THE

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HIMACHAL SERIES, 2023

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INDIAN LAW REPORTS

HIMACHAL SERIES

(April, 2023)

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SUBJECT INDEX

'A'

Arbitration and Conciliation Act, 1996- Order of acceptance of solvent security bond was passed by Registrar (Judicial)- Chamber appeal was filed for setting it aside- **Held**- Registrar (Judicial) committed mistake in accepting security bond of first concerned plot because out of 5 storeys only 3 storeys had been approval for construction and there was discrepancy in the report of evaluator- Title and valuation of second property was also held to be irrelevant because it cannot be considered as a solvent security equivalent to amount payable, in terms of award. (Paras 21 and 22) Chaggan Lal & others vs. Nand Lal Sharma & others Page-350

Arbitration and Conciliation Act, 1996- Section 34- Challenge to Arbitral Award passed by Tribunal**-** Petitioner and respondent entered into a contract for the widening and strengthening of a specific road- There was delay in completion of the work- Petitioner granted an extension of time for completion- Respondent invoked the arbitration clause to claim damages for the delay- Arbitral Tribunal heard the dispute and passed the impugned award- Such award was challenged before High Court- **Held**- High Court cannot act as a Court of appeal and the powers conferred under Section 34 of the Act are fairly narrow- Mandate under Section 34 of the Act is to respect the finality of the Arbitral Award- Interference with the Arbitral Award in the usual course on factual aspects would defeat the commercial wisdom behind opting for alternative dispute resolution- Findings of Arbitral Tribunal were not found to be perverse- Petition was dismissed and Arbitral award was upheld (Paras 21, 23 and 27) Title: Himachal Pradesh Road & other Infrastructure Development Corporation Ltd. vs. M/s C & C Construction Ltd. Page-358

'C'

Central Civil Services (Classification, Control and Appeal) Rules, 1965- Rule 19-Writ petition- Removal by State on the ground of conviction under Sections 279, 304-A of IPC- **Held**- Court refrained from entertaining the Petition under Article 226 of the Constitution on the ground that alternate remedy was not exhausted and no exceptional circumstance was culled out for not exhausting alternative statutory remedy. (Para 20) Title: Mohinder Singh vs. The Himachal Road Transport Corporation & others Page-400

Code of Civil Procedure, 1908 - Order 39, Rule 4 – Trial Court passed status

quo order in application for temporary injunction – Defendant applied for modification of the order - Application was dismissed by trial court – Defendant went in appeal - Appeal was also dismissed – Defendant filed petition under Article 227 - **Held** - Petitioner raised construction despite the status quo order - The endeavour of the petitioner by filing application under Order 39, Rule 4 CPC was only to circumvent the order passed by learned Trial Court on the application filed under Order 39, Rules 1 and 2 – Petition dismissed. (Paras 5 & 6) Title: Rattan Lal vs. Basia Ram Page-22

Code of Civil Procedure, 1908- Order I Rule 10 and XXIII Rule 1A – Transposition-Certain properties were disposed of by the father in favour of some legal heirs while excluding some heirs by virtue of a will. Mother sets up a claim on half share of the property as absolute owner as per Section 14 of Hindu Succession Act and challenged the capacity of testator to dispose of all the properties. Both the parties died during pendency of proceedings. One of the heirs who did not inherit the property through will was added as a respondent by the mother, while she was alive. After her death, application was filed by respondent for transposition as an appellant on the ground that right to sue survives as per Order XXII of CPC- **Held**- Since, respondent was the son of original appellant (now deceased mother) right to sue survives because if claim of ownership of the original appellant is accepted then applicant is also entitled to inherit the share of his mother. Transposition was allowed. Title: Khayala Devi vs. Bhandari & others Page-391

Code of Civil Procedure, 1908- Order XLI Rule 27- **H.P. Urban Rent Control Act, 1987**- Section 24(5) -Tenant was evicted by Rent Controller and the Appellate Authority upheld the eviction order- Application for Additional evidence was also dismissed by the Authority- Revision petition was filed- **Held-** Documents sought to be adduced as additional evidence did not depict ownership of any of the parties- Petitioner failed to show that he exercised due diligence and care for obtaining the documents and the cause which prevented him from adducing such evidence during trial- order rejecting application for additional evidence was valid. Tenant must pay or deposit arrears of rent within thirty days of the eviction in order to maintain an appeal- Failure to deposit the arrears disentitles him from preferring an appeal- Revision was dismissed as there was no illegality, irregularity or perversity in the impugned judgment. (Paras 18 and 20) Title: Ramesh Kumar vs. Leela Devi Page-437

Code of Criminal Procedure, 1973 - Section 439 – An FIR was registered under Sections 20 and 29 of the NDPS Act – 11.700 Kg cannabis was allegedly recovered from the vehicle of petitioner - Fifth petition for grant of bail - **Held** - It is not a case where the Court may be in a position to hold that there is no *prima facie* case against petitioner – **Further held** – Delay in the trial happened due to non-apprehension of one accused but now he has been apprehended and trial is expected to be expedited – Petition dismissed. (Paras 8 to 13) Title: Devender Kumar vs. N.C.B. Page-159

Code of Criminal Procedure, 1973 – Section 439 – An FIR was registered under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances, Act 1985 – Commercial quantity of cannabis was allegedly recovered – **Held** - The Constitutional guarantee of expeditious trial cannot be diluted by applying the rigors of Section 37 of ND & PS Act in perpetuity - The petitioner is in custody since 24.02.2021 and the facts suggest that the trial is not likely to be concluded in near future - There is nothing on record to suggest that delay in trial is attributable to the petitioner - The co-accused of the petitioner is already on bail – Bail petition allowed subject to conditions.(Paras 7 to 18) Title: Vikas @ Vicky vs. State of H.P. Page-135

Code of Criminal Procedure, 1973 – Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under Sections 363, 366-A, 370-A, 506 and 120-B IPC – Bail sought - **Held -** The trial has already commenced and material witnesses i.e. the victim and her father have already been examined - There is no apprehension that petitioner, if released on bail, will be in a position to exert pressure on the victim or her father to win them over - Petitioner has already been in custody for about two years - Allegations against the petitioner are still to be proved - His pre-trial incarceration for indeterminate period will not be in the interest of justice - Speedy trial is a right vested in the petitioner- **Further held** – Petitioner is also entitled to bail on the ground of parity - Bail granted. (Paras 10 to 13) Title: Mohammad Nazim vs State of H.P. Page-74

Code of Criminal Procedure, 1973 – Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under Sections 302, 201 and 120-B IPC – Challan already filed – Some evidence also led - **Held**– Seriousness of the offence cannot be the only ground to deny bail - It has to be weighed and balanced with other factors - In absence of any eye witness to

the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner – **Further held** – Petitioner also entitled to bail on the ground of parity - Bail granted. (Paras 10 to 24) Title: Lal Dhar vs. State of H.P. Page-79

Code of Criminal Procedure, 1973 – Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under sections 302, 201 and 120-B IPC – Challan already filed – Some evidence also led - **Held**- Seriousness of the offence cannot be the only ground to deny bail - It has to be weighed and balanced with other factors - In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner – **Further held** – Petitioner also entitled to bail on the ground of parity - Bail granted. (Paras 10 to 24) Title: Hem Raj alias Kaku vs. State of H.P. Page-102

Code of Criminal Procedure, 1973 – Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under sections 302, 201 and 120-B IPC – Challan already filed – Some evidence also led - **Held**- seriousness of the offence cannot be the only ground to deny bail - It has to be weighed and balanced with other factors - In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner – **Further held** – Petitioner also entitled to bail on the ground of parity - Bail granted. (Paras 10 to 24) Title: Chaman Lal vs State of H.P. Page-113

Code of Criminal Procedure, 1973 – Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under sections 302, 201 and 120-B IPC – Challan already filed – some evidence also led - **Held**- Seriousness of the offence cannot be the only ground to deny bail - It has to be weighed and balanced with other factors - In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence

by the petitioner – **Further held** – Petitioner also entitled to bail on the ground of parity - Bail granted. (Paras 10 to 24) Title: Kiran vs. State of H.P. Page-124

Code of Criminal Procedure, 1973 – Section 439 – Section 37 NDPS Act vis-a-vis right to speedy/expeditious trial - Commercial quantity of contraband was recovered from two persons - They were allegedly transporting the contraband at the instance of petitioner and one another person – Petitioner was in custody since 24.02.2021 - Bail sought – **Held** - The Constitutional guarantee of expeditious trial cannot be diluted by applying the rigors of Section 37 of ND&PS Act in perpetuity – Bail granted. (Paras 7 to 18) Title: Hitesh vs. State of H.P. Page-148

Code of Criminal Procedure, 1973 – Section 439 –An FIR was registered under sections 20 and 29 of the NDPS Act, 1985 - Commercial quantity of contraband was allegedly recovered - Petitioner was in custody since 24.02.2021 - **Held** - The Constitutional guarantee of expeditious trial cannot be diluted by applying the rigors of Section 37 of ND & PS Act in perpetuity – Bail granted. (Paras 7 to 18) Title: Bobby Sharma vs. State of H.P. Page-164

Code of Criminal Procedure, 1973 – Section 439-An FIR was registered under sections 366, 366-A, 376, 120-B IPC and Sections 4 and 17 of the POCSO Act – Petitioner allegedly accompanied the main accused on motorcycle when the child victim was taken from Karsog to Tattapani- **Held** - Petitioner is only 19 years of age and his prolonged detention in the given facts of the case will not be warranted for the reasons firstly that it is likely to adversely affect his career and secondly, in absence of any specific criminal intent attributed to him, petitioner cannot be kept in custody for indeterminate period - Pre-trial incarceration cannot be applied as a matter of rule – Bail granted. (Paras 7 to 11) Title: Chuni Lal vs. State of H.P. Page-143

Code of Criminal Procedure, 1973 – Section 482 – An FIR was registered under sections 363 and 366-A IPC – Similar previous petition was dismissed as withdrawn but this fact was not disclosed – Petition dismissed on account of the conduct of the petitioner with cost of Rs.15000/-. (Paras 2 to 4) Title: Gaurav Nikhil vs. State of H.P. and others Page-156

Code of Criminal Procedure, 1973 - Section 482**-** Petition was filed under Section 482 of the Cr.P.C. requesting the court to entrust the investigation to

the Central Bureau of Investigation (CBI)- it is alleged that state police failed to make any progress in the investigation- **Held** - Court has the discretion to order a CBI investigation under Article 226 of the Constitution- There must be sufficient material to justify such an inquiry- Such powers must be invoked sparingly and cautiously and not as a matter of routine- Court ordered further investigation by the State CID, to be conducted by an officer not below the rank of Superintendent of Police. (Paras 19 and 21) Title: Sarvhitkari Adhyatmik Kendra (Regd.) through its Secretary & others vs. State of H.P. & others Page-457

Code of Criminal Procedure, 1973- Section 397- Revision- Judgments of conviction and sentence under Section 323 read with Section 34 of the Indian Penal Code (IPC), passed by the Additional Chief Judicial Magistrate and upheld by the Additional Sessions Judge, were challenged on the grounds of not being sustainable in light of inconsistent and contradictory evidence presented by the prosecution - **Held** - If on the same evidence, two views are reasonably possible, the one in favour of the accused must be preferred- It is the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice - There was failure to appreciate the evidence in its right perspective- Judgment of conviction was not sustainable in the eyes of law and accordingly- conviction was quashed and set aside (Paras 13, 15 and 16) Title: Satyapal vs. State of H.P. Page-472

Code of Criminal Procedure, 1973 -Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under sections 302, 201 and 120-B IPC – Challan already filed – Some evidence also led - **Held**- seriousness of the offence cannot be the only ground to deny bail - It has to be weighed and balanced with other factors - In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner – **Further held** – Petitioner also entitled to bail on the ground of parity - Bail granted. (Paras 10 to 24) Title: Joginder Rajput vs. State of H.P. Page-90

Constitution of India, 1950 – Article 226 - CCS (CCA) Rules 1965 - Rules 27(2) and 27(3) - Removal from Service – The petitioner was serving as Clerk in RKMC College, Shimla – Director Higher Education proposed a departmental

inquiry against the petitioner – Articles of Charges were framed – Inquiry Officer submitted his report – Major Penalty of Removal from Service was imposed on the petitioner by the Disciplinary Authority – Petitioner filed appeal – Appellate Authority rejected the appeal vide order dated 2.8.2016 – Challenged – **Held** – Petitioner had taken many grounds for challenging the penalty but the Appellate Authority did not deal with the grounds raised by the petitioner – Appellate Authority did not apply independent mind to the facts and the evidence of the case – Rules 27(2) and 27(3) of CCS(CCA) Rules were not kept in view - The appeal was dealt with mechanically – Order passed by the Appellate Authority quashed - Appellate Authority directed to consider and decide the appeal preferred by the petitioner afresh, after affording him opportunity of hearing by passing a reasoned and speaking order within a period of six weeks. (Paras 4 and 5) Title: Jagbandhu vs. State of H.P. & Ors. Page-244

Constitution of India, 1950 – Article 226 - Challenge laid to transfer on the basis of DO Note before completion of normal tenure of three years – **Held** - Court does not interfere in the matters of transfer of government employees unless the administrative action is smeared with malafide - There is no material to infer malafide or coloured exercise of power behind the decision – **Further held** - There is no absolute rule that petitioner has to remain posted at a particular place for a specific tenure - The Comprehensive Guiding Principles-2013 for regulating the transfer of State Government employees adopted by the State government does not provide for any such mandate - It has only been specified that tenure/stay of an officer/official at one station shall be three years normally - It cannot be taken as an absolute mandate and the State Government always has a right to transfer its employees keeping in view the administrative exigency or public interest – petition dismissed. (Paras 6 to 12) Title: Abdul Hamid vs. State of H.P. & Ors. **(D.B.)** Page-196

Constitution of India, 1950 – Article 226 - Delay and laches - Petitioner participated in the selection process for one post of Drawing Master, reserved for Orthopedically Handicapped General Category in the year 2008 – Respondent no. 3 was selected and appointed as Drawing Master on 29.02.2008 - Two years later, the petitioner assailed the said appointment alleging that additional marks given to respondent No.3, for possessing diploma in Library Science, ought not to have been granted to him as this qualification had no nexus with the post of Drawing Master - **Held** - After participating in the selection process under particular set of terms, it would be

too late in the day for the petitioner to contend that award of marks for possessing additional qualification had no nexus for filling up the post of Drawing Master - In case the petitioner was aggrieved by the selection criteria, he was required to assail the same at the appropriate stage - **Further held** - Respondent no.3 was appointed on 29.02.2008 on the post in question - Even at that stage, no challenge was made to his appointment - Writ petition filed almost two years after the selection and appointment of respondent no.3 suffers from unexplained delay and laches - Petition dismissed. (Paras 4 to 7) Title: Santosh Nanta vs. State of H.P. & Ors. Page- 236

Constitution of India, 1950 – Article 226 - Equal pay for equal work - Petitioner was appointed as Chemist in the respondent-Corporation in March, 1983 - Promoted to the post of Manager Production on 04.10.1989 - Further promoted to the post of Production Manager on 06.03.2003 – There were two feeder categories for promotion to the post of General Manager (Rs.13500-16800/-), viz. (i) post of Production Manager and (ii) post of Chief Finance Officer, both in the pay scale of Rs.10025-15100/- one Sh. R.S. Sublaik was holding the post of Chief Finance Officer in the pay scale of Rs.10025-15100/- respondents granted him higher pay scale of Rs.13500-16800/- w.e.f. 02.08.2007 - He received higher pay scale till his retirement on 31.05.2010 as Chief Finance Officer – Petitioner represented for grant of same pay scale on ground of parity - Service Committee of the respondent-Corporation rejected the representation on 26.09.2014 – **Held** - When two categories of posts, governed by separate R&P Rules, different modes of recruitment, different qualifications and different job profiles, it is then not necessary that they are to enjoy the same pay scales only on the ground that their further channel of promotion is same, i.e. the post of General Manager - **Further held** - The respondents vide office letter dated 28.08.2010 have again scaled down the pay scale of the post of Chief Finance Officer from Rs.13500-16800/- (enjoyed by the incumbent namely Sh. R.S. Sublaik w.e.f. 02.08.2007 till his retirement on 31.05.2010) to Rs.10025-15100/- hence, with effect from 28.08.2010, the claim of the petitioner to the higher scale of Rs.13500-16800/- on the analogy of the higher pay scale having been released to the post of Chief Finance Officer, does not survive – **Further held** - There cannot be any equality in the matter of illegality – Petition dismissed. (Paras 4 and 5) Title: Ramesh Chand Verma vs. H.P. Agro Industries Corporation Ltd. and others Page-280

Constitution of India, 1950 – Article 226 **–** Himachal Pradesh Public Service Commission invited applications for recruitment to the post of Assistant

Conservator of Forest - For males the requirement of chest measurement was 79 Cms without expansion and 84 Cms with expansion - For females it was 74 Cms without expansion and 79 Cms with expansion – Respondents failed the chest measurement test – They approached Himachal Pradesh Administrative Tribunal – Fresh physical test was allowed and respondents were permitted to provisionally appear in the interview – Respondents cleared the physical test – Result was permitted to be declared – Petitioners filed CWP – Medical Board was constituted with consent of the parties – Petitioners filed Review Petition which was dismissed – SLP was also dismissed – Present petition was filed on the ground that the rules governing the selection process by respondent No. 2 nowhere provided for re-test on physical standards - **Held** - Indisputably the order dated 2.5.2019 was passed by Division Bench in CWP No. 656 of 2019 on the basis of the consent of parties - The petitioners were consenting parties and cannot be allowed to resile from such consent especially after dismissal of their review petition and also failure to seek special leave to appeal from Hon'ble Supreme Court - The order dated 2.5.2019 on one hand validated the orders passed by learned Tribunal, on the other, the parties were afforded another opportunity to submit themselves to re-test of chest expansion - Having given their consent to passing of such an order, the petitioners cannot be allowed to re-open the issue- Petition dismissed. (Paras 13 to 17) Title: Vikhyat Guleria & Ors. vs. State of H.P. & Ors. Page-290

Constitution of India, 1950 - Article 226 - Judgment in Rem - Petitioners were appointed as Timber/Resin Watchers in H.P. State Forest Development Corporation w.e.f. 18.7.1983 - persons working in other categories like peon, chowkidar etc. were also included in seniority list of Timber/Resin Watchers in derogation of bye-law 3.4 - Previously, some of Timber/Resin Watchers filed an OA No. 656 of 1994 before the Tribunal for quashing the seniority list dated 3.6.1993 - on abolition of the Tribunal, the said petition was transferred to the High Court and was re-registered as CWP-T No. 2265 of 2008 - This writ was dismissed on 29.3.2010 - Ramesh Chand Sharma and some other Timber/Resin Watchers similarly situated to petitioners, assailed order dated 29.3.2010 by filing LPA No. 55 of 2010 - LPA was disposed off on the basis of reply that instructions had been issued to respondent No.2 to correct all the seniority lists and not to include any other category of daily wagers in the seniority of Timber/Resin Watchers (daily wages) - Ramesh Chand Sharma filed Execution Petition No. 11 of 2017 - benefit of judgment passed in LPA No. 55 of 2010 was extended in his favour on 5.10.2020 - Petitioners made a

representation on 10.6.2021 to the Corporation for implementation of judgment passed in LPA No. 55 of 2010 - representation was not decided by Corporation - Petitioners were constrained to file present writ petitions - Petitioners claimed that judgment passed in LPA No. 55 of 2010 is a judgment in *rem* pronounced with intention to give benefits to all similarly situated persons on the basis of undertaking/submission of respondent Corporation and rectification of seniority list was to be carried out by Corporation with respect to all Timber/Resin Watchers but not only with respect to Ramesh Chand Sharma - respondents contested the petiton alleging delay and laches - **Held** - No inference, in any manner can be drawn to construe that direction passed by the Division Bench was only qua appellants therein as it was not reply of Corporation that it was looking into to draw seniority list by correcting the discrepancy only qua appellants in LPA but not qua others or all - Judgment in LPA No. 55 of 2010 held to be a judgment in *rem* butnot a judgment in *personam* - **Further held** - Though judgment in LPA No. 55 of 2020 is in *rem* but it is a matter of fact that while others were agitating their cause for redressal of their grievances, petitioners were banking upon the result of their litigation and it is not the case of petitioners that all of them had ever represented to the Corporation for redressal of their grievances - as per pleadings, petitioners for the first time, represented to the Corporation on 10th June, 2021 - Petitioners held to be entitled for benefit of promotion and further promotion from the due date on the basis of corrected seniority list benefiting them for promotion as Forest Guards as well as Deputy Rangers but their arrears restricted for three years prior to making their representation i.e. 3 years prior to 10.6.2021 and actual arrears of monetary benefits given to them w.e.f. 10.6.2018 - Petitions allowed. Title: Salig Ram & others vs. H.P. State Forest Development Corp Page-200

Constitution of India, 1950 – Article 226 - Petitioner joined the respondent-University as a Mortar Mate w.e.f. 03.03.1979 - His services were regularized w.e.f. 24.07.1996, as a Junior Technician (Work Inspector) - Petitioner was not considered for promotion against the post of Junior Engineer (Civil) because he was not fulfilling the eligibility criteria of having six months Departmental Training – He was sent to only three months training by the University - **Held** - The case of the petitioner was considered and rejected for promotion against the post of Junior Engineer (Civil) in the year 2014 - New Rules had come into force w.e.f. 16.01.2013 - It was incumbent upon the respondent–University, after said Rules came into force, to call upon the

petitioner to undergo further training of three months - Another option available with the respondent-University was to confer promotion to the petitioner against the post of Junior Engineer (Civil) subject to the condition of his undergoing further training of three months - None of the said options having been exercised by the respondent-University, the same could not have debarred the petitioner from being promoted to the post of Junior Engineer (Civil) - The petitioner superannuated in the year 2018 – Petition allowed to the extent that the respondent-University directed to hold a review DPC and consider the case of the petitioner for promotion against the post of Junior Engineer (Civil) as from the date when his name was rejected for want of six months Departmental Training Course - The name of the petitioner ordered to be considered on the strength of the certificate of three months departmental training course which he was possessing - If found eligible for promotion, petitioner ordered to be promoted to the post of Junior Engineer (Civil) without disturbing any other incumbent who stood promoted against said post - **Further held** - If found eligible, the petitioner be given notional benefits as from the date he is found fit for promotion by the DPC up to the date of his superannuation, and post superannuation, benefits be granted in actual by determining them as if the petitioner superannuated from the post of Junior Engineer (Civil). (Paras 3 to 8) Title: Mohan Lal vs. Chaudhary Sarwan Kumar, H.P. Krishi Vishav Vidalaya, Palampur and another Page-273

Constitution of India, 1950 – Article 226 - Seniority – Pay fixation –HP Public Service Commission issued Advertisement No.II of 2003 for posts of Assistant Engineers (Civil) out of which five posts were reserved for 'general ex-servicemen' and one for 'Scheduled Caste ex-serviceman' - Interviews were conducted on 6th, 7th and 8th January, 2004 - Names of candidates, including petitioner, were recommended -Controversy was raised regarding these recommendations - petitioner along-with another filed CWP No. 97 of 2004 – This CWP was disposed off by a Division Bench of Hon'ble High Court vide Judgment dated 22.4.2004 - Interviews to the posts were again conducted on 26th and 27th October, 2004 - petitioner was not recommended - Inclusion of names of three candidates, namely, Rakesh Kumar, Sumit Sood and Rakesh Rana was assailed by the petitioner by filing CWP-T No. 11665 of 2008 - one Bhushan Lal Sharma also filed CWP-T No. 6340 of 2008 - Rakesh Kumar did not join – Allegations against Sumit Sood remained unsubstantiated - Vide Judgment dated 3.10.2022 passed in CWP(T) Nos. 6340 and 11665 of 2008 the Hon'ble High Court quashed the appointment of Rakesh Rana as

Assistant Engineer in IPH Department – Subsequently, on completion of formalities, petitioner joined the Department as Assistant Engineer (Civil) - He submitted a representation dated 5.5.2014 for consideration of his case for consequential benefits at par with the Assistant Engineers (Civil) appointed on the basis of interviews held on 26th and 27th October, 2004 - Matter was referred to the Law Department - It was clarified that the Hon'ble High Court vide Judgment dated 3.10.2012 directed the respondent-State to call the names of next two meritorious candidates from the Commission and offer them appointment as Assistant Engineers, but no consequential benefits were granted to the petitioner from the year 2004-05 as such Administrative Department was advised that it may act further accordingly – Petitioner claimed entitlement for all consequential benefits from the date of appointment of other candidates from the same Select List, i.e. since November, 2004 - **Held -** Though petitioner is entitled for appointment since November, 2004, however, he has joined the service only in the year 2013 and he has not actually worked since 2004 to 2013 - It cannot be fair to extend him monetary benefits in actual, but he, definitely, deserves for notional consequential monetary benefit from November, 2004 till his joining for fixation of pay and increments and other benefits etc. but for all consequential benefits thereto on actual basis since his joining the service - However, he shall be entitled for all other benefits on actual basis including seniority, counting of service towards pensionary benefits and promotion if any on the basis of that – **Further held** - Petitioner shall be deemed to have been appointed alongwith other appointees under the appointment order dated 16.11.2004 and he shall be assigned a place of seniority in accordance with his placement in the order of merit in the Select List prepared by the Commission - Petition allowed. (Paras 19 to 21) Title: Ajay Sharma vs. State of H.P. Page-264

Constitution of India, 1950 – Article 226 - Services of all the petitioners were terminated by the respondents on 18.08.1987 on the ground that their JBT certificates were found fake and bogus - Petitioners instituted Original Application No. 346 of 1987 before the erstwhile Himachal Pradesh Administrative Tribunal - Termination of the services of the petitioners was held to be illegal and invalid vide order dated 26.09.1995 - Respondents were directed to reinstate the petitioners forthwith – State preferred Civil Appeal Nos. 7835-7842 of 1996 - Hon'ble Apex Court modified the judgment of the Tribunal vide order dated 09.12.1997 to afford opportunity of hearing to the

candidates – Subsequently, Inquiry Officer was appointed - Certificates possessed by the candidates were found false and fake - Petitioners and other similarly situated persons were prosecuted in the Court of learned Special Judge (F), Shimla for committing different offences – They were acquitted – Petitioners sought reinstatement on the basis of acquittal.

Held - There was no issue before the learned Trial Court regarding adjudication of genuineness of the JBT certificates possessed by the petitioners - Order of acquittal cannot be construed to mean that the JBT certificates of the petitioners were genuine – Petition dismissed. (Para 7) Title: Rajinder Kumar & Ors vs. State of H.P. & Ors. Page-223

Constitution of India, 1950 – Article 226 -Overpayment to Govt. Employee **-** Petitioner retired as Head Teacher on 30.09.2009 - Rs. 1,31,152/- were deducted from the payable GPF as overpayment – Respondent took plea that Rs.13942/- (Rs.9000 + 4942) in all were wrongly credited in petitioner's GPF account in 1984-85 and 1989-90 - This amount alongwith applicable interest worked out to Rs.1,31,152/- as on 30.09.2009 - **Held** - It is not the case of the respondents that the petitioner had misrepresented any facts to them - The GPF amount was being deducted by the respondents - The accounts thereof were being maintained by the respondents - In case, some error crept in maintaining the GPF amount of the petitioner during the years 1984-85 and 1989-90, the fault, if any, lay squarely on the respondents - It was for the respondents to have rectified the error at the appropriate time the respondents sought to correct their mistake during January 2010 - The exercise was undertaken after about 25 years from the date of alleged mistake and four months after petitioner's retirement - Apart from deducting the principal amount of Rs.13942/-, alleged to have been wrongly credited in petitioner's GPF account in the years 1984-85 and 1989-90 the respondents also added interest thereupon and arrived at the figure of Rs. 1,31,152/-, which they have deducted from the due and admissible GPF amount payable towards the petitioner - Such a recourse in the given facts was impermissible in law - Petition partly allowed and respondents directed to refund and release the withheld GPF amount alongwith interest @5% per annum. (Paras 4 to 6)Title: Jawahar Lal vs. State of H.P. & Ors. Page-230

Constitution of India, 1950 – Article 226– Petitioner was promoted as Sister Tutor from the post of Staff Nurse on 19.3.2001 - She took admission in

M.Sc. Nursing in Jiwaji University, Gwalior in 2009 - degree in M.Sc. Nursing was essential condition for being considered for promotion to the post of Lecturer – DPC was convened on 3.1.2013 - Petitioner was promoted as Lecturer in the Nursing College *vide* office order dated 10.1.2013 – Respondent no.4 filed CWP No. 1305 of 2013 and challenged the promotion of petitioner alleging that result of M.Sc. Nursing was declared after the DPC, so petitioner was not eligible for promotion – CWP was dismissed vide judgment dated 2.1.2014 - Another DPC was held on 3.5.2013 - Ms. Sunita Devi and Ms. Sangeeta were ordered to be promoted as Lecturer in December, 2013 - The promotion orders were challenged by respondent No.6 by way of CWP No. 8829 of 2013 - During the pendency of said writ petition, respondent No.1 withdrew the promotion orders of Ms. Sunita Devi and Ms. Sangeeta - Both of them assailed such order of withdrawal by way of CWP No.1450 of 2014 - Both the matters i.e. CWP No. 8829 of 2013 and CWP No. 1450 of 2014 were disposed of vide order dated 7.8.2014 with direction to constitute DPC - Review DPC was convened on 7.4.2015 – Recommendation of DPC dated 3.1.2013 in respect of the petitioner was also reviewed and modified to the extent that petitioner was held ineligible for promotion on 3.1.2013 on the ground that her marks-sheet for the final examination result of M.Sc. Nursing was issued on 26.2.2013.

Held - There was no direction for reviewing the recommendation of DPC dated 3.1.2013 in respect of the petitioner- **Further held** - The review DPC had no jurisdiction to sit over the judgment of the Court – The promotion of petitioner to the post of Lecturer in Nursing College vide order dated 10.1.2013 upheld - Respondents directed to treat the petitioner in the cadre of Lecturer w.e.f. 10.1.2013 and to allow her all consequential benefits. (Paras 14 to 17) Title: Kamla Tanwar vs. State of H.P. & others Page-214

Constitution of India, 1950 – Article 226– Seniority – Promotion – Delay and laches -Petitioner was appointed as Staff Nurse in the department of Health and Family Welfare on 03.03.1989 - She qualified B.Sc. Nursing Course during service from P.G.I. Chandigarh between 1994-1996 - The grievance of the petitioner was that respondents No. 3 and 4 were junior to her in the cadre of Staff Nurses and they had not even completed five years of service in the cadre but they were promoted as Sister Tutors before petitioner on 04.02.1998 – Petitioner filed representations on 09.09.1999 and 24.03.2001- She was finally promoted on 29.03.2001 – The seniority list issued in the year 2011 showed her junior to the respondents no.3 and 4 – Challenged – **Held** -

Petitioner was throughout aware of her placement in seniority list -The private respondents were promoted as Sister Tutor much prior to the petitioner - The petitioner had reasons to entertain any misgiving about her seniority position vis-a vis private respondents - The periodic circulation of seniority list of Senior Tutors belied the stand of the petitioner – Claim held to be barred by delay and laches – Petition dismissed. (Paras 11 to 17) Title: Amita Sareen vs. State of H.P. & others Page-251

Constitution of India, 1950 - Article 227 - Argument raised on behalf of petitioner that issuance of warrant of possession without providing opportunity of being heard to Judgment Debtor is illegal and is not sustainable - **Held** - Plea is factually incorrect - There is no illegality, irregularity or perversity in order passed by Executing Court to issue fresh warrant of possession with direction to police and Bailiff to assist and facilitate execution of warrant of possession - Petition dismissed. Title: Roshan vs. M/s Nayyar Mineral Export (P) Ltd. & others Page-16

Constitution of India, 1950 – Article 227 - **Held** – Superintending powers are only to check material illegality or irregularity – If the view taken by the Courts below is possible from the facts of the case and material before the Court, then the High Court should not interfere with such orders under Article 227 of the Constitution of India. (Para 6) Title: Rattan Lal vs. Basia Ram Page-22

Constitution of India, 1950 - Writ Jurisdiction- Article 226- Deputy Director of Elementary Education in ReckongPeo conducted interviews to fill the positions of Drawing Master, PET, and Shastri- Petitioners invited to interview for Scheduled Caste posts, were not considered for appointment due to the State Government's notification dated August 16, 2004, which mandates that Class-III and Class-IV posts be filled by local residents of Kinnaur- The constitutional validity of this notification was challenged- **Held**- Notification prescribing condition of residence while offering public employment in tribal areas against Class-III and Class-IV posts is not sustainable and accordingly deserves to be quashed and set-aside being contrary to the provisions contained in Article 16 (3) and Article 35 of the Constitution of India- Petitioners were qualified to be offered appointment from due date. (Paras 16 and 17) Title: Amit Kumar vs. State of H.P. & Ors. Page-312

Constitution of India, 1950 -Article 226 **-** Predecessor-in-interest of petitioners was displaced from West Pakistan during partition - He settled at

Shimla – CWP was filed by maternal grandmother of petitioners claiming relief of allotment of land or payment of compensation as alternative relief – The said CWP was disposed of with direction to the respondents to process and settle the claim of the petitioners within a period of two months – LPA of respondents was dismissed – Respondents sanctioned monetary compensation but did not allot land– Petitioners prayed for allotment of land in Shimla and compensation of Rs.5 crore -**Held** - When the prayer made by predecessor-in-interest of the petitioners was either for the allotment of land or compensation and the respondent authority has exercised its discretion and granted compensation and not land, the exercise of said discretion cannot be faulted with and the decision which has been taken by the competent authority to compensate the petitioners by way of award of compensation cannot be said to be bad in law – Petition dismissed. (Paras 6 to 9) Title: Chander Pal Singh and another vs. Union of India and others Page-182

Constitution of India, 1950- Article 226 - Petitioners challenged the denial of a revised pay scale - Contended that the delay in implementing the revised pay scale until January 1, 1994, created a pay anomaly, as other similarly positioned posts received the revised pay from 1986- **Held**- Refusal to grant the revised pay scale was arbitrary and violated the principle of equality under Article 14 of the Constitution of India- State actions must be rational, reasonable, and non-discriminatory-Revised pay scale was ordered to be applied retrospectively with associated benefits- Petition was allowed (Para 19) Title: Bharat Singh Kanwar & others vs. H.P. Tourism Development Corporation Ltd. & another Page-332

Constitution of India, 1950 –Article 226- Transfer order was challenged by the petitioner – **Held** - Both the petitioner as well as private respondent have not only feigned ignorance regarding the works and ethics of the Department but their conduct is otherwise not befitting the office they are holding, therefore, both of them are required to be posted/transferred out of their present place of posting, as granting an indulgence to any one of the parties would be causing manifest injustice to the other Engineers, who are desirous to serve in Shimla but have failed to get posting because of the cartel formed by the influential Engineers like the parties in the instant case – Petition disposed with direction to respondent No.1 to post one of the incumbents in District Lahaul & Spiti and other in District Kinnaur. (Paras 2 to 6) Title:

Rajesh vs. H.P. State Electricity Board Limited and others **(D.B.)** Page-188

Constitution of India,1950 – Article 226 - Petitioner challenged her non-consideration for promotion against the post of Principal from the due date - Review DPC was held - Petitioner was notionally promoted to the post in issue w.e.f. February, 2004 - Petitioner claimed actual benefits from the date of promotion - **Held** - Denial of promotion to the petitioner w.e.f. February, 2004 up to the date of passing of order of promotion, dated 12.09.2022, was on account of the acts of omission of the Department, the petitioner cannot be made to suffer for that - However, the petitioner approached the Court on 11th May, 2016 by way of Original Application No. 1930/2016 - Petitioner held entitled for notional benefits w.e.f. February, 2004 up to three years preceding the date of filing of the Original Application i.e 10th May 2013 - Actual monetary benefits ordered to be conferred after the said date - Post superannuation/pensionary benefits also ordered to be computed accordingly. Title: Ms. Manjushri Parmar vs. State of H.P. and others Page-10

Constitution of India,1950 – Articles 226 and 227 - Order of Assistant Collector 1st Grade, Divisional Commissioner and Financial Commissioner (Appeals) challenged mainly on the ground that objections filed before the Assistant Collector 1st Grade were not decided before accepting the mode of partition – **Held** - There are no objections on record and learned counsel for the petitioner also could not produce the copy of the objections filed before the Assistant Collector 1st Grade - inference drawn that no objections were filed before the Assistant Collector 1st Grade - Writ petition dismissed. Title: Narayan Singh vs. State of H.P. & others Page-4

Contempt of Court Act, 1971-Section 12 **- Industrial Disputes Act, 1947**-Section 25-F - Petitioner was part time sweeper in SBI- her services were terminated on 29.7.2005 - Central Government–cum-Labour Court, Chandigarh held the termination of petitioner to be bad in law – Award upheld by Learned Single Judge of the High Court – LPA was also dismissed - Petitioner was re-instated on 3.6.2022 – However, her services were again terminated on 26.8.2022 by offering her one month's salary and retrenchment compensation on the ground that the Bank had already outsourced housekeeping and maintenance services – Petitioner alleged that her services were terminated only to undo the effects of the judgment passed by the Court in her favour – **Held** - It cannot be said that a workman having once secured

his/her reinstatement by getting the retrenchment set-aside on account of violation of Section 25-F of the Act, the employer cannot subsequently retrench the workman after complying with the provisions as per law – Petition dismissed. (Para 12) Title: Puja vs. Vikas Negi & another Page-27

Contempt of Courts Act, 1971 – Section 12 - More than seven months were taken by the respondent-State to comply with the judgment passed by the Court despite an express mandamus to comply with the judgment forthwith-unconditional and unqualified apology tendered by the learned Additional Advocate General accepted - Contempt notice discharged - Petitioner permitted to join the post of Additional Commissioner, State Taxes & Excise, Grade-I forthwith, i.e., during the course of the day itself in terms of order dated 04.04.2023 and in the event of direction passed by the Court not being complied with, the same to amount to aggravating the contempt of the Court. Title: Rajeshwar Dayal Janartha vs. Shri Bharat Khera Page-1

'E'

Employee's Compensation Act, 1923-Respondent filed a petition seeking compensation under the Workmen's Compensation Act, on the ground that her husband was working as a Driver with the owner of vehicle and in the course of his employment he met with an accident leading to his death - **Held**-where owner of the vehicle admits that the owner and deceased shared a relationship of employer and employee then, the onus to prove the absence of such relationship is upon the insurance company. Title: Oriental Insurance Company Ltd. vs. Smt. Rattani Devi & another Page-427

Employees Compensation Act, 1923 – Section 22 - The deceased Sh. Santosh alias Ganpat Ram was a workman employed by respondent No.2 as a helper on JCB Machine - On 10.07.2008, the deceased was working on the JCB machine - Retaining wall of the road gave way, causing machine to roll down - Workman received fatal injuries and expired - Employer had purchased a policy of insurance for 15 workmen - Commissioner awarded compensation of Rs.4,36,940/- besides interest of Rs.1,04,870/- in favour of the claimant – Challenged - **Held** - No terms and conditions of the policy have been placed on record - The insurer/appellant is not justified in claiming the benefit of any exclusion clause – **Further held** - In absence of any details as to how many of 15 employees of insured were skilled and how many were unskilled workmen and as to what was the salary drawn by each of them, it cannot be assumed that the deceased Santosh alias Ganpat Ram was getting

salary less than Rs.4000/- **Further held**- The third and last contention raised on behalf of the insurer that the liability should have been fastened on respondent No.3 National Insurance Company Ltd. also deserves rejection for the reasons that it was for the claimant to have opted for claim of compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act – Appellant/insurer held liable to indemnify the insurer/employer - Appeal dismissed. (Paras 9 to 13) Title: New India Assurance Company Ltd. vs. Smt. Fulla Devi and others Page-299

'H'

H.P. Rent Control Act, 1987- Section 14(2)(i)-In an eviction petition on the ground of non-payment of rent, tenant contested the eviction petition, questioning the rate of rent- Arrears of rent were assessed by Rent Controller- This order of assessment was challenged in Revision- Meanwhile, he was evicted on the ground of non- payment of rent as assessed previously- this order of eviction was also challenged in Revision- **Held**- Tenant was under obligation to deposit the arrears of rent- Even though, the order was not acceptable to tenant and he had filed an appeal against the same but order of payment remained in existence and it was never stayed by any competent Court- once an order has been passed unless the same is set aside or stayed such order cannot be considered nonest- Since, order was not set aside, it has to be followed- Petition was set aside. (Para 33) Title: Jagdish Singh Pathania vs. Parshottam Kumar Page-377

H.P. Urban Rent Control Act, 1987 - Section 24(5) **- Code of Civil Procedure, 1908 -** Order 22 Rule 3 - Original landlord filed eviction petition on the ground of bonafide requirement of the premises for her son – Original landlord expired – Son applied for substitution on the basis of Will - Allowed by Rent Controller – Revision preferred by tenants - **Held** - No illegality committed by learned Court below while considering the applicant as one of the legal representative of original landlord Smt. Sudarshna Devi – Further held - Ground of bonafide requirement of premises did not cease to exist after the death of original landlord – Petition dismissed. (Paras 6, 11 to 23) Title: M/s Super Sanitation & Anr. vs. Smt. Sudarshana Devi & others Page-51

Himachal Pradesh Deputy Forest Rangers and Forest Guards Class-III(Executive Section) Recruitment, Promotion and certain Conditions of Service Rules, 1978- Service Matter –Promotion to the post of Deputy Forest Rangers-Seniority list of Forest Guards Criteria for amalgamation of Seniority

lists prepared at circle leave to prepare one Senior list-The respondent issued notification to prepare a Saniority list of Forest Guards on the basis of their merit in direct recruitment process for there promotion to the next post –The petitioners unsuccessfully challenged the same in the writ petition-Letter Patent Appeal- **Held**-Vide note (P) appended to 1978 Rules, it has been made crystal clear that a joint Seniority list of Forest Guards Chief Conservator has to prepase for the purpose of promotion to the posts of Deputy Forest Rangers on the basis of length of service in the grade-1978 Rules remained in force in respect of the Deputy Forest Rangers- Single Judge has committed error-Impugned communication is quashed and set aside –Appeal allowed. (Paras 18 and 24) Title: Sandeep Kumar & Ors. vs. State of H.P. & Ors. **(D.B.)** Page-447

Himachal Pradesh Urban Rent Control Act, 1987- Section 24(5) of the Act-Rent Controller directed eviction of tenant – Tenant made an appeal- Appellate Authority set aside the eviction order and remanded the case back to the Rent Controller to frame fresh issues and decide the matter afresh- Revision was filed by Landlord against this order- Tenant claimed that Revision petition was time barred- **Held**- Appellate Authority committed jurisdictional error in remanding the case- Remand Order was not sustainable under law- Petition was not time barred due to extension of limitation period by Supreme Court during covid pandemic. (Para 11 and 24) Title: Brahmin Sabha vs. M/s Beant Singh & sons Page-340

'I'

Indian Evidence Act, 1872 – Sections 45 and 112 - DNA test – Husband filed divorce petition against wife on grounds of cruelty and desertion – DNA test prayed alleging that marriage was consummated only once, whereas, the child was born even before eight months – Family Court dismissed the application – Revision filed - **Held** - The baby was born to the couple having access to each other and during subsistence of valid marriage between them - It is conclusive proof of baby's legitimacy - In such circumstances, the paternity of the child cannot be allowed to be ascertained in the manner sought by the petitioner (husband) - It is for the petitioner to prove his allegations of cruelty and desertion against the respondent (wife) on the strength of evidence adduced by him - He cannot be allowed to fill up the lacuna, if any, in his evidence by seeking to conduct the DNA test of the child and the parties – Revision Petition dismissed. (Para 5) Title: Anil Kapoor vs. Dipika Chauhan Page-38

Industrial Disputes Act, 1947 – Sections 25(F) and 25(G) - Petitioner was engaged as Beldar in Forest Department in the year 1991 – His services terminated orally in the year 1999 – Labour Court directed re-engagement of the petitioner alongwith seniority and continuity in service from the date of termination of services, except back wages – Award was challenged by the State - **Held** – Termination of the services of the petitioner was preceded by the workman having put in more than 240 days in the calendar year 1999 – Services of petitioner could have been terminated by following procedure prescribed in section 25(F) – This procedure was not followed – No notice was issued by the department to show that the workman had abandoned the job voluntarily - **Further held** - The petitioner had initially agitated his cause in the year 2006 which was wrongly rejected by the authority concerned and thereafter he subsequently took up the issue in the year 2010 - As the contention and grievance of the petitioner that persons junior to him were not only retained by the department but their services were subsequently regularized is a matter of record and further as the services of the workman were terminated by the department in the year 1999 in violation of the provisions of Sections 25(F) and 25(G) of the Industrial Disputes Act, therefore, it cannot be said that the industrial dispute had ceased to exist - No force in the contention that the dispute raised by the workman was barred by delay and laches – Petition dismissed. (Paras 11 to 13) Title: State of H.P. & others vs. Sh. Desh Raj Page-171

'L'

Land Acquisition Act, 1894 – Section 18 - State Government issued notification under Section 4 of the Land Acquisition Act, 1894 for acquiring land measuring 0-41-23 hectares in Village Alyana, Tehsil Sarkaghat, District Mandi, H.P. for construction of Sarori-Rissa Road - Land Acquisition Collector, HP PWD, Mandi offered market value of Rs. 13,166.20 for entire land proposed to be acquired vide award dated 7.12.1995 – Respondents filed separate reference petitions - Reference petitions were decided by learned Additional District Judge, Mandi vide award dated 19.8.2011 - Compensation was reassessed at the rate of Rs. 31.30 per square meters for land irrespective of its classification - The benefit of consortium and interest under Sections 23 (1)(a), 28 and 34 of the Act was also awarded- RFA(s) filed - **Held** - The learned Reference Court was not right in assessing the market value of exemplar sale deed, which was executed after about eleven months from the date of issuance of notification under Section 4 of the Act - Except exemplar sale deed Ext. PW-

1/A, the learned Reference Court did not place reliance on any other evidence for assessment of market value of the land - Impugned awards set aside and the matters remanded back for decision afresh. (Paras 10 to 13) Title: Principal Secretary, PWD & others vs. Mehar Chand & others Page-306

Land Acquisition Act, 1894- Section 11- Determination of Market value of land-Land was acquired by State for public purposes under Section 4 of the Land Acquisition Act- Land Acquisition Collector determined the market value of the acquired land on the basis of category and classification- The assessed market value was challenged- Reference was made by the parties- A uniform flat rate was decided by the Reference Court- State preferred an appeal against the award passed by Reference Court- **Held** - It is well settled that at the time of determining market value of land for acquisition, the purpose for which the land is acquired, is relevant, and not nature and classification of land- Market value of the land is to be determined as a single unit irrespective of nature and classification of the land-Uniform rate to all kinds of land under acquisition must to be awarded (Para 7) Title: The Land Acquisition Collector & others vs. Kirna Devi & another Page-506

Land Acquisition Act, 2013-Right of Petitioner to get the claim on construction of road on their land 23 years ago – **Held** – Legal position regarding construction of road on the land of private individual is well settled in Sukh Dutt Ratra and Another vs. State of Himachal Pradesh and Others, 2022 (7) SCC 508 and respondents cannot be deprived of property, without due process of law – Neither land of the petitioners acquired nor compensation paid – Respondent deprived of the property without due process of law – Petition dismissed. (Paras 13 & 14) Title: State of H.P. & Others vs. Hem Raj Mehta & Others **(D.B.)** Page-484

'N'

Negotiable Instruments Act, 1881- Section 148- Petitioner was convicted by trial court for commission of offence punishable under section 138- Appellate Court suspended the sentence subject to deposit of 40% of compensation amount- Challenged as excessive - **Held** - Though the quantum of compensation amount to be deposited for suspension of sentence is in the realms of discretion of the First Appellate Court, however, the discretion has to be exercised judiciously and in accordance with the provisions of the Act - Counsel for the petitioner highlighted the fact that the petitioner had suffered

badly in his business during COVID-19 pandemic – Order passed by the First Appellate Court modified and petitioner directed to deposit 25% of the compensation amount awarded by the Trial Court, within a period of four weeks. Title: Devi Lal vs. Punjab National Bank Page-68

'P'

Protection of Children from Sexual Offences Act, 2012- Section 4 of POCSO read with Section 376 of IPC- Victim made an allegation in FIR that Penetrative Sexual Assault was committed against her by accused. According to her version, as stated in FIR, her neighbour had helped her when he found her running back towards her home after the alleged offence. However, during recording of statements under Section 164 of Cr. PC, she took a complete U-turn and alleged that her neighbour had committed the alleged offence against her. Victim and her parents made self- contradictory statements during the whole criminal proceeding. However, one DNA profile obtained from underwear of victim had completely matched with the DNA profile obtained from blood sample of one accused- **Held**- When there are material contradictions in the statement of prosecution witnesses coupled with lack of cogent evidences, benefit of doubt must be given to accused persons. Mere match of DNA profile cannot be made the basis of conviction. Conviction was set aside and accused persons were acquitted. (Paras 28 and 29) Title: Neeraj vs. State of Himachal Pradesh Page-417

'S'

Societies Registration Act, 1860-Writ Jurisdiction-The National Horticulture Board (NHB), set up by the Indian government in 1984, provides credit-linked back-ended subsidies for horticulture projects. The petitioners applied for subsidies to set up apple packing and grading units- After completion of projects, petitioners requested the release of subsidies following joint inspections by their respective banks and NHB. The joint inspection teams recommended subsidy releases, but noted some minor civil works needed completion- NHB rejected the subsidy claims, arguing that timely completion was mandatory, and any deviation would lead to rejection. The petitioners contended that delays were minor and caused by necessary administrative processes and adverse weather condition-**Held**- NHB failed to take into consideration the Joint Inspection Reports in right perspective and was swayed away by observations of the Joint Inspection Team, which were with respect to trivial and insignificant work in nature- Rejection of subsidy was arbitrary, unreasonable, irrational and contrary to Norms and Rules

applicable in field- Petition was allowed and release of subsidy was directed. Title: Sudhir Khimta vs. Union of India & others Page-491

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'I'

Imtiyaz Ahmad Malla Vs. State of Jammu & Kashmir Special Leave Petition (C) No. 678 of 2021;

Indian Oil Corporation Limited Vs. Kerala State Road Trading Corporation, (2017) 14 Scale 30: (1018) 12 SCC 518;

'K'

Kanti Devi v. Poshi Ram [(2001) 5 SCC 311];

Kasthuri Radhakrishnan and others v. M. Chinniyan and another, (2016) 3 SCC 296;

Krishnan and another Vs. Krishnaveni and another, (1997) 4 SCC 241;

'L'

LAC and another Vs. Bhoop Ram and others, 1997 (2) SLC 229;

'M'

Madan Mohan Singh v. Ved Prakash Arya, (2021) 5 SCC 456;
Madan Mohan vs. Krishan Kumar Sood 1994 Suppl. (1) SCC 437;
Mahmood Kurdeya Vs. Narcotic Control Bureau (2022) 3 RCR (Criminal) 906;

Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218;

'N'

National Insurance Company Ltd. Vs. Pranay Sethi & others (2017)16 SCC 680;
Nitish Adhikary @ Bapan Vs.The State of West Bengal (Special Leave to Appeal (Cr.L.) No (s). 5769 of 2022;

'O'

Om Parkash v. Ganga Ram, Latest HLJ 2001 (HP) 161;
Om Prakash Vs. The Director Postal Services, AIR 1973 PH 1;

'P'

Pawan Kumar & Kamal Bhardwaj vs. State of H.P., latest HLJ 2008 (HP) 1150;
Peerappa Hanmantha Harijan (Dead) by Legal Representatives and others Vs. State of Karnataka and Another, (2015) 10 SCC 469;
Pilla Sitaraman Patrudu and others Vs. Union of India and others, AIR 1997 SC 250;

Prem Lal versus Soma Devi, 2020(1) RCR(Rent) 371;

'R'

Raghubeer Singh versus Hargopal Sood and others, 2018(1) RCR (Rent) 387;

Rajendra Tiwary v. Basudeo Prasad and another, (2002) 1 SCC 90;
Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation 2002(1) RCR 514;
Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230;

Robin Singh Mehta & others Vs. State of H.P. and others and connected matter, 2021 (1) Him L.R. (DB) 225;

'S'

Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40;

Santosh Chaturvedi v. Kailash Chandra and another, (2020) 16 SCC 672;

Satish Kumar & another v. Jagat Ram, 2020(1) RCR 0442 (HP);

Secretary, Minor Irrigation and Rural Engineering Services, U.P. and others vs. Sahngoo Ram Arya and another (2002)5 SCC 521;

Shakuntla Bai and others versus Narayan Das and others, AIR 2004 SC 3484;

Sukh Dutt Ratra & Another vs. State of H.P. & Others, (2022) 7 SCC 508;

Shankar Dass Vs. Union of India and another (1985) 2 SCC 358;

Sheela Suryavanshi vs. State Of H.P. & Ors., 2020 Labour Industrial Cases 3907;

Shub Ram & others Vs. State of Haryana and another 2010 (1) SCC 444;

Smt. Gulabi and etc. Vs. State of H.P. (AIR 1998 HP 9);

Smt. Surinder Kaur v. Mohinder Pal Singh, ILR (1975) 5 HIM. 620;

Sri Chand (Dead) through Legal Representatives v. Surinder Singh, (2020) 6 SCC 288;

State of Madhya Pradesh & Ors. vs. Ramesh Chandra Bajpai (2009) 13 SCC 635;

State of Maharashtra vs. Digambar (1995) 4 SCC 683;

State of Haryana Vs. Balwant Singh, (2003) 3 SCC 362;

State of Karnataka and others vs. C. Lalitha, (2006)2 SCC 747;

State of Punjab vs. Central Bureau of Investigation and others, reported in(2011)9 SCC 182;

State of Uttar Pradesh vs. Arvind Kumar Srivastava (2015)1 SCC 347;

State of West Bengal vs. Committee for Protection of Democratic Rights (2010)3 SCC 571;

Sudarshan Kumar Vs. State of Himachal Pradesh and another, 2010 (Supp) Him L.R. 2401;

Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and others vs M. George Ravishekaran and others (2014) 3 SCC 373;

Sunil Kumar Soni Versus State of Rajasthan and others SLP(C) No.27633/2017;

Surinder Singh Deswal and others Versus Virender Gandhi (2019) 11 SCC 341;

Sushil Kumar Singhal Vs. Regional Manager, Punjab National Bank, (2010) 8 SCC 573;

'U'

Union of India and another Vs. Tulsiram Patel, (1985) 3 SCC 398;

Union of India and others vs. C. Girija and others, (2019) 15 SCC 633;

Union of India and others, reported in (2013)10 SCC 611;

Union of India Vs. Harinder Pal Singh and others 2005 (12) SCC 564;

Union of India Vs. P.D. Yadav, (2002) 1 SCC 405;

Union of India Vs. Subrata Nath and 7941-7942 Subrata Nath Vs. Union of India Civil Appeal Nos. 7939-7940 of 2022;

Union of India vs. Tarsem Singh, (2008)8 SCC 648;

Uttaradi Mutt v. Raghavendra Swamy Mutt, (2018) 10 SCC 484;

'V'

Vidya Devi vs. State of H.P. & Others, (2020) 2 SCC 569;
Viluben Jhalejar Contractor (Dead) by LRs. Vs. State of Gujarat, (2005) 4 SCC 789;

****

BEFORE HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.

Rajeshwar Dayal Janartha

....Petitioner.

Vs.

Shri Bharat Khera

.....Respondent.

For the petitioner: Mr. Shrawan Dogra, Senior Advocate, with M/s Bharat Thakur, Harsh Kalta and Tejasvi Dogra, Advocates.

For the respondents: M/s Tejesvi Sharma, Pushpender Jaswal and Baldev Negi, Additional Advocate Generals, with Mr. Gautam Sood, Deputy Advocate General.

COPC No. 36 of 2023

Date of Decision: 05.04.2023

Contempt of Courts Act, 1971 – Section 12 - More than seven months were taken by the respondent-State to comply with the judgment passed by the Court despite an express mandamus to comply with the judgment forthwith- unconditional and unqualified apology of the officer concerned tendered by the learned Additional Advocate General accepted - Contempt notice discharged - Petitioner permitted to join the post of Additional Commissioner, State Taxes & Excise, Grade-I forthwith, i.e., during the course of the day itself in terms of order dated 04.04.2023 and in the event of direction passed by the Court not being complied with, the same to amount to aggravating the contempt of the Court.

The following judgment of the Court was delivered:

Ajay Mohan Goel, Judge *(Oral):*

Learned Additional Advocate General has handed over a copy of the instructions dated 04.04.2023, so imparted to him by the Principal Secretary (ST & E) to the Government of Himachal Pradesh, alongwith which,

order dated 04.04.2023, passed by the Principal Secretary (ST & E) to the Government of Himachal Pradesh has been appended. Last paragraph of this order reads as under:-

> *"Now, therefore, in compliance to the judgment passed by Hon'ble High Court, Himachal Pradesh in CWP No. 3466/2021 dated 22nd August, 2022 and COPC No. 36/2023 dated 4th April, 2023, review DPC was held on 04.04.2023 in which the sealed cover of Sh. Rajeshwar Dayal Janartha, Additional Commissioner, State Taxes and Excise, Gr-II was opened and he was found fit and recommended for promotion. Therefore, Sh. Rajeshwar Dayal Janartha, Additional Commissioner, State Taxes & Excise, Grade-II is promoted to the post of Additional Commissioner, State Taxes & Excise, Grade-I w.e.f. 25th March, 2021 with all consequential benefits, including monetary and seniority."*

2. On the strength of the order which now stands passed by the Principal Secretary (ST & E) to the Government of Himachal Pradesh, learned Additional Advocate General submits that as the judgment dated 22nd August, 2022, passed by this Court now stands complied with, therefore, it will be in the interest of justice in case the present proceedings are ordered to be closed.

3. Learned Senior Counsel appearing for the petitioner submits that the order, which learned Additional Advocate General has made available to the Court, has not yet been served upon the petitioner, who is present in the Court in person.

4. The judgment was passed by this Court in the case on 22nd August, 2022. The limitation for preferring Letters Patent Appeal against the judgment passed in a Writ Petition by the Single Judge is 30 days. The limitation to seek review of the judgment passed by the High Court is 30 days. In the present case, none of the statutory remedies available to the aggrieved party were availed by the respondents. Yet, more than seven months stand

taken by the respondent-State to comply with the judgment passed by the Court. This is despite the fact that there was an express mandamus issued by the Court to comply with the judgment forthwith.

5. Learned Additional Advocate General submits that unconditional and unqualified apology of the Officer concerned be taken on record and he also assures that in future, the judgments of the Court shall be implemented in letter and spirit.

6. Though the Court is not satisfied that delay in implementation of the judgment is *bonafide*, yet the unconditional and unqualified apology tendered by the learned Additional Advocate General is accepted and the present proceedings are ordered to be closed by discharging the notice.

7. The petitioner shall be permitted to join the post of Additional Commissioner, State Taxes & Excise, Grade-I forthwith, i.e., during the course of the day itself in terms of order dated 04.04.2023 and in the event of this direction being passed by the Court not being complied with, the same would amount to aggravating the contempt of the Court. Consequential benefits be positively released in favour of the petitioner within a period of six weeks from today. Copy of order dated 04.04.2023, which was handed over by the learned Additional Advocate General to the Court stands handed over to learned Senior Counsel for the petitioner and the petitioner can join his duties on the strength of said order.

BEFORE HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.

Narayan Singh ....Petition

Versus

State of H.P. and others ...Respondents.

For the petitioner: Mr. Desh Raj Thakur, Advocate.

For the respondents: M/s Jitender Sharma, Tejesvi Sharma, Pushpender Jaswal and Baldev Negi, Additional Advocate Generals, with Mr. Gautam Sood, Deputy Advocate General, for respondents No. 1 to 4.

Mr. Jagat Paul, Advocate, for respondents No. 5 to 10.

CWP No. 2146 of 2018
Decided on: 03.04.2023

Constitution of India,1950 – Articles 226 and 227 - Order of Assistant Collector 1st Grade, Divisional Commissioner and Financial Commissioner (Appeals) challenged mainly on the ground that objections filed before the Assistant Collector 1st Grade were not decided before accepting the mode of partition – held - there are no objections on record and learned counsel for the petitioner also could not produce the copy of the objections filed before the Assistant Collector 1st Grade - inference drawn that no objections were filed before the Assistant Collector 1st Grade - writ petition dismissed.

The following judgment of the Court was delivered:

Ajay Mohan Goel, Judge *(Oral):*

By way of this writ petition, the petitioner has, *inter alia*, prayed for the following reliefs:-

> *"(i) That the impugned order dated 30.05.2012 contained in Annexure P-3, order dated 31.12.2014 contained in Annexure P-4, order dated 28.04.2016 contained in Annexure P-5 and impugned order dated 28.07.2018 contained in Annexure P-7 passed by the respondents No. 1 to 4 may kindly be quashed and set aside.*
>
> *(ii) That the respondents may kindly be directed to re-partition the land in dispute after taking into consideration the possession of the present petitioner on spot."*

2. Brief facts necessary for the adjudication of the present petition are that partition proceedings were initiated at the behest of Shri Hans Raj, Binder and Kali Ram for partition of land comprised in Khata Khatauni No. 231/359, Khasra No. 278, total measuring 2-18 Bigha, situated in Moza Kolar, Tehsil Paonta Sahib, District Sirmaur, H.P. The petitioner was also a co-sharer. The grievance of the petitioner started with the passing of order dated 30.05.2012 (Annexure P-3) in partition Case No. 84/10, titled as *Hans Raj Vs. Narayan Singh and others*, in terms whereof, the partition effected at the spot on the basis of Mode of Partition prepared, was accepted by the Assistant Collector, 1st Grade, Paonta Sahib, purportedly without deciding the objections so raised against the same by the present petitioner. In terms of the order which was passed by the Assistant Collector, 1st Grade (Annexure P-3), no written objections were raised against the partition proceedings by the present petitioner.

3. Feeling aggrieved by this order, the petitioner preferred a Revision Petition under Section 17 of the Himachal Pradesh Land Revenue

Act. This petition was dismissed by the Collector, Sub-Division, Paonta Sahib, District Sirmaur, H.P. vide order dated 31.12.2014, in which, *inter alia*, it was held by the authority concerned that the main plea of the petitioner was that he had purchased land abutting the roadside, but in partition his possession was disturbed and he was not given land which he had purchased, but as in the course of partition, alongwith possession of the parties, quality of land has to be kept in mind, therefore, in terms of the record, the land abutting the roadside stood equitably divided between the parties as per their respective shares and further, the partition was effected by the Authority below in a proper manner.

4. Feeling aggrieved by this order, the petitioner again preferred an appeal under Section 17 of the Himachal Pradesh Land Revenue Act before the Divisional Commissioner, Shimla Division, Shimla, which was dismissed in terms of order dated 28.04.2016. While dismissing the Revision Petition, learned Divisional Commissioner, Shimla Division, Shimla while reiterating that the partition was carried out as per law, further held that in the case in hand, the Mode of Partition was prepared after hearing the parties and the same was not challenged by the parties and had become final. Learned Court further held that Assistant Collector 1st Grade after duly considering the report of the Field Revenue Agency and the contentions of the parties had passed the order sanctioning the partition on 30.05.2012 and the partition stood concluded with the drawing up of *"Sanand Takseem"*. Learned Court further held that it was settled law that if no appeal was preferred against the Mode of Partition, then no appeal was maintainable against the final order, as the same was passed in execution of what already stood determined by the Mode of Partition, provided there was no infraction of the sanctioned Mode of Partition. Learned Court also held that it found no illegality or irregularity in the orders passed by the learned Court below and accordingly, it dismissed the revision petition.

5. Feeling aggrieved, the petitioner again preferred a Revision Petition before the Financial Commissioner (Appeals), i.e., Revision Petition No. 159/2017, titled as *Shri Narayan Singh Vs. Shri Om Parkash and others*, which was decided by the learned Financial Commissioner on 28.07.2018. Learned Financial Commissioner while upholding the order passed by the learned Authorities below held that the main contention of the petitioner was that he had purchased 0-2 Biswas land abutting the road which was in his possession since the time of its purchase, whereas record of the Courts below revealed that the petitioner had purchased 1/29th share from one Smt. Rani Rattni, measuring 0-2 Biswas. Learned Financial Commissioner further held that there was nothing on record from which it could be established that the petitioner had purchased a particular portion of Khasra No. 278, which was under partition. Learned Financial Commissioner further held that perusal of the record of learned Courts below demonstrated that petitioner was entitled to 24/116 shares and he had been allotted 0-12 Biswa land as per his entitlement. Learned Financial Commissioner also held that as far as possession over particular portion was concerned, there was only one Khasra No. 278 (2-18 Bigha) under partition and in case any of the co-sharers was in possession of more area than his entitlement, he could not be allowed to retain the excess share and in such an eventuality, possession of such co-sharers would necessarily be disturbed.

6. Feeling aggrieved, the petitioner has filed the present petition.

7. Learned counsel for the petitioner has submitted that the orders passed by all the authorities are not sustainable in the eyes of law, as the same have been passed by the learned authorities below without deciding objections which were filed by the present petitioner before the Assistant Collector 1st Grade. On this count, learned counsel for the petitioner has

submitted that the present petition is liable to be allowed and the impugned orders are liable to be quashed and set aside. No other point was urged.

8. The petition is opposed by learned Additional Advocate General as also learned counsel for respondents No. 5 to 10 on the ground that no objections whatsoever were filed by the petitioner before the Assistant Collector 1st Grade and the boggy of objections having been filed has been raised by the petitioner before all the authorities, stood belied by the fact that there are no objections on record in the file of the Assistant Collector 1st Grade filed by the petitioner, as alleged. Learned counsel for respondents No. 5 to 10 has further submitted that otherwise also there is no infirmity in the findings which have been returned by the authorities below and as in exercise of its power of judicial review, this Court will not sit as an Appellate Court and as no procedural irregularity stood pointed out in the impugned orders, the present petition being devoid of any merit be dismissed.

9. I have heard learned counsel for the parties and have also gone through the impugned orders as also the record which stood requisitioned by the Court.

10. The main premise of the present petitioner, as has been argued by the learned counsel for the petitioner is that the order passed by the Assistant Collector 1st Grade (Annexure P-3) is bad in law, as the same was passed without appreciating the objections filed by the petitioner before the said authority. Learned counsel for the petitioner has drawn the attention of the Court to order dated 10.04.2012 and submitted that there is a categorical recital in this order that Shri N.L. Parwal, learned counsel who was representing the present petitioner had filed his Power of Attorney and objections and if thereafter, the objections were misplaced or lost before the Assistant Collector, 1st Grade, Paonta Sahib, the petitioner cannot be made to suffer for the said acts of omission of the office. This Court while perusing the record of the office of learned Assistant Collector 1st Grade has minutely gone

through all the documents. Though it stands recorded in order dated 10.04.2012 that Shri N.L. Parwal has produced his *Vakalatnama* and "his objection is produced", but on record, there is no objection filed before the said authority by the present petitioner. Learned counsel for the petitioner was also called upon by this Court to place on record a copy of the objections, if any, actually filed before the learned Assistant Collector 1st Grade, but the same could not be done. From this, the only inference which can be drawn is this that in fact no objections were filed before the Assistant Collector 1st Grade and taking benefit of what stood recorded in order dated 10.04.2012, the plea of boggy of objections was raised by learned counsel for the petitioner not only before this Court, but before all the authorities below. Otherwise also, this Court having gone through the orders passed by the authorities below finds no infirmity or procedural irregularity in the same, because the partition in fact had been carried out in metes and bounds and the reasoning which has been given by learned Financial Commissioner while justifying the orders passed by the learned authorities below is plausible.

11. Accordingly, in view of the observations made hereinabove, as there is no merit in the present petition, the same is dismissed. Interim orders, if any, stand vacated.

BEFORE HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.

Ms. Manjushri Parmar ....Petitioner.

Versus

State of H.P. and others ...Respondents.

For the petitioner: Mr. Ajay Sharma, Senior Advocate, with Ms. Kavita Kajal, Advocate.

For the respondents: M/s Jitender Sharma, Tejesvi Sharma, Pushpender Jaswal and Baldev Negi, Additional Advocate Generals, with Mr. Gautam Sood, Deputy Advocate General.

CWPOA No. 7317 of 2019
Decided on: 12.04.2023

Constitution of India,1950 – Article 226 - Petitioner challenged her non-consideration for promotion against the post of Principal from the due date - Review DPC was held - Petitioner was notionally promoted to the post in issue w.e.f. February, 2004 - Petitioner claimed actual benefits from the date of promotion - **Held** - Denial of promotion to the petitioner w.e.f. February, 2004 up to the date of passing of order of promotion, dated 12.09.2022, was on account of the acts of omission of the Department, the petitioner cannot be made to suffer for that – However, the petitioner approached the Court on 11th May, 2016 by way of Original Application No. 1930/2016 - Petitioner held entitled for notional benefits w.e.f. February, 2004 up to three years preceding the date of filing of the Original Application i.e 10th May 2013 - Actual monetary benefits ordered to be conferred after the said date - Post superannuation/pensionary benefits also ordered to be computed accordingly.

The following judgment of the Court was delivered:

Ajay Mohan Goel, Judge *(Oral):*

By way of present writ petition, the petitioner has, *inter alia*, prayed for *the following reliefs:-*

> *"(i) That respondents may kindly be directed to consider and allow appropriate place to the applicant in the seniority list of Principals alongwith other persons and promote her from due date, i.e., February, 2004 when applicant passed departmental examination with all consequential benefits of pay, seniority etc. etc.*
>
> *(iii) Respondents may kindly be further directed to consider and fix the pay of the applicant accordingly and then submit fresh case to Accountant General for allowing new pension with directions to Accountant General also to decide the said case within the shortest possible time as is deemed fit by this Hon'ble Court and respondents may be directed to release arrears of pension also per new fixation of pension alongwith interest @ 9% p.a. in the interest of justice."*

2. The petitioner had approached the erstwhile learned Himachal Pradesh Administrative Tribunal by way of Original Application No. 1930 of 2016, which was filed before the learned Tribunal on 11th May, 2016. After abolition of the learned Tribunal, the same was transferred to this Court and presently it stands registered as CWPOA No. 7317 of 2019.

3. The grievance of the petitioner is with regard to her non-consideration for promotion against the post of Principal from the due date despite the fact that she was fulfilling all the requisite criterion and was otherwise also eligible for promotion in terms of her seniority.

4. When this case was listed on 08.03.2022, the following order was passed:-

> *"Mr. Sumesh Raj, learned Additional Advocate General has informed the Court that as per his instructions, the*

Department is proposing review DPS in the case of the petitioner and formalities in this regard, which include informing the Himachal Pradesh Public Service Commission also are underway. On his request, the case is ordered to be listed on 28.03.2022, by which date, by way of a short affidavit, the Court shall be informed as to whether review DPC has been held and if not, then what steps have been taken by the Department to convene the same at the earliest.

5. This was followed by the passing of order dated 07.09.2022, which reads as under:-

"The report of the Review DPC has been produced before the Court in a sealed cover. The sealed cover was opened in the Court itself and the proceedings of the Review DPC stand perused by the Court.

The Recommendations of the DPC demonstrate that the petitioner has been recommended for promotion to the post of Principal (School Cadre) (Class-1-Gazetted), in the pay scale of Rs.2850-4375 (pre-revised), on notional basis against an unreserved vacancy available in the year 2004 and falling to the share of Lecturer (School) category under 40% promotion quota, in the Department of Higher Education to the Government of Himachal Pradesh.

In view of the recommendations of the DPC, before the matter is heard any further, the case, as prayed for, is ordered to be listed after four weeks, so as to enable the State to implement the recommendations of the DPC and place the order on record. The proceedings of the DPC stand returned to Mr. Vikrant Thakur, learned counsel appearing for the Public Service Commission in the sealed cover itself.

As prayed for, the matter is ordered to be listed on 19.10.2022, on which date State may place on record the order of implementation of recommendation of the DPC."

6. On 19.10.2022, this Court passed the following order:-

"Learned Additional Advocate General submits that notification dated 12th September, 2022 stands issued by the Principal Secretary (Education), Government of Himachal Pradesh, in terms whereof, the petitioner has been ordered to be promoted on notional basis w.e.f. February 2004 against the post of Principal (School Cadre), Class-1 (Gazetted).

On the request of learned vice counsel appearing for the petitioner, list on 28th October, 2022."

7. On 28.10.2022, the following order was passed:-

"Learned Senior Counsel appearing for the petitioner has submitted that though the petitioner has now been granted promotion w.e.f. February, 2004, however, the same has been ordered to be on notional basis, whereas as the petitioner was denied promotion on the date on account of the acts of the respondent-Department, the petitioner is entitled for actual benefits post grant of promotion from the date when the petitioner was legally entitled for promotion.

Learned Additional Advocate General submits that let the matter be taken up after four weeks, so that the Court can be properly assisted on this issue. Ordered accordingly.

As prayed for, list after four weeks."

8. Learned Senior Counsel for the petitioner has argued that the stand of the petitioner stands vindicated by the fact that the respondents have now promoted the petitioner w.e.f. February, 2004 as Principal (School Cadre) (Class-1 Gazetted). He further submitted that as the denial of promotion to the petitioner was on account of the acts of omission of the Department, therefore, the petitioner cannot be made to suffer for the lapses of the Department and act of the Department of giving notional benefits to the petitioner w.e.f. February, 2004 is bad, as she is entitled for actual benefits as from the said date.

9. Learned Additional Advocate General has submitted that there was no *malafide* on the part of the respondents in denying the promotion to

the petitioner, which stands established from the fact that it is the Department itself which proceeded with the case of the respondents and a review DPC was held, in terms whereof, the petitioner stands notionally promoted to the post in issue w.e.f. February, 2004. He further submitted that as the petitioner has not performed the duties of Principal till the passing of promotion order, which was passed in the year 2022, therefore, she is not entitled for actual benefits w.e.f. February, 2004.

10. Having heard learned Senior Counsel for the petitioner as also learned Deputy Advocate General, this Court is of the considered view that as denial of promotion to the petitioner w.e.f. February, 2004 up to the date of passing of order of promotion, dated 12.09.2022, was on account of the acts of omission of the Department, the petitioner cannot be made to suffer for that. The State cannot take the excuse that because the petitioner has not performed the duties of the post of Principal, therefore, she cannot claim actual benefits w.e.f. February, 2004. However, taking into consideration the fact that the petitioner approached the Court on 11th May, 2016 by way of Original Application No. 1930/2016, this Court is of the considered view that interest of justice would be served in case the petitioner is held entitled for notional benefits w.e.f. February, 2004 up to three years preceding the date of filing of the Original Application, which after abolition of the learned Tribunal stands transferred to this Court. Ordered accordingly.

11. This writ petition is disposed of with the direction that the petitioner is held entitled to notional benefits against the post of Principal (School Cadre) (Class-1 Gazetted) w.e.f. 2004 up to 10th May, 2013 and thereafter actual monetary benefits shall stand conferred upon her. It goes without saying that her post superannuation/pensionary benefits shall also be computed accordingly. In the event of the arrears which now became accruable to the petitioner in terms of the order passed by the Court today being paid to the petitioner within a period of three months from today, no

interest shall accrue thereupon, but in case the arrears are not paid within three months from today, then the same shall entail simple interest @ 6% per annum from the date of passing of this judgment till actual payment. Miscellaneous applications, if any, also stand disposed of.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Roshan …Petitioner

Versus

M/s Nayyar Mineral Export (P) Ltd. & others
…Respondents.

For the Petitioner: Mr. Varun Chandel, Advocate.

For the Respondent: No.1. Mr. Mukul Sood, Advocate for respondent

Respondents No. 2, 3(a) to 3(d), 4 to 6 are ex-parte and respondent No.7 stands deleted vide order dated 24.8.2021.

CMPMO No. 748 of 2019
Date of decision: 31st March, 2023

Constitution of India, 1950 - Article 227 - Argument raised on behalf of petitioner that issuance of warrant of possession without providing opportunity of being heard to Judgment Debtor is illegal and is not sustainable - **Held** - Plea is factually incorrect - There is no illegality, irregularity or perversity in order passed by Executing Court to issue fresh warrant of possession with direction to police and Bailiff to assist and facilitate execution of warrant of possession - Petition dismissed.

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge

Petitioner has approached this Court assailing the orders dated 7.8.2019 and 23.10.2019 passed by Senior Civil Judge, Nurpur, District

Kangra in Execution Petition No. 33 of 2016, titled M/s Nayyar Mineral Export (P) Ltd. vs. Kishore and others.

2. Respondent No.1 is Decree Holder and petitioner and proforma-respondents are Judgment Debtors as they/their predecessors-in-interest have suffered judgment and decree dated 1.3.2008 passed by the Civil Judge (Senior Division), Nurpur in Civil Suit No. 165 of 2003 which has been affirmed by Additional District Judge-I Kangra vide judgment and decree dated 2.8.2010, passed in Civil Appeal No. 28-N/2008 titled Kishore and others vs. M/s Nayyar Minerals Export (P) Ltd.

3. Time barred Regular Second Appeal, preferred by Judgment Debtors, was dismissed by this High Court, vide order dated 15.6.2018, with dismissal of application filed for condonation of delay CMP(M) No. 49 of 2017 titled Kishore and others vs. M/s Nayyar Minerals Export (P) Ltd.

4. After affirmation of judgment and decree by Additional District Judge vide judgment dated 2.8.2010, Decree Holder preferred Execution Petition No. 33 of 2016 on 17.8.2016 wherein present petitioner was Judgment Debtor No.1 and he along with other Judgment Debtors except Judgment Debtor No.7 Parsino Devi, was served for 23.11.2016, whereas at that time, Judgment Debtor No. 7 Parsino was reported to have expired. Thereafter, on 18.1.2017, it was informed that Judgment Debtor Pushpa Devi had also expired. On that day, Execution Petition was adjourned for filing reply on behalf of Judgment Debtors except Judgment Debtor Pushpa Devi and Judgment Debtor Parsino, who were reported to have expired. On that day, Decree Holder was also directed to file appropriate application on account of their death.

5. Execution Petition remained pending and was listed in Court on 18.3.2017, 17.5.2017, 7.6.2017, 2.8.2017, 13.9.2017, 8.11.2017, 20.12.2017, 7.2.2018, 21.3.2018, 30.5.2018, 18.7.2018, 29.8.2018, 26.9.2018,

28.11.2018, 16.1.2019, 5.2.2019, 4.4.2019, 30.5.2019, 15.6.2019 and 17.7.2019.

6. Application under Order 22 Rule 4 CPC for substitution of Pushpa Devi and application under Order 1 Rule 10 CPC for deletion of name of Parsino Devi were filed on 17.5.2017. Legal representatives of Judgment Debtor Pushpa Devi namely Mohan Lal (husband) and Pawan Kumar (son) were served but they did not appear and proceeded ex-parte on 8.11.2017. However, Judgment Debtor Anu Bala and Pinki Devi, daughters of deceased Pushpa Devi, were not served despite the fact that they were daughters of Mohan Lal and sisters of Pawan Kumar, who were duly served. Ultimately, Decree Holder filed an application under Order 5 Rule 20 CPC and Judgment Debtors Anu Bala and Pinki Devi were served by way of publication for 4.4.2019 but for absence on the date fixed for their presence in Court, they were proceeded ex-parte.

7. On 30.5.2019 to avoid the unnecessary delay in execution of impugned judgment and decree, matter was referred for conciliation to Lok Adalat to be held on 15.6.2019 but on that day, for absence of Judgment Debtors, conciliation failed and case was again listed in Court.

8. In aforesaid background, case was listed on 7.8.2019 before Senior Civil Judge on which date impugned order was passed by Senior Civil Judge allowing the applications under Order 22 Rule 4 CPC and Order 1 Rule 10 CPC and warrant of possession was also issued.

9. Vide impugned order dated 7.8.2019, Judgment Debtor Parsino was permitted to be deleted as her legal heirs were already on record as Judgment Debtors No. 1 to 6. Judgment Debtor No.3 was ordered to be substituted through her husband Mohan Lal, son Pawan Kumar and daughters Anu Bala and Pinki Devi being legal representatives of deceased Pushpa Devi. On that day, Senior Civil Judge also observed that more than three years have already passed after filing of Execution Petition but till that

time appearing Judgment Debtors did not prefer objections and, therefore, he ordered to execute the decree by issuing warrant of possession for 25.9.2019.

10. No ground has been made out for assailing deletion of Judgment Debtor Parsino Devi and substitution of legal representatives of Judgment Debtor Pushpa Devi on account of death of three Judgment Debtors. However, learned counsel for petitioner has contended that by not granting time for filing objections and issuing warrant of possession, Senior Civil Judge has violated principles of natural justice and therefore, he submits that this order warrants interference as according to him matter was being adjourned for service of parties especially service of legal heirs of deceased sister of petitioner and matter remained pending in Lok Adalat and therefore, petitioner could not maintain follow-up with his counsel as he was not aware about filing of objections, moreover his counsel also could not communicate properly and for lack of knowledge or proper intimation, petitioner could not file response/objections and therefore, he is entitled for opportunity for filing the objections.

11. Petitioner/Judgment Debtor No.1 was served for 23.11.2016 and on 18.1.2017 time was granted to file reply on behalf of appearing Judgment Debtors. Petitioner was one of them but he did not prefer to file reply/objections to Execution Petition till 2019. He along with others was being duly represented by Advocate. Other Judgment Debtors have not preferred to contest the order dated 7.8.2019 and it appears that they have accepted the order and it is only the petitioner who has assailed order dated 7.8.2019.

12. Petitioner/Judgment Debtor, alongwith others, has suffered a decree on 1.3.2008 for possession by demolishing the structure raised. Appeal preferred by him and others was dismissed on 2.8.2010. Thereafter, Judgment Debtors did not assail the judgment and decree, and even after service in Execution Petition in the year 2016, they remained silent till 2017

and thereafter preferred CMP(M) No. 49 of 2017 after seven years of affirmation of judgment and decree passed by Additional District Judge. The said appeal was dismissed along with application on 15.6.2018. Even thereafter, Judgment Debtor-petitioner did not opt to file any objection/reply to Execution Petition. Judgment Debtors were being represented by Advocate and Judgment Debtor – Petitioner was contesting the suit since its inception in the year 2003. Petitioner had approached the High Court, consulted and engaged the counsel in High Court. He was aware about impact of decree passed against him and he had been taking all steps to frustrate the decree passed against him. He was well conversant with procedure of the Court. Therefore, it does not lie in the mouth of petitioner that he was not having proper communication with his counsel and, therefore, he, for lack of knowledge and information, could not file objection/reply to Execution Petition for three years. In aforesaid facts and circumstances, I do not find any error, illegality or perversity in impugned order dated 7.8.2019.

13. For execution of decree passed on 1.3.2008, warrant of possession vide order dated 7.8.2019 was issued after 11 years, returnable on 25.9.2019. On 25.9.2019 warrant of possession was not received back and therefore, reminder was sent to concerned quarter for reporting on 23.10.2019.

14. On 23.10.2019, warrant of possession was received back unexecuted with report that same could not be executed for want of police assistance and presence of Bailiff for the purpose of handing over the domestic article on Supurdari. Therefore, in view of report, fresh warrant of possession was ordered to be issued along with direction to concerned SHO for providing police assistance, and Bailiff of Court was also directed to assist the Executing Agency in execution of warrant of possession and matter was listed for report on 11.12.2019. Thereafter, present petition was preferred and vide order dated 20.11.2019 execution of orders dated 7.8.2019 and

23.10.2019 was stayed. Petitioner has suffered a decree whereby Decree Holder has been held entitled for vacant possession of land by way of demolition of structure. The decree was passed on 1st March, 2008 and Execution Petition was filed in 2016. Petitioner, alongwith others, was served for 23.11.2016. On 18.1.2017, specific order was passed directing Judgment Debtors to file reply and warrant of possession was issued by Senior Civil Judge on 7.8.2019, after about three years of filing of Execution Petition. During this period, Judgment Debtor did not opt to file any objection/reply to petition. Otherwise also, even in present petition, there is not even a whisper about objection proposed to be raised by Judgment Debtor against execution of decree. Only arguments raised on behalf of petitioner is that issuance of warrant of possession without providing opportunity of being heard to Judgment Debtor is illegal and is not sustainable. This plea is factually incorrect as per observations made herein-above, on the basis of material placed on record and when warrant of possession was received back without execution with report that it could not be executed without help or assistance of police and Bailiff. There is no illegality, irregularity or perversity in order passed by Executing Court to issue fresh warrant of possession with direction to police and Bailiff to assist and facilitate execution of warrant of possession.

In view of above, I find no merit in this petition and petition is accordingly dismissed. Needless to say that interim order passed in this petition also stands vacated.

BEFORE HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.

Rattan Lal ....Petitioner

Versus

Basia Ram ...Respondent

For the petitioner : Mr. Naresh K. Sharma, Advocate.

For the respondents : Mr. Umesh Kanwar, Advocate.

CMPMO No. 251 of 2020
Decided on: 24.03.2023

Constitution of India, 1950 – Article 227 - **Held** - Superintending powers are only to check material illegality or irregularity – If the view taken by the Courts below is possible from the facts of the case and material before the Court, then the High Court should not interfere with such orders under Article 227 of the Constitution of India. (Para 6)

Code of Civil Procedure, 1908 - Order 39, Rule 4– Trial Court passed status quo order in application for temporary injunction – Defendant applied for modification of the order – Application was dismissed by trial court – Defendant went in appeal - Appeal was also dismissed – Defendant filed petition under Article 227 - **Held** - Petitioner raised construction despite the status quo order - The endeavour of the petitioner by filing application under Order 39, Rule 4 CPC was only to circumvent the order passed by learned Trial Court on the application filed under Order 39, Rules 1 and 2 – Petition dismissed. (Paras 5 & 6)

The following judgment of the Court was delivered:

Ajay Mohan Goel, Judge*(Oral)*

By way of this petition filed under Article 227 of the Constitution of India, the petitioner has challenged the orders passed by learned Trial Court as well as learned Appellate Court, in terms whereof, an application filed by the petitioner under Order 39, Rule 4 of the Code of Civil Procedure, for modification of the order dated 17.03.2017, passed by learned Trial Court on an application filed under Order 39, Rules 1 and 2 of the Code of Civil Procedure, was dismissed as also the appeal filed by the petitioner against the said order.

2. Brief facts necessary for the adjudication of the present petition are that the respondents-plaintiffs filed a suit against the petitioner-defendant for permanent injunction for restraining the defendant from raising any construction over the suit land *inter alia* on the ground that the suit land is joint and yet not partitioned. Alongwith the suit, an application under Order 39, Rules 1 and 2 of the Code of Civil Procedure was also filed by the plaintiffs, which application was disposed of by the learned Trial Court in terms of order dated 17.03.2017 whereby the parties were directed to maintain status quo qua the nature, possession and construction over the suit land. Record demonstrates that this was an *ex parte* order passed by the learned Trial Court as the defendant despite service did not appear before the Court at the time of hearing of the application. This order was passed on 17.03.2017. Record further demonstrates that neither any application was filed by the petitioner for recalling this *ex parte* order nor the same was assailed under Order 43 of the Civil Procedure Code. Be that as it may, after about two years, the petitioner filed an application under 39 Rule 4 of the Code of Civil Procedure, copy whereof is appended with the petition as Annexure P10, seeking modification of order passed by the learned Trial Court dated

17.03.2017 *inter alia* on the ground that the construction of four lane road from Kiratpur to Nerchowk had damaged the residential house of the petitioner and even the remaining part thereof was in a dilapidated condition which was not habitable. Accordingly, a prayer was made for modification of order dated 17.03.2017 passed by learned Trial Court to the effect that the petitioner/ defendant be allowed to raise construction of a residential house thereupon.

3. This application was resisted by the plaintiffs and in terms of order dated 29.06.2019, learned Trial Court dismissed the application by holding that the ingredients of Order 39, Rule 4 of the Code of Civil Procedure, were not satisfied by the petitioner/applicant.

4. In appeal, learned Appellate Court, in terms of order dated 28.12.2019, while upholding the order passed by learned Trial Court, dismissed the appeal, by observing that the appellant therein was making an endeavour to make a case of hardship by invoking the provisions of Order 39, Rule 4 of the Civil Procedure Code but the same was not convincing. Learned Appellate Court held that no material was brought on record to demonstrate the acquisition-removal of some portion of the property of the appellant after the filing of the written statement. Learned Appellate Court also held that the applicant had not specified any place/places in particular where he intended to raise the construction and even if the suit land was believably part of big chunk of land, some part thereof was falling in front of the road also. Learned appellate Court also observed that the manner in which the variation/modification was being sought, if allowed, was likely to be misused to the disadvantage of the plaintiffs and the Court was not in a position to make precise assessment where the proposed construction was likely to be carried out, and therefore, no blanket permission, as was being sought by the appellant, could be granted as the same would render the order passed by learned Trial Court under Order 39, Rules 1 and 2 as redundant.

4. Feeling aggrieved, the petitioner has filed this petition.

5. Before the Court addresses the present petition on merit, it is relevant to refer to the conduct of the petitioner during the pendency of the present proceedings. As is evident from the above narration of the facts, here is a case where learned Trial Court, in its wisdom, in the application filed under Order 39, Rules 1 and 2 of the Code of Civil Procedure, on 17.03.2017, directed the parties to maintain status quo qua the nature, possession and construction over the suit land. Till date, this order is in force. Yet, during the pendency of the present proceedings, the petitioner indulged in carrying out construction over the suit land which is evident from various orders which have been passed by the Hon'ble Coordinate Bench of this Court. This Court is of the considered view that this conduct of the petitioner clearly demonstrates that the petitioner has scant regard for the majesty of law, and in fact, during the pendency of these proceedings under Article 227 of the Constitution of India, he has taken law in his own hands by overreaching the status quo order passed by learned Trial Court, which has attained finality.

6. Be that as it may, having heard learned Counsel for the parties and having gone through the orders passed by learned Courts below, this Court is of the considered view that there is no infirmity in the orders so passed by the learned Courts below. In exercise of the powers so conferred upon this Court under Article 227 of the Constitution of India, this Court is not to act as an appellate Court and if the view taken by the learned Courts below is the view which is possible from the facts of the case and material before the Court, then the High Court is well advised not to interfere with such orders in exercise of powers so conferred upon it under Article 227 of the Constitution of India. Superintending powers are only to check material illegality or irregularity and as already mentioned hereinabove, it is not as if some appellate power stands conferred upon this Court under Article 227 of the Constitution of India. Having carefully gone through the contents of the

application filed under Order 39, Rule 4 of the Code of Civil Procedure by the present petitioner before the learned Court below as well as the reply filed thereto and the orders passed by both the learned Courts below, this Court has no hesitation in holding that the endeavour of the petitioner herein, by way of filing application under Order 39, Rule 4 of the Code of Civil Procedure, was only to circumvent the order which was passed by learned Trial Court on the application filed under Order 39, Rules 1 and 2, dated 17.03.2017. In the said background, both the learned Courts below have rightly dismissed the application under Order 39, Rule 4 of the Code of Civil Procedure as well as the appeal filed by the present petitioner.

In view of above discussion, this petition being devoid of merit is dismissed. Pending miscellaneous applications, if any, also stand disposed of accordingly.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Puja .....Petitioner

Versus

Vikas Negi and another .....Respondents

For the petitioner: Mr.Karan Kapoor, Advocate.

For the respondents: Mr. B.C. Negi, Senior Advocate with Mr. Arvind Sharma, Advocate, for respondents No. 1 and 2.

COPC No. 316 of 2022
Reserved on: 01.04.2023
Decided on: 19.04.2023

Contempt of Court Act, 1971-Section 12 **- Industrial Disputes Act, 1947**- Section 25-F - Petitioner was part time sweeper in SBI- her services were terminated on 29.7.2005 - Central Government–cum-Labour Court, Chandigarh held the termination of petitioner to be bad in law – Award upheld by Learned Single Judge of the High Court – LPA was also dismissed – Petitioner was re-instated on 3.6.2022 – However, her services were again terminated on 26.8.2022 by offering her one month's salary and retrenchment compensation on the ground that the Bank had already outsourced housekeeping and maintenance services – Petitioner alleged that her services were terminated only to undo the effects of the judgment passed by the Court in her favour – **Held** - It cannot be said that a workman having once secured his/her

reinstatement by getting the retrenchment set-aside on account of violation of Section 25-F of the Act, the employer cannot subsequently retrench the workman after complying with the provisions as per law – Petition dismissed. (Para 12)

Cases referred:

Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and others vs M. George Ravishekaran and others (2014) 3 SCC 373;

The following judgment of the Court was delivered:

Satyen Vaidya, Judge.

By way of instant petition, the petitioner has approached this Court for initiating proceedings, against respondents, under the Contempt of Courts Act with the allegation that they have willfully and deliberately disobeyed the judgment/order dated 26.02.2022 passed by this Court in LPA No. 258 of 2012, titled as State Bank of India and another vs. Puja.

2. Brief facts necessary for adjudication of the petition can be summed up as under:

(i) The petitioner worked as sweeper in New Shimla branch of State Bank of India (for short, 'the bank') from 6.9.2000 to 29.7.2005, on payment of Rs. 50 per day. She was not allowed by the bank to work with effect from 29.7.2005. Petitioner had raised an industrial dispute under the Industrial Disputes Act, 1947 (for short, 'the Act') against the bank alleging *inter-alia* termination of her services to be in violation of Section 25-F of the Act with further prayer to reinstate her in service with all consequential benefits.

(ii) Appropriate authority on 22.01.2007 had referred the dispute raised by petitioner to Central Government–cum-Labour Court, Chandigarh (for short, 'the Tribunal') under Section 10 of the Act in following terms:

"Whether the action of the management of State Bank of India, Shimla in terminating the services of Smt. Pooja, Part Time Sweeper w.e.f. 29.7.2005 is illegal and unjustified? If so, to what relief the concerned workman is entitled to and from which date?"

(iii) Learned Tribunal held the termination of petitioner to be bad in law on the grounds that no prior notice or one month's pay in lieu of notice and retrenchment compensation was paid to her by the bank before terminating her services. It was also held that the petitioner had served for five years and the refusal on part of the Bank to abruptly bring to an end her services was violative of principles of natural justice and provisions of the Act. Learned Tribunal answered the reference in in favour of petitioner and granted relief in following terms:

> *"Wherever, termination of any workman is declared illegal and void on account of being against the provisions of the I.D.Act, 1947, there are two options to remedied the violation of rights of workman. The first option is reinstatement of the workman on the same post from which she was terminated and another is reasonable compensation. It is settled principle of service jurisprudence that the order of reinstatement should not be casual but priority should be given for reinstatement of the workman. If the conduct of the management in this reference is to be seen, it is apparently clear that management refused to have any relation with the workman and to prove its wrong and illegal contention, the management has tried to take the benefits of the cheques which were given to the workman through a contractor. The workman has served for more than five years and I am of the view that reinstatement of the workman on the position she was working immediately prior to her termination is the only appropriate remedy.*

Accordingly, the management is directed to reinstate the workman with all consequential benefits within one month from the date of publication of the workman. Central Government be approached for publication of the award, and thereafter, file be consigned to record room."

(iv) The Bank assailed the award passed by learned Tribunal before this Court by way of CWP No. 663 of 2011, which came to be decided by learned Single Judge of this Court vide judgment dated 29.3.2012. Learned Single Judge upheld the award passed by learned Tribunal in the following terms:

"10. It is thus evident that the workman was working with the management. She was being paid Rs.50/- per day by the management from petty cash. Thus, it is established that there was master-servant relationship between the workman and management. She was paid Rs.700/- separately by the contractor for operating generator. The management has not disputed before the learned trial Court that she has completed 240 days as observed by the learned Presiding Officer. MW-1 Mr. P.C. Heer, as noticed above, has admitted that the workman was neither issued any notice nor paid any compensation. Since the workman had completed 240 days, her services could not be terminated without complying with the mandatory provisions of Section 25 of the Industrial Disputes Act, 1947.

11. Consequently, there is no illegality or perversity in the award. The same is reasoned and based on correct appreciation of oral as well as documentary evidence. This Court will not interfere with the award.

> *12. Accordingly, in view of the observations and analysis made hereinabove, there is no merit in the petition and the same is dismissed. Pending application(s), if any, also stands disposed of. There shall, however, be no order as to costs."*

(v) Noticeably, the continuation of service of petitioner with the Bank was protected by the interim orders dated 23.2.2011 and 3.6.2011 passed in CWP No. 663 of 2011.

(vi) The Bank assailed the judgment dated 29.3.2012 passed by learned Single Judge in CWP No. 663 of 2011 by preferring Letters Patent Appeal No.258 of 2012, which came to be decided by a Division Bench of this Court (in which I was one of the Members) vide judgment dated 26.2.2022,judgment passed by learned Single Judge of this Court in CWP No. 663 of 2011 as also the award passed by learned Tribunal were affirmed while dismissing the Letters Patent Appeal of the Bank.

(vii) The judgment passed by Division Bench of this Court in LPA No. 258 of 2012 attained finality as the Bank did not assail it further. On 3.6.2022, the Bank showed the compliance to the award passed by learned Tribunal as affirmed by this Court and issued a communication to the petitioner in following terms:

> *"In compliance with the final judgment of Hon'ble High Court of Himachal Pradesh in above case, we would like to inform you that your services, as per order of CGIT, Chandigarh dated 07.09.2010, has been reinstated status quo."*

(viii) On 26.8.2022, the Bank again terminated the services of petitioner by offering her one month's salary and retrenchment compensation under Section 25-F of the Act on the

ground that the Bank had already outsourcedhousekeeping and maintenance services and, therefore, the services of petitioner were not required and could not be continued.

3. According to petitioner, the issuance of letter dated 26.8.2022 by the Bank to petitioner is contemptuous being in violation of the award dated 7.9.2010 passed by learned Tribunal and further affirmed by this Court in LPA No. 258 of 2012. It is alleged that the respondents have intentionally and deliberately violated the judgment passed by this Court. It has been contended on behalf of the petitioner that the plea raised regarding outsourcing of housekeeping and maintenance services as reason for retrenchment of petitioner is not available to the Bank at this stage as no such plea was raised by the Bank either before the Tribunal or this Court. During the entire litigation, the Bank had sought to defeat the claim of the petitioner on the ground that she was not the employee of the Bank and was an outsourced employee of a contractor employed by the Bank.

4. Per contra, the respondents have contested the claim of the petitioner on the grounds that *firstly*, no case for contempt is made against the respondents as they have not violated any order/judgment passed by this Court. *Vide* award dated 7.9.2010 passed by learned Tribunal as affirmed by this Court, the rights of petitioner, arising out of her previous retrenchment in the year 2005, were adjudicated and there was no caveat/injunction upon the Bank to not to retrench the petitioner in future in accordance with law and *secondly*, the Bank has genuine inability to continue the service of petitioner for the reason that the Bank had since long back outsourced its housekeeping and maintenance services to different contractors.

5. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

6. Before adverting to the facts and issue involved herein, it is necessary to be reminded of the duty cast upon this Court while exercising the contempt jurisdiction and reference can be made to the following dictum in

Sudhir Vasudeva, Chairman and Managing Director, Oil and Natural Gas Corporation Limited and others *versus* ***M. George Ravishekaran and others***reported in **(2014) 3 SCC 373**:

> *"19.The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the judgment or the order violation of which is alleged. Only such directions which are explicit in a judgment or order or are plainly self-evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot be reopened; nor the plea of equities can be considered. Courts must also ensure that while considering a contempt plea the power available to the Court in other corrective jurisdictions like review or appeal is not trenched upon. No order or direction supplemental to what has been already expressed should be issued by the Court while exercising jurisdiction in the domain of the contempt law; such an exercise is more appropriate in other jurisdictions vested in the Court, as noticed above. The above principles would appear to be the cumulative outcome of the precedents cited at the bar, namely, Jhareswar Prasad Paul and Another vs. Tarak Nath Ganguly and others (2002) 5 SCC 352, V.M.Manohar Prasad vs. N. Ratnam Raju and Another (2004) 13 SCC 610, Bihar Finance Service House Construction Cooperative Society Ltd. vs. Gautam Goswami and Others (2008) 5 SCC 339 and Union of India and Others vs. Subedar Devassy PV (2006) 1 SCC 613".*

7. Now, adverting to the facts of the case, the crux of submissions made on behalf of the petitioner is that the respondents by retrenching the petitioner w.e.f. 26.8.2022 have willfully overreached the judgment secured by petitioner in her favour, whereby the award passed by learned Tribunal directing her reinstatement with all consequential benefits was affirmed by this Court. The aforesaid action of the respondents has been alleged to be in clear violation of the judgment passed by this Court in LPA No. 258 of 2012. As per the petitioner, her retrenchment by way of communication dated 26.8.2022 is only to undo the effects of the judgment passed by this Court in her favour.

8. As noticed above, the petitioner was earlier retrenched in the year 2005. She raised an industrial dispute and a reference was made by the appropriate Government to the learned Tribunal. The reference was to adjudicate on the legality of the termination of services of petitioner w.e.f. 29.7.2005 and in case the termination was found to be illegal, to ascertain the extent of relief to be granted to the petitioner.

9. Petitioner secured the verdict in her favour and learned Tribunal after answering the reference in favour of the petitioner directed the Bank to reinstate the services of the petitioner with all consequential benefits. This award was ultimately affirmed firstly by learned Single Judge and thereafter by a Division Bench of this Court. Thus, the entire earlier adjudication was on the legality of the retrenchment of the petitioner effected by the Bank w.e.f. 29.7.2005.

10. Retrenchment is defined in Section 2 (oo) of the Act as under:

> "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include –
>
> (a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health."

11. Section 25-F of the Act, provides for conditions precedent to retrenchment of workmen as under:

"**25-F. Conditions precedent to retrenchment of workmen**.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay (for every completed year of continuous service) or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government (or such authority as may be specified by the appropriate Government by notification in the Official Gazette)."

12. Thus, there is no mandate of law that a workman cannot be retrenched. The only caveat is as prescribed under Section 25-F of the Act. It also cannot be said that a workman having once secured his/her reinstatement by getting the retrenchment set-aside on account of violation of Section 25-F of the Act, the employer cannot subsequently retrench the workman after complying with the provisions as per law.

13. In the facts of instant case, there was no direction from this Court to the Bank to continue the employment of petitioner till a particular period or not to retrench her in future. Even by implication such inference cannot be drawn from the judgment of this Court. It being so, the contention raised on behalf of the petitioner cannot be countenanced. The respondents cannot be held to have violated any judgment/order or direction of this Court.

14. Another contention, raised on behalf of the petitionerthat the groundsassigned vide communication dated 26.8.2022 for retrenchment of petitioner itself suggest the will and intent of respondents to undo the effects of judgment passed by this Court, also requires rejection. Petitioner has now been retrenched for the reason that the bank has outsourced housekeeping and maintenance services since long and in such view of the matter the services of petitioner were not required in New Shimla Branch of the Bank. The legality of the retrenchment order dated 26.8.2022 issued by the Bank cannot be tested in these proceedings. On a pointed query to learned counsel for the petitioner, it was informed that the petitioner has not undertaken any legal remedy against her alleged illegal retrenchment. Noticeably, even in the earlier litigation, the Bank had denied relationship of employer and employee with the petitioner. It was the case of the bank, though held otherwise, that petitioner was an employee of the contractor to whom the Bank had awarded certain works.

15. In view of above discussion, it cannot be said that respondents have willfully and intentionally violated any judgment, order or direction of this Court. In result, the petition fails and the same is dismissed.

Petition is accordingly disposed of so also pending miscellaneous application(s), if any.

BEFORE HON'BLE MS. JUSTICE JYOTSNA REWAL DUA, J.

Anil Kapoor .....Petitioner

Versus

Dipika Chauhan .....Respondent

For the Petitioner: Mr. Sudhir Thakur, Senior Advocate with Mr. Karun Negi, Advocate.

For the Respondent: Mr. Peeyush Verma and Mr. Ajay Kumar, Advocates.

Civil Revision No.66 of 2022
Reserved on: 24th March, 2023
Decided on: 1st April, 2023

Indian Evidence Act, 1872 – Sections 45 and 112 - DNA test – Husband filed divorce petition against wife on grounds of cruelty and desertion – DNA test prayed alleging that marriage was consummated only once, whereas, the child was born even before eight months – Family Court dismissed the application – Revision filed - **Held** - The baby was born to the couple having access to each other and during subsistence of valid marriage between them - It is conclusive proof of baby's legitimacy - In such circumstances, the paternity of the child cannot be allowed to be ascertained in the manner sought by the petitioner (husband) - It is for the petitioner to prove his allegations of cruelty and desertion against the respondent (wife) on the strength of evidence adduced by him - He cannot be allowed to fill up the lacuna, if any, in his evidence by seeking to conduct the DNA test of the child and the parties – Revision Petition dismissed. (Para 5)

Cases referred:

Ashok Kumar Versus Raj Gupta and others(2022) 1 SCC 20;
Aparna Ajinkya Firodia Versus Ajinkya Arun FirodiaSLP(C) No.9855/2022;

Bhabani Prasad Jena v. Orissa State Commission for Women [(2010) 8 SCC 633;
Dipanwita Roy v. Ronobroto Roy [(2015) 1 SCC 365;
Ashok Kumar Versus Raj Gupta and others (2022) 1 SCC 20;
Kanti Devi v. Poshi Ram [(2001) 5 SCC 311];

The following judgment of the Court was delivered:

Jyotsna Rewal Dua, Judge

In the divorce proceedings pending between the petitioner (husband) and the respondent (wife) under Section 13(1)(ia) and (ib) of the Hindu Marriage Act, the husband moved an application for conducting Deoxyribonucleic Acid (DNA) test of the child and the parties. This application was dismissed by the learned District Judge (Family Court), Shimla, H.P. on 07.04.2022. The petitioner seeks to assail this order in the instant petition.

2. Relevant facts:-

2(i). In October, 2018, the petitioner instituted petition under Section 13(1)(ia) and (ib) of the Hindu Marriage Act against his wife (respondent). Decree of Divorce was prayed for on the grounds of cruelty and desertion.

2(ii). The husband pleaded that marriage between the parties was solemnized on 19.05.2015. After the marriage, the petitioner and respondent lived together as husband and wife. They consummated their marriage only once on 21.07.2015. The baby was born to the respondent (wife) within eight months, on 14.03.2016. After the birth of the child, the respondent had stayed for a period of 11 days at petitioner's home and then demanded separate residence at Shimla. The husband further submitted in the petition that the respondent

(wife) had herself told himabout the child not belonging to him. Some relevant paras from the petition are as under:-

> *"4. That marriage of parties has been consummated once on 21st July 2015 and baby to the marriage was born on 14-03-2016 before eight months, therefore the Petitioner is requesting to the Ld Court for the DNA test of the parties, especially as the respondent herself had stated to the Petitioner that the child does not belong to the Petitioner.*
>
> *5. That the Respondent had only stayed for the period of 11 days at Petitioner home after birth of baby and then demanded from the Petitioner separate flat at Shimla which was refused by the Petitioner as the Petitioner has old age parents to be taken care off and was not in a condition to purchase flat.*
>
> *13. That the respondent was pregnant from some other men/stranger during the marriage with the petitioner and she had affair with someone else as she used to send text message to the Petitioner stating that "I Don't like You". The petitioner will produce the proof at the time of evidence.*
>
> *14. That the situation had become so worse that once when he visited the house in Shimla there was one man whose name not known to petitioner was present inside the bedroom of the respondent and at that time the Respondent asked the Petitioner that why he had come to her house without any prior information, thereafter many times when Petitioner visited her house the same person/stranger was always present inside the house and when the Petitioner tried to ask to the respondent she used to say to the petitioner that you are not my husband and neither the child belongs to you. Thereafter the Petitioner did not go to the house in Shimla from past near about two years and they both are living separately.*
>
> *15. That the respondent has deserted the petitioner without any reasonable and justifiable cause and rhyme and hence it has become impossible for the petitioner to live more in the company of the respondent therefore, the*

petitioner is entitled for a decree of divorce on the grounds of cruelties and desertion."

2(iii). In her reply to the petition, the respondent, inter alia, denied the allegations of having ever stated to the petitioner about the child not belonging to him. She also denied that the parties did not cohabit as husband and wife.

2(iv). The petitioner (husband) moved an application under Section 45 of the Indian Evidence Act with the prayer to carry out DNA test of the child and the parties. The application was with the averment that the respondent (wife) had repeatedly informed the petitioner about the baby child not belonging to him. To determine the paternity of the child and to establish that the child did not belong to him, the DNA test of the child and parties was essential. The respondent (wife) opposed the application and denied the allegations of the petitioner (husband).

2(v). Learned Family Court vide its order dated 07.04.2022, considered the fact that:- the evidence had already been led by both the parties; the divorce petition was at the stage of final arguments; the allegations of cruelty and desertion levelled by the husband were to be proved by him and that belated filing of the application by the husband seeking DNA test would impinge upon the privacy of minor child. Learned Family Court also observed that the child, in the instant case, was born during subsistence of the marriage between the petitioner and the respondent, therefore, it would not be appropriate for the Court to allow DNA test of the child and the parties. The application was dismissed, giving cause of action to the petitioner (husband) to institute the present civil revision.

3. Submissions:-

Learned Senior Counsel for the petitioner-husband submitted that the husband had taken the plea of adultery in the divorce petition. His specific case was that the parties had consummated the marriage only once, that too on 21.07.2015, whereas the child was born even before eight months, i.e. on 14.03.2016. In these circumstances, petitioner's prayer for DNA test of the child and parties was justified. In support of his submissions, learned Senior Counsel placed reliance upon the decisions rendered by the Co-ordinate Benches of this Court in ***Cr.MMO No.198 of 2016 (Sharda Versus Surat Singh)*** and ***CMPMO No.11 of 2013 (Arvinder Singh Versus Smt. Anuradha Chauhan)***, decided on 18.04.2017 and 19.09.2016, respectively. Reference was also made to the judgment passed by the Hon'ble Apex Court in ***(2022) 1 SCC 20 (Ashok Kumar Versus Raj Gupta and others)***. The emphasis in the arguments advanced by learned Senior Counsel for the petitioner was that to unearth the truth and in order to do complete justice between the parties, the DNA test of the child and the parties to the litigation was essential.

Learned counsel for the respondent (wife) defended the impugned order. Pointing out the pleadings of the petitioner in the divorce petition, learned counsel submitted that the plea of denial of access to the wife had not been taken by the petitioner. The parties had been living as husband and wife. The husband had sought decree of divorce on grounds of cruelty and desertion. No specific allegations of adultery were pleaded in the petition. The petitioner had levelled allegation about the child not being his by merely projecting that the

respondent (wife) had told him so. This allegation was refuted by the wife in her defence. The parties had led evidence. In evidence also, the petitioner (husband)did not deny having access to the respondent (wife). Rather, his statement was to the effect that he had been visiting his wife in Shimla every weekend. The child was born to the couple during subsistence of a valid marriage. Therefore, presumption under Section 112 of the Indian Evidence Act was attracted. It was for the petitioner to prove his case by leading evidence. He could not have hunted for evidence by moving application under Section 45 of the Indian Evidence Act, seeking to determine paternity of the child, thereby infringing child's right of privacy. In support of these submissions, learned counsel for the respondent-wife placed reliance upon a judgment passed by the Hon'ble Apex Court in ***SLP(C) No.9855/2022 (Aparna Ajinkya Firodia Versus Ajinkya Arun Firodia)***, decided on 20.02.2023.

4. Having heard learned counsel on both sides at length, I do not find any reason to interfere with the impugned order. This is on account of following reasons:-

4(I). Legal Position:-

4(I)(a). Previous decisions rendered on the subject by Hon'ble Apex Court in ***Bhabani Prasad Jena v. Orissa State Commission for Women [(2010) 8 SCC 633] and Dipanwita Roy v. Ronobroto Roy [(2015) 1 SCC 365]***, were considered again in ***(2022) 1 SCC 20 (Ashok Kumar Versus Raj Gupta and others)***,as under:-

> *"10. The above decision in Bhabani Prasad Jena was considered and approved in Dipanwita Roy v. Ronobroto Roy, where the Court noticed from the facts that the*

> *husband alleged infidelity against his wife and questioned the fatherhood of the child born to his wife. In those circumstances, when the wife had denied the charge of infidelity, the Court opined that but for the DNA test, it would be impossible for the husband to establish the assertion made in the pleadings. In these facts, the decision of the High Court to order for DNA testing was approved by the Supreme Court. Even then, J.S. Khehar, J., writing for the Division Bench, considered it appropriate to record a caveat to the effect that the wife may refuse to comply with the High Court direction for the DNA test but in that case, presumption may be drawn against the party."*

Hon'ble Apex Court in *Ashok Kumar's* case, *supra*, went on to hold that in the circumstances where other evidence is available to prove or dispute the relationship, the Court should ordinarily refrain from ordering blood tests. This is because such tests impinge upon the right of privacy of an individual and could also have major societal repercussions. Indian law leans towards legitimacy and frowns upon bastardy. The presumption in law of legitimacy of a child cannot be lightly repelled. Hon'ble Apex Court in *Ashok Kumar's* case, *supra*, also considered and reiterated its previous decision in ***Kanti Devi v. Poshi Ram [(2001) 5 SCC 311]***, wherein, it was observed that even though Section 112 of the Evidence Act was enacted at a time when modern scientific advancements with DNA and RNA tests were not even in contemplation of the legislature, but even then, it is not enough to escape from the conclusiveness of Section 112 of the Act, i.e. if a husband and wife were living together during the time of conception, but the DNA test revealed that the child was not born to the husband, the conclusiveness in law would remain irrebuttable. Even in such case,

the law would lean in favour of the innocent child from being bastardised if his mother and her spouse were living together during the time of conception.

4(I)(b). While deciding ***Criminal Appeal No.1569/2022 (Inayath Ali and another Vs. State of Telangana and another)*** on 15.09.2022, Hon'ble Supreme Court, inter alia, held that direction for DNA test of children in matrimonial disputes cannot be ordered merely because something is permissible under the law when such direction would be invasive to physical autonomy of a person. The consequence thereof would not be confined to the question as to whether such an order would result in testimonial compulsion, but encompasses right to privacy as well. Such direction would violate privacy right of persons subjected to such tests and could be prejudicial to the future of children.

4(I)(c). It will be appropriate at this stage to notice Section 112 of the Indian Evidence Act, which reads as under:-

> *"112. Birth during marriage, conclusive proof of legitimacy.- The fact that any person was born during the continuance of a valid marriage between his mother and any man, or within two hundred and eight days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten."*

The section came up for consideration before the Hon'ble Apex Court in *Aparna Aninkya Firodia's*case, *supra*. Hon'ble Apex Court held that the latter part of Section 112 of the Evidence Act indicates that if a person is able to establish that the parties to the marriage had

no access to each other at any time when the child could have been begotten, the legitimacy of such child can be denied. It must be proved by strong and cogent evidence that access between them was impossible on account of serious illness or impotency or that there was no chance of sexual relationship between the parties during the period when the child must have been begotten. Unless the absence of access is established, the presumption of legitimacy cannot be displaced. Where the husband and wife have co-habited together and no impotency is proved, the child born from their wedlock is conclusively presumed to be legitimate, even if the wife is shown to have been, at the same time, guilty of infidelity. The fact that a woman is living in adultery would not by itself be sufficient to repel the conclusive presumption in favour of the legitimacy of a child. The operation of conclusive presumption under Section 112 can be avoided by proving non-access at the relevant time. The Hon'ble Apex Court culled out following principles as to the circumstances under which a DNA test of a minor child could be directed to be conducted:-

> *"12. Having regard to the aforesaid discussion, the following principles could be culled out as to the circumstances under which a DNA test of a minor child may be directed to be conducted:*
>
> *i. That a DNA test of a minor child is not to be ordered routinely, in matrimonial disputes. Proof by way of DNA profiling is to be directed in matrimonial disputes involving allegations of infidelity, only in matters where there is no other mode of proving such assertions.*
>
> ***ii. DNA tests of children born during the subsistence of a valid marriage may be directed, only when there is sufficient prima-faciematerial to dislodge the presumption under Section 112 of the Evidence Act. Further, if no plea has been raised as to non-access,***

in order to rebut the presumption under Section 112 of the Evidence Act, a DNA test may not be directed.

iii. *A Court would not be justified in mechanically directing a DNA test of a child, in a case where the paternity of a child is not directly in issue, but is merely collateral to the proceeding.*

iv. *Merely because either of the parties have disputed a factum of paternity, it does not mean that the Court should direct DNA test or such other test to resolve the controversy. The parties should be directed to lead evidence to prove or disprove the factum of paternity and only if the Court finds it impossible to draw an inference based on such evidence, or the controversy in issue cannot be resolved without DNA test, it may direct DNA test and not otherwise. In other words, only in exceptional and deserving cases, where such a test become indispensable to resolve the controversy the Court can direct such test.*

v. *While directing DNA tests as a means to prove adultery, the Court is to be mindful of the consequences thereof on the children born out of adultery, including inheritance-related consequences, social stigma, etc."*

Hon'ble Justice V. Ramasubramanian, in his concurrent judgment in *Aparna Aninkya Firodia's*case, *supra,* observed that the Indian Evidence Act places birth during marriage as "conclusive proof" of legitimacy. A combined reading of Section 112 shows that once the party questioning the legitimacy of birth of a child shows that the parties to the marriage had no access to each other, then, the benefit of Section 112 is not available to the party invoking Section 112. In other words, if a party to a marriage establishes that there was no access to the party to the marriage, then the shield of conclusive proof becomes unavailable.

The judgment rendered by the Co-ordinate Bench of this Court in Sharda's case, supra, was in different fact scenario. The Court therein was dealing with a case where a woman admitted that she had never married the man, but claimed that he had access to her and out of that relationship, two children were born. The man denied the allegations. Hence, to ascertain the truth, DNA test was ordered.

4(II). The facts of the instant case may now be examined on the touchstone of above legal pedestal:-

4(II)(a). The petitioner (husband) in his divorce petition has not denied access to the respondent (wife). His pleadings relevant to the controversy are that the marriage between the couple was consummated once and further that the respondent had told him about the child not belonging to him. These allegations have been denied by the respondent (wife) in her reply.

4(II)(b). The parties have already led evidence. While appearing in the witness box as PW-1, the petitioner-husband, in his cross-examination, stated that after his marriage with the respondent, he used to visit her every Saturday and used to stay with her during the weekend. He has also stated that at the time of birth of **their son,**he was at Shimla. His elder brother and sister-in-law had also visited **couple's son** at Shimla. He has also stated that he had celebrated **his son's***mundan* at Kumarsain. It is quite evident from the perusal of petitioner's statement that leaving aside the point of husband's not raising the plea of non-access to respondent-wife in his divorce petition, the petitioner-husband has categorically admitted in his statement that he had been visiting his wife every weekend after their marriage, had

been residing with her at Shimla in her premises and had celebrated his son's birth and also performed his son's *mundan* ceremony with much fanfare.

It will also be relevant to notice the line of cross-examination of the wife by the husband. While appearing in the witness box as RW-1, the respondent-wife has admitted the suggestion given to her that her son was born to her and her husband (petitioner). This question put to the wife indicates that husband admits the child to be his progeny.

5. Conclusion:-

In view of the evidence on record, it is evident that the couple had access to each other. The husband has not even denied access to his wife in his pleadings to the divorce petition. He has specifically admitted having access to his wife while appearing as PW-1 and further that he used to stay with his wife during weekends. Thus, the presumption under Section 112 of the Indian Evidence Act gets attracted. The baby was born to the couple having access to each other and during subsistence of valid marriage between them. It is conclusive proof of baby's legitimacy. In such circumstances, the paternity of the child cannot be allowed to be ascertained in the manner sought by the petitioner (husband). It is for the petitioner to prove his allegations of cruelty and desertion against the respondent (wife) on the strength of evidence adduced by him. He cannot be allowed to fill up the lacuna, if any, in his evidence by seeking to conduct the DNA test of the child and the parties.

In view of the above, I find no merit in the instant revision petition. The same is accordingly dismissed alongwith pending miscellaneous application(s), if any.

BEFORE HON'BLE MR. JUSTICE SANDEEP SHARMA, J.

M/s Super Sanitation & Anr. .....Petitioners

Versus

Smt. Sudarshana Devi & others ... Respondents

For the Petitioners: Mr. G.C.Gupta, Senior Advocate with Ms. Meera Devi, Advocate.

For the Respondents: Mr. Ashok Sood, Senior Advocate with Mr. Khem Raj, Advocate, for respondent No.1.

Civil Revision No.67 of 2021
Judgment reserved on: 12.04.2023
Date of Decision:27.04.2023

H.P. Urban Rent Control Act, 1987 - Section 24(5) - **Code of Civil Procedure, 1908** – Order 22 Rule 3 – Original landlord filed eviction petition on the ground of bonafide requirement of the premises for her son – Original landlord expired – Son applied for substitution on the basis of Will - Allowed by Rent Controller – Revision preferred by tenants – **Held** - No illegality committed by learned Court below while considering the applicant Rakesh Kumar Goel to be one of the legal representative of original landlord Smt. Sudarshna Devi – Further held - Ground of bonafide requirement of premises did not cease to exist after the death of original landlord – Petition dismissed.(Paras 6, 11 to 23)

Cases referred:

Brijesh Kumar Sood and another versus Brig. K.K.Sood (retd.) and another, 2012(2) Shim. LC 648;

D.Sasi Kumar vs. Soundararajan, (2019)9 Supreme Court Cases 282;

Prem Lal versus Soma Devi, 2020(1) RCR(Rent) 371;

Raghubeer Singh versus Hargopal Sood and others, 2018(1) RCR (Rent) 387;

Shakuntla Bai and others versus Narayan Das and others, AIR 2004 SC 3484;

The following judgment of the Court was delivered:

Sandeep Sharma, Judge:

Instant Civil Revision Petition filed under Section 24(5) of the Himachal Pradesh Urban Rent Control Act,1987*(hereinafter, 'Act)* lays challenge to order dated 10.09.2020 passed by Rent Controller, Court No.2, Shimla, Himachal Pradesh, whereby an application under Order 22 Rule 3 read with Section 151 CPC, having been filed by respondent, came to be allowed.

2. Precisely, the facts of the case, as emerge from the record are that late Smt. Sudarshna Devi claiming herself to be landlord of shop No.52, The Mall Shimla, filed a petition under Section 14 of the Act, seeking ejectment of the petitioners herein*(hereinafter, 'tenants)* and proforma-respondents No.2 to 4 from the premises known as shop No. 52, The Mall Shimla on the ground that premises were bona-fidely required by her for providing accommodation to her son Rakesh Kumar Goel, who intends to start practice as consulting engineer in the shop in occupation of the tenants. Before aforesaid petition could be decided on its own merit, Smt. Sudarshna Devi expired on 24.03.2019 and as such, Sh. Rakesh Kumar Goel, son of late Smt. Sudarshna Devi, filed an application under Order 22 Rule 3 read with Section 151 CPC, praying therein for his substitution in place of original landlord Smt. Sudarshna Devi. Applicant Rakesh Kumar Goel averred in the application that late Smt. Sudarshna Devi before her death, executed a Will dated 24.12.2011, thereby bequeathing demised premises in his favour. Applicant further pleaded that he being legal representative of deceased Smt. Sudarshna Devi is entitled to prosecute the case. Applicant further averred that her deceased mother had filed petition for eviction on the ground of bonafide requirement for settling her

son i.e. applicant, but now after her death, bonafide need of the applicant is in his own right.

3. Aforesaid prayer made on behalf of the applicant, as named hereinabove, came to be resisted on behalf of petitioners and proforma-respondents No.2 to 4 on the ground that Smt. Sudarshna Devi had not executed any Will in favour of the applicant and Will propounded by him is false and fabricated. They also averred in the reply that Will has been created merely with an oblique motive to oust the petitioners from the demised premises. Petitioners further averred in the reply that petition has already been abated on account of death of original landlord Smt. Sudarshna Devi. It also came to be denied on behalf of the petitioners and proforma-respondents No.2 to 4 that need of the deceased was bonafide and they averred that applicant has no right to be arrayed as legal representatives of the original landlord because requirement of applicant has ceased to exist with the death of original landlord and the petition has become infructuous. Apart from above, petitioners and proforma-respondents No.2 to 4 also averred in the reply to the application that under proviso to Section 14(6) of the Act, no petition can be filed within five years from the date of acquisition of interest in the premises by the landlord.

4. Learned trial Court on the basis aforesaid pleadings adduced on record allowed the application for bringing on record the LRs of deceased Smt. Sudarshna Devi and vide order impugned in the instant proceedings ordered for substitution of applicant Rakesh Kumar Goel in place of late Smt. Sudarshna Devi. In the aforesaid background, petitioners and proforma respondent Nos. 2 to 4 have approached this Court in the instant proceedings, praying therein to set-aside aforesaid order passed by learned Rent Controller, Court No.2, Shimla.

5. Having heard learned counsel representing the parties and perused the material available on record vis-à-vis reasoning assigned in the

order impugned in the instant proceedings passed by Rent Controller while allowing application under Order 22 Rule 3 read with Section 151 CPC, this Court finds no illegality and infirmity in the same and as such, same does not call for any interference.

6. It is not in dispute that original landlord Smt. Sudarshna Devi had filed eviction petition on the ground that premises in question bona fidely required by her for providing accommodation to her son Rakesh Kumar Goel, who intends to start practice as consulting engineer in the shop in question. Since original landlord Smt. Sudarshna Devi expired during the pendency of eviction petition, her son Sh. Rakesh Kumar Goel filed an application under Order 22 Rule 3 CPC for his substitution in place of deceased Smt. Sudarshna Devi. Applicant set up a case that by valid Will dated 24.12.2011, executed by Smt. Sudarshna Devi, he has become owner of the demised premises and as such, required to be substituted in place of original landlord Smt. Sudarshna Devi. Though, inquiry in terms of Order 22 Rule 5 CPC ought to have been conducted before considering prayer made in the application, especially to ascertain whether there exists any dispute between the legal representatives of the deceased qua the property so bequeathed, but since in the case at hand, Will clearly reveals that it is not the applicant namely Rakesh Kumar Goel alone, who has been made beneficiary of estate of the deceased Smt. Sudarshna Devi, but also the brother of the applicant and as such, learned court below rightly concluded that knowledge of the Will can be attributed to other legal representative as well as who have not come forward to agitate the same. Since, no cogent and convincing evidence ever came to be led on record by the non-applicants/respondents to demonstrate that Will executed by Smt. Sudarshna Devi is fabricated and has been made under coercion, no illegality can be said to have been committed by learned Court below while considering the applicant Rakesh Kumar Goel to be one of the legal representative of original landlord Smt. Sudarshna Devi, owner of the demised premises. It is

not in dispute that original landlord Smt. Sudarshna Devi had filed petition on the ground that she bondafidely required the premises for providing accommodation to her son i.e. Rakesh Kumar Goel, but question which needs to be determined in the instant proceedings is "whether aforesaid ground of bona fide requirement of premises ceased to exist after the death of original landlord Smt. Sudarshna Devi or not?."

7. Mr. G.C.Gupta, learned Senior counsel representing the petitioners-tenants and proforma respondents, vehemently argued that ground of bonafide requirement as raised by original landlord ceased to exist after the death of original landlord and as such, there was no occasion for the Court below to allow the application having been filed by the applicant Rakesh Kumar Goel to substitute him in place of deceased Smt. Sudarshna Devi. He further submitted that after death of original landlord Smt. Sudarshna Devi, eviction petition stood abated and as such, otherwise there was no occasion for the Court below to entertain the application, if any, filed by the applicant Rakesh Kumar Goel for his substitution in place of deceased Smt. Sudarshna Devi.

8. While placing reliance upon the judgment passed by Co-ordinate bench of this Court in case titled ***Brijesh Kumar Sood and another versus Brig. K.K.Sood (retd.) and another,*** 2012(2) Shim. LC 648, Mr. Gupta, learned Senior Counsel vehemently argued that transferee landlord though can continue to maintain petition on ground of non-payment of arrears of rent, subletting of premises, but definitely he cannot continue proceedings as far as bona fide requirement for building and rebuilding of suit premises is concerned. In support of his aforesaid submission, he also placed reliance upon the following judgments:-

(i) AIR 1988 Supreme Court 506, titled M.Veerappa versus Evelyn Sequeira and others.

(ii) AIR 1968 Supreme Court 410, titled Lakshmi Narain Agarwal versus The State Transport Authority, U.P and another.

(iii) (2001) 8 Supreme Court Cases 758, titled Chitranjan Burman versus Om Prakash Bajoria and others.

(iv) AIR 1958 Supreme Court 253, titled Syedna Taher Saifuddin Saheb vs. State of Bombay.

9. Lastly, Mr. Gupta, argued that learned Rent Controller below while allowing the application filed by applicant Rakesh Kumar Goel wrongly placed reliance upon the judgment passed by this Court in Civil Revision No.124 of 2019 dated 23.09.2019, titled **M/s Rikhi Ram Amar Nath versus Vikas Sood and another,** wherein this Court having taken note of the judgment passed by Hon'ble Apex Court in **Shakuntla Bai and others versus Narayan Das and others, AIR 2004 SC 3484,** held that even if landlord dies during pendency of the petition, bonafide need cannot be said to have lapsed. Mr. Gupta, submitted that though legal representative, if any, of deceased landlord can be arrayed as petitioner in place of deceased petitioner, but for limited purpose i.e. for continuation of the proceedings. He submitted that in no circumstance petition filed by original petitioner for eviction on the ground of bonafide requirement can be allowed to continue at the behest of LRs, if any, of original landlord because bonafide requirement, if any, ceased to exist with the death of original landlord.

10. While refuting aforesaid submissions made by learned Senior Counsel representing the petitioners, Mr. Ashok Sood, learned Senior Counsel representing the respondent vehemently argued that there is no illegality and infirmity in the order impugned in the instant proceedings and as such, no interference is called for. Mr. Sood, submitted that bonafide requirement, if any, of deceased original landlord continues to exist and as such, Court below rightly allowed the application filed by the legal representative of deceased

landlord. He submitted that bare perusal of eviction petition filed by original landlord Smt. Sudarshna Devi reveals that she had filed petition on the ground that shop/premises were bondafidely required by her for providing accommodation to her son, who intends to start practice as consulting engineer in the shop. He submitted that bonafide requirement still exists because admittedly Rakesh Kumar Goel needs accommodation for starting his practice as consulting engineer. He submitted that bonafide need, if any, of landlord is to be seen on the date of petition and definitely not on the date of application, if any, filed by LRs of the original landlord for substitution. In support of his aforesaid contention, he invited attention of this Court to judgment passed by Hon'ble Apex Court in **Shakuntla Bai versus Narayan Das, AIR 2004 SC 3484.** To substantiate his aforesaid arguments, he also placed reliance upon the following judgments:-

(i) AIR 1976 Supreme Court 2358, titled Shantilal Thakordas and others vs. Chimanlal Maganlal Telwala.

(ii) (2008) 8 Supreme Court Cases 521, titled Jaladi Suguna(deceased) through LRs. versus Satya Sai Central Trust and others.

(iii) (2002) 5 Supreme Court Cases 397, titled Joginder Pal vs. Naval Kishore Behal.

(iv) (1997) 4 Supreme Court Cases 413, titled Kamleshwar Prasad vs. Pradumanju Agarwal (dead) by LRs.

(v) (2001) 2 Supreme Court Cases 604, tilted Gaya Prasad vs. Pradeep Srivastava.

11. Having heard learned counsel for the parties and perused material available on record, this Court finds that late Smt. Sudarshna Devi

had filed eviction petition under Section 14 of the Act on the ground that premises in question are bondafidely required by her for providing accommodation to her son Sh. Rakesh Kumar Goel, but before such prayer of her could be considered and decided by the competent Court of law, she passed away. After her death, Sh. Rakesh Kumar Goel, son of deceased landlord Smt. Sudarshna Devi, filed an application under relevant provision of law, seeking his substitution in place of deceased original landlord.

12. Though, petitioners-tenants and proforma respondents attempted to carve out a case that Will setup by applicant Rakesh Kumar Goel, allegedly executed by late Smt. Sudarshna Devi, thereby bequeathing premises in question in favour of Rakesh Kumar Goel is fabricated, but since no cogent and convincing evidence ever came to be led on record to prove fabrication, if any, of Will, learned Court below rightly rejected the plea of fraud setup by petitioners and proforma respondents. Apart from above, there is nothing on record that other recipients/beneficiaries of the Will executed by Smt. Sudarshna Devi ever disputed contents of the Will, rather they all continue to reap the benefit of the property fell in their shares in termsof will executed by Smt. Sudarshna Devi.

13. Leaving everything aside, petitioners and proforma-respondents never succeeded in proving fact, if any, that applicant Rakesh Kumar Goel is/was not the legal representative of Smt. Sudarshna Devi and as such, no illegality can be said to have been committed by Court below while considering the applicant Rakesh Kumar Goel to be legal representative of deceased Smt. Sudarshna Devi. Question, which needs to be determined in the case at hand is “whether plea of bonafide requirement as raised by original landlord at the time of filing of eviction petition under Section 14 of the Act, continues to exist after death of original landlord Smt. Sudarshna Devi or same ceased to exist”?.

14. Mr. G.C.Gupta, learned Senior counsel representing the petitioners, vehemently argued that plea of bonafide requirement ceased to

exist with the death of original landlord Smt. Sudarshna Devi. In support of his aforesaid plea, he placed heavy reliance upon the judgment passed by Co-ordinate bench of this Court in Brijesh ***Kumar Sood's*** case (supra), wherein Co-ordinate bench of this Court though held that transferee landlord can continue to maintain petition on ground of non-payment of arrears of rent, subletting of premises, but he/she cannot continue proceedings as far as bona fide requirement for building and rebuilding of suit premises is concerned.

15. Having carefully perused aforesaid judgment in its entirety, this Court is not persuaded to agree with Mr. G.C.Gupta, learned Senior Counsel representing the petitioners because facts of the case in ***Brijesh Kumar Sood's*** case(supra) were totally different to the case at hand. Moreover, in the aforesaid case, though Court held that transferee landlord cannot continue the proceedings as far as bona fide requirement for building and rebuilding of the suit premises is concerned, but nowhere held that plea of bonafide requirement of premises ceases to exist after the death of the original landlord. Relevant paras No.2,6 and 33 of aforesaid judgment are as under:-

> "2. Material facts necessary for the adjudication of this petition are that respondent No.1 (hereinafter referred to as transferor landlord) filed petition under section 14 of the H.P. Urban Rent Control Act, 1987 (hereinafter referred to as 'the Act' for brevity sake) against the petitioners/tenants (hereinafter referred to as 'tenants' for convenience sake) on the grounds of non-payment of arrears of rent, tenant has acquired premises which are reasonably sufficient for him and his family requirement, sub-letting and lastly on the ground that premises under the occupation of tenant No.1, namely, Brijesh Kumar Sood are bona fide required for carrying out construction of the building and rebuilding. Respondent No.2 (hereinafter referred to as 'transferee landlord') moved an application under order 1 rule 10 of the Code of Civil Procedure for impleading him as party in the main petition, i.e. 51/2 of 2001. According to the averments contained in the application preferred by transferee landlord, he has purchased the premises in question vide sale deed dated

25.9.2004. According to him, he has stepped into the shoes of transferor landlord. The tenant filed reply to the same. The Rent Controller vide order dated 9.8.2005, allowed the application preferred under order 1 rule 10 of the Code of Civil Procedure. The tenants preferred an appeal before the learned Appellate Authority. The Appellate Authority dismissed the appeal on 8.5.2007. Thereafter, tenants approached this Court. This Court dismissed the petition vide order dated 19.10.2010. However, while dismissing the petition, the Court had observed that the tenants had right to file revision against the impugned order dated 9.8.2005. It is in these circumstances, the present petition has been preferred against the order dated 9.8.2005.

6. In the instant case, the transferee landlord has moved an application under order 1 rule 10 of the Code of Civil Procedure. The Court is of the view that the transferee landlord should have moved application under section 146 or under order 22 rule 10 of the Code of Civil Procedure. However, in the interest of justice, an application under order 1 rule 10 of the Code of Civil Procedure preferred by transferee landlord will be deemed to have been moved under section 146 or under order 22 rule 10 of the Code of Civil Procedure.

33. Accordingly, in view of the observations and discussions made hereinabove, the petition is disposed of in the following manner:

> It is held that the transferee landlord can continue to maintain the petition on the grounds of non-payment of arrears of rent, sub-letting of premises, the tenant has acquired premises, which are reasonably sufficient for tenant and his family members. The transferee landlord cannot continue the proceedings as far as the bona fide requirement for building and rebuilding of the suit premises is concerned".

16. Question with regard to existence of bonafide need of landlord after his/her death came to be examined by Hon'ble Apex Court in case titled

Shakuntala Bai and others versus Narayan Das and others, AIR 2004 Supreme Court 3484, which has been otherwise taken note by this Court in judgment dated 23rd September, 2019 titled as ***M/s Rikhi Ram Amar Nath versus Shri Vikas Sood and another*** passed in Civil Revision No.124 of 2019, which has been relied upon by learned Court below while passing impugned order. In the aforesaid judgment, Hon'ble Apex Court has categorically held that bonafide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate. At this stage, it would be profitable to reproduce para No.11 of the aforesaid judgment herein:-

> "11. ***In Shantilal Thakordas v. Chimanlal Maganlal Telwala*** 1976 (4) SCC 417, a larger Bench overruled the decision rendered in Phool Rani v. Naubat Rai Ahluwalia (supra) in so far it held that the requirement of the occupation of the members of the family of the original landlord was his personal requirement and ceased to be the requirement of the members of his family on his death. The court took the view that after the death of the original landlord the senior member of his family takes his place and is well competent to continue the suit for eviction for his occupation and occupation of the other members of the family. Thus, this decision held that the substituted heirs of the deceased landlord were entitled to maintain the suit for eviction of the tenant. The ratio of this decision by larger Bench does not in any manner affect the view expressed in Phool Rani (supra) that where the death of the landlord occurs after a decree for possession has been passed in his favour, his legal representatives are entitled to defend further proceedings like an appeal and the benefit accrued to them under the decree. In fact, the ratio of Shantilal Thakordas (supra) would reinforce the aforesaid view. There are several decisions of this Court on the same line. In Kamleshwar Prasad v. Pradumanju Agarwal 1997(4) SCC 413 it was held that the need of the landlord for premises in

> question must exist on the date of application for eviction, which is the crucial date and it is on the said date the tenant incurred the liability of being evicted therefrom. Even if the landlord died during the pendency of the writ petition in the High Court, the bona fide need cannot be said to have lapsed as the business in question can be carried on by his widow or any other son. In Gaya Prasad v. Pradeep Srivastava 2001 (2) SCC 604 it was held that the crucial date for deciding as to the bonafides of requirement of landlord is the date of his application for eviction. Here the landlord had instituted eviction proceedings for the bona fide requirement of his son who wanted to start a clinic. The litigation continued for a long period and during this period the son joined Provincial Medical Service and was posted at different places. The subsequent event i.e. the joining of the service by the son was not taken into consideration on the ground that the crucial date was the date of filing of the eviction petition. Similar view has been taken in G.C. Kapoor v. Nand Kumar Bhasin 2002 (1) SCC 610. Therefore, the legal position is well settled that the bona fide need of the landlord has to be examined as on the date of institution of proceedings and if a decree for eviction is passed, the death of the landlord during the pendency of the appeal preferred by the tenant will make no difference as his heirs are fully entitled to defend the estate".

17. In **D.Sasi Kumar vs. Soundararajan, (2019)9 Supreme Court Cases 282**, Hon'ble Apex Court again reiterated that bonafide requirement of landlord is to be seen on the date of institution of case. Relevant paras No.11 and 12 of aforesaid judgment are as under:-

> 11. It is no doubt true that as observed by the High Court the plan for construction and the financial capacity to construct has not been placed as evidence. However, as already indicated above, the nature of the requirement as stated by the landlord would be for running a garment shop which in any event could be run in the premises as it exists with minor alterations though the desire of the landlord is also to demolish and reconstruct. Therefore, in that

circumstance the mere nonproduction of the approved plan or the documents to indicate financial capacity at this juncture cannot be held fatal in the instant facts. That apart as indicated above, the need of the landlord while being examined has been weighed in the background of the fact that the tenant owns two other premises and no hardship will be caused. Though the High Court has in that regard also recorded that no documentary evidence is placed, the fact of possession of alternate premises has been admitted by the tenant in his cross examination. There can be no better proof than admission.

12. Further the High Court has also erroneously arrived at the conclusion that the bonafide occupation as sought should be not only on the date of the petition but it should continue to be there on the date of final adjudication of rights. Firstly, there is no material on record to indicate that the need as pleaded at the time of filing the petition does not subsist at this point. Even otherwise such conclusion cannot be reached, when it cannot be lost sight that the very judicial process consumes a long period and because of the delay in the process if the benefit is declined it would only encourage the tenants to protract the litigation so as to defeat the right. In the instant case it is noticed that the petition filed by the landlord is of the year 2004 which was disposed of by the Rent Controller only in the year 2011. The appeal was thereafter disposed of by the Appellate Authority in the year 2013. The High Court had itself taken time to dispose of the Revision Petition, only on 06.03.2017. The entire delay cannot be attributed to the landlord and deny the relief. If as on the date of filing the petition the requirement subsists and it is proved, the same would be sufficient irrespective of the time lapse in the judicial process coming to an end. This Court in the case of **Gaya Prasad vs. Pradeep Srivastava,** (2001) 2 SCC 604 has held that the landlord should not be penalised for the slowness of the legal system and the crucial date for deciding the bonafide requirement of landlord is the date of application for eviction, which we hereby reiterate.

18. Similar view has been taken by Co-ordinate bench of this Court in case titled **Prem Lal versus Soma Devi, 2020(1) RCR(Rent) 371,** wherein it has been held as under:-

> "22. After death of landlord Anant Ram, his wife has been substituted as landlord/landlady in his place. Section 2(d) of the Act defines that "landlord" means any person for the time being entitled to receive rent in respect of any building or rented land whether on his own account or on behalf, or for the benefit, of any other person, or as a trustee, guardian, receiver, executor or administrator for any other person, and includes a tenant who sublets any building or rented land in the manner hereinafter authorized, a specified landlord, and every person from time to time deriving title under a landlord. Wife being a Class-1 legal heir is definitely a person who is entitled to receive rent in respect of building earlier owned by her husband. She is entitled to pursue the eviction petition after death of her husband either singly or jointly with other persons claiming status of landlord, unless her status is disputed by someone else, including any other persons claiming himself to be landlord or by the tenant. In present case wife of landlord was substituted in his place after his death during pendency of petition before the Rent Controller and such substitution or her status as landlady was never disputed by tenant, rather her status stands admitted by him as in reply to the application filed for substitution of deceased landlord, it was contended that she was not only legal heir of deceased landlord, which means that she was admitted to be one of legal heirs of landlord. But it is also a fact that no other person has come forward to claim himself to be legal heir of deceased landlord in addition to his wife and tenant has also not brought on record any other material so as to establish that she is not only person who is

entitled to be substituted in place of landlord. Therefore, on this issue also plea of tenant is not sustainable."

19. In yet another judgment dated 23.06.2017 passed by Co-ordinate Bench of this Court in case titled **Raghubeer Singh versus Hargopal Sood and others,** 2018(1) RCR (Rent**) 387,** has held that a cause of action is not prolonged by mere transfer of the title. It is the old suit carried on at his instance and he is bound by all proceedings up to the stage when he obtains leave to carry on the proceedings. It would be profitable to reproduce para No.7 of aforesaid judgment hereinbelow:-

> "7. Under Rule 10, Order 22 of the Code, when there has been a devolution of interest during the pendency of a suit, the suit may, by leave of the Court, be continued by or against persons upon whom such interest has devolved and this entitles, the person who has acquired an interest in the subject matter of the litigation by an assignment or creation or devolution of interest pendente lite or suitor or any other person interested, to apply to the Court for leave to continue the suit. But it does not follow that it is obligatory upon them to do so. If a party does not ask for leave, he takes the obvious risk that the suit may not be properly conducted by the plaintiff on record, and yet, as pointed out by their Lordships of the Judicial Committee in ***Moti Lal v. Karab-ud-Din, (1898) ILR25 Cal 179***, he will be bound by the result of the litigation even though he is not represented at the hearing unless it is shown that the litigation was not properly conducted by the original party or he colluded with the adversary. It is also plain that if the person who has acquired an interest by devolution, obtains leave to carry on the suit, the suit in his hands is not a new suit, for, as Lord Kingsdown of the Judicial Committee said in ***Prannath v. Rookea Begum,(1851-59) 7 Moo Ind App 323,*** a cause of action is not prolonged by mere transfer of the title. It is the old suit carried on at his instance and he is bound by all proceedings up to the stage when he obtains leave to carry on the proceedings."

20. Applicant, namely Rakesh Kumar Goel having stepped into the shoes of the original landlord Smt. Sudarshna Devi and on the basis of Will, as detailed hereinabove, rightly came to be termed to be her legal representative. Since original landlord Smt. Sudarshna Devi had filed eviction petition on the ground that she bondafidely required demised premises for providing accommodation to her son Rakesh Kumar Goel, bonafide requirement, as detailed hereinabove, cannot be said to have ceased to exist with the death of Smt. Sudarshna Devi because the person for whom original landlord wanted to have premises is not only alive but he also requires those premises for his bonafide use. No doubt, LRs, if any, of original landlord can maintain separate petition on the ground of bonafide requirement but since such bonafide requirement never ceased to exist with the death the original landlord, there is otherwise no requirement, if any, for legal representative of deceased landlord to file separate proceedings.

21. Though, Mr. G.C.Gupta, learned Senior counsel representing the petitioners vehemently argued that the transferee landlord cannot continue with the proceedings on the ground that premises are required bondafidely for building and rebuilding because it is the personal right of the landlord, but as has been discussed hereinabove and has been further ruled by Hon'ble Apex Court in the judgments, as detailed hereinabove that bonafide need of the landlord is to be examined on the date of institution of the proceedings and not on the date of death of landlord. Since in the case at hand, plea of bonafide requirement of demised premises was setup by original landlord for her son prior to her death and the son for whom such premises were bondafidely required is alive and he does not have any other premises to settle or to setup his business, no illegality can be said to have been committed by learned Court below while ordering impleadment of applicant Sh. Rakesh Kumar Goel in place of original landlord Smt. Sudarshna Devi.

22. Moreover, this Court finds that vide impugned order though learned Court below brushed aside the plea set up by the petitioners and proforma respondents that bonafide requirement of landlord ceased to exist on account of her death, but while permitting Sh. Rakesh Kumar Goel to be substituted in place of original landlord Smt. Sudarshna Devi categorically recorded in the order that he has right to pursue the present petition, meaning thereby question with regard to correctness and genuineness of bonafide requirement, if any, of the applicant, who came to be substituted in place of original landlord shall be determined on the basis of totality of evidence led on record by the respective parties to the *lis.* Judgments pressed into service by learned Senior counsel representing the petitioner as detailed in para-8 of the instant judgment have no application in the case at hand but even otherwise these are not required to be taken note of in light of law laid down by Hon'ble Apex Courtin ***Shakuntala Bai & Raghubeer Singh'*** cases (supra).

23. Consequently, in view of the detailed discussion made hereinabove, this Court finds no merit in the present petition and accordingly same is dismissed being devoid of any merit. Pending applications, if any, also stand disposed of.

24. Learned counsel representing the parties undertake to cause presence of their respective clients before the Court below on **8.5.2023,** enabling it to proceed with the matter. Since matter is hanging fire for long, this Court hopes and trusts that Court below would make all out efforts to conclude the trial expeditiously, preferably within a period of three months.

BEFORE HON'BLE MS. JUSTICE JYOTSNA REWAL DUA, J.

Devi Lal .....Petitioner

Versus

Punjab National Bank .....Respondent

For the Petitioner: Mr. Dheeraj K. Vashisht, Advocate.

For the Respondent: Mr. Arvind Sharma, Advocate.

Cr.MMO No.341 of 2023
Decided on: 12th April, 2023

Negotiable Instruments Act, 1881- Section 148- Petitioner was convicted by trial court for commission of offence punishable under section 138- Appellate Court suspended the sentence subject to deposit of 40% of compensation amount- Challenged as excessive - **Held** - Though the quantum of compensation amount to be deposited for suspension of sentence is in the realms of discretion of the First Appellate Court, however, the discretion has to be exercised judiciously and in accordance with the provisions of the Act - Counsel for the petitioner highlighted the fact that the petitioner had suffered badly in his business during COVID-19 pandemic – Order passed by the First Appellate Court modified and petitioner directed to deposit 25% of the compensation amount awarded by the Trial Court, within a period of four weeks.

Cases referred:

Surinder Singh Deswal and others Versus Virender Gandhi (2019) 11 SCC 341;

Surinder Singh Deswal and others Versus Virender Gandhi and another (2020) 2 SCC 514;

The following judgment of the Court was delivered:

Jyotsna Rewal Dua, Judge

Notice. Mr. Arvind Sharma, learned counsel, appears and waives service of notice on behalf of the respondent.

With the consent of learned counsel for the parties, the matter is heard at this stage.

2. The petitioner was accused in the proceedings initiated by the respondent-Bank under Section 138 of the Negotiable Instruments Act, 1881 (in short 'N.I. Act') before the learned Trial Court. Vide judgment dated 10.01.2023, learned Trial Court convicted the petitioner for the aforesaid offence. The petitioner was sentenced to undergo simple imprisonment for a period of six months and to pay compensation of Rs.5,50,000/- to the complainant. In default of payment of compensation amount, he was to undergo further simple imprisonment for two months.

3. The petitioner preferred an appeal against the judgment of conviction and order of sentence dated 10.01.2023. Alongwith the appeal, the petitioner moved an application for suspension of sentence. Learned Appellate Court on 13.02.2023, suspended the sentence imposed upon the petitioner. The order was, however, subject to deposit of 40% of the compensation amount by the petitioner and thereafter furnishing personal bond in the sum of Rs.3,00,000/- by him with one surety in the like amount to the satisfaction of the learned Trial Court. The grievance of the petitioner in the instant petition pertains to the condition of deposit of 40% of the compensation amount levied upon him under the impugned order dated 13.02.2023 for suspension of sentence by the learned Appellate Court.

4. Heard learned counsel for the parties.

5. Section 148 of the N.I. Act delineates Power of Appellate Court to order payment pending appeal against conviction in the following manner:-

> *"148. Power of Appellate Court to order payment pending appeal against conviction.-*
>
> *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court:*
> *Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under Section 143 A.*
>
> *(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.*
>
> *(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:*
> *Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."*

In terms of Sub-Section (1) of Section 148, the Appellate Court is empowered to order suspension of sentence subject to the appellant depositing minimum 20% of the fine or compensation awarded by the learned Trial Court.

In ***(2019) 11 SCC 341 (Surinder Singh Deswal and others Versus Virender Gandhi)***, Hon'ble Apex Court considered the amendment carried out in Section 148 of the N.I. Act. It was observed that to curb the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of Section 138 of the N.I. Act was being frustrated. The amendment carried out in Section 148 of the N.I. Act, by which the First Appellate Court in an appeal challenging the order of conviction under Section 138 of the N.I. Act is conferred with the power to direct the convict to deposit such sum, which shall be a minimum of 20% of the fine or compensation awarded by the learned Trial Court, does not affect the substantive right of appeal. It was further held that under the section, the Appellate Court "may" order the appellant to deposit such sum, which shall be a minimum of 20% of the fine or compensation awarded by the Trial Court and the word used is not "shall". It will be apt to extract relevant portion from the judgment:-

> *"8. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the N.I. Act as amended, the appellate Court "may" order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court and the word used is not "shall" and therefore the discretion is vested with the first appellate court to direct the appellant – accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the NI Act as amended is concerned, considering the amended Section 148 of the NI Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the NI Act, though it is true that*

in amended Section 148 of the NI Act, the word used is "may", it is generally to be construed as a "rule" or "shall" and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore amended Section 148 of the NI Act confers power upon the Appellate Court to pass an order pending appeal to direct the appellant-accused to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the Appellant Accused under Section 389 of the Cr.P.C. to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the NI Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended Section 148 of the NI Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the NI Act, but also Section 138 of the N.I. Act. Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonoured of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, the Parliament has thought it fit to amend Section 148 of the NI Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the NI Act and also Section 138 of the NI Act."

The judgment in Surender Singh Deswal's case, *supra*, was again followed in ***(2020) 2 SCC 514 (Surinder Singh Deswal and others Versus Virender Gandhi and another)***. In the later judgment, it was also held that effect of failure to comply with the conditions imposed by the Appellate Court while ordering suspension of sentence, is deemed vacation of the protection.

In the instant case, learned First Appellate Court has ordered suspension of sentence subject to deposit of 40% of the compensation amount. Though the quantum of compensation amount to be deposited for suspension of sentence is in the realms of discretion of the First Appellate Court, however, the discretion has to be exercised judiciously and in accordance with the provisions of the Act. Learned counsel for the petitioner has highlighted the fact that the petitioner has suffered badly in his business during COVID-19 pandemic and is not in a position at present to satisfy the condition imposed in the impugned order for suspension of sentence.

Taking into consideration the pleadings and submissions made by learned counsel for the parties, the impugned order dated 13.02.2023 passed by the learned First Appellate Court in Criminal Miscellaneous Application No.98/2023 is modified to the limited extent that the petitioner is directed to deposit 25% of the compensation amount awarded by the learned Trial Court, within a period of four weeks from today.

The petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Mohammad Nazim ...Petitioner.

Versus

State of H.P. ...Respondent

For the petitioner : Mr. Rajesh Kumar Parmar, Advocate.

For the respondent : Mr. Varun Chandel, Additional Advocate General.

Cr.MP(M) No.436 of 2023
Reserved on: 1.4.2023
Date of decision: 5.4.2023

Code of Criminal Procedure, 1973 – Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under Sections 363, 366-A, 370-A, 506 and 120-B IPC – Bail sought - **Held**- The trial has already commenced and material witnesses i.e. the victim and her father have already been examined - There is no apprehension that petitioner, if released on bail, will be in a position to exert pressure on the victim or her father to win them over - Petitioner has already been in custody for about two years - Allegations against the petitioner are still to be proved - His pre-trial incarceration for indeterminate period will not be in the interest of justice - Speedy trial is a right vested in the petitioner-**Further held** – Petitioner is also entitled to bail on the ground of parity - Bail granted.(Paras 10 to 13)

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Petitioner is an accused in case FIR No. 34 of 2021, dated 5.3.2021, registered at Police Station Sadar, District Shimla, H.P. under Sections 363, 366-A, 370-A, 506 and 120-B of IPC. He was arrested on 6.4.2021 and since then, he is in custody.

2. Brief facts of the case are that the father of victim on 5.3.2021 reported to the police that his minor daughter aged about fifteen years (victim) had not returned home from the school and on inquiry, he had found that the students were not even required to attend the school on the said date. Police registered a case under Section 363 IPC. During investigation, the location of mobile phone used by the victim was found somewhere in Haryana. It was found that victim was travelling towards Delhi. A police party reached Delhi. On further analysis of the call detail records of the mobile phone, which was in contact with mobile number of the victim, one person named Jatin Malik was tracked. On interrogation of the Jatin Malik, it was found that the victim had taken a lift in his vehicle on the night of 5.3.2021 from a place near Panipat. The victim while travelling in the vehicle of Jatin Malik had contacted a person named Mohammad Zubair from the mobile phone of Jatin Malik. The caller from the other side had sent a location on the mobile number of Jatin Malik with direction to leave the victim at such location. Finally, Jatin Malik had dropped the victim at about 10.30 p.m. at NTPC Chowk, Badarpur, Delhi, where a boy had received her.

3. During further investigation, it was found that the boy, who had received the victim, was named Ibrahim and he had further dropped the victim with a female named Nasrin at Village Dhakiya in Uttar Pradesh. Lastly, the victim was recovered on 8.3.2021 and was handed over to her father.

4. The investigation was completed and challan was filed in the Court. Prosecution has come up with allegations that the victim had left her home at the instance of Petitioner and Mohammad Zubair. It is alleged that the petitioner, Mohammad Zubair, Ibrahim and other co-accused had entered into a criminal conspiracy and thereby had enticed the victim to leave her home. They had intended to send the victim abroad with ulterior motive. It is further alleged against the petitioner and Mohammad Zubair that they were

telephonically contacting the victim and had made all arrangements for her travel to Delhi and further beyond the country.

5. Petitioner has approached this Court for grant of bail on the ground that he has been falsely implicated. Specific contention of the petitioner is that he was working in Kerala at the relevant time. Merely on the basis of his telephonic conversations with Mohammad Zubair and Ibrahim, his implication is hypothetical. After completion of investigation, no legal evidence has been found against the petitioner. He is in custody for the last about two years. The material witnesses in the case have already been examined. He has also sought the bail on the ground of parity as his co-accused namely Mohammad Zubair, Ibrahim, Nasreen and Ivad have already been released on bail. Learned counsel for the petitioner contended that the petitioner is entitled for bail on the ground of parity with his co-accused Mohammad Zubair and Ibrahim, as the allegations against them are similar to those against the petitioner. Petitioner has undertaken to abide by all the terms and conditions as may be imposed.

6. On the other hand, learned Additional Advocate General has opposed the prayer for bail on the ground that petitioner is involved in a serious offence. The charges, if proved, against the petitioner may entail severe punishment. Petitioner belongs to Uttar Pradesh and there is likelihood of his absconding from the course of justice.

7. I have heard learned counsel for the parties and have also gone through the record carefully.

8. It is not in dispute now that the trial of the case has already commenced. The victim and her father have already been examined as prosecution witnesses. A number of witnesses still remain to be examined.

9. The allegation against the petitioner is that he had conspired with Mohammad Zubair to facilitate the elopement of the victim under a false promise of marriage extended to her. Except for the allegation of telephonic

conversations by petitioner, no other evidence has been found against him to allege any overt act on his part.

10. As noticed above, the trial has already commenced and material witnesses i.e. the victim and her father have already been examined. Thus, there is no apprehension that petitioner, if released on bail, will be in a position to exert pressure on the victim or her father to win them over. Petitioner has already been in custody for about two years. Allegations against the petitioner are still to be proved. His pre-trial incarceration for indeterminate period will not be in the interest of justice. Speedy trial is a right vested in the petitioner.

11. Further a Coordinate Bench of this Court has already ordered the release of co-accused Ibrahim on bail vide order dated 30.12.2022, passed in Cr.MP(M) No. 1983 of 2022. Similarly Mohammad Zubair also stands released on bail by this Court vide order dated 14.2.2023 passed in Cr.M.P(M) 261 of 2023. In the given facts of the case, the petitioner is entitled for the same treatment as given to co-accused Mohammad Zubair and Ibrahim. The case of petitioner, at least at this stage, cannot be said to be different than the case of his co-accused.

12. The apprehension of respondent-State that the petitioner may abscond from the course of justice also remains unsubstantiated, as no tangible material has been placed on record for such purpose. Merely, because petitioner belongs to other State cannot be used as a ground to deny him the right of bail. For securing the presence of petitioner for the purpose of trial, he can be put to appropriate terms.

13. Keeping in view the peculiar facts and circumstances of the case, petition is allowed and the petitioner is ordered to be released on bail in case FIR No. 34 of 2021, dated 5.3.2021, registered at Police Section Sadar, District Shimla, H.P. under Sections 363, 366-A, 370-A, 506 and 120-B of IPC,on his furnishing personal bond in the sum of Rs. 2,00,000/- with two

sureties in the like amount, one of whom should necessarily be having immoveable property in the State of Himachal Pradesh,to the satisfaction of the learned trial Court. This order shall be subject to following conditions: -

i) That the petitioner shall make himself available to the police or any other Investigating Agency or Court in the present case as and when required;

ii) That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence. He shall not, in any manner, try to overawe or influence or intimidate the prosecution witnesses;

iii) That the petitioner shall not obstruct the smooth progress of the investigation/trial;

iv) That the petitioner shall not commit the offence similar to the offence to which he is accused or suspected;

v) That the petitioner shall not misuse his liberty in any manner;

vi) That the petitioner shall not jump over the bail;

vii) That in case petitioner indulges in repetition of similar offence(s) then, his bail shall be liable to be cancelled on taking appropriate steps by prosecution;

viii) That the petitioner shall not leave the territory of India without prior permission; and

ix) That the petitioner shall inform the Police/Court his contact number and shall keep on informing about change in address and contact number, if any, in future.

14. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Lal Dhar .....Petitioner

Versus

State of Himachal Pradesh .....Respondent

For the petitioner: Mr. Rajiv Rai, Advocate, with Mr. Gurdev Negi, Advocate.

For the respondent: Mr. Varun Chandel Additional Advocate General with Mr. Arsh Rattan, Deputy Advocate General.

Cr. M.P.(M) No. 643 of 2023
Reserved on: 31.03.2023
Decided on: 05.04.2023

Code of Criminal Procedure, 1973 – Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under Sections 302, 201 and 120-B IPC – Challan already filed – Some evidence also led - **Held**– Seriousness of the offence cannot be the only ground to deny bail - It has to be weighed and balanced with other factors - In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner – **Further held** – Petitioner also entitled to bail on the ground of parity - Bail granted. (Paras 10 to 24)

Cases referred:

Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22;
Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218;
Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230;
Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40;

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Petitioner is accused in case FIR No. 49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, H.P.

2. Brief facts necessary for adjudication of the petition are that a boy named Ankit Kumar alias Anku aged about 19 years, resident of Village Samoh, Tehsil Jhandutta, District Bilaspur, H.P. was student of Polytechnic Institute at Village Kalol, District Bilaspur. On 13.7.2022 Ankit Kumar alias Anku left his native village to join his College by personal vehicle bearing registration No. HP-69A-1984 (Alto K-10). The vehicle belonged to his maternal grandmother. In the evening of 14.7.2022, Ankit Kumar alias Anku left for his native village from village Kalol. At about 8.30 p.m., he telephonically informed his mother that he had reached village Baroha and would reach home within 10-15 minutes. Ankit Kumar alias Anku, however, did not reach home that night. Next morning at about 8.30 a.m. father of Ankit Kumar alias Anku noticed the vehicle No. HP-69A-1984 parked behind the house of Jodh Singh. Thereafter, search was launched for Ankit Kumar alias Anku, but he could not be found anywhere. On 19.7.2022, father of Ankit Kumar alias Anku lodged missing report at Police Station, Jhandutta.

3. On 21.7.2022, Vice President, Gram Panchayat, Samoh telephonically informed the police that a part of dismembered body was lying in a grass land in village Samoh. Police reached the spot. Sh. Ramesh Kumar, father of Ankit Kumar alias Anku got recorded his statement under Section 154 Cr.P.C. The dismembered part of the body was identified by Sh. Ramesh Kumar to be that of his son. Accordingly, the above noted case was registered.

4. During investigation, on 22.7.2022, the other parts of the body were recovered and identified by Sh. Ramesh Kumar. Postmortem was got conducted. It was opined that the body had been severed with cutter/sharp edged weapon. The complainant Sh. Ramesh Kumar and his brother Sh. Ravi Kant raised suspicion of commission of offence against the petitioner and other co-accused namely Devi Dass S/o Jhamdiya Ram, Chaman Lal S/o Sh. Devi Dass, Hem Raj alias Kaku S/o Devi Dass, Kiran W/o Hem Raj and Joginder Rajput S/o Gaindan Lal.

5. The police after completion of investigation, has presented the challan against petitioner and other above-named co-accused. As per the final report submitted by the Police under Section 173 Cr.P.C., sufficient evidence is stated to have been found against petitioner and other co-accused. It is alleged that accused Devi Dass and his family had enmity with the family of deceased.They criminally conspired with petitioner and Joginder Rajput and murdered Ankit Kumar alias Anku during intervening night of 14/15.7.2022 and in order to destroy the evidence had severed the body in parts and such parts were separately disposed of by packing those in gunny bags.

6. Petitioner was arrested on 23.7.2022. He remained in police custody till 02.08.2022 and thereafter he was remanded to judicial custody. Petitioner is still in judicial custody.

7. It is contended on behalf of the petitioner that his prolonged custody is unwarranted. He was simply working as a labourer in the house of Devi Dass and the investigating agency has not been able to find any incriminating evidence against petitioner. He has been implicated merely on the asking of the complainant. It is further contended that petitioner has committed no offence. The challan stands filed. Most of the prosecution witnesses are related to the deceased and they have joined hands with the sense of sheer vengeance. Petitioner is stated to be permanent resident of Village Madrahan, P.O. Chakian Bazaar, Tehsil and Police Station Dhanghata,

District Sant Kabir Nagar, U.P. He has undertaken to abide by all the terms and conditions as may be imposed against him.

8. Learned Additional Advocate General has opposed the prayer for grant of bail. It is submitted that the crime has been committed in most ghastly manner. The body of deceased had been cut into pieces, which reflects the criminal intent of the accused persons including the petitioner. He further submitted that the release of petitioner on bail will send a wrong signal in the masses. The accusations against petitioner are of serious nature. He is accused of commission of a very heinous offence.

9. I have heard learned counsel for the petitioner and learned Additional Advocate General for the respondent/State and have also gone through the entire investigation records.

10. The perusal of the contents of final report under Section 173 Cr.P.C. submitted by the respondent reveals that the prosecution is not relying upon any direct evidence. There is no eye witness to the occurrence. The accusations against petitioner and other co-accused have been sought to be proved by way of circumstantial evidence. The circumstance on which reliance has been placed are firstly that on 7.7.2022 Devi Dass and his family members had threatened the deceased that he would be finished by severing his body, secondly on 15.7.2022 the grand-mother of deceased had noticed accused Kiran Kumari cleaning the blood with a broom outside her cow-shed, thirdly, one axe, one blood stained sickle, one chopper (Toka), two knives were recovered from the house of co-accused Devi Dass and as per RFSL report, the sickle, chopper and knives were having blood stains on them.

11. Though, at this stage, this Court will not minutely scan the evidence collected by the investigating agency, however, in order to prima-facie assess the seriousness and gravity of accusations and to find out the existence of reasonable grounds to believe that petitioner has committed the offence as alleged, a cursory scan of the material becomes necessary. It is only

for such purpose that the material relied upon by the investigating agency has been noticed as above.

12. Merely because, the accusations are of serious nature and the offence, if proved, will attract severe punishment, cannot be the only ground to deny the bail. It has to be weighed and balanced with other factors, such as the allegations against the bail-petitioner and also the available evidence to prove such allegations.

13. The obligation cast on the Court while deciding a bail application, has its genesis in maintenance of balance between the rights of the accused on one hand and the public interest on the other.

14. In **Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40**, the Hon'ble Supreme Court observed and held as under:

> "***21***. *In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*
>
> ***22***. *From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test.In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any*

circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

***23**. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."*

15. An identical reiteration of above concept came to be recorded by the Hon'ble Supreme Court in **Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218** in para 16 of the judgment as under:

*"**16**. This Court in Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is*

no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

16. In **Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22**, the Hon'ble Supreme Court in paras 4 to 6 of the judgment, held as under:

"4*. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in Inhuman Conditions in 1382 Prisons, In re, (2017) 10 SCC 658.*

5*. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1, going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565,in which it is observed that it was held way back in Nagendra Nath Chakravarti, In re, 1923 SCC Online Cal 318, that bail is not to be withheld as a punishment. Reference was also made to Emperor v. H. L. Hutchinson, 1931 SCC online All 14,wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.*

> ***6***. *However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."*

17. In **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230**, the Hon'ble Supreme Court in para 47 of the judgment, held as under:

> *"**47**. The considerations which must weigh with the Court in granting bail have been formulated in the decisions of this Court in Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Prasanta Kumar Sarkar v. Ashis Chatterjee(2010) 14 SCC 496. These decisions as well as the decision in Sanjay Chandra (supra) were adverted to in a recent decision of a two judge Bench of this Court dated 19 March 2021 in The State of Kerala v. Mahesh (2021) 14 SCC 86, where the Court observed: (SCC para 21)*
>
> > *"21. .....All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant accused absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses."*
>
> *Similarly, the Court held that the grant of bail by the High Court can be set aside, consistent with the precedents we have*

discussed above, when such grant is based on non-application of mind or is innocent of the relevant factors for such grant."

18. Reverting to the facts of the case, noticeably, there is no eye witness. The Forensic Science Laboratory Report also prima-facie does not opine the connection between the blood stains found on the sickle, chopper and knives allegedly recovered from the house of co-accused Devi Dass with the deceased. In fact, sufficient material has not been found for further analysis. There also is no prima-facie corroboration to the statement of the grand -mother of deceased regarding having noticed the accused Kiran Kumari cleaning the blood outside the cow-shed with broom on 15.7.2022. The allegation regarding threat extended to the deceased by petitioner and other accused persons on 7.7.2022, in addition to other aforesaid circumstances, require scrutiny and appreciation during trial.

19. Thus, the evidence collected by the investigating agency to prove the above noted circumstances, cannot be said to suggest a strong inference against the petitioner. In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner.

20. Analyzing the facts of the case at the touchstone of legal parameters, as enunciated from time to time and noticed above, this Court is of the view that petitioner is entitled to bail. The petitioner has a permanent abode. The apprehension expressed by learned Additional Advocate General regarding possibility of petitioner fleeing from the course of justice is only on supposition. No criminal history has been attributed to the petitioner. Even otherwise, petitioner can be put to strict terms for ensuring fair and speedy trial.

21. Learned Additional Advocate General has also not been able to convincingly reveal the material which may be sufficient to draw an inference regarding possibility of petitioner tampering with prosecution evidence. Most of the witnesses are closely related to the deceased and it is hard to presume that such witnesses can be influenced by the petitioner. As regards making of inculpatory statements by the petitioner, its admissibility will again be seen at the time of the trial at the touchstone of well settled principles of law.

22. Petitioner is already in custody since 23.07.2022. His further detention in judicial custody is not going to serve any fruitful purpose. Pre-trial incarceration cannot be ordered as a matter of rule. In case the charges, if any against the petitioner are proved, he will suffer the legal consequences.

23. A co-accused in the case namely Devi Dass has already been released on bail by this Court vide order dated 17.3.2023 passed in Cr.M.P.(M) 380 of 2023. The case of petitioner is also similar to the case of accused Devi Dass, therefore, petitioner is also entitled to bail even on the ground of parity.

24. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail in case registered vide FIR No.49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, on his furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One lacs) with one suretyin the like amount to the satisfaction of learned trial Court. This order shall, however, be subject to the following conditions:

i) That the petitioner shall not indulge in any criminal activity and in the event of breach of this condition, the bail granted to the petitioner in this case, shall automatically be cancelled.

ii) That the petitioner shall not leave the territory of India without express leave of Trial Court during the Trial.

iii). That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with the prosecution evidence.

iv) That the petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

25. Any observation made in this order shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Joginder Rajput .....Petitioner

Versus

State of Himachal Pradesh .....Respondent

For the petitioner: Mr. Rajiv Rai, Advocate, with Mr. Gurdev Negi, Advocate.

For the respondent: Mr. Varun Chandel Additional Advocate General with Mr. Arsh Rattan, Deputy Advocate General.

Cr. M.P.(M) No. 644 of 2023
Reserved on: 31.03.2023
Decided on: 05.04.2023

Code of Criminal Procedure, 1973 -Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under sections 302, 201 and 120-B IPC – Challan already filed – Some evidence also led - **Held**- seriousness of the offence cannot be the only ground to deny bail - It has to be weighed and balanced with other factors - In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner – **Further held** – Petitioner also entitled to bail on the ground of parity - Bail granted. (Paras 10 to 24)

Cases referred:

Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22;
Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218;

Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230;
Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40;

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Petitioner is accused in case FIR No. 49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, H.P.

2. Brief facts necessary for adjudication of the petition are that a boy named Ankit Kumar alias Anku aged about 19 years, resident of Village Samoh, Tehsil Jhandutta, District Bilaspur, H.P. was student of Polytechnic Institute at Village Kalol, District Bilaspur. On 13.7.2022 Ankit Kumar alias Anku left his native village to join his College by personal vehicle bearing registration No. HP-69A-1984 (Alto K-10). The vehicle belonged to his maternal grandmother. In the evening of 14.7.2022, Ankit Kumar alias Anku left for his native village from village Kalol. At about 8.30 p.m., he telephonically informed his mother that he had reached village Baroha and would reach home within 10-15 minutes. Ankit Kumar alias Anku, however, did not reach home that night. Next morning at about 8.30 a.m. father of Ankit Kumar alias Anku noticed the vehicle No. HP-69A-1984 parked behind the house of Jodh Singh. Thereafter, search was launched for Ankit Kumar alias Anku, but he could not be found anywhere. On 19.7.2022, father of Ankit Kumar alias Anku lodged missing report at Police Station, Jhandutta.

3. On 21.7.2022, Vice President, Gram Panchayat, Samoh telephonically informed the police that a part of dismembered body was

lying in a grass land in village Samoh. Police reached the spot. Sh. Ramesh Kumar, father of Ankit Kumar alias Anku got recorded his statement under Section 154 Cr.P.C. The dismembered part of the body was identified by Sh. Ramesh Kumar to be that of his son. Accordingly, the above noted case was registered.

4. During investigation, on 22.7.2022, the other parts of the body were recovered and identified by Sh. Ramesh Kumar. Postmortem was got conducted. It was opined that the body had been severed with cutter/sharp edged weapon. The complainant Sh. Ramesh Kumar and his brother Sh. Ravi Kant raised suspicion of commission of offence against the petitioner and other co-accused namely Devi Dass S/o Jhamdiya Ram, Chaman Lal S/o Sh. Devi Dass, Hem Raj alias Kaku S/o Devi Dass, Kiran W/o Hem Raj and Lal Dhar S/o Agnu Prasad.

5. The police after completion of investigation, has presented the challan against petitioner and other above-named co-accused. As per the final report submitted by the Police under Section 173 Cr.P.C., sufficient evidence is stated to have been found against petitioner and other co-accused. It is alleged that accused Devi Dass and his family had enmity with the family of deceased.They criminally conspired with petitioner and Lal Dhar and murdered Ankit Kumar alias Anku during intervening night of 14/15.7.2022 and in order to destroy the evidence had severed the body in parts and such parts were separately disposed of by packing those in gunny bags.

6. Petitioner was arrested on 23.7.2022. He remained in police custody till 02.08.2022 and thereafter he was remanded to judicial custody. Petitioner is still in judicial custody.

7. It is contended on behalf of the petitioner that his prolonged custody is unwarranted. He was simply working as a labourer in the house of Devi Dass and the investigating agency has not

been able to find any incriminating evidence against petitioner. He has been implicated merely on the asking of the complainant. It is further contended that petitioner has committed no offence. The challan stands filed. Most of the prosecution witnesses are related to the deceased and they have joined hands with the sense of sheer vengeance. Petitioner is stated to be permanent resident of Village Pipla Shivnagar, Post Office, Tehsil and Police Station Milakh, District Rampur, Uttar Pradesh. He has undertaken to abide by all the terms and conditions as may be imposed against him.

8. Learned Additional Advocate General has opposed the prayer for grant of bail. It is submitted that the crime has been committed in most ghastly manner. The body of deceased had been cut into pieces, which reflects the criminal intent of the accused persons including the petitioner. He further submitted that the release of petitioner on bail will send a wrong signal in the masses. The accusations against petitioner are of serious nature. He is accused of commission of a very heinous offence.

9. I have heard learned counsel for the petitioner and learned Additional Advocate General for the respondent/State and have also gone through the entire investigation records.

10. The perusal of the contents of final report under Section 173 Cr.P.C. submitted by the respondent reveals that the prosecution is not relying upon any direct evidence. There is no eye witness to the occurrence. The accusations against petitioner and other co-accused have been sought to be proved by way of circumstantial evidence. The circumstance on which reliance has been placed are firstly that on 7.7.2022 Devi Dass and his family members had threatened the deceased that he would be finished by severing his body, secondly on 15.7.2022 the grand-mother of deceased had noticed accused Kiran

Kumari cleaning the blood with a broom outside her cow-shed, thirdly, one axe, one blood stained sickle, one chopper (Toka), two knives were recovered from the house of co-accused Devi Dass and as per RFSL report, the sickle, chopper and knives were having blood stains on them.

11. Though, at this stage, this Court will not minutely scan the evidence collected by the investigating agency, however, in order to prima-facie assess the seriousness and gravity of accusations and to find out the existence of reasonable grounds to believe that petitioner has committed the offence as alleged, a cursory scan of the material becomes necessary. It is only for such purpose that the material relied upon by the investigating agency has been noticed as above.

12. Merely because, the accusations are of serious nature and the offence, if proved, will attract severe punishment, cannot be the only ground to deny the bail. It has to be weighed and balanced with other factors, such as the allegations against the bail-petitioner and also the available evidence to prove such allegations.

13. The obligation cast on the Court while deciding a bail application, has its genesis in maintenance of balance between the rights of the accused on one hand and the public interest on the other.

14. In **Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40**, the Hon'ble Supreme Court observed and held as under:

> "***21***. *In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will*

stand his trial when called upon.The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

***22**. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test.In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.*

***23**. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."*

15. An identical reiteration of above concept came to be recorded by the Hon'ble Supreme Court in **Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218** in para 16 of the judgment as under:

*"**16**. This Court in Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is*

required to ensure that an accused person would stand his trial when called upon and that the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

16. In **Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22**, the Hon'ble Supreme Court in paras 4 to 6 of the judgment, held as under:

***"4**. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the*

dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in Inhuman Conditions in 1382 Prisons, In re, (2017) 10 SCC 658.

***5**. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1, going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565,in which it is observed that it was held way back in Nagendra Nath Chakravarti, In re, 1923 SCC Online Cal 318, that bail is not to be withheld as a punishment. Reference was also made to Emperor v. H. L. Hutchinson, 1931 SCC online All 14,wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.*

***6**. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."*

17. In **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230**, the Hon'ble Supreme Court in para 47 of the judgment, held as under:

*"**47**. The considerations which must weigh with the Court in granting bail have been formulated in the decisions of this Court in Ram Govind Upadhyay v. Sudarshan Singh*

(2002) 3 SCC 598 and Prasanta Kumar Sarkar v. Ashis Chatterjee(2010) 14 SCC 496. These decisions as well as the decision in Sanjay Chandra (supra) were adverted to in a recent decision of a two judge Bench of this Court dated 19 March 2021 in The State of Kerala v. Mahesh (2021) 14 SCC 86, where the Court observed: (SCC para 21)

> *"21. .....All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant accused absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses."*

Similarly, the Court held that the grant of bail by the High Court can be set aside, consistent with the precedents we have discussed above, when such grant is based on non-application of mind or is innocent of the relevant factors for such grant."

18. Reverting to the facts of the case, noticeably, there is no eye witness. The Forensic Science Laboratory Report also prima-facie does not opine the connection between the blood stains found on the sickle, chopper and knives allegedly recovered from the house of co-accused Devi Dass with the deceased. In fact, sufficient material has not been found for further analysis. There also is no prima-facie corroboration to the statement of the grand -mother of deceased

regarding having noticed the accused Kiran Kumari cleaning the blood outside the cow-shed with broom on 15.7.2022. The allegation regarding threat extended to the deceased by petitioner and other accused persons on 7.7.2022, in addition to other aforesaid circumstances, require scrutiny and appreciation during trial.

19. Thus, the evidence collected by the investigating agency to prove the above noted circumstances, cannot be said to suggest a strong inference against the petitioner. In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner.

20. Analyzing the facts of the case at the touchstone of legal parameters, as enunciated from time to time and noticed above, this Court is of the view that petitioner is entitled to bail. The petitioner has a permanent abode. The apprehension expressed by learned Additional Advocate General regarding possibility of petitioner fleeing from the course of justice is only on supposition. No criminal history has been attributed to the petitioner. Even otherwise, petitioner can be put to strict terms for ensuring fair and speedy trial.

21. Learned Additional Advocate General has also not been able to convincingly reveal the material which may be sufficient to draw an inference regarding possibility of petitioner tampering with prosecution evidence. Most of the witnesses are closely related to the deceased and it is hard to presume that such witnesses can be influenced by the petitioner. As regards making of inculpatory statements by the petitioner, its admissibility will again be seen at the time of the trial at the touchstone of well settled principles of law.

22. Petitioner is already in custody since 23.07.2022. His further detention in judicial custody is not going to serve any fruitful purpose. Pre-trial incarceration cannot be ordered as a matter of rule. In case the charges, if any against the petitioner are proved, he will suffer the legal consequences.

23. A co-accused in the case namely Devi Dass has already been released on bail by this Court vide order dated 17.3.2023 passed in Cr.M.P.(M) 380 of 2023. The case of petitioner is also similar to the case of accused Devi Dass, therefore, petitioner is also entitled to bail even on the ground of parity.

24. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail in case registered vide FIR No.49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, on his furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One lacs) with one suretyin the like amount to the satisfaction of learned trial Court. This order shall, however, be subject to the following conditions:

i) That the petitioner shall not indulge in any criminal activity and in the event of breach of this condition, the bail granted to the petitioner in this case, shall automatically be cancelled.

ii) That the petitioner shall not leave the territory of India without express leave of Trial Court during the Trial.

iii). That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with the prosecution evidence.

iv) That the petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

25. Any observation made in this order shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Hem Raj alias Kaku .....Petitioner

Versus

State of Himachal Pradesh .....Respondent

For the petitioner: Mr. N. S. Chandel, Senior Advocate, with Mr. Rajesh Verma, Advocate.

For the respondent: Mr. Varun Chandel and Mr. Mohinder Zharaick, Additional Advocate Generals with Mr. Arsh Rattan, Deputy Advocate General.

Cr. M.P.(M) No. 746 of 2023
Reserved on: 31.03.2023
Decided on: 05.04.2023

Code of Criminal Procedure, 1973 – Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under sections 302, 201 and 120-B IPC – Challan already filed – Some evidence also led - **Held**- Seriousness of the offence cannot be the only ground to deny bail - It has to be weighed and balanced with other factors - In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner – **Further held** – Petitioner also entitled to bail on the ground of parity - Bail granted. (Paras 10 to 24)

Cases referred:
Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22;
Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218;
Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230;
Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40;

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Petitioner is accused in case FIR No. 49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, H.P.

2. Brief facts necessary for adjudication of the petition are that a boy named Ankit Kumar alias Anku aged about 19 years, resident of Village Samoh, Tehsil Jhandutta, District Bilaspur, H.P. was student of Polytechnic Institute at Village Kalol, District Bilaspur. On 13.7.2022 Ankit Kumar alias Anku left his native village to join his College by personal vehicle bearing registration No. HP-69A-1984 (Alto K-10). The vehicle belonged to his maternal grandmother. In the evening of 14.7.2022, Ankit Kumar alias Anku left for his native village from village Kalol. At about 8.30 p.m., he telephonically informed his mother that he had reached village Baroha and would reach home within 10-15 minutes. Ankit Kumar alias Anku, however, did not reach home that night. Next morning at about 8.30 a.m. father of Ankit Kumar alias Anku noticed the vehicle No. HP-69A-1984 parked behind the house of Jodh Singh. Thereafter, search was launched for Ankit Kumar alias Anku, but he could not be found anywhere. On 19.7.2022, father of Ankit Kumar alias Anku lodged missing report at Police Station, Jhandutta.

3. On 21.7.2022, Vice President, Gram Panchayat, Samoh telephonically informed the police that a part of dismembered body was lying

in a grass land in village Samoh. Police reached the spot. Sh. Ramesh Kumar, father of Ankit Kumar alias Anku got recorded his statement under Section 154 Cr.P.C. The dismembered part of the body was identified by Sh. Ramesh Kumar to be that of his son. Accordingly, the above noted case was registered.

4. During investigation, on 22.7.2022, the other parts of the body were recovered and identified by Sh. Ramesh Kumar. Postmortem was got conducted. It was opined that the body had been severed with cutter/sharp edged weapon. The complainant Sh. Ramesh Kumar and his brother Sh. Ravi Kant raised suspicion of commission of offence against the petitioner and other co-accused namely Devi Dass S/o Sh. Jhamdiya Ram, Chaman Lal S/o Sh. Devi Dass, Kiran W/o Hem Raj, Laldhar S/o Agnu Prasad and Joginder Rajput S/o Gaindan Lal.

5. The police after completion of investigation, has presented the challan against petitioner and other above-named co-accused. As per the final report submitted by the Police under Section 173 Cr.P.C., sufficient evidence is stated to have been found against petitioner and other co-accused. It is alleged that the petitioner and other co-accused persons namely Devi Dass, Chaman Lal and Kiran had enmity with the family of deceased and all the accused persons having criminally conspired had murdered Ankit Kumar alias Anku during intervening night of 14/15.7.2022 and in order to destroy the evidence had severed the body in parts and such parts were separately disposed of by packing those in gunny bags.

6. Petitioner was arrested on 22.7.2022. He remained in police custody till 02.08.2022 and thereafter he was remanded to judicial custody. Petitioner is still in judicial custody.

7. It is contended on behalf of the petitioner that his prolonged custody is unwarranted. The investigating agency has not been able to find any incriminating evidence against petitioner. He has been implicated merely on the asking of the complainant. It is further contended that petitioner has

committed no offence. The challan stands filed. Most of the prosecution witnesses are related to the deceased and they have joined hands with the sense of sheer vengeance. Petitioner is stated to be permanent resident of Village Samoh, Tehsil Jhandutta, District Bilaspur, H.P. He has undertaken to abide by all the terms and conditions as may be imposed against him.

8. Learned Additional Advocate General has opposed the prayer for grant of bail. It is submitted that the crime has been committed in most ghastly manner. The body of deceased had been cut into pieces, which reflects the criminal intent of the accused persons including the petitioner. He further submitted that the release of petitioner on bail will send a wrong signal in the masses. The accusations against petitioner are of serious nature. He is accused of commission of a very heinous offence.

9. I have heard learned counsel for the petitioner and learned Additional Advocate General for the respondent/State and have also gone through the entire investigation records.

10. The perusal of the contents of final report under Section 173 Cr.P.C. submitted by the respondent reveals that the prosecution is not relying upon any direct evidence. There is no eye witness to the occurrence. The accusations against petitioner and other co-accused have been sought to be proved by way of circumstantial evidence. The circumstance on which reliance has been placed are firstly that on 7.7.2022 the petitioner and other co-accused had threatened the deceased that he would be finished by severing his body, secondly on 15.7.2022 the grand-mother of deceased had noticed accused Kiran Kumari cleaning the blood with a broom outside her cow-shed, thirdly, one axe, one blood stained sickle, one chopper (Toka), two knives were recovered from the house of petitioner and as per RFSL report, the sickle, chopper and knives were having blood stains on them.

11. Though, at this stage, this Court will not minutely scan the evidence collected by the investigating agency, however, in order to prima-facie

assess the seriousness and gravity of accusations and to find out the existence of reasonable grounds to believe that petitioner has committed the offence as alleged, a cursory scan of the material becomes necessary. It is only for such purpose that the material relied upon by the investigating agency has been noticed as above.

12. Merely because, the accusations are of serious nature and the offence, if proved, will attract severe punishment, cannot be the only ground to deny the bail. It has to be weighed and balanced with other factors, such as the allegations against the bail-petitioner and also the available evidence to prove such allegations.

13. The obligation cast on the Court while deciding a bail application, has its genesis in maintenance of balance between the rights of the accused on one hand and the public interest on the other.

14. In **Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40**, the Hon'ble Supreme Court observed and held as under:

> "***21***. *In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*
>
> ***22***. *From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test.In this country, it would be quite contrary to the concept of personal*

liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

***23**. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."*

15. An identical reiteration of above concept came to be recorded by the Hon'ble Supreme Court in **Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218** in para 16 of the judgment as under:

*"**16**. This Court in Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and*

caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

16. In **Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22**, the Hon'ble Supreme Court in paras 4 to 6 of the judgment, held as under:

***"4**. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in Inhuman Conditions in 1382 Prisons, In re, (2017) 10 SCC 658.*

***5**. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1, going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565,in which it is observed that it was held way back in Nagendra Nath Chakravarti, In re, 1923 SCC Online Cal 318, that bail is not to be withheld as a punishment. Reference was also made to Emperor v. H. L. Hutchinson, 1931 SCC online All 14,wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal*

interpretation to the provision for bail is almost a century old, going back to colonial days.

***6**. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."*

17. In **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230**, the Hon'ble Supreme Court in para 47 of the judgment, held as under:

*"**47**. The considerations which must weigh with the Court in granting bail have been formulated in the decisions of this Court in Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Prasanta Kumar Sarkar v. Ashis Chatterjee(2010) 14 SCC 496. These decisions as well as the decision in Sanjay Chandra (supra) were adverted to in a recent decision of a two judge Bench of this Court dated 19 March 2021 in The State of Kerala v. Mahesh (2021) 14 SCC 86, where the Court observed: (SCC para 21)*

> *"21. .....All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant accused absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses."*

> *Similarly, the Court held that the grant of bail by the High Court can be set aside, consistent with the precedents we have discussed above, when such grant is based on non-application of mind or is innocent of the relevant factors for such grant."*

18. Reverting to the facts of the case, noticeably, there is no eye witness. The Forensic Science Laboratory Report also prima-facie does not opine the connection between the blood stains found on the sickle, chopper and knives allegedly recovered from the house of petitioner with the deceased. In fact, sufficient material has not been found for further analysis. There also is no prima-facie corroboration to the statement of the grand-mother of deceased regarding having noticed the accused Kiran Kumari cleaning the blood outside the cow-shed with broom on 15.7.2022. The allegation regarding threat extended to the deceased by petitioner and other accused persons on 7.7.2022, in addition to other aforesaid circumstances, require scrutiny and appreciation during trial.

19. Thus, the evidence collected by the investigating agency to prove the above noted circumstances, cannot be said to suggest a strong inference against the petitioner. In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner.

20. Analyzing the facts of the case at the touchstone of legal parameters, as enunciated from time to time and noticed above, this Court is of the view that petitioner is entitled to bail. The petitioner has a permanent abode. The apprehension expressed by learned Additional Advocate General regarding possibility of petitioner fleeing from the course of justice is only on supposition. No criminal history has been attributed to the petitioner. Even

otherwise, petitioner can be put to strict terms for ensuring fair and speedy trial.

21. Learned Additional Advocate General has also not been able to convincingly reveal the material which may be sufficient to draw an inference regarding possibility of petitioner tampering with prosecution evidence. Most of the witnesses are closely related to the deceased and it is hard to presume that such witnesses can be influenced by the petitioner. As regards making of inculpatory statements by the petitioner, its admissibility will again be seen at the time of the trial at the touchstone of well settled principles of law.

22. Petitioner is already in custody since 22.07.2022. His further detention in judicial custody is not going to serve any fruitful purpose. Pre-trial incarceration cannot be ordered as a matter of rule. In case the charges, if any against the petitioner are proved, he will suffer the legal consequences.

23. A co-accused in the case namely Devi Dass has already been released on bail by this Court vide order dated 17.3.2023 passed in Cr.M.P.(M) 380 of 2023. The case of petitioner is also similar to the case of accused Devi Dass, therefore, petitioner is also entitled to bail even on the ground of parity.

24. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail in case registered vide FIR No.49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, on his furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One lacs) with one suretyin the like amount to the satisfaction of learned trial Court. This order shall, however, be subject to the following conditions:

i) That the petitioner shall not indulge in any criminal activity and in the event of breach of this condition, the bail granted to the petitioner in this case, shall automatically be cancelled.

ii) That the petitioner shall not leave the territory of India without express leave of Trial Court during the Trial.

iii). That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with the prosecution evidence.

iv) That the petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

25. Any observation made in this order shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Chaman Lal .....Petitioner

Versus

State of Himachal Pradesh .....Respondent

For the petitioner: Mr. N. S. Chandel, Senior Advocate, with Mr. Rajesh Verma, Advocate.

For the respondent: Mr. Varun Chandel and Mr. Mohinder Zharaick, Additional Advocate Generals with Mr. Arsh Rattan, Deputy Advocate General.

Cr. M.P.(M) No. 747 of 2023
Reserved on: 31.03.2023
Decided on: 05.04.2023

Code of Criminal Procedure, 1973 – Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under sections 302, 201 and 120-B IPC – Challan already filed – Some evidence also led - held– seriousness of the offence cannot be the only ground to deny bail - It has to be weighed and balanced with other factors - In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner – **Further held** – Petitioner also entitled to bail on the ground of parity - Bail granted. (Paras 10 to 24)

Cases referred:

Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22;

Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218;
Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230;
Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40;

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Petitioner is accused in case FIR No. 49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, H.P.

2. Brief facts necessary for adjudication of the petition are that a boy named Ankit Kumar alias Anku aged about 19 years, resident of Village Samoh, Tehsil Jhandutta, District Bilaspur, H.P. was student of Polytechnic Institute at Village Kalol, District Bilaspur. On 13.7.2022 Ankit Kumar alias Anku left his native village to join his College by personal vehicle bearing registration No. HP-69A-1984 (Alto K-10). The vehicle belonged to his maternal grandmother. In the evening of 14.7.2022, Ankit Kumar alias Anku left for his native village from village Kalol. At about 8.30 p.m., he telephonically informed his mother that he had reached village Baroha and would reach home within 10-15 minutes. Ankit Kumar alias Anku, however, did not reach home that night. Next morning at about 8.30 a.m. father of Ankit Kumar alias Anku noticed the vehicle No. HP-69A-1984 parked behind the house of Jodh Singh. Thereafter, search was launched for Ankit Kumar alias Anku, but he could not be found anywhere. On 19.7.2022, father of Ankit Kumar alias Anku lodged missing report at Police Station, Jhandutta.

3. On 21.7.2022, Vice President, Gram Panchayat, Samoh telephonically informed the police that a part of dismembered body was lying in a grass land in village Samoh. Police reached the spot. Sh. Ramesh Kumar,

father of Ankit Kumar alias Anku got recorded his statement under Section 154 Cr.P.C. The dismembered part of the body was identified by Sh. Ramesh Kumar to be that of his son. Accordingly, the above noted case was registered.

4. During investigation, on 22.7.2022, the other parts of the body were recovered and identified by Sh. Ramesh Kumar. Postmortem was got conducted. It was opined that the body had been severed with cutter/sharp edged weapon. The complainant Sh. Ramesh Kumar and his brother Sh. Ravi Kant raised suspicion of commission of offence against the petitioner and other co-accused namely Devi Dass S/o Sh. Jhamdiya Ram, Hem Raj alias Kaku S/o Sh. Devi Dass, Kiran W/o Hem Raj, Laldhar S/o Agnu Prasad and Joginder Rajput S/o Gaindan Lal.

5. The police after completion of investigation, has presented the challan against petitioner and other above-named co-accused. As per the final report submitted by the Police under Section 173 Cr.P.C., sufficient evidence is stated to have been found against petitioner and other co-accused. It is alleged that the petitioner and other co-accused persons namely Devi Dass, Hem Raj alias Kaku and Kiran had enmity with the family of deceased and all the accused persons having criminally conspired had murdered Ankit Kumar alias Anku during intervening night of 14/15.7.2022 and in order to destroy the evidence had severed the body in parts and such parts were separately disposed of by packing those in gunny bags.

6. Petitioner was arrested on 22.7.2022. He remained in police custody till 02.08.2022 and thereafter he was remanded to judicial custody. Petitioner is still in judicial custody.

7. It is contended on behalf of the petitioner that his prolonged custody is unwarranted. The investigating agency has not been able to find any incriminating evidence against petitioner. He has been implicated merely on the asking of the complainant. It is further contended that petitioner has committed no offence. The challan stands filed. Most of the prosecution

witnesses are related to the deceased and they have joined hands with the sense of sheer vengeance. Petitioner is stated to be permanent resident of Village Samoh, Tehsil Jhandutta, District Bilaspur, H.P. He has undertaken to abide by all the terms and conditions as may be imposed against him.

8. Learned Additional Advocate General has opposed the prayer for grant of bail. It is submitted that the crime has been committed in most ghastly manner. The body of deceased had been cut into pieces, which reflects the criminal intent of the accused persons including the petitioner. He further submitted that the release of petitioner on bail will send a wrong signal in the masses. The accusations against petitioner are of serious nature. He is accused of commission of a very heinous offence.

9. I have heard learned counsel for the petitioner and learned Additional Advocate General for the respondent/State and have also gone through the entire investigation records.

10. The perusal of the contents of final report under Section 173 Cr.P.C. submitted by the respondent reveals that the prosecution is not relying upon any direct evidence. There is no eye witness to the occurrence. The accusations against petitioner and other co-accused have been sought to be proved by way of circumstantial evidence. The circumstance on which reliance has been placed are firstly that on 7.7.2022 the petitioner and other co-accused had threatened the deceased that he would be finished by severing his body, secondly on 15.7.2022 the grand-mother of deceased had noticed accused Kiran Kumari cleaning the blood with a broom outside her cow-shed, thirdly, one axe, one blood stained sickle, one chopper (Toka), two knives were recovered from the house of petitioner and as per RFSL report, the sickle, chopper and knives were having blood stains on them.

11. Though, at this stage, this Court will not minutely scan the evidence collected by the investigating agency, however, in order to prima-facie assess the seriousness and gravity of accusations and to find out the existence

of reasonable grounds to believe that petitioner has committed the offence as alleged, a cursory scan of the material becomes necessary. It is only for such purpose that the material relied upon by the investigating agency has been noticed as above.

12. Merely because, the accusations are of serious nature and the offence, if proved, will attract severe punishment, cannot be the only ground to deny the bail. It has to be weighed and balanced with other factors, such as the allegations against the bail-petitioner and also the available evidence to prove such allegations.

13. The obligation cast on the Court while deciding a bail application, has its genesis in maintenance of balance between the rights of the accused on one hand and the public interest on the other.

14. In **Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40**, the Hon'ble Supreme Court observed and held as under:

> "***21***. *In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*
>
> ***22***. *From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test.In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should*

be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

***23**. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."*

15. An identical reiteration of above concept came to be recorded by the Hon'ble Supreme Court in **Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218** in para 16 of the judgment as under:

*"**16**. This Court in Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of*

an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case. That detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

16. In **Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22**, the Hon'ble Supreme Court in paras 4 to 6 of the judgment, held as under:

"4*. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in Inhuman Conditions in 1382 Prisons, In re, (2017) 10 SCC 658.*

5*. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1, going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565,in which it is observed that it was held way back in Nagendra Nath Chakravarti, In re, 1923 SCC Online Cal 318, that bail is not to be withheld as a punishment. Reference was also made to Emperor v. H. L. Hutchinson, 1931 SCC online All 14,wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal*

interpretation to the provision for bail is almost a century old, going back to colonial days.

***6**. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."*

17. In **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230**, the Hon'ble Supreme Court in para 47 of the judgment, held as under:

*"**47**. The considerations which must weigh with the Court in granting bail have been formulated in the decisions of this Court in Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Prasanta Kumar Sarkar v. Ashis Chatterjee(2010) 14 SCC 496. These decisions as well as the decision in Sanjay Chandra (supra) were adverted to in a recent decision of a two judge Bench of this Court dated 19 March 2021 in The State of Kerala v. Mahesh (2021) 14 SCC 86, where the Court observed: (SCC para 21)*

> *"21. .....All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant accused absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses."*

> *Similarly, the Court held that the grant of bail by the High Court can be set aside, consistent with the precedents we have discussed above, when such grant is based on non-application of mind or is innocent of the relevant factors for such grant."*

18. Reverting to the facts of the case, noticeably, there is no eye witness. The Forensic Science Laboratory Report also prima-facie does not opine the connection between the blood stains found on the sickle, chopper and knives allegedly recovered from the house of petitioner with the deceased. In fact, sufficient material has not been found for further analysis. There also is no prima-facie corroboration to the statement of the grand-mother of deceased regarding having noticed the accused Kiran Kumari cleaning the blood outside the cow-shed with broom on 15.7.2022. The allegation regarding threat extended to the deceased by petitioner and other accused persons on 7.7.2022, in addition to other aforesaid circumstances, require scrutiny and appreciation during trial.

19. Thus, the evidence collected by the investigating agency to prove the above noted circumstances, cannot be said to suggest a strong inference against the petitioner. In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner.

20. Analyzing the facts of the case at the touchstone of legal parameters, as enunciated from time to time and noticed above, this Court is of the view that petitioner is entitled to bail. The petitioner has a permanent abode. The apprehension expressed by learned Additional Advocate General regarding possibility of petitioner fleeing from the course of justice is only on supposition. No criminal history has been attributed to the petitioner. Even

otherwise, petitioner can be put to strict terms for ensuring fair and speedy trial.

21. Learned Additional Advocate General has also not been able to convincingly reveal the material which may be sufficient to draw an inference regarding possibility of petitioner tampering with prosecution evidence. Most of the witnesses are closely related to the deceased and it is hard to presume that such witnesses can be influenced by the petitioner. As regards making of inculpatory statements by the petitioner, its admissibility will again be seen at the time of the trial at the touchstone of well settled principles of law.

22. Petitioner is already in custody since 22.07.2022. His further detention in judicial custody is not going to serve any fruitful purpose. Pre-trial incarceration cannot be ordered as a matter of rule. In case the charges, if any against the petitioner are proved, he will suffer the legal consequences.

23. A co-accused in the case namely Devi Dass has already been released on bail by this Court vide order dated 17.3.2023 passed in Cr.M.P.(M) 380 of 2023. The case of petitioner is also similar to the case of accused Devi Dass, therefore, petitioner is also entitled to bail even on the ground of parity.

24. Accordingly, the petition is allowed and the petitioner is ordered to be released on bail in case registered vide FIR No.49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, on his furnishing personal bond in the sum of Rs.1,00,000/- (Rupees One lacs) with one suretyin the like amount to the satisfaction of learned trial Court. This order shall, however, be subject to the following conditions:

i) That the petitioner shall not indulge in any criminal activity and in the event of breach of this condition, the bail granted to the petitioner in this case, shall automatically be cancelled.

ii) That the petitioner shall not leave the territory of India without express leave of Trial Court during the Trial.

iii). That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with the prosecution evidence.

iv) That the petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

25. Any observation made in this order shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Kiran .....Petitioner

Versus

State of Himachal Pradesh .....Respondent

For the petitioner: Mr. N. S. Chandel, Senior Advocate, with Mr. Rajesh Verma, Advocate.

For the respondent: Mr. Varun Chandel and Mr. Mohinder Zharaick, Additional Advocate Generals with Mr. Arsh Rattan, Deputy Advocate General.

Cr. M.P.(M) No. 748 of 2023
Reserved on: 31.03.2023
Decided on: 05.04.2023

Code of Criminal Procedure, 1973 – Section 439 **-** Petitioner is co-accused facing trial for commission of offences punishable under sections 302, 201 and 120-B IPC – Challan already filed – some evidence also led - **Held**- Seriousness of the offence cannot be the only ground to deny bail - It has to be weighed and balanced with other factors - In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner – **Further held** – Petitioner also entitled to bail on the ground of parity - Bail granted. (Paras 10 to 24)

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Petitioner is accused in case FIR No. 49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, H.P.

2.Brief facts necessary for adjudication of the petition are that a boy named Ankit Kumar alias Anku aged about 19 years, resident of Village Samoh, Tehsil Jhandutta, District Bilaspur, H.P. was student of Polytechnic Institute at Village Kalol, District Bilaspur. On 13.7.2022 Ankit Kumar alias Anku left his native village to join his College by personal vehicle bearing registration No. HP-69A-1984 (Alto K-10). The vehicle belonged to his maternal grandmother. In the evening of 14.7.2022, Ankit Kumar alias Anku left for his native village from village Kalol. At about 8.30 p.m., he telephonically informed his mother that he had reached village Baroha and would reach home within 10-15 minutes. Ankit Kumar alias Anku, however, did not reach home that night. Next morning at about 8.30 a.m. father of Ankit Kumar alias Anku noticed the vehicle No. HP-69A-1984 parked behind the house of Jodh Singh. Thereafter, search was launched for Ankit Kumar alias Anku, but he could not be found anywhere. On 19.7.2022, father of Ankit Kumar alias Anku lodged missing report at Police Station, Jhandutta.

3.On 21.7.2022, Vice President, Gram Panchayat, Samoh telephonically informed the police that a part of dismembered body was lying in a grass land in village Samoh. Police reached the spot. Sh. Ramesh Kumar, father of Ankit Kumar alias Anku got recorded his statement under Section 154 Cr.P.C. The dismembered part of the body was identified by Sh. Ramesh Kumar to be that of his son. Accordingly, the above noted case was registered.

4.During investigation, on 22.7.2022, the other parts of the body were recovered and identified by Sh. Ramesh Kumar. Postmortem was got conducted. It was opined that the body had been severed with cutter/sharp edged weapon. The complainant Sh. Ramesh Kumar and his brother Sh. Ravi Kant raised suspicion of commission of offence against the petitioner and

other co-accused namely Devi Dass S/o Sh. Jhamdiya Ram, Hem Raj alias Kaku S/o Sh. Devi Dass, Chaman Lal S/o Sh. Devi Dass, Laldhar S/o Agnu Prasad and Joginder Rajput S/o Gaindan Lal.

5.The police after completion of investigation, has presented the challan against petitioner and other above-named co-accused. As per the final report submitted by the Police under Section 173 Cr.P.C., sufficient evidence is stated to have been found against petitioner and other co-accused. It is alleged that the petitioner and other co-accused persons namely Devi Dass, Hem Raj alias Kaku and Chaman Lal had enmity with the family of deceased and all the accused persons having criminally conspired had murdered Ankit Kumar alias Anku during intervening night of 14/15.7.2022 and in order to destroy the evidence had severed the body in parts and such parts were separately disposed of by packing those in gunny bags.

6.Petitioner was arrested on 22.7.2022. She remained in police custody till 02.08.2022 and thereafter she was remanded to judicial custody. Petitioner is still in judicial custody.

7.It is contended on behalf of the petitioner that her prolonged custody is unwarranted. The investigating agency has not been able to find any incriminating evidence against petitioner. She has been implicated merely on the asking of the complainant. It is further contended that petitioner has committed no offence. The challan stands filed. Most of the prosecution witnesses are related to the deceased and they have joined hands with the sense of sheer vengeance. Petitioner is stated to be permanent resident of Village Samoh, Tehsil Jhandutta, District Bilaspur, H.P. She has undertaken to abide by all the terms and conditions as may be imposed against her.

8.Learned Additional Advocate General has opposed the prayer for grant of bail. It is submitted that the crime has been committed in most ghastly manner. The body of deceased had been cut into pieces, which reflects the criminal intent of the accused persons including the petitioner. He further

submitted that the release of petitioner on bail will send a wrong signal in the masses. The accusations against petitioner are of serious nature. She is accused of commission of a very heinous offence.

9.I have heard learned counsel for the petitioner and learned Additional Advocate General for the respondent/State and have also gone through the entire investigation records.

10.The perusal of the contents of final report under Section 173 Cr.P.C. submitted by the respondent reveals that the prosecution is not relying upon any direct evidence. There is no eye witness to the occurrence. The accusations against petitioner and other co-accused have been sought to be proved by way of circumstantial evidence. The circumstance on which reliance has been placed are firstly that on 7.7.2022 the petitioner and other co-accused had threatened the deceased that he would be finished by severing his body, secondly on 15.7.2022 the grand-mother of deceased had noticed the petitioner cleaning the blood with a broom outside her cow-shed, thirdly, one axe, one blood stained sickle, one chopper (Toka), two knives were recovered from the house of petitioner and as per RFSL report, the sickle, chopper and knives were having blood stains on them.

11.Though, at this stage, this Court will not minutely scan the evidence collected by the investigating agency, however, in order to prima-facie assess the seriousness and gravity of accusations and to find out the existence of reasonable grounds to believe that petitioner has committed the offence as alleged, a cursory scan of the material becomes necessary. It is only for such purpose that the material relied upon by the investigating agency has been noticed as above.

12.Merely because, the accusations are of serious nature and the offence, if proved, will attract severe punishment, cannot be the only ground to deny the bail. It has to be weighed and balanced with other factors, such as the

allegations against the bail-petitioner and also the available evidence to prove such allegations.

13.The obligation cast on the Court while deciding a bail application, has its genesis in maintenance of balance between the rights of the accused on one hand and the public interest on the other.

14.

I

n **Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40**, the Hon'ble Supreme Court observed and held as under:

> "***21***.*In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it can be required to ensure that an accused person will stand his trial when called upon.The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*
>
> ***22***. *From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some un-convicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, `necessity' is the operative test.In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.*

> ***23**. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson."*

15.An identical reiteration of above concept came to be recorded by the Hon'ble Supreme Court in **Manoranjana Sinh alias Gupta vs. Central Bureau of Investigation (2017) 5 SCC 218** in para 16 of the judgment as under:

> *"**16**. This Court in Sanjay Chandra vs. Central Bureau of Investigation (2012) 1 SCC 40, also involving an economic offence of formidable magnitude, while dealing with the issue of grant of bail, had observed that deprivation of liberty must be considered a punishment unless it is required to ensure that an accused person would stand his trial when called upon and that the courts owe more than verbal respect to the principle that punishment begins after conviction and that every man is deemed to be innocent until duly tried and found guilty. It was underlined that the object of bail is neither punitive nor preventive. This Court sounded a caveat that any imprisonment before conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of a conduct whether an accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of imprisonment as a lesson. It was enunciated that since the jurisdiction to grant bail to an accused pending trial or in appeal against conviction is discretionary in nature, it has to be exercised with care and caution by balancing the valuable right of liberty of an individual and the interest of the society in general. It was elucidated that the seriousness of the charge, is no doubt one of the relevant considerations while examining the application of bail but it was not only the test or the factor and that grant or denial of such privilege, is regulated to a large extent by the facts and circumstances of each particular case.*

That detention in custody of under-trial prisoners for an indefinite period would amount to violation of Article 21 of the Constitution was highlighted."

16.In **Dataram Singh vs. State of Uttar Pradesh and another (2018) 3 SCC 22**, the Hon'ble Supreme Court in paras 4 to 6 of the judgment, held as under:

***"4**. To put it shortly, a humane attitude is required to be adopted by a judge, while dealing with an application for remanding a suspect or an accused person to police custody or judicial custody. There are several reasons for this including maintaining the dignity of an accused person, howsoever poor that person might be, the requirements of Article 21 of the Constitution and the fact that there is enormous overcrowding in prisons, leading to social and other problems as noticed by this Court in Inhuman Conditions in 1382 Prisons, In re, (2017) 10 SCC 658.*

***5**. The historical background of the provision for bail has been elaborately and lucidly explained in a recent decision delivered in Nikesh Tarachand Shah v. Union of India (2018) 11 SCC 1, going back to the days of the Magna Carta. In that decision, reference was made to Gurbaksh Singh Sibbia v. State of Punjab (1980) 2 SCC 565,in which it is observed that it was held way back in Nagendra Nath Chakravarti, In re, 1923 SCC Online Cal 318, that bail is not to be withheld as a punishment. Reference was also made to Emperor v. H. L. Hutchinson, 1931 SCC online All 14,wherein it was observed that grant of bail is the rule and refusal is the exception. The provision for bail is therefore age-old and the liberal interpretation to the provision for bail is almost a century old, going back to colonial days.*

***6**. However, we should not be understood to mean that bail should be granted in every case. The grant or refusal of bail is entirely within the discretion of the judge hearing the matter and though that discretion is unfettered, it must be exercised*

judiciously and in a humane manner and compassionately. Also, conditions for the grant of bail ought not to be so strict as to be incapable of compliance, thereby making the grant of bail illusory."

17.In **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and another (2021) 6 SCC 230**, the Hon'ble Supreme Court in para 47 of the judgment, held as under:

*"**47**. The considerations which must weigh with the Court in granting bail have been formulated in the decisions of this Court in Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Prasanta Kumar Sarkar v. Ashis Chatterjee(2010) 14 SCC 496. These decisions as well as the decision in Sanjay Chandra (supra) were adverted to in a recent decision of a two judge Bench of this Court dated 19 March 2021 in The State of Kerala v. Mahesh (2021) 14 SCC 86, where the Court observed: (SCC para 21)*

> *"21. .....All the relevant factors have to be weighed by the Court considering an application for bail, including the gravity of the offence, the evidence and material which prima facie show the involvement of applicant for bail in the offence alleged, the extent of involvement of the applicant for bail, in the offence alleged, possibility of the applicant accused absconding or otherwise defeating or delaying the course of justice, reasonable apprehension of witnesses being threatened or influenced or of evidence being tempered with, and danger to the safety of the victim (if alive), the complainant, their relatives, friends or other witnesses."*

Similarly, the Court held that the grant of bail by the High Court can be set aside, consistent with the precedents we have discussed above, when such grant is based on non-application of mind or is innocent of the relevant factors for such grant."

18.Reverting to the facts of the case, noticeably, there is no eye witness. The Forensic Science Laboratory Report also prima-facie does not opine the connection between the blood stains found on the sickle, chopper and knives allegedly recovered from the house of petitioner with the deceased. In fact, sufficient material has not been found for further analysis. There also is no prima-facie corroboration to the statement of the grand-mother of deceased regarding having noticed the petitioner cleaning the blood outside the cow-shed with broom on 15.7.2022. The allegation regarding threat extended to the deceased by petitioner and other accused persons on 7.7.2022, in addition to other aforesaid circumstances, require scrutiny and appreciation during trial.

19.Thus, the evidence collected by the investigating agency to prove the above noted circumstances, cannot be said to suggest a strong inference against the petitioner. In absence of any eye witness to the incident and non-availability of support in the form of scientific opinion, no such material is found to exist, which may lead a strong inference negating the possibility of any other hypothesis than the commission of alleged offence by the petitioner.

20.Analyzing the facts of the case at the touchstone of legal parameters, as enunciated from time to time and noticed above, this Court is of the view that petitioner is entitled to bail. The petitioner has a permanent abode. The apprehension expressed by learned Additional Advocate General regarding possibility of petitioner fleeing from the course of justice is only on supposition. No criminal history has been attributed to the petitioner. Even otherwise, petitioner can be put to strict terms for ensuring fair and speedy trial.

21.Learned Additional Advocate General has also not been able to convincingly reveal the material which may be sufficient to draw an inference regarding possibility of petitioner tampering with prosecution evidence. Most of the witnesses are closely related to the deceased and it is hard to presume

that such witnesses can be influenced by the petitioner. As regards making of inculpatory statements by the petitioner, its admissibility will again be seen at the time of the trial at the touchstone of well settled principles of law.

22.Petitioner is already in custody since 22.07.2022. Her further detention in judicial custody is not going to serve any fruitful purpose. Pre-trial incarceration cannot be ordered as a matter of rule. In case the charges, if any against the petitioner are proved, she will suffer the legal consequences.

23.A co-accused in the case namely Devi Dass has already been released on bail by this Court vide order dated 17.3.2023 passed in Cr.M.P.(M) 380 of 2023. The case of petitioner is also similar to the case of accused Devi Dass, therefore, petitioner is also entitled to bail even on the ground of parity.

24.Accordingly, the petition is allowed and the petitioner is ordered to be released on bail in case registered vide FIR No.49 of 2022, dated 21.7.2022, registered under Sections 302, 201 and 120-B IPC, at Police Station, Jhandutta, District Bilaspur, on herfurnishing personal bond in the sum of Rs.1,00,000/- (Rupees One lacs) with one suretyin the like amount to the satisfaction of learned trial Court. This order shall, however, be subject to the following conditions:

i) That the petitioner shall not indulge in any criminal activity and in the event of breach of this condition, the bail granted to the petitioner in this case, shall automatically be cancelled.

ii) That the petitioner shall not leave the territory of India without express leave of Trial Court during the Trial.

iii). That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with the prosecution evidence.

iv) That the petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

25. Any observation made in this order shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made hereinabove.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Vikas @ Vicky ....Petitioner.

Versus

State of Himachal Pradesh ...Respondent.

For the petitioner : Mr. Ajit Sharma, Advocate.

For the respondent : Mr. Mohinder Zharaick,
Additional Advocate General.
HC Ashok Kumar No. 75,
P.S. Swarghat in person
alongwith record.

Cr.MP(M) No.: 906 of 2023 Reserved
on : 26.04.2023
Decided on : 28.04.2023

Code of Criminal Procedure, 1973 – Section 439 – An FIR was registered under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances, Act 1985 – Commercial quantity of cannabis was allegedly recovered – **Held** - The Constitutional guarantee of expeditious trial cannot be diluted by applying the rigors of Section 37 of ND & PS Act in perpetuity - The petitioner is in custody since 24.02.2021 and the facts suggest that the trial is not likely to be concluded in near future - There is nothing on record to suggest that delay in trial is attributable to the petitioner - The co-accused of the petitioner is already on bail – Bail petition allowed subject to conditions.(Paras 7 to 18)

Cases referred:

Abdul Majeed Lone Vs. Union Territory of Jammu and Kashmir(Special Leave to Appeal (Cr.L.) No. 3961 of 2022;

Chitta Biswas @ Subhas Vs. The State of West Bengal, (Criminal Appeal No.(s) 245 of 2020;

Gopal Krishna Patra @ Gopalrusma Vs. Union of India (Cr. Appeal No. 1169 of 2022;
Mahmood Kurdeya Vs. Narcotic Control Bureau (2022) 3 RCR (Criminal) 906;
Nitish Adhikary @ Bapan Vs.The State of West Bengal (Special Leave to Appeal (Cr.L.) No (s). 5769 of 2022;

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Petitioner is an accused in case FIR No. 16/2021, dated 24.02.2021, registered under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances, Act (for short 'ND&PS' Act), at Police Station Swarghat, District Bilaspur, H.P. Petitioner is in custody since 24.02.2021.

2. Petitioner is facing trial for offences under Sections 20 and 29 of ND&PS Act in pursuance to challan filed by respondent. The case of the prosecution is that on 24.02.2021, police intercepted Car No. HP49-2697, at place Baner within the jurisdiction of Police Station Swarghat, District Bilaspur, H.P. Accused Tek Ram was on the wheel and Bobby Sharma was an occupant of front passenger seat. On search of the Car, 1.790 Kgs *Charas* was recovered from the vehicle. The case was registered and accused Tek Ram alongwith Bobby Sharma were arrested. It was discovered that Tek Chand and co-accused Bobby Sharma were transporting the contraband at the instance of Hitesh and the petitioner. It was also discovered that petitioner alongwith Hitesh were waiting on the State border of Himachal Pradesh beyond Swarghat in District Bilaspur, H.P. Police acted with promptness and arrested co-accused Hitesh, who were found waiting near State border in a vehicle No. DL8CNA-7974.

3. Petitioner has now prayed for grant of bail on the ground that his constitutional right of expeditious disposal of trial has been infringed. As per petitioner, he is in custody for more than two years and the trial has not concluded, rather, it is progressing at snail's pace.

4. As per petitioner, out of twenty-five cited witnesses, prosecution has examined only four witnesses till date and four witnesses have been given up.

5. Learned Additional Advocate General has opposed the prayer of the petitioner, on the ground that Section 37 of ND&PS Act, has application in the facts of the case and merely, on the ground of delay in conclusion of trial, petitioner cannot be released on bail.

6. I have heard learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the status report.

7. The fetters placed by Section 37 of ND&PS Act, evidently have been instrumental in denial of right of bail to the petitioner in the instant case till date. The question that arises for consideration is, can the provision of Section 37 of the Act, be construed to have same efficacy throughout the pendency of trial, notwithstanding, the period of custody of the accused, especially, when it is weighed against his fundamental right to have expeditious disposal of trial.

8. As is suggested by the contents of status report, recording of prosecution evidence is still in progress despite the fact that petitioner is in custody since 24.02.2021. In the considered view of this Court, the Constitutional guarantee of expeditious trial cannot be diluted by applying the rigors of Section 37 of ND&Ps Act in perpetuity.

9. Recently, in a number of cases, under-trials for offences involving commercial quantity of contraband under ND&PS Act have been allowed the liberty of bail by Hon'ble Supreme Court only on the ground that they have been incarcerated for prolonged durations.

10. In ***Mahmood Kurdeya*** Vs. ***Narcotic Control Bureau (2022) 3 RCR (Criminal) 906***, Hon'ble Supreme Court has held as under:-

> *"6.What persuades us to pass an order in favour of the appellant is the fact that despite the rigors of Section 37 of the said Act, in the present case though charge sheet was filed on 23.09.2018 even the charges have not been framed nor trial has commenced."*

11. In ***Nitish Adhikary @ Bapan*** Vs.***The State of West Bengal (Special Leave to Appeal (Cr.L.) No (s). 5769 of 2022,*** decided on 01.08.2022, Hon'ble Supreme Court has held as under:-

> *"During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.*
>
> *Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner."*

12. In ***Gopal Krishna Patra @ Gopalrusma*** Vs. ***Union of India (Cr. Appeal No. 1169 of 2022),*** decided on 05.08.2022, Hon'ble Supreme Court has held as under:-

> *" The appellant is in custody since 18.06.2020 in connection with crime registered as NCB Crime No. 02/2020 in respect of offences punishable under Sections 8,20,27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 1098.*
>
> *The application seeking relief of bail having been rejected, the instant appeal has been fled.*

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned Additional Solicitor General for the respondent.

Considering the fact and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out."

13. In ***Chitta Biswas @ Subhas*** *Vs.* ***The State of West Bengal, (Criminal Appeal No.(s) 245 of 2020,*** decided on 07.02.2020, it has been held as under:-

"The appellant was arrested on 21.07.2018 and continues to be custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.

Without expressing any opinion on the merits or demerits of the rival submission and considering the facts and circumstances on record, in our view, case for bail is made out."

14. In ***Abdul Majeed Lone*** Vs. ***Union Territory of Jammu and Kashmir(Special Leave to Appeal (Cr.L.) No. 3961 of 2022***, decided on 01.08.2022, it has been held as under:-

"Having regard to the fact that the petitioner is reported to be in jail since 1-3-2020 and has suffered incarceration for over 2 years and 5 months and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the UT, we are inclined to enlarge the petitioner on bail.".

15. In addition, different Co-ordinate Benches of this Court have also followed precedent to grant bail to the accused in ND&PS Act, on the ground of prolonged pre-trial incarceration. Reference can be made to order

dated 28.07.2022, passed in Cr.MP(M) No. 1255 of 2022, order dated 01.12.2022, passed in Cr.MP(M) No. 2271 of 2022 and order dated 04.11.2022, passed in Cr.MP(M) No. 2273 of 2022.

16. Recently in ***Criminal Appeal No. 943 of 2023*** *titled as* ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***,Hon'ble Supreme Court vide its judgment dated 28.03.2023. has held as under:-

> *"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31 st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country20. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.*
>
> *22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State21 as"a radical transformation" whereby the prisoner:*
>
> > *"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."*
>
> *23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"22 (also see Donald Clemmer's 'The Prison Community' 20 National Crime Records Bureau, Prison Statistics in India*

https://ncrb.gov.in/sites/default/files/ PSI-2021/Executive_ncrb_Summary-2021.pdf 21 1993 Cri LJ 3242 22 Working Papers - Group on Prisons & Borstals - 1966 U.K. published in 194023). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

17. Reverting to the facts of the case, the petitioner is in custody since 24.02.2021 and the facts suggest that the trial is not likely to be concluded in near future. There is nothing on record to suggest that delay in trial is attributable to the petitioner.The co-accused of the petitioner has already been released on bail by this Court, vide order dated 05.04.2023 passed in Cr.MP(M) No. 539 of 2023.

18. Keeping in view the facts of the case and also the above noted precedents, the bail petition is allowed and petitioner is ordered to be released on bail in case FIR No. 16/2021, dated 24.02.2021, registered under Sections 20 and 29 of ND&PS Act, at Police Station Swarghat, District Bilaspur, H.P. on his furnishing personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of learned trial court. This order shall, however, be subject to the following conditions:-

i) *Petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.*

ii) Petitioner shall not tamper with the prosecution evidence, in any manner, whatsoever and shall not dissuade any person from speaking the truth in relation to the facts of the case in hand.

iii) Petitioner shall be liable for immediate arrest in the instant case in the event of petitioner violating the conditions of this bail.

(iv) Petitioner shall not leave India without permission of learned trial Court till completion of trial.

19. Any expression of opinion herein-above shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of this petition.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Chuni Lal .....Petitioner

Versus

State of Himachal Pradesh .....Respondent

For the petitioner: Mr.C. N. Singh, Advocate.
For the respondent: Mr. Mohinder Zharaick, Additional Advocate General.

ASI Het Ram, Police Station, Karsog, present alongwith records.

Cr. M.P.(M) No. 909 of 2023
Reserved on: 26.04.2023
Decided on: 28.04.2023

Code of Criminal Procedure, 1973 – Section 439-An FIR was registered under sections 366, 366-A, 376, 120-B IPC and Sections 4 and 17 of the POCSO Act – Petitioner allegedly accompanied the main accused on motorcycle when the child victim was taken from Karsog to Tattapani- **Held** - Petitioner is only 19 years of age and his prolonged detention in the given facts of the case will not be warranted for the reasons firstly that it is likely to adversely affect his career and secondly, in absence of any specific criminal intent attributed to him, petitioner cannot be kept in custody for indeterminate period - Pre-trial incarceration cannot be applied as a matter of rule – Bail granted. (Paras 7 to 11)

The following judgment of the Court was delivered:

Satyen Vaidya, Judge.

A case was registered under Sections 366, 366-A, 376, 120-B of IPC and Sections 4 and 17 of the Protection of Children from Sexual Offences Act (for short, "POCSO" Act), vide FIR No. 10 of 2023, dated 19.01.2023 at Police Station, Karsog, District Mandi, H.P.

2. Petitioner is one of the accused arrayed in the above noted case. The investigation is complete and challan has been filed.

3. Facts giving rise to the registration of above noted case are that on 19.01.2023, the child victim in custody of Child Development Project Officer, Karsog and others reported to the police that she was 13 years old and was a student of 8th standard in Middle School, Nehra. She had two brothers and a sister and her mother worked at a "Dhaba" at Karsog Bus stand. She had already lost her father. On 07.02.2022, she visited market in Karsog on the pretext that she was going to visit the house of her maternal grand-father at Bhandarnu. She met two boys named Raj and Sunny at Karsog Bus-stand. She knew Raj for the last four months and were exchanging phone calls with each other. Raj offered to take the victim to Tattapani on the promise to marry her. On the refusal of child victim, she was forced to ride pillion on the motorcycle and was taken to Tattapani. There the child victim and accused Raj started residing as husband and wife. Raj maintained physical relations with her. She even conceived. After disclosure of factum of pregnancy of child victim to accused Raj, he started harassing the victim and forced her to abort the fetus. She was pregnant by one month and had wished to go to her mother's house, but accused Raj started giving beating to her. Due to such beatings, the fetus was aborted. Even the parents of Raj did not object to the conduct of Raj. Even on 18.01.2023, Raj had maintained physical relations with her.

4. The accused Raj alongwith his parents and petitioner have been arrayed as accused. The allegation against petitioner is that he accompanied accused Raj on motorcycle when the child victim was taken from Karsog to

Tattapani on 07.02.2022. Beyond this, there is no further allegation against the petitioner.

5. Petitioner has prayed for grant of bail on the ground that he is innocent and has committed no offence. It is submitted that there is no evidence against him which may suggest the criminal intent of petitioner at any stage. It is further submitted that petitioner is of young age and his pre-trial incarceration will not serve any purpose, rather it will be detrimental in his career building. Petitioner is stated to be permanent resident of Village Dumo, Post Office Jassal, Tehsil Karsog, District Mandi, H.P. and there is no likelihood of his fleeing from the course of justice. Petitioner has also undertaken to abide by all the terms and conditions as may be imposed against him.

6. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

7. Status report filed on behalf of the respondent reveals that after completion of investigation, challan has already been presented. The only evidence collected against petitioner is that he accompanied the accused Raj on motorcycle when the child victim was taken to Tattapani from Karsog. In the given circumstances, criminal intent of petitioner cannot be ascertained with precision.

8. Petitioner has already suffered custody since 21.01.2023. He is only 19 years of age and his prolonged detention in the given facts of the case will not be warranted for the reasons firstly that it is likely to adversely affect his career and secondly, in absence of any specific criminal intent attributed to him, petitioner cannot be kept in custody for indeterminate period. Pre-trial incarceration cannot be applied as a matter of rule.

9. No doubt, the nature of accusation is a relevant factor for deciding the bail plea of an accused, but that cannot be the sole factor to deny right of liberty. The nature and quality of evidence collected in support of

accusations, also plays an important role. As noted above, in the instant case, there is nothing against petitioner which suggests with certainty that petitioner had accompanied his co-accused Raj with some criminal intent in mind.

10. Petitioner is permanent resident of Village Dumo, Post Office Jassal, Tehsil Karsog, District Mandi, H.P. and there is no likelihood of his absconding/fleeing from the course of justice. No criminal history has been attributed to the petitioner. The only concern of this Court at this stage is to facilitate the fair and early disposal of trial for which petitioner can be put to appropriate terms.

11. Keeping in view the peculiar facts and circumstances of the case, the petition is allowed and the petitioner is ordered to be released on bail in case registered vide FIR No. 10 of 2023, dated 19.01.2023, at Police Station, Karsog, District Mandi, H.P. under Sections 366, 366-A, 376, 120-B of IPC and Sections 4 and 17 of thePOCSO Act, on his furnishing personal bond in the sum of Rs. 25,000/- with one surety in the like amount to the satisfaction of trial Court. This order is, however, subject to the following conditions:

i) That the petitioner shall not indulge in any criminal activity and in the event of breach of this condition, the bail granted to the petitioner in this case, shall automatically be cancelled.

ii) That the petitioner shall not leave the territory of India without express leave of Trial Court during the Trial.

iii). That the petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case and shall not tamper with the prosecution evidence.

iv) That the petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.

12. Any observation made herein above shall not be taken as an expression of opinion on the merits of the case and the trial Court shall decide the matter uninfluenced by any observation made herein above.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Hitesh ....Petitioner.

Versus

State of Himachal Pradesh ...Respondent.

For the petitioner :Mr. Ajit Sharma, Advocate.

For the respondent :Mr. Varun Chandel and Mr. Mohinder Zharaick, Additional Advocate Generals with Mr. Arsh Rattan, Deputy Advocate General.

HC Raman Kumar No. 65, P.S. Swarghat, District Bilaspur in person alongwith record.

Cr.MP(M) No.: 539 of 2023
Reserved on : 31.03.2023
Decided on : 05.04.2023

Code of Criminal Procedure, 1973 – Section 439 – Section 37 NDPS Act vis-a-vis right to speedy/expeditious trial - Commercial quantity of contraband was recovered from two persons -They were allegedly transporting the contraband at the instance of petitioner and one another person – Petitioner was in custody since 24.02.2021 - Bail sought – **Held** - The Constitutional guarantee of expeditious trial cannot be diluted by applying the rigors of Section 37 of ND&PS Act in perpetuity – Bail granted. (Paras 7 to 18)

Cases referred:

Abdul Majeed Lone Vs. Union Territory of Jammu and Kashmir(Special Leave to Appeal (Cr.L.) No. 3961 of 2022;

Chitta Biswas @ Subhas Vs. The State of West Bengal, (Criminal Appeal No.(s) 245 of 2020;

Gopal Krishna Patra @ Gopalrusma Vs. Union of India (Cr. Appeal No. 1169 of 2022);

Mahmood Kurdeya Vs. Narcotic Control Bureau (2022) 3 RCR (Criminal) 906;

Nitish Adhikary @ Bapan Vs.The State of West Bengal (Special Leave to Appeal (Cr.L.) No (s). 5769 of 2022;

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Petitioner is an accused in case FIR No. 16/2021, dated 24.02.2021, registered under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances, Act (for short 'ND&PS' Act), at Police Station Swarghat, District Bilaspur, H.P. Petitioner is in custody since 24.02.2021.

2. Petitioner is facing trial for offences under Sections 20 and 29 of ND&PS Act in pursuance to challan filed by respondent. The case of the prosecution is that on 24.02.2021, police intercepted Car No. HP49-2697, at place Baner within the jurisdiction of Police Station Swarghat, District Bilaspur, H.P. Accused Tek Ram was on the wheel and Bobby Sharma was an occupant of front passenger seat. On search of the Car, 1.790 Kgs *Charas* was recovered from the vehicle. The case was registered and accused Tek Ram alongwith Bobby Sharma were arrested. It was discovered that Tek Chand and co-accused Bobby Sharma were transporting the contraband at the instance of Vikas @ Vicky and the petitioner. It was also discovered that the petitioner alongwith Vikas @ Vicky were waiting on the State border of Himachal Pradesh beyond Swarghat in District Bilaspur, H.P. Police acted with promptness and arrested petitioner and co-accused Vikas @ Vicky, who were found waiting near State border in a vehicle No. DL8CNA-7974.

3. Petitioner has now prayed for grant of bail on the ground that his constitutional right of expeditious disposal of trial has been infringed. As per petitioner, he is in custody for more than two years and the trial has not concluded, rather, it is progressing at snail's pace.

4. As per petitioner, out of twenty-five cited witnesses, prosecution has examined only four witnesses till date and four witnesses have been given up.

5. Learned Additional Advocate General has opposed the prayer of the petitioner, on the ground that Section 37 of ND&PS Act, has application in the facts of the case and merely, on the ground of delay in conclusion of trial, petitioner cannot be released on bail.

6. I have heard learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the status report.

7. The fetters placed by Section 37 of ND&PS Act, evidently have been instrumental in denial of right of bail to the petitioner in the instant case till date. The question that arises for consideration is, can the provision of Section 37 of the Act, be construed to have same efficacy throughout the pendency of trial, notwithstanding, the period of custody of the accused, especially, when it is weighed against his fundamental right to have expeditious disposal of trial.

8. As is suggested by the contents of status report, recording of prosecution evidence is still in progress despite the fact that petitioner is in custody since 24.02.2021. In the considered view of this Court, the Constitutional guarantee of expeditious trial cannot be diluted by applying the rigors of Section 37 of ND&Ps Act in perpetuity.

9. Recently, in a number of cases, under-trials for offences involving commercial quantity of contraband under ND&PS Act have been allowed the liberty of bail by Hon'ble Supreme Court only on the ground that they have been incarcerated for prolonged durations.

10. In ***Mahmood Kurdeya*** Vs. ***Narcotic Control Bureau (2022) 3 RCR (Criminal) 906***, Hon'ble Supreme Court has held as under:-

> *"6.What persuades us to pass an order in favour of the appellant is the fact that despite the rigors of Section 37 of the said Act, in*

the present case though charge sheet was filed on 23.09.2018 even the charges have not been framed nor trial has commenced."

11. In ***Nitish Adhikary @ Bapan*** Vs.***The State of West Bengal (Special Leave to Appeal (Cr.L.) No (s). 5769 of 2022,*** decided on 01.08.2022, Hon'ble Supreme Court has held as under:-

"During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.

Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner."

12. In ***Gopal Krishna Patra @ Gopalrusma*** Vs. ***Union of India (Cr. Appeal No. 1169 of 2022),*** decided on 05.08.2022, Hon'ble Supreme Court has held as under:-

" The appellant is in custody since 18.06.2020 in connection with crime registered as NCB Crime No. 02/2020 in respect of offences punishable under Sections 8,20,27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 1098.

The application seeking relief of bail having been rejected, the instant appeal has been fled.

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned Additional Solicitor General for the respondent.

Considering the fact and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out."

13. In ***Chitta Biswas @ Subhas*** *Vs.* ***The State of West Bengal, (Criminal Appeal No.(s) 245 of 2020,*** decided on 07.02.2020, it has been held as under:-

> *"The appellant was arrested on 21.07.2018 and continues to be custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.*
>
> *Without expressing any opinion on the merits or demerits of the rival submission and considering the facts and circumstances on record, in our view, case for bail is made out."*

14. In ***Abdul Majeed Lone*** Vs. ***Union Territory of Jammu and Kashmir(Special Leave to Appeal (Cr.L.) No. 3961 of 2022***, decided on 01.08.2022, it has been held as under:-

> *"Having regard to the fact that the petitioner is reported to be in jail since 1-3-2020 and has suffered incarceration for over 2 years and 5 months and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the UT, we are inclined to enlarge the petitioner on bail.".*

15. In addition, different Co-ordinate Benches of this Court have also followed precedent to grant bail to the accused in ND&PS Act, on the ground of prolonged pre-trial incarceration. Reference can be made to order dated 28.07.2022, passed in Cr.MP(M) No. 1255 of 2022, order dated 01.12.2022, passed in Cr.MP(M) No. 2271 of 2022 and order dated 04.11.2022, passed in Cr.MP(M) No. 2273 of 2022.

16. Recently in ***Criminal Appeal No. 943 of 2023*** *titled as* ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***,Hon'ble Supreme Court vide its judgment dated 28.03.2023. has held as under:-

> *"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31 st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country20. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.*
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> *22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State21 as"a radical transformation" whereby the prisoner:*
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> > *"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."*
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> *23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"22 (also see Donald Clemmer's 'The Prison Community' 20 National Crime Records Bureau, Prison Statistics in India https://ncrb.gov.in/sites/default/files/ PSI-2021/Executive_ncrb_Summary-2021.pdf 21 1993 Cri LJ 3242 22 Working Papers - Group on Prisons & Borstals - 1966 U.K. published in 194023). Incarceration has further deleterious*

effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

17. Reverting to the facts of the case, the petitioner is in custody since 24.02.2021 and the facts suggest that the trial is not likely to be concluded in near future. There is nothing on record to suggest that delay in trial is attributable to the petitioner.

18. Keeping in view the facts of the case and also the above noted precedents, the bail petition is allowed and petitioner is ordered to be released on bail in case FIR No. 16/2021, dated 24.02.2021, registered under Sections 20 and 29 of ND&PS Act, at Police Station Swarghat, District Bilaspur, H.P. on his furnishing personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of learned trial court. This order shall, however, be subject to the following conditions:-

i) *Petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.*

ii) Petitioner shall not tamper with the prosecution evidence, in any manner, whatsoever and shall not dissuade any person from speaking the truth in relation to the facts of the case in hand.

iii) Petitioner shall be liable for immediate arrest in the instant case in the event of petitioner violating the conditions of this bail.

(iv) Petitioner shall not leave India without permission of learned trial Court till completion of trial.

19. Any expression of opinion herein-above shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of this petition.

BEFORE HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.

Gaurav Nikhil ....Petitioner

Versus

State of H.P. and others ...Respondents

For the petitioner :Mr. Jagat Pal, Advocate.

For the respondent :M/s Tejasvi Sharma, Pushpender Jaswal and Baldev Negi, Additional Advocate Generals with Mr. Gautam Sood, Deputy Advocate General for respondents No. 1 to 3.

: Ms. Parul Verma, Advocate for respondents No. 4 and 5.

: SI Het Ram, IO Police Station Dhalli, Shimla, present with case record.

CRMMO No.: 181 of 2023 Decided on: 14.03.2023

Code of Criminal Procedure, 1973 – Section 482 – An FIR was registered under sections 363 and 366-A IPC – Similar previous petition was dismissed as withdrawn but this fact was not disclosed – Petition dismissed on account of the conduct of the petitioner with cost of Rs.15000/-. (Paras 2 to 4)

The following judgment of the Court was delivered:

Ajay Mohan Goel, Judge *(Oral)*

By way of this petition filed under Section 482 of the Code of Criminal Procedure, the petitioner has prayed for quashing of FIR No. 101 of

2018, dated 07.06.2018, registered at Police Station Dhalli, District Shimla, HP, under Sections 363, 366-A of the Indian Penal Code and consequential criminal proceedings, i.e. Session Trial No. 06 of 2021, titled as State of HP vs. Gaurav Nikhil, pending in the Court of learned Sessions Judge (Forest), Shimla, H.P.

2. When the case was taken up for consideration, learned Additional Advocate General has apprised the Court that earlier also a petition was preferred by the present petitioner under Section 482 of the Code of Criminal Procedure, i.e. Cr.MMO No. 45 of 2021, titled as Gaurav Nikhil vs. State of HP and others and the petition was withdrawn by the petitioner in terms of the observations which were made by this Court, as are contained in para-3 of thereof, which are reproduced as under:-

> *"3. After arguing for a considerable time, being the proposition of law involved that whether a case involving a minor girl, can be compromised or not, learned Counsel for petitioner, seeks permission to withdraw the present petition. Permission granted. Accordingly, petition stands disposed of as withdrawn with liberty to file the same afresh under appropriate provisions of law."*

3. As the factum of the petitioner having approached this Court earlier was brought to the notice of the Court by learned Additional Advocate General, the Court went through the contents of the present petition to ascertain as to whether this fact was narrated in the present petition or not. The Court is pained to point out that this fact has been conspicuously concealed by the petitioner as no averment has been made in this regard in the petition by him. Incidentally, learned Counsel, who is representing the petitioner in the present case, had filed the earlier petition also. In these circumstances, taking into consideration the fact that the inherent power so vested in this Court under Section 482 of the Code of Criminal Procedure is discretionary, the Court is refusing to exercise said power and accordingly, the petition is dismissed on account of the conduct of the petitioner. The

petitioner is burdened with cost of Rs. 15,000/- (Rs. Fifteen Thousand) which will be paid to the funds of Himachal Pradesh High Court Bar Association.

4. For the purpose of compliance of this order, the case is ordered to be listed before Registrar General of this Court on 30.04.2023. In case, order is not complied by the said date, then the Court will *suo motu* initiate contempt proceedings against the petitioner.

Pending miscellaneous application(s), if any, also stand disposed of accordingly.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Devender Kumar ....Petitioner.

Versus

N.C. B. ...Respondent.

For the petitioner : Mr. Manoj Pathak, Advocate.

For the respondent : Mr. Dev Raj, Advocate.

Cr.MP(M) No.:108 of 2023
Reserved on : 31.03.2023
Decided on : 05.04.2023

Code of Criminal Procedure, 1973 - Section 439 – An FIR was registered under Sections 20 and 29 of the NDPS Act – 11.700 Kg cannabis was allegedly recovered from the vehicle of petitioner - Fifth petition for grant of bail - **Held** - It is not a case where the Court may be in a position to hold that there is no *prima facie* case against petitioner – **Further held** – Delay in the trial happened due to non-apprehension of one accused but now he has been apprehended and trial is expected to be expedited – Petition dismissed. (Paras 8 to 13)

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

By way of instant petition, a prayer has been made to release the petitioner on bail under Section 439 of Cr.P.C. in case FIR No. 75/2020, dated 29.12.2020, registered under Sections 20 & 29 of Narcotic Drugs and Psychotropic Substances, Act (for short 'ND&PS' Act), at Police Station N.C.B. Nahan, District Sirmour, HP.

2. Petitioner was arrested on 29.12.2020 and is in custody since then.

3. The case as alleged against petitioner is that the Narcotic Control Bureau (N.C.B.), on the basis of a secret information, intersepted vehicle (Maruti Alto) with registration No. HP35-4856 near Yashwant Parmar Chowk, Nahan, District Sirmour H.P. Petitioner alongwith another person named Satram Lal, were found occupying the vehicle. A search was conducted and huge quantity of 11.700 Kilograms of *Charas* was recovered from the vehicle. The case was registered. Petitioner alongwith other occupant of the vehicle, named Satram Lal, were arrested. Investigation was carried and more persons namely Om Prakash, Pappu, Yogesh and Manoj Kumar, were also arrayed as accused.

4. On conclusion of investigation, the challan has been presented and is presently pending adjudication before learned Special Judge-II, Nahan, District Sirmour, H.P.. Petitioner is one of the under trials.

5. It has been submitted on behalf of the petitioner that he has been falsely implicated in the case and he is suffering incarceration since 29.12.2020. It is further submitted that petitioner is permanent resident of Village Kandadhar, P.O. Showad, Tehsil Anni, District Kullu, H.P. and in case of his release on bail, there is no likelihood of his absconding or fleeing from the course of justice. Petitioner has also undertaken to abide by all the terms and conditions as may be imposed by this Court. As per petitioner, the trial has not even begun till date and in such circumstances, he can not be detained in custody for indefinite period.

6. On the other hand, Mr. Dev Raj, learned Counsel, has opposed the bail petition on the ground that petitioner is not entitled to the bail in view of the rigors of Section 37 of ND&PS Act. It is further submitted that twice in the past i.e. on 05.05.2021 and 24.07.2021, this Court had rejected the prayer of the petitioner for grant of bail in the abovementioned FIR by

discussing the merits. Petitioner has not been able to show any changed circumstance, so as to entitle him to bail. It is also submitted that the accusations against petitioner are very serious in nature and in case petitioner is released on bail, there is every likelihood that he will re-indulge in the trade of contraband, which will be prejudicial to the interest of society at large.

7. I have heard learned counsel for the petitioner as well as learned counsel for the respondent-NCB and have also gone through the status report.

8. Record reveals that petitioner approached this Court for grant of bail in above noted case by way of Cr.MP(M) No. 250 of 2021. This Court had rejected the prayer of the petitioner by observing as under:-

> *"7. The recovery of the contraband is from a private car, in which both the petitioners were present. A perusal of the bail petition does not reveal a specific stand taken about the presence in the vehicle or knowledge of the contraband. Under Section 37 of the NDPS Act, the burden is entirely on the petitioners to meet the twin conditions, which they failed to do so."*

9. Petitioner filed another bail petition before this Court, which was registered as Cr.MP(M) No. 1376 of 2021 and was again rejected on 24.07.2021 for the same reasons as given in earlier rejection order. Thereafter, petitioner has approached this Court for grant of bail by way of Cr.MP(M) No. 1992 of 2021 and Cr.MP(M) No. 1738 of 2022 and both the times, the bail petitions filed on behalf of the petitioner, were withdrawn. This is the fifth petition for grant of bail filed on behalf of the petitioner in the same case.

10. 11.700 Kilograms of *Charas* was recovered from the vehicle in which petitioner was one of the occupants. There is no material on record to suggest that petitioner had no knowledge about carriage of the contraband in the vehicle. Thus, it is not a case where this Court may be in a position to hold that there is no *prima facie* case against petitioner. Keeping in view the huge quantity of contraband, it also cannot be said that the petitioner, if released on bail, will not re-indulge in similar activities. In these circumstances, the rigors of Section 37 of ND&PS Act, apply with all force causing legal impediment in release of petitioner on bail.

11. Record further reveals that the challan was filed in the Court on 24.06.2021 and charges have not yet been framed. The undue delay in trial can be considered as a changed circumstance, however, it is evident from the record that one of the co-accused, namely Manoj Kumar, could be associated in the case only in July, 2022. In this view of the matter, there are reasonable grounds to explain the delay in framing of charges in the matter.

12. The undue delay in trial, in appropriate cases, can be a reason to release an accused of offence involving commercial quantity under ND&PS Act, as the rigors of Section 37 of the Act, cannot be applied in perpetuity as against the rights of speedy trial available to the accused. As noticed above, in the facts of given case, the trial has been delayed on account of non-apprehension of one of the accused. Since, now all the accused persons are before learned Special Judge, it is expected that sufficient expedition will be shown in proceedings with the trial further. In the given circumstances of the case, petitioner

is not entitled for grant of bail at-least at this stage, when not even a single prosecution witness has been examined. Keeping in view the seriousness and gravity of accusations and availability of *prima facie* material against petitioner, the release of petitioner on bail at this stage, may result in affecting the fair trial of the case.

13. Keeping in the view the peculiar facts and circumstances of the case, petitioner is not held entitled to bail, at this stage.

14. In result, the petition is dismissed.

15. Any observation made hereinabove shall not be taken as an expression of opinion on the merits of the case and the trial court shall decide the matter uninfluenced by any observation made hereinabove.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Bobby Sharma

....Petitioner.

Versus

State of Himachal Pradesh

...Respondent.

For the petitioner :Mr. Manoj Pathak, Advocate.

For the respondent :Mr. Varun Chandel and Mr. Mohinder Zharaick, Additional Advocate Generals with Mr. Arsh Rattan, Deputy Advocate General.

Cr.MP(M) No.: 112 of 2023
Reserved on 31.03.2023
Decided on : 05.04.2023

Code of Criminal Procedure, 1973 – Section 439 –An FIR was registered under sections 20 and 29 of the NDPS Act, 1985 - Commercial quantity of contraband was allegedly recovered - Petitioner was in custody since 24.02.2021 - **Held** - The Constitutional guarantee of expeditious trial cannot be diluted by applying the rigors of Section 37 of ND & PS Act in perpetuity – Bail granted. (Paras 7 to 18)

Cases referred:

Abdul Majeed Lone Vs. Union Territory of Jammu and Kashmir(Special Leave to Appeal (Cr.L.) No. 3961 of 2022;

Chitta Biswas @ Subhas Vs. The State of West Bengal, (Criminal Appeal No.(s) 245 of 2020;

Mahmood Kurdeya Vs. Narcotic Control Bureau (2022) 3 RCR (Criminal) 906;

Mohd Muslim @ Hussain Vs. State (NCT of Delhi) Criminal Appeal No. 943 of 2023;

Nitish Adhikary @ Bapan Vs.The State of West Bengal (Special Leave to Appeal (Cr.L.) No (s). 5769 of 2022;

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Petitioner is an accused in case FIR No. 16/2021, dated 24.02.2021, registered under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances, Act (for short 'ND&PS' Act), at Police Station Swarghat, District Bilaspur, H.P. Petitioner is in custody since 24.02.2021.

2. Petitioner is facing trial for offences under Sections 20 and 29 of ND&PS Act in pursuance to challan filed by respondent. The case of the prosecution is that on 24.02.2021, police intercepted Car No. HP49-2697, at place Baner within the jurisdiction of Police Station Swarghat, District Bilaspur, H.P. Accused Tek Ram was on the wheel and petitioner was an occupant of front passenger seat. On search of the Car, 1.790 Kgs *Charas* was recovered from the vehicle. The case was registered and petitioner alongwith co-accused Tek Ram were arrested. It was discovered that petitioner and Tek Ram were transporting the contraband at the instance of other co-accused, namely Vikas @ Vicky, Hitesh and Manoj Hooda. Petitioner and Tek Ram were engaged to transport the contraband from District Kullu, H.P. till the boundary of State of Himachal Pradesh. It was also discovered that the other co-accused were waiting on the State border of Himachal Pradesh beyond Swarghat in District Bilaspur, H.P. Police acted with promptness and arrested co-accused Vikas @ Vicky and Hitesh, who were found waiting near State border in a vehicle No. DL8C-NA-7974.

3. Petitioner has now prayed for grant of bail on the ground that his constitutional right of expeditious disposal of trial has been infringed. As per petitioner, he is in custody for more than two years and the trial has not concluded, rather, it is progressing at snail's pace.

4. As per petitioner, out of twenty-five cited witnesses, prosecution has examined only four witnesses till date and four witnesses have been given up.

5. Learned Additional Advocate General has opposed the prayer of the petitioner, on the ground that Section 37 of ND&PS Act, has application in the facts of the case and merely, on the ground of delay in conclusion of trial, petitioner cannot be released on bail.

6. I have heard learned counsel for the petitioner as well as learned Additional Advocate General and have also gone through the status report.

7. The fetters placed by Section 37 of ND&PS Act, evidently have been instrumental in denial of right of bail to the petitioner in the instant case till date. The question that arises for consideration is, can the provision of Section 37 of the Act, be construed to have same efficacy throughout the pendency of trial, notwithstanding, the period of custody of the accused, especially, when it is weighed against his fundamental right to have expeditious disposal of trial.

8. As is suggested by the contents of status report, recording of prosecution evidence is still in progress despite the fact that petitioner is in custody since 24.02.2021. In the considered view of this Court, the Constitutional guarantee of expeditious trial cannot be diluted by applying the rigors of Section 37 of ND&Ps Act in perpetuity.

9. Recently, in a number of cases, under-trials for offences involving commercial quantity of contraband under ND&PS Act have been allowed the liberty of bail by Hon'ble Supreme Court only on the ground that they have been incarcerated for prolonged durations.

10. In ***Mahmood Kurdeya*** Vs. ***Narcotic Control Bureau (2022) 3 RCR (Criminal) 906***, Hon'ble Supreme Court has held as under:-

> *"6.What persuades us to pass an order in favour of the appellant is the fact that despite the rigors of Section 37 of the said Act, in*

the present case though charge sheet was filed on 23.09.2018 even the charges have not been framed nor trial has commenced."

11. In ***Nitish Adhikary @ Bapan*** Vs.***The State of West Bengal (Special Leave to Appeal (Cr.L.) No (s). 5769 of 2022,*** decided on 01.08.2022, Hon'ble Supreme Court has held as under:-

"During the course of the hearing, we are informed that the petitioner has undergone custody for a period of 01 year and 07 months as on 09.06.2022. The trial is at a preliminary stage, as only one witness has been examined. The petitioner does not have any criminal antecedents.

Taking into consideration the period of sentence undergone by the petitioner and all the attending circumstances but without expressing any views in the merits of the case, we are inclined to grant bail to the petitioner."

12. In ***Gopal Krishna Patra @ Gopalrusma*** Vs. ***Union of India (Cr. Appeal No. 1169 of 2022),*** decided on 05.08.2022, Hon'ble Supreme Court has held as under:-

" The appellant is in custody since 18.06.2020 in connection with crime registered as NCB Crime No. 02/2020 in respect of offences punishable under Sections 8,20,27-AA, 28 read with 29 of the Narcotic Drugs and Psychotropic Substances Act, 1098.

The application seeking relief of bail having been rejected, the instant appeal has been fled.

We have heard Mr. Ashok Kumar Panda, learned Senior Advocate in support of the appeal and Mr. Sanjay Jain, learned Additional Solicitor General for the respondent.

Considering the fact and circumstances on record and the length of custody undergone by the appellant, in our view the case for bail is made out."

13. In ***Chitta Biswas @ Subhas*** *Vs.* ***The State of West Bengal, (Criminal Appeal No.(s) 245 of 2020,*** decided on 07.02.2020, it has been held as under:-

> *"The appellant was arrested on 21.07.2018 and continues to be custody. It appears that out of 10 witnesses cited to be examined in support of the case of prosecution four witnesses have already been examined in the trial.*
>
> *Without expressing any opinion on the merits or demerits of the rival submission and considering the facts and circumstances on record, in our view, case for bail is made out."*

14. In ***Abdul Majeed Lone*** Vs. ***Union Territory of Jammu and Kashmir(Special Leave to Appeal (Cr.L.) No. 3961 of 2022***, decided on 01.08.2022, it has been held as under:-

> *"Having regard to the fact that the petitioner is reported to be in jail since 1-3-2020 and has suffered incarceration for over 2 years and 5 months and there being no likelihood of completion of trial in the near future, which fact cannot be controverted by the learned counsel appearing for the UT, we are inclined to enlarge the petitioner on bail.".*

15. In addition, different Co-ordinate Benches of this Court have also followed precedent to grant bail to the accused in ND&PS Act, on the ground of prolonged pre-trial incarceration. Reference can be made to order dated 28.07.2022, passed in Cr.MP(M) No. 1255 of 2022, order dated 01.12.2022, passed in Cr.MP(M) No. 2271 of 2022 and order dated 04.11.2022, passed in Cr.MP(M) No. 2273 of 2022.

16. Recently in ***Criminal Appeal No. 943 of 2023*** *titled as* ***Mohd Muslim @ Hussain Vs. State (NCT of Delhi)***,Hon'ble Supreme Court, vide its judgment dated 28.03.2023, has held as under:-

"21. Before parting, it would be important to reflect that laws which impose stringent conditions for grant of bail, may be necessary in public interest; yet, if trials are not concluded in time, the injustice wrecked on the individual is immeasurable. Jails are overcrowded and their living conditions, more often than not, appalling. According to the Union Home Ministry's response to Parliament, the National Crime Records Bureau had recorded that as on 31 st December 2021, over 5,54,034 prisoners were lodged in jails against total capacity of 4,25,069 lakhs in the country20. Of these 122,852 were convicts; the rest 4,27,165 were undertrials.

22. The danger of unjust imprisonment, is that inmates are at risk of "prisonisation" a term described by the Kerala High Court in A Convict Prisoner v. State21 as"a radical transformation" whereby the prisoner:

> *"loses his identity. He is known by a number. He loses personal possessions. He has no personal relationships. Psychological problems result from loss of freedom, status, possessions, dignity any autonomy of personal life. The inmate culture of prison turns out to be dreadful. The prisoner becomes hostile by ordinary standards. Self-perception changes."*

23. There is a further danger of the prisoner turning to crime, "as crime not only turns admirable, but the more professional the crime, more honour is paid to the criminal"22 (also see Donald Clemmer's 'The Prison Community' 20 National Crime Records Bureau, Prison Statistics in India https://ncrb.gov.in/sites/default/files/ PSI-2021/Executive_ncrb_Summary-2021.pdf 21 1993 Cri LJ 3242 22 Working Papers - Group on Prisons & Borstals - 1966 U.K. published in 194023). Incarceration has further deleterious effects - where the accused belongs to the weakest economic strata: immediate loss of livelihood, and in several cases, scattering of families as well as loss of family bonds and alienation from society. The courts therefore, have to be sensitive to these aspects (because in the event of an acquittal, the loss to

the accused is irreparable), and ensure that trials – especially in cases, where special laws enact stringent provisions, are taken up and concluded speedily."

17. Reverting to the facts of the case, the petitioner is in custody since 24.02.2021 and the facts suggest that the trial is not likely to be concluded in near future. There is nothing on record to suggest that delay in trial is attributable to the petitioner.

18. Keeping in view the facts of the case and also the above noted precedents, the bail petition is allowed and petitioner is ordered to be released on bail in case FIR No. 16/2021, dated 24.02.2021, registered under Sections 20 and 29 of ND&PS Act, at Police Station Swarghat, District Bilaspur, H.P. on his furnishing personal bond in the sum of Rs. 1,00,000/- with one surety in the like amount to the satisfaction of learned trial court. This order shall, however, be subject to the following conditions:-

i) *Petitioner shall regularly attend the trial of the case before learned Trial Court and shall not cause any delay in its conclusion.*

ii) Petitioner shall not tamper with the prosecution evidence, in any manner, whatsoever and shall not dissuade any person from speaking the truth in relation to the facts of the case in hand.

iii) Petitioner shall be liable for immediate arrest in the instant case in the event of petitioner violating the conditions of this bail.

(iv) Petitioner shall not leave India without permission of learned trial Court till completion of trial.

19. Any expression of opinion herein-above shall have no bearing on the merits of the case and shall be deemed only for the purpose of disposal of this petition.

BEFORE HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.

State of Himachal Pradesh and others

...Petitioners

Versus

Sh. Desh Raj ..Respondents

For the Petitioners : M/s Tejasvi Sharma, Pushpender Jaswal and Baldev Negi, Additional Advocate Generals with Mr. Gautam Sood, Deputy Advocate General.

For the Respondent : Mrs. Archana Dutt, Advocate.

CWP No. 2041 of 2016
Date of Decision:10.04. 2023

Industrial Disputes Act, 1947 – Sections 25(F) and 25(G) - Petitioner was engaged as Beldar in Forest Department in the year 1991 – His services terminated orally in the year 1999 – Labour Court directed re-engagement of the petitioner alongwith seniority and continuity in service from the date of termination of services, except back wages – Award was challenged by the State - **Held** – Termination of the services of the petitioner was preceded by the workman having put in more than 240 days in the calendar year 1999 – Services of petitioner could have been terminated by following procedure prescribed in section 25(F) – This procedure was not followed – No notice was issued by the department to show that the workman had abandoned the job voluntarily - **Further held** - The petitioner had initially agitated his cause in the year 2006 which was wrongly rejected by the authority concerned and thereafter he subsequently took up the issue in the year

2010 - As the contention and grievance of the petitioner that persons junior to him were not only retained by the department but their services were subsequently regularized is a matter of record and further as the services of the workman were terminated by the department in the year 1999 in violation of the provisions of Sections 25(F) and 25(G) of the Industrial Disputes Act, therefore, it cannot be said that the industrial dispute had ceased to exist - No force in the contention that the dispute raised by the workman was barred by delay and laches – Petition dismissed. (Paras 11 to 13)

The following judgment of the Court was delivered:

Ajay Mohan Goel, Judge (***Oral***)

J U D G E M E N T

The petitioners-State has assailed the award passed by the Court of learned Labour Court Court-cum-Industrial Tribunal, Kangra at Dharamshala in reference No.74 of 2014, titled as Desh Raj vs. The D.F.O Division, Bilaspur, dated 21.07.2015, in terms whereof, the reference made to the Labour Court by the Appropriate Government with regard to termination of the services of the workman was answered by the learned Labour Court, by directing the State to re-engage the petitioner with seniority and continuity in service from the date of his illegal termination, except back wages.

2. Brief facts necessary for the adjudication of the present petition are that an industrial dispute was raised by the respondent-workman (hereinafter referred to as the workman for convenience) with regard to his illegal termination by the respondent-Department in the month of November, 1999, in violation of the provisions of Section 25-F of the

Industrial Disputes Act by stating that he was engaged as a daily wage Beldar in the year 1991 at Kalor Forest Division and he remained employed till 1999, when his services were verbally terminated from the month of November, 1999, though he had completed more than 240 days in the preceding 12 months and services of several other workmen junior to him were retained and who were subsequently regularized. On the Industrial Dispute so raised, the following reference was made by the Appropriate Government for adjudication to the learned Labour Court.

> *"Whether termination of the services of Sh. Desh Raj s/o Sh. Anant Ram, R/O Village & PO kosrian, Tehsil Jhandutta, Distt, Bilaspur, H.P. by the Divisional Forest Officer, Bilaspur Division, H.P. during November, 1999 without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what benefits, including reinstatement, amount of back wages, salary seniority, past service benefits and compensation the above worker is entitled to from the above employers?*

3. On the basis of the statement of claim filed by the workman as also reply filed thereto by the Department, the following issues were framed by the learned Labour Court.

> 1.Whether the termination of the services of the petitioner by the respondent in the month of November, 1999 is illegal and unjustified as alleged? OPP
>
> 2.Whether the claim petition is not maintainable in the present form? OPR

3.Whether the petition is hit by vice of delay and laches as alleged, if so, its effect? OPR

4. Relief.

4. The issues were decided by the learned Labour Court as under:-

Issue No. 1: Yes.
Issue No. 2: No.
Issue No. 3: No.
Relief: Petition is allowed per operative part of the Award.

5. Learned Labour Court held that the services of the petitioner were orally terminated on 01.11.1999 and he had worked for more than 248 days in said year itself. Learned Labour Court further held that whereas the plea of the department was that the workman himself had abandoned the job as he did not report for duty w.e.f. 01.11.1999, but there was nothing on record from which it could be inferred that there was abandonment of the job by the workman as this fact could not be proved by the department. Learned Labour Court held that the plea of abandonment has to be proved like any other fact since abandonment or absence from duties is a serious misconduct and it was therefore essential for the department to have had issued notice to the workmen to join and in default to have had initiated department proceedings and in the absence of any of these acts having been done by the department, it could not be construed that the workman had abandonment the job. Learned Labour Court also held in para 12 of the

award that as it was proved from the record that the department had engaged and retained persons junior to the workman, therefore, there was violation of Section 25(G) of the Industrial Disputes Act. Learned Court also held that as it stood proved that in the year 1999, the workman had worked for more than 240 days and even in the year 1998, he had worked for 248 days, the termination of the workman was obviously in violation of the provisions of Section 25(F) of the Industrial Disputes Act. Learned Labour Court also held that as the workman had admitted that he had agricultural land and he had also worked labourer during the period of unemployment, therefore, the workman was not entitled for back wages for the period his services stood illegally terminated. On the issue of delay and laches, learned Labour Court held that it appeared that the workman was initially agitating his claim before Labour-cum-Conciliation Officer, Bilaspur, who was not having correct figures of working days of the workmen which were later rectified pursuant to communication dated 28.09.2011 and thereafter, it was detected that the petitioner had in fact worked for more than 240 days in the year 1999.

6. Learned Labour Court also held that the petitioner was a simple rustic villager who was not conversant with the intricacies of law, therefore, it could not be said that the claim petition was hit by delays and laches. On the basis of these findings, learned Labour Court directed re-engagement of the petitioner forthwith alongwith seniority and continuity in service from the date of his illegal termination, except back wages.

7. Feeling aggrieved, the State has filed the present writ petition.

8. Leaned Deputy Advocate General has vehemently argued that the award passed by the learned Labour Court is not sustainable in the eyes of law as the learned Labour Court has erred in not appreciating that the work in fact was willfully abandoned by the workman and therefore, he was not entitled for the relief that stood granted by the learned Labour Court. Learned Deputy Advocate General further argued that neither there was any violation of Section 25(G) nor of Section 25(H) of the Industrial Disputes Act and in fact, the industrial dispute, which was raised by the workman, was hit by delays and laches as it was a stale claim, which was raked up by the petitioner in the year 2010 relating to his alleged illegal termination in the year 1999. Learned Deputy Advocate General also argued that learned Labour Court erred in not appreciating that the factum of the work having been voluntarily abandoned by the workman was evident from his conduct as any workman whose services stood illegally terminated would have had raised industrial dispute immediately. Accordingly, he prayed that the award passed by the learned Labour Court is not sustainable in the eyes of law. Learned Deputy Advocate General also relied upon the judgment of Hon'ble Supreme Court of India in **Prabhakar** vs. **Joint Director Sericulture Department and another**, AIR 2016 Supreme Court 2984, to substantiate his contention that the claim of the workman was stale claim.

9. Learned Counsel for the respondent-workman submitted that there is no merit in the present writ petition and the same was

therefore liable to be dismissed. She argued that it stood proved on the basis of record before the learned Labour Court that the services of the workman were indeed terminated in violation of the provisions of Section 25(G) as not only persons junior to the petitioner were retained but they were subsequently regularized also. She further argued that as it stood proved from record that even in the year 1999, the workman had put in more than 240 days as up to 31.10.1999, termination of services of the workman that too verbally was in clear by violation of the provisions of Section 25(F) of the Industrial Disputes Act. She further submitted that learned Labour Court rightly held on the basis of evidence and record that the department was not able to prove that the work was voluntarily abandoned by the workman. She further argued that the claim of the workman was not stale as he had earlier raised his grievance in the year 2006, but the same was rejected by the authority concerned as the department did not portray correct picture before the authority. The department did not disclose to the authority that the workman had indeed completed more than 240 days in the year 1999. She further submitted that when again the workman raised the issue in the year 2010 and all facts, figures and relevant record were produced before the authority and it stood demonstrated that indeed the petitioner had worked for more than 240 days in the year 1999 then the appropriate Government made the reference to the learned Labour Court. She thus argued that as the award passed by the learned Labour Court is just and fair, therefore, the present petition being devoid of any merit be dismissed.

10. I have heard learned Counsel for the parties and also carefully gone through the award passed by the leaned Labour Court as well as other documents appended therewith.

11. Termination of the services of the petitioner w.e.f. 1st November, 1999, was in fact preceded by the workman having put in more than 240 days in the calendar year 1999. This is a matter of record. In such like circumstance, the services of the petitioner could have been terminated by the department by following the procedure prescribed in Section 25(F) in the Industrial Disputes Act. Admittedly, this procedure was not followed at the time of the termination of services of the petitioner w.e.f. 1st November, 1999. The contention of the learned Deputy Advocate General that there was voluntary abandonment of the work by the petitioner is not substantiated from any material on record. In fact, learned Labour Court has correctly held that to demonstrate fact that the work stood abandoned by the workman on his own, the onus was upon the department to have had proved these facts. During the course of arguments, learned Deputy Advocate General could not draw the attention of this Court to any Exhibit from which it could be inferred that any notice etc. was issued by the department to the workman, mentioning therein that he had voluntarily abandoned the job w.e.f. 1st November, 1999 and that consequences would ensue. In the absence of there being any such material on record, the only inference that could have been drawn was that the services of the petitioner were indeed terminated by the department and that too, without following the provisions of Section 25(F) of the Industrial Disputes Act.

12. As far as the violation of Section 25(G) of the Act is concerned, learned Labour Court has spelled out the reasoning in Para-12 of the award by giving reference of the workmen who were junior to the present respondent i.e. engaged after the present respondent and whose services in fact stood subsequently regularized. During the hearing of this writ petition, it could not be demonstrated on the basis of record by the petitioners/State that the findings so returned by the learned Labour Court were perverse findings and not borne out from the record.

13. As far as the issue of delay and laches is concerned it is borne out from the record that after the termination of his services in the month of November, 1999, it is not as if the petitioner raised the industrial dispute for the first time in the year 2010. Record demonstrates that the petitioner raised the industrial dispute in the year 2006 also but the same was rejected by the authority concerned as at the relevant time, the department concerned did not place before the authority the correct facts, in terms whereof, the petitioner had put in more than 240 days in the calendar year preceding his termination. When this fact came to the notice of the workman that he again agitated the issue and as the stand of the workman was found correct, it is thereafter that the Appropriate Government made the reference to the learned Labour Court. A perusal of the Award passed by learned Labour Court demonstrates that this issue has been addressed and redressed by the learned Labour Court while deciding Issue No. 3, findings returned wherein are substantiated from the record. As far as the judgment relied upon by learned Deputy Advocate General, in the said

judgment, i.e. Prabhakar vs. Joint Director Sericulture Department and another (supra), Hon'ble Supreme Court of India has laid down the law that notwithstanding the fact that law of limitation does not apply to the industrial disputes, it is to be shown by the workman that there is a dispute in praesenti. Hon'ble Court has held that the workman has to demonstrate that even if considerable period has lapsed and there are delays and laches, such delay has not resulted into making the industrial dispute cease to exist and if the workman is able to give satisfactory explanation for these laches and delays and demonstrate that the circumstances disclose that issue is still alive, delay would not come in his way because of the reason that law of limitation has no applicability. Hon'ble Supreme Court further held that if on the other hand because of such delay dispute no longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred to. In this case, as already mentioned hereinabove, the petitioner had initially agitated his cause in the year 2006 which was wrongly rejected by the authority concerned and thereafter he subsequently took up the issue in the year 2010. As the contention and grievance of the petitioner that persons junior to him were not only retained by the department but their services were subsequently regularized is a matter of record and further as the services of the workman were terminated by the department in the year 1999 in violation of the provisions of Sections 25(F) and 25(G) of the Industrial Disputes Act, therefore, it cannot be said that the industrial dispute had ceased to exist. Thus, it is held that there is no force in the contention made on behalf of the respondent-State that the award

passed by learned Labour Court is bad as learned Court below erred in not appreciating that the dispute raised by the workman was barred by delay and laches.

14. In this view of the matter, as this Court does not find any infirmity with the award passed by the learned Labour Court, the present petition being devoid of any merit in the petition. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

BEFORE HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.

Sh. Chander Pal Singh and another

....Petitioner.

Versus

Union of India and others

...Respondents.

For the petitioners : Mr. G.D. Verma, Senior Advocate with Mr. Sumit Kumar, Advocate.

For the respondents : Mr. Lokender Pal Thakur, Senior Panel Counsel for respondent No.1.

: M/s Pushpender Jaswal and Baldev Negi, Additional Advocate Generals for respondents No. 2 to 4.

CWP No. 2571 of 2017
Reserved on: 04.03.2023
Decided on: 07.03.2023

Constitution of India, 1950 -Article 226 **-** Predecessor-in-interest of petitioners was displaced from West Pakistan during partition - He settled at Shimla – CWP was filed by maternal grandmother of petitioners claiming relief of allotment of land or payment of compensation as alternative relief – The said CWP was disposed of with direction to the respondents to process and settle the claim of the petitioners within a period of two months – LPA of respondents was dismissed – Respondents sanctioned monetary compensation but did not allot land– Petitioners prayed for allotment of land in Shimla and compensation of Rs.5 crore -**Held** - When the prayer made by predecessor-in-interest of the petitioners was either for the allotment of land or compensation and the respondent authority has exercised its discretion and granted compensation and not land, the exercise of said discretion cannot be faulted with and the decision which has been taken by the competent authority to compensate the petitioners by way of award of compensation cannot be said to be bad in law – Petition dismissed. (Paras 6 to 9)

The following judgment of the Court was delivered:

Ajay Mohan Goel, Judge

By way of the present writ petition, the petitioners have prayed for the following reliefs:-

i) That appropriate orders and directions may be issued to the respondents to make allotment of suitable plot in favour of the petitioners in or around Station Ward Bara Shimla or anywhere in Shimla Town.

ii) That the respondents may be ordered to pay suitable amount of compensation to the petitioners over and above the amount as offered to the tune of Rs. 3,13,480/- and in any case, the may be held entitled to get at least a sum of Rs. 5.00 Crore as amount of compensation.

2. The case of the petitioners is that their predecessor-in-interest late Shri Sardar Jagat Singh was displaced from West Pakistan on account of partition of the country. As a result of said displacement, predecessor-in-interest of the petitioners had no alternative except to settle at Shimla. Late Smt. Man Kaur (maternal grandmother of the petitioners) filed civil writ petition bearing No. 2633 of 1995 for allotment of land on the ground that they were displaced persons on account of partition of the country. This writ petition was disposed of by this Court with the direction to the respondents to process and settle the claim of the petitioners within a period of two months in terms of order dated 08.12.2014. The decision was challenged by way of LPA No. 168 of 2015, which was decided on 19.07.2016. In compliance to the judgment passed by this Court, Sub Divisional Officer(Civil)-cum-Settlement Officer, while making reference to the recommendations of State of Himachal Pradesh dated 11.11.2016, restricted the recommendations only qua payment of compensation and ignored the claim of the predecessor-in-interest of the petitioners for allotment of land out of the pool area. In these circumstances, on 16.11.2016, the petitioners made a representation and submitted that they were not interested in monetary compensation but are interested in allotment of property. Another representation was made on 22.03.2017, in pursuance

whereof, Sub Divisional Officer, Shimla, wrote a letter to the Joint Secretary (R&R) to the Government of Himachal Pradesh, for reconsideration of the matter. This was followed by communication dated 14.06.2017, in terms whereof, Joint Secretary (Revenue) to the Government of Himachal Pradesh informed the Sub Divisional Officer (Civil), Shimla, that monetary compensation already stood sanctioned by the government on 24.01.2017. The petitioners made representation against the said communication, however, as respondents did not pay heed to the requests of the petitioners, hence the present writ petition.

3. In terms of the reply filed by the respondents-State, the petition has been opposed *inter alia* on the ground that predecessor-in-interest of the petitioners, namely, Smt. Man Kaur, issued a legal notice through counsel, in terms whereof she claimed payment of Rs.34,000/- w.e.f. 09.04.1948 till the date of realization. A copy of the legal notice has been appended with the reply as Annexure R-1. It is further the stand of the respondent-State that from the very beginning, the claim of the predecessor-in-interest of the petitioners was only with regard to payment of Rs. 34,000/- and not with regard to allotment of the land. According to the State, the petitioners were raising the claim for allotment of land for the first time, which stood rightly rejected. It was further the stand of the respondent-State that as far as the payment of compensation was concerned, the same was rightly calculated by the respondents vide letter dated 11.11.2016 (Annexure R-2), which comes to Rs. 3,13,480/- up to October, 2016, qua which approval also stood granted and this was also conveyed to the petitioners vide letter dated 05.06.2017 (Annexure R-4). It is further the case of the respondents-State that the petitioners were called upon to provide details of their bank accounts so that payment as per approval could be made but rather than furnishing the bank details, the petitioners initially filed the representations and thereafter, the writ petition.

4. By way of rejoinder, the petitioners have reiterated their stand as spelled out in the writ petition.

5. I have heard learned Senior Counsel appearing for the petitioners as also learned Senior Panel Counsel for respondent No. 1-Union of India and learned Additional Advocate General and also carefully gone through the record of the case.

6. Before proceeding further, it is relevant to refer to the writ petition which was initially filed by the predecessor-in-interest of the petitioners, namely, Smt. Man Kaur, who incidentally died during the pendency of the writ petition, i.e. CWP No. 2633 of 1995, titled as Chander Pal Singh and another vs. Union of India and others. A perusal of the reliefs claimed in the said writ petition demonstrates that the petitioners had sought the following reliefs therein:-

> (i) It is, therefore, humbly prayed that the respondents may please be directed to allot the land to the petitioner for house construction and in the alternative the respondents be directed to pay the compensation to the petitioner within increase including interest since 1948, which is necessary in the interest of justice and fair play.
>
> (ii) Any other relief, including cost of this petition and cost of Counsel fee, may please be directed to be paid alongwith compensation, which is necessary in the ends of justice and fair play.

7. The relief clause thus clearly demonstrates that the prayer made by the petitioners was for issuance of a direction to the respondents to allot land to the petitioners for construction of the house or in the alternative to pay compensation to the petitioners. This writ petition was disposed of by this Court in terms of judgment dated 08.12.2014 with the direction that the claim instituted be possessed and settled within a period of two months. Incidentally, no mandamus was issued by the Court in the said writ petition that the predecessor-in-interest of the petitioners be compensated for

displacement by way of allotment of land. The judgment of the learned Single Judge when assailed in LPA No.168 of 2015 stood decided by way of order of the Hon'ble Division Bench dated 19th July, 2016, which reads as under:-

> *"This appeal is directed against the judgment and order, dated 8th December, 2014, passed by a learned Single Judge of this Court in CWP No.2633 of 1995, titled Chander Pal Singh and another vs. Union of India & others, whereby the writ petition came to be disposed of with a direction to the writ respondents/appellants to process and settle the claim within a period of two months, (for short, the impugned judgment).*
>
> *2. It is apt to reproduce the relevant portion of the impugned judgment hereunder:*
>
> *".....Therefore it is deemed it fit, just and expedient that the claim admittedly instituted by the predecessor-in-interest of the petitioners herein, be processed and settled by the respondents within a period of two months hereafter. In view of the above, the present petition stands disposed of, as also the pending applications, if any."*
>
> *3. It is apparent from the perusal of the operative portion of the impugned judgment, referred to above, that the writ respondents/ appellants have been directed to process and settle the claim of the predecessor-in-interest of the petitioners as per law applicable. Therefore, it is astonishing why the appellants/writ respondents chose to file the instant appeal.*
>
> *4. Having glance of the above, there is no merit in the instant appeal and the same is dismissed, alongwith pending CMPs, if any. Consequently, the impugned judgment is upheld."*

8. Thereafter, the respondents processed the case and have sanctioned the monetary compensation, which according to the respondent-state, is payable now to the petitioners. This Court is of the considered view that there was no indefeasible right created upon the predecessor-in-interest or the petitioners for allotment of the land and land itself, on account of this displacement at the time of partition. Incidentally, even in the writ petition which was filed by the predecessor-in-interest of the present petitioners, while

claiming relief or allotment of land, alternative relief for payment of compensation was also made. When this writ petition was disposed of by the learned Single Judge with issuance of a direction to the competent authority to decide the case of the petitioners therein within a time bound period, without issuance of any mandamus that land be allotted to the petitioners, said judgment was not assailed by the petitioners, meaning thereby that they were satisfied with the said verdict. In these circumstances, when the prayer made by predecessor-in-interest of the petitioners was either for the allotment of land or compensation and the respondent authority has exercised its discretion and granted compensation and not land, the exercise of said discretion cannot be faulted with and the decision which has been taken by the competent authority to compensate the petitioners by way of award of compensation thus cannot be said to be bad in law. In fact, no mandamus can be issued to the respondents-State, as prayed for, for allotment of land and the grant of compensation by the competent authority is held to be a fair decision taken by the competent authority pursuant to the direction passed by the learned Single Judge in the earlier writ petition.

9. Accordingly, in view of above discussion, as this Court does not find any merit in the present petition, the same is accordingly dismissed. It is made clear that in the event of the petitioners furnishing particulars as demanded by the authority, the amount of compensation as assessed, be paid to them as expeditiously as possible. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

BEFORE HON'BLE MR. JUSTICE TARLOK SINGH CHAUHAN, J. AND HON'BLE MR. JUSTICE VIRENDER SINGH, J.

Rajesh .....Petitioner.

Versus

Himachal Pradesh State Electricity Board Limited and others .....Respondents**.**

For the Petitioner : Mr. Sanjeev Bhushan, Senior Advocate with Mr. Rakesh Chauhan, Advocate.

For the Respondents : Ms. Ruma Kaushik, Advocate, for respondent No.1.

Mr. Yashwardhan Chauhan, Advocate, for respondent No.2.

CWP No.1485 of 2023
Date of decision: 10.04.2023

Constitution of India, 1950 –Article 226- Transfer order was challenged by the petitioner – **Held** - Both the petitioner as well as private respondent have not only feigned ignorance regarding the works and ethics of the Department but their conduct is otherwise not befitting the office they are holding, therefore, both of them are required to be posted/transferred out of their present place of posting, as granting an indulgence to any one of the parties would be causing manifest injustice to the other Engineers, who are desirous to serve in Shimla but have failed to get posting because of the cartel formed by the influential Engineers like the parties in the instant case – Petition disposed with direction to respondent No.1 to post one of the incumbents in District Lahaul & Spiti and other in District Kinnaur. (Paras 2 to 6)

Cases referred:

Sheela Suryavanshi vs. State Of H.P. & Ors., 2020 Labour Industrial Cases 3907;

The following judgment of the Court was delivered:

Tarlok Singh Chauhan, Judge (Oral)

Even though this petition is directed against the order of transfer, however, a perusal of the records goes to reveal that both the petitioner as also private respondent working as Assistant Engineers, being Class-I, have been pulling strings for their transfer and posting on the stations of their choices and have managed their postings continuously for more than three decades in and around Shimla.

2. While dealing with an issue where employees working under the State Government had been seeking their postings only in Shimla and had infact formed some sort of cartel, this Court in ***Sheela Suryavanshi vs. State Of H.P. & Ors.***, **2020 Labour Industrial Cases 3907** observed as under:

> "18. Off late, this Court has seen a surge in litigation relating to transfer. The State of Himachal unlike other States is not evenly or uniformly developed in matters of basic infrastructure like education, health services etc. It is for this reason and rightly so that every employee tries to make an endeavour to seek posting in the district or tehsil headquarters where the infrastructure is relatively well developed. This we observe on the basis of the statistics relating to Shimla alone, where floating population is equal to permanent population. Most of these migration in urban areas is directly related with education of children and thereafter it could be for other purposes like better health facilities etc.
>
> 19.We further notice that because of cartel created by few of the employees serving in the urban and semi urban areas of Himachal Pradesh, the influential employees manage to secure their postings in and around urban areas, leaving practically no room for the other employees.
>
> 20.The instant case is one such classical example, which reflects the modus operandi being resorted to by these teachers on completion of their tenure by seeking mutual transfer or

creating artificial vacancies and thereafter getting each one adjusted in such vacancies.

21. It cannot be ignored that not only the State or Country but the whole world is in the grip of pandemic COVID-19, because of which students cannot be taught physically in the class rooms and are being taught through online classes.

22. In such circumstances, the respondents are not only duty bound but are mandated by law to ensure that no monopoly in the matters of transfers is created in favour of selected fews but an endeavour has to be made to accommodate maximum number of teachers whose children are appearing for the board examination or examination for professional courses. These students can only study and attend classes on line if there is adequate and desired band-width. Even otherwise the facilities of tuition and coaching classes on online are mainly available in these places i.e. the district and tehsil headquarters, therefore, also the State is required to adopt a fair and transparent policy of transfer by calling for the details of all the teachers whose children are to appear in the Board exam or examination for professional courses like MBBS, AIEEE etc. This would not only bring about an end to the monopoly created in favour of few teachers but would also ensure benefit to the student community as a whole.

23.The Central Government, State Governments and likewise all public sector undertakings are expected to function like a 'model employer'. A model employer is under an obligation to conduct itself with high probity and expected condour and the employer, who is duty bound to act as a model employer has obligation to treat its employees equally and in appropriate manner so that the employees are not condemned to feel totally subservient to the situation. A model employer should not exploit the employees and take advantage of their helpless and misery.

24. The action of the State must be reasonable, fair, just and transparent and not arbitrary, fanciful or unjust. The right of fair treatment is an essential ingredient of justice. Exercise of unbridled and uncanalised discretionary power impinges upon the right of the citizen; vesting of discretion is no wrong provided

it is exercised purposively judiciously and without prejudice. Wider the discretion, the greater the chances of abuse. Absolute discretion is destructive of freedom, than of man's other inventions. Absolute discretion marks the beginning of the end of the liberty.

25. It was observed by Wades Administrative Laws, 5th Edition at page 347 that "*The first requirement is the recognition that all powers have legal limits, the next requirement, no less vital, is that the Court should draw this limit in a way which strikes the most suitable balance between executive efficiency and legal protection of the citizen. Parliament consistently confers upon public authorities powers which on their face seem absolute and arbitrary. But arbitrary power and unfettered discretion are what the Courts refuse to countenance. They have woven a net-work of restrictive principles which require statutory powers to be reasonable and in good faith and in accordance with the spirit and letter of the empowering Act.*" At page 359, it was also observed that "*Discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That amounts at least to this that the statutory body must be guided by relevant consideration and not irrelevant. If its decision is influenced by extraneous consideration which ought not have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith, nevertheless, the decision will be set-aside.*"

26. Here, it shall be apposite to make a reference to the judgment of the Hon'ble Supreme Court in ***New India Public School vs. Huda (1996) 5 SCC 510***, wherein it was observed that when public authority discharges its public duty, it has to be consistent with the public purpose and clear and unequivocal guidelines or rules are necessary and the same cannot be acted at the whim and fancy of the public authorities or under their garb or cloak for any extraneous consideration.

27.The concept of reasonableness and non-arbitrariness pervades the entire constitutional spectrum and is a golden thread which runs through the whole fabric of the Constitution. Thus, Article 14 read with Article 16(1) of the Constitution

> accords right to an equality or an equal treatment consistent with principles of natural justice. Therefore, any law made or action taken by the employer, corporate statutory or instrumentality under Article 12 must act fairly and reasonably. Right to fair treatment is an essential inbuilt of natural justice.
> 28.As observed above, exercise of unbridled and uncanalised discretionary power impinges upon the right of the citizen; vesting of discretion is no wrong provided it is exercised purposively, judiciously and without prejudice.
> 29. The main concern of the Court in such matters is to ensure the Rule of law and to see that the executive acts fairly and gives a fair deal to its employees consistent with the requirements of Articles 14 and 16 of the Constitution. It also means that the State should not exploit its employees nor should it seek to take advantage of their helplessness and misery. As is often said, the State must be a 'model employer'."

3. No employee(s) in the service of the State, was it statutory Board and Corporation etc., can be so indispensable that he/they cannot be transferred out of Shimla so as to afford a chance towards similarly situated persons to serve in the State Capital.

4. This Court in ***CWP No.6284 of 2021*** titled ***Harinder Singh*** *vs.* ***Himachal Pradesh State Electricity Board Limited and another***, decided on 02.12.2021, while deprecating the practice of favouritism in matters of transfer observed as under:

> "2.The petitioner was appointed as Clerk in the respondent-Board in the year 1992 and thereafter promoted to the post of Senior Assistant. Later, vide office order dated 30.6.2020, he was promoted to the post of Superintendent (Grade-II) and ordered to be transferred from Electrical Sub Division Bagthan under Electrical Division Nahan to Electrical Sub Division Totu, Shimla. The petitioner joined at Totu on 14.7.2020 and vide office order dated 29.9.2021, has been ordered to be transferred to Boards Secretariat, Shimla vice respondent No.2, Ranju Sharma.

3. On the other hand, respondent No.2 ever since her appointment in the year 1998 and despite three promotions has only served in Shimla and even now while she was ordered to be transferred from Electrical System Division Totu to Boards Secretariat Shimla, has been accommodated against the interest of the petitioner by posting her at Electrical System Division Totu.

4. If this was not enough, the official respondent has been over enthusiastic in contesting the case knowing fully well that its action is absolutely illegal and smacks of favouritism and nothing more.

5.The official respondent has gone to the extent of preparing statement of incumbency of the petitioner, but would not disclose the incumbency of respondent No.2, who, as stated above, has served only in Shimla.

6.The Central Government, State Governments and unlike all public sector undertakings are expected to function like a model employer. The model employer is under an obligation to conduct itself with high probity and expected candour and the employer, who is duty bound to act as a model employer, has social obligation to treat its employees in an appropriate manner so that an employee is not condemned to feel totally subservient to the situation. A model employer should not exploit its employees and take advantage of their helplessness and misery.

7. In the present case, conduct of the official respondent is reprehensible and falls short of expectation of a model employer and to say the least, the official respondent has indulged in favouritism thereby driven the petitioner to unnecessary and avoidable litigation.

8. It needs to be noticed that transfer of respondent No.2 was ordered to be effected within stone's throw distance, yet she

again managed to have modified the transfer and stayed in a comfort zone.

9. Since the impugned transfer order has been effected not on account of administrative exigency or public interest, but on favouritism, the same cannot sustain and is ordered to be quashed and set aside.

10. Normally, in the given facts and circumstances, we would have passed mandatory direction to the official respondent to transfer respondent No.2 to a far flung and remote area, so that she could understand the pangs of separation along with discomfort and distress, which normally an government employee undergoes when transferred from his/her comfort zone, however taking into consideration the fact that respondent No.2 is due to retire shortly, we desist from passing any order for the time being, however in case the official respondent contemplates to transfer Superintendent Grade-II, then it will be first respondent No.2, who shall be transferred outside Shimla District.

11. Before parting, we need to observe that the role of the respondent-Board as a model employer has been deliberated upon by us with the fond hope that in future a deliberate disregard is not taken recourse to and deviancy of such magnitude is not adopted to frustrate the claims of the genuine employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair.

12.Hope for everyone is gloriously precious and a model employer should not convert it to be deceitful by playing a game of chess, that too, entrenched in favouritism. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then

only the concept of good governance can be concretized. We leave it at that."

5. Since, both the petitioner as well as private respondent have not only feigned ignorance regarding the works and ethics of the Department but their conduct is otherwise not befitting the office they are holding, therefore, both of them are required to be posted/transferred out of their present place of posting, as granting an indulgence to any one of the parties in this case would be causing manifest injustice to the other Engineers, who are desirous to serve in Shimla but have failed to get posting because of the cartel formed by the influential Engineers like the parties in the instant case. This Court is not inclined to exercise its discretion in favour of any of the parties "as justice is not on their side".

6. In such circumstances, we see no reason to interfere with the transfer order, but would direct respondent No.1 to post one of the incumbents in District Lahaul & Spiti and other in District Kinnaur and report compliance before the next date.

7. The petition stands disposed of in the aforesaid terms so also the pending application, if any.

8. For compliance, to come up on **01.05.2023.**

BEFORE HON'BLE MS. JUSTICE SABINA, A.C.J. AND HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Abdul Hamid .....Petitioner.

Versus

State of Himachal Pradesh & Ors. .....Respondents.

For the petitioner : Ms. Anubhuti Sharma, Advocate.

For the respondents : Mr. Pranay Pratap Singh,
Additional Advocate General.

CWP No. 6312 of 2022
Reserved on:31.03.2023
Decided on:04.04.2023

Constitution of India, 1950 – Article 226 - Challenge laid to transfer on the basis of DO Note before completion of normal tenure of three years – **Held** - Court does not interfere in the matters of transfer of government employees unless the administrative action is smeared with malafide - There is no material to infer malafide or coloured exercise of power behind the decision – **Further held** - There is no absolute rule that petitioner has to remain posted at a particular place for a specific tenure - The Comprehensive Guiding Principles-2013 for regulating the transfer of State Government employees adopted by the State government does not provide for any such mandate - It has only been specified that tenure/stay of an officer/official at one station shall be three years normally - It cannot be taken as an absolute mandate and the State Government always has a right to transfer its employees keeping in view the administrative exigency or public interest – petition dismissed. (Paras 6 to 12)

The following judgment of the Court was delivered:

Per Satyen Vaidya, *Judge*

Aggrieved against office order dated 07.09.2022, Annexure P-1, petitioner has approached this Court for grant of following substantive relief:-

> *"i. That the Office Order dated 07.09.2022 at Annexure P-1 may very kindly be quashed and set-aside."*

2. The grievance of petitioner is that he has been ordered to be transferred without allowing him to complete normal tenure of three years. The transfer of petitioner has been ordered after a period of one year four months only. As per petitioner, previously also, he had been transferred after short spans and every time he had to knock the doors of this Court. It is further submitted that the transfer of the petitioner has been effected on the basis of a D.O. Note and there is neither any public interest nor administrative exigency in his transfer. The impugned action of the respondents has been alleged to be malafide.

3. On the other hand, respondents have contested the claim of petitioner by filing reply. It is submitted that petitioner has been transferred from Churah Forest Division to Tundah Wildlife Block, Khajjiar purely on administrative grounds. There is no malafide in transferring the petitioner. There is no D.O. Note, which has triggered the transfer order of the petitioner. No person has been ordered to be posted in Churah Forest Division vice the petitioner.

4. We have heard learned counsel for the parties and gone through the record available on the file carefully.

5. Undoubtedly, petitioner has been transferred from Churah Forest Division to Tundah Wildlife Block, Khajjiar after one year four months of the posting of petitioner at Churah Forest Division.

6. The issue that arises for consideration in peculiar facts of the case is whether petitioner can claim to remain posted at a particular place for complete tenure of three years as a matter of rule? In our considered view, the answer has to be returned in negative.

7. Transfer is an incidence of service and the employer has every right to transfer the employee keeping in view the exigencies of administration. This Court in exercise of writ jurisdiction does not interfere in the matters of transfer of government employees unless the administrative action is smeared with malafide.

9. Reverting to the facts of the case, except for bald assertion that petitioner has been transferred on the basis of D.O. Note, no tangible material has been placed on record to substantiate the allegation. Neither any detail of the D.O. Note has been made available on record nor the author of such D.O. Note has been impleaded as a party. Respondents have denied such fact. Further, it can be noticed that none has been ordred to be posted in place of petitioner in Churah Forest Division. Thus, it also cannot be said that petitioner has been transferred to accommodate some other person.

10. As regards, the allegations of malafide on part of respondents, it is not inferable from the material on record. This Court in exercise of jurisdiction under Article 226 of the Constitution will not indulge in probing into the reasons behind administrative decision especially when there is no material to infer malafide or coloured exercise of power behind such decision.

11. In the instant case, petitioner has failed to place on record any material to prick the judicial conscience of this Court.

12. Even otherwise, there is no absolute rule that petitioner has to remain posted at a particular place for a specific tenure. The Comprehensive Guiding Principles-2013 for regulating the transfer of State Government employees adopted by the State government does not provide for any such mandate. It has only been specified that tenure/stay of an officer/official at

one station shall be three years normally. It cannot be taken as an absolute mandate and the State Government always has a right to transfer its employees keeping in view the administrative exigency or public interest.

13. In view of above discussion, we don't find any merit in the petition and the same is accordingly dismissed.

14. Pending miscellaneous application(s), if any, shall also stand disposed of.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

1. CWP No. 4920 of 2021

Salig Ram & others ...Petitioners

Versus

H.P. State Forest Development Corp. ....Respondents

2. CWP No. 6468 of 2021

Daya Ram ....Petitioner

Versus

H.P. State Forest Development Corp. ....Respondents

3. CWP No. 6469 of 2021

Bhag Chand ....Petitioner

Versus

H.P. State Forest Development Corp. ....Respondents

4. CWP No. 6470 of 2021

Bhagwan Dass ....Petitioner

Versus

H.P. State Forest Development Corp. ....Respondents

5. CWP No. 6471 of 2021

Hari Ram ....Petitioner

Versus

H.P. State Forest Development Corp. ....Respondents

6. CWP No. 6472 of 2021

Kedar Dutt ....Petitioner

Versus

H.P. State Forest Development Corp. ....Respondents

7. CWP No. 6473 of 2021

Sher Singh ....Petitioner

Versus

H.P. State Forest Development Corp. ....Respondents

For the Petitioner(s): Mr. Gaurav Sharma, Advocate in all petitions.

For the Respondent(s): Mr. Vinod Kumar Thakur, Advocate in all petitions.

CWP No. 4920 of 2021 with
CWP Nos. 6468 to 6472 of 2021
Date of Decision 31st March, 2023

Constitution of India, 1950 - Article 226 - Judgment in Rem - Petitioners were appointed as Timber/Resin Watchers in H.P. State Forest Development Corporation w.e.f. 18.7.1983 - persons working in other categories like peon, chowkidar etc. were also included in seniority list of Timber/Resin Watchers in derogation of bye-law 3.4 -

Previously, some of Timber/Resin Watchers filed an OA No. 656 of 1994 before the Tribunal for quashing the seniority list dated 3.6.1993 - on abolition of the Tribunal, the said petition was transferred to the High Court and was re-registered as CWP-T No. 2265 of 2008 - This writ was dismissed on 29.3.2010 - Ramesh Chand Sharma and some other Timber/Resin Watchers similarly situated to petitioners, assailed order dated 29.3.2010 by filing LPA No. 55 of 2010 - LPA was disposed off on the basis of reply that instructions had been issued to respondent No.2 to correct all the seniority lists and not to include any other category of daily wagers in the seniority of Timber/Resin Watchers (daily wages) - Ramesh Chand Sharma filed Execution Petition No. 11 of 2017 - benefit of judgment passed in LPA No. 55 of 2010 was extended in his favour on 5.10.2020 - Petitioners made a representation on 10.6.2021 to the Corporation for implementation of judgment passed in LPA No. 55 of 2010 - representation was not decided by Corporation - Petitioners were constrained to file present writ petitions - Petitioners claimed that judgment passed in LPA No. 55 of 2010 is a judgment in *rem* pronounced with intention to give benefits to all similarly situated persons on the basis of undertaking/submission of respondent Corporation and rectification of seniority list was to be carried out by Corporation with respect to all Timber/Resin Watchers but not only with respect to Ramesh Chand Sharma - respondents contested the petiton alleging delay and laches - **Held** - No inference, in any manner can be drawn to construe that direction passed by the Division Bench was only qua appellants therein as it was not reply of Corporation that it was looking into to draw seniority list by correcting the discrepancy only qua appellants in LPA but not qua others or all - Judgment in LPA No. 55 of 2010 held to be a judgment in *rem* butnot a judgment in *personam* - **Further held** - Though judgment in LPA No. 55 of 2020 is in *rem* but it is a matter of fact that while others were agitating their cause for redressal of their grievances, petitioners were banking upon the result of their litigation and it is not the case of petitioners that all of them had ever represented to the Corporation for redressal of their grievances - as per pleadings, petitioners for the first time, represented to the Corporation on 10th June, 2021 - Petitioners held to be entitled for benefit of promotion and further promotion from the due date on the basis of corrected seniority list benefiting them for promotion as Forest Guards as well as Deputy Rangers but their arrears restricted for three years prior to making their representation i.e. 3 years prior to

10.6.2021 and actual arrears of monetary benefits given to them w.e.f. 10.6.2018 - Petitions allowed.

Cases referred:

State of Uttar Pradesh vs. Arvind Kumar Srivastava (2015)1 SCC 347;
State of Karnataka and others vs. C. Lalitha, (2006)2 SCC 747;
Union of India vs. Tarsem Singh, (2008)8 SCC 648;

The following judgment of the Court was delivered:

Vivek Singh Thakur, J.

All these petitions, for involvement and appreciation of common questions of law and facts, are being decided together by this order.

2 Petitioners, being duly sponsored by different Employment Exchanges, were appointed as Timber/Resin Watchers in respondent-H.P. State Forest Development Corporation (in short Corporation) w.e.f. 18.7.1983. Their services were regularized w.e.f. 1.8.1984 vide order dated 11.2.1988. Thereafter, tentative seniority list of Timber/Resin Watchers dated 3.10.1989, as stood on 1.4.1989, was issued. Some of Timber/Resin Watchers represented against the said seniority list. However, without deciding their representation, Corporation issued another seniority list on 25.7.1991, as it stood on 1.4.1991. Some of Timber/Resin Watchers represented against the same. However, their representation was rejected by Corporation on 9.10.1991.

3 Rejection of representation was assailed by some of Timber/Resin Watchers by filing OA No. 15 of 1992 before H.P. State Administrative Tribunal (in short 'the Tribunal'). The said Original Application, vide order dated 3.4.1992, was disposed of by the Tribunal

with direction to Corporation to treat the same as an appeal to the Board of Directors of respondent Corporation.

4 During pendency of appeal before Board of Directors, the Corporation circulated another seniority list on 3.6.1993 and also made promotions on the basis of said seniority list by promoting 14 persons to the post of Forest Guards.

5 Grievance of Timber/Resin Watchers was that in their seniority list persons working in other categories like peon, Chowkidar etc. were also included in seniority list of Timber/Resin Watchers whereas according to bye-law 3.4 seniority has to be determined on the basis of length of service in the grade and, therefore, the persons not belonging to grade of Timber/Resin Watchers were not to be included in seniority list of Timber/Resin Watchers.

6 Against the aforesaid omission and commission of Corporation, some of Timber/Resin Watchers filed an OA No. 656 of 1994 before the Tribunal for quashing the seniority list dated 3.6.1993. On abolition of the Tribunal, the said petition was transferred to the High Court and was re-registered as CWP-T No. 2265 of 2008.

7 CWP-T No. 2265 of 2008 was dismissed by the Single Bench of this Court vide judgment dated 29.3.2010.

8 Ramesh Chand Sharma and others, some Timber/Resin Watchers similarly situated to present petitioners, assailed order dated 29.3.2010 by filing LPA No. 55 of 2010 before the Division Bench of this High Court, which was disposed of on 02.08.2016 directing the respondents to do needful within six weeks from the date of order in

terms of para 14 of impugned judgment dated 29.3.2010 passed in CWP-T No. 2265 of 2008.

9 Para 14 of judgment in CWP-T No. 2265 of 2008 reads as under:-

> "14. The respondents No. 1 to 3 in their reply have submitted that the seniority list has again been looked into and discrepancies found have been corrected and instructions in this behalf have already been issued to respondent No.2 to correct all the seniority lists and not to include any other category of daily wagers in the seniority of Timber/Resin Watchers (daily wages). Therefore, in view of the stand of respondents No. 1 to 3 in their reply the grievance of the petitioners has been set at rest by respondents No.1 to 3 themselves when it has been stated in the reply that instructions have been issued to respondent No.2 to correct all the seniority lists and not to include any other category of daily wagers in the seniority of Timber/Resin Watchers (daily wages). Therefore, no separate directions are required from this Court not to include any other category of daily wagers in the seniority of Timber/Resin Watchers (daily wages)."

10 For non-compliance of aforesaid directions passed in LPA No. 55 of 2010 Ramesh Chand Sharma filed Execution Petition No. 11 of 2017, whereafter respondent Corporation extended the benefit of judgment passed in LPA No. 55 of 2010 in favour of Ramesh Chand vide Office Order dated 5.10.2020 promoting him as Forest Guard in the pay scale of Rs.950-1800/- w.e.f 29.10.1991 instead of 9.7.2004 with further promotion as Deputy Ranger in the pay scale of Rs.5480-8925/- w.e.f. 18.1.2006 instead of 15.12.2012. Thereafter, Execution Petition No. 11 of 2017 was disposed of on the basis of statement made

by counsel for Ramesh Chand that entire greivance of petitioner was redressed by executing and implementing the judgment in reference.

11 Petitioners made a representation on 10.6.2021 to the Corporation for implementation of judgment passed in LPA No. 55 of 2010 but the said representation was not decided by Corporation whereupon petitioners were constrained to file present writ petitions.

12 Claim of petitioners is that in para 14 of judgment dated 29.3.2010, passed in CWP-T No. 2265 of 2008, it was recorded by Single Bench that respondent Corporation, in its reply, had submitted that seniority list was again looked into and discrepancies found therein were communicated to respondent No.2 to correct all seniority lists by not including any other category of daily wagers. LPA was disposed of on the basis of and in terms of aforesaid submissions/stand of the respondent Corporation and, therefore, the said submissions of Corporation became part of judgment and direction passed by the Division Bench as evident from para 2 and para 4 of judgment passed in LPA No. 55 of 2010.

13 It is the claim of petitioners that judgment passed in LPA No. 55 of 2010 is a judgment in *rem* and has been pronounced with intention to give benefits to all similarly situated persons on the basis of undertaking/submission of respondent Corporation and, therefore, the said rectification of seniority list was to be carried out by Corporation with respect to all Timber/Resin Watchers but not only with respect to Ramesh Chand Sharma.

14 It has been contended on behalf of petitioners that delay and latches on the part of petitioners in approaching the Court shall

not come in their way because judgment in LPA No 55 of 2010 is judgment in *rem* but not judgment in *personam.* Tosubstantiate their claim, petitioners have placed reliance on the pronouncement of Supreme Court in ***State of Uttar Pradesh vs. Arvind Kumar Srivastava*** reported in ***(2015)1 SCC 347*** wherein it has been held as under:-

> "22.1 Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently.
>
> 22.2 However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim.
>
> 22.3 However, this exception may not apply in those cases where the judgment pronounced by

> the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India reported in (1997)6 SCC 721). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence."

15 Learned counsel for petitioners has also placed reliance on ***State of Karnataka and others vs. C. Lalitha,*** reported in ***(2006)2 SCC 747,*** wherein it has been observed as under:-

> "29. Service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. Only because one person has approached the Court that would not mean that persons similarly situated should be treated differently……"

16 In response, claim of petitioners has been opposed on the ground that petition has been filed after a lapse of 35 years and as such, same is not maintainable for delay and latches on their part.

17 In preliminary submission No. 6 of reply, filed by respondent Corporation, decision of Board of Directors taken in furtherance to order passed by the Tribunal, vide memo No. 175, has been referred whereby claim of applicants Ramesh Chand and others was rejected in 1993. In the entire reply, events happened prior to judgment passed in LPA No. 55 of 2010 have been reproduced which are of no relevance as ultimately respondent Corporation has to comply with directions of Division Bench passed in LPA No. 55 of 2010.

18 Crux of reply of the Corporation is that the Corporation has implemented the order passed by Court in its letter and spirit by implementing the same in favour of Ramesh Chand Sharma including others but petitioners are not entitled for that on account of delay and latches.

19 Stand of the Corporation as recorded in para 14 of judgment passed in CWP-T No. 2265 of 2008 depicts that the Corporation was going to correct the discrepancies found in seniority list of Timber/Resin Watchers. On the basis of this stand/assurance, in para 4 of judgment in LPA No. 55 of 2010 direction given to respondent-Corporation to carry out exercise to correct the discrepancies in seniority list of Timber/Resin Watchers accordingly within six weeks from the date of passing of judgment dated 2.8.2016. No inference, in any manner can be drawn to construe that direction passed by the Division Bench was only qua appellants therein as it was not reply of Corporation that it was looking into to draw seniority list by correcting the discrepancy only qua appellants in LPA but not qua others or all. Therefore, judgment in LPA No. 55 of 2010 is a judgment

in *rem* butnot a judgment in *personam,* and, thus it, for its implementation, shall be squarely covered and governed by pronouncement of the Supreme Court in ***Arvind Kumar Srivastva' case*** in terms of paras 22.1 and 22.3.

20 Learned counsel for petitioners has also placed reliance upon order dated 17th June, 2022 passed by a Division Bench of this Court in Execution Petition No. 19 of 2021 whereby co-petitioners of Ramesh Chand Sharma were held to be entitled for benefit of judgment passed in LPA No. 55 of 2010 and direction was given to extend the benefit in their favour also vide order dated 17th June, 2022.

21 Learned counsel for petitioners have also relied upon pronouncement of the Supreme Court in ***Union of India vs. Tarsem Singh,*** reported in ***(2008)8 SCC 648,*** wherein claim of petitioners was allowed by Supreme Court even after delay of 16 years but by restricting the relief relating to arrears to only 3 years before the date of writ petition or from the date of demand by observing:-

> "7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be

> entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

22 It has been submitted on behalf of petitioners that in view of reply filed to CWP-T No. 2265 of 2008 they were under impression that the Corporation is taking steps to rectify all discrepancies in seniority list including the discrepancies qua petitioners and after passing of judgment in LPA No. 55 of 2010 they were under impression that entire seniority list was to be drawn after rectifying the mistake and, therefore, it has been submitted that they cannot be ousted for alleged delay and latches in filing independent writ petitions and further that omission and commission on the part of Corporation are continuing wrong as it is affecting the petitioners and other similarly situated persons causing losses every month continuously and therefore, petitioners are entitled to file petition at this stage also and at the most in view of pronouncement of the Supreme Court the actual monetary benefits can be restricted by granting benefit from the date of entitlement on notional basis.

23 Learned counsel for Corporation has placed reliance on judgment dated 1.12.2022 passed by Division Bench of this Court in

CWP No. 1218 of 2021 whereby claim of petitioners therein was rejected on the ground of delay and latches as well as on account of acquiescence and waiver etc.

24 In present case, though judgment in LPA No. 55 of 2020 is in *rem* but it is a matter of fact that while others were agitating their cause for redressal of their grievances, petitioners were banking upon the result of their litigation and it is not the case of petitioners that all of them had ever represented to the Corporation for redressal of their grievances. As per pleadings, petitioners for the first time, represented to the Corporation on 10th June, 2021. Therefore, they shall be entitled for benefit of promotion and further promotion from the due date on the basis of corrected seniority list benefiting them for promotion as Forest Guards as well as Deputy Rangers but their arrears shall be restricted for three years prior to making their representation i.e. 3 years prior to 10.6.2021 and actual arrears of monetary benefits shall be given to them w.e.f. 10.6.2018.

25 In view of above discussion, respondent-Corporation is directed to implement the judgment dated 2.8.2016 passed in ***LPA No. 55 of 2010 titled Ramesh Chand Sharma vs. HP Forest Department Corporation and others*** qua petitioners also by extending them all consequential benefits of promotions, back wages etc. by promoting them as Forest Guards etc. in the pay scale of Rs.950-1800/- w.e.f. 29.10.1991 and promoting further as Deputy Rangers in the pay scale of Rs.5480-8925 w.e.f. 18.1.2006 with all other consequential benefits but restricting actual monetary benefits w.e.f. 10.6.2018, however for the purpose of determining entitlement

calculation shall be done from due date by extending benefits on notional basis from due date till 9.6.2001 but thereafter on actual basis from 10.6.2021 and onwards for all intents and purposes. Benefits shall be extended and paid to petitioners on or before 31.07.2023 failing which respondent-Corporation shall be liable to pay interest @ 6% per annum for delayed payment from 10.6.2021 till full and final payment.

26 All petitions stand allowed and disposed of in aforesaid terms including all pending miscellaneous application(s), if any, in aforesaid terms.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Kamla Tanwar ...Petitioner

Versus

State of Himachal Pradesh and others
....Respondents

For the petitioner : Mr. B.C. Negi, Senior Advocate with Mr. Rajat Awasthy, Advocate.

For the respondents: Mr. B.N.Sharma, Additional Advocate General, for respondent No.1.
Mr. Vikrant Thakur, Advocate, for respondent No.2.
Mr. Surender Verma, Advocate, for respondent No.3.
Ms. Rashmi Parmar, Advocate, for respondent No.4.

CWPOA No. 5255 of 2019
Reserved on: 21.04.2023
Decided on: 28.04.2023

Constitution of India, 1950 – Article 226– Petitioner was promoted as Sister Tutor from the post of Staff Nurse on 19.3.2001 - She took admission in M.Sc. Nursing in Jiwaji University, Gwalior in 2009 - degree in M.Sc. Nursing was essential condition for being considered for promotion to the post of Lecturer – DPC was convened on 3.1.2013 - Petitioner was promoted as Lecturer in the Nursing College *vide* office order dated 10.1.2013 – Respondent no.4 filed CWP No. 1305 of 2013 and challenged the promotion of petitioner alleging that result of M.Sc. Nursing was declared after the DPC, so petitioner was not eligible for promotion – CWP was dismissed vide judgment dated 2.1.2014 - Another DPC was held on 3.5.2013 - Ms. Sunita Devi and Ms. Sangeeta

were ordered to be promoted as Lecturer in December, 2013 - The promotion orders were challenged by respondent No.6 by way of CWP No. 8829 of 2013 - During the pendency of said writ petition, respondent No.1 withdrew the promotion orders of Ms. Sunita Devi and Ms. Sangeeta - Both of them assailed such order of withdrawal by way of CWP No.1450 of 2014 - Both the matters i.e. CWP No. 8829 of 2013 and CWP No. 1450 of 2014 were disposed of vide order dated 7.8.2014 with direction to constitute DPC - Review DPC was convened on 7.4.2015 – Recommendation of DPC dated 3.1.2013 in respect of the petitioner was also reviewed and modified to the extent that petitioner was held ineligible for promotion on 3.1.2013 on the ground that her marks-sheet for the final examination result of M.Sc. Nursing was issued on 26.2.2013.

Held - There was no direction for reviewing the recommendation of DPC dated 3.1.2013 in respect of the petitioner- **Further held** - The review DPC had no jurisdiction to sit over the judgment of the Court – The promotion of petitioner to the post of Lecturer in Nursing College vide order dated 10.1.2013 upheld - Respondents directed to treat the petitioner in the cadre of Lecturer w.e.f. 10.1.2013 and to allow her all consequential benefits. (Paras 14 to 17)

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

By way of instant petition, petitioner has prayed for following substantive reliefs:

> *"(i) That respondent No.3 may be directed to place on record the provisions relating to declaration of confidential/provisional result of the candidates before formal declaration of result of such examination.*
>
> *(ii) That the recommendations of DPC held on 7.4.2015, Annexure A-9, to the extent applicant has been declared ineligible for promotion in the DPC held on 3.1.2013 may kindly be quashed and set aside and consequently promotion of applicant to the post of Lecturer, Sister*

Nivedita Government College of Nursing, IGMC Complex, Shimla vide order dated 10.1.2013, Annexure A-4, may be upheld with all consequential benefits, if necessary, even by review DPC dated 7.4.2015.

(iii) That if during the pendency of OA, on the basis of recommendations of DPC at Annexure A-9, respondent No.4 is promoted as Lecturer (Nursing) by excluding the applicant, in such an eventuality the promotion of respondent No.4 on the basis of DPC at Annexure A-9 may also be quashed and set aside.

(iv) That if during the pendency of OA, any interruption is caused in the service of applicant pursuant to recommendations of DPC at Annexure A-9 and if any adverse order is passed on the basis of such recommendations, such order may also be quashed and set aside and applicant may be directed to be reinstated as Lecturer Nursing with continuity in service and all consequential benefits.

(v) That in the alternative, the promotion of respondents No. 5 and 6 or any of them vide notification dated 12.12.2014, Annexure A-7, if necessary, may be quashed and set aside with a direction to the respondent department to hold review DPC and consider the applicant for promotion as Principal Nursing Officer from the date respondents No. 5 and 6 were so promoted, with all consequential benefits."

2. The petitioner was working as Sister Tutor in Government Nursing School, IGMC Complex, Shimla, which was upgraded as Sister Nivedita Government College of Nursing (for short, 'Nursing College') in the year, 2010. Petitioner had been promoted as Sister Tutor from the post of Staff Nurse on 19.3.2001. In 2009, petitioner sought permission of her employer to

improve her qualification and sought admission in M.Sc. Nursing in Jiwaji University, Gwalior in 2009.

3. As per the R & P Rules for the post of Lecturer in Nursing College "Sister Tutor" was feeder category for promotion to the post of Lecturer. However, possession of degree in M.Sc. Nursing with three years regular or regular combined with continuous ad-hoc service in the grade was an essential condition for being considered for promotion to the post of Lecturer.

4. On 3.1.2013, the meeting of DPC for the post of Lecturer in Nursing College was convened. Besides others, the name of petitioner was also considered. Consequently, the petitioner was promoted as Lecturer in Nursing College *vide* office order dated 10.1.2013.

5. Respondent No.4 assailed the promotion of petitioner as Lecturer by filing CWP No.1305 of 2013 before this Court on the ground that petitioner was not eligible to be promoted as Lecturer on the date of holding of DPC as the result of M.Sc. Nursing was declared by Jiwaji University, Gwalior on 26.2.2013 and, therefore, the petitioner was not having the essential qualification of M.Sc. Nursing either at the date of her consideration for promotion to the post of Lecturer or on the date when she was promoted to the said post. On the other hand, the petitioner had contested CWP No. 1305 of 2013 on the ground that Jiwaji University, Gwalior, at the request of petitioner, had issued letter dated 1.1.2013, whereby the provisional result of the petitioner was communicated to the Director of Health Services & Family Welfare, Himachal Pradesh and it was revealed that the applicant had passed M.Sc. Nursing (final examinations) held in June, 2012 and the marks sheet would be issued after formal declaration of result.

6. A co-ordinate Bench of this Court vide judgment dated 2.1.2014 dismissed the petition of respondent No.4 by holding as under:

> *"2. The case of the petitioner, in a nutshell, is that respondent No.4 was not eligible as per the Recruitment and Promotion Rules.*

According to the petitioner, certificate Annexure P-6 is not authentic.

3. Petitioner has not led any tangible evidence to establish on record that certificate Ext. P-6 is not authentic. The DPC has taken into consideration the qualification possessed by respondent No.4. Scope of judicial review to interfere with recommendations of DPC is very limited. The Court can only interfere if there is specific mala fide alleged against any member of the Selection Committee or there is infraction of any Act or Rules. In the present case, neither the petitioner has made any mala fide against any member of the DPC nor has he brought to the notice of the Court violation of any Act or Rule.

4. In view of discussion and analysis made hereinabove, there is no merit in the petition and the same is dismissed. Pending application(s), if any, also stand dismissed."

7. Another DPC was held by respondent No.1 for considering promotion of Sister Tutor to the post of Lecturer in Nursing College on 3.5.2013 and as a result, two incumbents namely Ms. Sunita Devi and Ms. Sangeeta were ordered to be promoted as Lecturer in December, 2013. The promotion orders of Ms. Sunita Devi and Ms. Sangeeta were challenged by respondent No.6 by way of CWP No. 8829 of 2013. During the pendency of said writ petition, respondent No.1 withdrew the promotion orders of Ms. Sunita Devi and Ms. Sangeeta. Both these incumbents then assailed such order of withdrawal by way of CWP No.1450 of 2014. Both the matters i.e. CWP No. 8829 of 2013 and CWP No. 1450 of 2014 were disposed of by a Division Bench of this Court vide order dated 7.8.2014 in following terms:

"2. During the pendency of the writ petition, the promotion order, so far it relates to respondents No.5 and 6, was withdrawn and that is why respondents No.5 and 6 came to be deleted from the array of respondents in terms of order, dated 15th May, 2014.

Thus, the writ petition (CWP No.8829 of 2013) survives so far it relates to respondent No.4 only.

3. Further, during the pendency of the writ petition (CWP No.8829 of 2013), respondents No.5 and 6, whose promotion orders were withdrawn, have questioned the withdrawal order by the medium of CWP No.1450 of 2014 and sought its quashment.

4. Without entering into the controversy whether the promotion order made in favour of respondents No.5 and 6 in CWP No. 8829 of 2013 and the promotion order made in favour of respondent No.4 in CWP No. 8829 of 2013 were legal one or otherwise or whether the order of withdrawal, which is subject matter of CWP No.1450 of 2014, is legally correct or otherwise, we deem it proper to direct the competent authority to constitute a Departmental Promotion Committee and examine the case of the writ petitioners as well as of the writ respondents within six weeks and pass appropriate orders. Till then, interim directions granted in CWP No. 1450 of 2014 shall remain in force.

5. It is made clear that we have not expressed any opinion on the merits of the cases.

6. In view of the above, the writ petitions are disposed of alongwith all pending applications."

8. In pursuance to order dated 7.8.2014 passed by a Division Bench of this Court in CWP No. 8829 of 2013 and CWP No. 1450 of 2014, the review DPC was convened on 7.4.2015. While considering the incumbency of respondent No.6, Ms. Sunita Devi and Ms. Sangeeta in terms of order dated 7.8.2014, the promotion of petitioner as Lecturer ordered on 10.1.2013 in pursuance to the recommendation of DPC dated 3.1.2013, was also reviewed on the ground that there was a direction to that effect issued by this Court *vide* order dated 5.3.2015 in CWP No. 4686 of 2013 titled as Brij Lal vs. State of Himachal Pradesh and others. Accordingly, the proceedings of DPC on

3.1.2013 were also reviewed and modified to the extent that petitioner was held ineligible for promotion on 3.1.2013 on the ground that her marks-sheet for the final examination result of M.Sc. Nursing was issued on 26.2.2013.

9. The petitioner has approached this Court by way of instant petition with the grievance that the review in respect of the promotion of the petitioner as Lecturer by the review DPC held on 7.4.2015 was un-sustainable for the reasons, *firstly* that there was no direction from any Court for such review, *secondly*, this Court vide judgment dated 2.1.2014 passed in CWP No. 1305 of 2013 had already upheld the promotion of petitioner to the post of Lecturer and *lastly,* petitioner had been divested from consideration for promotion to the post of Principal Nursing, which was another promotional channel available from the feeder category of Sister Tutor.

10. On the other hand, learned State Counsel as also the learned counsel for private respondents have supported the recommendations made by the review DPC held on 7.4.2015. They have unequivocally taken a stand that the petitioner was not having essential qualification on the date of consideration for promotion or on the date of promotion as lecturer, therefore, the order whereby the petitioner was promoted was *dehors* the R & P Rules and the review DPC was justified in modifying the recommendation of DPC held on 3.1.2013.

11. The respondent No.3 in its short reply has submitted that the provision for supply of confidential results is available in its rules.

12. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

13. The limited question that arises for consideration of this Court is whether the review DPC was justified in reviewing the recommendation of the DPC held on 3.1.2013 in respect of the promotion of petitioner to the post of Lecturer?

14. The proceedings of review DPC dated 7.4.2015 reveal that the review in respect of the DPC dated 3.1.2013 *qua* petitioner was conducted on the basis of order dated 5.3.2015 passed by this Court in CWP No. 4686 of 2013. I have gone through the records more particularly the orders passed in CWP No. 4686 of 2013 titled as Brij Lal vs. State of Himachal Pradesh and others and have not found any direction by this Court to conduct review DPC in respect of the recommendation made by the DPC held on 3.1.2013 *qua* the petitioner. Thus, the entire premise for reviewing the promotion of petitioner has been found to be incorrect.

15. Admittedly, the promotion of Ms. Sunita Devi and Ms. Sangeeta as Lecturers was in pursuance to the recommendation of DPC held on 3.5.2013. Ms. Sunita Devi and Ms. Sangeeta were promoted on 31.10.2013. Respondent No.6 had assailed their promotion orders only in CWP No.8829 of 2013. During the pendency of CWP No. 8829 of 2013, the respondents had withdrawn the promotion orders of Ms. Sunita Devi and Ms. Sangeeta. Both these incumbents then assailed such withdrawal order by way of CWP No.1450 of 2014. While disposing of both these petitions i.e. CWP No. 8829 of 2013 and CWP No.1450 of 2014, a Division Bench of this Court had issued directions for review DPC. In such background, it cannot be said that there was any direction for reviewing the recommendation of DPC dated 3.1.2013 in respect of the petitioner.

16. Further, the decision of review DPC dated 7.4.2015 in respect of the petitioner was again unwarranted as the recommendations of DPC dated 3.1.2013 in respect of the petitioner had already been upheld by this Court vide judgment dated 2.1.2014 passed in CWP No. 1305 of 2013. The authenticity of certificate dated 1.1.2013 issued by the Jiwaji University, Gwalior in respect of the petitioner had duly been considered by this Court and thereafter its authenticity was upheld. That being so, the review DPC had no jurisdiction to sit over the judgment of this Court.

17. In light of above discussion, petition is allowed. The recommendation made by DPC on 7.4.2015 modifying the recommendation of DPC dated 3.1.2013 in respect of petitioner are quashed and set-aside. The promotion of petitioner to the post of Lecturer in Nursing College vide order dated 10.1.2013 is upheld. The respondents are directed to treat the petitioner in the cadre of Lecturer w.e.f. 10.1.2013 and to allow her all consequential benefits.

The petition stands disposed of in the aforesaid terms, so also the pending application(s), if any.

BEFORE HON'BLE MS. JUSTICE JYOTSNA REWAL DUA, J.

Rajinder Kumar & Ors ....Petitioners

Versus

State of H.P. & Ors. ...Respondents

For the petitioner: Mr. Vijay Bir Singh, Advocate.

For the respondents: Mr. Y. P. S. Dhaulta & Mr. Navlesh Verma, Additional Advocates General and Ms. Seema Sharma, Mr. Sumit Sharma and Ms. Leena Guleria, Deputy Advocates General.

CWPOA No.106 of 2020

Decided on: 25th April, 2023

Constitution of India, 1950 – Article 226 - Services of all the petitioners were terminated by the respondents on 18.08.1987 on the ground that their JBT certificates were found fake and bogus - Petitioners instituted Original Application No. 346 of 1987 before the erstwhile Himachal Pradesh Administrative Tribunal - Termination of the services of the petitioners was held to be illegal and invalid vide order dated 26.09.1995 - Respondents were directed to reinstate the petitioners forthwith – State preferred Civil Appeal Nos. 7835-7842 of 1996 - Hon'ble Apex Court modified the judgment of the Tribunal vide order dated 09.12.1997 to afford opportunity of hearing to the candidates – Subsequently, Inquiry Officer was appointed - Certificates possessed by the candidates were found false and fake - Petitioners and other similarly situated persons were prosecuted in the Court of learned Special Judge (F), Shimla for committing different offences – They were acquitted – Petitioners sought reinstatement on the basis of acquittal.

Held - There was no issue before the learned Trial Court regarding adjudication of genuineness of the JBT certificates possessed by the petitioners - Order of acquittal cannot be construed to mean that the JBT certificates of the petitioners were genuine – Petition dismissed. (Para 7)

Cases referred:

Imtiyaz Ahmad Malla Vs. State of Jammu & Kashmir Special Leave Petition (C) No. 678 of 2021;

The following judgment of the Court was delivered:

Jyotsna Rewal Dua, Judge

CMP(T) No. 796 of 2021

Allowed and disposed of.

CWPOA No. 106 of 2020

2. With the consent of the parties, the matter is heard at this stage.

3. The projected case of the petitioners is that their services of all the petitioners were terminated by the respondents on 18.08.1987 on the ground that their JBT certificates were found fake and bogus. The petitioners instituted Original Application No. 346 of 1987 before the erstwhile Himachal Pradesh Administrative Tribunal, against termination of their services. Several other OAs were also instituted by similarly placed persons. The Original Application was allowed on 26.09.1995. The termination of the services of the petitioners was held to be illegal and invalid. The respondents were directed to reinstate the petitioners forthwith.

4. The judgment passed by the learned Tribunal was assailed by the respondents-State before the Hon'ble Apex Court in Civil Appeal Nos. 7835-7842 of 1996. The Hon'ble Apex Court modified the judgment of the Tribunal with following order passed on 09.12.1997: -

> *"The High Court allowed the writ petitions of the respondents mainly on the ground that the contesting respondents have not been given an opportunity to show that their appointments were on the basis of correct and genuine certificates and not on false/fake certificates as alleged by the appellants (vide para 22 of the Judgment). There is no ground to interfere with the Tribunal's Judgment except to modify it slightly with the direction to the appellants to give an opportunity to the respondents individually to show cause and establish that the certificates were not false and fake and that their appointments were on the basis of genuine certificates. As and*

when they establish the fact that the certificates were genuine and not faked ones, it must be taken that their appointments were valid. In view of the long pendency of the matter, the appellants are directed to commence and complete the enquiry within six months. The appeals are disposed of accordingly. No costs."

Pursuant to the afore directions of the Hon'ble Apex Court dated 09.12.1997, the respondents appointed an Inquiry Officer to examine the genuineness of the JBT certificates of the concerned candidates, including the petitioners. According to the respondents, they also published list of all the candidates, including those who had filed the Original Applications before the erstwhile Tribunal, in the newspapers about the inquiry proceedings being conducted for verifying the genuineness of the JBT certificates of the candidates at District Headquarters. The petitioners and other candidates were asked through issuance of show cause notices to appear in person before the Inquiry Officer to establish the veracity of genuineness of the JBT certificates possessed by them. This was in terms of the order passed by the Hon'ble Supreme Court on 19.12.1997. The Inquiry Officer submitted his report on 09.09.1998. In terms of the reply filed by the respondents to the present petition, 'the petitioners and other similar candidates were informed individually regarding veracity of genuineness of certificates possessed by them vide letter dated 27.01.2000, that the certificates possessed by them were found false and fake and that they had no claim for appointment as JBT Teachers in Himachal Pradesh.'

5. It appears from the record that the petitioners and other similarly situated persons were prosecuted for committing different offences in the Court of learned Special Judge (F), Shimla. In Criminal Trial No.23-S/7 of 2000, learned Court on 25.09.2006, acquitted the accused persons of the offences under Sections 420, 471 read with Section 120B of Indian Penal Code

and also under Section 13(2) of the Prevention of Corruption Act. In another case i.e. Trial No. 11-S/7 of 2000, learned Special Judge (F) Shimla on 31.12.2011 acquitted the accused persons of the offences under Sections 120B, 420 and 471 of Indian Penal Code. It is an admitted position that these judgments have now attained finality.

The present petition has been filed by the petitioners on 06.09.2016, essentially seeking their reinstatement with all consequential benefits on the basis of judgment passed by learned Special Judge (F) Shimla, acquitting them of the charges levelled against them in the criminal cases. Substantive prayers made in the petition run as under: -

> *"(i) That the impugned orders of termination of the applicants, Annexure A-1, may very kindly be quashed and set aside.*
>
> *(ii) That the impugned rejection order dated 28.06.2016 (Annexure A-7) passed by respondent No.2 may kindly be quashed and set aside and respondents may kindly be directed to re-engage the services of the applicants immediately withal consequential benefits of pay, arrears, seniority and pension."*

6. I have heard learned counsel for the petitioners and learned Additional Advocate General for the respondents.

In ***Special Leave Petition (C) No. 678 of 2021 (Imtiyaz Ahmad Malla Vs. State of Jammu & Kashmir)*** decided on 28.02.2023, the Hon'ble Apex Court reiterated that if a person is acquitted or discharged, it cannot always be inferred that he was falsely involved. Unless it is an honourable acquittal, the candidates cannot claim the benefit of the same. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. Acquittal in a criminal case does not automatically entitle him for appointment to the post. It is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. Relevant part from the judgment reads as under: -

"12. In Pradeep Kumar's case (supra) also it was reiterated that if a person is acquitted or discharged, it cannot obviously be inferred that he was falsely involved, or he had no criminal antecedents. The precise observations made therein are re-produced hereunder:

> *"10. The acquittal in a criminal case is not conclusive of the suitability of the candidates in the post concerned. If a person is acquitted or discharged, it cannot always be inferred that he was falsely involved or he had no criminal antecedents. Unless it is an honourable acquittal, the candidate cannot claim the benefit of the case. What is honourable acquittal, was considered by this Court in Inspector General of Police v. S. Samuthiram [Inspector General of Police v. S. 3 (1994) 1 SCC 541 4 AIR 1964 SC 787 Samuthiram, (2013) 1 SCC 598 : (2013) 1 SCC (Cri) 566 : (2013) 1 SCC (L&S) 229] , in which this Court held as under: (SCC p. 609, para 24) "24. The meaning of the expression "honourable acquittal" came up for consideration before this Court in RBI v. Bhopal Singh Panchal [RBI v. Bhopal Singh Panchal, (1994) 1 SCC 541 : 1994 SCC (L&S) 594] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions "honourable acquittal", "acquitted of blame", "fully exonerated" are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression "honourably acquitted". When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the*

accused, it can possibly be said that the accused was honourably acquitted."

11. .....

12. .....

13. It is thus well settled that acquittal in a criminal case does not automatically entitle him for appointment to the post. Still, it is open to the employer to consider the antecedents and examine whether he is suitable for appointment to the post. From the observations of this Court in Mehar Singh [Commr. of Police v. Mehar Singh, (2013) 7 SCC 685 : (2013) 3 SCC (Cri) 669 : (2013) 2 SCC (L&S) 910] and Parvez Khan [State of M.P. v. Parvez Khan, (2015) 2 SCC 591 : (2015) 1 SCC (L&S) 544] cases, it is clear that a candidate to be recruited to the police service must be of impeccable character and integrity. A person having criminal antecedents will not fit in this category. Even if he is acquitted or discharged, it cannot be presumed that he was honourably acquitted/completely exonerated. The decision of the Screening Committee must be taken as final unless it is shown to be mala fide. The Screening Committee also must be alive to the importance of the trust reposed in it and must examine the candidate with utmost character."

7. The facts of the case, as noted above, are not in dispute. The events and facts as submitted by the respondents in their reply have not been countered by the petitioners by filing any rejoinder. The only ground urged for taking back the petitioners into services centres around the judgment passed by learned Special Judge (F),Shimla, acquitting the petitioners of the charges levelled against them. The judgment dated 31.12.2011, passed in corruption case No. 11-S/7 of 2000 has been placed on record by the petitioners at Annexure A-5. Paragraphs No.30 and 31 of this judgment show that the accused persons have been acquitted by giving them benefit of doubt. The claim of the petitioners to reinstate them in the service as JBT Teachers with consequential benefits cannot be allowed on the strength of the aforesaid judgment of the learned Trial Court. Before the learned Trial Court, the issue was in respect of proving the criminal intention of the accused persons in

obtaining false JBT certificates and for establishing commission of offences allegedly committed by them under various provisions of law. There was no issue before the learned Trial Court regarding adjudication of genuineness of the JBT certificates possessed by the petitioners. Order of acquittal cannot be construed to mean that the JBT certificates of the petitioners were genuine. It was on 21.07.2000 that the petitioners were communicated that their JBT certificates were not genuine and that they were found false and fake. No challenge to the aforesaid findings was laid by the petitioners at the appropriate time.

For the aforesaid reasons, there is no merit in the present petition. The same is accordingly dismissed. Pending miscellaneous application(s), if any, also to stand disposed of.

BEFORE HON'BLE MS. JUSTICE JYOTSNA REWAL DUA, J.

Jawahar Lal (deceased) through LRs ..Petitioner

Versus

State of H.P. & Ors. …Respondents

For the petitioner: Mr. Abhishek Dulta, Advocate.

For the respondents: Mr. Y. P. S. Dhaulta & Mr. Navlesh Verma, Additional Advocates General and Ms. Seema Sharma, Mr. Sumit Sharma and Ms. Leena Guleria, Deputy Advocates General., for respondents No.1 and 2.

Mr. Tara Chand Chauhan, Advocate, for respondent No.3.

CWPOA No.368 of 2019
Decided on: 25th April, 2023

Constitution of India, 1950 – Article 226 -Overpayment to Govt. Employee **-** Petitioner retired as Head Teacher on 30.09.2009 - Rs. 1,31,152/- were deducted from the payable GPF as overpayment – Respondent took plea that Rs.13942/- (Rs.9000 + 4942) in all were wrongly credited in petitioner's GPF account in 1984-85 and 1989-90 - This amount alongwith applicable interest worked out to Rs.1,31,152/- as on 30.09.2009 - **Held** - It is not the case of the respondents that the petitioner had misrepresented any facts to them - The GPF amount was being deducted by the respondents - The accounts thereof were being maintained by the respondents - In case, some error crept in maintaining the GPF amount of the petitioner during the years 1984-85 and 1989-90, the fault, if any, lay squarely on the respondents - It was for the respondents to have rectified the error at the appropriate time the respondents sought to correct their mistake during January 2010 - The exercise was undertaken after about 25 years from the date of

alleged mistake and four months after petitioner's retirement - Apart from deducting the principal amount of Rs.13942/-, alleged to have been wrongly credited in petitioner's GPF account in the years 1984-85 and 1989-90 the respondents also added interest thereupon and arrived at the figure of Rs. 1,31,152/-, which they have deducted from the due and admissible GPF amount payable towards the petitioner - Such a recourse in the given facts was impermissible in law - Petition partly allowed and respondents directed to refund and release the withheld GPF amount alongwith interest @5% per annum. (Paras 4 to 6)

The following judgment of the Court was delivered:

Jyotsna Rewal Dua, Judge

The petitioner has questioned the decision of the respondents dated 07.01.2010, whereby an amount of Rs.1,31,152/-, on account of alleged overpayment to him, was ordered to be recovered from him. In fact, payment of this amount, which was part of GPF, was withheld by the respondents on the ground that the petitioner was not entitled for the same. The petitioner has prayed for following substantive reliefs in this petition: -

> *"(i) That the impugned decision dated 7.1.2010 Annexure P/2 of the respondent No.3 effecting recovery of an amount of Rs.1,31,152/- on account of overpayment may be held illegal and arbitrary.*
>
> *(ii) That the recovered amount of Rs.1,31,152/- may be ordered to be refunded to the petitioner alongwith interest w.e.f. September 2009 (i.e. date of retirement of the petitioner) alongwith interest @ 18% per annum till the actual realization of the amount.*
>
> *(iii) That the respondent may also be directed to pay the interest @ 18% on the amount of Rs.66000/- contributed by the petitioner in his GPF account for the year 2009 till the actual realization of amount."*

2. The petitioner joined the respondent-Education Department on 24.11.1969 as Junior Basic Trained Teacher (JBT). He was promoted to the post of Head Teacher on 01.10.2001. The petitioner was further promoted as Central Head Teacher on 30.12.2004 and he retired as such on 30.09.2009.

According to the petitioner, an amount of Rs.6,71,835/- was due to be paid to him as GPF on the date of retirement on 30.09.2009. However, the respondents made the payment of GPF amounting to Rs.5,40,682/- in the month of January 2010. An amount of Rs. 1,31,152/- was illegally deducted from the due and admissible GPF payable to the petitioner.

Further contention has also been raised for the petitioner that the respondents have not paid the interest on the delayed payment of GPF amount.

3. The respondent-Department (respondents No.1 and 2) has taken a stand that an amount of Rs.1,31,152/- was withheld from the payable GPF amount of the petitioner on account of an objection raised by respondent No.3 (office of Accountant General).

Respondent No.3 in its reply has clarified that GPF final payment case of the petitioner was received in its office on 09.11.2009. The case was rechecked and fresh calculations were made. While rechecking the case, it was noticed that in the year 1984-85, an amount of Rs.9,000/- and in the year 1989-90, an amount of Rs.4942/- had been erroneously shown in excess in the GPF account of the petitioner. After noticing the error in petitioner's GPF account, the same was rectified. Rs.13942/- (Rs.9000 + 4942) in all were wrongly credited in petitioner's GPF account. This amount alongwith applicable interest was worked out as Rs.1,31,152/- as on 30.09.2009. Hence, this amount was deducted from the admissible GPF payment towards the petitioner.

4. The stand taken by the respondents is in teeth of well settled legal position, which has been summarized by the Division Bench of this

Court in a decision dated 24.03.2022, delivered in ***CWPOA No.3145 of 2012 (S. S. Chaudhary Vs. State of H.P. and others and connected matters)***. Relevant paragraph of the judgment reads as under:-

> *"35. In view of the aforesaid discussion, as held by Hon'ble Supreme Court in Rafiq Masih's case (supra), it is notpossible to postulate all situations of hardship, where paymentshave mistakenly been made by the employer, yet in thefollowing situations, recovery by the employer would beimpermissible in law:-*
>
> *(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service)*
>
> *(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.*
>
> *(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.*
>
> *(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.*
>
> *(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such anextent, as would far outweigh the equitable balanceof the employer's right to recover.*
>
> *(vi) Recovery on the basis of undertaking from the employees essentially has to be confined to Class-I/Group-A and Class-II/Group-B, but even then, the Court may be required to see whether the recovery would be iniquitous, harsh or arbitrary to such anextent, as would far overweigh the equitable balanceof the employer's right to recover.*

(vii) Recovery from the employees belonging to Class-III and Class-IV even on the basis of undertaking is impermissible.

(viii) The aforesaid categories of cases are by way of illustration and it may not be possible to lay down any precise, clearly defined, sufficiently channelized and inflexible guidelines or rigid formula and to giveany exhaustive list of myriad kinds of cases.Therefore, each of such cases would be required tobe decided on its own merit."

In the instant case, the petitioner had retired from Class-III post. The case of the petitioner would be covered by situations (i) and (ii) of the above judgment. It is not the case of the respondents that the petitioner had misrepresented any facts to them. The GPF amount was being deducted by the respondents. The accounts thereof were being maintained by the respondents. In case, some error crept in maintaining the GPF amount of the petitioner during the years 1984-85 and 1989-90, the fault, if any, lay squarely on the respondents. It was for the respondents to have rectified the error at the appropriate time. The respondents sought to correct their mistake during January 2010. The exercise was undertaken after about 25 years from the date of alleged mistake and four months after petitioner's retirement. Apart from deducting the principal amount of Rs.13942/-, alleged to have been wrongly credited in petitioner's GPF account in the years 1984-85 and 1989-90 the respondents also added interest thereupon and arrived at the figure of Rs. 1,31,152/-,which they have deducted from the due and admissible GPF amount payable towards the petitioner. Such a recourse in the given facts was impermissible in law. The prayer of the petitioner for refund of an amount of Rs.1,31,152/- alongwith interest after quashing the impugned decision dated 07.01.2010 (ordering effecting recovery of this amount) is justified. .

5. Learned counsel for respondent No.3 on the basis of instructions, has submitted that due and admissible interest on the delayed payment of the GPF amount has already been paid to the petitioner under the applicable rules. This instruction was imparted in respect to prayer No.3 of the petition. There was no counter to this submission on behalf of the petitioner.

6. In view of above, the present writ petition is partly allowed. the respondents are directed to refund and release the withheld GPF amount of the petitioner in the sum of Rs.1,31,152/- alongwith interest @5% per annum from the due date till its payment. The respondents are directed to carry out this entire exercise within a period of six weeks from today.

The present writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

BEFORE HON'BLE MS. JUSTICE JYOTSNA REWAL DUA, J.

Santosh Nanta ....Petitioner

Versus

State of H.P. & Ors. …Respondents

For the petitioner: Mr. Vikram Thakur, Advocate.

For the respondents: Ms. Seema Sharma, Deputy Advocate General, for respondents No. 1 and 2.

Mr. Surender Sharma, Advocate, for respondent No.3.

CWPOA No.450 of 2019
Decided on: 13th April, 2023

Constitution of India, 1950 – Article 226 - Delay and laches - Petitioner participated in the selection process for one post of Drawing Master, reserved for Orthopedically Handicapped General Category in the year 2008 – Respondent no.3 was selected and appointed as Drawing Master on 29.02.2008 - Two years later, the petitioner assailed the said appointment alleging that additional marks given to respondent No.3, for possessing diploma in Library Science, ought not to have been granted to him as this qualification had no nexus with the post of Drawing Master - **Held** - After participating in the selection process under particular set of terms, it would be too late in the day for the petitioner to contend that award of marks for possessing additional qualification had no nexus for filling up the post of Drawing Master - In case the petitioner was aggrieved by the selection criteria, he was required to assail the same at the appropriate stage - **Further held** - Respondent no.3 was appointed on 29.02.2008 on the post in question

- Even at that stage, no challenge was made to his appointment - Writ petition filed almost two years after the selection and appointment of respondent no.3 suffers from unexplained delay and laches - Petition dismissed. (Paras 4 to 7)

The following judgment of the Court was delivered:

Jyotsna Rewal Dua, Judge

Respondent No.3's selection to the regular post of Drawing Master, reserved for Orthopedically Handicapped General Category, and his appointment as such on 29.02.2008, has been questioned in the instant writ petition instituted on 29.07.2010.

2. Heard learned counsel on both the sides and considered the case file.

3. The petitioner, respondent No.3 and others received interview calls in the year 2008 for one post of Drawing Master, reserved for Orthopedically Handicapped General Category. They participated in the selection process. In the result drawn by the official respondents, respondent No.3 emerged successful with 13.57 marks, whereas, the petitioner secured 13.07 marks. Respondent No.3 was accordingly selected and appointed as Drawing Master on 29.02.2008. Two years later, the petitioner assailed the appointment of respondent No.3 on the ground that additional marks given to respondent No.3, for his possessing diploma in Library Science, ought not to have been granted to him as this qualification, possessed by respondent No.3 had no nexus with the post of Drawing Master, for which selection process was undertaken by the respondents.

4. During the course of hearing, learned Deputy Advocate General produced the record and referred to the office letter dated 13/19.02.2008, copy of which has been placed on record, under which, the criteria was laid down for filling up the post in question. As per this criteria, 5 marks were

delineated as weightage to be given for additional qualification (percentage obtained divided by 25). The result (Annexure P-4) prepared by the respondents for the post in question reflects that the marks for additional qualifications possessed by the participants were awarded not only to respondent No.3, but to the other candidates as well. Apart from the marks awarded to the petitioner for possessing diploma in Art & Craft, separate marks were awarded to him for possessing 10+2 qualification. Respondent No.3 (the selected candidate) was not awarded any additional marks for his possessing 10+2 qualification, even though, he did possess the same. He was awarded additional marks for his possessing diploma in Library Science. Award of marks to respondent No.3 for possessing additional qualification was in terms of the criteria for award of marks prepared by the respondents. It is an admitted position that the petitioner has not laid any challenge to the criteria formulated by the respondents for award of marks. In fact, no reference has been made in the writ petition to the criteria laid down by the respondents for awarding marks for filling up the post in question. After participating in the selection process under particular set of terms, it would be too late in the day for the petitioner to contend that award of marks for possessing additional qualification had no nexus for filling up the post of Drawing Master. In case the petitioner was aggrieved by the selection criteria, he was required to assail the same at the appropriate stage.

5. As already noticed above, respondent No.3 was appointed on 29.02.2008 on the post in question. Even at that stage, no challenge was made to his appointment. This writ petition filed almost two years after the selection and appointment of respondent No.3 as Drawing Master (Orthopedically Handicapped General Category), suffers from unexplained delay and laches.

6. It would be appropriate to refer to a recent decision of the Hon'ble Apex Court, delivered on 28.03.2023, in ***Civil Appeal Nos. 2164-***

2172 of 2023 (Tajvir Singh Sodhi and others Vs. State of Jammu and Kashmir and others). In the said case, some candidates, who remained unsuccessful in the selection process, had prayed to quash appointment of selected candidates as Drug Inspectors. Outlining its several authoritative previous pronouncements on the issue, the Hon'ble Apex Court observed that the Courts recognize that the process of selection involves a high degree of expertise and discretion and that it is not appropriate for Courts to substitute their judgment for that of a selection committee. It would be indeed, treading on thin ice, if the Courts were to venture into reviewing the decision of experts who form part of a selection board. It is not within the domain of the Courts, exercising the power of judicial review to enter into the merits of a selection process, a task which is the prerogative of and is within the expert domain of a Selection Committee, subject of course to a caveat that if there are proven allegations of malfeasance or violations of statutory rules, only in such cases of inherent arbitrariness, can the Courts intervene. With respect to the contention of the writ petitioners (therein), that the entire selection process was vitiated as the eligibility criteria enshrined in the advertisement was recast without any justifiable reason, the Hon'ble Court adverted to following case law: -

> *"68 The next aspect of the matter which requires consideration is the contention of the writ petitioners to the effect that the entire selection process was vitiated as the eligibility criteria enshrined in the Advertisement Notice dated 5th May, 2008 was recast vide a corrigendum dated 12th June, 2009, without any justifiable reason. In order to consider this contention, regard may be had to the following case law:*
>
> *i) In Manish Kumar Shahi vs. State of Bihar, (2010) 12 SCC 576, this Court authoritatively declared that having participated in a selection process without any protest, it would not be open to an unsuccessful candidate to challenge the selection criteria subsequently.*

ii) In Ramesh Chandra Shah vs. Anil Joshi, (2013) 11 SCC 309, an advertisement was issued inviting applications for appointment for the post of physiotherapist. Candidates who failed to clear the written test presented a writ petition and prayed for quashing the advertisement and the process of selection. They pleaded that the advertisement and the test were ultra vires the provisions of the Uttar Pradesh Medical Health and Family Welfare Department Physiotherapist and Occupational Therapist Service Rules, 1998. After referring to a catena of judgments on the principle of waiver and estoppel, this Court did not entertain the challenge for the reason that the same would not be maintainable after participation in the selection process. The pertinent observations of this Court are as under:

> *"24. In view of the propositions laid down in the above noted judgments, it must be held that by having taken part in the process of selection with full knowledge that the recruitment was being made under the General Rules, the respondents had waived their right to question the advertisement or the methodology adopted by the Board for making selection and the learned Single Judge and the Division Bench of the High Court committed grave error by entertaining the grievance made by the respondents."*

iii) Similarly, in Ashok Kumar vs. State of Bihar, (2017) 4 SCC 357, a process was initiated for promotion to Class-III posts from amongst Class-IV employees of a civil court. In the said case, the selection was to be made on the basis of a written test and interview, for which 85% and 15% marks were earmarked respectively as per norms. Out of 27 (twenty-seven) candidates who appeared in the written examination, 14 (fourteen) qualified. They were interviewed. The committee selected candidates on the basis of merit and prepared

a list. The High Court declined to approve the Select List on the ground that the ratio of full marks for the written examination and the interview ought to have been 90:10 and 45 ought to be the qualifying marks in the written examination. A fresh process followed comprising of a written examination (full marks - 90 and qualifying marks - 45) and an interview (carrying 10 marks). On the basis of the performance of the candidates, results were declared and 6 (six) persons were appointed on Class-III posts. It was thereafter that the appellants along with 4 (four) other unsuccessful candidates filed a writ petition before the High Court challenging the order of the High Court on the administrative side declining to approve the initial Select List. The primary ground was that the appointment process was vitiated, since under the relevant rules, the written test was required to carry 85 marks and the interview 15 marks. This Court dismissed the appeals on the grounds that the appellants were clearly put on notice when the fresh selection process took place that the written examination would carry 90 marks and the interview 10 marks. The Court was of the view that the appellants having participated in the selection process without objection and subsequently found to be not successful, a challenge to the process at their instance was precluded. The relevant observations are as under:

> *"13. The law on the subject has been crystalized in several decisions of this Court. In Chandra Prakash Tiwari v. Shakuntala Shukla, this Court laid down the principle that when a candidate appears at an examination without objection and is subsequently found to be not successful, a challenge to the process is precluded. The question of entertaining a petition challenging an examination would not arise where a candidate has appeared and participated. He or she cannot subsequently turn around and contend that the*

process was unfair or that there was a lacuna therein, merely because the result is not palatable. In Union of India v. S. Vinodh Kumar (2007) 8 SCC 100, this Court held that: "18. It is also well settled that those candidates who had taken part in the selection process knowing fully well the procedure laid down therein were not entitled to question the same (See also Munindra Kumar v. Rajiv Govil (1991) 3 SCC 368 and Rashmi Mishra v. M.P. Public Service Commission (2006) 12 SCC 724)".

69 It is therefore trite that candidates, having taken part in the selection process without any demur or protest, cannot challenge the same after having been declared unsuccessful. The candidates cannot approbate and reprobate at the same time. In other words, simply because the result of the selection process is not palatable to a candidate, he cannot allege that the process of interview was unfair or that there was some lacuna in the process. Therefore, we find that the writ petitioners in these cases, could not have questioned before a Court of law, the rationale behind recasting the selection criteria, as they willingly took part in the selection process even after the criteria had been so recast. Their candidature was not withdrawn in light of the amended criteria. A challenge was thrown against the same only after they had been declared unsuccessful in the selection process, at which stage, the challenge ought not to have been entertained in light of the principle of waiver and acquiescence."

7. The exposition of above law is squarely applicable to the fact of the instant case. The selection criteria for the concerned post is not even in question in the instant writ petition. The selection committee is not impleaded as party respondent. The petitioner had participated in the selection process under the selection criteria which he has now questioned on the alleged ground of the same having no nexus with the post in question. Allegation of malafide do not find place in the petition. The selection and

appointment of respondent No.3 pertains to the year 2008, assailed by the petitioner in the year 2010. No explanation for the delay in filing the writ petition has been offered.

For the aforesaid reasons, there no merit in the present writ petition. The same is accordingly dismissed. The pending miscellaneous application(s), if any, also stand disposed of.

BEFORE HON'BLE MS. JUSTICE JYOTSNA REWAL DUA, J.

Jagbandhu ....Petitioner

Versus

State of H.P. & Ors. ...Respondents

For the petitioner: Mr. Sanjeev Bhushan, Senior Advocate with Mr. Rakesh Chauhan, Advocate.

For the respondents: Mr. Navlesh Verma, Additional Advocate General.

CWPOA No.629 of 2020
Decided on: 20th April, 2023

Constitution of India, 1950 – Article 226 - CCS (CCA) Rules 1965 - Rules 27(2) and 27(3) - Removal from Service – The petitioner was serving as Clerk in RKMC College, Shimla – Director Higher Education proposed a departmental inquiry against the petitioner – Articles of Charges were framed – Inquiry Officer submitted his report – Major Penalty of Removal from Service was imposed on the petitioner by the Disciplinary Authority – Petitioner filed appeal – Appellate Authority rejected the appeal vide order dated 2.8.2016 – Challenged – **Held** – Petitioner had taken many grounds for challenging the penalty but the Appellate Authority did not deal with the grounds raised by the petitioner – Appellate Authority did not apply independent mind to the facts and the evidence of the case – Rules 27(2) and 27(3) of CCS(CCA) Rules were not kept in view - The appeal was dealt with mechanically – Order passed by the Appellate Authority quashed - Appellate Authority directed to consider and decide the appeal preferred by the petitioner afresh, after affording him opportunity of hearing by passing a reasoned and speaking order within a period of six weeks. (Paras 4 and 5)

Cases referred:

Union of India Vs. Subrata Nath Civil Appeal Nos. 7939-7940 of 2022;
Subrata Nath Vs. Union of India 7941-7942;

The following judgment of the Court was delivered:

Jyotsna Rewal Dua, Judge

The petitioner was imposed penalty of removal from the service by the Disciplinary Authority vide order dated 08.01.2016 (Annexure A-5). The appeal against this order was rejected by the Appellate Authority on 02.08.2016 (Annexure A-7). Aggrieved, the petitioner has preferred this petition.

2. Facts

2(i). The Director Higher Education, Himachal Pradesh-respondent No-2, issued a memorandum dated 29.06.2013 (Annexure A-1), proposing to hold an inquiry against the petitioner under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rule, 1965 (CCS (CCA) Rules). The petitioner at that time was serving as Clerk in RKMC College, Shimla. Five articles of charges were framed against the petitioner. The disciplinary proceedings followed. The Inquiry Officer-cum-Additional Director, Higher Education, Himachal Pradesh, submitted his inquiry report with respect to the charges levelled against the petitioner on 16.01.2014 (Annexure A-2). Finally, vide order dated 08.01.2016 (Annexure A-5), Disciplinary Authority imposed major penalty of removal from services under Rule 11(viii) of CCS (CCA) Rules, upon the petitioner.

2(ii). The petitioner preferred an appeal on 05.02.2016 (Annexure A-6) in terms of Rule 23(ii) of CCS (CCA) Rules against the imposition of penalty of removal from service through respondent No.2 to the Principal Secretary (Education) to the Government of Himachal Pradesh. The appellate Authority vide order dated 02.08.2016 has rejected the appeal.

3. Heard learned counsel on both the sides and considered the case record.

4. Observations

4(i). It is seen from the record that the petitioner in his appeal preferred under Rule 23(ii) of CCS (CCA) Rules, had taken many grounds for challenging the penalty of removal from service imposed upon him by the Disciplinary Authority vide order dated 08.01.2016. The Appellate Authority in the impugned order dated 02.08.2016 has not dealt with the contentions raised by the petitioner. The only observations made by the Appellate Authority for rejecting the appeal preferred by the petitioner are as under:-

> "*And whereas the CO was given opportunity of personal hearing on 2/7/2016 by the undersigned to defend his appeal.*
>
> *And Whereas, undersigned after carefully going through all the submissions made by the appellate vis a vis findings of the Inquiry officer and comments of the disciplinary authority has come to the conclusion that there is no merit in the appeal.*
>
> *Now therefore, keeping in view the facts and circumstances of the case as discussed above and after careful consideration of whole matter, the undersigned, in exercise of powers vested under Rule 27 read with Rule 11 of CCS(CCA) Rules, 1965, observed that appeal submitted under Rule 23 of CCS(CCA) Rules, 1965 against the penalty imposed is considered and is hereby rejected.*
>
> *The applicant be informed accordingly."*

The above extract is clear indicator that the appellate Authority has not applied its independent mind to the facts and the evidence of the case.

4(ii) In a recent judgment rendered in 23.11.2022, in ***Civil Appeal Nos. 7939-7940 of 2022 (Union of India Vs. Subrata Nath) and 7941-7942 (Subrata Nath Vs. Union of India),*** the Hon'ble Apex Court considered

the plethora of its previous authoritative pronouncements on the issue involved in the present case and held that both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of inquiry report. In exercise of powers of judicial review, the High Court or for the matter the Tribunal cannot ordinarily re-appreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would show the conscience of the High Court/Tribunal or is found to be flawed for other reasons as enumerated. Observations from the judgment relevant to the context are as under:-

> *"22. To sum up the legal position, being fact finding authorities, both the Disciplinary Authority and the Appellate Authority are vested with the exclusive power to examine the evidence forming part of the inquiry report. On finding the evidence to be adequate and reliable during the departmental inquiry, the Disciplinary Authority has the discretion to impose appropriate punishment on the delinquent employee keeping in mind the gravity of the misconduct. However, in exercise of powers of judicial review, the High Court or for that matter, the Tribunal cannot ordinarily reappreciate the evidence to arrive at its own conclusion in respect of the penalty imposed unless and until the punishment imposed is so disproportionate to the offence that it would shock the conscience of the High Court/Tribunal or is found to be flawed for other reasons, as enumerated in P. Gunasekaran (supra). If the punishment imposed on the delinquent employee is such that shocks the conscience of the High Court or the Tribunal, then the Disciplinary/Appellate Authority may be called upon to re-consider the penalty imposed. Only in exceptional circumstances, which need to be mentioned, should the High Court/Tribunal decide to impose appropriate punishment by itself, on offering cogent reasons therefor."*

Being the fact examining authority, it was incumbent upon the Appellate Authority to consider and decide the objections/grounds taken by the appellant (petitioner) in the appeal. This course was not adopted by the Appellate Authority.

4(iii) It will also be appropriate to refer to Rules 27(2) and (3) of the CCS(CCA) rules, which lay down the procedure for considering the appeal preferred against the order imposing any of the penalties specified in Rule 11. These Rules read as under: -

> *"27(2) In the case of an appeal against an order imposing any of the penalties specified in rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-*
>
> *(a) whether the procedure laid down in these rules have been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;*
>
> *(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and*
>
> *(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;*
>
> *and pass orders-*
>
> *(i) confirming, enhancing, reducing, or setting aside the penalty; or*
>
> *(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :*

provided that-

(i) The Commission shall be consulted in all cases where such consultation is necessary;

(ii) If such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and in inquiry under rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit:

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of rule 11 and an enquiry under rule 14 has been held in the case, the appellate authority shall make such orders as it may deem fit after the appellant has been given a reasonable opportunity of making a representation against the proposed penalty; and

(ii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of rule 16, of making a representation against such enhanced penalty.

(3) In an appeal against any other order specified in rule 23, the appellate authority shall consider all the circumstances of the case and make such orders as it may deem just and equitable."

A reading of the impugned order passed by the Appellate Authority makes it evident that the provisions of the above Rules were also

not kept in view and the appeal preferred by the petitioner against imposition of penalty of removal from service had been dealt with mechanically.

5. Conclusion

In the instant case, the Appellate Authority which was vested with the power to examine the evidence and to appreciate the facts has not performed its duty in accordance with law and settled procedure. The Appellate Authority only observed that it has gone through the submissions of the petitioner vis-à-vis findings of Inquiry Officer and then came to the conclusion that there was no merit in the appeal. No reason whatsoever has been assigned by the Appellate Authority for rejecting the appeal preferred by the petitioner. The ground taken by the petitioner in his appeal were also not discussed. There was no independent application of mind by the Appellate Authority. Hence, for passing a non-speaking and unreasoned order by the Appellate Authority, this petition is allowed to that an extent. Order dated 02.08.20216 (Annexure A-7) is quashed and set aside. Respondent No.1-the Appellate Authority is directed to consider and decide the appeal preferred by the petitioner afresh, after affording him opportunity of hearing and by passing a reasoned and speaking order within a period of six weeks from today.

The pending miscellaneous application(s), if any, also to stand dispose of.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Smt. Amita Sareen ....Petitioner.

Versus

State of Himachal Pradesh and others ...Respondents

For the petitioner	:	Mr. Yudhvir Singh Thakur, Advocate.
For respondents No.1& 2	:	Mr. B.N. Sharma, Additional Advocate General.
For respondent No.3	:	Mr. Dilip Sharma, Sr. Advocate, with Mr. Manish Sharma, Advocate.
For respondent No. 4	:	Mr. Sunil Mohan Goel, Advocate.

CWPOA No. : 991 of 2019
Reserved on : 21.04.2023
Decided on : 28.4.2023

Constitution of India, 1950 – Article 226– Seniority – Promotion – Delay and laches -Petitioner was appointed as Staff Nurse in the department of Health and Family Welfare on 03.03.1989 - She qualified B.Sc. Nursing Course during service from P.G.I. Chandigarh between 1994-1996 - The grievance of the petitioner was that respondents No. 3 and 4 were junior to her in the cadre of Staff Nurses and they had not even completed five years of service in the cadre but they were promoted as Sister Tutors before petitioner on 04.02.1998 – Petitioner filed representations on 09.09.1999 and 24.03.2001- She was finally promoted on 29.03.2001 – The seniority list issued in the year 2011 showed her junior to the respondents no.3 and 4 – Challenged – **Held** -

Petitioner was throughout aware of her placement in seniority list -The private respondents were promoted as Sister Tutor much prior to the petitioner - The petitioner had reasons to entertain any misgiving about her seniority position vis-a vis private respondents - The periodic circulation of seniority list of Senior Tutors belied the stand of the petitioner – Claim held to be barred by delay and laches – Petition dismissed. (Paras 11 to 17)

Cases referred:

Union of India and others vs. C. Girija and others, (2019) 15 SCC 633;

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Petitioner has prayed for following substantive reliefs:-

i) That the petitioner may be held entitled to promotion as Sister Tutor with effect from 04.02.1998 when Staff Nurses junior to her i.e. respondents No. 3 and 4, were so promoted.

ii) *That the petitioner may be held entitled to all consequential benefits including her placement as Sister Tutor over and above respondents No. 3 and 4 in the final seniority list of Sister Tutor.*

iii) That the final seniority list of Sister Tutors issued vide memo dated 20.07.2011 (Annexure P-6), may be quashed and set aside to the extent impugned. The respondents may be directed to redraw the seniority list and place the petitioner above respondents No.3 and 4 with all consequential benefits.

iv) That respondents No. 1 and 2 may be directed not to give any further promotion/posting to respondents No. 3 and 4 on the basis of impugned final seniority list issued on 20.07.2011.

2. Petitioner was appointed as Staff Nurse in the department of Health and Family Welfare, Himachal Pradesh, on 03.03.1989. During service,

she qualified B.Sc. Nursing Course from P.G.I. Chandigarh between 1994-1996.

3. Respondents No. 3 and 4 were also working as Staff Nurses with the department of Health and Family Welfare, H.P. Both the respondents were promoted as Sister Tutors, vide promotion order dated 04.02.1998 in pursuance to recommendation of D.P.C. convened in the year 1997.

4. The grievance of the petitioner is that respondents No. 3 and 4 were junior to her in the cadre of Staff Nurses. They had not even completed five years of service in the cadre and were promoted as Sister Tutors before petitioner on 04.02.1998. In such backdrop, petitioner has approached this Court for reliefs noted above.

5. Petitioner has alleged that she had represented for being promoted as Sister Tutor, vide representations dated 09.09.1999 and 24.03.2001. She was finally promoted, vide office order dated 29.03.2001 as Sister Tutor. It is further submitted on behalf of the petitioner that she was assured by the authorities that her promotion would be dated back to grant her seniority above respondents No. 3 and 4. Petitioner has pleaded her cause of action to file instant petition, on the basis of seniority list of Sister Tutors issued in the year 2011, wherein she was shown junior to private respondents.

6. The official respondents have filed reply to the petition and have contested the claim of the petitioner. As per their stand, some posts of Sister Tutors were lying vacant. The department of Health and Family Welfare invited options, vide letter dated 26.08.1997, from Staff Nurses to opt in teaching cadre. The cut-off date was fixed as 29.10.1997. The requirement of B.Sc. Nursing and confidential report for last three years of the desirous candidates were also sought. In pursuance to this process, the D.P.C. was held and respondents No. 3 and 4 were promoted as Sister Tutors. Petitioner had not opted for being promoted as Sister Tutor in response to letter dated

26.08.1997. Petitioner was promoted w.e.f. 29.04.2001 as Sister Tutor and as such her place in the seniority list was correctly mentioned below respondents No. 3 and 4. The official respondents have further contested the claim of the petitioner being time barred and also suffering from *vice* of delay and laches.

7. Respondents No. 3 and 4 though have filed their separate replies, but their grounds of defence are substantially identical. As per private respondents, their promotion as Sister Tutors was result of option submitted by them in response to letter dated 26.08.1997. Since the petitioner had not availed the opportunity, at that stage, she cannot claim herself to be on equal footing with private respondents. It is further submitted that the private respondents were duly registered with Nursing Council Punjab. They were working as Staff Nurses in the department of Health and Family Welfare, H.P. They immediately opted for the teaching line in Nursing, when they got the opportunity in pursuance to letter dated 26.08.1997. Respondents No. 3 and 4 have also taken a stand that the claim of the petitioner was stale. Petitioner throughout had the knowledge that private respondents were senior to her in the cadre of Sister Tutors. The department of Health and Family Welfare, H.P., had been circulating the seniority list of Sister Tutors on regular basis. One such list was circulated on 02.02.1999 showing the seniority position of Sister Tutors as on 31.12.1998. Another final seniority list of Sister Tutors as on 30.04.2001 was again circulated in February, 2002. A similar list showing seniority position of Sister Tutors as on 31.12.2005 was also circulated. Another tentative seniority list of Sister Tutors as on 31.08.2009 was again issued. Final seniority list of Sister Tutors as on 31.12.2010 has also been placed on record to show that petitioner had feigned ignorance about her seniority position in the seniority list. As per private respondents, the cause of action, if any, had accrued in favour of the petitioner immediately on promotion of private respondents as Sister Tutors and thereafter on each and

every successive date as the seniority list of Sister Tutors had been circulated by the department on regular basis.

8. I have heard learned counsel for the parties and have also gone through the record of the case carefully.

9. The facts of the case as have emerged from the pleadings of the parties and documents placed on record reveal that on 26.08.1997 respondent No. 2 had issued a communication to the Principal, I.G.M.C. Shimla, all the Chief Medical Officers/Medical Superintendents in the State, the Zonal Leprosy Officers and all the Block Medical Officers in the State, which reads as under:-

> *"Some posts of Sister Tutors in the pay scale of Rs.1640-2925 are lying in the various Health and Family Welfare Training Schools of this Department. You are, therefore, requested to give vide publicity amongst the Nursing personnels for opting the teaching cadre who has/have passed B.Sc. Nursing. The options of the desirous Nursing personnels (Ward Sisters/Staff Nurse) must reach in this Directorate on or before 29.10.1997. The B.Sc. Nursing certificate alongwith confidential reports for the last three years may also be sent. Please take note that no options after 29.10.1997 shall pertained in any case. The options and other all documents as required above should be send through you immediately.*
>
> *This supersedes previous options called vide this Directorate letter of even number dated 4.6.1996."*

10. Though in rejoinder, petitioner has stated that she had not received copy of letter dated 26.08.1997, yet it cannot be believed that petitioner was not aware about the options invited vide above noted communication. At the time of issuance of communication dated 26.08.1997, petitioner was working as Staff Nurse in District Hospital Chamba. Since, the communication dated 26.08.1997 was addressed to all the Chief Medical Officers/ Medical Superintendents in the State, it must have been sent to the

Chief Medical Officer/ Medical Superintendent District Hospital Chamba. Evidently, no separate communication was required to be served upon the petitioner. Thus, the petitioner clearly failed to avail benefit of option invited vide communication dated 26.08.1997. In this view of the matter, it cannot be said that the promotion of respondents No. 3 and 4 was not in accordance with rules. In any case, in absence of any challenge being made either to communication dated 26.08.1997 or to the promotion of petitioner, this Court need not go into such questions.

11. The main relief claimed by petitioner is to seek seniority in the cadre of Sister Tutor above the private respondents. Before testing the claim of petitioner on merits, the objection of respondents regarding stale claim of petitioner needs to be addressed. Hence, the issue that arises for consideration of this Court is whether the petitioner had approached the Court with sufficient promptitude or her claim was barred by delay and laches?

12. Petitioner has not sought any relief with respect to the promotion of respondents No. 3 and 4 as Sister Tutors. Petitioner has sought the relief to the extent that she should be placed senior to the private respondents in the seniority list of Sister Tutors. As per petitioner, the cause of action arose to her for filing the present petition, when she found herself to be lower in seniority than private respondents in the seniority list of Sister Tutors circulated by department of Health and Family Welfare, H.P in the year 2011.

13. The controversy in hand leads this Court to scan through various documents placed on record. Petitioner has filed a copy of representation made by her to respondent No.2 on 09.09.1999. Its contents reveal that she had not made any grievance with respect to the promotion of private respondents as Sister Tutors. Annexure P-5 is a copy of another representation of petitioner submitted to respondent No.2 on 24.03.2001, in

which she had raised grievance about promotion of private respondents in February, 1998 as Sister Tutors by ignoring the petitioner. Immediately thereafter petitioner was promoted as Sister Tutor, vide order dated 29.03.2001. The record further reveals that department of Health and Family Welfare, H.P. has been circulating the seniority list of Sister Tutors periodically. One such list was issued on 22.01.1999 showing seniority position of Sister Tutors as on 31.12.1998. Another final seniority list of Sister Tutors as on 30.04.2001 is also on record. Similar seniority lists circulated in the years 2005, 2006, 2009 and 2010 also find place on record. In all these seniority lists of Sister Tutors private respondents have been shown above the petitioner. The presence of above noted seniority lists of Sister Tutors clearly belies the stand of the petitioner that after making a representation, vide Annexure P-5, she waited till 2011 to file the petition on the alleged assurance of the authorities to redress her grievance. Noticeably, immediately after the submission of representation, Annexure P-5, by petitioner, she was promoted as Sister Tutor on 29.03.2001. Her stand to the extent that the cause of action accrued to her in 2011 when she noticed placement of her name at lower place than that of the petitioner in the seniority list is also falsified. The fact that updated seniority list of Sister Tutors had been circulated by the competent authority periodically is sufficient to infer that petitioner has not approached this Court with clean hands. She was aware throughout that the private respondents were senior to her in the cadre of Sister Tutors. Thus, the cause of action, if any, had arisen in her favour atleast when she made representation, Annexure P-5, on 24.03.2001.

14. In CWP No.1218 of 2021, titled as ***Suresh Kapoor and Ors***. Vs. ***State of H.P. and others***, decided on 01.12.2022, a Division Bench of this Court has observed as under: -

"9. It is more than settled that there has to be an element of repose and a stale claim, more particularly to the one related to seniority and promotion, cannot be resuscitated.

10. It is also beyond any cavil or doubt that the remedy under article 226 of the Constitution of India is a discretionary one. For sufficient or cogent reasons, the court may, in a given case, refuse to exercise its jurisdiction; delay and laches being one of them. While considering the question of delay and laches on the part of the petitioners, the court must also consider the effect thereof.

11. As regards the service matters, more particularly, pertaining to seniority and promotion, the delay is to be strictly construed or else it would amount to unsettling the settled matters after a lapse of time. A person aggrieved by an order of promotion should approach the Court at least within six months or at the most a year of such promotion. It has been further held that it is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extraordinary powers under Article 226 of the Constitution of India in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle matters."

15. In ***Union of India and others*** vs. ***C. Girija and others, (2019) 15 SCC 633***, the legal position has been summarized as under: -

"16. This Court had occasion to consider the question of cause of action in reference to grievances pertaining to service matters. This Court in C. Jacob Vs. Director of Geology and Mining and Another, (2008) 10 SCC 115 had occasion to consider the case where an employee was terminated and after decades, he filed a representation, which was decided. After decision of the representation, he filed an O.A. in the

Tribunal, which was entertained and order was passed. In the above context, in paragraph No.9, following has been held:-

> *"9. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly, they assume that a mere direction to consider and dispose of the representation does not involve any "decision" on rights and obligations of parties. Little do they realise the consequences of such a direction to "consider". If the representation is considered and accepted, the ex-employee gets a relief, which he would not have got on account of the long delay, all by reason of the direction to "consider". If the representation is considered and rejected, the ex-employee files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in 2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation. The tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored."*

17. *This Court again in the case of Union of India and Others Vs. M.K. Sarkar, (2010) 2 SCC 59 on belated representation laid down following, which is extracted below:-*

> *"15. When a belated representation in regard to a "stale" or "dead" issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the "dead" issue or time-barred dispute. The issue of limitation or delay and laches*

should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches."

18. *Again, this Court in State of Uttaranchal and Another Vs. Shiv Charan Singh Bhandari and Others, (2013) 12 SCC 179 had occasion to consider question of delay in challenging the promotion. The Court further held that representations relating to a stale claim or dead grievance does not give rise to a fresh following was laid down:-*

"19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time. 23. In State of T.N. v. Seshachalam, (2007) 10 SCC 137, this Court, testing the equality clause on the bedrock of delay and laches pertaining to grant of service benefit, has ruled thus:

"16. … filing of representations alone would not save the period of limitation. Delay or laches is a relevant factor for a court of law to determine the question as to whether the claim made by an applicant deserves consideration. Delay and/or laches on the part of a government servant may deprive him of the benefit which had been given to others. Article 14 of the Constitution of India would not, in a situation of that nature, be

attracted as it is well known that law leans in favour of those who are alert and vigilant."

19. *This Court referring to an earlier judgment in P.S. Sadasivaswamy Vs. State of Tamil Nadu, (1975) 1 SCC 152 noticed that a person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. In Paragraph No. 26 and 28, following was laid down:-*

"26. Presently, sitting in a time machine, we may refer to a two-Judge Bench decision in P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152, wherein it has been laid down that: (SCC p. 154, para 2)

"2. … A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claims and try to unsettle settled matters."

28. Remaining oblivious to the factum of delay and laches and granting relief is contrary to all settled principles and even would not remotely attract the concept of discretion. We may hasten to add that the

same may not be applicable in all circumstances where certain categories of fundamental rights are infringed. But, a stale claim of getting promotional benefits definitely should not have been entertained by the Tribunal and accepted by the High Court."

20. On the preposition as noticed above, it is clear that the claim of the applicant for inclusion of her name in the panel, which was issued on 09.01.2001 and for the first time was raked up by her, by filing representation on 25.09.2007, i.e., after more than 06 and half years. The claim of inclusion in the panel had become stale by that time and filing of representation will not give any fresh cause of action. Thus, mere fact that representation was replied by Railways on 27.12.2007, a stale claim shall not become a live claim. Both Tribunal and High Court did not advert to this important aspect of the matter. It is further to be noted from the material on record that after declaration of panel on 09.01.2001, there were further selection under 30% promotion by LDCE quota, in which the applicant participated. In selection held in 2005 she participated and was declared unsuccessful. With regard to her non-inclusion in panel in 2005 selection, she also filed O.A. No. 629 of 2006 before the Tribunal, which was dismissed. After participating in subsequent selections under 30% quota and being declared unsuccessful, by mere filing representation on 27.09.2007 with regard to selection made in 2001, the delay and laches shall not be wiped out."

16. Reverting to the facts of the case, it is clearly evident that petitioner was throughout aware of her placement in seniority list. The private respondents had been promoted to the posts of Sister Tutor much prior to the date when petitioner was promoted to the said post and in such view of the matter it can be believed that petitioner had reasons to entertain any misgiving about her seniority position vis-a vis private respondents. Above all

the periodic circulation of seniority list of Senior Tutors by competent authority completely belies the stand of the petitioner.

17. Keeping in view the facts of the case and exposition of law noticed above, the claim of the petitioner as regards her seniority above private respondents is clearly not maintainable being barred by delay and laches.

18. In result, the petition fails and is accordingly dismissed.

19. The petition is disposed of, so also the pending miscellaneous application(s), if any.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Ajay Sharma. …Petitioner.

Versus

State of Himachal Pradesh. …Respondent.

For the Petitioner. Mr.Vijay Chaudhary, Advocate.

For the Respondent: Mr.Dinesh Thakur, Additional Advocate General.

CWPOA No. 2515 of 2019
Date of decision: 31.3.2023

Constitution of India, 1950 – Article 226 - Seniority – Pay fixation –HP Public Service Commission issued Advertisement No.II of 2003 for posts of Assistant Engineers (Civil) out of which five posts were reserved for 'general ex-servicemen' and one for 'Scheduled Caste ex-serviceman' - Interviews were conducted on 6th, 7th and 8th January, 2004 - Names of candidates, including petitioner, were recommended -Controversy was raised regarding these recommendations - petitioner along-with another filed CWP No. 97 of 2004 – This CWP was disposed off by a Division Bench of Hon'ble High Court vide Judgment dated 22.4.2004 - Interviews to the posts were again conducted on 26th and 27th October, 2004 - petitioner was not recommended - Inclusion of names of three candidates, namely, Rakesh Kumar, Sumit Sood and Rakesh Rana was assailed by the petitioner by filing CWP-T No. 11665 of 2008 - one Bhushan Lal Sharma also filed CWP-T No. 6340 of 2008 - Rakesh Kumar did not join – Allegations against Sumit Sood remained unsubstantiated - Vide Judgment dated 3.10.2022 passed in CWP(T) Nos. 6340 and 11665 of 2008 the Hon'ble High Court quashed the appointment of Rakesh Rana as Assistant Engineer in IPH Department – Subsequently, on completion of formalities, petitioner joined the Department as Assistant Engineer (Civil) - He submitted a

representation dated 5.5.2014 for consideration of his case for consequential benefits at par with the Assistant Engineers (Civil) appointed on the basis of interviews held on 26th and 27th October, 2004 - Matter was referred to the Law Department - It was clarified that the Hon'ble High Court vide Judgment dated 3.10.2012 directed the respondent-State to call the names of next two meritorious candidates from the Commission and offer them appointment as Assistant Engineers, but no consequential benefits were granted to the petitioner from the year 2004-05 as such Administrative Department was advised that it may act further accordingly – Petitioner claimed entitlement for all consequential benefits from the date of appointment of other candidates from the same Select List, i.e. since November, 2004 - **Held -** though petitioner is entitled for appointment since November, 2004, however, he has joined the service only in the year 2013 and he has not actually worked since 2004 to 2013 - It cannot be fair to extend him monetary benefits in actual, but he, definitely, deserves for notional consequential monetary benefit from November, 2004 till his joining for fixation of pay and increments and other benefits etc. but for all consequential benefits thereto on actual basis since his joining the service - However, he shall be entitled for all other benefits on actual basis including seniority, counting of service towards pensionary benefits and promotion if any on the basis of that – **Further held** - Petitioner shall be deemed to have been appointed alongwith other appointees under the appointment order dated 16.11.2004 and he shall be assigned a place of seniority in accordance with his placement in the order of merit in the Select List prepared by the Commission - Petition allowed. (Paras 19 to 21)

Cases referred:

C. Jayachandran Vs. State of Kerala and others, (2020) 5 SCC 230;

Pilla Sitaraman Patrudu and others Vs. Union of India and others, AIR 1997 SC 250;

Robin Singh Mehta & others Vs. State of H.P. and others and connected matter, 2021 (1) Him L.R. (DB) 225;

Sudarshan Kumar Vs. State of Himachal Pradesh and another, 2010 (Supp) Him L.R. 2401;

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge (oral)

Petitioner has approached this Court seeking direction to respondent to release all consequential benefits, i.e. seniority, pay fixation, monetary benefits alongwith 12% interest per annum to the petitioner at par with Assistant Engineers (Civil) appointed as per merit in the Select List dated 16.11.2004, prepared and recommended by Commission to the respondent-Department, from due date, i.e. since November, 2004.

2. On request of Irrigation and Public Health Department (I&PH) of Government of Himachal Pradesh, Public Service Commission (Commission) initiated recruitment process by issuing Advertisement No.II of 2003, inviting applications from eligible candidates for various posts, including six posts, of Assistant Engineers (Civil) Gazetted Class-I. Out of these six posts five posts were reserved for 'general ex-servicemen' and one for 'Scheduled Caste ex-serviceman' (backlog). Interviews for filling up these posts were conducted on 6th, 7th and 8th January, 2004 by the Selection Committee constituted by the Commission. Names of these candidates, including petitioner, were recommended, however a controversy was raised regarding these recommendations, whereupon petitioner alongwith co-petitioner had filed CWP No. 97 of 2004 seeking appropriate direction.

3. The said petition CWP No. 97 of 2004 was disposed of by Division Bench of this High Court vide judgment dated 22.4.2004 and thereafter interviews to the posts were again conducted on 26th and 27th October, 2004, wherein petitioner had appeared. Result of interview was declared on 16.11.2006 but the name of the petitioner was not amongst recommended candidates.

4. Inclusion of names of three candidates, namely, Rakesh Kumar, Sumit Sood and Rakesh Rana, in the select list was assailed by the

petitioner by filing CWP-T No. 11665 of 2008 and one another Bhushan Lal Sharma also did so by filing CWP-T No. 6340 of 2008.

5. Out of aforesaid these three persons, Rakesh Kumar did not join. Petitioner had raised objection with respect to eligibility of Sumit Sood and Rakesh Rana on the ground that Sumit Sood was already employed as Junior Engineer in HPPWD and thus was not a dependant son/ward of ex-serviceman father/guardian and thus he was not falling in the definition of wards/dependants of ex-serviceman. Whereas Rakesh Rana was not possessing a degree in Civil Engineering or its equivalent qualification as per rules and his father being ex-serviceman had already availed benefit as he was already appointed against a vacancy reserved for ex-serviceman.

6. Petitioner had also made a complaint against Sumit Sood and Rakesh Rana, whereupon a thorough inquiry was ordered to be conducted through Deputy Commissioner/Sub Divisional Magistrate as well as Head of the Department. After inquiry, it was reported that Sumit Sood had himself availed benefit of ex-serviceman while getting service as Junior Engineer in PWD and father of Rakesh Rana had also availed benefit of ex-serviceman by getting employment in IPH Department as Stenographer and these facts were also confirmed by Engineer-in-Chief IPH.

7. Show cause notice was issued to these persons for terminating their services for furnishing false information to the Department, which was assailed by them before erstwhile H.P. State Administrative Tribunal (Tribunal), which on abolition of Tribunal were transferred to this High court and dismissed being not maintainable against issuance of show cause notice.

8. Lateron, on the basis of opinion of Law Department, based upon the fact that Sumit Sood, at the time of getting job in HPPWD, had appeared as a general category candidate and not against post reserved for category of wards of ex-serviceman, nor his father had ever availed any such benefit under said quota, show cause notice issued against him was dropped.

9. Rakesh Rana was also considered to be eligible for equivalence of his degree with Civil Engineering. However, in judgment dated 3.10.2022 passed in CWP(T) Nos. 6340 and 11665 of 2008 it was held by this High Court that he was not falling within the criteria to consider him as a ward of ex-serviceman because his father had availed such benefit at earlier point of time, and, therefore, appointment of Rakesh Rana as Assistant Engineer in IPH Department was quashed and set aside and it was directed to the IPH Department to call for the names of next two meritorious candidates from the Commission and offer them appointment as Assistant Engineers in IPH Department after completing the codal formalities within two months after passing the order dated 3.10.2012 in these writ petitions.

10. In furtherance to the aforesaid order passed by the Court vide memorandum dated 27.11.2013 appointment to the post of Assistant Engineer (Civil) was offered to the petitioner, in sequel whereof petitioner joined the Department as Assistant Engineer (Civil). Thereafter, petitioner submitted a representation/request dated 5.5.2014 for consideration of his case for consequential benefits at par with the Assistant Engineers (Civil) appointed on the basis of interview held on 26th and 27th October, 2004.

11. In response to the request, matter was referred to the Law Department and it was examined at Government level in consultation with Law Department, whereby it was clarified that the High Court vide judgment dated 3.10.2012 directed the respondent-State to call the names of next two meritorious candidates from the Commission and offer them appointment as Assistant Engineers, but no consequential benefits were granted to the petitioner from the year 2004-05 as such Administrative Department was advised that it may act further accordingly.

12. It is claim of the respondent-State that appointment of petitioner has been made after quashing the selection of one candidate holding the post and no appointment can be made to a post from retrospective date,

which was being occupied by another candidate and further that benefits of seniority and pay fixation cannot be extended to the petitioner at par to those candidates who had been serving in the Department since 2004, whereas petitioner was appointed in the year 2013, particularly when no such benefit has been ordered to be extended by the Court in the order in furtherance whereto he has been appointed.

13. Grievance of the petitioner is that he was deprived from appointment for omission and commission on the part of respondent-State and the Commission, because of recommendation of ineligible candidates at the cost of entitlement of petitioner for appointment on the basis of merit and as such petitioner has been deprived from appointment in November, 2004 despite no fault on his part, but for consideration of ineligible candidates against the post which would otherwise have been available to the petitioner alongwith other selected candidates appointed in November, 2004 and, therefore, it has been contended that petitioner is also entitled for all consequential benefits from the date of appointment of other candidates from the same Select List, i.e. since November, 2004. It has been claimed that petitioner is entitled for seniority immediately below the third candidate appointed on the basis of Select List dated 16.11.2004 at Sr. No. 4 and is entitled for all consequential benefits and the rejection of his claim on the ground that no consequential benefits were granted to the petitioner in the judgment is illegal and arbitrary because, in the given facts and circumstances, petitioner deserves to be considered appointed alongwith other candidates as per Select List of 16.11.2004 and, therefore, prayer for quashing communication dated 14.7.2014, whereby Department has refused extension of benefits to him as prayed by petitioner since November, 2004, has been made.

14. Response of respondent-State is that the Court in CWP-T No. 11665 of 2008 had directed the State to call for names of next two meritorious

candidates from the Commission and offer them appointment as Assistant Engineers in IPH Department after completing codal formalities within a period of two months and this judgment nowhere granted consequential benefits to them and by offering appointment to any post in the Government is always from prospective date and not from retrospective date and all benefits to an employee are to be extended only after and from the date of joining and further that petitioner had joined on 5.12.2013 without any protest by accepting offer of appointment communicated vide order dated 27.11.2013.

15. Referring ***Pilla Sitaraman Patrudu and others Vs. Union of India and others, AIR 1997 SC 250***, learned counsel for the petitioner has contended that there is no fault of the petitioner in delay in his appointment and, therefore, he is entitled to ranking given in the Select List and is to be considered appointed in November, 2004 alongwith other selectee candidates, as he was deprived from the appointment from the due date because of fault on the part of respondent-State and the Commission.

16. Referring ***C. Jayachandran Vs. State of Kerala and others, (2020) 5 SCC 230***, it has been contended that petitioner deserves to be deemed to have been appointed alongwith other appointees in November, 2004 and entitled for assigning the place of seniority accordingly as well as other benefits by considering him appointed from the said deemed date of appointment.

17. Learned counsel for the petitioner has also placed reliance upon ***Sudarshan Kumar Vs. State of Himachal Pradesh and another, 2010 (Supp) Him L.R. 2401*** to substantiate claim of the petitioner for entitlement of the petitioner to be considered as an appointee alongwith other selected candidates in the same recruitment process by common Select List.

18. Referring pronouncement in ***Robin Singh Mehta & others Vs. State of H.P. and others and connected matter, 2021 (1) Him L.R. (DB) 225***, learned counsel for the petitioner has contended that petitioner is also

entitled for all consequential benefits from November, 2004 including seniority.

19. From the facts, it emerged that in absence of ineligible candidates in the Select List, petitioner was at Sr. No. 4 in his category and there were five posts advertised to be filled in that category and it is not a case where petitioner has joined his appointment on the basis of order passed in Writ Petition preferred by someone else, but it is a case where petitioner from the very beginning was agitating for his cause. As a matter of fact, he was amongst selected candidates in the first recommendation made by the Selection Committee, in furtherance to the interview conducted for the first time in January, 2004 and in the second list also, after exclusion of ineligible candidates, he figured at Sr. No. 4 in the merit of Select List but he had been excluded from the Select List on inclusion of ineligible candidates, which is definitely a fault on the part of recruitment Agency/Department, for which petitioner cannot be made to suffer. If ineligible candidates had not been included in the Select List, petitioner would have been appointed alongwith others in November, 2004 and in that eventuality he would have been entitled for all benefits including seniority since November, 2004 alongwith other selectees of the same Select List.

20. It is also a fact that though petitioner is entitled for appointment since November, 2004, however, he has joined the service only in the year 2013 and he has not actually worked since 2004 to 2013 and, therefore, in my considered opinion it cannot be fair to extend him monetary benefits in actual, but he, definitely, deserves for notional consequential monetary benefit from November, 2004 till his joining for fixation of pay and increments and other benefits etc. but for all consequential benefits thereto on actual basis since his joining the service. However, he shall be entitled for all other benefits on actual basis including seniority, counting of service towards pensionary benefits and promotion if any on the basis of that.

21. In view of above discussion and considering the pronouncements of the Courts, referred supra, rejection communicated vide communication dated 14.7.2014 is set aside and it is directed that petitioner shall be deemed to have been appointed alongwith other appointees under the appointment order dated 16.11.2004 and he shall be assigned a place of seniority in accordance with his placement in the order of merit in the Select List prepared by the Commission.

22. Respondent is directed to do the needful in terms of aforesaid directions on or before 30th June, 2023.

The petition is allowed in aforesaid terms, so also pending applications, if any.

BEFORE HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.

Mohan Lal ....Petitioner.

Versus

Chaudhary Sarwan Kumar, Himachal Pradesh
Krishi Vishav Vidalaya, Palampur and another ...Respondents.

For the petitioner : Ms. Reeta Hingmang, Advocate.

For the respondents : Mrs. Aruna Chauhan, Advocate for respondent No. 1.

: None for respondent No. 2.

CWPOA No. 3499 of 2019
Decided on : 23.03.2023

Constitution of India, 1950 – Article 226 - Petitioner joined the respondent-University as a Mortar Mate w.e.f. 03.03.1979 - His services were regularized w.e.f. 24.07.1996, as a Junior Technician (Work Inspector) - Petitioner was not considered for promotion against the post of Junior Engineer (Civil) because he was not fulfilling the eligibility criteria of having six months Departmental Training – He was sent to only three months training by the University - **Held** - The case of the petitioner was considered and rejected for promotion against the post of Junior Engineer (Civil) in the year 2014 - New Rules had come into force w.e.f. 16.01.2013 - It was incumbent upon the respondent–University, after said Rules came into force, to call upon the petitioner to undergo further training of three months - Another option available with the respondent-University was to confer promotion to the petitioner against the post of Junior Engineer (Civil) subject to the condition of his undergoing further training of three months - None of the said options having been exercised by the respondent-University, the same could not have debarred the petitioner from being promoted

to the post of Junior Engineer (Civil) - The petitioner superannuated in the year 2018 – Petition allowed to the extent that the respondent-University directed to hold a review DPC and consider the case of the petitioner for promotion against the post of Junior Engineer (Civil) as from the date when his name was rejected for want of six months Departmental Training Course - The name of the petitioner ordered to be considered on the strength of the certificate of three months departmental training course which he was possessing - If found eligible for promotion, petitioner ordered to be promoted to the post of Junior Engineer (Civil) without disturbing any other incumbent who stood promoted against said post - **Further held** - If found eligible, the petitioner be given notional benefits as from the date he is found fit for promotion by the DPC up to the date of his superannuation, and post superannuation, benefits be granted in actual by determining them as if the petitioner superannuated from the post of Junior Engineer (Civil). (Paras 3 to 8)

The following judgment of the Court was delivered:

Ajay Mohan Goel, Judge(*Oral*)

By way of this petition, the petitioner has sought a direction to the respondent/University to promote him against the post of Junior Engineer (Civil) upon completion of fifteen years of service against the post of Work Inspector and also on the strength of his having obtained the certificate of three months training programme in Civil Engineering (Grade A).

2. Brief facts necessary for the adjudication of the present petition, as can be culled out both from the petition filed by the petitioner as also the reply filed by the respondent-University, are that the petitioner joined the respondent-University as a Mortar Mate w.e.f. 03.03.1979 and he worked as such on work charge basis up to 23rd of July, 1996. His services were regularized w.e.f. 24.07.1996, as a Junior Technician (Work Inspector).

3. Respondent-University is having Recruitment and Promotion Rules for the post of Junior Engineer (Civil), which have been issued in terms of notification dated 16th January, 2013, appended with the petition as Annexure P-1. As per the said Rules, the post of Junior Engineer (Civil) is to be filled in 75% by way of direct recruitment and 25% by way of promotion. There are seven feeder categories mentioned in Rule 13, from which, an incumbent can be promoted against the post of Junior Engineer (Civil). This Court is concerned with Clause (vii) thereof, which *inter alia* provides that the post of Junior Engineer (Civil) will be filled by promotion from amongst Work Inspectors, who are matriculates or posses its equivalent recognized qualification, with at least 15 years of regular service on regular combined with continuous *adhoc* service rendered, if any, in the gradeand completed successfully the prescribed Departmental Training Course of six months duration. As mentioned herein above, it is not in dispute that as on the date when the said Rules came into force, the petitioner was having fifteen years of regular service as a Work Inspector and further he was also possessing the qualification of matriculation. The issue is with regard to the prescribed Departmental Training Course of six months duration. There is on record appended with the petition as Annexure P-3, copy of communication dated 11.07.2022, addressed by the Estate Officer of the respondent-University to the Principal of Government Polytechnic, Sundernagar, Himachal Pradesh, on the subject "Training Courses for in-service unqualified Work Inspectors". Perusal thereof demonstrates that the petitioner was sponsored by the respondent-University to undergo the training course, duration of which was not six months but only three months.

4. At this stage, it is also relevant to refer another communication on record i.e. Annexure P-8 dated 5th April, 2014, addressed by Registrar of the respondent-University to the Engineer-in-Chief, Himachal Pradesh Public Works Department, on the subject "Promotion to the post of Junior Engineer

(Civil) from feeder category-clarification regarding". By way of this communication, clarification was sought by the respondent-University from the Engineer-in-Chief of the Himachal Pradesh Public Works Department as to whether incumbent similarly situated as the petitioner, who had undergone three months Departmental Training Course stood promoted against the post of Junior Engineer (Civil) or not and Annexure P-8A appended with the petition, which is a communication addressed by the Engineer-in-Chief of Himachal Pradesh Public Works Department to the Registrar of the respondent-University dated 19.04.2014, demonstrates that before the promulgation of provision of sixth month Department Training in the R&P Rules, the Junior Engineers, who were having three months Departmental Training, were considered for promotion.

5. The response, which has been filed to the writ petition by the respondents is clear and categoric that the only reason as to why the petitioner was not considered for promotion against the post of Junior Engineer (Civil), when a vacancy to the quota of the petitioner became available that he was not fulfilling the eligibility criteria of having six months Departmental Training. This fact is further evident from the instructions, which have been imparted to the learned counsel for the respondent-University by the Registrar of the respondent-University dated 1st December, 2022, which stand perused and returned back to the learned Counsel. A perusal thereof demonstrates that in the year 2014, the petitioner was not considered for promotion against the post of Junior Engineer (Civil) despite vacancy to the feeder category pertaining to the petitioner being available for the reason that he was not fulfilling the eligibility criteria. This Court is aware that the eligibility of an incumbent for promotion has to be seen in terms of the Rules which are in vogue as on the date the DPC meets to consider the eligible candidates for such promotions. In the present case, the promotion has been denied to the petitioner on the sole ground that the petitioner as on

the date of consideration was not possessing six months Departmental Training. I have already referred hereinabove to the communication, in terms whereof, the petitioner was sent by the respondent-University for Departmental Training. The reason as to why the petitioner underwent three months Departmental Training and not six months Departmental Training was that he was sponsored for training by the respondent-University, duration of which was only three months. This means that it is not on account of the fault of the petitioner or omission on his part that he was not conferred promotion for want of six months Departmental Training. At the cost of repetition, it is stated that the reason as to why he was possessing three months Departmental Training was that he was sent by the respondent-University only for three month Departmental Training and not six month training.

6. In these circumstances, this court is of the considered view, as it is not the case of the respondent-University that after new Rules came into force, the petitioner was called upon to either undergo six months Departmental Training or further departmental training of three months but he refused, the petitioner cannot be made to suffer for the acts of omission of the respondent-University. As already mentioned hereinabove, the petitioner joined the service of the respondent-University as a Mortar Mate and thereafter, he rose to the rank of Junior Technician (Work Inspector) on account of sheer hard work and the number of years of service he rendered with the respondent-University. To give impetusto such employees, there was a provision in the Recruitment and Promotion Rules, for promoting unqualified Work Inspectors, who are at least Matriculate to the post of Junior Engineer (Civil). The condition of Departmental Training of six months as is contained in the R&P Rules, cannot create a hurdle in the path of an incumbent for promotion who has undergone departmental training of lesser duration on the asking of the respondent-University and who subsequently

was not called upon to undergo further training of three months so as to become eligible in terms of the R&P Rules. It appears that the reason as to why the petitioner was made to undergo three months Departmental Training was in terms of the Rules, which were in force at the relevant time when the petitioner was sent for training, contemplated three months Departmental Training only, for being eligible for promotion against the post of Junior Engineer(Civil).

7. As already mentioned hereinabove, the case of the petitioner was considered and rejected for promotion against the post of Junior Engineer (Civil) in the year 2014. New Rules had come into force w.e.f. 16.01.2013, in terms of Notification Annexure P-1. It was incumbent upon the respondent–University, after said Rules came into force, to call upon the petitioner to undergo further training of three months or another option available with the respondent-University was to confer promotion to the petitioner against the post of Junior Engineer (Civil) subject to the condition of his undergoing further training of three months. None of the said options having been exercised by the respondent-University, the same could not have debarred the petitioner from being promoted to the post of Junior Engineer (Civil). Incidentally, the Court stands informed that the petitioner has now superannuated in the year 2018.

8. Accordingly, in view of the above discussion, this writ petition is allowed to the extent that the respondent-University is directed to hold a review DPC and consider the case of the petitioner for promotion against the post of Junior Engineer (Civil) as from the date when his name was rejected for want of six months Departmental Training Course. The name of the petitioner will be considered on the strength of the certificate of three months departmental training course which he is possessing and if found eligible for promotion, he will be promoted to the post of Junior Engineer (Civil) without disturbing any other incumbent who stood promoted against said post.

Needful be done within a period of two months from today. If found eligible, the petitioner be given notional benefits as from the date he is found fit for promotion by the DPC up to the date of his superannuation, and post superannuation, benefits be granted in actual by determining them as if the petitioner superannuated from the post of Junior Engineer (Civil).

The petition stands disposed of in above terms. Pending miscellaneous application(s), if any, also stand disposed of accordingly.

BEFORE HON'BLE MS. JUSTICE JYOTSNA REWAL DUA, J.

Ramesh Chand Verma .....Petitioner

Versus

H.P. Agro Industries Corporation Ltd.
and others .....Respondents

For the Petitioner: Mr. Bhuvnesh Sharma, Senior Advocate with Mr. Parav Sharma, Advocate.

For the Respondents: None for respondents No.1 and 2.

Mr. Y.P.S. Dhaulta, Mr. Rupinder Singh Thakur and Mr. Navlesh Verma, Additional Advocates General with Ms. Seema Sharma, Deputy Advocate General, for respondents No.3 and 4.

Mr. Manoj Kumar, Marketing Manager and Ms. Asha Guleria, Legal Assistant, present in person alongwith record.

CWPOA No.5455 of 2019
Decided on: 13th April, 2023

Constitution of India, 1950 – Article 226 - Equal pay for equal work - Petitioner was appointed as Chemist in the respondent-Corporation in March, 1983 - Promoted to the post of Manager Production on 04.10.1989 - Further promoted to the post of Production Manager on 06.03.2003 – There were two feeder categories for promotion to the post of General Manager (Rs.13500-16800/-), viz. (i) post of Production Manager and (ii) post of Chief Finance Officer, both in the pay scale of Rs.10025-15100/- one Sh. R.S. Sublaik was holding the post of Chief Finance Officer in the pay scale of Rs.10025-15100/- respondents granted him higher pay scale of Rs.13500-16800/- w.e.f. 02.08.2007 -

He received higher pay scale till his retirement on 31.05.2010 as Chief Finance Officer – Petitioner represented for grant of same pay scale on ground of parity - Service Committee of the respondent-Corporation rejected the representation on 26.09.2014 – **Held** - When two categories of posts, governed by separate R&P Rules, different modes of recruitment, different qualifications and different job profiles, it is then not necessary that they are to enjoy the same pay scales only on the ground that their further channel of promotion is same, i.e. the post of General Manager - **Further held** - The respondents vide office letter dated 28.08.2010 have again scaled down the pay scale of the post of Chief Finance Officer from Rs.13500-16800/- (enjoyed by the incumbent namely Sh. R.S. Sublaik w.e.f. 02.08.2007 till his retirement on 31.05.2010) to Rs.10025-15100/- hence, with effect from 28.08.2010, the claim of the petitioner to the higher scale of Rs.13500-16800/- on the analogy of the higher pay scale having been released to the post of Chief Finance Officer, does not survive – **Further held** - There cannot be any equality in the matter of illegality – Petition dismissed. (Paras 4 and 5)

Cases referred:

Sunil Kumar Soni Versus State of Rajasthan and othersSLP(C) No.27633/2017;

Stae of Madhya Pradesh & Ors. vs. Ramesh Chandra Bajpai(2009) 13 SCC 635;

The following judgment of the Court was delivered:

Jyotsna Rewal Dua, Judge

CMP(T) No.161 of 2023

Learned Senior Counsel for the petitioner seeks permission to withdraw the application with liberty to seek appropriate remedy for claiming the relief of promotion to the post of General Manager w.e.f. October, 2009 as this prayer is not the part and parcel of the writ petition. The application is accordingly dismissed as withdrawn with

liberty aforesaid. All rights and contentions of the parties in that regard are left open.

CWPOA No.5455 of 2019

The petitioner, in essence, has staked his claim to the higher pay scale of Rs.13500-16800/- w.e.f. 02.08.2007 alongwith all consequential benefits. He has also prayed for quashing of the minutes of Service Committee Meeting of respondents No.1 and 2-Corporation held on 26.09.2014, whereby his claim for this pay scale was rejected.

2. Facts:-

2(i). The petitioner was appointed as Chemist in the respondent-Corporation in March, 1983. He was promoted to the post of Manager Production on 04.10.1989. The petitioner was further promoted to the post of Production Manager on 06.03.2003 and placed in the pay scale of Rs.10025-15100/-.

2(ii). In terms of the applicable Recruitment & Promotion Rules (in short 'R&P Rules'), the post of Production Manager was a feeder channel post for further promotion to the post of General Manager in the pay scale of Rs.13500-16800/-.The post of Chief Finance Officer in the pay scale of Rs.10025-15100/- was also a feeder category post for promotion to the post of General Manager. Thus, there were two feeder categories for promotion to the post of General Manager (Rs.13500-16800/-), viz. (i) post of Production Manager and (ii) post of Chief Finance Officer, both in the pay scale of Rs.10025-15100/-.

2(iii). One Sh. R.S. Sublaik was holding the post of Chief Finance Officer in the pay scale of Rs.10025-15100/-. The respondents granted him higher pay scale of Rs.13500-16800/- w.e.f. 02.08.2007. Sh. R.S.

Sublaik (not a party to this petition) statedly received this higher pay scale till his retirement on 31.05.2010 as Chief Finance Officer.

2(iv). The grievance of the petitioner is that on the analogy of the higher pay scale of Rs.13500-16800/- released by the respondents to Sh. R.S. Sublaik-the Chief Finance Officer, the petitioner also represented for grant of same pay scale to him as he was holding the post of Production Manager in the pay scale of Rs.10025-15100/-. The posts of Production Manager and that of Chief Finance Officer enjoyed this same pay scale till 01.08.2007. The respondents recommended the case of the petitioner for grant of higher pay scale, i.e. at par with the one granted to Sh. R.S. Sublaik, on 13.06.2008 (Annexure A-2) and thereafter on 31.05.2010 (Annexure A-3). However, the Service Committee of the respondent-Corporation illegally turned down the case of the petitioner for grant of higher pay scale of Rs.13500-16800/- to him on 26.09.2014 vide Annexure A-6. Hence, the writ petition was preferred by the petitioner for grant of following substantive relief:-

> *"(i) That the office order dated 26.9.2014, whereby the higher pay-scale of Rs.13500-16800/- due to the applicant, has been denied may kindly be quashed and set aside and the respondents may further be directed to grant the higher pay-scale of Rs.13500-16800/- to the applicant w.e.f. 2.8.2007 with all consequential benefits."*

3. Submissions:-

Learned Senior Counsel for the petitioner submitted that the posts of Production Manager and Chief Finance Officer were the feeder category posts for promotion to the post of General Manager. Both these feeder category posts were in the same pay scale of

Rs.10025-15100/-. The promotional post of General Manager was in the higher pay scale of Rs.13500-16800/-. Once the pay scale of Sh. R.S. Sublaik, occupying the post of Chief Finance Officer, was raised to Rs.13500-16800/-, then, it was incumbent upon the respondents to have granted the same higher pay scale to the petitioner. Non-release of the higher pay scale to the petitioner was an act of discrimination on part of the respondents. The petitioner could not have been singled out for denying the benefit of higher pay scale released to his counterpart-Sh. R.S. Sublaik, who was holding the feeder post in the parallel channel of promotion to the post of General Manager.

Learned Additional Advocate General defended the denial of higher pay scale to the petitioner. It was submitted that the posts of Production Manager and Chief Finance Officer were governed by separate set of R&P Rules. The eligibility/educational criteria and other relevant parameters for recruitment/promotion to these two feeder channels were governed by different set of rules. The petitioner cannot claim parity with the pay scale attached to the post of Chief Finance Officer. Learned Additional Advocate General also submitted that even otherwise, the petitioner cannot make a claim for negative parity. The higher pay scale of Rs.13500-16800/- released to Sh. R.S. Sublaik w.e.f. 02.08.2007 was withdrawn by the respondents vide office letter dated 28.08.2010. The pay scale of the post of Chief Finance Officer was brought down from Rs.13500-16800/- to Rs.10025-15100/- w.e.f. 28.08.2010. Hence, with effect from 28.08.2010, the claim of the petitioner for the grant of higher pay scale does not survive.

4. Conclusions:-

Heard learned counsel for the parties and gone through the material available on record. For the following reasons, the relief prayed for by the petitioner cannot be granted to him:-

4(i). Legal Position:-

While deciding ***Civil Appeal No.3892 of 2022 (State of Madhya Pradesh and others Versus Seema Sharma)*** on 12.05.2022, Hon'ble Apex Court, following the ratio of law laid down in ***(2009) 13 SCC 635 (Stae of Madhya Pradesh & Ors. vs. Ramesh Chandra Bajpai)***, held that doctrine of equal pay for equal work could only be invoked when the employees were similarly circumstanced in every way. Mere similarity of designation or similarity in quantum of work was not determinative of equality in the matter of pay scales. The Court has to consider all relevant factors such as the mode of recruitment, qualifications for the post, nature of work, value of work, responsibilities involved and various other factors. It was also held that fixation of pay scales is a matter of policy. The Courts can interfere only in exceptional cases, where there is discrimination between two sets of employees appointed by the same authority in the same manner where the eligibility criteria is also the same and the duties are also identical in every aspect.

An earlier decision rendered on 07.04.2022 by the Hon'ble Apex Court in ***Civil Appeal No.2661/2015 (State of Uttarakhand vs. Sudhir Budakoti & Others)*** was reiterated, which held that mere differential treatment on its own cannot be termed as an "anathema to Article 14 of the Constitution". When there is a reasonable basis for a classification adopted by taking note of the exigencies and diverse

situations, the Court is not expected to insist on absolute equality by taking a rigid and pedantic view as against a pragmatic one. The object of classification is meant for providing benefits to an identified group of persons, who form a class of their own. When the differentiation is clearly distinguishable with adequate demarcation duly identified, the object of Article 14 gets satisfied. There is no way the Courts could act like appellate authorities especially when a classification is introduced by way of a policy decision clearly identifying the group of beneficiaries by analysing the relevant materials. When two identified groups are not equal, certainly they cannot be treated as a homogeneous group. A reasonable classification would not injure the equality enshrined under Article 14 when there exists an intelligible differentia between two groups having a rational relation to the object. An interference would only be called for on the Court being convinced that the classification causes inequality among similarly placed persons. The role of the Court being restrictive, generally the task is best left to the concerned authorities. When a classification is made on the recommendation made by a body of experts constituted for the purpose, Courts will have to be more wary of entering into the said arena as its interference would amount to substituting its views, a process which is best avoided.

It will also be relevant to refer to a decision dated 22.02.2023, rendered by the Hon'ble Apex Court in ***Civil Appeal No.8329 of 2011 (Union of India Versus Indian Navy Civilian Design Officers Association and another)***, wherein it was held that the doctrine "equal pay for equal work" is not an abstract doctrine. Equal pay must be for equal work of equal value. The equation of posts

and determination of pay scales is the primary function of the Executive and not of the Judiciary. The Courts therefore should not enter upon the task of job evaluation which is generally left to the expert bodies like the Pay Commissions which undertake rigorous exercise for job evaluation after taking into consideration several factors like the nature of work, the duties, accountability and responsibilities attached to the posts, the extent of powers conferred on the persons holding a particular post, the promotional avenues, the Statutory rules governing the conditions of service, the horizontal and vertical relativities with similar jobs etc. It may be true that the nature of work involved in two posts may sometimes appear to be more or less similar, however, if the classification of posts and determination of pay scale have reasonable nexus with the objective or purpose sought to be achieved, namely, the efficiency in the administration, the Pay Commissions would be justified in recommending and the State would be justified in prescribing different pay scales for the seemingly similar posts. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues or frustration due to longer duration of promotional avenues is also an acceptable reason for pay differentiation. It is also a well-accepted position that there could be more than one grade in a particular service. The classification of posts and the determination of pay structure, thus falls within the exclusive domain of the Executive, and the Courts or Tribunals cannot sit in appeal over the wisdom of the Executive in prescribing certain pay structure and grade in a particular service. It was also held in the aforesaid judgment that the powers of judicial review in the matters

involving financial implications are also very limited. The wisdom and advisability of the Courts in the matters concerning the finance, are ordinarily not amenable to judicial review unless a gross case of arbitrariness or unfairness is established by the aggrieved party.

4(ii). In the backdrop of above legal position, the facts of the case may now be examined. It is an admitted position that Production Manager and Chief Finance Officer are two separate category of posts in the respondent-Corporation. These two categories of posts are governed by separate set of R&P Rules. In terms of these rules, the educational criteria and age requirement for the two sets of posts are all different. The promotion/recruitment to the posts of Production Manager and Chief Finance Officer is also governed by separate and distinct criteria. Therefore, just because at one point of time, both these posts were in the same pay scale of Rs.10025-15100/- would not mean that these posts are required to be maintained in the same pay scale for all times to come. Grant of higher pay scale to the post of Chief Finance Officer would not *ipso-facto* mean that the post of Production Manager is also required to be maintained in the same pay scale. The nature of duties assigned to the incumbents holding these two categories of posts are also different. Thus, when two categories of posts, governed by separate R&P Rules, different modes of recruitment, different qualifications and different job profiles, it is then not necessary that they are to enjoy the same pay scales only on the ground that their further channel of promotion is same, i.e. the post of General Manager.

Point is answered accordingly against the petitioner.

4(iii). Insofar as the claim of the petitioner in respect of release of higher pay scale to Sh. R.S. Sublaik, the holder of the post of Chief Finance Officer, is concerned, apart from the discussion in paras 4(i) and 4(ii) above, suffice to observe that the respondents vide office letter dated 28.08.2010 have again scaled down the pay scale of the post of Chief Finance Officer from Rs.13500-16800/- (enjoyed by the incumbent namely Sh. R.S. Sublaik w.e.f. 02.08.2007 till his retirement on 31.05.2010) to Rs.10025-15100/-. Hence, with effect from 28.08.2010, the claim of the petitioner to the higher scale of Rs.13500-16800/- on the analogy of the higher pay scale having been released to the post of Chief Finance Officer, does not survive. It is also well settled that there cannot be any equality in the matter of illegality. [Refer ***SLP(C) No.27633/2017 (Sunil Kumar Soni Versus State of Rajasthan and others)***, decided on 28.03.2023].

5. In view of the above, I find no merit in the claim made by the petitioner. The present petition is accordingly dismissed alongwith pending miscellaneous application(s), if any.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

Vikhyat Guleria & Ors. .....Petitioners.

Versus

State of Himachal Pradesh & Ors. .....Respondents.

For the petitioners : Mr. P.D. Nanda, Advocate.

For the respondents : Mr. Arsh Rattan, Deputy Advocate General, for respondent No. 1.

Mr. Vikrant Thakur, Advocate, for respondent No. 2.

Mr. Manish Sharma, Advocate, for respondents No. 3, 4 and 6 to 8.

Name of respondent No. 5 stands deleted.

CWPOA No. 6938 of 2020
Reserved on:20.4.2023
Decided on:28.4.2023

Constitution of India, 1950 – Article 226 **–** Himachal Pradesh Public Service Commission invited applications for recruitment to the post of Assistant Conservator of Forest - For males the requirement of chest measurement was 79 Cms without expansion and 84 Cms with expansion - For females it was 74 Cms without expansion and 79 Cms with expansion – Respondents failed the chest measurement test – They approached Himachal Pradesh Administrative Tribunal – Fresh physical test was allowed and respondents were permitted to provisionally appear in the interview – Respondents cleared the physical test – Result was permitted to be declared – Petitioners filed CWP – Medical Board

was constituted with consent of the parties – Petitioners filed Review Petition which was dismissed – SLP was also dismissed – Present petition was filed on the ground that the rules governing the selection process by respondent No. 2 nowhere provided for re-test on physical standards - **Held** - Indisputably the order dated 2.5.2019 was passed by Division Bench in CWP No. 656 of 2019 on the basis of the consent of parties - The petitioners were consenting parties and cannot be allowed to resile from such consent especially after dismissal of their review petition and also failure to seek special leave to appeal from Hon'ble Supreme Court - The order dated 2.5.2019 on one hand validated the orders passed by learned Tribunal, on the other, the parties were afforded another opportunity to submit themselves to re-test of chest expansion - Having given their consent to passing of such an order, the petitioners cannot be allowed to re-open the issue- Petition dismissed. (Paras 13 to 17)

The following judgment of the Court was delivered:

Satyen Vaidya, *Judge*

By way of instant petition, petitioners have prayed for following reliefs:

"i) This Hon'ble Court may be pleased to quash and set aside Notification dated 20.5.2019, Annexure A-12 in so far as appointment of respondent No. 3, 4, 6 and 8 as Assistant Conservator of Forests is concerned.

ii) That the entire process of selection for the posts of Conservator of Forest Class-I (Gazetted) may kindly be quashed and set aside.

iii) The Press Note at Annexure A-9 dated 22.2.2019 whereby the result for the post of Assistant Conservator of Forests Class-I (Gazetted) in the Department of Forests declared and result prepared by the respondents after the judgment

passed by the Hon'ble High Court of Himachal Pradesh in CWP No. 656 of 2019 may kindly be quashed and set aside.

iv) That the re-test by respondents No. 1 & 2 on 26.12.2018 in respect of physical standards of those candidates who had not passed this test initially conducted on 3.10.2018 may kindly be quashed and set aside.

v) The respondent No. 1 and 2 may kindly be directed to conclude the selection process on the basis of result declare at annexure P-5 dated 10.12.2018 and take it to its logical conclusion."

2. Himachal Pradesh Public Service Commission (Respondent No. 2) invited applications from eligible candidates for recruitment to the post of Assistant Conservator of Forests, Class-I (Gazetted) (HPFS) in the department of Forests, Himachal Pradesh vide advertisement No. 7 of 2017, dated 12.7.2017. The candidates were mandatorily required to undergo and qualify screening test, written test, physical standards and walking test before being called for interview.

3. The prescribed physical standards were part of essential qualifications. For males the requirement of chest measurement was 79 Cms without expansion and 84 Cms with expansion and for females it was 74 Cms without expansion and 79 Cms with expansion.

4. The case as projected by the petitioners is that they had qualified the physical standards, whereas private respondents had failed in chest expansion to the requisite extent. In total, six candidates including the petitioners were successful and were called for interview on 20.12.2018 by respondent No. 2.

5. Private respondents having failed to finally qualify for interview, approached Himachal Pradesh Administrative Tribunal by way of Original Application No. 7322 of 2018. On 14.12.2018, an interim order in following terms was passed by learned Tribunal:-

> *"4. In the facts and circumstances, before the respondents are called to enter upon replies, it shall be expedient and in the interest of justice the* ***Short replies/instructions*** *are filed on behalf of the respondents. Ordered accordingly.*
> *5. However, in the facts and circumstances and documents filed alongwith the original application, there shall be a direction to respondent No. 1-Public Service Commission to permit the applicants to appear in the interview for the post of Assistant Conservator of Forests (ACF) fixed for 20th December, 2018, provisionally. However, their result shall not be declared and produced before this Tribunal in a sealed cover on the next date of hearing.*
> *6. At the same time, the respondents/competent authority(s) shall be well within their right to put the applicants to fresh physical test for measurement of their chests with and without expansion ……"*

6. The OA No. 7322 of 2018 was finally disposed of by learned Tribunal on 4.1.2019 and an order to the following effects was passed:-

> *"In terms of the previous order dated 14.12.2018, particularly para-6 thereof, the learned Standing Counsel for respondent No. 1-Public Service Commission has filed result of fresh physical test for measurement of the applicants, inter-alia, of their chest with and without expansion in a sealed cover, which is allowed to be opened, according to which, all the applicants*

> *alongwith four others have come up to the mark and, thus, fulfill the eligibility criteria on that parameter.*
> *2. The result after resealing is returned to the aforesaid official of respondent No. 1-Public Service Commission.*
> *3. In view of the above, the original application is disposed of accordingly in terms of the aforesaid result.*
> *4. Respondent No. 1-Public Service Commission shall be free to declare result of the process under reference."*

7. In pursuance to the directions of learned Tribunal, the private respondents were submitted to re-test on Chest expansion and all of them were declared qualified. They were interviewed besides petitioners and respondents No. 3,4,6 and 8 were selected against the categories, in which petitioners were competing.

8. Petitioners approached this Court by way of CWP No. 656 of 2019, *inter alia*, assailing the directions issued by learned Tribunal in OA No. 7322 of 2018 and consequent selection of private respondents. A Division Bench of this Court disposed of CWP No. 656 of 2019 in following terms:-

> *"The controversy here pertains to the eligibility of respondents No. 3 to 8 for the post of Assistant Conservator of Forests, with reference to the requirement of minimum chest measurements (expended and unexpended).*
> *2. Learned Senior counsel for the private respondents, on instructions, states that they have no objection if their fresh chest measurements are conducted by the authorities of Indira Gandhi Medical College, Shimla. Mr. D.K. Khanna, learned counsel representing respondent No.2-Himachal*

Pradesh Public Service Commission also does not have any objection to this offer. The petitioners are willing to accept the offer made on behalf of respondents No.3, 4, 6 and 8.

3. In view of the broad consensus arrived at between the parties, the writ petition is disposed of with a direction to the Principal, Indira Gandhi Medical College, Shimla to constitute a Medical Board and carry out the chest measurements of respondents No. 3 to 8 (expended or unexpended) or any other selected candidate even if he is not a party respondent except the female candidates, if any. Similarly, the above-stated Medical Board shall carry out chest measurements of the petitioners (expended and unexpended) as well. The petitioners and the private respondents shall be at liberty to witness the process of chest measurements to be carried out by the Medical Board.

4. The Principal of Indira Gandhi Medical College, Shimla, may associate a police Officer from the police Department not below the rank of Dy.S.P., to assist the Medical Board for carrying the chest measurements. The Director General of Police, Himachal Pradesh, is directed to depute an Officer not below the rank of Dy.S.P for the aforesaid purpose. The measurements will be carried out within one week and an intimation to this effect may be sent to the petitioners and the private respondents on their respective mobile numbers, which they are directed to handover to the learned Additional Advocate General during the course of the day for onwards transmission to the Principal of the Medical College. Pending miscellaneous applications, if any, also stand disposed of accordingly."

9. The petitioners sought review of order dated 2.5.2019, passed in CWP No. 656 of 2019 by way of Review Petition No. 73 of 2019, however, they remained unsuccessful and Review Petition No. 73 of 2019 was disposed of by a Division Bench of this Court on 12.7.2019 in following terms:

> "The order under review is an order passed on consent. Therefore, there is no scope for review, hence, dismissed."

10. Petitioners preferred a SLP before Hon'ble Supreme Court seeking to assail order dated 12.7.2019, passed in Review Petition No. 73 of 2019, but again remained unsuccessful. The Special Leave was declined by Hon'ble Supreme Court vide order dated 18.10.2019.

11. Petitioners, have now again approached this Court by way of instant petition. Their main platform of challenge is that the rules governing the selection process by respondent No. 2 nowhere provided for re-test on physical standards. Petitioner further contend that by allowing the private respondents to undergo re-test on physical standards rights of petitioners have been prejudiced and the candidates who otherwise could not qualify the essential requirements of physical standards, w10ere finally selected.

12. I have heard learned counsel for the parties and gone through the record.

13. The private respondents were allowed to take re-test on chest expansion firstly under the order dated 14.12.2018 passed by learned Tribunal in OA No. 7322 of 2018 and thereafter in compliance

to the consent order passed by a Division Bench of this Court in CWP No. 656 of 2019.

14. The Division Bench of this Court while disposing of CWP No. 656 of 2019 had specifically recorded that petitioners were willing to accept the offer made on behalf of the private respondents, whereby they had offered themselves for fresh chest measurement to be conducted by authorities of Indira Gandhi Medical College, Shimla. Accordingly, the order was passed taking into consideration the broad consensus arrived at between the parties. Directions were then issued to the Principal, IGMC, Shimla to constitute a Medical Board and carry out the chest measurements of respondents No. 3 to 8 therein or any other selected candidate. Similarly, directions were issued for carrying out chest measurements of the petitioners as well. All the contesting private parties were given opportunity to witness the process of chest measurements to be carried out by the Medical Board.

15. Subsequent to passing of aforesaid order in CWP No. 656 of 2019, petitioners had sought review of the said order. The review petition of the petitioners was dismissed only on the ground that the order sought to be reviewed was an order passed on consent of the parties. Hon'ble Supreme Court also declined to grant Special Leave to the petitioners vide orders dated 18.10.2019 and 6.1.2020.

16. Thus, indisputably the order dated 2.5.2019 was passed by a Division Bench of this Court in CWP No. 656 of 2019 on the basis of the consent of parties. The petitioners were consenting parties and cannot be allowed to resile from such consent especially after dismissal of their review petition and also failure to seek special leave to appeal

from Hon'ble Supreme Court. The aforesaid order dated 2.5.2019 on one hand validated the orders passed by learned Tribunal, on the other, the parties were afforded another opportunity to submit themselves to re-test of chest expansion. That being so, it does not lie in the mouth of the petitioners now to say that the re-test of expansion was in violation of rules. Having given their consent to passing of such an order, the petitioners cannot be allowed to re-open the issue.

17. In view of above discussion, I find no merit in the petition and the same is accordingly dismissed. Pending miscellaneous application(s), if any, shall also stand disposed of.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

New India Assurance Company Ltd. ... Appellant

Versus

Smt. Fulla Devi and others ...Respondents

For the appellant: Mr. B.M. Chauhan, Senior Advocate, with Mr. Amit Himalvi, Advocate.

For the respondents: Mr. Surender Verma, Advocate, for respondent No.1.

Mr. Narender Sharma, Advocate, for respondent No.2.

Mr. Rajiv Jiwan, Senior Advocate with Mr. Prashant Sharma, Advocate, for respondent No.3.

FAO (WCA) No. 448 of 2010.
Reserved on: 20.04.2023
Decided on: 25.04.2023

Employees Compensation Act, 1923 – Section 22 - The deceased Sh. Santosh alias Ganpat Ram was a workman employed by respondent No.2 as a helper on JCB Machine - On 10.07.2008, the deceased was working on the JCB machine - Retaining wall of the road gave way, causing machine to roll down - Workman received fatal injuries and expired - Employer had purchased a policy of insurance for 15 workmen - Commissioner awarded compensation of Rs.4,36,940/- besides interest of Rs.1,04,870/- in favour of the claimant – Challenged - **Held** - No terms and conditions of the policy have been placed on record - the insurer/appellant is not justified in claiming the benefit of any exclusion clause – **Further held** - In absence of any details as to how many of 15 employees of insured were skilled and how many were unskilled

workmen and as to what was the salary drawn by each of them, it cannot be assumed that the deceased Santosh alias Ganpat Ram was getting salary less than Rs.4000/- **Further held**- The third and last contention raised on behalf of the insurer that the liability should have been fastened on respondent No.3 National Insurance Company Ltd. also deserves rejection for the reasons that it was for the claimant to have opted for claim of compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act – Appellant/insurer held liable to indemnify the insurer/employer - Appeal dismissed. (Paras 9 to 13)

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

By way of instant appeal under Section 30 of the Employees Compensation Act, the Appellant/Insurer has assailed Award dated 8.7.2010 passed by the Commissioner under Workmen Compensation Act-cum-SDO (C), Sundernagar, District Mandi, H.P. in Case No.16/2008, whereby respondent No.1 herein/claimant has been awarded a sum of Rs.5,41,910/- as compensation on account of death of Sh. Santosh alias Ganpat Ram.

2. Brief facts necessary for adjudication of appeal are that respondent No.1 (hereinafter referred to as the 'claimant') applied under Section 22 of the Employees' Compensation Act (for short, 'the Act') to the Commissioner under the Act for compensation on account of death of her son Sh. Santosh alias Ganpat Ram. The deceased Sh. Santosh alias Ganpat Ram was a workman employed by respondent No.2 (hereinafter referred to as the 'employer') as a helper on JCB Machine No. HP-51B-3921. On 10.07.2008, the deceased was working on the

aforesaid machine and in the meanwhile, retaining wall of the road on which the machine was parked gave way, causing machine to roll down alongwith the deceased. Consequently, the deceased received fatal injuries and died.

3. The appellant (hereinafter referred to as the 'insurer') was impleaded as respondent before the Commissioner as the employer had purchased a policy of insurance from the insurer having coverage for 15 of his workmen.

4. The Commissioner having found proofs in respect of the employment of the deceased with employer, his age, monthly wages and cause of accident etc. proceeded to award a compensation of Rs.4,36,940/- besides interest to the tune of Rs.1,04,870/- in favour of the claimant.

5. Dis-satisfied with the award passed by the Commissioner, the insurer has filed this appeal. On 22.11.2010, the appeal was admitted on following substantial questions of law:

> *(i) Whether the learned Commissioner below has erred in directing the appellant company to pay interest @ 12% per annum from one month after the date of the accident till the actual amount is realized. Whether the learned Commissioner below has erred in awarding interest to the petitioner more particularly when as per policy there is no liability of the appellant to pay interest?*
>
> *(ii) Whether the learned Commissioner has gravely erred in fastening the liability to pay compensation upon the appellant as the JCB machine which met with an accident and which resulted in death of the deceased, was not insured with the appellant?*
>
> *(iii) Whether the learned Commissioner has erred in passing orders to proceed against the appellant under section*

4-A(3)(b) of the Workman's Compensation Act within 30 days from the receipt of copy of the Award?

6. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

7. Learned Senior counsel representing the Appellant/Insurer has raised following contentions at the time of hearing:

(i) *The Commissioner was not justified in awarding interest against the insurer in view of exclusion clause contained in the policy of insurance.*

(ii) The assessment of wages of deceased @ Rs.4000/- per month by the Commissioner was against the terms of policy whereby the employer had insured 15 employees having accumulated charges of Rs.4,32,000/-. As per the insurer, the deceased could be given benefit of pro-rata wages in terms of the disclosure made in the insurance policy.

(iii) The employer had also purchased a policy of insurance from respondent No.3 i.e. National Insurance Company Ltd. under the Motor Vehicles Act and the claimant could have been granted compensation by fastening the liability on respondent No.3.

8. Substantial question of law No. (ii), as noticed above, appears to have been framed wrongly. It is not the case of appellant/ insurer that the employer had not purchased policy of insurance from it. Rather, the appellant/insurer has itself placed reliance upon the policy of insurance placed on record as Ext. R-3 in support of its contentions noticed above.

9. In order to test the contention of appellant/insurer regarding exclusion clause in the insurance policy to absolve it from liability of payment of interest, the material on record needs to be scanned.Noticeably, the insurer has not led any evidence before the

Commissioner. The policy of insurance effective between the dates 30.7.2007 to 29.7.2008, has been placed on record as Ext.R-3. The date of accident is 10.7.2008, which makes the above noted insurance policy relevant for adjudication. The document Ext.R-3 has been placed on record by the insurer. Evidently, no terms and conditions of the policy have been placed on record. Even the insured has not made any effort to place on record any terms and conditions of the policy of insurance which excludes the liability of payment of interest of the insurer. Thus, the insurer/appellant is not justified in claiming the benefit of any exclusion clause.

10. To support its contention regarding assessment of wages of the deceased on higher side, learned senior counsel representing the appellant/insurer has referred to the document Ex. R-3, policy of insurance, wherein the total wages in respect of 15 insured workmen has been shown as Rs.4,32,000/-. On the strength of this, he contends that the wages paid by the insured to his 15 employees has to be calculated pro-rata and in this view of the matter, the deceased would not be getting salary at Rs.4000/- per month. Learned senior counsel representing the insurer has further made a reference to the statement of insured recorded by the Commissioner as RW-1, wherein it was admitted that he had purchased the policy of insurance on the basis of Rs.4000/- and Rs.3000/- respectively as the wages for skilled and unskilled labourers. The contention so raised on behalf of the insurer is liable to be rejected for the reasons that the document Ext.R-3, has a format in which the details of skilled and unskilled workers is required to be provided. However, no such detail is there. The policy of insurance

is issued by the insurer and such lapse has not been explained. The total wages as shown to be paid by the insured to his 15 employees is Rs.4,32,000/-. In absence of any details as to how many of 15 employees of insured were skilled and how many were unskilled workmen and as to what was the salary drawn by each of them, it cannot be assumed that the deceased Santosh alias Ganpat Ram was getting salary less than Rs.4000/-. This assumes significance in light of the fact that the insured, while deposing before the Commissioner on oath, had specifically stated that he was paying Rs.4500/- per month to the deceased as helper with JCB machine. Neither such statement of insured has been rebutted nor any evidence contrary to his version has been placed on record. In such view of the matter, no fault can be found with the findings returned by the Commissioner, whereby the monthly wages of the deceased have been calculated as Rs.4000/- per month.

11. The third and last contention raised on behalf of the insurer that the liability should have been fastened on respondent No.3 – National Insurance Company Ltd. also deserves rejection for the reasons that it was for the claimant to have opted for claim of compensation either under the Workmen's Compensation Act or under the Motor Vehicles Act. The insurer in the instant case cannot have any possible grievance in that regard. Claimant sought her option to claim compensation under the Employees Compensation Act in preference to Motor Vehicles Act for which she had every right. The insured had purchased a policy of insurance under Employees Compensation Act for his 15 workmen from the appellant/insurer, therefore, the appellant/insurer is liable to indemnify the insurer/employer.

12. Learned senior counsel representing the insurer has further contended that the liability of penalty under the Act could not be fastened on the insurer and to that extent, the impugned award is bad in law. The Commissioner has drawn the operative part of the award in the following terms:

> *"11. Therefore, as per operative part of this judgment on the reasons mentioned above, the resent applicant shall be paid compensation amount to Rs.5,41,910/- (Rupees five lacs forty one thousand nine hundred ten only) by the opposite party No.3 by way of depositing the amount without deducting any tax at source, in this court within a period of one month from the date of receipt of copy of this order, failing which the proceedings u/s 14-A(3) (b) of the Act shall be initiated against the opposite party No.3."*

13. I have not found anything in the impugned award which fastens the liability of penalty on the insurer or directs it to pay the penalty. In the impugned order, it is only recorded that in case the insurer fails to deposit the awarded amount within one month from the date of receipt of copy of order, proceedings under Section 4-A (3) (b) of the Act shall be initiated against it. That being so, the grievance of the appellant/insurer, as noticed above, is pre-mature. It is not the case of appellant/insurer that any such proceeding has been initiated against it till date.

14. Substantial questions of law Nos. (i) and (iii) are answered accordingly.

15. In light of the above discussion, I find no merit in the appeal and the same is accordingly dismissed, so also the pending miscellaneous application(s), if any.

BEFORE HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

1. **RFA No. 174 of 2013**

Principal Secretary, PWD & others ...Appellants.

Versus

Mehar Chand & others ...Respondents

2. **RFA No. 175 of 2013**

Principal Secretary, PWD & others ...Appellants

Versus

Dharmpal & another ...Respondents

3. **RFA No. 176 of 2013**

Principal Secretary, PWD & others ...Appellants

Versus

Roshan Lal ...Respondent

4. **RFA No. 177 of 2013**

Principal Secretary, PWD & others ...Appellants

Versus

Bansi Ram & others ...Respondents.

For the appellants : Mr. Mohinder Zharaick, Additional Advocate General.

For the respondents : Mr. Virender Chauhan, Advocate, vice Mr. Surinder Saklani, Advocate.

RFA No. 174 of 2013 a/w RFA Nos. 175, 176 and 177 of 2013

Reserved on: 20.4.2023

Date of decision : 25.4.2023

Land Acquisition Act, 1894 – Section 18 - State Government issued notification under Section 4 of the Land Acquisition Act, 1894 for acquiring land measuring 0-41-23 hectares in Village Alyana, Tehsil Sarkaghat, District Mandi, H.P. for construction of Sarori-Rissa Road - Land Acquisition Collector, HP PWD, Mandi offered market value of Rs. 13,166.20 for entire land proposed to be acquired vide award dated 7.12.1995 – Respondents filed separate reference petitions - Reference petitions were decided by learned Additional District Judge, Mandi vide award dated 19.8.2011 - Compensation was reassessed at the rate of Rs. 31.30 per square meters for land irrespective of its classification - The benefit of consortium and interest under Sections 23 (1)(a), 28 and 34 of the Act was also awarded- RFA(s) filed - **Held** - The learned Reference Court was not right in assessing the market value of exemplar sale deed, which was executed after about eleven months from the date of issuance of notification under Section 4 of the Act - Except exemplar sale deed Ext. PW-1/A, the learned Reference Court did not place reliance on any other evidence for assessment of market value of the land - Impugned awards set aside and the matters remanded back for decision afresh. (Paras 10 to 13)

Cases referred:

General manager, OIL and Natural Gas Corporation Ltd vs. Rameshbhai Jivanbhai Patel 2008 (14) SCC 745;

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

All these appeals filed under Section 54 of the Land Acquisition Act have been heard and are being decided together, as these involved common question of facts and law and have also arisen from a common award dated 19.8.2011, passed by learned Additional District Judge, Mandi.

2. The State Government issued notification under Section 4 of the Land Acquisition Act, 1894 (for short 'the Act') on 8.7.1992 for acquiring land measuring 0-41-23 hectares in Village Alyana, Tehsil Sarkaghat, District

Mandi, H.P. for construction of Sarori-Rissa Road. The land was to be acquired, as noticed above, included the lands of respondents in the instant appeals.

3. The Land Acquisition Collector, HP PWD, Mandi vide award dated 7.12.1995 offered the market value of Rs. 13,166.20 for entire land proposed to be acquired.

4. The respondents herein and other land owners whose land was sought to be acquired filed reference petitions under Section 18 of the Act, which were registered as Reference Petitions No. 50 to 60 of 2003. The instant appeals arise out of Reference Petition No. 53 of 2003, titled as, Pat Ram deceased through LRs Mehar Chand and others vs. Land Acquisition Collector & another, Reference Petition No. 58 of 2003 titled as, Melahar deceased through LRs Bansi Ram & others vs. Collector Land Acquisition & another, Reference Petition No. 56 of 2003, titled as, Roshan Lal vs. Collector Land Acquisition & another and Reference Petition No. 54 of 2003 titled Santu deceased through LRs, Dharampal & another vs. Collector Land Acquisition & another.

5. All the above noted Reference Petitions were decided by learned Additional District Judge, Mandi vide award dated 19.8.2011. The compensation was reassessed at the rate of Rs. 31.30 per square meters for land irrespective of its classification. The benefit of consortium and interest under Sections 23 (1)(a), 28 and 34 of the Act was also awarded.

6. Aggrieved against the award passed by learned Additional District Judge in Reference Petitions No. 53, 58, 56 and 54 of 2003, the appellants have assailed the same before this Court by filing appeals under Section 54 of the Act.

7. I have heard the learned counsel for the parties and have also gone through the record carefully.

8. Mr. Mohinder Zharaick, learned Additional Advocate General has contended that the impugned award deserves interference, as the learned Reference Court has based its findings on only one exemplar sale deed dated 26.8.1993, Ext. PW-1/A. He further contended that the area sold vide Ext. PW-1/A was only 0-2-13 hectares and the sale deed for such a small area could not have been legally made the basis for determining the market value of the land. Learned Additional Advocate General has also taken exception to the impugned award on the ground that Ext. PW-1/A could not have been relied upon as an exemplar sale deed by learned Reference Court, as the transaction recorded therein was much subsequent in time to the date of issuance of notification under Section 4 of the Act.

9. The first contention raised by learned Additional Advocate General that on account of smallness of the land involved in exemplar sale deed, the market value could not be assessed, needs to be rejected for the reasons that the learned Reference Court had assessed the market value by making deduction at the rate of Rs. 33.33/- percent from the market value of Rs. 46.94/- per square meters. Learned Reference Court after making such deduction had assessed the market value only of Rs. 31.30/- per square meters.

10. The next contention raised by learned Additional Advocate General is to the effect that reference to the sale deed Ext. PW-1/A being later in time to the date of notification under Section 4 of the Act was impermissible. The sale deed Ext. PW-1/A relied upon by learned Reference Court was executed on 26.8.1993 i.e. almost after eleven months of issuance of notification under Section 4 of the Act.

11. In ***General manager, OIL and Natural Gas Corporation Ltd*** vs. ***Rameshbhai JivanbhaiPatel2008 (14) SCC745***, it has been held that the assessment of market value should be avoided on the exemplar sale

transactions, which have taken place after the issuance of notification under Section 4 of the Act. Para-16 of the judgment reads as under:-

> *"16. Much more unsafe is the recent trend to determine the market value of acquired lands with reference to future sale transactions or acquisitions. To illustrate, if the market value of a land acquired in 1992 has to be determined and if there are no sale transactions/ acquisitions of 1991 or 1992 (prior to the date of preliminary notification), the statistics relating to sales/acquisitions in future, say of the years 1994-95 or 1995-96 are taken as the base price and the market value in 1992 is worked back by making deductions at the rate of 10% to 15% per annum. How far is this safe? One of the fundamental principles of valuation is that the transactions subsequent to the acquisition should be ignored for determining the market value of acquired lands, as the very acquisition and the consequential development would accelerate the overall development of the surrounding areas resulting in a sudden or steep spurt in the prices. Let us illustrate. Let us assume there was no development activity in a particular area. The appreciation in market price in such area would be slow and minimal. But if some lands in that area are acquired for a residential/commercial/industrial layout, there will be all round development and improvement in the infrastructure/ amenities/facilities in the next one or two years, as a result of which the surrounding lands will become more valuable. Even if there is no actual improvement in infrastructure, the potential and possibility of improvement on account of the proposed residential/commercial/ industrial layout will result in a higher rate of escalation in prices. As a result, if the annual increase in market value was around 10% per annum before the acquisition, the annual increase of market value of lands in the areas neighbouring the acquired land, will become much more, say 20% to 30%, or even more on account of the development/proposed development. Therefore, if the percentage to be added with reference to previous acquisitions/sale transactions is 10% per annum, the percentage to be deducted to arrive at a market value with reference to future acquisitions/sale transactions should not be 10% per annum, but much more. The percentage of standard*

> *increase becomes unreliable. Courts should therefore avoid determination of market value with reference to subsequent/future transactions. Even if it becomes inevitable, there should be greater caution in applying the prices fetched for transactions in future. Be that as it may."*

12. In light of above exposition, the learned Reference Court was not right in assessing the market value of exemplar sale deed, which was executed after about eleven months from the date of issuance of notification under Section 4 of the Act. Noticeably, except exemplar sale deed Ext. PW-1/A, the learned Reference Court has not placed reliance on any other evidence for assessment of market value of the land. Thus, the impugned award, passed in Reference Petitions No. 53, 58, 56 and 54 of 2003 cannot be sustained.

13. Accordingly, the appeals are allowed. The impugned awards are set aside and the matters are remanded back to learned Reference Court to decide Reference Petitions No. 53, 58, 56 and 54 of 2003 afresh. Since initiation of reference petitions dates back to the year 2002, it is expected from the learned Reference Court that the above noted reference petitions will be decided by such Court with sufficient expedition and preferably within three months from the date of receipt of this judgment. Record be sent back forthwith. Pending applications, if any, also stand disposed of.

BEFORE HON'BLE MR. JUSTICE SANDEEP SHARMA, J.

Amit Kumar

.....Petitioner.

Versus

State of Himachal Pradesh and Ors.

.....Respondents

2. CWPOA No. 101 of 2019

Ramesh Kumar and Anr.

.....Petitioners.

Versus

State of Himachal Pradesh and Ors.

.....Respondents

3. CWPOA No. 186 of 2019

Dalip Kumar

.....Petitioner.

Versus

State of Himachal Pradesh and Ors.

.....Respondents

For the Petitioner(s): Mr. Dilip Sharma Senior Advocate with Mr. Manish Sharma, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General, with Mr. Rajan Kahol and Mr. Vishal Panwar, Additional Advocates General and Mr. Rahul Thakur, Deputy Advocate General.

Civil Writ Petition (Original Application)
Nos. 196, 101 and 186 of 2019
Date of Decision: 13.3.2023

Constitution of India, 1950 - Writ Jurisdiction- Article 226- Deputy Director of Elementary Education in ReckongPeo conducted interviews to fill the positions of Drawing Master, PET, and Shastri- Petitioners invited to interview for Scheduled Caste posts, were not considered for appointment due to the State Government's notification dated August 16, 2004, which mandates that Class-III and Class-IV posts be filled by local residents of Kinnaur- The constitutional validity of this notification was challenged- **Held**- Notification prescribing condition of residence while offering public employment in tribal areas against Class-III and Class-IV posts is not sustainable and accordingly deserves to be quashed and set-aside being contrary to the provisions contained in Article 16 (3) and Article 35 of the Constitution of India- Petitioners were qualified to be offered appointment from due date. (Paras 16 and 17)

Cases referred:

A.V.S. Narasimha Rao and Ors v. The State of Andhra Pradesh and Anr, 1969(1) SCC 839;

The following judgment of the Court was delivered:

Sandeep Sharma, J. *(Oral)*

Since common facts as well as issues are involved in the above captioned cases, same were heard together and are now being disposed of vide common judgment.

2. For having bird's eye view, facts shorn of unnecessary details but relevant for adjudication of cases at hand are that Deputy Director, Elementary Education, Reckong Peo, District Kinnaur, with a view to fill up the posts of Drawing Master, PET and Shastri on batch wise basis sent communication dated 14.10.2016 (Annexure A-4 in all the petitions) to the petitioners asking them to come present for interview against the post(s) reserved for Scheduled Caste (Un-reserved) in Kinnaur District. Though pursuant to aforesaid interview letters, petitioners appeared in the interview, but their candidature was not considered for appointment in light of instructions contained in notification No. PLG-F (TDM) 35-1/05 dated

16.8.2004 issued by the Government of Himachal Pradesh Department of Tribal Development, as is evident from mark list of interview placed on record as Annexure A-6 in the respective petitions.

3. Since despite being fully qualified to be appointed against the posts in question, candidature of the petitioners was not considered, they approached the erstwhile HP State Administrative Tribunal by way of OA Nos. 2263, 2448 and 2265 of 2017, which now on account of abolishment of the Tribunal stand transferred to this Court, praying therein for following main reliefs:

> "(i). That the impugned decision reflected in letter dated 16.08.2004, Annexure A-5 whereby for appointment to class-III and class-IV posts in the areas specified therein has been restricted to "local candidates" of such areas may kindly be quashed and set aside:
> (ii) That the letter dated 16.08.2004, Annexure A-5, may kindly be quashed and set aside being ultra-vires the provisions of Articles 14, 16 and 335 of the Constitution of India.
> (iii) That the impugned action of respondent No.4 of considering the applicant ineligible on the basis of Annexure A-5 on the ground that he is not a local candidate, may also be quashed and set aside and the respondent department may be directed to offer appointment to the applicant to the post of Drawing Master reserved for SC (UR) from 06.03.2017, the date from which appointment has been offered to private respondent pursuant to same selection process, with all consequential benefits.
> (iv) That if it becomes necessary to quash the appointment of private respondent made vide order dated 6.3.2017, Annexure A-4/A, in order to offer appointment to the applicant, in that event appointment order of private respondent at Annexure A-4/A may also be quashed and set aside."

4. Pursuant to notices issued in the instant proceedings, respondents have filed reply, wherein though it has been not disputed that at the time of interview, petitioners were having prescribed educational qualification for being appointed against the posts in question, however, they have claimed that in terms of instructions dated 16.8.2004, petitioners being not resident of Kinnaur area, could not be offered appointment against the

posts in question. It has been stated in the reply that as per instructions dated 16.8.2004, Class-III and Class-IV posts in district cadres are to be filled up amongst the local residents of the District Kinnaur.

5. Mr. Dilip Sharma, learned Senior Counsel, appearing for the petitioners, vehemently argued that though careful perusal of instructions dated 16.8.2004 sought to be relied by the respondent-State are not legally sustainable, but even otherwise bare perusal of same nowhere suggest that all posts of class-III and IV category are to be filled up from amongst the candidates belonging to the district Kinnaur. He submitted that even otherwise, aforesaid instructions if permitted to sustain, would amount to 100% reservation to the local population of District Kinnaur, which is not permissible under the law. While inviting attention of this Court to the provisions contained under Article 16(3) of the Constitution of India, learned Senior Counsel, argued that Parliament is only competent to make law, if any, with regard to requirement as to the residence within the state or Union Territory for public employment. He further argued that though while refuting the claim of the petitioners, respondents have placed heavy reliance upon the notification dated 16.8.2004, but even otherwise, respondent-State, at one point of time, realizing that such instructions are not in conformity with the conditions contained under Article 16 (3) of the Constitution of India itself clarified that Article 16 (3) of the Constitution of India empowers Parliament for making any law prescribing any requirement as to the residence within that state or UT prior to such employment or appointment. He stated that bare reading of Chapter-4 of Handbook on Personnel Matters V-1, (2nd Edition) clearly reveals that State of HP had made rules prescribing a residential requirement for appointment to the non-gazetted posts in Himachal Pradesh, but same ceased to be in force with effect from 20.3.1974. He stated that since rules prescribing residential requirement as have been taken note herein above made by the Government of India in terms of Rules

16 (3) of the Constitution of India, ceased to exist w.e.f. 20.3.1974, Government of Himachal Pradesh was otherwise not competent to prescribe or make condition with regard to residence while notifying vacancies for appointment. To substantiate his aforesaid submissions, Mr. Sharma, learned Senior counsel representing the petitioner placed heavy reliance upon the judgment passed by the Hon'ble Apex Court in **A.V.S. Narasimha Rao and Ors v. The State of Andhra Pradesh and Anr, 1969(1) SCC 839**, wherein it has been held that the legislative power to prescribe residential qualification for employment is exclusively conferred on Parliament. Learned Senior counsel appearing for the petitioners submitted that since petitioners herein were fully qualified to be appointed against the posts in question at the time of interview held in terms of interview letters, they deserve to be offered appointment from the due date.

6. While refuting the aforesaid submissions made by the learned senior counsel for the petitioner, Mr. Vishal Panwar, learned Additional Advocate General, submitted that though petitioners at the time of the interview were having requisite education qualification, but since they were not local residents of the tribal District of Kinnaur, their candidature could not be considered in light of notification dated 16.8.2004 and as such, no illegality can be said to have been committed by the respondent-State by denying appointment to the petitioners.

7. Having heard learned counsel for the parties and perused material available on record, this Court finds that impugned action of the respondents rests upon notification dated 16.8.2004 (Annexure A-5), issued by the Government of Himachal Pradesh, which is reproduced herein below:

> " No.PLG-F(TDM)35-1/05
> Government of Himachal Pradesh
> Department of Tribal Development
> From
>
> The Pr. Secretary (TD) to the

Government of Himachal Pradesh.

To,

1. All the Administrative Secretaries to the Govt. of H.P.
2. All the Heads of Departments in H.P.
3. All the Divisional Commissioners in H.P.
4. All the Deputy Commissioner in H.P.
5. The Resident Commissioner, Pangi at Killar, Distt, Chamba, H.P.
6. The Resident Commissioner, Bharmour, Distt. Chamba.
7. The Addl. Deputy Commissioner, Spiti Distt. Lahaul-Spiti at Kaza.

Dated Shimla-2, the 16th August, 2004.

Subject: Reservation in appointment to the Class-Ill and Class-IV Services in District Cadre posts in the Scheduled Areas.

Sir,

The matter regarding adequate representation to the local Scheduled Tribe and Scheduled Caste members of the Scheduled Areas in District cadre posts was under consideration of the State Government. In the Scheduled Areas of the State i.e. Districts of Kinnaur and Lahaul & Spiti and Pangi & Bharmour Sub-disivisons of Chamba District, the average local scheduled tribes population is 69.27% and the average local Scheduled Caste population is 17.90%. The Scheduled Tribes population ranges from about 57% in Kinnaur District to about 85% in Pangi Sub-division of Chamba District and similarly the population of local Scheduled Castes in the Scheduled Areas ranges from about 7% in Lahaul & Spiti District to about 26% in Kinnaur district. There is no OBC population in the scheduled Areas.

2. The vertical reservation prescribed in the State of Himachal Pradesh for appointment to the Class-Ill and Class-IV services by direct recruitment is 5% for Scheduled Tribes, 22% for Scheduled Castes and 18% for OBCs which is applicable to the District Cadre posts in Scheduled Areas also. Hence, the present reservation

policy does not provide opportunities for adequate representation to the local scheduled Tribe communities in the District Cadre posts.

3.Though, as per the 9 Judges bench judgement of the Hon'ble Supreme Court in Indra Sawhney case, reservation contemplated in clause 4 of Article 16 should not exceed 50% but at the same time the Hon'ble Supreme Court in the same judgement in Indra Sawhney case has clearly taken a view that while 50% shall be the rule, it is necessary not to put out of consideration certain extra ordinary situations inherent in the great diversity of this country and the people. It might happen that if far flung and remote areas, the population inhabiting those remote areas might, on account of their being out of the main stream of National Life and in view of conditions peculiar to and Characteristic of them need to be treated in a different way, some relaxation in this strict rule may become imperative.

4. These areas have been scheduled in the Constitution Keeping in view the remoteness, backwardness, and special cultural characteristics of people living in these areas. For economic development of these areas, Integrated Tribal development Project (ITDP) concept has been introduced so as to raise their level of development at par with the main stream population. However, the population in the scheduled areas still remain backward in terms of literacy, incomes etc. Their access to institutional infrastructures also is limited due to geographical constraints, lack of adequate and appropriate personnel in health and educational institutions etc. The existing reservation policy is not only contrary to demographic composition in the scheduled areas but is also contrary to the spirit of providing a mechanism to ensure adequate representation to these people in the Government services, thereby depriving them of the opportunities in Government Services.

5.Now, therefore, the State Government has decided to provide reservations to the local Scheduled Tribes and Scheduled Castes candidates in the Scheduled Areas of HP as early as possible in proportion to their population and accordingly prescribe the reservation in the District Cadre posts in Class-III and Class-IV grade/services to each category as under :-

i)Kinnaur District:
i)60% reservation in the posts for local Scheduled Tribes and 25% of the posts for local Scheduled Caste candidates.
ii) Lahaul & Spiti:
78% reservation in the posts for local Scheduled Tribes and 7% of the postsfor local Scheduled Castes candidates.
(iii) Pangi Sub-division of Chamba District:
75% reservations in the posts sanctioned for Pangi Sub-division borne on District Cadre posts for local Scheduled Tribes and 10% of such posts for local Scheduled Castes candidates.
iv) Bharmour Sub-division of Chamba District:
72% reservation in the sanctioned posts for Bharmour Sub-division borne on District Cadre for local Scheduled Tribes and 13% of such posts to the local Scheduled Castes candidates.

6.The local members of Scheduled Caste and Scheduled Tribes of such Scheduled Areas will not be eligible to avail reservation in District Cadre posts in the other Districts outside the Scheduled Areas. The local Scheduled Castes and Scheduled Tribes members of Pangi and Bharmour Sub-division of Chamba District will not be eligible to avail reservation in District Cadre posts even within Chamba District against the posts sanctioned for non-Scheduled Area of Chamba District.
7. The above instructions may be followed with immediate effect.
8. Horizontal reservations for various categories like Ex-serviceman etc. as prescribed by Department of Personnel Government of Himachal Pradesh from time to time will be applicable as such in the Scheduled: Area slos.
This issues with concurrence of Law Department.

Yours faithfully,
Sd/-
Pr.Secretayr (TD) to the
Government of Himachal Pradesh."

Close scrutiny of instructions, reproduced herein above suggests that State of Himachal Pradesh decided to provide reservation to the local Scheduled Tribes and Scheduled Castes candidates in the scheduled area of the State as early as possible in proportion to their population and accordingly prescribed the reservation in the district cadre posts in class-III and Class-IV Grade/services to each category. In Kinnaur, 60% of the reservation in the posts came to be provided for local scheduled tribes and 25% of the posts for local scheduled caste candidates, meaning thereby, 15 % posts are yet to be filled by other categories. Similarly, in Lahaul and Spiti, 78% of the posts came to be reserved for local Scheduled Tribes and 7% of the posts for local Scheduled Castes candidates. For Pangi Sub-division of Chamba District, 75% of the posts sanctioned for Pangi Sub-division borne on District Cadre came to be reserved for local Scheduled Tribes and 10% of such posts for local Scheduled Castes candidates. In Bharmour Sub-division of Chamba District, 72% of sanctioned posts for Bharmour Sub-division borne on District Cadre came to be reserved for local Scheduled Tribes and 13% of such posts to the local Scheduled Castes candidates, meaning thereby, major chunk of posts are/were to be filled in from the candidates belonging to SC/ST of Kinnaur, Lahaul Spiti, Pangi and Bharmaur, but yet in all, 15% of the posts are/were to be filled from other categories. Though notification dated 16.8.2004 appears to have been issued in complete violation of law/mandate given by the Hon'ble Apex Court in **A.V.S. Narasimha Rao's** (supra)and as such,same is not sustainable in the eye of law, but even otherwise in any event, reservation could not exceed 50% of the total posts. Though very object of issuance of aforesaid notification is seen or accepted that is to provide opportunity to local population to have employment in government services, even then, 15% of the posts could be filled in from the candidates hailing from other parts of the State.

8. Most relevant question needs to be determined in the instant case is that "*whether by way of notification dated 16.8.2004, issued by the Government of Himachal Pradesh, State, could prescribe condition of residence, if any, while offering public employment in any part of the State?*"

9. Before exploring answer to the aforesaid question, it would be apt to take note of the provision contained under Article 16 of the Constitution of India:

> "16. Equality of opportunity in matters of public employment.-
> (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.
> (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect or, any employment or office under the State.
> (3) Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office [under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory] prior to such employment or appointment.
> (4) Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favor of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
> (5) Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

10. Article 16 of the Constitution of India talks about the equality of opportunity in matters of public employment. It has been categorically prescribed in the aforesaid provision of law that there shall be equality of opportunity for all citizens in matters relating to employment or appointment

to any office under the State. Article 16(2) clearly provides that no citizen shall, on grounds of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of any employment or office under the State. Article 16 (3) if read in its entirety, clearly provides that it is only parliament, which is competent to make any law prescribing requirement as to residence within that State or Union territory prior to such employment or appointment. Though Article 16(4) empowers State for making any provision for reservation of posts in favour of any backward class of citizens which, in its opinion, is not adequately represented in the services under the State, but definitely it has no power to legislate with regard to requirement as to the residence while offering public employment within particular area of the State. Similarly, Article 16(4)(A) provides that State is competent for making any provision for reservation in matter of promotion with consequential seniority, but definitely, it is not competent to make provision if any, with regard to requirement as to the residence within any part of the State, rather such power lies with the parliament only as has been provided in Article 16 (3).

11. At this stage, it would be also apt to take note of Article 35 of the Constitution of India, which is as under:

> "35. Legislation to give effect to the provisions of this Part- Notwithstanding anything in this Constitution,-
>
> (a) Parliament shall have, and the Legislature of a State shall not have, power to make laws
>
> (i) with respect to any of the matters which under clause (3) of Article 16, clause (3) of Article 32, Article 33 and Article 34 may be provided for by law made by Parliament; and
>
> (ii) for prescribing punishment for those acts which are declared to be offences under this Part;
>
> and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for

> prescribing punishment for the acts referred to in sub clause (ii);
>
> (b) any law in force immediately before the commencement of this Constitution in the territory of India with respect to any of the matters referred to in sub clause (i) of clause (a) or providing for punishment for any act referred to in sub clause (ii) of that clause shall, subject to the terms there of and to any adaptations and modifications that may be made therein under Article 372, continue in force until altered or repealed or amended by Parliament.
>
> Explanation.- In this article, the expression "law in force" has the same meaning as in Article 372"

12. Bare perusal of the aforesaid provision of law clearly suggests that parliament can only make law with regard to residence within state or UT under Article 16 (3) of the Constitution of India. The notification dated 16.8.2004, if read in entirety, clearly suggests that these are administrative instructions, which admittedly cannot override the constitutional provisions as discussed herein above. Once Article 35 empowers the Parliament only to legislate with regard to requirement of residence while offering public employment, there was no occasion for the state to issue notification dated 16.8.2004.

13. At this stage, Mr. Vishal Panwar, learned Additional Advocate General invited attention of this court to the Public Employment (Requirement As To Residence) Act, 1957 (in short "*the 1957 Act*") made by the parliament under Clause 3 of Article 16 of the Constitution of India, which empowers the Central Government to make rules in respect of certain classes of public employment in certain areas, which reads as under:

> "3. Power to make rules in respect of certain classes of public employment in certain areas.
>
> (1) The Central Government may, by notification in the Official Gazette, make rules prescribing, in regard to appointments to-
>
> (a) any subordinate service or post under the State Government of Andhra Pradesh, or

(b) any subordinate service, or post under the control of the Administrator of Himachal Pradesh, Manipur or Tripura, or
(c) any service or post under a [local or other authority] (other than a cantonment board) within the Telangana area of Andhra Pradesh or within the Union territory of Himachal Pradesh, Manipur or Tripura, any requirement as to residence within' the Telangana area or the said Union territory, as the case may be, prior to such appointment.

(2) In this section,-
[(a) " Himachal Pradesh" includes the territories specified in sub- section (1) of section 5 of the Punjab Reorganisation Act, 1966 ;] (11 of 1966).]
[(aa)]" subordinate service or post" means any service or post appointments to which are not notified in the Official Gazette but includes any service of tehsildars;
(b) "Telangana area" comprises all the territories specified in sub- section (1) of section 3 of the States Reorganisation Act, 1956 (37 of 1956)."

14. Mr. Panwar, learned Additional Advocate General, states that in terms of Section 3 of the *1957 Act,* Central Government itself made rules qua Himachal Pradesh, Manipur and Tripura Public employment (Requirement As To Residence) Rules, 1959 (*In short "the 1959 Rules*"). He submitted that as per Rule-3 of the aforesaid Rules of 1959, Hand Book on personnel matters (V-1), provision was made to provide reservation to the people of the local area. Mr. Dilip Sharma, learned senior counsel while fairly admitting aforesaid submission made by the learned Additional Advocate General argued that though in terms of clause 3 of the Article 16 of the Constitution of India, public employment (Requirement As The Residence) Act, 1957, was made by the parliament and thereafter, in terms of clause 3 of the aforesaid Act, 1959 Rules were framed, but it is not in dispute that such rules ceased to operate w.e.f. 20.3.1974, meaning thereby, there was no occasion for the State to make provision of requirement of residence while offering public employment in tribal areas after 20.3.1974. Having carefully perused clause 4.2 of Chapter 4 (Citizen and Domicile) of the Handbook on Personnel Matters (Vol-1)

(Second Edition), this Court finds force in the submission of learned Senior Counsel for the petitioner that 1959 Rules were extended from time to time, but ultimately ceased to be in force w.e.f. 20.3.1974, which reads as under:

> "4.2 Requirements as to Residence and place of birth etc.
> (a) Constitutional provisions
> Article 15 (1) of the Constitution of India provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Further Article 16 (2) of the Constitution provides that no citizen shall on ground only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, or discriminated against in respect of, any employment or office under the State.
> However, Article 16 (3) of the Constitution provides that nothing in that Article shall prevent the Parliament from or classes of making any law prescribing in regard to a class employment or appointment to an office under the Government of, Union or any local or other authority within, a State or to residence within that State or Territory, any requirement as Union Territory prior to such employment or appointment.
>
> (b) Act under Article 16 (3) of the Constitution and Rules made thereunder.
>
> Article 16 (3) of the Constitution empowers Parliament to make a law prescribing requirement as to residence within a State or Union Territory prior to employment or appointment as indicated above. The States Reorganisation Commission in 1955 observed that some of the States had adopted various devices to exclude from their services persons who were not permanent residents of such States. So long as Parliament did not legislate under exercise of the power conferred by Article 16 (3), discriminatory State regulations continued to operate by virtue of Art. 35 (b). Parliament enacted enacted the Public Employment (Requirement as to Residence) Act, 1957, in pursuance of the recommendations made by the Commission, and repealed all such discriminatory State Laws prescribing residence as a qualification for employment. By this Act, Parliament empowered the Central Government to make rules prescribing a residential requirement for appointment to the non-gazetted posts in Himachal Pradesh, Manipur and Tripura. A copy of the Rules notified in 1959, is at Annexure 4.1. These rules were extended from time to time but ultimately ceased to be in force with effect from 20th March, 1974.

> The Rules provided for residence within the Union Territory (of H.P./Manipur/Tripura) as an eligibility condition for appointment and for a certificate of eligibility for the purpose. However, after the Rules ceased to be in force, the Departments were requested to amend the relevant recruitment rules to delete provision for obtaining eligibility certificate etc. for employment."

15. Record further reveals that on 4.9.1978, Government of Himachal Pradesh, again issued instructions to all administrative departments that Himachal Pradesh Manipur and Tripura, Public Employment (Requirement As To Residence) Rules were in vogue till 20.3.1974 and as such, provisions given with regard to qualification and residence cannot be pressed into service while offering public employment. Though vide aforesaid communication, direction was issued to amend the rules, but it appears that no corrective action was taken. Leaving everything aside, this Court finds that Andhra Pradesh Public Employment (Requirement as to Residence) Rules, 1959, which were enacted in terms of provisions contained under Public Employment (Requirement as to Residence) Act 1957, were laid challenge before the Hon'ble Apex Court in **A.V.S. Narasimha Rao and Ors v. The State of Andhra Pradesh and Anr, 1969 (1) SCC 839,** wherein Hon'ble Apex Court having taken note of the provisions contained in Articles 16 and 35 of the Constitution of India categorically ruled that Parliament can make any law, which prescribes any requirement as to the residence within the state or Union Territory prior to employment in the State or Union Territory. Most importantly, in the aforesaid judgment, Hon'ble Apex Court held that provision as contained in Article 16 speaks of a whole State as the venue for residential qualification and it is impossible to think that the Constituent Assembly was thinking of residence in Districts, Taluqas, cities, towns or villages. Relevant paras of the judgment passed in **A.V.S. Narasimha Rao's** read as under:

"3. The petitioners -were appointed between December 27, 1956 and July 4, 1968. They -challenge the Act, the Rules and the proposed action as ultra vires the Constitution. Their case is that Art. 16(3) under which the Act and the Rules purport to be made has been misunderstood as conferring a power to make, a law prescribing requirement as to residence in a part of a State. For this reason S. 3 of the Act is challenged as ultra vires the Constitution.

Article 16 on which the Act, the Rules and the present action are all based, reads :

> "16. Equality of opportunity in matters of public employment.
>
> (1)There shall be equality of opportunity -for all citizens in matters relating to employment or appointment to any office under the State.
>
> (2) No citizen shall, on ground only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated 'against in respect of, any employment or office under the State. (3)Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.
>
> (4).....
>
> (5).....

4. The question is one of construction of this article, particularly of the first three clauses, to find out the ambit of the law taking power of Parliament. The first clause emphasises that ware shall be in India equality of opportunity for all citizens in matters of employment or appointment to any office under the late. The word 'State' here is to be understood in the extended use given to it by the definition of that word Art. 12. The second clause then specifies a prohibition against discrimination only on the

grounds of religion, race, sex, descent, place of birth, residence or any of them. The intention here is make every office or employment open and available to every citizen, and inter alia to make offices or employment in one part India open to citizens in all other-parts of India. The third pause then makes an exception. This clause was amended by the Constitution (Seventh Amendment) Act, 1956. For the original words of the clause 'under any State specified in the First schedule or any local or other authority within its territory any requirement as to residence within-that State', the present words from 'under the Government' to 'Union territory' have been substituted. Nothing turns upon the amendment which seeks to apply of the exception in the clause to Union territory and to remove ambiguity in language.

5.The clause thus enables Parliament to make a law in a special case prescribing any requirement As to residence within a State or Union territory prior to appointment, as a condition of employment in the State or Union territory. Under Art. 35(a) this power is conferred upon Parliament but is denied to the Legislatures of the States, notwithstanding anything in the Constitution, and under (b) any law in force immediately before the commencement of the Constitution in respect to the matter shall subject to the terms thereof and subject to such adaptations that may be made under Art. 372 is to continue in force until altered or repealed or amended by Parliament.

6. The legislative power to create residential qualification for employment is thus exclusively conferred on Parliament. Parliament can make any law which prescribes. any requirement as to residence within the State or Union territory prior to employment or appointment to an office in that State or Union territory. Two questions arise here. Firstly, whether Parliament', while prescribing the requirement, may prescribe the requirement of residence in a particular part of the State and, secondly, whether Par- liament can delegate this function by making a declaration and leaving the details to be filled in by the rule making power of the Central or State Governments.

7.Mr. S. V. Gupte, for the petitioners, points out that the Constitution is speaking of State and Union territory. It has already made a declaration that no person shall be disqualified for any office in the territory of India because of his residence in

any particular part of India. The exception, therefore, must be viewed narrowly and not carried to excess by interpretation. The article speaks of residence in a State and means only that. If it chose to speak of residence in parts of State such as Districts, talauqas, cities, towns etc. more appropriate and specific language could have been used such as 'any requirement as to residence within that State or Union territory or part of that State or Union territory'. Having used the word State, the unit State is only meant and not any part thereof. Reference is made to the history of the drafting of the Article and the debates in the Constituent Assembly which bear out this contention.

8. On the other hand, Mr. Setalvad bases his argument on two things. He contends that the power is given to Parliament to make any law and, therefore, Parliament is supreme and can make any law on the subject as the article says. He very ingeniously shifts the emphasis to the words 'any requirement' and contends that the requirement may be also as to residence in the State or any particular part of State.

9.The claim for supremacy of Parliament is misconceived. Parliament in this, as in other matters, is supreme only in so far as the Constitution makes it. Where the Constitution does not concede supremacy, Parliament must, act within its appointed functions and not transgress them. What the Constitution says is a matter for,construction of the language of the Constitution. Which is the proper construction of the two suggested? By the first clause equality of opportunity in employment or appointment to an office is guaranteed. By the second clause, there can be no discrimination, among other things, on the ground of residence. Realising, however, that sometimes local sentiments may have to be respected or sometimes an inroad from more advance States into less developed States may have to be prevented, and a residential qualification may, therefore, have to be prescribed, the exception in clause (3) was made. Even so,, that clause spoke of residence within the State. The claim of Mr. Setalvad that Parliament can make a provision regarding residence in any particular part of a State would render the general prohibition lose all its meaning. The words 'any requirement' cannot be read to warrant something which could have been said more specifically. These words bear upon the kind of residence or its duration rather than its location within the State. We accept the argument of Mr. Gupte that the

> Constitution, as it stands, speaks of a whole State as the venue for residential qualification and it is impossible to think that the Constituent Assembly was thinking of residence in Districts, Taluqas, cities, towns or villages. The fact that this clause is an exception and came as an amendment must dictate that a narrow construction upon the exception should be placed as indeed the debates in the Constituent Assembly also seem to indicate. We accordingly reject the contention of Mr. Setalvad seeking to put a very wide and liberal construction upon the words 'any law' and 'any requirement'. These words are obviously controlled by the words 'residence within the State or Union territory' which words mean what they say, neither more nor less. It follows, therefore, that S. 3 of the Public Employment (Requirement as to Residence) Act, 1957, in so far as it relates to Telengana (and we say nothing about the other parts) and Rule 3 of the Rules under it are ultra vires the Constitution.

16. In view of the detailed discussion made herein above as well as law laid down by the Hon'ble Apex Court, notification dated 16.8.2004 thereby prescribing condition of residence while offering public employment in tribal areas against Class-III and Class-IV posts is not sustainable and accordingly, same deserves to be quashed and set-aside being contrary to the provisions contained in Article 16 (3) of the Constitution of India. Since bare perusal of merit list placed on record alongwith all the petitions captioned above, clearly reveals that pursuant to interview letters, names of the petitioners were sponsored by the employment exchanges of their respective areas and they were having requisite qualification for the posts in question, coupled with the fact that they were placed higher in merit than others and yet their candidature was not considered in terms of instructions dated 16.8.2004, prayer made on their behalf for appointment from the due date against the posts in question deserves to be allowed. Though at this stage, Mr. Vishal Panwar, learned Additional Advocate General submitted that much water has flown under the bridge after 2016, when these interviews were conducted, but since rightful claim of the petitioners was denied on the basis of statutory instructions, which have been made in complete violation of the provisions

contained under Article 16 (3) of the Constitution of India, claim of the petitioners cannot be allowed to be defeated on the ground that after year, 2016, many other persons have been appointed. Petitioners being fully qualified deserve to be offered appointment from due date.

17. Consequently, in view of the above, present petition is allowed and notification dated 16.8.2004, thereby prescribing condition of residence while offering public employment in tribal areas against Class-III and Class-IV posts is quashed and set-aside being contrary to the provisions contained under Articles 16 and 35 of the Constitution of India and respondents are directed to offer the appointment to the petitioners against the posts in question from the due date, within eight weeks. Since petitioners had not worked against the posts in question from the due date, they cannot be held entitled to actual financial benefits, but definitely, they are entitled to seniority and notional pay fixation from the due date. If need so arises, State is always at liberty to create supernumerary posts to safeguard the interest of private respondents, who were admittedly lower in merit at the time of interview held in the year, 2016, otherwise they will have to give way to the petitioners. In the aforesaid terms, present petitions are disposed of alongwith pending applications, if any.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Bharat Singh Kanwar & others ...Petitioners

Versus

H.P. Tourism Development Corporation Ltd. & another ....Respondents

For the Petitioners: Mr. Dilip Sharma, Sr Advocate with Mr.Manish Sharma, Advocate.

For the Respondents: Mr.Naresh Kaul, Advocate for respondent No.1.

Mr. Harinder Singh Rawat, Additional Advocate General for respondent No.2.

CWPOA No. 4690 of 2019
Date of Decision 27th March, 2023

Constitution of India, 1950- Article 226 - Petitioners challenged the denial of a revised pay scale - Contended that the delay in implementing the revised pay scale until January 1, 1994, created a pay anomaly, as other similarly positioned posts received the revised pay from 1986- **Held**- Refusal to grant the revised pay scale was arbitrary and violated the principle of equality under Article 14 of the Constitution of India- State actions must be rational, reasonable, and non-discriminatory-Revised pay scale was ordered to be applied retrospectively with associated benefits- Petition was allowed. (Para 19)

The following judgment of the Court was delivered:

Vivek Singh Thakur, J.

Petitioners have approached this Court against rejection of their request to grant pay scale of Rs.2000-3500/- w.e.f. 1.1.1986 instead of 1994, assailing decision dated 19.2.2011 of Service Committee of H.P. Tourism Development Corporation, and seeking directions to respondents to grant the

petitioners re-revised pay, scale of Rs.2000-3500/- w.e.f. 1.1.1986 instead of 1994 with all consequential benefits including arrears of salary and interest on delayed payments.

2 Petitioners, serving in respondent No.1 H.P. Tourism Development Corporation Limited (respondent Corporation), were promoted as Traffic Supervisors {subsequently re-designated as Manager (Transport)} on 30.9.1983 in the pay scale of Rs.700-1200/-. Feeder category to the post of Traffic Supervisors was Traffic Assistant {subsequently re-designated as Assistant Manager (Transport)} with pay scale of Rs.570-1080 prior to 1.1.1986.

3 Prior to 1.1.1986 pay scale of posts Deputy TDO (subsequently designated as Assistant Manager), Accountant {subsequently designated as Senior Assistant (Account)}, Assistant (subsequently designated as Senior Assistant) was also 570-1080/- i.e. equal to that of Traffic Assistants.

4 Pay scales of all aforesaid posts, including Traffic Assistant and Traffic Supervisors, were revised w.e.f. 1.1.1986. Deputy TDO, Accountant, Assistant and Senior Assistant, on revision of pay scale from 1.1.1986, were granted pay scale at the rate of Rs.1500-2640/-, whereas Traffic Supervisor was granted pay scale of Rs.1640-2925/-.

5 Later on, pay scale of Deputy TDO, Accountant, Assistant and Senior Assistant were re-revised to Rs.1800-3200/- w.e.f. 1.1.1986.

6 Pay scales of Traffic Assistant and Traffic Supervisor were also re-revised from Rs.1500-2640/- to 1800-3200/- and Rs. 1640-2925 to 2000-3500/- but w.e.f. 1.1.1994 instead of 1.1.1986 and this re-revision was communicated by Commissioner-cum-Secretary (Tourism) to the Government of HP to the Managing Director of respondent Corporation vide communication dated 19th July, 1994 (Annexure P-1).

7 As revision of pay scale of Traffic Supervisor created an anomaly because the posts having pay scale of Rs.570-2080/- on 1.1.1986 were

assigned pay scale of Rs.1800-3200/- w.e.f. 1.1.1986 but Traffic Assistants, working on equal pay scale like Deputy TDO, Accountant and Assistant i.e. Rs.570-1080/-, were discriminated because Deputy TDO, Accountant and Assistant were granted re-revised pay scale of Rs.1800-3200/- from 1.1.1986 whereas Traffic Assistant were granted re-revised pay scale of Rs.1800-3200/- w.e.f. 1.1.1994 instead of 1.1.1986. Traffic Supervisors having higher pay scale of Rs.700-1200/- on 1.1.1986 than to these posts were granted pay scale of Rs.1640-2925/- from 1.1.1986 to 1.1.1994 and thereafter, they were granted re-revised higher pay scale Rs.2000-3500/-.

8 Petitioners' representation, for rectifying the aforesaid anomaly and to grant them re-revised pay scale w.e.f. 1.1.1986, was rejected by respondents and communicated vide communication dated 22nd May, 1995 (Annexure P-2) assigning the reason that Government had expressed inability to grant re-revised pay scale retrospectively from 1.1.1986.

9 Petitioner No.1 represented against the decision communicated vide communication dated 22.5.1995 by submitting a representation dated 31.8.1995. In furtherance thereto, on 27.9.1995, Managing Director of respondent Corporation requested the respondent/State through Finance Commissioner-cum-Secretary (Tourism) to the Government of HP to reconsider the matter and to grant re-revised pay scale to various categories of posts from 1.1.1986 instead of 1.1.1994.

10 On 3.12.1996, respondent Corporation submitted a memorandum for removing anomalies in pay scales of employees of the the Corporation for consideration and approval, which is placed before the Service Committee with the following positions:-

Sr. No.	Name/Category of Post	Pre-revised pay scale (prior to 1986)	Revised pay scale w.e.f. 1.1.86	Scale re-revised on 1.1.1994 w.e.f.	
				1.1.86	1.1.94

1	Dy.TDO (Designated as Assistant Manager)	570-1080	1500-2640	1800-3200	
2	Accountant (Designated as Sr. Assistant (Account))	570-1080	1500-2640	1800-3200	
3	Assistant (designated as Sr.Assistant)	570-1080	1500-2640	1800-3200	
4	Traffic Assistant (designated as Assistant Manager (Tpt)	570-1080	1500-2640	1500-2640	1800-3200
5	Traffic Supervisor (designated as Manager (Tpt)	700-1200	1640-2925	1640-2925	2000-3500

11 Matter remained pending consideration with respondents. In the meanwhile, petitioners amongst others filed OA No. 2570 of 1999 for redressal of their grievances, which, on abolition of H.P. State Administrative Tribunal was transferred to this Court and was re-registered as CWP-T No.6053 of 2008 and was disposed of on 28.5.2010 directing the Service Committee to consider the case of petitioners and to take a final decision within 10 weeks.

12 On filing an application under Right to Information Act on 8.3.2011, respondent Corporation supplied the information on 1.4.2011 by providing copy of memorandum submitted for consideration of Service Committee (Annexure P-11) and decision of Service Committee rejecting the claim of petitioners in its meeting held on 19.2.2011 (Annexure P-12).

13 Thereafter, petitioners preferred present petition on 20th April, 2011 in this Court as CWP No. 2863 of 2011. On re-creation of Erstwhile H.P. State Administrative Tribunal, it was transferred to the Tribunal and was

registered as TA No.6168 of 2015. Thereafter, on abolition of the Tribunal again, it has been transferred to this Court and has been registered as CWPOA No. 4690 of 2019.

14 To substantiate the claim of petitioners, it has also been submitted on their behalf that posts having pay scale of Rs.1800-3200/- prior to 1.1.1996, on revision of pay scale w.e.f. 1.1.1996 were granted revised pay scale of Rs.5800-9200/- and, as such, all posts including Traffic Supervisors (Manager Transport) having pay scale of Rs.570-1080/- prior to 1.1.1986 were allowed the same revised pay scale of Rs.5800-9200/- w.e.f. 1.1.1996. Except the category of Traffic Assistant, all other posts having the same pay scale were assigned pay scale of Rs.1800-3200/- w.e.f. 1.1.1986 to 31.12.1995 and Rs.5800-9200/- w.e.f. 1.1.1996, whereas Traffic Assistants were allowed pay scale of Rs.570-1080/- before 1.1.1986 and Rs.1500-2640/- w.e.f. 1.1.1986 to 31.12.1993 and Rs.1800-3200/- from 1.1.1994 to 1.1.1996 and after 1.1.1996 like others pay scale of Rs.5800-9200/-. Further that category of Traffic Supervisor was also treated similarly like Traffic Assistant, by providing pay scale of Rs.700-1200/- prior to 1.1.1986 and Rs.1640-2925/- from 1.1.1986 to 31.12.1993 and Rs.2000-3500/- w.e.f. 1.1.1994 to 31.12.1995 and, as such, during the span of 1.1.986 to 1.1.1996 they were also discriminated like Traffic Assistants by granting pay scale of Rs.2000-3500/- from a later date than 1.1.1986 i.e. 1.1.1994.

15 Claim of petitioners has been contested by respondents on the basis of reply filed by respondent No.1 as it was communicated on 3.3.2022 that no reply is intended to be filed on behalf of respondent No.2/State.

16 It has been contended on behalf of respondents that request of Traffic Assistant and Traffic Supervisor along with other categories was taken up with the Finance Department to the Government of HP and case was examined in depth by Finance Department and in view of Finance Department, there was no anomaly in this case and instead it was a demand

of upward revision which was allowed to these categories w.e.f. 1.1.1994. Further that matter was placed before the Service Committee of respondent Corporation and decision of Service Committee was communicated to petitioners vide communication dated 21.4.2011. Lastly it has been contended on behalf of respondent Corporation that grant of higher pay scale does not fall within domain of Court as it is for employer to decide the pay scale of particular post and entitlement of an employee therefor at given point of time and matter stands considered and rejected by employer Corporation, after taking into consideration the material placed before it and therefore, it has been contended that present petition deserves to be dismissed.

17 Perusal of record placed before me depicts that respondent Corporation had submitted the matter to Government for consideration with positive observation that there exists an anomaly in granting the pay scale w.e.f. 1.1.1986 with request to reconsider the grant of pay scale to Traffic Supervisors and Traffic Assistants, as prayed by them, w.e.f. 1.1.1986. The rejection communicated vide communication dated 22nd May, 1995, (Annexure P-2), does not assign any reason for not granting the re-revised pay scale retrospectively w.e.f. 1.1.1986 in case of Traffic Supervisor/Traffic Assistant serving in respondent Corporation whereas it is a matter of fact that in furtherance to communications dated 10.8.1990 as well as 31.10.1992 and 10.2.1995, respondent/State had granted an approval for re-revised the pay scale at the rate of Rs.1800-3200/- to the posts of Deputy TDO, Accountant, Assistant retrospectively from 1.1.1986, whose pay scales were identical to Traffic Assistant on 1.1.1986 and were revised w.e.f. 1.1.1986 identically to Rs.1500-2640/- along with Traffic Assistant. No reason has been assigned to grant re-revised pay scale to certain categories with retrospective effect and to restrict the same in case of Traffic Assistant and Traffic Supervisor w.e.f. 1.1.1994. No rational reasoning or justification has been disclosed in this

communication or in reply and, therefore, this communication is arbitrary for lacking valid reasons for arriving at decision taken.

18 Similarly, minutes of meeting dated 19.2.2011 rejecting the case of petitioners by stating that all posts are promotional and, therefore, upward revision was allowed by Finance Department w.e.f. 1.1.1994 and, therefore, it was recommended by Service Committee to reject the request of petitioners for grant of higher pay scale w.e.f. 1.1.1986 instead of 1.1.1994. With respect to Traffic Assistant and Traffic Supervisor, no other reason except stating that pay scales were granted to these posts by considering Promotional Rules with respect to the said category prevailing in HPTDC along with pay scales so that upward promotional channel would not get disrupted in the pay scale, resulting into creation of administrative problem. This reason does also not appear to be justifiable for the reason that in case of similar situation in case of Deputy TDO and TDO which posts were also promotional, re-revised pay scale was given from retrospective effect w.e.f. 1.1.1986 but in identical situation it was denied in case of Traffic Assistant and Traffic Supervisor. Therefore, conclusion arrived at by Service Committee in its meeting dated 19.2.2011 with respect to claim of petitioners is also arbitrary, irrational, unreasonable and unjustifiable.

19 There is no nexus between grant of pay scale to certain categories from 1.1.1986 but to similarly situated persons having the same pay scale w.e.f. 1.1.1994. No reason has been assigned for picking up certain categories for granting re-revised pay scale w.e.f. 1.1.1986 and to deny the same to Traffic Assistant and Traffic Supervisor. State as well as its instrumentalities cannot act arbitrarily to grant pay scale to certain categories in 'pick and choose manner' and to deprive other similarly situated employees for no reason. Arbitrariness is an anti-thesis of doctrine of equality envisaged under Article 14 of Constitution of India. Therefore, a case is made out for judicial review warranting interference in the omission and commission of

respondents and, therefore, general principle, that it is prerogative of employer to grant pay scale and to determine the entitlement of an employee for that at a particular given point of time, is of no help to respondent in present case as employer has failed to act rationally, reasonably and in consonance with mandate of the Constitution, and, in the given facts and circumstances of the case, it is a fit case for interference by Court by invoking its power on judicial review under Article 226 of Constitution of India.

20 It is also apt to record here that a Traffic Assistant Roop Ram with identical facts had approached the Court and his petition CWP-T No. 7727 of 2008 was allowed by a Single Bench of this High Court vide judgment dated 16.6.2010 directing the respondent Corporation to release pay scale of Rs.1800-3200/- to him w.e.f. 1.1.1986 instead of 1.1.1994 along with interest at the rate of 9% per annum.

21 Respondent Corporation had preferred LPA No. 260 of 2010 against the said judgment which was dismissed by a Division Bench of this Court vide judgment dated 30th May, 2017.

22 Therefore, in view of above, petition is allowed, directing the respondents to grant pay scale of Rs.2000-3500/- to petitioners w.e.f. 1.1.1986 instead of 1.1.1994 along with other consequential benefits including the arrears of salary and to pay arrears on or before ***30th June, 2023*** along with interest at the rate of 5% per annum and in case of non-payment of arrears by 30th June, 2023, the interest at the rate of 7.5% per annum shall be payable.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Brahmin Sabha

.....Petitioner

Versus

M/s Beant Singh & sons

....Respondent

For the Petitioner:Mr. R.K. Sharma, Senior Advocate, with Mr. Arun Kumar, Advocate.

For the respondent :Mr. G.C. Gupta, Senior Advocate, with Ms Meera Devi, Advocate.

Civil Revision No.11 of 2021
Decided on : March 10, 2023

Himachal Pradesh Urban Rent Control Act, 1987- Section 24(5) of the Act- Rent Controller directed eviction of tenant – Tenant made an appeal- Appellate Authority set aside the eviction order and remanded the case back to the Rent Controller to frame fresh issues and decide the matter afresh- Revision was filed by Landlord against this order- Tenant claimed that Revision petition was time barred- **Held**- Appellate Authority committed jurisdictional error in remanding the case- Remand Order was not sustainable under law- Petition was not time barred due to extension of limitation period by Supreme Court during covid pandemic. (Para 11 and 24)

Cases referred:

Smt. Surinder Kaur v. Mohinder Pal Singh, ILR (1975) 5 HIM. 620;

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge

Landlord-petitioner (hereinafter referred to as 'Landlord') has approached this Court by filing this Revision Petition, assailing the

order/judgment dated 27.2.2020, passed by Appellate Authority-II, Shimla, in **Rent Appeal No.38-S/13(b) of 2013,** titled as **M/s Beant Singh @ Sons v. Brahmin Sabha,** whereby order dated 28.3.2013, passed by Rent Controller, Court No.5, Shimla, in **Case No.4-2 of 2006,** titled as **Brahmin Sabha v. M/s Beant Singh & Sons,** directing eviction of tenant-respondent (hereinafter referred to as 'Tenant'), has been set aside and the case has been remanded back to the Rent Controller, with direction to frame fresh issue on the grounds taken by the landlord in the pleadings and to decide the matter afresh, after giving opportunity to the parties to lead evidence and after hearing them.

2. I have heard learned counsel for the parties and have also gone through the record.

3. It has been submitted on behalf of the landlord that the Appellate Authority has committed a material illegality, irregularity and perversity in deciding the appeal, whereby it has returned finding that landlord had taken two self-contradictory pleas for eviction of the tenant and Rent Controller had erred in framing two issues, i.e. Issues No.2 and 3, erroneously. Further that there is no provision for wholesale remand of the case in appeal under the Himachal Pradesh Urban Rent Control Act, 1987 (hereinafter referred to as 'Rent Act') and, thus, judgment passed by the Appellate Authority, remanding the case to the Rent Controller, is without jurisdiction and for such jurisdictional error impugned judgment deserves to be set aside.

4. Learned counsel for the landlord has relied upon pronouncement of this High Court in **Smt. Surinder Kaur v. Mohinder Pal Singh, ILR (1975) 5 HIM. 620;** and **Civil Revision No.80 of 2012,** titled as **Braham Dass v. Om Parkash and another,** decided on **7.7.2017.**

5. It has been contended on behalf of the tenant that present Revision Petition is time barred and as it has been filed after expiry of period of

limitation and no ground has been taken in the petition, with respect to condonation of delay on account of spread of Corona Pandemic, which was necessary to be pleaded and proved for condonation of delay, therefore, on this sole ground, petition deserves to be dismissed.

6. It has further been contended on behalf of the tenant that Appellate Authority is competent and duly empowered to order for further enquiry, if necessary, and as in the present case two contradictory issues were framed by the Rent Controller, therefore, it was necessary to send the matter for enquiry and keeping in view the nature of mistake committed by the Rent Controller, there was no other option with the Appellate Authority but to remand the case to frame the issue and, therefore, it has been contended that there is no illegality or impropriety in the impugned order and, therefore, present Revision Petition is not maintainable.

7. It has been contended on behalf of the landlord that there is no limitation provided under the Rent Act, as Section 24(5) of the Rent Act empowers the High Court to entertain the Revision Petition at any time and, therefore, a petition preferred within a reasonable period is to be considered and decided by the Court on merits, and the present petition has been preferred within reasonable period, particularly keeping in view the conditions prevailing at relevant point of time, on account of spread of COVID Pandemic. Therefore, it has been submitted that no separate application for condonation of delay was required and, thus, no such application has been filed nor any submission has been made in the main petition, because there was no question of condonation of delay by the Court, for having power to entertain the Revision Petition at any time.

8. It is true that Section 24(5) of the Rent Act empowers the High Court to entertain Revision Petition at any time, but “any time” is to be a reasonable time and keeping in view the limitation period of 90 days, for filing Revisions under Code of Criminal Procedure and Civil Procedure Code,

provided under the Limitation Act or other enactments, it would be appropriate to consider that about 90 days time is a reasonable period for preferring a Revision Petition under the Rent Act. In special circumstances, justifying cause of delay of any amount of days, rendering the petitioner unable to prefer a Revision Petition within about 90 days/reasonable period, the Court has power to entertain the Revision Petition even filing of the same later than 90 days.

9. In present case, impugned judgment was passed by the Appellate Authority on 27.2.2020, copy whereof was applied on 2.3.2020, which was attested on 21.3.2020 and was delivered on 7.10.2020. Thereafter, present Revision Petition was filed on 4.11.2020. After deducting the time between filing of application for copy and attestation thereof, 90 days time had expired on 18.6.2020.

10. Keeping in view the situation prevailing in March 2020, the Supreme Court had taken Suo Moto cognizance of difficulties might be faced by litigants in filing petitions, applications, suits, appeals or other quasi-judicial proceedings within the limitation prescribed under general law of limitation or any special law. It was a period of outbreak of COVID-19 Pandemic and, vide order dated 23.3.2020, passed in **Suo Moto Writ Petition (Civil) No.3 of 2020,** the Supreme Court had extended the period of limitation with effect from 15.3.2020 till further orders. Vide Order dated 10.1.2022, passed in the aforesaid Writ Petition, the Supreme Court had directed to exclude the period from 15.3.2020 to 28.2.2022, for the purpose of limitation with respect to all judicial or quasi-judicial proceedings.

11. In present case, limitation had to start from 21.3.2020 and petition was filed on 4.11.2020, both the dates are between the period from 15.3.2020 and 28.2.2022 and, in these circumstances, I do not find any justifiable reason or prudent cause to consider the petition barred by

limitation or otherwise, by construing that it has been filed beyond the limit of reasonable period.

12. The findings returned by the Appellate Court that the landlord has taken self-contradictory grounds for eviction of the tenant, and under the Rent Act, ground of rebuilding/ reconstruction or addition and alteration is only one ground and, therefore, it cannot be taken as two different grounds and two issues cannot be framed, are erroneous and misconceived, as the landlord in Para-18(a)(ii) has categorically stated that building has outlived its age, as the same was more than 100 years old and was made of *Dhajji* wall and stone masonry thick walls, as such, it required rebuilding/substantial additions and alterations by removing walls and after demolishing the building, which could only be undertaken if the premises were vacated by the tenant and, therefore, premises under occupation of tenant were required bonafidely for building/rebuilding and reconstruction by the landlord. It was further stated in the petition that building was to be constructed on old lines as per building bye-laws, but with substantial additions and alterations in old structure by increasing the height rooms by raising construction on the basis of new/prevailing bye-laws, by making substantial increase in floor area and number of storeys as well as proper internal adjustment of rooms. Therefore, the landlord has not taken any self-contradictory plea.

13. The tenant had also well understood the grounds taken by the landlord for eviction and, as such, to the relevant paragraph, no issue with respect to self-contradictory grounds has been raised in the reply and the only plea taken was that the entire building, in occupation of the tenant, was in good condition and did not require any re-building or reconstruction as alleged.

14. In the light of pleadings of the parties, Issues No.2 and 3 were to be considered and decided by taking into consideration the pleadings as well as evidence of the parties and as the only ground taken by the landlord was

rebuilding and reconstruction, with substantial additions and alterations in the old building, as stated in Para-18(a)(ii), the landlord led evidence in that respect only and no separate evidence was led with respect to Issue No.3, framed by the Rent Controller rightly or wrongly, with respect to additions and alterations in the premises and, therefore, in Para-35 of the order of the Rent Controller, it was observed that no evidence has been led by the landlord to substantiate this issue and, accordingly, this issue was decided against the landlord and the landlord did not assail the said finding on Issue No.3.

15. Plea of the tenant that Issue No.3, framed as a separate issue, was wrongly framed by the Rent Controller separately, but as the Rent Petition was decided in favour of the landlord, the landlord was not having any occasion to assail the same appears to be correct. As submitted, landlord was not aggrieved by the finding returned with respect to the said issue, as is also evident from the pleadings and evidence led by the landlord, addition and alteration pleaded in the grounds was with respect to reconstruction and rebuilding of the premises but was not regarding addition and alteration in the existing structure without reconstructing or rebuilding and, therefore, landlord rightly did not assail it.

16. In the impugned judgment, though case has been remanded to the Rent Controller for deciding afresh, but in Point No.1, the Appellate Authority has discussed every point raised by the landlord and the tenant and has affirmed the findings of the Rent Controller with respect to Issue No.1, with observation that Rent Controller had arrived at right conclusion that tenant was in arrears of rent and the Appellate Authority has also considered the case law referred by the parties and concluded that Issues No.2 and 3 were self-contradictory and, therefore, matter was remanded to the Rent Controller.

17. For the discussion made hereinabove, it is apparent that the Appellate Authority did not take pains to look into the record to decide the

appeal on the basis of pleadings and evidence led by the parties, but was swayed by the framing of two issues by the Rent Controller with respect to one and only one ground taken by the landlord for eviction of the tenant, i.e. on the ground of rebuilding and reconstruction but leading to substantial additions and alterations as explained in Para-18(1)(ii) of the petition referred supra. Therefore, findings returned by the Appellate Authority in the impugned judgment with respect to Point No.1 are erroneous, irrational and contrary to the record.

18. Findings returned by the Appellate Authority on Point No.1, holding that order passed by the Rent Controller was not sustainable under law, are erroneous and perverse being decided on the basis of plea taken, which is contrary to the pleadings and evidence on record and, therefore, impugned judgment deserves to be set aside and the order passed by the Rent Controller deserves to be affirmed, for the material on record.

19. From the grounds taken for eviction, it is evident that only plea of rebuilding/reconstruction of the premises has been taken, with explanation that on reconstruction/rebuilding, there will be substantial additions/alterations in the existing structure of the building by explaining the same, as noticed supra. But, it appears that the Appellate Authority failed to take pains and to have a glance to the pleadings as well as evidence led on two separate issues framed by the Rent Controller erroneously.

20. It is apparent that averment in the pleading related to additions/alterations in the building has been made to demonstrate that landlord intended to improve the utility and capability of the existing building by raising new construction, in accordance with norms, but on the basis of latest technology to use the area/land to its maximum which, for the nature of the pleadings and grounds taken, cannot be treated as a separate plea taken by the landlord for eviction on the ground of additions/ alterations of building.

21. In view of above discussion, it is apparent that landlord has not taken contradictory grounds for eviction of tenant, but has taken only one ground and, therefore, framing of two separate issues by the Rent Controller erroneously cannot be made basis to return finding that the landlord has taken two self-contradictory grounds for eviction. Landlord had taken one and only one ground for eviction and had led evidence on that issue only and tenant was also well aware about it. There is no pleading on behalf of the landlord or evidence led on record so as to construe that landlord had taken two grounds relating to rebuilding/reconstruction and addition/alteration, as alleged and construed by the Appellate Authority. Therefore, on this point, findings returned by the Appellate Authority are perverse, being contrary to the pleadings and evidence on record. Framing of wrong issue by the Rent Controller, in facts and circumstances of the case, is inconsequential so as to have any effect on the case of the landlord.

22. In **Surinder Kaur's** case, finding was returned by the Court on the basis of provisions of Section 21(3) of Himachal Pradesh Urban Rent Control Act, 1971. Now *para materia* provision is there in Section 24(3) of the Rent Act, which reads as under:

> **"24. Vesting of appellate authority on offices by State Government.-**
>
> **..... ....**
>
> **(3)** The appellate authority shall decide the appeal after sending for the records of the case from the Controller and after giving the parties an opportunity of being heard and, if necessary, after making such further inquiry as it thinks fit either personally or through the Controller.**"**

23. Ratio of law laid down in **Surinder Kaur's** case is also applicable in present case, which reads as under:

> "It is apparent that in those cases where the Appellate Authority is of opinion that in order to decide the appeal a further enquiry is necessary it has been empowered to make that enquiry itself or to make it through the Controller. The expression 'through the Controller' clearly contemplates that when the Controller makes the enquiry he does so on behalf of the Appellate Authority. In other words, the Controller makes the enquiry and forwards the findings reached by him to the Appellate Authority. He does so not for the purpose of disposing of a petition pending before him but for the purpose of enabling the Appellate Authority to dispose of the appeal pending before the latter. It is clear from the terms of Section 21 (3) of the Act that the enquiry envisaged by that provision is intended in order to enable the Appellate Authority to decide the appeal. It is manifest that the provision does not contemplate that the appeal should be allowed and the case remanded to the Controller for making an enquiry and disposing of the petition afresh. No such power to remand the case has been conferred by Section 21(3) on the Appellate Authority. I am fortified in the view taken by me by the decisions of the Punjab High Court in *Shri Krishan Lal Seth vs. Shrimati Pritam Kumari*, 1961 P.L.R. 865; and *Rajinder Kumar vs. Basheshar Nath*, 1965 P.L.R. 974. I am of opinion that the order of the Appellate Authority is in excess of his jurisdiction and is vitiated accordingly."

24. In any case, Appellate Authority was not empowered to remand the case, as ordered, and it ought to have decided itself, after hearing the parties, or would have asked the Rent Controller to return its finding or, for considering it necessary, would have conducted further enquiry either personally or through Rent Controller, and, in case of enquiry by the Rent Controller, the Appellate Authority should have decided the appeal itself after return of findings/receiving the report from the Rent Controller with regard to enquiry, but Appellate Authority acted contrarily by remanding the case to the Rent Controller for deciding afresh, and, therefore, the Appellate Authority has committed a jurisdictional error.

25. In view of aforesaid discussion, the present Revision Petition is allowed and, consequently, impugned judgment dated 27.2.2020, passed by Appellate Authority-II, Shimla, in **Rent Appeal No.38-S/13(b) of 2013,** titled as **M/s Beant Singh @ Sons v. Brahmin Sabha,** is set aside. The parties are directed to appear before the Appellate Authority on 28.3.2023, whereafter the Appellate Authority shall decide the appeal afresh, in terms of ratio of law and observations made hereinabove, preferably within three months thereafter.

Revision Petition stands disposed of, so also pending application(s), if any. Records of the Courts below be sent immediately.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Chaggan Lal & others …Objectors.

Versus

Nand Lal Sharma & others

..Claimants/Respondents/Appellants/Judgment Debtors.

For the Objectors: Mr.R.K. Bawa, Senior Advocate, alongwith Mr.Ajay Kumar Sharma, Advocate.

For the Respondents: Mr.B.P. Sharma, Senior Advocate, alongwith Mr.Arun Kumar, Advocate, for respondents No.1 and 2.

Mr.Sanjay Kumar Sharma, Advocate, for respondent No.3.

Respondents No.4 and 5 are *ex parte* vide order dated 19.10.2021.

Respondent No.6 stands deleted vide order dated 06.03.2020.

Chamber Appeal No.1 of 2022 in
Arbitration Case No. 11 of 2020
Date of Decision: March 7, 2023

Arbitration and Conciliation Act, 1996- Order of acceptance of solvent security bond was passed by Registrar (Judicial)- Chamber appeal was filed for setting it aside- **Held**- Registrar (Judicial) committed mistake in accepting security bond of first concerned plot because out of 5 storeys only 3 storeys had been approval for construction and there was discrepancy in the report of evaluator- Title and valuation of second property was also held to be irrelevant because it cannot be considered as a solvent security equivalent to amount payable, in terms of award. (Paras 21 and 22)

The following judgment of the Court was delivered:

Vivek Singh Thakur, J.

Chamber Appeal No.1 of 2022

This Chamber Appeal has been filed by respondents No.1 and 2 under Rule 5 of Chapter II of High Court of Himachal Pradesh (Original Side) Rules, 1997 (hereinafter referred to as 'Original Side Rules, 1997'), for setting aside order of accepting the solvent security bond, passed by Registrar (Judicial) on 28.08.2020, and also for direction to the petitioners to deposit entire awarded amount in the Registry of this Court.

2. Petitioners invoking provisions of Section 34 of Arbitration and Conciliation Act (hereinafter referred to as 'Arbitration Act') have filed main petition for quashing and setting aside Arbitral Award dated 14.11.2019 passed by the Sole Arbitrator.

3. Vide order dated 06.03.2020, passed in OMP No.84 of 2020, execution and operation of impugned Award was stayed, subject to deposit of entire awarded amount in the Registry of this Court alongwith up-to-date interest within six weeks from passing the order, or subject to furnishing solvent security bond, equivalent to the aforesaid sum or of a bank guarantee, equivalent to aforesaid sum within the aforesaid period in the Registry of this Court.

4. Petitioners could not deposit entire amount or furnish solvent security within time, however, after due date, solvent security bond was furnished by/on behalf of the petitioners, with extension of time, vide order dated 16.07.2020 passed in OMP No.156 of 2020.

5. Solvent security bond furnished by or on behalf of the petitioners was directed to be placed before Registrar (Judicial) with a direction to him to accept or reject the same after satisfying the validity and viability of security

bond with further order that in case solvent security bond was not found viable or acceptable then petitioners had to furnish another security bond or bank guarantee on or before 17.08.2020, failing which they had to deposit entire amount alongwith up-to-date interest in the Registry of this Court on or before 31.08.2020.

6. Vide order dated 25.08.2020, Registrar (Judicial) was permitted to take up the matter on 28.08.2020 for assessing viability and solvency of security bond and bank guarantee, in terms of order dated 16.07.2020 read with order dated 06.03.2020.

7. Vide order dated 28.08.2020 Registrar (Judicial) accepted the security bond furnished and executed on behalf of the petitioners by Jitender Dua.

8. Respondents No.1 and 2 had disputed validity and legality of security bond and, therefore, they filed an application OMP No.338 of 2020 by raising objection to acceptance of security bond by Registrar (Judicial) furnished on affidavit of Jitender Dua on behalf of the petitioners. The said application was dismissed with liberty to applicants-respondents No.1 and 2 to avail appropriate remedy, in accordance with law, if advised so, in view of provisions of Rule 5 of High Court of H.P. (Original Side) Rules, 1997. Thereafter, present appeal has been preferred by applicants-respondents No.1 and 2.

9. On behalf of petitioners, two properties have been furnished as solvent security bonds.

10. First property is Conveyance Deed registered on 18.10.2018 between Himachal Pradesh State Industrial Development Corporation Limited (HPSIDC) and M/s Shri Sai Balaji Pharmatech Private Limited, through its Director Jitender Dua.

11. Second property is land measuring 11 Biswa 5 Biswansi, located in Village Billanwali Gujran, Tehsil Baddi, District Solan, H.P., with title report of one Ravinder Singh Thakur, Advocate.

12. Valuation Reports with respect to afore two properties obtained from registered Valuator/Valuer namely Anil Vats Associates, Panchkula, have also been placed on record indicating that current value of two properties was about 6 Crores 14 lacs.

13. Registrar (Judicial) vide order dated 28.08.2020 had accepted these properties as solvent security bond on the basis of affidavit filed by Jitender Dua, after rejecting the objections raised by/on behalf of applicants-respondents No.1 and 2.

14. Learned counsel for the applicants-respondents No.1 and 2 has pointed out that a condition in Conveyance Deed referred supra (first property) with respect to Plot No.5-Extension unambiguously depicts that this property is not free from all encumbrances so as to furnish the same as solvent security with clear title. He has referred Clause (xiii)(a), which reads as under:-

> "(xiii)(a) The Vendee shall have no right to transfer by way of gift, mortgage or by transfer of shares other than the original promoter declared at the time of allotment/agreement/conveyance deed or change of management or otherwise, the land or any right of the plot or the building(s) erected thereon except with the prior written approval of the Vendor Corporation. The Competent Authority of the Vendor Corporation shall have the right to refuse such request without assigning any reasons thereof. The Competent Authority while granting such permission may impose such conditions as may be decided by the Vendor Corporation from time to time."

15. It has further been submitted on behalf of the applicants-respondents No.1 and 2 that allottee/transferee of the plot has no right to transfer the property by way of gift, mortgage or transfer of shares other than

original promoter declared at the time of allotment/agreement/conveyance deed or change of management or otherwise, the land or any right of the plot or the building(s) erected thereon except with prior written approval of Vendor Corporation. Therefore, it has been contended that property of Plot No.5-Extension, above referred, cannot be a solvent security free from all encumbrances and, thus, acceptance of property as a solvent security, by Registrar (Judicial), warrants interference in this appeal.

16. With respect to second property it has been submitted that valuation report itself vis-a-vis maps of the property placed on record, are depicting contradictory factual matrix. It has further been submitted that valuation of the report of Plot No.5-Extension, at its first page, number of floors have been mentioned as 4. Whereas, in second page, including ground floor there is valuation of 5 floors. Further, in the Map, Plot No.5-Extension is only having 3 floors, i.e. ground floor, first floor and second floor, and in supplementary affidavit dated 17.08.2020 filed by Jitender Dua, in support of additional solvent security bond, in para-2 it has been submitted that 3 storeys of the building have been approved by concerned authority and 4th storey has not been got approved by Deponent and Deponent shall apply for approval of the same. It has also been pointed out that in second page of valuation report, a remark has been given that Valuator had taken actual measurement area for valuation, and this report was only for general purpose, but cannot be used for banking purpose. By pointing out aforesaid points and variations and defects in the valuation report as well as construction on Plot No.5-Extension, it has been contended that this property is not fit for furnishing and/or accepting it as solvent security.

17. With respect to second property, it has been pointed out by learned counsel for appellants/respondents No.1 and 2 that as per revenue record, Jitender Dua is owner of the property bearing Khasra No.606/188 and 171, situated in Mohal Billanwali Gujjran, Tehsil Baddi, District Solan, H.P.,

measuring 11 Biswas 5 Biswansi (544.50 sq.yard), but in its valuation report, property has been reflected by the Valuer as 11 Biswas 12 Biswansi (562.50 sq. yard) which is in excess by 18 sq. yard and, thus, bond is factually incorrect and was not required to be accepted.

18. It has further been submitted that even if, second property is accepted as a valid security bond then also, its valuation is only worth `3,27,08,800/-, whereas, amount due at the time of furnishing bond was about `6,50,00,000/- and, therefore, acceptance of solvent security bond by Registrar (Judicial) instead of directing the petitioners to deposit entire awarded amount alongwith up-to-date interest, is major mistake based on material illegality and irregularity committed by acceptance of defective security bond upon which no charge can be created for want of authority and competence.

19. Learned counsel for non-applicants/petitioners has argued that in Plot No.5-Extension, 3 storeys are sanctioned and valuation thereof is sufficient to consider it sufficient solvent security furnished in compliance of order passed by the Court. It has further been submitted that M/s Shri Sai Balaji Pharmatech Private Limited is allottee of Plot No.5-Extension with all rights to create charge thereon by virtue of conveyance deed executed between HPSIDC and M/s Shri Sai Balaji Pharmatech Private Limited and in Clause (xiii)(a) there is no bar to furnish this property as security. The bar is only with respect to transfer of right by way of gift or mortgage, and creation of charge on the said property is not prohibited as the allottee has absolute right on the Plot and lien of Industrial Department nowhere creates any hindrance on the absolute ownership of the allottee entitling him to execute bond for furnishing the allotted plot as solvent security. It has further been submitted that valuation report is with respect to title verification and valuation thereof and in case valuation of only 3 validly constructed storeys is taken into consideration then also, valuation is higher than the amount awarded by the

Arbitrator. Further that, second property is in ownership and possession of Jitender Dua, who is competent to furnish the same in security and minor discrepancy in measurement of area, happened in mentioning measurement of the area is irrelevant as valuation of property has been done by the Valuator after visiting the spot physically.

20. First property of Plot No.5-Extension alongwith construction thereon is a property which cannot be transferred or alienated by the allottee except prior approval of HPSIDC. My considered opinion is that such property cannot be furnished as a bond or solvent security as a guarantee of payment/repayment of awarded amount without consent of HPSIDC. There is nothing on record that HPSIDC has communicated any no objection for furnishing this property as solvent security or bond against the amount due/payable in compliance of award passed by the Arbitrator, in case of dismissal of Objection Petition preferred by the petitioners. The security to be furnished as surety bond must be free from all encumbrances having no rider of any condition of permission from any third party and in case of such rider no objection of such person/authority is mandatory and in absence thereof, such property cannot be accepted as a solvent security.

21. Registrar (Judicial) has also committed a mistake in accepting security bond of Plot No.5-Extension and property constructed thereon, particularly when it is an admitted fact that out of 5 storeys only 3 storeys have approval, for constructions, and Evaluator, at one place, had recorded the building of 4 storeys and at another place as 5 storeys and in the Map only 3 storeys have approval of the Competent Authority.

22. In absence of first property, there is no valid solvent security/bond equivalent to the amount payable by the petitioners, in terms of award passed by the Arbitrator. Therefore, title and valuation of second property is also irrelevant because it cannot be considered as a solvent

security equivalent to amount payable, in terms of award. Therefore, second property cannot be considered as a solvent security.

23. In view of above discussion, present appeal is allowed and order dated 28.08.2020 passed by Registrar (Judicial) is set aside with a direction to the petitioners to furnish solvent security, in terms of order dated 06.03.2020 and subsequent orders passed thereafter on or before 10.04.2023, failing which petitioners are directed to deposit entire awarded amount alongwith up-to-date interest in the Registry of this Court on or before 29.04.2023.

BEFORE HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.

Himachal Pradesh Road and
other Infrastructure Development
Corporation Ltd. ....Petitioner.

Versus

M/s C & C Construction Ltd. .... Respondent.

For the petitioner : Mr. J.S. Bhogal, Senior Advocate,
with Mr. T.S. Bhogal, Advocate.

For the Respondent : M/s Navin Kumar and Rashmeet Kaur, Advocates, with Dr. Deepal Hoda, Authorized Representative.

CARBC No.1 of 2020
Reserved on : 15.9.2022
Decided on: 05.12.2022

Arbitration and Conciliation Act, 1996- Section 34- Challenge to Arbitral Award passed by Tribunal**-** Petitioner and respondent entered into a contract for the widening and strengthening of a specific road- There was delay in completion of the work- Petitioner granted an extension of time for completion- Respondent invoked the arbitration clause to claim damages for the delay- Arbitral Tribunal heard the dispute and passed the impugned award- Such award was challenged before High Court-**Held-** High Court cannot act as a Court of appeal and the powers conferred under Section 34 of the Act are fairly narrow- Mandate under Section 34 of the Act is to respect the finality of the Arbitral Award- Interference with the Arbitral Award in the usual course on factual aspects would defeat the commercial wisdom behind opting for alternative dispute resolution- Findings of Arbitral Tribunal were not found to be perverse- Petition was dismissed and Arbitral award was upheld (Paras 21, 23 and 27)

The following judgment of the Court was delivered:

Ajay Mohan Goel, Judge

By way of this petition, filed under Section 34 of the Arbitration and Conciliation Act, 1996, the petitioner has prayed for setting aside of the award passed by learned Arbitral Tribunal, dated 17.08.2019, in terms whereof the claim petition of the respondent has been allowed by learned Tribunal in the following terms:-

> "*(i) An amount of Rs.11.70 Crore under claim No.1.*
> *(ii) An amount of Rs.13.60 Crore under claim No.2.*
> *(iii) Under Claim No.3, the Claimant is held entitled to Rs.6.07 Crore towards simple interest @ 12% per annum from 07.04.2016, the date when cause of action arose to the Claimant till 07.04.2018 the date of filing of statement of claim on the awarded amount of Rs.25.30 Crore.*
> *(iv) Claimant is also held entitled to Rs.4.12 Crore towards pendente lite interest @ 12% per annum on the awarded amount of Rs.25.30 Crore from 08.04.2018 to 17.08.2019 the date of award.*
> *(v) The Claimant is also held entitled to future interest @ 12% per annum from the date of award till payment on Rs.35.49 Crore, the awarded amount of (Rs.25.30 Crore+Rs.6.07 Crore pre-litigation interest+ Rs.4.12 Crore pendente lite interest). In case payment, including interest is made within three months from the date of Award no future interest will be payable.*
> *(vi) The Claimant is held entitled to proportionate costs of the proceedings from the Respondent, as provided under Section 31 (a) of the Act, qualified at Rupees Eighty Lakh only, which includes the fee payable by the Claimant to the Arbitrators, the unpaid amount of fees, which was payable by the Respondents and was ordered to be paid by the Claimant and the expenses of the Arbitrators including their travel and hotel expenses paid by the Claimant.*"

2. Brief facts necessary for the adjudication of the present petition are as under:-

The case of the petitioner is that the parties, i.e. the petitioner and the respondent entered into a Contract, in terms whereof, the respondent

agreed to execute the works relating to widening and strengthening of Una-Barsar-Jahu-Kalkhar-Nerchowk Road, Section Una to Barsar from Km 45+000 to Km 90+800. A formal Contract embodying the terms of the agreement was duly executed and was numbered as Contract No.PW-SRP/RIDC/Procurement -ICB-3/2008 of May 06, 2008. The works were completed by the respondent belatedly, however, the petitioner decided to grant extension of time till the completion of the work. After the payments with regard to the work executed stood made to the respondent, the respondent invoked the arbitration agreement with respect to its claim for damages for prolongation of the Contract. The respondent nominated Shri Ashok Khurana, Director General (Retd.), CPWD, as its Arbitrator nominee. On receipt of such notice of invocation of the arbitration, the petitioner nominated Shri R.K. Sharma, Engineer-in-Chief (Retd.) IPH, Himachal Pradesh as its Arbitrator nominee and they both nominated Hon'ble Mr. Justice Devinder Gupta (Retd.) as the Presiding Arbitrator and the constitution of the Tribunal was completed on 24.02.2018.

3. The claim was filed before the Tribunal by the claimant and reply thereto was filed by the present petitioner and objections thereto were taken by the petitioner with regard to maintainability of the claim petition including the claim petition being hopelessly time barred as also the authority of the person who had filed the claim. Thereafter, the issues were framed by learned Tribunal and the parties led their respective evidence which led to the passing of the impugned award.

4. Learned Senior counsel appearing for the petitioner has argued that the award under challenge is not sustainable in the eyes of law, for the reason that learned Tribunal erred in not appreciating that the claim was beyond limitation. Learned Senior Counsel submitted that the findings returned by learned Tribunal that the claim was within the period of limitation were perverse findings and were in-conflict with the Public Policy of India.

Learned Senior Counsel further submitted that the findings of learned Tribunal that the claim was filed by a duly authorized person were also bad in law as the claim was not filed by the claimant through a duly authorized person and this also results in the award being in-conflict with the Public Policy of India. Learned Senior Counsel further submitted that the findings returned by learned Tribunal that the claims were maintainable even in the absence of any notice in terms of Clause 24.1 of the Contract was a result of complete misreading of the provisions of the Contract and further, the findings returned by learned Tribunal pertaining to prolongation cost in maximum retail prises (MRPs) by ignoring the express provisions of agreement also amounted to the violation of requirements of Section 28 of the Arbitration and Conciliation Act. As per learned Senior Counsel, learned Tribunal erred in not appreciating that it was the claimant who had violated the terms of the agreement and while agreeing to extend the time for completion of the work, the present petitioner had not agreed to compensate the claimant for that and in fact the claimant had not led any claim qua the cost compensation and said claim was deemed to have been given by the respondent. According to learned Senior Counsel, learned Tribunal completely ignored the provisions of Clauses 14.10 and 14.11 of the agreement and it also erred in not taking note of the provisions of Clause 2.21 of the Contract in terms whereof, compliance as required was not done by the claimant. Learned Senior Counsel further argued that learned Tribunal failed to take note of the fact that extension of time as sought by the claimant was granted by the petitioner vide variation order No.3, dated 08.04.2011, as per determination by the Engineer without any prolongation cost and the condition in the extension of time to the effect that it was being granted without prolongation cost was accepted by the claimant even though the time being granted was contested. As per learned Senior Counsel, these aspects of the matter were not gone into by the learned Tribunal which renders the award in-conflict with the Public Policy of India.

Learned Senior Counsel further submitted that while quantifying claim No.1, learned Tribunal took the amount as claimed by the respondent without even referring to the stand of the petitioner and a mere certificate of the Chartered Accountant without any account details etc., who was not even produced as a witness by the party was construed to be correct and extremely exaggerated claim was granted in favour of the claimant to the deterrent of the petitioner. Learned Senior Counsel also submitted that while deciding claim No.2, pertaining to additional overhead cost during the extended period, learned Tribunal proceeded on the assumption that delay was attributable to the petitioner without even considering the defence of the petitioner or referring to the documents which were filed by the petitioner before learned Tribunal. Learned Senior Counsel further submitted that in fact a perusal of the award demonstrates that the same was passed by learned Tribunal with a pre-determined mind and the evidence on record was neither correctly appreciated nor the pleadings were gone into in the correct perspective which renders the award to be against the Public Policy of India. Accordingly, a prayer has been made that the petition be allowed and the award be set aside.

5. Opposing the petition, learned counsel for the respondent argued that the present petition is not maintainable, for the reason that the grounds which have been urged in the same for setting aside the award are not available to the petitioner. Learned counsel submitted that the award passed by learned Tribunal is a reasoned and a speaking award which was passed by learned Tribunal after taking into consideration respective contentions of the parties and after referring to the documents relied upon by the parties and therefore, as the award stood passed by learned Tribunal by taking into consideration all that was placed before it by the parties, the same does not calls for any interference by this Court, more so in view of limited scope of interference under Section 34 of the 1996 Act. Learned counsel submitted that the petitioner has not been able to make out any case so as to invite

interference of this Court under Section 34 of the 1996 Act and the intent of the petitioner is to call upon this Court to re-appreciate the evidence on record which is not permissible in law. Learned counsel submitted that the petitioner wants this Court to arrive at its own conclusion with regard to the issues which were raised by the parties before learned Tribunal which is not permissible in law and accordingly he submitted that as there was no merit in present petition and further as the award passed by learned Tribunal was a valid award in terms of the Public Policy of India, present petition be dismissed. It was refuted by learned counsel that either the clauses of the agreement were not correctly appreciated by learned Tribunal or the claim petition was filed by a person not authorized to do so. Learned counsel also submitted that the award was within limitation as was correctly held by learned Tribunal as the acts of omission on the part of respondent before learned Tribunal were all continuing wrongs. He further submitted that delay in execution of the work was not on account of any acts of omission by the claimant, but the same was completely attributable to the present petitioner as has been rightly held by learned Tribunal. Accordingly, a prayer has been made for dismissal of the present petition.

6. Before the Court ventures into the adjudication of the present petition, it is necessary to refer as to what is the scope of interference by a Court with an Award under Section 34 of the 1996 Act. In terms of the law which has been laid down by Hon'ble Supreme Court of India, the jurisdiction conferred on the Courts under Section 34 of the 1996 Act is stated to be fairly narrow and when it comes to the scope of an appeal under Section 37 of the Act, the jurisdiction of the Appellate Court in examining an order setting aside or refusing to set aside an Award is said to be all the more circumscribed.

7. In *MMTC Limited* Versus *Vedanta Limited, (2019) 4 Supreme Court Cases 163*, Hon'ble Supreme Court held that the position is well settled by now that the High Court does not sit in appeal over the arbitral award and may

interfere on merits on the limited grounds provided under Section 34 (2)(b) (ii), i.e. if the award is against the public policy of India. Hon'ble Supreme Court held that as per the legal position clarified through decisions of Hon'ble Supreme Court prior to the amendments to the 1996 Act in 2015, a violation of Indian public policy, in turn, includes a violation of the Fundamental Policy of Indian Law, a violation of the interest of India, conflict with justice or morality, and the existence of patent illegality in the arbitral award. Hon'ble Supreme Court further held that additionally, the concept of the "Fundamental Policy of Indian Law" would cover compliance with statutes and judicial precedents, adopting a judicial approach, compliance with the principles of natural justice, and Wednesbury reasonableness.Hon'ble Court has further held that 'patent illegality' it has been held to mean contravention of the substantive law of India, contravention of the 1996, Act and contravention of the terms of the Contract.

8. In *K. Sugumar and Another* Versus *Hindustan Petroleum corporation Limited and Another, (2020) 12 Supreme Court Cases 539*, Hon'ble Supreme Court held that the contoursof the powers of the Court under Section 34 of the Act are too well established to require any reiteration and even a bare reading of Section 34 of the Act indicates the highly constricted power of the Civil Court to interfere with an arbitral award. Hon'ble Court has further held that the reason for this is obvious as when parties have chosen to avail an alternative mechanism for dispute resolution, then they must be left to reconcile themselves to the wisdom of the decision of the arbitrator and the role of the Court should be restricted to the bare minimum.Interference will be justified only in cases of commission of misconduct by the arbitrator which can find manifestation in different forms including exercise of legal perversity by the arbitrator.

9. In *Dyna Technologies Private Limited* Versus *Crompton Greaves Limited, (2019) 20 Supreme Court Cases 1*, Hon'ble Supreme Court in Para-24 thereof has been pleased to hold as under:-

> *"24. There is no dispute that Section 34 of the Arbitration Act limits a challenge to an award only on the grounds provided therein or as interpreted by various Courts. We need to be cognizant of the fact that arbitral awards should not be interfered with in a casual and cavalier manner, unless the Court comes to a conclusion that the perversity of the award goes to the root of the matter without there being a possibility of alternative interpretation which may sustain the arbitral award. Section 34 is different in its approach and cannot be equated with a normal appellate jurisdiction. The mandate under Section 34 is to respect the finality of the arbitral award and the party autonomy to get their dispute adjudicated by an alternative forum as provided under the law. If the Courts were to interfere with the arbitral award in the usual course on factual aspects, then the commercial wisdom behind opting for alternate dispute resolution would stand frustrated."*

10. Similarly, in *Parsa Kente Collieries Limited* Versus *Rajasthan Rajya Vidyut Utpadan Nigam Limited, (2019) 7 Supreme Court Cases 236*, Hon'ble Supreme Court has reiterated that construction of the terms of a Contract is primarily for an arbitrator to decide unless the arbitrator construes the Contract in such a way that it could be said to be something that no fair minded or reasonable person could do. Hon'ble Court further held that a possible view by the arbitrator on facts has necessarily to pass muster as the arbitrator is the ultimate master of the quantity and quality of evidence to be relied upon when he delivers his arbitral award. Hon'ble Court has also held that an award based on little evidence or no evidence which does not measure upthe quality to trained legal mind would not be held to be invalid on this score.

11. Similarly, in *Dyna Technologies Private Limited* (supra), Hon'ble Supreme Court also held that the Court should not interfere with an award merely because an alternative view on facts and interpretation of Contract exists and the Courts need to be cautious and should defer to the view taken by the Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration Act.

12. After referring to all the judgment mentioned hereinabove, Hon'ble Supreme Court in *UHL Power Company Limited Versus State of Himachal Pradesh, (2022) 4 Supreme Court Cases 116*, while reiterating the above mentioned legal position has reiterated that under Section 34 of the Act, the High Court cannot re-appreciate the findings returned by learned Arbitral Tribunal and take a different view in respect of interpretation of relevant clauses of the agreement governing the parties. Hon'ble Court has observed that the High Court cannot act as a Court of appeal and the powers conferred under Section 34 of the Act are fairly narrow.

13. A perusal of the award demonstrates that on the basis of the pleadings of the parties, learned Tribunal ordered that each claim of the claimant will be treated as a separate issue and in addition, four more points were formulated for determination. The genesis of claim of the claimant before learned Tribunal was that it was awarded the work for construction and completion of widening and strengthening of Barsar-Jahu Section from Km 45 to Km 90.809 having total length of 45.80 km of Una-Ner-Chowk Road. The Contract consisted of widening and strengthening of existing single/intermediate lane road to two lane standard invoking 37,000 cum bituminous works, 145,000 cum aggregate base work 650,000 cum earth work in excavation and embankment and 6 bridges with 33,000 cum concrete, Contract completion period would be 33 months. The contract was awarded on 29.02.2008. A formal agreement was executed on 06.05.2008 and total

Contract value was Rs.103,93,81,256/-. In terms of the Contract, entire stretch of 45.8 km of the road was to be completed within a period of 33 months from the date of issue of notice to proceed which was issued by the respondent through Engineer on 07.05.2008. As per the claimant, the completion of work was inordinately delayed due to various reasons attributable to the respondent and beyond the control of the claimant compelling the claimant to overstay at the site with all requisite men and machinery, which resulted in incurring substantial costs over and above the Contract costs. According to the claimant, the respondent/ employer was liable to reimburse to the complainant said costs as per law. It was further the case of the claimant that several notices were issued to the respondent under Clause 20.1 of the Contract, in terms whereof, the claim was raised by the claimant towards additional cost suffered due to prolongation of the Contract for reasons attributable to the respondent and beyond the control of the claimant. The respondent granted nine extensions of time, but additional cost incurred by the claimant on account of extension of time was not reimbursed. Further, according to the complainant, through its letter dated 07.04.2016, it included the claim prolongation cost in IPC 73 alongwith all contemporaneous record for payment by the respondent, but the Engineer through its letter dated 17.05.2016 abruptly and arbitrarily rejected the claim. After the claim was rejected by the Engineer and as the DRB being defunct, the claimant through its letter dated 13.09.2017 invoked arbitration and referred the disputes for adjudication. The case of the respondent before learned Tribunal was that the claims were not maintainable as the same were not raised as and when the same were alleged to have arisen and further the claimant failed to give requisite notice in terms of Clause 21.4 of the Contract. As per the respondent, while submitting the monthly progress reports, the claimants had repeatedly been mentioning the claim as 'Nil' and therefore, the claims referred were nothing, but an afterthought and were without any merit. The person

filing the statement of claim was neither having any authority on behalf of the claimant to initiate the proceedings nor any authority has been filed with the statement of claim and therefore also the claim rejected merit. The pleas raised by the claimant were barred by limitation and it was the claimant who had sought nine extensions of time which were allowed by the respondents and this was done by the respondent by taking a lenient view as the work had to be completed and in fact the extension of time was granted to the claimant without imposing any liquidated damages so that to enable the claimant to utilize the amount. The claimant wasill-equippedand short of man power and equipment to undertake the work and certain minor hindrances which were there were in fact removed on priority basis. There was no hindrance as per the respondent in the execution of work created by local inhabitants as was claimed by the claimant and no notice raising the claim towards additional cost suffered due to prolongation of the Contract was sent to the respondent by the claimant in terms of the Contract.

14. In terms of the impugned award, the claim has been allowed by learned Tribunal, details whereof have already been stated in the judgment hereinabove.

15. In terms of the award, the following claims were made by the claimant:-

> "*Claim No.I: Additional Cost incurred due to prolonged retention of the Equipment during extended period.*
> *Claim No.II: additional Overhead Costs during Extended Period.*
> *Claim No.III: towards Interest on the above claimed amounts of Prolongation Cost calculated as per clause 14.8 GCC.*"

16. As I have already observed hereinabove that besides treating each the claim of the claimant to be a separate issue, learned Tribunal formulated the following points also for determination:-

> "*a. Whether the clams are within the period of limitation? (onus on the Claimant)*

b. Whether the clams have been filed by a duly authorized person on behalf of the Claimant? (onus on the Claimant).
c. Whether the claims are not maintainable for want of notice in terms of Clause 20.1 of GCC, as alleged? (onus on the Respondent)
d. Whether the Claimant is precluded from filing the claims after stating in the Monthly Progress Reports the claims as 'NIL', as alleged? (onus on the Respondent)."

17. Learned Tribunal answered Claim No.1 after referring to the respective stand of the parties as also the case law on the issue of holding that the contractor was entitled for additional costs for carrying out the Contract work in the extended period of Contract when the delay was caused on account of events which are either mentioned in the Contract itself or which are permissible for additional costs under the law. Learned Tribunal held that in terms of the provisions of the Contract as well as the judicial precedents referred therein, the claimant was entitled to both additional time as well as additional costs under the Contract for Delay Events attributable to the employer. It held that in the present case extension of time was granted to the claimant, but the Engineer as also the employer failed to consider the costs claimed and the entitlement of the claimant for additional costs arose under the Contract and not as an outcome of the extension of time granted by the respondent. Learned Tribunal held that the delay was not attributable to the claimant, but the same was attributable to the respondent and therefore, the claimant was entitled to recover from the respondent Rs.1.20 crore towards claim No.1.

18. With regard to claim No.2, learned Tribunal held that after due appreciation of the submissions of the parties, learned Tribunal was of the view that overhead costs are time related costs which are incurred with the passage of time and are not dependent on the value of work or quantum of work executed during the relevant time. It held that the site expenses were provided by the claimant to the respondent for its inspection at the material

time, but no objection was raised at the relevant time and as regard Head Office overhead costs, the same was not uncommon that Head Office provides necessary support to project management and providing such support incurs expenses. Learned Tribunal after deliberating on the issue held that the claimant was entitled to an amount of Rs.13.07 crore under claim No.2.

19. With regard claim No.3, learned Tribunal held that as per Clause 14.8 of GCC as modified by the PCC, if the contractor does not receives payment in accordance with sub-clause 14.7 GCC, the contractor was entitled to receive interest compounded monthly on the amount unpaid during the period of delay and interest was to be calculated at 1% above the PLR rate fixed by the Reserve Bank of India to commercial Banks for payments in local currencies. Learned Tribunal further held that the claimant had filed the PLR rate fixed by Reserve Bank of India downloaded from its official website and Section 31 (7) (a) of the 1996 Act provided that the award may include such rate of interest between the date on which cause of action arose till the date of award as made. In light of said provision, learned Tribunal allowed simple interest @ 12% per annum from 07.04.2016, i.e. the date when the cause of action accrued to the claimant upto 07.04.2018, i.e. the date of filing of the Statement of Claim. The Pendente Lite interest was also allowed @12 % per annum 08.04.2018 to 17.08.2019. The future interest was held to be payable on the awarded sum from 17.08.2019 till the date actual payment @ 10% per annum with the condition that in case payment including interest was made within three months from the date of award, no future interest will be payable.

20. As far as the additional issues framed, learned Tribunal returned its findings as under:-

With regard to Additional Issue-(a): Whether the claims are within the period of limitation, Learned Tribunal held that as the claimant had raised its prolongation cost claim on 07.04.2016 which was rejected by the Engineer on 17.05.2016 and the claimant raised its additional cost incurred in its final

bill on 09.05.2017 which was not paid, it is thereafter that the claimant invoked arbitration on 13.09.2017 and as the statement of claim was filed with supporting documents on 07.04.2018, i.e. within the period of three years from the date of accrual of cause of action on 17.05.2016 and 20.05.2017, therefore, the claim was within limitation in terms of the ratio of the law laid down by Hon'ble Supreme Court of India in *Inder Singh Rekhi* Versus *Delhi Development Authority*, AIR 1988 Supreme Court 1107.

With regard to Additional Issue-(b): Whether the claims have been filed a duly authorized person on behalf of the Claimant, learned Tribunal held that this issue was framed on the objection taken by the respondent in its statement of defence, but the claimant had placed on record authorization dated 18.01.2016 in favour of Deepal Hooda, alongwith Board's Resolution dated 13.01.2014 with the documents filed with rejoinder and therefore, objection of the respondent taken in the statement of defence had become redundant and moreover, this objection was not pressed by the respondent during final argument stage.

With regard to Additional Issue-(c): Whether the claims are not maintainable for want of notice in terms of Clause 20.1 of GCC, as alleged, learned Tribunal returned the findings that the claims were maintainable even in the absence of notice in terms of Clause 20.1 of GCC, by agreeing with the contention with the contention of the claimant that Clause 20.1 of the Contract was in contravention of Section 28 of the Contract Act, 1872, whereby any agreement restricting enforcement of a party's right absolutely or which limits the within which rights may be enforced is void. Learned Tribunal clearly held that when the Delay Events occurred, the claimant promptly notified the Engineer about the occurrence of such events to EOT and costs. In its EOT application, the claimant had narrated in detail the occurrence of consequences of Delay Events which was sufficient compliance in terms of Clause 20.1 of the Contract. Learned Tribunal also held that the Delay Events

were reviewed and evaluated by the Engineer and on such evaluation, nine extensions were granted to the claimant and therefore, the Engineer was bound to determine the cost to which the claimant was entitled under the same Clause, but it failed to do so. Accordingly, it held that it was therefore not correct on the part of the respondent to urge that it had no notice of the Delay Events. Learned Tribunal also held that even assuming that the claimant had failed to give any notice of its claim as required under Clause 20.1 of the Contract, the same cannot be taken benefit of by the respondent in denying the claim because of Section 28 of the Contract Act.

With regard to Additional Issue-(d): Whether the Claimant was precluded from filing the claims after stating in the Monthly Progress Reports the claims as 'NIL', as alleged, learned Tribunal returned the findings that as per the procedure brought to the notice of learned Tribunal, it was mentioned that on receipt of the copies of MPRs, the Engineer makes its comments and forwards it to the employer and in the case in hand, the copy of MPR which was shown to learned Tribunal, the entry against claim shown as 'NIL' was not shown by the claimant but by the Engineer and the same cannot be taken benefit of by the respondent.

21. As I have already mentioned in above part of the judgment in terms of the law as it stands today, the scope of interference under Section 34 of the Act qua an arbitral award is fairly narrow. In terms of pronouncements of Hon'ble Supreme Court, the High Court should not interfere with an award merely because an alternative view on facts and interpretation of Contract exists and further the Courts need to be cautious and should defer to the view taken by learned Arbitral Tribunal even if the reasoning provided in the award is implied unless such award portrays perversity unpardonable under Section 34 of the Arbitration and Conciliation Act. The High Court cannot re-appreciate the findings returned by learned Tribunal and take a different view

in respect of interpretation of relevant clauses of the agreement governing the parties.

22. A perusal of the award under challenge demonstrates that learned Tribunal *in extensio took* note of respective contentions of the parties. The case of the claimant has been dwelled with at length from para-15 onwards of the award and similarly, the case of the respondent has been dwelled with again elaborately from para-35 onwards of the award. The relevant Contract Clauses have been referred to by learned Tribunal from para-64 onwards of the award. The chronological narration of the milestones finds mention from para-65 onwards of the award with reference to the communications which were exchanged between the parties in the interregnum, which are part of the record. The chronological narration continuous till para-157 of the award. From para-158 onwards, learned Tribunal has returned its observations on the issues including the issue of limitation, the issue as to whether the claim was filed by a duly authorized person on behalf of the claimant, the issue whether the claims were not maintainable for want of notice in terms of Clause 20.1 of GCC as also the issue whether the claimant was precluded from filing the claim after stating in the Monthly Progress Reports the claims as 'nil' as alleged. The findings on the main claims are contained in the arbitral award from para-201 onwards and perusal thereof demonstrates that while returning its findings on the claims, learned Tribunal has dwelled upon the respective contentions of the parties and thereafter returned its findings.

23. A careful perusal of the entire award thus demonstrates that the award has been passed by learned Tribunal after referring to the respective contentions of the parties and after taking into consideration the evidence which was led by them to substantiate their respective contentions. Therefore, in this background, this Court cannot say that the award has been passed by learned Tribunal without appreciating the respective contentions of the parties

or without taking into consideration the documents which were produced before learned Tribunal by the parties.

24. Now, the next question which arises for consideration before this Court is as to whether this Court can in this background go into the findings returned by learned Tribunal by re-appreciating the pleadings and evidence on record ? The answer to this in the considered view of this Court is in negative. Once, the findings that have been returned by learned Tribunal are based upon construction of respective contentions of the parties as also the evidence on record and the terms of the Contract entered into between the parties, then the findings returned by learned Tribunal in the considered view of this Court cannot be interfered with under Section 34 of the Act, more so as after carefully going through the findings so returned, this Court does not finds that the findings are against the law of land or are so perverse so as to shake the judicial conscious of this Court. In fact, this Court will hasten to act that in terms of the law as it stands today, when the parties have chosen to avail an alternative mechanism for dispute resolution, then they must reconcile themselves to the wisdom of the decision of Arbitrator and interference is justified only in cases of commission of misconduct by the Arbitrator which does not exists as far as present case is concerned. Learned Arbitral has not indulged in any exercise of legal perversity nor the findings returned are against settled laws of the land. The findings which have been returned by learned Arbitrator are simple findings of fact which have been so returned after appreciating respective stand of the parties as also the evidence led by them. This Court again reiterates that as re-appreciation of evidence is not within forteof this Court under Section 34 of the Act, therefore, this Court is refraining itself from re-appreciating the evidence so as to return the finding on merit qua the issues which were raised before learned Arbitral Tribunal by the claimant.

25. Suffice to say that in the backdrop of learned Tribunal having taken note of the facts, the evidence, the law governing the field and the Clauses of the Contract, the award so passed by it does not calls for any interference.

26. The thrust of the arguments of learned counsel for the petitioner as has been referred to hereinabove primarily was that learned Court misread and mis-appreciated the evidence on record and the findings which have been returned thereafter, therefore, are not sustainable in law. This Court is of the considered view that in light of the law as has been laid down by Hon'ble Supreme Court, referred to hereinabove, once this Court is satisfied that learned Arbitral Tribunal took into consideration the respective contentions of the parties, referred to the relevant documents relied upon by the parties, assigned reasons for arriving at the conclusion which have been arrived at, then the High Court cannot interfere with the Award so passed under Section 34 of the Act, because reappreciation of evidence by the High Court under Section 34 of the Act is not permissible in law. This Court reiterates that it is for the Arbitrator to construe the terms of the Contract and he is the ultimate master of the quantity and quality of evidence being relied upon by the parties. That being the case, now this Court cannot sit as an Appellate Court and re-appreciate the evidence on record and then apply its mind and return the findings as to whether the conclusions which have been arrived at by learned Arbitrator are correct or not. It is not the case of the petitioner that the Award is in conflict with justice or morality or that there is patent illegality writ large over it as the same is in violation of the statutes or judicial precedents.

27. After going through the Award under challenge, it cannot be said that the findings which have been returned by learned Arbitral Tribunal are such that no fair minded or reasonable person could return such findings. Similarly, as the mandate under Section 34 of the Act is to respect the finality of the Arbitral Award, then if this Court was to interfere with the Arbitral

Award in the usual course on factual aspects as is done in the case of an appeal, then the same would defeat the commercial wisdom behind opting for alternative dispute resolution as has been held by Hon'ble Supreme Court in *Dyna Technologies Private Limited* (supra).

28. Accordingly, in view of the above discussion, as this Court is of the considered view that the petitioner has not been able to make out any case for interference therein in terms of Section 34 (2)(b)(ii)of the Act, the present petition being devoid of any merit is dismissed. Pending miscellaneous applications, if any, stand disposed of. Interim order, if any, stands vacated.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Jagdish Singh Pathania ...Petitioner(s)

Versus

Parshottam Kumar ...Respondent(s).

For the Petitioner(s): Mr. Nitin Thakur, Advocate.

For the Respondent: Ms. Rekha Mahajan and Mr.Ashotam Mahajan, Advocates.

Civil Revision No. 83 of 2022 with
Civil Revision No. 84 of 2022
Date of decision: 10th March, 2023

H.P. Rent Control Act, 1987- Section 14(2)(i)-In an eviction petition on the ground of non-payment of rent, tenant contested the eviction petition, questioning the rate of rent- Arrears of rent were assessed by Rent Controller- This order of assessment was challenged in Revision- Meanwhile, he was evicted on the ground of non- payment of rent as assessed previously- this order of eviction was also challenged in Revision- Held: Tenant was under obligation to deposit the arrears of rent- Even though, the order was not acceptable to tenant and he had filed an appeal against the same but order of payment remained in existence and it was never stayed by any competent Court- once an order has been passed unless the same is set aside or stayed such order cannot be considered nonest- Since, order was not set aside, it has to be followed- Petition was set aside. (Para 33)

Cases referred:

Bharat Sanchar Nigam Ltd. vs.Vinod Lakhan Pal 2015(4) ILR(HP) 652;
Central Board of Dawoodi Bohra Community & another vs. State of Maharashtra & another (2005)2 SCC 673;
Madan Mohan vs. Krishan Kumar Sood 1994 Suppl. (1) SCC 437;
National Insurance Company Ltd. Vs. Pranay Sethi & others (2017)16 SCC 680;

Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation 2002(1) RCR 514;
Hans Raj Khimta vs. Kanwaljeet Kaur alias Sardarni Babli, 2016(1) RCR 0447;
Satish Kumar and another vs. jagat Ram 2020(a) RCR 0442 (HP);

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge.

J U D G M E N T

These Civil Revision Petitions, arising out of the same rent petition, bearing Rent Case No. 05 of 2017 titled Parshotam Kumar vs, Jagdish Singh Pathania filed under H.P. Urban Rent Control Act, 1987 (in short' H.P. Rent Control Act) and for involvement of common question of facts and law to be appreciated for adjudication of these petitions, are being decided by this common order.

2 Petitioner herein is tenant, whereas respondent is landlord. For convenience, hereinafter, they shall be referred as per their status in rent petition i.e. petitioner as tenant and respondent as landlord.

3 Landlord has filed above referred rent petition for eviction of tenant from Shop No. 1153 situated in Main Bazar, Nurpur, on the grounds of arrears of rent and personal use as daughter of landlord intends to start practice as lawyer with averments that said shop was rented to tenant for non-residential purpose at the rate of Rs.500/- per month w.e.f. 1.3.1988 and its rent was increased and is at the rate of Rs.2200/- per month w.e.f. 1.4.2015 and since April, 2016 no rent has been paid.

4 Tenant contested the petition on the ground of maintainability, locus standi and estoppal and denied the letting out of premises at the rate of Rs.500/- per month but with submissions that it was let out at the rate of Rs.475/- per month and increase of rent to Rs.2200/- w.e.f. 1.4.2015 or

arrears of rent were denied with further submissions that tenant was regularly paying rent to landlord and landlord after receiving rent used to interfere in day-to-day affairs compelling the tenant to file suit against landlord for restraining him from interfering in peaceful possession of tenant over the shop. Further that tenant was paying rent through Money Orders after filing of suit but landlord intentionally did not receive the same since April, 2016 and lastly that tenant was having no other source of income whereas landlord was having 8 shops within Municipal Area Nurpur and three shops are available with him being vacant.

5 Issues in rent petition were framed by Rent Controller on 31.5.2019. At that stage, on 8.9.2020, landlord moved an application under Section 151 CPC for assessment of arrears of rent along with interest and cost in consonance with law laid down by Supreme Court in ***Rakesh Wadhawan vs. M/s Jagdamba Industrial Corporation*** reported in ***2002(1) RCR 514,*** w.e.f. April, 2016 till upto date.

6 The application was opposed on the ground that tenant was regularly paying the rent but landlord did not receive it with intention to make a ground for eviction and law cited in application was not applicable in present case having no concern with present case.

7 Landlord in rent petition had claimed rent at the rate of Rs.500/- with increase to Rs.2200/- since 1.4.2015 whereas tenant had claimed rate of rent at Rs.475/- per month since beginning with no increase at any point of time.

8 Rent Controller, vide order dated 1.10.2020, relying upon pronouncement of Supreme Court in ***Rakesh Wadhawan's*** case and taking into consideration rate of rent as admitted by tenant at the rate of Rs.475/- per month along with interest at the rate of 12% per annum, calculated the arrears as Rs.32,703.75 and by adding the cost assessed at the rate of Rs.2000/-, directed the tenant to deposit the same on or before next date of

hearing to avoid eviction on account of non-payment of arrears of rent. Next date in the case was fixed as 29.10.2020 for payment of provisional rent arrears along with interest and cost and for further proceedings.

9 Aforesaid order dated 1.10.2020 was assailed by tenant by filing Rent Appeal No.03-N/XIV/2020 which was dismissed by Appellate Authority-II, Kangra at Dharamshala vide judgment dated 9.4.2021 on the ground that in view of judgment of Supreme Court in ***Rakesh Wadhawan's*** case, Rent Controller was obliged and duty bound to fix 'provisional rent' and he has calculated the provisional rent, on the basis of rate of rent of shop admitted by tenant in its reply/written statement, exercising the inherent power in consonance with provisions of HP Urban Rent Control Act and Rules made thereunder (in short H.P. Rent Control Act and HP Rent Rules). Appellate Authority had also returned findings that as the impugned order dated 1.10.2020 was not determining the rights of parties finally but had fixed provisional rent subject to final decision of rent petition therefore, appeal against the said interlocutory order passed by Rent Controller was not maintainable before the Appellate Authority. The appeal was dismissed directing the parties to appear before Rent Controller-I, Nurpur on 29.4.2021.

10 Petitioner, by preferring Civil Revision Petition No. 83 of 2022, has assailed aforesaid order dated 1.10.2020 passed by Rent Controller and judgment dated 9.4.2021 passed by Appellate Authority.

11 On 29.4.2021 parties put in appearance before Rent Controller through counsel. On that day, landlord moved an application for passing eviction order against tenant due to non-payment of arrears of rent assessed by Rent Controller vide order dated 1.10.2020 with averments that after assessing the arrears of interim rent, Rent Controller had fixed the 'next date' 29.10.2020 for making payment and as such, this date was to be treated 'first date of hearing' on which entire payment of arrears of rent, calculated provisionally by Rent Controller, was to be made. But tenant did not tender

the rent but sought time on the ground that an appeal had been preferred against the said order, however, neither any arrears of rent were tendered at any point of time nor any stay order was obtained from Appellate Authority and therefore, it was claimed that due to non-payment of arrears of rent, in view of ratio of law laid down in the case of ***Rakesh Wadhawan*** by Supreme Court, eviction of tenant shall follow.

12 Aforesaid application was contested by tenant on the ground that he did not have an opportunity to tender the rent as case file had been requisitioned by Appellate Authority for adjudicating the appeal preferred by tenant.

13 Rent Controller allowed the application and ordered the eviction of tenant on the ground of non-payment of interim rent as assessed by Rent Controller vide order dated 1.10.2020 with observation that perusal of record depicted that tenant never made any endeavour to deposit the arrears of rent with Rent Controller as provided in H.P. Rent Act and further that requisition of case file by Appellate Authority did not preclude the tenant from depositing the arrears of rent with Rent Controller particularly when there was no stay against order dated 1.10.2020 by Appellate Authority and amount was not tendered even after dismissal of appeal.

14 In addition, for adjudication of other grounds, set up in eviction petition, further proceedings of case were ordered to be continued and case was fixed for landlord's evidence on 22.7.2021.

15 The aforesaid order dated 29.4.2021 was assailed by tenant before Appellate Authority-II, Kangra at Dharamshala by filing Rent Appeal No. 02-N/XIV/2022.

16 Appellate Authority by placing reliance on ***Rakesh Wadhawan's case*** and ***Hans Raj Khimta vs. Kanwaljeet Kaur alias Sardarni Babli,*** reported in ***2016(1) RCR 0447*** dismissed the appeal preferred by tenant on 30.4.2022.

17 In Civil Revision No. 84 of 2022 tenant has assailed aforesaid order dated 29.4.2021 passed by Rent Controller and 30.4.2022 passed by Appellate Authority whereby order dated 29.4.2021 passed by Rent Controller has been affirmed.

18 Learned counsel for petitioner has submitted that judgment in ***Rakesh Wadhawan's*** case has been passed by a two Judges Bench without taking into consideration judgment of Supreme Court passed by three Judges in ***Madan Mohan vs. Krishan Kumar Sood*** reported in ***1994 Suppl. (1) SCC 437*** which lays down correct interpretation of Section 14(2)(i) of H.P. Urban Rent Control Act that there are only two eventualities in case of arrears of rent which are as under:-

"i. on the first day tenant on his own makes a tender of entire amount due (arrears+interest+costs) then case would be over.
ii. if not then there would be an adjudication and upon adjudication in case Rent Controller decides in favour of Landlord and orders eviction then Tenant gets 30 days time to deposit."

19 It has been further contended on behalf of petitioner that there is no provision for assessment of interim rent in H.P. Rent Control Act, and that inquiry/adjudication means completion of trial after taking evidence and also that Supreme Court in ***Madan Mohan's*** case has held that tenant shall get 30 days time after adjudication and in present case, there is no adjudication at all and, therefore, by referring ***Central Board of Dawoodi Bohra Community and another vs. State of Maharashtra and another*** reported in ***(2005)2 SCC 673*** and ***National Insurance Company Ltd. Vs. Pranay Sethi and others*** reported in ***(2017)16 SCC 680***, it has been contended that judgment passed in ***Rakesh Wadhawan's*** case is *per-curium* for having been passed without considering the judgment in ***Madan Mohan's case.***

20 It has been contended on behalf of petitioner that order dated 1.10.2020 and subsequent orders passed in pursuance thereto, including orders passed by Appellate Authority are against law as well as basic principles and provisions of H.P. Rent Control Act as calculations of interim/provisional arrears of rent is completely unknown to law especially H.P. Rent Control Act; and calculations/assessment of arrears of interim rent in an application under Section 151 CPC, without calling the parties to lead evidence, is bad in law. Further that Rent Controller has travelled beyond the scope of Act, ignoring the provisions of Indian Evidence Act, in passing an order without any evidence in support of claim of landlord and, therefore, it has been contended that eviction order of tenant on the ground of non-deposit of interim rent is not permissible under H.P. Rent Control Act and, thus, liable to be set aside.

21 Learned counsel for respondent submits that in ***Rakesh Wadhawan's*** judgment Supreme Court has interpreted the provisions of Section 13(2)(i) of East Punjab Urban Rent Restrictions Act 1949 (in short "East Punjab Act") which is *pari-materia* to the provisions of Section 14(2)(i) of the H.P. Rent Control Act and thus, law laid down in said judgment is applicable in present case also; and in view of conclusion arrived at in that judgment, application filed by landlord for determining the provisional/interim arrears of rent is maintainable and further that Rent Controller has determined the arrears of rent on the basis of admitted facts and rate of rent as claimed by tenant in its reply/written statement and, therefore, there was no necessity to call the parties to lead evidence for determining the rate of rent for calculating temporary/interim arrears of rent. It has been submitted that 'date of first hearing' for tendering the amount in present case is 29.10.2020 which was the date fixed by Rent Controller for payment of provisional rent arrears along with interest and cost after determining the same vide order dated 1.10.2020 and as tenant has failed to

deposit the interim/provisional arrears of rent, in terms of judgment in ***Rakesh Wadhawan's*** case, he is liable to be evicted for non-deposit/non-payment of arrears of rent as ordered by Court particularly when there was no stay against order dated 1.10.2020 by Appellate Authority or any other competent Court of law.

22 Learned counsel for the respondent has submitted that Coordinate Benches of this High Court in ***Satish Kumar and another vs. jagat Ram*** reported in ***2020(a) RCR 0442 (HP);*** and ***Bharat Sanchar Nigam Ltd. vs.Vinod Lakhan Pal 2015(4) ILR(HP) 652,*** have held that the statutory period of thirty days, within which the liability of rent as determined against the tenant is enjoined to be defrayable to the landlord by the legally permissible mode, is neither extendable nor enlargeable; and where arrears of rent have been determined by Rent Controller, even though may not be termed as amount due, the same has to be deposited within thirty days from the date of order of the Rent Controller as payment of rent due, within period of thirty days, is a condition precedent and sine qua non for maintaining an appeal before Appellate Authority or otherwise order of Rent Controller has to be treated to have attained finality and appeal must be dismissed. She has further submitted that in view of ratio of aforesaid judgments time prescribed for payment of rent due, in present case, i.e. deposit of arrears of rent on 'date of hearing' as explained in Rakesh Wadhawan's case, is neither enlargeable or extendable and for non-deposit thereof on 'first date of hearing' consequences in terms of ***Rakesh Wadhawan's*** and ***Madan Mohan's*** judgments shall follow.

23 In ***Madan Mohan's*** case, three-Judges Bench of Supreme Court has dealt with third proviso of Section 14(2)(i) of H.P. Rent Control Act and effect of non-payment of arrears of rent as provided under the said proviso. Whereas in ***Rakesh Wadhawan's*** case two Judges' Bench of Supreme Court has interpreted the proviso of Section 13(2)(i) of East Punjab Act, which is

pari-materia to first proviso of Section 14(2)(i) of H.P. Rent Control Act. Therefore, subject matter and point for consideration in ***Rakesh Wadhawan's*** case and ***Madan Mohan's*** case are altogether different and thus, judgment in ***Rakesh Wadhawan's*** case cannot be said *per-curium* for having been passed without taking note of ***Madan Mohan's*** case.

24 Relevant part of Section 13(2)(i) along with its proviso, of East Punjab Act which is *pari-materia* to Section 14(2)(i) of H.P. Rent Control Act and its first proviso, reads as under:-

"13(1)……

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-

1. That the tenant has not paid or tendered the rent due by him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement, by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of applications for ejectment after due service pays or tenders the arrears of rent and interest at six percent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within the time aforesaid."

25 Relevant portion of Section 14 of H.P. Rent Control Act reads as under:-

"14(1)……

(2) A landlord who seeks to evict his tenant shall apply to the Controller for a direction in that behalf. If the Controller, after giving the tenant a reasonable opportunity of showing cause against the applicant, is satisfied-

(i) that the tenant has not paid or tendered the rent due from him in respect of the building or rented land within fifteen days after the expiry of the time fixed in the agreement of tenancy with his landlord or in the absence of any such agreement by the last day of the month next following that for which the rent is payable:

Provided that if the tenant on the first hearing of the application for ejectment after due service pays or tenders the arrears of rent and interest at

the rate of 9 percent per annum on such arrears together with the cost of application assessed by the Controller, the tenant shall be deemed to have duly paid or tendered the rent within time aforesaid;

Provided further that if the arrears pertain to the period prior to the appointed day, the rate of interest shall be calculated at the rate of 6 percent per annum:

Provided further that the tenant against whom the Controller has made an order for eviction on the ground of non-payment of rent due from him, shall not evicted as a result of his order, if the tenant pays the amount due within a period of 30 days from the date of order; or……."

26 Comparison of Section 13(2)(i), along with its first proviso, of East Punjab Act with Section 14(2)(i) of H.P. Rent Control Act and its proviso clearly depicts that both provisions are *pari-materia* and therefore in view of Article 141 of Constitution of India, pronouncement of the Supreme Court, on subject matter related to *pari-materia* provision of two enactments, is definitely binding upon the Court while adjudicating the matter under the identical provisions.

27 Conclusion in ***Rakesh Wadhawan's*** summed up by the Supreme Court is as under:-

"30.To sum up, our conclusions are:

1. In Section 13(2) (i) proviso, the words 'assessed by the Controller' qualify not merely the words 'the cost of application' but the entire preceding part of the sentence i.e. 'the arrears of rent and interest at six per cent per annum on such arrears together with the cost of application'.

2. The proviso to Section 13(2)(i) of East Punjab Urban Restriction Act, 1949 casts an obligation on the Controller to make an assessment of (i) arrears of rent (ii) the interest on such arrears, and (iii) the cost of application and then quantify by way of an interim or provisional order the amount which the tenant must pay or tender on the 'first date of hearing' after the passing of such order of 'assessment' by the Controller so as to satisfy the requirement of the proviso.

3. Of necessity, 'the date of first hearing of the application' would mean the date falling after the date of such order by Controller.

4. On the failure of the tenant to comply, nothing remains to be done and an order for eviction shall follow. If the tenant makes compliance, the inquiry shall continue for finally adjudicating upon the dispute as to the arrears of rent in the light of the contending pleas raised by the landlord and the tenant before the Controller.

5. If the final adjudication by the Controller be at variance with his interim or provisional order passed under the proviso, one of the following two orders may be made depending on the facts situation of a given case. If the amount deposited by the tenant is found to be in excess, the Controller may direct a refund. If, on the other hand, the amount deposited by the tenant is found to be short or deficient, the Controller may pass a conditional order directing tenant to place the landlord in possession of the premises by giving a reasonable time to the tenant for paying or tendering the deficit amount, failing which alone he shall be liable to be evicted. Compliance shall save him from eviction.

6. While exercising discretion for affording the tenant an opportunity of making good the deficit, one of the relevant factors to be taken into consideration by the Controller would be, whether the tenant has paid or tendered with substantial regularity the rent falling due month by month during the pendency of the proceedings.

31. The view of the law so taken by us advances the object sought to be achieved by the legislation, serves best the interests of landlord and tenant both, removes uncertainty in litigation and obscurity in drafting of the provision and also accords with the principles of justice and equity. Even if, it is an innovation, it is in the field of procedural law, without affecting the substantive rights and obligations of the landlord and the tenant and such innovation is permissible on the basis of authority and supported by principles of justice, good sense and reason. We have not touched the substantive rights of landlord and tenant, and are feeling satisfied with a do little in the field of procedure so as to effectuate the purpose of enactment."

28 The aforesaid conclusion, being binding in nature, definitely evolves procedure to be adopted by Rent Controller at the time of adjudication of rent petition and, thus, either on application or without an application filed by landlord, Rent Controller is under obligation to make an assessment of (i) arrears of rent; ((ii) the interest on such arrears; (iii) the cost of application and then to quantify, by way of an interim or provisional order, the amount which the tenant must pay or tender on the 'date of first hearing' i.e. "first

date of hearing" after passing of such order of "assessment" by Rent Controller so as to satisfy the requirement of proviso and "the date of first hearing of application" would mean the first date falling after the date of such order by Controller, and on compliance of order or failure thereof, would be followed by conclusion as summed up in ***Rakesh Wadhawan's*** case resulting into passing of order for eviction or continuation of rent petition. Therefore, irrespective of the fact that there is no speaking provision in first proviso to Section 14(2)(i) for filing an application for determining/assessment of provisional/interim arrears of rent, in view of binding pronouncement of the Supreme Court, an application preferred by landlord for the said purpose shall be maintainable.

29 No doubt, provisions of CPC are not applicable to proceedings initiated under H.P. Rent Control Act and only those provisions which have been specifically made applicable in such proceedings under the Act and Rules made thereunder shall apply in such proceedings but at the same time, essence of provisions of CPC may be applicable in terms of provisions of H.P. Rent Control Act and Rules providing such applicability. However, without going into applicability of Section 151 CPC in proceedings under H.P. Urban Rent Act, even if it is considered that Section 151 CPC is not applicable in such proceedings, then also, for pronouncement of the Supreme Court, an application, under Section 14(2)(i) read with first proviso thereof, shall be maintainable for assessment of arrears of rent as propounded in pronouncement of ***Rakesh Wadhawan's*** case. Mentioning of wrong provision for filing the application shall not affect the right of applicant to file such application, in case averments made in application are making out a case entitling the applicant to file such an application either on the basis of provisions of law or in terms of binding pronouncement of High Court or Supreme Court. Therefore, plea raised by tenant in this regard is not sustainable.

30 "First date of hearing" of 'Date of first hearing' in present case with respect to first proviso to Section 14(2)(i) of the Act after determination of interim/provisional arrears of rent vide order dated 1.10.2020 with directions to pay the same on or before 29.10.2020, in terms of ***Rakesh Wadhawan's*** judgment, shall be 29.10.2020. In absence of stay of order dated 1.10.2020 tenant was bound to pay provisional/interim arrears of rent on 29.10.2020 failing which consequences in terms of sum up in ***Rakesh Wadhawan's*** pronouncement, shall follow.

31 It is settled law that the fact admitted by opposite party needs not to be proved. An admission made by a party can be used against said party as admission of a fact by party is best evidence which can be used by other party against party admitting the fact. In present case, calculation of provisional rent has been made on the basis of admitted rent of Rs.475/- per month which is an admitted rent by tenant and, therefore, no further enquiry or adjudication for determining the provisional/interim rent or calling the parties to lead evidence was required to prove relief rent @ Rs.475/- per month and, thus plea, that interim/provisional arrears of rent have been calculated by ignoring the principles of law including the provisions of Indian Evidence Act, is not sustainable. Provisional/interim arrears of rent is in consonance with provisions of Indian Evidence Act especially Section 58 thereof.

32 In terms of first proviso to Section 14(2)(i) of H.P. Rent Control Act coupled with interpretation thereof by Supreme Court in ***Rakesh Wadhawan's*** case, tenant was under obligation to deposit the arrears of rent in terms of order dated 1.10.2020 on the 'date of first hearing' of application i.e. 29.10.2020. No doubt, the order was not acceptable to tenant and he has assailed the same by filing an appeal but order remained in existence and it was never stayed by any competent Court and it is settled law that once an order has been passed unless the same is set aside or stayed such order

cannot be considered nonest by person against whom it has been passed, and in absence of setting aside the said order or stay by competent Court against the said order, the said order has to be followed and failure in compliance thereof, shall be followed by legal consequences.

33 Once a period is fixed by statutory provision or propounded in the binding pronouncement of Supreme Court as a date for performing the act in terms of provisions of law, the said date is neither extendable nor enlargeable, in absence of any provision of such extension or enlargement and such date in present case is date of first hearing of application i.e. 29.10.2020 and as tenant has failed to comply with order on such date, therefore, he is liable to face the legal consequences thereof as summed up by the Supreme Court in ***Rakesh Wadhawan's*** case.

34 In view of above discussion, I find no illegality, irregularity or perversity warranting interference in impugned orders. Accordingly, both these petitions are dismissed. Parties are directed to appear before Rent Controller on ***21st March, 2023***. It is made clear that no fresh notice shall be issued to parties for that date and in case of absence of any party, the Rent Controller shall proceed further in accordance with law. Record be sent back forthwith.

All pending miscellaneous application(s) if any, also stand disposed of.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Khayala Devi (deceased) through LRs. …Appellant.

Versus

Bhandari (deceased) through LRs & others. …Respondents

For the Applicant. *Mr.Anand Sharma, Senior Advocate, alongwith Mr. Karan Sharma, Advocate.*

For the Respondents: *None for respondent No. 1(a) (who is also applicant), Power of Attorney filed by Mr.Sunil Chaudhary, Advocate.*

Mr.Ajay Kumar, Senior Advocate, alongwith Mr. Sumit Sood, Advocate, for respondent No. 1(b)-Vidya Thakur.

None for respondents No. 1(c) to 1(e) Mr. Ashok Sood, Advocate representing them earlier, has been designated as Senior Advocate.

Mr.Bimal Gupta, Senior Advocate, alongwith Mr.Gurinder Singh Parmar, Advocate, for respondents No. 2(a) to 2(d).

Respondents No. 3 and 4 stand deleted.

CMP (M) No. 1586, 1587 and CMP Nos. 10696 and 10697 of 2019 In RSA No. 469 of 2009
Date of Order: 27.2.2023

Code of Civil Procedure, 1908- Order I Rule 10 and XXIII Rule 1A – Transposition-Certain properties were disposed of by the father in favour of some legal heirs while excluding some heirs by virtue of a will. Mother sets up a claim on half share of the property as absolute owner as per Section 14 of Hindu Succession Act and challenged the capacity of testator to dispose of all the properties. Both the parties died during pendency of proceedings. One of the heirs who did not inherit the property through will was added as a respondent by the mother, while she was alive. After her death, application was filed by respondent for transposition as an appellant on the ground that right to sue survives as per Order XXII of CPC- Held- Since, respondent was the son of original appellant (now deceased mother) right to sue survives because if claim of ownership of the original appellant is accepted then applicant is also entitled to inherit the share of his mother. Transposition was allowed.

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge (oral)

CMP (M) No. 1586, 1587 of 2019 & CMP No. 10696 of 2019

These applications have been filed by Ranveer Chand who is son of late Bhandari Lal (defendant No. 1) and late Khayala Devi (plaintiff) and is already on record as respondent-defendant No. 1(a) alongwith other legal heirs of deceased Bhandari Ram, brought on record as such on application filed by Khayala Devi during her life time on death of Bhandari Ram. Now Khayala Devi has expired.

2. Application CMP (M) No. 1587 of 2019 has been filed under Order 22 Rule 1, 3 and 9 of the Code of Civil Procedure for bringing on record Ranvir Chand (applicant) as legal representative of plaintiff Khayala Devi after setting aside abatement if any.

3. Application CMP (M) No. 1586 of 2019 has been filed under Section 5 of the Limitation Act for condonation of delay in filing CMP (M) No. 1587 of 2019.

4. CMP No. 10696 of 2019 has been filed under Order 1 Rule 10 and 23 Rule 1A of the Code of Civil Procedure for transposition of Ranvir Chand (applicant), as appellant, claiming him sole legal heir of deceased appellant-plaintiff Khayala Devi, who has been brought on record as respondent No. 1(a) by late Khayala Devi, after death of defendant No. 1 Bhandari, being his legal heir.

5. Plaintiff Khayala Devi was wife of Bhandari (defendant No. 1) and defendant No. 2 Somu Ram was brother of Bhandari. Legal heirs of Bhandari and Khayala Devi are common.

6. Civil Suit No. 99 of 2005 was filed by Khayala Devi for declaration that she had become owner of the land comprised in Khasra No. 666/517, situated in Phati Mohal, Kothi Khokan, Tehsil and District Kullu alongwith residential house situated over it to the extent of half share by claiming that the said land alongwith house was given by defendant No. 1 to her about 60 years back in lieu of maintenance and by virtue of operation of law, i.e. Section 14 of the Hindu Succession Act she had become absolute owner of the said property, and, therefore, gift deed dated 21.4.2005 purported to have been executed by Bhandari Lal in favour of defendant No. 2, was null and void with further prayer to restrain the defendants from creating any charge over the suit land and dispossessing the plaintiff from it. Aforesaid Civil Suit was dismissed by the Trial Court on 26.3.2008.

7. Civil Appeal No. 18 of 2008, preferred by plaintiff Khayala Devi was dismissed on 24.8.2009. Thereafter, present appeal was preferred by her in September, 2009.

8. Defendant No. 1 Bhandari had expired on 3.9.2010, whereafter, on application filed by Khayala Devi (plaintiff), vide order dated 11.4.2021 passed in CMP (M) No. 218 of 2011, legal heirs of Bhandari including applicant Ranveer Chandwere permitted to be brought on record.

9. Plaintiff Khayala Devi and defendant No. 1 Bhandari were having two sons namely Ranvir Thakur (Ranveer Chand) and Sher Chand Thakur and one daughter Vidya Thakur. Sher Chand had expired prior to death of Bhandari, leaving behind his wife Dr. Shashi and daughters Dr. Navedita and Ms.Shivani. At the time of death of Bhandari Lal, his surviving legal heirs were Khayala Devi (wife), Ranvir Thakur (son), Vidya Devi (daughter) and legal heirs of pre-deceased Sher Chand Thakur i.e. Dr. Shashi (daughter-in-law) alongwith Nivedita and Shivani (granddaughters). Khayala Devi was plaintiff/appellant who had filed suit against Bhandari Lal. Therefore, rest of legal heirs, in furtherance to order dated 11.4.2011 were arrayed as defendants/respondents No. 1(a) to 1(e).

10. After service of respondents No. 1(a) to 1(e), respondent No. 1(a) Ranvir Thakur (applicant herein) engaged Mr.Sunil Chaudhary, Advocate to represent him, who filed Power of Attorney on his behalf. Similarly, respondents No. 1(b) to 1(e) were also served and Mr.Ashok Sood, Advocate had put in appearance on their behalf. Later on, after designation of Mr.Ashok Sood, as Senior Advocate, learned counsel appearing on behalf of respondents No. 1(b) to 1(e), from the office of Mr.Ashok Sood expressed his inability to represent them, in absence of Power of Attorney, for want of instructions and thereafter fresh notices were directed to be issued to these respondents vide order dated 6.8.2018.

11. Plaintiff Khayala Devi expired on 20.4.2019, whereafter these applications have been preferred by Ranvir Thakur for his substitution/transposition as plaintiff/appellant in place of his deceased mother Khayala Devi.

12. In the plaint, it was alleged that defendant No. 1 Bhandari Lal was in control and influence of his daughter-in-law Kaushalya Devi as well as defendant No. 2 Somu, brother of defendant No. 1 and under their influence

he started living separately from plaintiff Khayala Devi, but alongwith his daughter-in-law and granddaughters. Kaushalya Devi is wife of Ranveer.

13. In written statement filed jointly by defendants No. 1 and 2, it was alleged that plaintiff Khayala Devi and Ranvir were giving merciless beatings to defendant No. 1 to compel him to transfer his entire holdings in their favour and, therefore, defendant No. 1 Bhandari was compelled to left his house and live separately in village Bhuntar. It was further stated in the written statement that, however, defendant No. 1 Bhandari had again joined the company of Khayala Devi and Ranvir after executing Will dated 13.3.2002 in favour of Ranvir, but despite that they did not change their behavior, but became more cruel and defendant No. 1 was turned out from the house in the month of November, 2003 by Ranvir and thereafter defendant No. 1 started residing separately at different place in rented accommodation with his daughter-in-law and four granddaughters (wife and daughters of Ranveer) and consequently he revoked earlier Will and executed fresh Will on 31.12.2003 in favour of his brother defendant No. 2, daughter Vidya Thakur and two daughters of pre-deceased son Sher Chand Thakur and four daughters of Ranvir Chand.

14. Learned counsel for contesting respondents have opposed the prayer made by the applicant on the ground that keeping in view the nature of plaint and claim set up by plaintiff Khayala Devi, right to sue does not survive in favour of Ranvir Chand or any other legal heirs and, therefore, these applications deserve to be dismissed and further that applicant was arrayed as respondent/defendant No. 1(a) after death of Bhandari, but at that time he did not object to the same and, therefore, now, his prayer for his substitution or transposition as plaintiff being legal heir of Khayala Devi, is not sustainable as he cannot blow hot and cold together because either he has to claim his right as a legal heir of defendant No. 1 or plaintiff whose interests are in clash with each other.

15. Claim of the applicant is that, as apparent from the pleadings, Ranvir was living with his mother Khayala Devi in the suit property and was intermeddling with the same during life time of his mother and thereafter also he is in possession of the property in dispute, and further that after arraying him as respondent No. 1(a) he had approached the Advocate and had narrated entire facts of the case, but he was never advised by the Advocate to object his impleadment as respondent No. 1(a) and being a common man, applicant Ranvir was not having ability to visualize the effect of arraying or substituting him as respondent/defendant No. 1(a). It has been further submitted that in CMP (M) No. 218 of 2011 not only applicant Ranvir, but his mother Khayala Devi (plaintiff) was also reflected as legal heirs of defendant No. 1 Bhandari, to be substituted in place of defendant No. 1, but she was not substituted as she was opponent of defendant No.1 in present lis. It has been further submitted that considering the pleadings of the parties in the plaint as well as written statement, it can be inferred that Ranvir was living with his mother Khayala Devi, as defendant No. 1 in his written statement had categorically stated that Khayala Devi and Ranvir were beating and maltreating defendant No. 1 for transferring the property in dispute in their favour and Ranveer had turned out him (Bhandari) from house.

16. Ranvir is one of legal heirs of Khayala Devi. Plaintiff and defendant No. 1 were husband and wife and they are having common legal heirs. Ranvir is one of their legal heirs. Bhandari Lal had executed gift deed as well as Will with respect to his property in exclusion of some legal heirs, whereas his wife plaintiff was claiming half share of the property referred in the plaint as an absolute owner. In case of her claim is accepted by the Court, after her death, such property is to be devolved upon her legal heirs. Therefore, right to sue survives for the legal heirs and Ranvir is one of the legal heirs and, therefore, he has a right to maintain the prayer for his impleadment/transposing as plaintiff/appellant.

17. Further claim of Ranveer that he is entitled for inheriting entire property of Khayala Devi, is not to be decided in present applications or in present suit as in present suit claim of Khayala Devi is to be adjudicated and in case her suit is decreed, then, because of her death, the property has to be devolved upon all legal heirs or some of them or one of them on the basis of Will or other valid instrument if any, executed by her and in absence of any such instrument/deed, the property shall devolve upon all surviving legal heirs according to their right to inherit the same.

18. In applications filed under Order 22 or under Order 1 Rule 10 of the Code of Civil Procedure, question of entitlement of the property amongst the legal heirs is not to be decided. Therefore, the issue, as to whether Ranvir is entitled for inheritance of property of Khayala Devi or not, is not being decided in these applications. However, in the given facts and circumstances, he is permitted to be brought on record as appellant No. 1(a) being legal representative of deceased plaintiff/appellant, only for the purpose of continuation of the appeal and his right as well as rights of other legal heirs of Khayala Devi on any dispute arising between them, are to be adjudicated in separate appropriate proceedings and for allowing Ranvir to be arrayed as a legal representative of deceased Khayala Devi, shall not create any right, interest or entitlement in his favour in the suit property as he is being impleaded/substituted/transposed only for continuation of present appeal by arraying him on behalf of all legal representative of Khayala Devi, entitled to inherit her property.

19. In view of above discussion, for above observation, these applications are allowed and Ranvir is permitted to be substituted in place of Khayala Devi as her legal representative for the purpose of continuation of appeal by transposing him from respondent No. 1(a) to appellant No. 1(a), after setting aside abatement and condoning the delay, if any.

20. Accordingly name of Ranveer as respondent No. 1(a) stands deleted by transposing and impleading him as appellant No. 1(a).

Applications are allowed and disposed of in the aforesaid terms.

CMP No. 10697 of 2019

1. This application has been filed seeking permission to delete respondents No. 1 (c) to 1(e) on the ground that after passing order dated 6.8.2018 by the court to serve these respondents, they could not be served despite repeated attempts by taking appropriate steps. It has been submitted that deletion of these respondents will not cause any prejudice to other respondents and will not hamper their lawful interest in any manner, as these respondents are grand-daughters of deceased Bhandari Lal, who are well settled and are neither showing any interest to impart instructions to their counsel nor accepting service through Court notices since last 9 months till filing of application.

2. It has also been submitted that deletion of these respondents would smooth the progress of advancing substantial justice to all the parties more specially keeping advance age of appellant, i.e. 93 years.

3. This application has been filed in August, 2019 through applicant Ranvir Chand, whereas Khayala Devi had expired on 20.4.2019. Therefore plea taken that appellant is 93 years old is not correct as she was not alive at the time of filing this application. Otherwise it is not a valid ground for deletion of necessary party. It appears that there is complete non application of mind in drafting and filing this application.

4. The application is misconceived as no necessary party to the lis, having right and interest in the property is to be deleted for want of service. These respondents are not only legal heirs of defendant No. 1 Bhandari Lal, but also plaintiff Khayala Devi and they were arrayed as party on the application filed by Khayala Devi during her life time after death of

defendant No. 1 Bhandari Lal, therefore, they are necessary party to the lis for proper final and complete adjudication of the matter.

5. Taking into consideration pleadings in the application, I do not find any merit in this application and accordingly the same is dismissed.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Mohinder Singh. …Petitioner.

Versus

The Himachal Road Transport Corporation & others. …Respondents.

For the Petitioner. Ms.Reeta Hingmang, Advocate.

For the Respondents: Mr.Raman Jamalta, Advocate.

CWPOA No. 6429 of 2019
Date of decision: 6.3.2023

Central Civil Services (Classification, Control and Appeal) Rules, 1965- Rule 19-Writ petition- Removal by State on the ground of conviction under Sections 279, 304-A of IPC- **Held**- Court refrained from entertaining the Petition under Article 226 of the Constitution on the ground that alternate remedy was not exhausted and no exceptional circumstance was culled out for not exhausting alternative statutory remedy. (Para 20)

Cases referred:

Om Prakash Vs. The Director Postal Services, AIR 1973 PH 1;
Shankar Dass Vs. Union of India and another (1985) 2 SCC 358;
State of Haryana Vs. Balwant Singh, (2003) 3 SCC 362;
Sushil Kumar Singhal Vs. Regional Manager, Punjab National Bank, (2010) 8 SCC 573;
Union of India and another Vs. Tulsiram Patel, (1985) 3 SCC 398;
Union of India Vs. P.D. Yadav, (2002) 1 SCC 405;

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge (oral)

Petitioner had approached erstwhile HP State Administrative Tribunal against his removal from service vide Office Order dated 8.9.2015 passed by Regional Manager, HRTC Baijnath by filing Original Application No.

5262 of 2015, which was admitted by the erstwhile Administrative Tribunal on 22.6.2017. After abolition of said Tribunal, Original Application was transferred to this Court and registered as CWPOA No. 6429 of 2019 i.e. present petition.

2. Undisputed facts in present case are that petitioner was appointed as a Driver in Baijnath Unit of Himachal Road Transport Corporation (for short 'HRTC') on regular basis on 4.3.2000. On 21.6.2008 he was driving bus No. HP 53 A-7503, enrouted from Amritsar to Baijnath and when bus was entering the bus stand of Pathankot, it collided with Motor Cycle, causing death of Motor Cycle rider, leading to registration of FIR No. 65 dated 21.6.2008 under Sections 279, 304-A of the Indian Penal Code against the petitioner, in furtherance whereof petitioner was subjected to trial and was convicted vide judgment dated 3.5.2012 by Judicial Magistrate First Class, Pathankot and, thereafter, Appeal, Revision and Special Leave Petition preferred by him before Sessions Judge Gurdaspur Punjab, High Court of Punjab and Haryana and Supreme Court, respectively, were dismissed and ultimately he had to undergo imprisonment for a period of 9 months 20 days w.e.f. 8.8.2014 to 28.5.2015 and before serving the aforesaid sentence he served HRTC till 8.8.2014 and after serving the sentence he approached the authorities for submitting his joining report alongwith copies of judgments passed in Criminal Case, whereupon he was served a notice dated 9.6.2015 for showing cause that why he should not be removed from the service invoking provisions of Rule 19 of CCS (CCA) Rules, 1965 and after filing response, he was removed from the service vide Office Order dated 8.9.2015.

3. It is undisputed that after the accident, Works Manager, HRTC Pathankot had inquired the matter and recorded the statement of petitioner (driver) and conductor deputed with him and had submitted his inquiry report to Regional Manager HRTC Baijnath alongwith rough sketch of accident scene, concluding therein that Motor Cyclist was overtaking the bus from the left side

i.e. opposite to the driver side and had succeeded partly, but was crushed under the front right tyre, with his opinion that petitioner was not at fault as he could not see Motorcycle overtaking from left (wrong) side as because of low height of Motor Cycle, it was not in the visibility area of the bus driver.

4. It is also admitted that the Motor Cyclist was serving in Indian Air Force and was resident of Visakhapatnam and his dependants had filed petition before MACT Visakhapatnam as MOP No. 307 of 2009, titled as Smt. N. Aruna Kumari and others Vs. Mohinder Singh and another.

5. Counter filed by the HRTC in Motor Accident Claim petition, placed on record alongwith MA No. 1000 of 2019, also remained undisputed, wherein Regional Manager HRTC Baijnath had responded as under:-

> "*2. It is submitted that the bus bearing No. HP 53A 7503 belonging to this respondent, driven by first respondent never hit the motor cycle driven by Sri Nagulapati Kishore Kumar on 22-06-2008 as alleged in the petition. As such this respondent or the first respondent are not liable to pay any compensation jointly and severally, much less and compensation claimed in the present application to the petitioners.*
> *2to4. … …. …*
> *5. It is submitted that the first respondent was deployed as driver of bus No. HP 53A 7503 which was plied on Amritsar-Baijnath bus route. Sri Ramesh Chand was performing the duty of conductor in the said bus. It is submitted that at about 4 P.M on 21-06-2008 when the first respondent was driving the bus towards Patankot bus terminal, the deceased was coming on the motor cycle in the opposite direction and the said motor cycle at that time is on the side of the bus where conductor is sitting. At that time the conductor blew the whistle signaling the first respondent to stop the bus. Immediately the first respondent stopped tine bus, switched off the engine of the bus and got down from the bus. After getting down from the bus this respondent noticed that the motorcyclist felt down on the ground as the motor cycle on which he is travelling skidded on a heap of stones and the bus driven by the first respondent has not hit the motorcyclist. The first respondent was driving the vehicle in the first gear as he has to negotiate a curve to enter into the bus terminal and the speed of the bus at that time would be between*

> *2 to 3 Kilometers per hour. Immediately the first respondent along with the conductor on humanitarian grounds took the motorcyclist to hospital in a three wheeler but he succumbed to death in the hospital. As such the allegations in the petition that the accident occurred on 22-06-2008 because of the rash and negligent driving of the first respondent without following the traffic rules is absolutely false."*

6. Present petition was filed before erstwhile Tribunal on 24.12.2015 on the grounds that removal of the petitioner from service, despite having been sentenced for the same offence once, is illegal, arbitrary, discriminatory, unjustified, unconstitutional and violative of Articles 14 and 16 of the Constitution of India; petitioner has a right to continue in the job as on conviction in criminal case does not warrant automatic dismissal from the service; and as a result of illegal and arbitrary act of the respondents, petitioner has been made to suffer financially and socially.

7. In order to substantiate plea of the petitioner, learned counsel for the petitioner has relied upon pronouncement of Punjab and Haryana High Court in ***Om Prakash Vs. The Director Postal Services***, reported in ***AIR 1973 PH 1*** and order dated 2.3.2015 passed by High Court of Punjab and Haryana in ***CWP No. 18117 of 2013,* titled as *Dhani Ram Vs. U.H.B.V.N and another.***

8. Removal of petitioner from service has been justified by the respondents, in view of provisions of Rule 19 of CCS (CCA) Rules, 1965, with submission of learned counsel for the respondents that after an employee is convicted and sentenced, employer has a right to remove him from service as provided under clause (i) of Rule 19 of CCS (CCA) Rules, 1965.

9. To substantiate the plea of respondents, learned counsel for the respondent has referred pronouncements of the Supreme Court in ***Shankar Dass Vs. Union of India and another (1985) 2 SCC 358; Union of India and another Vs. Tulsiram Patel, (1985) 3 SCC 398; State of***

Haryana Vs. Balwant Singh, (2003) 3 SCC 362; Sushil Kumar Singhal Vs. Regional Manager, Punjab National Bank, (2010) 8 SCC 573.

10. In similar circumstances, referring pronouncement of three Judges Bench of the Supreme Court in ***Union of India Vs. P.D. Yadav, (2002) 1 SCC 405***, two Judge Bench of the Supreme Court in ***Balwant Singh's***case referred supra has observed as under:-

> *"6. A three-Judge Bench of this Court in Union of India v. P.D. Yadav (2002) 1 SCC 405, while dealing with more or less a similar contention with regard to double jeopardy, has held thus: (SCC p. 425, para 25)*
>
> > *"25. A contention, though feebly, was advanced on behalf of some of the respondents that forfeiture of pension in addition to the punishment imposed under Section 71 of the Army Act amounted to double jeopardy. In our view, this contention has no force. There is no question of prosecuting and punishing a person twice for the same offence. Punishment is imposed under Section 71 of the Army Act after trial by Court Martial. Passing an order under Regulation 16(a) in the matter of grant or forfeiture of pension comes thereafter and it is related to satisfactory service. There is no merit in the contention that the said Regulation is bad on the ground that it authorized imposition of a double penalty; may be in a given case, penalty of cashiering or dismissal from service and the consequential forfeiture of pension may be harsh and may cause great hardship but that is an aspect which is for the President to consider while exercising his discretion under the said Regulation. May be in his discretion, the President may hold that the punishment of cashiering or dismissal or removal from service was sufficient having regard to circumstances of the case and that a person need not be deprived of his right to pension. A crime is a legal wrong for which an offender is liable to be prosecuted and punished but only once for such a crime. In other words, an offender cannot be punished twice for the same offence. This is demand of justice and public policy supports it. This principle is embodied in the well-known maxim nemo debet bis vexari, (si constat curiae quod sit) pro una et eadem*

causa meaning no one ought to be vexed twice if it appears to the court that it is for one and the same cause. Doctrine of double jeopardy is a protection against prosecution twice for the same offence. Under Articles 20-22 of the Indian Constitution, provisions are made relating to personal liberty of citizens and others. Article 20(2) expressly provides that: "No. one shall be prosecuted and punished for the same offence more than once." Offences such as criminal breach of trust, misappropriation, cheating, defamation etc., may give rise to prosecution on criminal side and also for action in civil court/other forum for recovery of money by way of damages etc., unless there is a bar created by law. In the proceedings before General Court Martial, a person is tried for an offence of misconduct and whereas in passing order under Regulation 16(a) for forfeiting pension, a person is not tried for the same offence of misconduct after the punishment is imposed for a proven misconduct by the General Court Martial resulting in cashiering, dismissing or removing from service. Only further action is taken under Regulation 16(a) in relation to forfeiture of pension. Thus, punishing a person under Section 71 of the Army Act and making order under Regulation 16(a) are entirely different. Hence, there is no question of applying principle of double jeopardy to the present case."

7. Under these circumstances, there was no question of the respondent suffering a double jeopardy. The aid of Article 20(2) of the Constitution of India was wrongly taken. Article 20(2) of the Constitution of India does not get attracted to the facts of the present case….."

11. In view of aforesaid settled exposition of law, plea of the petitioner that for already having sentenced for the same offence once, penalty upon him cannot be imposed by the employer invoking provisions of CCS (CCA) Rules, is not sustainable.

12. Relevant provision of Rule 19 of CCS CCA Rules reads as under:-

"19. Special procedure in certain cases
Notwithstanding anything contained in Rule 14 to Rule 18—

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(i) where the Disciplinary Authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules.

the Disciplinary Authority may consider the circumstances of the case and make such orders thereon as it deems fit:"

13. The aforesaid provision is based upon the provisions of Article 311 of the Constitution of India, which reads as under:-

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.— *(1) No person who is a member of a civil service of the Union or an all India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by a authority subordinate to that by which he was appointed.*

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply.

(a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank ins satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

(c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.

> *(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."*

14. Dealing with clause (a) of second provision of Article 311 of the Constitution of India, which is paramateria to Rule 19(i) of CCS (CCA) Rules the Supreme Court in *Tulsiram Patel's* case, referred supra, has observed as under:-

> *"127. Not much remains to be said about clause (a) of the second proviso to Article 311(2). To recapitulate briefly, where a disciplinary authority comes to know that a government servant has been convicted on a criminal charge, it must consider whether his conduct which has led to his conviction was such as warrants the imposition of a penalty and, if so, what that penalty should be. For that purpose it will have to peruse the judgment of the criminal court and consider all the facts and circumstances of the case and the various factors set out in Challappan's case. This, however, has to be done by it ex parte and by itself. Once the disciplinary authority reaches the conclusion that the government servant's conduct was such as to require his dismissal or removal from service or reduction in rank he must decide which of these three penalties should be imposed on him. This too it has to do by itself and without hearing the concerned government servant by reason of the exclusionary effect of the second proviso. The disciplinary authority must, however, bear in mind that a conviction on a criminal charge does not automatically entail dismissal, removal or reduction in rank of the concerned government servant. Having decided which of these three penalties is required to be imposed, he has to pass the requisite order. A government servant who is aggrieved by the penalty imposed can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the government servant who has been in fact convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies and still wants to pursue the matter, he can invoke the court's power of judicial review*

> *subject to the court permitting it. If the court finds that he was not in fact the person convicted, it will strike down the impugned order and order him to be reinstated in service. Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order. Thus, in Shankar Dass v. Union of India and another, (1985) 2 S.C.C. 358, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case."*

15. In ***Sushil Kumar Singhal'***case, referred supra, the Supreme Court has observed that conviction of an employee in an offence permits the disciplinary authority to initiate disciplinary proceedings against him or to take appropriate steps for his dismissal/removal only on the basis of conviction. However, in this case employee was dismissed from service on the ground that offence committed by petitioner therein was an offence involving moral turpitude, and moral turpitude was summarized by the Supreme Court as under:-

> *"23. "Moral Turpitude" means [Per Black's Law Dictionary (8th Edn., 2004)] :-*
>
> > *"Conduct that is contrary to justice, honesty, or morality. In the area of legal ethics, offenses involving moral turpitude--such as fraud or breach of trust.... Also termed moral depravity....*
> >
> > *'Moral turpitude means, in general, shameful wickedness-so extreme a departure from ordinary standards of honest, good morals, justice, or ethics as to be shocking to the moral sense of the community. It has also been defined as an act*

of baseness, vileness, or depravity in the private and social duties which one person owes to another, or to society in general, contrary to the accepted and customary rule of right and duty between people.' "

24. In Pawan Kumar Vs. State of Haryana & Anr., (1996) 4 SSC 17, this Court has observed as under:-

"12. `Moral turpitude' is an expression which is used in legal as also societal parlance to describe conduct which is inherently base, vile, depraved or having any connection showing depravity."

The aforesaid judgment in Pawan Kumar (supra) has been considered by this Court again in Allahabad Bank & Anr. Vs. Deepak Kumar Bhola, (1997) 4 SCC 1; and placed reliance on Baleshwar Singh Vs. District Magistrate and Collector, AIR 1959 All. 71, wherein it has been held as under:-

"The expression `moral turpitude' is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellow men or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man."

25. In view of the above, it is evident that moral turpitude means anything contrary to honesty, modesty or good morals. It means vileness and depravity. In fact, the conviction of a person in a crime involving moral turpitude impeaches his credibility as he has been found to have indulged in shameful, wicked, and base activities."

16. In *Tusliram Patel's* case, five-Judges Bench of the Supreme Court has discussed the guiding principles for dispensing with enquiry in case

of conviction and other special circumstances and in furtherance thereto Government of India, Department of Personnel and Training has issued OM No. 11012/11/85—Estt. (A), dated the 11th November, 1985 and 4th April, 1986, relevant portion whereof is as under:-

> *"Guiding principles for dispensing with enquiry in cases of conviction and other special circumstances.— (a) General: The judgment delivered by the Supreme Court on 11.07.85 in the case of Tulsi Ram Patel and others has been the cause of much controversy. The apprehension caused by the judgment is merely due to an inadequate appreciation of the point clarified in this judgment and in the subsequent judgment of the Supreme Court delivered on September 12, 1985 in the case of Satyavir Singh and others (Civil Appeal No. 242 of 1982 and Civil Appeal No. 576 of 1982). It is, therefore, imperative to clarify the issue for the benefit and guidance of all concerned.*
>
> *2. In the first place it may be understood that the Supreme Court in its judgment has not established any new principle of law. It has only clarified the constitutional provisions, as embodied in Article 311 (2) of the Constitution. In other words, the judgment does not take away the constitutional protection granted to government employees by the said Article, under which no government employee can be dismissed, removed or reduced in rank without an inquiry in which he has been informed of the charges against him and given a reasonable opportunity to defend himself. It is only in three exceptional situations listed in clauses (a), (b) and (c) of the second proviso to Article 311 (2) that the requirement of holding such an inquiry may be dispensed with.*
>
> *3. Even under these three exceptional circumstances, the judgment does not give unbridled power to the competent authority when it takes action under any of the three clauses in the second proviso to Article 311 (2) of the Constitution or any service rule corresponding to it. The competent authority is expected to exercise its power under this proviso after due caution and considerable application of mind. The principles to be kept in view by the competent authority while taking action under the second proviso to Article 311 (2) or corresponding service rules have been defined by the Supreme Court itself. These are reproduced in the succeeding paragraphs for the information, guidance and compliance of all concerned.*
>
> *4. (b) Cases falling under rule 19 (i): When action is taken under Clause (a) of the second proviso to Art. 311 (2) of the*

Constitution or Rule 19 (i) of the CCS CCA) Rules, 1965, or any other service rule similar to it, the first prerequisite is that, the Disciplinary Authority should be aware that a Government servant has been convicted on a criminal charge. But this awareness alone will not suffice. Having come to know of the conviction of a Government servant on a criminal charge, the Disciplinary Authority must consider whether his conduct, which had led to his conviction, was such as warrants the imposition of a penalty and if so, what that penalty should be. For that purpose, it will have to peruse the judgment of the Criminal Court and consider all the facts and circumstances of the case. In considering the matter, the Disciplinary Authority will have to take into account the entire conduct of the delinquent employee, the gravity of the misconduct committed by him, the impact which his misconduct is likely to have on the administration and other extenuating circumstances or redeeming features. This however has to b done by the Disciplinary Authority by itself. Once the Disciplinary Authority reaches the conclusion that the Government servant's conduct was blameworthy and punishable, it must decide upon the penalty that should be imposed on the Government servant. This too has to be done by the Disciplinary Authority by itself. The principle, however, to be kept in mind is that, the penalty imposed upon the civil servant should not be grossly excessive or out of all proportion to the offence committed or one not warranted by the facts and circumstances of the case.

5. After the competent authority passes the requisite orders as indicated in the preceding paragraph, a Government servant who is aggrieved by it can agitate in appeal, revision or review, as the case may be, that the penalty was too severe or excessive and not warranted by the facts and circumstances of the case. If it is his case that he is not the person who was in fact, convicted, he can also agitate this question in appeal, revision or review. If he fails in all the departmental remedies available to him and still wants to pursue the matter, he can seek judicial review. The court (which term will include a Tribunal having the powers of a court) will go into the question whether impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed, or not warranted by the facts and circumstances of the case or the requirements of the particular service to which the government servant belongs.

5-A(c) Cases falling under Rule 19 (ii): A question has been raised whether in a case where Clause (b) of the second proviso to Article 311 (2) of the Constitution is invoked, the Disciplinary Authority may dispense with the issuing of charge-memo listing the charges. Clause (b) is attracted in a case where the Disciplinary Authority concludes "that it is not reasonably practicable to hold such an inquiry". The circumstances leading to such a conclusion may exist either before the inquiry is commenced or may develop in the course of the inquiry. In the Tulsi Ram Patel case, the Supreme Court observed as under-

> *"It is not necessary that a situation which makes the holding an inquiry not reasonably practicable should exist before the disciplinary inquiry is initiated against Government servant. Such a situation can also come into existence subsequently during the course of an inquiry, for instance, after the service of charge-sheet upon the Government servant or after he has filed his written statement thereto or even after the evidence had been led in part. In such a case also, the Disciplinary Authority would be entitled to apply Clause (b) of the second proviso because the word 'inquiry' in that clause includes part of an inquiry."*

Article 311 (2) of the Constitution concerns itself with the punishment of dismissal, removal or reduction in rank, which comes in the category of major punishment under the service rules providing the procedure for disciplinary action against Government servants, The first step in that procedure is the service of a memorandum of charges or a charge-sheet, as popularly known, on the Government servant listing the charges against him and calling upon him, by a specified date, to furnish reply either denying or accepting all or any the charges. An inquiry hence commences under the service rules with the service of the charge-sheet. Obviously, if the circumstances even before the commencement of an inquiry are such that the Disciplinary Authority holds that it is not reasonably practicable to hold an inquiry, no action by way of service of charge-sheet would be necessary. On the other hand, if such circumstances develop in the course of inquiry, a charge-sheet would already have been served on the Government servant concerned.

…. ….. …..

10 (e) Conclusion: The preceding paragraphs clarify the scope of Clauses (a), (b) and (c) of the second proviso to Årt. 31 1 (2) of the Constitution, Rule 19 of CCS (CCA) Rules, 1965, and other service rules similar to it, in the light of the judgments of the Supreme Court delivered on 11-7-1985 and 12-9-1985. It is, therefore, imperative that these clarifications are not lost sight of while invoking the provision of the second proviso to Art. 311 (2) or service rules based on them. Particularly, nothing should be done that would create the impression that the action taken is arbitrary or mala fide. So far as Clauses (a) and (c) and service rules similar to them are concerned, there are already detailed instructions laying down the procedure for dealing with the cases falling within the purview of the aforesaid clauses and rules similar to them. As regards invoking Clause (b) of the second proviso to Art. 311 (2) or any similarly worded service rule, absolute care should be exercised and it should always be kept in view that action under it should not appear to be arbitrary or designed to avoid an inquiry which is quite practicable."

17. Provisions contained in proviso (a) to Clause (2) of Article 211 of the Constitution of India and Rule 19(i) of CCS (CCA) Rules provide that on conviction an employee can be dismissed or removed or reduced in rank, on the ground of conduct which led to conviction on criminal charge, without conducting any enquiry. But, it does not mean that every conviction shall be followed by removal of employee, as it does not mandate automatic removal on conviction. Employer having right to remove the employee from service, without enquiry, has to consider all relevant factors, like nature and gravity of offence, impact of conviction on service, suitability of employee in service after conviction, and competent authority is expected to exercise its power under these provisions after due caution and considerable application of mind and has to consider that the conduct of the employee was such as warrants imposition of penalty and, if so, what that penalty should b, as these provisions not only provide dismissal or removal from service but also in alternative, reduction in rank which definitely provides discretion to the

competent authority to impose appropriate penalty, if any required, in the given facts and circumstances of the case.

18. Undisputedly petitioner was having alternative remedy of filing Appeal/Revision against his impugned removal from the service. Though he has claimed filing of appeal, but he has preferred present petition on 24.12.2015.

19. It has been claimed by petitioner that he filed an appeal before Divisional Manager, against his removal, on 2.12.2015.

20. In reply, dated 28.2.2017, filed on behalf of respondents, it has been stated that petitioner has approached the Tribunal without filing statutory appeal to Divisional Manager. The reply was filed on 30.3.2017. Thereafter petition was admitted on 22.6.2017 and remained pending adjudication before the erstwhile Tribunal and thereafter in this Court. The petitioner was having alternative remedy and, therefore, he had to exhaust the same before approaching this Court and petition may have been disposed on this ground only relegating him to exhaust the statutory remedy available to him, and the said order should have been passed at the initial stage. Petitioner was removed from the service in September, 2015 and he filed this petition in December, 2015. Thereafter, the petition was admitted and remained pending adjudication in the Court for about 7 years. Though this Court refrains and hesitates from entertaining the petition under Article 226 of the Constitution of India directly without exhausting the alternative remedy available under the statute, but this Court is not inhibited from entertaining the petition under Article 226 of the Construction for not availing alternative remedy, in the exceptional circumstances. No exceptional circumstance has been culled out in the petition or in rejoinder for not exhausting the alternative statutory remedy available to the petitioner. However, it is also a matter of fact that for availing the remedy available to the petitioner he approached an Advocate, who instead of guiding the petitioner appropriately

to the best of her wisdom filed Original Application before the erstwhile Administrative Tribunal, where, it appears that petition was admitted in routine manner and during arguments addressed before me learned counsel for petitioner submits that petition was filed by some other Advocate and she has been engaged at later stage.

21. It has been contended on behalf of petitioner that except the accident in reference, petitioner has never committed any other offence, much less a grievous offence of any kind involving moral turpitude or rashness or negligence while performing duties as driver for about 14 years with the HRTC and the accident took place in the year 2008 and thereafter also he served the HRTC as a driver without any fault or rashness or negligence at any point of time till 2014 and HRTC itself considers that petitioner was not at all fault, as has come in the report of Works Manager as well as in reply to the claim petition filed before the MACT Visakhapatnam and, therefore, it has been canvassed that in these peculiar facts and circumstances, removal of petitioner from service is unwarranted and disproportionate.

22. Keeping in view the entire facts and circumstances of the case, instead of deciding the matter on merits by dealing the contentions of the parties, present petition is disposed of with liberty and permission to the petitioner to approach the Appellate Authority by filing an appeal afresh, if advised so, for redressal of his grievance regarding removal from service and such appeal shall be preferred on or before 28th March, 2023 and in case such appeal is preferred by the petitioner, the same shall be decided by the Appellate authority on or before 15th May, 2023 and in case petitioner is still aggrieved, he shall exhaust the remedy of revision or review as available under law and in case of filing, if need be, revision/review by the petitioner the said revision/review shall also be decided by the concerned authority within two months after filing of the same.

23. Needless to say the concerned appellate/revisonal/reviewing authority, as the case may be, shall decide the matter in accordance with law in the light of pronouncements of the Supreme Court as well as provisions of CCS (CCA) Rules as explained in the pronouncements of the Supreme Court and explained in Office Memoranda issued by the Government from time to time, and shall make such order therein, as it deems fit in accordance with law.

24. It is clarified that this Court has not expressed any view on merits of rival contentions of parties, except on the plea of double jeopardy taken by the petitioner, which stands settled by the pronouncements of the Supreme Court referred supra. So far as plea with respect to punishment or quantum thereof is concerned, that shall be considered by concerned statutory authorities at appropriate time in appropriate appeal/revision/review, if any filed before them, in accordance with relevant law and pronouncements of the Supreme Court in that regard.

The petition stands disposed of in aforesaid terms, so also pending applications, if any.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Neeraj .....Appellant

Versus

State of Himachal Pradesh ....Respondent

Cr.A No.267 of 2022

Makhan Singh .....Appellant

Versus

State of Himachal Pradesh .....Respondent

For the Appellants : Mr. Rajesh Kumar Parmar, Advocate & Mr.Arun Sehgal, Advocate.

For the Respondent : Mr. Harinder Singh Rawat, Additional Advocate General, and Mr. R.P. Singh, Deputy Advocate General.

CRIMINAL APPEALS NO.274 AND 267 OF 2022

Cr.A No.274 of 2022

Decided on: 13.01.2023

Protection of Children from Sexual Offences Act, 2012- Section 4 of POCSO read with Section 376 of IPC- Victim made an allegation in FIR that Penetrative Sexual Assault was committed against her by accused. According to her version, as stated in FIR, her neighbour had helped her when he found her running back towards her home after the alleged offence. However, during recording of statements under Section 164 of Cr. PC, she took a complete U-turn and alleged that her neighbour had committed the alleged offence against her. Victim and her parents made self- contradictory statements during the whole criminal proceeding. However, one DNA profile obtained from underwear of victim had completely matched with the DNA profile obtained from blood sample of one accused-**Held**-When there are material contradictions in the statement of prosecution witnesses coupled with lack of cogent evidences, benefit of doubt must be given to accused persons. Mere match of DNA profile cannot be made the basis of conviction. Conviction was set aside and accused persons were acquitted. (Paras 28 and 29)

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge.

J U D G M E N T

These appeals, arising out of the same FIR, for involvement of appreciation of common facts, evidence and law, are being decided by this common judgment.

2. Appellants have been convicted, under Section 4 of POCSO Act, read with Section 376 IPC, by Additional Sessions Judge, Fast Track Special Court (POCSO), Solan, in **Sessions Trial No.106-S/7 of 2020/2015, titledState versus Makhan Singh and another**, in case FIR No.289 of 2014, dated 6.12.2014, registered in Police Station Nalagarh, District Solan, Himachal Pradesh, under Sections 363, 376, 506 of the Indian Penal Code (for short 'IPC') and Section 7 of Protection of Children from Sexual Offences Act, 2012 (for short 'POCSO Act').

3. Each of the appellants has been sentenced, under Section 4 of the POCSO Act, read with Section 376 IPC, for 7 years rigorous imprisonment and fine of `5,000/- each and in default payment of fine to undergo one month's imprisonment.

4. As per prosecution case, Reeta Devi, mother of victim, alongwith minor victim, approached Police Station Nalagarh, on 6.12.2014 at 6 p.m., and lodged a report, stating therein that she was an employee in a private company and her husband was owner-cum-driver of a Truck and they had one daughter and two sons and her daughter (victim), used to stay at home, and on that day she reached home at 3 p.m. and found her daughter under fear and, on enquiry, her daughter disclosed that at about 1.30 p.m., victim had gone to bring fodder for goat and at that time Neeraj, resident of village Nangal, came alongwith two companions on a motorcycle and made her to sit on motorcycle forcibly by shutting her mouth with his one hand, whereas his

two companions were already on the motorcycle and all three of them took her on the motorcycle to the forest and the motorcycle was being driven by Neeraj and both companions of Neeraj left Neeraj and victim at secluded place and went off and, thereafter, Neeraj violated her person forcibly and left the place leaving her there, wherefrom she ran towards house and on the way her neighbor Makhan met on the motorcycle, who brought her on the motorcycle to home. With aforesaid narration, prayer was made to take action and conduct the medical examination of her daughter.

5. On the basis of aforesaid report, FIR No.289 of 2014 (Ex.PW-1/A) was registered and investigation was carried out.

6. Victim was medically examined and her MLC Ex. PW-7/B was obtained from the Medical Officer and final opinion of the Doctor (Ex. PW-7/B, was obtained thereon, after receipt of report of chemical analysis from the Forensic Science Laboratory.

7. On 07.12.2014 statement of victim, Ex. PW-16/J was recorded under Section 161 Cr.P.C. Thereafter, on 09.12.2014, statement of victim, Ex. PW-4/A, was recorded under Section 164 of the Code of Criminal Procedure (for short 'Cr.P.C.'), in presence of her mother, before Additional Chief Judicial Magistrate, Nalagarh, wherein victim deposed that on 5.12.2014 she received call of Makhan asking her to meet him outside her house at 1-1.30 p.m. Thereafter, she received repeated missed calls from Makhan on her mobile wheeto she responded by giving a missed call to Makhan, whereupon Makhan called back and, out of fear, she acceded to his request, and when she was feeding buffalos outside her house at 1.30 p.m., Makhan and his friend came on motorcyle and due to fear she accompanied them. At that time, she was alone at home. The motorcycle was being driven by friend of Makhan and she sat on the motorcycle behind Makhan and they took her to Kharuni forest. Further that, after parking the motorcycle on the road near jungle, Makhan accompanied her to the forest and violated her person. Thereafter, Makhan

and his friend dropped her near her house on a shop of mobile phones and went away and she returned home. When she was weeping at home, her father enquired about reason, whereupon she disclosed that she had gone with Makhan because he had threatened her but she had not disclosed about violation of her person by Makhan but only about threats. She further stated that thereafter she came to the Police Station alongwith parents and her mother lodged FIR on the same day and she had disclosed the entire story to her mother in the Police Station.

8. In her statement under Section 164 Cr.P.C., victim had further stated that Neeraj was not accompanying Makhan but he had come to her house in the morning of 5.12.2014 and had threatened that in case she would not flee with him then he would kill her father and brother and thereafter Neeraj had left the place. Further that, alongwith Makhan, only one boy had come. Makhan had disclosed to her that they were three, but one had been dropped on Chowk.

9. Victim in her statement under Section 164 Cr.P.C. had further stated that Neeraj did not do anything wrong to her on 5.12.2014 nor he was accompanying Makhan but he had violated her person during night of 4.12.2014 at her home, who had contacted her by taking out two bricks of the wall and pelting small pebbles to wake her up. She stated that she had not disclosed about the incident of Neeraj to her family, but she had disclosed the entire aforesaid story to the police. She had further stated that she did not raise any alarm, noise or cry because of fear of threat of killing her father and her father extended by Neeraj.

10. During investigation, appellants Neeraj and Makhan were arrested. They were also subjected to medical examination.

11. During investigation, spot was identified by the victim wherefrom a used condom was taken in possession and seized by the police vide Memo Ex.PW-1/B. Motorcycle, alleged to be used in the commission of the offence,

was also taken in possession vide Memo Ex. PW-1/C. Vide Memo Ex. PW-1/D, appellant Neeraj identified the room and the place where he had violated the victim during night of 4.12.2014.

12. Underwear and vaginal swab of victim were also sent for chemical analysis and, as per report of the Forensic Science Laboratory, one DNA profile obtained from underwear of victim had completely matched with the DNA profile obtained from blood sample of Neeraj. It has also been reported that a mixed autosomal STR DNA profile was obtained from vaginal swab of victim out of which two autosomal STR DNA profiles were identifiable, one of which completely matached with DNA profile of Neeraj while the other matched with DNA profile of victim. Report of the State Forensic Science Laboratory is Ex.PW-14/A.

13. Date of Birth Certificate obtained from Gram Panchayat Bhogpur (Ex.PW-5/C) indicates that recorded Date of Birth of victim was 12.3.2000.

14. After completion of investigation, challan was presented in the Court and, on finding sufficient material, charges were framed against appellant Makhan Singh under Section 363 IPC and 4 of POCSO Act read with Section 376 IPC, and against appellant Neeraj under Section 4 of the POCSO Act read with Section 376 IPC.

15. Prosecution examined as many as 18 witnesses, whereas, after recording statement of appellants under Section 313 Cr.P.C., they did not lead any evidence in defence.

16. On conclusion of trial, appellants have been convicted and sentenced as stated supra.

17. Reeta Devi, mother of victim, has been examined as PW-1. In her deposition, she stated that she had two daughters and victim was her elder daughter. She has further stated that, on 6.12.2014, her daughter was weeping and her husband was present there and he asked her to accompany to Police Station Nalagarh, where FIR Ex.PW-1/A was lodged, where, on

asking of police, victim narrated the incident to police official but did not tell anything to her. After registration of FIR, she remained associated with police, during investigation, in Kharuni forest, where victim identified the spot and one used condom was recovered. However, she has expressed ignorance about the person named by the victim involved in commission of offence. She was declared hostile for resiling from her earlier statement and was subjected to cross-examination by Public Prosecutor. In cross-examination, she has denied the prosecution case completely as was recorded in the FIR, but has admitted identification of spot by the victim and her signatures on relevant Memos, but has denied that victim identified the motorcycle in her presence or identified the place where Neeraj violated the victm. She has also denied to have made statement Portions 'A to A' and 'B to B' in statement recorded under Section 161 Cr.P.C. She has admitted that her house is adjacent to National Highway having many houses around her house, where there was always hustle and bustle and people used to come and go from that place all the time. She has denied any acquaintance with appellants Makhan and Neeraj.

18. PW-2 Jagmohan Singh is father of victim. He has stated that on the relevant day he alongwith his wife and daughter had gone to Police Station, but since he had consumed liquor, therefore, police asked him to sit outside the Police Station. According to him, victim did not disclose anything about the incident. He was also declared hostile for resiling from his previous statement recorded by the police. In cross-examination by Public Prosecutor, he has denied the prosecution case in toto about accusation against Neeraj and Makhan as alleged in the challan and in the statement of victim recorded by the police. He has also admitted tht on 13.12.2014, about 8-9 days after the incident, marriage of victim was solemnized. He has further stated that there is no Kharuni forest as mentioned in the statements recorded by the Police.

19. Owner of motorcycle Amrit Pal has been examined as PW-3, who has stated that motorcycle was borrowed by Hem Raj on 6.12.2014, and PW-6 Hem Raj has corroborated this statement by saying that he had borrowed the motorcycle of Amrit Pal on the request of Makhan, whereas in the FIR there is no allegation against Makhan and in statement of victim recorded under Section 164 Cr.P.C. violation of person of victim has been alleged on 5.12.2014. Therefore, statement of PW-3 Amrit Pal and PW-6 Hem Raj, instead of corroborating the prosecution story, are creating confusion.

20. PW-4 victim, in her examination-in-chief, has stated that appellants present in Court were neither known to her nor she identified them and that on 7.12.2014 she had made the statement as per direction of the Investigating Officer having been threatened to do so. She was declared hostile for resiling from her earlier statement. In her cross-examination by the Public Prosecutor, she has denied to have made earlier statements, she had also denied acquaintance/ introduction with Makhan as well as Neeraj. She has denied the entire story of the prosecution and even she has also denied her consent for her medical examination. She has also denied identification of spot and signatures on the relevant Memos. However, she has admitted her signatures on Ex.PW-4/A, statement under Section 164 Cr.P.C., but with further clarification that such statement was made by her as per direction of the Investigating Officer. It is also pertinent to mention that the Magistrate had recorded that statement in presence of Reeta Devi, mother of victim, but Reeta Devi had lodged the FIR contrary to the statement of victim recorded under Section 164 Cr.P.C. Mother is also completely silent in her deposition regarding the three stories put forward by the victim in her three statements, i.e. at the time of lodging FIR, statement under Section 161 Cr.P.C. as well as statement under Section 164 Cr.P.C. She has completely resiled from her earlier statements.

21. Veracity of parents of victim is also doubtful, because at different times they have made different statements and so far as occurrence is concerned there is complete denial of prosecution story in their statements, whereas the prosecution story is based on first report lodged by mother of victim.

22. As admitted by father of the victim that victim was married immediately after 8-9 days of the alleged incident again creates doubt about age of the victim, particularly for the reason that in FIR it was claimed that there was only one daughter of Reeta Devi, whereas in deposition in Court, she stated that she had two daughters and incident took place with elder daughter.

23. It is not a case where before the Police or before the Magistrate, under Section 164 Cr.P.C., the victim or her family members have made consistent depositions so as to rely upon the story put forth by the complainant party but is a case where from the very beginning statements of complainant party are having major contradictions not only with each other but also the statement made by the victim at the first instance, and at the time of recording statement under Section 161 Cr.P.C. as well as 164 Cr.P.C. It is not a case where victim or her parents resiled from the earlier statements or have made contradictory statements in the Court at the behest of the accused persons, but for the material on record it is apparent that from the very beginning complainant party was making self-contradictory statements.

24. According to victim, she had disclosed the entire story about Makhan to the mother, at the time of lodging the FIR, in the Police Station, but in FIR there is no accusation against Makhan, rather it has been stated that Makhan helped the victim to return home when she was left alone in the forest by Neeraj after violating her. However, in her statement under Section 164 Cr.P.C., victim took complete U-turn and entire episode was alleged to be related to Makhan.

25. On first day, story of complainant is that three persons, on a motorcycle, had forcibly kidnapped the victim in the broad day light from a place adjacent to a busy highway having number of houses in surrounding, by shutting her mouth with hand by Neeraj and Neeraj was also driving the motorcycle. The story appears to be improbable. The victim, in her statement under Section 164 Cr.P.C. changed the version and said that it was Makhan not Neeraj who kidnapped her by making calls on her mobile phone and Makhan was sitting in between driver and her as she sat on the motorcycle in the last behind Makhan. This story is completely in contradiction to the first version given to in the FIR. In her statement under Section 164 Cr.P.C., victim narrated a new incident that Neeraj came to her room during night of 04.12.2014 in her house where she is residing alongwith her parents and brother/sister and she opened the door on signaling by Neeraj because of threat to life to her father and brother. This story is also again entirely new version come on record in the statement of victim. Not only this, there also contradiction with respect to date of incident. In FIR it is 06.12.2014, but in statement under Section 164 Cr.P.C. it is 05.12.2014. Therefore, allegation, as leveled in present case, appears to be highly improbable. What is the truth in the entire episode, it appears to have been withheld by the complainant party for the reasons best known to them.

26. Though DNA profile obtained from the underwear and vaginal swab has matched with the DNA profile of Neeraj, but, in the FIR, Neeraj was never named and with respect to the incident of 5.12.2014 or 6.12.2014 there was no allegation against Neeraj, but in statement recorded under Section 164 Cr.P.C. it was alleged that Neeraj visited her during night of 4.12.2014. But, it is also apparent from the statement that alleged entry in the house was consensual and further that it appears to be a consensual act, but for age of the victim it constituted an offence, but, at the same time, it is also noticeable that nowhere in the statements of prosecution witnesses it has come on record

that Neeraj was knowing that victim was a minor and was not having age of discretion to consent for consensual intercourse.

27. According to prosecution, a used condom was recovered from the forest, the alleged spot of violation of person of victim by Neeraj or Makhan, but why that condom was not subjected to chemical analysis or DNA profiling, there is complete silence in this regard in the entire prosecution story.

28. It is settled law that benefit of doubt is to be given to the accused and accused cannot be convicted on the basis of a sketchy evidence and for want of reliable and cogent version of the victim and her parents, matching of DNA profile is of no help to the prosecution.

29. In the aforesaid facts and circumstances and major contradictions, rather denial of occurrence, cast great doubt about the truthfulness of prosecution story. There is no reliable, cogent and convincing evidence on record to conclude, beyond reasonable doubt, that appellants had committed the offence, as alleged in the prosecution case.

30. In view of the above discussion, present appeals are allowed, judgment of conviction and sentence passed by the trial Court is set-aside and the accused-appellants are acquitted of the charges framed against them, by giving them benefit of doubt. Release warrants be prepared and issued accordingly.

Appeals stand disposed of, so also pending application(s), if any.

BEFORE HON'BLE MR. JUSTICE AJAY MOHAN GOEL, J.

Oriental Insurance Company Ltd. ....Appellant

Versus

Smt. Rattani Devi and another ...Respondents

For the appellant : Mr. Deepak Bhasin, Senior Advocate with Mr. Sambhav Bhasin, Advocate.

For the respondents : Mr. Vikas Rathore and Vinod Chauhan, Advocates for respondent No. 1.

: Respondent No. 2 *ex parte*.

FAO No. 255 of 2014
Decided on:
02.03.2023

Employee's Compensation Act, 1923-Respondent filed a petition seeking compensation under the Workmen's Compensation Act, on the ground that her husband was working as a Driver with the owner of vehicle and in the course of his employment he met with an accident leading to his death - Held- where owner of the vehicle admits that the owner and deceased shared a relationship of employer and employee then, the onus to prove the absence of such relationship is upon the insurance company.

The following judgment of the Court was delivered:

Ajay Mohan Goel, Judge*(Oral)*

By way of this appeal, the appellant-Insurance Company has assailed award dated 25.04.2014, passed by the Court of Commissioner under the Employee's Compensation Act, 1923, Bilaspur, District Bilaspur in WC No. 3/2 of 2011/10, titled Smt. Rattani Devi vs. Smt. Pushp Lata and another, in

terms whereof, the claim petition preferred by respondent No.1 herein was allowed by the learned Commissioner in the following terms:-

> *"In the light of my findings on above issues, the present petition is partly allowed and an award of Rs. 5,84,800/- alongwith interest @ 12% per annum from the date of death of deceased Bhim Singh i.e. 28.10.2009 till realization of the said amount alongwith Rs. 5,000/- as funeral charges alongwith the cost of litigation is hereby passed in favour of the petitioner and against the respondents. The file after due completion be consigned to the record room."*

2. This appeal was admitted on 23.02.2015, on the following substantial questions of law:-

> "1. Whether the award of the Commission suffers from illegality and is unsustainable regarding employer-employee relationship in the absence of any proof?
> 2. Whether the Commissioner has committed an error while arriving at the conclusion that the deceased suffered injuries during the course of his employment under the Insured in the absence of any employment proof on record?
> 3. Whether the Award is unsustainable for the reason that the Commissioner has fell into error while applying the provisions of law with retrospective effect?
> 4. Whether the learned Commissioner was justified in imposing the interest on award amount upon the insurance company in the absence of any contract or statutory provision empowering him to do so?"

3. Brief facts necessary for the adjudication of the present appeal are as under:-

Respondent/petitioner (hereinafter referred to as the petitioner for convenience) filed a petition seeking compensation under the Workmen's Compensation Act, on the grounds that her husband, namely, Bhim Singh was working as a Driver with Smt. Pushp Lata, engaged on vehicle No. Hyva No. HP 24A-457A and in the course of his employment on 28.10.2009, when he was plying said vehicle from Delag Gala to Ghagas, the same met with an

accident, on account of which, Bhim Singh sustained multiple injuries, leading to his death. According to the claimant, the accident occurred on account of a mechanical defect. At the time of the accident, deceased Bhim Singh was getting a monthly salary of Rs. 6000/- per month and also Rs. 150/- as diet money and apart from this, he was also having some earning from the agriculture, which took his gross monthly earnings to be Rs.11,500/- . Compensation to the tune of Rs. 20,000,00/- was sought by the claimant. The owner of the vehicle admitted the case of the petitioner except the fact that late Bhim Singh was having any agricultural income.

4. The appellant-Insurance Company, resisted the claim petition *inter alia* on the ground that the same was not maintainable and that the vehicle was being driven by the deceased without any valid and effective licence and that there was no nexus between the death of the deceased and his employment.

5. On the basis of pleadings of the parties, the following issues were framed by learned Commissioner:-

1. Whether the deceased Bhim Singh the husband of petitioner died during the course of employment with the respondent while driving the Hyva No. HP 24A-4578? OPP
2. If issue No. 1 is proved in affirmative whether the petitioner is entitled for the compensation to the tune of Rs. 20,00,000/- from the respondents on accont of the death of Bhim Singh alongwith interest @ 12% per annum? OPP
3. Whether the petition is not maintainable in the present form? OPD
4. Whether the petition is incomplete, vague and without cause of action? OPD
5. Whether there is no nexus between the death and the employment of deceased Bhim Singh with the respondents? OPD
6. Relief.

6. On the strength of the evidence led by the parties, the issues were decided as under:-

Issue No. 1 : Yes

Issue No. 2	: Partly yes
Issue No. 3	: No.
Issue No. 4	: No.
Issue No. 5	: No.
Relief	: The petition of the petitioner is partly allowed as per operative part of the award.

7. Learned Commissioner, after holding that deceased Bhim Singh was employed as a Driver on her vehicle by Smt. Pushp Lata and after holding that the death of Bhim Singh took place in the course of his employment, awarded an amount of Rs.5,84,800/- in favour of the claimant. While arriving at the said figure, learned Commissioner on the basis of evidence on record took the age of the deceased to be 52 years and assessed the gross income of the deceased to be Rs. 10,500/- per month and took the same to be Rs.8000/- per month on the basis of notification No. S.O. 1258 (E) Dated 31.5.2010 of the Central Government for assessing compensation.

8. Learned Senior Counsel appearing for the appellant-Insurance Company, has argued that the award passed by the learned Commissioner is not sustainable in the eyes of law as learned Commissioner erred in not appreciating that the deceased did not die in the course of his employment nor there was anything on record to establish the relationship of employee and employer between the deceased and Smt. Pushp Lata. Learned Senior Counsel has also argued that assuming the accident did take place in the course of employment, then also the award was not sustainable as the provisions of law, which have been applied by the learned Commissioner while calculating the compensation payable to the claimant were those which were incorporated in the Employee's Compensation Act, 1923, after the date of accident. Accordingly, a prayer has been made that the present appeal be allowed and the award in issue be set aside.

9. The appeal is resisted by the learned Counsel appearing on behalf of respondent No.1 on the ground that there is no perversity in the award passed by the learned Commissioner as the findings returned by the learned Commissioner that the husband of the claimant died in harness, were correct findings which were duly borne out from the record and it also stood proved on record that the deceased was engaged as a Driver on the vehicle of Smt. Pushp Lata, who also had admitted this fact. Learned Counsel further submitted that the provisions of the Employee's Compensation Act, 1923, as have been taken into consideration by the learned Commissioner can also not be faulted with for the reason that Employee's Compensation Act being a beneficial legislation, learned Commissioner rightly announced the award by relying upon the statutory provisions as they stood on the date when the award was announced. Accordingly, he has submitted that as there is no infirmity in the award passed by the learned Commissioner, the present appeal be dismissed.

10. I have heard learned Senior counsel appearing for the appellant as well as learned counsel for respondent No.1. As none has put in appearance on behalf respondent No.2 despite service, accordingly said respondent is proceeded against *ex parte*.

11. This Court will answer substantial questions of law No.1 and 2 first and thereafter, it will refer to the other substantial questions of law. A perusal of the record demonstrates that in the claim petition, it was averred by the claimant that respondent No.1 impleaded therein, namely, Smt. Pushp Lata, who is respondent No.2 in the present appeal, was the registered owner of vehicle Hyva No.HP 24A-4578, which was duly insured with the present appellant-Company and the husband of the deceased was employed by the owner of the vehicle as driver of the said vehicle. Further, it was averred in the claim petition that on 28.10.2009, when the vehicle was on its way from Delag Gala to Ghaghas and Bhim Singh was on the wheels of the vehicle and he was

driving the same with due care and caution, the vehicle rolled down the hill near Village Dali and as a result of this accident, Bhim Singh sustained multiple serious injuries, leading to his death. According to the claimant, Bhim Singh was a hale and hearty person aged 50 years who was being paid a monthly salary of Rs.6,000/- per month and also Rs.150/- per day as diet money and additionally, he was also earning Rs.1,000/- per month from agriculture sources. Response thereto filed by respondent No.1 demonstrates that the factum of deceased Bhim Singh being engaged as a Driver on the vehicle, particulars whereof stand mentioned in the claim petition, was admitted by the owner of the vehicle and similarly, the averments made in the claim petition with regard to monthly wages as also the diet money being paid to Sh. Bhim Singh, were admitted by the owner of the vehicle. That being the case, this court is of the considered view that as the owner of the vehicle did not dispute the relationship of employer and employee between her and the deceased, no further evidence was required to be led by the claimant to prove this fact and in case, the insurance company was of the view that there was any collusion etc. between the claimant and the so-called owner of the vehicle or indeed there was no such relation of master and servant, then the onus was upon the insurance company to prove this fact which it miserably failed to do as there is no evidence on record lead by the Insurance Company to demonstrate that there was no such relationship between the deceased and Smt. Pushp Lata. Therefore, this Court has no hesitation in holding that there is no infirmity in the findings returned by the learned Commissioner with regard to relationship of employee and employer between deceased and Pushp Lata. Similarly, the factum of the deceased having lost his life in the course of his employment, has also been admitted by the owner of the vehicle. There is also on record a copy of FIR Exhibit AW-1/A, dated 28.10.2009, which clearly proves the factum of the said incident having taken place. The copy of the driving licence, RC of the vehicle as well as the copy of insurance of the vehicle

alongwith the postmortem report of the deceased are also on record. These exhibits clearly prove the factum of the deceased having lost his life in the course of employment and also the fact that the vehicle was not being driven in violation of the provisions of the insurance policy and the vehicle indeed was duly insured with the insurance company. Accordingly, this Court holds that the findings which have been returned by the learned Commissioner with regard to the relationship of employee and employer between deceased Bhim Singh and Pushp Lata and also with regard to death of deceased Bhim Singh having taken place in the course of his employment, are correct findings, duly borne out from record and the same do not call for any interference.

12. Now, this Court will deal with substantial questions of law No. 3 and 4. The accident in issue took place on 28th October, 2009. The provisions of Section 4 of the Employee's Compensation Act, 1923, as they existed on the date when the unfortunate accident took place, *inter alia* in terms of Explanation (II) appended thereto provided that where the monthly wages of a workman exceed Rs.4000/-, his monthly wages for the purpose of (a) and (b) shall be deemed to be Rs.4000/- only. This explanation was omitted vide Act 45 of 2009 i.e. Section 7(A)(IV) thereof, w.e.f. 18.01.2010. As already mentioned hereinabove in the present case, the accident took place on 28th October, 2009 and deceased also lost his life in the said accident on the same day. However, a perusal of the impugned award demonstrates that while assessing the compensation payable to the complainant, in para 12 of the award learned Commissioner has relied upon Notification No. S.O.1258 (E), dated 31.5.2010, of the Central Government, in terms whereof, the monthly wages for the purpose of assessing compensation cannot exceed Rs. 8,000/- and by taking the monthly wage of the deceased to be Rs.10,500/-, the compensation has been calculated by multiplying the relevant factor by taking the monthly wages of the deceased to be Rs. 8,000/- per month. This Court is of the considered view that this part of the award passed by the learned

Commissioner is not sustainable for the reason that as the incident and death took place on 28.10.2009, i.e., before notification dated 31.5.2010 had come into force, the compensation ought to have been assessed by the learned Commissioner on the basis of the statutory provisions as they existed on the date when the unfortunate accident took place i.e. by placing reliance upon the contents of Explanation (II) of Section 4 of the Act, which were omitted w.e.f. 18.1.2010. In fact, this issue is no more *res integra* and Hon'ble Supreme Court of India in case K. Sivaraman and others vs. P. Sathishkumar and another, (2020) 4 Supreme Court Cases 594, has clearly and categorically reiterated the legal position by stating that prior to the Act 45 of 2009, by virtue of deeming provision in Explanation II to Section 4, the monthly wages of an employee were capped at Rs.4,000/- even where an employee was able to prove the payment of a monthly wage in excess of Rs.4000/-. Hon'ble Supreme Court further held that the legislature, in its wisdom and keeping in mind the purpose of the 1923 Act as a social welfare legislation did not enhance the quantum in the deeming provision, but deleted it altogether and the amendment was in furtherance of the salient purpose which underlines the 1923 Act of providing to all employees compensation for accidents which occur in the course of and arising out of employment. Hon'ble Supreme Court further held that the objective of the amendment was to remove a deeming cap on the monthly income of an employee and extend to them compensation on the basis of actual monthly wages drawn by them, **however, there was nothing to indicate that the legislature intended for the benefit to extend to accidents that took place prior to the coming into force of the amendment**.

13. In light of the said pronouncement of law by the Hon'ble Supreme Court of India, the award passed by the learned Commissioner in terms whereof the compensation has been assessed by placing reliance upon notification dated 31.05.2010 which came into force after the date of accident,

is not sustainable in law and the same requires to be modified to the extent that the compensation payable to the claimant has to be now reassessed by taking the income of the deceased at Rs.4000/- and then calculating the compensation by taking 50% of the same and multiplying it with the relevant factor. As far as the issue of imposition of interest on award upon the insurance company is concerned, this issue is also now no more *res integra* and the learned Commissioner in fact has not committed any illegality in ordering the award of interest at the rate of 12% per annum, however, this also has to be modified to the extent that interest is to be payable after one month as from the date of the accident.

14. Accordingly, the appeal stands partly allowed in above terms and the compensation payable to the claimant stands re-assessed as under:-

Income of the deceased	=	Rs. 4,000/-
50% of Rs. 4,000/-	=	Rs. 2000/-
Multiplying the factor of 146.2	=	2000x1.46.2
	=	Rs. 2,92,400/-
Total amount	=	Rs. 2,92,400
		+ 5,000
		(Funeral charges)
		= Rs.2,97,400/-

15. Now the total re-assessed amount, which is payable to the claimant is Rs. 2,97,400/- alongwith interest @ 12% per annum from 28.11.2009, i.e. one month after the accident, till deposit of compensation amount by the Insurance Company, i.e. 29.05.2014 and thereafter applicable rate of interest.

16. The appeal stands disposed of in above terms. As prayed for by learned Counsel for the parties, the amount which is now payable to the claimant alongwith interest after taking into consideration the amount which already stands paid to her, is ordered to be released in her favour and the balance amount is ordered to be refunded to the Insurance Company.

Pending miscellaneous application(s), if any, also stand disposed of accordingly.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Ramesh Kumar .....Petitioner

Versus

Leela Devi ....Respondent

For the Petitioner: Mr. Dinesh Kumar Sharma and Mr. Yoginder Paul, Advocates.

For the respondent : Mr. Dhiraj Thakur, Advocate.

Civil Revision No.13 of 2020
Decided on :March 14, 2023

Code of Civil Procedure, 1908- Order XLI Rule 27- **H.P. Urban Rent Control Act, 1987**- Section 24(5) -Tenant was evicted by Rent Controller and the Appellate Authority upheld the eviction order- Application for Additional evidence was also dismissed by the Authority- Revision petition was filed- Held: Documents sought to be adduced as additional evidence did not depict ownership of any of the parties- Petitioner failed to show that he exercised due diligence and care for obtaining the documents and the cause which prevented him from adducing such evidence during trial- order rejecting application for additional evidence was valid-Tenant must pay or deposit arrears of rent within thirty days of the eviction in order to maintain an appeal- Failure to deposit the arrears disentitles him from preferring an appeal- Revision was dismissed as there was no illegality, irregularity or perversity in the impugned judgment. (Paras 18 and 20)

Cases referred:

Bharat Sanchar Nigam Ltd. v. Vinod Lakhan Pal, 2015(4) ILR(HP) 652;
Kasthuri Radhakrishnan and others v. M. Chinniyan and another, (2016) 3 SCC 296;
Madan Mohan Singh v. Ved Prakash Arya, (2021) 5 SCC 456;
Om Parkash v. Ganga Ram, Latest HLJ 2001 (HP) 161;
Rajendra Tiwary v. Basudeo Prasad and another, (2002) 1 SCC 90;
Santosh Chaturvedi v. Kailash Chandra and another, (2020) 16 SCC 672;

Satish Kumar & another v. Jagat Ram, 2020(1) RCR 0442 (HP);
Sri Chand (Dead) through Legal Representatives v. Surinder Singh, (2020) 6 SCC 288;
Uttaradi Mutt v. Raghavendra Swamy Mutt, (2018) 10 SCC 484;

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge

Instant Revision Petition, under Section 24(5) of the H.P. Urban Rent Control Act, 1987 (hereinafter referred to as 'Rent Act'), has been preferred against judgment dated 9.9.2019, passed by Appellate Authority-II, Shimla, Himachal Pradesh, in Rent Appeal No.1-S/13(b) of 2017, titled as **Ramesh Kumar *v.* Leela Devi**, whereby order dated 25.11.2016, passed by Rent Controller, Court No.2, Shimla, District Shimla, Himachal Pradesh, in Case No.39/2 of 2015/2014, titled as **Leela Devi v. Ramesh**, has been upheld, and also against order dated 9.9.2019, passed by the Appellate Authority in CMP No.53-S/6 of 2018, filed under Order XLI Rule 27 of the Code of Civil Procedure (CPC) for production/leading additional evidence, whereby the application has been dismissed.

26. It has been contended on behalf of tenant-petitioner that there is neither written agreement nor rent receipt or any other document to substantiate the oral claim of the landlord-respondent that the petitioner was her tenant, whereas it has been admitted by the respondent that the petitioner has constructed his own house and shop in Khasra No.135 and, thus, Rent Petition was not maintainable for want of material/ documentary evidence. It has been submitted that oral statement of respondent has been rebutted by the petitioner by oral statement and, therefore, oral claim of the respondent is not sufficient to establish her claim as landlord. Further that the landlord-respondent has placed on record copy of Jamabandi for the year 1964-65 (Ex.

PW-1/B), wherein Khasra number of the premises, in reference, has been mentioned as 347 min, which is not sufficient to prove relation of landlord and tenant and, thus, both the Courts below have committed a material irregularity and illegality by considering the respondent as landlord. To substantiate this plea, reliance has been placed on **Rajendra Tiwary versus Basudeo Prasad and another, (2002) 1 SCC 90;** and **Madan Mohan Singh v. Ved Prakash Arya, (2021) 5 SCC 456.**

27. By referring Jamabandi of year 2010-22, it has been contended on behalf of tenant that respondent has not been shown in possession of the premises in reference and, therefore, her claim as landlord, on the basis of old record is not tenable for presumption of truth attached with the revenue record.

28. It has been further argued on behalf of tenant that in view of provisions of Order VII Rule 3 CPC description of the property, sufficient to identity it, was required to be placed on record, but the landlord has failed to do so and, therefore, the Courts below have committed a mistake of law by allowing the eviction petition filed by the landlord-respondent.

29. It has been argued that an application filed by petitioner, under Order XLI Rule 27 CPC, before the Appellate Authority, has been wrongly rejected as it was necessary to place on record the documents indicating that respondent was never linked as owner or as possessor of the property in the new entries of revenue record, so as to clarify the ambiguity and to show exact location of the property for which eviction petition was filed.

30. Relying upon pronouncement of the Supreme Court in **Uttaradi Mutt v. Raghavendra Swamy Mutt, (2018) 10 SCC 484**, it has been contended that documents proposed to be placed on record, as additional evidence, are Government documents, i.e. revenue record and copy of order passed under Public Premises (Eviction of Unauthorised Occupants) Act, 1971, which would be necessary to show that respondent has approached the

Court without title and possession of the land in reference and, thus, was not entitled to maintain the Rent Petition, and the additional evidence sought to the adduced was necessary to remove the cloud of doubt over the case and the proposed additional evidence has a direct and important bearing upon the main issue in the petition and interest of justice clearly renders it imperative that the application should have been allowed.

31. Learned counsel for the landlord-respondent has submitted that claim of the respondent is not based only on oral evidence but the same is substantiated by Jamabandi Ex. PW-1/B, wherein Medh Ram, husband of respondent, has been reflected in possession of 2 biswas of land in Khasra No.347 min and it is not the case of petitioner that he is not in possession of the premises referred in Khasra No.347 min, which was in possession of husband of the respondent. It has been further contended that in reply to the petition, identity of the property has not been disputed but it was averred that landlord be directed to file better particulars/latest revenue record. Further that absence of landlord-respondent in the latest revenue entry does not preclude her from filing the eviction petition as she has already filed an application before the revenue authorities for correction of the revenue entries.

32. It has been further contended on behalf of the landlord that tenant-petitioner has failed to rebut the oral as well as documentary evidence placed on record for substantiating his claim that he has constructed the house and shop on the land in reference, rather, as a matter of fact, no such plea has been taken in reply to the eviction petition and, therefore, suggestion put to the respondent, during cross-examination, to that effect deserves to be ignored, particularly for the reason that the suggestion put to the landlord was for claiming ownership of shop and room in reference, which was never pleaded in the reply to the eviction petition, and for this reason deposition of tenant claiming ownership of room and shop, in his statement recorded as RW-1, is also to be discarded for want of such pleading in the reply.

33. It has been further contended that it is not a case where tenant was not aware about identity of the property, but he was insisting for placing on record revenue record with new Khasra number of the premises in reference, and for knowing identity of premises, though in reply relationship of landlord and tenant has been denied but in cross-examination tenant has admitted that he had not paid rent to the respondent since 1993. Whereas, the eviction petition was filed on the ground of arrears of rent, which were calculated by the Rent Controller on the basis of material on record and admission of the tenant and for assailing the eviction order, on the ground of arrears of rent, it was mandatory for the tenant to pay/deposit the amount due within a period of thirty days from date of order, i.e. thirty days after 25.11.2016, as provided under Section 14(2) of the Rent Act, whereas petitioner has failed to deposit the amount within period of thirty days to assail the eviction on the ground of non-payment of rent and, therefore, appeal of the tenant was liable to be dismissed on this sole ground and, resultantly, present Revision Petition is not maintainable for want to deposit of arrears of rent within the period prescribed under the Rent Act.

34. To substantiate the aforesaid plea, pronouncement of the Supreme Court in **Sri Chand (Dead) through Legal Representatives v. Surinder Singh, (2020) 6 SCC 288,** has been referred, wherein for non-deposit of necessary amount by the tenant to save himself from eviction, claim of the tenant was rejected.

35. In present case, there was no stay, granted by the Appellate Authority or any other competent Court of law, against the order of eviction dated 25.11.2016, passed by the Rent Controller, and the tenant-petitioner has not deposited the amount due as determined by the Rent Controller as arrears of rent.

36. This High Court in **Satish Kumar and another v. Jagat Ram, 2020(1) RCR 0442 (HP);** and **Bharat Sanchar Nigam Ltd. v. Vinod Lakhan**

Pal, 2015(4) ILR(HP) 652, has reiterated that the statutory period of thirty days, within which the liability of rent determined against the tenant is defrayable to the landlord by the legally permissible mode, is neither extendable nor enlargeable and where arrears of rent have been determined by Rent Controller, even though may not be termed as amount due, the same has to be deposited within thirty days from the date of order of the Rent Controller as payment of rent due, within period of thirty days, is a condition precedent and *sine qua non* for maintaining an appeal before Appellate Authority otherwise order of Rent Controller has to be treated to have attained finality and appeal must be dismissed.

37. Referring pronouncement of the Supreme Court in **Kasthuri Radhakrishnan and others v. M. Chinniyan and another, (2016) 3 SCC 296,** it has been contended that scope and nature of enquiry, under the Rent Act, is only to examine the status of landlord and the landlord may not be necessarily a title holder of the premises in reference, as scope of enquiry before the Rent Controller was limited to the question as to whether grounds for eviction of the tenant have been made out under the Rent Act or not, because tenant has never raised question of title, claiming his ownership on the property or disputing the possession of husband of the respondent on the premises in reference and further question of title of the premises is not relevant because of the definition of "landlord" and "tenant", provided under Sections 2(d) and 2(j) of the Rent Act, wherein landlord need not, always to be owner of the premises in reference.

38. In **Rajendra Tiwary's** case also, relied upon by the tenant, the Supreme Court has observed that the scope of enquiry before the courts was limited to the question: as to whether the grounds for eviction of the defendant have been made out under the Act, and that the question of title of the parties to the suit premises is not relevant having regard to the width of the definition of the terms "landlord" and "tenant" in clauses (j) and (h), respectively, of

Section 2 of the Act. Therefore, this pronouncement is of no help to the tenant in present case, in its given facts and circumstances.

39. In **Madan Mohan Singh's** case, it has been held that conduct of the party before and after the creation of relationship is relevant for finding out their intention and in absence of any evidence of taking premises on rent, there was no basis for holding that relationship of landlord and tenant was proved. In present case, in reply and evidence lead by him, there is no specific stand of tenant. Though he has denied relationship of tenant and landlord in the reply but without disclosing the basis for possession of the premises in reference, and at the time of recording of evidence in the Court stand set up by the tenant is that he is owner of the premises in reference, but without placing on record any evidence and, in these circumstances, admission, that he had not paid any rent to respondent since 1993, is an admission on his part that prior to that he was making payment of rent and, therefore, was tenant in the premises in reference, under Medh Ram who had expired in 1993. Therefore, this pronouncement is also of no help to the tenant.

40. Referring pronouncement of the Supreme Court in **Santosh Chaturvedi v. Kailash Chandra and another, (2020) 16 SCC 672,** it has been contended that proceeding in the Rent Act is of summary nature, wherein jural relationship of landlord and tenant is to be taken note to the extent it is required for considering such eviction petition and rigor of examining the ownership ought not to be indulged in the manner as is done in title suit unless respondents sets out title to the very rented property which was adverse to that of the landlord. It has been further canvassed that no claim of title was set up by tenant in the reply and, therefore, there was no necessity for the Courts below to enter into the question of title of the premises in reference.

41. Referring pronouncement of this High Court in **Om Parkash v. Ganga Ram, Latest HLJ 2001 (HP) 161**, it has been contended that merely

because name of landlord has not been incorporated in the revenue record with respect to premises in reference, claim of landlord shall not stand extinguished on this ground.

42. Tenant had filed two applications under Order XLI Rule 27 of the Code of Civil Procedure. First application No.206-S/6 of 2017 was filed on 3.7.2017 which was dismissed, as not pressed, on 21.11.2018 after filing second application No.53-S/6/2018 on 1.3.2018. In second application under Order XLI Rule 27 CPC, petitioner had proposed to place on record Jamabandis for the years 1969-70, 1973-74, 1978-79, 1983-84, 1988-89 & 2000-2001, and copy of Musabi. It was claim of the petitioner that these documents were necessary for just determination of the case, as, according to him, after filing of the appeal demarcation of the land took place on behalf of Railway Authorities and possession was found over Khasra No.134 min (new) but not in Khasra No.347 (old). Claim of the petitioner, as set up in cross-examination, was that he himself constructed shop and room on Khasra No.135, whereas documents proposed to be placed on record, in additional evidence, relate to Khasra No.134. Copy of Musabi depicts the Khasra number but not the name of owner or person in possession of the said Khasra number. In these Jamabandis neither name of Medh Ram or Leela Devi or petitioner Ramesh Kumar is reflected in the column of ownership or possession of the premises in reference. Entries in these revenue documents are wrong on the face of it, because on the spot premises occupied by the tenant is existing whereas revenue papers are silent about it. As a matter of fact, these documents have no entry depicting the link of Khasra No.347 min, which has been shown in possession of Medh Ram as per Jamabandi for the year 1964-65 (Ex. PW-1/B) and, therefore, these documents would have no bearing on the merits of the case and further, though it has been claimed by the petitioner that demarcation took place after filing of the appeal, but all these documents relate to the period prior to the filing of appeal and were in

existence at the time of adjudication of the eviction petition and the petitioner has not quoted even a single word about his diligence and care for obtaining these documents and about the cause which prevented him from placing the documents on record during pendency of the eviction petition. Lastly, none of these documents depicts ownership either of the petitioner or the respondent and these documents, thus, do not reflect any right of either party on the premises in reference and, thus, are not relevant for adjudication of the Rent Petition. For all these reasons, I find no irregularity, illegality or perversity in the order dated 9.9.2019 rejecting the application filed for leading additional evidence filed by the petitioner.

43. Though there is no written agreement or rent receipt on record, however there is averment made in the eviction petition, substantiated by document Ex.PW-1/B. It has come on record that Medh Ram had expired in 1993, leaving behind his legal heirs, including respondent, and it is also settled that it is not necessary to file eviction petition by all landlords, where they are more than one. Therefore, plea of the petitioner-tenant that in absence of written agreement or rent receipt petition is not maintainable is not sustainable.

44. In view of pronouncements in **Sri Chand's, Satish Kumar's and Vinod Lakhan Pal's** cases supra, appeal of the petitioner was also not maintainable for non-deposit of arrears of rent within thirty days after passing of order dated 25.11.2016 in the eviction petition and, therefore, also present petition deserves to be dismissed.

45. Petitioner has admitted that originally he is resident of Pathankot (Punjab) and that he had not purchased the land and he was not having any document regarding ownership of the land in reference, with self explanation that land was vacant and he constructed kiosk thereon. However, no such plea was taken in the reply to the eviction petition, rather he has admitted, in

cross-examination, that he has not paid any rent since 1993 till the date of his deposition in the Court, i.e. 20.6.2016.

46. Identity of the premises in question was never disputed by the petitioner but he was only insisting for filing latest revenue record. Petitioner has also failed to rebut the oral as well as documentary evidence on record, wherein Medh Ram has been depicted in possession of the premises in reference, by placing on record cogent and reliable material.

47. In light of above discussion, and also keeping in view the scope of this Court in interfering with the concurrent findings of the Courts below, exercising revisional jurisdiction under Section 24 of the Rent Act, I do not find any perversity, irregularity or illegality in the impugned orders/judgment, warranting interference of this Court in this petition.

The Revision Petition is dismissed and disposed of, so also pending application, if any.

BEFORE HON'BLE MS. JUSTICE SABINA, A.C.J. AND HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

LPA No. 168 of 2022
Sandeep Kumar and Ors.

....Appellants.

Versus

State of Himachal Pradesh and Ors.

...Respondents.

2. CWP No. 6930 of 2022
Yogesh Kumar and Ors.

....Petitioners.

Versus

State of Himachal Pradesh and Ors.

...Respondents.

3. LPA No. 154 of 2022
Intzar

....Appellant.

Versus

State of Himachal Pradesh and ors.

...Respondents.

For the appellants : Mr. Devan Khanna, Advocate for the appellants in LPA No. 168 of 2022 and for the petitioner in CWP No. 6930 of 2022.

Mr. B.C. Negi, Sr. Advocate, with Mr. Nitin Thakur, Advocate, for the appellant in LPA No. 154 of 2022.

For the respondents: Mr. P.P. Singh, Additional Advocate General for the respondents in LPA No. 168 of 2022 and CWP No. 6930 of 2022 and for respondents No. 1 to 4 in LPA No. 154 of 2022.

Mr. Tek Chand Sharma, Advocate for respondents No. 5, 16 to 18 and 20 in LPA No. 154 of 2022.

Ms. Minakshi Sharma, Advocate, for respondents No 21 to 23 in LPA No. 154 of 2022.

LPA No. : 168 of 2022 a/w
CWP No. 6930 of 2022 & LPA No. 154 of 2022
Reserved on :14.03.2023
Decided on : 22.03.2023

Himachal Pradesh Deputy Forest Rangers and Forest Guards Class-III(Executive Section) Recruitment, Promotion and certain Conditions of Service Rules, 1978- Service Matter –Promotion to the post of Deputy Forest Rangers-Seniority list of Forest Guards Criteria for amalgamation of Seniority lists prepared at circle leave to prepare one Senior list-The respondent issued notification to prepare a Saniority list of Forest Guards on the basis of their merit in direct recruitment process for there promotion to the next post –The petitioners unsuccessfully challenged the same in the writ petition-Letter Patent Appeal- **Held**-Vide note (P) appended to 1978 Rules, it has been made crystal clear that a joint Seniority list of Forest Guards Chief Conservator has to prepase for the purpose of promotion to the posts of Deputy Forest Rangers on the basis of length of service in the grade-1978 Rules remained in force in respect of the Deputy Forest Rangers- Single Judge has committed error-Impugned communication is quashed and set aside –Appeal allowed. (Paras 18 and 24)

The following judgment of the Court was delivered:

Satyen Vaidya, Judge

Letters Patent Appeals Nos. 168 and 154 of 2022 alongwith CWP No. 6930 of 2022 were heard together and are being decided by a common judgment as all these matters involve common questions of facts and law. Both the LPAs otherwise also arise out of common judgment.

2. CWP No. 2765 of 2019, titled Intzar & Ors. Vs. State of H.P. & Ors. and CWP No. 3077 of 2020, titled Sandeep Kumar & Ors. Vs. State of H.P. & ors., were filed by the petitioners therein seeking identical relief to quash letter dated 08.08.2019 (Annexure P-12 in CWP No. 2765 of 2019 and Annexure P-20 in CWP No. 3077 of 2020), issued by Principal Chief Conservator of Forests, H.P (for short, "PCCF"). Both the petitions were dismissed by learned Single Judge, vide impugned judgment dated 22.08.2022. Appellants, who were the petitioners in the writ petitions, have assailed judgment dated 22.08.2022, passed by learned Single Judge by way of present appeals.

3. During the pendency CWP No. 2765 of 2019 and CWP No. 3077 of 2020, impugned communication dated 08.08.2019 in the said petitions, was implemented in some Forest Circles of the State. Aggrieved against such implementation CWP No. 6930 of 2022, has been preferred.

4. Parties hereinafter shall be referred to the same status which they held before Writ Court.

5. Department of Forests, has a cadre of Forest Guards. The R&P Rules to the post of Forest Guard were initially governed by *Himachal Pradesh Deputy Forest Rangers and Forest Guards Class-III (Executive Section) Recruitment, Promotion and Certain Conditions of Service Rules, 1978* (for short "1978 Rules"). Separate R&P Rules for the post of Forest Guards were notified on 01.02.2003 as Himachal Pradesh Forest Department, Forest Guards, Class-III (Non-Gazetted) (Executive Section) Recruitment & Promotion Rules, 2003 (for short "2003 Rules"), whereby 1978 Rules, in so far as those related to the posts of Forest Guards, were repealed. 2003 Rules were further

amended, *vide* notification dated 02.04.2007. The Government of Himachal Pradesh, vide notification dated 20.09.2014, notified New Recruitment & Promotion Rules for the posts of Forest Guard in the Department of Forests (for short "2014 Rules"). 2003 Rules, were repealed by 2014 Rules.

6. 1978 Rules, in so far as those related to the posts of Deputy Forest Ranger, remained in vogue.

7. Despite repeated repeal and promulgation of R&P Rules for the post of Forest Guards, the mode of recruitment i.e. 90% by direct recruitment and 10% by promotion through limited competitive test remained unchanged. Petitioners were the directly recruited Forest Guards.

8. The cadre of Forest Guards is a feeder cadre to the promotional post of Deputy Forest Rangers. As per 1978 Rules, 60% of the posts of Deputy Forest Rangers are filled by way of promotion and remaining 40% by direct recruitment.

9. *Vide* communication dated 08.08.2019, PCCF issued direction to all concerned to re-cast the seniority list of Forest Guards as per merit gained in direct recruitment/limited direct recruitment.

10. According to the petitioners, the instructions/directions issued by PCCF, *vide* impugned communication dated 08.08.2019, were against the statutory rules. As per petitioners, the cadre of Forest Guards in Department of Forests, H.P., was a Circle Level Cadre. The seniority was maintained Circle-wise and for consideration of seniority for the purposes of promotion to the post of Deputy Forest Rangers, length of service was the only criteria prescribed under statutory rules. Thus, the instructions issued by Principal Chief Conservator of Forests, H.P., *vide* communication dated 08.08.2019, were alleged to be *dehors* the statutory rules as the merit gained in direct recruitment was irrelevant criteria.

11. The claim of the petitioners was contested on the grounds that the seniority of Forest Guards maintained in some of the Forest Circles, on

the basis of length of service was contrary to R&P Rules as also the direction contained in letter dated 29.09.2003, issued by PCCF. As per respondents, the seniority of Forest Guards was to be maintained at Circle level, on the basis of marks /merit obtained by each candidate in the selection process. The respondents defended the communication dated 08.08.2019, issued by PCCF, being in conformity with the relevant R&P Rules and in compliance to order dated 13.02.2019, passed by erstwhile H.P. Administrative Tribunal in O.A. No. 584 of 2019. Respondents also defended its action under the umbrella of powers to relax R&P Rules in appropriate cases.

12. Learned Single Judge vide impugned judgment has upheld the communication dated 08.08.2019, issued by the PCCF, by rejecting the claim of the petitioners, broadly on the ground that the relevant R&P Rules were silent on the yardsticks to be adopted while amalgamating the seniority of Forest Guards of different Circles, at the time of their consideration for promotion to the next higher post of Deputy Forest Ranger. Learned Single Judge further held that in absence of any specific provision in R&P Rules, respondents were within their right to apply appropriate criteria. In this manner, the criteria proposed, vide impugned communication dated 08.08.2019 for consideration of seniority on the basis of merit in the direct recruitment/limited direct recruitment was held permissible. Further, the said criteria has also been held to be fair and legal by testing the same at the touch stone of legal principle enunciated from time to time.

13. We have heard learned counsel for the parties and have also gone through the record carefully.

14. Learned counsel for the petitioners contended that the learned Single Judge while passing the impugned judgment, had ignored the relevant provisions of 1978 Rules, wherein the joint seniority list of Forest Guards for the purposes of promotion to the post of Deputy Forest Rangers was to be

prepared by the PCCF, on the basis of length of service in the grade. Reference has been made to *Note (p)* of 1978 Rules, which reads as under:-

> *"(p) For the purpose of promotion to the posts of Deputy Forest Rangers a joint seniority list of Forest Guards will be prepared by the Chief Conservator of Forests on the basis of length of service in the grade by application of KLM Formula."*

15. Noticeably, from the impugned judgment, it is not inferable that learned Single Judge had noticed the aforesaid provision. Evidently, learned Single Judge took notice of *Note (l) and (r)* of 1978 Rules, which reads as under;-

> *"(l) The Chief Conservator of Forests may constitute more than one DPC/ Selection Committee in the State for the purpose of recruitment/promotion of Deputy Forest Rangers but he shall prepare a joint list of merit for the purpose of seniority before the orders of appointment are issued.*
>
> *(r) Promotion to the posts of Deputy Forest Rangers will be made by seniority subject to rejection of unfit."*

16. In our considered view, reliance placed by learned Single Judge on *Note (l) ibid* was foreign to the issue involved in the matter. The dispute was with respect to the criteria to be adopted for framing the seniority list of the Forest Guards for the purposes of promotion to the post of Deputy Forest Rangers, whereas *Note (l)* related to the recruitment to the post of Deputy Forest Rangers and further promotion of Deputy Forest Rangers to the next promotional post. The language employed while casting *Note (l)* is couched in such words, which can have no other interpretation. It is specifically mentioned that more than one DPC/Selection Committee in the State can be constituted for the purpose of recruitment/promotion of Deputy Forest Rangers. Thus, the purpose is of promotion of Deputy Forest Rangers and not

the promotions to the posts of Deputy Forest Rangers. We are strengthened in our this view by the *Note (m)* following *Note (l)*, which reads as under:-

> *"(m) The Conservator may constitute more than one DPC/Selection Committee in his Circle for recruitment of Forest Guards but he shall prepare a joint list of merit for the purpose of seniority before the orders of appointment are issued."*

17. *Note (m)* deals with the same situation for Forest Guards, which is dealt by *Note (l)* for Deputy Forest Rangers. Had the import of *Note (l)* been to denote merit for the purpose of seniority of Forest Guards, there was no need to separately incorporate *Note (m)*, as noticed above.

18. Vide *Note (p)*, appended to 1978 Rules, it has been made crystal clear that a joint seniority list of Forest Guards is to be prepared by Chief Conservator of Forests, for the purpose of promotion to the posts of Deputy Forest Rangers, on the basis of length of service in the grade. Thus, there is a clear cut stipulation in 1978 Rules with respect to the criteria to be adopted for preparation of seniority list of Forest Guards for the purposes of promotion to the next higher post. It is not in dispute that 1978 Rules remained in force in respect of the Deputy Forest Rangers, therefore, *Note (p)* of said Rules also held the field as it related to the filling-up of posts of Deputy Forest Rangers by way of promotion from feeder category of Forest Guards.

19. Petitioners were appointed as Forest Guard by direct recruitment in the year 2007. 2003 Rules as amended in 2007 were in force at the time of their appointments. Even 2014 Rules are not substantially different from 2003 Rules, in so far as, these relate to the issue under adjudication. In 2003 Rules as also in 2014 Rules, it was clearly provided that a final merit list of successful candidates would be prepared for each Forest Circle category-wise i.e. General, OBC, SC and ST etc. as per reservation policy of the government. The merit list was to be prepared on the basis of total marks obtained in

each category viz. physical efficiency test, written test and personality test. Offer of appointment was to be made in order to merit as per availability of vacancy. *Note (r)* of the Notes appended to 1978 Rules, as noticed by learned Single Judge, has to be read in conjunction with the relevant provisions of 2003 and 2014 Rules, as noticed above. Since, the cadre of Forest Guards in Department of Forests, H.P. is a circle level cadre and the seniority is also maintained at circle level, the preparation of seniority on the basis of merit in the selection process is relatable only to the preparation of select list, however, for the purpose of amalgamated seniority of Forest Guards of all the circles for the purposes of promotion to the post of Deputy Forest Rangers has to abide by the mandate of 1978 Rules, especially, *Note (l)* appended thereto, where the length of service has been specifically provided to be the criteria to determine the seniority.

20. Thus, we stand to differ from learned Single Judge and hold that there was a specific provision in R&P Rules, with respect to the relevant criteria for fixing seniority of Forest Guards for the purpose of promotion to the post of Deputy Forest Rangers. In view of existence of such specific criteria and without their being any challenge thereto, such rule having statutory recognition has to prevail and can be substituted by its amendment or substitution by another statutory rule and not by a simple administrative instruction.

21. We have also found substance in the contention raised on behalf of the petitioners that even the very premise of impugned communication dated 08.08.2019, being in compliance to order dated 13.02.2019, passed by erstwhile H.P. Administrative Tribunal in O.A. No. 584 of 2019, was a misconceived notion. Petitioners in O.A. No. 584 of 2019 had raised their grievance with respect to the rules for the Forest Guards promoted by way of promotion through limited direct competitive test. Petitioners belong to a different category as they were direct recruits. In this view of the matter, the

impugned communication dated 08.08.2019 cannot be said to have its legal basis in order dated 13.02.2019 passed by erstwhile H.P. Administrative Tribunal, in O.A. No. 584 of 2019.

22. We also deem it proper to make reference to the communications dated 06.05.2019 and 02.08.2019, issued by Principal Chief Conservator of Forests, H.P., which find mention in impugned communication dated 08.08.2019. In the communication dated 06.05.2019, (Annexure P-18 in CWP No. 3077 of 2020), the entire reference is to the recruitment of Forest Guards made in the year 2002-03 by way of promotion through limited competitive test after one time relaxation of R&P Rules. It has also a reference to communication dated 29.09.2003, issued by PCCF, which again deals with the recruitment of Forest Guards through limited competitive test. The communication dated 02.08.2019 was also on the same subject and hence, we have no hesitation to hold that the reliance on all the aforesaid communications and order dated 13.02.2019, passed by erstwhile H.P. Administrative Tribunal was totally misplaced and could not have formed a legal basis for issuance of communication dated 08.08.2019 and consequently crafting changes in the criteria to fix seniority of Forest Guards for the purposes of promotion to the post of Deputy Forest Rangers.

23. Once we have held that a specific criteria in 1978 Rules existed for fixing seniority of Forest Guards for their promotion to next higher post, we do not find it necessary to delve into the legality or fairness of the procedure adopted by the PCCF while issuing administrative instructions *vide* impugned communication dated 8.8.2019.

24. In view of above discussion, LPAs Nos. 168 and 154 of 2022 are allowed. The impugned judgment dated 22.08.2022, passed by learned Single Judge in CWP No. 3077 of 2020 and CWP 2765 of 2019 is set aside. The communication dated 08.08.2019, Annexure P-12, issued by Principal Chief Conservator of Forests, (Hoff) H.P., in CWP No. 2765 of 2019 and Annexure P-

20 in CWP 3077 of 2020, is quashed and set aside. Respondents are directed to adhere to the seniority list of directly recruited Forest Guards, for the purposes of promotion to the post of Deputy Forest Rangers, strictly basing the criteria of length in service.

25. In view of our aforesaid finding, CWP No. 6930 of 2022 is also allowed. Letter/order dated 12.09.2022, Annexure P-15, issued by Principal Chief Conservator of Forests (HoFF) H.P., in CWP No. 6930 of 2022, is quashed.

26. Both the appeals and writ petition are accordingly, disposed of, so also the pending miscellaneous application(s), if any.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Sarvhitkari Adhyatmik Kendra (Regd.) through its Secretary & others ...Petitioners

Versus

State of Himachal Pradesh & others ...Respondents

For the Petitioners: Mr.Bipin C.Negi,Sr.Advocate with M/s Ravi Sharma and Sandeep Chauhan, Advocates.

For the Respondents: Mr.Ashok Sharma, Advocate General with Mr. Hemant Vaid Additional Advocate General, for respondent No.1.

Mr. Ajay Kochhar, Sr. Advocate with Mr. Vivek Sharma and Ms. Avni Kochhar Advocates, for respondents No.1 and 2.

Mr. Anshul Bansal, Advocate for respondent No.3.

Cr.MMO No.465of2018
Decided on: 13.03.2023

Code of Criminal Procedure, 1973 - Section 482- Petition was filed under Section 482 of the Cr.P.C. requesting the court to entrust the investigation to the Central Bureau of Investigation (CBI)- it is alleged that state police failed to make any progress in the investigation- **Held** - Court has the discretion to order a CBI investigation under Article 226 of the Constitution- There must be sufficient material to justify such an inquiry- Such powers must be invoked sparingly and cautiously and not as a matter of routine- Court ordered further investigation by the State CID, to be conducted by an officer not below the rank of Superintendent of Police. (Paras 19 and 21)

Cases referred:

Secretary, Minor Irrigation and Rural Engineering Services, U.P. and others vs. Sahngoo Ram Arya and another (2002)5 SCC 521;

State of Punjab vs. Central Bureau of Investigation and others, reported in(2011)9 SCC 182;

State of West Bengal vs. Committee for Protection of Democratic Rights (2010)3 SCC 571;

Union of India and others, reported in (2013)10 SCC 611;

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge.

Petitioners, by way of present petition, have approached this Court invoking provisions of Section 482of Code of Criminal Procedure (in short 'Cr.P.C."), with prayer to entrust investigation of FIR No. 106 dated 3.6.2018, registered in Police Station Bhuntar, District Kullu under Sections 323, 341, 325, 34 IPC, with respectto incident occurred on 3.6.2018 near Shamshi District Kullu, to independent Agency like Central Bureau of Investigation(CBI),asrespondentNo.1hasfailedto make any progress in investigation in the matter.

2 Petitioner No.1 Sarvhitkari Adhyatmik Kendra is a Registered Society which is being represented through Secretary Surinder Singh. Petitioner No. 2 Khem Singh is injured/victim in incident dated 3.6.2018, who is claiming himself to be real successor of Shri Param Sant Thakur Singh Maharaj and an authorized person to conduct Satsang to disseminate his teachings. Petitioner No.3 Ganesh Dass is claiming himself as devotee.

3 It has been claimed in petition that Baba

Param Sant Thakur Singh was Chief of Vishav Manav Ruhani Kendra, Nawan Nagar, District Panchkula and he had nominated petitioner No.2 Khem Singh as his successor during his life time but prior to his death; respondent No.2 Baljit Singh came close to Baba Param Sant Thakur Singh Ji Maharaj during his last days of life when he was not in his full senses, and respondent No.2 Baljit Singh exploited the situation for his selfish ends and got himself declared as successor of Baba Param Sant Thakur Singh Ji Maharaj, and after death of Maharaj, respondent No.2 deviated the principles of mission and started performing Karamkand (rituals) and practicing occult science in the Dera in breach of trust of devotees, which compelled the devotees to form the Sarvhitkari Adhyatmik Kendra, a registered Society, with sole motive to preach and complete the mission of late Baba Sant Thakur Singh Ji Maharaj and conduct the Satsang accordingly.

4 It is further case of petitioners that aforesaid activity by Sarvhitkari Society was and is not liked by respondent No.2 and his supporters who are having vested interest and, therefore, they became inimical towards petitioner No.2 and his followers, and fearing from exposure of their acts and misdeeds, respondent No.2 and his supporters/followers as well as their paid goons started planned attacks in organized manner on devotees of petitioner No.2 to disrupt, obstructand

dissuade the devotees from conducting Satsang through out India. All these matters were complained by members of Society and FIR were registered in State of Maharashtra, Gujarat and other States where thefollowers of respondent No.2 organized the attacks on members of petitioners' society.

5 It has been alleged in petition that on 3.6.2018 at about 7.30 AM petitioner No.2 was going to house of a devotee for conducting Satsang near Shamshi in District Kullu. After alighting from bus, he was walking on the road towards house of devotee. At that time, 5-6 young persons (goons) came out of a black coloured car having temporary No. HP33T-8699 having iron rods, swords and wooden sticks with them and attacked petitioner No.2 causing him serious injuries in the right leg, left hand including fracture of arm and they inflicted about 35 injuries on his body.

6 Matter was reported to police and FIR No. 106 of 2018 dated 3.6.2018, referred supra, was registered in Police Station Bhuntar, District Kullu H.P.

7 It is the case of petitioners that respondent No.1 has failed to conduct a fair and effective inquiry and investigation in the matter and to collect the evidence to bring respondent No.2, his followers and goons to books

and punish them and therefore, present petition has been filed.

8 Response of respondent No.2 is that petitioners have not approached the Court with clean hands, and that petitioner No.2 was issued an Identity Card for voluntary Sewa by an organization named Vishwa Manav Kendra, Nawan Nagar, District Panchkula Haryana which had ceased to operate and exist since January 2005 and, therefore, claim of petitioners based on authority issued by the said organization also ceased to exist in January 2005 or, at the most, at the time of death of Maharaj Thakur Singh Ji on 6.3.2005 and after cessation of Vishwa Manav Kendra, all its programmes/activities came to an end and therefore, proclamations of petitioner No.2 are to be construed baseless and misleading.

9 It has been further contended on behalf of respondent No.2 that he is associated with another Society/Organization named as Vishav Manav Ruhani Kendra, Nawan Nagar, District Panchkula duly registered on 20.1.2005 which is an entirely different and distinct identity than Vishwa Manav Kendra and petitioner No.2 had applied to Society for issuance/renewal of his Sewa identity Card by submitting a written application which

was not approved for the reason that petitioner No.2 had failed to follow the Rules, Regulations, basic tenets of the Society which were essentially required for voluntary Sewa. Further that there was a complaint against petitioner No.2 regarding which petitioner No.2 had tendered apology in writing to respondent No.2. Further that there had never been any conflict with respect to Gaddi of Thakur Sant Ji Maharaj as in his communication, sent for tendering the apology to respondent No. 2, petitioner No.2 had addressed respondent No.2 as Param Pujya Maharaj Ji, who has been declared as successor by Thakur Singh Mahajra Ji on 21.9.2004 and introduced as such in congregation held on 2.1.2005 whereas respondent No.2 was not present in these occasions and thus there is no question of influencing the Maharaj by respondent No.2 as all DVDs recorded during that time clearly show that Maharaj was in full senses with sound disposing mind at the time of delivering Satsangs/addressing congregations during that time. It has been contended that allegations against respondent No.2 are mischievous and scandalous levelled for the purpose of usurping the succession in the Society by use of all unlawful means.

10 As per response of respondent No.1, through Superintendent of Police, Kullu, District Kullu, District Police has carried out the investigation meticulously and sincerely and during investigation, police has collected all cogent evidence, to trace out the culprits, including CCTV footages, Customer Application Forms of suspects and their Call Details Record etc. and has also interrogated 40 persons and inquired about 300 persons belonging to both sides/parties but despite that no clue of culprits

could be traced as the number plate affixed on Car used for commission of offence was found to be fake and in CCTV footages no such car was found crossing at possible different points, and faces of suspects were also not identifiable in CCTV footages.

11 During pendency of petition, by filing an affidavit by Superintendent of Police,it was informed that finding no evidence or clue of culprits, and despite taking all efforts to trace the involvement of suspects in assault, finding no incriminating material against respondent No.1 and to identify culprits, an untrace report was prepared and was presented before the Magistrate for adjudication.

12 Respondent No.3 Central Bureau of Investigation in its reply has submitted that CBI is a specialized agency having limited manpower and resources and is already overburdened with investigation of cases entrusted to it by various High Courts including this High Court as well as the Supreme Court of India and present matter does not fall within ambit of guidelines laid down by Supreme Court in case of ***State of West Bengal vs. Committee for Protection of Democratic Rights,*** reported in **(*2010) 3 SCC 571*** for referring to CBI, as instant case is local in nature and does not involve any Inter-State and International ramifications whereas State police is well equipped with trained Investigating Officers to inquire/investigate such kind of cases and has requisite recourses at its command to conduct enquiry/investigation of the case properly

under the supervision of Senior Police Officers of repute having experience with these type of cases. Further that investigation in present case requires no expertise of CBI and therefore, prayer for dismissing the petition has been made.

13 At the same time, it has been submitted on behalf of respondent No.3 CBI that in case Court deems it appropriate to entrust the investigation to respondent No.3/CBI, then respondent No.3 is ready for that and shall investigate the matter in compliance thereof.

14 It has been contended on behalf of respondent No.2 that State Police has already enquired the matter by making comprehensive attempts to collect the evidence but nothing material has been found against respondent No.2 as alleged and an untrace report has also been filed on conclusion of investigation and therefore, in present case, for the provisions of law and sanctity of investigation of District Police, which has not been doubted at any point of time, no case for further investigation much less re-investigation has been made out and, therefore, prayer for rejecting the petition has been made.

15 Learned counsel for respondent No.2 has also submitted that petitioners have a right to file objections against untrace report submitted by Investigating Officer before the Magistrate and, therefore, on this count also, present petition deserves to be dismissed. Whereas,it has been contended on behalf of petitioners that Magistrate has power only to direct further investigation by the same

Investigating Agency but not by the independent Agency like respondent No.3 or even any higher authorities of police and, therefore, particularly keeping in view the inability of District Police to trace the culprits in their investigation, present petition is maintainable in the facts, circumstances and nature of prayer made in petition.

16 Petitioners have claimed that incident was witnessed by Smt. Jalpa resident of Gadori, Mohan Lal resident of village Banjar and Bharat Kumar resident of village Jarad District Kullu. Photocopies of affidavits of these persons have been placed on record along with rejoinder to reply of respondent No.2, wherein Smt. Jalpa has categorically stated that at the time of recording her statement, police did not record the same correctly and completely but recorded the same as per their whims. Mohal Lal and Bharat Kumar have also stated that they were present on spot and they took the victim to Kullu hospital in Ambulance where police had come and they alongwith Jalpa had narrated the entire incident to police and police had noted their names and phone numbers by saying that they will be called for recording their statements but they were neither called by police nor their statements were recorded.

17 In ***Secretary, Minor Irrigation and Rural Engineering Services, U.P. and others vs. Sahngoo Ram Arya and another*** reported in ***(2002)5 SCC 521*** the Supreme Court has observed:-

"5. While none can dispute the power of the High Court under Article 226 to direct an inquiry by the CBI, the said power can be exercised only in cases where there is sufficient material to come to a prima facie conclusion that there is a need for such inquiry. It is not sufficient to have such material in the pleadings. On the contrary, thereis a need for the High Court on consideration of such pleadings to come to the conclusion that the material before it is sufficient to direct such an inquiry by the CBI. This is a requirement which is clearly deducible from the judgment of this Court in the case of Common Cause, A. Registered Socieity vs. Union of India ((1999)6 SCC 667. This Courtinthesaidjudgmentatparagraph174of the report has held thus: (SCC p.750, para 174)

"174. The other direction, namely, the direction to CBI to investigate "any other offence" is wholly erroneous and cannot be sustained. Obviously, direction for investigation can be given only if an offence is, prima facie, found to have been committed or a person's involvement is prima facie established, but a direction to CBI to investigate whether any person has committed an offence or not cannot be legally given. Such a direction would be contrary to the concept and philosophy of" LIFE" and "LIBERTY" guaranteed to a person under Article 21of the Constitution. This direction is in complete negation of various decisions of this Court in which the concept of "LIFE" has been explained in a manner which has infused "LIFE" into the letters of Article 21."

6. It is seen from the above decision of this Court that the right to life underArticle21includest he right of a person to live without being hounded by the Police or the CBI to find out whether he has

committed any offence or is living as a law-abiding citizen. Therefore, it is clear that a decision to direct an inquiry by the CBI against a person can only be done if the High Court after considering the material on record comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency, and the same cannot be done as a matter of routine or merely because a party makes some such allegations. In the instant case, we see that the High Court without coming to a definite conclusion that there is a prima facie case established to direct an inquiry has proceeded on the basis of 'ifs' and 'buts' and thought it appropriate that the inquiry should be made by the CBI. With respect, we think that this is not what is required by the law as laid down by this Court in the case of Common Cause."

18 In**State of West Bengal and others vs. *Committee for Protection of Democratic Rights, West Bengal and others*** reported in ***(2010)3 SCC 571*** the Supreme Court has observed as under:-

"69. In the final analysis, our answer to the question referred is that a direction by the High Court, in exercise of its jurisdiction underArticle226 of the Constitution, to the CBI to investigate a cognizable offence alleged to have been committed within the territory of a State without the consent of that State will neither impinge

upon the federal structure of the Constitution nor violate the doctrine of separation of power and shall be valid in law. Being the protectors of civil liberties of the citizens, this Court and the High Courts have not only the power and jurisdiction but also an obligation to protect the fundamental rights, guaranteed by Part III in general and under Article 21 of the Constitution in particular, zealously and vigilantly.

70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases

and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

71. In *Minor Irrigation& Rural Engineering Services, U.P.& Ors. Vs. Sahngoo Ram Arya (2002) 5S CC 521*,this Court had said that an order directing an enquiry by the CBI should be passed only when the High Court, after considering the material on record, comes to a conclusion that such material does disclose a prima facie case calling for an investigation by the CBI or any other similar agency. We respectfully concur with these observations."

19 In ***State of Punjab vs. Central Bureau of Investigation and others,*** reported in***(2011)9 SCC 182,*** the Supreme Court has observed as under:-

"22……The language of sub-section(8) of Section

173 Cr PC, therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 Cr PC for fresh investigation or reinvestigation if the High Court is satisfied that such fresh investigation or reinvestigation is necessary to secure the ends of justice.

……

32. In the recent case of State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others[(2010)2SCC 571] a Constitution Bench of this Court, while holding that no Act of Parliament can exclude or curtail the powers of the High Court under Article

> 226 of the Constitution, has cautioned that the extra-ordinary powers of the High Court under Article 226 of the Constitution must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights. This caution equally applies to the cases where the High Court exercises inherent powers under Section 482ofthe Cr.P.C. to direct investigation by the CBI for securing the ends of justice."

20 In**Advocates Association, Bangalore vs. *Union of India and others,*** reported in ***(2013)10 SCC 611,*** by referring paras 69 and 70 of pronouncement of Constitution Bench of Supreme Court in ***State of West Bengal vs. Committee for Protection of Democratic Rights*** reported in ***(2010)3 SCC 571,*** referred supra, keeping in view the nature of matter, and fact that composition of SIT, in that case, itself had not been finalized, it was considered that CBI inquiry is necessitated in the said matter.

21 In present case, itis undisputed that a criminal incident had occurred in broad day light on a Highway which is claimed to be witnessed by local persons and District Police has failed to trace the culprits despite

making all efforts and therefore, without going into allegations and counter allegations by petitioners and respondent No.2 against each other, which are not necessary to be determined in present petition, nature of petition and prayer made therein and also the facts and circumstances of case, I am of considered opinion that for the ends of justice, further investigation is necessitated in the matter in issue and therefore, Director General of Police is directed to ensure further investigation in the matter by assigning the investigation to State CID on or before ***21st March, 2023*** which shall be conducted by an Officer, not below the rank of Superintendent of Police. Investigation shall be completed on or before **30th June, 2023**and its report shall be submitted before the competent Magistrate for further action in accordance with law.

Petition stands disposed of in aforesaid terms including all pending miscellaneous application(s), if any.

BEFORE HON'BLE MR. JUSTICE SANDEEP SHARMA, J.

Satyapal

.....Petitioner

Versus

State of Himachal Pradesh

.....Respondent

For the Petitioner: Mr. Shashi Shirshoo, Advocate.

For the Respondent: Mr. Rajan Kahol and Mr. Vishal Panwar, Additional Advocates General.

Cr.R. No. 607 of 2022
Date of Decision:10.3.2023

Code of Criminal Procedure, 1973- Section 397- Revision- Judgments of conviction and sentence under Section 323 read with Section 34 of the Indian Penal Code (IPC), passed by the Additional Chief Judicial Magistrate and upheld by the Additional Sessions Judge, were challenged on the grounds of not being sustainable in light of inconsistent and contradictory evidence presented by the prosecution- **Held** - If on the same evidence, two views are reasonably possible, the one in favour of the accused must be preferred- It is the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice - There was failure to appreciate the evidence in its right perspective- Judgment of conviction was not sustainable in the eyes of law and accordingly- conviction was quashed and set aside (Paras 13, 15 and 16)

Cases referred:

C. Magesh and Ors. v. State of Karnataka (2010) 5 SCC 645;
Krishnan and another Vs. Krishnaveni and another, (1997) 4 SCC 241;
Pawan Kumar & Kamal Bhardwaj vs. State of H.P., latest HLJ 2008 (HP) 1150;

The following judgment of the Court was delivered:

Sandeep Sharma, J. *(Oral)*

Instant criminal revision petition, lays challenge to judgment dated 1.10.2022, passed by the learned Additional Sessions Judge, Rampur Bushahr, District Shimla, H.P., in CIS Regd. No. 5 of 2021, affirming judgment of conviction and order of sentence dated 14.1.2021, passed by the learned Additional Chief Judicial Magistrate, Rampur Bushahr, District Shimla, H.P., in CIS Regd. No. 668 of 2013, whereby the learned trial Court while holding the petitioner-accused guilty of having committed offence punishable under Section 323 read with Section 34 of the IPC, convicted and sentenced him to undergo imprisonment till rising of the court and pay fine of Rs. 1000/- each.

2. Precisely, the facts of the case, as emerge from the record are that on 8.7.2011, at about 10:25pm, police station Kumarsain after having received telephonic information from Kingal that some SSB personnel have picked up quarrel in a hotel, reached on the spot and recorded the statement of the complainant Manju Devi under Section 154 Cr.PC, wherein she alleged that while she was working in the hotel of Ms. Meena Negi, at about 9:45pm, accused named in the FIR i.e. Ravinder Kumar, Ravi Kumar and present appellant Satyapal, came in a car and stopped near liquor shop at Kingal. She alleged that after having consumed liquor, all the accused came in the hotel of Meena Negi and picked up quarrel with her. She alleged that accused not only tore her shirt, but also made an attempt to outrage her modesty. After completion of investigation, police presented challan in the competent court of law under Sections 451, 504, 323 read with Section 34 of IPC against the accused namely Satyapal and Ravinder Kumar. Allegedly, third accused namely Ravi Kumar had fled away from the spot in a car and thereafter, died in an accident.

3. On the basis of evidence led on record by the prosecution, learned trial court though acquitted the accused namely Ravinder and Satyapal for their having allegedly committed offence punishable under

Sections 451, 354, 504 and 201 IPC, but convicted them for having committed offences under Section 323 IPC read with Section 34 IPC, as a consequence of which, they came to be convicted and sentenced till rising of the court. While imposing fine of Rs. 1000, court below also ordered that in default of payment of fine, each accused would undergo simple imprisonment ten days.

4. Being aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the court below, both the accused preferred an appeal in the court of learned Sessions Additional Sessions Judge Rampur Bushahr, District Shimla, HP., which also came to be dismissed vide judgment dated 1.10.2022, as a consequence of which, judgment of conviction recorded by the learned trial Court came to be upheld. In the aforesaid background, present petitioner-accused, who is working as SSB training Center, has approached this Court by way of instant proceedings, seeking therein his acquittal after setting aside the judgments of conviction and order of sentence recorded by the courts below.

5. Having carefully perused entire evidence led on record by the prosecution to prove the guilt of the appellant accused, this Court is persuaded to agree with Mr. Shashi Shirshoo, learned counsel for the petitioner that there is no cogent and convincing evidence to connect the petitioner-accused with the offence alleged to have been committed by him under Section 323 IPC. Interestingly, in the case at hand, bare perusal of statement of complainant PW1 Manju Rani suggests that entire incident as taken note herein above, happened in the presence of owner of the hotel i.e. Meena Negi, but she never came to be examined.

6. Prosecution with a view to prove guilt of the accused, placed heavy reliance upon the testimonies of PW1, PW3, PW5, PW6, PW10 and PW12, however, if the statements of aforesaid witnesses are read in its entirety, it clearly suggest that none of them were present on the spot at the time of the alleged incident. PW1 Manju Devi deposed that on 9:45 while she

was working in the hotel of Meena Negi, petitioner-accused alongwith other friends as named herein above, entered the hotel and started quarreling with the complainant. Complainant alleged that accused named in the FIR tore her shirt and tried to outrage her modesty, but such incident, if any, had actually happened in the presence of Smt. Meena Negi but she never came to be cited as prosecution witness. Statement of complainant recorded under Section 154 Cr.PC. reveals that she with a view to prove the guilt of the accused named in the FIR introduced the names of two other persons namely Sanjeev Kumar PW2 and Satish Kumar PW3. She alleged that when these persons after having heard noises of quarrel reached on the spot and tried to escape her from clutches of the accused, they were also given beatings, however, if the statements of PW 2 and PW3 are read in conjunction it, nowhere suggests that they were present on the spot. If the statements of PW2 is perused, it suggests that on 8.7.2011, he after having heard noise in the bazar reached on the spot and found that one person was sitting on the road and he had received injuries. He deposed that people present on the spot disclosed that few persons were quarrelling, out of which two persons fled away from the spot and one person has suffered injuries. If the statement of this witness is perused in its entirety, it nowhere suggests that he had occasion to see the alleged incident with his eyes, rather whatever he stated before the court below was a hearsay and as such, could not be given much credence by the court below while ascertaining the guilt, if any, of the accused. Version put forth by the PW2 Satish Kumar, does not inspire confidence, rather same is full of contradictions. He alleged that on 8.7.2011, accused Satyapal alongwith two other persons, who work in SSB Training Centre, started hurling abuses upon the complainant PW1 Manju. He deposed that he tried to make the accused Stayapal understand, but he alongwith other friends attacked him with iron rod and gave beating with fist and kicks. He stated that two persons after having seen the villagers coming

from other side succeeded in fleeing from spot, whereas accused Ravinder Kumar was apprehended by the villagers. He alleged that Ravinder Kumar gave him beatings. If the version putforth by this witness is perused juxtaposing the statement given by PW1 Manju Rani, there appears to be considerable force in the submission of Mr. Shashi Shirshoo, learned counsel for the petitioner-accused that there are material contradictions. As per version putforth by PW1 complainant Manju Devi, none was present on the spot, when at the first instance, accused named herein above, entered the Eatery/Dhabha and attempted to outrage the modesty of the complainant save and except owner of the Dhabha i.e. Meena Negi, who has not been examined. PW3 Satish Kumar nowhere stated that he after having heard noise reached the Dhabha and saw accused giving beatings to the complainant, rather he claimed that he after having heard noises reached on the spot and was given beatings by the accused Ravinder Kumar. Most importantly, this witness categorically admitted that accused named in the FIR lodged FIR Ext.PW13/A against him and Vinod Kumar for their having allegedly given beatings to them.

7. PW5 Vinod Kumar, who was allegedly present on the spot while PW3 Satish Kumar was being given beatings by the accused named in the FIR deposed that on 8.7.2011 at 8:00pm while he had gone to his house after having closed his workshop at 10:15pm, he heard noises from the bazar. He deposed that his uncle namely Satish Kumar, PW3, was being given beatings by three persons. He deposed that when he tried to escape his uncle PW3 Satish Kumar, accused named in the FIR also gave him beatings with iron road, fist and kicks, as a result of which, he became unconscious. If the aforesaid version putforth by PW5 is perused juxtaposing the statement given by PW3 Satish Kumar, it creates serious doubt about the correctness of the story putforth by the prosecution. PW4 Bhupinder Sharma deposed that when he reached on the spot, PW3 Satish Kumar and PW5 Vinod Kumar were

lying injured on the spot. He deposed that persons present on the spot disclosed him that they were given beatings by three SSB personnel. He deposed that two persons though succeeded in fleeing from the spot, but one person namely Ravinder Kumar fell from the stairs and suffered injuries.

8. At this stage, it would be apt to take note of cross FIR Ext.PW8/A lodged by the accused Satyapal, perusal where reveals that accused had lodged the FIR against the persons namely Satish Kumar and Vinod Kumar at PS Kumarsain, alleging therein that on 8.7.2011 at 9:30pm, he after having received telephonic call that his mother has suffered attack, proceeded towards his native place. He alleged that his two friends Ravi Kumar and Ravinder Kumar went alongwith him till Kingal. He alleged that while he was going towards Petrolpump Kingal, three persons started giving them beatings with Danda and stones. Complainant alleged that he as well as other persons Ravi Kumar though succeeded in fleeing from the spot, but another friend of him Ravinder was left behind. He alleged that he alongwith his friend Ravi went towards Sainj Luhri side but since they were being followed by persons, who had given them beatings, he lost the control of his vehicle and met with an accident. Both the FIRs Ext.PW12/A and Ext.PW8/A are of the same date. Though prosecution attempted to carve out a case that FIR Ext.PW8/A was counterblast to the FIR Ext.PW12/A lodged by the complainant PW1, but after having perused contents of both the FIRs, one fact which clearly emerges from the record is that on the date of the alleged incident, quarrel took place inter-se accused named in the FIR Ext.PW12A and Ext.PW8/A and both the parties suffered injuries. It has categorically come in the cross-examination of PW3 Satish Kumar that one of the accused named in the FIR Ext.12/A suffered fracture in his leg. Accused named in FIR Ext.PW12/A including the petitioner accused though claimed that they were given beatings by PW3 Satish Kumar and PW5 Vinod Kumar while they were going towards patrol pump, Kingal, whereas prosecution has tried to

project the case that all the accused named in the FIR Ext.PW12A firstly entered the hotel of Meena Negi and thereafter attempted to outrage the modesty of the complainant PW1 Manju Kumari and when they were objected to their unlawful act by PW3 Satish Kumar, he was also given beatings by the accused named in the FIR Ext.PW12/A.

9. Since prosecution was unable to prove the offence, if any, committed by the accused named in the FIR lodged at the behest of PW1 Manju Kumari under Section 354, they were honourably acquitted. Both the courts below found the accused Satyapal and Ravinder guilty of having committed offence punishable under Section 323 IPC for their having allegedly given beatings to PW3 Satish Kumar. However, there is no cogent and convincing evidence to prove the beatings, if any, given by the accused named in FIR Ext.PW12/A to Satish Kumar PW3. Though PW1 Manju Kumari deposed that while PW3 tried to rescue her from the clutches of the accused, he was given beatings, but her version itself becomes doubtful on account of statement made by PW3 because as per own version of PW3, he reached the spot after having heard the noises. As per his version, he reached when many persons were already present on the spot and an attempt was made by the accused to outrage the modesty of PW1 Manju Devi. As per own version of PW1, Manju Kumari, owner of the hotel Meena was present while she was being given beatings and as such, she could be the best eye witness to prove the commission of offence, if any, punishable under Sections 354 and 323 if any, by the accused, however, for reasons best known to the prosecution, Meena Negi never came to be examined. Moreover, it is not understood that why prosecution failed to examine other witnesses present on the spot. Prosecution specifically picked up two persons PW3 Satish Kumar and PW5 Vinod Kumar as prosecution witnesses to prove the guilt of the accused named in the FIR Ext.PW12/A. No doubt, prosecution is always at liberty to cite any person as prosecution witnesses but action of the prosecution in

citing PW3 Satish Kumar and PW5 Vinod Kumar clearly suggests that an attempt was made to hide the offence allegedly committed by the accused named in FIR Ext.PW13/A. While the accused named in the FIR Ext.PW12/A were going to Kingal for filling patrol, they were given beatings by persons including PW3 Satish Kumar and PW5 Vinod Kumar. Most importantly, neither PW3 Satish Kumar and PW5 Vinod Kumar, who were allegedly given beatings by the accused named in the FIR Ext.PW13/A ever reported the matter to the police with regard to their having suffered injuries in the alleged incident, rather factum with regard to their having received injuries, if any, suffered in the alleged incident came to be reported by PW1 Manju Kumari, who was otherwise unable to prove the allegation leveled by her against the accused that they attempted to outrage her modesty.

10. The Hon'ble Apex Court has repeatedly held that since the fundamental aspect of criminal jurisprudence rests upon the well established principle that "no man is guilty until proved so", utmost caution is required to be exercised in dealing with the situation where there are multiple testimonies and equally large number of witnesses testifying before the Court. Most importantly, the Hon'ble Apex Court has held that there must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses. In nutshell, it can be said that evidence in criminal cases needs to be evaluated on touchstone of consistency. Reliance is placed on Judgment passed by the Hon'ble Apex Court in ***C. Magesh and Ors. v. State of Karnataka*** (2010) 5 SCC 645, wherein it has been held as under:-

> "45. It may be mentioned herein that in criminal jurisprudence, evidence has to be evaluated on the touchstone of consistency. Needless to emphasise, consistency is the keyword for upholding the conviction of an accused. In this regard it is to be noted that this Court in the case titled Suraj Singh v. State of U.P., 2008 (11) SCR 286 has held:- (SCC p. 704, para 14)

> "14. The evidence must be tested for its inherent consistency and the inherent probability of the story; consistency with the account of other witness is held to be creditworthy. The probative value of such evidence becomes eligible to be put into the scales for a cumulative evaluation."
>
> 46. In a criminal trial, evidence of the eye witness requires a careful assessment and must be evaluated for its creditability. Since the fundamental aspect of criminal jurisprudence rests upon the stated principle that "no man is guilty until proven so", hence utmost caution is required to be exercised in dealing with situations where there are multiple testimonies and equally large number of witnesses testifying before the court. There must be a string that should join the evidence of all the witnesses and thereby satisfying the test of consistency in evidence amongst all the witnesses."

11. In the case at hand, version put forth by the prosecution witnesses is not only contradictory, but they all have given different versions with regard to alleged incident of beatings. Moreover, version put forth by PW3 and PW5 becomes highly doubtful in the absence of statement of independent witnesses, who were otherwise present in plenty.

12. Moreover, two views are possible in the case. Since first incident of beatings and alleged indecent behavior of the accused against the complainant Manju PW1, never came to be proved coupled with the fact that accused named in the FIR Ext.PW12/A had also lodged FIR against PW3 and PW5 that they were given beatings, there appears to be possibility of false implication of accused named in the FIR Ext.PW12/A.

13. After perusing the statements of the prosecution witnesses as well as material available on record, two views are possible in the present case and as such, petitioner–accused is entitled to the benefit of doubt. In this regard, reliance is placed upon judgment passed by the Hon'ble Apex Court reported in ***State of UP*** *versus* ***Ghambhir Singh****, AIR 2005 (92) SCC 2439*, where Hon'ble Apex Court has held that if on the same evidence, two views

are reasonably possible, the one in favour of the accused must be preferred. The relevant paragraph is reproduced as under:-

> "6. So far as Hori Lal, PW-1 is concerned, he had been sent to fetch a basket from the village and it was only a matter of coincidence that while he was returning he witnessed the entire incident. The High Court did not consider it safe to rely on his testimony because he evidence clearly shows that he had an animus against the appellants. Moreover, he evidence was not corroborated by objective circumstances. Though it was his categorical case that all of them fired, no injury caused by rifle was found, and, only two wounds were found on the person of the deceased. Apart from this PW-3 did not mention the presence of either PW-1 or PW-2 at the time of occurrence. All these circumstances do create doubt about the truthfulness of the prosecution case. The presence of these three witnesses becomes doubtful if their evidence is critically scrutinized. May be it is also possible to take a view in favour o the prosecution, but since the High Court, on an appreciation of the evidence on record, has recorded a finding in favour of the accused, we do not feel persuaded to interfere with the order of the High Court in an appeal against acquittal. It is well settled that if on the same evidence two views are reasonably possible, the one in favour of the accused must be preferred."

14. The Hon'ble Division Bench of this Court vide judgment reported in ***Pawan Kumar*** *and* ***Kamal Bhardwaj*** *versus* ***State of H.P.****, latest* ***HLJ 2008 (HP) 1150*** has also concluded here-in-below:-

> "25. Moreover, when the occurrence is admitted but there are two different versions of the incident, one put forth by the prosecution and the other by the defence and one of the two version is proved to be false, the second can safely be believed, unless the same is unnatural or inherently untrue.
>
> 26. In the present case, as noticed hereinabove, the manner of occurrence, as pleaded by the defence, is not true. The manner of the occurrence testified by PW-11 Sandeep Rana is not unnatural nor is it intrinsically untrue, therefore, it has to be believed.
>
> 27.Sandeep Rana could not be said to have been established, even if the prosecution version were taken on its face value. It was pleaded that no serious injury had been caused to PW-11 Sandeep Rana and that all the injuries, according to the testimony of PW-21 Dr. Raj

> Kumar, which he noticed on the person of Sandeep Rana, at the time of his medical examination, were simple in nature."

15. As far as scope of power of this Court while exercising revisionary jurisdiction under Section 397 is concerned, the Hon'ble Apex Court in ***Krishnan and another Versus Krishnaveni and another*, (1997) 4 Supreme Court Case 241**; has held that in case Court notices that there is a failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/incorrectness committed by inferior criminal court in its judicial process or illegality or sentence or order. The relevant para of the judgment is reproduced as under:-

> "8. The object of Section 483 and the purpose behind conferring the revisional power under Section 397 read with Section 401, upon the High Court is to invest continuous supervisory jurisdiction so as to prevent miscarriage of justice or to correct irregularity of the procedure or to mete out justice. In addition, the inherent power of the High Court is preserved by Section 482. The power of the High Court, therefore, is very wide. However, the High Court must exercise such power sparingly and cautiously when the Sessions Judge has simultaneously exercised revisional power under Section 397(1). However, when the High Court notices that there has been failure of justice or misuse of judicial mechanism or procedure, sentence or order is not correct, it is but the salutary duty of the High Court to prevent the abuse of the process or miscarriage of justice or to correct irregularities/ incorrectness committed by inferior criminal court in its judicial process or illegality of sentence or order."

16. Consequently, in view of the detailed discussion made herein above as well as law taken into consideration, this Court has no hesitation to conclude that courts below have failed to appreciate the evidence in its right

perspective and as such, judgments of conviction and order of sentence dated 1.10.2022 and 14.1.2021 passed by the courts below, are not sustainable in the eye of law and accordingly, same are quashed and set aside and the petitioner-accused namely Satya Pal is acquitted of the charge framed under Section 323 read with Section 34 of IPC against him. Bail bonds if any, discharged. Present petition is disposed of alongwith pending applications if any.

BEFORE HON'BLE MS. JUSTICE SABINA, A.C.J. AND HON'BLE MR. JUSTICE SATYEN VAIDYA, J.

State of H.P. & Others .....Appellants.

Versus

Hem Raj Mehta & Others .....Respondents.

For the appellants : Mr. Pranay Pratap Singh, Additional Advocate General.

For the respondents : Mr. Nishant Khidtta, Advocate.

LPA No. 155 of 2022
Reserved on:07.03.2023
Decided on:10.03.2023

Land Acquisition Act, 2013-Right of Petitioner to get the claim on construction of road on their land 23 years ago – **Held** – Legal position regarding construction of road on the land of private individual is well settled in Sukh Dutt Ratra and Another vs. State of Himachal Pradesh and Others, 2022 (7) SCC 508 and respondents cannot be deprived of property, without due process of law – Neither land of the petitioners acquired nor compensation paid – Respondent deprived of the property without due process of law – Petition dismissed. (Paras 13 & 14)

Cases referred:

State of Maharashtra vs. Digambar (1995) 4 SCC 683;
Sukh Dutt Ratra & Another vs. State of H.P. & Others, (2022) 7 SCC 508;
Vidya Devi vs. State of H.P. & Others, (2020) 2 SCC 569;

The following judgment of the Court was delivered:

Per Satyen Vaidya, *Judge*

By way of instant appeal, the appellants have assailed judgment dated 23.9.2021, passed by learned Single Judge in CWP No. 74 of 2019.

2. Brief facts necessary for adjudication of appeal are that the appellants-State constructed road named as 'Udho-Niwas-Jakhar-Bartu' in the year 1995-96. Acquisition proceedings to acquire some of the land utilized for construction of above noted road was undertaken and the compensation was offered vide award dated 24.11.1997. A part of the land utilized for aforesaid road remained without acquisition and consequently owners of such land were not paid any compensation. On 4.9.2014, another award came to be passed in respect of a part of the land utilized for the aforesaid road.

3. The grievance of the respondents is that their land comprised in Khasra Nos. 610 and 603 situate in Patwar circle Jakhar, Mohal Jakhar, Tehsil Rohru, District Shimla was also utilized by the appellants No. 1 and 2 for construction of the above named road, but no acquisition was undertaken in respect of their land and the compensation was not paid to them either in terms of award dated 24.11.1997 or award dated 4.9.2014.

4. The respondents approached the appropriate authority with a prayer to acquire their land, already utilized for the above noted road. Despite recommendation of their case by appropriate authority, their grievance was not finally settled, which forced them to approach this Court by way of CWP No. 74 of 2019, seeking relief in following terms:

> *"(i) That writ in the nature of mandamus may kindly be issued directing the respondents to acquire the land of the petitioners and pay the compensation as has been done in the other similar situated cases i.e. by award dated 04.09.2014 (Annexure P-3) immediately within a reasonable period as deemed fit by this Hon'ble Court.*
>
> *(ii) That the petitioners may kindly be granted same and similar order, which has been granted by this Hon'ble*

Court in a similar situated case vide judgment dated 09.01.2018 (Annexure P-11)."

5. Appellants contested the writ petition, mainly, on the ground that the claim of the respondents was highly belated. They had approached this Court after about 23 years and for such reasons were not entitled to any relief. It was also urged that the land of the respondents had been utilized for 'Udho-Niwas-Jakhar-Bartu Road' with their oral consent. Respondents had enjoyed the facility of road and thus, were estopped from filing the petition.

6. Learned Single Judge vide judgment dated 23.9.2021 passed in CWP No. 74 of 2019 allowed the claim of the respondents and directed the appellants in following terms:

"9. For the foregoing reasons, the extant writ petition is allowed, and, the respondents are directed to, within four weeks from today, issue the requisite acquisition notice, under, the relevant statute, vis-a-vis, the lands of the writ petitioner, and, thereafter forthwith determine, just, and, fair compensation qua the lands of the landowners concerned. All pending applications also stand disposed of."

7. In the instant appeal, challenge has been laid to impugned judgment dated 23.9.2021 passed in CWP No. 74 of 2019 again on the ground that the claim of the respondents was highly belated. They had consented for utilization of their land for construction of road and for such reasons, were not entitled to any relief. The appellants have pressed into service the judgment of Full Bench of this Court in ***Shankar Dass*** vs. ***State of Himachal Pradesh*** passed in *CWP No. 1966 of 2010,* decided on 02.03.2013, wherein it was held that in cases with identical facts, the appropriate remedy was to approach Civil Court by filing civil suit. The appellants have also placed reliance upon

the judgment passed by Hon'ble Supreme Court in ***State of Maharashtra*** vs. ***Digambar*** reported in ***(1995) 4 SCC 683*** to support its contention.

8. We have heard learned counsel for the parties and gone through the record available on the file carefully.

9. There is no denial of the appellants to the fact that the land of the respondents comprised in Khasra Nos. 610 and 603 sitaute in Patwar Circle Jakhar Mohal Jakhar, Tehsil Rohru, Distt. Shimla was utilized for construction of road 'Udho-Niwas-Jakhar-Bartu' fin the year 1995-96. It is also not in dispute that the land of the respondents, so utilized by the appellants, was not acquired at any stage and the respondents have not been paid any compensation.

10. The only ground consistently agitated by the appellants before writ Court and also before this Court is regarding the delay on the part of respondents to approach the Court, besides, the contention regarding the oral consent given by the respondents for utilization of their land for the construction of road.

11. Learned Single Judge while allowing the petition of the respondents vide impugned judgment had placed reliance on judgment passed by Hon'ble Supreme Court in ***Vidya Devi*** vs. ***State of H.P. & Others***, reported in ***(2020) 2 SCC 569*** to dispel the contentions raised on behalf of the appellants.

12. Recently, in ***Sukh Dutt Ratra and Another*** vs. ***State of Himachal Pradesh and Others***, reported in ***(2022) 7 SCC 508***, Hon'ble Supreme Court in almost identical facts situation, as available in the instant case, after placing reliance upon *Vidya Devi (supra)* held as under:-

> *"23. This Court, in Vidya Devi (supra) facing an almost identical set of facts and circumstances – rejected the contention of 'oral' consent to be baseless and outlined the responsibility of the State:*

"12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law. Reliance is placed on the judgment of this Court in Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn., wherein it was held that the State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in State of Haryana v. Mukesh Kumar held that the right to property is now considered to be not only a constitutional or statutory right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health, employment, etc. Human rights have gained a multi-faceted dimension."

24. And with regards to the contention of delay and laches, this court went on to hold:

"12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice.

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and not defeat it.

> *25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative22 of both their human right, and constitutional right under Article 300-A, this court allowed the appeal. We find that the approach taken by this court in Vidya Devi (supra) is squarely applicable to the nearly identical facts before us in the present case.*
>
> *26. In view of the above discussion, in view of this court's extraordinary jurisdiction under Article 136 and 142 of the Constitution, the State is hereby directed to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants in the same terms as the order of the reference court dated 04.10.2005 in Land Ref. Petition No. 10-LAC/4 of 2004 (and consolidated matters). The Respondent-State is directed, consequently to ensure that the appropriate Land Acquisition Collector computes the compensation, and disburses it to the appellants, within four months from today. The appellants would also be entitled to consequential benefits of solatium, and interest on all sums payable under law w.e.f 16.10.2001 (i.e. date of issuance of notification under Section 4 of the Act), till the date of the impugned judgment, i.e. 12.09.2013."*

13. Thus, the challenge laid by the appellants to the impugned judgment passed by learned Single Judge is without substance and merits. The legal position has been well settled in *Sukh Dutt Ratra* (*supra).* The respondents cannot be deprived of property, without due process of law. Despite two separate awards having been passed in respect of land utilized for 'Udho-Niwas-Jakhar-Bartu Road' in the year 1997-2014. The land of the respondents remained without acquisition and as a consequence thereof, respondents have remained without payment of compensation.

14. Learned Additional Advocate General also placed reliance on the judgment dated 24.2.2023, passed by Hon'ble Supreme Court in ***Civil Appeal No. 1278 of 2023***, titled ***State of Himachal Pradesh & Others*** vs. ***Rajiv And Another.*** After going through the judgment so referred, we have not

found a view different than the view taken by Hon'ble Supreme Court in *Sukh Dutt Ratra*, save and except, that in Civil Appeal No. 1278 of 2023 the respondents therein were not held entitled to the interest under the Land Acquisition Act from the date of notification under Section 4 of the said Act in that case till the filing of the writ petition. However, in the facts of the instant case, we find that the award for grant of compensation for the second time was passed in 2014, without considering the land of the respondents and no plausible reasons whatsoever has been put forth by the appellants for such omission. Thereafter, the respondents continued to agitate their grievance with the appellants and despite the positive recommendation of appropriate authority of appellant No. 1 in favour of the claim of respondents, no final decision was taken, forcing the respondents to approach this Court. In such view of the matter, the appellants cannot derive any benefit from the judgment passed by Hon'ble Supreme Court in *Civil Appeal No. 1278 of 2023*, titled *State of Himachal Pradesh & Others* vs. *Rajiv and Another*, which in our considered view has been passed in the peculiar facts of the said case.

15. In view of above discussion, we find no merit in the appeal and the same is dismissed.

16. Pending miscellaneous application(s), if any, shall also stand disposed of.

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

Sudhir Khimta. …Petitioner.

Versus

Union of India & others. …Respondents.

2. CWP No. 2672 of 2018

Jyoti Lal Mehta …Petitioner.

Versus

Union of India & others. …Respondents

3. CWP No. 2673 of 2018

Rajinder Singh. …Petitioner.

Versus

Union of India & others. …Respondents

For the Petitioner(s). Mr.Ram Murti Bisht, Advocate.

For the Respondents: Mr.Shashi Shirshoo, Central Government Counsel, for respondent No. 1 in all petitions.

Mr.I.N. Mehta and Mr.Sarthak Mehta, Advocates, for respondents No. 2 to 4 in all petitions.

Mr.J.S. Bagga, Advocate, for respondent No. 5 in CWP No. 2672 of 2018.

Mr.Narender Singh Thakur, Advocate, for respondent No. 5 in CWP Nos. 2671 and 2673 of 2018.

CWP No. 2671 of 2018
alongwith CWP Nos. 2672
and 2673 of 2018
Date of decision: 9.3.2023

Societies Registration Act, 1860-Writ Jurisdiction-The National Horticulture Board (NHB), set up by the Indian government in 1984, provides credit-linked back-ended subsidies for horticulture projects. The petitioners applied for subsidies to set up apple packing and grading units- After completion of projects, petitioners requested the release of subsidies following joint inspections by their respective banks and NHB. The joint inspection teams recommended subsidy releases, but noted some minor civil works needed completion- NHB rejected the subsidy claims, arguing that timely completion was mandatory, and any deviation would lead to rejection. The petitioners contended that delays were minor and caused by necessary administrative processes and adverse weather condition-Held- NHB failed to take into consideration the Joint Inspection Reports in right perspective and was swayed away by observations of the Joint Inspection Team, which were with respect to trivial and insignificant work in nature- Rejection of subsidy was arbitrary, unreasonable, irrational and contrary to Norms and Rules applicable in field- Petition was allowed and release of subsidy was directed.

Cases referred:

Indian Oil Corporation Limited Vs. Kerala State Road Trading Corporation, (2017) 14 Scale 30: (1018) 12 SCC 518;

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge (oral)

These petitions, involving common question of fact and law required to be appreciated for adjudication of these petitions, are being decided by this common judgment.

2. Respondent No. 2 National Horticulture Board (herein after referred to NHB) has been set up by the Government of India in 1984 as an

autonomous society under the Societies Registration Act 1860, which implements programmes as sub-scheme of Mission for Integrated Development of Horticulture (MIDH) and has formulated various schemes with aims and objectives of development and promotion of horticulture, popularization of new technologies/tools/techniques in horticulture, assistance to the horticulture, transfer of technology and carrying out studies and surveys to identify constraints and develop short and long term strategies for systematic development of horticulture and providing technical services including advisory and consultancy services in order to propagate commercial horticulture.

3. Pattern of assistance provided by NHB is credit linked back-ended subsidy @ 35% of the total project cost limited to `50.75 lakh per project in general area and @ 50% of project cost limited to `72.50 lakh per project in NE, region Hilly and Scheduled areas.

4. As per scheme of NHB, Harish Chander father of Sudhir Khimta (petitioner in CWP No. 2671 of 2018) as well as Jyoti Lal Mehta and Rajinder Singh (respective petitioners in CWP Nos. 2672 and 2673 of 2018) had submitted applications on prescribed format for setting up respective projects of 'apple packing and grading unit' by raising loan from respective banks, arrayed as party as respondent No. 5 in each petition, with purpose for availing back-ended subsidy of 50% on project cost under the Scheme.

5. After death of Harish Chander, his son Sudhir Khimta (petitioner in CWP No. 2671 of 2018) pursued and carried on the process of availing subsidy by setting up the unit as proposed by his father.

6. After purchase and setting up the machinery and completing the work of unit and making it operational, petitioners, after inspection conducted by authorized officer of the Bank, through Bank, had requested for release of subsidy alongwith request for joint inspection of the unit. Whereafter correspondence took place between the Bank and NHB for

submission of documents for completing the file and thereafter joint inspection was conducted by respective Joint Inspection Committees on various dates and in their Joint Inspection Reports, Joint Inspection Team/Committee recommended release of subsidy to the petitioners subject to completion of certain civil works in CWP Nos. 2671 and 2673 of 2018 and subject to consideration of fact in CWP No.2672 of 2018 that one installment of term loan as well as completion of unit was reported after 18/24 months from the date of sanction and release of NHB subsidy.

7. Joint Inspection Reports were placed before State Committee for approval and release of subsidy, however cases were deferred with observation of non-completion of projects within time limit. The said fact was intimated by the Bankers to the petitioners. Petitioners, through respective Banks had explained that there is no non-completion but completion of civil work was within time period prescribed by the NHB, but cases for subsidy submitted by respective Banks on behalf of petitioners were rejected with following reasons:-

> *"The unit was not completed within the stipulated time i.e. 18 months + 3 months grace period from the 1st disbursement of term loan as per Scheme Guideline of the Board."*

8. Against aforesaid rejection, petitioners have approached this Court by filing these Writ Petitions on the ground that majority of work required for setting up units was complete within the prescribed time and it was reported to the Banks and Banks had requested NHB for carrying out joint inspection, but before conducting inspection, correspondence took place between the Banks and NHB for completing the formalities including furnishing certain information and documents as sought by NHB from the Banks which caused delay in joint inspection and further that the work reported to be incomplete in Joint Inspection Report is insignificant as it is not a work related to installation of machinery and making of the unit operational and the work, ornamental in nature, like ceiling of roof, which was also almost

complete, except small portion of roof of the ground floor. In Jyoti Lal Mehta (CWP No. 2672 of 2018) even no civil works was found incomplete, but case has been rejected only on the ground of delay in reporting the completion and conducting the inspection.

9. NHB has opposed the petitions mainly on the ground that conditions prescribed in the Scheme, which are to be considered to be part of Letters of Intent issued to the petitioners, are mandatory in nature and time is essence of the Scheme formulated by the Board and, therefore, petitioners had to complete the entire work of the unit within 18 months or at least within further extended period of 3 months and, therefore, petitioners, for incomplete work, are not entitled for any subsidy and, thus, cases for approval and release of subsidy have been rightly rejected by the NHB.

10. It has been further stated on behalf of NHB that no justification for delay was given by the lending banks and projects were not found complete even after expiry of prescribed period, at the time of conducting joint inspection and, therefore, projects were not eligible for subsidy even after extended period.

11. Referring pronouncement of the Supreme Court in ***Indian Oil Corporation Limited Vs. Kerala State Road Trading Corporation, (2017) 14 Scale 30: (1018) 12 SCC 518***, it has been contended that subsidy is a matter of privilege and cannot be enforced as a right and it can be withdrawn at any time and further petitioners, for failure in setting up their respective units within stipulated period, are not entitled to claim subsidy and thus have no enforceable right in their favour to maintain present Writ Petitions for release of subsidy in their favour.

12. A. In Sudhir Khimta (CWP No. 2671 of 2018), first installment of term loan was released on 23.3.2014. 18 months thereafter were completed on 23.9.2015 and extended period of 3 months expired on 23.12.2015. Request for joint inspection was made by the Bank to the NHB on 3.6.2015,

reporting the completion of unit by forwarding documents related to the claim of subsidy and joint inspection. Thereafter, banker and NHB had correspondences with each other and ultimately joint inspection was carried on 25.4.2017, wherein in column No. 22, it has been reported by the Joint Inspection Team as under:-

"The unit has been commissioned as per scheme guideline."

B. Column No. 24 of report contains recommendation of the Joint Inspection Team, wherein release of subsidy to the petitioner has been recommended, which read as under:-

> *"The Joint Inspection Team recommends an amount of NHB subsidy of Rs.886430/- @ 50% & 50% of eligible project cost of Rs.1635556/- for phm category of the project in hilly areas as per applicable cost norms under the scheme guideline of the board for apple grading & packing unit type 1 subject to following:-*
> *(i) promoter may please complete the civil work (ceiling ½ portion at GF of Apple G/P Hut) within one month.*
> *(ii) State Committee may also be considered the extension of period for project completion in most hard hilly areas."*

C. When case of the petitioner was deferred, vide communication dated 21.5.2018, banker of the petitioner had communicated four reasons causing delay in the matter with further submission that unit can be inspected at any time, which has been constructed and made operational as per guidelines and rules of the NHB and keeping in the view the hilly and difficult terrain of the area located in snow bound area, having plenty of rains during rainy season leading to disruption in transport and continuation of civil work and non-availability of labour for a considerable long period during the year on account of bad weather, it was recommended by the Bank to reconsider the case of the petitioner for providing financial assistance.

D. Thereafter, Horticulture Officer vide communication dated 22.5.2018 had requested NHB for reconsideration of deferred cases by the

State Committee with request to extend the period for completion of projects by the petitioners for releasing the subsidy in the circumstances explained in his communication Annexure P-12. However case, of the petitioner was rejected by the NHB (Board) and was communicated vide letter dated 17.8.2018 (Annexure P-13).

13. A. In Jyoti Lal Mehta (CWP No. 2672 of 2018), first installment of loan was released on 12.6.2015 and 18 month of prescribed period completed on 12.12.2016 and extended 3 months period expired on 12.3.2017. Joint inspection was conducted on 29.7.2017 in furtherance to communications dated 12.5.2017, 6.6.2017 and 7.6.2017 sent by banker of the petitioner to the Incharge of NHB.

B. Joint Inspection Team in Joint Inspection Report in column No. 22 has reported as under:-

> *"The unit is reported complete in all the aspect as per NHB scheme."*

C. Column No. 24 contains recommendation of the Joint Inspection Team, wherein release of subsidy to the petitioner has been recommended, which reads as under:-

> *"The Joint Inspection Team recommends an amount of NHB subsidy of Rs.552282/- @ 50% of eligible project cost of Rs.1104566/- for PHM category of the project in hilly area for apple grading & packing unit type-1 under the scheme guideline of the Board effective from 01/04/2014 onwards subject to consideration that on installment of TL as well as completion of this unit reported after 18/24 months from the date of sanction & release of NHB subsidy."*

D. When case of the petitioner was deferred, the same was communicated to the banker of the petitioner by NHB, vide communication dated 31.3.2018, by asserting that case of the petitioner was deferred for the

reason that project was not complete as per time limit prescribed in the Scheme guidelines by the Board.

E. Thereafter, Horticulture Officer vide communication dated 22.5.2018 had requested NHB for reconsideration of deferred cases by the State Committee with request to extend the period for completion of projects by the petitioners for releasing the subsidy in the circumstances explained in his communication Annexure P-12. However, case of the petitioner was rejected by the NHB (Board) and was communicated vide letter dated 17.8.2018 (Annexure P-13).

14. A. In Rajender Singh (CWP No. 2673 of 2018), first installment of loan was released on 10.2.2015 and 18 month of prescribed period completed on 10.8.2016 and extended 3 months period expired on 10.11.2016. Claim for release of subsidy was submitted on 28.1.2016 and thereafter correspondences took place between the bank and Board vide communications dated 3.6.2016, 8.12.2016 and 24.3.2017 etc. Joint inspection was conducted on 15.6.2017

B. Joint Inspection Team in Joint Inspection Report in column No. 22 has reported as under:-

> *"The unit is completed in all the aspect and likely to come in to operation in the upcoming apple season."*

C. Column No. 24 contains recommendation of the Joint Inspection Team, wherein release of subsidy to the petitioner has been recommended, which reads as under:-

> *"The Joint Inspection Team recommends an amount of NHB subsidy of Rs.931250/- @ 50% of eligible project cost of Rs.1862500/- for PHM category of the project i.e. apple grading & packing unit type-3 in hilly area as per applicable cost norm under the scheme guideline of the Board subject to completion of the civil work/wooden work & document as found in complete as per guideline."*

D. When case of the petitioner was deferred, the same was communicated to the banker of the petitioner by NHB vide communication dated 31.3.2018 by asserting that case of the petitioner was deferred for the reason that the project was not completed as per time limit period prescribed in the Scheme Guideline of the Board (NHB).

E.. Thereafter, Horticulture Officer vide communication dated 22.5.2018 had requested NHB for reconsideration of deferred cases by the State Committee with request to extend the period for completion of projects by the petitioners for releasing the subsidy in the circumstances explained in his communication Annexure P-12. However, case of the petitioner was rejected by the Board (NHB) and it was communicated vide letter dated 17.8.2018 (Annexure P-13).

15. After receiving the proposal of the petitioners under NHB Scheme 'Development of Commercial Horticulture through Production and Post-harvest Management', Letters of Intent dated 4.3.2014, 2.5.2015 and 15.1.2015 were issued to respective petitioners, communicating grant of Letters of Intent regarding proposed units with observation that Letter of Intent is limited to merely being an approval for the activity proposed in the application, but no endorsement/approval of project cost indicated in the application, and is also subject to terms and conditions enumerated in the Letters of Intent.

16. Aforesaid Letters of Intent contained as many as 13 conditions, but none of them speaks about prescribed time period of 18 months with further extension of 3 months as provided in general guidelines for all schemes published by NHB. Therefore, it has been contended on behalf of petitioners that requirement of completion of projects within 18+3 months (extended period) was never communicated to them and, therefore, it cannot be made a ground for rejection of claims for subsidy set up by the petitioners by genuinely establishing, installing and making operational the units as

proposed, in accordance with the Scheme of NHB. Whereas, claim of the respondent is that release of subsidy is subject to general condition contained in general guidelines published and issued for all Schemes by the NHB.

17. NHB has formulated schemes and has published general guidelines for all schemes and in Chapter-II containing 'Guidelines for making subsidy claims and release of subsidy under the commercial horticulture scheme etc.' time limit for completion of project has been prescribed in para 1.1.3, which reads as under:-

> *"1.1.3 Time limit of Completion of project*
>
> *i. Time limit for completion of the project would be maximum of 18 months period from the date of disbursement of the 1st installment of term loan, which may be extended by a further period of 3 months, if reasons for delay are considered, justified by the financial institution concerned and agreed to by NHB.*
>
> *ii. If the project is not completed within stipulated period, benefit of subsidy shall not be available and advanced subsidy placed with the participating bank, if any, will have to be refunded to NHB forthwith or not later than 30 days after such period."*

18. Condition No. V of Letter of Intent provides that grant of subsidy to the beneficiary would be subject to Guidelines of the scheme, which reads as under:-

> "*V. Mere issuance of LOI will not guarantee the grant of subsidy to the beneficiary unless the proposal is implemented in accordance with the information given in the application of LOI/Detailed Project Report (DPR) and within guidelines of the scheme. Any deviation in implementation of project will lead to rejection of proposal for which promoter will be sole responsible."*

19. Condition No. V of Letter of Intent unambiguously provides that grant of subsidy shall be subject to implementation of proposal according to guidelines of the Scheme and any deviation in the implementation of project will lead to rejection of proposal. Therefore, plea of petitioners, that term and

conditions prescribing time limit for completion of project is not part of Letter of Intent and as such is not mandatory, is not tenable and thus liable to be rejected. However, the time limit for completion of project provided under the Scheme does not contain any clause that time period prescribed for completion of project cannot be extended by the Board (NHB). But in absence of any specific provision for extension of time for more than 3 months, such extension cannot be claimed as a matter of right.

20. In Sudhir Khimta's case (CWP No.2671 of 2016), vide communication dated 3.6.2015, it was communicated by the Bank to NHB that petitioner had completed all codal formalities related to his unit and thereby making a request to NHB to release the subsidy and to conduct joint inspection and documents related to the claim of the petitioner were also submitted alongwith this communication. In response thereto, vide communication dated 5.6.2015, NHB sought further information from the Bank including certain documents. In response thereto Bank had furnished complete details to NHB and thereafter joint inspection was conducted on 25.4.2017, wherein in column No. 8, it was reported that project was not yet complete, whereas in its communication by the Bank to the NHB it was reported that project/unit was complete as per terms and conditions of the Scheme. Joint Inspection Team has contradicted its own version reported in column No. 8 by its observation in column No. 22, wherein it has been reported that unit has been commissioned as per scheme guideline and in column No. 24 also it has recommended for release of subsidy amount by observing that the claim of the petitioner is within the norms under the scheme and guidelines of the Board. However, in the last, it has been observed that promoter may please complete the civil work (ceiling ½ portion at GF of Apple G/P Hut) within one month and also recommended that State Committee may also consider the extension of period for project completion for the reason that project was in the most hard hilly area.

21. In Jyoti Lal Mehta's case (CWP No. 2672 of 2018) in communication dated 12.5.2017 (Annexure P-5), it was reported by the Bank to NHB that loan of `9.62 lakhs for completion of project during period from 12.6.2015 to 6.6.2017 was disbursed and unit was complete in all respect and was running significantly as per NHB scheme guidelines and was in operational condition. This fact has not been controverted by NHB or any other respondent at any point of time by placing on record any material contrary thereto. As per Joint Inspection Report, project was complete in June 2017, but the said observation has been contradicted by the Joint Inspection Team in Colum No. 22, wherein it has been reported that unit was reported to be complete in all respect as per NHB scheme. In column No. 24 Joint Inspection Team has recommended release of subsidy with observation that unit was commenced as per guidelines of the NHB, however, by subjecting it to the consideration that one installment of term loan was released and unit was completed after 18/24 months from the date of sanction and release of NHB subsidy.

22. In Rajinder Singh's case (CWP No. 2673 of 2018) request for release of subsidy and joint inspection was made on 24.5.2016, i.e. prior to expiry of time period prescribed under the Scheme and vide communication dated 8.12.2016, in response to communication received from NHB, Bank had reported that unit was complete in all respect as per NHB Scheme guideline and was in operational condition as per knowledge of the bank. This information/averment has not been controverted by the NHB or any other respondent.

23. In Joint Inspection Report in column No. 8, it has been reported by the Joint Inspection Team that project was yet to be completed. But, at the same time, in column No. 22, it has been reported by the Team that unit was complete in all respect and was likely to come in operation in coming apple season. In column No. 24, Joint Inspection Team has

recommended release of subsidy to the petitioner subject to completion of civil work/wooden work and documents have been found incomplete as per guidelines without specifying anything about civil work/wooden work in the inspection report specifically.

24. From the aforesaid facts and circumstances, it has been established on record that concerned Banks had reported to the NHB within the prescribed time limit for conducting joint inspection for release of subsidy with unequivocal and unambiguous statement that projects were complete as per guidelines of the NHB, which includes the time limit prescribed for completion of project and in response thereto, issue with respect to expiry of time period prescribed under the Scheme was never raised by or on behalf of NHB and further Joint Inspection was not conducted immediately on receiving the information from the Bank about completion of the project, but was conducted after a considerable long period and in Joint Inspection Reports, contradictory reporting was made by the Inspecting Teams as referred and observed supra, but with recommendation to release the subsidy to the petitioner by observing that units were completed in all respects as per guideline and Schemes of NHB and, therefore, rejection of the claims of the petitioners, for release subsidy in their favour, is not sustainable.

25. By taking into consideration the entire Joint Inspection Reports, it may also be construed that though projects/units were complete in all respects, subject to completion of trivial civil work/wooden work which appears to be ornamental in nature and for such trivial and insignificant, incomplete civil work, it cannot be said that petitioners had failed to establish the unit within time prescribed under the scheme, particularly for observation of Joint Inspection Team that units were complete in all respect as per NHB scheme. NHB/Board/State Committee cannot pick up one line of the Joint Inspection Reports to conclude that projects/units were not complete, only for observation with respect to incomplete civil/wooden work which was

insignificant or immaterial for establishing and making operational the unit in reference.

26. Be that as it may, after deferring the cases by the State Committee for consideration of the matters with respect to delay in establishing the units, explanation was rendered by the petitioners through Horticulture Officer as well as Banks about the reasons causing the delay in completion of civil/wooden works in the units. However, thereafter, State Committee/NHB has rejected the claims of the petitioners for subsidy without adverting to or responding to the reasons assigned on behalf of petitioners for incomplete civil/wooden works and claims of the petitioners have been rejected by observing that units were not complete within the stipulated time. But, the State Committee of the Board (NHB) has failed to take into consideration the Joint Inspection Reports in right perspective, but was swayed by the observations of the Joint Inspection Team, which were not only with respect to trivial and insignificant work in nature, but also contrary to the main reports of Joint Inspection Teams, wherein units have been reported to be established as per claims and guidelines of NHB and cases of the petitioners have been recommended for release of subsidy.

27. From above discussion it is apparent that rejection of claim of petitioners by NHB is arbitrary, unreasonable, irrational and contrary to Norms and Rules applicable in field. It deserves to be interfered with.

28. In view of above observations, petitions are allowed and communication dated 17.8.2018 (Annexure P-13 in all the petitions), rejecting the claims of the petitioners, is quashed and set aside and petitioners are held entitled for grant of subsidy in terms of relevant scheme/guidelines of NHB applicable in present cases as recommended by Joint Inspection Teams of NHB and consequently respondent-Board (NHB) is directed to release the subsidy to the petitioners on or before 13th April, 2023.

Petitions are allowed and disposed of in aforesaid terms alongwith pending application(s).

BEFORE HON'BLE MR. JUSTICE VIVEK SINGH THAKUR, J.

The Land Acquisition Collector & others. …Appellants.

Versus

Kirna Devi and another. …Respondents

2. RFA No. 189 of 2017

The Land Acquisition Collector & another. …Appellants.

Versus

Satish Kumar. …Respondent

3. RFA No. 190 of 2017

The Land Acquisition Collector & others. …Appellants.

Versus

Sangeeta Devi. …Respondent

4. RFA No. 191 of 2017

The Land Acquisition Collector & others. …Appellants.

Versus

Rajinder Singh. …Respondent

5. RFA No. 192 of 2017

The Land Acquisition Collector & others. …Appellants.

Versus

Om Parkash & others. …Respondents

For the Appellants. Mr.Harinder Singh Rawat, Additional Advocate General.

For the Respondents: Mr.Shanti Swaroop Bhatti and Mr.Y.K. Pathak, Advocates.

RFA No. 188 of 2017 alongwith RFA
Nos. 189 to 192 of 2017
Date of decision: 7.3.2023

Land Acquisition Act, 1894- Section 11- Determination of Market value of land-Land was acquired by State for public purposes under Section 4 of the Land Acquisition Act- Land Acquisition Collector determined the market value of the acquired land on the basis of category and classification- the assessed market value was challenged- Reference was made by the parties- A uniform flat rate was decided by the Reference Court- State preferred an appeal against the award passed by Reference Court- **Held** - It is well settled that at the time of determining market value of land for acquisition, the purpose for which the land is acquired, is relevant, and not nature and classification of land- Market value of the land is to be determined as a single unit irrespective of nature and classification of the land-Uniform rate to all kinds of land under acquisition must to be awarded. (Para 7)

Cases referred:

Dadu Ram Vs. Land Acquisition Collector and others (2016) 2 ILR 636 (HP);
Executive Engineer and another Vs. Dila Ram, Latest HLJ 2008 (HP) 1007;
G.M. Northern Railway Vs. Gulzar Singh and others (Latest HLJ 2014 (HP) 775);
H.P. Housing Board Vs. Ram Lal and others, 2003 (3) Shim.L.C. 64;
Himat Singh and others Vs. State of Madhya Pradesh and Another, (2013) 16 SCC 392;
LAC and another Vs. Bhoop Ram and others, 1997 (2) SLC 229;
Peerappa Hanmantha Harijan (Dead) by Legal Representatives and others Vs. State of Karnataka and Another, (2015) 10 SCC 469;
Shub Ram & others Vs. State of Haryana and another 2010 (1) SCC 444;
Smt. Gulabi and etc. Vs. State of H.P. (AIR 1998 HP 9);
Union of India Vs. Harinder Pal Singh and others 2005 (12) SCC 564;
Viluben Jhalejar Contractor (Dead) by LRs. Vs. State of Gujarat, (2005) 4 SCC 789;

The following judgment of the Court was delivered:

Vivek Singh Thakur, Judge (Oral)

These appeals have been preferred by State of Himachal Pradesh against common Award dated 28.7.2016 passed by Reference Court, i.e. Additional District Judge (1) Una, District Una, H.P. in LAC Petition Nos. 15/2014, titled Kirna Devi and another Vs. The Land Acquisition Collector and another; 14/14, titled Satish Kumar Vs. The Land Acquisition Collector and another; 1/14, titled Sangeeta Devi Vs. The Land Acquisition Collector and another; 2/14, titled Rajinder Singh Vs. The Land Acquisition Collector and another; and 3/14, titled Om Parkash & others Vs. The Land Acquisition Collector and another.

2. Undisputed facts are that the land belonging to respondents/land owners, situated in village Jalgarn, District Una, has been acquired by the State for public purpose, i.e. for construction of Nangal-Mehatpur-Una-Amb-Mubarikpur road by issuing notification dated 3.10.2008 under Section 4 of the Land Acquisition Act (herein after referred to as the Act), which was lastly published in the newspaper on 6.11.2008.

3. Land Acquisition Collector after completing due process under the Act, had announced Award under Section 11 of the Act determining the market value of the acquired land on the basis of category and classification ranging from `190.95 per Centiare to `14639.33 per Centiare .

4. Feeling aggrieved and dissatisfied with the aforesaid determination of market value of the land, land owners preferred above referred Reference Petitions, which have been decided by the Reference court vide impugned common award dated 28.7.2016, whereby uniform flat rate has been determined by the Reference Court, for calculating the compensation payable to land owners, at the rate of `14639.33 per Centiare, the highest rate determined by the Land Acquisition Collector with respect to portion of land acquired under the above process.

5. In the Reference Petitions, land owners have placed reliance upon documentary evidence Ex. PW-2/A to Ex. PW-2/P, Ex. PW-4/A, Ex. PW-

5/A to Ex. PW-5/C, Ex. PW-6/A, Ex. PW-6/B, Ex. PW-7/A, Ex. PW-7/B and Ex. PW-8/A, whereas State has placed reliance upon Ex. R1 to R9.

6. When land of different kinds and classification is acquired for one purpose irrelevant to the classification of land, he market value of entire acquired land, irrespective of its classification and category is required to be assessed and awarded at a flat and uniform rate for all categories of land, because in view of purpose of acquisition classification of land completely loses significance and entire land under acquisition has to be awarded uniform rate. In present case land has been acquired for construction of road and for utilization of land for the said purpose category and classification of agricultural land is completely irrelevant.

7. It is well settled that at the time of determining market value of land for acquisition, the purpose for which the land is acquired, is relevant, and not nature and classification of land and where nature and classification of the land has no relevance for purpose of acquisition, market value of the land is to be determined as a single unit irrespective of nature and classification of the land. In such a case, uniform rate to all kinds of land under acquisition as a single unit irrespective of their nature and classification is to be awarded. (See ***Dadu Ram Vs. Land Acquisition Collector and others (2016) 2 ILR 636 (HP)***; ***H.P. Housing Board Vs. Ram Lal and others, 2003 (3) Shim.L.C. 64; Union of India Vs. Harinder Pal Singh and others 2005 (12) SCC 564; Executive Engineer and another Vs. Dila Ram, Latest HLJ 2008 (HP) 1007; LAC and another Vs. Bhoop Ram and others, 1997 (2) SLC 229; Smt. Gulabi and etc. Vs. State of H.P. (AIR 1998 HP 9)*** and ***G.M. Northern Railway Vs. Gulzar Singh and others (Latest HLJ 2014 (HP) 775).***

8. Further, it is also settled that when the purpose of acquisition is common and no developmental activity is required to be carried out, compensation is to be awarded at uniform rate. (See ***Viluben Jhalejar***

Contractor (Dead) by LRs. Vs. State of Gujarat, (2005) 4 SCC 789; Himat Singh and others Vs. State of Madhya Pradesh and Another, (2013) 16 SCC 392 and Peerappa Hanmantha Harijan (Dead) by Legal Representatives and others Vs. State of Karnataka and Another, (2015) 10 SCC 469).

9. As provided under Section 25 of the Act, Court cannot award compensation lesser than that awarded by Land Acquisition Collector (See ***Shub Ram & others Vs. State of Haryana and another2010 (1) SCC 444***). Therefore, where uniform rate of compensation is to be awarded, it cannot be less than highest rate determined by the Land Acquisition Collector.

10. In present case Land Acquisition Collector has determined highest value of land at the rate of `14639.33 per Centiare. In view of provisions of Section 25 of the Act, Reference Court cannot determine the value of land at a rate lower than the rate determined by the Land Acquisition Collector. As discussed supra, in present case uniform rate of the acquired land is to be determined for calculating the compensation payable to the land owners and the value of land has been determined by the Reference Court at a rate of `14,639.33 per centiare which was the rate determined by the Land Acquisition Collector.

11. For provisions of the Act read with above referred pronouncements of the Court, value of land cannot be determined lesser than `14639.33 per centiare, which is the value of land determined by the Land Acquisition Collector.

12. In view of aforesaid facts and circumstances and ratio of pronouncements referred supra, I do not find any illegality, irregularity or perversity in the value of land determined by the Reference Court As such, I find no merit in the appeals and, accordingly, the appeals are dismissed alongwith pending applications.