

**MINUTES OF THE COURT CASES MEETING HELD WITH LAW OFFICERS
AND CHIEF LAW ASSISTANTS HELD ON 8th MARCH 2019**

Shri N. Murali Krishna, Sr. LO	Shri B.R.R.Naidu, CLA/Con
Shri I.V.V.R.P. Prasad, LO/Hqrs	Shri K. Gopinath, CLA/Hqrs
Shri M.V. Ramana, LO/BZA	Shri M.K. Shaji, CLA/Hqrs
Smt. T. Satyavathy, LO/SC Divn	Shri S. Venkateswarlu, CLA/Hqrs
Shri K. Phani Raj, ACM/M&D	Shri A. Apparao, CLA/HQ
	Shri E. Satyanarayana, CLA/HQ
	Shri A. Bhagwat Prasad, CLA/G/SC
	Shri Stanly Paul, CLA/P/SC
	Shri S. Nagender, CLA/HYB
	Shri D.R.V.S.S.N. Raju, CLA/G/BZA
	Sri G.S.Ratna Kumar, CLA/P/BZA
	Shri Kumar Kotappa, CLA/GTL
	Shri S Srinivas, CLA/GNT
	Shri Ashok Prasad, CLA/NED
	Shri Amjad Ali, OS/Law

Court, in a review petition doesn't sit in appeal over its orders: Shri Kumar Kotappa, CLA/GTL presented judgement in RA 15/2018 filed by Shri B. Ramachandrudu, SS/RU against the impugned order in OA 822/2018 dated 19.01.2013 which has been disposed off holding that no hearing is necessary since in the guise of review the Tribunal does not rehear the case.

Sr. Law Officer stated that Section 114 of CPC read with Order 47 Rule 1-8 deals with review petitions. Among other rules, one of the important rule for filing a review application is discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason. However, where an appeal is already filed, filing of review does not arise. Where there is no provision for appeal, review can be filed within the limitation period i.e. 30 days.

Criteria for deciding Quantum/Interest of Compensation: Shri Gopinath, CLA presented the following judgements with regard to payment of compensation:

The Hon'ble Supreme Court in judgement dated 14th May 2009 in CA No.3568 of 2009 in the matter of Thazhathe Purayil Sarabi Vs. UOI directed that the awarded sum will carry interest @6% simple interest per annum from the date of the application till the date of the Award and, thereafter, at the rate of 9% per annum till the date of actual payment of the same. The Hon'ble Supreme Court in judgement dated 9th May 2018 of in CA 4945/2018 in the matter of Union of India vs. Rinadevi held that in absence of any specific statutory provision, interest can be awarded from the date of accident itself when the liability of the Railways arises upto the date of payment, without any difference in the stages. While delivering judgement dated 29.01.2019 in the matter of Radha Yadav Vs. Union

of India in CA No.1267 and 1268 of 2019 the Hon'ble Supreme Court clarified Rina Devi case (above) and held that the amount of compensation payable on the date of accident with reasonable rate of interest shall first be calculated. If the amount so calculated is less than the amount prescribed as on the date of the award, the claimant would be entitled to higher of these. Question of interest on the enhanced amount as on date of award does not arise.

Calculation of Casual Labour service for arriving at Qualified Service for Sanction of Pension : Shri Ashok Prasad, CLA/NED presented the judgement dated 24.03.2017 of the Hon'ble Apex Court in Civil Appeal No.3938 of 2017 arising out of SLP No.23723 of 2015 in the matter of Union of India Vs. Rakesh Kumar & Ors. The Apex Court held that

- i) the casual worker after obtaining temporary status is entitled to reckon 50% of his services till he is regularised on a regular/temporary post for the purposes of calculation of pension.
- ii) the casual worker before obtaining the temporary status is also entitled to reckon 50% of casual service for purposes of pension.
- iii) Those casual workers who are appointed to any post either substantively or in officiating or in temporary capacity are entitled to reckon the entire period from date of taking charge to such post as per Rule 20 of Rules, 1993.

Maintainability of review petition seeking review of a judgment against which SLP has already been dismissed by Supreme Court in limine: Shri DRVSSN Raju/CLA presented the judgement dated 01.03.2019 of the Apex Court Civil Appeal No.2432/2019 in the matter of Khoday Distilleries Ltd. Vs. Mahadeshw Sahakara Sakkare Karkhane Ltd.

The Hon'ble Court in its judgement held that , since special leave petition was dismissed in limine without giving any reasons, the review petition filed by the appellant in the High Court would be maintainable and should have been decided on merits and matter is remanded back to the High Court for deciding the review petition on merits.

Sr. Law Officer stated that SLP and Review Petition are two different things and as long as there is no decision on merits, it is not a judgement and in such cases, lower court can review its order.

Summoning of higher officials at the drop of a hat: Shri S.Srinivas, CLA/GNT presented a judgement dated 04.10.2007 pronounced by the Apex Court in Cr.A No.1338/2007 in the matter of State of Gujarat Vs. Turabali Gulamhussain Hirani.

The Hon'ble Court held that though the High Court has power to summon these officials, but that should be done in very rare and exceptional cases when there are compelling circumstances to do so. Such summoning orders should not be passed lightly or as a routine or at the drop of a hat. Judges should have modesty and humility. Summoning a senior official, except in some very rare and

exceptional situation, and that too for compelling reasons, is counter productive and may also involve heavy expenses and valuable time of the official concerned. Hence, frequent, casual and lackadaisical summoning of high officials by the Court cannot be appreciated.

Mis-joinder and Non-joinder: Shri Shaji M.K./CLA presented the Apex Court's judgement in CA No.1937 and 1938 of 1972 in the matter of AVR Siddhanti & Anr. Vs. General Manager, South Central Railway wherein the effect of mis-joinder and non-joinder and necessary proper party have been dwelt upon. The purpose of any civil suit is to grant relief to the plaintiff whose civil rights have been infringed. Therefore, adjudication upon rights and liabilities of parties should be done only to that extent. However, anybody whose interest is likely to be directly affected by the decision of the court is a necessary party. This means such a person should be called upon to bear the relief claimed by the plaintiff.

Shri Shaji presented another case, Praveen Bhatia v. Dr. M Ghosh (CA 1536 of 2009), the plaintiff filed a suit against a doctor due to whose negligence his wife had died. The doctor was held to be a necessary party (since relief has been claimed from him). But the insurance company with whom the insurance has been obtained is neither a necessary nor a proper party, since no relief has been claimed from it. Thus, mis-joinder cannot be cause for dismissal of the suit.

Shri Shaji, elaborating the issue explained that difference between Misjoinder refers to impleading an unnecessary party. It may also refer to a situation in which a plaintiff is impleaded as a defendant and vice-versa (party wrongfully impleaded). However, Non-joinder refers to a situation when a party who ought to have been impleaded according to the law, is not impleaded. As opposed to presence of the wrong party, it refers to absence of a party. In case of non-joinder of necessary parties, the suit may be dismissed, but misjoinder cannot lead to dismissal of the suit.

Substantial Question of Law : Shri A. Bhagwat Prasad, CLA presented the judgement of the Hon'ble Supreme Court in C.A.NO.8909 of 2015 arising out of SLP(C) No.1120 of 2015 in the matter of Ashok Rangnath Nagar Vs. Shrikant Govindrao Sangvikar. The Supreme Court in its judgement stated that the High Court by the impugned judgment allowed the appeal and reversed the judgment passed by the trial court and the first appellate court, without formulating substantial question of law.

The Apex Court in the light of the provision contained in Section 100 CPC concluded that in no circumstances the High Court can reverse the judgment of the trial court and the first appellate court without formulating the substantial question of law and complying with the mandatory requirements of Section 100 CPC. Hence the Apex Court remitted the matter back to the High Court to first formulate the substantial question of law and then decide appeals in accordance with law.

Fixation of Pension on the basis of Last Pay Drawn: Shri E. Satyanarayana, CLA presented the judgement of the Apex Court dated 27th August 2013 in CA

7292/2013 arising out of SLP 14007/2012 in the matter of Union Of India & Ors vs Bhanwar Lal Mundan, wherein the Tribunal and High Court allowed his claim for fixation of pension on adhoc promotions.

The Hon'ble Supreme Court allowed the appeal and held that the respondent was getting higher scale of pay in the post while he was holding a particular post as a deputationist. After his repatriation to the parent cadre on selection to a higher post he was given higher scale of pay as it was fixed keeping in view the pay scale drawn by him while he was working in the ex-cadre post. Such fixation of pay, was erroneous and the authorities were within their domain to rectify the same. The tribunal and the High Court have fallen into error by opining that the respondent would be entitled to get the pension on the basis of the pay drawn by him before his retirement. However, the Supreme Court ruled that there shall be no recovery from the excess amount paid to the respondent.

Furnishing of inquiry report to delinquent employee: Shri Staly Paul, CLA presented the judgement dated 20.11.1990 delivered by the Hon'ble Supreme Court in the matter between Union of India Vs. Md. Ramjan Khan. The issue contested in the case was that whether with the amendment of the provisions of Article 311(2) under the 42nd Amendment of the Constitution doing away with the opportunity of showing cause against the proposed punishment, the delinquent employee's rights for entitlement of copy of enquiry report are taken away.

The Hon'ble Apex Court decided that wherever there has been an Inquiry officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge thereafter.

Sr. Law officer stated that after the 42nd Amendment, it is not required to issue a second notice in cases where inquiry officer himself is a disciplinary authority. But there is no change in the provision of furnishing a copy of the inquiry report to the delinquent employee, in line with principles of natural justice, as detailed in the judgement.

Gratuity cannot be attached: Shri S. Nagender, CLA presented the judgement dated 04.11.2008 of the Hon'ble Supreme Court in CA No.6440-41 of 2008 in the matter of Radhey Shyam Gupta Vs. Punjab National Bank & Anr. The issue involved in the matter is Punjab National Bank sanctioned a loan of Rs.83,000/- for purchase of Matador to Shri Durgaprasad and the appellant Shri Radhey Shyam Gupta stood guarantor for the loan. The bank sought attachment of FDs Radhey Shyam Gupta on the plea that the Matador was not traceable.

Hon'ble Supreme Court has decided that even after the retiral benefits, such as pension and gratuity, had been received by the appellant, they

did not lose their character and continued to be covered by proviso (g) to Section 60(1) of the Code and the High Court should have directed the respondent Bank and the Executing Court to seriously pursue the recovery of the Matador or any other property of the principal-debtor and cannot order attachment of pension or gratuity of the surities i.e. Radhey Shyam Gupta.

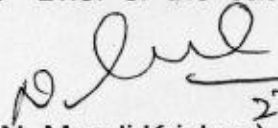
Setting up of Arbitration Tribunals in cases where the original work has been split into multiple contracts: Shri S. Venkateswarlu judgement dated 10.10.2017 of the Hon'ble Supreme Court in Arbitration Petition No.30 of 2016 in the matter of M/s. Duro Felguera, S.A. Vs. M/s. Gangavaram Port Ltd., wherein the Hon'ble Supreme Court decided that while here are six arbitrable agreements (five agreements for works and one Corporate Guarantee) and each agreement contains a provision for arbitration. Hence, there has to be an Arbitral Tribunal for the disputes pertaining to each agreement. While the arbitrators can be the same, there has to be six Tribunals - two for international commercial arbitration involving the Spanish Company-M/s Duro Felguera, S.A. and four for the domestic arbitration.

Grant of compassionate appointment after lapse of a considerable time: Shri Appa Rao, CLA presented judgement dated 01.03.2019 of the Hon'ble Supreme Court in the matter of The Government of India & Anr. Vs. P. Venkatesh.

The Hon'ble Supreme Court observed that Compassionate appointment, it is well-settled, is intended to enable the family of a deceased employee to tide over the crisis which is caused as a result of the death of an employee, while in harness. Thus, the Apex Court allowed the appeal stating that the recourse to the Tribunal suffered from a delay of over a decade in the first instance. This staleness of the claim took away the very basis of providing compassionate appointment.

Law Officer/P/HQ pointed out that all the compassionate ground appointments are governed by the rules set up by the respective departments and if the rules are against grant of compassionate appointment, the rule of the department would prevail.

Next Meeting will be held on 12th April, 2019. All the members are requested to come prepared to present atleast one case. Brief of the case may be emailed to loscrhq@gmail.com 2 days in advance.


(N. Murali Krishna)
Sr. Law Officer
22/3/19

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

Date: 22.03.2019

To

All ADRMs, CCO/SC, PCPO/Hqrs, LO/P/Hqrs, LO/BZA,
LO/SC, ACM/M&D, All CLAs – for information please.