

CONTENTS

Bhanwar Lal & Anr. v. Rajasthan Board of Muslim Wakf & Ors.	.....	721
Commissioner of Central Excise, Jalandhar v. M/s. Kay Kay Industries	.....	623
Davalsab Husainsab Mulla v. North West Karnataka Road Transport Corporation	.....	826
Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and others	.....	782
Kusheswar Nath Pandey v. State of Bihar & Ors.	.....	593
Laxmi Narain Modi v. Union of India and Others	.....	641
Londhe Prakash Bhagwan v. Dattatraya Eknath Mane & Ors.	.....	775
Maharashtra Ekta Hawkers Union and Another v. Municipal Corporation, Greater Mumbai and Others	.....	742
Noor Saba v. Anoop Mishra & Anr.	.....	679
Poongodi & Anr. v. Thangavel	.....	862
Punjab School Education Board v. Dalip Chand and Others	.....	688

Rohilkhand Medical College & Hospital, Bareilly v. Medical Council of India & Another	.....	692
Singareni Collieries Co. Ltd. v. Vemuganti Ramakrishan Rao & Ors.	.....	658
State of Uttaranchal and Anr. v. Sri Shiv Charan Singh Bhandari and Ors.	.....	609
Tamil Nadu Rural Development Engineers Association v. The Secretary to Government Rural Development Department & Ors.	.....	840
Tirupati Developers (M/s) v. State of Uttarakhand & Ors.	.....	598
U.P. Power Corporation Ltd. v. N.T.P.C. Ltd. & Ors.	.....	805

SUBJECT-INDEX**APPEAL:**

(See under: Delay/Laches) 775

CENTRAL ELECTRICITY REGULATORY

COMMISSION (TERMS AND CONDITIONS FOR DETERMINATION OF TARIFF) REGULATIONS, 2001:

(i) Regulation 2.5 r/w Regulation 1.9 - Taking over of Thermal Power Station - Excess expenditure - Fixation of tariff - Held: Basis for fixation of tariff has to be the "actual capital expenditure" incurred on the completion of the project - But where the actual expenditure exceeds the approved expenditure, the excess so incurred can be taken into consideration to the extent the same is allowed by Central Electricity Authority or an appropriate independent agency nominated for the purpose - In the instant case, CERC had on a prudent check disallowed a substantial part of the excess that was claimed by respondent-NTPC and the claim allowed had been conceded by appellant-Corporation to have been actually spent by respondent for completion of project.

(ii) Regulation 2.5 - Fixation of tariff - Reference to CEA or independent agency - Held: In the instant case, prayer for additional capitalization was made by respondent-Corporation and considered by CERC after Electricity Act 2003 had come into force - The new legislation did not set out any role for CEA, in the matter of approval of schemes for generating companies or the capital expenditure for the completion of such projects - However, on

(iii)

facts, since the issue of actual expenditure had been concluded by admission of appellant, and in the absence of any question relating to the nature of the expenditure, the absence of a reference to CEA cannot be said to have caused any miscarriage of justice for the appellant or vitiated the tariff fixation by CERC.

U.P. Power Corporation Ltd. v. N.T.P.C. Ltd. & Ors.

..... 805

CENTRAL EXCISE ACT, 1944:

(See under: Central Excise Rules, 1944) 623

CENTRAL EXCISE RULES, 1944:

(i) rr. 57-A(4) and (5) r/w r.57-A(6) and (1) - Notification No. 58/97-CE(NT) dated 1.9.1997 - Deemed MODVAT credit - Claimed by manufacturer of final product - Adjudicating authority and appellate authority ordered recovery of the amount on the ground that the supplier of inputs had not discharged full duty liability - Held: In the instant case, a declaration was given by manufacturer of inputs indicating that excise duty had been paid on the said inputs under the Act - Further, the said inputs were directly received from manufacturer and not purchased from the market - When the prescribed procedure has been duly followed by assessee-manufacturer of final products, it cannot be said that the assessee has not taken reasonable care as prescribed in the notification - Orders of adjudicating authority and appellate authority rightly quashed by Tribunal and High Court - Notification No. 58/97-CE (NT) dated 1.9.1997 - Clause (6) - Customs Tariff Act, 1975 - s. 3 - Central Excise Act, 1944.

(v)

(ii) s.57-A(6), Proviso - Credit of duty of excise or additional duty - Held: The proviso postulates and requires "reasonable care" and not verification from the department whether the duty stands paid by the manufacturer-seller.

Commissioner of Central Excise, Jalandhar v. M/s. Kay Kay Industries 623

CIRCULARS/GOVERNMENT ORDERS/
NOTIFICATIONS:

Notification No. 58/97-CE(NT) dated 1.9.1997.
(See under: Central Excise Rules, 1944) 623

CODE OF CRIMINAL PROCEDURE, 1973:

(i) s.125(3), first proviso - Order of High Court curtailing the entitlement of appellants to maintenance to a period of one year prior to the date of filing of application - Held: The application of appellants was in continuation of their earlier application - The provision does not create a bar nor does it in any way affect the entitlement of a claimant to arrears of maintenance - Order of High Court set aside - Respondent directed to pay the entire arrears of maintenance due to appellants and to continue to pay monthly maintenance.

(ii) s.125(3), first proviso - Explained.
Poongodi & Anr. v. Thangavel 862

CONSTITUTION OF INDIA, 1950:

(1) Arts. 14, 16 and 309.
(See under: Service Law) 840

(2) Art. 21.
(See under: Education/Educational Institutions) 692

(vi)

CONTEMPT OF COURT:

Contempt petition alleging non-compliance of Court's order - Held: The exercise of contempt jurisdiction is summary in nature and an adjudication of the liability of the alleged contemnor for wilful disobedience of the court is normally made on admitted and undisputed facts - In the instant case, no case for omission of any contempt of Court's order is made out.

Noor Saba v. Anoop Mishra & Anr. 679

CUSTOMS TARIFF ACT, 1975:

s. 3.
(See under: Central Excise Rules, 1944) 623

DELAY/LACHES:

(1) Appeal against interim order filed belatedly - Prayer to condone 2449 days delay - Allowed by Division Bench of High Court - Principles as regards condonation of delay culled out - Additional guidelines laid down - Held: Rules of limitation are not meant to destroy the rights of the parties - They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly -- Every legal remedy must be kept alive for a legislatively fixed period of time - Order passed by Division Bench of High Court condoning the delay is set aside - Appeal.

Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Ors. 782

(2) Delay in filing appeal before School Tribunal - Appointment of Headmaster challenged belatedly - Held: If no time-limit has been prescribed in a statute to apply before appropriate forum, court

(vii)

has to be approached within a reasonable time - In the instant case, appointment of appellant was within the knowledge of respondent from day one, but he did not take any steps for a long time - Period of 9 years and 11 months, is an inordinate delay to pursue the remedy and that too without submitting any cogent reason therefor - Court has no power to condone the same in such a case - Maharashtra Employees of Private Schools (Conditions of Service) Regulation Act, 1977 - s. 9 - Appeal.

Londhe Prakash Bhagwan v. Dattatraya Eknath Mane & Ors. 775
(3) (See under: Service Law) 609

EDUCATION/EDUCATIONAL INSTITUTIONS:

(1) Admission to medical courses - Court took notice with concern, of unprecedented growth of Technical and Medical Institutions in the country which has resulted in widespread prevalence of various unethical practices and emphasized that there is extreme necessity of a Parliamentary Legislation for curbing these unfair practices - Legislation - Judicial notice - Constitution of India, 1950 - Art. 21.

(Also see under: Indian Medical Council Act, 1950; and Medical Colleges Regulation (Amendment 2010 Part-II))

Rohilkhand Medical College & Hospital, Bareilly v. Medical Council of India & Anr. 692

(2) Managing committee of school - Non-compliance of court's order - Inordinate delay in filing appeal - Held: The persons who are nominated or inducted as members or chosen as

(viii)

Secretaries of the managing committees of schools are required to behave with responsibility and not to adopt a casual approach - A statutory committee cannot remain totally indifferent to an order passed by court.

(Also see under: Delay/Laches)

Esha Bhattacharjee v. Managing Committee of Raghunathpur Nafar Academy and Ors. 782

ELECTRICITY ACT, 2003:

s.70 and s.73 r/w s.61 proviso, and Regulation 2.5 of Regulations of 2001 - Fixation of tariff - Capital expenditure - Excess expenditure - Determination - Reference to CEA - Held: The far reaching changes that came about in the legal framework with the enactment of the 2003 Act, made Regulation 2.5 redundant in so far as the same envisaged a reference to CEA or an Independent Agency for approval of the additional capitalisation - Insistence on a reference, to CEA for such approval, despite the sea change in the legal framework would have been both unnecessary as well as opposed to the spirit of new law that reduced the role of CEA to what has been specified in s.73.

(Also see under: Central Electricity Regulatory Commission (Terms and Conditions for Determination of Tariff) Regulations, 2001)

U.P. Power Corporation Ltd. v. N.T.P.C. Ltd. & Ors. 805

EMPLOYEES' PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT, 1952: s.6A.

(ix)

(See under: Industrial Disputes Act, 1947) 826

ENVIRONMENT PROTECTION ACT, 1986:

(See under: Prevention of Cruelty to Animals
(Slaughter House) Rules, 2000) 641

HAWKER MATTERS:

(i) 'Hawker' - Connotation of - Explained.

(ii) Street vendors - Held: Till an appropriate legislation is enacted by Parliament or any other competent legislature, and is brought into force, the salient provisions of National Policy on Urban Street Vendors, 2009, as enumerated in the Order, should be implemented throughout the country - Further directions issued for facilitating implementation of the 2009 Policy - As regards the order of Supreme Court staying the hearing of writ petitions pending before High Courts and directing to obtain any clarification/modification from the Court, the parties, whose applications have remained pending before Supreme Court, shall be free to institute appropriate proceedings including petition under Art. 226 of the Constitution, in the jurisdictional High Court.

Maharashtra Ekta Hawkers Union and Another v. Municipal Corporation, Greater Mumbai and Ors. 742

INDIAN MEDICAL COUNCIL ACT, 1956:

ss. 10A and 19A - Held: s.10A, mandates that when a new medical college is to be established or the number of seats to be increased, the permission of Central Government is a pre-requisite - s.19A obliges MCI to prescribe minimum required standards for medical education and the recommendations made by MCI to Central

(x)

Government carry considerable weight - In the instant case, MCI constantly on all the occasions, recommended to Central Government not to renew permission for admission of the third batch for the academic year 2008-09, but in spite of the same, a Central Team was appointed, a favourable report was got and permission was accorded by Central Government for the year 2008-09, which was the subject matter of CBI investigation.

Rohilkhand Medical College & Hospital, Bareilly v. Medical Council of India & Anr. 692

INDUSTRIAL DISPUTES ACT, 1947:

s.11-A - Power of Labour Court to give appropriate relief in case of discharge or dismissal of workman - Exercise of discretion - Explained - Held: In the instant case, Labour Court examined the scope of exercising its discretion u/s. 11A in order to interfere with punishment imposed on appellant - Having regard to the factors, referred by Labour Court, it rightly declined to exercise its discretionary jurisdiction u/s. 11A to interfere with the punishment of dismissal - Employees' Provident Fund and Miscellaneous Provisions Act, 1952 - s.6A.

Davalsab Husainsab Mulla v. North West Karnataka Road Transport Corporation 826

INTERPRETATION OF STATUTES:

(i) Incorporation by reference;

(ii) Casus omissus.

(See under: Land Acquisition Act, 1894) 658

JUDICIAL NOTICE:

(See under: Education/Educational Institutions) 692

(xi)

JURISDICTION:

(See under: Rajasthan Wakf Act, 1995) 721

LABOUR LAW:

Dismissal of workman - Misconduct - Disciplinary inquiry - Charges found proved - Past conduct also considered - Order of dismissal - Labour Court held the order fully justified - Held: Having regard to the gravity of misconduct found proved against appellant in an enquiry held for that purpose by way of disciplinary procedure prescribed in the relevant rules, the conclusion of Labour Court on this aspect cannot be assailed.

Davalsab Husainsab Mulla v. North West Karnataka Road Transport Corporation 826

LAND ACQUISITION ACT, 1894:

s.11-A, Explanation, r/w ss. 4 and 6 - Limitation to make award - Time taken for obtaining copy of stay order - Held: Cannot be excluded to bring the award within limitation - Explanation to s. 11-A permits exclusion of the period during which court had stayed acquisition proceedings for the purpose of reckoning the period of two years prescribed for making the Award, but it does not provide for exclusion of the time taken to obtain a certified copy of judgment or order by which stay order was either granted or vacated - s.12 of Limitation Act has no application to making of an award under LA Act - Doctrine of casus omissus also cannot be applied - In the instant case, award made stood elapsed - Limitation Act, 1963 - s.12 - Interpretation of Statutes - Incorporation by reference - Casus omissus.

Singareni Collieries Co. Ltd. v. Vemuganti Ramakrishan Rao & Ors. 658

(xii)

LEGISLATION:

(See under: Education/Educational Institutions) 692

LIMITATION ACT, 1963:

s.12.
(See under: Land Acquisition Act, 1894) 658

MAHARASHTRA EMPLOYEES OF PRIVATE SCHOOLS (CONDITIONS OF SERVICE) REGULATION ACT, 1977:

s. 9.
(See under: Delay/Laches) 775

MEDICAL COLLEGES REGULATION (AMENDMENT 2010 PART II):

Clause 8(3)(1)(d) - Revocation of permission/recognition for award of MBBS degree - Approval for renewal of permission to Medical College for increased intake from 100 to 150 seats for academic year 2013-2014 - Revoked by MCI on receipt of information from CBI with regard to conspiracy between the Chairman of the Medical College on the one hand and public functionaries of Union Ministry and Government Hospital on the other - Held: CBI investigation has revealed that fraud was practiced by the Central team as well as the college to get the sanction for the 3rd batch of MBBS students for the academic year 2008-09 - That was sufficient for MCI to take action, and revoke the letter of permission granted for academic year 2013-14 - The decision of MCI is in accordance with Regulations 8(3)(1)(d) - Minimum Standard Requirements for the Medical College for 100 Admissions Annually Regulations, 1999.

(Also see under: Indian Medical Council Act, 1950)

Rohilkhand Medical College & Hospital, Bareilly v. Medical Council of India & Anr. 692

MINIMUM STANDARD REQUIREMENTS FOR THE MEDICAL COLLEGE FOR 100 ADMISSIONS ANNUALLY REGULATIONS, 1999:

(See under: Medical Colleges Regulation (Amendment 2010 Part-II) 692

PREVENTION OF CRUELTY TO ANIMALS (ESTABLISHMENT AND REGISTRATION OF SOCIETIES FOR PREVENTION OF CRUELTY TO ANIMALS) RULES, 2000:

(See under: Prevention of Cruelty to Animals (Slaughter House) Rules, 2000) 641

PREVENTION OF CRUELTY TO ANIMALS (SLAUGHTER HOUSE) RULES, 2000:

Slaughter houses - Maintenance, supervision and periodical inspection of - Transportation of animals, their loading and unloading, effluent disposal, solid waste disposal etc - Orders dated 9.7.2013 and 23.8.2012 passed by Supreme Court - Implementation of - Functioning of State Committees - Guidelines framed by MoEF - Held: Few of the States have filed the action taken reports detailing the functioning of the Committees constituted - MoEF, on 27.8.2013, filed a compliance report enclosing the broad framework to be followed by the State Committees for effective supervision of slaughter houses and also with regard to transportation of animals, loading and unloading, effluent disposal, solid waste disposal and also with regard to the periodical

inspection of slaughter houses by respective State Animal Welfare Boards - It is of extreme importance that State Governments, State Animal Welfare Boards, Pollution Control Board etc. should scrupulously follow the guidelines issued by MoEF, in obedience to the direction given by the Court on 10.10.2012 - State Governments further directed to implement the provisions of the Act as well as the guidelines issued by the MoEF, and file an action taken report - Environment Protection Act, 1986, the Solid Wastes (Management and Handling) Rules, 2000 - Prevention of Cruelty to Animals (Establishment And Registration of Societies for Prevention of Cruelty to Animals) Rules, 2000.

Laxmi Narain Modi v. Union of India and Ors. 641

PUNJAB SCHOOL EDUCATION BOARD (EMPLOYEES PENSION, PROVIDENT FUND AND GRATUITY) REGULATIONS, 1991: Regulation 6.

(See under: Service Law) 688

RAJASTHAN WAKF ACT, 1995:

s. 85 r/w ss. 5, 6 and 7 - Bar of jurisdiction of civil court - Jurisdiction of Tribunal - Explained - Held: In the instant case, the suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees - Suit for possession and rent as also for cancellation of sale deed is to be tried by civil court - However, suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the Tribunal - Since the suit was filed much before the Act came

into force, the civil court, where the suit was filed, will continue to have the jurisdiction over the issue and would be competent to decide the same - Jurisdiction.

Bhanwar Lal & Anr. v. Rajasthan Board of Muslim Wakf & Ors. 721

SERVICE LAW:

(1) Pension - Service qualifying for pension - Service in Punjab Education Department - Reckoning of for pension on superannuation from Punjab School Education Board - Held: Employee is entitled to get benefit of Notification dated 17.03.2011 issued by Punjab School Education Board and shall be eligible to add his service qualifying for superannuation pension - Punjab School Education Board (Employees Pension, Provident Fund and Gratuity) Regulations, 1991 - Regulation 6.

Punjab School Education Board v. Dalip Chand and Ors. 688

(2) Promotion:

(i) (a) Ad hoc promotion - Granted to junior - Held: A senior has right to be considered even for adhoc promotion - If seniors are eligible as per the rules and there is no legal justification to ignore them, the employer, at his whim or caprice, cannot extend the promotional benefit to a junior on ad hoc basis.

(b) Adhoc promotion - Granted to junior - Belated claim by seniors to promote them from the date their junior was granted ad hoc promotion - However on regular promotion, their seniority in promotional post maintained - Held: Though claim of promotion is based on the concept of equality

and equitability, relief has to be claimed within a reasonable time - In the instant case, cause of action had arisen for assailing the order when junior employee was promoted on ad hoc basis - A stale claim of getting promotional benefits should not have been entertained by Tribunal and accepted by High Court - Direction given by Tribunal which has been concurred with by High Court, being unsustainable in law, is set aside - Delay/laches.

(c) Service matters - Limitation - Held: The issue of limitation or delay and laches should be considered with reference to the original cause of action - A mere submission of representation to competent authority does not arrest time.

State of Uttaranchal and Anr. v. Sri Shiv Charan Singh Bhandari and Ors. 609

(ii) Promotion - Time bound promotion - Granted to appellant in 1998 - Promotion subsequently found to be irregular as appellant had not passed the required examination - Orders issued in 2009 for cancellation of the promotion - Held: On facts, not justified - The appellant was not at all in any way at fault - It was a time bound promotion which was given to him and some eleven years thereafter, the Government Authorities woke up - Moreover, appellant had passed the required examination subsequently in 2007 much before the cancellation orders were issued in 2009 - Approach of the Government authorities was totally unjustified.

Kusheswar Nath Pandey v. State of Bihar & Ors. 593

(3) (i) Seniority between direct recruits and promotee Assistant Engineers - Held: Appellants were promoted as Assistant Engineers much later

than respondents-Assistant Engineers (direct recruits) had started discharging their functions as Assistant Engineers in RD Department - Respondents had completed five years service as Assistant Engineers and under the relevant rules were eligible to be promoted as Assistant Executive Engineers - Consequently, they were duly promoted as Assistant Executive Engineer - Thus, the action taken by State Government cannot be said to be either arbitrary or violative of Art. 14 or 16 of Constitution of India.

(ii) Quota for promotion to post of Assistant Executive Engineer - Held: For promotion to the post of Assistant Executive Engineer (RD), more than one mode of recruitment i.e. promotion from Assistant Engineer (RD) and recruitment by transfer from the feeder category of Junior Engineer and Senior Draughting Officer have been recognised and stipulated -Therefore, rules providing ratio of 6:2:1 cannot be said to be violative of Art.14 or 16 of the Constitution - Further, fixation of quota/ratio is the prerogative of the executive and, in the instant case, the ratio was fixed in the service rules framed under Art.309 of the Constitution - Constitution of India, 1950 - Arts. 14, 16 and 309.

Tamil Nadu Rural Development Engineers Association v. The Secretary to Government Rural

..... 840

SOLID WASTES (MANAGEMENT AND HANDLING) RULES, 2000:

(See under: Prevention of Cruelty to Animals (Slaughter House) Rules, 2000)

..... 641

STAMP ACT, 1899:

s.28 r/w Art.5 (b-1) of Schedule 1B [as applicable to State of Uttarakhand] and ss.33, 38 and 47A - Deficit stamp duty - Agreements for sale executed in favour of appellant - Presented before Deputy Registrar for registration - Matter referred by him to Assistant Commissioner (Stamp and Registration) who held that the stamp duty paid on the documents was deficient and directed appellant to make up for the deficit stamp duty alongwith penalty imposed as well as interest - Writ petitions in High Court - Partial relief given to appellant modifying the orders of Deputy Registrar - Held: The subject matter of the documents fell u/s.33 - Subsequent conduct of the parties in cancelling the agreements cannot be a reason for not taking action u/s.33/38 - High Court accepted that at the relevant time stamp duty was payable @ Rs. 80/- per thousand whereas the Assistant Commissioner (Stamps) had calculated the same @ Rs. 125/- per thousand - Stamp duty payable was reduced and relief to that extent has already been given - Likewise, High Court also set aside the order of Assistant Commissioner (Stamps) in so far as the interest payment was imposed upon the appellant - In any case, High Court reduced the penalty to 15% of the deficit stamp duty, thereby giving sufficient succour to the appellant - No further relief can be granted to appellants.

M/s Tirupati Developers v. State of Uttarakhand & Ors.

..... 598