MINUTES OF THE COURT CASES MEETING HELD WITH LAW OFFICERS AND CHIEF LAW ASSSTANS BY SDGM ON 9.11.2018

Members Present

Shri N. Murali Krishna, Sr. LO	Shri K. Gopinath, CLA/Hqrs
Shri K. Phani Raj, ACM/M&D	Shri A. Bhagwat Prasad, CLA/G/SC
Shri I.V.V.R.P. Prasad, LO/Hqrs	Shri Stanly Paul, CLA/P/SC
Smt. T. Satyavathy, LO/SC Divn	Shri D.R.V.S.S.N. Raju, CLA/G/BZA
	Shri Kumara Kotappa, CLA/GTL
	Shri S. Nagender, CLA/HYB
	Shri Shaji M.K., CLA/Hqrs
	Shri S. Srinivas, CLA/GNT
	Shri Amjad, OS

Meeting of all legal staff conducted on 9-11-2018 in CCM Conference Hall, Rail Nilayam, Secunderabad.

Shri Gopinath, CLA presented a case of interest on arbitration award (Krishna Bhagya Jala Ligam vs Harish Chandra Reddy & Another 2002 2 SCC). In terms of Section 31(7) (b) of A&C Act 2015, which deals with the power of arbitrator to grant interest, rate of interest is 2% higher than the current bank rate of interest prevalent on the date of award, from the date of award to the date of payment. Hon'ble Supreme Court held that 'after economic reforms in our country, the interest regime has changed and the rates have been substantially reduced and therefore the interest awarded by the Arbitrator @ 18% p.a reduced to @ 9 % p.a.

Shri Kotappa, CLA/GTL presented a case (S K Srivatsava vs P.K. Mishra OA 718/2007 DOJ 3-6-2008) where, even though higher officials are in the array of respondents, the Tribunal held that junior officers in the respondent's list can file affidavit on behalf of all the respondents. The Tribunal followed Principal Bench decision in Badola case.

Shri Prasad, LO/Hqrs stated that there are various notices issued by CAT in contempt petitions. Form 1 notice is general notice. Form 2 notice is little bit higher in degree and one has to act upon and form 3 notice is Summoning to Court. As per Section 20, one has to file contempt within one year from the date of judgment. Delay in filing contempt after one year has to be seriously objected.

Shri Bhagwat Prasad, CLA/SC presented a case CA 5898/2012 (DOJ 17-7-2012) Michigan Rubber India Ltd vs State of Karnataka and others reg tenders. The Supreme Court held that Courts will have less interference when there are technical issues in the tenders and in the absence of malafides. In this particular case when the case is pending in the Court, company has issued tenders for 4 more works based on expert committee report on technical issues and in the interest of travelling public.

Shri S. Venkateswarlu, CLA presented a case of passport permission (Menaka Gandhi –vs- Union of India . In this case the passport was rejected by GOI without revealing reasons behind it. She has taken shelter under Article 21 of the Constitution 1950 which states that "No person shall be deprived of his life or personal liberty except according to procedure established by law" and she was not given any opportunity of hearing prior to the withdrawal of the passport. The Supreme Court held that post decisional hearing cannot be held to be following the Principles of Natural Justice.

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Shri Amjad, OS presented a case (CA 10800& 10801/2018 SLP (C) 31101 & 31102/2016 Caravan shipping service Pvt. Ltd regarding contract, where Supreme Court held that arbitration agreement should be in writing and it need not be signed. In this case, the contention was that in Bill of lading, though there is an arbitrary clause, since the same was not signed, it cannot be considered as arbitration clause.

Shri Srinivas, CLA/GNT presented a case on unauthorized absence on medical grounds (CA No.6018/2014 Cheal Singh vs MG Bank). In this case the employee was absent for 10 ½ months and administration removed him from service. After that he produced medical certificate but administration did not accept the same. Court allowed the case on the ground that the administration did not dispute the medical certificate produced by him at any stage.

He presented one more case (CA 4611/2008 DG, ECIC and another –vs- Purushotham Malani) regarding Voluntary retirement where court stated that the employee can withdraw the Voluntary retirement at any time prior to last date, but the reasons have to be given by the employee. Withdrawal of VR is not a matter of right and valid reasons have to be given for such withdrawal.

Shri M.K. Shaji, presented a case on territorial jurisdiction of court [CA 5086/2013 Swasthik Gases Pvt. Ltd vs. IOC Ltd 2013(9) SCC 32]. In this the agreement is subject to jurisdiction of the court of Calcutta. Swasthik Gases filed case in Rajasthan where the cause of action occurred. Held: "where the contract specifies the jurisdiction of the courts at a particular place and such courts have jurisdiction to deal with the matter, we think that an inference may be drawn that parties intended to exclude all other courts".

Shri Phani Raj, ACM/M&D presented a case SLP Civil 10184/2008 AVM Sales Corporation vs Anuradha Chemicals. Based on the agreement condition between the parties that "any dispute arising out of this agreement will be subject to Calcutta jurisdiction only", Hon'ble SC while allowing the SLP set aside the decree passed by the Principal Senior Civil Judge, Vijayawada has upheld the High Court's order and ordered to return the plaint to present the same before Calcutta Court to try the suit.

Next Meeting will be held on 14-12-2018. All the members are requested to come prepared to present atleast one case. Brief of the case (1 page only) may be emailed to loscrhq@gmail.com 2 days in advance.

20/11/18

(N. Murali Krishna)
Sr. Law Officer

G149/CLAs Meeting/2018/Law

Date: 20.11.2018

To

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

Minutes of Law Officer's Meeting with CLAs held in PFA's Conference Hall on 17th December, 2018

Members Present:

Shri N. Murali Krishna, Sr.Law Officer
Shri K. Gopinath, CLA/HQrs
Shri Shaji M.K., CLA/HQrs
Shri V. Appa Rao, CLA/HQrs
Shri Satyanarayana, CLA/HQrs.
Shri A. Bhagawat Prasad, CLA/G/SC
Shri Ratnakumar, CLA/P/BZA
Shri D.R.V.S.S.N. Raju, CLA/G/BZA
Shri Kumara Kotappa, CLA/GTL
Shri S. Nagendra, CLA/HYB
Shri Ashok Prasad, CLA/NED
Shri S. Srinivas, CLA/GNT
Shri Syed Amjad Ali, OS

Inaugurating the meeting, Sr. Law Officer welcomed all the CLAs from the Divisions/Units & Headquarters to the monthly Law Officers' Meeting. He informed about the initiative being taken up by the Law Branch in bringing out an e-magazine. He informed that the Law Branch webpage has been developed and has now become operative. He stated that apart from Northern Railway, South Central Railway is having own website for Law Branch. In this regard, he appreciated the efforts being put up by Mr. Apparao, CLA. He invited the CLAs to share important judgements which would help in the diligent disposal of day-to-day work of CLAs.

Shri Gopinath, CLA put forth a judgement in Criminal Appeal No.5847 of 2014 Arising out of SLP (Crl.) No.27614 OF2011 Manju Sarkar & Ors. Appellant(s) versus Mabish Miah and ors on Workmen Compensation Act, 1923. The Hon'ble Supreme Court agreed with contention of the appellants that Sajal Sarkar met with a road accident resulting in his death during the course of his employment as truck driver under respondent Nos.1 and 2 and the Courts below have failed to note the principle of notional extension at both the entry and exit by time and space and apply the same to the present case and the appellants are entitled to compensation.

Sr Law officer stated that this judgement can be referred for a clear understanding the term notional extension of employment both with regard work place and duty time, which would help in resolving cases of CG appointments and payment of ex-gratia compensation.

Shri Ram Nihori Lal, CLA/GAZ/Hqrs put forth the judgement delivered by the Hon'ble Supreme Court of India dated 7th March, 2011 in SLP (Civil) /2011 CC 3709/2011 arising out of WP No.6350/2007 filed by Shri D.C.S. Negi Vs. Union of India. While dwelling on the subject of limitation, the Hon'ble Supreme Court has made serious observation that it is the duty of the Tribunal to act in accordance with the statute and it cannot abdicate its duty on the plea that neither the applicant nor the respondents raised an objection to the issue of limitation".

Sr. Law Officer opined that this reminds us that while contesting a case, all the technical aspects need to be thoroughly checked. In this judgment, the case has been decided on the technical plea of limitation.

Shri Kumar Kotappa, CLA/GTL presented the judgement of the Apex Court In the case Medha Kotwal Lele Vs. UOI. In this case, the Hon'ble Supreme Court pronounced that implementation of the guidelines in Vishaka has to be not only in form but substance and spirit so as to make available safe and secure environment to women at the workplace in every aspect and thereby enabling the working women to work with dignity, decency and due respect. The Hon'ble Court directed Bar Council of India to ensure all bar associations in the country and persons registered with the State Bar Councils follow the Vishaka guidelines. Similarly, Medical Council of India, Council of Architecture, Institute of Chartered Accountants, Institute of Company Secretaries and other statutory Institutes shall ensure that the organisations, bodies, associations, Institutions and persons registered/ affiliated with them follow the guidelines laid down by Vishaka.

Sr. Law Officer informed that Conduct Rules 3(c) has been inserted after this judgment in 2013. Further, he stated that the proviso to Rule 9(2) of the RS (D&A) Rules, 1968 provides that the Complaints Committee established in each office under the Railways enquiring into such complaints shall be deemed to be the inquiring authority appointed by the disciplinary authority.

Shri Ratnakumar, CLA/BZA presented the judgement dated 31.10.2017 pronounced by the Hon'ble High Court of Delhi In WP C No.8149/2010 filed by Ms. Shanta Kumar vs Council Of Scientific and Research. The Hon'ble High Court agreed with the view of the Complaints Committee that all physical contact cannot be termed as sexual harassment and only a physical contact or advances which are in the nature of an "unwelcome sexually determined behaviour" would amount to sexual harassment.

Shri S. Srinivas, CLA/GNT presented the judgement of the Apex Court in Civil Appeal No.2061/2015 arising out of SLP (C) No.21297/2014 filed by Rajasthan State Road Transport Corporation Vs. Revat Singh. The Apex Court in its judgement pointed out that 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. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution. 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.

Sr. Law Officer explained that statutory provisions cannot be changed by courts unless the statute itself is arbitrary.

Shri D.R.V.S.S.N.Raju, CLA/G/BZA presented the judgement of the Hon'ble Supreme Court of India dated 30.11.2018 in Civil Appeal No.8649/2018 arising out of SLP (Civil) No.24742/2012 filed by State of Bihar & Ors. Vs. Shri Kirti Narayan Prasad. The Hon'ble Supreme Court held that since the appointment of the petitioners is ab initio void, they cannot be said to be the civil servants of the State. Therefore, holding disciplinary proceedings envisaged by Article 311 of the Constitution or under any other disciplinary rules shall not arise.

Discussing the judgement, Sr.Law Officer stated that in cases where appointment itself is ab initio void, the question of applying disciplinary proceedings does not arise.

Shri Ashok Prasad,CLA/NED presented the judgement of the Hon'ble High Court of Delhi in W.P.(C) 1535/2012 filed by Union of India Vs. Central Government Pensioners. Matter relates to fixation of pay of pre-2006 pensioners. The Hon'ble High Court held that the pay of the retiree i.e. who retired before 01.01.2006 is to be brought corresponding to the revised pay scale as per 6th Central Pay Commission and then it has to be ensured that pension fixed is such that it is not lower than 50% of the minimum of the pay in the band and the grade pay thereon. The High Court upheld the decision of the Full Bench of the Tribunal in issuing mandamus to UOI to refix the pension accordingly within a period of two months and pay the arrears of pension within two months.

Shri Venkateshwarlu, CLA : He presented the Judgement of the Hon'ble Supreme Court of India dated 17th April, 2003 in Civil Appeal No.7419/2001 filed by ONGC Vs. Saw Pipes Ltd. The Hon'ble Supreme Court, setting aside the arbitral award rejected the claim to refund the deducted amount. The Court decided that when the words of the contract are very clear, the courts cannot interfere. The liquidated damages cannot be termed as penalty. It is only to make the other party to stick to the terms and conditions.

Shri Shaji M.K. CLA/HQrs quoted some critical observations made by the Hon'ble Supreme Court of India while delivering its judgement in Civil Appeal No.5239/2002 filed by Shri Dalip Singh Vs. State of Punjab.

The Hon'ble Supreme Court stated that in order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final. Thus, the litigants who approach the courts with unclean hands, are not entitled for any relief.

Shri A. Bhagwat Prasad, CLA/G/SC presented the judgement in Civil Appeal No.1650/2018 dated 15.02.2018 in the case of Sundaram Finance Ltd. Vs. Abdul Samad & Anr. The Hon'ble Court has taken a view that the enforcement of an arbitral award through its execution can be filed anywhere in the country where such decree can be executed and there is no requirement for obtaining a transfer of the decree from the Court, which would have jurisdiction over the arbitral proceedings.

Sr. Law Officer stated that in so far as arbitral proceedings are concerned, the usual procedure of filing transfer of decree for execution of EP is not required.

Shri V. Appa Rao, CLA/Hqrs presented the judgement dated 11.07.2013 of Hon'ble Supreme Court in Civil Appeal No.5476/2013 arising out of SLP (C) 11381/2012 filed by Shri Jagmittar Sain Bhagat Vs. Director Health Services, Haryana & Ors. In this case, Shri Jagmittar Sain Bhagat approached a consumer disputes redressal forum seeking payment of gratuity, retiral benefits etc. The Hon'ble Court held that a government servant cannot raise any dispute regarding his service conditions or for

payment of gratuity or GPF or any of his retiral benefits before any of the Forum under the Act.

The government servant does not fall under the definition of a "consumer" as defined under Section 2(1)(d)(ii) of the Act. Such government servant is entitled to claim his retiral benefits strictly in accordance with his service conditions and regulations or statutory rules framed for that purpose. The appropriate forum, for redressal of any his grievance, may be the State Administrative Tribunal, if any, or Civil Court but certainly not a Forum under the Act.

Shri S. Nagendra, CLA/HYB: presented the judgement delivered by the Hon'ble Supreme Court of India in Civil Appeal No.1852/2015 arising out of SLP (C) No.5811/2014 dated 13.02.2015 filed by National Thermal Power Corporation Ltd. Vs. Shri Ashok Kumar Singh & Ors.

Holding that the act of NTPC in forfeiting the deposited security amount is in accordance with Section 5 of the Contract Act, 1872, the Hon'ble Supreme Court stated that Section 5 of the Act will not allow the party from withdrawing the contract without suffering forfeiture of security deposit and held that the right to withdraw an offer before its acceptance cannot nullify the agreement to suffer any penalty for the withdrawal of the offer against the terms of agreement.

Shri Syed Amjad Ali, OS/Law Section/Hqrs : presented the judgement dated 5.12.2018 of Hon'ble Supreme Court of India delivered in Civil Appeal No.11866/2018 arising out of SLP (C) No.17521/2017 filed by M/s Simplex Infrastructure Ltd. Vs. Union of India. The Hon'ble Supreme Court held that the period of limitation prescribed in Section 34(3) of the Act, condoning the respondent's delay of 514 days in filing the application is not justified. The petition under Section 34 stands dismissed on the ground that it is barred by limitation.

Concluding the meeting, Sr. Law Officer advised all the CLAs to ensure submission of MCDOs in the first week of the month. The next meeting of Law Officers will be held on 11th January 2019. All the members are requested to come prepared to present at least one case.

24/12/18

(N. Murali Krishna)
Sr.Law Officer

G. 149/CLAs Meeting/2018/Law Date:24.12.2018

To
All ADRMs, PCPO/HQrs, CCO/SC, LO(P)HQrs
SPO(Courts)/HQ, LO/BZA, All CLAs } for information please.