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SUBJECT-INDEX**ADMINISTRATIVE LAW:**

Administrative decision - Malafide - Allegation of - Standard of proof - Held: Merely because action by public authority is found untenable, it cannot be called malafide - An action may continue to be bonafide and in good faith, even if the public authority has committed mistakes or irregularities or breached principles of natural justice - Suspicion however strong, cannot be proof of charge of malafide.

M/s Mutha Associates and Ors. v. State of Maharashtra and Ors. 1051

CONSTITUTION OF INDIA, 1950:

(1) Art. 14 - Differential treatment of similarly situated persons/groups - Held: Should be founded on an intelligible differentia and that differentia must have rational relation to the object sought to be achieved by the statute.

(Also see under: Service Law)

State of Uttar Pradesh v. Dayanand Chakrawarty & Ors. 1023

(2) Arts. 101(3)(a), 102(1)(e), 190(3)(a) and 191(1)(e).

(See under: Representation of the People Act, 1951) 1130

(3) Art. 136 - Appeal against order of acquittal - Scope of - Held: If view taken by High Court is reasonable or plausible one on the evidence on record, Supreme Court should not reverse the order of acquittal passed by High Court, on the ground that it had different view.

Hamza v. Muhammadkutty @ Mani & Ors. 867

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(4) Art. 142.

(See under: Hindu Marriage Act, 1955) 937

(5) Art.226.

(See under: Delay/Laches) 1051

(6) Article 326.

(See under: Representation of the People Act, 1951) 1163

CRIMINAL TRIAL:

Non-examination of material witness - Effect of - Held: Non-examination of a material witness is not a mathematical formula for discarding the weight of the testimony available on record.

Harivadan Babubhai Patel v. State of Gujarat 889

DELAY/LACHES:

Delay in challenging acquisition proceedings u/Art. 226 of the Constitution - Held: The Court can decline to invoke its power of judicial review under Art.226 to interfere with acquisition proceedings, if the challenge to such proceedings is belated and the delay is unexplained - Constitution of India, 1950 - Art.226.

(Also see under: Land Acquisition Act, 1894)

M/s Mutha Associates and Ors. v. State of Maharashtra and Ors. 1051

DOCTRINES/PRINCIPLES:

Principle of 'No work no pay' - Held: Not applicable to the employees guided by specific rules relating to absence from duty and to the employee who was prevented by the employer from performing his duties.

State of Uttar Pradesh v. Dayanand Chakrawarty & Ors. 1023

EVIDENCE:

(1) Circumstantial evidence - Ap

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Conviction based on circumstantial evidence - Permissibility - Held: Conviction can be based solely on circumstantial evidence - But the circumstances from which the conclusion of the guilt is to be drawn should in the first instance be fully established, and all the facts so established should also be consistent with only one hypothesis i.e. the guilt of the accused - Onus lies on prosecution to prove that chain of event is complete and not to leave any doubt in the mind of the Court - All circumstances must lead to the conclusion that the accused is the only one who has committed the crime and none else.

Majendran Langeswaran v. State (NCT of Delhi) & Anr. 907

(2) Circumstantial evidence - Failure of accused to give any explanation or giving false answer u/s. 313 Cr.P.C, can be counted as providing a missing link for building chain of circumstances.

Harivadan Babubhai Patel v. State of Gujarat 889

(3) Medical Evidence - Appreciation of - Held: Medical evidence cannot be considered in isolation and must be taken in conjunction with all the circumstantial evidence on record - When the doctor expresses two views, the view favourable to the accused should be taken into account.

Hamza v. Muhammadkutty @ Mani & Ors. 867

HINDU MARRIAGE ACT, 1955:

(i) ss.13(1)(ia) and (iii) - Divorce on the ground of cruelty at the hands of the wife - Allegation of aggressive and abnormal behavior of the wife - Held: PW4, the expert witness produced by appellant-husband admitted that while examining respondent-wife, he did not observe any signs of aggressiveness in her - Also, the appellant was not able to prove, that his wife was suffering from

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any incurable unsoundness of mind and/or mental disorder - Alleged behavior could have easily been established through attendants of wife, but such witnesses were withheld, despite being easily available to appellant - Respondent-wife merely suffered from cognitive deficiency which was acquired by her during her second pregnancy - Besides, she was found to have substantially improved from her cognitive deficiency, during the course of her treatment - Appellant-husband failed to establish, that the mental unsoundness of mind or mental disorder of respondent-wife was of such degree, that he could not be expected to live with her - Further, appellant husband cannot be permitted to use his own fault to his advantage - He did not heed the advise of the gynecologist, after abortion of the wife's first pregnancy that they should not plan any further conception for a period of at least two years - Despite the advice, the appellant impregnated his wife, just after eight months of the said abortion - Decree of divorce cannot be granted on ground that matrimonial ties between parties had irretrievably broken down since the breakdown was only from the side of appellant and wife did not consent to the severance of matrimonial ties right from the beginning - Further plea of appellant for dissolution of marriage by invoking jurisdiction u/Art.142 of the Constitution also not tenable as, on facts, the same cannot be viewed as doing justice to respondent-wife - Constitution of India, 1950 - Art. 142.

(ii) Hindu Marriage Act, 1955 - s.13(1) - Divorce under - Grounds - Nature of - Held: The grounds are based on the 'fault' of the party against whom dissolution of marriage is sought - It is only on the ground of an opponent's fault, that a party may approach a Court for seeking annulment of his/her matrimonial alliance - The party seeking divorce

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under the "matrimonial offence theory" / the "fault theory" must be innocent - A party suffering "guilt" or "fault" disentitles himself/herself from consideration - Matrimonial jurisprudence - 'Matrimonial offence theory' - 'Fault theory'.

Darshan Gupta v. Radhika Gupta 937

INDUSTRIAL DISPUTES ACT, 1947:

s.25B.

(See under: Labour Law) 1091

LABOUR LAW:

Regularisation - Claim for - Daily wage workers of different departments of the State Government - State Government provided benefits of regularization scheme in Resolution dated 17th October, 1988 - Dispute over applicability of said Resolution - Held: Resolution dated 17th October, 1988 not limited to any particular department, and applied to all departments including Road and Building, Forest and Environment Department, Water Resources Department, etc. and to all daily wage workers including semi-skilled workers performing any nature of job, working in different departments of the State including the daily wage workers of the Forest Department performing work other than building maintenance and repairing work - However, as per scheme contained in said Resolution all daily wage workers not entitled for regularization or permanency in the services - Direction issued for grant of benefit of the Resolution to eligible daily wage workers of the Forest and Environment Department working for more than 5 years including those performing work other than building maintenance and repairing w.e.f. 29th October, 2010 or subsequent date from which they are so eligible - Industrial Disputes Act, 1947 - s.25B.

State of Gujarat & Ors. v. PWD Employees Union & Ors. Etc. 1091

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LAND ACQUISITION ACT, 1894:

(i) s.6 r/w. s.126(2) of Maharashtra Regional and Town Planning Act, 1966 - Acquisition of land - By Municipal authorities - For extension of 'Bamboo Trade and Flea Market' by Agricultural Produce Market Committee - Under development plan for the city - Acquisition proceedings challenged - High Court upheld the proceedings - Held: High Court rightly upheld the acquisition proceedings on the grounds of delay/laches as well as on merits - There was no dichotomy between the purpose notified and the purpose for which the reservation was made.

(ii) s.48 - Withdrawal of land acquisition proceedings - By the Minister of Revenue - Withdrawal challenged - High Court set aside withdrawal order on the grounds that same was not notified in official Gazette, it was violative of principles of natural justice and the reasons for withdrawal were not sustainable - Held: Withdrawal order was arbitrary, lacked objectivity, it was passed by ignoring material on record and was violative of principles of natural justice and, therefore rightly set aside by High Court.

M/s Mutha Associates and Ors. v. State of Maharashtra and Ors. 1051

MATRIMONIAL JURISPRUDENCE:

'Matrimonial offence theory' - 'Fault theory'.

(See under: Hindu Marriage Act, 1955) 937

MAXIMS:

'frans et jus nunquam cohyabitant' - Applicability of.

PENAL CODE, 1860:

(1) s.302 - Murder - Incident occurred on a ship while it was on the high seas - Allegation that appellant-helmsman killed another helmsman with a knife - Conviction of appell

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circumstantial evidence - Held: Not justified as there were many inconsistencies and infirmities in the prosecution version - The very fact that two blood-stained knives were found by the prosecution proved that the prosecution failed to give sufficient explanation as to who had assaulted the deceased by using another knife - Two other helmsmen present when appellant allegedly made confession before PW-6, not examined by the prosecution - Though deceased was alleged to have been assaulted as many as 14 times by a sharp-edged weapon and there was massive blood at the site of the offence, no blood had spilled on the appellant or his clothes - Moreover, nothing on record by way of explanation from the prosecution side as to why the clothes of the appellant were not seized - Fact regarding enmity of appellant with his superiors and others suppressed - Even Investigating Officer failed to inspect the cabin where the dead body was found - No site plan was prepared by the Investigating Officer - Before arrival of the Investigating Agency officials, the place of occurrence including the cabin was completely washed and cleaned in such a way as if nothing had happened in the cabin and the place around it - Conclusion of the guilt of the appellant not fully established beyond all shadow of doubt as the circumstances not conclusive in nature - Neither the chain of events was complete nor the circumstances led to conclusion that the offence was committed by the appellant and none else.

Majendran langeswaran v. State (NCT of Delhi) & Anr. 907

(2) s.302/34 - Death of woman in her matrimonial house by stab injury on neck - Initial prosecution of family members of in-laws of deceased u/ss. 498A and 306 IPC - Acquittal in the case - Not challenged further - Complaint by brother of the deceased

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alleging murder of the deceased by 6 family members of her in-laws - Son of the deceased, aged 7 years at the time of incident, deposing as eye-witness - Trial court relying on testimony of child witness, convicted 2 of the accused u/s.302/34 while acquitted other 4 accused - High Court reversed the order of conviction - Held: Order of High Court not perverse or unreasonable so as to call for interference - Prosecution failed to prove its case beyond reasonable doubt - The child witness was tutored and his evidence was without adequate corroboration and hence did not inspire confidence - Order of acquittal upheld.

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(3) (i) ss. 342, 346, 302, 120B and 201r/w. s. 34 - Prosecution under - Of 4 accused persons - Circumstantial evidence - Conviction of two accused and acquittal of two accused by trial court - High Court further acquitted another accused and convicted the appellant-accused - Held: The evidence on record was cogent, credible and met the test of circumstantial evidence - Appellant-accused rightly convicted - However, since no other accused was convicted, the appellant-accused could not have been convicted u/s.120B - Conviction of the appellant confirmed except u/s. 120B.

(ii) s.120B - Conviction of one accused, while other accused persons acquitted - Held: Conviction u/ s.120B cannot be sustained when the other accused persons are acquitted.

Harivadan Babubhai Patel v. State of Gujarat 889

REPRESENTATION OF THE PEOPLE ACT, 1950:
s.16.

(See under: Representation of the People Act, 1951)

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REPRESENTATION OF THE PEOPLE ACT, 1951:

(1) ss.4, 5 and 62 - Qualification to contest election
- Person having no right to vote by virtue of the provisions of sub-section (5) of s.62 of the 1951 Act - Held: Is not an elector and is therefore not qualified to contest the election to the House of the People or the Legislative Assembly of a State - Representation of the People Act, 1950 - s.16 - Constitution of India, 1950 - Article 326.

The Chief Election Commissioner Etc. v. Jan Chaudhary (Peoples Watch) & Ors. 1163

(2) s.8(4) - Constitutionality of - Legislative power of the Parliament to enact s.8(4) - Held: The Parliament exceeded its powers conferred by the Constitution in enacting sub-section (4) of s.8 and accordingly sub-section (4) of s.8 is ultra vires the Constitution - Sub-section (4) of s.8 which carves out a saving in the case of sitting members of Parliament or State Legislature from the disqualifications under sub-sections (1), (2) and (3) of s.8 or which defers the date on which the disqualification will take effect in the case of a sitting member of Parliament or a State Legislature is beyond the powers conferred on Parliament by the Constitution - Sitting members of Parliament and State Legislature who have already been convicted for any of the offences mentioned in sub-section (1), (2) and (3) of s.8 and who have filed appeals or revisions which are pending and are accordingly saved from the disqualifications by virtue of sub-section (4) of s.8 not to be affected by the declaration now made in this judgment - However, if any sitting member of Parliament or a State Legislature is convicted of any of the offences mentioned in sub-sections (1), (2) and (3) of s.8 and by virtue of such conviction and/or sentence suffers the disqualifications mentioned in sub-sections (1), (2) and (3) of s.8 after the

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pronouncement of this judgment, his membership of Parliament or the State Legislature, as the case may be, will not be saved by sub-section (4) of s.8 which is now declared as ultra vires the Constitution notwithstanding that he files the appeal or revision against the conviction and /or sentence - Constitution of India, 1950 - Arts. 101(3)(a), 102(1)(e), 190(3)(a) and 191(1)(e).

Lily Thomas v. Union of India & Ors. 1130

SERVICE LAW:

(1) APPOINTMENT/RECRUITMENT/SELECTION: Recruitment/Selection - Competitive examination - Appointment of successful candidates as per the merit list - Complaints regarding defects/mistakes in questions of main examination - Expert Committee found the defects - Selective re-evaluation of the answer-scripts of all the candidates - Revised merit list drawn - In the revised list name of 26 candidates who were appointed on the basis of first merit list, did not figure - Writ petition by the 26 candidates challenging validity of the revised merit list - Dismissed by High Court - Held: The decision of re-evaluation was valid and did not cause any prejudice either to the 26 candidates or to the candidates selected in the revised merit list - But since the candidates have successfully completed their training and rendered 3 years service by virtue of the interim order passed by the High Court and also because the 26 candidates were not responsible for the irregularity, their appointment cannot be cancelled - The 26 candidates would be put at the bottom of the revised merit list - They also will not be entitled to back wages, seniority or any other benefit on the basis of their appointment as per the first merit list.

Vikas Pratap Singh and Ors. v. State of Chhatisgarh and Ors.

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(2) Promotion - Out-of-turn/accelerated promotion - Claim for - By Motor Vehicle Inspector (Grade II) - For the post of Regional Transport Officer - Under r.36(b)(ii) of Tamil Nadu State and Subordinate Services Rules - After rendering about 3 years of service - Permissibility - Held: Special rules framed prescribing conditions of eligibility and manner and method of appointment from the Post of Motor Vehicles Inspector (Grade II) to the post of Motor Vehicles Inspector (Grade I) and from the post of Motor Vehicles Inspector (Grade I) to the post of Regional Transport Officer - The claimant, since not fulfilling the eligibility criteria for promotion stipulated in Special Rules, would not be entitled to accelerated promotion under r.36(b)(ii) of the General Rules - Moreover, r.36(b)(ii) which contemplates accelerated promotion, only in cases where seniority is the sole criterion for promotion, would not be applicable to the post of Regional Transport Officer, because the appointment on the post is not made by seniority - Tamil Nadu State and Subordinate Services Rules - r.36(b)(ii).

P. Dharni & Ors. v. Govt. of Tamil Nadu & Ors. 982

(3) Superannuation - State framed Regulations, 2005 - Fixing two different ages of superannuation (58 and 60) - For the employees of one Department, solely on the basis of their source of entry in the service - Constitutionality of - Held: The employees from the two sources are treated alike for the purpose of superannuation under Regulation 31 of 1978 Regulations - Subsequently no discrimination can be made and differential treatment is not permissible, solely on the basis of their source of entry - Thus, Regulations, 2005 is unconstitutional and ultra vires Art. 14 of the Constitution - The employees who were ordered to retire at the age of 58 are entitled to pecuniary

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benefit - The employees who approached the Court, shall be entitled to full salary upto 60 years of age - The employees who did not approach the Court shall not be entitled to full salary upto 60 years of age, but they would be deemed to have continued in service upto 60 years and their retiral benefits to be fixed accordingly - Uttar Pradesh Jal Nigam Employees (Retirement on the age of Superannuation) Regulations, 2005 - Regulation 4 - Uttar Pradesh Jal Nigam Services of Engineers (Public Health Branch) Regulations, 1978 - Regulation 31 - Constitution of India, 1950 - Art. 14.

State of Uttar Pradesh v. Dayanand Chakrawarty & Ors. 1023

TAMIL NADU STATE AND SUBORDINATE SERVICES RULES:
r.36(b)(ii).

(See under: Service Law) 982

UTTAR PRADESH JAL NIGAM EMPLOYEES (RETIREMENT ON THE AGE OF SUPERANNUATION) REGULATIONS, 2005: Regulation 4.

(See under: Service Law) 1023

UTTAR PRADESH JAL NIGAM SERVICES OF ENGINEERS (PUBLIC HEALTH BRANCH) REGULATIONS, 1978: Regulation 31.

(See under: Service Law) 1023

WITNESSES:

Child witness - Testimony - Corroboration of - Held: In absence of corroboration of oral testimony of child witness, his evidence cannot be relied on. (Also see under: Penal Code, 1860)

Hamza v. Muhammadkutty @ Mani & Ors. 867