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(i) Regulation 2.5 r/w Regulation 1.9 - Taking over of Thermal Power Station - Excess expenditure - Fixation of tariff - Held: Basis for fixation of tariff has to be the "actual capital expenditure" incurred on the completion of the project - But where the actual expenditure exceeds the approved expenditure, the excess so incurred can be taken into consideration to the extent the same is allowed by Central Electricity Authority or an appropriate independent agency nominated for the purpose - In the instant case, CERC had on a prudent check disallowed a substantial part of the excess that was claimed by respondent-NTPC and the claim allowed had been conceded by appellant-Corporation to have been actually spent by respondent for completion of project.

(ii) Regulation 2.5 - Fixation of tariff - Reference to CEA or independent agency - Held: In the instant case, prayer for additional capitalization was made by respondent-Corporation and considered by CERC after Electricity Act 2003 had come into force - The new legislation did not set out any role for CEA, in the matter of approval of schemes for generating companies or the capital expenditure for the completion of such projects - However, on facts, since the issue of actual expenditure had been concluded by admission of appellant, and in the absence of any question relating to the nature of the expenditure, the absence of a reference to CEA cannot be said to have caused any miscarriage of justice for the appellant or vitiated the tariff fixation by

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(i) rr. 57-A(4) and (5) r/w r.57-A(6) and (1) - Notification No. 58/97-CE(NT) dated 1.9.1997 - Deemed MODVAT credit - Claimed by manufacturer of final product - Adjudicating authority and appellate authority ordered recovery on the ground that supplier of inputs had not discharged full duty liability - Held: In the instant case, a declaration was given by manufacturer of inputs indicating that excise duty had been paid on the inputs - Further, inputs were directly received from manufacturer and not purchased from market - When prescribed procedure has been duly followed by assessee-manufacturer of final products, it cannot be said that assessee has not taken reasonable care as prescribed in the notification - Orders of adjudicating authority and appellate authority rightly quashed by Tribunal and High Court - Notification No. 58/97-CE (NT) dated 1.9.1997 - Clause (6) - Customs Tariff Act, 1975 - s. 3 - Central Excise Act, 1944.

(ii) r.57-A(6), Proviso - Credit of duty of excise or additional duty - Held: The proviso postulates and requires "reasonable care" and not verification from the department whether duty stands paid by manufacturer-seller.

*Commissioner of Central Excise, Jalandhar v. M/s. Kay Kay Industries* .... 623

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(1) Government of India, Department of Personnel and training O. M. dated 29.12.2005.

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## CODE OF CIVIL PROCEDURE, 1908:

O.15, r.5 - Striking off the defence - Suit for eviction for default in payment of rent - Tenant filing written statement belatedly - Application by land-lord for striking off the defence as defendant failed to deposit the rent even after receipt of notice - Allowed by trial court and revisional court - Order set aside by High Court - Held: Trial court fully applied its mind while exercising its discretionary power to strike off the defence - Revisional court noticed the grounds and, exercising its revisional jurisdiction, affirmed the order - Orders passed by courts below were not perverse nor had they exceeded their jurisdiction - Therefore, it was not open to High Court to sit in appeal under Art. 227 of the Constitution to alter such findings of fact and to accept the written statement without any ground - Judgment of High Court set aside - Constitution of India, 1950 - Art.227.

*Bal Gopal Maheshwari & Ors. v. Sanjeev Kumar Gupta* .... 283

## CODE OF CRIMINAL PROCEDURE, 1973:

(1) Appeal - High Court affirming the conviction - Held: It is the sacrosanct duty of appellate court, while sitting in appeal against judgment of trial court, to be satisfied that guilt of accused has been established beyond all reasonable doubt - Appreciation of evidence and proper re-assessment to arrive at the conclusion is imperative in a criminal appeal - In the instant case, High Court, while dealing with statutory appeal has failed to appreciate and scrutinize the evidence in proper perspective, and reasons ascribed by it for accepting the evidence and concurring with the view of trial court are not supported by any acceptable reason - There is total lack of deliberation and proper ratiocination - Judgment of High Court set aside and matter remitted to it for disposal of appeal afresh.

*Kamlesh Prabhudas Tanna & Another v. State of Gujarat* .... 257

(2) (i) s.125(3), first proviso - Order of High Court curtailing the entitlement of appellants to maintenance to a period of one year prior to the date of filing of application - Held: The application of appellants was in continuation of their earlier application - The provision does not create a bar nor does it in any way affect the entitlement of a claimant to arrears of maintenance - Order of High Court set aside - Respondent directed to pay the entire arrears of maintenance due to appellants and to continue to pay monthly maintenance.

(ii) s.125(3), first proviso - Explained.

*Poongodi & Anr. v. Thangavel* .... 862

(3) ss.161 and 162, Explanation - Improvements

in deposition of witness over his statement u/s 161 - Held: In view of Explanation to s. 162, unless the omission in the statement recorded u/s. 161 of a witness is significant having regard to the context in which the omission occurs, it will not amount to a contradiction to the evidence of the witness recorded in court - In the instant case, courts below rightly considered the omissions as not material omissions amounting to contradictions covered by the Explanation to s.162.

(Also see under: Penal Code, 1860)

*Baldev Singh v. State of Punjab* .... 547

(4) ss. 173(2) and 173(8).

(See under: Investigation) .... 199

(5) (i) ss.197 r/w ss.190, 200 and 156(3) CrPC and s.19 of PC Act - Complaint u/s 200 against a public servant - Previous sanction not obtained - Special Judge directing investigation to be conducted by DSP, Lokayukta - Held: Once it is noticed that there was no previous sanction, Magistrate cannot order investigation against a public servant while invoking powers u/s. 156(3) Cr.P.C. - Special Judge has stated no reason for ordering investigation - High Court has rightly quashed order of Special Judge as well as complaint - Prevention of Corruption Act, 1988 - s.14.

(ii) ss.156(3) r/w s.190 - Power of Magistrate to order investigation - Held: A Magistrate, who is otherwise competent to take cognizance, has power to refer a private complaint for police investigation u/s. 156(3) Cr.P.C. - When a Special Judge refers a complaint for investigation u/s. 156(3), obviously, he has not taken cognizance of offence and, therefore, it is a pre-cognizance

stage and cannot be equated with post-cognizance stage.

*Anil Kumar & Ors. v. M. K. Aiyappa & Anr. ....* 869

(6) (i) s.197 r/w s.239 CrPC and s.19 of P.C. Act - Previous sanction for prosecution of public servant - Appellant, an IAS, holding offices of Industries Commissioner in State Government and a nominee Director of MPSIDC - Misuse of position by appellant while discharging his responsibilities as a nominee Director of MPSIDC - Prosecution of - Held: The Governor under Clause 89 of Memorandum and Articles of Association of MPSIDC has absolute discretion to nominate anyone suitable as per his wisdom, as nominee Director of MPSIDC, and is also vested with absolute discretion to remove a nominee Director - Participation of appellant in the meeting of Board of Directors of MPSIDC was not on account of his holding the office of Industries Commissioner nor was it on account of his being a member of IAS cadre - Therefore, sanction if required, ought to have been obtained from Governor of the State - However, since appellant was not holding public office which he was alleged to have abused, when the first charge sheet was filed, there was no need to obtain any sanction before proceeding to prosecute him for offences alleged against him - Prevention of Corruption Act, 1988 - s.19.

(ii) s.197 - Previous sanction for prosecution of public servant - Held: Sanction is essential only if, at the time of taking cognizance, accused was still holding the public office which he allegedly abused.

(iii) s.197 - Previous sanction for prosecution of

public servant - Plurality of offices held by public servant - Held: If an accused holds a plurality of offices, sanction is essential only at the hands of the competent authority entitled to remove him from service of the office which he had allegedly misused.

(iv) s.197 - Previous sanction for prosecution of public servant - Public servant, a nominee Director of MPSIDC - Plea that such nominee Director was not incharge of conduct of business of MPSIDC nor was he responsible for its day to day activities - Held: Accusation implicating the appellant, is directly attributable to him as nominee Director of MPSIDC - His culpability lies in the mischief of passing the resolution in question - Implementation of said resolution is the consequential effect of the said mischief.

*Ajoy Acharya v. State Bureau of Inv. against Eco. Offence* .... 457

(7) s. 202 - Complaint - Order of Magistrate taking cognizance and issuing process against accused - Challenged - Held: Scope of enquiry u/s 202 is extremely limited in the sense that Magistrate, at this stage, is expected to examine prima facie the truth or falsehood of allegations made in complaint - He is not expected to embark upon a detailed discussion of merits or demerits of case, but only to consider inherent probabilities apparent on the statement made in complaint - Once Magistrate has exercised his discretion in forming an opinion that there is ground for proceeding, it is not for higher courts to substitute its own discretion for that of Magistrate - In the instant case, complaint discloses a prima facie case made out for initiating proceedings for offence

punishable u/s 504 IPC - Penal Code, 1860 - s.504.

*Fiona Shrikhande v. State of Maharashtra and Another* .... 240

(8) s.354(2).

(See under: Penal Code, 1860) .... 1000

(9) s. 354(3) - Awarding of death sentence in a case of murder - Special reasons to be recorded - Held: There is the paradigm of shift to life imprisonment as the rule and death, as an exception - Before awarding a sentence of death, in view of s. 354(3), court has to first examine whether it is a case fit for awarding of life sentence and if not and only then, death sentence can be awarded - Code of Criminal Procedure, 1898 - s. 367(5).

(Also see under: Penal Code, 1860)

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(11) s. 367(5).

(See under: Code of Criminal Procedure, 1973) .... 295

(12) ss.397 and 401 - Revision against order of acquittal - Scope of - High Court held that order of acquittal deserved reversal and remitted the matter to trial court for decision afresh - Held: Revisional jurisdiction of High Court, while examining an order of acquittal is extremely narrow and ought to be exercised only in cases where the trial court had committed a manifest error of law or procedure or had overlooked and

ignored relevant and material evidence thereby causing miscarriage of justice - Further, re-appreciation of evidence is not to be made - In the instant case, the view taken by trial court in acquitting the accused cannot be held to be a view impossible of being reached - Keeping in mind limited jurisdiction for a scrutiny of foundation of order of acquittal passed by trial court, reversal ordered by High Court cannot be sustained.

(Also see under: Penal Code, 1860)

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(i) (See under: Universities) .... 117

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(2) Arts.14 and 16(1).

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(3) Art.14 r/w Art. 32.

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(4) Arts. 14, 16 and 309.

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(5) Art. 19(1)(a) - Freedom of speech and expression - Right to know - Voter's right to know about the candidate contesting the election - Explained - Held: Citizen's right to know of the

candidate who represents him in Parliament/State Assembly will constitute an integral part of Art.19(1)(a); and any act, which is derogative of the fundamental rights is <i>ultra vires</i> - Purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of citizens under Art.19(1)(a) - Citizens are entitled to have the necessary information at the time of filing of nomination paper in order to make a choice of their voting. (Also see under: Representation of the People Act, 1951)		
<i>Resurgence India v. Election Commission of India &amp; Anr.</i>	....	360
(6) Art. 21. (See under: Education/Educational Institutions)	....	692
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(i) (See under: Public Health)	....	1103
(ii) (See under: Public Interest Litigation)	....	1126
(8) Art.136 - Appeal by State Government challenging order of High Court after the Chancellor initiated process of making appointments of Vice-Chancellors and Pro Vice-Chancellors pursuant to order of High Court - Maintainability of - Discussed. (Also see under: Universities)		
<i>Dr. Ram Tawakya Singh v. State of Bihar and Ors</i>	....	117
(9) Art. 136 - Criminal appeal - Concurrent findings of three courts below - Court declines to reappreciate the evidence.		
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(10) Arts. 136 and 226.		

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(11) Art.226 - Writ jurisdiction of High Court - Scope of - High Court reversing the concurrent findings of all the three consolidation authorities - Held: Whether or not the respondent-company held or occupied the subject land for cultivation was essentially a question of fact, answered against the company - High Court failed to appreciate that it was not sitting in appeal over the findings recorded by authorities below - It could not reappraise the material and hold that the land was held or occupied for cultivation and substitute its own finding for that of the authorities - High Court, thus, committed an error - Uttar Pradesh Sugar Undertakings (Acquisition) Act, 1971.		
<i>State of U.P. v. M/s Lakshmi Sugar &amp; Oil Mills Ltd. and Ors.</i>	....	345
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<b>CONTEMPT OF COURT:</b>		
Contempt petition alleging non-compliance of Court's order - Held: The exercise of contempt jurisdiction is summary in nature and an adjudication of liability of alleged contemnor for wilful disobedience of court is normally made on admitted and undisputed facts - In the instant case, no case for omission of any contempt of Court's order is made out.		
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s. 56 - Contract to do act, afterwards becoming		

impossible - Doctrine of frustration - Statutory contract - Auction purchaser finding impossible to run abkari shops due to resistance by local residents, the area being a holy place - State also found it impossible to re-sell or re-dispose of arrack shops - Held: Doctrine of frustration excludes ordinarily further performance where contract is silent as to position of parties in the event of performance becoming literally impossible - However, in a statutory contract in which party takes absolute responsibility, it cannot escape liability whatever may be the reason - Further, in a case in which consequence of non-performance of contract is provided in statutory contract itself, parties shall be bound by that and cannot take shelter behind s. 56 - In the instant case, by reason of sub-r. (15) of r. 5 of 1974 Rules, State was entitled to forfeit the security money - In the face of specific consequences having been provided, appellant shall be bound by it and could not take benefit of s.56 - Kerala Abkari Shops (Disposal in Auction) Rules, 1974 - r. 5(15) - Doctrines/ Principles - Doctrine of frustration - Doctrine of fairness.

(Also see under: Kerala Abkari Shops (Disposal in Auction) Rules, 1974)

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(1) Appeal against interim order filed belatedly - Prayer to condone 2449 days delay - Allowed by Division Bench of High Court - Principles as regards condonation of delay culled out - Additional guidelines laid down - Held: Rules of limitation are not meant to destroy the rights of the parties - They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly -- Every legal remedy must be kept alive for a legislatively fixed period of time - Order passed by Division Bench of High Court condoning the delay is set aside - Appeal.

*Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Ors.* .... 782

(2) Delay in filing of appeal before School Tribunal - Appointment of Headmaster challenged belatedly - Held: If no time-limit has been prescribed in a statute to apply before appropriate forum, court has to be approached within a reasonable time - In the instant case, appointment of appellant was within the knowledge of respondent from day one, but he did not take any steps for a long time - Period of 9 years and 11 months, is an inordinate delay to pursue the remedy and that too without submitting any cogent reason therefor - Court has no power to condone

the same in such a case - Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 - s. 9 - Appeal.

*Londhe Prakash Bhagwan v. Dattatraya Eknath Mane & Ors.* .... 775

(3) (i) Delay in lodging of FIR - Held: Delay in lodging of FIR often results in embellishment as well as in introduction of a distorted version of what may have actually happened, but the facts of each case have to be examined to find out whether the delay in lodging the FIR is fatal to prosecution case - In the instant case, there is enough evidence of the fact that complainant was afraid of lodging the complaint to local police station which was under the control of one of the accused-appellants - Delay of 2 months and 21 days in lodging the FIR has been explained by facts and evidence adduced - FIR.

(ii) Delay in recording statements u/s 161 CrPC - Held: Complainant in the very first complaint had named appellants as persons who raided his house and picked up seven members of his family and, therefore, the fact that there was considerable delay of two years from the date of lodging the FIR in recording of statements of witnesses does not make their evidence in this regard doubtful. (Also see under: Penal Code, 1860)

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#### EDUCATION/EDUCATIONAL INSTITUTIONS:

(1) Admission to medical courses - Court took notice with concern, of unprecedented growth of Technical and Medical Institutions in the country, which has resulted in widespread prevalence of various unethical practices, and emphasized that there is extreme necessity of a Parliamentary Legislation for curbing these unfair practices - Legislation - Judicial notice - Constitution of India, 1950 - Art. 21.

(Also see under: Indian Medical Council Act, 1950; and Medical Colleges Regulation (Amendment 2010 Part-II))

*Rohilkhand Medical College & Hospital, Bareilly v. Medical Council of India & Anr.* .... 692

(2) Managing committee of school - Non-compliance of court's order - Inordinate delay in filing appeal - Held: The persons who are nominated or inducted as members or chosen as Secretaries of the managing committees of schools are required to behave with responsibility and not to adopt a casual approach - A statutory



committee cannot remain totally indifferent to an order passed by court.

(Also see under: Delay/Laches)

*Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Ors.* .... 782

(3) Medical admissions - Admission to PG Medical Courses - Weightage to in-service candidates - Clarificatory order by High Court in review petition, without disturbing the already allocated seats - Held: On facts, since the order does not deprive the appellants of getting admission into their preferred colleges or subjects, and they have already been admitted into various colleges and counseling is also over, it would not be in the interest of justice to disturb the admissions of appellants or contesting respondents - Legal questions left open.

*Dr. Kulmeet Kaur Mahal & Ors. v. State of Punjab & Ors.* .... 320

(4) Medical education.

(See under: Enhancement of Annual Intake Capacity in Undergraduate Courses in Medical College for the Academic Session 2013-14 only Regulations 2013) .... 503

(5) Medical education - Renewal of permission granted for third batch of MBBS -Subsequently rejected by Medical Council of India - Held: MCI has got the power to conduct a surprise inspection to find out whether deficiencies pointed out have been rectified or not, especially when the College submits a compliance report - In the instant case, deficiencies pointed out by MCI team in its report are fundamental and very crucial - MCI has rightly passed the order rejecting the approval for renewal

of permission.

*Manohar Lal Sharma v. M.C.I. and Ors.* .... 325

ELECTRICITY ACT, 2003:

s.70 and s.73 r/w s.61 proviso, and Regulation 2.5 of Regulations of 2001 - Fixation of tariff - Capital expenditure - Excess expenditure - Determination - Reference to CEA - Held: The far reaching changes that came about in the legal framework with the enactment of the 2003 Act, made Regulation 2.5 redundant in so far as the same envisaged a reference to CEA or an Independent Agency for approval of the additional capitalisation - Insistence on a reference, to CEA for such approval, despite the sea change in the legal framework would have been both unnecessary as well as opposed to the spirit of new law that reduced the role of CEA to what has been specified in s.73.

(Also see under: Central Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2001)

*U.P. Power Corporation Ltd. v. N.T.P.C. Ltd. & Ors.* .... 805

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ENHANCEMENT OF ANNUAL INTAKE CAPACITY IN UNDERGRADUATE COURSES IN MEDICAL COLLEGE FOR THE ACADEMIC SESSION 2013-14 ONLY REGULATIONS 2013:

Medical admissions - Enhancement of annual intake capacity in undergraduate medical courses - Corrigendum Notification issued by Central

Government confining benefits of Regulations, 2013 to Government Colleges only - Held: The Corrigendum is not violative of Art. 14 - In a given case, Central Government can modify the time schedule in respect of any of five classes or categories of applicants mentioned in Regulation 1999 - The corrigendum extending the last date was made applicable only to Government medical colleges recording the reason that the time would be very short so as to process the applications by MCI received from non-government medical colleges - Therefore, it cannot be said that the decision taken by Central Government is perverse, arbitrary or unreasonable, so as to strike down the corrigendum, under the extra-ordinary jurisdiction of the Court under Art. 32 of the Constitution - Establishment of Medical College Regulations, 1999 - Establishment of Medical College Regulations (Amendment), 2012 - Constitution of India, 1950 - Art.14 r/w Art. 32.

*Dr. B. R. Ambedkar Medical College & Anr. v. Union of India & Another* .... 503

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ESTABLISHMENT OF MEDICAL COLLEGE REGULATIONS (AMENDMENT) ACT, 2010 (PART II):  
r.8(3)(1) - Medical College - "Opportunity and time

to rectify the deficiencies" - Held: After the inspection is carried out, compliance report is called for only to ascertain whether the deficiencies pointed out were rectified or not - If MCI is not satisfied with compliance, it can conduct a surprise inspection - After that, no further time or opportunity to rectify the deficiencies is contemplated nor further opportunity of being heard, is provided - In the instant case, order of MCI is not vitiated as violative of principles of natural justice, especially, when no allegation of bias or mala fide has been attributed against doctors who conducted surprise inspection - Administrative law - Natural justice - Opportunity of hearing.

(Also see under: Indian Medical Council Act, 1956)

*Manohar Lal Sharma v. M.C.I. and Ors.* .... 325

ESTABLISHMENT OF MEDICAL COLLEGE REGULATIONS (AMENDMENT), 2012:  
(See under: Enhancement of Annual Intake Capacity in Undergraduate Courses in Medical College for the Academic Session 2013-14 only Regulations 2013) .... 503

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(1) Agreement to sell - Containing the recital of delivery of possession - Held: At the time of considering the question of admissibility of document, it is the recital therein which shall govern the issue - It does not mean that recital in the document shall be conclusive but for the purpose of admissibility it is the terms and conditions incorporated therein which shall hold the field - Deeds and Documents.

(Also see under: Stamp Act, 1899)

*Om Prakash v. Laxminarayan & Ors.* .... 923

(2) Witness at enmity with accused - Evidence of - Held: Testimony of such a witness has to be carefully scrutinized by court before it is accepted, but only on account of enmity, court cannot discard evidence of the witness altogether.

(Also see under: Penal Code, 1860)

*Baldev Singh v. State of Punjab* .... 547

#### FIR:

(1) Contents of FIR - Witnesses not named in complaint - Held: There is no need to mention all the details graphically in complaint and it depends upon so many factors such as condition of injured etc.

(Also see under: Penal Code, 1860)

*Raja @ Sasikumar & Anr. v. State through Inspector of Police* .... 230

(2) (See under: Delay/Laches) .... 547

#### FOOD SAFETY AND THE STANDARDS (FOOD PRODUCTS STANDARDS AND FOOD ADDITIVES) REGULATIONS, 2011:

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#### FRUIT PRODUCTS ORDER, 1955:

(See under: Public Interest Litigation) .... 1126

#### HAWKER MATTERS:

(i) 'Hawker' - Connotation of - Explained.

(ii) Street vendors - Held: - Till an appropriate legislation is enacted by Parliament or any other competent legislature, and is brought into force, the salient provisions of National Policy on Urban Street Vendors, 2009, as enumerated in the Order, should be implemented throughout the country - Further directions issued for facilitating implementation of the 2009 Policy - As regards the order of Supreme Court staying the hearing of writ petitions pending before High Courts and directing to obtain any clarification/modification from the Court, the parties, whose applications have remained pending before Supreme Court, shall be free to institute appropriate proceedings including petition under Art. 226 of the Constitution, in the jurisdictional High Court.

*Maharashtra Ekta Hawkers Union and another v. Municipal Corporation, Greater Mumbai and Ors.* .... 742

#### IMPLEADMENT:

Medical admissions - Application for impleadment - Significance of time limit - Explained - Delay/Laches.

(Also see under: Education)

*Dr. Kulmeet Kaur Mahal & Ors. v. State of Punjab & Ors.* .... 320

#### INDIAN ADMINISTRATIVE SERVICE (APPOINTMENT BY SELECTION) REGULATIONS, 1997:

Regulation 4 r/w Regulation 3 - Selection to I.A.S. under non-State Civil Services category for the year 2011 - State Government to send proposals for consideration of Committee - Held: Names of officers from the cadre of Assistant Commissioner of Commercial Tax and above, who were of outstanding merit and were eligible, were to be

forwarded, but names which were sent for consideration were, only of Joint Commissioners and Additional Commissioners and not Assistant Commissioners - When there is a criterion laid down for selection, Administration has to confine to the same, and it cannot impose an additional criterion, as it will mean treating similarly situated employees dissimilarly, and denying equal opportunity to some of them in the matter of public employment on the basis of a criterion which is not laid down, resulting into violation of Arts. 14 and 16(1) of the Constitution - The decision of respondents not to consider appellants for selection was violative of Arts. 14 and 16(1) of the Constitution, since it was arrived at on the basis of a criterion which was not laid down - Indian Administrative Service (Promotion by Appointment) Regulations, 1955 - Constitution of India, 1950 - Arts.14 and 16(1).

(Also see under: Judgment; and Administrative Law)

*B. Amrutha Lakshmi v. State of Andhra Pradesh and Ors.* .... 1083

INDIAN ADMINISTRATIVE SERVICE (PROMOTION BY APPOINTMENT) REGULATIONS, 1955:  
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INDIAN MEDICAL COUNCIL ACT, 1956:  
(1) Medical Council of India - Powers and responsibilities of, as regards maintaining standards of medical education - Explained - Held: MCI, while deciding to grant permission, is not functioning as a quasi-judicial authority, but only as an administrative authority - Rigid rules of

natural justice are, therefore, not contemplated - MCI has got power to conduct surprise inspection, which contemplates no notice - It has no power to dilute the statutory requirements - Minimum Standard Requirements for the Medical College for 150 Admissions Annually Regulations, 1999 - Schedule II - Natural justice.

(Also see under: Education/Educational Institutions)

*Manohar Lal Sharma v. M.C.I. and Ors.* .... 325

(2) ss. 10A and 19A - Held: s.10A, mandates that when a new medical college is to be established or the number of seats to be increased, the permission of Central Government is a pre-requisite - s.19A obliges MCI to prescribe minimum required standards for medical education and the recommendations made by MCI to Central Government carry considerable weight - In the instant case, MCI constantly on all the occasions, recommended to Central Government not to renew permission for admission of the third batch for the academic year 2008-09, but in spite of the same, a Central Team was appointed, a favourable report was got and permission was accorded by Central Government for the year 2008-09, which was the subject matter of CBI investigation.

*Rohilkhand Medical College & Hospital, Bareilly v. Medical Council of India & Anr.* .... 692

INDUSTRIAL DISPUTES ACT, 1947:

(1) (i) s.10(1) - Reference of disputes to Labour Court - Jurisdiction of Labour Court - Explained.

(ii) s.10(1) - Reference of dispute to Labour Court - Defective reference - Held: In the instant case, reference does not reflect real dispute between parties - On the contrary, the manner in which the reference is worded, shall preclude the appellant

from putting forth and proving its case as it would deter Labour Court to go into those issues - The reference also implies that appropriate Government has itself decided the contentious issues and assumed the role of an adjudicator which is, otherwise, reserved for Labour Court/ Industrial Tribunal - The reference being defective, is quashed - Appropriate Government directed to make reference afresh, incorporating real essence of the dispute as discussed in judgment.

*M/s. Tata Iron & Steel Co. Ltd. v. State of Jharkhand & Ors.* .... 437

(2) s.11-A - Back wages.  
(See under: Service Law) .... 1

(3) s.11-A - Power of Labour Court to give appropriate relief in case of discharge or dismissal of workman - Exercise of discretion - Explained - Held: In the instant case, Labour Court examined the scope of exercising its discretion u/ s. 11A in order to interfere with punishment imposed on appellant - Having regard to the factors, referred by Labour Court, it rightly declined to exercise its discretionary jurisdiction u/s. 11A to interfere with punishment of dismissal - Employees' Provident Fund and Miscellaneous Provisions Act, 1952 - s.6A.

*Davalsab Husainsab Mulla v. North West Karnataka Road Transport Corporation* .... 826

(4) s.25-F.  
(See under: Labour Law) .... 91

#### INTERPRETATION OF STATUTES:

(1)(i) Construing of a provision - Held: While interpreting any provision of a statute the plain meaning has to be given effect and if language is

simple and unambiguous, there is no need to traverse beyond the same.

(ii) Headings and marginal notes - Held: Heading of a Section or marginal note may be relied upon to clear any doubt or ambiguity in the interpretation of the provision and to discern the legislative intent - When the Section is clear and unambiguous, there is no need to traverse beyond those words - Therefore, headings or marginal notes cannot control the meaning of body of the section.

(Also see under: Persons With Disability (Equal Opportunities, Protection of Rights And Full Participation) Act, 1995)

*Union of India & Anr. v. National Federation of the Blind & Ors.* .... 1023

(2) Construing of a statutory provision - Held: Words used in a statute are to be read as they are used, to the extent possible, to ascertain the meaning thereof - s. 71 of Maharashtra Value Added Tax Act, 2002 and s. 64 of Bombay Sales Tax Act, contain a bar only against Government officers from producing the documents mentioned therein - There is no bar therein against a party to produce any such document - Maharashtra Value Added Tax Act, 2002 - s.71 - Bombay Sales Tax Act, 1959 - s.64.

(Also see under: Arbitration and Conciliation Act, 1996)

*Delta Distilleries Limited v. United Spirits Limited & Anr.* .... 573

(3) (i) *Contemporenea expositio* - Held: Is a recognized rule of interpretation - Concept of licence and lease were dealt with by contemporary statutes: Easements Act, Transfer of Property Act and s. 41 of PSCC Act - Therefore, s. 41(1) of

PSCC Act could not have contemplated any other meaning of the term "occupation with permission" but only the permission as contemplated by s.52 of Easements Act.

(ii) Provisions '*pari materia*' - Held: Bombay Rent Act, 1947 and Chapter VII of PSCC Act cannot be said to be *pari materia* statutes - s.5(4-A) of Bombay Rent Act and s.52 of Easements Act reflecting the expression 'licensee' are not *pari materia*.

(iii) *Noscitur a sociis* - Held: When the intention of legislature in using the expression 'licensee' in s. 41(1) of the PSCC Act is clear and unambiguous, the principle of *noscitur a sociis* is not to be applied.

(iv) Statement of Objects and Reasons - Relevance of interpreting a provision - Explained. (Also see under: Presidency Small Cause Courts Act, 1882)

*Prabhudas Damodar Kotecha & Ors. v. Manhabala Jeram Damodar & Anr.* .... 52

(4) *Ejusdem generis* - Term, 'otherwise' occurring in r.8A of Supreme Court Rules, 1966 - Held: Should be construed as *ejusdem generis* and must be interpreted to mean some kind of legal obligation or some transaction enforceable in law. (Also see under: Supreme Court Rules, 1966)

*In Re: Rameshwar Prasad Goyal, Advocate....* 212

(5) (i) Incorporation by reference;

(ii) *Casus omissus*.

(See under: Land Acquisition Act, 1894) .... 658

#### INVESTIGATION:

Transfer of investigation to CBI - Held: Supreme

Court or High Court can exercise its constitutional powers for transferring an investigation from State investigating agency to any other independent investigating agency like CBI only in rare and exceptional cases - Where investigation has already been completed and charge sheet has been filed, ordinarily, superior courts should not reopen the investigation and it should be left open to the court, where charge-sheet has been filed, to proceed with the matter in accordance with law - In the instant case, facts and circumstances do not present special features warranting transfer of investigation to CBI - Besides, incident occurred 15 years back and final report u/s 173(2) Cr.P.C. has already been submitted before competent criminal court - It is open to Magistrate to accept the final report or to reject it and to direct further investigation u/s 173(8) Cr.P.C. - Constitution of India, 1950 - Arts. 136 and 226 - Code of Criminal Procedure, 1973 - ss. 173(2) and 173(8).

*Prof. K.V. Rajendran v. Superintendent of Police, CBCID South Zone, Chennai & Ors....* 199

#### JUDGMENTS:

Prospective operation of judgment - Names of appellants not sent by department for selection to IAS - Held: Since selection for the year 2011 had been over even before the interim application in CAT was decided, setting aside the selection conducted two years back, and asking the respondents to re-do the exercise after considering the appellants and other similarly situated candidates, would create lot of uncertainty, in as much as appellants and such other similarly situated candidates, might or might not finally succeed in selection process - Though declaration is being granted that appellants and persons

situated like them were entitled to be considered by the Committee, no further relief in that behalf can be granted to them - The opinion rendered by Court will have to operate prospectively in the matter of application of relevant rules, for future selections.

(Also see under: Indian Administrative Service (Appointment by Selection) Regulations, 1977)

*B. Amrutha Lakshmi v. State of Andhra Pradesh and Ors.* .... 1083

#### JUDICIAL COMITY:

Judicial comity - Held: Is an integral part of judicial discipline and judicial discipline the cornerstone of judicial integrity - When there are binding decisions, judicial comity expects and requires the same to be followed - Precedent.

(Also see under: Penal Code, 1860)

*Sunil Damodar Gaikwad v. State of Maharashtra* .... 295

#### JUDICIAL NOTICE:

(See under: Education/Educational Institutions) .... 692

#### JUDICIAL REVIEW:

(See under: Service Law) .... 898

#### JURISDICTION:

(See under: Rajasthan Wakf Act, 1995) .... 721

#### JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2000:

(1) s. 2(2) - Juvenile in conflict with law - Proof of juvenility - The school leaving certificate having been proved, accused could not be subjected to medical examination - Going by the school leaving certificate, since appellant was a juvenile on the

date of occurrence, he can be tried only by JJ Board.

*Ranjeet Goswami v. State of Jharkhand & Anr.* .... 497

(2) (See under: Penal Code, 1860) .... 911

#### KERALA ABKARI SHOPS (DISPOSAL IN AUCTION) RULES, 1974:

rr. 5 (10), (15) and (19) - Auction purchaser failing to execute the agreement - Forfeiture of deposit - Held: In terms of sub-r. (15) of r. 5, security money deposited by auction purchaser is liable to be forfeited.

(Also see under: Contract Act, 1872; and Administrative Law)

*Mary v. State of Kerala And Ors.* .... 1126

#### LABOUR LAW:

(1) Back Wages.  
(See under: Service Law) .... 1

(2) Defective reference.  
(See under: Industrial Disputes Act, 1947) .... 437

(3) Dismissal of workman - Misconduct - Disciplinary inquiry - Charges found proved - Past conduct also considered - Order of dismissal - Labour Court held the order fully justified - Held: Having regard to the gravity of misconduct found proved against appellant in an enquiry held for that purpose by way of disciplinary procedure prescribed in the relevant rules, the conclusion of Labour Court on this aspect cannot be assailed.

*Davalsab Husainsab Mulla v. North West Karnataka Road Transport Corporation* .... 826

(4) Termination of services of workman - Industrial

dispute raised belatedly - No objection as to delay raised - Reinstatement ordered by Labour Court holding that termination was in violation of s.25-F of ID Act - Held: Delay in raising industrial dispute is an important circumstance which Labour Court must keep in view, notwithstanding whether or not such objection has been raised - Legal position to be followed in case of non-compliance of s.25-F, emphasized - In the instant case, workman worked as a work-charged employee for 286 days - Labour Court did not keep in view admitted delay of 6 years in raising industrial dispute by him - Judicial discretion exercised by Labour Court is, thus, flawed and is unsustainable - In the circumstances, in lieu of reinstatement, compensation of Rs.1 lac shall be paid by employer to workman - Industrial Disputes Act, 1947 - s.25-F.

*Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota v. Mohan Lal* ....

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#### LAND ACQUISITION ACT, 1894:

s.11-A, Explanation, r/w ss. 4 and 6 - Limitation to make award - Time taken for obtaining copy of stay order - Held: Cannot be excluded to bring the award within limitation - Explanation to s. 11-A permits exclusion of the period during which court had stayed acquisition proceedings for the purpose of reckoning the period of two years prescribed for making the Award, but it does not provide for exclusion of the time taken to obtain a certified copy of judgment or order by which stay order was either granted or vacated - s.12 of Limitation Act has no application to making of an award under LA Act - Doctrine of casus omissus also cannot be applied - In the instant case, award

made stood elapsed - Limitation Act, 1963 - s.12 - Interpretation of Statutes - Incorporation by reference - Casus omissus.

*Singareni Collieries Co. Ltd. v. Vemuganti Ramakrishan Rao & Ors.* .... 658

#### LEGISLATION:

(1) (See under: Education/Educational Institutions) .... 692

(2) (See under: Motor Vehicles Act, 1988) .... 882

#### LIMITATION ACT, 1963:

s.12.  
(See under: Land Acquisition Act, 1894) .... 658

#### LOCUS STANDI:

Appointment of Vice Chancellors and Pro Vice-Chancellors - Writ petition by a Professor and Head of Department in a University, in the State, challenging the appointments, though he was not a candidate for such appointments - Held: Maintainable - Further, even assuming that writ petitioner does not have any direct personal interest in such appointments, High Court could have suo motu taken cognizance of the issues raised by him and treated his petition as one filed in public interest and decided the same on merits - Public interest litigation.

(Also see under: Universities)

*Dr. Ram Tawakya Singh v. State of Bihar and Others* .... 117

#### MAHARASHTRA EMPLOYEES OF PRIVATE SCHOOLS (CONDITIONS OF SERVICE) ACT, 1977:

(1) Objects of the Act - Explained.



(Also see under: Service Law)

*Deepali Gundu Surwase v. Kranti Junior  
Adhyapak Mahavidyalaya (D.Ed.) and Ors. ....* 1

(2) s. 9.

(See under: Delay/Laches) .... 775

MAHARASHTRA EMPLOYEES OF PRIVATE  
SCHOOLS (CONDITIONS OF SERVICE)  
RULES, 1981:

r.34 - Suspension of employee - Entitlement to  
subsistence allowance - Discussed.

(Also see under: Service Law)

*Deepali Gundu Surwase v. Kranti Junior  
Adhyapak Mahavidyalaya (D.Ed.) and Ors. ....* 1

MAHARASHTRA VALUE ADDED TAX ACT, 2002:  
s.71.

(See under: Interpretation of Statutes) .... 573

MEDICAL COLLEGES REGULATION (AMENDMENT  
2010 PART II):

Clause 8(3)(1)(d) - Revocation of permission/  
recognition for award of MBBS degree - Approval  
for renewal of permission to Medical College for  
increased intake from 100 to 150 seats for  
academic year 2013-2014 - Revoked by MCI on  
receipt of information from CBI with regard to  
conspiracy between Chairman of Medical College  
on the one hand and public functionaries of Union  
Ministry and Government Hospital on the other -  
Held: CBI investigation has revealed that fraud  
was practiced by the Central team as well as the  
college to get the sanction for the 3rd batch of  
MBBS students for academic year 2008-09 - That  
was sufficient for MCI to take action, and revoke

the letter of permission granted for academic year  
2013-14 - Decision of MCI is in accordance with  
Clause 8(3)(1)(d) - Minimum Standard  
Requirements for the Medical College for 100  
Admissions Annually Regulations, 1999.

(Also see under: Indian Medical Council Act,  
1950)

*Rohilkhand Medical College & Hospital,  
Bareilly v. Medical Council of India & Anr. ....* 692

MINIMUM STANDARD REQUIREMENTS FOR THE  
MEDICAL COLLEGE FOR 150 ADMISSIONS  
ANNUALLY REGULATIONS, 1999:

(1) Schedule II.

(See under: Indian Medical Council Act,  
1956) .... 325

(2) (See under: Medical Colleges Regulation  
(Amendment 2010 Part-II) .... 692

MINIMUM WAGES ACT, 1923:

s. 3.

(See under: Motor Vehicles Act, 1988) .... 882

MOTOR VEHICLES ACT, 1988:

(1) (i) Motor accident - Victim, a 17 year old student  
became disabled - Tribunal awarded  
compensation of Rs. 18,75,800/- with 7.5%  
interest - High Court reduced it to Rs. 12,45,800/  
- Held: Keeping in view the amount spent by  
parents on treatment of victim and the fact that he  
has practically become bedridden and would  
require care by a person throughout his life,  
compensation by Tribunal was just and proper -  
Judgment of High Court set aside and that of  
Tribunal restored.

(ii) Motor accident claims - Award of just compensation - Discussed.

*R. Venkata Ramana & Anr. v. The United India Insurance Co. Ltd. & Ors.* .... 451

(2) s.149(2)(a)(ii) - Plea of fake driving licence raised by insurer - Held: Onus is on the insurer to establish the defence - As far as owner of vehicle is concerned, when he hires a driver, he has to check whether the driver has a valid driving licence - Thereafter he has to satisfy himself as to competence of driver - If that is done, it can be said that owner had taken reasonable care in employing a person who is qualified and competent to drive vehicle - He is not expected to verify genuineness of driving licence with licensing authority - In the instant case, driver had been put to a driving test and had also been imparted training by employer - In view of the evidence of licensing authority, it cannot be absolutely held that the licence to the driver had not been issued by the said authority and it was fake - Insurer is liable to indemnify the insured.

*Pepsu Road Transport Corporation v. National Insurance Company* .... 266

(3) (i) s. 166 - Fatal motor accident - Compensation - Annual income of deceased - Polisher - Addition towards future prospects - Multiplier - Claim petition filed u/s. 166, taking notional income of deceased - Just and reasonable compensation - Held: Deceased was working as a polisher, which is a skilled job - Income reckoned accordingly - Since deceased was self-employed and about 25 years of age, there must be an addition of 50% to his actual income - There being 5 dependents, 1/5th amount

is to be deducted towards personal expenses - Keeping in view life expectancy of deceased, multiplier of 20 must be applied - Besides, compensation also awarded towards loss of consortium and under the head loss of care and guidance of minor children.

(ii) s. 166 - Fatal motor accident - Compensation - Held: The finding of fact recorded by Tribunal in the absence of any evidence in rebuttal to show that deceased was not working as a polisher and it is not a skilled work, is an erroneous finding for the reason that both Tribunal and High Court have not assigned reason for not accepting the evidence on record with regard to the nature of work that was being performed by deceased - State Government in exercise of its statutory power u/s. 3 of Minimum Wages Act, 1948 must issue a notification for fixing the wages of a polisher - Minimum Wages Act, 1923 - s. 3 - Legislation.

(iii) s. 166 - Claim petition - Enhancement of compensation in appeal - Held: Legal representatives of deceased are entitled to compensation as mentioned under various heads in the table as provided in the judgment - Even though certain claims were not preferred by them, they are legally and legitimately entitled for the said claims - Accordingly, compensation awarded more than what was claimed by dependants as it is the statutory duty of Tribunal and appellate court to award just and reasonable compensation to legal representatives of deceased to mitigate their hardship and agony, as they filed application u/s. 166.

*Sanobanu Nazirbhai Mirza & Ors. v. Ahmedabad Municipal Transport Service* .... 882

NALANDA OPEN UNIVERSITY ACT, 1995:  
ss.11 and 13.

(See under: Universities) .... 117

NARCOTIC DRUGS AND PSYCHOTROPIC  
SUBSTANCES ACT, 1985:

s. 67 - Power to call for information etc. -  
Questions: (i) whether the officer investigating the  
matter under NDPS Act would qualify as police  
officer or not and (ii) whether the statement  
recorded by investigating officer u/s. 67 can be  
treated as confessional statement or not, even if  
the officer is not treated as police officer - Referred  
to larger Bench - Further, sentence suspended till  
the disposal of appeal by the larger Bench -  
Appellant released on bail.

*Tofan Singh v. State of Tamil Nadu* .... 962

NATURAL JUSTICE:

(See under: Indian Medical Council Act, 1956;  
and Establishment of Medical College  
Regulations (Amendment) Act, 2010) ....

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NEGOTIABLE INSTRUMENTS ACT, 1881:

(1) (i) s.138 of N.I. Act r/w s.357(3) CrPC -  
Dishonour of cheque - Conviction - Sentence of  
six months simple imprisonment and to pay  
compensation to complainant, affirmed by  
Sessions Judge - High Court in revision filed by  
accused, substituting six months sentence by  
imposing a further sum equivalent to cheque  
amount - Held: High Court was competent to  
impose a sentence of fine only upon accused -  
However, as the amount of fine imposed by High  
Court over and above the amount of compensation  
exceeds double the cheque amount, it would  
violate s.138 N.I. Act - Complainant has received  
compensation as per adjudication of trial court -

Accused sentenced to pay further a fine - Code  
of Criminal Procedure, 1973 - s.357(3).

(ii) s.138 - Power of court to levy fine - Held: Is  
circumscribed to twice the cheque amount - Even  
in a case where court may be taking a lenient  
view in favour of accused by not sending him to  
prison, it cannot impose a fine more than twice  
the cheque amount - That statutory limit is  
inviolable and must be respected -- High Court  
has, in the case at hand, overlooked the statutory  
limitation on its power to levy a fine.

(iii) s. 138 of N.I. Act and s. 357, CrPC - Held:  
Power to award compensation is not available u/  
s 138 of N.I. Act - It is only when court has  
determined the amount of fine that the question of  
paying compensation out of the same would arise.

*Somnath Sarkar v. Utpal Basu Mallick  
& Anr.* ....

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(2) s. 141 r/w s. 138 - Complaint against a  
company, its Chairman, Managing Directors and  
Directors - Petitions by two directors seeking to  
quash the proceedings against them - Held: In  
case of offence by company for dishonour of  
cheque, culpability of Directors has to be decided  
with reference to s. 141 - To bring the Directors  
within the mischief of s. 138, it shall be necessary  
to allege that at the relevant time they were in  
charge of and responsible to the conduct of  
business of the Company - In the instant case,  
necessary averment in the complaints is lacking -  
Therefore, prosecution of two Directors concerned  
cannot be allowed to continue and their  
prosecution in all the cases, is quashed.

*A.K. Singhania v. Gujarat State Fertilizer  
Co. Ltd. & Anr.* ....

1069

PATNA UNIVERSITY ACT, 1976:

ss. 11 and 14.

(See under: Universities)

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PENAL CODE, 1860:

(1) s. 302/34 - Murder - Conviction of 3 out of 7 accused - Appeal by two - Held: In a case of several accused persons, on the same set of evidence, if it is possible to remove the chaff from the grain, then the court would not be committing any mistake in sustaining the prosecution case against whom the evidence is shown to be intact - In the instant case, testimonies of PWs are acceptable insofar as involvement of appellants in the crime is concerned - The conclusion arrived at by High Court is concurred with.

*Raja @ Sasikumar & Anr. v. State through Inspector of Police*

.... 230

(2) s.302/34 and s.300, Exception 4 - Ingredients of - Explained - Held: Evidence discloses that when victim abused the accused, two of them brought weapons and lathi and attacked the victim - Thus, accused had sufficient time to cool down and, therefore, it cannot be said that the crime was committed in a heat of passion - Further, deceased being an old man had merely abused the accused, verbal abuses are not fight - Therefore, this ingredient is also not satisfied - High Court erred in holding the convicts guilty u/ s.304 (Part-II) - Judgment of High Court, in so far as it altered the conviction of respondents from s.302/34 to that of s.304/34, is set aside and conviction as recorded by trial court, restored.

*State of Orissa v. Khaga @ Khageswar Naik & Ors.*

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(3) (i) s. 302 r/w s.120-B - Police party picking up 7 members of complainant's family - Victims did not return - Conviction by courts below u/ss 364, 452, 120-B and 302 - Held: Evidence adduced is that the seven persons abducted by appellants were seen in different police stations and also in residential quarters near the police station - On this evidence, court cannot hold that the two appellants have killed seven abducted persons only because they have not been traced or are found missing - Finding of guilt recorded by courts below u/s. 302 against appellants, was not correct either on facts or on law - Therefore, conviction of appellants u/s. 302 r/w s. 120-B is set aside.

(ii) ss. 364 and 452 - Seven members of a family picked up by police party - Victims did not return - Held: It has been established that appellants had gone to house of complainant in early morning and picked up 7 members of his family - Therefore, conviction of appellants u/ss 364 and 452 was rightly maintained by High Court - The sentence of three years with fine u/s 452 is maintained - However, in the facts of the case, keeping in view Illustration (h) to s.220(1)CrPC, as seven persons had been abducted by appellants, they were guilty of seven offences and should be punished for each of these offences u/ s. 364 - Therefore, it is directed that the fine of Rs.4000/- as imposed by trial court and the period of rigorous imprisonment of five years will be for each of the seven offences of abduction and the five years rigorous imprisonment for each of the seven offences of abduction will run consecutively and not concurrently - Code of Criminal Procedure, 1973 - s.220(1), Ill.(h).

*Baldev Singh v. State of Punjab*

.... 547

(4) ss. 302 and 307 - Accused causing death of his wife and 2 sons and attempting to cause death of his daughter - Sentenced to death by courts below u/s. 302 and life imprisonment u/s. 307 - Held: Apart from drawing a 'balance sheet' of mitigating and aggravating factors, socio-economic compulsions such as poverty are also factors that are to be considered by courts while awarding a sentence - In the instant case, it has come in evidence that accused suffered from economic and psychic compulsions - He had no prior criminal record - He had, in fact, intended to wipe out the whole family including himself on account of abject poverty - The possibility of reforming and rehabilitating him cannot be ruled out - He is not likely to be menace or threat or danger to society - In the facts and circumstances, the case does not fall under rarest of rare category so as to warrant a punishment of death - The 'individually inconclusive and cumulatively marginal facts and circumstances' tend towards awarding lesser sentence of life imprisonment - Sentence u/s. 302 commuted to life imprisonment which would be till the end of his biological life - Sentence u/s 307 reduced to 7 years RI - In case sentence of imprisonment for life is remitted or commuted to any specified period, sentence of imprisonment u/s. 307 shall commence thereafter.

*Sunil Damodar Gaikwad v. State of Maharashtra* ....

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(5) s.304-B - Dowry death - Appropriate sentence - Sentence of life imprisonment awarded by courts below - Held: The principles of sentencing evolved by Supreme Court though largely in the context of death penalty will be applicable to all lesser sentences so long as sentencing judge is vested

with discretion to award a lesser or a higher sentence resembling the swing of pendulum from minimum to maximum - In the instant case, facts do not disclose any extraordinary, perverse or diabolic act on the part of accused to take an extreme view - It is not a case where maximum punishment of life imprisonment ought to have been awarded - At the same time, from the order of trial court, it is clear that some of injuries on deceased, though obviously not fatal injuries, are attributable to accused-appellant and, as such, minimum sentence prescribed i.e. seven years would also not meet the ends of justice - Rather a sentence of ten years RI would be appropriate - Ordered accordingly - Sentence/Sentencing - Code of Criminal Procedure, 1973 - s.354(2). (Also see under: Sentence/Sentencing)

*Sunil Dutt Sharma v. State (Govt. of NCT of Delhi)* ....

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(6) s. 354 - Criminal force to outrage modesty of woman - Accused convicted and sentenced to six months simple imprisonment with fine - Held: Provisions of s.354 have been enacted to safeguard public morality and decent behaviour - Courts cannot take lenient view in awarding sentence on the ground of sympathy or delay - Appellant has committed a heinous crime and with the social condition prevailing, modesty of a woman has to be strongly guarded - It is not a fit case so as to give benefit of 1958 Act to appellant - As appellant had been awarded only six months imprisonment, considering the matter under the JJ Act, 2000 would not serve any purpose at such a belated stage - Juvenile Justice (Care and Protection of Children) Act, 2000 - Probation of

Offenders Act, 1958 - Delay.

*Ajaha Ali v. State of West Bengal* .... 911

(7) ss. 498-A, 304-B and 302 - Death of a married woman by burn injuries - Acquittal of husband by trial court - Set aside by High Court with a direction for decision afresh - Held: The investigation and the evidence of prosecution witnesses do not reveal any harassment and ill-treatment to deceased by accused prior to her death and, as such, no case u/s 304-B as well as u/s 498-A is made out against accused - Insofar as offence u/s 302 is concerned, there is no eye-witness to occurrence - By the time witnesses reached the place of occurrence, deceased was already engulfed in flames - There are contradictions in depositions of prosecution witnesses - Further, evidence of doctor of Government Hospital that deceased herself had stated that she had been injured due to bursting of stove while she was cooking, casts a doubt on prosecution story - Order of High Court set aside, and that of trial court restored.

*Venkatesan v. Rani & Anr.* .... 105

(8) s.504 - Intentional insult with intent to provoke breach of peace - Ingredients - Explained. (Also see under: Code of Criminal Procedure, 1973)

*Fiona Shrikhande v. State of Maharashtra and Another* .... 240

PERSONS WITH DISABILITIES (EQUAL OPPORTUNITIES, PROTECTION OF RIGHTS AND FULL PARTICIPATION) ACT, 1995:

(i) s.33 - Reservation of posts for persons with disabilities - Held: Section 33 lays down that every

appropriate Government has to appoint on a minimum of 3% vacancies in an establishment, persons with disabilities - View of High Court that computation of reservation must be on the basis of total cadre strength is clearly erroneous - Reservation of 3% for persons with disability has to be computed on the basis of total vacancies in the strength of a cadre and not just on the basis of the vacancies available in the identified posts.

(ii) s. 33 - Reservation of posts for persons with disabilities - Held: The Section does not distinguish the manner of computation of reservation between Group A and B posts or Group C and D posts, respectively - Computation of reservation for persons with disabilities has to be done in case of Group A, B, C and D, posts in an identical manner viz., "computing 3% reservation on total number of vacancies in the cadre strength" - Accordingly, certain clauses in OM dated 29.12.2005, which are contrary to scheme of reservation, are struck down and appropriate Government is directed to issue new Office Memorandum(s) consistent with the decision rendered by the Court - In order to ensure proper implementation of reservation policy for disabled and to protect their rights, further directions given - Government of India, Department of Personnel and training O. M. dated 29.12.2005.

*Union of India & Anr. v. National Federation of the Blind & Ors.* .... 1023

PRACTICE AND PROCEDURE:

Statement made by counsel before court - Disposal of case accordingly - Held: When a statement is made before court it is, as a matter of course, assumed that it is made sincerely and

is not an effort to over-reach the court - Statement by counsel is not expected to be flippant, mischievous, misleading and certainly not false - This confidence in statement made by counsel is founded on the assumption that counsel is aware that he is an officer of the court.

(Also see under: Service Law)

*H.P. Scheduled Tribes Employees Federation & Anr. v. Himachal Pradesh S. V. K. K. & Ors.* .... 384

PRECEDENT:

(See under: Judicial Comity) .... 295

PRESIDENCY SMALL CAUSE COURTS ACT, 1882:

(i) s.41(1) - Suits or proceedings between licensors and licensees - Suit for eviction of gratuitous licensee - Held: Is maintainable before Small Causes Court - Expression 'licensee' used in PSCC Act is a term of wider import intended to bring in a gratuitous licensee as well and is used in general sense of term as defined in s. 52 of Easements Act - It does not derive its meaning from the expression 'licensee' as used in sub-s. (4A) of s. 5 of Rent Act - Bombay Rents, Hotel and Lodging House Rates (Control) Act, 1947 - ss. 5(4-A) and 15-A - Interpretation of statutes - Contemporenea exposition - Easements Act, 1882 - s.52 - Transfer of Property Act, 1882.

(ii) s.41(1) - Suits or proceedings between licensors and licensees and landlord and tenant - Jurisdiction - Held: s.41(1) confers jurisdiction on Small Causes Court to entertain and try all suits and proceedings between a "licensor" and a "licensee" relating to recovery of possession of any immovable property or relating to recovery of

licence fee - High Court has correctly noticed that the clubbing of the expression "licensor and licensee" with "landlord and tenant" in s. 41(1) and clubbing of causes relating to recovery of licence fee is only with a view to bring all suits between "landlord and tenant" and "licensor and licensee" whether under Rent Act or under PSCC Act under one umbrella to avoid unnecessary delay, expenses and hardship.

(Also see under: Interpretation of Statutes)

*Prabhudas Damodar Kotecha & Ors. v. Manhabala Jeram Damodar & Anr.* .... 52

PREVENTION OF CORRUPTION ACT, 1988:

s.19.

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PREVENTION OF CRUELTY TO ANIMALS (SLAUGHTER HOUSE) RULES, 2000:

Slaughter houses - Maintenance, supervision and periodical inspection of - Transportation of animals, their loading and unloading, effluent disposal, solid waste disposal etc - Orders dated 9.7.2013 and 23.8.2012 passed by Supreme Court - Implementation of - Functioning of State Committees - Guidelines framed by MoEF - Held: Few of the States have filed action taken reports detailing functioning of Committees constituted - MoEF, on 27.8.2013, filed a compliance report

enclosing broad framework to be followed by State Committees for effective supervision of slaughter houses and also with regard to transportation of animals, loading and unloading, effluent disposal, solid waste disposal and also with regard to the periodical inspection of slaughter houses by respective State Animal Welfare Boards - It is of extreme importance that State Governments, State Animal Welfare Boards, Pollution Control Board etc. should scrupulously follow guidelines issued by MoEF, in obedience to direction given by the Court on 10.10.2012 - State Governments further directed to implement provisions of the Act as well as guidelines issued by MoEF, and file an action taken report - Environment (Protection) Act, 1986, the Solid Wastes (Management and Handling) Rules, 2000 - Prevention of Cruelty to Animals (Establishment And Registration of Societies for Prevention of Cruelty to Animals) Rules, 2000.

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PREVENTION OF FOOD ADULTERATION ACT, 1954:  
 (1) (See under: Public Health) .... 1103  
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PUBLIC HEALTH:  
 Food articles injurious to public health - Held: A paramount duty is cast on State and its authorities to achieve an appropriate level of protection to

human life and health which is a fundamental right guaranteed to citizens under Art. 21 r/w Art. 39(e) and (f) and Art. 47 of the Constitution - Therefore, provisions of FSS Act and PFA Act and the rules and regulations framed thereunder have to be interpreted and applied in the light of Constitutional principles, and endeavour has to be made to achieve an appropriate level of protection of human life and health - Considerable responsibility is cast on Authorities as well as other officers functioning under the Acts to achieve desired results - Constitution of India, 1950 - Arts. 21, 39(e)(f) and 47 - Food Supply and Standards Act, 2006 - Prevention of Food Adulteration Act, 1954. (Also see under: Public Interest Litigation)

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PUBLIC INTEREST LITIGATION:  
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(2) Writ petition before Supreme Court - For constituting a Committee of Experts to evaluate harmful effects of soft drinks on human health, particularly on health of children, and to take regulatory measures - Held: Adequate provisions have already been made in various Acts, Rules and Regulations - By and large, various grievances raised by petitioner are covered by legislations - Their enforcement has to be ensured by authorities concerned - Expert Scientific Panel on Labelling and Claims/Advertising, after examining various grievances raised by petitioner and giving an opportunity of being heard, has passed an order on 12.9.2012 - Further directions given - Constitution of India, 1950 - Arts. 21, 39(e), (f) and 47 - Food Supply and Standards Act, 2006 -



Prevention of Food Adulteration Act, 1954, Food Safety and the Standards (Food Products Standards and Food Additives) Regulations, 2011 -- Food Safety and Standards (Packaging and Labelling) Regulations, 2011 - Fruit Products Order, 1955.

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RAJASTHAN WAKF ACT, 1995:  
s. 85 r/w ss. 5, 6 and 7 - Bar of jurisdiction of civil court - Jurisdiction of Tribunal - Explained - Held: In the instant case, the suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees - Suit for possession and rent as also for cancellation of sale deed is to be tried by civil court - However, suit pertaining to removal of trustees and rendition of accounts would fall within the domain of Tribunal - Since the suit was filed much before the Act came into force, the civil court, where the suit was filed, will continue to have jurisdiction over the issue and would be competent to decide the same - Jurisdiction.

*Bhanwar Lal & Anr. v. Rajasthan Board of Muslim Wakf & Ors.* .... 721

RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993:  
(i) ss.19 and 22 - Object of the Act and the

procedure before Tribunal - Held: DRT and DRAT shall not be bound by the procedure laid down by Code of Civil Procedure, but shall be guided by principles of natural justice and subject to rules framed - They have been conferred powers to regulate their own procedure, as the very purpose of their establishment is to expedite disposal of applications and appeals preferred before them - They have the character of specialized institutions with expertise and have been conferred jurisdiction to decide the *lis* in speedy manner so that larger public interest, that is, economy of the country does not suffer.

(ii) s.19(25) - Powers of Tribunal - Held: s.19(25) confers limited powers - Tribunal does not have any inherent powers - Tribunal cannot assume the role of a court of different nature which can grant "liberty to initiate any action against the bank" - Taking note of a submission made at the behest of auction purchaser and then to proceed to say that he is at liberty to file any action against bank for any omission committed by it, has no sanction of law - Therefore, the observation, namely, "liberty is also given to the auction purchaser to file action against the bank for any omission committed by it", is deleted - Judgment of High Court whereby it has declined to interfere with grant of liberty by DRAT is also set aside.

(Also see under: Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002)

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(See under: Narcotics Drugs and Psychotropic Substances Act, 1985) .... 962

## REGISTRATION ACT, 1908:

s. 17(1)(c) - Registration of instrument creating interest - Mortgage by deposit of title deeds - Held: When debtor deposits with creditor title-deeds of property for the purpose of security, it becomes mortgage in terms of s. 58(f) of Transfer of Property Act and no registered instrument is required u/s. 59 thereof, as in other classes of mortgage - However, parties may choose to have a memorandum prepared only showing deposit of title-deeds - In such a case also registration is not required and, therefore, payment of registration fee and stamp duty is not required - Letter of Finance Commissioner would apply in cases where instrument of deposit of title-deeds incorporates terms and conditions in addition to what flows from the mortgage by deposit of title-deeds - Transfer of Property Act, 1872 - ss. 58(f) and 59 - Letter dated 29.3.2007 issued by Finance Commissioner.

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## REPRESENTATION OF THE PEOPLE ACT, 1951:

(i) s.33-A r/w ss. 36 and 125-A - Right to information - Candidates contesting the election - Filing of nomination paper - Affidavit with particulars left blank - Furnishing of information as required under sub-s.(1) of s.33-A and as laid down in the judgments of Supreme Court in *Association for Democratic Reforms and People's Union for Civil Liberties* - Principles culled out and directions issued - Held: Every candidate is obligated to file an affidavit with relevant information with regard to his/her criminal antecedents, assets and liabilities and educational qualifications - Filing of affidavit with particulars

left blank will render the affidavit nugatory - It is clarified that Para 73 of the judgment in *People's Union for Civil Liberties* will not come in the way of Returning Officer to reject the nomination paper when affidavit is filed with particulars left blank.

(ii) s.36 r/w s.33-A - Scrutiny of nomination - Duty of Returning Officer - Explained - Furnishing of relevant information - Held: Returning Officer can compel a candidate to furnish information relevant on the date of scrutiny - Election Commission already has a standard draft format for reminding the candidates to file an affidavit as stipulated - Another clause may be inserted in the format for reminding the candidates to fill in the blanks with relevant information thereby conveying the message that no affidavit with particulars left blank will be entertained.

(iii) s.125 A(i) - Filing of false affidavit and filing of affidavit with particulars left blank - Held: Filing of affidavit with particulars left blank will be directly hit by s.125A(i) - However, as the nomination paper itself is rejected by Returning Officer, there is no reason to penalize the candidate again for the same act by prosecuting him/her - If the candidate who has filed an affidavit with false information as well as the candidate who has filed an affidavit with particulars left blank are treated at par, it will result in breach of fundamental right guaranteed under Art.19(1)(a) of the Constitution, viz., 'right to know', which is inclusive of freedom of speech and expression.

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SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST ACT, 2002:

Delay in disposal of cases and granting of adjournments by DRT and DRAT - Object of the Act - Explained -- Held: Grant of an adjournment should be an exception and not a routine and mechanical matter - Tribunals are expected to act in quite promptitude, so that an ingenious litigant does not take recourse to dilatory tactics -- In the case at hand, there was no reason for DRAT to keep on adjourning the matter and finally dispose it by passing an extremely laconic order - A curative step is warranted and Chairman and Members of DRAT shall endeavour to remain alive to the obligations as expected of them by such special legislations, namely, SARFAESI Act and RDB Act - Adjournments.

(Also see under: Recovery of Debts Due to Banks and Financial Institutions Act, 1993)

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SENTENCE/SENTENCING:

(1) Sentence for offences of abduction of seven persons - Sentences to run consecutively. (See under: Penal Code, 1860) .... 547

(2) Sentence for offence punishable u/s 304-B IPC - Held: In a situation where commission of an offence is held to be proved by means of a legal presumption, circumstances surrounding the crime to determine presence of aggravating circumstances (crime test) may not be readily forthcoming unlike a case where there is evidence of overt criminal acts establishing direct involvement of accused with crime, to enable the

court to come to specific conclusions with regard to barbarous or depraved nature of the crime committed - Necessity to combat the menace of demand for dowry or to prevent atrocities on women and like social evils as well as necessity to maintain purity of social conscience cannot be determinative of quantum of sentence inasmuch as the said parameters would be common to all offences u/s. 304-B IPC - It, therefore, cannot be elevated to the status of acceptable jurisprudential principles to act as a rational basis for awarding varying degrees of punishment on a case to case basis - Factors to be taken into account while imposing the sentence u/s 304 IPC, discussed - Penal Code, 1860 - s.304-B.

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SERVICE LAW:

(1) (i) Back wages on reinstatement - Suspension and termination of services of school teacher - Declared by Tribunal as illegal - Reinstatement - Award of full back wages, set aside by High Court - Held: High Court committed grave error by interfering with the order passed by Tribunal for payment of back wages, ignoring that charges levelled against appellant were frivolous and inquiry was held in gross violation of rules of natural justice - Impugned order set aside and order passed by Tribunal restored - Management shall pay full back wages to appellant.

(ii) Award of back wages, when termination of employee found to be illegal - Principles culled

out - Labour law - Industrial Disputes Act, 1947 - s.11-A - Back wages.

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(2) (i) Misconduct - Dismissal from service - Appellant, in drunken state, forcibly entering into office of Principal - High Court substituting the order of dismissal by withholding of two increments without cumulative effect - Held: When charge is proved, it is the disciplinary authority with whom lies the discretion to decide as to what kind of punishment is to be imposed - Where it is found that punishment is disproportionate to the nature of charge, court can only refer matter back to disciplinary authority to take appropriate view by imposing lesser punishment, rather than directing itself the exact nature of penalty - Judgment of High Court is set aside and that of Tribunal restored, upholding the punishment of removal of respondent from service.

(ii) Punishment - Judicial review - Held: Court while undertaking judicial review of the matter is not supposed to substitute its own opinion on reappraisal of facts - In exercise of power of judicial review, court can interfere with punishment imposed when it is found to be totally irrational or is outrageous in defiance of logic - Entering the school premises in working hours in an inebriated condition and thereafter forcibly entering into Principal's room would constitute a serious misconduct - Penalty of removal for such a misconduct cannot be treated as disproportionate - Constitution of India, 1950 - Art.14 - Judicial Review.

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(3) Pension - Service qualifying for pension - Service in Punjab Education Department - Reckoning of for pension on superannuation from Punjab School Education Board - Held: Employee is entitled to get benefit of Notification dated 17.03.2011 issued by Punjab School Education Board and shall be eligible to add his service qualifying for superannuation pension - Punjab School Education Board (Employees Pension, Provident Fund and Gratuity) Regulations, 1991 - Regulation 6.

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(4) Promotion:

(i) (a) Ad hoc promotion - Granted to *junior* - Held: A senior has right to be considered even for *ad hoc* promotion - If seniors are eligible as per the rules and there is no legal justification to ignore them, employer, at his whim or caprice, cannot extend promotional benefit to a junior on ad hoc basis.

(b) Ad hoc promotion - Granted to junior - Belated claim by seniors to promote them from the date their junior was granted ad hoc promotion - However on regular promotion, their seniority in promotional post maintained - Held: Though claim of promotion is based on the concept of equality and equitability, relief has to be claimed within a reasonable time - In the instant case, cause of action had arisen for assailing the order when junior employee was promoted on ad hoc basis - A stale claim of getting promotional benefits should not have been entertained by Tribunal and accepted by High Court - Direction given by Tribunal which has been concurred with by High Court, being unsustainable in law, is set aside -

Delay/laches.

(c) Service matters - Limitation - Held: Issue of limitation or delay and laches should be considered with reference to original cause of action - A mere submission of representation to competent authority does not arrest time.

*State of Uttaranchal and Anr. v. Sri Shiv Charan Singh Bhandari and Ors.* .... 609

(ii) Promotion - Time bound promotion - Granted to appellant in 1998 - Promotion subsequently found to be irregular as appellant had not passed required examination - Orders issued in 2009 for cancellation of promotion - Held: On facts, not justified - Appellant was not at all in any way at fault - It was a time bound promotion which was given to him and some eleven years thereafter, Government Authorities woke up - Moreover, appellant had passed required examination subsequently in 2007 much before cancellation orders were issued in 2009 - Approach of Government authorities was totally unjustified.

*Kusheswar Nath Pandey v. State of Bihar & Ors.* .... 593

(5) Reservation in promotion - Consequential seniority - Compliance of direction in M. Nagaraj's case - State of Himachal Pradesh issuing circulars dated 7.9.2007 and 23.1.2010 - Plea of State Government to await the finalization of 117th Constitution Amendment - Held: The material on record indicates the intention of the State not to comply with the earlier decision to implement the policy of reservation in promotions and grant of consequential seniority - State Government, directed to take a final decision on the issue -

Proposed 117th Constitutional Amendment would not adversely affect the merits of claim of petitioner, for grant of promotion with consequential seniority.

*H.P. Scheduled Tribes Employees Federation & Anr. v. Himachal Pradesh S. V. K. K. & Ors.* .... 384

(6) Retiral benefits - CPF Scheme and Pension Scheme - Belated option of employee for CPF scheme accepted by employer - After getting retiral benefits accordingly, employee claiming benefit of Pension Scheme - Held: A special favour was done to respondent by appellant University by accepting his option even after the prescribed period was over and, therefore, he cannot be permitted to take undue advantage of the same - Notification No. Pension/RAJAU/C/91/F-75/3668-768 dated 17.8.1991.

*Rajasthan Agriculture University, Bikaner v. State of Rajasthan & Ors.* .... 276

(7) (i) Seniority between direct recruits and promotee Assistant Engineers - Held: Appellants were promoted as Assistant Engineers much later than respondents-Assistant Engineers (direct recruits) had started discharging their functions as Assistant Engineers in RD Department - Respondents had completed five years service as Assistant Engineers and under the relevant rules were eligible to be promoted as Assistant Executive Engineers - Consequently, they were duly promoted as Assistant Executive Engineer - Thus, the action taken by State Government cannot be said to be either arbitrary or violative of Art. 14 or 16 of Constitution.

(ii) Quota for promotion to post of Assistant Executive Engineer - Held: For promotion to post of Assistant Executive Engineer (RD), more than one mode of recruitment i.e. promotion from Assistant Engineer (RD) and recruitment by transfer from the feeder category of Junior Engineer and Senior Draughting Officer have been recognised and stipulated -Therefore, rules providing ratio of 6:2:1 cannot be said to be violative of Art.14 or 16 of the Constitution - Further, fixation of quota/ratio is the prerogative of executive and, in the instant case, ratio was fixed in service rules framed under Art.309 of the Constitution - Constitution of India, 1950 - Arts. 14, 16 and 309.

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#### SOCIAL JUSTICE:

Reservation in employment for persons with disabilities - Held: Employment is a key factor in the empowerment and inclusion of people with disabilities - It is an alarming reality that disabled people are out of job not because their disability comes in the way of their functioning rather it is social and practical barriers that prevent them from joining the workforce - Therefore, bringing them in the society based on their capabilities is need of the hour - State has a categorical obligation under the Constitution and under various International treaties relating to human rights in general and treaties for disabled persons in particular, to protect rights of disabled persons - Directions issued to ensure proper implementation of reservation policy for persons with disability and to protect their rights.

(Also see under: Persons With Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995)

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(1) s.28 r/w Art.5 (b-1) of Schedule 1B [as applicable to State of Uttarakhand] and ss.33, 38 and 47A - Deficit stamp duty - Agreements for sale executed in favour of appellant - Presented before Deputy Registrar for registration - Matter referred by him to Assistant Commissioner (Stamp and Registration) who held that stamp duty paid on the documents was deficient and directed appellant to make up for the deficit stamp duty alongwith penalty imposed as well as interest - Writ petitions in High Court - Partial relief given to appellant modifying the orders of Deputy Registrar - Held: The subject matter of the documents fell u/s.33 - Subsequent conduct of parties in cancelling the agreements cannot be a reason for not taking action u/s.33/38 - High Court accepted that at the relevant time stamp duty was payable @ Rs. 80/- per thousand whereas Assistant Commissioner (Stamps) had calculated the same @ Rs. 125/- per thousand - Stamp duty payable was reduced and relief to that extent has already been given - Likewise, High Court also set aside the order of Assistant Commissioner (Stamps) in so far as interest payment was imposed upon appellant - In any case, High Court reduced the penalty to 15%

of the deficit stamp duty, thereby giving sufficient succour to appellant - No further relief can be granted to appellant.

*M/s Tirupati Developers v. State of Uttarakhand & Ors.* .... 598

(2) s.35 r/w s.2(10), Schedule 1-A, Art. 23, as substituted by s. 6 of Act 22 of 1990 - Instrument not duly stamped, inadmissible in evidence - "Conveyance" - Agreement to sell containing recital that possession had been handed over to purchaser - Held: The agreement to sell with possession is an instrument which requires payment of stamp duty applicable to a deed of conveyance - Duty as required, has not been paid and, therefore, trial court rightly held the same to be inadmissible in evidence.

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#### SUPREME COURT RULES, 1966:

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conduct is censured and he is warned not to behave in future in such manner.

(ii) O.4, rr.4 and 6 - Advocate-on-Record - Role and duty - Misconduct - AsOR lending their signatures in large number of cases and not appearing in Court - Held: In case an AOR is only lending his signatures without taking any responsibility for conducting the case, the very purpose of having the institution of AsOR stands defeated - In such a fact-situation, lending of signatures for consideration would amount to misconduct of his duty towards Court and such an attitude tantamounts to cruelty in the most crude form towards the innocent litigant - Conduct of such an AOR is unbecoming of an AOR - An AOR is the source of lawful recognition through whom litigant is represented - As per Rules, no unauthorised person can deal with Registry and it must strictly adhere to Rules.

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(2) (i) ss.59 and 58(f) - Mortgage and mortgage by deposit of title deeds - Discussed.

(ii) s.58(f) - Mortgage by deposit of title deeds - Held: Charge of mortgage can be entered into revenue record in respect of mortgage by deposit of title-deeds and for that, instrument of mortgage is not necessary.

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(2)(i) Appointment of Vice-Chancellors and Pro-Vice-Chancellors - 'Consultation with State Government' - Expression 'consultation' - Connotation of - Explained - Held: Though, final decision is with consulter, he cannot generally ignore advice of consultee except for good reasons - There should be meeting of minds between parties involved in the process of consultation on material facts and points involved - Consultation is not complete or effective unless parties thereto make their respective points of view known to the other and discuss and examine relative merit of their views.

(ii) Appointment of Vice-Chancellors and Pro Vice Chancellors - Notifications dated 9.2.2013, 19.2.2013 and 14.3.2013 issued for appointment of candidates as Vice-Chancellors and Pro Vice-Chancellors of different Universities in State of Bihar - Held: As regards the instant matters, Chancellor has been consistently flouting the mandate of law and making appointments completely disregarding the requirement of academic excellence and experience and without effectively consulting the State Government - He selected for appointment some persons who were

facing prosecution under various criminal laws and/or involved in financial irregularities - The mechanism adopted by Chancellor in making appointments is blatantly violative of the scheme of BSU Act and PU Act and also Art. 14 of the Constitution - Impugned Notifications are quashed - Consequential directions issued - Bihar State Universities Act, 1976 - ss.10 and 12 - Patna University Act, 1976 - ss. 11 and 14 - Nalanda Open University Act, 1995 - ss.11 and 13 - Constitution of India, 1950 - Art. 14.

(iii) Vice-Chancellors and Pro Vice-Chancellors - Appointment to the offices of - Held: Relevant statutory provisions prescribe the qualification of academic excellence as a condition precedent for appointment to these posts - Candidate must be a person reputed for his scholarship and academic interest or eminent educationist having experience of administering the affairs of any University, and selection of such a person is possible only if a transparent method is adopted and efforts are made to reach out to people across the country - Art. 14 of the Constitution which mandates that every action of State authority must be transparent and fair has to be read in the language of these provisions.

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Constitution - Held: All the steps taken by UGC were strictly in accordance with clause 7 of Notification for NET Examination, 2012 - Prescribing the qualifying criteria as per clause 7 does not amount to a change in the rule as it was already pre-meditated in the notification - It is open to UGC to lay down any "qualifying criteria", which has a rational nexus to the object to be achieved, i.e. for maintenance of standards of teaching, examination and research - UGC has only implemented the opinion of Experts by laying down the qualifying criteria, which cannot be considered as arbitrary, illegal or discriminatory or violative of Art.14 of the Constitution - University Grants Commission Regulations, 2010.

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#### UTTAR PRADESH SUGAR UNDERTAKINGS (ACQUISITION) ACT, 1971:

s.2(h)(vi) r/w s.3 - 'Scheduled undertaking' - Vesting of, in Sugar Corporation - Land of sugar factory shown in revenue records as "*Parti Kadim Tilla*" (land not cultivated for a long time and in the form of hillock), held by consolidation authorities as vested in the Corporation - High Court directing to restore the name of sugar Company in revenue records - Held: All the three statutory authorities concurrently held that there was no evidence on record to show that subject land was ever held or occupied by respondent-Company for agricultural purposes or that any

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(Also see under: Constitution of India, 1950)

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## **JUDGES OF THE SUPREME COURT OF INDIA**

1. Hon'ble Shri P. Sathasivam, Chief Justice of India
2. Hon'ble Mr. Justice G.S. Singhvi
3. Hon'ble Mr. Justice R.M. Lodha
4. Hon'ble Mr. Justice H.L. Dattu
5. Hon'ble Dr. Justice B.S. Chauhan
6. Hon'ble Mr. Justice A.K. Patnaik
7. Hon'ble Mr. Justice T.S. Thakur
8. Hon'ble Mr. Justice K.S. Radhakrishnan
9. Hon'ble Mr. Justice Surinder Singh Nijjar
10. Hon'ble Mr. Justice Chandramauli Kr. Prasad
11. Hon'ble Mr. Justice H.L. Gokhale
12. Hon'ble Mrs. Justice Gyan Sudha Misra
13. Hon'ble Mr. Justice Anil R. Dave
14. Hon'ble Mr. Justice S.J. Mukhopadhaya
15. Hon'ble Mrs. Justice Ranjana Prakash Desai
16. Hon'ble Mr. Justice J.S. Khehar
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19. Hon'ble Mr. Justice Fakkir Mohamed Ibrahim Kalifulla
20. Hon'ble Mr. Justice Ranjan Gogoi
21. Hon'ble Mr. Justice Madan B. Lokur
22. Hon'ble Mr. Justice M. Yusuf Eqbal
23. Hon'ble Mr. Justice V. Gopala Gowda
24. Hon'ble Mr. Justice Vikramajit Sen
25. Hon'ble Mr. Justice Pinaki Chandra Ghose
26. Hon'ble Mr. Justice Kurian Joseph
27. Hon'ble Mr. Justice A.K. Sikri
28. Hon'ble Mr. Justice Sharad Arvind Bobde
29. Hon'ble Mr. Justice Shiva Kirti Singh
30. Hon'ble Mr. Justice C. Nagappan

**MEMORANDA  
OF  
JUDGES OF THE SUPREME COURT OF INDIA**

1. Hon'ble Mr. Justice K.S. Radhakrishnan, Judge, Supreme Court of India was on leave for 8 (eight) days from 20.09.2013 to 27.09.2013, on full allowances.
  
2. Hon'ble Mr. Justice H.L. Gokhale, Judge, Supreme Court of India was on leave for 3 (three) days from 10.09.2013 to 12.09.2013, on full allowances.

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