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**SUBJECT-INDEX****ADMINISTRATIVE LAW:**

Opportunity of hearing - Mining lease - Plea of violation of principles of natural justice alleging that parties were heard by a different officer and decision was made by another officer - Held: Judicial review of administrative action/quasi judicial orders passed by Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to manifest injustice - When conclusions of authority are based on evidence, the same cannot be re-appreciated by court in exercise of its powers of judicial review - In the instant case, the order was verbatim reproduction of report prepared by the officer who had heard the parties and it was signed by other officer merely to communicate the approval of Central Government to parties - It is clearly a case of institutional hearing - Order does not suffer from any legal or procedural infirmity - Judicial review.

*M/s Kalinga Mining Corporation v. Union of India & Ors.* ..... 814

**CINEMATOGRAPH ACT, 1952:**

s.7.

(See under: Penal Code, 1860) ..... 698

**CODE OF CIVIL PROCEDURE, 1908:**

(1) s. 9 - Jurisdiction of civil court - To adjudicate on the dispute contemplated under Land

Acquisition Act - Land acquired by Development Authority - Subsequently purchased from the original owner - Suit by purchaser for permanent injunction against the Authority - Trial Court held that suit was not maintainable - High Court remanding the matter to trial court to adjudicate the suit on merits - Held: Civil court is devoid of jurisdiction to give declaration or grant injunction on the invalidity of the procedure contemplated under Land Acquisition Act - Acquisition proceedings having been completed before the land was purchased, purchaser had no right to maintain the suit against the Authority - High Court erred in remitting the matter, when the suit was not maintainable - Land Acquisition Act, 1894.

*The Commissioner, Bangalore Development Authority & Anr. v. Brijesh Reddy & Anr.* ..... 853

(2) O. 18, r.16 - Power to examine witness immediately - Held: Mere apprehension of death of a witness cannot be a sufficient cause for immediate examination of a witness - More so, it is the discretion of court to come to a conclusion as to whether there is a sufficient cause or not to examine the witness immediately - In the instant case, plaintiff was just above 70 years of age and hale and hearty and, as such, there was no occasion for her to file an application under O. 18, r. 16 for recording statement prior to commencement of trial.

(Also see under: Hindu Adoptions and

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Maintenance Act, 1956)

*Laxmibai (Dead) thr. Lrs. & Anr. v. Bhagwantbuva (Dead) thr. Lrs. & Ors.* ..... 632

(3) O. 39, rr.1 and 2 - Suit for permanent injunction - On application filed by plaintiffs-appellants u/O.39, rr.1 and 2 interim injunction granted by trial court - High Court proceeded to decide the effect of s.53A of Transfer of Property Act and set aside the order of trial court - Held: High Court completely misconstrued the provisions of O. 39, rr.1 and 2 and committed serious error in deciding the scope of s.53A of Transfer of Property Act and O.2, r.2 CPC - Trial court while granting ad-interim injunction very categorically observed in the order that respective rights of parties shall be decided at the time of final disposal of suit - The very fact that second plaintiff was in possession of property as a tenant under first plaintiff and possession of former was not denied, interim protection was given to her against the threatened action of defendants-respondents to evict her without following due process of law - Order passed by High Court set aside.

*Lakshmi alias Bhagyalakshmi and Anr. v. E. Jayaram (D) by Lrs.* ..... 794

CODE OF CRIMINAL PROCEDURE, 1973:

s. 319 - Power to proceed against other persons appearing to be guilty of offence - Held: The words "could be tried together with the accused" in s. 319(1) appear to be only directory - "Could be"

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cannot under the circumstances be held to be "must be" and the opinion formed by court on the basis of evidence would not be nullified - Even if addition of new accused is ultimately held to be justified, mere fact that trial of remaining accused had already concluded would not prevent prosecution of newly added accused for offences for which he has been summoned by trial court - Constitution of India, 1950 - Art. 21.

(Also see under: Constitution of India, 1950)

*Babubhai Bhimabhai Bokhiria & Anr. v. State of Gujarat & Ors.* ..... 665

COMPENSATION:

(See under: Labour Laws) ..... 705

CONSTITUTION OF INDIA, 1950:

(1) Art. 21 read with s. 319 CrPC - Right to speedy trial - SLP of newly added accused, referred to Constitution Bench - Court granting stay - Prayer by one of the accused seeking vacation of stay order/grant of bail - Held: Stay order modified to the effect that while stay of trial of newly added accused shall continue qua him only, trial court shall be free to proceed with trial qua other accused persons - Code of Criminal Procedure, 1973 - s.319.

(Also see under: Code of Criminal Procedure, 1973)

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(2) Art. 32 read with Art. 217 - Petition for a writ of quo warranto seeking to quash appointment of Judge of High Court - Consultation process leading to appointment alleged to have been vitiated for failure of consideration of a criminal case pending against the incumbent - Held: 'Eligibility' of the incumbent is not in issue - As regards 'lack of effective consultation', a fact that is unknown to anyone cannot be said to be not taken into consideration and the consultative process cannot be faulted as incomplete for that reason - At the time the incumbent was being considered for appointment as a judge of High Court, he was unaware of any case being pending in which he was named as an accused - It is not a case of suppression of any material fact by the incumbent or at his behest - None of the members of High Court or Supreme Court Collegia was aware of the fact - State Government and Central Government were equally unaware of the fact - No case is made out for issuing a writ of quo warranto quashing the appointment of respondent as the judge of High Court.

*M. Manohar Reddy & Anr. v. Union of India & Ors.* ..... 711

(3) Arts. 226 and 227 - Jurisdiction of High Court - Writ of certiorari - High Court setting aside the award of Labour Court and directing reinstatement of workman with 25% back wages - Held: It is settled law that when Labour Court arrived at a finding overlooking the materials on record, it would

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amount to perversity and writ Court would be fully justified in interfering with the said conclusion - If a finding of fact is based on no evidence that would be regarded as an error of law which can be corrected by a writ of certiorari - In the instant case, the issue whether resignation of workman was voluntary and the factum of complaint sent by him immediately were not adverted to by Labour Court - High Court thoroughly analyzed all the aspects and arrived at the correct conclusion - Labour law.

*M/s Atlas Cycle (Haryana) Ltd. v. Kitab Singh....* 611

#### CUSTOM:

Defendant pleading a special family custom that a child from outside the family could not have been adopted - Held: He who relies upon custom varying general law, must plead and prove it - Special customs which prevail in a family, a particular community etc., require strict proof and defendants/respondents have failed to prove the same - Evidence Act, 1872 - s.57 - Judicial notice.

(Also see under: Hindu Adoptions and Maintenance Act, 1956)

*Laxmibai (Dead) thr. Lrs. & Anr. v. Bhagwantbuva (Dead) thr. Lrs. & Ors.* ..... 632

#### DOCTRINES / PRINCIPLES:

Doctrine of deemed confirmation.

(See under: Service Law) ..... 758

#### EDUCATION / EDUCATIONAL INSTITUTIONS:

Admission - Requiring 60% marks in qualifying examination - Candidate mentioned in enrolment

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form that he had secured 56% marks in qualifying examination - While in declaration appended to enrolment form asserted that he had secured 60% marks - University did not permit him to appear in the exam - Writ petition by candidate - Single Judge of High Court did not permit him to appear in exam, but granted him compensation of Rs. 5 lakhs - Division Bench affirmed the order of Single Judge - Held: Candidate applied for admission knowing fully well that he had not secured minimum eligible marks - He cannot claim benefit for his own wrong - College cannot be held liable for the act of candidate - Direction for compensation, not sustainable.

*Priyadarshini College of Computer Science and Anr. v. Manish Kumar and Ors.* ..... 622

#### EVIDENCE ACT, 1872:

(1) s.113-A - Presumption as to abetment of suicide - 'Cruelty' - Suicide by second wife of appellant - Conviction of appellant u/ss 306 and 498-A - Held: It is not the case of prosecution that appellant had subjected the deceased to cruelty of the nature described in clause (b) of Explanation to s.498A, IPC - As regards clause (a) of the Explanation, prosecution has not been able to prove beyond reasonable doubt that appellant was guilty of any wilful conduct which was of such a nature as was likely to drive deceased to commit suicide - Therefore, presumption u/s 113A is not attracted and appellant cannot also be held guilty of abetting suicide of deceased - Judgment of courts below

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holding the appellant guilty of offences punishable u/ss 306 and 498-A IPC, set aside - Penal Code, 1860 - ss. 306 and 498-A.

*Atmaram s/o Raysingh Rathod v. State of Maharashtra* ..... 867

(2) s.134 read with ss.138 and 146 - Number of witnesses and cross-examination - It is not the number of witnesses but quality of their evidence which is important - If a party wishes to raise any doubt as regards correctness of statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to - Without this, it is not possible to impeach his credibility.

(Also see under: Hindu Adoptions and Maintenance Act, 1956)

*Laxmibai (Dead) thr. Lrs. & Anr. v. Bhagwantbuva (Dead) thr. Lrs. & Ors.* ..... 632

#### HINDU ADOPTIONS AND MAINTENANCE ACT, 1956:

(i) s.16 read with ss.10 and 11 - Adoption of male child by a female - Adoption deed got registered - Presumption of a valid adoption - Held: If there is a registered adoption deed, there is a presumption u/s 16 to the effect that adoption has been made in compliance with provisions of the Act until and unless such presumption is disproved - Burden to rebut the presumption lies on the person who challenges such adoption - In the instant case,

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defendants/respondents never made any attempt whatsoever, to rebut the presumption.

(ii) ss. 10 and 11 read with s. 16 - Adoption - Held: In the instant case, there is ample evidence on record to prove occurrence of giving and taking ceremony - Adoptive mother put her thumb impression on the deed, and it was also signed by natural parents of child - The deed was signed by witnesses - Appellate courts could not have drawn any adverse inference against appellants/plaintiffs on the basis of a mere technicality, to the effect that natural parents of adoptive child had acted as witnesses, and not as executors of the document - The document was valid.

*Laxmibai (Dead) thr. Lrs. & Anr. v. Bhagwantbuva (Dead) thr. Lrs. & Ors.* ..... 632

#### INDUSTRIAL DISPUTES ACT, 1947:

25-F - Termination of workman - Who worked only for eight months as a daily wager - Courts below holding the termination to be in contravention of s. 25-F and directing reinstatement with continuity of service with 25% back wages - Held: In a case of wrongful termination of a daily wager, who had worked for a short period, award of reinstatement is not proper - Award of compensation would be in consonance with the demand of justice - Compensation of Rs. 50,000/- awarded - Labour Laws.

*Asst. Engineer, Rajasthan Dev. Corp. & Anr. v. Gitam Singh* ..... 679

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#### JUDGMENTS:

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#### LABOUR LAWS:

(1) (See under: Constitution of India, 1950) ..... 611

(2) (See under: Industrial Disputes Act, 1947) ..... 679

(3) Termination - Of temporary daily wagers - Delay in approaching Labour Commissioner for conciliation - On failure of conciliation, disputes referred to Labour Court - Labour Court holding termination as illegal and directing reinstatement - Writ Petition - Direction by High Court to Management to pay Rs. 10,000/- to each of the workmen - Held: Workmen who approached the Commissioner after 8-10 years entitled to Rs. 50,000/- each and who approached after 2-3 years entitled to Rs. 1,00,000/-.

*Rajkumar S/o Rohitlal Mishra v. Jalagaon Municipal Corporation* ..... 705

#### LEASE:

Termination of lease - Vesting of title in lessor - Lease of subject land terminated and possession thereof taken over as per Panchnama - Suit by transferee of lessee for declaration and injunction - Held: With termination of lease, title to suit

property vested in lessor, ipso jure - That being so, possession of a vacant property would follow title and also vest in lessor - Panchnama drawn up at site recorded the factum of actual takeover of possession from lessee, whereafter possession too legally vested in lessor - Therefore, dispossession of lessee had taken place pursuant to termination of lease in terms of Panchnama.

*Board of Trustees of Port of Kandla v. Hargovind Jasraj & Anr.*

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#### LIMITATION ACT, 1963:

Suit for declaration - Limitation - Held: A suit for declaration not covered by Article 57 of Schedule to the Act must be filed within 3 years from the date when right to sue first arises - A suit for declaration that termination of lease was invalid and, therefore, ineffective could have been instituted by lessee as and when right first accrued and for that purpose, dispossession of lessee was not necessary as dispossession is different from termination of lease - However, dispossession having taken place, lessee ought to have filed suit within three years of date of dispossession - Suit having been instituted after nearly eighteen years later was clearly barred by limitation - Courts below fell in error in holding the suit as within time.

*Board of Trustees of Port of Kandla v. Hargovind Jasraj & Anr.*

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#### MINERAL CONCESSION RULES, 1960:

r.25-A - Held: Is prospective in operation.

(Also see under: Administrative Law)

*M/s Kalinga Mining Corporation v. Union of India & Ors.*

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#### MOTOR VEHICLES ACT, 1988:

s. 167 read with s.166 of the Act and s.8 of 1923 Act - Death of an employee in a motor accident while in employment - Motor Accident Claims Tribunal awarding compensation and directing deduction of the amount already paid to claimant under 1923 Act - Held: Dependents having opted to file claim petition u/s 166 of the Act first, and being disbursed the amount under 1923 Act subsequently, order of Tribunal directing deduction of amount paid under 1923 Act from the compensation determined under Motor Vehicles Act, gives full effect to s.167 of the said Act, and claimants are, thus, not allowed dual benefit under the two enactments - Workmen's Compensation Act, 1923 - ss. 8 and 10.

*Oriental Insurance Co. Ltd. v. Dyamavva & Ors.*

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#### PENAL CODE, 1860:

(1) s.292 read with s. 34 IPC and s.7 of Cinematograph Act - Display of obscene films to young viewers - Conviction - Plea of accused for release u/s 4 of Probation of Offenders Act - Held: In view of the dichotomy of punishments introduced by Legislature in s.292 IPC for first offenders and subsequent offenders, sentence of one month's simple imprisonment with fine, needs no interference - Probation of Offenders Act, 1958 -

s.4 - Cinematograph Act, 1952 - s.7.

*Gita Ram & Anr. v. State of H.P.* ..... 698

(2) s. 302/34.

(See under: Sentence / Sentencing) ..... 783

#### PROBATION OF OFFENDERS ACT, 1958:

s.4.

(See under: Penal Code, 1860) ..... 698

#### PUBLIC INTEREST LITIGATION:

Writ petition filed in 2012 seeking to quash appointment of a Judge of High Court made in 2000 - Held: Writ petition is based on incorrect facts - It is not a sincere and honest endeavour to correct something which the petitioners truly perceive to be wrong but the real intent is to malign the incumbent - Writ petition is not only without merit but also wanting in bona fides.

(Also see under: Constitution of India, 1950)

*M. Manohar Reddy & Anr. v. Union of India & Ors.* ..... 711

#### RAJASTHAN UNIVERSITIES' TEACHERS AND OFFICERS (SELECTION FOR APPOINTMENT) ACT, 1974:

(See under: Service Law) ..... 758

#### RES JUDICATA:

Writ petition - Substitution of legal heirs of applicant for grant of mining lease - Allowed by High Court - SLP dismissed in limine - Issue again raised by appellant in writ petition challenging the order of granting mining lease - Held: It cannot be said that High Court has erroneously accepted the plea

raised by LRs of respondent that the claim of appellant is barred by res judicata - On the plea of a decision in a subsequent judgment, the issue cannot be permitted to be reopened since it has become final inter partes - Judgments - Finality of judgment.

(Also see under: Administrative Law)

*M/s Kalinga Mining Corporation v. Union of India & Ors.* ..... 814

#### SENTENCE / SENTENCING:

(i) Death sentence - Propriety of - Conviction u/s. 302/34 IPC of 3 accused - Death sentence to two - Confirmed by High Court - Held: Death sentence is not warranted - But in view of the fact that accused caused death of 4 persons and nature of injuries inflicted, death sentence modified to life imprisonment for a minimum period of thirty years without remission - Penal Code, 1860 - s. 302/34.

(ii) Death Sentence - Award of - Principles to be followed - Held: To award death sentence, aggravating circumstances (crime test) have to be fully satisfied and there should be no mitigating circumstance (criminal test) favouring the accused - Even thereafter test of rarest of rare case has to be applied.

(iii) Death sentence - Rarest of rare case test - Criteria - Held: Test of rarest of rare case depends on the perception of the society and is not 'judge-centric'.

*Gurvail Singh @ Gala & Another v. State of Punjab* ..... 783

## SERVICE LAW:

ss. 3(2) and (3) - Pension - Ad hoc Professors/ Lecturers - Continued in service - Claim for pensionary benefits - Allowed by High Court - Held: The initial appointment would only protect the period fixed therein - There could not have been continuance of service after the fixed duration as provided u/s 3(3) and such continuance is to be treated as null and void regard being had to language employed in s.3(2) - Regulations do not take in their sweep an employee who is not regularly appointed - High Court has applied doctrine of deemed confirmation which is impermissible - Orders of High Court set aside - Rajasthan Universities' Teachers And Officers (Selection For Appointment) Act, 1974 - University Pension Regulations, 1990 - Regulations 2(i), 22 and 23 - Service law - Pension.

*University of Rajasthan and Another v. Prem Lata Agarwal* ..... 758

## SUIT:

Title suit - Plaintiff claiming title over the property left by her father - Allegation that defendant appointed as guardian of her father was in possession of property even after death of her father - Plea that after mother of plaintiff remarried after her father's death, plaintiff became sole owner - Defendant stating that he was not in possession of property and that some portion of property was orally gifted to him by father of plaintiff - Trial court partly decreed the suit holding that plaintiff was entitled to only half share, as for half share her

mother acquired the right of widow's estate and that she was not entitled to part of property gifted by her father to defendant - First appellate court affirmed the decree - Division Bench of High Court set aside the decree holding that plaintiff was entitled to entire property - Held: Plaintiff was entitled to decree in her favour - Defendant was in the helm of affairs pertaining to property for benefit of widow and plaintiff after death of owner and for benefit of plaintiff after civil death of widow (due to her remarriage) - The claim of defendant by way of oral gift has no sanctity.

*Sudish Prasad & Ors. v. Babui Jonhia alias Manorama Devi & Ors.* ..... 801

UNIVERSITY PENSION REGULATIONS, 1990:  
Regulations 2(i), 22 and 23.

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WORKMEN'S COMPENSATION ACT, 1923:

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