

**PROCEEDINGS OF THE COURT CASES MEETING HELD WITH
LAW OFFICERS AND CHIEF LAW ASSISTANTS ON 29.11.2019**

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. Gopinath, 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 S. Nagender, CLA/HYB
Shri A. Bhagwat Prasad, CLA/G/HYB
Shri G.S. Ratnakumar, CLA/BZA
Shri D.R.V.S.S.S.N. Raju, CLA/G/BZA
Shri G. Kumar Kotappa, CLA/GTL
Shri Ashok Prasad, CLA/NED
Shri Syed Amjad Ali, OS/Law

Seniority cannot be claimed from a date when the incumbent was not borne in service : Shri Amjad Ali, OS has presented the judgement of the Apex Court dated 19th November 2019 in Civil Appeal No. 8833-8835 of 2019 in the matter of K. Meghachandra Singh Vs. Ningam Siro. The Apex Court, reversing the judgement in N.R. Parmar case [(2014) 14 SCC 720], stated that a person is disentitled to claim seniority from a date when he was not borne in service. The Supreme Court observed that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre.

Awarding compensation for damages for the costs of future care and loss of future earnings: Shri G.Kumar Kotappa, CLA/GTL presented the judgement dated 20.09.2019 delivered by the National Consumer Disputes Redressal Commission in Revision Petition No. 251 of 2015 (Against the Order dated 04/12/2014 in Appeal No. 477/2008 of the State Commission Maharashtra) in the matter of Kum. Samiksha Vs. Acharya Vinoba Bhawe Rural Hospital. The Commission while enhancing the compensation, quoted the judgement of the House of Lords in the case of Wells v. Wells wherein it is observed that the purpose of awarding a lump sum for damages for the costs of future care and loss of future earnings was to put the plaintiff in the same financial position as if the injury had not occurred, and consequently the courts had the difficult task of ensuring that the award maintained its value in real terms, despite the effect of inflation. Thus, duly taking into consideration the Patient's condition and the medical expenses incurred, the Commission awarded lumpsum compensation of ₹18,00,000/-.

Appeal – Abatement : Shri G. Kumar Kotappa presented another judgement in the matter of State of A.P. Vs. S. Narasimha Kumar AIR 2006 SC 2924 - Whether an appeal from a composite order of sentence combining the substantive imprisonment with fine is for the purposes of Section 431 not an appeal from a sentence of fine : Dwelling on this question, the Supreme Court observed that the plain meaning of Section 431 is that every criminal appeal abates on the death of the accused "except an appeal from a sentence of fine". If by the judgment under appeal a sentence of fine is imposed either singularly or in conjunction with a sentence of imprisonment, the appeal against conviction would be an appeal from a sentence of fine within the meaning of Section 431. The Supreme Court further stated that the reason of the rule contained in the exception is that a sentence of fine operates directly against the estate of the deceased and therefore the legal representatives are entitled to clear the estate from that liability.

Those in charge of the conduct of Government litigation should never forget basic principle of National Litigation Policy: Shri D.R.V.S.S.S.N. Raju, CLA/BZA has presented judgement dated 24.04.2018 of the Supreme Court in Civil Appeal No.04415-04416/2018 in the matter of Union of India &Ors. Vs. Pirthwi Singh &Ors. While disposing of the appeal filed by Govt. Of India by imposing costs, the Supreme Court observed that Union of India must appreciate that by pursuing frivolous or infructuous cases, it is adding to the burden of this Court and collaterally harming other litigants. The Hon'ble Court also discussed about the vision/mission of the National Litigation Policy, 2010 is as follows: "The National Litigation Policy is based on the recognition that Government and its various agencies are the pre-dominant litigants in courts and Tribunals in the country. Its aim is to transform Government into an Efficient and Responsible litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and those in charge of the conduct of Government litigation should never forget this basic principle".

A Govt. Servant cannot raise any dispute regarding his service conditions under Consumer Protection Act : Shri V. Apparao, CLA/Engg. has presented the judgement of the Apex Court dated 6th November 2019 in CA No.8472/2019 in the matter of Ministry of Water Resources & Ors. Vs. Shreepat Rao Kamde. Keeping in line with the principles laid down in the case of Jagmittar Sain Bhagat, the Apex Court held that the government servant cannot approach any of the forum under Consumer Protection Act, 1986 for any of the retiral benefits and that the complaint is not maintainable before the District Forum under the provisions of the Act.

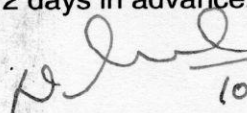
Right to Pension is governed by the service conditions: Shri Ahsok Prasad, CLA/NED presented the judgement dated 30.10.2001 of Bombay High Court in the matter of Onkar Singh Vs. Union of India. The High Court has agreed with the view that the training period as Artificer Apprentice, will be included in the computation of the qualifying period of service for earning pension for the reason that during the period of training as Artificer Apprentice the sailor was in the service of the Navy. However, the Court held that the Right to Pension is governed by the Regulations framed under the Navy Act, 1957 and it cannot grant pension contrary to rules. The Court further held that it cannot compel the Naval authority to re-enrol the petitioners for the purpose of allowing them to acquire pensionable service.

Right to file an appeal under Section 96(2) CPC : Shri E. Satyanarayana, CLA/P/HQ presented the judgement dated 21.11.2019 delivered by the Supreme Court in Civil Appeal No.8898/2019 in the matter of N. Mohan Vs. R. Madhu. In this case, the High court dismissed the application for condonation pointing out that the appellant has chosen belatedly to file the first appeal in time, the High Court has dismissed the application for condonation of delay of 546 days in filing the first appeal. Being aggrieved, the appellant has filed this appeal. On the issue of Right to file an appeal under Section 96(2) CPC the Apex Court held that the right to appeal is not a mere matter of procedure; but is a substantive right. Right to appeal under Section 96(2) CPC challenging the original decree passed ex-parte, being a statutory right, the defendant cannot be deprived of the statutory right merely on the ground that the application filed under Order IX Rule 13 CPC was earlier dismissed.

No fresh inquiry after setting aside the impugned orders: Ms. Vijitha, CLA/Gaz/HQ presented the judgement dated 13.08.2019 of the High Court of Delhi in WP(C)8489/2016 in the matter of D.P. Sharma Vs. M/s BSES Rajdhani Power Limited & Anr. In this case, the Inquiry Officer exonerated the petitioner from the charges of misconduct, but he Disciplinary Authority insisted penalty in the year 1999. This penalty order was set aside by High court on 12.08.2013 and liberty was given to issue show cause notice within 3 months. However, no show cause notice was given even after 13 months from the said date and confirmed the penalty of 1999. No permission was taken from the High Court for extension of time. Further, there was inordinate delay since the alleged misconduct was held during 1980-82, charge sheet was issued in 1990 and penalty was imposed in 1999 i.e. after 18 years of the alleged misconduct. Hence, the High Court held that the said show cause notice is unjust, illegal and time barred. The alleged misconduct was purportedly committed in the year 1980-82 and period of almost 38 years have passed since the said alleged misconduct. Moreover, it is a case of no evidence against the petitioner and, therefore, fresh inquiry, if directed to be conducted, would be a futile exercise.

RBE No.172/2004 : Shri S. Nagendra, CLA/SC presented a judgement in O.A. No.021/001124/2017 dated 16.08.2018 of CAT/HYB in the matter of S. Srinivasa Rao Vs. Union of India. The applicant was medically decategorized on 24.06.2016 and placed in a supernumerary post on 24.06.2016. The applicant sought retirement on 10.08.2017 under the provisions of Special Voluntary Retirement Scheme. Directing the respondents to allow the applicant to retire on Special VRS, the Tribunal allowed the OA. The Tribunal observed that the contention that the applicant did not appear for screening is not valid and CPO is a part of the respondents organization and for his non certifying about non-availability of alternative employment, the applicant's request cannot be denied.

Next Meeting will be held on 27th December, 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.


10/12/19
(N. Murali Krishna)
Sr. Law Officer

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

Date: 10.12.2019

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

(N. Murali Krishna)
Sr. Law Officer