

Judiciary Digest

Current & Conceptual Weekly

15th - 21st April, 2024

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1. Supreme Court Reinstates College Registrar, Citing Violation of Natural Justice

The Supreme Court has directed the reinstatement of the Registrar at the GB Pant Institute of Engineering and Technology, Ghurdauri, emphasising that terminating an employee's services without a disciplinary inquiry violates the principles of natural justice.

In **SANDEEP KUMAR VS. GB PANT INSTITUTE OF ENGINEERING AND TECHNOLOGY GHURDAURI**, the bench comprising Justices BR Gavai and Sandeep Mehta asserted that the termination of the appellant's services without conducting a disciplinary inquiry was unjustified and a gross violation of natural justice. The court criticised the High Court for dismissing the appellant's writ petition on procedural grounds, highlighting the absence of certain meeting minutes in the record.

The appellant challenged the termination, arguing that no disciplinary inquiry or opportunity to show cause was provided before the action was taken. The respondents defended the termination, alleging that the appellant lacked the requisite qualifications and had suppressed information regarding his suspension. However, the court rejected this argument, noting that the decision to terminate was made without affording the appellant due process.

The court pointed out that the appellant had satisfactorily completed nearly two years of probation without any issues, as stipulated in the appointment letter. Therefore, the termination was deemed illegal, and the court directed the appellant's reinstatement as Registrar with all associated benefits.

2. Waqf Board's Jurisdiction over Mutawalliship Dispute

In **S V CHERIYAKOYA THANGAL v. S.V P POOKOYA & ORS.**, the Supreme Court clarified that the original jurisdiction to decide matters related to Mutawalliship lies with the Waqf board and not the Waqf Tribunal. Justices M.M Sundresh and S.V.N. Bhatti highlighted the distinction between the roles of the Waqf Tribunal, an adjudicatory authority, and the Waqf Board, which handles administration-related issues.

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The Court emphasised that the Waqf Tribunal functions as a civil court with powers equivalent to the Civil Court, allowing it to adjudicate disputes akin to suits. However, when it comes to matters of administration, including disputes over Mutawalliship, the jurisdiction rests with the Waqf Board.

The case centred on a dispute between parties claiming Mutawalliship of the Waqf. Initially, the Waqf Board ruled in favour of the appellant, declaring them Mutawalli. Dissatisfied with this decision, the opposing party approached the Waqf Tribunal, seeking relief. The Tribunal, however, did not grant any relief, leading to a revision filed before the High Court.

While the High Court did not delve into the merits of the case, it set aside the Waqf Board's decision, citing lack of jurisdiction. Consequently, the matter was remitted to be decided afresh by the Tribunal. The appellants challenged this order before the Supreme Court.

After examining relevant provisions of the Waqf Act of 1995, particularly Section 32(2)(g) which assigns the function of appointing and removing Mutawallis to the Waqf Board, the Court concluded that the Waqf Board is the competent authority for deciding Mutawalliship disputes.

Therefore, the Court set aside the impugned order and directed the High Court to decide the matter on its merits. Given the protracted nature of the dispute, the Court urged the High Court to expedite the hearing and dispose of the matter promptly.

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3. PIL Against Blanket Section 144 Orders During Elections

The Supreme Court has taken cognizance of a public interest litigation (PIL) challenging the issuance of 'blanket' Section 144 CrPC orders ahead of Lok Sabha/Vidhan Sabha elections. In **Aruna Roy and Anr. v. Union of India**, Justices BR Gavai and Sandeep Mehta issued notice on the plea filed by activists Aruna Roy and Nikhil Dey. They directed that any applications of this nature shall be decided by the competent authority within three days of filing.

During the hearing, Advocate on Record Prashant Bhushan, representing the petitioners, highlighted the trend of issuing blanket Section 144 orders, prohibiting public meetings and assemblies for the entire duration of elections. He argued that such orders are issued without any well-founded apprehension of breach of peace, contrary to constitutional principles.

Bhushan pointed to an order issued by the District Magistrate of Barmer as an example, where Section 144 restrictions were imposed for the duration of Lok Sabha elections. The petitioners, seeking to conduct a "democracy yatra" to educate voters, requested permission, which was not granted in a timely manner.

In response to Bhushan's submissions, the bench issued notice in the matter and directed that any application seeking permission for public events during elections must be decided within three days. Bhushan requested an earlier returnable date for the notice, expressing concern that elections would be over by the time of the next hearing. Eventually, the court made the notice returnable in two weeks.

Before concluding, Bhushan requested that the order be applicable across the country, to which Justice Gavai agreed, amending the order accordingly.

4. Old versus New: Sentencing Provisions

Sentencing Authority

Under the old law (CrPC), the sentencing authority of different tiers of magistrates was distinctly outlined. The Chief Judicial Magistrate wielded the power to impose sentences, excluding death or life imprisonment, not exceeding seven years. Magistrates of the first class had the authority to sentence individuals to a maximum of three years of imprisonment or a fine, while those of the second class could impose sentences up to one year of imprisonment or a fine.

Conversely, the new law (BNSS) maintains a similar hierarchy of sentencing authority but introduces a broader spectrum of punitive measures. The Chief Judicial Magistrate retains the power to issue sentences within the statutory limits. However, magistrates of the first class are now empowered to impose community service alongside traditional sanctions, such as imprisonment or fines. Magistrates of the second class also have the discretion to order community service as part of the sentencing process.

Magnitude of Penalties

In terms of monetary penalties, the old law capped fines at relatively lower thresholds, with the maximum fines ranging from five thousand rupees for second-class magistrates to ten thousand rupees for first-class magistrates.

Conversely, the new law substantially elevates the ceiling for fines, with first-class magistrates authorised to levy fines not exceeding fifty thousand rupees. Second-class magistrates are empowered to impose fines up to ten thousand rupees.

5. Past Exam Highlight: Prelims and Mains

Prelims

1. The principle that accused cannot at the stage of framing charge invoke Section 91 was laid down in:
 - a. State of Orissa v. Debendra Nath Padhi
 - b. Satish Mehra v. Delbi Administration
 - c. K.M. Mathew v. KA. Abraham
 - d. dalat Prasad v. Rooplal Jindal

Ans. (a)

Explanation: The principle that the accused cannot at the stage of framing charge invoke Section 91 of the CrPC (Code of Criminal Procedure) was laid down in State of Orissa v. Debendra Nath Padhi. In this case, the Supreme Court of India held that the accused does not have the right to production of documents that are not part of the prosecution case at the stage of framing of charges.

2. A declaration of forfeiture under Section 95 of the Code of Criminal Procedure can be set aside by

- a. Magistrate issuing the search warrant
- b. Chief Judicial Magistrate/Chief Metropolitan
- c. Court of Sessions
- d. High Court

Ans. (d)

Explanation: A declaration of forfeiture under Section 95 of the Code of Criminal Procedure can indeed be set aside by the High Court. This section allows the government to declare certain publications forfeited if they contain material that violates specific legal standards, such as promoting hatred or inciting violence. The decision to forfeit can be challenged, and the authority to review and set aside such a declaration lies with the High Court.

3. Can a Magistrate order the search of any place in his presence, for the search of which he is empowered to issue a search warrant?

- a. Yes, under section 103 Cr.P.C.
- b. Yes, under section 104 Cr. P.C.
- c. No
- d. Yes, under section 105 Cr.P.C.

Ans. (a)

Explanation: Under Section 103 of the Code of Criminal Procedure (Cr.P.C.), a Magistrate can order the search of any place in his presence, for the search of which he is empowered to issue a search warrant. This section pertains to the conduct of searches according to the provisions laid out in the Cr.P.C., ensuring lawful procedure and oversight by an empowered authority, such as a Magistrate, during the search process.

4. Which of the questions is not lawful in cross examination?

- a. A question to test the veracity of the witness
- b. A question to discover what the position in life of the witness is
- c. A question the answer of which amounts to hearsay
- d. A question to injure the character of the witness

Ans. (c)

Explanation: Hearsay evidence is typically not admissible as it involves statements made outside the courtroom by a third party and thus cannot be cross-examined or verified for accuracy. This type of question does not provide reliable evidence that can be substantiated or challenged directly in court.

5. In which of the following judgments delivered by the Supreme Court in 2015, it was held that "it is imperative if the examination-in-chief is over, the cross-examination should be completed the same day"?

- a. Vinod Kumar v. State of Punjab
- b. Ahmad Shah v. State of Rajasthan
- c. Jasmer Singh v. State of Haryana
- d. Inder Singh v. State of Rajasthan

Ans. (a)

Explanation: In the judgement Vinod Kumar v. State of Punjab delivered by the Supreme Court in 2015, it was held that "it is imperative if the examination-in-chief is over, the cross-examination should be completed the same day". This directive aims to maintain the continuity and integrity of witness testimony, ensuring that the evidence remains fresh and undisturbed by external influences or lapses in memory that can occur with delays.

6. To an answer to a court question, the adverse party

- a. Has a right to cross-examination as a matter of right

- b. Has a right to cross-examine only with the permission of the court
- c. Has no right to cross-examine the witness
- d. Either (a) or (c)

Ans. (b)

Explanation: Typically, cross-examination is a right in adversarial legal systems; however, there are circumstances where the court may limit this right based on relevance, redundancy, or other legal considerations to ensure the efficiency and integrity of the proceedings. This control helps to manage the scope and nature of questioning to maintain a fair trial.

7. What is the prescribed limitation period, for filing a suit for compensation of libel or slander?

- a. One Year in both cases
- b. Three years in both cases
- c. One year for libel, 3 years for slander, or
- d. 3 years for libel, 1 year for slander

Ans. (a)

Explanation: According to Article 75 of the Limitation Act, the limitation period for filing a suit for compensation for libel or slander is one year from the date of publication.

8. Provision for suits, etc. for which the prescribed period is shorter than the period prescribed by the Indian Limitation Act, 1908, is contained in :

- a. Section 28 of the Limitation Act, 1963
- b. Section 29 of the Limitation Act, 1963
- c. Section 30 of the Limitation Act, 1963
- d. Section 31 of the Limitation Act, 1963

Ans. (c)

Explanation: Section 30 of the Limitation Act, 1963, addresses the provision for suits, appeals, or applications for which the prescribed period is shorter than the period

prescribed by the earlier Indian Limitation Act, 1908. This section ensures that legal claims affected by the change in the limitation period from the old act to the new one have a transition mechanism. It allows these claims to be instituted or made either within a seven-year period from the commencement of the new act or within the original period prescribed by the 1908 act, whichever expires earlier, thereby safeguarding the rights to legal recourse under changing legislative timelines.

9. A suit to redeem or recover possession of immovable property mortgaged can be brought by the mortgagor within a period of:

- a. 30 years
- b. 12 years
- c. 6 years
- d. 3 years

Ans. (a)

Explanation: According to Article 61 of the Limitation Act, this period begins when the right to redeem or to recover possession accrues.

10. Any suit for which no period of limitation is provided elsewhere in the Schedule of the Act, the limitation would be:

- a. One year
- b. Three years
- c. Five years
- d. Twelve years

Ans.(b)

Explanation: This is stipulated under Article 113 of the Limitation Act. The three-year period begins when the right to sue accrues, providing a general timeframe for initiating legal proceedings in cases where specific durations are not outlined in the Act.

Mains

Q. Write in brief, what is:

- (a) Examination in Chief
- (b) Cross Examination
- (c) Re-examination

Ans: Examination-in-chief, cross-examination, and re-examination are essential components of the trial process in courts, particularly in the context of witness testimony. Each phase serves a distinct purpose and is governed by specific rules and procedures

Examination-in-chief

Examination-in-chief, as per Section 137 of the Code of Criminal Procedure (CrPC), involves the questioning of a witness by the party who has summoned them to testify. This phase is governed by Section 138 of the CrPC, which mandates that witnesses be first examined-in-chief, allowing the party calling the witness to present their evidence. Section 142 further stipulates that leading questions, which suggest the desired answer, are generally not permitted during examination-in-chief, except with the permission of the court. The witness provides testimony based on their personal knowledge, observations, and experiences relevant to the case.

Cross-examination

Cross-examination, outlined in Section 137 of the CrPC, follows examination-in-chief and is conducted by the opposing party. This phase allows the adverse party to test the credibility of the witness, challenge their testimony, and uncover any inconsistencies or weaknesses in their evidence. Section 146 of the Indian Evidence Act, 1872, expands on the scope of cross-examination, permitting questions aimed at testing the witness's veracity, discovering their

identity and social status, or undermining their character. Leading questions are generally allowed during cross-examination, subject to objections by the opposing party or permission from the court.

Re-examination

Re-examination, as provided in Section 137 of the CrPC, occurs subsequent to cross-examination and is conducted by the party who called the witness. This phase enables the party to clarify any issues raised during cross-examination, explain or elaborate on the witness's earlier testimony, or address new matters that arose during cross-examination. Section 138 of the CrPC directs re-examination to be focused on matters referred to in cross-examination. The introduction of new matters during re-examination is subject to the permission of the court, and leading questions are generally not permitted unless allowed by the court.

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6. Clear Concept: Strict Proof of Marriage under Section 125 CrPC

The concept of strict proof of marriage under Section 125 of the Criminal Procedure Code (CrPC) is a matter of significant judicial interpretation and has been subject to various rulings by the higher courts in India. Section 125 of the CrPC provides for the maintenance of wives, children, and parents, irrespective of their religion.

Traditionally, in matrimonial proceedings, establishing the validity of marriage requires strict proof, typically in the form of marriage certificates, witnesses, and other documentary evidence. However, the interpretation of the requirement of proof of marriage under Section 125 CrPC differs from that of matrimonial proceedings.

The Supreme Court of India, in several landmark judgments, has clarified that while strict proof of marriage may be essential in matrimonial proceedings, the same standard of proof is not necessary in proceedings under Section 125 CrPC. These proceedings are summary in nature and are intended to prevent vagrancy and destitution among dependents, especially women, children, and parents.

In the case of **Kamala v. M.R. Mohan Kumar (2018)**, the Supreme Court held that proceedings under Section 125 CrPC do not require the same level of strict proof of marriage as matrimonial proceedings. The Court emphasised that the purpose of Section 125 CrPC is to provide speedy

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assistance and social justice to dependents and that it should not be burdened with the same level of proof as required in matrimonial disputes.

Similarly, the Punjab & Haryana High Court, in a recent judgement, reiterated that strict proof of marriage is not a condition precedent for claiming maintenance under Section 125 CrPC. The Court emphasised that the legislative intent behind Section 125 CrPC is to provide social justice and protect dependent women, children, and parents from destitution. Therefore, requiring strict proof of marriage would be antithetical to this legislative intent.

The High Court also highlighted that prolonged cohabitation as husband and wife would entitle partners to maintenance under Section 125 CrPC, even if the performance of essential marriage ceremonies is not proved. This interpretation aligns with the beneficial nature of Section 125 CrPC and aims to prevent vagrancy or destitution among dependents.

Furthermore, the courts have emphasised that the standard of proof required under Section 125 CrPC is preponderance of probabilities, rather than proof beyond reasonable doubt. This standard allows for a more flexible and pragmatic approach, considering the circumstances of each case and the needs of the dependents involved.

