be cancelled at any point of time without any notice or opportunity of hearing. The order impugned has done substantial justice and has rightly curtailed the realization of parking fee in absence of the facilities as required under the Government Order, referred to above being available. It is always open to the petitioner to make an application before the Nagar Panchayat for refund of the money deposited by him towards contract once it is found that the contract itself was illegally granted. **(Komal Singh v. State of U.P.; 2014(1) ALJ 300)**

Art. 14 – Appointment – Eligibility – Minimum qualification not fulfil – Rejection is proper - Parity cannot be claimed

In the present case, none of the petitioners possess requisite minimum qualification. Be that as it may, it cannot be doubted that if an illegal appointment has been made by authorities concerned, disobeying the provisions providing necessary minimum qualification, petitioners do not get a right to claim parity with such illegal act of the respondents. In Union of India & another Vs. Kartick Chandra Mondal & another (2010) 2 SCC 422, the Court has gone to the extent that even if some other persons similarly placed have been absorbed, that cannot be a basis to grant a relief by the Court which is otherwise contrary to statute.

In State of Karnataka & others Vs. Gadilingappa & others (2010) 2 SCC 728, the Court reiterated that it is well settled principal of law that even if a mistake is committed in an earlier case, the same cannot be allowed to be perpetuated.

It is well settled that if a wrong has been committed by the respondents in respect to some other persons that will not provide a cause of action to claim parity on the ground of equal treatment since the equality in law under Article 14 is applicable for claiming parity in respect to legal and authorized acts. Two wrongs will not make one right. **(Jitendra Kumar and others v. State of U.P. and others; 2014 (1) ALJ 346)**

Arts. 14 and 16 - Salary – Claim for –Even when their substantive post is that of a class IV, they were assigned the work of the post of clerk of a class III post claim for salary of the post of clerks - Petitioners entitled to be paid salary as that of clerks

The petitioners, who are 22+35 in numbers, were appointed on a Class IV posts in the Municipal Corporation, Ludhiana. Even when their substantive post is that of a Class IV, they were assigned C.W.P. No.1548 of 2006 (O&M) 3 the work of the post of Clerk of a Class III post. It is submitted that there are no service rules governing the posts of Clerks in any of the Municipal Corporation/Municipal Council, in the State of Punjab. The post of Clerk is a non- provincialised post and is filled up at the level of Municipal Corporation.

Prayer for payment of salary is made on the ground that even if the post of aforesaid petitioners was Class-IV, once they were assigned the work of Clerks for the period they worked, they are entitled to the salary of the post of Clerks.

In this case, it is denied that the petitioners had been working as Clerks, this contention of the respondents is in teeth of their own office orders which are produced by the petitioners alongwith this writ petition. Our attention is also drawn to the office order No. 731/ General Deptt. dated 28.11.1995, as per which eleven of the petitioners were allowed to continue to work as Clerks in the Engineering Wing. This office order further discloses that it had been passed on the basis of approval given by the Commissioner in his order dated 23.11.1995, after receiving the report of the Superintending Engineer (B&R). To the similar effect is the office order No. 250/J.V. Dated 03.7.2001, which, inter-alia, refers that the Commissioner vide his order dated 26.6.2001, after agreeing with the advise of the Local Advisor and as per the order passed by the Additional Commissioner dated 03.7.2001, has ordered that Class IV employees working in the Municipal C.W.P. No.1548 of 2006 (O&M) 4 Corporation are deployed as Clerks to work against the vacancies of the Clerk in their own pay scale be allowed to continue to work as such. This order pertains to 20 Clerks. Both these orders clearly demonstrate that the petitioners have been working as Clerks and that too under the orders of the Commissioner of the Municipal Corporation, who is the competent authority in this regard.

In these circumstances, the prayer of the petitioners to the effect that they be paid salary to the post of Clerks is allowed. **(Shammi Kapoor v. Municiapal Corpn., Ludhiana, through its Commissioner; 2014 (2) SLR 338 (P&H)**

Art. 14 – Natural justice- Right of cross examination - Is integral part of natural justice principles

Not only should the opportunity of cross examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice. In the absence of such an opportunity, it cannot be held that the matter has

been decided in accordance with law as cross examination is an integral part and parcel of the principles of natural justice. **(Ayaaubkhan Noorkhan Pathan v. State of Maharashtra and Ors.; AIR 2013 SC 58)**

Arts. 14 and 16 – Compassionate appointment - Object of

Petitioner's father was a peon in Judgeship Bijnor. He died in harness. Petitioner has been appointed on the post of peon in the same Judgeship under U .P. Recruitment of Dependants of Government Servant Dying-in-harness Rule 1974. Petitioner has also joined on the post of peon; however, he wants a Class III job. In this regard, learned counsel for the petitioner has placed reliance upon a report given by two Additional District Judges on 8.1.2010 to the District Judge which is Annexure 5 to the writ petition recommending that petitioner may be appointed a clerk on compassionate ground as his father died in harness on 22.5.2009. Learned counsel for the petitioner has placed reliance upon an authority of this Court reported in Rajesh Singh v. Director of Education, 1991 UPLBEC 345.

The Court does not agree with the contention of learned counsel for the petitioner. The Supreme Court in Commissioner of Public Instructions v. K.R. Vishwanath; AIR 2005 SC 3275 has held that strictly the claim of compassionate appointment can not be upheld on the touchstone of. Articles 14 & 16 of the Constitution of India and that the object of such appointment is to enable the family to get over sudden financial crisis or to mitigate the hardship due to death of the bread earner in the family. Paragraphs 10, 11 and 11-A of the said authority is quoted below:

"10. As was observed in State of Haryana and Ors. v. Rani Devi and anr., AIR 1996 SC 2445 it need not be pointed out that the claim 'of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased-employee.

In view of the above authorities it is quite clear that the purpose of giving compassionate appointment is to provide minimum succour, to mitigate the hardship and to enable the family to get over sudden financial crisis. It cannot be by way of wind fall or bonanza. Giving appointment to the dependent on a post lower to the post on which deceased was working amounts to mitigating the hardship. The family may not get as much salary as the deceased was getting but it will be getting at least some salary. Giving appointment on the same post on which the deceased was working completely wipes out the hardship which the family may face due to death of the bread earner in harness. However, giving job on a higher post is not to mitigate the hardship but providing more than what the family was earlier getting. This is not permissible under law. This is beyond the permissible inroad which may be made in the area of Articles 14 and 16 or the Constitution. It will be illegal encroachment in the territory occupied by Articles 14 and 16 of the Constitution. The purpose of mitigating hardship may override Articles 14 and 16 of the Constitution however,

the object of providing more than what the deceased was getting can not be permitted to override the mandate of Articles 14 and 16. **(Amit Kumar v. State of U.P.; 2013 (1) SLR 29 (All)**

Art. 14 – Does not envisage negative equality – Any illegality once committed cannot be allowed to be perpetuated – Instances of appointment of persons involved in serious crimes cannot be made precedence

The Screening Committee's proceedings have been assailed as being arbitrary, unguided and unfettered. But, in the present cases, court sees no evidence of this. However, certain instances have been pointed out where allegedly persons involved in serious offences have been recommended for appointment by the Screening Committee. It is well settled that to such cases the doctrine of equality enshrined in Article 14 of the Constitution of India is not attracted. This doctrine does not envisage negative equality (Fuljit Kaur). It is not meant to perpetuate illegality or fraud because it embodies a positive concept. If the Screening Committee which is constituted to carry out the object of the comprehensive policy to ensure that people with doubtful background do not enter the police force, deviates from the policy, makes exception and allows entry of undesirable persons, it is undoubtedly guilty of committing an act of grave disservice to the police force but court cannot allow that illegality to be perpetuated by allowing the respondents to rely on such cases. It is for the Commissioner of Police, Delhi to examine whether the Screening Committee has compromised the interest of the police force in any case and to take remedial action if he finds that it has done so. Public interest demands an in-depth examination of this allegation at the highest level. Perhaps, such deviations from the policy are responsible for the spurt in police excesses. Court expect the Commissioner of Police, Delhi to look into the matter and if there is substance in the allegations to take necessary steps forthwith so that policy incorporated in the Standing Order is strictly implemented. **(Commissioner of Police, New Delhi & anr. v. Mehar Singh; 2013 (4) Supreme 531)**

Art. 14 – Reasoned order is requirement of natural justice and reason is heart beats of every conclusion

It is a settled legal proposition that not only administrative order, but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice-delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. (Union of India v. Ibrahim Uddin; 2013 (4) ALJ 66)

Arts. 14, 16 and 226 – Compassionate appointment – Claim for higher post – Validity of

In this case, upon the death of the father of the present petitioner, his mother had submitted a claim for consideration of the case of her son, namely, Deepak on a Class—IV post. Thereafter, upon attaining the age of majority and after the decision of this Court in

Civil Writ Petition No. 1515 of 2002, the petitioner himself had also submitted a request for being considered for appointment to a Class—IV post on compassionate ground. Such appointment has been given to him in terms of issuance of appointment letter dated 12.6.2009 on the post of Peon. The petitioner has accepted such appointment without any reservation. It would not be open for him now to seek appointment to a Class— III post on compassionate basis. **(Deepak vs. State of Haryana; 2013 (4) SLR 191 (P&H)**

Art. 14 - Legislative expectation – Applicability of

Indisputably, the respondent T.D. Viswanath, alleged to have worked on the post of Lecturer in History in the year 1990 and continued as such for a few years, but before his appointment neither the post was advertised nor any selection process was followed. No appointment letter was issued by the Society appointing him either permanently or temporarily in the said post. It is also not in dispute T.D. Vishwanath did not receive any letter of termination or relieving order from the Society. According to him, the Society orally directed him not to continue in the College.

In considered opinion of the Court, the Tribunal completely misdirected itself in passing such an order of regularisation and reinstatement in a case where the respondent allegedly worked in the College as part-time Lecturer without any appointment letter and without any selection process. Since the Society never issued any letter of appointment a letter of termination was also not served upon the respondent.

As stated above, in the absence of any appointment letter, issued in favour of the respondent as he was temporary/part-time lecturer in the College, there cannot be any legitimate expectation for his continuing in the service.. This was the reason that when in the years 1995 and 1996, two persons were appointed one after the other on the post of Lecturer in History, the respondent did not challenge the said appointments. Even assuming that the respondent was permitted to work in the College as part-time lecturer for some period, the action of the management of the college asking him to stop doing work cannot be held to be punitive. The termination simplicitor is not per se illegal and is not violative of principles of natural justice. **(B.T. Krishnamurthy v. Sri Basaveswara Education Society and Ors.; AIR 2013 SC 1787)**

Arts. 14 and 226 – Permission to candidate who was not validly admitted after affiliation cannot be valid

In the present case, the students were not validly admitted after affiliation, therefore, they cannot be allowed to appear in the examination. The petitioner, therefore, has failed to make out a case for interference. There has been no affiliation from the examining body. In absence of affiliation, the petitioner was not entitled to admit the students and anyhow if any mistake was committed by the Agra University, that will not entitle the petitioner to claim any parity or any illegal parity is supposed to grant indulgence in favour of the petitioner. **(Sardar patel Instt. v. State of U.P.; 2013 (2) SLR 538 (All)**

Arts. 14, 315 to 320 – PIL – Issuance of Quo Warranto – Appointment of the Chairperson in a Public Service Commission does not fall in category of a service matter, so PIL for a writ of quo warranto in respect of an appointment to a constitutional position would not be barred

The respondent No.1 has also alleged in the writ petitions various irregularities and illegalities committed by Mr. Harish Dhanda. He has further stated in the writ petition that his colleague has even sent a representation to the Governor of Punjab and the Chief Minister of Punjab against the proposed appointment of Mr. Harish Dhanda. He has accordingly prayed in the writ petition for a mandamus to the State of Punjab to frame regulations governing the conditions of service and appointment of the Chairman and Members of the Punjab Public Service Commission and for an order restraining the State of Punjab from appointing Mr. Harish Dhanda as Chairman of the Punjab Public Service Commission. On a reading of the entire writ petition filed by the respondent No.1 before the High Court, I have no doubt that the respondent No. l has filed this writ petition for espousing the cause of the general public of the State of Punjab with a view to ensure that a person appointed as the Chairman of the Punjab Public Service Commission is a man of ability and integrity so that recruitment to public services in the State of Punjab are from the best available talents and are fair and is not influenced by politics and extraneous considerations. Considering the averments in the writ petition, Court cannot hold that the writ petition is just a service matter in which only the aggrieved party has the locus to initiate a legal action in the court of law. The writ petition is a matter affecting interest of the general public in the State of Punjab and any member of the public could espouse the cause of the general public so long as his bonafides are not in doubt. Therefore, I do not accept the submission of Mr. P.P. Rao, learned senior counsel appearing for the State of Punjab, that the writ petition was a service matter and the High Court was not right in entertaining the writ petition as a Public Interest Litigation at the instance of the respondent No. 1. The decisions cited by Mr. Rao were in cases where this Court found that the nature of the matter before the Court was essentially a service matter and this Court accordingly held that in such service matters, the aggrieved part and not any third party can only initiate a legal action. **(State of Punjab v. Salil Sabhlok; 2013 (2) SLR 659 (SC)**

Arts. 14 and 16(4) - Reservation – Reserved category candidate who adjudged more meritorious than open category candidates is entitled to choose the particular service/cadre/post as per his choice/preference and he cannot be compelled to accept appointment to an inferior post leaving more important service/cadre/post in the reserved category for less meritorious candidate of that category

The Constitution Bench noticed the judgment in R.K. Sabharwal v. State of Punjab and distinguished the same by making the following observation:

"Reference was also made to R.K. Sabharwal v. State of Punjab, this Court had declared that the State shall not count a reserved category candidate selected in the open category against the vacancies in the reserved category. However, by this it could not be inferred that if the candidate himself wishes to avail a vacancy in the reserved category, he shall be prohibited from doing so. After considering the counsel's submissions and deliberations among ourselves, we are of the view that the ratio in that case is not applicable for the purpose of the present case. That case was primarily concerned with the Punjab Service of Engineers in the Irrigation Department of the State of Punjab. The decision was rendered in the context of the posts earmarked for the Scheduled Castes/Scheduled Tribes and Backward Classes on the roster. It was noted that once such posts are filled the reservation is complete. Roster cannot operate any further and it should be stopped. Any post falling vacant in a cadre thereafter, is to be filled from the category reserved or general due to retirement or removal of a person belonging to the respective category. Unlike the

examinations conducted by UPSC which includes 21 different services this case pertains to a single service and therefore the same cannot be compared with the examination conducted by UPSC. The examination conducted by UPSC is very prestigious and the topmost services of this nation are included in this examination. In this respect, it is obvious that there is fierce competition amongst the successful candidates as well to secure appointments in the most preferred services. This judgment is strictly confined to the enabling provision of Article 16(4) of the Constitution under which the State Government has the sole power to decide whether there is a requirement for reservations in favour of the backward class in the services under the State Government. However, the present case deals with positions in the various civil services under the Union Government that are filled through the examination process conducted by UPSC. Therefore, the fact-situation in R.K. Sabharwal case is clearly distinguishable.

In view of the above discussion and the law laid down in State of Bihar v. M. Neethi Chandra, Anurag Patel v. U.P. Public Service Commission, which has been approved by the Constitution Bench in Union of India v. Ramesh Ram, Court held that the official respondents did not commit any illegality by appointing more meritorious candidates of OBC to Assam Civil Service for which they had given preference and the High Court did not commit any error by dismissing the writ petition.

As a sequel to the above, the questions framed in this appeal are answered in the following terms:

"1) A reserved category candidate who is adjudged more meritorious than open category candidates is entitled to choose the particular service/cadre/post as per his choice/preference and he cannot be compelled to accept appointment to an inferior post leaving the more important service/cadre/post in the reserved category for less meritorious candidate of that category.

6) On his appointment to the service/cadre/post of his choice/preference, the reserved category candidate cannot be treated as appointed against the open category post." **(Alok Kumar Pandit v. State of Assam; 2013(3) SLR 719 (SC)**

Arts. 14, 311, 226 – U.P. Govt. Servants (Discipline and Appeal) Rules, Rule 7 – Dismissal from service on ground of dereliction of duty – Violation of principles of natural justice proved – Departmental proceedings vitiated, hence dismissal order liable to be set aside

Indisputably, the petitioner has not been allowed to inspect the records. This fact is evident from Annexure-6 to the writ petition and averment made in this regard in paras 10 and 11 of the writ petition which has not been specifically denied in counter-affidavit. It is common ground that the Inquiry Officer was changed. Earlier, the Settlement Officer (Consolidation) was the Inquiry Officer, however, in his place the S.D.M., Chauri Chaura, Gorakhpur was appointed as Inquiry Officer. There is no material on record to indicate that the petitioner was communicated the decision of the disciplinary authority to change the Enquiry Officer. It is also not disputed in the counter-affidavit that time, date and place of enquiry was communicated. It has not been stated that date, place and time was communicated to the petitioner. It is also evident from the enquiry report that no witnesses

have been examined by the department to prove the charges. From the aforesaid facts, it is evident that submission of Sri Saxena that there was complete violation of justice and enquiry was not fair, merit accepting of his submission. A perusal of the dismissal order also indicates that the disciplinary authority has not applied his mind at all. He has simply stated that he has' perused the record and he is satisfied that his charges are proved. Such types of conclusions are not permissible in the disciplinary proceeding without support of reason. It is true that while agreeing with the finding of the Inquiry Officer, the disciplinary authority is not required to give a elaborate reasons but at least the brief reason in support of the conclusions are necessary to indicate that the disciplinary authority has applied his mind. There is only one line of the conclusion of the disciplinary authority that he was produced the record and he is satisfied that the petitioner is guilty.

Court found that the second submission of Sri Saxena that no date, time and place was intimated to the petitioner and he' was not given the information regarding the change of the Inquiry Officer, is also established from the record. In absence of the proper information regarding the date, place and time of inquiry. No fresh enquiry can be said to be held. This Court in some of the cases, has held that if the employee is not informed with regard to date, place and time then on this ground the enquiry is vitiated. The Division Bench of this Court has followed the judgement of the Supreme Court in the case of Meenglas Tea Estate v. The Workmen, AIR 1963 SC 1719. The Division Bench of this Court in the case of Sub hash Chandra Sharma v. Managing Director and another reported in 2000 (1) UPLBEC 541 has set aside the termination order of employee on the ground of violation of natural justice as in that case also neither the date for inquiry was fixed- nor any inquiry was to be held in which the evidence was led by the department.

Having regard to the facts and evidence on the record, I arrive at irresistible conclusion that the disciplinary inquiry against the petitioner is vitiated for the grounds mentioned herein above. The order of the dismissal dated 14.6.1999 is set aside. **(Purushotam Yadav v. State of U.P.; 2013(3) SLR 728)**

Arts. 14 to 16, 19 & 21 - Gender identity

Right of Transgender Community (T.G.) to be identified as 3rd Gender and Rights of Trans sexual offer undergoing sex reassignment surgery (SRS).

Hon‘ble Supreme Court issued following declarations and direction on 15/4/2014 in writ petition CC-No 4000 of 2012).

1. "Hijras, eunuchs, apart from binary genders, be treated as “third gender” for the purpose of safeguarding their rights under Part III of our Constitution and the laws made by Parliament and the State Legislature.

2. Transgender Persons’ right to decide their self-identified gender is also upheld and the Centre and State Governments are directed o grant legal recognition of their gender identity such as male, female or as third gender.

3. We direct the Centre and the State Governments to take steps to treat them as socially and Educationally Backward Classes of citizens and extend all kinds of reservation in cases

of admission in educational institutions and for public appointments.

4. The Centre and State Governments are directed to operate separate HIV surveillance centers since hijas/trans genders face several sexual health issues.

5. The Centre and State Governments should seriously address the problems being faced by hijras/trans genders such as fear, shame, gender dysphoria, social pressure, depression, suicidal tendencies, social stigma, etc. and insistence for SRS for declaring one's gender is immoral and illegal.

6. The Centre and State Governments should take proper measures to provide medical care to TGs in the hospitals and also provide them separate public toilets and other facilities.

7. The Centre and State Governments should also take steps for framing various social welfare schemes for their betterment.

8. The Centre and State Governments should take steps to create public awareness so that TGs will feel that they that they are also part and parcel of the social life and be not treated as untouchables.

9. The Centre and the State Governments should also take measures to regain their respect and place in the society which once they enjoyed in other cultural and social life."

In aforesaid case Hon'ble Supreme Court held that International Law was applicable where Indian Law was absent to deal with situation such as absence of Indian Law on Trans Genders. In such cases municipal courts will follow International Law on the subject. **(National Legal Services Authority vs. Union of India; (2014) 5 SCC 438)**

Arts. 14 and 16 - Juniors promoted in 1983 – Claim for ad-hoc promotion made in 2003 – Respondent aware of such promotion - Not proper for the Tribunal, High Court to grant benefit to the respondent - Petition should have been dismissed on the ground of delay

There can be no cavil over the fact that the claim of promotion is based on the concept of equality and equitability, but said relief has to be claimed within a reasonable time. The said principle has been stated in Ghulam Rasool Lone v. State of Jammu and Kashmir and another; (2009) 15 SCC 321.

Presently, sitting in a time machine, court may refer to a two-Judge Bench decision in P.S. Sadasivasway v. State of Tamil Nadu; SCC 152: (1976

(1) SLR 53 SC wherein it has been laid down that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time, but it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the

Court to put forward stale claims and try to unsettle settled matters.

Court will be failing in his duty if Court does not state something about the benefit of promotion conferred on the junior employee. Court has been apprised by the learned counsel for the State that the promotion extended to him on 15.11.1983 has been cancelled and, as further put forth by the learned counsel for the respondents, the same is under assail before the High Court. The said Madhav Singh Tadagi was neither a party before the tribunal nor before the High Court and he is also not a party before the Court.

As presently advised, court refrains itself from expressing any opinion on the cancellation of promotion and the repercussions of the same. As the matter is subjudice before the High Court, suffice it to say that the High Court shall deal with the same in accordance with the settled principles of law in that regard. Court says no more on the said score. However, court irrefragably comes to hold that the direction given by the tribunal which has been concurred with by the High Court being absolutely unsustainable in law is bound to be axed and court so do. Consequently, the appeals are allowed and the orders passed by the High Court and that of the tribunal are set aside. **(State of Uttaranchal and another v. Sri Shiv Charan Singh Bhandari and others; 2014(2) SLR 688(SC)**

Arts. 14, 16 and 226 – Compassionate appointment - Constitutionality – Provision cannot be said unconstitutional

Petitioner‘s father, who was an employee of the Eastern Coalfields Limited, died on February 14, 2004. National Coal Wage Agreement-VI governs the monetary compensation and the compassionate appointment to be offered to the dependents of the employee died in harness. In terms of the said agreement, the dependents include wife/husband of the deceased, unmarried daughter and the son including the adopted son. The wife of the deceased, namely, Sikha Mondal, applied for her employment, but on June 20, 2006 her prayer was rejected by the appellant company on the ground that she was aged within 33 and 38 years and that she was physically unfit and in lieu of employment she was offered monetary compensation at the rate of Rs. 3,000/-per month till she would attain the age of 60 years or till the date of remarriage and/or death, whichever is earlier. The widow of the deceased did not accept the offer of the authorities and applied for review of the decision taken by the authorities. During pendency of her review application, on March 20, 2007 the widow died and on her death, the writ petitioner/respondent being the unmarried daughter of the deceased Nandalal Mondal applied for appointment.

The authorities of the Eastern Coalfields Limited considered the case of the writ petitioner and rejected her prayer by order dated September 2, 2009 on the ground that if the writ petitioner's age could have been 18 years or more at the time of death of her father, then her case could have been considered. There was no provision for employment for minor female dependent. She was advised to obtain terminal benefits of her father, which the authorities assured to lookinto the same on priority basis.

Aggrieved by the order of the authorities, as aforesaid, the writ petition was filed before the learned single Judge.

The learned single Judge opined that exercise undertaken by the widow came to an

end without any result. She died, she was not offered compassionate appointment and she also did not achieve the monetary compensation. The claim made by the daughter/writ petitioner was, also, rejected on the grounds as stated hereinbefore.

The learned single Judge observed that it would appear from clause 9.5.0(iii) of the National Coal Wage Agreement-VI that a male dependent, who, at the time of death of the workman, was 12 years or above, would be kept on a live roster and would be provided employment when he attains the age of 18 years. The learned single Judge further observed that the compassionate appointment could be offered either to a son or to a daughter of the deceased and there was no reason as to why a male dependent would be kept on the live roster but a female dependent could not be. The aforesaid provision was held to be bad and opposed to Article 14 of the Constitution of India. Thus, the learned single Judge issued direction to give compassionate appointment either to the son of the deceased, namely, Gaurav Mondal, or to the daughter of the deceased being the writ petitioner and to make payment of monetary compensation in favour of any one of the dependents till the date of appointment so offered.

It is apparent that in case, the male dependant of the concerned worker is 12 years and above in age as on the date of death of the worker, he would be kept on live roaster and would be provided employment commensurate with his skill and qualifications, when he attains the age of 18 years. During the period, the male dependant is on live roaster, the female dependant would be paid monetary compensation as per rates at paragraphs (i) and (ii) of clause 9.5.0 above.

Therefore, the finding as recorded by the learned Single Judge that the provisions as contained in clause 9.5.0(iii) of the National Coal Wage Agreement- VI is arbitrary and cannot be accepted, as the female dependent is taken care of by making payment of monetary compensation at the rate of Rs. 3,000/- per month and the male dependent can be kept on live roster. As such, wholesome, the provision cannot be said to be discriminatory or arbitrary and opposed to Article 14 of the Constitution of India.

Even it is trite as held by the Apex Court that compassionate appointment on the death of the employee is governed by the policy. The National Coal Wage Agreement-VI contains the policy of offering compassionate appointment. It is not for the court to rewrite a policy as the offer of compassionate employment is governed by such rule/policy. **(Eastern Coalfields Limited v. Rakhi Mondal; 2014(3) SLR 769 (Cal)**

Arts. 14 and 39-A -Meaning of Access to Justice

Access to Justice will not affect the quality of human life so as to take access to justice out of the purview of right to life guaranteed under Article 21. We have, therefore, no hesitation in holding that access to justice is indeed a facet of right to life guaranteed under Article 21 of the Constitution. We need only add that access to justice may as well be the facet of the right guaranteed under Article 14 of the Constitution, which guarantees equality before law and equal protection of laws to not only citizens but non-citizens also. We say so because equality before law and equal protection of laws is not limited in its application to the realm of executive action that enforces the law. It is as much available in relation to proceedings before Courts and tribunal and adjudicatory fora where law is applied and

justice administered. The Citizen‘s inability to access courts or any other adjudicatory mechanism provided for determination of rights and obligations is bound to result in denial of the guarantee contained in Article 14 both in relation to equality before law as well as equal protection of laws. Absence of any adjudicatory mechanism or the inadequacy of such mechanism, needless to say, is bound to prevent those looking for enforcement of their right to equality before laws and equal protection of the laws from seeking redress and thereby negate the guarantee of equality before laws or equal protection of laws and reduce it to a mere teasing illusion. Article 21 of the Constitution apart, access to justice can be said to be part of the guarantee contained in Article 14 as well.

Access to justice is and has been recognised as a part and parcel of right to life in India and in all civilized societies around the globe. The right is so basic and inalienable that no system of governance can possibly ignore its significance, leave alone afford to deny the same to its citizens. The Magna Carta, the Universal Declaration of Rights, the International Covenant on Civil and Political Rights, 1966, the ancient Roman Jurisprudential maxim of `Ubi Jus Ibi Remediuma, the development of fundamental principles of common law by judicial pronouncements of the Courts over centuries past have all contributed to the acceptance of access to justice as a basic and inalienable human right which all civilized societies and systems recognise and enforce.

Access to justice will again be no more than an illusion if the adjudicatory mechanism provided is so expensive as to deter a disputant from taking resort to the same. Article 39-A of the Constitution promotes a laudable objective of providing legal aid to needy litigants and obliges the State to make access to justice affordable for the less fortunate sections of the society. **Anita shwaha v. Pushap Sudan, (2016) 8 SCC 509.**

Arts. 14, 265 -T axing statue-When can be said to be violative of Art. 14

Every legislation is done with the object of public good as said by Jeremy Bentham. Taxation is an unilateral decision of the Parliament and it is the exercise of the sovereign power. The financial proposals put forth by the Finance Minister reflects the governmental view for raising revenue to meet the expenditure for the financial year and it is the financial policy of the Central Government. The Finance

Minster‘s speech only highlights the more important proposals of the budget. Those are not the enactments by the Parliament. The law as enacted is what is contained in the Finance Act. After it is legislated upon by the Parliament and a rate of duty that is prescribed in relation to a particular Tariff Head that constitutes the authoritative expression of the legislative will of Parliament. Now in the present facts of the case, as per the finance bill, the legislative will of the Parliament is that for the commodities falling under Tariff Head 2208.10, the tariff is Rs.300/- per litre or 400% whichever is higher. Even assuming that the amount of tax is excessive, in the matters of taxation laws, the Court permits greater latitude to the discretion of the legislature and it is not amenable to judicial review.

Hence the Supreme Court is unable to concur with the submission of the appellant that the budget proposals are duly passed and approved by the Parliament and moreover, if the appellant is aggrieved by the particular tariff prescribed under the Finance Act and the same is contrary to the approved budget proposals, he ought to have questioned the same if

permissible.

Hence, this issue is answered against the appellant.

Statute Law- Generally

A Taxing Statute can be held to contravene Article 14 of the Constitution if it purports to impose certain duty on the same class of people differently and leads to obvious inequality. Such a material is not placed before us to come to a just conclusion that the action of the respondents is discriminative. Hence, the same is held against the appellant. **(Amin Merchant V. Chairman, Central Board of Excise and Revenue and others, (2016) 9 SCC 191)**

Articles 14 and 226- Applicability of- Fundamental right U/A 14 of constitution is available against a state and its authorities and not against probate body to maintain a writ petition

This writ petition has been filed by a student through his father aged about 17 years, being aggrieved by the action of opposite party no.9 i.e. Principal La Martiniere College, Lucknow declining him admission in standard XI. By means of this petition the petitioner has sought a writ of certiorari quashing the reply dated 21.06.2015 submitted by the Principal to the District inspector of Schools Anglo India Schools, Lucknow and has also sought a writ of mandamus commanding the respondents to admit him in standard XI (Science-Biology stream) of La Martiniere College, Lucknow for the academic session 2015-16 and specifically to the District Magistrate, Lucknow for taking necessary action in the matter in accordance with law.

The assertion that the action of respondent school being arbitrary was hit by Article 14 of the Constitution has been made only for being rejected. The Fundamental Right under Article 14 of the Constitution is available against a State and its authorities and not against a private body certainly not for maintaining a writ petition under Article 226 of the Constitution against such bodies. Arbitrary action, if any, may give cause for the aggrieved person to initiate civil action before the Civil Court but not a writ petition against a private educational institution. The opposite parties have been able to demonstrate that admission to standard XI is a fresh admission and not an automatic promotion, a stand supported by learned Senior Advocate Sri Nagar, who appeared and argued on behalf of Indian School Certificate Board and placed before the Court the relevant Regulations in this regard.

The first relief claimed in the writ petition is for issuance of a writ of certiorari quashing the letter dated 21.06.2015 written by the Principal of the School, which is a private unaided educational institution. Moreover the said letter is in response to some letter written by the District Inspector of Schools Anglo India Schools Lucknow. Issuance of a writ of certiorari for quashing a reply such as the one contained in the letter dated 21.06.2015 is unheard of. The claim for issuance of such a writ is not supported by any decision. A writ of certiorari cannot be issued to quash a letter/reply sent by the Head of the private Institution. The Indian School of Certificate Board to which the institution is affiliated, is, itself not a statutory authority nor any effort was made by the petitioner to prove that it was.

In view of the discussion made herein above it hardly needs to be emphasised that in the facts of the present case, no case is made out for issuance of a writ of certiorari or mandamus as prayed for in the writ petition. **(Vatsal Gupta Thru His Father v. State of U.P., 2016 (1) AWC 161)**

Articles 15 (4) and 16 (4) –Removal from the post of Post Graduate Teacher- Upon Cancellation of caste certificate of Scheduled Caste community- Validity of

In this case, petitioner belonged to forward class of prosperous Hindu community, she married upon age of majority with person belonging to Scheduled Caste community. As such she could not be said to have a quired status of. Scheduled cast community.

When a member is transplanted into the Dalits, Tribes and OBCs, he/she must of necessity also undergo and have had some of the handicaps, and must have been subjected to the same disabilities, advantages, indignities or suffering so as to entitle the candidate to avail the facility of reservation. The candidate who had advantageous start in life being born in forward caste and had march of advantageous life but is transplanted in scheduled caste by adoption or marriage or conversion, does not become eligible to the benefit of reservation either under Articles 15(4) and 16(4), as the case may be. Acquisition of the status of scheduled caste etc. by voluntary mobility into these categories would play fraud on the Constitution, and would frustrate the benign constitutional policy under Articles 15(4) and 16(4) of the Constitution. (Vide Murlidhar Dayandeo Kesekar Versus Vishwanath Pandu 1995 Suppl (2) SCC 549 and R. Chandevarappa Versus State of Karnataka, (1995) 6 SCC 309)

Having considered the facts and circumstances of the case, it is not in dispute that the petitioner belongs to the forward class of a prosperous hindu community, she married upon attaining the age of majority a person belonging to the Scheduled Caste, as such, it cannot be said that she acquired the status of that community, therefore, it cannot be said that she would be entitled to the constitutional protection and benefit conferred in terms of Article 15(4) and 16(4) of the Constitution. **(Smt. Sunita Singh Vs. State Of U.P. And Others, 2016 (2) AWC 1343)**

Arts. 16 and 226 – Seniority – Work charge status – Workman granted reinstatement with full back seniority but without back wages – Legality of

The petitioner was appointed as daily waged Beldar in the year 1984. In the year 1987, his services were terminated and thereafter, the petitioner filed a Reference Petition and the same was referred for decision to the Presiding Judge of the H.P. Industrial Tribunal who vide her order dated 19.3.2001 held that the termination of the services of the petitioner was in violation of Section 25-F of the Industrial Disputes Act, 1947 and further held that the petitioner is entitled to reinstatement with full back seniority but without back wages.

Now, the claim of the petitioner in this case is that the entire period has to be taken into consideration for working out his seniority and to fix the date when he should be given work charge status.

The stand of the state is that the period during which the petitioner did not actually work cannot be counted. The respondents cannot be permitted to take such a stand. They were parties before the learned Industrial Tribunal and the award of the learned Industrial Tribunal has been upheld by this Court in CWP No. 302 of 2002 titled State of H.P. v. Nanda Ram and the Department cannot sit over the order of the Labour Court or the Judgment of this Court itself, For the purpose of grant of work charge status, the entire period from the date of initial appointment of the petitioner, i.e. in March, 1984 shall have to

be counted and the respondents cannot discard the period during which the petitioner was not in service because the order is very clear in this regard. **(Nanda Ram v. State of H.P.; 2012 (2) SLR 750)**

Art. 16—Denial compassionate appointment on the ground that lump sum amount was paid as ex gratia to family of deceased employee is not only ridiculous but also unconscionable

In Court's opinion, the reasons of rejecting the case of the petitioner for consideration of appointment on compassionate ground is not only ridiculous but also ludicrous besides being wholly unconscionable. It is not the case of the respondents that there is no scheme for considering dependants of deceased employees for appointment on compassionate grounds but this is no ground that merely because ex gratia lump sum amount has been paid, therefore, the petitioner is not entitled for appointment on compassionate ground. **(Arvind Kumar Singh vs. State Bank of India; 2012 (5) ALJ 630)**

Art. 16—Appointment obtaining suppressing material information/giving false information—Whether unequivocally entail cancellation of appointment/termination of service—Effect of

As noted by Court, all the above decisions were rendered by a Division Bench of this Court consisting of two-Judges and having bestowed our serious consideration to the issue, Court consider that while dealing with such an issue, the Court will have to bear in mind the various cardinal principles before granting any relief to the aggrieved party, namely:

(i) Fraudulently obtained orders of appointment could be legitimately treated as voidable at the option of the employer or could be recalled by the employer and in such cases merely because the respondent employee has continued in service for a number of years, on the basis of such fraudulently obtained employment, cannot any equity in his favour or any estoppels against the employer.

(ii) Verification of the character and antecedents is one of the important criteria to test whether the selected candidate is suitable to the post under the State and on account of his antecedents the appointing authority if find not desirable to appoint a person to a disciplined force can it be said to be unwarranted.

(iii) When appointment was procured by a person on the basis of forged documents, it would amount to misrepresentation and fraud on the employer and, therefore, it would create no equity in his favour or any estoppels against the employer while resorting to termination without holding any inquiry.

(iv) A candidate having suppressed material information and/or giving false information cannot claim right to continue in service and the employer, having regard to the nature of employment as well as other aspects, has the discretion to terminate his services.

(v) Purpose of calling for information regarding involvement in any criminal case or detention or conviction is for the purpose of verification of the character/antecedents at the

time of recruitment and suppression of such material information will have clear bearing on the character and antecedents of the candidate in relation to his continuity in service.

(vi) The person who suppressed the material information and/or gives false information cannot claim any right for appointment or continuity in service.

(vii) The standard expected of a person intended to serve in uniformed service is quite distinct from other services and, therefore, any deliberate statement or omission regarding a vital information can be seriously viewed and the ultimate decision of the appointing authority cannot be faulted.

(viii) An employee on probation can be discharged from service or may be refused employment on the ground of suppression of material information or making false statement relating to his involvement in the criminal case, conviction or detention, even if ultimately he was acquitted of the said case, inasmuch as such a situation would make a person undesirable or unsuitable for the post.

(ix) An employee in the uniformed service pre-supposes a higher level of integrity as such a person is expected to uphold the law and on the contrary such a service born in deceit and subterfuge cannot be tolerated.

(x) The authorities entrusted with the responsibility of appointing Constables, are under duty to verify the antecedents of a candidate to find out whether he is suitable for the post of a Constable and so long as the candidate has not been acquitted in the criminal case, he cannot be held to be suitable for appointment to the post of Constable.

Though there are very many decisions in support of the various points culled out in the above paragraphs, inasmuch as we have noted certain other decisions taking different view of coordinate Benches, we feel it appropriate to refer the above-mentioned issues to a larger Bench of this Court for an authoritative pronouncement so that there will enable the Courts to apply the law uniformily while dealing with such issues.

With that view, we feel it appropriate to refer this matter to be considerably by a larger Bench of this Court. **(Jitendra Singh vs. State of U.P. Through Principal Secretary, Home & Ors.; 2012 (5) ALJ 503)**

Art. 16—Regularization of services—Executive function—Court/Tribunal cannot direct the authorities to frame scheme for regularization of employees of the Railway Employees Consumer Cooperative Society

The respondents were employees of a cooperative society of Railway Employees Consumer Cooperative Society Ltd. By its order dated 30.5.2001, the Central Administrative Tribunal (for short 'the Tribunal') has directed the Chairman, Railway Board to formulate a suitable scheme for induction of the respondents and similarly placed employees of other cooperative societies in regular Group 'D' posts and alternatively also as Casual Group 'D' employees in the railways. This direction has been upheld by the High Court in the impugned judgments.

In court's opinion, the order of the Tribunal as well as the impugned judgments of the

High Court were totally unwarranted and illegal. There is broad separation of power in the Indian Constitution. As held by this Court in Divisional Manager, Aravali Golf Club vs. Chander Hass, 2008 (1) Recent Apex Judgments (R.A.J.) 116 : (2008) 1 SCC 683 " [2008(1) SLR 728 (SC)], it is not proper for the Judiciary to encroach into the domain of the Legislature or the Executive. The framing of a scheme such as the one done by the Tribunal and approved by the High Court was a purely executive function and could not validly be done by the judiciary. **(Union of India vs. Ram Singh Thakur; 2012 (2) SLR 533 (SC)**

Art. 16 Seniority – Fixation - Determination of Seniorities between direct recruits and enter-charge transferees under direct recruit quota - Principles stated

Principles emerging for determination of seniority between the direct recruits and inter-charge transferees (under direct recruit quota) on interpretation of various Govt. orders are:-

(1) The seniority of direct recruits can neither be reckoned from the date of sending requisition to the recruiting body nor can the seniority be reckoned from the date of selection.

(2) The seniority of direct recruits shall be reckoned from the date when they are available for appointment in any particular year in their quota as per the rotation of quota.

(3) The inter-change transferee belonging to direct recruit quota shall be treated to be direct recruit in the particular year when he joins after transfer and shall be treated to be an addition in the direct recruits available in the particular year.

(4) The seniority in the cadre of inter-charge transferee shall start from the date of person reports for duty in that charge. However, he will not rank senior to any official to a batch selected on merit, whose inter-se seniority is not regulated by the date of joining. **(Rajeev Mohan vs. Central Administrative Tribunal, Allahabad Bench, Allahabad; 2012 (5) ALJ 257)**

Art. 16 Compassionate Appointment – Denial - Validity of

The authority concerned has rejected the application of petitioner for compassionate appointment on account of lapse of a period of more than three years from the date of death of Shyam Veer Singh without further considering the case of applicant on merit as to whether the family of deceased employee is continuously facing financial distress and hardship occasioned by death of deceased employee of corporation and whether the family cannot be relieved from such financial distress and hardship without offering compassionate appointment to the applicant.

The Authority concerned is directed to consider the case of petitioner on merit and while considering so the competent authority shall examine as to whether the family of deceased employee continues to be under financial distress and hardship and the family of deceased employee cannot be relieved from such financial hardship and distress unless the compassionate appointment is offered to the petitioner. **(Asha Rani vs. State of U.P.;**

2012(5) ALJ 335)

Art. 16 – Compassionate appointment – Object of – Its object is to grant immediate succour to family of deceased‟s employee

It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying-in-harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased-employee would be directly in conflict with Articles 14 and 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind. **(Local Administration Department & Anr. v. M. Selvanayagam @ Kumaravelu; AIR 2011 SC 1880)**

Art. 16 – Regularisation of service claimed by temporary employee – Being temporary employee petitioner has no right to post – Her service being discontinued, relief or reinstatement cannot be granted

A regular appointment can only be made after selection by the U.P. Public Service Commission. Also, admittedly, the respondent was only a temporary employee and had not worked after 16.4.1991

It has been held in a recent decision of the Court in State of Rajasthan v. Daya Lal; 2011(2) SCC 429 that the High Court in exercise of its power under Article 226 canot regularize an employee. Merely because some others had been regularized does not give any right to the respondent. An illegality cannot be perpetuated.

Also, it is well-settled that a temporary employee has no right to the post vide State of U.P. v. Kaushal Kishore Shukla; (1991) 1 SCC 691. The respondent‟s service was not terminated as a measure of punishment. Hence no opportunity of hearing was necessary for terminating her service. The direction for her reinstatement is not sustainable as she was only a temporary employee and hence had no right to the post. **(State of U.P. & Ors. V.Rekha Rani; AIR 2011 SC 1893)**

Art. 16 – Promotion – Selection for promotion by Public Service Commission could not be treated as ad-hoc appointment.

After completion of working as junior engineer, petitioner‟s name was sent to Public Service Commission for promotion, for post of Assistant Engineer – He was selected for promotion by Public Service Commission – Appointment on selection for promotion so made could not be treated ad-hoc – Order treating him as ad-hoc Assistant Engineer, invalid.

(Nikhilesh Kumar Gupta v. State of U.P. & Ors.; 2009(5) ALJ (DOC) 126 (All HC Lko Bench (DB)

Art. 16 – Air Force Act – Ss. 18 & 189 – Govt. Employee – Who is not – Employee of unit run canteen in Air Force is not Govt. Employee.

Employee of unit run canteen (URC) is not Govt. Servant, From Rule 4 read with Rule 2 it is clear classification that all employees are first on probation and they shall be treated as temporary employees. After completion of five years they might be declared as permanent employees. They however do not get the status of the Government employees at any stage. URCs are purely private ventures and their employees are by no stretch of imagination employees of the Government or canteen stores Deptt. (CSD) URCs are not funded by CSD as well as the articles are not supplied by the CSD. Only refundable loans can be granted by the CSD to URCs at the rate of interest laid down by it from time to time upon the application of URCs seeking financial assistance. There is no statutory obligation on the part of the Central Government to provide canteen services to its employees. Even the profits generated from the URCs are not credited to the Consolidated Funds, but are distributed to the Non Public Funds, which are used by the units for the welfare of the troops. (R.R. Pillai, deceased by L.Rs. v. Commanding Officer H.Q.S.A.C. (U) & Ors.; AIR 2010 SC 188)

Art. 16 & 14 – Appointment cannot be made over and above post advertised which offends Articles 14 & 16.

Vacancies cannot be filled up over and above the number of vacancies advertised as the recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16 of those persons who acquired eligibility for the post in question in accordance with the statutory rules subsequent to the date of notification of vacancies. Filling up the vacancies over the notified vacancies is neither permissible nor desirable, for the reason, that it amounts to "improper exercise of power and only in a rare and exceptional circumstance and in emergent situation, such a rule can be deviated and such a deviation is permissible only after adopting policy decision based on some rational", otherwise the exercise would be arbitrary. Filling up of vacancies over the notified vacancies amounts to filling up of future vacancies and thus, not permissible in law. In case the vacancies notified stand filled up, process of selection comes to an end. Waiting list etc. cannot be used as a reservoir, to fill up the vacancy, which comes into existence after the issuance of notification/advertisement. The un-exhausted select list/waiting list becomes meaningless and cannot be pressed in service any more. **(Rakhi Ray v. High Court of Delhi; AIR 2010 SC 932)**

Art. 16 & 309 – Ad-hoc appointment is always to post and not to cadre/service and it is not made in accordance with provisions in recruitment rules for regular appointment.

The basic issue was whether ad hoc appointment or appointments on daily wage or

work charge basis are appointments made to the cadre/service in accordance with the provisions contained in the recruitment rules contemplated by the Government Orders dated 25.1.1992 and dated 17.2.1998. It is the stand of the appellants that they are not, while the respondents contend to the contrary. In order to become "a member of service", candidate must satisfy four conditions, namely (i) the appointment must be in a substantive capacity; (ii) to a post in the service i.e. in a substantive vacancy; (iii) made according to rules; (iv) within the quota prescribed for the source. Ad hoc appointment is always to a post but not to the cadre/service and is also not made in accordance with the provisions contained in the recruitment rules for regular appointment. (State of Rajasthan & Ors. v. Jagdish Narain Chaturvedi; AIR 2010 SC 157)

Article 16 – Preliminary enquiry – There is no law, which requires participation of delinquent employees in preliminary enquiry.

There is no requirement under any statutory provision or otherwise under settled law, which requires opportunity of participation to delinquent employees in the preliminary enquiry. Such enquiry is a fact finding enquiry only for the satisfaction of the authority, as to whether the allegations noticed against employee concerned, deserve any merit and as to whether a departmental enquiry be initiated against employee or not. There is no reason for participation of the employee in the aforesaid proceedings. **(Gopalji Rai & Ors. v. State of U.P. & Anrs.; 2006 (4) ALJ 502)**

Articles 16 – Disciplinary proceedings – Holding of more than one preliminary enquiries – Would not vitiate regular disciplinary conducted against employee in accordance with Rules.

Even otherwise holding of more than one preliminary enquiries would not vitiate the regular disciplinary enquiry conducted against an employee in accordance with rules. Moreover any irregularity in the preliminary enquiry would not affect order of punishment passed. In pursuance to a regular enquiry conducted in accordance with rules unless regular inquiry itself is found to vitiate in law. Therefore, the first submission of the petitioner that after two preliminary enquiries reports submitted by the Chief Fire Officer the disciplinary authority could not have directed to hold further enquiry is rejected. **(Veerpal Singh v. Senior Superintendent of Police, Agra & Ors.; 2006 (5) ALJ 307)**

Article 16 – Pay scales – Differentiation in pay scales of two groups of storekeepers – whether grant of higher pay scale to storekeeper having higher educational qualification is discriminatory – „No".

Differentiation in pay scale of two groups of store keepers is not something new brought about for the first time in recent past of in last one or two revisions of pay scales. It has always been there since very inception of creation of two different grades in storekeepers in the U.P. State Bridge Corporation. A different grade in the same service cadre was created in higher pay scale of Rs. 250-425 and appointees having amended

qualification were placed in higher pay scale. ON revision of pay scales from time to time both the categories of storekeepers were treated as distinct and separate class. They were never fused together and integrated into one class. Therefore, no question of unconstitutional discrimination could arise by reason of differential treatment being given to them in the fixation of their pay scale and its revision from time to time and no fault can be found in fixation of higher pay scale to the store keepers having Diploma in Material Management, as their better qualification have reasonable nexus with their duties and responsibilities and quality of work on their respective posts.

Unless the petitioner placed relevant material before the Court that change in qualification was not required by expediency or need of public service and had not rational nexus with the duties and responsibilities for the post the fixation of high pay scale for the appointees having higher and better qualification cannot be found faulty. According fixation of higher pay scale for appointees subsequent to the appointment of the petitioner cannot be said to be discriminatory and violative of Art. 14 and 16 of the constitution. **(Ram Krishna Mishra v. State of U.P. & Ors., 2006(2) ALJ 500)**

Articles 16, 309 – U.P. Dependents of Govt. Servant Dying in Harness Rules (1974), R. 5 - Compassionate Appointment – Whether denial of compassionate appointment on the ground that family of claimant was not living in indigent conditions was proper – „Yes"

The petitioner claimed that his brothers are handicapped and there is no other source of livelihood and as such the dependent of the deceased employee must be given appointment by the Respondents on compassionate ground. It has been found by the Committee that the family is not living in indigent condition, which is a relevant consideration for offering appointment to the dependent of the deceased family who died in harness. It may be that the dependent may not be having independent source of income but the family still may not be in indigent condition. (**Sunil Kumar v. Union of India & Ors., 2006(2) ALJ 709)**

Art. 16 - Compassionate appointment - Consideration of

Compassionate appointment is the service condition of an employee applied in case the scheme has been framed by the employer. It is not an advantage receivable by heirs on account of death and have co-relation of amount receivable under the statutes occasioned on account of accidental death. Compassionate appointments have nexus with the death of an employee during the course of service and not otherwise. (Prabandhak U.P. Rajya Sadak Parivahan Nigam v. Smt. Rabia Begum and others; 2014 (2) ESC 871 (All)

Arts 16 and 226 - Transfer of Employee of his Choice – Interference by Court - No Govt. Employee of a public undertaking has any legal right to be posted forever at any particular place or place of his choice

The transfer is not only an incident of service, but a condition of service as well and it is necessary in public interest and efficiency in public administration. No government

employee of a public undertaking has any legal right to be posted forever at any particular place or place of his choice. Unless an order of transfer is shown to be an outcome of mala fine exercise or stated to be in violation of statutory provisions prohibiting such transfer, the Court or the Tribunal normally cannot interfere with such orders, as if the Court or the Tribunal is the Appellate Authority and is substituting its own decision for that of the management.

The guidelines as referred to by Shri Pathick Chandra Das cannot have same force as that of the statute. Moreover, whether there existed administrative exigency or not is not a matter for the Court, but is a matter for the Administration.

Unless, an aggrieved employee is able to establish either the order of transfer being tainted with mala fide or the same being in arbitrary exercise of such powers by disclosing necessary facts or materials, which can reveal such action to be malafide or arbitrary and, further, that the action is in violation of the statutory provisions, the question of interference by the Court against such order of transfer does not arise.

Ordinarily, an employee, who has been transferred, should, subject to just exceptions, join at his transferred place/post immediately.

The legal position regarding interference by Court in the matter of transfer is too well settled. The respondent no. 1/ applicant‘s transfer neither suffers from violation of any statutory rules not it can be described as mala fide. **(Andaman and Nicobar Administration v. Newazesh Ali; 2014 (2) SLR 783 (Cal)**

Arts. 16 and 226 - Absorption in service – Surplus Employees from a lower pay scale post can be absorbed to higher pay scale post

The petitioners fulfil the requisite qualifications as prescribed in the advertisement dated 01.06.2010 and since the petitioners have been adjusted against the posts of Inspector, Legal Metrology, they should be allowed to continue on the said post by absorbing them on the said post as there is no impediment which would come in the way either in the qualifications or performance of work of the petitioners. He, accordingly, prays that the writ petition be allowed.

Counsel for the respondents, on the other hand, states that initially the petitioners were adjusted on the post of inspector, Legal Metrology but subsequently, they had been granted the pay scale of the posts, which were held by them prior to their joining the Department of Legal Metrology i.e. Junior Technical Assistant and Semi Skilled Operator. Since they were and are drawing the initial pay scale, which is less than that of Inspector, Legal Metrology, therefore, they cannot be absorbed against the post of Inspector, Legal Metrology. There are posts available in the same pay scale, in which the petitioners are serving i.e. of Manual Assistants, which are lying vacant in the department. She, accordingly, contends that the writ petition deserves to be dismissed.

In response to this argument raised by the counsel for the respondents, counsel for the petitioners has referred to para (c) of Grounds of the reply, wherein it has been specifically admitted by the respondents that there are no instructions, which provide for absorption of a

surplus employee from a lower pay scale/post to the higher pay scale/post. He, accordingly, contends that the argument raised by the counsel for the respondents cannot, therefore, be accepted. **(Rajan Kapoor and others v. Chief Secretary of Govt. Punjab; 2014(2) SLR 488 (P&H)**

Art. 16 – Incentive of one increment under the Government scheme regarding sterilization - Entitlement of – Whether re-employed persons are entitled to Increment (Incentive) if the sterilization operation was undergone prior to re-employment – Held, —No.

The respondent-employee was re-employed as a Male Nurse at Nuclear Fuel Complex, Hyderabad. According to the case of the respondent-employee, prior to his re-employment, a sterilization operation was undertaken by his wife and therefore, as per the policy of the appellant-organization, he was entitled to one incentive increment for promoting small family norms. In spite of his repeated requests he was not given the increment and therefore, he had approached the Central Administrative Tribunal, Hyderabad by filing O.A.No.254 of 2009. The Tribunal rejected his application relying upon the policy of the Government to the effect that a re-employed person, if he or his spouse had undergone sterilization operation prior to his re-employment, was not entitled to an increment by way of incentive.

The Tribunal did not grant the application in view of the policy decision of the Government to the effect that the special incentive increment was not to be given to a person who/whose spouse had undergone the sterilization operation before his re-employment.

Not being satisfied with the rejection of the application, the respondent-employee had filed Writ Petition No. 24132 of 2009 in the High Court of Andhra Pradesh challenging the validity of the order of the Tribunal. The petition was allowed and the High Court has directed the appellants to give special incentive increment to the respondent-employee.

Being aggrieved by the aforestated judgment delivered by the High Court, this appeal has been filed.

It is a known fact that our country is having a severe problem with regard to explosion of population and so as to curb the population, the Government had framed certain policies. The Government had made an effort to give incentive to those who had tried to control the size of their families and as per one of the policies, with which Court is concerned at present, an employee or his/her spouse undergoing sterilization operation, was to be given one incentive increment. It was, however, clarified under policy dated 18.9.2002 that the re-employed persons were not entitled to incentive, if the sterilization operation was undergone prior to the re- employment.

In Court‘s opinion, the Tribunal was absolutely justified in rejecting the application of the respondent-employee in view of the aforestated policy of the Government.

The Court is of the view that normally the courts should not interfere with the just policies framed by the Government. In Court‘s opinion, the policy decision taken by the

Government which is reproduced hereinabove dated 18.9.2002, is quite reasonable and it has nexus with the purpose which is to be achieved. In the circumstances, the High Court ought not to have become lenient by allowing the petition and by awarding incentive increment to the respondent-employee in violation of the Government policy.

For the reasons recorded hereinabove, the Court is of the view that the High Court committed an error while allowing the petition and giving direction with regard to giving incentive increment to the respondent-employee and therefore, Court quashed and set aside the said direction. **(Secretary, Department of Atomic Energy and others v. M.K. Bawane; 2014 (3) SLR 335 (SC)**

Arts. 16, 226 - Regularisation of services – Temporary employee - Petitioner was engaged as a sweeper in the Nagar Nigam on a temporary basis, but was working on a permanent post for more than 10 years - In 2000, the regularisation rules came into existence - Workman applied for regularisation of his services - No action taken, until ban on fresh appointment imposed by G.O. – Said ban did not apply for regularisation of services of existing employees - Impugned order sustainable

The petitioner was engaged as a sweeper in the Nagar Nigam w.e.f. 1st November, 1994 on a temporary basis, but was working on a permanent post, and in this fashion continued to work for more than 10 years. In 2000, the Regularization Rules came into existence, and the workman applied for regularization of his services. The employers took action on his application by putting a note and forwarding it to the Competent Authority who recommended the matter and sent it to the Selection Committee. Inspite of this direction, the matter of regularization of the services of the workman was not placed before the Selection Committee between the years 2000 to 2005, and when a government order dated 12th March, 2005 imposed a ban on appointments, the Competent Authority conveniently consigned the application of the workman on the ground that the State Government has now imposed a ban. The workman being dissatisfied with the action of the Competent Authority in not making him permanent, raised an industrial dispute, which was referred by the State Government to the labour court for adjudication. The terms of the reference order was "whether the employers justified in not making the workman permanent in the service of the Nagar Nigam as Sweeper? If not, to what relief was the workman entitled to."

The Court finds that the award of the labour court does not suffer from any error of law. The award of the labour court is perfectly justified in the facts and circumstances of the given case. The Court finds that the workman was working for more than 11 years without any break in service. The muster roll of the year 2005 was produced by the workman to prove that he had worked for all the days in the month. The best evidence was with the employer to produce the attendance register to indicate the number of working days on which the workman has done work in a year and which they have miserably failed to produce.

The Court finds that a clear averment was made by the workman that he was working on a substantive post, which fact has not been denied by the employers. The Court also finds that a specific averment was made that junior to the workman was regularized, which fact has also not been denied by the employers.

The note-sheet clearly indicates that the claim of the workman for regularization under the 2001 Regularization Rules was sent to the Selection Committee, but for the reasons best known, the claim of the workman was not considered from 2001 to 2005, and then, the employer conveniently threw the claim of the workman in the dustbin on the ground that the Government has now imposed a ban.

The Court is of the opinion that the ban imposed by the State Government was with regard to fresh appointments and that the ban did not apply for the regularization of the services of existing employees. **(Nagar Ayukt, Nagar Nigam, Kanpur v. Presiding Officer, Labour Court, Kanpur and others; 2014(3) SLR 596 (All)**

Art. 16 – Salary – Liability to pay – A private college taken over by Govt. – Liability would start from date of which State Govt. has taken over

The appellants were appointed prior to 29.1.1981 by the then Managing Committee of the R.B.T.S. Homeopathic Medical College and Hospital, Muzaffarpur. A Notification dated 29.1.1981 was issued by the Health Department, Government of Bihar to take over the private medical college with effect from 1.4.1981. In the Notification dated 29.1.1981, it was made clear that these institutions will be taken over by the Government of Bihar with effect from 1.4.1981. Therefore, in court considered view, the liability of the State Government would arise from the date these private institutions were taken over by the State Government i.e. with effect from 1.4.1981.

In case of employees where some payments have been made by the State Government, court directed the State not to recover that amount from the employees. In other cases, the employees would be entitled to different pay scales only from 1.4.1981. **(Chandra Nath Jha v. State of Bihar; 2013 (1) SLR 518 (P&H)**

Art. 16 and 235 – Evidence Act, Sec. 114 (e) – Dismissal from service on ground of concealment of fact that he was deserter from Indian Army and for which he was convicted and jailed – Dismissal was proper

The appellant had applied for the post of Peon notified by the Public Service Commission, hereinafter referred to as "the Commission", in 1987 and having qualified in the test conducted on 16.4.1988 and the consequential interview on 12.6.1989, he was posted as Peon in the Irrigation Department in the year 1992. In 1993, he obtained inter-departmental transfer to the Judicial Department and was promoted to the post of Lower Division Clerk, when the said proceedings were initiated against him on account of an anonymous complaint received by the Registrar General of the High Court of Kerala, who had administrative control over the officers and ministerial staff of the subordinate judiciary. The appellant, aggrieved by the dismissal from service and the unsuccessful appeal, was before the learned Single Judge, who dismissed the writ petition by the impugned judgment. Hence this appeal has filed.

The appellant was dismissed from service and is categorized as "unfit for civil employment" cannot at all be disputed. The said order of dismissal and consequent is

qualification has become final and the appellant cannot seek continuance in civil employment by reason merely of picking holes in an enquiry proceeding initiated for non-disclosure of such facts. The challenge based only on the validity of the charge, procedural irregularity, etc. are also found to be not sustainable. The further plea that the punishment is disproportionate cannot be countenanced, since the appellant was categorized as 'unfit' for public employment by reason of his dismissal from Armed Services and had not disclosed the said fact which resulted in his continuing in public employment for 20 years.

Court have to further notice, as has been pointed out in the counter-affidavit, that after obtaining employment, every employee has to be subjected to police verification. The police verification is primarily self declaratory in nature as to the personal details. It is on such self declaration before an authorized officer from the police that the verification is conducted and report filed with the appropriate authority. It looms large that no such declaration has also been disclosed on the police verification, since if so disclosed, necessarily proceedings would have been taken at that stage itself. Appellant having successfully evaded disclosure and having continued in employment for 20 years suppressing the fact of dismissal from Armed Services and consequent disqualification from civil employment, cannot turn around and be permitted to claim equity by reason of the long 20 years continued in employment or claim immunity by reason only of the original application submitted by the appellant having not been unearthed. We are of the definite opinion that the judgment of the learned Single Judge does not suffer from any infirmity and the same is liable to be upheld on all counts. **(Viswanathan K.C. v. D. Pappachan (Ker.); 2014(1) SLR 182)**

Art. 16 and 233(2) – Selection – A.P. Higher Judicial Service - Selectee was working as assistant public prosecutor and could not be considered as advocate practicing at bar for seven years - High Court allowed the petition - Held that assistant public prosecutor is also an advocate and his selection cannot be set aside on the ground that he is working with Govt.

Before they could be appointed to the post in question, Writ Petition Nos.34683 of 2011 and 894 of 2012 had been filed in the High Court wherein their selection had been challenged on the ground that the appellants had been working as Assistant Public Prosecutors and as such, they should not have been considered as advocates having standing of seven years at the Bar and according to the submissions made in the petitions, challenging their selection, a person working as a Public Prosecutor cannot be said to be an advocate practicing at Bar because of his being in employment of the State of Andhra Pradesh. Moreover, Lakshmana Rao Yadavalli, the first appellant‘s selection had also been challenged on an additional ground that he had not completed 35 years of age at the time when the post in question had been advertised. According to the submissions made before the High Court, a person cannot be appointed to the post in question till he completes the age of 35 years.

After hearing the concerned parties, the aforestated petitions had been allowed and therefore, the present appellants who were respondents in the aforestated petitions have not been appointed to the post in question.

Ultimately, this Court came to the conclusion that the appellant in the said case had

been practising as an advocate, therefore, he was eligible for the judicial post. Similarly, in the case on hand the appellants were practicing advocates though they were full time employees and therefore, they are eligible to be appointed as Judges.

In the case of Deepak Aggarwal (supra) this Court has held that simply because a person has been appointed as an Assistant Public Prosecutor and as such he is in employment of the Government, cannot be a ground for not selecting him to a judicial post on the ground that he was not an advocate practicing at the Bar. The ratio of the said judgment is that an Assistant Public Prosecutor is also an advocate who is practicing at the Bar.

In view of the aforestated legal position, in our opinion, the High Court was not right in considering the appellants as disqualified candidates as they were in full time employment of the Government. **(Lakshmana Rao Yadavalli & Anr. v. State of Andhra Pradesh & Ors.; 2014 (2) SLR 235 (SC)**

Articles 16 and 226 - Compassionate appointment- Petitioner applied for compassionate appointment on attaining majority after lapse of more than six years- Post cannot be kept vacant till dependant attained majority - Claim barred by limitation

Material on record discloses that the petitioner's father died on 16.09.2005 in harness. At that time, the petitioner was aged about 9 years. The petitioner's mother has given a representation dated 04.12.2008 to the respondents seeking employment assistance on compassionate grounds to the petitioner's brother viz., Senthil Kumar, who was aged only 14 years at the time of application. The respondents denied employment assistance to him on the ground that he was a minor. Therefore, the petitioner's mother made an application on 09.02.2009 for providing employment assistance to her. In the meanwhile, the petitioner attained majority and therefore he has submitted an application on 10.12.2009 to provide compassionate appointment. By the impugned order in Na.Ka.No.A4/2592/2009 dated xx..07..2012, signed on 03.08.2012, it was stated by the Commissioner of Police, Madurai that as per the Circular of the Additional Director General of Police, Chennai - 4 in Na.Ka.No.34918/C.A.2/05 dated 23.06.2005, the application of the petitioner cannot be considered, and that same has been rejected. Challenging the same, the petitioner has filed this writ petition.

In the case of State of J&K v. Sajad Ahmed Mir, reported in 2006 (5) SCC 766, the court has held that:

Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the

Constitution."

The principles enunciated in the above said judgments would makes it clear that compassionate appointment is not a vested right which can be exercised at any time, in future. Compassionate employment cannot be claimed after a lapse of time.

It could be seen from the catena of decisions, the object of providing employment assistance is to tide over the financial constraint due to the untimely death of the breadwinner and that, a post cannot be kept vacant till the dependent attains the majority, so as to enable him to seek employment assistance on compassionate grounds. Employment assistance can be sought for by any one of the dependents in the family, including wife or son or daughter depending upon age and the educational qualifications, prescribed by the Government, at the time of making the application. If there are more than one dependents, a No Objection Certificate is insisted from other legal heirs. One of the criteria for employment assistance on compassionate ground is that the family, should be in indigent circumstances and that the same has to be certified by a competent authority.

In the light of the decisions cited supra, this Court is of the view that this court cannot alter or modify the time prescribed by the Government for submission of an application, so as to enable any legal heir to seek for employment assistance.

For the reasons stated above, this Court does not find any patent illegality warranting intervention. Hence, the impugned order is sustained and this writ petition is liable to be dismissed. **[P. Saravana Kumar v. Superintendent of Police, Madurai, 2014 (4) SLR 128 (Mad)]**

Art. 16 – Appointment made on co-terminus basis – Nature of – Respondents who had taken co-terminus appointment with full understanding then it would not permissible for them to challenge their dis-engagement when the tenure of the Chairman was over

In this case, the principle contention of the appellants is that as seen from the above narration of facts, tile engagement of the respondents was clearly on a co-terminus basis. There as no assurance to them that they will be continuing in service after the tenure of the Chairman of the Board was over. There are recruitment rules and a procedure by which the employees under the Board are to be engaged. It was submitted on behalf of the appellant that any departure therefrom would mean allowing a back door entry in Government Establishment/Quasi Government employment which would be violative of Articles 14 and 16 of the Constitution of India. As against this submission of the appellant, it was pointed out by the respondents that in their case there has been an approval by the Board and then by the Lt. Governor. That being so, there was no reason to interfere into the orders passed by the Division Bench as well as by the Single Judge in the two matters before us directing implementation.

The learned Single Judge who heard the Writ Petition No.3181 of 2008 and also the Division Bench which heard the writ appeal could not have ignored that the respondents were clearly told that their services were coterminus, and they will have no right to be employed thereafter. Condition No.4 and 6 of the earlier referred terms and condition are very clear in this behalf .The respondents had taken the co-terminus appointment with full

understanding. It was not permissible for them to challenge their dis-engagement when the tenure of the Chairman was over. What a Constitution Bench of this Court has observed in paragraph 45 of Secretary, State of Karnataka and Ors. Vs. Umadevi (3) and Ors. reported in 2006 (4) SCC 1 : [2006(3) SLR I (SC)], is quite apt. The said para reads as follows:-

"45. While directing that appointments, temporary or casual, be regularised or made permanent, the courts are swayed by the fact that the person concerned has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with open eyes. It may be true that he is not in a position to bargain "not at arm's length" since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible"

As stated by this Court in Umadevi (supra), absorption, regularization or permanent continuance of temporary, contractual, casual, daily-wage or adhoc employees appointed/recruited and continued for long in public employment dehors the constitutional scheme of public employment is impermissible and violative of Article 14 and 16 of the Constitution of India. As recorded in paragraph 53 of the report in SCC, this Court has allowed as a onetime measure, regularization of services of irregularly appointed persons, provided they have worked for ten years or more in duly sanctioned posts. That is also not the case in the present matter. **(Chief Executive Officer v. K. Aroquia Radja; 2013 (3) SLR 274 (SC)**

Art. 16 – Regional Rural Banks (Appointment and Promotion of Officer and other employees) Rules, 1998, Rr. 2(d), 2(c) and 2(f) – Promotion – Circular issued by the Bank debarring such employees who have —Drafting or having been penalised for any misconduct during last 5 yrs. from being considered clearly contrary to statutory rules

There is no doubt that punishment and adverse service record are relevant to determine the minimum merit by the DPC. But to debar a candidate, to be considered for promotion, on the basis of punishment or unsatisfactory record would require the necessary provision in the statutory service Rules. There is no such provision under the 1998 Rules.

In B.V. Sivaiah case, the Court laid down the broad contours defining the term "bare minimum merit" in the following words:

"Court thus arrive at the conclusion that the criterion of _seniority-cum-merit' in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and

prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."

From the above, it becomes clear that the determination of the bare minimum criteria is the function of the DPC and cannot be taken-over by the management at the time of determining the eligibility of a candidate under Rule 2(e).)

Court also do not found any merit in the submission of Mr. Dhruv Mehta that the Circular No.17 of 2009 dated 30th November, 2009 and Circular date, 12th July, 2010 are to ensure that the individual members of the DPC do not recommend for promotion an individual officer despite having been punished in the preceding 5 years. Such curtailment of the power of the DPC would have to be located in the statutory service rules. The 1998 Rules do not contain any such provision. The submission needs merely to be stated, to be rejected. We also do not find any merit in the submission of Mr. Mehta that without the aforesaid guidelines, an officer, even though, he has been punished for gross misconduct would have to be permitted to be promoted as no minimum marks are prescribed for interview or performance appraisal. In our opinion, it is fallacious to presume that under the 1998 Rules, once an officer gets the minimum mark in the written examination, he would be entitled to be promoted on the basis of seniority alone. There is no warrant for such a presumption. The misconduct committed by eligible employee/officer would be a matter for DPC to take into consideration at the time of performance appraisal. The past conduct of an employee can always be taken into consideration in adjudging the suitability of the officer for performing the duties of the higher post.

There is another very good reason for not accepting the submissions made by Mr. Dhruv Mehta. Different rules/regulations of the banks provide specific punishments such as "withholding of promotion, reduction in rank, lowering in ranks/pay scales". However, there is another range of penalty such as censure, reprimand, withholding of increments etc. which are also prescribed under various staff regulations. To debar such an employee from being considered for promotion would tantamount to also inflicting on such employee, the punishment of withholding of promotion. In such circumstances, a punishment of censure/ reprimand would, in fact, read as censure/reprimand +5 years debarment from promotion. Thus the circulars issued by the bank debarring such employees from being considered would be clearly contrary to the statutory rules. **(Ayurved Shastra Seva Mandal v. Union of India; 2013 (3) SLR 428 (SC)**

Arts. 16 and 226 – Retrospective promotion – Arrears of pay and consequential benefits – Grants of

The facts, which are not in dispute are that the petitioner had filed CWP No. 2 48 of 2005 in this Court with a grievance that though the persons junior to him had been promoted as Junior Engineer/Sectional Officer but the case of the petitioner was not considered. The writ petition was disposed of on 18.03.2008 with a direction to the authorities to consider the case of the petitioner for promotion from the date, the persons junior to him were promoted. The authorities considered the case of the petitioner and vide order dated 06.08.2009 communicated vide endorsement dated 07.08.2009, promoted the petitioner as Junior Engineer (Electrical) w.e.f. 16.02.2001, the date on which his juniors were promoted. Thereafter, the petitioner claimed arrears of his salary for the period from which he was

promoted till the passing of the order on the plea that on account of wrong action of the authorities, the petitioner had to suffer. He was always ready and willing to work on the higher post but was not promoted and his juniors were granted that benefit. The claim was partially accepted vide order dated 11.03.2010 communicated vide endorsement dated 16.04.2010 thereby granting the arrears of salary to the petitioner from 18.09.2008. The cut off date applied had no relation with the case in hand. It is sought to be explained by stating that upto 17.09.2008 the order passed by this Court in favour of the petitioner for consideration of his case for promotion, was to be complied with. As there was some delay in compliance thereof, hence, the petitioner has been directed to be paid arrears of salary on the promoted post w.e.f. 18.09.2008, though in fact, he has been granted promotion w.e.f. 16.02.2001. The mere fact that after a direction issued by this Court, the petitioner was granted retrospective promotion from the date, his juniors were promoted, clearly establishes the fact that at the relevant time the petitioner was illegally denied promotion though his juniors were given that benefit. The petitioner cannot be said to be at fault. He was always ready to perform his duties of the promoted post but was deprived of by the authorities for the reasons which could not be sustained, when the petitioner had earlier approached this Court. The claim for arrears of pay for part of the period is sought to be denied by raising a plea of 'no work no pay''. However, the same will not be applicable in the facts and circumstances of this case, considering the fact that the petitioner was denied promotion on account of fault of the respondents. The issue was considered by Hon'ble the Supreme Court in Union of India Vs. K.V. Janakiraman, AIR 1991 SC 2010 : [1991(5) SLR 60 (SC)], wherein it was observed as under:-

"The normal rule of ―no work no pay" is not applicable to cases such as the present one where the employee although he is will to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. "

For the reasons mentioned above, Court found merit in the present petition. It is established that the petitioner was denied promotion on the date when his juniors were promoted though the petitioner was also having same qualification. After he was granted promotion with retrospective effect in terms of the directions issued by this Court for consideration of his case, he cannot be denied benefit of arrears of salary. The impugned order dated 11.3.2010 communicated vide endorsement dated 16.04.2010 (Annexure P-8) denying the arrears of salary to the petitioner from 16.02.2001 till 17.09.2008, is set aside.

The respondents are directed to pay all consequential benefits to which the petitioner is entitled to on account of his promotion from back date. **(Suresh Kumar v. State of Punjab; 2013 (2) SLR 731 (P&H)**

Art. 16 – Object of compassionate appointment – Delay in raising such a claim is contradictory to the object sought to be achieved

The very object of making provision for appointment on compassionate ground, is to provide successor to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an ante thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a

claim, is contradictory to the object sought to be achieved. The instant controversy reveals that even though Vijay Bahadur Singh, the father of the applicant (Prabhat Singh) seeking appointment on compassionate ground had died on 2.3.1996, Prabhat Singh sought judicial redress, for the first time, by approaching the CAT Allahabad Bench in 2005. By such time, there was no surviving right for appointment on compassionate ground under the OM dated 5.5.2003. As already noticed above, appointment on compassionate ground under the OM dated 5.5.2003 is permissible within three years of the death of the bread winner in harness. By now, sixteen years have passed by, and as such, there can be no surviving claim for compassionate appointment. **(Chief Commissioner v. Prabhat Singh; 2013(3) SLR 710 (SC)**

Arts. 16 and 136 – Maharashtra Universities Act, 1994, Ss. 3, 5, 8, 14, 51 and 115 – Maharashtra Civil Services Rules – Rr. 52, 54 Leave encashment – Entitlement – Leave encashment paid by colleges cannot be reimbursed by State government; since Teachers of University or affiliated colleges are not Govt. servants

Court is in complete agreement with the view expressed by the coordinate Bench in Khandesh College Education Society, Jalgaon v. Arjun Hari Narkhede (2011) 7 SCC 172, that the provisions contained in the 1981 Rules are not applicable to the university teachers and the teachers of the affiliated colleges because they are not Government servants but this cannot lead to an inference that the affiliated colleges are entitled to reimbursement of the amount paid to the teachers in lieu of earned leave. Though the Statutes framed by the Pune University under the 1974 Act entitle the teachers of the affiliated colleges to get the benefit of leave encashment, there is no provision either in that Act or in the 1994 Act which obligates the State Government to extend the benefit of leave encashment to the university teachers or to the teachers of the affiliated colleges and the mere fact that the Statutes of the particular university provide for grant of leave encashment to the teachers, does not entitle the concerned university or college to claim reimbursement from the State Government as of right. **(State of Mahasrashtra v. Nowrosjee Wadia College; 2013 (2) SLR 485 (SC)**

Arts. 16, 226 – U.P. Employment of Department of Govt. servant Dying in Harness Rules, 1974, R. 5(3)(4) – Compassionate appointment – Right to remarry – Remarriage is a personal choice of employee, under the provisions of Dying in Harness Rules, 1974

Perusal of Rules would go to show that every appointment made under sub-rule (3) of the Rule 5 is subject to the condition that said person has to maintain other member of the family of the deceased, who were dependent on deceased immediately. Sub-rule (4) of Rule 5 clearly proceeds to mention that where a person is unable to maintain the other member of the family of the deceased as per sub-rule (3) of Rule 5 then his service may be terminated under U.P. Government Servant (Discipline and Appeal) Rules, 1999, as amended from time to time. The only obligation cast upon the person at the time of offering employment under Ding in Harness Rules, 1974 is that a person shall maintain other member of the family who were dependent on deceased, and in case a person is unable to maintain the family member of the deceased then services of a person may be terminated asper U.P. Government Servant (Discipline & Appeal) Rule, 1999. Affidavit as has been so taken from the petitioner that she would not remarry is not at all subscribed by rules and as petitioner has submitted her

affidavit, petitioner is before this Court with request that she should be accorded permission to remarry.

In view of this affidavit, which has been so given by the petitioner that she would not remarry is neither here nor there. Petitioner is free to solemnize the remarriage, but she will have to kept in mind sub-rule (3) and (4) of Rule 5 of 1974 Rules. The petitioner to show her bonafides has contended before this Court that 1/3rd of her salary would be paid to her mother-in-law each and every month after she contracted marriage. **(Ankita Srivastava v. State of U.P., 2014 (6) SLR 638 (All.)**

Articles 19, 20 and 21 – Narco analysis and Brain Mapping tests – Permissible even in absence of consent/willingness of accused/witness.

In the instant case the question is whether in absence of consent/willingness of the accused/witness, who is subjected to the Narco Analysis, Brain Mapping or similar tests, the same should be undertaken by order of Court. The matters at hand are of general importance and larger interest. Article 20 and Article 19, of the Constitution of India which guarantee Fundamental Right and are resorted to as a shield for seeking protection against alleged tests, which is not a physical invasion, but an intellectual invasion, will prima facie come within the bracket of reasonable restriction on Fundamental Rights. Here is a tie between silencing constitutionally available individual right and prerogative of State to investigate and use, for that purpose, modern medico forensic aids for larger good of larger number of persons, the community on the whole whose such individual is a member. In larger interest, it is felt necessary that this modern scientific invention based on an aesthetic drugs already in use over decades and electro gram and similar systems already used for over decades and safe enough needs to be allowed, as an aid in the process of investigation and retrieval of data and information stored in the memory of the person concerned. In the background, larger interest should outweigh the individual liberties and fundamental rights and balance can be struck by considering the perspective of reasonable restrictions. (**Sampatrao R. Arvelli & Anr. Etc. v. State of Maharashtra & Ors.; 2009 Cri.L.J. 457 (Bom H.C.)**

Art. 19(1)(a) – Unpopular remarks about social acceptance of pre-marital sex – Law should not be used to chill freedom of speech.

Even though the constitutional freedom of speech and expression is not absolute and can be subjected to reasonable restrictions on grounds such as „decency and morality" among others, there is need to tolerate unpopular views in the socio-cultural space. The framers of Constitution recognized the importance of safeguarding this right since the free flow of opinions and ideas is essential to sustain the collective life of the citizenry. While an informed citizenry is a pre-condition for meaningful governance in the political sense, the court must also promote a culture of open dialogue when it comes to societal attitudes. The appellant"s remarks did provoke a controversy since the acceptance of pre-marital sex and live-in relationships is viewed by some as an attack on the centrality of marriage. While there can be no doubt that in India, marriage is an important social institution, but there are certain individuals or groups who do not hold the same view. Even in the societal mainstream, there are a significant numbers of people who see nothing wrong in engaging in pre-marital sex. Notions of social morality are inherently subjective and the criminal law cannot be used as a means to unduly interfere with the domain of personal autonomy. Morality and Criminality are not co-extensive. If the complainants vehemently disagreed with the appellant"s views, then they should have contested her views through the news media or any other public platform. The law should not be used in a manner that has chilling effects on the „freedom of speech and expression". **(S. Khushboo v. Kanniammal & Anr.; AIR 2010 SC 3196)**

Art. 19(1)(f) and 31 (since omitted by forty-forth Amendment Act, 1978), 300-A and

226 – Deletion of Article 19(1)(f), 31 – Effect of – Person who deprived of his right to property without authority of law can protect his right by approaching High Court U/A 226, notwithstanding deletion of Arts. 19(1)(f) and 31.

Even though the right to acquire and hold property has ceased to be Fundamental right, it cannot be said that right to hold the property has ceased to be a legal right. In fact, such a right has been recognized as a „constitutional right" under Art. 300A. If any person"s property is taken away by the Executive without authority of law, such person would be entitled to legal relief on the ground that such action is in contravention of Art. 300A. However, since such right has been brought outside the purview of Fundamental Rights, the aggrieved person may not have any right to move the Supreme Court under Art. 32 for violation of Art. 300A and his remedy would be under Article 226 or by a Civil Suit, depending upon the facts and circumstances.

Therefore, notwithstanding the deletion of Art. 19(1)(f) and Art. 31, in case where a person is deprived of his property without authority of law, such person can protect the right recognized under Art. 300-A by approaching High Court under Art. 226, within the known parameters of jurisdiction under Art. 226. **(P.P.M. Thangaiah Nadar Firm & Ors. V. Govt. of Tamil Nadu & Ors.; 2007 (1) ALJ 527)**

Article 19(1)(c)— Right to form associations, union or cooperative societies—Nature and scope of right guaranteed u/s. 19(1)(c) of the Constitution

The right, it is evident from the above, is guaranteed in favour of citizens and citizens alone. Recourse to Article 19(1)(C) is not, therefore, open to juristic or other persons and entities who are non-citizens. Confronted with this position, it was argued on behalf of the BCCI and intervening associations that even when the provisions of Article 19(1)(c) may not be available to the State Cricket Associations who are members of BCCI , yet the recommendations made by the Committee, if accepted, would prejudicially affect the citizens who have come together to form such State associations. It was contended that this Court could in its discretion lift the veil to determine whether the right of any citizen/citizens was affected and grant suitable relief if the answer was in the affirmative. It was contended that once this Court decides to do so it will find that citizens comprising the State Cricket Associations are the ones actually affected by the recommendations in question.

Court regrets our inability to accept the submission so vehemently urged before us by learned Counsel for the BCCI and the State Cricket Associations. We say so, firstly because no citizen has come forward in the present proceedings or in the earlier round to complain of the violation of any fundamental right guaranteed under Article 19(1)(c) of the Constitution. Secondly and more importantly because the recommendations do not, in Court"s opinion, affect the composition of the State Cricket Associations in any manner. Citizens who have come together to form the State Associations continue to associate as before with no change in their internal composition. If that be so as it indeed is the right guaranteed under Article 19(1)(c) stands exercised, which exercise would continue to enjoy the protection of the constitutional guarantee till the Association/Union or co-operative Society, as the case may be, continues to exist. What is, however, important is that the right under Article 19(1)(c) does not extend to guaranting to the citizens the concomitant right to

pursue their goals and objects uninhibited by any regulatory or other control. **Board of Control for Cricket vs. Cricket Assn. of Bihar, 2016 (7) SCALE 143**

Art. 19 and Sec. 12 of Contempt of Courts Act, 1971 – Fundamental right to speech – Act 1971 is on the restrictions on the right.

The appellants with Sheopat Singh belong to the Marxist Communist Party. Sheopat Singh died during the pendency of these proceedings. It is relevant to mention that appellants Nos. 2 and 3 are advocates. A prominent trader union activist of Sri Ganganagar District Shri Darshan Koda was murdered on 18.12.2000. Some of the accused were granted anticipatory bail in February, 2001 by the High Court of Rajasthan. The Appellants addressed a huge gathering of their party workers in front of the Collectorate at Sri Ganganagar on 23.02.2001. While addressing the gathering, the Appellants made scandalous statements against the High Court which were published in Lok Sammat newspaper on 24.02.2001.

The advocate General gave his consent to Respondent no. 1 for initiation of contempt proceedings on 16.01.2002. Thereafter, Respondent no. 1 filed a Contempt Petition in the High Court.

The Appellants were found guilty of committing contempt by the High Court of Judicature for Rajasthan at Jodhpur.

Every citizen has a fundamental right to speech, guaranteed under Article 19 of the Constitution of India. Contempt of Court is one of the restrictions on such right. We are conscious that the power under the Act has to be exercised sparingly and not in a routine manner. If there is a calculated effort to undermine the judiciary, the courts will exercise their jurisdiction to punish the offender for committing contempt. We approve the findings recorded by the High Court that the Appellants have transgressed all decency by making serious allegations of corruption and bias against the High Court. The caustic comments made by the Appellants cannot, by any stretch of imagination, be termed as fair criticism. The statements made by the Appellants, accusing the judiciary of corruption lower the authority of the Court. The explanation to sub-Section 12 (1) of the Act provides that an apology should not be rejected merely on the ground that it is qualified or tendered at a belated stage, if the accused makes it bona fide. The stand taken by the Appellants in the contempt petition and the affidavit filed in this Court does not inspire any confidence that the apology is made bona fide. After a detailed consideration of the submissions made by both sides and the evidence on record, we are in agreement with the judgment of the High Court that the Appellants are guilty of committing contempt of Court. **(Het Ram Beniwal v. Raghuveer Singh, 2016 (7) Supreme 393)**

Arts 19(1)(c) & (4) & 19(1)(g)& (6) - Right of Citizens to form Association

Article 19(1)(c) of the Constitution of India guarantees to the citizens of this country the right to form associations, unions or cooperative societies. It reads:

(a)-(b) * * *

(c) to form associations or unions or cooperative societies;

(d)-(g)* * *

The right is evident from the above, is guaranteed in foam of citizens and citizens also.

Recourse to Article 19(1)(C) is not, therefore, open to juristic or other persons and entities who are non- citizens. Confronted with this position, it was argued on behalf of the BCCI and intervening associations that even when the provisions of Article 19(1)(c) may not be available to the State Cricket Associations who are members of BCCI , yet the recommendations made by the Committee, if accepted, would prejudicially affect the citizens who have come together to form such State associations. It was contended that this Court could in its discretion lift the veil to determine whether the right of any citizen/citizens was affected and grant suitable relief if the answer was in the affirmative. It was contended that once this Court decides to do so it will find that citizens comprising the State Cricket Associations are the ones actually affected by the recommendations in question.

Right under Article 19(1)(c) does not extend to guaranting to the citizens the concomitant right to pursue their goals and objects uninhibited by any regulatory or other control.

In the light of the above authoritative pronouncements, no room for any doubt that the right guaranteed under Article 19(1)(c) cannot be claimed by an association or union or a co-operative Society as is sought to be done in the case at hand, even when the right to form an association or union or cooperative society extends to the continued existence of such association or union or cooperative society with its original voluntary composition. But the right does not extend so far as include the right of any such association or union or cooperative society to achieve its objects or to conduct its business unhindered by any regulatory or other control. Anything beyond the protection of the original composition of the association or union or cooperative society would fall outside Article 19(1)(C) and shall be governed by other clauses of Article 19 of the Constitution. For instance, the right of the association or union or cooperative society to conduct its business or pursue its objects shall be regulated under Article 19(1)(g) read with sub- Article (6) of the Constitution. So also, the right to move freely throughout the territory of India shall be governed by Article 19(1)(d) read with sub-Article 5 of the Constitution. Suffice it to say that so long as the initial voluntary composition of the State Cricket Associations who are complaining of the breach of their right under Article 19(1)(c) remains unaffected, there is no violation of what is guaranteed by Article 19(1)(c). **Board of Control for Cricket v. Cricket Association of Bihar and others, (2016) 8 SCC 535**

Art. 19 (1) (a) – Right to receive information is subjected to availability and possibility of giving information, that too without offending fundamental rights

A citizen has the right to expression and receive information under Article 19(1)(a) of the Constitution. That right is derived from freedom of speech and expression comprised in the Article. The freedom of speech and expression includes the right to receive information. [Refer : The State of U.P. vs. Raj Narain and others, (1975) 4 SCC 428; Secretary, Ministry

of Information & Broadcasting, Govt. of India and others vs. Cricket Association of Bengal and others, (1995) 2 SCC 161; P.V. Narasimha Rao vs. State (CBI/SPE), (1998) 4 SCC 626)]. But such right can be limited by reasonable restrictions under the law made for the purpose mentioned in the Article 19(2) of the Constitution.

It is imperative for the State to ensure the availability of the right to the citizens to receive information. But such information can be given to the extent it is available and possible, without affecting the fundamental right of others. **(Indian Soaps & Toiletries Makers Assn. vs. Ozair Husain & Ors.; AIR 2013 SC 1834)**

Article 20(2) – Double Jeopardy – Determinations.

In the instant case, the offence for which the appellant, accused was tried earlier in the foreign country, USA was in respect of a charge of conspiracy. He was in respect of a charge of conspiracy to possess a controlled substance with the intention of distributing the same, whereas the appellant now is being tried in India for offences relating to the importation of the contraband article from foreign country, Nepal into India and exporting the same for sale in the USA. While the first part of the charges would attract the provisions of Section 846 read with Section 841 of Title 21 of United States Code (USC) controlled Substances Act, the latter part, being offences under the NDPS Act, 1985, would be triable and punishable in India, having particular regard to the provisions of Sections 3 and 4 of the Penal Code read with S. 3(38) of the General Clauses Act, which has been made applicable in similar cases by virtue of Article 367 of the Constitution. Therefore, the offences for which the appellant was tried and convicted in the USA and for which he is now being tried in India, are distinct and separate and do not, therefore, attract either the provisions of S. 300(1) of Cr.P.C. or Art. 20(2) of Constitution.

The plea that apart from the offence for which the appellant had been tried and convicted in the USA, he could also have been tried in the USA for commission of offences which were also triable under the NDPS Act, 1985, as the contents thereof are different from the provisions of Title 21 USG Controlled Substances Act which deal with possession and distribution of controlled substances within the USA, would not be tenable. The provisions of Ss. 3 and 4 of the Penal Code would be apt in a situation such as the present one. In view of those provisions a person liable by any Indian law to be tried for any offence committed beyond India is to be dealt with under the provisions of the Code, would also apply to any offence committed by any citizen of India in any place within and beyond India. **(Jitendra Panchal v. Intelligence Officer, NCB (From: Bom); 2009 AIR SCW 1559)**

Article 20(3) – Testimonial compulsion – Narco Analysis and Brain Mapping test does not violate principle of testimonial compulsion embodied under Article 20(3).

Since Article 20(3) specifically deals with the question of testimonial compulsion, there was no occasion to bring the matter within the purview of Article 21 of the Constitution of India, because when there is a specific clause about a particular matter, another omnibus provision which may encompass the issue need not be considered.

It is now settled law that, hair and nails of the accused can be taken for utilization during investigation even if the accused does not agree to the same. If that invasion of the person of the accused is permissible, the, principle should be applicable to Narco Analysis and Brain Mapping test also.

The discovery of the truth is the desideratum of investigation, and, all efforts have to be made to find out the real culprit, because, one guilty person, who escapes, is the hope of one million. Courts have, therefore, to adopt a helpful attitude in all efforts, made by the prosecution for discovery of the truth. If the Narco Analysis and Brain Mapping test can be helpful in finding out the facts relating to the offence, it should be used and utilized and the courts should not obstruct the conduct of the exercise. **(Abhay Singh v. State of U.P.; 2009(3) ALJ 387)**

Arts. 20(3), 21, 22(i) - CrPC Sections 163, 164 – Right of accused to be represented by lawyer and right against self–incrimination - Failure to provide legal aid to accused before recording confession (pre-trial stage) does not vitiate trial

It is improper to say that the right to be represented by a lawyer and the right against self-incrimination would remain incomplete and unsatisfied unless those rights are read out to the accused. The obligation to provide legal aid to the accused as soon as he is brought before the Magistrate is very much part of our criminal law procedure, aimed at protecting the accused against self-incrimination. But to say that any failure to provide legal aid to the accused at the beginning, or before his confession is recorded under Section 163, Cr.P.C, would inevitably render the trial illegal is stretching the point to unacceptable extremes. The object of the criminal law process is to find out the truth and not to shield the accused from the consequences of his wrong-doing. A defence lawyer has to conduct the trial on the basis of the materials lawfully collected in the course of investigation. The test to judge the constitutional and legal acceptability of a confession recorded under Section 164, Cr.P.C. is not whether the accused would have made the statement had he been sufficiently scared by the lawyer regarding the consequences of the confession. The true test is whether or not the confession is voluntary. If a doubt is created regarding the voluntariness of the confession, notwithstanding the safeguards stipulated in S. 164 it has to be trashed but if a confession is established as voluntary it must be taken into account, not only constitutionally and legally but also morally.

Every accused unrepresented by a lawyer has to be provided a lawyer at the commencement of the trial, engaged to represent him during the entire course of the trial. Even if the accused does not ask of a lawyer or he remains silent, it is the Constitutional duty of the Court to provide him with a lawyer before commencing the trial. Unless the accused voluntarily makes an informed decision and tells the Court, in clear and unambiguous words, that he does not want the assistance of any lawyer and would rather defend himself personally, the obligation to provide him with a lawyer at the commencement of the trial is absolute, and failure to do so would vitiate the trial and the resultant conviction and sentence, if any, given to the accused. But the failure to provide a lawyer to the accused at the pre-trial stage may not have the same consequence of vitiating the trial. It may have other consequences like making the delinquent magistrate liable to disciplinary proceedings, or giving the accused right to claim compensation against the State

for failing to provide him legal aid. But it would not vitiate the trial unless it is shown that failure to provide legal assistance at the pre-trial. That would have to be judged on the facts of each case. **(Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra; AIR 2012 SC 3565(F)**

Art. 20(3) – Silence of accused – No adverse inference can be drawn against accused

The cumulative effect of reading the provisions of Article 20(3) of the Constitution with Sections 161(2), 313(3), and proviso (b) to Section 315, Cr.P.C. remains that in India, law provides for the rule against adverse inference from silence of the accused. **(State of M.P. v. Ramesh & Anr.; 2011 Cri.L.J. 2297 (SC)**

Art. 20 – Conviction for offences – Conviction and sentence in criminal proceedings under ex post facto law is prohibited.

It is trite law that the sentence imposable on the date of commission of the offence has to determine the sentence imposable on completion of trial. This position is clear even on a bare reading of Article 20(1) of the Constitution of India, 1950 (in short, „the Constitution"). The said provision reads as under:

"20. Protection in respect of conviction for offences:-(1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."

Wills in his Constitutional Law of the United States (at Page 516) brought out a lucid classification of the penal law, which are ex post factor:

(i) when they make criminal an act which was innocent when done;

(ii) when they make a crime greater than it was when it was committed;

(iii) when they make the punishment greater than the punishment as at the time the act was committed;

7. when they change the rule of evidence as to deprive a defendant of a substantive right; and

8. when they make retrospective qualifications for an offence which are out a proper exercise of the police power.

Under Article 20(1) of the Constitution what is prohibited is the conviction and sentence in criminal proceedings under ex post factor law. **(Ravinder Singh v. State of Himachal Pradesh; 2009 Cri.L.J. 4640 (SC)**

Arts. 20 and 311 – Enquiry proceedings – Charge-sheet and the enquiry proceedings sought to be initiated against the petitioner are barred by principle of double jeopardy as also general principle of res judicata

By this writ petition, the petitioner impugns the action of the employer/respondent no.1/Delhi Financial Corporation for issuing a second charge-sheet dated 14.11.2007, although, there was an earlier enquiry report with respect to a charge-sheet dated 21.12.2004 exonerating the petitioner on more or less the same set of allegations. Effectively, the petitioner pleads the bar of double jeopardy or bar of conducting of a fresh enquiry on the basis of a new charge-sheet containing allegations in the old charge-sheet, on account of general principles of res judicata.

In this matter court has held, it is clear that the charge-sheet dated 14.11.2007 and the enquiry proceedings sought to be initiated thereupon against the petitioner by the respondent no.1 are barred by principle of double jeopardy as also general principle of res judicata.

The writ petition is therefore allowed and the memorandum of charges dated 14.11.2007 and all proceedings emanating therefrom by the respondent no.1 are quashed. **(B.S.Chowdhury v. Delhi Financial Corporation and others, 2014 (6) SLR 545 (Delhi)**

Art. 20 – Protection against self-incrimination – Consideration of

The authors of the confessional statements (Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah) in Special Case no. 4 of 2009, are very much available and their presence can be procured by the accused-respondents to be presented as defence witnesses on their behalf. In the aforesaid view of the matter, it is not possible for us to accept, that the accused-respondents can place reliance on Section 32 of the Evidence Act, in order to lead evidence in respect of the confessional statements (made by Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah), by recording evidence to the statements of the witnesses at serial nos. 63 to 66.

The plea advanced at the hands of the learned counsel for the accused-respondents, as has been noticed in the foregoing paragraph, is clearly not available to the accused-respondents in view of the protection afforded to a witness who would find himself in such a peculiar situation under Section 132 of the Evidence Act. Section 132 of the Evidence Act is being extracted hereunder:-

"132. Witness not excused from answering on ground that answer will criminate - A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind: Proviso Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer."

Without stating anything further, the Court is satisfied to record, that Section 132 of

the Evidence Act clearly negates the basis of the submission, adopted by the learned counsel for the accused-respondents, for being permitted to lead secondary evidence to substantiate the confessional statements made by Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah. Accordingly, we hereby reiterate the conclusion drawn by us hereinabove, namely, that the confessional statements made by the accused (Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah) in Special Case no. 4 of 2009 cannot be proved in evidence, through the statements of the witnesses at serial nos. 63 to 66. Needless to mention, that the authors of the confessional statements (Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah) may be produced as defence witnesses by the accused-respondents, for their statements would fall in the realm of relevance under Section 11 of the Evidence Act. And in case Sadiq Israr Shaikh, Arif Badruddin Shaikh and Ansar Ahmad Badshah appear as defence witnesses in Special Case no. 21 of 2006, the protection available to a witness under Section 132 extracted above, would also extend to them, if they are compelled to answer questions posed to them, while appearing as defence witnesses in Special Case no. 21 of 2006. **(State of Maharashtra v. Kamal Ahmed Mohammed Vakil Ansari and Ors.; 2013 CriLJ 2069)**

Arts. 20, 21, 24 and Cr.P.C., Sec. 154 – Second FIR - Recording of second FIR regarding offences committed in same transaction is impermissible

Under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 of the Code, only earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 of the Code. Thus, there can be no second FIR and, consequently, there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the Station House Diary, the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the FI.R but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in S. 173 of Code, Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under-way or final report under S. 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution. First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

Thus where in case of false encounters by accused police officials the Court entrusted the investigation to CBI by relying on the stand taken by CBI that all encounters were part of the same conspiracy and that the third encounter killing is part of the same chain of events in which first two encounters were made, the subsequent lodging of fresh FIR as

regards the third encounter was impermissible.

Upkar Singh (AIR 2004 se 4320) also carves out a second exception to the rule prohibiting lodging of second FIR for the same offence or different offences committed in the course of the transaction disclosed in the first FIR. The only exception to the law declared in T. T. Anthony (AIR 2001 SC 2637), which is carved out in Upkar Singh (supra) is to the effect that when the second FIR consists of alleged offences which are in the nature of the cross case/cross complaint or a counter complaint, such cross complaint would not be permitted as second FIR. In the case on hand, it is not the case of the CBI that the FIR in Tulsiram Prajapati's case is a cross FIR or a counter complaint to the FIR filed in Sohrabuddin and Kausarbi's case being FIR dated 0l.02.2010. **(Amitbhai Anilchandra Shah v. Central Bureau of Investigation; 2013 CrLJ 2313)**

Art. 20(3) – Taking voice sample of accused for investigation does not offend Art. 20(3)

If an accused person is directed to give his voice sample during the course of investigation of an offence, there is no violation of his right under Article 20(3) of the Constitution. Voice sample is like finger print impression, signature or specimen handwriting of an accused. Like giving of a finger print impression or writing by the accused for the purposes of investigation, giving of a voice sample for the purpose of investigation cannot be included in the expression ―to be a witness‖. By giving voice sample the accused does not convey information based upon his personal knowledge which can incriminate him. A voice sample by itself is fully innocuous. By comparing it with tape recorded conversation, the investigator may draw his conclusion but, voice sample by itself is not a testimony at al. When an accused is asked to give voice sample, he is not giving any testimony of the nature of a personal testimony. When compared with the recorded conversation with help of mechanical process, it may throw light on the points in controversy. It cannot be said, by any stretch of imagination that by giving voice sample, the accused conveyed any information based upon his personal knowledge and became a witness against himself. The accused by giving the voice sample merely gives ‗identification data' to the investigating agency. He is not subjected to any testimonial compulsion. Thus, taking voice sample of an accused by the police during investigation is not hit by Article 20(3) of the Constitution. **(Ritesh Sinha v. State of U.P.; 2013 (2) ALJ 435)**

Art. 20(3) – Administration of oath to accused in his confessional statement is violative of mandatory provisions of Art. 20(3) of Constitution and S. 281 of Cr.P.C.

The learned Magistrate has committed gross illegality in administering oath to each accused before recording their confessional statement. Section 164(5) Cr.P.C. specifically provides that no oath shall be administered to an accused while recording his confession. Administration of oath to the accused in his confessional statement is violative of mandatory provisions of Article 20(3) of the Constitution and Section 281 Cr.P.C. Thus, the Magistrate cannot administer oath to the accused before recording his confessional statement and if he does so, the statement is illegal and should be excluded from consideration. **(Baldeo S/o Bhupat and Anr. v. State of U.P.; 2013 (3) ALJ 266)**

Article 21 – Petition for compensation for custodial death – Grounds for non allowing petition.

In cases of police torture or custodial death, there is any direct ocular evidence of the complicity of the police personnel alone who can only explain the circumstances in which a person in their custody had died. Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues – and the present case is an apt illustration as to how one after the other police witnesses feigned ignorance about the whole matter.

The exaggerated adherence to and insistence upon the establishment of proof beyond every reasonable doubt by the prosecution, at times even when the prosecuting agencies are themselves fixed in the dock, ignoring the ground realities, the fact situation and the peculiar circumstances of a given case, as in the present case, often results in miscarriage of justice and makes the justice delivery system suspect and vulnerable. In the ultimate analysis the society suffers and a criminal gets encouraged. Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times by the Courts as well because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The Courts must not lose sight of the fact that death in police custody is perhaps one of the worst kinds of crimes in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in custody flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the maltreatment of detainees/under-trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops the foundations of the criminal justice delivery system would be shaken and the civilisation itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The Courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve; otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which, if it happens, will be a sad day, for any one to reckon with.

In view of the fact that sanction for prosecution has been granted, charge-sheet had been filed and cognizance had been taken, the court feels that no further direction at present is necessary. It is needless to say that if at any point of time, evidence surfaces before the concerned Court to show that some other offences appear to have been committed, necessary orders can be passed. The Court is not for the present accepting the prayer for compensation because that would depend upon the issue as to whether there are custodial death. The writ petition is accordingly disposed of. The Court makes it clear that the Court have not expressed any opinion on the truth or otherwise of the allegations made and which will be considered by the concerned Court. **(Dalbir Singh v. State of U.P. & Ors.; 2009 Cri.L.J. 1543)**

Arts. 21, 226 and 311—Termination of services—Reinstatement—Consideration of

The respondent No. 3 was a Group-'D' staff under the respondent-bank in the Head Office. He was absent from his duty on and from July 26, 1998. On March 14, 1998, he left Calcutta. On April 3, 1998, the respondent No. 3 sent a communication to the respondent authority with regard to the intimation of his absence from the services and that communication was received by the respondent-bank on April 28, 1998. The respondent-bank issued a notice dated July 8, 1998 to the petitioner at the following address. "Karbalamore p.a. & Dist. Hooghly". Subsequently, a notice dated October 13, 1998 was issued by the petitioner-bank, to the respondent No. 3 under Clause-17 of the Fifth Bipartite Settlement. By an order dated November 16, 1995, the name of the petitioner was struck off from the roll of the petitioner-bank. The petitioner submitted a representation dated January 6, 1999 to the respondent authority for consideration of his absence from services due to his illness and that of his wife. Ultimately, an industrial dispute was raised in the matter and the same was referred to the Central Government Industrial Tribunal, Calcutta. The Tribunal passed the impugned order. Hence, this writ application.

According to Counsel for respondent/Bank, in view of the aforesaid admitted facts and circumstances of this case, there was no procedural impropriety in the- decision making process of the petitioner-bank. The impugned award was passed on a sympathetic ground, without support by any reasons. Therefore, the same was perverse and liable to be set aside.

According to the learned Counsel for appellant in case of unauthorized absence a disciplinary proceeding was required to be initiated against the petitioner before passing the impugned order but the same was not done. As a result, the action on the part of the petitioner-bank could not be sustained in law.

Bank is a model employer whose action to be tested and pass through the constitutional mandate of Article 14 & 21 of the Constitution of India. The workman has been deprived of livelihood without fair procedure in terms of Article 21 of Constitution of India despite his intimation about distress condition of family and his suffering from Jaundice, by sending a letter which was duly received by the Bank authority. As a model employer Bank authority ought to have resorted the steps of disciplinary' proceeding by sending charge memo of unauthorised absence, in the permanent address recorded in the Bank's register. In the instant case admittedly it has not been done, and accordingly, it has caused constitutional breach of Article 14 and 21 both.

Having regard to such situation and the findings above we have not found any merit to interfere with award passed by the learned Tribunal below about reinstatement in service s confirmed by the learned Trial Judge in the writ application moved by the appellant Bank unsuccessfully. **(UCO Bank vs. Jaglal Ram; 2012 (2) SLR 540 (Cal.)**

Art. 21—Right to life includes right to live with human dignity—Dignity even of accused in custody cannot be comatosed

When an accused is in custody, his Fundamental Rights are not abrogated in toto. His dignity cannot be allowed to be comatosed. The right to life is enshrined in Art. 21 of the Constitution and a fortiorari, it includes the right to live with human dignity and all that goes along with it. As such any treatment meted to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty

of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the Welfare State is governed by rule of law which has paramountcy. It is thus the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Art. 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities. **(Dr. Mehmood Nayyar Azam vs. State of Chhattisgarh and Ors.; 2012 CrLJ 3934 (SC)**

Art. 21 – Right to speedy trial - Delay in disposal of appeal against conviction cannot be ground to discharge accused

It was argued by the learned counsel for the appellant that considering the fact that though the appeal was filed before the High Court at Allahabad in the year 1981, the same was disposed of by the High Court-only on 13.01.2006, i.e., after a gap of 25 years and the sole appellant be discharged from the com-mission of offence on the ground of delay. We are unable to accept the said contention. This Court, in a series of decisions, held that the Limitation Act, 1963 does not apply to criminal proceedings unless there is express and specific provision to that effect. It is also settled law that a criminal offence IS considered as a wrong against the State and the Society even though it is committed against an individual. After considering various decisions including the decision of the Constitution Bench of this Court in Abdul Rehman Antulay v. R.S. Nayak, and Kartar Singh v. State of Punjab and a decision rendered by seven learned Judges of this Court in P. Ramachandra Rao v. State of Karnataka recently on 17.08.2012 a Bench of two Judges of this Court in Ranjan Dwivedi etc. v. C.B.I. rejected similar argument based on delay 'either at the stage of trial or thereafter.

In this case, merely because the High Court had taken nearly 25 years to dispose of the appeal, the present appellant cannot be exonerated on the ground of delay. (**Shyam Babu v. State of U.P.; 2012 (6) ALJ 10)**

Arts. 21, 22(i), 39 A – Right of accused to legal aid not to limited to stage of trial, but it is only for representing accused in court proceeding and not during police interrogation

The view that Article 22(1) merely allows an arrested person to consult a legal practitioner of his choice and the right to be defended by a legal practitioner crystallizes at the stage of commencement of the trial in terms of S. 304 of the Cr.P.C. is incorrect and is based on an unreasonably restricted construction of the Constitutional and statutory provisions; and it also overlooks the socio-economic realities of the country. Having regard to the progress law has made to serve the evolving needs of our people and particularly after the introduction of Art. 39A it is now rather late in the day to contend that Article 22(1) is merely an enabling provision and that the right to be defended by a legal practitioner comes into force only on the commencement of trial as provided under S. 304 of the Cr.P.C. He needs a lawyer at the stage of his first production before the Magistrate, to resist remand to

police or jail custody and to apply for bail. He would need a lawyer when the charge-sheet is submitted and the Magistrate applies his mind to the charge-sheet with a view to determine the future course of proceedings. He would need a lawyer at the stage of framing of charges against him and he would, of course, need a lawyer to defend him in trial. It is therefore the duty and obligation of the Magistrate before whom a person accused of committing a cognizable offence is first produced to make him fully aware that it is his right to consult and be defended by a legal practitioner and, in case he has no means to engage a lawyer of his choice, that one would be provided to him from legal aid at the expenses of the State. The right flows from Articles 21 and 22 (1) of the Constitution and need to be strictly enforced. Supreme Court as such directed all the Magistrates in the country to faithfully discharge the aforesaid duty and obligation and further make it clear that any failure to fully discharge the duty would amount to dereliction in duty and would make the concerned Magistrate liable to departmental proceedings.

The right to consult and be defended by a legal practitioner however is not to be construed as sanctioning or permitting the presence of a lawyer during police interrogation. According to our system of law, the role of a lawyer is mainly focused on Court proceedings. The accused would need a lawyer to resist remand to police or judicial custody and for granting of bail; to clearly explain to him the legal consequences in case he intended to make a confessional statement in terms of Sec. 164, Cr.P.C.; to represent him when the Court examines the charge-sheet submitted by the police and decides upon the future course of proceedings and at the stage of the framing of charges; and beyond that, of course, for the trial. The right to access to a lawyer in India is not based on the Miranda Principles, as protection against self-incrimination, for which there are more than adequate safeguards in Indian laws. **(Mohammad Amir Kasab v. State of Maharashtra; AIR 2012 SC 3565(F)**

Arts. 21, 19(1)(a), 129, 215 - Civil PC (5 of 1908), S. 151 - Court proceedings - Prohibition to publication of - Can be placed temporarily by Courts in exercise of its inherent power which includes power to punish for contempt's

All Courts which have inherent powers, i.e. the Supreme Court, the High Courts and Civil Courts can issue prior restraint orders or proceedings, prohibitory orders in exceptional circumstances temporarily prohibiting publications of Court proceedings to be made in the media and that such powers do not violate Article 19(1)(a). One of the Heads on which Article 19(1) (a) rights can be restricted is in relation to contempt of Court under Article 19(2). Article 129/Article 215 is in two parts. The first part declares that the Supreme Court or the High Court shall be a Court of Record and shall have all the powers of such a Court. The second part says includes the powers to punish for contempt. These Articles save the pre-existing powers of the Courts as Courts of record and that the power includes the power to punish for contempt. As such a declaration has been made in the Constitution that the said powers cannot be taken away by any law made by the Parliament except to the limited extent mentioned in Article 142(2) in the matter of investigation or punishment of any contempt of itself. Reading Article 19(2) which refers to law in relation to contempt of Court with the first part of Article 129 and Article 215, it becomes clear that the power is conferred on the High Court and the Supreme Court to see that the administration of justice is not perverted, prejudiced, obstructed or interfered with. To see that the administration of justice is not prejudiced or perverted clearly includes power of the Supreme Court to prohibit temporarily, statements being made in the media which would prejudice or obstruct or interfere with the administration of justice in a given case pending

in the Supreme Court or the High Court or even in the subordinate Courts. Such statements which could be prohibited temporarily would include statements in the media which would prejudice the right to a fair trial of a suspect or accused under Article 21. The object of the contempt law is not only to punish, it includes the power of the Courts to prevent such acts which interfere, impede or pervert administration of justice. Presumption of innocence is held to be a human right. If in a given case the appropriate Court finds infringement of such presumption by excessive prejudicial publicity by the newspapers (in general), then under inherent powers, the Courts of Record suo motu or on being approached or on report being filed before it by subordinate Court can under its inherent power under Article 129 or Article 215 pass orders of postponement of publication for a limited period if the applicant is able to demonstrate substantial risk of prejudice to the pending trial and provided he is able to displace the presumption of Open Justice and to that extent the burden will be on the applicant who seeks such postponement of offending publication. **(Sahara India Real Estate Corpn. Ltd. and Ors. v. Securities and exchange Board of India and Anr.; AIR 2012 SC 3829)**

Art. 21 & 19 – Right to reputation is also a facit under 21

In the present case, the appellant doctor who was spreading awareness against the exploitation of weaker and marginalized sections of society became a victim of the local coal mafia, police and persons whose interests were being affected thereby. Multiple criminal cases were lodged against the doctor and he was admittedly humiliated in police custody. Pursuant to the intervention by the High Court, departmental proceedings were initiated and the erring officials were punished. The High Court in its final order referred the matter to the Chief Secretary of the State for grant of compensation. Till the present appeal i.e. after 19 years, no compensation had been paid to the appellant even though the Supreme Court initially gave an opportunity to the State Government to consider the issue of compensation.

In the present case the writ court is not concerned with defamation as postulated under Section 499 IPC. The writ court is really concerned with how in a country governed by the rule of law and where Article 21 of the Constitution is treated to be sacred, the dignity and social reputation of a citizen has been affected.

Inhuman treatment has many a facet. It fundamentally can cover such acts which have been inflicted with an intention to cause physical suffering or severe mental pain. It would also include a treatment that is inflicted that causes humiliation and compels a person to act against his will or conscience. Torture is not merely physical but may even consist of mental and psychological torture calculated to create fear to submit to the demands of the police. **(Mehmood Nayyar Azam Vs. State of Chhattisgarh and others; (2012) 8 SCC 1)**

Art. 21, 32 and 226 – Compensation for harassment in police custody under public law – Consideration of

It needs no special emphasis to state that when an accused is in custody, his Fundamental Rights are not abrogated in too. His dignity cannot be allowed to be comatose.

The right to life is enshrined in Article 21 of the Constitution and a fortiorari it includes the right to live with human dignity and all that goes along with it.

There is no shadow of doubt that any treatment meted out to an accused while he is in custody which causes humiliation and mental trauma corrodes the concept of human dignity. The majesty of law protects the dignity of a citizen in a society governed by law. It cannot be forgotten that the Welfare State is governed by rule of law which has paramountcy. It has been said by Edward Biggon "the laws of a nation form the most instructive portion of its history." The Constitution as the organic law of the land has unfolded itself in manifold manner like a living organism in the various decisions of the court about the rights of a person under Article 21 of the Constitution of India. When citizenry rights are sometimes dashed against and pushed back by the members of City Halls, there has to be a remand and when the remand takes place. Article 21 of the Constitution, springs up to action as a protector.

It is the sacrosanct duty of the police authorities to remember that a citizen while in custody is not denuded of his fundamental right under Article 21 of the Constitution. The restrictions imposed have the sanction of law by which his enjoyment of fundamental right is curtailed but his basic human rights are not crippled so that the police officers can treat him in an inhuman manner. On the contrary, they are under obligation to protect his human rights and prevent all forms of atrocities.

The appellant was tortured while he was in custody. When there is contravention of human rights, the inherent concern as envisaged in Article 21 springs to life and enables the citizen to seek relief by, taking recourse to public law remedy.

The relief of monetary compensation as exemplary damages, in proceedings under Article 32 by the Supreme Court or under Article 226 by the High Courts for established infringement of the indefeasible right guaranteed under Article 21 is a remedy available in public law and is based on the strict liability for contravention of the guaranteed basic and indefeasible rights of the citizen. The purpose of public law is not only to civilize public power but also to assure the citizen that they live under a legal system which aims to protect their interests and preserve their rights. Therefore, when the court moulds the relief by granting 'compensation' in proceedings under Article 32 or 226 seeking enforcement or protection of fundamental rights, it does so under the public law by way of penalizing the wrongdoer and fixing the liability for the public wrong on the State which has failed in its public duty to protect the fundamental rights of the citizen. The payment of compensation in such cases is not to be understood, as it is generally understood in a civil action for damages under the private law but in the broader sense of providing relief by an order of making 'monetary amends' under the public law for the wrong done due to breach of public duty, by not protecting the fundamental rights of the citizen. The compensation is in the nature of 'exemplary damages' awarded against the wrongdoer for the breach of its public law duty and is independent of the rights available to the aggrieved party to claim compensation under the private law in an action based on tort, through a suit instituted in a court of competent jurisdiction or/and prosecute the offender under the penal law. **(Dr. Mehmood Nayyar Azam vs. State of Chhatisgarh and others; 2012(5) AWC 4353(SC)**

Art. 21-A – Right to education flows from and is a fundamental right u/A 21

Education is a process which engages many different actors : the one who provides education (the teacher, the owner of an educational institution, the parents), the one who receives education (the child, the pupil) and the one who is legally responsible for the one who receives education (the parents, the legal guardians, society and the State). These actors influence the right to education. The 2009 Act makes the Right of Children to Free and Compulsory Education justiciable. The 2009 Act envisages that each child must have access to a neighbourhood school. The 2009 Act has been enacted keeping in mind the crucial role of Universal Elementary Education for strengthening the social fabric of democracy through provision of equal opportunities to all. The Directive Principles of State Policy enumerated in our Constitution lay down that the State shall provide free and compulsory education to all children upto the age of 14 years. The said Act provides for right (entitlement) of children to free and compulsory admission, attendance and completion of elementary education in a neighbourhood school.

The word "Free" in the long title to the 2009 Act stands for removal by the State of any financial barrier that prevents a child from completing 8 years of schooling. The word "Compulsory" in that title stands for compulsion on the State and the parental duty to send children to school. To protect and give effect to this right of the child to education as enshrined in Article 21 and Article 21A of the constitution, the Parliament has enacted the 2009 Act. **(Society for Un-aided Private Schools of Rajasthan v. U.O.I. and anr.; 2012 (3) Supreme 305)**

Art. 21 – Right to life – Honour killing – Administrative and police officials directed to take strong measure to prevent such atrocious Act

In recent years heard of „Khap Panchayats" (known as katta panchayats in Tamil Nadu) which often decree or encourage honour killings or other atrocities in an institutionalized way on boys and girls of different castes and religion, who wish to get married or have been married, or interfere with the personal lives of people. The Court of the opinion that this is wholly illegal and has to be ruthlessly stamped out. As already stated in Lata Singh"s case, there is nothing honourable in honour killing or other atrocities and, in fact, it is nothing but barbaric and shameful murder. Other atrocities in respect of personal lives of people committed by brutal, feudal minded persons deserve harsh punishment. Only in this way can the Court stamp out such acts of barbarism and feudal mentality. Moreover, these acts take the law into their own hands, and amount to kangaroo courts, which are wholly illegal.

Hence, the Court directs the administrative and police officials to take strong measures to prevent such atrocious acts. If any such incidents happen, apart from instituting criminal proceedings against those responsible for such atrocities, the State Government is directed to immediately suspend the District Magistrate/Collector and SSP/SPs of the district as well as other officials concerned and charge-sheet them and proceed against them departmentally if they do not (1) prevent the incident if it has not already occurred but they have knowledge of it in advance, or (2) if it has occurred, they do not promptly apprehend the culprits and others involved and institute criminal proceedings against them, as in opinion of the Court they will be deemed to be directly or indirectly accountable in this connection. **(Arumugam Servai v. State of Tamil Nadu; AIR 2011 SC 1859)**

Art. 21 - Cr.P.C. S. 437 – Bail – Right to speedy trial – In granting bail, delay in concluding trial is important factor which should be taken into consideration

In deciding bail applications an important factor which should certainly be taken into consideration by the Court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. **(State of Kerala v. Raneef; AIR 2011 SC 340)**

Art. 21 – Right to live with dignity – Extent of

Mere membership of a banned organization will not incriminate a person unless he resorts to violence or incites people to violence or does an act intended to create disorder or disturbance of public peace by resort to violence. Section 3(5) cannot be read literally otherwise it will violate Articles 19 and 21 of the Constitution. Mere membership of a banned organization will not make a person a criminal unless he resorts to violence or incites people to violence or creates public disorder by violence or incitement to violence. **(Arup Bhuyan v. State of Assam; AIR 2011 SC 957)**

Art. 21 – Cr.P.C. 438 – Personal liberty – Deprivation of – Accused once released on anticipatory bail cannot be compelled to surrender before trial court and again apply for regular bail, it amounts to deprivation of his personal liberty

The restrictions imposed by Court, namely, that the accused released on anticipatory bail must submit himself to custody and only thereafter can apply for regular bail. This is contrary to the basic tention and spirit of Section 438, Cr.P.C. **(Siddharam Satlingappa Mhetre v. State of Maharashtra; AIR 2011 SC 312)**

Art. 21 – Ragging in educational institution – Directions issued to Govt. in States, Union Territories and University to act as per guidelines formulated by committee constituted by Supreme Court.

Ragging is a form of systematic and sustained physical, mental and sexual abuse of fresh students at the College/University/any other educational institution at the hands of senior students of the same institution and sometimes even by outsiders. “Ragging” means causing, inducing, compelling or forcing a student, whether by way of a practical joke or otherwise, to do any act which detracts from human dignity or violates his person or exposes him to ridicule or to forbear from doing any lawful act, by intimidating, wrongfully restraining, wrongfully confining, or injuring him or by using criminal force to him or by holding out to him any threat of such intimidation, wrongful restraint, wrongful confinement, injury or the use of criminal force. **(University of Kerala v. Council of Principals of College in Kerala & Ors.; AIR 2009 SC 2223)**

Art. 21 – Personal liberty includes right of woman to make reproductive choices.

The woman‟s right to make reproductive choices is also a dimension of „personal liberty‟ as understood under Article 21 of the Constitution of India. It is important to recognise that reproductive choices can be exercised to procreate as well as to abstain from procreating. The crucial consideration is that a woman‟s right to privacy, dignity and bodily integrity should be respected. This means that there should be no restriction whatsoever on the exercise of reproductive choices such as a woman‟s right to refuse participation in sexual activity or alternatively the insistence on use of contraceptive methods. Furthermore, women are also free to choose birth control methods such as undergoing sterilisation procedures. Taken to their logical conclusion, reproductive rights include a woman‟s entitlement to carry a pregnancy to its full term, to give birth and to subsequently raise children. However, in the case of pregnant women there is also a „compelling State interest‟ in protecting the life of the prospective child. Therefore, the termination of a pregnancy is only permitted when the conditions specified in the applicable statute have been fulfilled. Hence, the provisions of the MTP Act, 1971 can also be viewed as reasonable restrictions that have been placed on the exercise of reproductive choices. **(Suchita Srivastava v. Chandigarh Administration; AIR 2010 SC 235 (SC)**

Article 21 – Prohibition on employment of men below 25 years of age in Hotels and Bars would violate right to livelihood.

Young men who take a degree or diploma in Hotel Management enter into service at the age of 22 years or 23 years. It, thus, cannot prohibit employment of men below 25 years. Such a restriction keeping in view a citizen‟s right to be considered for employment, which is a facet of the right to livlihood do not stand judicial scrutiny. **(Anuj Garg & Ors. v. Hotel Association of India & Ors.; AIR 2008 SC 663)**

Article 21 – Speedy Justice – Denial of – Concern express by Apex Court at delay in disposal of cases.

Before parting with this case, the Apex Court again express his deep concern at the delay in disposing of cases in Courts. Recently in Civil Appeal No. 1307 of 2001 titled Rajindra Singh (Dead) through L.Rs. & Ors. V. Prem Mai & Ors. Decided on 23rd August, 2007 the Court expressed his deep anguish about this situation, and had observed that because of delay in disposal of cases people in this country are fast losing faith in the judiciary. Court observed in the media news of lynching of suspected thieves in Bihar's Vaishali District, the gunning down of an undertrial prisoner outside Patna City Civil Court, and other incidents where people have taken the law into their own hands. This is obviously because many people have started thinking that justice will not be done in the Courts due to the delays in Court proceedings. This is indeed an alarming state of affairs, and once again request the concerned authorities to do the needful in the matter urgently before the situation goes totally out of control. **(Moses Wilson & Ors. v. Kasturiba & Ors.; AIR 2005 SC 379)**

Article 21 – Right to speedy trial – Violation of – Constitutional guarantee and cannot be violated.

Where the Court comes to the conclusion that the right to speedy trial of an accused under Art. 21 of Constitution has been infringed, the charges or the conviction, as the case may be, may be quashed unless the Court feels that having regard to the nature of offence and other relevant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the Court to make an appropriate order as it may deem just and equitable including fixation of time frame for conclusion of trial.

Where investigations were conducted by an officer, who had no jurisdiction to do so and the appellant could not be accused of delaying the trial merely because he successfully exercised his right to challenge an illegal investigation and even the direction issued by the High Court had no effect on the prosecution and they slept over the matter for almost seventeen years, for which there was no explanation whatsoever, it was held that, the stated delay clearly violated the constitutional guarantee of a speedy investigation and trial under Article 21 of the Constitution and that under these circumstances, further continuance of criminal proceedings, pending against the appellant in the Court of Special Judge was unwarranted and despite the fact that allegations against him were quite serious, they deserve to be quashed. **(Vakil Prasad Singh v. State of Bihar; 2009 Cri.L.J. 1731)**

Article 21 & 22 – National Securities Act, S. 16 – Illegal detention under preventive detention law – Claim for compensation or damages not maintainable.

The case of police atrocities and illegal police custody cannot be equated with the preventive detention under Special Act. Broadly speaking, if any atrocity is committed on the person of the accused while he is in police custody. Articles 21 and 22 of the Constitution of India would be applicable, but that analogy cannot be imported when a person is detained under preventive Act and no atrocity is shown to have been heaped upon the detenu. So far as the National Security Act is concerned, reference should also be profitably made to Section 16 which provides that no suit or other legal proceedings shall lie against Central Government or State Government and no suit, prosecution or illegal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Act.

While dealing with the question of compensation, that Courts may award compensation under Articles 32 and 226 in cases where violation of Article 21 involving custodial death/torture is established or is incontrovertible. But it may not award the same where there is no evidence of custodial torture. The Apex Court held that cases where violation of Article 21 involving custodial death or torture is established or is incontrovertible stand on a different footing when compared to those cases where such violation is doubtful or not established. Where there is no independent evidence of custodial torture and where there is neither medical evidence about any injury or disability, resulting from custodial torture, now any mark/scar it may not be prudent to accept claims of human right‟s violation, by persons having criminal records in a routine manner for awarding compensation. That may open the floodgates for false claims. The Courts should, therefore, while zealously protecting the fundamental rights of those who are illegally detained or subjected to custodial violence should also stand guard against false, motivated and

frivolous claims in the interests of the society and to enable the police to discharge their duties fearlessly and effectively. **(Dharam Pal Yadav v. Superintendent, District Jail, Budaun & Ors.; 2007 (1) ALJ 269 (DB)**

Article 21, 142 – Right of marriage – Whether major boy or girl undergoing inter-cast or inter-religious marriage would be protected under Article 21 of Constitution of India – "Yes".

Disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. Such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. Direction issued to Administration/police authorities throughout the country to see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple is not harassed by any one nor subjected to threats or acts of violence, and any one who gives such threats or harasses or commits acts of violence either himself or at his instigation is taken to task by instituting criminal proceedings by the police against such persons and further stern, action is taken against such persons as provided by law. **(Lata Singh v. State of U.P. & Anr.; 2006 (5) ALJ 357)**

Art. 21—Right to Privacy

Hon"ble Supreme Court considered ratio decidendi of its two earlier decisions namely M.P. Sharma v. Satish Chandra, AIR 1954 SC 300 and Kharak Singh v. State of U.P., AIR 1963 SC 1295 on question of Right to Privacy as Fundamental Right which is implicit in Art. 21 of Constitution in the light of subsequent decisions in R. Rajagopal v. State of T.N., (1994) 6 SCC 632 & People's Union for Civil Liberties (PUCL) v. Union of India, (1997) 1 SCC 301. While R. Rajagopal case held that the "right to privacy" is implicit under Article 21 of the Constitution, PUCL case held that the "Right to privacy" insofar as it pertains to speech is part of fundamental rights under Articles 19(1) (a) and 21 of the Constitution.

In M.P. Sharma case an eight Judges bench of Hon"ble Supreme Court observed at para 18 –

……"A power of search and seizure is in any system of jurisprudence an overriding power of the State for the protection of social security and that power is necessarily regulated by law. When the Constitution makers have thought fit not to subject such regulation to constitutional limitations by recognition of a fundamental right to privacy, analogous to the American Fourth Amendment, we have no justification to import it, into a totally different fundamental right, by some process of strained construction."

Where as in Kharak Singh‘s Case it was observed by a six judges bench of Supreme Court in Para 20-

“20……Nor do we consider that Art. 21 has any relevance in the context as was sought to be suggested by learned counsel for the petitioner. As already pointed out, the right of privacy is not a guaranteed right under our Constitution and therefore the attempt to ascertain the movement of an individual which is merely a manner in which privacy is invaded is not an infringement of a fundamental right guaranteed by Part III.”

While analyzing the aforesaid cases Hon‟ble Supreme Court in present case held that the cases on hand raise far-reaching question of importance involving interpretation of Constitution. What is at stake is the amplitude of the fundamental rights including that precious and inalienable right under Article 21. If the observations made in M.P. Sharma (supra) and Kharak Singh (supra) are to be read literally and accepted as the law of this country, the fundamental rights guaranteed under the Constitution of India and more particularly right to liberty under Article 21 would be denuded of vigour and vitality. At the same time, we are also of the opinion that the institutional integrity and judicial discipline require that pronouncement made by larger Benches of this Court cannot be ignored by the smaller Benches without appropriately explaining the reasons for not following the pronouncements made by such larger Benches. With due respect to all the learned Judges who rendered the subsequent judgments - where right to privacy is asserted or referred to their Lordships concern for the liberty of human beings, we are of the humble opinion that there appears to be certain amount of apparent unresolved contradiction in the law declared by this Court.

Therefore, in our opinion to give a quietus to the kind of controversy raised in this batch of cases once for all, it is better that the ratio decidendi of M.P. Sharma v. State of U.P., AIR 1954 SC 300 and Kharak Singh vs. State of U.P., AIR 1963 SC 1295 is scrutinized and the jurisprudential correctness of the subsequent decisions of this Court where the right to privacy is either asserted or referred be examined and authoritatively decided by a Bench of appropriate strength. **[K.S. Puttaswamy vs. Union of India, (2015) 8 SCC 735 (Matter refer to larger Bench)]**

Art. 21- Detention of girl in Nari Niketan against her wish would violate her right vested U/s 21 of Constitution of India

A girl should be housed in Nari Niketan only as last resort in case she has no other place to live. Liberty of petitioner had been curtailed by confining her in Nari Niketan so impugned order quashed direction to respondent No. 2 to release petitioner forthwith to allow her to go as per her fee will. Mohini Gupta through her husband. **Dilip Sharma v. State of U.P. and others, 2016 (5) AWC 5185**

A**rt. 21 – Delayed Trial – It can become a ground to quash criminal proceedings but depends on impact of offence on society and an confidence of people on judicial system**

It is to be kept in mind that on one hand, the right of the accused is to have a speedy

trial and on the other, the quashment of the indictment or the acquittal or refusal for sending the matter for re-trial has to be weighed, regard being had to the impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. No time limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighted on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of collective. **(Niranjan Hemchandra Sashittal and Anr. v. State of Maharashtra; AIR 2013 SC 1682)**

Art. 21—Speedy trial is a facet of right to life under Art. 21

It is in the light of the settled legal position no longer possible to question the legitimacy of the right to speedy trial as a part of the right to life under Article 21 of the Constitution. The essence of Article 21 of the Constitution lies not only in ensuring that no citizen is deprived of his life or personal liberty except according to procedure established by law, but also that such procedure ensures both fairness and an expeditious conclusion of the trial. **(Babubhai Bhimabhai Bokhiria vs. State of Gujarat; 2013 Cri.L.J. 1547 (SC)**

Art. 21—Protection of Human Rights Act (10 of 1994) S. 12—Encounter death—Investigation to be done by independent agency

In this case, what disturbs the Court is the fact that the police have refused to follow the guidelines dated 2.12.2005 issued by the National Human Rights Commission. The two crucial guidelines which have been completely ignored by the police are that the investigation into the encounter death must be done by an independent investigation agency and that whenever a complaint is made against the police making out a case of culpable homicide, an FIR must be registered. In the instant case, the police have refused to even register the FIR on the complaint made by the appellant alleging that his son Sunil was killed by the police. Section 154 of the Code mandates that whenever a complaint discloses a cognizable offence, an FIR must be registered. This Court has, in a catena of judgments, laid down that the police must register an FIR if a cognizable offence is disclosed in the complaint. [See: State of Haryana vs. Bhajan Lal, 1992 (Supp) 1 SCC 335). Ignoring the mandate of Section 154 of the Code and the law laid down by this Court, the police have merely conducted inquiries which appear to be an eyewash. It is distressing to note that till date, no FIR has been registered on the complaint made by the appellant. **(Rohtash Kumar vs. State of Haryana; 2013 Cri.L.J. 1518 (SC)**

Art. 21—Police encounter—Magisterial inquiry—Validity

While inquiring whether the encounter is genuine or not, the inquiring authority must first focus its attention on the circumstances that led to the death of a person in an encounter. If it comes to a conclusion that it was the deceased who had attacked the police to prevent them from arresting him or to prevent them from performing their police duty and, therefore, the police had to retaliate, then the antecedents of the deceased could be taken into consideration as additional material at that stage to support the police version that it

was a genuine encounter. But the inquiring authority cannot start the inquiry keeping in mind the antecedents of the deceased. **(Rohtash Kumar vs. State of Haryana; 2013 Cri.L.J. 1518 (SC)**

Art. 21 and S. 357-A of CrPC - Compensation to victims of Acid Attack

Hon'ble Supreme Court directed that the acid attack victims shall be paid compensation of at least Rs. 3 lakhs by the State Government/Union Territory concerned as the aftercare and rehabilitation cost. Of this amount, a sum of Rs. 1 lakh shall be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of Rs. 2 lakhs shall be paid as expeditiously as may be possible and positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance with the above direction. **(Laxmi vs. Union of India; (2014) 4 SCC 427)**

Arts. 21, 32, 72 and 161 – Commutation of death sentence on ground of delay in disposal of mercy petitions

Hon'ble Supreme Court in aforesaid case considered the question of commutation of death sentence on ground of delay in disposal of mercy petitions filed by some petitioners before President or Governor. (As the case may be)

The clemency procedure under Articles 72/161 provides a ray of hope to the condemned prisoners and his family members for commutation of death sentence into life imprisonment and, therefore, the executive should set up and exercise its time-honoured tradition of clemency power guaranteed in the Constitution one way or the other within a reasonable time. Profuse deliberation on the nature of power under Articles 72/161 has already been said in Shatrughan Chauhan vs. Union of India, (2014) 3 SCC 1: (2014) 2 SCC (Cri.) 1 and the Court embrace the same in the given case as well. The relevant portion of Shatrughan Chauhan case is an under: (SCC pp. 39 & 43, paras 48 & 61).

―Accordingly, if there is undue, unexplained and inordinate delay in execution due to pendency of mercy petitions or the executive as well as the constitutional authorities have failed to take note of/consider the relevant aspects, this Court is well within its powers under Article 32 to hear the grievance of the convict and commute the death sentence into life imprisonment on this ground alone however, only after satisfying that the delay was not caused at the instance of the accused himself….

In present case Hon'ble Supreme Court relying on aforesaid case commuted death sentence of petitioners into life imprisonment and further observed that life imprisonment means end of one's life, subject to any remission granted by the appropriate Government u/s. 432 of the Code of Criminal Procedure, 1973 which, in turn, is subject to the procedural checks mentioned in the said provision and further substantive check in s. 433-A of the Code. All the writ petitions are allowed on the above terms and the transferred cases are, accordingly, disposed of. **(V. Sriharan vs. Union of India; (2014) 4 SCC 242**)

Art. 21—Cross-examination—Accused‘s right to cross-examine prosecution witnessed—Denial of, would jeopardise accused‘s right to life and liberty

The ultimate quest in any judicial determination is to arrive at the truth, which is not possible unless the deposition of witnesses goes through the fire of cross-examination. In a criminal case, using a statement of a witness at the trial, without affording to the accused an opportunity to cross-examine, is tantamount to condemning him unheard. Life and liberty of an individual recognised as the most valuable rights cannot be jeopardised leave alone taken away without conceding to the accused the right to question those deposing against him from the witness box.

The right of cross-examination granted to an accused under Sections 244 to 246 even before framing of the charges does not, in the least, cause any prejudice to the complainant or result in any failure of justice, while denial of such a right is likely and indeed bound to prejudice the accused in his defence. The fact that after the Court has found a case justifying framing of charges against the accused, the accused has a right to cross-examine the prosecution witnesses under Section 246(4) does not necessarily mean that such a right cannot be conceded to the accused before the charges are framed or that the Parliament intended to take away any such right at the pre-charge stage. **(Sunil Mehta vs. State of Gujarat; (2013) 3 SCC (Cri) 881)**

Art. 21 – Right of reputation – Availability of

Allegations against any person if found to be false or made forging someone else signature may affect his reputation. Reputation is a sort of right to enjoy the good opinion of others and it is a personal right and an enquiry to reputation is a personal injury. Thus, scandal and defamation are injurious to reputation, Reputation has been defined in dictionary as ―to have a good name; the credit, honor, or character which is derived from a favourable public opinion or esteem and character by report‖. Personal rights of a human being include the right of reputation. A good reputation is an element of personal security and is protected by the Constitution equally with the right to the enjoyment of life, liberty and property. Therefore it has been held to be a necessary element in regard to right to life of a citizen under Article 21 of the Constitution. International Covenant on Civil and Political Rights 1966 recognises the firth to have opinions and the right of freedom of expression under Article 19 is subject to the right of reputation of others. Reputation is not only a salt of life but the purest treasure and the most precious perfume of life. **(Umesh Kumar v. State of Andhra Pradesh; 2013(6) Supreme 323)**

Art. 21 – Prisoners and under trials - Right to speedy and fair trial, an integral part of very soul of Art. 21

In the present case, Hon‘ble Supreme Court observed that the first submission which pertains to the denial of speedy trial has been interpreted to be a facet of Article 21 of the Constitution. The present provision is to be tested on the touchstone of the aforesaid constitutional principle. Section 12 of the 1986 Act clearly mandates that the trial under 1986 Act of any offence by the Special Court shall have precedence and shall be concluded

in preference to the trial of any other case against the accused in any other court (not being a Special Court) to achieve the said purpose. The legislature thought it appropriate to provide that the trial of such other cases shall remain in abeyance. It is apt to note here that "any other case" against the accused in "any other court" does not include the Special Court. The emphasis is on speedy trial and not denial of it. The legislature has incorporated such a provision so that an accused does not face trial in two cases simultaneously and a case before the Special Court does not linger owing to clash of dates in trial. It is also worthy to note that the Special Court has been conferred jurisdiction under Section 8(1) of the U.P. Gangsters Act, 1986 to try any other offences with which the accused may, under any other law for the time being in force, have been charged and proceeded at the same trial.

As far as fair trial is concerned, needless to emphasise, it is an integral part of the very soul of Article 21 of the Constitution. Fair trial is the quaint essentiality of apposite dispensation of criminal justice. On a careful scrutiny of the provision, it is quite vivid that the trial is not hampered as the trial in other courts is to remain in abeyance by the legislative command. Thus, the question of procrastination of trial does not arise. As the trial under the U.P Gangsters Act, 1986 would be in progress, the accused would have the fullest opportunity to defend himself and there cannot be denial of fair trial. Thus the aforesaid provision does not frustrate the concept of fair and speedy trial which are the imperative facets of Article 21 of the Constitution. The concept of speedy and fair trial is neither smothered nor scuttled when the trial in other courts are kept in abeyance. As far as Article 14 is concerned, the procedure provided in the U.P. Gangsters Act, 1986 does not tantamount to denial of fundamental fairness in the trial. It is neither unfair nor arbitrary. **(Dharmendra Kirtahal v. State of Uttar Pradesh and Another; (2013) 8 SCC 368)**

Arts. 21, 22(1), 19(1)(a) and 4—Due process—Right to legal representation—Solemn duty of Advocate—Principles reiterated

To deny employment to an individual because of his political affinities would be offending the fundamental rights under Articles 14 and 16 of the Constitution. The submission of the appellant that her husband was only discharging his duties for litigants belonging to a banned organisation who had sought his assistance, has merit. Those who are participating in politics, and are opposed to those in power, have often to suffer the wrath of the rulers. It may occasionally result in unjustifiable arrests or detentions. The merit of a democracy lies in recognising the right of every arrested or detained person to be defended by a legal practitioner of his choice. Article 22(1) specifically gives this protection to arrested persons. All such accused do have the right to be defended lawfully until they are proved to be guilty, and advocates have the corresponding duty to represent them, in accordance with law. Taking any contrary view in the facts of the present case will result in making the appellant suffer for the role of her husband who is discharging his duty as an advocate in furtherance of this fundamental right of the arrested persons. **(K. Vijaya Lakshmi vs. State of A.P.; (2013) 3 SCC (Cri) 330)**

Art. 21—Personal liberty—Is not absolute—Controlled by concept of rational liberty

Personal liberty has its own glory and is to be put on a pedestal in trial to try

offenders, it is controlled by the concept of ―rational liberty. In essence, liberty of an individual should not be allowed to be eroded but every individual has an obligation to see that he does not violate the laws of the land or affect others‘ lawful liberty to lose h is own. The cry of liberty is not to be confused with or misunderstood as unconcerned senile shout for freedom. The protection of the collective is the bone marrow and that is why liberty in a civilized society cannot be absolute. It is the duty of the courts to uphold the dignity of personal liberty. It is also the duty of the Court to see whether the individual crosses the Lakshman Rekha that is carved out by law is dealt with appropriately. **(Dharmendra Kirthal vs. State of U.P.; AIR 2013 SC 2569 (E)**

Arts. 21 & 14 – Right to dignity – Wife beating leading to suicide – View that one or two beatings not sufficient in ordinary course for women to commit suicide is not acceptable—Court should be sensitive to women‘s problems

In this case, the view taken by the Sessions Judge in this case that one or two beatings are not sufficient in the ordinary course for a woman to commit suicide suggests that wife beating is a normal facet of married life. It cannot mean that giving one or two slaps to a wife by a husband just does not matter. It is one thing to say that every wear and tear of married life need not lead to suicide and it is another thing to put it so crudely and suggest that one or two assaults on woman is an accepted social norm. Judges have to be sensitive to women's problems. Assault on a woman offends her dignity. What effect it will have on a woman depends on the facts and circumstances of each case. There cannot be any generalisation on this issue. This, however, must not be understood to mean that in all cases of assault suicide must follow and that where there is no evidence the court should go out of its way, ferret out evidence and convict the accused in such cases. It is of course the duty of the court to see that an innocent person is not convicted. But it is equally the duty of the court to see that perpetrators of heinous crimes are brought to book. The views taken by the Sessions Judge can be characterised as perverse. They show a mindset which needs to change. Perhaps the Sessions Judge wanted to convey that the circumstances on record were not strong enough to drive the deceased to commit suicide. But to make light of slaps given to the deceased wife which resulted in loss of her right eyesight in this case is to show extreme insensitivity. There is a phenomenal rise in crimes against women, and the protection granted to women by the Constitution of India and other laws can be meaningful only if those who are entrusted with the job of doing justice are sensitised towards the women's problems. **(Vajresh Venkatray Anvekar v. State of Karnataka; (2013) 3 SCC (Cri) 227)**

Art. 21 – Fair trial – What does it constitutes - Denial of adducing evidence in support of defence is valuable right and constitutes to denial of fair trial

Fair trial is the main object of criminal procedure, and it is the duty of the court to ensure that such fairness is not hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society, and therefore, fair trial includes the grant of fair and proper opportunities to the person concerned, and the same must be ensured as this is a constitutional, as well as a human right. Thus, under no circumstances can a person‘s right to fair trial be jeopardized. Adducing evidence in support of the defence

is a valuable right. Denial of such right would amount to the denial of a fair trial. **(Natasha Singh v. CBI (State); 2013 Cri.LJ 3346 (SC)**

Art. 21 – Right to speedy trial – Scope

Unless there is a speedy trial, the concept of fair trial is totally crucified. Recently, in Mohd. Hussain vs. State (Govt. of NCT of Delhi); 2012(9) SCC 408, a three-Judge Bench, after referring to the pronouncements in P. Ramachandra Rao case vs. State of Karnataka; (2002) 4 SCC 578, Zahaira Habibulla H. Sheikh vs. State of Gurajat; (2004) 4 SCC 158, Satyajit Banerjee vs, State of WB; (2005) 1 SCC 115, pointed out the subtle distinction between the two in the following manner:

40. 'Speedy trial' and 'fair trial' to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused‘s right of fair trial. Unlike the accused‘s right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused‘s right to speedy trial have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of the accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end.

It is to be kept in mind that on the one hand, the right of the accused is to have a speedy trial and on the other, quashment of the indictment or the acquittal or refusal for sending the matter for re-trial has to be weighed, regard being had to the impact of the crime on the society and the confidence of the people in the judicial system. There cannot be a mechanical approach. From the principles laid down in many an authority of this Court, it is clear as crystal that no time-limit can be stipulated for disposal of the criminal trial. The delay caused has to be weighed on the factual score, regard being had to the nature of the offence and the concept of social justice and the cry of the collective. **(Niranjan Hemchandra Sashital vs. State of Maharashtra; (2013) 2 SCC (Cri) 737)**

Arts. 21, 32, 72 and 161 – Death penalty awarded for terrorist acts/terrorism – Delay in deciding mercy/clemency petition u/A 72/161 cannot be invoked as ground for commutation of death sentence in such cases

The power vested in the President under Article 72 and the Governor under Article 161 of the Constitution is a manifestation of prerogative of the State. It is neither a matter of grace nor a matter of privilege, but is an important constitutional responsibility to be

discharged by the highest executive keeping in view the considerations of larger public interest and welfare of the people.

While exercising power under Article 72, the President is required to act on the aid and advice of the Council of Ministers. In tendering its advice to the President, the Central Government is duty-bound to objectively place the case of the convict with a clear indication about the nature and magnitude of the crime committed by him, its impact on the society and all incriminating and extenuating circumstances. The same is true about the State Government, which is required to give advice to the Governor to enable him to exercise power under Article 161 of the Constitution. On receipt of the advice of the Government, the President or the Governor, as the case may be, has to take a final decision in the matter. Although, he/she cannot overturn the final verdict of the Court, but in appropriate case, the President or the Governor, as the case may be, can after scanning the record of the case, form his/her independent opinion whether a case is made out for grant of pardon, reprieve, etc. In any case, the President or the Governor, as the case may be, has to take cognizance of the relevant facts and then decide whether a case is made out for exercise of power under Article 72 or 161 of the Constitution.

Time and again, it has been held that while imposing punishment for murder and similar type of offences, the Court is not only entitled, but is duty-bound to take into consideration the nature of the crime, the motive for commission of the crime, the magnitude of the crime and its impact on the society, the nature of weapon used for commission of the crime, etc. If the murder is committed in an extremely brutal or dastardly manner, which gives rise to intense and extreme indignation in the community, the Court may be fully justified in awarding the death penalty. If the murder is committed by burning the bride for the sake of money or satisfaction of other kinds of greed, there will be ample justification for awarding the death penalty. If the enormity of the crime is such that a large number of innocent people are killed without rhyme or reason, then too, award of extreme penalty of death will be justified. All these factors have to be taken into consideration by the President or the Governor, as the case may be, while deciding a petition filed under Article 72 or 161 of the Constitution and the exercise of power by the President or the Governor, as the case may be, not to entertain the prayer for mercy in such cases cannot be characterised as arbitrary or unreasonable and the Court cannot exercise power of judicial review only on the ground of undue delay. **(Devender Pal Singh Bhullar v. State (NCT of Delhi); (2013) 6 SCC 195)**

Art. 21 - Right to speedy trial - Deprivation of - Good cause for failure to complete the trial within a reasonable time would not volatile of accused

Reasons for the delay is one of the factors which Courts would normally assess in determining as to whether a particular accused has been deprived of his or her right to speedy trial, including the party to whom the delay is attributable. Delay, which occasioned by action or inaction of the prosecution is one of the main factors which will be taken note by the Courts while interjecting a criminal trial. A de- liberate attempt to delay the trial, in order to hamper the accused, is weighed heavily against the prosecution. How- ever, unintentional and unavoidable delays or administrative factors over which prosecution has no control, such as, over-crowded Court dockets, absence of the presiding officers, strike by

the lawyers, delay by the superior forum in notifying the designated Judge, (in the present case only), the matter pending before the other forums, eluding High Courts and Supreme Courts and adjournment of the criminal trial at the instance of the accused, may be a good cause for the failure to complete the trial within reasonable time. This is only illustrative and not exhaustive. Such delay or delays cannot be volatile of accuser‘s right to a speedy trial and needs to be excluded while deciding whether there is unreasonable and unexplained delay. The good cause exception to the speedy trial requirement focuses on only one factor i.e., the reason for the delay and the attending circum- stances bear on the inquiry only to the extent to the sufficiency of the reason itself. **(Ranjan Dwivedi V. C.B.I. through Director General; 2013 (81) ACC 402 (SC)**

Art. 21 – Protection of Human Rights Act, S. 2(d) – Human Rights of transgender community - Hijras/Transgender persons are also entitled to equal protection of laws and equality in all spheres and also entitled to reservation in public employment

Indian Law, on the whole, only recognizes the paradigm of binary genders of male and female, based on a person‘s sex assigned by birth, which permits gender system, including the law relating to marriage, adoption, inheritance, succession and taxation and welfare legislations, unfortunately Court have no legislation in this country dealing with the rights of transgender community. Due to the absence of suitable legislation protecting the rights of the members of the transgender community, they are facing discrimination in various areas and hence it is necessary to follow the International Conventions to which India is a party and to give due respect to other non-binding International Conventions and principles. Constitution makers could not have envisaged that each and every human activity be guided, controlled, recognized or safeguarded by laws made by the legislature. Article 21 has been incorporated to safeguard those rights and a Constitutional Court cannot be a mute spectator when those rights are violated, but is expected to safeguard those rights knowing the pulse and feeling of that community, though a minority, especially when their rights have gained universal recognition and acceptance. The International Conventions protecting transgender including Yogyakarta principles, which are found not inconsistent with the various fundamental rights guaranteed under the Indian Constitution, must be recognized and followed, which has sufficient legal and historical justification in our country.

Word ―person in Art. 14 not restricted to male and female, includes even hijras/transgender persons such persons who are neither male nor female are also entitled to equal protection of laws and equality in all spheres.

Discrimination on ground of sex is not limited to biological sex of male or female but includes transgender. Transgender being discriminated on ground of sex are entitled to benefits as socially and educationally backward class citizens also entitled to reservation in public employment. So Government directed to take affirmative action in this regard. **(National Legal Services Authority v. Union of India and others; AIR 2014 SC 1863)**

Arts. 21, 19 & 25 - Does not mere animal existence or continued drudgery through life - Lack of basic amenities, healthcare, security and proper tracks for Amarnathji yatris

Now, court may examine the dimensions of the rights protected under Article 21 of the Constitution of India. The socio-economic justice for people is the very spirit of the preamble of our Constitution. 'Interest of general public' is a comprehensive expression comprising several issues which affect public welfare, public convenience, public order, health, morality, safety etc., all intended to achieve the socio-economic justice for people. In the case of Consumer Education and Research Centre v. Union of India, (1995) 3 SCC 42, this Court while noticing Article 1 of the Universal Declaration of Human Rights, 1948 (for short 'UDHR') asserted that human sensitivity and moral responsibility of every State is that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The Court also observed "the jurisprudence of personhood or philosophy of the right to life envisaged under Article 21, enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality.

Not only this, there is still a greater obligation upon the Centre, State and the Shrine Board in terms of Article 48A of the Constitution where it is required to protect and improve the environment. Article 25(2) of the UDHR ensures right to standard of adequate living for health and well-being of an individual including housing and medical care and the right to security in the event of sickness, disability etc. The expression 'life' enshrined in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living. The expanded connotation of life would mean the tradition and cultural heritage of the persons concerned. In the case of Consumer Education & Research Centre (supra), the Court discussing the case of C.E.S.C. Ltd. v. Subhash Chandra Bose; [(1992) 1 SCC 441] stated with approval that in that case the Court had considered the gamut of operational efficacy of human rights and constitutional rights, the right to medical aid and health and held the right to social justice as a fundamental right. The Court further stated that the facilities for medical care and health to prevent sickness, ensure stable manpower for economic development and generate devotion to duty and dedication to give the workers' best performance, physically as well as mentally. The Court particularly, while referring to the workmen made reference to Articles 21, 39(e), 41, 43 and 48-A of the Constitution of India to substantiate that social security, just and humane conditions of work and leisure to workmen are part of his meaningful right to life.

From the analysis of the above, it is clear that the appropriate balance between different activities of the State is the very foundation of the socio-economic security and proper enjoyment of the right to life. **(Court on Its Own Motion vs. Union of India & Others; 2012(8) Supreme 646)**

Arts 21, 15, 14 and 51-A(e)—Eve-teasing—Malady is against constitutional mandate—Directions issued

The respondent who was a police official was alleged to have misbehaved with a woman at a bus-stand. He was found guilty in the departmental enquiry but was acquitted in

the criminal case. The issue before the Supreme Court was whether the respondent was entitled to reinstatement as a result of his acquittal. While dealing with this issue, the Supreme Court collaterally considered the social evil of eve-teasing.

There is no uniform law in the country to curb eve-teasing effectively in or within the precinct of educational institutions, places of worship, bus-stands, metro stations, railway stations, cinema theatres, parks, beaches, places of festival, public service vehicles or any other similar place. Eve-teasing generally occurs in public places which, with a little effort, can be effectively curbed. Consequences of not curbing such a menace are at times disastrous. There are many instances where girls of young age are being harassed, which sometimes may lead to serious psychological problems and even committing suicide. Every citizen in this country has the right to live with dignity and honour which is a fundamental right guaranteed under Article 21 of the Constitution. Sexual harassment like eve-teasing of women amounts to violation of rights guaranteed under Articles 14, 15 as well.

It is very difficult to establish the facts as required by Section 294 IPC and, seldom, complaints are being filed and criminal cases will take years and years and often the offender gets away with no punishment and filing complaint and to undergo a criminal trial itself is an agony for the complainant, over and above the extreme physical or mental agony already suffered. Similarly, the burden under Section 509 IPC is on the prosecution to prove that the accused had uttered the words or made the sound or gesture and that such word, sound or gesture was intended by the accused to be heard or seen by some woman. Normally, it is difficult to establish this and, seldom, a woman files complaints and often the wrongdoers are left unpunished even if the complaint is filed since there is no effective mechanism to monitor and follow up such acts. The necessity of a proper legislation to curb eve-teasing is of extreme importance, even the Tamil Nadu legislation has no teeth.

Eve-teasing can be categorised in five heads: (1) verbal eve teasing; (2) physical eve teasing; (3) psychological harassment; (4) sexual harassment; and (5) harassment through some objects.

Parliament is currently considering the Protection of Woman against Sexual Harassment at Workplace Bill, 2010, which is intended to protect female workers in most workplaces. Provisions of that Bill are not sufficient to curb eve-teasing. Before undertaking suitable legislation to curb eve-teasing, it is necessary to take at least some urgent measures so that it can be curtailed to some extent. In public interest, directions are issued as follows:

(1) All the State Governments and Union Territories are directed to depute plain clothed female police officers in the precincts of bus-stands and stops, railway stations, metro stations, cinema theatres, shopping malls, parks, beaches, public service vehicles, places of worship, etc. so as to monitor and supervise incidents of eve-teasing.

(2) There will be a further direction to the State Government and Union Territories to install CCTV cameras in strategic positions which itself would be a deterrent and if detected, the offender could be caught.

(3) Persons in charge of the educational institutions, places of worship, cinema theatres, railway stations, bus-stands have to take steps as they deem fit to prevent eve-teasing, within their precincts and, on a complaint being made, they must pass on the information to the nearest police station or the Women's Help Centre.

(4) Where any incident of eve-teasing is committed in a public service vehicle either by the passengers or the persons in charge of the vehicle, the crew of such vehicle shall, on a complaint made by the aggrieved person, take such vehicle to the nearest police station and give information to the police. Failure to do so should lead to cancellation of the permit to ply.

(5) The State Governments and Union Territories are directed to establish Women Helpline in various cities and towns, so as to curb eve-teasing within three months.

(6) Suitable boards cautioning such act of eve-teasing be exhibited in all public places including precincts of educational institutions, bus-stands, railway stations, cinema theatres, parks, beaches, public service vehicles, places of worship, etc.

(7) Responsibility is also on the passer-by and on noticing such incident, they should also report the same to the nearest police station or to Women Helpline to save the victims from such crimes.

(13) The State Governments and Union Territories of India would take adequate and effective measures by issuing suitable instructions to the authorities concerned including the District Collectors and the District Superintendent of Police so as to take effective and proper measures to curb such incidents of eve-teasing. **(Dy. Inspector General of Police vs. S. Samuthiram; (2013)1 SCC (Cri) 566)**

Arts. 21, 22(1) and 39—Right to speedy trial and fair trial—Deprivation of right to speedy does not per se prejudice the accused in defending himself

'Speedy trial' and 'fair trial' to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused's right to speedy tiral have to be weighed vis-à-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed alongwith the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appeal Court is confronted with the question whether or not retrial of an accused should be ordered. **(Mohd. Hussain @ Julfikar Ali vs. State (Govt. of N.C.T.) Delhi; 2013 (80) ACC 910 (SC)**

Art. 21 – Freedom of choice of marriage – An inherent aspect of right to life

Ultimately, the question which ought to consider and assess by this Court is whether the State Police Machinery could have possibly prevented the said occurrence. The response is certainly a 'yes'. The State is duty bound to protect the Fundamental Rights of its citizens; and an inherent aspect of Article 21 of the Constitution would be the freedom of choice in marriage. Such offences are resultant of the States incapacity or inability to protect the Fundamental Rights of its citizens. **[In Re: Indian Woman Says Gang-raped on Orders of Village Court, 2014 AIR (SC) 2816]**

Arts. 21, 20(1), 14, 19, 32 and Arts. 72 & 161 - Judicial Review – When permissible Judicial Review, held, is available where mercy petition is rejected without considering the supervening circumstances of delay.

This right of judicial review on ground of non-consideration of supervening circumstances is available till last breath of death convict, till the noose is being tied on his neck- Merch jurisprudence is a part of the evolving standard of decency, which is the hallmark of the society - In the same manner that the death sentence itself is passed lawfully, execution of death sentence must also be in consonance with the constitutional mandate. Right to seek mercy U/Arts. 72/161 is a constitutional right and not at the discretion or whims of executive. Every Constitutional duty must be discharged with due care and diligence, otherwise judicial interference is the command of the Constitution for upholding its values. However, clarified that whether non-consideration of any such supervening circumstance(s) will entitle death convict to commutation of death sentence must be appreciated based on facts of each individual case and no exhaustive guidelines can be framed in its regard. Criminal Procedure Code 1973, Ss. 413 to 415.

Inordinate delays caused due to circumstances beyond the control of death convict and that which is caused by the authorities for no reasonable ground is under, unjust and unfair. Whether delay is undue and unreasonable must be appreciated based on facts of each individual case and no exhaustive guidelines can be framed in this regard. Lastly, held, the Supreme Court should commute death sentence itself if above said ground is made out rather than remanding matter for reconsideration of mercy petition.

Held, thought no time-limit can be fixed for exercise of power U/Arts. 72 and 161, it is the duty of the executive to expedite the matter at every stage viz. calling for the record, others and documents filed in court, preparation of note for approval of the Minister concerned and ultimate decision of the President/Governor. Minister concerned is expected to follow its own rules rigorously which can reduce to a large extent the delay caused. Universal Declaration of Human Rights, 1948, United Nations Covenant on Civil & Political Rights, 1966. (**Shatughan Chauhan vs. Union of India; (2014) 3 SCC 1)**

Art. 21 - Fair and Speedy trial-Concept of

There is no denial of the fact that fair trial is an insegregable facet of Article 21 of the Constitution. This court on numerous occasions has emphasized on the fundamental

conception of fair trial as the majesty of law so commends.

The concept of fair trial is not in the realm of abstraction. It is not a vague idea. It is a concrete phenomenon. It is not rigid and there cannot be any strait-jacket formula for applying the same. On occasions it has the necessary flexibility. Therefore, it cannot be attributed or clothed with any kind of rigidity or flexibility in its application. It is because fair trial in its ambit requires fairness to the accused, the victim and the collective at large. Neither the accused nor the prosecution nor the victim which is a part of the society can claim absolute predominance over the other. Once absolute predominance is recognized, it will have the effect potentiality to bring in an anarchical disorder in the conducting of trial defying established legal norm. There should be passion for doing justice but it must be commanded by reasons and not propelled by any kind of vague instigation. It would be dependent on the fact situation; established norms and recognized principles and eventual appreciation of the factual scenario in entirety. There may be cases which may command compartmentalization but it cannot be stated to be an inflexible rule. Each and every irregularity cannot be imported to the arena of fair trial. There may be situations where injustice to the victim may play a pivotal role. The centripodal purpose is to see that injustice is avoided when the trial is conducted. Simultaneously the concept of fair trial cannot be allowed to such an extent so that the systemic order of conducting a trial in accordance with Cr.P.C. or other enactments get mortgaged to the whims and fancies of the defence or the prosecution. The command of the Code cannot be thrown to winds. In such situation, as has been laid down in many an authority, the courts have significantly an eminent role. A plea of fairness cannot be utilized to build Castles in Spain or permitted to perceive a bright moon in a sunny afternoon. It cannot be acquiesced to create an organic disorder in the system. It cannot be acceded to manure a fertile mind to usher in the nemesis of the concept of trial as such. **State of Haryana v. Ram Mehar, (2016) 8 SCC 762**

Arts. 21, 32 & 226 – Right to convict under Article 21

Prisoners both under trials and convicts have certain fundamental rights and human rights, little or no attention is being paid in this regard by the States and some Union Territories including the National Capital Territory of Delhi. Certainly fundamental rights and human rights of people, however they may be placed, cannot be ignored only because of their adverse circumstances.

Even a convicts are not, by mere reason of the conviction, denuded of all the fundamental rights which they otherwise possess. A compulsion under the authority of law, following upon a conviction, to live in a prison-house entails by its own force the deprivation of fundamental freedoms like the right to move freely throughout the territory of India or the right to ―practise a profession. A man of profession would thus stand stripped of his right to hold consultations while serving out his sentence. But the Constitution guarantees other freedoms like the right to acquire, hold and dispose of property for the exercise of which incarceration can be no impediment, likewise, even a convict is entitled to the precious right guaranteed by Article 21 of the Constitution that he shall not be deprived of his life or personal liberty except according to procedure established by law. **Inhuman Conditions in 1382 prisons (II) In Re, (2016) 10 SCC 17**

Arts. 22(4), (5), (6) and (7) – Preventive detention – Meaning and object

There is a clear distinction between the principles governing the evaluation of a dying declaration under the English Law and the Indian Law. Under the English Law, credence and relevancy of a dying declaration is only when the person making such a statement is in hopeless condition and expecting an imminent death. So under the English Law, for its admissibility, the declaration should have been made when in his actual danger of death and that the declaring should have had a full apprehension that his death would ensue. However, under the Indian Law, the dying declaration is relevant, whether the person who makes it was or was not under expectation of death at the time of such declaration. The dying declaration is admissible not only in the case of homicide but also in civil suits. The admissibility of a dying declaration rests upon the principle of nemo meritorious praesumuntur mentiri (a man will not meet his maker with a lie in his mouth). **(Bhajju v. State of M.P.; 2012 (77) ACC 192 (SC))**

Arts. 22, 19 and 21—Preventive detention—Permissible ground for

The Constitution recognizes preventive detention though it takes away the liberty of a person without any enquiry or trial. Preventive detention results in negation of personal liberty of an individual; it deprives an individual freedom and is not seen as compatible with the rule of law, yet the Framers of the Constitution placed the same in Part III of the Constitution. The Court has time and again given the expression “personal liberty” its full significance and asserted how valuable, cherished, sacrosanct and important the right of liberty given to an individual in the Constitution was and yet legislative power to enact preventive detention laws has been upheld in the larger interest of the State security. **(Dropti Devi vs. Union of India; (2012) 2 SCC (Cri) 387)**

Art. 22(4) – UP Gangsters and Ant- Social Activities (Prevention) Act 1986 - S. 12 – Constitutional Validity up-held - It does not infringe any facet of Arts. 14 and 21, 22 (4), 300-A

It is the duty of the Court to uphold the constitutional validity of a statute and there is always a presumption in favour of the constitutionality of an enactment. The burden is on him who challenges the same to show that there has been a clear transgression of the constitutional principles and it is the duty of the Court to sustain that there is a presumption of constitutionality and in doing so, the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of the legislation. Thus the submissions raised at the Bar are to be considered in the backdrop of the aforesaid "caveat". What has to be seen is whether the provision trespasses the quintessential characteristics of the Organic Law and, therefore, should not be allowed to stand. **(Dharmendra Kirtahal v. State of Uttar Pradesh and Another; (2013) 8 SCC 368)**

Art. 22(5)—Detention order—Challenge at pre-execution stage—Validity of

Confining the challenge to detention order at pre-execution stage only to the five exceptions mentioned in (1992 (1) SCC (Supp) 496), would amount to stifling and imposing restrictions on the powers of judicial review vested in the High Courts and the Supreme Court under Articles 226 and 32 of the Constitution. The exercise of powers vested in the superior Courts in judicially reviewing executive decisions and orders cannot be subjected to any restrictions, as such powers are untrammelled and vested in the superior Courts to protect all citizens and non-citizens, against arbitrary action. Law is never static, but dynamic and that the right to freedom being one of the most precious rights of a citizen, the same could not be interfered with as a matter of course and even if it is in the public interest, such powers would have to be exercised with extra caution and not as an alternative to the ordinary laws of the land. **(Subhash Popatlal Dave vs. Union of India; 2013 CriLJ 4166 (SC)**

Arts. 22(5), 21, 226, 32—Preventive Detention—Long lapse in execution of order is no ground to quash detention order

If it is held that howsoever the grounds of detention might be weighty and sustainable which persuaded the authorities to pass the order of detention, the same is fit to be quashed merely due to long lapse of time specially when the detune is allowed to challenge the order of detention even before the order of detention is served on him, the detune would clearly be offered with a double-edged weapon to use to his advantage circumventing the order of detention. On the one hand, he can challenge the order of detention at the pre-execution stage on any ground, evade the detention in the process and subsequently would be allowed to raise the plea of long pendency of the detention order which could not be served and finally seek its quashing on the plea that it has lost its live link with the order of detention. This, would render the very purpose of preventive detention laws as redundant and nugatory. On the contrary, if the order of detention is allowed to be served on the proposed detune even at a later stage, it would be open for the proposed detenu to confront the materials or sufficiency of the material relied upon by the authorities for passing the order of detention so as to contend that at the relevant time when the order of detention was passed, the same was based on non-existent or unsustainable grounds so as to quash the same. But to hold that the same is fit to be quashed merely because the same could not be executed for one reason or the other specially when the proposed detune was evading the detention order and indulging in forum shopping, the laws of preventive detention would surely be reduced into a hollow piece of legislation. **(Subhash Popatlal Dave vs. Union of India; 2013 CriLJ 4166 (SC)**

Art. 22 - Preventive Detention – Basis of detention – Gravity of offence is irrelevant in preventive detention matter

The counsel submitted that the gravity of offence is irrelevant in preventive detention matters. Preventive detention is a serious inroad on the liberty of a person. The procedural safeguards are the only protection available to him and, therefore, their strict compliance is necessary. The learned counsel urged that the gravity of the offence is irrelevant in a preventive detention matter. We entirely agree with this submission. (Abdul Nasar Adam Ismail vs. State of Maharashtra; (2013) 4 SCC 435)

Art. 22 — Delay in issuance of detention order – Effect - Detention order is valid if explanation of delay given by detaining authorities is satisfactory and reasonable

The Court have carefully perused the affidavit of the detaining authority. The detaining authority has stated what steps were taken and how the proposal submitted by the sponsoring authority was processed till the detention order was passed. The sponsoring authority has also filed affidavit explaining steps taken by it till the proposal was submitted. The High Court has rightly held that the said explanation is satisfactory. In this connection, reliance placed by the High Court on the judgment of this Court in Rajendrakumar Natvarlal Shah v. State of Gujarat 22 is apt. We deem it appropriate to quote the relevant paragraph.

"10. Viewed from this perspective, we wish to emphasise and make it clear for the guidance of the different High Courts that a distinction must be drawn between the delay in making of an order of detention under a law relating to preventive detention like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 and the delay in complying with the procedural safeguards of Article 22(5) of the Constitution. It has been laid down by this Court in a series of decisions that the rule as to unexplained delay in taking action is not inflexible. Quite obviously, in cases of mere delay in making of an order of detention under a law like the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 enacted for the purpose of dealing effectively with persons engaged in smuggling and foreign exchange racketeering who, owing to their large resources and influence have been posing a serious threat to the economy and thereby to the security of the nation, the courts should not merely on account of delay in making of an order of detention assume that such delay, if not satisfactorily explained, must necessarily give rise to an inference that there was no sufficient material for the subjective satisfaction of the detaining authority or that such subjective satisfaction was not genuinely reached. Taking of such a view would not be warranted unless the court finds that the grounds are "stale" or illusory or that there is no real nexus between the grounds and the impugned order of detention. The decisions to the contrary by the Delhi High Court in Anil Kumar Bhasin v. Union of India & Ors., Crl. W.No.410/86 dated 2.2.1987, Bhupinder Singh v. Union of India & Ors., Crl. W. No.375/86 dated 11.12.1986, Surinder Pal Singh v. M.L. Wadhawan & Ors., Crl. W. No.444/86 dated 9.3.1987 and Ramesh Lal v. Delhi Administration, Crl. W. No.43/84 dated 16.4.1984 and other cases taking the same view do not lay down good law and are accordingly overruled."

In light of the above observations of this Court in our opinion, the order of detention cannot be quashed on the ground that there is delay in issuance of the detention order. **(Abdul Nasar Adam Ismail Vs.The State of Maharashtra; (2013) 2 SCC (Cri) 438)**

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detention matter. The Court entirely agree with the submission. **(Abdul Nasar Adam Ismail vs. State of Maharashtra; (2013) 4 SCC 435)**

Article 25, 26—Freedom of Religion under and enforcement thereof under Article 32 of Indian Constitution-

Religion incorporates the particular belief(s) that a group of people subscribe to. Hinduism, as a religion, incorporates all forms of belief without mandating the selection or elimination of any one single belief. It is a religion that has no single founder; no single scripture and no single set of teachings. It has been described as Sanatan Dharma, namely, eternal faith, as it is the collective wisdom and inspiration of the centuries that Hinduism seeks to preach and propagate. It is keeping in mind the above precepts that we will proceed further.

The freedom of religion under Articles 25 and 26 of the Constitution is not only confined to beliefs but extends to religious practices also would hardly require reiteration. Right of belief and practice is guaranteed by Article 25 subject to public order, morality and health and other provisions of Part- III of the Constitution. Sub-Article (2) is an exception and makes the right guaranteed by Sub-article (1) subject to any existing law or to such law as may be enacted to, inter alia, provide for social welfare and reforms or throwing or proposing to throw open Hindu religious institutions of a public character to all classes and sections of Hindus. Article 26(b) on the other hand guarantees to every religious denomination or section full freedom to manage its own affairs insofar as matters of religion are concerned, subject, once again, to public order, morality and health and as held by this Court subject to such laws as may be made under Article 25(2)(b). The rights guaranteed by Articles 25 and 26, therefore, are circumscribed and are to be enjoyed within constitutionally permissible parameters. Often occasions will arise when it may become necessary to determine whether a belief or a practice claimed and asserted is a fundamental part of the religious practice of a group or denomination making such a claim before embarking upon the required adjudication. **[Adi Saiva Sivachariyargal Nala Sangam v. State of T.N., (2016) 2 SCC 725]**

Art. 30 – Minority Institution – Declaration of - Consideration of

Petitioner seeks quashing of the notification dated 4th May, 2009 issued by the Secretary, National Commission for Minority Educational Institution, New Delhi as well as the letter dated 5th May, 2009 issued by the same authority and the consequential order dated 16th March, 2011 issued by the District Inspector of Schools, Moradabad. Under the aforesaid documents, the petitioner's institution has been declared to be a minority institution covered by Article 30 of the Constitution of India. The District Inspector of Schools has further directed that since the status certificate has been issued by the National Commission for Minority Educational Institution, which is a statutory body, the same has to be honoured. The institution must therefore, act accordingly.

So far as the law in respect of minority institutions covered by Article 30 of the Constitution of India is concerned, suffice is to refer to the judgment of the Apex Court in the case of Azeez Basha vs. Union of India reported in AIR 1968 SC 662. The Apex Court has laid down that for an institution to be covered within the meaning of Article 30 of the Constitution of India, it must be proved that (a) institution was brought into existence (established) by a minority community and (b) institution has all along been run and managed by the minority community, which had established the same. Relevant portion of the Judgment reads as follows:

"19. .....The Article in our opinion clearly shows that the minority will have the right to administer educational institutions of their choice provided they have established them, but not otherwise. The Article cannot be read to mean that even if the educational institution has been established by somebody else, any religious minority would have the right to administer it because, for some reason or other, it might have been administering it before the Constitution came into force. The words "establish and administer" in the Article must be read conjunctively and so read it gives the right to the minority to administer an education institution provided it has been established by it. ....."

The Apex Court has held that both the above conditions must be satisfied simultaneously. If one of the conditions is found to be wanting, then the institution will not be treated to be a minority institution within the meaning of Article 30 of the Constitution of India.

It is no doubt true that in the said meeting, contributions were made by the members of Jain‘s family. However, the proceedings are in themselves sufficient to establish that the institution had been established by the public of Billari belonging to the various communities. It is this established institution was sought to be taken over by the association, and a decision was taken to get it recognised by the U.P. Education Board after up-gradation upto High School. From a simple reading of the proceedings so enclosed, it is apparent that there was decision to convert the private school (English) into any minority institution either for the purposes of protecting any minority linguistic rights or religious rights. Even the Managing Committee formed under the said resolution comprised of persons of various communities. From the said document filed by the respondent-Committee of Management

itself, at least one thing stands proved beyond doubt that the institution in question was not established by any minority community/Jains. The institution in question was established and was being run and managed by the public of Bilari, members whereof belonging to the various communities upto to date of passing of the resolutions enclosed as Annexure-1 to the counter affidavit.

In light of the said judgment of the Division Bench and in view of s.12 (2) of Act, 2004 which provides that Commission for the purposes of discharging its functions under this Act, shall have all the powers of a civil court trying a suit. It logically follows that Commission while declaring the status of a institution to be a minority institution shall not only consider the material evidence relevant for the purpose, but shall also pass a reasoned order with reference to the evidence so produced for coming to the conclusions that institution in question had been (a) established by a minority community and (b) had been run and managed by a minority community since its establishment. **(Dr. Madan Kumar Bansal v. Union of India and others; 2014(3) SLR 312 (All)**

Article 31 and 300A – Right of Property – Not only a Constitution or statutory right but also a Human Right.

According to Revamma's case, the right of property is now considered to be not only a constitutional or statutory right but also a human right. In the said case, the Court observed that ―Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment, etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgments of Beaulane Properties Ltd. V. Palmer; 2005(3) WLR 554, and Japye (Oxford) Ltd. V. United Kingdom; 2005(49) ERG 90. The Court herein tried to read the human rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights have widened so much that now property dispute issues are also being raised within the contours of human rights. **(Hemaji Waghaji Jat v. Bhikhabhai Khengarbhi; 2009(106) RD 784)**

Art. 31(b) & 9th Schedule – After 24.4.1973 (the date when basic feature doctrine was propounded by Supreme Court in Keshvananda Bhati"s case) the law included in 9th Schedule would not enjoy absolute immunity from judicial review – Article 31(b) cannot go beyond the limits of amending power as contained in Article 368.

Judicial Review is an essential feature of the Constitution. It gives practical content to the objectives of the Constitution embodied in Part III and other parts of the Constitution. It may be noted that the mere fact that equality which is a part of the basic structure can be excluded for a limited purpose, to protect certain kinds of laws, does not prevent it from being part of the basic structure. Therefore, it follows that in considering whether any particular feature of the Constitution is part of the basic structure – rule of law, separation of power – the fact that limited exceptions are made for limited not mean that it is not part of the basic structure.

Every amendment to the Constitution whether it be in the form of amendment of any Article or amendment by insertion of an Act in the Ninth Schedule has to be tested by reference to the doctrine of basic structure which includes reference to Article 21 read with Article 14, Article 15 etc. As stated, laws included in the Ninth Schedule do not become part of the Constitution, they derive their validity on account of the exercise undertaken by the Parliament to include them in the Ninth Schedule. That exercise has to be tested every time it is undertaken. In respect of that exercise the principle of compatibility will come in. One has to see the effect of the impugned law on one hand and the exclusion of Part III in its entirety at the will of the Parliament.

The doctrine of basic structure contemplates that there are certain parts or aspects of the Constitution including Article 15, Article 21 read with Article 14 and 19 which constitute the core values which if allowed to be abrogated would change completely the nature of the Constitution. Exclusion of fundamental rights would result in nullification of the basic structure doctrine, the object of which is to protect basic feature of the Constitution as indicated by the synoptic view of the rights in Part III.

The doctrine of basic structure as a principle has now become an axiom. It is premised on the basis that invasion of certain freedoms needs to be justified. It is the invasion which attracts the basic structure doctrine. Certain freedoms may justifiably be interfered with. If freedom, for example, is interfered in cases relating to terrorism, it does not follow that the same test can be applied to all the offences. The point to be noted is that the application of a standard is an important exercise required to be undertaken by the Court in applying the basic structure doctrine and that has to be done by the Courts and not by prescribed authority under Article 368. The existence of the power of Parliament to amend the Constitution at will, with requisite voting strength, so as to make any kind of laws that excludes Part III including power of judicial review under Article 32 is incompatible with the basic structure doctrine. Therefore, such an exercise if challenged, has to be tested on the touchstone of basic structure as reflected in Article 21 read with Article 14 and Article 19, Article 15 and the principles thereunder.

In conclusion, we hold that:

(i) A law that abrogates or abridges rights guaranteed by Part III of the Constitution may violate the basic structure doctrine or it may not. If former is the consequence of law, whether by amendment of any Article of Part III or by an insertion in the Ninth Schedule, such law will have to be invalidated in exercise of judicial review power of the Court. The validity or invalidity would be tested on the principles laid down in this judgment.

(ii) The majority judgment in Kesavananda Bharati's case, requires the validity of each new constitutional amendment to be judged on its own merits. The actual effect and impact of the law on the rights guaranteed under Part III has to be taken into account for determining whether or not it destroys basic structure. The impact test would determine the validity of the challenge.

(iii) All amendments to the Constitution made on or after 24th April, 1973 by which the Ninth Schedule is amended by inclusion of various laws therein shall have to be tested on the touchstone of the basic or essential features of the Constitution as reflected in Article 21 read with Article 14, Article 19, and the principles underlying them. To put it differently even though an Act is put in the Ninth Schedule by a constitutional amendment, its provisions would be open to attack on the ground that they destroy or damage the basic structure if the fundamental right or rights taken away or abrogated pertains or pertain to the basic structure.

(iv) Justification for conferring protection, not blanket protection, on the laws included in the Ninth Schedule by Constitutional Amendments shall be a matter of Constitutional adjudication by examining the nature and extent of infraction of a Fundamental Right by a statute, sought to be Constitutionally protected, and on the touchstone of the basic structure doctrine as reflected in Article 21 read with Article 14 and Article 19 by application of the "rights test" and the "essence of the right" test taking the synoptic view of the Articles in Part III as held in Indira Gandhi's case. Applying the above tests to the Ninth Schedule laws, if the infraction affects the basic structure then such a law(s) will not get the protection of the Ninth Schedule. This is our answer to the question referred to us vide Order dated 14th September, 1999 in L.R. Coelho v. State of Tamil Nadu; [(1999) 7 SCC 580].

(v) If the validity of any Ninth Schedule law has already been upheld by this Court, it would not be open to challenge such law again on the principles declared by this judgment. However, if a law held to be violative of any rights in Part III is subsequently incorporated in the Ninth Schedule after 24th April, 1973, such a violation/infraction shall be open to challenge on the ground that it destroys or damages the basic structure as indicated in Article 21 read with Article 14, Article 19 and the principles underlying thereunder.

(vi) Action taken and transaction finalized as a result of the impugned Acts shall not be open to challenge. **(I.R. Coelho (Dead) by L.Rs. v. State of Tamil Nadu; 2007 (1) Supreme 137)**

Article 32-

Writ petition before Supreme Court is maintainable if apprehension of harm is well founded. The petitioner need not wait till actual prejudice, adverse effect and consequences. **[Adi Saiva Sivachariyargal Nala Sangam v. Government of Tamil Nadu 2016 AIR (SC) 209]**

Article 32- Public Interest Litigation- Government Advertisements— Constitution— Article 12, 38, 39 & 142—Guidelines suggested by the Court appointed Committee— Publication of photographs of functionaries of State and political leaders along with the advertisement—Review petition—Court review its judgment in 2015(6) SCALE 302 to the extent indicated in Para 2.3.

Upon due consideration, Court review his judgment dated 13th May, 2015 passed in Writ Petition (Civil) No.13 of 2003, Writ Petition (Civil) No.197 of 2004 Page 2 2 and Writ Petition (Civil) No.302 of 2012 to the extent indicated below:

(1) The exception carved out in paragraph 23 of the aforesaid judgment dated 13th May, 2015 permitting the publication of the photographs of the President, Prime Minister and Chief Justice of the country, subject to the said authorities themselves deciding the question, is now extended to the Governors and the Chief Ministers of the States.

(2) In lieu of the photograph of the Prime Minister, the photograph of the Departmental (Cabinet) Minister/Minister In-charge of the concerned Ministry may be published, if so desired.

(3) In the States, similarly, the photograph of the Departmental (Cabinet) Minister/Minister In-charge in lieu of the photograph of the Chief Minister may be published, if so desired.

(4) All other observations/directions in the aforesaid judgment dated 13th May, 2015 Page 3 3 shall continue to remain in force subject to the above modification.

The review petitions are disposed of in the above terms. **[State of Karnataka vs. Common Cause and Ors., 2016 (3) SCALE 346]**

Arts. 32, 226 and 136—Investigation—Transfer of, to CBI in case already such judice in criminal courts—When proper and valid

The court is vested with very wide powers in order to equip it adequately to be able to do complete justice. Where the investigating agency has submitted the charge-sheet before the court of competent jurisdiction, but it has failed to bring all the culprits to book, the court is empowered u/s. 319 CrPC to proceed against other persons who are not arrayed as accused in the charge-sheet itself. The court can summon such suspected persons and try them as accused in the case, provided the court is satisfied of involvement of such persons in commission of the crime from the record and evidence before it.

The court noticed that the investigation of a case or filing of charge-sheet in a case does not by itself bring the absolute end to exercise of power by the investigating agency or by the court. Sometimes and particularly in the matters of the present kind, the investigating agency has to keep its options open to continue with the investigation, as certain other relevant facts, incriminating materials and even persons, other than the persons stated in the FIR as accused, might be involved in the commission of crime.

CEC is not vested with any investigative powers under the orders of this Court, or under the relevant notifications, in the manner as understood under CrPC. CEC is not conducting a regular inquiry or investigation with the object of filing charge-sheet as contemplated u/s. 173 CrPC.

CEC is not discharging quasi-judicial or even administrative functions, with a view to determine any rights of the parties. It was not expected of CEC to give notice to the companies involved in such illegalities or irregularities, as it was not determining any of their rights. It was simpliciter reporting matters to the Court as per the ground realities primarily with regard to environment and illegal mining for appropriate directions. It had made different recommendations with regard to prevention and prosecution of environmentally harmful and illegal activities carried on in collusion with government officers or otherwise.

Contention (c) is advanced on the premise that all matters stated by CEC are sub-judice before one or the other competent court or investigating agency and thus, this Court has no jurisdiction to direct investigation by CBI. In any case, it is argued that such directions would cause them serious prejudice. This argument is misplaced in law and is misconceived on facts. Firstly, all the facts that had been brought on record by CEC are not directly sub judice in their entirety, before a competent forum or investigating agency. **(Samaj Parivartan samudaya vs. State of Karnataka; (2012)3 SCC (Cri) 365)**

Art. 32 – Destruction of public/private properties in bandh – Guidelines issued by Court in absence of legislation.

Taking a serious note of various instances where there was large scale destruction of public and private properties in the name of agitations, bandhs, hartals and the like and after considering and accepting the recommendations made by two Committees set up by Court, the Court issued following guidelines to effectuate modalities for preventive action and for adding teeth to investigation, inquiry.

As soon as there is a demonstration organized:

10. The organizer shall meet the police to review and revise the route to be taken and to lay down conditions for a peaceful march or protest;

All weapons, including knives, lathis and the like shall be prohibited;

(i) An undertaking is to be provided by the organizers to ensure a peaceful march with marshals at each relevant junction:

(ii) The police and State Government shall ensure videograph of such protests to the

maximum extent possible;

(iii) The person in charge to supervise the demonstration shall be the SP (if the situation is confined to the district) and the highest police officer in the State, where the situation stretches beyond one district;

(iv) In the event that demonstration turn violent, the officer-in-charge shall ensure that the events are videographed through private operators and also request such further information from the media and others on the incidents in question.

(v) The police shall immediately informthe State Government with reports on the events, including damage, if any, caused.

(vi) The State Government shall prepare a report on the police reports and other information that may be available to it and shall file a petition including its report in the High Court or Supreme Court, as the case may be, for the Court in question to take suo motu action.

Guidelines to be adopted to assess damages, wherever a mass destruction to property takes place due to protests or thereof, the High Court may issue suo motu action and set up a machinery to investigate the damage caused and to award compensation related thereto. Where there is more than one State involved, such action may be taken by the Supreme Court.

The guidelines shall cease to be operative as and when appropriate legislation consistent with the guidelines indicated above are put in place and/or any fast track mechanism is created by Statute. **(Destruction of Public & Private Properties v. State of A.P. & Ors.; AIR 2009 SC 2266)**

Art. 32 & 226 – Powers of Court to direct to hand over investigation of case to CBI – Even after filing of charge-sheet against accused by State Police in order to do complete justice.

It is an admitted position in the instant case that the accusations are directed against the local Police Personnel in which High Police Officials of the State of Gujarat have been made the accused. Therefore, it would be proper for the writ petitioner or even the public to come forward to say that if the investigation carried out by the Police Personnel of State of Gujarat is done, the writ petitioner and their family members would be highly prejudiced and the investigation would also not come to an end with proper finding and if investigation is allowed to be carried out by the local Police Authorities, all concerned including the relatives of the deceased may feel that investigation was not proper and in that circumstances it would be fit and proper that the writ petitioner and the relatives of the deceased should be assured that an independent agency should look into the matter and that would lend the final outcome of the investigation credibility, however, faithfully the local Police may carry out the investigation, particularly when the gross allegations have been made against the High Police Officials of the State of Gujarat and for which some High Police Officials have already been taken into custody. When Police Officials of the State were involved in the crime and in fact they are investigating the case, it would be proper and

interest of justice would be better served if the investigation is directed to be carried out by the CBI Authorities, in that case CBI Authorities would be an appropriate authority to investigate the case.

It cannot be said that after the charge-sheet is submitted in Court in the criminal proceeding it was not open for the court or even for the High Court to direct investigation of the case to be handed over to the CBI or to any independent agency. Therefore, it can safely be concluded that in an appropriate case when the court feels that the investigation by the Police Authorities is not in the proper direction and in order to do complete justice in the case and as the High Police Officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI. **(Rubabbuddin Sheikh v. State of Gujarat & Ors.; AIR 2010 SC 3175)**

Art. 32 – Doctrine of ex debito Justitiae when can be invoke and prevail

The doctrine of ex debito justitiae would prevail over procedural law but would be applicable only in a situation where the order of this Court had been passed without notice or where the order has effect of eroding the public confidence in the justice delivery system.

It would also not be maintainable as a review petition filed by writ petitioner dismissed by Supreme Court.

The principle of ex debito justitiae is founded on a recognition of a debt that the justice delivery system owes to a litigant to correct an error in a judicial dispensation. Its application, by the very nature of things, cannot be made to depend on varying perceptions of legal omissions and commissions but such recognition of the debt which

have the potential of opening new vistas of exercise of jurisdiction

to relook concluded cases, must rest on surer foundations which

have been discerned and expressed in Rupa Ashok Hurra (2002)4

SCC 388. Frantic cries of injustice founded on perceived erroneous application of law or appreciation of facts will certainly not be enough to extend the frontiers of this jurisdiction.

The said jurisdiction because of its very nature has attracted the terminology of curative jurisdiction. The procedural steps with regard to filing and disposal of applications invoking the curative jurisdiction, termed as curative petitions, have also been laid down in paragraphs 52 and 53 of the report of Syed Shah Mohammed Quadri, J. in Rupa Ashok Hurra (2002)4 SCC 388 which now finds mention in Order XLVIII of the Supreme Court Rules, 2013.

Merely because in the comprehension of the writ petitioner the judgment of this Court is erroneous would not enable the Court to reopen the issue in departure to the

established and settled norms and parameters of the extent of permissible exercise of jurisdiction as well as the procedural law governing such exercise. **Ashiq Hussain Faktoo v. Union of India, (2016)9 SCC 739.**

Article 32 – PIL – Maintainability – Private Disputes, Reiterated are not maintainable.

Public interest litigation may be entertained when an issue of great public importance is involved, but not to settle private scores. In an application under Article 32 of the Constitution there must be an element of infraction of one or the other fundamental rights contained in Part III of the Constitution. Although, the writ petitioner has attempted to show that the writ petition had been filed for the benefit of the people of the States of Gujarat, Madhya Pradesh and Rajasthan, the facts as sought to be projected clearly indicate that the writ petition has been filed out of grudge harboured. Although, the writ petition is alleged to be in the nature of a public interest litigation, the same appears to be a private interest litigation". The materials in the writ petition consist only of vague allegations without any proper foundation. No case has therefore been made for a direction to the CBI to investigate. **(National Council for Civil Liberties v. Union of India & ORS; (2007) 6 SCC 506)**

Arts. 32, 21—Prisons Act (9 of 1894), Sec. 4—Over-crowding in jails—Earlier orders passed by Supreme Court directing State and Inspector-General of Prisons to prepare Plan of Action for reducing prison population—Non-compliance of

Unless due importance is given to the fundamental rights and human rights of the people, the right to life and the right to live with dignity under Article 21 of the Constitution will have no meaning.

Under these circumstances, Court is constrained to direct the Union of India through the Ministry of Home Affairs to obtain the status of compliance of our orders passed on 5th February 2016 and 6th May, 2016 as on 30th September, 2016. The information should be collated by the Ministry of Home Affairs and shared with the learned Additional Solicitor General and the learned Amicus so that even the rights of prisoners, whether convicts or under trials are given due importance. The needful be done before the next hearing, that is 18th October, 2016. **Re-Inhuman Conditions 1382 Prisons (II), AIR 2016 SC 4527**

Arts. 32 & 137 – Reversal of judgment of acquittal and recorded a conviction and sentence by Supreme Court

Held- A writ petition could be filed challenging the judgment which is contrary to the established procedure of law and also on the maxim ex debito justitiae inclusive of violation of the principle of natural justice.

If the present writ petition is converted to a review petition and heard in the open court on the fundamental principles of review as well as the maxim ex debito justitiae, the

cause of justice would be sub served.

Direction issued to Registry to convert the present writ petition to a review petition. **Ashiq Hussain Faktoo v. Union of India, (2016)9 SCC 746.**

Art. 32 - Invoking of Jurisdiction or seeking directions for registration of FIR u/s. 376-C, 376-D and 376 (2) (n) of IPC and for the arrest of the accused – Inappropriate to exercise jurisdiction under Article 32 of the Constitution – Trial Court directed to conclude the trial with utmost expedition

In this case, learned Counsel for the petitioner has vehemently urged that the petitioner, after being recovered from village Sirol, Sector-18, Gurgaon, Haryana on 8.11.2013, was unlawfully detained in the police station till her statement was recorded by the learned Judicial Magistrate, First Class on 9.11.2013. It is further submitted that offences under the POCSO Act have been committed against the petitioner in addition to the offence under s. 376-D of the Indian Penal Code. Despite the seriousness of the matter the investigation, it is alleged, has not been conducted impartially which would justify appropriate intervention of the Court.

Shri Rakesh K. Khanna, learned Additional Solicitor General appearing for the first respondent has submitted that no order or direction to the first respondent would be justified in view of the fact that the case has been registered by the Haryana Police and has been investigated by the authorities of the State of Haryana. Shri Ankit Swarup, learned counsel for the respondents 2 and 3 has submitted that on completion of investigation chargesheet has been filed against all the nine accused who are in custody and are presently lodged in Rohtak Jail. It is also submitted that charges have been framed by the Trial Court against the accused inter alia under Section 376-D IPC and s. 4/6 of the POCSO Act, in fact, according to the learned counsel, the trial has also commenced in the meantime.

In view of what has been stated by the Superintendent of Police, Rohtak in the counter Affidavit filed on 8.1.2014 and as chargesheet has been filed against all the nine accused and the trial has commenced in the meantime it will be wholly inappropriate to exercise our jurisdiction under Article 32 of the Constitution. The allegations and apprehensions expressed in the writ petition are not borne out by the subsequent facts, as stated on behalf of the respondents 2 and 3, which are not disputed. In view of the above, we will have no occasion to pass any order save and except that the trial against the accused persons, which has already commenced, be concluded by the Trial Court with utmost expedition. **(Nishu v. Commissioner of Police, Delhi and others; 2014 (85) ACC 962)**

Art. 32 and 226 PIL – Service matter – PIL is not permissible so far service matters are concerned

The Supreme Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of court. Whenever any public interest is invoked, the Court must examine the case to ensure that there is in fact, genuine public interest involved. The Court must

maintain strict vigilance to ensure that there is no abuse of the process of court and that, ordinarily meddlesome bystanders are not granted a visa. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. Even as regards the filing of public interest litigation, it has been consistently held that such a course of action is not permissible so far as service matters are concerned. **(Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra; (2013) 4 SCC 465)**

Art. 32 and 226 - Writ petition – Writ petition before High Court withdrawn and filed in the Supreme Court – Validity of

The petitioner has instituted a number of proceedings (criminal and of the nature of contempt and writs) before the Punjab and Haryana High Court and in those cases he has also been getting orders in his favour. One such writ petition filed by the writ petitioner before the Punjab and Haryana High Court was CWP No.21234/2011. The petitioner seems to have felt that the other side was delaying the matter and the case was not proceeding efficaciously before the High Court. He, therefore, filed a petition (CM No.8619 of 012) for withdrawal of the writ petition. On July 18, 2012, the High Court allowed the application and permitted the petitioner to withdraw his writ petition before the High Court and to seek any other remedy available in law.

Having, thus, withdrawn his writ petition before the High Court, the petitioner has come to this Court in this petition under Article 32 of the Constitution.

Court takes exception to the manner in which this petition has been filed before the Court. The petitioner is completely wrong in his belief that the proceeding before the High Court was not effective or that he would not have got full and complete protection from the High Court, if the High Court found the need to give him the protection. The petitioner must realise that the High Courts have wide powers and possess as much authority as this Court to protect and safeguard the constitutional rights of any person within their jurisdiction.

Court found the action of the petitioner in withdrawing the proceedings pending before the High Court simply to file this petition before this Court unacceptable and for this reason alone, Court refused to entertain this writ petition. **(Baba Tek Singh v. Union of India; 2013 (3) SLR 258 (SC)**

Art. 32 – Direction for CBI can be given by writ courts despite absence of state consent

This court had jurisdiction to direct the CBI to make an inquiry into the accumulation of wealth by Shri Mulalyam Singh Yadav and his family members in excess of their known source of income, based on the allegations made in the writ petition, cannot be questioned. By its judgment dated 1st March, 2007; this court merely directed an investigation into the allegations made in the writ petition and to submit a report to the Union Government. The submissions made on behalf of the review petitioners in this regard, must, therefore, be rejected, except in regard to the direction given to the CBI to submit a report of its inquiry to the Union Government. (**Akhilesh Yadav v. Vishwanath Chaturveri; 2013 (2) ALJ**

729)

Art. 32-Public interest litigation—Scope of—Legal total as to PIL—Only person having cause of action to approach

The legal tool of Public Interest Litigation was invented by the Courts as an exception to the otherwise well established rule, of only a person having cause of action or locus standi being entitled to approach the Court. Such invention was deemed necessary finding that in certain situations, owing to social or economic backwardness or other reasons the aggrieved parties were themselves unable to approach the Court (see S.P. Gupta Vs. UOI 1981 Supp.(1) SCC 87 and State of Uttaranchal Vs. Balwant Singh Chaufal (2010) 3 SCC 402). The field of operation of the said tool was expanded to cover situations where a general direction of the Court was deemed necessary, not for the benefit of any one person or a group of persons but for the benefit of the public generally viz. protection and preservation of ecology, environment etc. and for maintaining probity, transparency and integrity in governance. The Supreme Court else has been repeatedly issuing warnings, of allowing the said tool of Public Interest Litigation to be misused (see Balco Employees Union (Regd.) Vs. Union of India (2002) 2 SCC 333). The petitioner has been unable to satisfy us as to how it is entitled to file this petition in public interest. The warnings issued by the Supreme Court, of Public Interest Litigation becoming Publicity Interest Litigation (see Neetu Vs. State of Punjab (2007) 10 SCC 614) and of allowing "meddlesome interlopers" to file Public Interest Litigation (see S.P. Gupta) is opposite in this regard. Similarly, in Holicow Pictures Pvt. Ltd. Vs. Prem Chandra Mishra AIR 2008 SC 913 it was held that Public interest Litigation is to be used for delivering social justice to the citizens. **[Shahid Ali vs. Union of India and another, 2014 (4) ESC 1903 (Del)(DB)]**

Arts. 32 and 226 PIL – Service matter – PIL is not permissible so far service matters are concerned

The Supreme Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of court. Whenever any public interest is invoked, the Court must examine the case to ensure that there is in fact, genuine public interest involved. The Court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, ordinarily meddlesome bystanders are not granted a visa. Many societal pollutants create new problems of non-redressed grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. Even as regards the filing of a public interest litigation, it has been consistently held that such a course of action is not permissible so far as service matters are concerned. **(Ayaaubkhan Noorkhan Pathan vs. State of Maharashtra; (2013) 4 SCC 465)**

Art. 48-A – and 51-A – Doctrine of public trust – Doctrine enjoins duty on Governments to conserve and not waster natural resources – State enjoins a duty upon every citizen to protect and improve environment

There cannot be any two opinions that natural resources are the assets of the nation and its citizens. It is the obligation of all concerned, including the Central and the State Governments, to conserve and not waste such valuable resources. Article 48-A of the Constitution requires that the State shall endeavour to protect and improve the environment and safeguard the forests and wild life of the country. Similarly, Article 51-A enjoins a duty upon every citizen to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for all the living creatures. In view of the Constitutional provisions, the Doctrine of Public Trust has become the law of the land. The said doctrine rests on the principle that certain resources like air, sea, waters and forests are of such great importance to the people as a whole that it would be highly unjustifiable to make them a subject of private ownership. **[State of NCT of Delhi v. Sanjay, 2014 (6) Supreme 209]**

Art. 72 – Power of President or Governor to grant parden or remission not restricted by S. 433-A of Cr.P.C.

The Court make it clear that the power of the President of India under Article 72 or of the Governor under Article 161, being a constitutional power cannot be under the restriction imposed by Section 433-A Cr.P.C. In other words, it cannot restrict the constitutional powers under Articles 72 or 161 of the Constitution, just as no limitation can restrict the constitutional power of the High Court under Article 226 of the Constitution. This is because the Constitution is a higher law and the statute is subordinate to it. **(Samjuben Gordhanbhai Koli v. State of Gujarat; 2011 Cri.L.J. 654 (SC)**

Arts. 72, 161 - Power vested in President and Governor to grant pardon - Scope and ambit of

Power vested in the President under Article 72 and Governor under Article 161 of the Constitution is manifestation of prerogative of the State. It is neither a matter of grace nor a matter of privilege, but is an important constitutional responsibility to be discharged by highest executive keeping in view the considerations of larger public interest .and welfare of the people-While exercising power under Article 72, President is required to act on the aid and advice of the Council of Ministers- In tendering its advice to President, the Central Government is duty bound to objectively place the case of the convict with a clear indication about the nature and magnitude of the crime committed by him, its impact on the society and all incriminating and extenuating circumstances- The same is true about State Government, which is required to give advice to Governor to enable him to exercise power under Article 161 of Constitution- On receipt of advice of the Government, President or the Governor, as the case may be, has to take a final decision in the Matter- Although, he/she cannot overturn the final verdict of the Court, but in appropriate case, President or the Governor, can after scanning the record of the case, form his/her independent opinion whether a case is made out for grant of pardon or reprieve-In any case, President or Governor, has to take cognizance of relevant facts and then decide whether a case is made out for exercise of power under Article 72 or 161 of the Constitution. **(Devender Pal Singh Bhullar v. State of N.C.T. of Delhi; 2013 (2) Supreme 642)**

Art. 72—Power of clemency—Fixed term imprisonment also subjected to order passed in exercise of clemency power of Governor/President

Life imprisonment cannot be equivalent to imprisonment for 14 years or 20 years or even 30 years, rather it always means the whole natural life. This Court has always clarified that the punishment of a fixed term of imprisonment so awarded would be subject to any order passed in exercise of clemency powers of the President of India or the Governor of the State, as the case may be. Pardons, reprieves and remissions under Article 72 or Article 161 of the Constitution of India are granted in exercise of prerogative power. As observed in State of Uttar Pradesh vs. Sanjay Kumar, (2012) 8 SCC 537 : (2012 AIR SCW 5157), there is no scope of judicial review of such orders except on very limited grounds such as the non-application of mind while passing the order, non-consideration of relevant material, or

if the order suffers from arbitrariness. The power to grant pardons and to commute sentence is coupled with a duty to exercise the same fairly, reasonably and in terms of restrictions imposed in several provisions of the Code. **(Mohinder Singh vs. State of Punjab; 2013 Cri.L.J. 1559 (SC)**

Arts. 72, 161 – Clemency power – Nature - It is manifestation of prerogative of State

The power vested in the President under Art. 72 and the Governor under Art. 161 of the Constitution is manifestation of prerogative of the State. It is neither a matter of grace nor a matter of privilege, but is an important constitutional responsibility to be discharged by the highest executive keeping in view the considerations of larger public interest and welfare of people. While exercising power under Art. 72, the President is required to act on the aid and advice of the Council of Ministers. In tendering its advice to the President, the Central Government is duty-bound to objectively place the case of the convict with a clear indication about the nature and magnitude of the crime committed by him, its impact on the society and all incriminating and extenuating circumstances. The same is true about the State Government, which is required to give advice to the Governor to enable him to exercise power under Art. 161 of the Constitution. On receipt of the advice of the Government, the President or the Governor, as the case may be, has to take a final decision in the matter. Although, he/she can- not overturn the final verdict of the Court, but in appropriate case, the President or the Governor, as the case may be, can after scanning the record of the case, form his/her independent opinion whether a case is made out for grant of pardon, reprieve, etc. In any case, the President or the Governor, as the case may be, had to take cognizance of relevant facts and then decide whether a case is made out for exercise of power under Art. 72 or 161 of the Constitution. (Devender Pal Singh Bhullar v. State (NCT of Delhi); 2013 Cri.LJ 2888)–

Extra-ordinary jurisdiction – Re-appreciation of evidence – Power of

It is trite that appreciation of evidence is essentially the duty of the trial Court, and the first Appellate Court. But in cases, where, the Courts below are shown to have faltered and ignored material aspects resulting in miscarriage of justice, this Court can and has interfered to grant relief. That is because even when this Court may not be an ordinary Court of appeal, the width and the plenitude of the powers available to it under Article 136 would permit a reappraisal even at the apex stage in cases of manifest injustice. The legal position as to the powers of this Court under Article 136 of the Constitution is well-settled by pronouncements of the Court to which a detailed reference is in our view unnecessary. **(Khairuddin & Ors. v. State of West Bengal; 2013 Cri.LJ 3271 (SC)**

Arts. 72 and 161 – Clarified, entail a remedy to all convicts and are not limited to only death sentence cases

After the completion of the judicial process, if the convict files a mercy petition to the Governor/President, it is incumbent on the authorities to dispose of the same expeditiously. Though no time-limit can be fixed for the Governor and the President to exercise their power under Article 161 and Article 72 of the Constitution, respectively, it is

the duty of the executive to expedite the matter at every stage viz. calling for the records, orders and documents filed in the court, preparation of the not for approval of the Minister concerned, and the ultimate decision of the constitutional authorities.

Until 1980, mercy petitions were decided in minimum of 15 days and maximum of 10-11 months. Thereafter, form 1980, the time taken in disposal of mercy petitions gradually increased to an average of 4 years. The years 1989 to 1997 witnessed the impact of the observations of the Courts in the disposal of mercy petitions. The average time taken for deciding mercy petitions during this period was brought down to an average of 5 months from 4 years. But unfortunately, now history seems to be repeating itself as now the delay of maximum 12 years is seen in disposing of mercy petitions under Articles 72/161 of the Constitution.

Although no time frame can be set for the President for disposal of the mercy petition but the Supreme Court expects the Ministry concerned to follow its own rules rigorously which can reduce to a large extent the delay caused.

These guidelines and the scope of the power set out above make it clear that the power under Arts. 72/161 of the Constitution is an extraordinary power not limited by the judicial determination of the case and is not to be exercised lightly or as a matter of course. In view of the jurisprudential developments with regards to delay in execution of the death sentence, this criterion of undue and unexplained delay may be added so as to require consideration of the delay that may have occurred in disposal of a mercy petition. In this way, the constitutional authorities are made aware of the delay caused at their end which aspect has to be considered while arriving at a decision in the mercy petition.

Unexplained long delay in disposal of the mercy petition/execution of the death sentence may be one of the grounds of commutation of the sentence of death into life imprisonment. There is no good reason to disqualify all TADA or other non-IPC cases as a class form such relief. Each case requires consideration on its own facts. Therefore, unexplained delay in disposal of the mercy petition / execution of the death sentence is one of the grounds for commutation of sentence of death into life imprisonment and the said supervening circumstance is applicable to all types of cases including the offences under TADA. The only aspect the courts have to satisfy themselves on is that the delay must be unreasonable and unexplained or inordinate at the hands of the executive. **(Shatrughan Chouhan and another v. Union of India and others; (2014) 2 SCC (Cri.) 1)**

Article 102 (1)(a) & 103 – Office of profit – Require to be interpreted in a realistic manner – Payment of honoraria, daily allowance etc. are in natureof remuneration hence amount to profit – The office of profit would nevertheless be an office of profit irrespective of the fact that the holder chooses not to receive them.

The term „holds an office of profit" though not defined, has been the subject matter of interpretation, in several decisions of this Court. An office of profit is an office which is capable of yielding a profit or pecuniary gain. Holding an office under the Central or State Government, to which some pay, salary, emolument, remuneration or non-compensatory allowance is attached, is „holding an office of profit". The question whether a person holds an office of profit is required to be interpreted in a realistic manner. Nature of the payment must be considered as a matter of substance rather than of form. Nomenclature is not important. In fact, mere use of the word „honorarium" cannot take the payment out of the purview of profit, if there is pecuniary gain for the recipient. Payment of honorarium, in addition to daily allowances in the nature of compensatory allowances, rent free accommodation and chauffeur driven car at State expense, are clearly in the nature of remuneration and a source of pecuniary gain and hence constitute profit. For deciding the question as to whether one is holding an office of profit or not, what is relevant is whether the office is capable of yielding a profit or pecuniary gain and not whether the person actually obtained a monetary gain. If the "pecuniary gain" is "receivable" in connection with the office then it becomes an office of profit, irrespective of whether such pecuniary gain is actually received or not. If the office carries with it, or entitles the holder to, any pecuniary gain other than reimbursement of out of pocket/actual expenses, then the office will be an office of profit for the purpose of Article 102 (1)(a). (Paras 5 & 6)

It is well settled that where the office carries with it certain emoluments or the order of appointment states that the person appointed is entitled to certain emoluments, then it will be an office of profit, even if the holder of the office choose not to receive/draw such emoluments.

What is relevant is whether pecuniary gain is "receivable" in regard to the office and not whether pecuniary gain is, in fact, received or received negligibly. In this case, as noticed above, the office carried with it a monthly honorarium of Rs. 5000/-, entertainment expenditure of Rs. 10,000/-, staff car with driver, telephones at office and residence, free accommodation and medical treatment facilities to self and family members, apart from other allowances etc. That these are pecuniary gains cannot be denied. The fact that the petitioner is affluent or was not interested in the benefits/facilities given by the State Government or did not, in fact, receive such benefits till date, are not relevant to the issue. In this view, the question whether petitioner actually received any pecuniary gain or not is of no consequence. (Jaya Bachchan v. Union of India & Ors.; 2006(4) Supreme 378)

Art. 102(1)(e) and 191 (i)(e) – Power to make law under, providing disqualifications for membership of parliament/state legislature – Exclusive hold of this power – Legality

Under Articles 102(1)(e) and 191 (1)(e) of the Constitution, Parliament is to make one law for a person to be disqualified for being chosen as, and for being, a Member of either House of Parliament or Legislative Assembly or Legislative Council of the State. The

Constitution Bench in Election Commission, AIR 1953 SC 210, held that Article 191 (1) [which is identically worded as Article 102(1)] lays down "the same set of disqualifications for election as well as for continuing as a Member". Parliament thus does not have the power under Articles 102(1)(e) and 191(1)(e) of the Constitution to make different laws for a person to be disqualified for being chosen as a Member and for a person to be disqualified for continuing as a Member of Parliament or the State Legislature. To put it differently, if because of a disqualification a person cannot be chosen as a Member of Parliament or State Legislature, for the same disqualification, he cannot continue as a Member of Parliament or the State Legislature. This is so because the language of Articles 102(l)(e) and 191(1)(e) of the Constitution is such that the disqualification for both a person to be chosen as a Member of a House of Parliament or the State Legislature or for a person to continue as a Member of Parliament or the State Legislature has to be the same. **(Lily Thomas v. Union of India; (2013) 3 SCC (Cri) 641)**

Art. 105, 122 & 194 – Parliament‟s power to expel a Member is to be found in Article 105(3) – Scope of judicial review in Parliamentary proceedings is very limited and restricted.

Conscious of the high status of these bodies, the Constitution accorded certain powers, privileges and immunities to the Parliament and State Legislatures and their respective members. For this purpose, specific provisions were included in the Constitution in Articles 105. For the present, it may only be noticed that sub-Article (1) of Article 105 and Article 194 respectively confers on the Members of Parliament and the State Legislatures respectively "freedom of speech" in the Legislature, though "subject to the provisions" of the Constitution and "subject to the rules and orders regulating the procedure" of Parliament or of the Legislatures, as the case may be.

There was virtually a consensus amongst the learned counsel that it lies within the powers and jurisdiction of this Court to examine and determine the extent of power and privileges to find out whether actually power of expulsion is available under Article 105(3) or not.

Whenever Parliament, or for the matter any State legislature, claims any power or privilege in terms of the provisions contained in Article 105(3), or Article 194(3) as the case may be, it is the court which has the authority and the jurisdiction to examine, on grievance being brought before it, to find out if the particular power or privilege that has been claimed or asserted by the legislature is one that was contemplated by the said constitutional provisions or, to put it simply, if it was such a power or privilege as can be said to have been vested in the House of Commons of the Parliament of United Kingdom as on the date of commencement of the Constitution of India so as to become available to the Indian legislatures. **(Raja Ram Pal v. The Hon'ble Speaker, Lok Sabha & Ors.; 2007 (1) Supreme 245)**

Article 124 & 136—Special Leave to Appeal—Grant of—Need for a restrained approach towards grant of special leave to appeal against judgments and orders passed by the High Courts

We have given our anxious consideration to the submissions made at the Bar. Certain facts are beyond Page 19 19 dispute. It is not in dispute that the Supreme Court was never meant to be a regular court of appeal. It was meant to exercise its powers under Article 136 of the Constitution only in cases which raised important questions involving interpretation of the Constitution or questions of general public importance or questions of constitutionality of State or Central legislations or those raising important issues touching Centre-State relationship etc. The jurisdiction may also have been available to the Court where it found gross miscarriage of justice or an error so outrageous as no reasonable person would countenance. The power to interfere was not meant to be exercisable just because prolonged argument would eventually reveal some error or irregularity or a possible alternative view on a subject that did not cause any miscarriage of justice of a kind that would shock the conscience of the court on the subject. The long line of decisions of the Court to which we have made reference earlier supports that view. The fact, however remains that the filing of cases in the Supreme Court over the past six decades has grown so sharply that the Judge strength in the Supreme Court is proving inadequate to deal with the same. Statistics show that more than 3/4th Page 20 20 of the total number of cases filed are dismissed in limine. Even so, the dismissal is only after the court has applied its mind and heard arguments which consume considerable time of the Judges. Dismissal of an overwhelming number of cases has not and does not discourage the litigants or the member of the Bar from filing cases. That is why the number of cases filed is on the rise every year.
V. Vasanthakumar V. H.C. Bhatia, 2016(6) SCALE 834

Art. 131- CPC –Order VII Rule 11- Rejection of plaint – Applicability of doctrine of election- After choosing one particular remedy the plaintiff cannot avail the other remedy as well, in respect of the same relief founded on same cause of action

After hearing the arguments of the learned counsel for the parties, court found substance in the submission of the defendants. Even if court presume that the suit was maintainable, at the same time the plaintiff also had remedy of filing the statutory appeals etc. by agitating the matter under the Finance Act. It chose to avail the remedy under the Finance Act. The Doctrine of Election would, therefore, become applicable in a case like this. After choosing one particular remedy the plaintiff cannot avail the other remedy as well, in respect of the same relief founded on same cause of action. The plaint is, therefore, rejected under Order VII Rule 11 of the Code of Civil Procedure. **State of Rajasthan v. Union of India and Ors., 2016 (10) SCALE 312**

Art. 134 – Appeal against acquittal – Power of Supreme Court to interfere – Grounds for.

If the view taken by the High Court is plausible or possible, then it would not be proper for Supreme Court to interfere with an order of acquittal and Supreme Court would be justified in interfering with the judgment of acquittal of the High Court only when there are very substantial and compelling reasons to discard the High Court decision. Supreme Court stated some of the circumstances in which perhaps Supreme Court would be justified in interfering with the judgment of the High Court, but these are illustrative not exhaustive.

(i) The High Court‘s decision is based on totally erroneous view of law by ignoring the settled legal position; (ii) The High Court‘s conclusions are contrary to evidence and documents on record, (iii) The entire approach of the High Court in dealing with the evidence was patently illegal leading to grave miscarriage of justice; (iv) The

High Court‘s judgment is manifestly unjust and unreasonable based on erroneous law and facts on the record of the case; (iv) Supreme Court must always give proper weight and consideration to the findings of the High Court; (vi) Supreme Court would be extremely reluctant in interfering with a case when both the Sessions Court and the High Court have recorded an order of acquittal. Held, on facts of case, that no interference was warranted in judgment of acquittal by High Court. **(State of U.P. v. Banne; 2009 AIR SCW 1989 All)**

Article 134 – Appeal before Supreme Court against conviction –

Vital issue regarding the appellant‘‘s age below 18 years at the time of occurrence was not considered – Held, it is a vital issue having substantial bearing on the subject matter and the same having not been considered in proper perspective matter has to be remanded.

The appellant succeeds in showing that he was less than 18 years of age on the date of occurrence the applicability of Section 20AA has to be considered. This plea was not specifically taken before the trial Court and only some documents were filed before the First Appellate Court. The trial Court did not get the opportunity to examine the same. The First Appellate Court did not find any substance in the plea as the documents were not proved. A specific plea was taken before the High Court in the revision petition about unsustainability of the conclusion. It is a case where questionrelating to age of the accused has not been considered in the proper perspective by the first Appellate Court and the High Court. Since it is a vital issue which has substantial bearing on the subject matter of dispute, the matter is remanded to the High Court to consider acceptability of the plea relating to age and decide the matter afresh in accordance with law. (**Mohd. Yaseen v. State of U.P.; (2007) 7 SCC 49)**

Art. 136 – SLP against order of acquittal – Interference with – Finding of fact based on appreciation of evidence cannot be interfered with unless approach of HC is clearly erroneous, perverse or improper

It is well settled that in an appeal by special leave under Article 136 of the Constitution, against an order of acquittal passed by the High Court, the Court would not normally interfere with a finding of the fact based on appreciation of evidence, unless the approach of the High Court is clearly erroneous, perverse or improper and there has been a grave miscarriage of justice. **(State of U.P. v. Munni Ram and Others; 2011 (1) ALJ 557 (SC)**

Art. 136 – Exercise of powers under – Interference in criminal matters – Permissibility of

The powers of the Court under Article 136 of the Constitution are very wide, but it would not interfere with the concurrent findings of fact, save in exceptional circumstances. It would interfere in the findings recorded by the trial court as well as the High Court if it is found that the High Court has acted perversely and/or disregarded any vital piece of evidence which would shake the very foundation of the prosecution case. In other words, the Court would exercise the powers under Article 136 where the conclusion of the High Court is manifestly perverse and unsupportable on the evidence on record. **(Narayan Manikrao Salgar v. State of Maharashtra; (2012) 8 SCC 622)**

Art. 136 – Scope of interference – Principles reiterated

When the evidence is legally admissible and has been appreciated by the courts in its correct perspective then merely because another view is possible, this Court, in exercise of its powers under Article 136 of the Constitution, would be very reluctant to interfere with the concurrent findings of the courts below. Of course, there are exceptions but they are very limited ones. Where upon careful appreciation of evidence, this Court finds that the courts below have departed from the rule of prudence while appreciating the evidence in a case or the findings are palpably erroneous and are opposed to law or the settled judicial dictums, then the Court may interfere with the concurrent findings. Still, it is not possible to exhaustively state the principles or the kind of cases in which the Court would be justified in disturbing the concurrent findings. It will always depend upon the facts and circumstances of a given case. **(Nagesh Vs. State of Karnataka; (2012) 6 SCC 477)**

Art. 136, 226 – Consumer protection Act 1986 – Section 27A(1)(c) – Writ petition – Challenging order of National consumer commission – Order of national consumer disputes Redressal commission cannot be questioned in writ jurisdiction of High Court

In the instant case, condoning such an inordinate delay without any sufficient cause would amount to substituting the period of limitation by this Court in place of the period prescribed by the Legislature for filing the special leave petition. Therefore, we do not see any cogent reason to condone the delay.

While declining to interfere in the present special leave petition preferred against the order passed by the High Court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, we hereby make it clear that the order of the Commission are incapable of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27A (1) (c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders of the Commission. **(Cicily Kallarackal vs. Vehicle Factory; 2012(5) AWC 4398 (SC)**

Article 136—Special Leave Petitions—Kinds of cases which should be entertained under Article 136 of the Constitution—Use of words 'in the discretion‘ in Article 136—Ambit and scope of this discretionary remedy.

In Union Carbide Corporation & Ors. vs. Union of India & Ors. 1991(4) SCC 584, this Court in para 58 held as under:

This Court had occasion to point out that Article 136 is worded in the widest terms possible. It vests in the Supreme Court a plenary jurisdiction in the matter of entertaining and hearing of appeals by granting special leave against any kind of judgment or order made by a Court or Tribunal in any cause of matter and the powers can be exercised in spite of the limitations under the specific provisions for appeal contained in the Constitution or other laws. The powers given by Article 136 are, however, in the nature of special or residuary powers which are exercisable outside the purview of the ordinary laws in cases where the needs of justice demand interference by the Supreme Court. [See Durga Shankar Mehta vs. Thakur Raghuraj Singh & Others, (1955) 1 SCR 267]

Upon perusal of the law laid down by this Court in the aforesaid judgments, in Court‘s opinion, no effort should be made to restrict the powers of this Court under Article 136 because while exercising its powers under Article 136 of the Constitution of India, this Court can, after considering facts of the case to be decided, very well use its discretion. In the interest of justice, in Court‘s view, it would be better to use the said power with circumspection, rather than to limit the power forever.

In the circumstances, we do not see any reason to answer the issue which has already been answered in the aforesaid judgments. **[Mathai @ Joby vs. George, 2016 (2) SCALE 102]**

Art. 136 – Criminal Appeal – Interference with – Normally Supreme Court does not interfere with concurrent findings of courts below unless perverse.

By and large, this Court will not interfere with the concurrent findings recorded by the courts below. But where the evidence has not been properly appreciated, material aspects have been ignored and the findings are perverse under Article 136 of the Constitution, this Court would certainly interfere with the findings of the courts below though concurrent. **Tomaso Bruno & Anr. v. State of U.P., 2015(2) Supreme 278.**

Art. 136 – Criminal Appeal- Concurrent findings of courts below – Supreme Court will not interfere save in exceptional circumstances.

The principles for the exercise of jurisdiction in a petition under Article 136 of the Constitution of India have been succinctly summarized by a two-judge Bench of this Court in Ganga Kumar Srivastava Vs. The State of Bihar, (2005) 6 SCC 211, in the following terms:

(ii) —The powers of this Court under Article 136 of the

Constitution are very wide but in criminal appeals this Court does not interfere with the concurrent findings of the fact save in exceptional circumstances.

9. It is open to this Court to interfere with the findings of fact given by the High Court if the High Court has acted perversely or otherwise improperly.

10. It is open to this Court to invoke the power under Article 136 only in very exceptional circumstances as and when a question of law of general public importance arises or a decision shocks the conscience of the Court.

11. When the evidence adduced by the prosecution fell short of the test of reliability and acceptability and as such it is highly unsafe to act upon it.

12. The appreciation of evidence and finding is vitiated by any

error of law of procedure or found contrary to the

principles of natural justice, errors of record and

misreading of the evidence, or where the conclusions of

the High Court are manifestly perverse and unsupportable from the evidence on record. **Saddik @ Lalo Gulam Hussain Shaikh V. State of Gujarat, 2016 (7) Supreme 202**

Arts. 136 & 226- Exercise of equitable jurisdiction

Departmental enquiry and criminal proceedings whether can be initialed simultaneously with criminal proceedings. The High Court in exercise of equitable writ jurisdiction, can stay ongoing departmental proceeding in larger public interest and having regard to long pendency of trial.

The remedy of writ being an equitable jurisdiction, disciplinary proceeding pending for more than 10 years. The same was stayed by Supreme Court until they closure of recording evidence of prosecution witnesses cited in criminal trial. Criminal case pending against the respondent employee was directed to be decided expeditiously within a year. **State Bank of India v. Neelam Nag, (2016) 9 SCC 491**

Art. 136 – S.L.P. – Leave sought against judgment of acquittal by prosecutrix in rape

case – Liable to be granted

This is an application for grant of permission to file Special Leave Petition under Article 136 of the Constitution of India for assailing the judgment and order dated 4.7.2012 passed in Government Appeal No. 3432 of 2011 by the Division Bench of the High Court of Judicature at Allahabad, whereby the Bench declined to entertain the appeal directed against the judgment of acquittal rendered by the learned Additional Sessions Judge, Kanpur Nagar in S.T. No. 944 of 2007 wherein the accused persons faced trial for the offences punishable under Sections 363, 366, 328, 323, 506, 368 and 376(2)(g) of the Indian Penal Code (for short ―the IPC).

On a perusal of the material on record, there cannot be any dispute that the appellant was the complainant and the real aggrieved party. Being aggrieved by the decision of the High Court, she has sought permission to prefer the special leave petition. Regard being had to the essential constitution concept of jurisdiction under Article 136 of the Constitution of India as has been stated in Arunachalam v. P.S.R. Sadhanantham; AIR 1079 SC 1284 and the pronouncement by the Constitution Bench in P.S.R. Sadhanantham v. Arunachalam; AIR 1980 SC 856 where the assail was to the decision in Arunachalam under Article 32, the Court allow the application and permit the applicant to prosecute the Special Leave Petition. **(Kumari Shaima Jafari v. Irphan alias Gulfam and Ors.; 2013 (3) ALJ 64 (SC)**

Art. 136 – Exercise of power under Discretionary - Art. 136 does not confer right to appeal

Article 136 of the Constitution does not confer a right of appeal on a party. It only confers discretionary power on Supreme court to be exercised sparingly to interfere in suitable cases where grave miscarriage of justice has resulted from illegality or misapprehension or mistake in reading evidence or from ignoring, excluding or illegally admitting material evidence. **(Yasir Chisti & Anr. v. State of Rajasthan; 2012 Cr.LJ 637)**

Art. 136 - Review of death sentence - Manner, approach and scope - Special reasons adumbrated/mentioned by trial court needing further elaboration - Death sentence whether can be confirmed after making such elaboration

The Supreme Court has upon examination of both - the evidence on record and the reasoning of the courts below while sentencing the accused reached an independent conclusion that the facts and circumstances of the case do not warrant imposition of sentence of death. Therefore, it is not the absence or adequacy of "special reasons" alone which weighed in the mind of the Supreme Court while commuting the sentence. The facts in toto and procedural impropriety, if any, loomed large in exercising such discretion. Hence, the reliance placed on the aforementioned decisions is rejected. Further, it cannot be accepted that the failure on the part of the court, which has convicted an accused and heard him on the question of sentence but failed to express the "special reasons" in so many words, must necessarily entail a remand to that court for elaboration upon its conclusion in awarding the death sentence for the reason that while exercising appellate jurisdiction the Supreme Court cannot delve into such reasons.

The appellate jurisdiction vested in the Supreme Court by virtue of Article 136 of the Constitution is not plain statutory but expansive and extraordinary. The Court exercises its discretion and grants leave to appeal in cases where it is satisfied that the same would circumvent a grave miscarriage of justice. Such jurisdiction is not fettered by rules of criminal procedure but guided by judicially evolved principles. An appeal by special leave under Article 136 of the Constitution is a continuation of the original proceedings. Thus, jurisdiction of the Supreme Court in appeal under Article 136 of the Constitution though circumscribed to the scope of earlier proceedings is neither fettered by the rules of criminal procedure nor limited to mere confirmation or rejection of the appeal. The Supreme Court while considering the question of correctness or otherwise of the sentence awarded by the courts below exercises discretionary jurisdiction under Article 136 of the Constitution and hence can not only examine the reasons so assigned under Section 354(3) Cr.PC but also substantiate upon the same, if need so be **(Deepak Rai v. State of Bihar; (2014) 1 SCC (Cri.) 52)**

Art. 137 – Review of criminal judgments and order would be permissible on grounds of errors apparent on face of record

In the judgment which is under review in the second review petition, the Court concluded:

NHRC has no jurisdiction to interfere and make a recommendation, and

The order of the Governor in commuting the sentence of death to one of life is bad in law as it did not disclose any reason.

On a review, the Court is constrained to hold that both findings on (a) and (b) are vitiated by errors apparent on the face of the record. **(Ramdeo Chauhan v. Bani Kant Das; AIR 2011 SC 615)**

Art. 137 - Review - Maintainability - Principles summarised

The principles relating to review jurisdiction may be summarised as follows:

When the review will be maintainable:

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words "any other sufficient reason" have been interpreted in Chhajju Ram; (1921-22) 49 l A 144 and approved by this Court in Moran Mar Basselios Catholicos; AIR 1954 SC 526 to mean "a reason sufficient on grounds at least analogous to those specified in the rule".

When the review will not be maintainable:

(iv) A repetition of old and overruled argument is not enough to reopen concluded adjudications.

(v) Minor mistakes of inconsequential import.

(vi) Review proceedings cannot be equated with the original hearing of the case.

(vii) Review is not maintainable unless the material error, manifest on the face of the order, undermines its soundness or results in miscarriage of justice.

(viii) A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected but lies only for patent error.

(ix) The mere possibility of two views on the subject cannot be a ground for review.

(x) The error apparent on the face of the record should not be an error which has to be fished out and searched.

(xi) The appreciation of evidence on record is fully within the domain of the appellate court, it cannot be permitted to be advanced in the review petition

(xii) Review is not maintainable when the same relief sought at the time of arguing the main matter had been negatived. **(Kamlesh Verma v. Mayawati and others; (2013) 8 SCC 320)**

Article 141 – Binding effect of precedent – Depends on how factual situation fits in with the fact situation of decision relied.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid‘s theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes.

Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. **(State of A.P. v. M. Radha Krishna Murthy; 2009 Cri.L.J. 1896)**

Arts. 141, 245 & 309 – Statute Law vis-a-vis judicial decision – Primacy of statute law

On being selected by the District Level Committee which had considered the candidature of those sponsored by the employment exchanges, the respondents were appointed as teachers purely on ad hoc basis between 1994 and 1996 by the District Education Officers. In furtherance of the policy decision taken by the State Government, the services of the respondents were regularised w.e.f. 1.10.2003. The respondents challenged the provisional gradation list by filing a writ petition on the ground that the same was discriminatory and prayed that their seniority be fixed by taking into consideration their total length of service including the ad hoc service. The High Court by the impugned judgment held that the seniority of the respondents should be fixed by taking into account their ad hoc service. Hence, the instant appeal.

The court considers it proper to notice the judgments on which reliance has been placed by the learned counsel for the respondents. This consideration needs to be prefaced with an observation that the cases in which recruitment and conditions of service including seniority are regulated by the law enacted by Parliament or the State Legislature or the Rules framed under Article 309 of the Constitution, the general proposition laid down in any judgment cannot be applied dehors the relevant statutory provisions and dispute relating to seniority has to be resolved keeping in view such provisions. **(State of Haryana and others v. Vijay Singh and others; (2012) 8 SCC 633)**

Art. 141 - Constitution Law and Preamble, Pts III and IV and Art. 300-A - Need for law to evolve with time

Although the legal jurisprudence developed in the country in the last five decades is somewhat precedent-centric, the judgments which have a bearing on socio-economic conditions of citizens and issues relating to compensation payable to the victims of motor

accidents, those who are deprived of their land and similar matters need to be frequently revisited keeping in view the fast-changing societal values, the effect of globalization on the economy of the nation and their impact on the life of the people. **(Santosh Devi Vs. National Insurance Company Limited and Others; (2012) 6 SCC 421)**

Art. 141 – Precedent – Binding nature – Statement of law by Bench is binding on Bench of same or lessor number of Judges

It is an accepted rule or principle that the statement of the law by a Bench is considered binding on a Bench of the same or lesser number of Judges. In case of doubt or disagreement about the decision of the earlier Bench, the well accepted and desirable practice is that the later Bench would refer the case to a larger Bench. **(Safiya Bee v. Mohd. Vajahath Hussain alias Fasi; AIR 2011 SC 421)**

Art. 141 – Precedents – Single bench decision would have only persuasive value if at all; insofar as division bench is concerned

Single Bench decision would have only persuasive value, if at all, insofar as Division Bench is concerned. **(Dilip v. State; 2011 Cri.L.J. 334 (Del HC)**

Art. 141 – Precedent – Is a judicial decision containing a principle, which forms an authoritative element, termed as ratio decidendi.

A precedent is a judicial decision containing a principle, which forms an authoritative element termed as ratio decidendi. An interim order, which does not finally and conclusively decide an issue, cannot be a precedent. Any reasons assigned in support of such non-final interim order containing prima facie findings, are only tentative. **(State of Assam v. Barak Upatyaka D.U. Karmachari Sanstha; AIR 2009 SC 2249)**

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S. 141 – Precedent – Decision which is per incuriam is not „law‟ declared in terms of Art. 141 to have a binding effect.

It is well settled that a decision which is per incuriam is not „law‟ declared in terms

of Article 141 to have a binding effect. **(State of Rajasthan & Ors. v. Jagdish Narain Chaturvedi; AIR 2010 SC 157)**

Art. 141 – Precedents – Blend reliance on decision without reference to facts – Not proper.

Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid‟s theorems nor as provisions of the statute and that too taken out of their context. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper. **(Bangalore v. Srikumar Agencies; 2009 AIR SCW 942 (A))**

Art. 141 – Precedent – Mere direction by Supreme Court without laying down any principle is not precedent.

It is well settled that a mere direction of the Supreme Court without laying down any principle of law is not a precedent. It is only where the Supreme Court lays down a principle of law that it will amount to a precedent. Often the Supreme Court issues directions without laying down any principle of law, in which case, it is not a precedent. For instance, the Supreme Court often directs appointment of someone or regularization of a temporary employee or payment of salary, etc. without laying down any principle of law. This is often done on humanitarian considerations, but this

(vii) will not operate as a precedent binding on the High Court. For instance, if the Supreme Court directs regularization of service of an employee who had put in 3 years‟ service, this does not mean that all employees who had put in 3 years‟ service must be regularized. Hence, such a direction is not a precedent. **(Indian Drugs & Pharmaceuticals Ltd. V. Workman, Indian Drugs & Pharmaceuticals Ltd.; 2007 (1) ALJ 505)**

Article 141 – Precedent – Decision is an authority for what it decides and not for what can logically be deduced there from.

It is now well settled that a decision is an authority for what it decides and not what can logically be deduced there from. It is also well settled that a ratio of case must be understood having regard to the fact situation obtaining therein. **(Inderpreet Singh Kahlon & Ors. v. State of Punjab & Ors; AIR 2006 SC 2571)**

Art. 141 – Precedent – earlier judgment of co-ordinate Bench binds subsequent Bench of High Court –If subsequent Division Bench waiting to take different view than that taken by earlier division Bench, than proper course is to refer matter to larger bench

An earlier judgment of a co-ordinate Bench binds a subsequent Bench of the High Court. If a subsequent Bench, considering the same issue, is of the view that the earlier decision is erroneous or has failed to consider the correct legal position, the correct course of action is to make an order referring the case to a larger bench consequently, if a single Judge is inclined to disagree with the view of another single judge, a reference is made to a Divisions Bench and if a Division Bench is unable to subscribe to the view of an earlier Division Bench on the subject, a reference has to be made to the Full Bench. This is not merely a matter of procedure but of judicial propriety which is founded on sound considerations of public policy. Adjudication of cases in the High Court must have an element of certainly. Consistency in judicial decision making is a hallmark of a system based on the rule of law. Errors in judicial decision making can be resolved by adopting recourse to well settled judicial procedures within the Court which consist of making reference to the larger bench. **Smt. Urmila Devi v. State of U.P. & Others 2015 (3) ALJ 765**

Art. 141- Precedent – Binding nature

In may be pointed out that the law declared by Hon‘ble Supreme Court is binding on all Courts, including High Courts and High Courts cannot ignore it on the ground that relevant provisions were not brought to the notice of the Apex Court or that the Apex Court laid down the legal position without considering all the points, and therefore its decision is not binding. **[Lt. Col. (Military Nursing Services) Madhu Lata Gaur v. Armed Forces Tribunal Regional Bench thru its V.C. Lko. and others 2015 (4) ALJ 748]**

Art. 141 – Ratio decidendi

The ratio decidendi consists in the reasons formulated by the court for resolving an issue arising for determination and not in what logically appear to flow from observations on non-issues. **Union of India v. Meghmani Organics Limited, (2016) 10 SCC 28.**

Art.-141 - Prospective overruling- Nature and scope - Principles summarised

The doctrine of prospective overruling has its origin in American jurisprudence. It was first invoked in this country in C. Golak Nath, AIR 1967 SC 1643, with the Supreme Court proceeding rather cautiously in applying the doctrine. However, the doctrine has not remained confined to overruling of earlier judicial decision on the same issue as was understood in Golak Nath case. In several later decisions, the Supreme Court has invoked the doctrine in different situations including in cases where an issue has been examined and determined for the first time. The Supreme Court held that it was open to the Court to grant, mould or restrict the relief in a manner most appropriate to the situation before it in such a way so as to advance the interest to justice. The doctrine is a useful tool to bring about smooth transition of the operation of law without unduly affecting the people who acted upon the law that operated prior to the date of the judgment overruling the previous law. **[K. Madhava Reddy and others vs. State of A.P. and others, (2014) 6 SCC 537 (DB)]**

Art. 141—Significance of—Rule of precedent—And rule of per incuriam is essential to maintain consistency of rulings

The discipline demanded by a precedent or the disqualification or diminution of a decision on the application of the per incuriam rule is of great importance, since without it, certainty of law, consistency of rulings and comity of Courts would become a costly casualty. A decision or judgment can be per incuriam any provision in a statute, rule or regulation, which was not brought to the notice of the Court. A decision or judgment can also be per incuriam if it is not possible to reconcile its ratio with that of a previously pronounced judgment of a Co-equal or Larger Bench; or if the decision of a High Court is not in consonance with the views of the Supreme Court. The per incuriam rule is strictly and correctly applicable to the ratio decidendi and not to obiter dicta. **(Sundeep Kumar Bafna vs. State of Maharashtra; 2014 Cri.L.J. 2245 (SC)**

Art. 141—Judicial discipline—Irreconcilable decisions of Supreme Court—Earliest one to be followed

It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. The Court thinks that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam. **(Sundeep Kumar Bafna vs. State of Maharashtra; 2014 Cri.L.J. 2245 (SC)**

Art. 141 - Declaration of ―right to die with dignity as fundamental right within fold of ―right to live with dignity guaranteed under Article 21

Although the Constitution Bench in Gian Kaur; (1996) 2 SCC 648 upheld that the ―right to live with dignity‖ under Article 21 will be inclusive of ―right to die with dignity‖, the decision does not arrive at a conclusion for validity of euthanasia be it active or passive. Aruna Shanbaug; (2011) 4 SCC 454 aptly interpreted the decision of the Constitution Bench in Gian Kaur case and came to the conclusion that euthanasia can be allowed in India only through a valid legislation (para 21 and 101 thereof). However, in para 104, the Bench in Aruna Shanbaug case contradicted its own interpretation of Gian Kaur case in para 101 and stated that although the Supreme Court approval the view taken in Airedale, 1993 AC 789, it has not clarified who can decide whether life support should be discontinued in the case of an incompetent person e.g. a person in coma or PVS. When, at the outset, it is interpreted to hold that euthanasia could be made lawful only by legislation, there is no question of deciding whether the life support should be discontinued in the case of an incompetent person e.g. a person in coma or PVS. Besides, it is factually wrong to observe that in Gian Kaur case, the Constitution Bench approved the decision of the House of Lords in Airedale case. A mere reference in the verdict cannot be construed to mean that the Constitution Bench in Gian Kaur case approved the opinion of the House of Lords rendered in Airedale case. In view of the inconsistent observations rendered in Aruna Shanbaug case and also considering the important question of Law involved which needs to be reflected in the light

of social, legal, medical and constitutional perspective, it becomes extremely important to have a clear enunciation of law. Thus, the question of law involved requires careful enunciation of law. Thus, the question of law involved requires careful consideration by a Constitution Bench of the Supreme Court for the benefit of humanity as a whole. **(Common Cause vs. Union of India; (2014) 5 SCC 338)**

Art. 141 - Law of Precedent - Ratio decidendi must be understood in background of facts of case. Ratio decidendi is not to be discerned from stray word or phrase read in isolation

In Som Mittal v. Government of Karnataka; (2008) 3 SCC 574, it has been observed that judgments are not to be construed as statutes. Nor words or phrases in judgments to be interpreted like provisions of a statute. Some words used in a judgment should be read and understood contextually and are not intended to be taken literally. Many a time a judge uses a phrase or expression with the intention of emphasizing a point or accentuating a principle or even by way of a flourish of writing style. Ratio decidendi of a judgment is not to be discerned from a stray word or phrase read in isolation. **(Arasmeta Captive Power Co. Pvt. Ltd. and another v. Lafarge India Pvt. Ltd.; AIR 2014 SC 525)**

Art. 141 – Law laid down by Supreme Court is law of the Land and has to be obeyed by all

The government departments are no exception to the consequences of wilful disobedience of the orders of the Court. Violation of the orders of the Court would be its disobedience and would invite action in accordance with law. The orders passed by this Court are the law of the land in terms of Article 141 of the Constitution of India. No Court or Tribunal and for that matter any other authority can ignore the law stated by this Court. Such obedience would also be conducive to their smooth working, otherwise there would be confusion in the administration of law and the respect for law would irretrievably suffer. There can be no hesitation in holding that the law declared by the higher court in the State is binding on authorities and tribunals under its superintendence and they cannot ignore it. This Court also expressed the view that it had become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have a grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty are important hallmarks of judicial jurisprudence developed in this country, as discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and to abide by the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.

These very principles have to be strictly adhered to by the executive and instrumentalities of the State. It is expected that none of these institutions should fall out of line with the requirements of the standard of discipline in order to maintain the dignity of institution and ensure proper administration of justice. **(Priya Gupta & Anr. vs. Addl. Secretary, Ministry of Health & Family Welfare & Ors.; 2012(8) Supreme 693)**

Art. 141 - Binding force of Judgment – Scope of

There can be no dispute with respect to the settled legal proposition that a judgment of court is binding, particularly, when the same is that of a co-ordinate bench; or of a larger bench. It is also correct to state that, even if a particular issue has not been agitated earlier, or a particular argument was advanced, but was not considered, the said judgment does not lose its binding effect, provided that the point, with reference to which an argument is subsequently advanced, has actually been decided. The decision therefore, would not lose its authority, "merely because it was badly argued, inadequately considered or fallaciously reasoned", the case must be considered, taking note of the ratio decidendi of the same i.e., upon which, the decision of the court is based, or on the test or abstract, or the specific peculiarities of the particular case, which finally gives rise to the decision **(Ravinder Singh v. Sukhbir Singh and Ors.; 2013 Cr. LJ 1123)**

Art. 141 - Precedent – Judgment of Supreme Court - High Court has to accept it and should not in collateral proceedings write contrary judgment - Controversy over Govt. resolution - Supreme Court interpreting it one way - Reopening of controversy by High Court in collateral proceedings - Approach of High Court deprecated - Principle of Res judicata also do not permit re-examination

That court said that, when the judgment of a Court is confirmed by the higher court, the judicial discipline requires that Court to accept that judgment and it should not in collateral proceedings write a judgment contrary to the confirmed judgment. Court may as well not the observations of Krishna Iyer, J. in Fuzlunbi v. K khader Vali and another reported in 1980 (4) SCC 125.

It is for the State to decide as to which cadres should be merged so long as the decision is not arbitrary or unreasonable. As stated earlier, the resolution dated 7.7.2006 is well reasoned and justified, and cannot be called arbitrary or unreasonable to be hit by Article 14. It deserved to be upheld. It is possible that the merger may affect the prospects of some employees but this cannot be a reason to set-aside the merger. Once the State Govt. has taken the necessary decision to merge the two cadres in a given case, the State Govt. is expected to follow it by framing the necessary rules.

State Govt. at this stage before the learned Single Judge the entire controversy was once again gone into. The law of finality of decisions which is enshrined in the principle of res-judicata or principles analogous thereto, does not permit any such re-examination and the learned Judge clearly failed to recognize the same. **(Bihar State government Secondary School Teachers Association v. Bihar Education Service Association and Ors.; AIR 2013 SC 487)**

Art. 141—Precedents—Binding nature of a Supreme Court's decision—Relevant principles

It is the settled legal proposition that a judgment of the Supreme Court is binding,

particularly, when the same is that of a coordinate Bench, or of a larger Bench. It is also correct to state that, even if a particular issue has not been agitated earlier, or a particular argument was advanced, but was not considered, the said judgment does not lose its binding effect, provided that the point with reference to which an argument is subsequently advanced, has actually been decided. The decision therefore, would not lose its authority, ―merely because it was badly argued, inadequately considered or fallaciously reasoned. The case must be considered, taking note of the ratio decidendi of the same i.e., the general reasons, or the general grounds upon which, the decision of the court is based, or on the test or abstract, of the specific peculiarities of the particular case, which finally gives rise to the decision. **(Ravinder Singh vs. Sukhbir Singh; (2013) 3 SCC (Cri) 891)**

Art. 141 - Precedent – Doctrine of Prospective overruling is applied to avoid unnecessary hardship

Anant Gopal Sheorey v. State of Bombay AIR 1958 SC 915 where the legal position was stated in the following words:

―4. The question that arises for decision is whether to a pending prosecution the provisions of the amended Code have become applicable. There is no controversy on the general principles applicable to the case. No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode.

The upshot of the above discussion is that the view taken by the Full Bench holding the amended provision to be applicable to pending cases is not correct on principle. The decision rendered by the Full Bench would, therefore, stand overruled but only prospectively. We say so because the trial of the cases that were sent back from Sessions Court to the Court of Magistrate First Class under the orders of the Full Bench may also have been concluded or may be at an advanced stage. Any change of forum at this stage in such cases would cause unnecessary and avoidable hardship to the accused in those cases if they were to be committed to the Sessions for trial in the light of the amendment and the view expressed by Court. (**Ramesh Kumar Soni v. State of Madhaya Pradesh; 2013 Cr. LJ 1738)**

Art. 141 – Judgment of Higher court or Bench of larger strength cannot be said to be finding until and unless facts of case of alleged precedent can be applied to facts of case in which it is relied upon

In opinion of the Court, no judgment of the higher court or a Bench of larger strength can be said to be binding until and unless the facts of the case of the alleged precedent can be applied to the facts of the case in which it is relied upon. Needless to say that a decision is only an authority for what it actually decides. It is the ratio decidendi laid down in the said judgment which has the binding force. Even such ratio is to be appreciated and applied in the facts of each case. **(Pooja Malhotra and Ors. vs. Pankaj Malhotra and Anr.; 2013(3) ALJ 515)**

Art. 141 – Precedent – Binding nature – Mere filing S.L.P. would not deprive judgment of High Court from status of binding nature

It is well settled that mere filing S.L.P. would not deprive a judgment of this Court from the status of a binding precedent and therefore so long as judgment dated 13.8.2012 in Shahwaiz Warsi & ors. is not reversed, this Court has no reason not to follow law laid down therein. **(M/s Kanhaiya Mal Kasturi Lal v. Hari Prasad; 2013 (2) ALJ 542)**

Art. 142 - Directions for establishing of Fast Track courts for disposal of cases involving the charge of rape at the trial stage

Court has considered that the Fast Tract Courts no doubt are being constituted for expeditious disposal of cases involving the charge of rape at the trial stage, but court are perturbed and anguished to notice that although there are Fast Tract Courts for disposal of such cases, we do not yet have a fast track procedure for dealing with cases of rape and gang rape lodged under Section 376 IPC with the result that such heinous offences are repeated incessantly.

Court has further observed that there is a pressing need to introduce drastic amendments into the Cr.P.C. in the nature of fast tract procedure for Fast Track Courts when we considered just and appropriate to issue notice and called upon the Union of India to file its response as to why it should not take initiative and sincere steps for introducing necessary amendment into the Cr.P.C., 1973 involving trial for the charge of Rape by directing that all the witnesses who are examined in relation to the offence and incident of rape cases should be straightway produced preferably before the Lady Judicial Magistrate for recording their statement to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial by producing the same in record in accordance with law which may be put to test by subjecting it to cross-examination. We were and are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Cr.P.C. skipping over the recording of statement by the Police under Section 161 Cr.P.C. to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial which may be put to test by subjecting it to cross-examination. We are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Cr.P.C. skipping over the recording of statement by the police under Section 161 Cr.P.C. which is any case is inadmissible except for contradiction so that the statement of the accused thereafter be recorded under Section 313 Cr.P.C. The accused then can be committed to the appropriate Court for trial whereby the trial court can straightway allow cross examination of the witnesses whose evidence were recorded earlier before the Judicial Magistrate.

Court, thereafter appointed the learned senior counsel Mr. Shekhar Naphade and Mr. U.U. Lalit, who appeared and addressed this Court. Learned senior advocate Mr. Shekhar Naphade agreed with the suggestions given by this Court that the statement of the victim of rape and gang rape may be and should be recorded under Section 164 of the Cr.P.C. which should be placed on record treated as evidence of the victim and may later be relied upon as evidence and then the accused may be given a chance to cross-examine the prosecution version and the evidence recorded at the instance of the victim.

On considering the same, court has accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, court are pleased to issue interim directions in the form of mandamus to all the police station in charge in the entire country to follow the direction of this Court which are as follows:

(i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any

Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be disclosed to any person till charge sheet/report under Section 173 Cr.P.C. is filed.

(iii) The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

(iv) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan / preferably Lady Judicial Magistrate as aforesaid.

(v) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

(vi) Medical Examination of the victim: Section 164 A Cr.P.C. inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C. **[State of Karnataka by Nonavinakere police v. Shivanna @ Tarkari Shivanna, 2014(86) ACC 308]**

Article 142 – Directions made by the Supreme Court under this Article are not binding on subordinate courts – Courts should be careful and should follow the ratio decidendi and not the relief given on specific facts.

Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally, it is not stated that such direction/order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The courts should therefore be careful to ascertain and follow the ratio decidendi, and not the relief given on the special facts, exercising power under Article 142. One solution to avoid such a situation is for this Court to clarify that a particular direction or portion of the order is in exercise of power under Article 142. Be that as it may. **(Indian Bank v. ABS Marine Products Pvt. Ltd. 2006(3) Supreme 647)**

Art. 142—Execution of final judgment or decree—Delay—Should not be countenanced by any authority

Delay in execution of a final judgment or decree, moreso when it is of the Apex Court, should never the countenanced by any authority because it would surely tend to undermine people's faith in the judicial system of the country, entailing in turn avoidable harm to all the institutions and functionaries under the Constitution, may be even to the Constitution itself. I**n Re: Punjab Termination of Agreement Act, 2004, AIR 2016 SC 5145**

Art. 142 - Directions for establishing of Fast Track courts for disposal of cases involving the charge of rape at the trial stage

Court has considered that the Fast Tract Courts no doubt are being constituted for expeditious disposal of cases involving the charge of rape at the trial stage, but court are perturbed and anguished to notice that although there are Fast Tract Courts for disposal of such cases, we do not yet have a fast track procedure for dealing with cases of rape and gang rape lodged under Section 376 IPC with the result that such heinous offences are repeated incessantly.

Court has further observed that there is a pressing need to introduce drastic amendments into the Cr.P.C. in the nature of fast tract procedure for Fast Track Courts when we considered just and appropriate to issue notice and called upon the Union of India to file its response as to why it should not take initiative and sincere steps for introducing necessary amendment into the Cr.P.C., 1973 involving trial for the charge of Rape by directing that all the witnesses who are examined in relation to the offence and incident of rape cases should be straightway produced preferably before the Lady Judicial Magistrate for recording their statement to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial by producing the same in record in accordance with law which may be put to test by subjecting it to cross-examination. We were and are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Cr.P.C. skipping over the recording of statement by the Police under Section 161 Cr.P.C. to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial which may be put to test by subjecting it to cross-examination. We are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Cr.P.C. skipping over the recording of statement by the police under Section 161 Cr.P.C. which is any case is inadmissible except for contradiction so that the statement of the accused thereafter be recorded under Section 313 Cr.P.C. The accused then can be committed to the appropriate Court for trial whereby the trial court can straightway allow cross examination of the witnesses whose evidence were recorded earlier before the Judicial Magistrate.

Court, thereafter appointed the learned senior counsel Mr. Shekhar Naphade and Mr. U.U. Lalit, who appeared and addressed this Court. Learned senior advocate Mr. Shekhar Naphade agreed with the suggestions given by this Court that the statement of the victim of rape and gang rape may be and should be recorded under Section 164 of the Cr.P.C. which should be placed on record treated as evidence of the victim and may later be relied upon as evidence and then the accused may be given a chance to cross-examine the prosecution version and the evidence recorded at the instance of the victim.

On considering the same, court has accepted the suggestion offered by the learned counsel who appeared before us and hence exercising powers under Article 142 of the Constitution, court are pleased to issue interim directions in the form of mandamus to all the police station in charge in the entire country to follow the direction of this Court which are as follows:

(i) Upon receipt of information relating to the commission of offence of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement under Section 164 Cr.P.C. A copy of the statement under Section 164 Cr.P.C. should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement under Section 164 Cr.P.C. should not be disclosed to any person till charge sheet/report under Section 173 Cr.P.C. is filed.

(vii) The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

(viii) The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan / preferably Lady Judicial Magistrate as aforesaid.

(ix) If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

(x) Medical Examination of the victim: Section 164 A Cr.P.C. inserted by Act 25 of 2005 in Cr.P.C. imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim under Section 164 Cr.P.C. **[State of Karnataka by Nonavinakere police v. Shivanna @ Tarkari Shivanna, 2014(86) ACC 308]**

Art. 143 – Power of President to consult Supreme Court – Scope of.

A bare perusal of Article 143 of the Constitution would show that the President is authorized to refer to this Court a question of law or fact, which in his/her opinion is of such a nature and of such a public importance that it is expedient to obtain the opinion of the Supreme Court upon it. The Article does not restrict the President to obtain opinion only on a pure question of law. The submission made by the learned counsel appearing for the State of Punjab that several questions of fact are involved in the Reference is thus hardly relevant, for the reason that an opinion can be sought on question of law and even on question of fact. **In Re: The Punjab Termination of Agreement Act, 2004, Special reference No. 1 of 2004 (under Article 143(1) of the Constitution of India. 2016 (8) Supreme 153**

Art. 161 – Grant of pardon is executive power so judicial courts do not have such power

If the petitioner has a grievance against that judgment, he has a right of appeal to the High Court on the judicial side. He can also approach the concerned executive authority under Section 432, Cr.P.C. or to the Governor under Article 161 of the Constitution of India. This is a judicial Court and hence this Court has no power which the executive has under Section 432, Cr.P.C. or which the Governor has under Article 161 of the Constitution. **(Mahamudul Hassan v. Union of India & Ors.; 2011 Cri.L.J. 165 (SC)**

Articles 161, 226 – Grant of pardon, suspension and commutation of sentence – Is essential function of Govt. and not of Writ Court.

Article 161 of the Constitution of India speaks that the Government has power to grant pardon etc. and suspend to commute sentences in certain cases. We are also of the view such power is to be exercised on the basis of individual cases and following process laid down in the Code of Criminal Procedure. It is also significant to note that the appropriate Government may or may not accept the pardon. Therefore, at this juncture, the High Court cannot calculate the period of imprisonment and hold by itself that on the individual cases of the petitioners, they will be sent for further imprisonment or they will be pardoned. It is for the essential function of the Government nor for the writ court. Striking down by the general order passed by the government does not mean considering the individual cases has been usurped. Therefore, remedy is open for the petitioners to approach before the appropriate government for consideration of their individual case. **(Ram Deo & Ors. v. State of U.P. &Ors.; 2006 (4) ALJ 657 (DB))**

Art 163(1) Indian Constitution: Nature & Scope of discretionary powers of Governor-

Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. The area for the exercise of his discretion is limited. Even this limited area, his choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith and tempered by caution.

Limited situation that finality expressed in Article 163(2) would apply to functions exercised by the Governor in his own discretion, as are permissible within the framework of Article 163(1), and additionally, in situations where the clear intent underlying a constitutional provision, so requires i.e., where the exercise of such power on the aid and advice, would run contrary to the constitutional scheme, or would be contradictory in terms council of ministers.

Limited Situation when discretionary power of Governor can be exercisable independent of, or contrary to aid and advice of council of ministers are-

Firstly, the measure of discretionary power of the Governor, is limited to the scope postulated therefor, under Article 163(1).

Secondly, under Article 163(1) the discretionary power of the Governor extends to situations, wherein a constitutional provision expressly requires the Governor to act in his own discretion.

Thirdly, the Governor can additionally discharge functions in his own discretion, where such intent emerges from a legitimate interpretation of the concerned provision, and the same cannot be construed otherwise.

Fourthly, in situations where this Court has declared, that the Governor should exercise the particular function at his own and without any aid or advice, because of the impermissibility of the other alternative, by reason of conflict of interest.

Fifthly, the submission advanced on behalf of the respondents, that the exercise of discretion under Article 163(2) is final and beyond the scope of judicial review cannot be accepted. Firstly, because we have rejected the submission advanced by the respondents, that the scope and extent of discretion vested with the Governor has to be ascertained from Article 163(2), on the basis whereof the submission was canvassed. And secondly, any discretion exercised beyond the Governor‟s jurisdictional authority, would certainly be subject to judicial review. Shamser Singh V. State of Punjab, (1974) 2 SCC 831 quoted and relied upon. Nabam Prebia & Bamang Pelix V. Dy. Speaker, Arunachal Pradesh Legislative Assembly, (21016) 8 SCC 1

Arts. 164 and 226 – Transfer - Respondent transferred only to accommodate another employee in Kolkata – Transfer order was actuated by mala fide and transfer order contrary to guidelines - Unless over whelming reason to depart from the same - Transfer order bad in law

It is trite that transfer orders should not normally be interfered with by courts of law as it is the prerogative of the employer to transfer an employee, based on the exigencies of work. In the case of Shilpi Bose (supra) the Court considered whether a transfer made by a competent authority on the request of Government servants should be interfered with by the Court.

In the case of Shilpi Bose (supra) the appellant before the Supreme Court and another person sought a mutual transfer. The authority accepted the representations of the employees and transferred them in public interest. The High Court held that the establishment was not empowered to transfer primary school teachers on their request. However, the Supreme Court concluded that there was no justification for this inference drawn by the High Court that, transfers cannot be made with a view to accommodate employees. It is in these circumstances that the Supreme Court held that when a competent authority issues a transfer order with a view to avoid hardship to a public servant, it should not be interfered with by the Court merely because the transfer order was passed on the request of the employees concerned.

The Court observed that when a transfer order is passed against an employee to wreak vengeance against him, such an order of transfer requires to be struck down. The Court noted that though a transfer causes plenty of difficulties and dislocation in the family set-up of the concerned employee it cannot be the sole reason for setting aside the transfer order. In the case of Rajendra Singh (supra) the Supreme Court concluded that no Government servant has a vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. A Government servant is liable to be transferred for administrative exigencies from one place to another. The Court further held that transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary.

The Court further held that the scope of judicial review of transfer orders is limited and an order of transfer can be questioned if it is vitiated because of the violation of some statutory provisions or it suffers from mala fides. We have already noted that the transfer order is contrary to the guidelines for the reasons mentioned earlier. In our opinion, the guidelines must be implemented strictly unless there is an overwhelming reason to depart from the same. **(Member Secretary, Central Silk Board v. Swapan Kumar Chakraborty; 2014(2) SLR 442(SC)**

Art. 194 – Powers and privileges of member of State Legislative – MLA has no right to vote or participate in proceedings of Assembly if he is in jail.

A person lawfully detained in prison does not loose all his fundamental rights, which he otherwise possesses. However, there are several natural consequences, which flow from his detention. Right to life guaranteed under Article 21 of the Constitution is available to detenue also, but right to practice ones profession stands stripped when a person is detained in prison. When an ordinary person who is detained in prison is denied his right to vote, then the MLA who is detained in prison on criminal charges cannot claim any superior right to participate in the sessions of assembly and to cast his vote. The plea that in case the MLA is not permitted to participate in the proceedings of the assembly then his constituency shall remain unrepresented is not tenable. Non-participation in the proceedings of the assembly by the petitioner (MLA) is a natural consequence of his detention in prison on criminal charges. Right of participation in the proceedings of the assembly by a member and the privileged in the assembly given to members are rights and privileges of those members who are participating in the proceedings. When the petitioner is detained in prison by lawful order, he cannot claim a writ of mandamus permitting him to participate in the proceedings of the Assembly. **(Shekhar Tiwari v. State of U.P. & Ors.; 2009 (5) ALJ 313 (All HC)**

Article 194(3) – Privilege of legislative assumption and its member – scopes of privileges enjoyed by members

It is clear that the basic concept is that the privileges are those rights without which the House cannot perform its legislative functions. They do not exempt the Members from their obligations under any statute which continue to apply to them like any other law applicable to ordinary citizens. Thus, enquiry or investigation into an allegation of corruption against some officers of the Legislative Assembly cannot be said to interfere with the legislative functions of the Assembly. No one enjoys any privilege against criminal prosecution.

According to Erskine May, the privilege of freedom from arrest has never been allowed to interfere with the administration of criminal justice or emergency legislation. Thus, in any case, there cannot be any privilege against conduct of investigation for a criminal offence. There is a provision that in case a member is arrested or detained, the House ought to be informed about the same.

Thus, it is amply clear that the Assembly does not enjoy any privilege of a nature that may have the effect of restraining any inquiry of investigation against the Secretary or the Deputy Secretary of the Legislative Assembly.

Thus, from the above, it is clear that neither did the House of Commons enjoy any privilege, at the time of the commencement of the Constitution, of a nature that may have the effect of restraining any inquiry or investigation against the Secretary or the Deputy Secretary of the Legislative Assembly or for that matter against the member of the Legislative Assembly or a Minister in the executive Government nor does the Parliament or the Legislative Assembly of the State or its members. The laws apply equally and there is no privilege which prohibits action of registration of a case by an authority which has been

empowered by the Legislature to investigate the cases. Simply because the officers belong to the office of the Hon‘ble Speaker of the Legislative Assembly, the provisions of the Act do not cease to apply to them. **[Justice Ripusudan Dayal (Retd.) and others v. State of M.P. and others, 2014(6) AWC 5807]**

Art. 217 – Family Courts Act, Ss. 2(d), (3) – Judicial Office – Judge of Family Court do not hold judicial office, Hence, cannot be considered for elevation as High Court Judge

Judges of the Family Court do not hold "Judicial Office" as such they are not eligible to be considered for elevation as High Court Judges. **(S.D. Joshi & Ors. V. High Court of Judicature at Bombay & Ors.; AIR 2011 SC 848)**

Arts. 217, 14 and 16- High Court Judge's appointment from bar – Pensionary benefits –Computation – Ten year practice as advocate should be added as qualifying service- one rank one pension must be norm for constitutional office

When persons who occupied the Constitutional Office of Judge, High Court retire, there should not be any discrimination with regard to the fixation of their pension. Irrespective of the source from where the Judges are drawn, they must be paid the same pension just as they have been paid same salaries and allowances and perks as serving Judges. Only practicing Advocates who have attained eminence are invited to accept Judgeship of the High Court. Because of the status of the office of High Court Judge, the responsibilities and duties attached to the office, hardly any advocate of distinction declines the offer. Though it may be a great financial sacrifice to a successful lawyer to accept Judgeship, it is the desire to serve the society and the high prestige attached to the office and the respect the office commands that propel a successful lawyer to accept Judgeship. The experience and knowledge gained by a successful lawyer at the Bar can never be considered to be less important from any point of view vis-a-vis the experience gained by a judicial officer. If the service of a judicial officer is counted for fixation of pension, there is no valid reason as to why the experience at Bar cannot be treated as equivalent for the same purpose.

The fixation of higher pension to the Judges drawn from the Subordinate Judiciary who have served for shorter period in contradistinction to Judges drawn from the Bar who have served for longer period with less pension is highly discriminatory and breach of Article 14 of the Constitution. The classification itself is unreasonable without any legally acceptable nexus with the object sought to be achieved.

In most of the States, the Judgeship of the High Court is offered to advocates who are in the age group of 50-55 years, since pre-eminence at the Bar is achieved normally at that age. After remaining at the top for a few years, a successful lawyer may show inclination to accept Judgeship, since that is the culmination of the desire and objective of most of the lawyers. When persons holding constitutional office retire from service, making discrimination in the fixation of their pensions depending upon the source from which they were appointed is in breach of Articles 14 and 16(1) of the Constitution. One rank one pension must be the norm in respect of a Constitutional Office.

When a Civil Servant retires from service, the family pension is fixed at a higher rate whereas in the case of Judges of the High Court, it is fixed at a lower rate. No discrimination can be made in the matter of payment of family pension. The expenditure for pension to the High Court Judges is charged on the Consolidated Fund of India under Article 112(3)(d)(iii) of the Constitution.

In the light of what is discussed, court accept the petitioners' claim and declare that

for pensionary benefits, ten years‘ practice as an advocate be added as a qualifying service for Judges elevated from the Bar. Further, in order to remove arbitrariness in the matter of pension of the Judges of the High Court‘s elevated from the Bar, the reliefs, as mentioned above are to be reckoned from 01.04.2004, the date on which Section 13A was inserted by the High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2005 (46 of 2005). Requisite amendment be carried out in the High Court Judges Rules, 1956 with regard to post-retiral benefits as has been done in relation to the retired Judges of the Supreme Court in terms of amendment carried out by Rule 3-B of the Supreme Court Judges Rules, 1959. **(P. Ramakrishnan Raju v. Union of India and others; AIR 2014 SC 1690)**

Art. 225 – Special Appeal against order passed in contempt proceeding – Maintainability of

Order passed by contempt Judge on prima facie view that there was contempt of Court and proceedings be initiated against alleged contemnor. Such Order passed by Court had trappings of finality even though passed during interlocutory stage of proceedings. So, special appeal against said order would be maintainable. **(S.M.A. Abdi & Anr. V. Pvt. Secretaries Brotherhood Office of the U.P. & Anr.; 2010 Cri.L.J. (NOC) 1203 (All)**

Article 225- Allahabad High Court Rules, Chapter 12, R. 4-Effect of non-service of notice- Petition has to be dismissed as against the party who has not been served and no relief can be granted against that party

Once such a scheme is provided under Chapter XII, Rule 4 of the High Court Rules then in view of the this court is of the considered opinion that once the petitioner-appellant was not at all claiming any relief against Ramesh Chandra Verma and he was merely a pro forma opposite party then in case steps were not taken, the writ petition was to be accepted to be dismissed only as against him. Even otherwise before us petitioner is submitting that the petitioner has died and as there is no direct lies between the petitioner appellant and the aforementioned opposite party. Consequently, in our considered opinion, on account of non-taking of steps for effecting service upon the aforementioned opposite party no relief could have been granted against him. **Harish Chandra Verma V. State of U.P. Thru. Prin. Secy., Deptt. Of Go-operative & Ors., 2016 (5) ALJ 308**

Article 226 – Writ Petition – Interim matter – Whether while adjudicating upon interim matter High Court justified in giving categorical finding on merits – Held, "No".

While adjudicating an interim matter, the High Court has given a categorical finding on merits holding inter alia that there is nothing to show that even prima facie, goods are liable to confiscation. The High Court appears to have decided the matter on merits finally even though that was not the stage for doing so and was beyond the scope of adjudication of the writ petition. This is not the way the High Court should have dealt with the matter. Apart from that, the High Court has not indicated any reason as to why the condition of execution of indemnity bond equivalent to seizure value of goods and/or furnishing of bank guarantee equal to 10% of value of goods, as was stipulated by the authorities, was not justified. This also adds to the vulnerability of the order. The court set aside the impugned orders of the High Court. **(Union of India and others etc. etc. v. Kundan Rice Mills Ltd.; 2009(1) AWC 157 (SC)**

Articles 226 – Powers under Article 226 are discretionary in nature.

It cannot be doubted that the powers of the Court under Article 226 of the Constitution are discretionary in nature but in the present case, the petitioner had filed objections under section 47 of the Code of Civil Procedure, which have been rejected as being barred by limitation. The court had earlier given liberty to the tenant to raise all possible objection in the Execution Case No. 70 of 1981 initiated by the landlord and, therefore, the learned Counsel for the respondent is not justified in contending that the Court should restrain from exercising its discretionary jurisdiction even though these objections have been rejected on a ground which is not sustainable in law. **(Pradeep Kumar Awasthi v. Uma Kant Tripathi; 2009(106) RD 805)**

Article 226 – Dismissal of writ petition without giving time/opportunity to file rejoinder affidavit would not be justified.

The writ petitioners have a right to file rejoinder-affidavit and they were entitled for some reasonable time to file rejoinder-affidavit. The purpose of granting time to file rejoinder-affidavit is to meet the allegations made in the counter-affidavit. Accordingly in dismissing the writ petition only on the basis of the counter-affidavit the learned single Judge committed an error as it is ex facie against the principles of fair play. It may have been different where repeatedly time was being granted to file rejoinder-affidavit and the petitioner was not filing rejoinder-affidavit. In that case the learned single Judge would have been justified in deciding the writ petition but where no time was ever granted for filing rejoinder-affidavit, the learned single Judge was not justified in deciding the writ petition without giving an opportunity for filing rejoinder-affidavit. Therefore, the judgment and order dated 1.8.2008; passed by learned single Judge is not sustainable. **(Subhash and Others v. State of U.P. and Others; 2009(2) AWC 1307)**

Article 226 – Res-judicata – Earlier writ petition was pending – No final finding recorded on any issue involved therein – Plea of res-judicata, not tenable.

Though agreement between petitioner and corporation regarding retail outlet did not contain any such provision of stoppage of supply and agreement permits only termination of agreement on violation of any of its condition, and adulteration was one of grounds on which agreement can be terminated and since there was no challenge by petitioners to 'Marketing Discipline Guidelines' and on contrary petitioners themselves relied upon these very guidelines.

'Marker check' having indicated possible adulteration. Corporation would be within its right to stop sales and supplies of petroleum products to petitioner's retail outlet. Even otherwise, considering from public interest point of view, it would be unreasonable to adopt an interpretation that despite prima facie confirmation of adulteration in petroleum products at retail outlet by scientific 'Marker check' the retail outlet would still be allowed to continue with mischief by sale of adulterated stock. **(M/s. Vindhya Service Station & Anr. v. Union of India & ors.; 2009(2) (NOC) 313 (All)**

Article 226 – Writ of mandamus – In absence of any rule meant for regularisation, no mandamus can be issued directing authorities to regularise services of daily wager.

In the case of Mahendra I, Jain and others v. Indore Development Authority and others reported in (2005) 1 Supreme Court Cases 639: (AIR 2005 SC 1252) the Apex Court has observed:-

The question, therefore, which arises for consideration is as to whether they could lay a void claim for regularisationof their services. The answer thereof must be rendered in the negative. Regularisation cannot be claimed as a matter of right. An illegal appointment cannot be legalised by taking recourse to regularisation. What can be regularised is an irregularity and not an illegality. The constitutional scheme which the country has adopted does not contemplate any back-door appointment. A State before offering public service to a person must comply with the constitutional requirements of Articles 14 and 16 of the Constitution. All actions of the State must conform to the constitutional requirements. A daily-wager in the absence of a statutory provision in this behalf would not be entitled to regularisation.

There is nothing on the record to indicate that the petitioner is eligible for consideration for the purposes of regularisation, therefore, in view of the above decisions of the Apex Court order for regularisation of the petitioner's services cannot be passed by the Court in absence of any statutory provisions. **(Sarvan Kumar v. State of U.P. & Ors.; 2009(2) ALJ 552)**

Art. 226 – Second writ application – When can be maintainable.

The bar under Chapter 22, Rule 7 of the Allahabad High Court Rules, 1952 is on filing of second application on the same facts. In the instant case the relevant facts, which had been pleaded in the writ petition, were the facts which had come in the knowledge of the petitioner, after receiving the caveat and copies of the orders under Right to Information Act, 2005.The petitioner was not aware of any action of the State authorities, which had

been complained in the second writ petitioner. In the earlier writ petition, the petitioner had stated about filing of suit and the fact that interim injunction application has been fixed. The second writ petition was filed praying for staying the dispossession on the ground that interim injunction application pending in the suit hence status quo be directed to be maintained.

Thus, petitioner was not precluded from filing second writ petition when in that writ petition action of the State showed that the petitioner was dispossessed without drawing any proceeding and only by administrative action. Second writ petition would be maintainable.**(Bheekam Chandra v. State of U.P. & Ors.; 2010(6) ALJ 328 (All HC)**

Art. 226 – Scope of writ of certiorari – Whether judicial Orders passed by civil court can be corrected by writ court U/A. 226 – Matter referred to larger Bench.

Court is unable to agree with the legal proposition laid down in Surya Dev Rai; 2003 AIR SCW 3872, that judicial orders passed by a Civil Court can be examined and then corrected/reversed by the writ Court under Article 226 in exercise of its power under a writ of certiorari. **(Radhey Shyam & Anr. V. Chhabi Nath & Ors.; 2009(5) ALJ 244 (SC)**

Art. 226 – Mandamus issuance of

A writ of mandamus would be issued to the appropriate government to reconsider the refusal to make a reference, where the refusal is on irrelevant, irrational or extraneous grounds; the refusal is a result of the appropriate government examining the merits of the dispute and prejudging/ adjudicating/determine the dispute; (iii) the refusal is mala fide or dishonest or actuated by malice; (iv) the refusal ignores the material available in the failure report of the Conciliation Officer or is not supported by any reasons. **(Sarva Shramik Sangh v. Indian Oil Corporation Ltd. & Ors.; AIR 2009 SC 2355 (SC)**

Art. 226 & S. 482 of Cr.P.C. – Quashing of FIR – Order passed at instance of third parties is unknown to law.

The appellant is an Animal Right Activist and Secretary of Panjarapole and involved in preservation of old, infirm and stray cattle. One of the objects of the trust is to prevent illegal and unauthorized transportation and slaughtering of animals. On receipt of message of illegal transportation of goats and sheep‟s, he tried to intercept the vehicles and informed the police. On the search it was found that in all eight trucks of goats and sheep were being conveyed in a unauthorised and cruel manner, to slaughter house. The trucks were taken with goats and sheep to „D‟ Panjarapole. The appellant filed complaint against „R‟ and others for alleged commission of offences punishable under S. 279 of IPC S. 11(1) (d) of the Prevention of Cruelty to Animals Act, 1960, and Sections 5, 6 and 8 of Bombay Animal Preservation Act, 1954. The respondents, claiming to be owners of the goats and sheep filed complaint before Magistrate for the alleged commission of offences punishable under Ss. 395, 427, 506(2) read with S. 34 of IPC alleging that the persons accused therein, including the appellant had, with the help of police, taken over the trucks, beaten the drivers, looted

cash of Rs. 1,11,000/- and taken away sheep and goats worth Rs. 45,48,000/-. The Magistrate directed the Police to make a report within seven days after conducting investigation into the complaint. The respondents also filed an application under Ss. 451 and 457 of Cr.P.C. for custody of the cattle. The Magistrate rejected the said application and directed the Investigating Officer to take possession of all goats and sheep from „D" Panjarapole and to hand over the same within two days to the Panjarapole of the nearest district. The Respondents filed the writ petition against the said order. The High Court by an interim order directed the appellant to shift the goats and sheep"s in proper manner to Panjarapole at „P" under the supervision and in presence of Investigating Officer. The High Court convicted the respondents under S. 11(1)(d) of the Act and imposed fine. While giving further directions the High Court quashed the FIR/complaint filed in Police Station by appellant, and the proceedings pursuant thereto including the orders for interim custody of the animals and the Revision Application preferred therefrom.

Held that the respondents who were not even remotely alleged to have committed offence/offences, cannot be convicted at all either at the trial or while exercising so called wide jurisdiction under Art. 226 of the Constitution.

Therefore, conviction of the respondents under S. 11(1)(d) of the Prevention of Cruelty to Animals Act, 1960 and imposition of fine of Rs. 50/ on each of them would be without jurisdiction, unauthorized unwarranted and illegal and thus, liable to be set aside.

The respondents, who had filed writ petition before the High Court, were not accused. Therefore, they could not have prayed for and, in fact, have not prayed to quash the FIR registered with Police Station and the proceedings pursuant thereto. Prayer for quashing the FIR could have been made only by the accused. But none of them had chosen to invoke jurisdiction of the High Court either under S. 482 of Cr.P.C. or under Art. 226 of the Constitution to get quashed the said FIR against them and the proceedings pursuant thereto. The quashing of FIR at the instance of third parties is unknown to law. Further, it is well settled that neither power under S. 482 of Cr.P.C. nor jurisdiction under Art. 226 of the Constitution can be exercised by the High Court to quash the complaint if prima facie commission of offences is made out. **(Bharat Amratlal Kothari v. Dosukhan Samadhkhan Sindhi & Ors.; AIR 2010 SC 475)**

Art. 226 – PIL – During pendency of civil suit PIL would not be entertainable.

If a Civil suit was pending which may or may not be frivolous, ordinarily the High Court should not have entertained public interest litigation. On the other hand, if it was found that the civil Court was not proceeding with the matter as expeditiously as it should have, appropriate directions could have issued in that behalf. It is trite that save and except cogent reasons, the High Court, in public interest litigation, would not interfere with the due process of law. If an abuse of process of Court was undertaken by a party, some finding of fact was required to be arrived at and even Public interest litigation is also entertainable when the same are filed by public-spirited and policy oriented activist persons of any organization. The writ petition though has been filed by a political party, but no doubt the petitioner itself is a political organization. A political party, which is a political organization, registered with the Election Commission, by reason of the mandatory requirements of being so registered is required to be an association of public spirited and policy oriented activist persons. **(J. & K. National Panthers Party v. Union of India; AIR 2010 J & K 47)**

Art. 226 – Refusal to grant permission to appear in BCA Exam. – Validity of.

Student who had completed four semester successfully transferred to other institute of same university – University disallowed him to appear in exam on ground that he has not been able to deposit examination fee in time – Student has already approached university & made efforts to deposit examination fee alongwith late fee – It was refused by university on one ground or another – It was not case of short attendance. Hence, disallowing him to appear in examination held improper. **(Ram Nagina Mishra v. Vice Chancellor CCS University, Meerut & Ors.; 2009(5) ALJ (DOC) 186 (All HC)**

Art. 226 – CPC – O. 39, R.1 and 2 and O.XLIII, R. 1 – (Maintainability of) Writ petition against order for temporary injunction would not be maintainable.

Once a suit is filed, Order XXXIX, Rules 1 and 2 of the CPC comes into play. The impugned order is an order of injunction granted under Order XXXIX, Rules 1 and 2 of the CPC, against which, an appeal lies under Order XLIII, Rule 1® of the CPC. **(T. Chand Bidi Company and Others v. Sh. Ameer Hasan; 2009(1) AWC 325)**

Article 226 – Alternate remedy – Not an absolute bar.

Availability of an alternative remedy by itself may not be a ground for the High Court to refuse to exercise its jurisdiction. It may exercise its writ jurisdiction despite the fact that an alternative remedy is available, inter alia, in a case where the same would not be an efficacious one. Furthermore, when an order has been passed by an authority without jurisdiction or in violation of the principles of natural justice, the superior Courts shall not refuse to exercise their jurisdiction although there exists an alternative remedy. **(Committee of Management v. Vice-Chancellor; 2009 AIR SCW 398 (b) All HC)**

Art. 226 - Scope of

The Writ Court exercising jurisdiction under Article 226 of the Constitution is fully empowered to interdict the State or its instrumentalities from embarking upon a course of action to detriment of the rights of the citizens, though, in the exercise of jurisdiction in the domain of public law such a restraint order may not be issued against a private individual. This, of course, is not due to any inherent lack of jurisdiction but on the basis that the public law remedy should not be readily extended to settlement of private disputes between individuals. Even where such an order is sought against a public body the Writ Court may refuse to interfere, if in the process of determination disputed questions of fact or title would require to be adjudicated. There is no universal rule or principle of law which debars the Writ Court from entertaining adjudications involving disputed questions of fact. In fact, in the realm of legal theory, no question or issue would be beyond the adjudicatory jurisdiction under Article 226, even if such adjudication would require taking of oral evidence. However, as a matter of prudence, the High Court under Article 226 of the Constitution, normally would not entertain a dispute which would require it to adjudicate contested questions and conflicting claims of the parties to determine the correct facts for due application of the law. **(M/s. Real Estate Agencies vs. Govt. of Goa & Ors.; 2012(6) Supreme 598)**

Arts. 226 and 227 – Code of Civil Procedure 1908, Order 41 Rule 33 disqualification petitions – Delay in disqualification proceedings

Interim Order passed by High Court under Order 41 Rule 33 CPC while disposing of Letters Patent Appeals preventing five named MLAs, from effectively discharging their functions as Members of the Vidhan Sabha - Whether such jurisdiction could at all have been invoked by High Court when no final order had been passed by Speaker on the disqualification petitions - Since the decision of Speaker on a petition under paragraph 4 of Tenth Schedule concerns only a question of merger on which the Speaker is not entitled to adjudicate, High Court could not have assumed jurisdiction under its powers of review before a decisions was taken by the Speaker under paragraph 6 of Tenth Schedule to the Constitution- Restraining the Speaker from taking any decision under paragraph 6 of Tenth Schedule was, beyond the jurisdiction of High Court- Supreme Court opined that High Court had no jurisdiction to pass such an order, which was in the domain of Speaker- High Court Assumed the jurisdiction which it never had in making the interim order which had the effect of preventing the five MLAs in question from effectively functioning as Members of the Haryana Vidhan Sabha - Hence, Direction given by High Court upheld only to the extent it directed Speaker to decide petitions for disqualification of five MLAs within a period of four months - Remaining portion of the order disqualifying five MLAs from effectively functioning as Members of Haryana Vidhan Sabha set aside. **(Speaker, Haryana Vidhan Sabha v. Kuldeep Bishnoi & Ors.; 2012 (7) Supreme 179)**

Art. 226 – Relief granted to the parties who moved the court immediately after the cause arose cannot be taken advantage of by those who waited and came to court belatedly

The relief obtained by some persons, by approaching the Court immediately after the cause of action has arisen, cannot be the basis for other persons who have belatedly filed their petition, to take the benefit of earlier relief provided, for the reason that, such persons cannot be permitted to take impetus of an order passed by the court, at the behest of another more diligent person. **(V. Chandrasekaran & Anr. Vs. Administrative Officer & Ors.; 2012(6) Supreme 612)**

Art. 226—Principles of natural justice—Applicability

The question of application of principles of natural justice, suffice is to mention that once it is admitted that the very election of petitioner was not in accordance with Statute and facts in this regard are virtually admitted and only one conclusion is possible, under Article 226 this Court is not obliged to interfere with an order which has resulted in substantive justice merely on the ground of some defect in the matter of procedure i.e. denial of opportunity of hearing since observance of principles of natural justice is not an empty formality. Where only one conclusion is possible, this Court can decline to interfere in exercise of power under Article 226 of the Constitution. **(Smt. Bhajno Devi vs. State of U.P.; 2012 (5) ALJ 583)**

Art. 226 - Scope and ambit - Explanation of

This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any

unlimited prerogative to correct all species of hardship or wrong decisions made within the limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes. **(Sita Ram Bijpuriya vs. State of UP; 2012(3) ARC 746 (All HC)**

Art. 226 and 32 – Judicial review of administrative action – Scope and parameters

The power of judicial review is neither unqualified nor unlimited. It has its own limitations. The scope and extent of the power that is so very often invoked has been the subject-matter of several judicial pronouncements within and outside the country. When one talks of 'judicial review' one is instantly reminded of the classic and oft quoted passage from Council of Civil Service Unions (C.C.S.U.) v. Minister for the Civil Service, (1984) 3 All ER 935, where Lord Diplock summed up the Permissible grounds of judicial review thus:

"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the ground on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety".

By 'illegality' as a ground for judicial review I mean that the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it. Whether he has or not is par excellence a justiciable question to be decided, in the event of dispute, by those persons, the Judges, by whom the judicial power of the State of exercisable.

By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness'. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it. Whether a decision falls within this category is a question that Judges by their training and experience should be well equipped to answer or else there would be something badly wrong with our judicial system.

The above principles have been accepted even by this Court In a long line of decisions handed down from time to time. We may, however, refer only to some of those decisions where the development of law on the subject has been extensively examined and the principles applicable clearly enunciated. In Tata Cellular v. Union of India, (1994) 6 SCC 651, this Court identified the grounds of judicial review of administrative action in the following words:

"The duty of the Court is to confine itself to the question of legality. Its concern should be:

(1) Whether a decision-making authority exceeded its powers?

(2) Committed an error of law.

(3) Committed a breach of the rules of natural justice.

(4) Reached a decision which no reasonable Tribunal would have reached or.

(5) Abused its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety."

(Heinz India (P) Ltd. and another vs. State of U.P. and others; 2012 (4) AWC 3662 (SC)

Art. 226 - Advocates Act, S.34 Writ Petition – Maintainability - Election for Bar Association – Whether writ containing the methodic of election disputes of Bar Association is maintainable – Held - "No"

The Court had gone to the issue of maintainability of the writ petition against the High Court Bar Association when a special circumstance compelled the Court to look into the matter in a writ petition. We find that everywhere the role of the Advocates was taken into consideration by the Division Bench as if the Bar Association is the only controlling body of the Advocates like Bar Council. In other words, the measures of the Bar Council in to have been discussed taking the name of the Bar Association giving complete go-by to the Advocates Act, 1961. Therefore, when the subject matter of dispute in Shiv Kumar Akela (supra) was between a petitioner and the Registrar, Societies, Firms and Chits and others and when the question of maintainability of the writ petition against the Bar Association arose incidentally and when on concession on a special circumstance the order was passed but not on contest, we are of the view that the ratio of the judgment is treated to be obiter dicta but not ratio decidendi to hold the High Court Bar Association as a statutory body to attract the writ jurisdiction of this Court under Article 226 of the Constitution. **(Udit Chandra vs. State of U.P.; 2012 (5) ALJ 191)**

Art. 226 – Grant of anticipatory bail – Consideration of

Instantcase was not a fit case for invoking doctrine of prospective overruling as that would result in conferring legitimacy to the influence of money power over the rule of law, which is the edifice of our Constitution. Unscrupulous elements in the society use money and other extraneous factors for influencing the decision making process by Executive. In this case also Estate Agent, with whom appellant had entered into an agreement had played crucial role in acquisition of land. Estate Agent

charged huge money from appellant for getting notifications issued under Sections 4(1) and 6(1) of the 1894 Act and sanction of layout plan by the BDA. Not too difficult for any person of reasonable prudence to presume that appellant had parted with crores of rupees knowing fully well that a substantial portion thereof would be used by Estate Agent for manipulating the State Apparatus. Hence held that there was no justification to invoke the doctrine of prospective overruling and legitimize what had been found by High Court to be ex-facie illegal. **(Bangalore City Cooperative Housing Society Ltd. v. State of Karnataka & ors.; 2012 (3) Supreme 209)**

Art. 226 – Quashing of criminal proceedings – Power has to be exercised very sparingly and with circumspection and that too in the rarest of rare case

The power of quashing criminal proceedings has to be exercised very sparingly and with circumspection and that too in the rarest of rare cases and the Court cannot be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of allegations made in the FIR/Complaint, unless the allegations are so patently absurd and inherently improbable so that no prudent person can ever reach such a conclusion. The extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice. However, the Court, under its inherent powers, can neither intervene at an uncalled for stage nor it can „soft-pedal the course of justice" at a crucial stage of investigation/proceedings. The provisions of Articles 226, 227 of the Constitution of India and Section 482 of the Code of Criminal Procedure, 1973 (hereinafter called as Cr.P.C.) are a device to advance justice and not to frustrate it. The power of judicial review is discretionary, however, it must be exercised to prevent the miscarriage of justice and for correcting some grave errors and to ensure that esteem of administration of justice remains clean and pure. **(State of Maharashtra & ors. V. Arun Gulab Gawali & Ors.; 2011 Cri.L.J. 89 (SC)**

Art. 226 – Public Interest Litigation – Tenability of

The parameters within which Public Interest Litigation can be entertained by the Court and the High Court, have been laid down and reiterated by the Court in a series of cases. By now it ought to be plain and obvious that the Court does not approve of an approach that would encourage petitions filed for achieving oblique motives on the basis of wild and reckless allegations made by individuals, i.e. busybodies; having little or no interest in the proceedings. The credentials, the motive and the objective of the petitioner have to be apparently and patently aboveboard. Otherwise the petition is liable to be dismissed at the threshold. **(P. Seshadri v. S. Mangati Gopal Reddy; AIR 2011 SC 1883)**

Art. 226 – Extra ordinary jurisdiction – Limit

In this case, there was no petition before the High Court on which the impugned order was passed. The High Court took suo motu action on the basis of some information which has not been disclosed in the impugned order.

To say the least, this was a strange procedure adopted by the High Court. In opinion

of the court, such suo motu orders, without even a petition on which they are passed, are ordinarily not justified nor sustainable. Ordinarily, there must be a petition on which the Court can pass an order. In opinion of the Court, the High Court was not justified in taking suo motu action in this case. Judges must exercise restraint in such matters. **(Bharat Ratna Indra Gandhi College of Engineering & Ors. V. State of Maharashtra & Ors.; AIR 2011 SC 1912)**

Art. 226 – Writ jurisdiction – Power of High Court to order for investigation by CBI can be directed in rare and exceptional case

The following propositions emerge from the judgments relied upon by both the sides.

(5) The High Court in an appropriate case can direct investigation by the CBI but the same must be done in a rare and an exceptional case.

(6) The victim of a crime is entitled to a fair investigation.

(7) When accusations are made against the local police personnel it would be desirable in the larger public interest to entrust the investigation to CBI to assure credibility to the investigation.

(8) Ordinarily the High Court would not interfere with the domain of investigation of crime by police in discharge of statutory duties;

(9) The High Court in exercise of powers under Article 226 cannot direct the investigating agency to carry out investigation in a particular manner and it can interfere with the functioning of investigating agency in an exceptional case. **(Smt. Vimal Ashok Thakre & Anr. V. Incharge, Police Station Officer, Nagpur & Ors.; 2011 Cri.L.J. 139 (Bom HC)**

Art. 226 – Direction for investigation – Is not amenable to revisional jurisdiction of High Court but a writ petition for quashing FIR registered on basis of order would be maintainable

It is only at the stage that an FIR has been lodged, and in the rarest cases where the FIR does not prima facie disclose the commission of a cognizable offence, or where there is legal bar to proceeding with the complaint/FIR or if it is a case of no evidence or the evidence is wholly inadequate for proving the charge, or it is demonstrated that the FIR has been lodged in a mala fide manner, only in those circumstances, with the exercise of extreme circumspection can a writ petition be filed challenging the lodging of the FIR and that too strictly in accordance with the parameters and subject to the restrictions mentioned in State of Haryana v. Bhajan Lal; AIR 1992 SC 604 and the Full Bench decision of the Court in Ajit Singh alias Muraha v. State of U.P.; 2006(56) ACC 433: 2006 (6) All LJ 110, and a catena of decisions of the Apex Court and the Court on the issue. In view of what has been stated the view taken in Ajay Malviya‟s case cannot be held to be laying down the correct law and needs to be clarified as above.

The order of the Magistrate made in exercise of powers under Section 156(3) Cr.P.C. directing the police to register and investigate is not open to revision at the instance of a person against whom neither cognizance has been taken nor any process issued. **(Father Thomas v. State of U.P. & Anr.; 2011(2) ALJ 217 (All HC, FB)**

Article 226 – Invoking of writ jurisdiction – Petitioner not coming with clean hands – Petition liable to be dismissed with heavy and deterrent costs.

Moreover, the petitioner has also not filed the copy of the application 5-Ga before this Court as such he has not come with clean hands before this Court while assailing the orders of the Court below.

In the facts and circumstances of the case, the writ petition is liable to be dismissed with heavy and deterrent cost.

The Apex Court in Salem Advocate Bar Association, Tamil Nadu v. Union of India; AIR 2005 SC 3353; has held that –

"far as awarding of costs at the time of judgment is concerned, awarding of costs must be treated generally as mandatory inasmuch as the liberal attitude of the Courts in directing the parties to bear their own costs had led the parties to file a number of frivolous cases in the Courts or to raise frivolous and unnecessary issues. Costs should invariably follow the event. Where a party succeeds ultimately on one issue or point but loses on number of other issues or points which were unnecessarily raised. Costs must be appropriately apportioned. Special reasons must be assigned if costs are not being awarded. Costs should be assessed according to rule in force. If any of the parties has unreasonably protracted the proceeding, the Judge should consider exercising discretion to impose exemplary costs after taking into account the expense incurred for the purpose of attendance on the adjourned dates." **(Manni Lal Gupta v. Haji Inayat Hussain through its Mutwalli Mohd. Makki and Another; 2007 (102) RD 775)**

Article 226 – U.P. Panchayats Raj Act – S. 12-C(6) – Election petititon

– Order of recount – Whether revisable – Held, „No".

We answer the questions referred to by the learned Single Judge as fillows:-

(1) A revision under section 12-C(6) of the Act shall lie only against a final order passed by the Prescribed Authority deciding the election application preferred under section 12-C(1) and not against any interlocutory order or order of recount of votes by the Prescribed Authority.

(2) The judgment of the learned Single Judge in the case of Abrar v. State of U.P. and Others; 2004(5) AWC 4088, does not lay down the law correctly and is, therefore, overruled to the extent of the question of maintainability of a revision petition, as indicated hereinabove.

(3) As a natural corollary to the above, we also hold that a writ petition would be maintainable against an order of recount passed by the Prescribed Authority while proceeding in an election application under section 12-C of the U.P. Panchayat Raj Act, 1947. **(Mohd. Mustafa v. Up-Ziladhikari, Phoolpur, Azamgarh and Others; 2007 (103) RD 282)**

Article 226 – Compassionate Appointment – Similarly, situated person can‟t be given appointment U/Article 14 of Constitution of

India in order to perpetuate mistake on the ground of this discrimination or hardship.

In an identical matter, appointment had been given to „x‟ even though his mother was employed in another institution, while petitioner is being discriminated. In this case court observed that Article 14 is not available to perpetuate illegality and the High Court cannot issue directions that a mistake be perpetuated on the ground of discrimination or hardship. **(Anshuman Singh Bhadoria v. Director of Education (Higher Education) U.P., Allahabad; 2006 (3) AWC 2457)**

Article 226 – Writ against private body like (IFFCO) – Maintainability of.

It must be remembered that any business or commercial activity, may be manufacturing units or related to any other kind of business generating resources, employment, production and resulting in circulation of money are such which do have an impact on the economy of the country in general but such activity cannot be classified as one falling in the category of discharging duties or functions of public nature. Therefore, no difficulty in concluding that manufacturing and selling of urea will also not involve any public function. In view of this, the inevitable conclusion that follows is that IFFCO is not amenable to the writ jurisdiction of the High Court under Article 226 of the Constitution. **(Jyoti Kumar Malviya v. Indian Farmers Fertilizers Co-operative Limited & Ors.; 2006 (4) ALJ 71 (DB)).**

Article – 226 – Aligarh Muslim University Act, S. 5 – Admission to P.G. Medical Courses – Whether reservation claim for 50% Muslim quota in Aligarh Muslim University under Section 5 of (Act No. 40 of 1920) is Constitutional - "No", it is unconstitutional and impermissible.

The claim of 50% Mohammdan quota for the post graduate medical courses by the University is declared as unconstitutional and impermissible and they shall make no claim of minority quota in like or other manner in future. In this regard, the Union‟s communication dated 25.2.2005 vetting the purported minority status of the Aligarh Muslim University by permitting their c .laim of Muslim reservation is quashed and set aside. The admission of Muslim students made on the invalidly claimed quotas of 50% is maintained on account of pure practicality. (The Aligarh Muslim University, Aligarh v. Malay Shukla & Ors., 2006 (2) ALJ 528.)

Art. 226 – PIL against allotment of Land to educational institution for inadequate consideration without following prescribed procedure – Maintainability of – Held

"Maintainable".

As stated in the writ petition, the petitioner is a resident of State of Punjab and is also an Income Tax Payee. It has neither been shown nor proved by the appellants that he is a (i) meddlesome interloper (ii) that he is acting under mala fide intention or (iii) that he has been set up by someone for setting his personal scores with Chandigarh Administration or the allottee. Dealing with the question of locus standi of the writ petitioner, we would like to refer to certain decisions of this Court to hold that the writ petition filed by the first respondent is a public interest litigation to protect public interest.

It is clear to us that the respondent No. 1 –the writ petitioner has filed a bona fide writ petition and he has the necessary locus. There is an apparent favour shown by the Union Territory of Chandigarh in favour of the appellant. Institute which is a profit making company and it has not shown to this Court that the allotment of land in its favour is in accordance with law. Hence, we are of the view that there is a strong reason to hold that the writ petition is maintainable in public interest. We completely agree with the views taken by the High Court, wherein it has rightly held that the writ petition is a Public Interest Litigation and not a Private Interest Litigation. The writ petition in question is the first petition filed by the first respondent and his first endeavor to knock the doors of the constitutional Court to protect the public interest by issuing a writ of certiorary. Institute of Law and others v. Neeraj Sharma and others, 2015(1) ESC 1(SC).

Arts. 226 and 227 – Exercise of power under – Dismissal from service – challenged before the High Court – High Court cannot venture into re-appreciation of evidence – What the High Court can be do and what it cannot do elaborated

Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence. The High Court can only see whether:

the enquiry is held by a competent authority;

the enquiry is held according to the procedure prescribed in that behalf;

/ there is violation of the principles of natural justice in conducting the proceedings;

/ the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

/ the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

/ the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

/ the disciplinary authority had erroneously failed to admit the admissible and material

evidence;

/ the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

/ the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

re-appreciate the evidence;

interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

go into the adequacy of the evidence;

go into the reliability of the evidence;

interfere, if there be some legal evidence on which findings can be based.

Correct the error of fact however grave it may appear to be go into the proportionality of punishment unless it shocks its correct the conscience. **(Union of India v. P. Gunasekaran, 2015 (144) FLR 219 (SC))**

Art. 226 – Writ jurisdiction – Suppression of material facts necessary for deciding lis in court – Amount to abuse of process of court, writ court entitled to refuse to entertain petition.

If a petitioner suppresses material facts or does not reveal all the facts before the Court that are necessary for deciding the lis, it would amount to an abuse of the process of the Court. It is the obligation of the litigant to honestly disclose the true and correct facts to the Court and failure to come clean would amount to suppression and concealment of material facts.

Thus, it is clear that when a party approaches the High Court and seeks to invoke its jurisdiction under Article 226 of the Constitution of India, it must place on record all the relevant facts without any reservation. In exercising its discretionary powers and extraordinary jurisdiction under Article 226 of the Constitution of India, the High Court not only acts as a Court of law, but also as a Court of equity. Therefore, in case there is a deliberate concealment or suppression of material facts on behalf of the petitioner or it transpires that the facts have been so twisted and placed before the Court, so as to amount to concealment, the writ Court is entitled to refuse to entertain the petition and dismiss it without entering into the merits of the matter. **[Baljit Singh Dahiya v. B.S.E.S. Rajdhani Power Ltd. and another, 2015(1) ESC 157(Del)].**

Art. 226- Writ of Mandamus- Sought for framing of Rules–Writ jurisdiction cannot be exercised for undertaking legislative or quasi legislative activity.

Relief which has been sought is in the nature of a mandamus for framing rules under Section 15 of the Adhiniyam, 1963. The power to frame rules is of a legislative nature and following the well settled principle of law, the writ jurisdiction under Article 226 of the

Constitution cannot extend to a mandamus for undertaking a legislative or quasi legislative activity including in the nature of subordinate legislation. **Rudal Singh v. State of U.P. & others 2015 (3) ALJ 401**

Art. 226 – Writ Petition Challenging age of retirement of members of District forum is not maintainable U/ A. 226

The Petitioner was appointed as a member of the Consumer Disputes Redressal Forum. His term came to an end after he attained age of 60 Years. Petitioner filed writ petition seeking mandamus for determining the maximum age for a member of the District Forum to hold office until the age of 70 Years. Petitioner pleaded that as qualifications for all members of the District Forum, the State Commission and the National Commission are same the retirement age should be same too i.e. 70 years. Age of retirement is a matter of legislative policy and High Court cannot interfere with same. Consumer Protection Act contemplates that District Forum is to be presided over by a District Judge or a person so qualified whereas State Commission required the President to be a person who is or has been a Judge of the High Court and Judge of Supreme Court of President of National Commission. President of State Commission and National Commission is appointed in consultation with Chief Justice of High Court and Supreme Court respectively. Nature of duties and pecuniary jurisdiction of District Forum, State Commission and National Commission vary from each other. Parliament in its legislative policy is entitled to make a distinction between the age of superannuation and terms of office for members of Tribunal within a hierarchy of Tribunals. These being matters in the realm of policy for the legislative body, High Court cannot interfere with same. **Ganesh Prasad v. Union of India and Ors. 2015 (3) ALJ 587**

Art. 226- The availability of alternative remedy does not affect extra ordinary jurisdiction of High Court under Article 226. However, it is settled law that when an alternative remedy open to a litigant, he should not invoke writ jurisdiction of the High Court.

The respondent was awarded a road improvement contract. An agreement pertaining thereto was executed between the appellant and the respondent. As per the agreement, the work was to be completed within 12 months. As the respondent could not finish the work within stipulated period of 12 months, the time was extended by another 6 months. Later, it was extended by another 9 months. Even then the respondent failed to complete the work. Therefore, a memorandum to stop work was issued to him. At that point of time, some revised estimation was to be made but the appellant was not sanctioning the same, the respondent approached the High Court disposed of the petition by directing the appellant to make revised estimation. But as steps were not taken by the officials, contempt petition was filed and later it was dropped. Later, the respondent submitted a representation to the appellant. Then he filed several writ petition against the appellant. The High Court directed the Principal Secretary, PWD to consider his representation and pass orders as per law. Thereafter, the contract in favour of the respondent was terminated. This action was challenged by the respondent before the High Court. Considering the submissions of the parties, the High Court accepted only one prayer and directed the appellant to measure the work already completed by the respondent before finalizing the next tender. However, it rejected other prayers of the respondent. This order was challenged by the respondent in intra-court appeal. The Division Bench first appointed a Commission to examine the work

site and submit a report. It empowered the Commission to seek assistance from any official and also that it could call for any recour4ds from the appellant and as well as from the respondent. Based on the Report submitted by the Commission, the Division Bench concluded that the order passed by the authority was based on erroneous facts. The Division bench set aside the order of termination of contract and also ordered to pay expenses incurred for work conducted by the Commission. Hence this appeal.

Allowing the appeal, the Supreme Court.

Held-

It is to be reiterated that writ petition under Article 226 is not the proper proceedings for adjudication of such disputes relating to contractual disputes. It is settled law that when an alternative and equally efficacious remedy is open to the litigant, he should be required to pursue that remedy and not invoke the writ jurisdiction of the High Court. Equally, the existence of alternative remedy does not affect the jurisdiction of the court is issue writ, but ordinarily that would be a good ground in refusing to exercise the discretion under Article 226. **[State of Kerala v. M.K. Jose, (2015) 9 SCC 433]**

Article 226

Board of Control for Cricket in India (BCCI) even though is not State under Article 12 of the Constitution still it is amenable to writ jurisdiction as it performs public functions for the reason that BCCI has got pervasive control on game of cricket.

High Powered Probe Committee headed by Justice R.M. Lodha former Chief Justice of India was formed to investigate frauds in Indian Premier League (IPL) games including betting and conflict of interest. Regulation 6.2.4 of BCCI Regulations permitting its administrators to have commercial interest in the event (I.P.L. Matches) conducted by BCCI was struck down as it gave rise to conflict of interest. **[Board of Control for Cricket in India v. Cricket Association of Bihar AIR 2015 SC 3194]**

Articles 226 & 227

Against orders passed by Civil Court writ petition under Article 226 of the Constitution is not maintainable. Only in rare cases jurisdiction under article 227 can be exercised by the High Court and Surya Dev Rai v. Ram Chander Rai AIR 2003 SC 3044 overruled. **[Radhey Shyam v. Chhabi Nath AIR 2015 SC 3269 and Jogendrasinhji Vijaysinghji v. State of Gujarat AIR 2015 SC 3623]**

Article 226- Whether a writ petition under Article 226 of constitution of India can be filed by a power of attorney holder – Held, —Yes

When a writ petition under Article 226 of the Constitution is instituted through a power of attorney holder, the holder of the power of attorney does not espouse a right or

claim personal to him but acts as an agent of the donor of the instrument. The petition which is instituted, is always instituted in the name of the principal who is the donor of the power of attorney and through whom the donee acts as his agent. In other words, the petition which is instituted under Article 226 of the Constitution is not by the power of attorney holder independently for himself but as an agent acting for and on behalf of the principal in whose name the writ proceedings are instituted before the Court.

Having held so, court must, at the same time, emphasize the necessity of observing adequate safeguards where a writ petition is filed through the holder of a power of attorney. These safeguards should necessarily include the following:

(1) The power of attorney by which the donor authorises the donee, must be brought on the record and must be filed together with the petition/application;

(iv) The affidavit which is executed by the holder of a power of attorney must contain a statement that the donor is alive and specify the reasons for the inability of the donor to remain present before the Court to swear the affidavit; and

(v) The donee must be confined to those acts which he is authorised by the power of attorney to discharge.

For these reasons, court hold and have come to the conclusion that the question referred for adjudication before the Full Bench must be answered in the affirmative and is accordingly answered, subject to due observance of the safeguards which we have indicated above. **(Syed Wasif Husain Rizvi v. Hasan Raza Khan & 6 Ors, 2016 (34) LCD 373)**

Art. 226- Writ of Mandamus- Relief of

In the absence of Statutory provision casting a duty upon the respondents authorities to consider and decide the applications made by the petitioners, no mandamus, as claimed, is liable to be issued. The law in this regard is well settled that no mandamus can be issued commanding the authority unless a Statutory duty has been case upon him by provisions of some Statutes and the authority has failed to discharge such a duty. **(Hari Prasad and another v. State of U.P. through Principal Secretary, Homes. Govt. of U.P. Lukcnow and others, 2016 (130) RD 154)**

Art. 226- Writ petition pending for approximately 13 to 14 years cannot be dismissed on ground of alternative remedy

Though the Apex court has directed that the writ petition be decided on merit and the order of dismissal on the ground of alternative remedy was set aside, however,the learned counsel for the respondent vehemently challenged the maintainability of the writ petition on the ground that the statutory remedy of revision against the impugned order has not been availed by the petitioner. This argument of the learned counsel for the respondent is not acceptable in view of the direction of the Apex Court to decide the writ petition on merit, in the peculiar facts and circumstances of the case. Moreover the settled legal position is that in case a writ petition is entertained and an interim order has been passed or the writ petition

is pending for a long time, it should not be dismissed on the ground of alternative remedy. The present writ petition can not be dismissed on the ground of alternative remedy after approximately 13 to 14 years of the pendency. Kailash Chandra Saxena V. Rent Control and Eviction Officer, Shahjahanpur and others, 2016 (5) ALJ 98

Art. 226- Power of Attorney Act- Writ petition U/A 226 of constitution of India can be filed by a power of attorney holder

When a writ petition under Article 226 of the Constitution is instituted through a power of attorney holder, the holder of the power of attorney does not espouse a right or claim personal to him but acts as an agent of the donor of the instrument. The petition which is instituted, is always instituted in the name of the principal who is the donor of the power of attorney and through whom the donee acts as his agent. In other words, the petition which is instituted under Article 226 of the Constitution is not by the power of attorney holder independently for himself but as an agent acting for and on behalf of the principal in whose name the writ proceedings are instituted before the Court.

Having held so, we must, at the same time, emphasize the necessity of observing adequate safeguards where a writ petition is filed through the holder of a power of attorney. These safeguards should necessarily include the following:

11. The power of attorney by which the donor authorises the donee, must be brought on the record and must be filed together with the petition/application;

12. The affidavit which is executed by the holder of a power of attorney must contain a statement that the donor is alive and specify the reasons for the inability of the donor to remain present before the Court to swear the affidavit; and

13. The donee must be confined to those acts which he is authorised by the power of attorney to discharge.

For these reasons, we hold and have come to the conclusion that the question referred for adjudication before the Full Bench must be answered in the affirmative and is accordingly answered, subject to due observance of the safeguards which we have indicated above. **(Syed Wasif Husain Rizvi v. Hasan Raza Khan & 6 Ors. 2016 (1) ARC 872)**

Art. 226- Scope of –Quashing of original proceedings before the statutory Court- Held, Not permissible unless barred under any Law or suffers from lack of jurisdiction

Constitution Bench of Supreme Court in State of M.P. v. Bhai Lal Bhai, AIR 1964 SC 1006 has held that in exercise of writ jurisdiction, the original proceeding before the statutory court should not be quashed, unless it is barred under any law or suffers from lack of jurisdiction. The present proceedings do not come in those categories. **(Parmeet Singh and another v. Collector/District Magistrate, Barabanki and others, 2016 (34) LCD 1031))**

Article 226—Bank guarantee—Prayer made that interest of appellants be protected by issuing a direction to respondents that they should furnish Bank Guarantee for claiming the difference between old and new rates—This point was not canvassed before the High Court.

In this case, the limited request made by Mr.N. K. Kaul, learned Additional Solicitor General, is that the interest of the appellants may be protected by issuing a direction to the respondents that they should furnish Bank Guarantee for claiming the diference between old and new rates. This is a point, apparently not canvassed before the High Court and it is for the appellants to apprise this point to the High Court.

Therefore, with liberty to the appellants to approach the High Court in that regard, this appeal is disposed of. **Food Corporation of India V. Rice Millers Association, District Gondia, 2016 (7) SCALE 568**

Art. 226 - Writ of Mandamus

A Writ of Mandamus cannot be issued to the executive to frame rules or regulations which are in the nature of subordinate legislation. (See: State of Jammu & Kashmir v. A.R. Zakki & Ors. 1992 Supp. (1) SCC 548 at paragraphs 10 and 15, and State of Uttar Pradesh and Ors. v. Mahindra and Mahindra Limited (2011) 13 SCC 77 at 81). This is for the reason that a court would then trespass into forbidden territory, as our Constitution recognizes a broad division of powers between legislative and judicial activity.

However, though the power to grant exemption under a statutory provision may amount to subordinate legislation in a given case, but being in the domain of exercise of discretionary power, is subject to the same tests in administrative law, as is executive or administrative action, as to its validity one of these tests being the well-known Wednesbury principle, (1985) 1 SCC 641 under which a court may strike down an abuse of such discretionary power on grounds that irrelevant circumstances have been taken into account or relevant circumstances have not been taken into account (for example). **Manuelsons Hotels Private Limited V. State of Kerala and others, (2016) 6 SCC 766**

Art. 226 - Writ Jurisdiction - Cannot be invoked to create right - It is invoked to enforce pre-existing right

The primary purpose of the writ is to protect and establish rights, and to impose a corresponding imperative duty existing in law. It is designed to promote justice (ex debito justiceiae) and its grant or refusal is at the discretion of the court. The writ cannot be granted unless it is established that there is an existing legal right of the applicant, or an existing duty of the respondent. Thus, the writ does not lie to crate or establish a legal right but, to enforce one that stood already established. While dealing with a writ petition, the court must exercise discretion, taking into consideration a wide variety of circumstances, inter-alia, the facts of the case, the exigency that warrants such exercise of discretion, the consequences of grant or refusal of the writ, and the nature and extent of injury that is likely to ensue by such grant or refusal.

Hence, discretion must be exercised by the court on grounds of public policy, public interest and public good. The writ is equitable in nature and thus, its issuance is governed by equitable principles. Refusal of relief must be for reasons which would lead to injustice. The prime consideration for issuance of the writ is, whether or not substantial justice will be promoted. Furthermore, while granting such a writ, the court must make every effort to ensure from the averments of the writ petition, whether proper pleadings are being made. Further in order to maintain the writ of mandamus, the first and foremost requirement is that, the petition must not be frivolous and it is filed in good faith. Additionally, the applicant must make a demand which is clear, plain and unambiguous. It must be made to an office having the requisite authority to perform the act demanded. Furthermore, the authority against whom mandamus is issued, should have rejected the demand earlier. Therefore, a demand and its subsequent refusal, either by words, or by conduct are necessary to satisfy the court that the opposite party is determined to ignore the demand of the applicant with respect to the enforcement of his legal right. However, a demand may not be necessary when the same is manifest from the facts of the case, that is, when it is an empty formality, or when it is obvious that the opposite party would not consider the demand. **(The Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society Jaipur & Ors.; 2013 (2) Supreme 345)**

Art. 226 - Penal interest-Adjustment with post retiral dues – Permissibility -Post retiral dues and gratuity could not be retained for recovery of penal rent/interest

The brief facts of the case that respondent no. 2, who was a Railway employee, retired on 31.10.1994, while he was posted at Mirzapur. He was provided Railway accommodation no. 83-B, Type-II, Railway Colony, Mirzapur. It appears that after the retirement, he had been allowed to retain the house upto 29.2.1995. No further permission was granted to retain the said house after 1st March, 1995. Admittedly, the respondent no. 2 had vacated the premises on 15.2.2000. The respondent was required to pay the penal rent for the period 1.3.1995 to 15.2.2000 for which it appears that notices had been given to which the respondent no. 2 filed and finally by the order dated 8.1.2000, penal rent at Rs. 1,08,759.07 has been calculated. Further, on consideration of the reply of the respondent no. 2, by the order dated 24.4.2002, after the adjustment of gratuity amount of Rs. 36,855/-, the respondent no. 2 has been asked to pay balance amount of Rs. 71,904/-.

The main contention of respondent no. 2 before the Tribunal was that the accommodation has been upto 2000 because of non-payment of post retiral dues and further that the penal rent cannot be adjusted with the gratuity amount. The Tribunal by the impugned order has directed the payment of rent/damages @ Rs. 200/- per month with effect from 1.11.1994 till the date on which the premises has been vacated and directed the respondent no. 2 to pay the amount within eight weeks. The Tribunal further held that amount of rent cannot be adjusted with the gratuity amount and accordingly directed to pay the amount of gratuity or any other post retiral dues within a period of two months from the date of aforesaid deposit of rent/damages.

Court is of the view that the delay in settlement of post retiral dues and its payment and the retention of accommodation without permission unauthorizedly are two separate issues. Merely because the post retiral dues has not been settled within time and had been

settled belatedly, it would be open to the retired employee to claim interest for such delay, but this reasons will not absolve the respondent no. 2 from the liability of penal rent, which is payable in accordance to rules for the illegal retention of accommodation. The record reveals that the calculation of penal interest has been made after giving opportunity and exchange of correspondence, which has not been disputed by the respondent no. 2 at any stage. Therefore, court is of the view that respondent no. 2 is liable to pay penal interest at Rs. 1,08,759.07 and the Tribunal has erred in directing payment of rent/damages @ Rs. 200/- per month. The order of the Tribunal to this extent is liable to be set aside.

In view of the aforesaid discussions, court has considered view that the amount of post retiral dues, including gratuity could not be retained for the recovery of penal rent and could not be adjusted with the penal rent. The order of the Tribunal to this extent is liable to be sustained. **[Union of India Through General Manager, N.C.R., Allahabad and v. Central Administrative Tribunal, Allahabad and another, (2014 (142) FLR 254 (Allahabad High Court)]**

Art. 226 - Retiral benefits – Gratuity – Withholding of retiral benefits - Legality of - Withholding of retiral benefits of retired employees for years together not only illegal but arbitrary

After receiving instructions, learned Counsel appearing for respondents fairly stated that at the time of retirement, no departmental enquiry was pending against petitioner. He, however, submitted that in the year 2013, two enquiries have been initiated but could not show any provision under which if any enquiry was not pending against an employee at the time of retirement, still his gratuity would not have been paid or respondents were authorized by some other provision to withhold gratuity of petitioner for such a long time.

Withholding of retiral benefits of retired employees for years together is not only illegal and arbitrary but a sin if not an offence since no law has declared so. The officials, who are still in service and are instrumental in such delay causing harassment to the retired employee must however feel afraid of committing such a sin. It is morally and socially obnoxious. It is also against the concept of social and economic justice which is one of the founding pillar of our constitution.

In view of the above, I have no hesitation in holding that nonpayment of gratuity to petitioner is wholly arbitrary and unreasonable. There was no justification at all for respondents to delay payment thereof. In any case, 90% of gratuity being provisional payment has to be made even if an enquiry would have been pending at the time of retirement but in the present case even that is not the state of affairs. In these facts and circumstances it is evident that withholding of gratuity for more than two years on the part of the respondents is patently illegal, erroneous, unjust, improper and unwarranted. **[Mahendra Prakash Srivastava v. District Judge, Allahabad & another, 2014 (4) SLR 274 (All)]**

Art. 226 – Armed Forced Rules, R. 180 – Court of Inquiry - Judicial Review - When permissible

One has to keep oneself alive to the relevant aspects while accepting the plea of bias. It is to be kept in mind that what is relevant is actually the reasonableness of the apprehension in this regard in the mind of such a party or an impression would go that the decision is dented and affected by bias. To adjudge the attractability of plea of bias a tribunal or a court is required to adopt a deliberative and logical thinking based on the acceptable touchstone and parameters for testing such a plea and not to be guided or moved by emotions or for that matter by one's individual perception or misguided intuition. It is the duty of the authorities to ensure that there is proper notice to the person concerned and he is given opportunity to cross-examine the witnesses and, most importantly, nothing should take place behind his back. Once the authority has exercised the power to hold such an inquiry and the COI has recommended for disciplinary action, then the recommendation of the COI is subject to judicial review. **(Union of India and others v. Sanjay Jethi and another; 2014 (3) SLR 338 (SC)**

Arts. 226 – Judicial review – Writ petition whether the order passed by the High Court in exercise of the administrative power under the service rules would be amenable by way of civil writ petition to judicial review under Article 226 of the Constitution of India - Held, Yes

The Apex Court in High Court of M.P. v. Mahesh Prakash and others; AIR 1994 SC 2595 regarding maintainability of writ petition in respect of order passed by the High Court on administrative side had held that the same was maintainable. It was further noticed that in such a situation, High Court was required to be made a party and it had a right to file SLP to the Apex Court against the order in writ petition passed on judicial side. The relevant observations are as under:-

"14. The order that the first respondent challenged in the writ petition filed by him before the High Court was an order passed by the High Court on its administrative side. By reason of Article 226 of the Constitution it was permissible for the appellant to move the High Court on its judicial side to consider the validity of the order passed by the High Court on the administrative side and issue a writ in that behalf. In the writ petition the first respondent was obliged to implead the High Court for it was the order of the High Court that was under challenge. It was, therefore, permissible for the High Court to prefer a petition for special leave to appeal to this Court against the order on the writ petition passed on its judicial side. The High Court is not here to support the judicial order its Division Bench passed but to support its administrative order which its Division Bench set aside. Court find, therefore, no merit in what may be termed the preliminary objection to the maintainability of the appeal."

The Full Bench of Kerala High Court considering the similar issue in K.Prabhakaran Nair v. State of Kerala and others, AIR 1970 Kerala 27 held that where the orders are passed by the High Court on the administrative side, the writ jurisdiction under Article 226 of the Constitution of India can be invoked to question such orders. It was noticed as under:-

"5. The learned counsel for the respondent pleaded that this writ petition is not maintainable as the prayer is for issuing a writ to the High Court itself. It is well settled that the High Court acting in its judicial capacity cannot be said to be an authority subject to the jurisdiction of the High Court itself under Article 226 of the Constitution for the issue of a

writ of certiorari. In Goonesinha v. De Kretser, AIR 1945 PC 83 Lord Goddard observed:

"It is well settled, and counsel did not seek to argue to the contrary, that a Court having jurisdiction to issue a writ of certiorari will not and cannot issue it to bring up an order made by a Judge of that Court. Now will a Superior Court issue the writ directed to another Superior Court--(1883) 11 Q.B.D. 479-- and if the Election Judge is to be regarded as a special or independent tribunal his Court would, in their Lordships' opinion, be a Superior Court. Considering that the Court is held before a Judge of the Supreme Court from whose decision there is no appeal, it could not be otherwise. But their Lordships are of opinion that the true view is that cognizance of these petitions is an extension of, or addition to, the ordinary jurisdiction of the Supreme Court and consequently certiorari cannot be granted to bring up any order made in the exercise of that jurisdiction."

The above principle has application only to orders passed by courts in exercise of judicial functions. The order in question was passed by the High Court in exercise of its administrative authority in view of the control over the subordinate courts vested in it. In these circumstances court are not prepared to hold that the petition is not maintainable. Court see nothing in the wording of Article 226 of the Constitution which warrants the imposition of a limitation that the jurisdiction of the High Court under the said Article cannot be invoked for the purpose of calling in question orders passed by the Chief Justice or by the High Court itself on the administrative side. The decision in Inre. Babul Chandra, AIR 1952 Pat 309 (FB)‘ and Saina Bhai v. State, 1955 Ker LT 813 = (AIR 1957 Trav Co 176)‘ were relied on by the learned Government Pleader to support his contention that there is no such power in the High Court.

In view of the above, the order passed by learned Single Judge holding that the writ petition was not maintainable, is not sustainable. **(Manjinder Singh Bal v. Registrar, Hon‘ble Punjab and Haryana High Court at Chandigarh & Anr.; 2014 (2) SLR 583 (P&H)**

Art. 226/227 - Quashing of plaint/civil suit - Exercise of powers of High Court U/A 226/227 – It cannot be exercised to question a plaint

A petition under Article 226 or Article 227 of Constitution of India can neither be entertained to decide the landlord- tenant dispute nor it is maintainable against a private individual to determine an intense dispute including the question whether one party is harassing the other party. The High Court under Article 227 has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-Judicial tribunals, exercise the power vested in them within the bounds of their authority but it was not the case that the order passed by the Munsif Court was without any jurisdiction or was so exercised exceeding its jurisdiction. If a suit is not maintainable it was well within the jurisdiction of the High Court to decide the same in appropriate proceedings but in no case power under Articles 226 and 227 of Constitution of India can be exercised to question a plaint. **(Jacky v. Tiny alias Antony and others; AIR 2014 SC 1615)**

Art. 226 – Registration of Births and Deaths Act, S. 16 – Date of birth – Correction of –

Validity

A combined reading of the pleadings of the parties would show that correctness, genuineness or authenticity of the birth certificate (Annexure p, I), has not been doubted by the respondent-board. The facts of the case are hardly in dispute. Specifically pleaded and undisputed case of the petitioner is that, when he was intending to apply for the passport, he got issued the birth certificate (Annexure P-l), from the office of Sub-Registrar, Births and Deaths, Sonepat. From the birth certificate (Annexure P-I), it came to the notice of the petitioner that his date of birth has been wrongly recorded in the school record, which in turn, came to be recorded as such in his detailed marks card of the 12th class, issued by the respondent-board.

Once the respondent-board has the power and competence to carry out the change/correction in the date of birth, as envisaged under Rule 69.2, coupled with the material fact that the authenticity and genuineness of the birth certificate (Annexure P-l) is not doubted, the plea raised by the respondent board does not stand the test of judicial scrutiny. No other reason is forthcoming either in the impugned communication (Annexure P-I0) or in the written statement, filed by the respondent-board nor any such reason have been put into service by the learned counsel for the respondent-board, during the course of argument.

After considering the peculiar facts and circumstances of the present case, coupled with the reasons aforementioned and the enunciation of law, as discussed herein above, this court is of the considered view that, respondent board has erred in law, while refusing to entertain the request of the petitioner for correction of his date of birth. Consequently, impugned communication dated 25.1.20 12 (Annexure P-10), is hereby set aside. Respondent-board is directed to consider the application of the petitioner for correction of his date of birth, in accordance with law and the observations make therein before. **(Parveen Malik v. Central Board of Secondary Education; (2014) 1 SLR 143)**

Art. 226 – Writ jurisdiction – Leave - Child care leave – Petitioner sought sanction of Child Care Leave for the complete period of 730 days - Claim of the petitioner for sanction of Child Care Leave for a period of 730 days was not bonafide - Writ Court cannot sit in appeal over a decision taken in administrative exigency – Grant of Child care Leave is a concession and not a right - No interference in the decision of the respondent - Authorities in denying to the petitioner the sanction of Child care Leave

A perusal of the same would make it apparent that the State Govt. has taken a decision to allow Child Care Leave to women govt. employees subject to a maximum period of two years during their entire service tenure for taking care of the two eldest surviving children below the CWP No.1481 of 2011 (O & M) -5-age of 18 years. Even the grant of such Child Care Leave is not mandatory and has been left to the discretion of the appropriate authority. The Notification dated 5.2.2010 makes it clear that such Child Care Leave may be availed of in more than one spell. The memo dated 5.2.2010 (Annexure P-3) itself further clarifies that even though, the decision has been taken to allow Child Care Leave to facilitate the women govt. employees to take care of the children at the time of need but the same does not mean that Child Care Leave should disrupt the functioning of the offices/institutions/schools etc. The memo still further clarifies that Child Care Leave

cannot be demanded as a matter of right and under no circumstances can any employee proceed on Child Care Leave without prior sanction of leave by the competent authority.

In the present case the application dated 20.9.2010 submitted by the petitioner for sanction of Child Care Leave has been placed on record at Annexure P-2. In terms thereof, the petitioner has sought sanction of Child Care Leave for the complete period of 730 days in one go. No suggestive material has been referred to or appended along with the petition, wherefrom this Court could take notice of a medical condition of the child of the petitioner so as to justify the claim of sanction of Child Care Leave over a period of 730 days as on 20.9.2010 i.e the date the application was submitted. The clear inference that can be drawn from the pleadings on record is that the claim of the petitioner for sanction of Child Care Leave for a period of 730 days i.e. the maximum entitlement under the memo dated 5.2.2010 (Annexure P-3) was not bonafide. Be that as it may, the question would arise as to whether this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India would act as a Court of Appeal to sit CWP No.1481 of 2011 (O & M) -6- in judgement over a decision taken by a competent authority not to sanction Child Care Leave to an employee in citing the relevant administrative exigency i.e. the interest of the students?

The Writ Court cannot sit in appeal over a decision taken in administrative exigency. It was for the respondent-Department to consider the feasibility of granting Child Care Leave over a long period of time i.e. 730 days as claimed by the petitioner. Even otherwise, the grant of Child Care Leave is a concession and not a right. The plea of discrimination would also not be available to the petitioner. The concept of equality and protection against arbitrary action as envisaged under Article 14 of the Constitution of India is a positive concept. Such concept cannot be used as a tool in a negative manner to perpetuate an illegality. **(Anoopika Randhawa v. State of Haryana & Others; 2014 (2) SLR 19 (P&H)**

Art. 226 - Transfer of investigation – Petition against - Investigation of case transferred from civil police to economic offence wing at dictate of political masters on application of accused - Legality of

Practice of transferring investigation from one investigating agency to other at behest of accused deprecated. Without there being anything more, investigation cannot be transferred from one investigating agency to other on behest of accused. No reason has been assigned for transferring investigation. Even while taking administrative decision authority concerned is obliged to record reasons- Transfer of investigation from local police to another machinery by a non-speaking order cannot be sustained. On cases which can be termed as ―economic offence‖ can be referred for investigating to EOW.

In this case, alleged offence committed by accused cannot be said to be covered by G.O. dated 18.9.1972. There must be cogent evidence to infer existence of bias and mala fide motive resulting into miscarriage of justice. Burden to prove bias or mala fide upon person moving application to transfer investigation, not discharged. **(Prema Devi v. State of U.P. and others; 2014 (84) ACC 948)**

Arts. 226 and 300-A - Disciplinary proceedings - Retirement – Pension - Disciplinary

proceedings against a Government employee after his retirement, does not automatically come to an end in case the enquiry is not concluded within two years of its inception and can continue beyond the period of two years

The provisos and the causes of Rule 9(4) are interrelated provisions and have to be read together as a whole. The intention of the Legislature is primarily to be gathered from the language used which means that attention should be paid to what has been said as also to what not has been said See: Nagar Palika Nigam v. Krishi Upaj Mandi Samiti; AIR 2009 SC 187, Principles of Statutory Interpretation, Justice, G.P. Singh, 13th Edition, page 64. From careful scrutiny of Clauses (a) and (b) of third proviso to Rule 9(4), it is apparent that aforesaid clauses nowhere provide that if the departmental proceeding is not concluded within the period of two years, the same would come to an end automatically. The aforesaid clauses only provide that if departmental proceeding is not concluded within a period of one year or two years, 50% of the amount of pension and entire amount of pension wit held shall stand restored to the delinquent employee, respectively. If the meaning of clause (b) of third proviso to Rule 9(4) is expanded to mean that Governor would not have any right to pass final order with regard to imposition of punishment as prescribed under clause (c), such an interpretation would bring clause (c) in conflict with clause (b) of third proviso to Rule 9(4) of the 1976 Rules and, therefore, such an interpretation cannot be accepted. Clauses of third proviso to Rule 9(4) have to be read as a whole and an attempt has to be made to reconcile them so that any repugnancy can be avoided.

Thus, clauses (a) and (b) of third proviso to Rule 9(4) have to be read subject to clause (c) of third proviso to Order 9, Rule (4). In other words, the withholding of pension as provided in clauses (a) and (b) of third proviso to Rule 9(4) of the Rules is provisional and tentative and is subject to the final order which may be passed by the Governor under clause (c) of third proviso to Rule 9(4). In view of preceding analysis, Court‘s answer to the questions referred for court‘s opinion is as follows:

The disciplinary proceeding initiated by the State Government against a Government employee after his retirement, does not automatically come to an end in case the enquiry is not concluded within two years of its inception and can continue beyond the period of two years. The Governor is not precluded from passing final order in relation to payment of pension to a Government employee against whom disciplinary proceeding is initiated after his retirement and is not concluded within two years from its institution. **(State of Madhya Pradesh and another v. Puranlal Nahir; 2014 (2) SLR 72 (MP)**

Art. 226 – Judicial Review in Service matters – Order of dismissal passed after full-fledged enquiry – Remedy of appeal not availed – Interference by High Court – Not proper – High Court does not act as an appellate authority

The High Court, in view of Court, under Article 226 of the Constitution of India was not justified in interfering with the order of dismissal passed by the appointing authority after a full-fledged inquiry, especially when the Service Rules provide for an alternative remedy of appeal. It is a well acceptable principle of law that the High Court while exercising powers under Article 226 of the Constitution does not act as an appellate authority. Of course, its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the

principles of natural justice. In State Bank of India and Others v. Ramesh Dinkar Punde; (2006) 7 SCC 212, this Court held that the High Court cannot re-appreciate the evidence acting as a court of Appeal. Court have, on facts, found that no procedural irregularity has been committed either by the Bank, presenting officer or the Inquiring Authority. Disciplinary proceedings were conducted strictly in accordance with the Service Rules. **(State Bank of India and Ors vs. Narendra Kumar Pandey; 2013(1) Supreme 292)**

Art. 226 – U.P. Recruitment of Service (Determination of Date of Birth) Rules – Date of birth – Correction of – Whether the date of birth recorded in the service book of an employee can be modified or changed at his instance after long lapse of time or at the end of his service – Held, "No"

From a perusal of the Rule, it transpires that if a person enters in to service after passing the High School Examination, then the date of birth recorded in the High School certificate shall be deemed to be his correct date of birth. The said Rule also provides that no application or representation shall be entertained for correction of such date or age in any circumstances whatsoever. Thus, in relation to correction of date of birth, a legal fiction has been made which means that the date of birth recorded in either of the circumstances referred to under Rule 2 of the Rules of 1974 shall be deemed to be correct for all purposes particularly for the purpose of determining the age of retirement. The effect of deeming provision/legal fiction has been considered time and again. The Apex Court in the case of Sant Lal Gupta and others v. Modern Cooperative Group Housing Society Ltd. and others; (2010) 13 SCC 336, has observed as under:-

" .... It is the exclusive prerogative of the legislature to create a legal fiction meaning thereby to enact a deeming provision for the purpose of assuming the existence of a fact which does not really exist. ...

To the case in hand, admittedly, the appellant entered in service without passing the High School examination, therefore, the date of birth recorded in the service book shall be deemed to be correct and in view of the legal fiction created under Rule 2, no application or representation for its correction could be entertained. **(Mohan Singh v. U.P. Rajya Vidyut Utpadan Ltd.; 2013 (1) SLR 129 (All)**

Art. 226 – Writ jurisdiction – Availability of – When an alternate and equally efficacious remedy is open to litigant, he should required to pursue that remedy and not envoke the extra ordinary jurisdiction of the High Court

By series of decision it has been settled that the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ, if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure required for decision has not been adopted.

It may be noted that when an alternative and equally efficacious remedy is open to a litigant, he should be required to pursue that remedy and not invoke the extra ordinary jurisdiction of the High Court to issue a prerogative writ as the writ jurisdiction is meant for

doing justice between the parties where it cannot be done in any other forum. **(Amitabh Thakur v. Union of India; 2013 (1) SLR 134 (All)**

Arts. 226 and 311 – Dismissal from service – Without giving reasonable opportunity of hearing – Validity of – It would be vitiating principle of natural justice

In this case, court is unable to agree with the view of learned Single Judge that prior approval of D.I.O.S. was necessary before passing the impugned dismissal order dated 9.7.2008 court was the considered view that the scheme of the Regulations 31 to 45 of Chapter III of the U.P. Intermediate Education Act, 1921 does not provide that prior approval or sanction of D.I.O.S. is essentially required for awarding punishment of removal or terminating of a Class IV employee of the institution recognized under the aforesaid Act.

Undisputedly the contesting Respondent No. l has not participated in the departmental enquiry proceedings. In view of the facts and circumstances of the case and rival contention of learned counsel for the parties, the Court do not find any substance in the arguments of the learned counsel for appellants that the contesting Respondent No. l has absconded and on account of his deliberate operation full fledged enquiry in the matter was not required.

Court was the considered view that the impugned dismissal order from service has been passed without affording reasonable opportunity of hearing and without following the procedure and against the relevant Regulations 31 to 45 of Chapter III framed under Scheme 16-G of the U .P. Intermediate Education Act, 1921, and thus in violation of statutory provisions as well as in gross violation of Principle of natural justice. In this regard, the view expressed by learned Single Judge does not call for any interference. **(Committee of Management v. Suresh Kumar; 2013 (1) SLR 33 (All)**

Arts. 226 and 227 - Supervisory jurisdiction - Scope and ambit

The finding of fact has been recorded after perusing the record by courts below that the documents are in possession of defendant no. 4 therein and this finding has not been shown or said to be perverse in the entire writ petition except what has been stated in the objection filed by courts below have been reiterated here at also.

Both the Courts below have recorded concurrent findings of fact and unless these findings are shown perverse or contrary to record resulting in grave injustice to petitioner, in writ jurisdiction under Article 226/227, the Court exercising restricted and narrow jurisdiction would not be justified in interfering with the same. In supervisory jurisdiction of this Court over subordinate Courts, the scope of judicial review is very limited and narrow. It is not to correct the errors in the orders of the court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority.

This power involves a duty on the High Court to keep the inferior courts and tribunals within the bounds of their authority and to see that they do what their duty requires and that they do it in a legal manner. But this power does not vest the High Court with any unlimited prerogative to correct all species of hardship or wrong decisions made within the

limits of the jurisdiction of the Court or Tribunal. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principle of law or justice, where grave injustice would be done unless the High Court interferes.

For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record.

It is well settled that power under Article 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. **(Mook Kumar Jaiswal vs. VIIIth Addl. District Judge; 2012(1) ARC 207 (All HC)**

Art. 226 – CPC, O. 23, R.1 – Subsequent writ petition – Maintainability of

Learned counsel for the respondents has submitted that principle of res judicata will no doubt arise only when issues are determined and are decided by the Court in a previous litigation between the same parties, but he has submitted that the bar to maintainability of subsequent writ petition, when no leave of the Court was sought at the time of withdrawal or dismissal of the first writ petition, is on account of public policy and principles flowing from Rule 1 of Order XXIII of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC'). In support of this contention, he has placed reliance upon a judgment of the Supreme Court in the case of Avinash Nagra v. Navodaya Vidyalaya Samiti and others; (1997) 2 SCC 534. In paragraph 13, it has been held that where the first writ petition challenging the order of termination of service was withdrawn without grant of liberty by the Court to file a second writ petition, the second writ petition for that very purpose would attract the principle of constructive res judicata and would, therefore, not be maintainable. He has further placed reliance upon a judgment of this Court in the case of Shyam Narain Dwivedi v. The State of Uttar Pradesh and others; (1999) I UPLBEC 513. In paragraph 29 of this judgment, reliance was placed upon principle of Order XXIII of CPC and it was held that this principle is applicable in writ proceedings, by way of public policy, if the writ petition is withdrawn without the leave or liberty. In this judgment, learned Single Judge considered large number of earlier judgments including Division Bench Judgment of this Court taking similar view and also judgment of the Supreme Court in the case of Sarguja Transport Service v. State Transport Appellate Tribunal, Gwalior and others; AIR 1987 SC 88. Paragraph 9 of the judgment in the case of Sarguja Transport Service (supra) clinches the legal issue that is clearly in favour of preliminary objection raised on behalf of respondents.

In Court considered view, a party is required to take all available grounds and all available pleas available to him and if he fails to do so, the principle of constructive res judicata comes into play. Otherwise also, only by finding out better or more grounds, the legal position would not change because there is no scope to take a different view than what was taken by this Court earlier in the judgments noted above as well as in another Division Bench Judgment in the case of Ashok Pratap Singh v. State of U.P. and others; (2004) 2 UPLBEC 1909.

In view of aforesaid discussion, the writ petition is dismissed on the preliminary

ground as not being maintainable because no liberty was sought for filing another writ petition by the petitioners and nor was it granted when their earlier writ petition was dismissed as not pressed. **(Khurkhur & anr. v. Union of India & others; 2013 (5) ALJ 533)**

Art. 226 – Writ jurisdiction – Scope – Petition setting aside arbitral award is not maintainable before High Court

In this case, the courts view that this petition whether under Art. 226/227 of the Constitution of India or under Section 34 r/w Section 42 of the Act is not maintainable before this court and the proper remedy available to the petitioner, if any, is to make proper application under Section 34 of the Act to the Court i.e. the Principal Court of original jurisdiction of the concern district. (India Waster Energy Development Ltd. v. Greater Noida Industrial Development Authority; 2013 (4) ALJ 01)

Arts. 226 and 142 – Exercise of power to grant of relief not prayed for is impermissible

Appearing for the appellants, Mr. P.P. Rao, learned Senior Counsel, argued that the High Court had committed an error in quashing the entire selection process even when the petitioners had not made any prayer to that effect. Mr. Rao was at pains to argue that a relief which was not even prayed for by the writ petitioners could not be granted by the Court whatever may have been the compulsion of equity, justice and good conscience. There is, in view of the Court, no merit in that contention of Mr. Rao. The reasons are not far to seek. It is true that the writ petitioners had not impleaded the selected candidates are party-respondents to the case. But it is wholly incorrect to say that the relief prayed for by the petitioners could not be granted to them simply because there was no prayer for the same.

If the model answer key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination insofar as the same pertained to ‗A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key. **(Rajesh Kumar vs. State of Bihar with Abhishek Kumar vs. State of Bihar; (2013) 4 SCC 690)**

Art. 226 – Separation of powers - Whether court has power to issue direction to Legislature to pass Law in particular manner Held; —No, It is not within the domain of the court

In A.K. Roy v. Union of India and others; (1982) Court considered the question

whether the Court should calling upon the Central Government to discharge its further delay and held:

1 SCC 271, the issue a mandamus duty without any

―The Parliament having left to the unfettered judgment of the Central Government the question as regards the time for bringing the provisions of the 44th Amendment into force, it is not for the court to compel the government to do that which, according to the mandate of the Parliament, lies in its discretion to do when it considers it opportune to do it. The executive is responsible to the Parliament and if the Parliament considers that the executive has betrayed its trust by not bringing any provision of the Amendment into force, it can censure the executive,…..

The aforesaid decision was noticed and reiterated by the Court in

Supreme Court Employees' Welfare Association v. Union of India and another,

(1989) 4 SCC 187, and held:

―51. There can be no doubt that no court can direct a legislature to enact a

particular law. Similarly, when an executive authority exercises a

legislative power by way of subordinate legislation pursuant to the

delegated authority of a legislature, such executive authority cannot be

asked to enact a law which he has been empowered to do under the

delegated legislative authority.‖

In Bal Ram Bali and another vs. Union of India, (2007) 6 SCC 805, this

Court discussed the separation of powers while dealing with the question of

total ban on slaughter of cows, buffaloes and chameleon. This Court

held that it is a matter of policy on which decision can be taken by the appropriate Government and the Court cannot issue any direction to Parliament or to the State Legislature to enact a particular kind of law. **(Indian Soaps & Toiletries Makers Assn. vs. Ozair Husain & Ors.; AIR 2013 SC 1834)**

Art. 226 – Reinstatement – Back wages – ―No work no pay – Applicability of –

Principle ―no work no pay is to be applied as punitive measure in those cases where the employee concerned had willingly not performed his duties or had absented himself

from work without proper cause. Petitioner is a bus conductor in UPSRTC. On 18.10.1996 bus conducted by him was checked on AlIahabad-Agra Route at Lallupura Railway crossing by the inspectors of the corporation and a report was made against him that 17 passengers were found without ticket in the bus. The checking partly took Rs. 841.50 in cash from the petitioner and made a collective penalty ticket of ten times the amount of the fare and a remark to this effect was also made in the way bill.

Version of the petitioner was that when the bus was standing at the Lallupura Railway crossing, 17 persons came inside the bus who were not inclined to pay the fare. During the process when the petitioner was trying to disembark them, the inspectors reached at the spot and without verifying the position from the petitioner or making an inquiry into the matter from those persons wrote a remark that 17 persons were found without ticket. Thereafter, the petitioner was suspended and charge-sheet was served on him.

The petitioner replied to the charge-sheet denying the charges. He sought an opportunity for cross-examination of the witnesses and for giving oral evidence in support of his case. Ultimately, by order dated 23.5.1998 services of the petitioner were terminated, against which he preferred a departmental appeal which was also dismissed. Challenging these orders, he preferred Claim Petition No. 1592 of 2000, Kailash Kumar Mishra v. State of U.P. and others, before the Tribunal.

The petitioner is aggrieved by part of the order, by which the Tribunal has directed that petitioner would not be paid any pay and allowances from the date of his termination to the date of his reinstatement on the principle of "no work no pay's in view of the fact that he had not done any work during that period though holding him to be entitled for consequential benefits from the date of reinstatement only.

Taking into consideration the facts and circumstances of the case, in our considered view, the principle of "no work and no pay" appears to have wrongly been applied in the instant case. Once the enquiry was found to be vitiated; the charges not be proved; opportunity of cross-examination of the witnesses not afforded to him; and the punishing authority not giving any reason for disagreeing with the findings of the inquiry officer nor any reason having been given by the punishing authority for his own findings, the petitioner alone cannot be made to suffer, Further, the principle" No work no pay" is to be applied as a punitive measure in those cases where the employee concerned had willingly not performed his duties or had absented himself from work without proper cause. Such is not the position in the present case. Here, the petitioner could not discharge his duties because of the enquiry proceedings and the punishment order which have ultimately been found to be vitiated on the aforesaid grounds. Since faults have been found on the part of the department also, in our view, the ends of justice would meet if 50 % of the salary and allowances is awarded to the petitioner from the date of his termination till his reinstatement. **(Kailash Kumar Mishra v. State Public Services Tribunal; 2013(3) SLR 778)**

Art. 226 - Judicial review - Parameters - Court does not act as appellate Court - Only reviews manner in which decision is reached

Power of judicial review is not akin to adjudication on merit by re-appreciating the evidence as an Appellate Authority. An order can be set aside if it is based on extraneous grounds, or when there are no grounds at all for passing it or when the grounds are such that, no one can reasonably arrive at the opinion. The Court does not sit as a Court of

Appeal but, it merely reviews the manner in which the decision was made. The Court will not normally exercise its power of judicial review unless it is found that formation of belief by the statutory authority suffers from mala fides, dishonest/corrupt practice. In other words, the authority must act in good faith. Neither the question as to whether there was sufficient evidence before the authority can be raised/examined, nor the question of re-appreciating the evidence to examine the correctness of the order under challenge. If there are sufficient grounds for passing an order, then even if one of them is found to be correct, and on its basis the order impugned can be passed, there is no occasion for that Court to interfere. The jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. This apart, even when some defect is found in the decision-making process, the Court must exercise its discretionary power with great caution keeping in mind the larger public interest and only when it comes to the conclusion that overwhelming public interest requires interference, the Court should intervene. **(Nirmala J. Jhala v. State of Gujarat and another; AIR 2013 SC 1513)**

Art. 226 – Maintainability of whether writ petition regarding election of office bearers of society is maintainable – Held, —No, Because alternate statutory remedy of approaching competent authorities available U/s. 25 of Societies Registration Act is available

Keeping in view the provisions contained under Section 25 of the Societies Registration Act, petitioners have got statutory remedy under sub-section (1) of Section 25 of the Act to ventilate their grievance. Accordingly, on account of availability of alternative statutory remedy to approach the competent authority under sub-section (1) of Section 25 of the Act, it cannot be said that the petitioners are the remediless.

From the examination of various pronouncements of Hon‘ble Apex Court as well as of this Court, it is now settled position of law that once the election process is started which includes the preparation of electoral roll, then ordinarily High Court should not invoke extraordinary jurisdiction of Article 226 of the Constitution of India and the aggrieved party shall have a right to challenge the outcome of the election in pursuance to the provisions contained in the Societies Registration Act or any other law time being enforced. The outcome of the election may also not be impugned under extraordinary jurisdiction of Article 226 of the Constitution of India in case the remedy to file an election petition or any other remedy under the Act or statute is available to an aggrieved person. **(Committee of Management of Shesh Nath Junior High School and Anr. vs. State of U.P. and Ors.; 2013(3) ALJ 539)**

Arts. 226 and 142 – Exercise of power for grant of relief not prayed for is impermissible

Appearing for the appellants, Mr. P.P. Rao, learned Senior Counsel, argued that the High Court had committed an error in quashing the entire selection process even when the petitioners had not made any prayer to that effect. Mr. Rao was at pains to argue that a relief which was not even prayed for by the writ petitioners could not be granted by the Court whatever may have been the compulsion of equity, justice and good conscience.

There is, in our view, no merit in that contention of Mr. Rao. The reasons are not far to seek. It is true that the writ petitioners had not impleaded the selected candidates are

party-respondents to the case. But it is wholly incorrect to say that the relief prayed for by the petitioners could not be granted to them simply because there was no prayer for the same.

If the model answer key which was used for evaluating the answer sheets was itself defective the result prepared on the basis of the same could be no different. The Division Bench of the High Court was, therefore, perfectly justified in holding that the result of the examination insofar as the same pertained to 'A' series question paper was vitiated. This was bound to affect the result of the entire examination qua every candidate whether or not he was a party to the proceedings. It also goes without saying that if the result was vitiated by the application of a wrong key, any appointment made on the basis thereof would also be rendered unsustainable. The High Court was, in that view, entitled to mould the relief prayed for in the writ petition and issue directions considered necessary not only to maintain the purity of the selection process but also to ensure that no candidate earned an undeserved advantage over others by application of an erroneous key. **(Rajesh Kumar vs. State of Bihar with Abhishek Kumar vs. State of Bihar; (2013) 4 SCC 690)**

Arts. 226 and 311 – Enquiry – Punishment – though initially charge-sheet was issued for imposition of major penalty, however, finally after supplying copy of the enquiry report to the delinquents officer and affording them opportunity of hearing, minor punishment imposed – Validity of

Counsel for the petitioner, while placing reliance upon a judgment of Full Bench of this court in Dr. K. G. Tiwari v. State of Haryana, 2002(2) SCT 915 : [2002(4) SLR 329 (Pb. & Hry.)], submitted that once a charge-sheet has been issued to an employee for imposition of a major penalty, after enquiry minor punishment can be inflicted. In the present case, though initially the charge-sheet was issued for imposition of major penalty, however, finally after supplying copy of the enquiry report to the delinquent officers and affording them opportunity of hearing, minor punishment was imposed. The order passed by the revisional authority setting aside the same holding it to be without jurisdiction is erroneous, hence, liable to be set aside.

Vide impugned order passed by Secretary, Cooperation (Appeals), Punjab, the order inflicting minor punishment on respondents No. 2 to 4 was set aside merely holding that once charge sheet had been issued under Rule 6(B) of the Punjab State Cooperative Supply & Marketing Federation Employees (Punishment & Appeal) Rules, 1990, before inflicting minor punishment as envisaged under Rule 6(A) of the said Rules, notice was required to be issued under that Rule.

In the case in hand, after conclusion of the enquiry and considering the report, though while disagreeing with the findings recorded by the enquiry officer, the disciplinary authority instead of imposing major punishment had merely imposed minor punishment on the charge-sheet employees thereby withholding one increment without cumulative effect and directing recovery of the pecuniary loss suffered, the same cannot be said to be in violation of the provisions of law. **(Punjab State Coop. Supply & Marketing Federation Ltd. v. Secretary, Cooperation (Appeals); 2013 (2) SLR 758 (P&B)**

Articles 226 and 227- Judicial review –Scope of very limited and narrow

In supervisory jurisdiction of this Court over subordinate courts. The scope of

judicial review is very limited and narrow. It is not to correct the errors in the orders of the court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority. **(Ramesh Chandra and others v. Shyam Ji Misra and others, 2014 (5) AWC)**

Article 226 – Specific performance of contract – Jurisdiction of High Court under Article 226 – High Court in exercise of its jurisdiction u/A. 226 of the Constitution would not normally grant the relief of specific performance of contract

The High Court, in our opinion, has rightly observed that the appellant can seek the appropriate relief by way of a civil suit. The High Court in exercise of its jurisdiction under Article 226 of the Constitution of India would not normally grant the relief of specific performance of a contract. **[Sri Ram Builders v. State of M.P. and others, 2014(6) AWC 5987]**

Article 226 – Contract Act, Sec. 56 – Breach of Contact – Judicial review – Scope – The scope of judicial review is very limited in contractual matters even where one of the contracting parties is state of an instrumentality of

The scope of judicial review is very limited in contractual matters even where one of the contracting parties is the State or an instrumentality of the State. The parameters within which power of judicial review can be exercised, has been authoritatively laid down by this Court in a number of cases.

In Tata Cellular v. Union of India, (1994)6 SCC 651, this court upon detailed consideration of the parameters within which judicial review could be exercised, has culled out the following principles:

70. It cannot be denied that the principles of judicial review would apply to the exercise of contractual powers by government bodies in order to prevent arbitrariness or favouritism. However, it must be clearly stated that there are inherent limitations in exercise of that power of judicial review. The Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But, the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

77. The duty of the court is to confine itself to the question of legality. Its concern should be:

(10) Whether a decision-making authority exceeded its powers?

(11) committed an error of law,

(12) committed a breach of the rules of natural justice,

(13) reached a decision which no reasonable tribunal would have reached, or

(14) abused its powers.

Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under:

(vi) Illegality: This means the decision-maker must understand correctly the law that regulates his decision- making power and must give effect to it.

(vii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety. The above are only the broad grounds but it does not rule out addition of further grounds in course of time. **[Sri Ram Builders v. State of M.P. and others, 2014(6) AWC 5987]**

Art. 227 – Writ – Maintainability of – whether High Court can interfere by exercising its supervisory jurisdiction when award passed by tribunal highly excessive or compensation has assessed without following norms or assess without giving reason – Held, —Yes.

Normally this court is loathed to exercise the supervision jurisdiction vested in it under art. 227 of the Constitution of India to correct the orders passed by the Motor Accident Claims Tribunal. However, when an award is highly excessive or the tribunal throws to the winds all norms relating to assessment of damages and assesses damages without giving any reasons, then this court has no option but to exercise its supervisory jurisdiction. In fact, in such a case, it is the duty of this court to interfere and set aside such orders which lower the esteem of the judicial system. **(Iffco Tokio General Ins. Co. Ltd. v. Kamla Devi; 2012 ACJ 1105)**

Art. 227- Absence of pleading in petition –Effect of- Not open to the court in exercise of supervisory jurisdiction u/A 227 to go into the question

The respondent-landlord preferred a suit before the small causes court for arrears of rent, ejectment and for making material alterations in the suit property which is a residential house. The original-tenant appeared and contested the suit by filing written statement. It was admitted in the written statement that the respondent is landlord but it was averred that the defendant had no knowledge of hibba (oral gift). The applicants who are legal heirs of erstwhile tenant filed an additional written statement adopting the written statement filed by their father. In the additional written statement, plea of validity of notice or derivative title of the respondent-landlord was not assailed. The courts below upon considering the evidence and material available on record, noted that the applicants had already purchased a residential premises in the same locality, therefore, were not entitled to the benefit of Section 20(4). Submission of the learned counsel for the applicant is that the courts below have not considered that the notice under Section 106 of Transfer of Property Act was bad and not legal, hence, the applicant could not have been evicted on that basis. Learned counsel for the applicant submits that the point was raised before the courts below but was not considered. However, in the pleadings before this Court, no ground or assertion has been made that the notice under Section 106 of Transfer of Property Act is bad, as such, the applicant could not have been evicted. Even otherwise, a ground though raised but not pressed before the courts below cannot be gone into in the first instance by this Court.

In absence of pleadings before this Court that the notice under Section 106 of Transfer of Property Act is bad, it is not open for this Court in exercise of supervisory jurisdiction under Article 227 of the Constitution to go into the question. **(Angoori Begum (Smt.) And 6 Others v. Mohammad Masroor Khan, 2016(1) ARC 122)**

Art. 227- Consideration for- interference with the concurrent finding of fact recorded by two courts below –Discussed

This petition filed under Article 227 of the Constitution of India impeaches the validity of the judgment and order dated 12.02.2013, passed by the prescribed authority,

whereby the application moved by respondent no.3 under Section 21(1)(a) of U.P. Urban Buildings (Regulation of Letting Rent and Eviction) Act, 1972 (hereinafter referred to as 'the U.P. Act No.13 of 1972') for eviction has been allowed.

The petitioner also challenges the order dated 08.03.2016, passed by the appellate court, whereby the Rent Appeal preferred by the petitioner against the order of the prescribed authority, has also been dismissed.

Court is afraid while hearing the petition under Article 227 of the Constitution of India in a matter where finding of facts are concluded by both the courts below, this Court can interfere unless, of course, any apparent perversity in the findings can be pointed out. Having perused the judgment and order passed by the prescribed authority as well as the appellate court, it cannot be said that the findings suffer from perversity to the extent that the same may be warranted to be interfered with in these proceedings under Article 227 of the Constitution of India. In the result, the petition deserves to be dismissed, which is hereby dismissed. **(Asad Ali v. Special Judge E.C.Act/District Judge Hardoi And Ors., 2016 (116) ALR 624)**

Art. 227 - Petition against a finding-Recorded by Appellate Court while dismissing appeal on merits-Appellate Court recorded a finding the suit property a not waqf property rather it was the property owned by 'x' who succeeded this property in his personal capacity- justification of-Appellate Court committed a material illegality in recording finding on the question of waqf-If the finding allowed to sustain would cause material injustice to the person who are interested in the waqf without adjudication of the real issue in dispute-Approach of the Appellate Court absolutely misguided against settled principles of law hence set aside.

Referring to the abovenoted judgments and the pronouncements of the Apex Court in Satyanarayan Laxminarayan Hegde vs. Mallikarjun Bhavanappa Trimuale, AIR 1960(SC) 137 and Hari Vishnu Kamath vs. Ahmad Ishaque, AIR 1955(SC) 233, it is submitted that an erroneous decision where the error is not being an cannot assume appellate power to correct any mistake of law. It may be an erroneous decision but cannot be corrected by the High Court in exercise of supervisory jurisdiction under Article 227 of the Constitution of India. However, where there is a question of assumption or excessive jurisdiction or refusal to exercise jurisdiction or any irregularity or illegality in the procedure or any breach of any rule of natural justice, the Court can interfere.

In view of the above discussion, in the facts and circumstances of the case, it is held that the appellate court had overreached its jurisdiction in arriving at a finding that the waqf was not in existence as it was cancelled by a registered deed of cancellation executed by the waqf.

This approach of the appellate court is absolutely misguided, against the settled principles of law.

In order to advance the ends of justice the power under Article 227 of the Constitution of India has to be invoked/exercised in the instant case. **Waqf Musammat Sharifan Biwi V. Dr. Prabhu Saran Rajvedi And Others, (2016(3) ARC 765**

Art. 227 – Scope of

There is no ground on which the High Court could have upset the concurrent finding on this question in its writ jurisdiction under Article 227, which is more or less akin to revisional jurisdiction of the High Court. The High Court also failed to hold that finding of the two courts were so perverse to the extent that any judicial person could ever reach to such conclusion or that the findings were against any provision of law or were contrary to evidence adduced etc.

In above case High Court did not keep in mind the principle of law laid down by the Constitution Bench of the Supreme Court in Hindustan Petroleum Corporation Ltd., (2014)9 SCC 78 for deciding the revision petition in rent matters and also the principle laid down by the Supreme Court in Surya Dev Rai, (2003)6 SCC 675 in relation to exercise of jurisdiction under Article 227 of the Constitution of India. The High Court proceeded to decide like the first appellate court. The High Court, as clear from the impugned judgment, probed into all the factual aspects of the case, appreciated the evidence and then reversed the factual findings of the appellate court and the prescribed authority. This was a jurisdictional error, which the High Court committed while deciding the writ petition. In other words, the High Court should have confined its inquiry to examine as to whether any jurisdictional error was committed by the first appellate court while deciding the first appeal. It was, however, not done. The High Court also failed to hold that the findings of the two courts were so perverse to the extent that no judicial person could ever reach to such conclusion or that the findings were against any provision of law or were contrary to evidence adduced etc. **Gulshera Khanam v. Aftab Ahmad, (2016)9 SCC 414**

Arts. 227 and 226 – Interference in civil/private disputes – When permissible in writ jurisdiction – Principles reiterated

The only question which was required to be determined in this case was: whether the High Court while exercising its power under Articles 226 and 227 of the Constitution is competent to set aside the plaint in a civil/private dispute?

A petition under Article 226 or 227 of the Constitution can neither be entertained to decide the landlord-tenant dispute nor is it maintainable against a private individual to determine an intense dispute including the question whether one party is harassing the other party. The High Court under Article 227 has the jurisdiction to ensure that all subordinate courts as well as statutory or quasi-judicial tribunals, exercise the powers vested in them within the bounds of their authority but it was not the case of Respondent 1 tenant that the order passed by the trial court was without any jurisdiction or was so exercised exceeding its jurisdiction. If a suit is not maintainable it was well within the jurisdiction of the High Court to decide the same in appropriate proceedings but in no case power under Articles 226 and 227 of the Constitution can be exercised to question a plaint. **[Jacky v. Tiny @ Antony and Others, (2014) 6 SCC 508]**

Art. 227 - Supervisory jurisdiction

Under Article 227 of the Constitution, in supervisory jurisdiction of this Court over subordinate Courts, the scope of judicial review is very limited and narrow. It is not to

correct the errors, in the orders of the Court below but to remove manifest and patent errors of law and jurisdiction without acting as an appellate authority. .For interference under Article 227, the finding of facts recorded by the Authority should be found to be perverse or patently erroneous and de hors the factual and legal position on record. It is well-settled that power under Art. 227 is of the judicial superintendence which cannot be used to up-set conclusions of facts, howsoever erroneous those may be, unless such conclusions are so perverse or so unreasonable that no Court could ever have reached them. **(Smt. Nazama Hashimi v. Jamal Ahmad Khan & Ors.; 2013 (5) AWC 5086)**

Art. 229, 235 - U. P. Govt. Servant Conduct Rules - R. 3 - Misconduct by Judicial Officer - Proof of

The disciplinary inquiry regarding conduct of a judicial officer while passing order in exercise of his judicial function can very well be inquired and gone into and can be made subject matter of disciplinary inquiry. However, the misconduct in passing an order by a judicial officer in exercise of his judicial function can be inquired only when the officer has acted in the manner as would reflect on his reputation or integrity or good faith or devotion to duty or there is material to show recklessness or misconduct in the discharge of his duty or he acted in a manner which is unbecoming of a government servant or acted negligently or omitted the prescribed conditions which are essential for exercise of statutory power or an order has been passed to unduly favour one of the parties or actions of the officer are actuated by corrupt motive. An officer while exercising his judicial functions passes large number of orders. The orders may be assailed both on the ground of error of law and error of facts but the mere fact that orders are erroneous is no ground to draw a disciplinary proceeding. When the orders have stemmed out of any corrupt motive or when intend to favour one of the parties or a consideration which is not germane with the case, it can be said that officer has misconducted himself and such conduct can be gone into and enquired.

The charges against the petitioner, as noticed Judicial Officer, were in three parts i.e. (i) rejecting the first bail application substantially on the same ground, (ii) without affording sufficient opportunity of hearing to the complainant or prosecution and (iii) extraneous consideration. As far as second charge is concerned, no finding has been given by the Enquiry Judge that bail application was allowed without affording opportunity to the complainant or prosecution. The allegation that officer has passed the order after taking illegal gratification was specifically examined and rejected by the Enquiry Judge. The allegation that substantially on the same ground earlier bail application was rejected, has been found favour with the Enquiry Judge.

Although the Enquiry Judge held that bail was granted on account of extraneous consideration but no extraneous consideration having either been referred to or proved, the charge of misconduct against the officer cannot be said to be proved. Further the opinion on the Enquiry Judge that substantially on the same ground first bail application was rejected is also not a proof of misconduct by charged officer while allowing the bail application unless the granting of bail is referred to or found out on any extraneous consideration which having not been proved in the instant case, the charge of misconduct against the Charged Officer cannot be held to be proved. Therefore the order reducing the Judicial Officer in rank consequent to disciplinary proceedings would be liable to be set aside. **(Syed Hasan vs. High Court of Judicature at Allahabad; 2013(2) ALJ 182)**

Art. 233 – Determination of vacancies for appointment of Distt. Judges – Anticipated vacancies cannot be considered when statutory rules do not provide so.

While determining vacancies in the post of judicial officers anticipated vacancies could not be considered when statutory rules do not provide so. The 1970 rules provide for advertisement of the vacancies after being determined. The rules further provide for implementation of reservation policies in favour of Scheduled Castes, Scheduled Tribes and Other Backward Classes. As the reservation policy is to be implemented, a number of vacancies to be filled up is to be determined, otherwise it would not be possible to implement the reservation policy at all. Thus, the question of taking into consideration the anticipated vacancies, could not arise.

In the instant case 20 posts of District Judges were advertised. Out of that 13 belonged to general category. The 13 posts were filled up as per merit list. The appellants who were down in the merit list filed writ petition claiming that 13 vacancies that came into existence during the pendency of selection process could have also been filled up from the said select list and that anticipated vacancies should have been considered while determining number of vacancies. Held, appointment had to be made as per statutory rules. Making appointments over and above the vacancies advertised was impermissible. Anticipated vacancies could not have been considered when 1970 rules provide for advertisement of vacancies after being determined. Moreover there was no challenge made to the advertisement. No explanation was offered therefore by appellants. **(Rakhi Ray v. High Court of Delhi; AIR 2010 SC 932)**

Art. 234 – Stricture and disparaging remarks against members of subordinate judiciary not to be made unless they are really necessary for judgment or order

The higher Courts every day come across orders of the lower Courts which are not justified either in law or in fact and modify them or set them aside. Our legal system acknowledges the fallibility of the Judges, hence it provides appeals and revisions. Inasmuch as the lower judicial officers mostly work under a charged atmosphere and are constantly under psychological pressure and they do not have the facilities which are available in higher Courts, remarks/observations and strictures are to be avoided particularly if the officer has no occasion to put-forth his reasoning's. Further, if the passage complained of is wholly irrelevant and unjustifiable and its retention on the records will cause serious harm to the persons to whom if refers and its expunction will not affect the reasons for the judgment or order, request for expunging those remarks are to be allowed. Harsh or disparaging remarks are not to be made against judicial officers and authorities whose conduct comes into consideration before Court of law unless it is really for the decision of the case as an integral part thereof. **(Awani Kumar Upadhyay v. Hon'ble High Court of Judicature at Allahabad and Ors.; 2013 (3) ALJ 53 (SC)**

Art. 235 – Adverse remark against lower judicial officers – When permissible.

Indian legal system acknowledges the fallibility of the Judges, hence it provides for appeals and revisions. A Judge try to discharge his duties to the best of his capacity, however, sometimes is likely to err. It has to be noted that the lower judicial officers mostly work under a charged atmosphere and are constantly under psychological pressure. They do not have the benefits, which are available in the higher Courts. In those circumstances, remarks/observations and strictures are to be avoided particularly if the officer has no occasion to put forth his reasoning. It is settled law that harsh or despairing remarks are not to be made against persons and authorities whose conduct comes into consideration before Courts of law unless it is really necessary for the decision of the case as an integral part thereof. **(Prakash Singh Teji v. Northern India Goods Transport Co. Pvt. Ltd. & Anr.; AIR 2009 SC 2304 (SC)**

Article 235 & 237 – Supervisory jurisdiction of High Court – Extends over all courts subordinate to it and can be exercised in respect of judicial as well as administrative matters.

Article 235 of the Constitution of India confers a supervisory jurisdiction upon the High Court over all the courts subordinate to it. Such jurisdiction can be exercised by the High Court in respect of judicial as also administrative matters. Article 236 of the Constitution of India, as referred to by Dr. Dhawan, provides for an interpretation clause. The expression "District Judge" would not only be an officer who has been specified in Clause (a) of Article 236 but would also be such officer who would otherwise be within the control of the High court in terms of Article 235 of the Constitution of India.

The High Court exercises control over the subordinate courts not only in terms of the Constitution of India as envisaged under Articles 235 and 227 thereof but also under other Acts, viz., Code of Civil Procedure and Code of Criminal Procedure. The officers appointed as the Judge, Family Court are selected by the High Courts from amongst the existing cadre of the District Judges. The ACRs of the said Judges are recorded by the High Court. It remains undisputed that there is a Committee of Judges Incharge of the Administration of the Family Courts. It may be true that the Act is a Federal Legislation but such Federal Legislation has been enacted by the Parliament for other purposes also as, for example, the Motor Vehicles Act, 1988 in terms whereof Motor Accident Claims Tribunals are constituted. **(M.P. Gangadharan & Anr. V. State of Kerala & Ors.; 2006(4) Supreme 489)**

Arts. 243-F, 243-K & Art. 191 – United Provinces Panchayat Raj, 1947, S. 5(A)(c) – Panchayat elections – Disqualification – Statute prohibited person who was receiving honourarium, from contesting election

The right to elect and right to be elected are statutory rights. Statutory creations they are and, therefore, subject to statutory limitations as held by the Supreme Court in AIR 1982 SC 983; Jyoti Basu and others v. Debi Ghosal and others. Therefore, when the statute prohibits that no person, who is receiving honorarium, can contest the election and no exception has been shown under the Act to contest the election even having office of profit, the Court is of the firm opinion that Shiksha Mitra and/or Anganbari workers having attached to the office of Panchayat on payment of honorarium cannot be eligible to contest the election. **(Smt. Sarita Devi v. State of U.P. & Ors.; 2011(1) ALJ 506 (All HC)**

Art. 246 – Power of State Legislature – State Legislature has power to make law in respect of fee taken in all courts except the Supreme Court.

There has to be a broad co-relationship with the fee collected with the cost of administration of civil justice and the State cannot enrich itself or to secure revenue for general administration by levy of fee. It is neither possible nor practicable to give exact break-up of the figures in regard to the expenses in relation to the administration of justice. It is not the requirement of law that the collection raised through the fee should exactly tally with the expenditure. The amount raised through the fee and expenses incurred in providing the services is not to be examined with exactitude with a view to ascertain any accurate or arithmetical equivalence. The test that the State cannot enrich itself by levy of fees would be satisfied if there is a broad co-relation between the amount raised from fee and the expenses incurred in administration of justice.

No facts and figure have been brought on record by the appellant so as to demonstrate that the fee levied by way of U.P. Amendment is so high and intended to secure revenue for general administration. However, the State has placed on record the figures, which clearly show co-relationship with the amount of fee collected and the expenditure on administration of justice. Therefore, it cannot be said that in the garb of fee the impugned legislation provides for tax and thus it cannot be said to be a colourable exercise of power.

Thus, provisions of Court Fees Act as amended from time to time in State of Uttar Pradesh is not ultra vires the powers of State Legislature. **(Shri Ram Das v. M/s. Punjab Iron Stores; AIR 2010 All 42 (All HC FB)**

Arts. 299 & 14 – Rights of tenderer participating in tender process.

The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the Authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations. **(Meerut Development Authority v. Association of Management Studies; 2009(5) ALJ 506 (SC)**

Arts. 299/ 300 -Government contract – Acceptance or rejection of bid- Decision making process – Should not be irrational or biased.

The issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view of the unsuccessful party but also from the point of view of the employer. As pointed out in Tata Cellular there must be judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision ―that no responsible authority acting reasonably and in accordance with relevant law could have reached‖ as held in Jagdish Mandal followed in Michigan Rubber.

Therefore, whether a term of the NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held in Ramana Dayaram Shetty. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot. **Central Coalfields Ltmited and Anr. V. SLL-SML (Joint Venture Consortium) & Ors. 2016 (6) Supreme 353**

Art. 300-A – Railway Service pension Rules, R. 31 – Revision – casual labour – counting of the period of service of casual labour for pensionary benefits - Consideration of

A prima facie reading of the Rule would evidence that it provides for the manner in which service would be reckoned for purposes of pensionary benefits and highlights that half the service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment.

The Rule in question does not refer to a temporary status employment, and this was noted by the Andhra Pradesh High Court. The Andhra Pradesh High Court then proceeded to consider as to what happens when a railway employee acquires a temporary status and then proceeded to consider whether acquiring said status i.e. temporary status would amount to absorption in service as a regular employee.

Though the Andhra Pradesh High Court has not juxtaposed regular employment vis-a-vis permanent employment, but in our opinion the same is implicit in the reasoning of the High Court when we noticed that the High Court thereafter proceeded to consider a Master Circular No.54 of 1994, para 20 thereof reads as under:-

"20. Counting of the period of service of casual labour for pensionary benefits:- Half of the period of service of a casual labour (either than casual labour employed on Projects) after attainment of temporary status on completion of 120 days continuous service if it is followed by absorption in service as regular railway employee, counts for pensionary benefits With effect from 1.1. 1981, the benefit has also been extended to Project Casual Labour".

The Andhra Pradesh High Court thereafter proceeded to note para 2005 of Indian Railway Establishment Manual, Volume-Il which reads as under:-

"Casual labour including Project Casual labour shall be eligible to count only half the period of service rendered by them after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption as qualifying service for the purpose of pensionary benefits. This benefit will be admissible only after their absorption in regular employment. Such casual labour, who have attained temporary status, will also be entitled to carry forward the leave at their credit to new post on absorption in regular service. Daily rated casual labour will not be entitled to these benefits."

and then proceeded to hold that para 20 of the Master Circular No.54 and Para 2005 of the Railway Establishment Manual Volume-II bring out, to give clarity, that with respect to casual labour other than casual labour employed on projects, on attaining temporary status, if followed by absorption as a regular railway employee, half service as casual labour has to be reckoned while calculating length of service meaning thereby the entire service rendered while on temporary status.

Court agree with the reasoning of the High Court, against which decision Leave to Appeal was dismissed by the Supreme Court and second time when a Division Bench of this Court simply followed the law declared by the Andhra Pradesh High Court, once again Leave to Appeal was refused by the Supreme Court.

The two office orders intended to be relied upon cannot be in derogatory of the Rule and the Statutory Railway Manual. It is trite that an office order cannot cut down a grant under a Rule-or a Statutory Railway Manual. It is trite that beneficial legislation has to be construed, insofar the language permits, in favour of the grantee. A pension is not a bounty. It is earned by dint of hard-work and a Statutory Rule or a Statutory Manual pertaining to pension and particular when it concerns the lowly paid employees, and in the instant case casual workers who attained a temporary status followed by permanent absorption have to be construed liberally. **(Union of India v. Sita Ram; 2013 (3) SLR 297 (Del.)**

Art. 300-A – Retiral benefits – Recovery of excess payment – Recovery of said excess amount after retirement of employee without giving him opportunity of hearing not permissible

The indisputable facts, in brief, are that the petitioner working as Assistant Engineer, retired from his service on attaining the age of superannuation on 31.03.2008. Thereafter, without assigning any reason and without affording an opportunity of hearing, the impugned order 29.05.2008 (Annexure-P/2) was passed holding that excess payment has been made to the petitioner during the service period and the said amount has to be deducted from the retiral dues of the petitioner.

According to the petitioner, the alleged excess payment has been made to the petitioner while the petitioner was in service, however, the impugned recovery order has been passed only after retirement of the petitioner. Thus, the impugned order is bad in law and the same is not at all sustainable in the eyes of law. Thus, this petition.

In Syed Abdul Qadir & others v. State of Bihar & others, (2009) 3 SCC 475 : [2008(7) SLR 642 (SC)] the Supreme Court observed that excess payment of emoluments/allowances cannot be recovered if the excess amount was not paid on account of any mis-representation or fraud on the part of the employee and if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowances or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous.

It is not the case of the respondents that the excess payment has been made to the petitioner on account of any mis-representation or fraud on the part of the petitioner. The excess payment might have been made by wrong calculation or wrong interpretation of the provisions of law, if any.

The Supreme Court as well as this Court in a catena of decisions, time and again reiterates that no recovery of excess payment for no fault of the employee can be made without following the principles of natural justice. **(Chhote Lal Rathore v. State of Chhattisgarh; 2013(3) SLR 716 (Chhatt.)**

Art. 309 – Rajasthan Administrative Services Rules, R. 33 – Reservation with consequential seniority can be provided only if there is inadequacy of representation of SC/ST/BC Class employees and an ascertaining whether reservation is at all necessary

Reservation of posts in promotion is dependent on the inadequacy of representation of members of the Scheduled Castes and Scheduled Tribes and Backward Classes and subject to the condition of ascertaining as to whether such reservation was at all required. As no exercise was undertaken by the State in terms of Article 16(4-A) to acquire quantifiable data regarding the inadequacy of representation of the Scheduled Castes and Scheduled Tribes communities in public services before issuing the notification dated 28.12.2002 and 25.4.2008 providing for consequential seniority and promotion to the members of the Scheduled Castes and Scheduled Tribes communities the notifications deleting the proviso in Rajasthan Various Service Rules are liable to be struck down. (**Suraj Bhan Meena & Anr. V. State of Rajasthan & ors.; AIR 2011 SC 874)**

Arts. 309, 16—Civil Services (Classification, Control and Appeal) Rules (1965), Rr. 14, 15—Disciplinary inquiry—Natural justice – Non observance of

Both the learned Single Judge and the Division Bench have heavily relied on the fact that before forwarding the copy of the report by letter dated 02.04.2008 the Disciplinary Authority-cum-Whole Time Members have already formed an opinion on 25.02.2008 to punish the writ petitioner with major penalty which is a clear violation of principle of natural justice. Court is of the view that before making opinion with regard to punishment which is to be imposed on a delinquent, the delinquent has to be given an opportunity to submit the representation/reply on the inquiry report which finds a charge proved against the delinquent. The opinion formed by the Disciplinary Authority-cum-Whole Time Members on 25.02.2008 was formed without there being benefit of comments of the writ petitioner on the inquiry report. In his representation any inputs and explanation given by the delinquent are also entitled to be considered by the Disciplinary Authority before it embarks with further proceedings as per statutory rules. Court is, thus, of the view that there was violation of principle of natural justice at the level of Disciplinary Authority when opinion was formed to punish the writ petitioner with dismissal without forwarding the inquiry report to the delinquent and before obtaining his comments on the inquiry report. Court is, thus, of the view that the order of the High Court setting aside the punishment order as well as the Appellate order has to be maintained.

Court has found that principles of natural justice have been violated after submission of the inquiry report dated 29.12.2007 all proceedings taken by the Disciplinary Authority after 29.12.2007 have to be set aside and the Disciplinary Authority is to be directed to forward the copy of the inquiry report in accordance with Rule 15(2) of Rules 1965 and further proceedings, if any, are to be taken thereafter. **H.P. State Electricity Board Ltd. V. Mahesh Dahiya, AIR 2016 SC 5341**

Article 309, 25 – U.P. Government Servants (Conduct) Rules, R.29 – Rule prohibiting bigamy is not arbitrary and does not offend dictates of religion.

There is no law, custom or practice showing that solemnizing more than one marriage is necessary religious or otherwise activity. In Muslim Personal Law marriage with four women is permissible. However, to the knowledge of the Court no personal law maintains or dictates it as a duty to perform more than one marriage. No religious or other authority provides that marrying more than one woman is a necessary religious sanction and any law providing otherwise or prohibiting bigamy or polygamy would be irreligious or offend the dictates of the religion. Polygamy cannot be said to be an integral part of any religious activity, may be Hindu, Muslim or any other religion. A distinction has to be drawn between religious faith, belief and religious practices. Even Article 25 of the Constitution guarantees only the religious faith and belief and No the religious practices which if run counter to public order or health or policy of social welfare which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole. Therefore, R. 29 of Govt. Servants (Conduct) Rules prohibiting bigamy cannot be said to arbitrary, illegal or ultra virus. **(Veerpal Singh v. Senior Superintendent of Police, Agra & Ors.; 2006 (5) ALJ 307)**

Arts. 309, 311 - Compulsory retirement of Judicial Officer - Legality of

Ordinarily the Courts are not interested in sufficiency of material upon which the order of compulsory retirement is based. It is well-settled that formation of opinion for compulsory retirement is based on subjective satisfaction of the authority concerned. The Courts can certainly look whether the valid material exists or not, or whether the order of compulsory retirement is based on some material or not, but sufficiency of material cannot be ground for setting aside the order of compulsory retirement.

Court has carefully considered all the materials in this case. The screening Committee had examined the entire service records of the petitioner before forming an opinion. This entire material was placed before the full court and after considering it, the full court recommended for compulsory retirement of the petitioner. Based on this recommendation, the appointing authority passed the final and formal order of compulsory retirement of the petitioner. The order was not based merely on adverse remarks of a single year. The overall conduct of entire career of petitioner was considered and then he was found fit for compulsory retirement. It is apparent that suitability, utility and desirability to continue in service as a Judicial Officer in public interest was the sole consideration for passing of the impugned order and no stigma is attached to his retirement. The petitioner is entitled to receive all admissible retiral benefits.

Court has carefully considered all the material records and are convinced from it that the impugned order was passed in public interest. The impugned order was based on cogent material on record and cannot be termed as mala fide or arbitrary. Court therefore, uphold the impugned order dated 17.5.2005, which requires no interference from this Court in exercise of powers under Article 226 of the Constitution of India. **(Moti Lal III v. State of U.P. and another; 2014 (2) ESC 920 (All)**

Articles 311, 309 – U.P. Govt. Servants (Discipline and Appeal) Rules, R. 9(4) – Disciplinary Proceedings – Reasoned order as contemplated U/R. 9(4) of above rules not passed – Order of punishment liable to be quashed.

When the rule framing authority itself has made separate provision making it obligatory upon disciplinary authority to record reasons at two different stages, one, when it disagrees with findings of inquiry officer and, secondly, when it decides to pass an order or punishment after considering the reply given by delinquent employee against findings of disagreement of disciplinary authority, then it is obligatory upon disciplinary authority to follow such procedure strictly. High Court would not read the aforesaid provision in such a manner so as to make one or the other exercise nugatory. The reasons contained in disagreement note constitute the ex-parte view taken by disciplinary authority against findings recorded by inquiry officer. When it is communicated to delinquent employee and he submits its reply, the disciplinary authority is benefited with the explanation given by delinquent employee. In order to find out as to whether it would like to stick to its earlier view of disagreement with finding of inquiry officer or same needs to be changed, modified, partly or wholly in light of explanation given by delinquent employee, it has to apply its mind again. The reasons, therefore, are required to be recorded by disciplinary authority as to why explanation given by delinquent employee is or is not satisfactory. The purpose and objective of reasons to be recorded under sub-rules (2) and (4) of Rule 9 are different. They are to be recorded at different stages with slightly different material inasmuch as at former stage, the stand of delinquent employee is not available to disciplinary authority while in later case it is available. Therefore non-observance of Rule 9(4) is fatal since its compliance is mandatory. If the delinquent employee after communicating its disagreement note and inquiry officer‟s finding to delinquent employee and after receiving reply failed to pass a reasoned order imposing punishment upon delinquent employee, such order would not be tenable in law and has to be set aside. (Sanjeev Kumar v. State of U.P. & Ors.; 2009(2) ALJ 158 (All HC)

Art. 311 – Termination of services as measure of punishment without holding regular department enquiry – Effect of

Order for termination of services passed as measure of punishment without holding regular departmental enquiry, cannot be termed as termination simpliciter. Employee would be entitled to protection of Art. 311 and liable to be restored in service. **(State of U.P. & Anr. V. Tej Bahadur Singh & Anr.; 2009(5) ALJ (DOC) 135 (All HC DB)**

Art. 311 – Disciplinary proceedings – Non-furnishing of inquiry report – Effect of

No prejudice shown to have caused to delinquent due to non-furnishing of report, proceedings cannot be said to be illegal merely on ground of non-furnishing of inquiry report. **(Jagdish Singh Rathore v. Cane Commissioner & Anr.; 2009(5) ALJ (NOC) 888 (All HC)**

Art. 311(2)—Protection U/Art. 311(2)—Not available to personnel of Border Security Force, it is meant for 'civil post' under Union or State

There is no gainsaying the fact that Article 311 of the Constitution provides for guarantees with regard to dismissal, removal or reduction in rank of persons employed in civil capacities under the Union of State. Article has obvious reference to civil service. Under Entry 2 of List 1 of the Seventh Schedule to the Constitution, the Parliament has been given the power to make laws with regard to the naval, military and air force as also to any other armed forces of the Union. In other words, besides the regular naval, military and armed forces, the Parliament can authorize the raising of any other kind of armed forces of the Union. Deriving power from that source in the Constitution of India, the Parliament had enacted the Border Security Force Act, 1968 which provides for the Constitution and regulation of an armed force of the Union for ensuring the security of the borders of India and for matters connected therewith. Under Section 3 of the Act, all officers, subordinate officers, under-officers and other officers enrolled under the Act are put as subject to the Act, wherever they may be, and all those persons are required to remain so subject until retired, discharged, released, removed from the force in accordance with the provisions of this Act and the Rules. Section 4 provides for the constitution of the force and section 6 provides for the enrollment to the force. Section 6(2) provides that notwithstanding anything contained in the Act and the Rules, every person who has for a continuous period of three months been in receipt of pay as a person enrolled under the Act and borne on the rolls of the Force shall be deemed to have been duly enrolled. Thus a complete enclosure is provided to preserve the force's sensitivity and integrity. There is no escape from the conclusion that officers, subordinate officers, under-officers and other persons enrolled under the Act remain subject to the Act so long as they remain in service. The petitioner of either case being a Sub-Inspector was concededly a subordinate officer under rule 14(1)(b) of the B.S.F. Rules, 1969 framed under the Act. There is also no manner of doubt that the B.S.F. being part of the Armed Forces of the Union and hence part of the defence services of the Union and this distinction takes the defence service out of the ambit of Article 311 of the Constitution. And if that is so, neither of the petitioner is entitled to invoke even principles of natural justice under the general law of master and servant.

Accordingly, question No.2 is answered in favour of the appellant and it is held that the protection under Article 311(2) of the Constitution is not available to personnel of the Border Security Force, as he does not hold a "Civil Post" under the Union or a State. **(Union of India vs. Indrajit Tewari; 2012 (5) ALJ 586)**

Art. 311 - Employment – Disciplinary proceedings – Invitation – Quashbility of charge sheet – Authority subordinate to appointing Authority can initiate disciplinary proceedings or issue charge memo

The legal proposition has been told down by the Supreme Court while interpreting the provisions of Article 311 of the Constitution of India that the removal and dismissal of a delinquent on misconduct must be by the authority not below the appointing authority. However, it does not mean that disciplinary proceedings may not be initiated against the delinquent by the authority lower than the appointing authority.

It is permissible for an authority, higher than appointing authority to initiate the proceedings and impose punishment, in case he is not the appellate authority so that the

delinquent may not loose the right of appeal. In other case, delinquent has to prove as what prejudice has been caused to him.

There is nothing in law which inhibits the authority subordinate to the appointing authority to initiate disciplinary proceedings or issue charge memo and it is certainly not necessary that charges should be framed by the authority competent to award the punishment or that the inquiry should be conducted by such an authority.

Law does not permit quashing of charge-sheet in a routine manner. **(Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha; 2012(4) AWC 3989)**

Art. 311 – Removal from service without observing natural justice – Effect of

Counsel for the petitioner has submitted that the impugned order passed by the Board (Appellate Authority) is without any reasons and, therefore, suffers from non-application of mind and cannot be sustained in law. Similarly, the petitioner was not given personal hearing by the Board before passing the impugned order and, therefore, the same cannot be sustained in law.

But counsel for the respondents, on the other hand, supported the impugned order and submitted that the Board has discussed the pros and cons in details before confirming the punishment awarded by the Disciplinary Authority. It is submitted that the minutes of the meeting of the Board of Directors would show that all facets of the issue were considered by the Board and it is only thereafter the impugned order was passed by the disciplinary. Authority which is just and proper and the punishment awarded are also sustainable in law. Court has observed that it is not in dispute that the Board (Appellate Authority) passed the impugned order without granting reasonable opportunity of hearing to the petitioner. Similarly, the Board did not give any reasons for confirming the punishment awarded by the Disciplinary Authority.

The impugned order, therefore, on the face off shows that it is without reasons and in violation of the principles of natural justice. The contentions canvassed by the learned counsel for the respondents that the members of the Board of Directors have discussed the issue in details in the meeting held for deciding the appeal of the petitioner cannot justify the passing of the cryptic order without giving any reasons. It is equally well settled that the reasons must be reflected in the order of the Appellate Authority itself and the same cannot be demonstrated by filing an affidavit before the Court. In view of the decision of the Full Bench (supra) based on the decision of the Apex

Court the expression :"consider" includes within its sweep the application of mind, personal hearing and records of reasons. It is, therefore obligatory on the part of appellate authority to apply its mind and to pass an appropriate speaking order of affording personal hearing to the delinquent.

Hence, court has not hesitation in holding that the impugned order suffers from non-application of mind and is violative of principles of natural justice and, therefore, cannot be sustained in law. **(Madhukar Tulsiram Tayade v. Chairman Board of Directors, Vidarbha Kshetriya Gramin Bank, Akola and ors.; 2012 (2) SLR 737)**

Article 311 – Termination of service on the ground that respondent was not eligible for post being over age – Appointment would be void ab initio.

In the instant case, if the petitioner was not eligible being overage, his application ought not to have been considered and thus, his appointment is void. It, therefore, makes no difference as how he has been removed from service.

So far as the issue of non-observance of principle of natural justice is concerned, the Hon‟ble Supreme Court in State of U.P. v. Om

Prakash Gupta, AIR 1970 SC 679, has observed that Courts have to examine whether the non observance of any statutory provision or principle of natural justice have resulted in deflecting the course of justice.

In view of the above, it is clear that the respondent No. 2 admittedly was overage and, therefore, was not eligible even to apply for the post what to talk of giving appointment to him. This is not a case where the said respondent had been removed during the period of probation on the ground of unsuitability. The said respondent canot be permitted to take any advantage merely ontechnicalities. The Courts are meant to do substantial justice. **(Indian Council of Agricultural Research, Krishi Bhawan & Ors. V. Central Administrative Tribunal, Allahabad Bench & Anr.; 2008 (1) ALJ 283)**

Article 311 – Compliance of Natural Justice in the termination of service when service was obtained by practicing fraud – held

By now it is settled principle of law that the principle of natural justice cannot be applied in a straight – jacket formula. To sustain the compliant of violation of principles of natural justice one must establish that he was prejudiced for non-observance of the principles of natural justice. The facts clearly disclose that the appointment on compassionate ground was secured by playing fraud. Fraud clocks every thing. In such admitted fact there was no necessity of issuing show cause notice. Thus it cannot be said there was non-observance of principles of natural justice. No prejudice whatsoever has been caused to the respondents. **(Secretary, A.P. Social Welfare Residential Educational Institutions v. Pindiga Sridhar & ors. – Civil Appeal No. 1470/2007 decided on 19.3.2007 = AIR 2007 SC 1527)**

Art. 311 – Civil Services Regulation (1920), Regn. 371-A – Departmental enquiry against retired government servants under CCA Rules – Cannot be conducted.

Departmental enquiry under the CCA rule cannot be conducted against a retired Government servant. Action can be taken against a retired Government servant only in accordance with the relevant rules, which are applicable. In the instant case petitioner was not been dealt with by the relevant rules i.e. Civil Service Regulations (CSR). In this case, no departmental enquiry could have proceeded against the petitioner under the CCA rules as he had already retired on attaining the age of superannuation. The petitioner had ceased to be an active Government servant. The whole exercise by the opposite parties in conducting the enquiry under CCA Rules was illegal, unjust and improper and the consequential order ought not have been passed. **(Prabhat Narain Srivastava v. State of U.P. & Ors.; 2007 (1) ALJ 758)**

Article 311 – Civil Services (Classification, Control & Appeal) Rules, R. 55 – Penalty of withholding one or two or more increments on permanent basis – Is major punishment and it can‟t be imposed without full-fledged disciplinary enquiry.

Penalty of withholding of one or two or three or more increments of Government employee on permanent basis tantamounts to reduction in rank, as reduction to a lower stage in time scale and as one of the major penalties, therefore, such penalties could not be imposed upon the Government servants governed by Rules of 1930 without holding full-fledged dArt. 311 – Civil Services Regulation (1920), Regn. 371-A – Departmental enquiry against retired government servants under CCA Rules – Cannot be conducted.

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Article 311 – Civil Services disciplinary inquiry as contemplated by R. 55 of 1930 Rules against such Government servants. Since in the instant case, the petitioner‟s three increments have been stopped permanently without holding full-fledged disciplinary inquiry against him as contemplated under R. 55 of 1930 Rules rather admittedly aforesaid punishments have been awarded to him merely by following the procedure prescribed under R. 55-B of 1930 Rules, therefore, the impugned order is per se illegal and cannot be sustained. **(Shravan Kumar Purwar v. Inspector General (Registration), U.P., Allahabad & Ors.; 2007 (2) ALJ 119 (DB))**

Articles 311, 309 – Exparte enquiry – Validity of.

Inquiry Officer can hold the enquiry exparte in two situations. Firstly in spite of service of charge sheet the delinquent employee does not reply the charge sheet within time stipulated in the charge sheet and secondly where the charged Govt. servant does not appear on the date fixed in the enquiry or at any stage of proceeding in spite of service of notice on him or having knowledge of the date. The „exparte inquiry‟ should not be confused and equated with „no formal inquiry‟ accordingly would not permit the Inquiry Officer to submit inquiry report finding the charged employee guilty of the charges leveled against him without holding any such formal disciplinary inquiry. Where after submission of reply to the charge sheet, the inquiry officer did not inform the petitioner in connection of date and place of holding of disciplinary inquiry against him, the respondent-authority/inquiry officer would not be justified under rules of inquiry to hold even exparte inquiry against the petitioner as unless inquiry officer communicates the date and place of holding such disciplinary inquiry against him. **(Shiv Shanker Saxena v. State of U.P.; 2006 (4) ALJ 90 (DB))**

Art. 311 – Termination of services – if it is in accordance with condition of appointment letter – Order cannot be termed as stigmatic in nature.

Where the appointment is totally irregular no opportunity is required while dispensing with his service. No doubt, it is mentioned in the impugned order that the working of the petitioner was not upto the mark, but that is not the foundation of the order. The foundation of the order is that the appointment was temporary which was terminable without notice and thus in accordance with the condition of appointment letter, the order has been passed and in this particular case the petitioner was not entitled to any opportunity as the order cannot be termed as stigmatic. It is also well settled that temporary employee does not have any right to the post and that too one whose appointment itself is hit by the principles enshrined in Articles 14 and 16 of the Constitution. (Yogesh Verma v. District Judge, Aligarh, 2006(2) ALJ 620)

Art. 311 – Compulsory retirement – Order of compulsory retirement passed after scrutinizing entire service record of employee – Cannot be said to be illegal or malafide.

The controversy regarding an order passing the compulsory retirement cannot be said to be illegal, malafide, if the same has been passed by the competent authority after scrutinizing the entire service record of an employee. As mentioned above, the courts has perused the complete service record of the petitioner, therefore, the contention of the petitioner to this effect cannot be accepted that the order of compulsory retirement against the petitioner is in any way illegal, punitive and has passed without taking into consideration the performance of the petitioner. **(Ramesh Kumar Srivastava v. State of U.P. & Anr., 2006(2) ALJ 686)**

Art. 311 - Unauthorised absence from duty from 28-8-1995 to 31-3-97 – Dismissal from service – Medical certificate not reliable - High Court invoking principle of proportionality directed reinstatement on the ground there was no previous absence - Validity of - Court shall presently proceed to deal with the doctrine of proportionality which has been taken recourse to by the High Court regard being had to the obtaining factual matrix

In Shri Bhagwan Lal Arya the Court opined that the unauthorized absence was not a grave misconduct inasmuch as the employee had proceeded on leave under compulsion because of his grave condition of health. Be it noted, in the said case, it has also been observed that no reasonable disciplinary authority would term absence on medical grounds with proper medical certificate from Government doctors as a grave misconduct.

Presently, court shall proceed to scrutinize whether the High Court is justified in applying the doctrine of proportionality. Doctrine of proportionality in the context of imposition of punishment in service law gets attracted when the court on the analysis of material brought on record comes to the conclusion that the punishment imposed by the Disciplinary Authority or the appellate authority shocks the conscience of the court. In this regard a passage from Indian Oil Corporation Ltd. and another v. Ashok Kumar Arora; (1997) 3 SCC 72 is worth reproducing: -

―At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee.

As has been seen from the analysis made by the High Court, it has given emphasis on past misconduct of absence and first time desertion and thereafter proceeded to apply the doctrine of proportionality. The aforesaid approach is obviously incorrect. It is telltale that the respondent had remained absent for a considerable length of time. He had exhibited adamantine attitude in not responding to the communications from the employer while he was unauthorisedly absent. As it appears, he has chosen his way, possibly nurturing the idea that he can remain absent for any length of time, apply for grant of leave at any time and also knock at the doors of the court at his own will. Learned counsel for the respondent has endeavoured hard to impress upon us that he had not been a habitual absentee. The Court really fail to fathom the said submission when the respondent had remained absent for almost one year and seven months. The plea of absence of ―habitual absenteeism‖ is absolutely unacceptable and, under the obtaining circumstances, does not commend acceptation. Court has disposed to think that the respondent by remaining unauthorisedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it. Such a conduct is not permissible and we are inclined to think that the High Court has erroneously placed reliance on the authorities where this Court had interfered with the punishment. We have no shadow of doubt that the doctrine of proportionality does not get remotely attracted to such a case. The punishment is definitely not shockingly disproportionate. **(Chennai Metropolitan Water Supply and Sewerage Board and others v. T.T. Murali Babu; 2014(3) SLR 398 (SC)**

Art. 311 – Police Act, 1861, S. 7 – Absence from duty - Dismissal from service - Petitioner had unauthorizedly absented for 36 days– Major penalty of dismissal from service imposed to the petitioner for unauthorized absence of only 36 days shocks the conscience for unauthorized of only 36 days shocks the conscience of court - Therefore, punishment imposed to the petitioner is called for interference

The court has to see whether the dismissal of the petitioner from service for the unauthorized absence of 36 days would be one which no reasonable person would have taken. This court taking into consideration of the procedures adopted in imposing punishment and also the number of unauthorized absence, i.e. for 36 days, is of considered view that major punishment of dismissal from service imposed to the petitioner is the one, which no reasonable person could have taken and also that the major penalty of dismissal from service imposed to the petitioner for unauthorized absence of only 36 days in the given case, shocks the conscience of this court. The maxim 'FIAT JUSTITIA RUAT ET COELUM' (justice should be done even if heaven falls) is applicable in the instant case. Therefore, the punishment imposed to the petitioner is called for interference. Accordingly, the impugned order dated 31.10.1994 and 2.3.2005 are hereby quashed.

From the record it is clear that there was considerable delay in filing the present writ petition and there is also no record that the petitioner was not otherwise employed during

the period i.e. from the date of dismissal from his service till date. In such circumstance, this court is of considered view that it would be appropriate to direct the respondents to reinstate the petitioner to service without any back wages. (**H. Khamba (Constable) v. State of Manipur & Ors.; 2014 (2) SLR 535 (Gau)**

Art. 311, Expunction Adverse remark of corruption - Officer earning goods remarks in subsequent year cannot be ground to expunge earlier

The court said, the reasons given for expunging the remarks on ―corruption and substituting the same by ―good remarks is shocking and untenable to say the least. Simply because the appellant allegedly showed improvement and earned good entries in the subsequent years cannot be a ground to erase the earlier remarks recorded 7 years ago thereby treating him as a good officer even for the earlier period. **(Vinod Kumar v. State of Haryana and others; AIR 2014 SC 33)**

Art. 311 - Industrial Disputes Act, Sch. 2 Item 6 - Dismissal from service and imposition Penalty after retirement - Permissibility – Conflict between (2007) 1 SCC 663 and 2011 AIR SCW 6577 - Question referred to larger Bench

It is the case of the appellant that in the charge sheet served upon the respondent herein, there are very serious allegations of misconduct alleging dishonestly causing coal stock shortage amounting to Rs. 31.65 crores, and thereby causing substantial loss to the employer. If such a charge is proved and punishment of dismissal is given thereupon, the provisions of Section 15 4(6) of the Payment of Gratuity would naturally get attracted and it would be within the discretion of the appellant to forfeit the gratuity payable to the respondent. As a corollary one can safely say that the employer has right to withhold the gratuity pending departmental inquiry. However, as explained above, this course of action is available only if disciplinary authority has necessary powers to impose the penalty of dismissal upon the respondent even after his retirement. Having regard to our discussion above of Jaswant Singh Gill [(2007) 1 SCC 663] and Ram Lal Bhaskar (2011 AIR SCW 6577), this issue needs to be considered authoritatively by a larger Bench. The court, therefore, was of the opinion that present appeal be decided by a Bench of three Judges. **(Ch. Cum Man. Director Mahanadi Coalfields Ltd v. Rabindranath Coubey; AIR 2014 SC 234)**

Art. 311 - Police Regulations of Calcutta, 1968, Chapter 19, Regulation 4 - Dismissal from service – Criminal proceedings – Acquittal - Acquittal or discharge in criminal proceedings shall not be a bar to award punishment in departmental proceedings in respect of the same cause or matter

In this case Regulation 4 of Chapter 19 of the Police Regulations of Calcutta, 1968, which is applicable to the case in hand, specifically provides that acquittal or discharge in a criminal proceeding shall not be a bar to award punishment in a departmental proceeding in respect of the same cause or matter. The said Regulation is extracted below for easy reference: Discharge or acquittal not a bar to departmental punishment. An order of discharge or acquittal of a Police Officer shall not be a bar to the award of departmental punishment to that officer in respect of the same cause or matter.

Above rule indicates that even if there is identity of charges levelled against the respondent before the Criminal Court as well as before the Enquiry Officer, an order of

discharge or acquittal of a police officer by a Criminal Court shall not be a bar to the award of the departmental punishment. The Tribunal as well as the High Court have not considered the above-mentioned provision and have committed a mistake in holding that since the respondent was acquitted by a Criminal Court of the same charges, reinstatement was automatic. Court find it difficult to support the finding recorded by the Tribunal which was confirmed by the High Court. **(State of West Bengal & Ors. v. Sankar Ghosh; 2014(3) SLR 682 (SC)**

Article 311 – Contractual employee - Dismissal from service - Petitioner accepted the terms of the contract which had given him service for a period of two year – Removal of the petitioner from service on completion of the period of two years will require no interference from this Court

While this Court is not inclined to interfere with the order of removal of the petitioner as directed in the order dated 11.08.2011 for a simple reason that the petitioner with his eyes open had accepted the terms of the contract which had given him service for a period of two years and therefore, when such appointment letter had also bound the petitioner with a specific condition that after completion of the period of two years his services would automatically come to an end, the petitioner on completion of the period of two years service cannot be heard to say that he ought to have been continued in service even after completion of a period of two year. In that view of the matter, the removal of the petitioner from service on completion of the period of two years will require no interference from this Court. **[Kartik Prasad Singh v. The State of Bihar and others, 2014 (4) SLR 47 (Patna)]**

Art. 311 – Disciplinary proceeding – Choice of punishment – Factor relevant in deciding punishment

When the charge proved, as happened in the instance case, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed. Of course, this discretion has to be examined objectively keeping in mind the nature and gravity of charge. The Disciplinary Authority is to decide a particular penalty specified in the relevant Rules. Host of factors go into the decision making while exercising such a discretion which include, apart from the nature and gravity of misconduct, past conduct, nature of duties assigned to the delinquent, responsibility of duties assigned to the delinquent, previous penalty, if any, and the discipline required to be maintained in department or establishment where he works, as well as extenuating circumstances, if any exist. **[Deputy Commissioner, KVS and others v. J Hussain, 2014 (3) ESC 297 (SC)]**

Art. 311 – Removal – Proportionality – School employee – Forcibly entering principals office inebriated condition constitutes serious misconduct – Punishment of removal not disproportionate

In Court's view entering the school premises in working hours i.e. 11.30 a.m. in an inebriated condition and thereafter forcibly entering into the Principals room would constitute a serious misconduct. Penalty of removal for such a misconduct cannot be treated as disproportionate. It does not seem to be unreasonable and does not shock the conscience of the Court. Though it does not appear to be excessive either, but even if it were to be so, merely because the Court feels that penalty should have been lighter than the one imposed, by itself is not a ground to interfere with the discretion of the disciplinary authorities. The

penalty should not only be excessive but disproportionate as well, that too the extent that it shocks the conscience of the Court and the Court is forced to find it as totally unreasonable and arbitrary thereby offending the provision of Article 14 of the Constitution. Discretion lies with the disciplinary/appellate authority to impose a particular penalty keeping in view the nature and gravity of charge. Once, it is found that the penalty is not shockingly disproportionate, merely because in the opinion of the Court lesser punishment could have been more justified, cannot be a reason to interfere with the said penalty. The High Court has also mentioned in the impugned order that the respondent is a married man with family consisting of number of dependents and is suffering hardship because of the said ―economic capital punishment‖. However, such mitigating circumstance are to be looked into by the departmental authorities. It was not even pleaded before them and is an after effect of the penalty. In all cases dealing with the penalty of removal, dismissal or compulsory retirements, hardship would result. That would not mean that in a given case punishment of removal can be discarded by the Court. That cannot by a reason to interdict with the said penalty. **[Deputy Commissioner v. J Hussain, 2014 (3) ESC 297(SC)]**

Art. 311 – Misconduct of consuming liquor while on duty – dismissal from service - validity of

The appellant-writ-petitioner while serving as Constable (Driver) in the State Poilce department was served with a memorandum of charges initiating proceeding under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958 levelling the following charges:-

The appellant-writ-petitioner participated in the enquiry that followed. Thereafter, the Enquiry Officer submitted his report holding that the charges were found proved against him. The appointing authority concurring with the said finding imposed the penalty of dismissal from service. Eventually, he turned to this Court for redress by filing S.B. Civil Writ Petition No.3231/2011. The learned Single Judge negated the challenge, where after, he preferred D.B.Civil Special Appeal (Writ) No.792/2011, which by judgment and order dated 29.6.2011 was also dismissed.

A Co-ordinate Bench of this Court while dismissing the appeal rejected all these contentions on a detailed consideration of all relevant aspects factual and legal. It was recorded inter-alia that in the light of the statement of the appellant-writ-petitioner himself one could come to the conclusion that he had consumed liquor on the date of incident while on duty and that no further evidence was necessary to prove the charges levelled against him. It was noted as well that the evidence of the doctor also proved that he had consumed liquor. The Coordinate Bench therefore returned a categorical finding that the charges levelled against the appellant-writ-petitioner had stood proved. Vis-a-vis the plea that his past conduct could not have been taken into consideration for determining the penalty, the Coordinate Bench held that even dehors the same, the misconduct proved against him on the charges levelled was adequate enough to warrant his dismissal from service, more particularly in view of the fact that he at all relevant times was a member of the disciplined force.

Court is of the unhesitant opinion that not only the plea is untenable on the face of it, it by no means constitutes a ground for review. The Coordinate Bench of this Court having dealt with all factual and legal aspects and recorded categorical finidng vis-a-vis the charges

proved against the appellant-writ petitioner, court do not find any cogent and convincing reason to entertain the instant petition. More importantly, as adverted to hereinabove, the Coordinate Bench did in fact deal with the contention now raised and rejected the same on merits. We are in respectful agreement with the conclusions recorded. **(Samunder Singh v. State of Rajasthan, 2014 (6) SLR 616 (Raj.)**

Art. 311 – Major punishment – Stoppage of increments with cumulative effect without holding enquiry – Validity of

In view of authority to pronouncement, it has to be held that the order wide which the punishment of stoppage of increments with cumulative effect is passed, is a major punishment and cannot be held without inquiry. **(Tarsem Singh v. Punjab State and another; 2013 (5) SLR 502 (P & H)**

Art. 311—Disciplinary inquiry—Doctrine of proof —beyond reasonable doubt does not apply to such proceeding despite it being quasi-judicial or quasi-criminal

Standard of proof in a Departmental Enquiry which is Quasi Criminal/Quasi Judicial in nature:

A. In M.V. Bijlani vs. Union of India and Ors.; AIR 2006 SC 3475: 2006(3) SLR 105 (SC), the Court held :

Disciplinary proceedings, however, being quasicriminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analyzing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. (Nirmala J. Jhala vs. State of Gujarat; 2013(4) SLR 127 (SC)

Art. 311 – Punishment of dismissal from service only for absence on one particular day and wrong signing of attendance register – Validity of

Petitioners, who were 5 in number, are stated to be employed as class-IV employee in Maheshwar Inter College, Aligarh, which is a recognised and aided intermediate college. The petitioners are stated to have participated in an illegal strike called by the Madhyamik Shikshak Sangh on 22.8.1988. For the said reason, the petitioners did not attend the college on the said date. For this act the petitioners were served with a charge-sheet on 3l.8 .1988, Annexure-6 to the writ petition. The charge-sheet contains two charges, first that the petitioners were absent without prior information on 22.8.1988 which amounts to indiscipline and dereliction of duty and second that the petitioners despite being absent, wrongly made their signatures on attendance register. The petitioners submitted their reply pointing out that they had proceeded on strike for non-payment of salary since July 1988

and because of some confusion they had signed the attendance register on the date of strike. The principal of the institution did not accept the explanation submitted by the petitioners and proceeded to pass an order of dismissal from services on 21.9.1988. Not being satisfied, petitioners filed an appeal before the Committee of the Management of the institution on 04 .1l.1988 which was dismissed. Against the appellate order, petitioners approached the District Inspector of Schools, Aligarh as per the regulations applicable. The District Inspector of Schools has also rejected their petition vide order dated 30.5.1989. It is against these orders that the present writ petition has been filed.

Thus writ petition has been pending before this Court since 1989. The petitioners had been granted an interim order on 09.06.1989 and they are continuously working since then. As on date, the petitioners have completed 26 years of service in terms of the interim order passed by this Court. According to the petitioners there has been no complaint with regards to their work and performance. It is the case of the petitioners that the punishment imposed is not justified as the charges were not proved. In the alternative if their case that on the alleged charges, the punishment inflicted upon the petitioners is too harsh. According to the petitioners the punishment is shockingly disproportionate to the charges found proved. Absence on one day or wrong signing of the attendance register did merit dismissal from service.

In the facts of this case, the Court found that there is substance in the contention of the petitioners. The punishment of dismissal from service only for absence on one particular day and wrong signing of the attendance register by class-IV employees appear to be shockingly disproportionate to the charge in the facts of the case. **(Sukhvir Singh v. DIOS, Aligarh; 2013 (3) SLR 328 (All)**

Art. 311 – Compulsory retirement – When can be quashed

Material facts necessary for adjudication of this appeal are that a memorandum under Rule-14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 was issued o the respondent on 14.08.1986. The Inquiry Officer was appointed. He submitted the report to the disciplinary authority on 22.03.1995. Thereafter, a show-cause notice was issued to the respondent on 27.11.1995 why the penalty of compulsory retirement be not imposed upon him. He filed reply to the same on 31.01.1996. The disciplinary authority passed the office order dated 12.09.1996, whereby the penalty of compulsory retirement from service was imposed upon the petitioner. He assailed this order before the learned erstwhile Himachal Pradesh Administrative Tribunal by filing O.A. No. 1557/96. The matter was transferred to this Court and it was assigned WP (T) No. 3818/2008. Learned Single Judge allowed the petition on 17.04.2009.

In the instant case, the Inquiry Officer has not given any findings on four bills as per Charge No. II. He has only returned findings with regard to bills No. 1416 and 1333, dated 31.3.1979. In view of this, it cannot be held that Charge No. II stood proved against the petitioner and thereafter the consequential issuance of show-cause notice, dated 27.11.1995 and order dated 12.9.1996 are null and void.

The scope of judicial interference in the departmental proceedings is very limited, however, if the inquiry report is perverse, the Court can interfere. Hence, the judgment of learned Single Judge being well reasoned warrants no interference. **(Himachal Road Trans. Corpn. v. Prithvi Chand; 2013(3) SLR 774)**

Art. 311 – Police Act, Sec. 7 – U.P. Govt. Servant Conduct Rules, R. 5 – Punishment – Award of censure entry for canvassing and seeking vote for his wife in election – Validity of

The petitioner was working on the post of constable at police station G.R.P, Moradabad, he proceeded on 30 days sanctioned medical leave. A complaint dated 10.7.2000 was made by one Shakhawat Hussain resident of village Dadiyal Ahtmali District Rampur to the Senior Superintendent of Police (Railways) GRP, Moradabad stating therein that in the election of Gram Pradhan in which the wife of the petitioner was also a candidate, he actively participated in the canvassing and threatened the voters by his licensed gun. On the complaint an enquiry was conducted wherein the allegations levelled against petitioner regarding threat by use of gun were found to be baseless. However, the petitioner was found guilty of canvassing and seeking vote for his wife in elections which was unbecoming of a Government Servant under the Government Servants Conduct Rules.

After hearing the learned counsels for the parties and on perusal of record it is apparent that enquiry was got conducted on the complaint made against the petitioner and the allegation that he was canvassing for his wife and praying for votes for his wife was proved.

On the basis of these findings the 'petitioner was served a show-cause notice under Rule 14(2) of the Police Officers of Subordinate Ranks (Appeal & Punishment) Rules, 1991 to which he submitted reply which proves that the petitioner participated in the enquiry and by issuing a show-cause notice to him he was provided opportunity to clarify his position about the incidence.

The petitioner has failed to support his defence or to prove himself as innocent. By doing canvassing to muster votes in favour of his wife who was contesting the election on the post of Gram Pradhan of the village and acting as her registered agent as well as has been found guilty for violating the provisions of Government Servant Conduct Rules. He was provided adequate opportunities for defending himself, therefore, there has been no violation of the principles of natural justice or fair play. The punishing authority does not appear to have committed any legal or procedural error in passing the punishing order, hence the same is just and legal. **(Mohammad Aiyyub v. State of U.P.; 2013(3) SLR 736 (SC)**

Art. 311 – Dismissal from service – Whether once a matter of dismissal was decided by civil Court is liable to reopen by means of reference before the Industrial Tribunal – Held, —No

In this case, the suit was filed by the contesting respondent and the Bank had taken up a plea that the Civil Court had no jurisdiction. This issue was decided against the Bank. The first appellate Court and this Court in second appeal have not overruled that part of the decision but they had decided the case on merits treating the Civil Court to have jurisdiction over the subject-matter.

The judgment of Civil Court can neither be challenged in the collateral proceedings nor can be challenged by the contesting respondent, who had himself filed the suit. There was no inherent lack of jurisdiction in the Civil Court. The contesting respondent cannot turn' back and say that the suit was not maintainable he is estopped.

In Court‘s opinion, the question regarding validity of the dismissal has already been decided in the civil suit and thereafter conceded in writ petition No. 20326 of 1998. There was no justification to refer it again for adjudication before Industrial Tribunal. It is not only waste of time but also amounts to abuse of the process of Court. **(Central Bank of India v. Union of India; 2013(2) SLR 530 (All)**

Art. 311 - Disciplinary proceedings - Standard of proof - Doctrine of proof beyond reasonable doubt - Does not apply

The disciplinary proceedings are not a criminal trial, and in spite of the fact that same are quasi-judicial and quasi-criminal, doctrine of proof beyond reasonable doubt, does not apply in such cases, but the principle of preponderance of probabilities would apply. The court has to see whether there is evidence on record to reach the conclusion that the delinquent had committed a misconduct. However, the said conclusion should be reached on the basis of test of what a prudent person would have done **(Nirmala J. Jhala v. State of Gujarat and another; AIR 2013 SC 1513)**

Arts. 311, 14 - Disciplinary proceedings - Preliminary inquiry - Evidence recorded therein - Cannot be used in regular Departmental inquiry - As no opportunity of cross-examination is available to delinquent

The purpose behind holding preliminary enquiry is only to take a prima facie view, as to whether there can be some substance in the allegation made against an employee which may warrant a regular enquiry. The evidence recorded in preliminary inquiry cannot be used in regular departmental inquiry as the delinquent is not associated with it, and opportunity to cross-examine the persons examined in such inquiry is not given. Using such evidence would be violative of the principles of natural justice. **(Nirmala J. Jhala v. State of Gujarat and another; AIR 2013 SC 1513)**

Article 323A & 323B—Tribunals—Issue of composition and functioning of Tribunals and statutory framework thereof— Its impact on working of this Court and on the rule of law— Desirability, constitutionality of provisions for composition of Tribunals as substitutes for High Courts and exclusion of High Court jurisdiction on account of direct appeals to this Court— This Court frames questions required to the examined by the Law Commission

It is well known that in the wake of 42nd Amendment to the Constitution of India, incorporating Article 323A and 323B of the Constitution under Part XIVA, various Tribunals have been set up. The Tribunals constitute alternative institutional mechanism for dispute resolution. The declared objective of such Tribunals is inability of the existing system of courts to cope up with the volume of work. This Court has gone into the question of validity of scheme under which the High Court is bypassed without the alternative institutional mechanism being equally effective for the access to justice which was

necessary component of rule of law and this Court being over burdened with routine matters in several judgments to which reference may be made.

The above resume of law laid down by this Court may call for review of composition of Tribunals under the Electricity Act or other corresponding statutes. Appeals to this Court on question of law or substantial question of law show that Tribunals deal with such questions or substantial questions. Direct appeals to this Court has the result of denial of access to the High Court. Such Tribunals thus become substitute for High Courts without manner of appointment to such Tribunals being the same as the manner of appointment of High Court Judges. A perusal of Sections 113(b)(i) to (iii) and 113(3) read with Section 78, Sections 84, 85 and 125 of the Electricity Act and corresponding provisions of similar Acts may, thus, need a fresh look.

Apart from the above aspect, further question is whether providing appeals to this Court in routine, without there being issues of general public importance, is not a serious obstruction to the effective working of this Court.

The questions which may be required to be examined by the Law Commission are : I Whether any changes in the statutory framework constituting various Tribunals with regard to persons appointed, manner of appointment, duration of appointment, etc. is necessary in the light of judgment of this Court in Madras Bar Association (supra) or on any other consideration from the point of view of strengthening the rule of law? II Whether it is permissible and advisable to provide appeals routinely to this Court only on a question of law or substantial question of law which is not of national or public importance without affecting the constitutional role assigned to the Supreme Court having regard to the desirability of decision being rendered within reasonable time? III Whether direct statutory appeals to the Supreme Court bypassing the High Courts from the orders of Tribunal affects access to justice to litigants in remote areas of the country? IV Whether it is desirable to exclude jurisdiction of all courts in absence of equally effective alternative Page 48 48 mechanism for access to justice at grass root level as has been done in provisions of TDSAT Act (Sections 14 and 15). V Any other incidental or connected issue which may be considered appropriate. **Gujarat Urja Vikas Nigam Ltd. V. Essar Power Limited, 2016 (7) SCALE 742**

Arts. 323 A & 323B - Establishment of Tribunals

That is wake of the 42nd amendment to the Constitution of India, incorporating Article 323A and 323B of the Constitution under Part XIVA, various Tribunals have been set up. The Tribunals constitute alternative institutional mechanism for dispute resolution. The declared objective of such Tribunals is inability of the existing system of courts to cope up with the volume of work. This Court has gone into the question of validity of scheme under which the High Court is by passed without the alternative institutional mechanism being equally effective for the access to justice which was necessary component of rule of law and this Court being over burdened with routine matters in several judgments to which reference may be made.

Appeal to Supreme Court on question of Law show that Tribunals deal with such questions or substantial questions. Direct appeals to this Court has the result of denial of

access to the High Court. Such Tribunals thus become substitute for High Courts without manner of appointment to such Tribunals being the same as the manner of appointment of High Court Judges. A perusal of Sections 113(b)(i) to (iii) and 113(3) read with Section 78, Sections 84, 85 and 125 of the Electricity Act and corresponding provisions of similar Acts may, thus, need a fresh look. **Gujarat Urja Vikas Nigam Ltd. v. Essar Power Ltd., (2016) 9 SC 103.**

Art. 324 – Powers of returning officer – Returning officer shall not have power to review or recall the said order to disqualifying convict for future period since he becomes functus officio after declaration of result of elections.

Disqualification is by operation of law. In case the appeal of the petitioner is allowed and conviction is set aside, the Returning Officer shall not have a power to review or recall the order impugned herein disqualifying the petitioner for a further period, for the simple reason that the Returning Officer becomes functus officio, after declaration of the result of the election. The statute has not conferred any power of review upon him. **(Angad Yadava v. Election Commission of India & Ors.; 2007 (1) ALJ 562)**

Art. 324 –Deposit of Fire –arms for maintaining Law and order in order to ensure free and fair elections –consideration of –Entire exercise for deposit of fir-arms is to be proceeded by review/assessment on objective basis after complying mandate of law and not in mechanical manner

The grievance of petitioners is that in the absence of any power to insist for a deposit of fire-arms under the Arms Act, 1959 (for short "the Act") and the Rules framed therein, no power is vested in police authorities to call upon licensees to do so even on the ground of ensuing Parliamentary elections. It is further submitted that power, if any, is to proceed against an individual licensee on a case-to-case basis either under the Act or under the Code of Criminal Procedure, 1973.

All the petitions allege that either on mere oral dictates of the Station House Officer concerned or by a written notice of the Officer In-charge of the Police Station concerned, such as, in the connected Writ Petition No. 17030 of 2014, the petitioner has been called upon to deposit his arm either at the police station or with the arms dealer, but in the letter dated 1.4.2014, addressed to the learned Standing Counsel, the Officer In-charge has attempted to deny that the said notice has any compulsive binding effect to deposit the arm, which the Court otherwise finds it to be factually incorrect, as the notice does call upon the licensee to deposit his arm in view of forthcoming Parliamentary elections without complying the mandate of law. Thus, the notice is in the teeth of the aforesaid legal position as the same was not preceded by any objective review/assessment in accordance with law. The Court also finds that there is a notice dated 7.3.2014, published in Rashtriya Sahara, Kanpur, annexed with Writ Petition No. 17436 of 2014, wherein it is alleged that In-charge of P.S. Rath, District Hamirpur has called upon arms licensee to deposit their fire-arms. The notice also states that Constables have been given directions to visit the area concerned and to ensure deposit of fire-arms. It further provides licensees who fail to deposit fire-arm, would be appropriately proceeded with.

Undoubtedly, neither law contemplates deposit of fire-arm in a mechanical manner

nor is it the mandate of the Election Commission of India to ensure deposit of fire-arms without complying the provisions of law. As stated above the entire exercise for deposit of fire-arms is to be preceeded by review/assessment on a objective basis after complying the mandate of law and not in a mechanical manner.

Thus, all petitions are disposed of with the following directions.

1. A mandamus is issued to the respondents not to compel the petitioners / arms licensees to deposit their fire-arms, unless their case/cases has/have been objectively (emphasis is mine) reviewed/assessed by a competent authority in writing and after complying with the provisions of law.

2. The Director General, U.P. Police, Lucknow shall forthwith issue instructions to all Senior Supdt. of Police/Supdt. of Police of the districts concerned to ensure that the aforesaid mandamus is complied with. **(Harihar Singh and others v. State of U.P. and others 2014 (5) AWC 5416)**

Article 366—Taxation-Imposition of Service Tax on Indivisible work contract and question of tax exemption

The Constitution (46th Amendment) Act was passed in 1982 by which Parliament amended Article 366 by adding clause (29-A), which provided that a tax on the sale or purchase of goods includes a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The constitutional amendment so passed was the subject-matter of a challenge in Builders‘ Ass. of India, (1989) 2 SCC 645. The challenge was ultimately repelled and the Court stated that ―after the 46th amendment, it has become possible for the states to levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in a building contract which had been entered into in two distinct and separate parts as stated above.

Service tax was introduced by the Finance Act, 1994 and various services were set out in Section 65 thereof as being amenable to tax. Various amendments were made in the sections of the Finance Act by which ―works contracts‖ which were indivisible and composite were split so that only the labour and service element of such contracts would be taxed under the heading service tax. By the finance Act, 2007, for the first time, Section 65 (105) (zzzza) Set out to tax the works contract, excluding works contract in respect of roads, airports, railways, transport terminals, bridges, tunnels and dams.

The issue involved in this appeal was: whether service tax can be levied on indivisible works contracts prior to the introduction, on 1-6-2007, of the Finance Act, 2007. Answering the negative and allowing the appeals of the assesses and dismissing the appeals of the Revenue, the Supreme Court.

Held- A works contract is a separate species of contract distinct from contracts for services simpliciter recognized by the world of commerce and the law as such, and has to be taxed separately as such. [Commissioner, Central Excise and Customs vs. Larsen & Toubro Ltd., (2016) 1 SCC 172]

The service – Can only mean the judicial service

The Constitution Bench in Chandra Mohan has the thus clearly held that the expression 'the service' in Article 233(2) means the judicial service.

Court have no doubt that the expression, 'the service' in Article 233(2) means the "judicial service". Other members of the service of Union or State are as it is excluded because Article 233 contemplates only two sources from which the District Judges can be appointed. These sources are:

(i) judicial service; and

3. (ii) the advocate/pleader or in other words from the Bar. District Judges can, thus, be appointed from no source other than judicial service or from amongst advocates. Article 233(2) excludes appointment of District Judges from the judicial service and restricts eligibility of appointment as District Judges from amongst the advocates or pleaders having practice of not less than seven years and who have been recommended by the High Court as such. **(Deepak Aggarwal v. Keshav Kaushik and others; 2013(1) Supreme 355)**

Art. 366 (29-A)(b) – Work contract

In a works contract property in goods passes out as movable but on the theory of accretion. It was further submitted that the property passes by accession just once which, by a fiction, is taxed as a sale. The Article also identifies the transferor and transferee effecting the deemed sale and deemed purchase. The taxable person is the contractor executing the works contract so that the main contractor, who assigns the work to another person to execute the work, cannot be a transferor, nor any property in goods vest in the main contractor, when the contract is executed by a sub-contractor. **Larsen & Toubro Ltd. v. Additional Deputy Commissioner of Commercial Taxes and another, (2016) 9 SCC 780.**

Whether the legislature is competent in setting up national company law tribunal and its appellate tribunal barring the jurisdiction exercised by the High Court under Article 226 & 227 of the Constitution – Matter referred for decision to Constitution bench by holding as follows: -

Law relating to the legislative competence to establish Tribunals has been enunciated in several judgments of this court, including L. Chandra Kumar v. Union of India and Ors (1997) 3 SCC 261; Union of India & Anr. Vs. Delhi High Court Bar Association & Ors. (2002) 4 SCC 275 and State of Karnataka Vs. Vishwabharathi House Building Cooperative Society & Ors. (2003) 2 SCC 412. It has been held that under Entries 77, 78, 95 of List I, Entry 65 of List II and Entry 11A of List III, the Parliament and State Legislatures possess legislative competence to effect changes in the original jurisdiction of the Supreme Court and the High Courts.

However, in none of the decisions rendered so far the question as to what extent such powers of High Court can be transferred to Tribunals, excepting judicial review under Articles 226/227 has not been considered. There is as yet no demarcating line to show that,

except for powers exercised under Article 226 & 227, the Parliament has the legislative competence to vest intrinsic judicial functions, traditionally performed by Courts in any Tribunal or Authority, outside the judiciary. The question to be determined is whether such _wholesale transfer of powers' as contemplated by the Companies (Second Amendment) Act, 2002 would offend the constitutional scheme of separation of powers and independence of judiciary, so as to aggrandize one branch over the other.

Since the issues raised in the appeals are of seminal importance and are likely to have serious impact on the very structure and independence of the judicial system, we are of the view that the issue with regard to the constitution of the Tribunals and the areas of their jurisdiction needs to be given a fresh look and therefore, the matter deserves to be heard by a Constitution Bench. **(Union of India v. R. Gandhi; Appeal (civil) 3067 of 2004, Decided by Hon'ble Supreme ourt on 18.05.2007.)**

Objectives of a statute should not contravene broad constitutional scheme enshrined under Articles 14, 19, 21 and Preamble of the Constitution.

It has been accepted without dispute that taxation laws must also pass the test of Article 14 of the Constitution of India. It has been laid down in a large number of decisions of this Court that a taxation statute for the reasons of functional expediency and even otherwise, can pick and choose to tax some. Importantly there is a rider operating on this wide power to tax and even discriminate in taxation: that the classification thus chosen must be reasonable. The extent of reasonability of any taxation statute lies in its efficiency to achieve the object sought to be achieved by the statute. Thus, the classification must bear a nexus with the object sought to be achieved [See Moopil Nair v. State of Kerala AIR 1961 SC 552, East India Tobacco Co. v. State of Andhra Pradesh AIR 1962 SC 1733, V. Venugopala Ravi Varma Rajah v. Union of India and Anr. AIR 1969 SC 1094, Assistant Director of Inspection Investigation v. Kum. A.B. Shanthi AIR 2002 SC 2188, The Associated Cement Companies Ltd. v. Government of Andhra Pradesh and Anr. AIR 2006 SC 928]

Objectives in a statute may have a wide range. But the entire matter should also be considered from a social angle. In any case, it cannot be the object of any statute to be socially devisive in which event it may fall foul of broad constitutional scheme enshrined under Articles 19, 21 as also the Preamble of the Constitution of India. **(Aashirwad Films v. Union of India & Ors; Appeal (civil) 709 of 2004, decided by Hon'ble Supreme Court on 18.05.2007)**

Whether membership of Raj Sabha is a disqualification for being appointed Chief Minister and Ministers under Art. 161(1), (4) and requirement of their being elected to State Legislative Assembly within a period of six months does not apply to them – Held: No.

The absence of the expression ―from amongst members of the Legislature in Article 164(1) is indicative of the position that whereas under that provision a non-legislator can be appointed as a Chief Minister or a Minister but that appointment would be governed by

Article 164(4), which places a restriction on such a non-member to continue as a Minister or the Chief Minister, as the case may be, unless he can get himself elected to the Legislature within the period of six consecutive months from the date of his appointment. Article 164(4) is therefore not a source of power or an enabling provision for appointment of a non-legislator as a Minister even for a short duration. It is actually in the nature of a disqualification or restriction for a non-member, who has been appointed as a Chief Minister or a Minister, as the case may be, to continue in office without getting himself elected within a period of six consecutive months. [(See S.R. Chaudhuri v. State of Punjab and Ors. (2001 (7) SCC 126)] 14. In Dr. Janak Raj Jai v. H.D. Deve Gowda (1997 (10) SCC 462) it was held that a member of the Legislative Assembly could be appointed as Prime Minister. **(Ashok Pandey v. K. Mayawati and others, writ petition (Civil) 296 of 2007, decided by Hon'ble Supreme Court on 13.6.2007)**

Records show that this marks sheet was not forged - After issuing marks-sheet, it was found by University that in Military Science paper, University has given wrong marks - Therefore, University corrected its mistake- Due to this correction 14 marks from petitioner's total marks of 439 were reduced after two years - This fact was not informed by University to petitioner-After two years of his appointment during verification by Board, this fact came to knowledge of Board - Thereafter, Board issued show-cause notice to petitioner in which it was mentioned that he obtained appointment by submitting fabricated marks-sheet of B.A. - Petitioner submitted his reply, clarifying facts - But Basic Siksha Adhikari, without considering his explanation terminated him from service-Such step of B. S.A. in terminating petitioner from service in casual manner and without considering his explanation - Deprives him from his livelihood and has serious civil consequences

On a close perusal of the pleadings exchanged by and between the contesting parties I am of the firm view that in this case the petitioner has been made to suffer without of his fault. To my judgment there was no fault of the petitioner much less any fraud on his part. The in-advertent mistake of the Examiner has been corrected by the University. However, from the stand taken by the University in its counter affidavit it is evident that the University did not take any steps to inform the concerned College and the students regarding the correction made by it. Thus, the concerned College VSSD College, Kanpur where the petitioner was a student of B.A. as well as the students of that College had no knowledge that the University had corrected their marks-sheet. From the facts it is clear that the action of the University authorities was casual.

Another important aspect of the matter is that the petitioner belongs to a Schedule Caste category and he applied for the post on the basis of his unamended mark-sheet in which he secured 285.5 Quality Point Marks. The cut of marks for the Schedule Caste category candidate was 280.03 marks. After the reduction of his marks his Quality Point Marks is 285.20. Thus his Quality Point Marks even after reduction of his marks in Military Science is much above the cut of marks. It was obligatory on the part of the District Basic Education Officer, Kannauj that when the petitioner has stated correct facts in his reply and there was no allegation of fraud by the University, he was not justified in using the strong words like fraud, forgery etc. in the impugned order while terminating the services of the petitioner.

Termination of service of an Assistant Teacher ensue a serious civil consequences as it deprives a person of his source of livelihood. The BSA before passing the impugned order ought to have considered the explanation submitted by the petitioner and other materials objectively, which he has miserably failed to do so. In my judgment the District Basic Education Officer, Kannauj has acted in most casual manner by terminating the services of the petitioner on the ground of fraud and further directing to recover the salary paid to the petitioner. **(Ram Kumar v. State of U.P.; 2012(2) ESC 982 (All)**

Secondary Education – Copy of fax – Is not admissible in evidence. (The Atul Products Ltd. V. V.P. Mehta & Ors.; 2009(5) ALJ (NOC) 844 (Bom HC)