



# South Central Railway Lex Info – e Magazine (An in-house magazine from Law Branch)

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**ADVISOR:**

Chandrima Roy  
SDGM

**Editor-in-Chief**

N.Murali Krishna,  
Sr.Law Officer.

**Editors:**

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M.V.Ramana,  
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Sr.Law Officer,  
Law Branch, SCR,  
3<sup>rd</sup> Floor,  
Rail Nilayam,  
Secunderabad  
PIN- 500025.  
email:  
loscrhq@gmail.com



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**EDITORIAL**

The present issue covers an important statute, i.e. The Employees Compensation Act, 1923. Supreme Court reiterated that it is the executives' exclusive domain to fix qualifications for appointment to a post and Court cannot interfere in such matters. What is moral turpitude when an employee is convicted is dealt by the Supreme Court in *The State Bank of India & Others. Vs P. Soupramaniane* case. Another important judgement is on the delay by the Department in filing appeals. The Apex Court deprecated the tendency of delayed appeals without sufficient reasons and imposed cost on the officials; So, appeals, if any shall be filed without delay.

N. Murali Krishna, Sr.LO/HQ

## ABC OF ACTS

### The Employees Compensation Act, 1923

(As amended under Gazette of India (extraordinary) dt. 23.12.09, RBE 61/11)

ECA is an act, which safeguards certain classes of employees against the risk in employment and payment of compensation for injuries sustained by them in accidents.

**Aim** - To provide for payment of compensation to certain classes of workers for injuries / death caused due to accidents, arising out of and in the course of employment; to regulate the payment of compensation according to the nature and result of the accidents; to prescribe the procedure to be followed in the payment of compensation & to evolve suitable machinery has been to ensure proper implementation of the provisions of the Act.

#### Definitions -

**Employee [S-2 (1) (n)]** : A railway servant as defined in clause (34) of section 2 of the Railway Act, 1989, not permanently employed in any administrative, district or sub. Divisional office of a railway and not employed in any such capacity as is specified in schedule II. The word workman/workmen in erstwhile Act should be substituted by Employee/Employees.

**Wages[S-2(1)(m)]**: Wages means all remuneration expressed in terms of money or capable of being expressed in terms of money. It excludes traveling allowance, contribution to PF by the employer, amounts given to cover special kind of expenses and services. Wages for purpose of calculation of compensation will be limited to Rs.8, 000.

**Employer [S-2 (1) (e)]** : Employer means anybody or persons or any managing agent of the employer or any legal representative of deceased employer. Accident means an unexpected event happening without design even though there may be negligence on the part of the employee.

**Circumstances where Compensation is Payable:** Where a personal injury caused to workmen is lasting for more than 3 days. The injury is caused as a result of accident. The accident has arisen out of and in the course of employment ('out of' refers to the place of accident and 'in the course' of refers to the time of accident). Injury has resulted in disablement or death.

**Circumstances where Compensation is not Payable:** In respect of any injury, which does not result in the total or partial disablement for a period, exceeding 3 days. In respect of any injury (excluding death) caused by accident which is directly attributable to- The influence of Drink or Drug at the time of accidents. Willful removal or disregard of safety appliances. Willful disobedience of safety instructions.

Disablements -Partial	
Temporary	Permanent
Reduces the earning capacity of employee in any of the employment he was capable of performing at the time of accident.	Reduces the earning capacity of the employee in every employment he was capable of performing at the time of accident.

Disablements- Total	
Temporary	Permanent
Incapacitate the workmen in all types of work.	Incapacitate the workmen in all types of work.

#### Occupational Diseases:

If a employee specified in Part A schedule III contracts any disease specified therein as an occupational disease peculiar to that employment, or if a employee, whilst in the service of an employer in whose service he has been employed for a continuous period of not less than six months in any employment specified in part B of schedule III or if a employee whilst in the service of one or more employer in any employment specified in part C of schedule III contracts any disease specified therein as an occupational disease peculiar to the employment, the contracting of the disease shall be deemed to be an injury by accident arisen out of, and in the course of, the employment.

#### Compensation under the Act [S- 2 (1) (c)]

Temporary	Partial Permanent
No compensation. HMP is payable during the period of treatment. (25% of wages)	Compensation is worked out for total permanent disablement and allowed proportionately based on LEC %.

Total Permanent	Death
60% of wages multiplied by age factor or <b>Rs.1,40,000/-</b> whichever is more.	50% of wages multiplied by age factor or <b>Rs.1,20,000/-</b> whichever is more.

#### Schedules

Schedule-I	Part-I List of total disablement with loss of earning capacity. Part-II List of Partial Disablement with Loss of Earning Capacity.
Schedule-II	List of workmen.
Schedule-III	List of occupational diseases.
Schedule-IV	Age relevant factor.

#### Reference to Commissioner -

If any question arises in any proceedings under this Act as to the liability of any person to pay compensation (inclgd. any question as to whether a person injured is or is not a employee) or as to the amount or duration of compensation (inclgd. any question as to the nature/extent of disablement), the question shall, in default of agreement, be settled by Commissioner. No Civil Court has jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by a Commissioner, or to enforce any liability incurred under this Act.

**Appeals** - An appeal shall lie to the High Court against the orders of a Commissioner.

- V.Appa Rao, CLA, GM Office

## Court cannot lay down conditions of eligibility for appointment

Maharashtra Public Service Commission issued separate advertisements posts of Assistant Commissioner (Drugs) and Drug Inspectors for which essential qualifications is possessing a Degree in Pharmacy or Pharmaceutical Chemistry or in medicine with specialization in Clinical Pharmacology or Microbiology from a University and Experience gained after acquiring qualification in the manufacture or testing of drugs or enforcement of the provisions of the Act for a minimum period of five years.

However, High Court holding that candidates possessing requisite years of experience in research and development of drugs and testing of the same, are also eligible to be considered for appointment to the posts of Assistant Commissioner (Drugs) and Drug Inspectors. Aggrieved by the orders of the High Court the appellants filed SLP contending that academic qualifications coupled with the requisite years of practical experience in the manufacturing and testing of drugs were essential qualifications for appointment, while research experience in a research and development laboratory was a desirable qualification which may have entitled such a person to a preference only.

The Supreme Court examined the prescribed qualifications for the posts and held that: the essential qualifications for appointment to a post are for the employer to decide. The employer may prescribe additional or desirable qualifications, including any grant of preference. It is the employer who is best suited to decide the requirements a candidate must possess according to the needs of the employer and the nature of work.

The court cannot lay down the conditions of eligibility, much less can it delve into the issue with regard to desirable qualifications being at par with the essential eligibility by an interpretive rewriting of the advertisement. Questions of equivalence will also fall outside the domain of judicial review. If the language of the advertisement and the rules are clear, the Court cannot sit in judgment over the same. If there is an ambiguity in the advertisement or it is contrary to any rules or law the matter has to go back to the appointing authority after appropriate orders, to proceed in accordance with law. In no case can the Court, in the garb of judicial review, sit in the chair of the appointing authority to decide what is best for the employer and interpret the conditions of the advertisement contrary to the plain language of the same.

The fact that an expert committee may have been constituted and which examined the documents before calling the candidates for interview cannot operate as

an estoppel against the clear terms of the advertisement to render an ineligible candidate eligible for appointment.

The plain reading of the advertisement provides that a degree in Pharmacy or Pharmaceutical Chemistry or in medicine with specialization in Clinical Pharmacology or Microbiology from a University coupled with the requisite years of experience thereafter in manufacturing or testing of drugs were essential qualifications. Preference could be given to those possessing the additional desirable qualification of research experience in the synthesis and testing of drugs in a research laboratory.

The preference clause in the advertisement only means that if a candidate with the required degree qualification and practical experience in the manufacturing and testing of drugs for stipulated period of years has an additional desirable attribute of a research experience in a research laboratory, other things being equal, preference could be given to such a candidate. The term "preference" mentioned in the advertisement cannot be interpreted to mean that merely because a candidate may have had the requisite experience of testing in a research and development laboratory he/she possessed the essential eligibility and had a preferential right to be considered for appointment.

The Apex Court, therefore held that the interpretation of the terms of the advertisement as made by the High Court both with regard to the posts of Assistant Commissioner (Drugs) and Drug Inspectors is not correct and set aside the impugned orders of the High Court. [The MAHARASHTRA PUBLIC SERVICE COMMISSION THROUGH ITS SECRETARY VS SANDEEP SHRIRAM WARADE AND OTHERS, CANo. 4597 OF 2019]

S. Nagendra, CLA/HYB Divn.

### Legal maxims

**In omnibus** - In every respect.

**In limine**- At the outset, on the threshold.

**In camera** - In private.

**In delicto** - At fault.

**In esse** - In existence.

**Ignorantia facti excusat, ignorantia juris non excusat** - Ignorance of fact excuses, ignorance of law does not excuse.

### All Cases Of Assault Or Simple Hurt Cannot Be Categorized As Crimes Involving Moral Turpitude

P. Soupramaniane, while working as a messenger in SBI, was convicted by the trial court u/s 324 IPC (Voluntarily causing hurt by dangerous weapons or means) and sentenced him to undergo imprisonment for three months. The Appellate court, though affirmed the conviction, released him on probation on the ground that he was employed as a Messenger in a Bank and any sentence of imprisonment would affect his career. Based on the Conviction, the bank discharged him from service. He challenged the action of SBI before the HC, and the divn. bench of HC set aside the order of discharge and directed the bank to reinstate him. Against which, the Bank has filed an appeal before the SC.

The SC affirmed the judgment of the HC but disagreed with the reasons given by it holding that "The release under probation does not entitle an employee to claim a right to continue in service. In fact the employer is under an obligation to discontinue the services of an employee convicted of an offence involving moral turpitude. The observations made by a criminal court are not binding on the employer who has the liberty of dealing with his employees suitably."

The SC held that conviction for an offence involving moral turpitude disqualifies a person from continuing in service. Though every offence is a crime against the society, discontinuance from service according to the Conduct rules applicable to the employee can be only for committing an offence involving moral turpitude. Whether an offence involves moral turpitude or not depends upon the facts and the circumstances of the case. The tests that can be applied for judging an offence involving moral turpitude are:

- Whether the act leading to a conviction was such as could shock the moral conscience or society in general;
- Whether the motive which led to the act was a base one, and
- Whether on account of the act having been committed the perpetrators could be considered to be of a depraved character or a person who was to be looked down upon by the society.

The other important factors to conclude that an offence involves moral turpitude are:— the person who commits the offence; the person against whom it is committed; the manner and circumstances in which it is alleged to have been committed; and the values of the society. Certain offences which can straightaway be termed as involving moral turpitude e.g. offences under the Prevention of Corruption of Act, NDPS Act, etc.

On examining the facts, the SC considered whether an offence involving bodily injury (assault) can be categorized as a crime involving moral turpitude. The Apex court held that it is very difficult to state that every assault is not an offence involving moral turpitude. A simple assault is different from an aggravated assault. All cases of assault or simple hurt cannot be catego-

rized as crimes involving moral turpitude. On the other hand, the use of a dangerous weapon which can cause the death of the victim may result in an offence involving moral turpitude. In this case, there was no motive for the Respondent to cause the death of the victims. The criminal courts below found that the injuries caused to the victims were simple in nature. Taking all these facts into consideration, the Apex Court opined that the crime committed by the Respondent does not involve moral turpitude. As the Respondent is not guilty of an offence involving moral turpitude, he is not liable to be discharged from service. [The State Bank of India & Others. Vs P. Soupramaniane, CANo. 7011/2009, DOJ: 26.4.2019]

-N. Murali Krishna, Sr.LO/HQ

### Difference Between:

#### Scheduled bank & Non-Scheduled bank

Scheduled Banks are the banks, which are accounted in the Second Schedule of the Reserve Bank of India Act, 1934. The scheduled bank should conform to the following conditions:

- The total min. value of paid up capital and reserve must be the amount as fixed by RBI from time to time.
- The bank requires to satisfy the central bank that its affairs are not carried out in a way that causes harm to the interest of the depositors.
- The bank needs to be a corporation rather than a Sole-proprietorship or Partnership firm.

Scheduled banks enjoy certain rights such as:

- Right to receive refinance facility from the apex bank
- Entitled for currency chest facility.
- Right to become members of clearing house

However, they are required to fulfil certain obligations like maintenance of avg/ daily balance of CRR (Cash Reserve Ratio) with the central bank @ rates specified by it. Further, these banks need to submit returns regularly to the Central Bank as per the provisions of RBI Act, 1934 and Banking Regulation Act, 1949.

#### Non-Scheduled Bank:

Non-Scheduled Bank refers to the banks which are not listed in the Second Schedule of RBI.

In finer terms, the banks which do not comply with the provisions specified by the central bank, within the meaning of the Reserve Bank of India Act, 1934, or as per specific functions, etc. or as per the judgement of the RBI, are not able to serve and protect the depositor's interest, are known as non-scheduled banks.

Non-Scheduled Banks also have to maintain the cash reserve requirement, not with the RBI, but with themselves. These are local area banks.

For more information, link: <https://rbi.org.in/commonman/English/Scripts/BanksInIndia.aspx> may be visited.

- K. Gopinath, CLA/GM Office

### Acceptance of withdrawal of notice of voluntary retirement – Sufficient reason to be provided

Puroshottam Malani was working in the appellant organization as Manager. Since he wanted to go on voluntary retirement, he tendered a three months' notice dated 31.12.1999 for voluntary retirement to retire him with effect from 31.3.2000. The said notice of respondent for relieving him on voluntary retirement was accepted by the appellant corporation. However, on 22.3.2000, i.e., 10 days prior to the date of relieving him, the respondent sought to withdraw his notice of voluntary retirement. The request for withdrawal of the notice for voluntary retirement was rejected by the appellant corporation on 17.4.2000.

Aggrieved against the said order of rejection, the respondent approached CAT. The CAT quashed and set aside the order dated 17.4.2000 and directed the appellant to treat the applicant-respondent to have continuously work until the date of actual superannuation and granted him all arrears of salary and other emoluments including increments and to get his pensionary benefits re-fixed accordingly. Aggrieved against the said order of the CAT, the appellant filed a WP before the High Court which was dismissed. Hence the present appeal by special leave.

In this appeal, the question that arises for consideration was whether after respondent's resignation has been accepted by the organisation and respondent had already withdrawn all the pensionary benefits including leave encashment, gratuity, commutation, is it still open for him to agitate the matter. The Supreme Court considered the relevant rule i.e Rule 48 (2) of the Central Civil Services (Pension Rules, 1972) [Equivalent to Rule 66(3) of Railway Services Pension Rules, 1993, Retirement on completion of 30 years qualifying service].

Rule 48(2) of the Central Civil Services (Pension) Rules, 1972 reads as under :-

"(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the Appointing Authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority :

Provided that the request for withdrawal shall be within the intended date of his retirement."

The Apex Court held that "government service is not contractual. It is a service which confers status and a person who opts for voluntary retirement and later on wants to revoke the same before the expiry of the period of notice has to satisfy the authorities why he is seeking

to revoke the notice of voluntary retirement. Rule 48 (2) of the Central Civil Services (Pension) Rules, 1972 clearly states that the incumbent can seek withdrawal of the notice of voluntary retirement but with the specific approval of the authorities. Therefore, as per Rule 48(2) of the CCS (Pension) Rules, 1972 specific approval of the authority is required for withdrawal of the notice of voluntary retirement. If the incumbent does not provide any reason or material for revoking his notice of voluntary retirement then it is always open for the authority to decline the request for withdrawal of notice of voluntary retirement. If such discipline is not read into the Rule then perhaps every employee can send a notice for voluntary retirement and revoke the same at his sweet will. The Rule mandates that there should be a specific approval of the appointing authority. Clearly, the Rule provides that the appointing authority can certainly approve or disapprove a request for withdrawal of notice of voluntary retirement.

In the present case, the incumbent who has given the notice of voluntary retirement on 31.12.1999 and wanted to revoke the same on 22.3.2000, i.e., before the last date 31.3.2000, has not given any explanation whatsoever for revoking the notice of voluntary retirement and has got all the benefits which he was entitled to get on the basis of voluntary retirement. After having received all the benefits of voluntary retirement, the respondent approached the Tribunal for setting aside the order dated 17.4.2000 accepting the notice of voluntary retirement. This conduct of the respondent also dis-entitles him any benefit. In the facts of the present case where the respondent has not provided for reason for withdrawal of his notice for voluntary retirement and secondly that the respondent had already received all the pensionary benefits including leave encashment, gratuity, commutation etc., the Supreme Court held that this appeal deserves to be allowed and set aside the order of the Tribunal. [Director General ESIC & Anr. Vs Puroshottam Malani, CA No.4611/2008 (DOJ: 22.07.2008)]

-S. Srinivas, CLA/GNT

### JOKES

The attorney tells the accused, "I have some good news and some bad news."

"What's the bad news?" asks the accused.

"The bad news is, your blood is all over the crime scene, and the DNA tests prove you did it."

"What's the good news?"

"Your cholesterol is 130."

### **Courts/Tribunals cannot direct Appointments on Compassionate Grounds contrary to eligibility conditions**

Brief facts of the case are that one Kalyan Singh father of the respondent Revat Singh was a driver with appellant Rajasthan State Road Transport Corporation. He died in harness on 26.6.2006. The respondent sought compassionate appointment on the post of driver. His educational qualification was 8th standard pass. The appellants considered the application for appointment on compassionate ground, and rejected the same on the ground that the respondent was not qualified either for the post of driver or that of conductor. The respondent was accordingly communicated by the appellants. The respondent made further correspondence in the matter after obtaining driving licence on 23.1.2007. However, said licence was not for heavy vehicles. When the appellants did not accept request for appointment against the post of driver, the respondent filed writ petition before the High Court, which was allowed by the Single Judge vide order dated 29.1.2014, directing the appellant to consider case of the respondent for the post of driver. Appeal there against before the Division bench was dismissed.

Rajasthan State Road Corporation filed SLP before the SC and submitted that the HC has erred in law in directing the appellant to consider the case of respondent for appointment against the post of driver on compassionate grounds. It is specifically pointed out that the respondent is not qualified for the post of driver as he is neither matriculate nor possessed driving licence for heavy vehicles.

The SC considered the law laid down in I.G. (Karmik) and others vs. Prahalad Mani Tripathi (2007) 6 SCC 162, wherein the SC has held that compassionate appointment can not be granted to a post for which the candidate is ineligible. It is further held in said case that even though higher post was applied for on compassionate ground, when a lower post offered considering qualification and eligibility as per rules was accepted by the candidate, he cannot claim higher post.

Further in Steel Authority of India Limited vs. Madhusudan Das, (2008) 15 SCC 560, the SC has clarified the law relating to compassionate appointments in following words:

"15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution mandate that all eligible candidates should be considered for appointment in the post which have fall-

en vacant. Appointment on compassionate ground offered to a dependant of deceased employee is an exception to the said rule. It is a concession, not a right. (See SBI v. Anju Jain, (2008) 8 SCC 475 para 33.)"

In State of Gujarat v. Arvindkumar T. Tiwari, (2012) 9 SCC 545, the Supreme Court while examining the law in the matters of compassionate appointment, has made following observations:

"11. The courts and tribunals do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of M.P. v. Dharam Bir (1998) 6 SCC 165, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under: "31. ... The courts as also the tribunals have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution."

The Apex Court further held that "Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility, etc. The court should therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of "fair play", "good conscience" and "equity". (Vide State of J&K v. Shiv Ram Sharma (1999)3 SCC 653 and Praveen Singh v. State of Punjab (2000) 8 SCC 633.)"

In view of the law laid down by this Court as above, the Supreme Court held that since the respondent was not qualified for the post of driver, as such the High Court erred in law in directing the appellant to consider his case against the post of driver of heavy vehicle and allowed the appeal filed by the RSRTC. [The Rajasthan State Road Transport Corporation and others vs Revat Singh, CANo. 2061 of 2015, DOJ:20 February, 2015]

-Stanley Paul, CLA/P/SC Divn.

## YOURS LEGALLY

### Delay defeats justice' is the saying -

“*Interest Reipublicae Ut Sit Finis Litium*” is a latin maxim which means, it is to the interest of the state that there should be a limit to litigation.

Accordingly, period of limitation is prescribed for bringing an action in a court of law or an appeal under various Statutes. Where no such period is prescribed under any statute, delay and laches comes in to play. Along with this prescribed period of limitation, certain Statutes empower the relevant courts/tribunals discretionary powers to condone delay if sufficient cause is shown. However, if the delay is enormous, and cannot be properly explained, courts may not exercise their discretion to condone the delay. It is also, a myth that limitation is not applicable to government organisations when an appeal is filed. The Supreme Court many times expressed its unhappiness and castigated the respective departments for delayed filing, while dismissing the appeals. Here is a case, where the Apex court imposed a heavy cost on the officials for delayed filing of appeal. Hence, wherever any appeals are to be filed, it is always important that necessary immediate action to be taken to file them in time.

In this case, the petitioner-State of Bihar filed an appeal against the order of the learned Single Judge before the Division Bench after a delay of 367 days. The Division Bench dismissed the application for condonation of delay on the ground that there was no sufficient cause shown for condonation of delay. Thereafter with a delay of 728 days that the present special leave petition has been filed stating that that the petitioner State is filing the present special leave petition after obtaining all the sanctions from the respective departments and took time to receive the affidavit and vakalatnama from the concerned department, hence there is delay in filing the present matter as cause for the delay.

The Supreme Court held that a clear signal has to be sent to the Government Authorities that they cannot approach the Court as and when they please, on account of gross incompetence of their officers and that too without taking any action against the concerned officers. No details of this delay of 728 days have been given as if there is an inherent right to seek condonation of delay by State Government. The law of limitation apparently does not apply to the State Government according to its conduct.

That such condonation of delay is no more admissible on the pretext of Government working lethargy is clear from the judgment of this court in *The Chief Post Master General vs. Living Media India Ltd.* [2012(3) SCC 563]. The casual manner in which the Division Bench was approached and also this Court

has been approached is strongly deprecated; the objective possibly being to get a certificate of dismissal from this Court. Holding so, the special leave petition on delay was dismissed and imposed cost of Rs. 20,000/-to be recovered from the officers responsible for the delay. [*The State of Bihar & Ors. Vs. Deo Kumar Singh & Ors., SLP (CIVIL) Diary No. 13348/2019, Date of Order: 09.05.2019*].

-N. Murali Krishna, Sr.LO/HQ

## FAQS

### - Plaintiff

A Plaintiff is a document by the presentation of which in a Civil Court a suit is instituted. It is a pleading of the plaintiff. It means it is a written statement of the plaintiff's claim. The object of the plaintiff is to state grounds upon which the assistance of the Court is sought by the plaintiff. A plaintiff is the first step towards the initiation of a suit. It can be said to be a statement of claim, a document, by presentation of which the suit is instituted. The expression “plaint” has not been defined in the Code. In plaintiff, plaintiff should allege facts about his cause of action. A plaintiff which is presented to a Civil Court of appropriate jurisdiction contains everything, including facts to relief that the plaintiff expects to obtain.

Order VII of CPC, 1908 deals with Plaintiff. Rules 1 to 8 of Order relate to particulars in a Plaintiff. Rule 9 lays down procedure on which plaintiff being admitted. Order 7 should be read with S.26 of the Code [S.26 Institution of Suit]. Whereas rules 10 to 10-B provide for return of plaintiff, and appearance of parties, Rules 11 to 13 deals with rejection of plaintiff. Rules 14 to 17 contain provisions for production of documents.

Particulars to be contained in the plaintiff:

- ⇒ The name of the Court where the suit is brought;
- ⇒ The name, place, and description of the plaintiff's residence;
- ⇒ The name, place, and description of the defendant's residence;
- ⇒ Where the Plaintiff or the defendant is a minor or a person of unsound mind, a statement to that effect;
- ⇒ The facts that led to the cause of action and when it arose;
- ⇒ That fact that point out to the jurisdiction of the Court;
- ⇒ A statement of the value of the subject-matter of the suit for the purpose of jurisdiction and court fees;
- ⇒ The relief claimed by the plaintiff,
- ⇒ Where the plaintiff has allowed a set-off or relinquished a portion of his claim, the amount so allowed or relinquished;
- ⇒ Where the suit is for recovery of money, the precise amount claimed etc.

-K. Gopinath, CLA/GM Office

# TREATISE ON

## Arbitration and Conciliation Act, 1996

(Contd.. From last issue....)

### Referring parties to arbitration where no arbitration clause is impermissible:

Referring the parties to arbitration has serious civil consequences. Once the parties are referred to arbitration, the proceedings will be in accordance with the provisions of Arbitration and Conciliation Act and the matter will go outside the stream of the civil court. Under Section 19 of Arbitration and Conciliation Act, the arbitral tribunal shall not be bound by the Code of Civil Procedure and the Indian Evidence Act. Once the award is passed, the award shall be set aside only under limited grounds. Hence, referring the parties to arbitration has serious civil consequences procedurally and substantively. When there was no arbitration agreement between the parties, without a joint memo or a joint application of the parties, the High Court ought not to have referred the parties to arbitration. [Kerala State Electricity Board and Anr. v. Kurien E. Kathilal, CA Nos.3164-3165 of 2017, DOJ: 20.09.2018]

### High Court to follow procedure laid in Cl. 64(3) of GCC before appointing independent arbitrator:

Section 11(6)(c) of A & C Act, 1996 relates to a person which may not be a party to the agreement but has given his consent to the agreement and before any other alternative is resorted to, agreed procedure has to be given precedence and the terms of the agreement has to be given its due effect as agreed by the parties to the extent possible. Thus, where the impartiality of the arbitrator in terms of the arbitration agreement is not doubted, emphasis should always be on the terms of the arbitration agreement, the qualification required for the arbitrator by the agreement of the parties in terms of Section 11(8) of Act, 1996, and also the other considerations such as to secure an independent and impartial arbitrator. Supreme Court has laid emphasis to act on the agreed terms and to first resort to the procedure as prescribed and open for the parties to the agreement to settle differences/ disputes arising under the terms of the contract through appointment of a designated arbitrator although the name in the arbitration agreement is not mandatory or must but emphasis should always be on the terms of the arbitration agreement to be adhered to or given effect as closely as possible. Thus, to fulfil the object with terms and conditions which are cumulative in nature, it is advisable for the Court to ensure that the remedy provided as agreed between the parties in terms of the contract is first exhausted. [UOI V Parmar Construction Company, CA No(s). 3303/2019, DOJ: 29.03.2019].

### Qualification of Arbitrator (s) on the Railway:

Qualification of Arbitrator(s) is being dealt by Cl. 64.3(c)(iii) of GCC for works Contracts and Cl.2905 (C) (iii) of IRS conditions of the Railways. Accordingly, Arbitrator (s) should be :

(a) Serving Gazetted Railway Officers of not below JA Grade level.

(b) Retired Railway Officers not below SA Grade level, one year after his date of retirement.

(c) Age of arbitrator at the time of appointment shall be below 70 years.

(ii) An arbitrator may be appointed notwithstanding the total number of arbitration cases in which he has been appointed in the past.

(iii) Arbitrator(s) shall not be the one who had an opportunity to deal with the matters to which the contract relates or who in the course of his/their duties as Railway servant(s) expressed views on all or any of the matters under dispute or differences. A certification to this effect as per annexure- XVI shall be taken from Arbitrators also. The proceedings of the Arbitral tribunal or the award made by such Tribunal will, however, not be invalid merely for the reason that one or more arbitrator had, in the course of his service, opportunity to deal with the matters to which the contract relates or who in the course of his/their duties expressed views on all or any of the matters under dispute.

### Decision of Court on appointment of arbitrator is final:

A decision on a matter entrusted to the Supreme Court or the High Court or the person or institution designated by such Court as to appointment of arbitrator under Ss.11(4), (5) or (6) is final and no appeal including Letters Patent Appeal shall lie against such decision in terms of Section 11(7) of the A&C Act, 1996.

### Matters to be disposed of by Court within 60 days:

In terms of S.11(13), an application made for appointment of an arbitrator or arbitrators shall be disposed of by the Supreme Court or the High Court or the person or institution designated by such Court, as expeditiously as possible and an endeavour shall be made to dispose of the matter within a period of sixty days from the date of service of notice on the opposite party.

- N. Murali Krishna, Sr.LO/HQ