

**PROCEEDINGS OF THE COURT CASES MEETING HELD WITH
LAW OFFICERS AND CHIEF LAW ASSISTANTS ON 25th OCTOBER 2019**

Shri N. Murali Krishna, Sr. LO
Shri I.V.V.R.P. Prasad, Sr.LO/P/Hqrs
Shri M.V. Ramana, LO/Hqrs
Shri K. Phani Raj, ACM/M&D

Shri K. Gopinath, CLA/Hqrs
Shri M.K. Shaji, CLA/Hqrs
Shri V. Apparao, CLA/HQ
Shri S. Venkateswarlu, CLA/Engg/HQ
Shri E. Satyanarayana, CLA/PCPO/HQ
Ms. M.N. Vijitha, CLA/PCPO/SC
Shri A. Bhagwat Prasad, CLA/G/SC
Shri S. Nagender, CLA/HYB
Shri A. Bhagwat Prasad, CLA/G/HYB
Shri D.R.V.S.S.N. Raju, CLA/G/BZA
Shri S. Srinivas, CLA/GNT
Shri Syed Amjad Ali, OS/Law

Shri N. Murali Krishna, Sr Law Officer welcomed the Sr. Law Officer, Law Officer and Chief Law Assistants to the meeting.

Power of review/recall vested with only National Commission after introduction of 22A in the year 2002 - Shri M.K. Shaji presented judgement dated 19.08.2011 of the Apex Court in CA No.4307/2007 in the matter of Rajeev Hitendra Pathak & Ors. Vs. Achyut Kashinath Karekar & Ors. The Apex Court observed that the District Forums and the State Commissions have not been given any power to set aside ex parte orders and power of review. After the amendment in Section 22 and introduction of Section 22A in the Act in the year 2002 by which the power of review or recall are vested with the National Commission only.

The Supreme Court set aside the findings of the National Commission as far as it has held that the State Commission can review its own orders. The Court agreed with the findings of the National Commission holding that the Complaint of 1999 be restored to its original number for hearing before the State Commission is in accordance with law.

Illegal appointment to public posts does not entitle to pension, salary and monetary benefits – Shri K. Gopinath, CLA/HQ presented a judgment dated 17.10.2019 of the Supreme Court in CA 7879/2019 arising out of SLP No.11885/2012. The Apex Court dismissing the appeals filed, fully agreed with the view taken by the Patna High Court that “these rights, including the right to salary, spring from a valid and legal appointment to the post. Once it is found that the very appointment is illegal and is non est in the eye of the law, no statutory entitlement for salary or consequential rights of pension and other monetary benefits can arise. In particular, if the very appointment is rested on forgery, no statutory right can flow from it”.

Wrongful termination of services – Payment of backwages: Shri I.V.V.R.P. Prasad, Sr. Law Officer/PCPO/O/SC, has presented the judgement of Supreme Court dated 21st August 2019 in Civil Appeal No 6188 of 2019 arising out of SLP (C) No 8112 of 2019 in the matter of Jayantibhai Raojibhai Patel Vs. Municipal

Council, Narkhed & Ors. Reiterating the stand taken by the Supreme Court Bench in the matter of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (2013) 10 SCC 324 which laid down certain principles for the payment of backwages, and unequivocally stated that “.. In cases of wrongful termination of service, reinstatement with continuity of service and backwages is the normal rule...” , Supreme Court directed a lumpsum payment of the backwages from the date of his removal till date of his superannuation in addition to the retiral benefits already granted by the High Court.

Declared dead in Absentia Effect: Shri N. Murali Krishna, Sr. Law Officer/HQrs presented a judgement dated 20.08.2019 of Karnataka High Court in WP No.981/2019 between UOI Vs. K.L. Michael. In this case, the High Court observed that there is no presumption that a person would be dead if that person is not seen for about 7 years. The High Court further held for the said presumption, the law provides that the Civil Court has to be approached for a declaration that the person is dead. Next comes the question as to from which date the said person is presumed to be dead. In the case of LIC Vs. Anuradha (26.03.2004), the Supreme Court held that a person shall be presumed to be dead on the date on which it is declared by the Civil Court under Section 107 of Evidence Act.

Issuing Public Notice for serving charge-sheet would not amount to defamation : Shri S. Srinivas, CLA/GNT presented judgement dated 22.11.2006 in the matter of V.K. Bagga Vs. O.P. Arora. The Court observed that the public notice was issued in disciplinary proceedings without any clear imputation of any kind and what is stated in the public notice is a statement of fact. Thus, the Apex Court held that giving of the public notice would not prima facie constitute any offence under Section 499 IPC or make out a case against the petitioner.

Compensation cannot be awarded by the Arbitrator, if the contract is extended under the terms of the contract : Shri S. Venkateswarlu, CLA/Engg/HQrs presented judgement dated 10th April 2008 in CA No.926-927/2002 in the matter of UOI Vs. Chandalavada Gopalakrishna Murthy & Ors. The Apex Court held that if the contract is extended under the terms of the contract, compensation cannot be awarded by the Arbitrator. Holding the order of the High Court not tenable as the question involved in the case is squarely covered in the three-Judge Bench judgement of Supreme Court in Ch. Ramalinga Reddy Vs. Superintending Engg. & Anr. 1999 (9)SCC 610 which was also followed in another decision of Supreme Court in General Manager (Northern Railway) & Anr. Vs. Sarvesh Chopra 2002(4)SCC 45.

Transfer of an employee during mid academic term is not proper unless exigencies of service : E. Satyanarayana, CLA/PCPO/HQrs presented the judgement dated 22nd October 2019 delivered by CAT/HYB in OA No.937/2019 in the matter of Ashuthosh Gupta Vs. UOI. The Tribunal directed the respondents to dispose of the representation of the applicant keeping in view the settled principles of Law relying on the judgement of the Apex Court in the matter Director of School Education Madras & Ors. Vs. O. Karuppa Thevan & Anr (1994 Supp.2 SCC 666) wherein it is held that “Transfer of an employee during mid

academic term is not proper unless exigencies of service are urgent for making such transfers”

Delays in departmental proceedings - Counting of suspension period for fixation of pension: Ms. M.N. Vijitha, CLA/CPO/O/HQrs presented the judgement dated 16.12.2015 of the Supreme Court in CA No.958 of 2010 in WP No.2046 of 2001 in the matter of Prem Nath Bali Vs. Registrar of High Court of Delhi & Anr. The Apex Court opined that every employer (whether State or private) must make sincere endeavor to conclude the departmental inquiry proceedings once initiated against the delinquent employee within a reasonable time by giving priority to such proceedings and as far as possible it should be concluded within six months as an outer limit and in any case not more than one year.

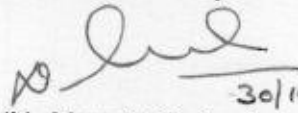
Deficiency in service – Compensation to the customer : Shri Amjad Ali, OS/Law Section presented the order dated 26.09.2019 pronounced by the District Consumer Redressal Forum-III Hyderabad in the matter of Udaru Sarvottam Reddy Vs. SBI. The District Forum held that in debiting an amount of Rs.10,000/- from its customer's bank account against a failed ATM transaction, there is deficiency in service by the Service Provider, SBI. The bank failed to produce proof of CCTV footage of the transaction though it is supposed to preserve the footage upto 90 days. The forum thus, directed the opposite party to pay a compensation of Rs.90,000/- and Rs.10,000/- towards costs.

Mere suspension of sentence does not imply that the order of conviction has been stayed: Shri V. Apparao, CLA/HQrs presented the judgement dated 15.10.2019 of the High Court of Delhi in WP(C) No.101000/2017 & CM No.41286/2017 in the matter of Santosh Kumar Vs. Delhi Jal Board. Upon conviction in a criminal offence, the petitioner who has been working as Asst.Pump Driver in Delhi Jal Board has been relieved from service. Pending his appeal, the appellate court suspended his sentence and granted him bail. Respondent claimed that he should be taken back to service as the effect of the said suspension, would tantamount to the order of conviction and sentence being treated as non est.

Relying on the rule laid down by the Supreme Court in UOI & Ors Vs. V. Ramesh Kumar in AIR 1997 SC 3531, the Delhi High Court rejected the WP holding that suspending the sentence is not stay of conviction.

Section 21 (3) of the Central Administrative Tribunal Act – Compassionate Allowance : Shri S. Nagender, CLA/HYB has presented the judgement dated 17.09.2019 of the CAT/HYB in OA No.021/00675/2019 in the matter of Amruth Heeraman Vs. UOI. In this case, the applicant has filed the OA after a lapse of 6 years from the date of previous order of the Tribunal in which the applicant has been permitted to withdraw the OA and given liberty to file a fresh OA with all the necessary documents. The Tribunal observed that though the applicant has been making representations to the President's Secretariat, there was no sufficient cause for condoning the delay under Section 21(3) of the Central Administrative Tribunal Act, and dismissed the OA as devoid of merits.

Next Meeting will be held on 29th November, 2019. All the members are requested to come prepared to the CLA's meeting and present at least one case. Brief of the case may be emailed to loscrhq@gmail.com at least 2 days in advance.



30/10/19
(N. Murali Krishna)
Sr. Law Officer

G.265/V/IV/Misc./Meeting/2019

Date: 30.10.2019

To

CCO/SC, PCPO/Hqrs,
All ADRMs,
Sr. LO/PCPO/HQ
LO/HQrs
All CLAs – for information please.


30/10/19
(N. Murali Krishna)
Sr. Law Officer