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LATEST LEGAL NEWS

'Difficult To Bring Up A Child In Your 60s': Supreme Court On Challenge To Age Limit Under Surrogacy Act

The Supreme Court on Tuesday orally expressed its reservations about the applications filed before it by persons wanting to have a child through surrogacy under the Surrogacy (Regulation) Act, 2021 who are beyond the age limit prescribed under the Act.

"There are cases where people in their 60s are saying they want children. It is so difficult to bring up a child at that age. Once a child starts walking, you know how difficult it is to monitor a child. Under Adoption Act, there is a cap on the combined age for adoption. In their 60s, having a child is very difficult. The child wouldn't know whether to call them as a father or grandfather. We have to look at the child's point of view, whether they can take care of the child. It is very easy to bring a child into this world, but rear a child, educate a child is not easy. What about the rights of the child? Even normal people will think a 100 times before having in kid in their late 30s or 40s' Justice Nagarathna said.

A bench of Justice B V Nagarathna and Justice Ujjal Bhuyan has been considering a batch of pleas filed by married women, suffering from a congenital disorder known as Mayer-Rokitansky-Kuster-Hauser (MRKH), who want to achieve biological motherhood through gestational surrogacy. MRKH syndrome causes absolute uterine factor infertility and the only way for a person suffering from such a condition to attain biological motherhood is through gestational surrogacy. This is because the petitioners are not able to produce eggs due to their medical condition.

Under the 2021 Act, the age prescribed for the woman is 23 to 50 years and the age prescribed for the man is 26 to 55 years.

On Wednesday while considering a batch of interlocutory applications filed in the case, which included a challenge to the age limit prescribed under the Surrogacy Act, Justice Nagarathna expressed her displeasure and said, 'Every thing people want to challenge? There is an intent behind it'

'Those who are before the Hon'ble Court must be in desperate need of a child at that

age' the counsel for the petitioner told the Court.

'They could have always adopted, right in the beginning when they knew they couldn't conceive. Adoption is also accepted nowadays, even single women are adopting now' Justice Nagarathna responded. Incidentally, the same bench yesterday issued notice on a petition challenging the provisions barring single unmarried women from surrogacy. In October, the Court had allowed a woman with MRKH Syndrome, to undergo surrogacy using a donor egg. The Apex Court did so, by staying the operation of a recent amendment to the Surrogacy Rules, with respect to the petitioner. The amendment introduced in March 2023, prohibits the use of donor eggs for gestational surrogacy of an intending couple.

On a previous occasion, the Supreme Court had also observed that insisting that only the egg and the sperm of an intending couple can be used for gestational surrogacy is prima facie against Rule 14(a) of the Surrogacy (Regulation) Rules, 2022.

A new amendment introduced in March 2023 to Form 2 read with Rule 7 of the Surrogacy Rules specifies that donor eggs cannot be used for gestational surrogacy of an intending couple. The petitioners had challenged the amendment dated 14.03.2023 made to Form 2 under Rule 7 of the

Surrogacy Rules, which is the form for Consent of the Surrogate Mother and Agreement for Surrogacy. The recent amendment substituted paragraph 1(d) in Form 2 to ensure that a couple undergoing surrogacy cannot have donor gametes and both the male and female gamete must come from the intending couple. Prior to the substitution introduced in March 2023, paragraph 1(d) of Form 2 specified that methods of surrogacy treatment may include fertilisation of a donor egg by the sperm of the husband. However, this was changed to not allow donor gametes for couples choosing surrogacy.

The amendment also specifies that single women (widowed/divorced) must use self-eggs and donor sperms to avail the surrogacy procedure.

The petitioners challenged this contending that this was against Rule 14(a) of the Surrogacy Rules. According to Rule 14(a) a woman may opt for gestational surrogacy, if she has no uterus or an abnormal uterus.

Supreme Court Gives Army Four Months to Fix Policy on Promotion of Women Officers

Some women officers in the Army had alleged discrimination in promotion from the rank of colonel to brigadier. **New Delhi:** The Supreme Court on Monday gave the Army four months' time to finalise its policy on promotion of women officers from the rank of colonel to brigadier, after it was told that [deliberations on the issue are underway](#).

A bench comprising Chief Justice of India (CJI) D.Y. Chandrachud and Justices J.B. Pardiwala and Manoj Misra took note of the submissions of Attorney General (AG) R. Venkataramani and senior advocate R. Balasubramanian on the matter, the *Hindustan Times* [reported](#).

CJI Chandrachud said, "We will give you [Army] time for bringing the policy. We would expect the formulation of policy by March 31, 2024."

Some women officers in the Army had alleged discrimination in promotion from the rank of colonel to brigadier.

In its February, 2020 verdict, the apex court had ordered permanent commission (PC) for women officers in the Army, rejecting the Union's stand on their "physiological limitations" as being based on "sex stereotypes" and calling it "gender discrimination against women", the *Hindustan Times* reported.

The top court had said that all women Short Service Commission (SSC) had to be considered for permanent commission irrespective of them having completed 14 years or, as the case may be, 20 years of service within three months.

A month after that, the Supreme Court had directed the Navy to do the same. It had said that a level playing field would ensure women have the opportunity to overcome "histories of discrimination" in its March, 2020 verdict.

AG Venkataramani told the court that an officer must meet the ["essential eligibility criteria"](#) of minimum 2 confidential reports in Colonel Select rank. "Any deviation from this fundamental eligibility criteria will amount to compromising with the operational requirement of the Indian Army," he said.

He also informed the court that to earn the rank of brigadier, an Army officer is required to experience operational command of a unit or battalion for a period of nearly 2 years. This experience and service knowledge as commanding officer of a

unit helps officers to understand the “intricacies, nuances and complexities” of command, Venkataramani said.

The applicant officers, represented by advocate Archana Pathak Dave, informed the Supreme Court that [women have fought a long drawn battle](#) in courts to get their due. They said that command roles were made available to women only after the top court’s 2020 decision on considering SSC women officers for PC.

However, in 2021, the court found that the Army’s yardstick to grant PC to women officers was discriminatory when compared to the criteria for male officers. Dave said that the applicants only seek a policy to be put in place for governing promotions by special board 3 (SB-3), the *Hindustan Times* [reported](#).

The AG countered this by saying that all Army policies are “gender-neutral” and that the applicants should not push the matter beyond a certain point. He said most of the women officers before the court did not meet the eligibility criteria for brigadier with command positions given to them after June this year, the report said.

The bench said, “That is all because we pushed the envelope. We nudged you, otherwise nothing would have happened.” The Court told Venkataramani that the Army had shown resistance by citing operational efficiency as a ground to justify denial of permanent commission to women.

“It is not your case that operational preparedness of Army has been affected in any manner with women coming in,” the bench added.

In a note submitted to Court, the AG said, “The experience of performing in colonel’s rank is utmost essential to gauge any officer’s fitness for higher appointment. Any exception to this will have ramifications on the quality of leadership in the Indian Army along with opening avenues for many others who are deficient of command criteria to seek similar treatment.”

The [top court had criticised the Army](#) for denying promotions to women permanent commission officers in November as well.

The bench had [said](#), “An attitude has been to find some way to defeat the just entitlements of women officers. Such an approach does disservice to the need to provide justice to the women officers, who have already fought a long and hard battle, to get their just entitlements under law.”

The women officers had approached the court last year as SB-3 that empanels officers as colonel had not met for 18 months despite the Supreme Court’s 2021

directive to the Army asking it to grant all consequential benefits including promotion and financial benefits to the women officers within 3 months.

Arbitration Agreement Can Bind Non-Signatories: Supreme Court Upholds 'Group Of Companies' Doctrine

A Constitution Bench of the Supreme Court on Wednesday (December 6) held that an arbitration agreement can bind non-signatories as per the "group of companies" doctrine. "The 'group of companies' doctrine must be retained in the Indian arbitration jurisprudence considering its utility in determining the intention of the parties in the context of complex transactions involving multiple parties and multiple agreements," the Court observed.

A bench comprising Chief Justice of India DY Chandrachud, Justices Hrishikesh Roy, PS Narasimha, JB Pardiwala and Manoj Misra delivered the verdict (Cox and Kings Ltd v. SAP India Pvt Ltd). Non-Signatories can be bound

The Court held that it is not necessary that only persons who are signatories to the arbitration agreement will be bound by the arbitration agreement.

Requirement of a written arbitration agreement does not mean that non-signatories will not be bound by it, provided there is a defined legal relations between the signatories and the non-signatories and that the parties intended to be bound by it by the act of conduct.

"The signature of party in agreement is the most profound expression of consent of person to submit to jurisdiction. However, the corollary that persons who have not signed aren't part of agreement may not always be correct," CJI DY Chandrachud stated while pronouncing the judgment.

Non-signatories, by virtue of their relationship with the signatory parties and their commercial involvement in the subject matter, are not total strangers to the arbitration agreement, the Court held.

Conclusions The conclusions of the judgment pronounced by CJI DY Chandrachud are as follows :

- a. The definition of parties under Section 2(1)(h) read with Section 7 of the Arbitration and Conciliation Act 1996 includes both signatory and non-signatory parties.
- b. The conduct of non-signatories could be an indicator of their consent to be bound by the arbitration agreement.
- c. The requirement of a written arbitration agreement under Section 7 does not exclude the possibility of binding non-signatory parties.

d. Under the Arbitration Act, concept of parties is distinct from the concept of parties "claiming through or under" a party to an arbitration agreement.

e. The underlying basis for the application of the 'group of companies' doctrine rests on maintaining the corporate separateness of the group of companies while determining the common intention of the parties to bind non-signatories to the arbitration agreement.

f. The principle of 'alter ego' or 'piercing the corporate veil' cannot be made the basis for the application of the group of companies doctrine.

g. The principle of 'group of companies' has an independent existence as a principle of law which stems from a harmonious reading of Section 2(1)(h) a

h. To apply the 'group of companies' doctrine, the courts or tribunals have to consider all the cumulative factors as laid down in Discover Enterprise. Resultantly, the principle of single economic unit cannot be the sole basis for invoking the group of companies doctrine.

i. The persons claiming "through or under" can only assert rights in a derivative capacity.

j. The judgment in Chloro Controls India Pvt. Limited v. Seven Trent Water Purification Inc is erroneous to the extent it held that 'non-signatories' can be roped in by invoking the phrase "parties claiming through or under" as the said phrase is used to bind successors-in-interest of party in a derivative capacity.

k. The 'group of companies' doctrine must be retained in the Indian arbitration jurisprudence considering its utility in determining the intention of the parties in the context of complex transactions involving multiple parties and multiple agreements.

l. At the referral stage, the referring court must leave it to the Arbitral Tribunal to decide whether non-signatories are bound by the arbitration agreement.

Justice Narasimha penned a separate but concurring judgment. In May 2022, a three judge bench led by the then CJI NV Ramana had referred the matter to a larger bench after observing that some aspects of the "group of companies" doctrine required

reconsideration, doubting the the decision in Chloro Controls India Pvt. Limited v. Seven Trent Water Purification Inc and subsequent decisions following it. In Mahanagar Telephone Nigam Ltd. v. Canara Bank, (2020) 12 SCC 767, it was observed that the group of companies doctrine can be utilized to bind a third party to an arbitration, if a tight corporate group structure constituting a single economic reality existed.

The reference happened in an application filed under Section 11 of the Arbitration Act by Cox and Kings Ltd (CKL) seeking the appointment of arbitration in an international commercial arbitration in a dispute related to SAP India Private Ltd. The issue was where the German holding company of SAPIPL could be roped in to arbitration.

The referring bench noted that the group of companies doctrine must be applied with caution and mere fact that a non-signatory is a member of a group of affiliated companies will not be sufficient to claim extension of the arbitration agreement to the non-signatory.

Stating that the ratio in Chloro Controls is based on economic convenience rather than correct application of law, the Court referred the aspect of interpretation of 'claiming through or under' as occurring in amended Section 8 of the Arbitration Act qua the doctrine of group of companies to a large Bench.

DR. A.

CURRENT AFFAIRS

Continuation of Fast Track Special Courts

The Union Cabinet, under the leadership of Prime Minister Shri Narendra Modi, has approved the extension of the Fast Track Special Courts (FTSCs) as a Centrally Sponsored Scheme (CSS) from April 1, 2023, to March 31, 2026. This scheme, with ..

SC Calls for Resolution in Tamil Nadu Governor-Bills Impasse

The Supreme Court has intervened in the ongoing impasse between the Tamil Nadu Governor, R N Ravi, and Chief Minister M K Stalin over the delay in clearing Bills sent by the Assembly. The court emphasized that a Governor cannot ..

Advocates (Amendment) Bill, 2023

The Advocates (Amendment) Bill, 2023, was introduced in the Rajya Sabha on August 1, 2023, aiming to make changes to the Advocates Act, 1961. This bill addresses specific issues, including the repeal of certain sections related to touts under the ..

Indian Post Office Bill, 2023

The Rajya Sabha has passed the Post Office Bill, 2023, a significant legislative move aimed at revamping and modernizing the country's postal services. The bill proposes to repeal the archaic Indian Post Office Act, which has been in existence for ..

Reporting Sexual Offences against Minors and the POCSO Act

The recent decision by the Himachal Pradesh High Court regarding the bailability of offences under the Protection of Children from Sexual Offences (POCSO) Act has raised legal questions. Himachal Pradesh High Court's Ruling Nature of the Offence: The court ruled ..

Punjab and Haryana High Court Quashes Haryana's 75% Private Job Reservation Law

The Punjab and Haryana High Court, on November 17, declared the Haryana State Employment of Local Candidates Act, 2020, unconstitutional. The law, which mandated 75% reservation in private jobs for Haryana residents, was deemed discriminatory by the court. This article ..

US Supreme Court Introduces Ethics Code Amid Controversy and Pressure

The US Supreme Court has taken a significant step by releasing its first-ever code of conduct, aiming to address mounting criticism and concerns surrounding ethics scandals involving some of its senior rightwing justices. This 14-page document outlines the "rules and ..

GPS Tracker Anklet: Monitoring Accused Individuals and the Legal Implications

In recent news, Ghulam Mohammad Bhat, accused of offenses under the Unlawful Activities (Prevention) Act (UAPA), was released on bail with a special condition imposed by a National Investigation Agency (NIA) court in Jammu – the affixing of a GPS ..

LATEST JUDGMENTS

Ram Lal Vs. State of Rajasthan & Ors. 2023 Latest Caselaw 907 SC

Citation : 2023 Latest Caselaw 907 SC

Judgement Date : **04 Dec 2023**

Case No : C.A. No.-007935-007935 / 2023

Ram Lal Vs. State of Rajasthan & Ors.

[Civil Appeal No. 7935 of 2023 arising out of SLP (C) No. 33423 of 2018]

K.V. Viswanathan, J.

1. Leave granted.

2. Ram Lal (the appellant) was a Constable with the Rajasthan Armed Constabulary, 9th Battalion, Jodhpur. He was appointed on 15.12.1991. A First Information Report (F.I.R.) was registered on 02.09.2022 against him under Sections 420, 467, 468 and 471 of the IPC. Soon thereafter, on 02.04.2003, a chargesheet in a departmental enquiry was also issued.

3. The identical allegation in both the proceedings was that the Appellant altered his date of birth from 21.04.1974 to 21.04.1972 in his 8th standard marksheet. It was alleged that this was done to project himself as having attained majority at the time of the recruitment. The appellant denied the charges.

4. Asked about the overwriting in the application, the appellant stated that it was possible that in the application form he might have written initially as 21.04.1974 and thereafter corrected it to 21.04.1972. He however maintained that his date of birth was 21.04.1972.

5. Five witnesses were examined in the departmental proceeding. These very five witnesses were also examined in the criminal trial, apart from eight other witnesses who were also examined at the criminal trial. The Enquiry Officer in the departmental proceeding found the charges proved and the Disciplinary Authority, by an order of 31.03.2004, dismissed the appellant from service. The Appellate Authority also dismissed the appeal. Attempts to have the order reviewed and the penalty reconsidered were also in vain.

6. At the criminal trial, the trial Court convicted the appellant for the offence under Section 420 of the IPC and sentenced him to undergo three years' imprisonment alongwith a fine of Rs.5,000/-. However, the Additional District and Sessions Judge, Jodhpur ['Appellate Judge'], vide judgment dated 24.08.2007, allowed the criminal appeal and acquitted the appellant.

7. The appellant, thereafter, represented for his reinstatement. Subsequently, he filed a writ petition in August, 2008 for quashing the dismissal order dated 31.03.2004, the

order of the Appellate Authority, and the orders refusing to review and reconsider the above-said orders.

8. The learned Single Judge, by his judgment dated 13.08.2008, dismissed the writ petition by holding that the standard of proof in a criminal proceeding and departmental proceeding is different. The learned Single Judge found no infirmity in the order of the Disciplinary Authority.

The writ appeal filed by the appellant has also been dismissed by reiterating the findings of the learned Single Judge and by further elucidating as to how the parameters for a judicial review against an order in a departmental proceeding are limited and circumscribed. Being aggrieved, the appellant is in appeal before us.

Questions for consideration:

9. The following two questions arise for consideration: a) Whether the dismissal of the appellant from service pursuant to the departmental enquiry was justified? b) On the facts of the case, what is the effect of the acquittal, ordered by the Appellate Judge in the criminal trial, on the order of dismissal passed in the departmental enquiry?

10. We have heard Mr. Adarsh Priyadarshi, learned counsel for the appellant and Mr. Vishal Meghwal, learned counsel for the State. Learned counsels have reiterated their contentions before the Courts below.

Legal Position:

11. We have examined both the questions independently. We are conscious of the fact that a writ court's power to review the order of the Disciplinary Authority is very limited. The scope of enquiry is only to examine whether the decision-making process is legitimate. [See State Bank of India vs. A.G.D. Reddy, 2023:INSC:766 = 2023 (11) Scale 530].

As part of that exercise, the courts exercising power of judicial review are entitled to consider whether the findings of the Disciplinary Authority have ignored material evidence and if it so finds, courts are not powerless to interfere. [See United Bank of India vs. Biswanath Bhattacharjee , 2022:INSC:117 = (2022) 13 SCC 329]

12. We are also conscious of the fact that mere acquittal by a criminal court will not confer on the employee a right to claim any benefit, including reinstatement. (See Deputy Inspector General of Police and Another v. S. Samuthiram, (2013) 1 SCC 598).

13. However, if the charges in the departmental enquiry and the criminal court are identical or similar, and if the evidence, witnesses and circumstances are one and the same, then the matter acquires a different dimension. If the court in judicial review concludes that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge, the Court in judicial review can grant redress in certain circumstances.

The court will be entitled to exercise its discretion and grant relief, if it concludes that allowing the findings in the disciplinary proceedings to stand will be unjust, unfair and oppressive. Each case will turn on its own facts. [See G.M. Tank vs. State of Gujarat & Others, (2006) 5 SCC 446, State Bank of Hyderabad vs. P. Kata Rao, (2008) 15 SCC 657 and S. Samuthiram (supra)]

Discussion:

Validity of the Disciplinary proceeding - Question No. 1:

14. A brief analysis of the facts of the case is essential. The origin of this dispute, which does not inspire confidence at all, is as follows. The appellant's cousin Shravan Lal (PW-4 in the departmental enquiry and PW-6 in the criminal case), deposed as under before the enquiry officer:-

"Stated on enquiry that about 13 months ago, I was operating engine at Well. On that day at about 3.00 p.m., Ramlal after drinking liquor, came at well and switched off the engine. Thereafter, Ramlal abused me and scuffled with me and said that today I will operate the engine and you cannot do anything to me. I have received job by fooling the Government. When I enquired him that how you did that, then, Ramlal told me that I have received job by altering my date of birth as 21.04.1972 in my marksheet, whereas, my date of birth was 21.04.1974.

Thereafter I went to school and enquired about this fact, whereupon I came to know that his date of birth was 21.04.1974. Due to this reason, I produced an application before the Superintendent of Police, Ajmer and made one report to the Commandant, 9th Battalion, RAC, Tonk and I also made one report to the Hon'ble Chief Minister and one report to DIG, RAC, Rajasthan, Jaipur."

An F.I.R. was registered on 02.09.2002. A charge-sheet in the departmental proceeding was issued on 02.04.2003. It will be relevant to extract the two charges in the disciplinary proceedings:

"Charge No.1:-

In the year 1991, an application for appointment on the post of constable was made by you, alongwith which, Marksheet of 8th pass issued by Government Secondary School, Tiloniya (Ajmer), bearing Roll No. 323 and Admission No. 2314, in which, your date of birth was mentioned as 21.04.1974, but you by altering it to 21.04.1972, fraudulently got recruited on the post of Constable.

Charge No.2:-

As a result of altering your date of birth from 21.04.1974 to 21.04.1972 in the Marksheet issued by the Government Secondary School, Tiloniya (Ajmer), Crime No. 183/02 under Section 420, 467, 468, 471 IPC was registered against you in P.S. Mandor, District - Jodhpur."

15. Five witnesses were examined in the departmental enquiry, namely, PW-1 Jagdish Chand, Principal in Government Secondary School, Village Tiloniya, PW-2 Bhawani Singh (constable who was tasked to bring the school records), PW-3 Karan Sharma, who was Circle Officer and had recorded the statement of Shравan Lal; PW-4 Shравan Lal and PW-5 Raj Singh who conducted the investigation of the criminal case.

16. The evidence of PW-5/Raj Singh, as set out in the enquiry report taken as it is, is significant since he clearly disproved the charge. He stated the following in the cross-examination before the enquiry officer:

"Raj Singh you conducted investigation of Crime No. 102 and sent the copy to Commandant, 9th Battalion, RAC, Tonk, what documents you sent alongwith the same - The documents which were sent by me were copy of FIR, copy of chargesheet which was submitted in the Court and statements of witnesses recorded during the investigation and documents; whose photocopies were also given to the accused.

Whether you had sent the copies of statements recorded in the aforesaid case to the Commandant - I did not send the copies to Commandant Sahab. Which officer had submitted the chargesheet, order of result in the Court - the then SHO of P.S. Mandor, District - Jodhpur City namely Sh. Ram Pratap submitted result of investigation, order and chargesheet against the accused, in the Court."

During the investigation, you had recorded statements of Dharmendra Kumar Jatav and Jairam Gurjar, did you record more statements and whether you would identify the copies of those statements - Yes, I recorded the statement of witnesses as it is. And I am producing herewith the statements of both the aforesaid witnesses.

Whether those have been written by yourself - Yes, those statements have been written by me, which are Exh. D-1 and Exh. D-2. In Exh. D-1, I recorded statement of Teacher namely Rakishan Dev Murari on A to B part and I filled the marksheet of Ramlal, wherein, date of birth of Ramlal is mentioned as 21.04.1972 in C to D part, which has been written as per the dictation of Checking Teacher Ramkishan Dev Murari.

Date of birth of 21.07.1972 mentioned on E to F part, was not mentioned in deliberate manner, in fact, same has been written due to the human error, whether you are agree with this statement - This statement is correct, whereas, at the time of filling up form for recruitment in Police RAC, Ramlal could enclose T.C. of 9th Pass, and he was studying in 10th class."

Thereafter, referring to the Exh. D-2 [Statement of Jairam Gurjar], he deposed as under:-

"Similarly, in Exh. D-2, on A to B part, you have shown me the photocopy of 8th class marksheet of Ramlal S/o Sh. Tejuram Chaudhary, R/o Tiloniya, on which, signatures of it's issuer i.e. Teacher namely Sh. Dharmendra Kumar, Ramkishan Dev Murari and Headmaster Sh. Vishnu Miyani are mentioned. I am acquainted with their signatures."

17. Most importantly dealing with the 8th class marksheet of the appellant, which formed the basis for his application seeking appointment as Constable, PW-5/Raj Singh stated as under:-

"The 8th class marksheet of Ramlal enclosed in the documents, which is Exh. P-3, (sic) in which, whether any alteration has been found in the date of birth anywhere, and whether date of birth has been mentioned as 21.04.1972 therein - Yes, no alteration has been made in the marksheet of 8th class and date of birth is 21.04.1972."

18. It is very clear from the above that no alteration was found in the Appellant's 8th class marksheet (which forms part of the enclosed documents sent to the Commandant) and the date of birth mentioned on it was 21.04.1972. Reference to 'P-3' in the above extract appears to be a mistake. The chargesheet and documents enclosed were Ex. P-12/1 to P-12/12. The defence also exhibited the original 8th class marksheet separately as Exh. D-3, as is clear from the chart of Exhibits set out in the enquiry report.

19. The Enquiry Officer, after setting out the depositions of the witnesses, set out the chart of the "P" series Exhibits and the Exhibits of the delinquent, namely the "D" series, and without any further discussion or marshaling of the evidence recorded the following with regard to charge-1:

"On perusal of statement of witnesses namely PW-1 PW- 2, PW-3, PW-4, PW-5 and Exh. P-1 to P-12, it is clear that correct date of birth of delinquent constable was 21.04.1974. When, delinquent constable submitted application for recruitment on the post of Constable, at that time, he did not complete the age of 18 years, therefore, due to the apprehension of rejection of his application due to the less age, delinquent constable has altered his date of birth as 21.04.1972 from 21.04.1974, therefore, Charge No.1 stands proved.

Delinquent Constable has also passed 10th class, whose marksheet is Exh. P-4, in which, his date of birth is mentioned as 21.04.1974."

In so far as charge-2 was concerned, it was merely noticed that challan had been filed in the criminal case as on 28.02.2004, the date of enquiry report, and that the trial had not concluded.

20. In the operative part of the enquiry report under the head, 'conclusions', there is no reference to the 8th class marksheet, (which was part of the enclosed documents sent by Constable Raj Singh with the chargesheet) or to Exh.D-3 [the original 8th class marksheet] exhibited by the defence. There is also no reference to the statement of Raj Singh PW-5 in the enquiry, who had acknowledged that there was no alteration in the marksheet of the 8th class.

What is referred to in the chart of exhibits are letter of Jagdish Chand (Ex.P1); the duplicate marksheet of 8th class issued by Jagdish Chand (Ex.P2); the statement of Shraavan Lal (Ex-P3); 10th class marksheet of Secondary Education Board Rajasthan, Ajmer, (Ex.P4); preliminary enquiry dated 16.10.2002 by Circle Officer, Kishangarh (Ex.P5); FIR No. 183/2000, (Ex.P6); application submitted by Ram Lal for recruitment to

the post of constable (Ex.P-7); letter of appointment dated 08.11.1991 (ExP-8); verification letter filed by Ramlal (Ex.P9); appointment order dated 16.12.1991, (Ex-P-10); letter of Government School Tiloniya, Ex.P-11; and chargesheet dated 24.04.2003, Ex.P-12.

21. It is very clear that relevant and material evidence being, the deposition of PW-5/Raj Singh; the marksheet of 8th class of the appellant [enclosed to the chargesheet] and the original marksheet independently marked as Ex. D3 by the defence have been completely left out in the discussion and consideration.

Inference has been drawn about the proof of the charges by ignoring crucial, relevant and material evidence which had come on record. The evidence of PW-5 Raj Singh and the marksheet enclosed in the documents annexed to the chargesheet and the original marksheet marked as Ex. D-3, were materials having a direct bearing on the charge. The Disciplinary Authority has merely reiterated the reasoning in the enquiry report. Equally so are the findings of the appellate authority.

It is well settled that if the findings of the disciplinary authorities are arrived at after ignoring the relevant material the court in judicial review can interfere. It is only to satisfy ourselves to this extent, that we have scrutinized the material to see as to what was reflected in the record. We are satisfied that the disciplinary proceedings are vitiated and deserves to be quashed.

22. In this scenario, we are inclined to accept the explanation given by the appellant that overwriting in the application form was only due to correction of an inadvertent error. As long as the original 8th standard marksheet reflected his date of birth as 21.04.1972 and there is no correction or manipulation in that document, the appellant cannot be penalised.

Effect of Acquittal in the Criminal Proceeding - Question No. 2:

23. With this above background, if we examine the criminal proceedings the following factual position emerges. The very same witnesses, who were examined in the departmental enquiry were examined in the criminal trial. Jagdish Chandra, Bhawani Singh, Shravan Lal, Raj Singh and Karan Sharma were examined as PW2, PW3, PW6, PW9 and PW13 respectively at the criminal trial. Apart from them, eight other witnesses were also examined.

The gravamen of the charge in the criminal case was that the appellant had submitted an application for recruitment along with his marksheet and he, by making alteration in his date of birth to reflect the same as 24.04.1972 in place of 21.04.1974, and obtained recruitment to the post of Constable. Though the Trial Court convicted the appellant under Section 420 of IPC, the Appellate Court recorded the following crucial findings while acquitting the appellant:

"Mainly the present case was based on the documents to this effect whether the date of birth of accused is 21.04.1972 or 21.04.1974. Exh. P-3 is original Marksheet, in which, the date of birth of accused has been shown as 21.04.1972 and same has also been

proved by the witnesses examined on behalf of the prosecution. Whatever the documents have been produced before the Court regarding the date of birth of 21.04.1974 are either the letters of Principal or are Duplicate T.C. or Marksheets.

Neither the prosecution has produced any such original documents in the Subordinate Court to this effect that when the admission form of accused was filled, what date of birth was mentioned by the accused in it, what was the date of birth in Roll Register of School, what date of birth was mentioned by accused in the Examination Form of Secondary, and nor after bringing the original records from the concerned witnesses, same were got proved in the evidence.

In these circumstances, this fact becomes doubtful that date of birth of accused was 21.04.1974, and accused is entitled to receive it's benefit. In the considered opinion of this Court, the conviction made by the Ld. Subordinate Court merely on the basis of oral evidences and letters or duplicate documents, is not just and proper. It is justifiable to acquit the accused. Resultantly, on the basis of aforesaid consideration, the present appeal filed by the Appellant/Accused is liable to be allowed."

[Emphasis supplied]

24. What is important to notice is that the Appellate Judge has clearly recorded that in the document Exh. P-3 - original marksheet of the 8th standard, the date of birth was clearly shown as 21.04.1972 and the other documents produced by the prosecution were either letters or a duplicate marksheet. No doubt, the Appellate Judge says that it becomes doubtful whether the date of birth was 21.04.1974 and that the accused was entitled to receive its benefit.

However, what we are supposed to see is the substance of the judgment. A reading of the entire judgment clearly indicates that the appellant was acquitted after full consideration of the prosecution evidence and after noticing that the prosecution has miserably failed to prove the charge [See S. Samuthiram (Supra).]

25. Expressions like "benefit of doubt" and "honorably acquitted", used in judgments are not to be understood as magic incantations. A court of law will not be carried away by the mere use of such terminology. In the present case, the Appellate Judge has recorded that Exh. P-3, the original marksheet carries the date of birth as 21.04.1972 and the same has also been proved by the witnesses examined on behalf of the prosecution.

The conclusion that the acquittal in the criminal proceeding was after full consideration of the prosecution evidence and that the prosecution miserably failed to prove the charge can only be arrived at after a reading of the judgment in its entirety. The court in judicial review is obliged to examine the substance of the judgment and not go by the form of expression used.

26. We are satisfied that the findings of the appellate judge in the criminal case clearly indicate that the charge against the appellant was not just, "not proved" - in fact the charge even stood "disproved" by the very prosecution evidence.

As held by this Court, a fact is said to be "disproved" when, after considering the matters before it, the court either believes that it does not exist or considers its non-existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it does not exist. A fact is said to be "not proved" when it is neither "proved" nor "disproved" [See Vijayee Singh and Others v. State of U.P. (1990) 3 SCC 190].

27. We are additionally satisfied that in the teeth of the finding of the appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in G.M. Tank (supra).

28. Apart from the above, one other aspect is to be noted. The Enquiry Officer's report makes a reference to the appellant passing 10th standard, and to a 10th standard marksheet exhibited as Exh. P-4 referring to the date of birth as 24.07.1974. Jagdish Chandra-PW1 (in the departmental enquiry) clearly deposed that since the appellant was regularly absent from Class 10, his name was struck off and he did not even pass 10th standard. The appellant has also come out with this version before the disciplinary authority, stating that the 10th class certificate of Ram Lal produced before the Enquiry Officer, is of some other Ram Lal.

29. This issue need not detain us any further because it is not the case of department that the appellant sought employment based on 10th standard marksheet. It is their positive case that the appellant sought employment on the basis of his 8th standard marksheet. Shravan Lal-PW-4 in the departmental enquiry had also furnished the 10th standard marksheet procured from the Secondary Education Board, Ajmer. In cross-examination, on being asked, he admitted that the appellant was recruited on the basis of 8th standard marksheet, and he admitted that there was no alteration in the 8th standard marksheet.

30. In view of the above, we declare that the order of termination dated 31.03.2004; the order of the Appellate Authority dated 08.10.2004; the orders dated 29.03.2008 and 25.06.2008 refusing to reconsider and review the penalty respectively, are all illegal and untenable.

31. Accordingly, we set aside the judgment of the D.B. Special Appeal (Writ) No.484/2011 dated 05.09.2018. We direct that the appellant shall be reinstated with all consequential benefits including seniority, notional promotions, fitment of salary and all other benefits.

As far as backwages are concerned, we are inclined to award the appellant 50% of the backwages. The directions be complied with within a period of four weeks from today.

32. The appeal is allowed in the above terms. No order as to costs.

.....J. (J.K. Maheshwari)

.....J. (K.V. Viswanathan)

Mohit Singhal & Anr. Vs. State of Uttarakhand & Ors. 2023 Latest Caselaw 895 SC

Citation : 2023 Latest Caselaw 895 SC

Judgement Date : *01 Dec 2023*

Case No : CrL.A. No.-003578-003578 / 2023

Mohit Singhal & Anr. Vs. State of Uttarakhand & Ors.

[Criminal Appeal No. 3578 of 2023]

Abhay S. Oka, J.

1. The appellants were shown as accused in the First Information Report registered at the instance of the third respondent for an offence punishable under Section 306 of IPC (for short, 'IPC').

2. It is an admitted position that the third respondent, who is the widow of deceased Ashok Kumar, had borrowed a sum of Rs.40,000/- from one Sandeep Bansal @ Sandeep Lala. The first appellant is the son of the said Sandeep Bansal. The third respondent, in her complaint to the police, stated that subsequently, she borrowed a sum of Rs.60,000/- from Sandeep. While paying the said amount, Sandeep deducted a sum of Rs.15,000/- towards interest.

3. The third respondent in her complaint stated that on 8th June 2017, she received a call from Sandeep. He abused her for not repaying the loan. The third respondent sought time of two months to repay the loan. On 15th June 2017, the first appellant came to the shop of the third respondent, where her husband was sitting.

The first appellant demanded money, and the deceased husband of the third respondent pleaded with him to give him some time within which he could arrange for the money. It is alleged that the first appellant abused the deceased and assaulted the deceased with a belt. He also assaulted the third respondent and the mother of the deceased. It is alleged that the first appellant threatened the third respondent to abduct her daughter.

4. The third respondent alleges that Sandeep had taken 10 to 12 cheques from her. One cheque was dishonoured, so Sandeep issued a legal notice dated 27th June 2017 to the deceased. The third respondent alleges that her husband was under tension due to these events and, therefore, he was very upset.

She alleges that due to the acts of the appellant of threatening him, the deceased took recourse to the extreme step of committing suicide. The prosecution is also relying upon the alleged suicide note written by the deceased on 30th June 2017. The deceased ended his life on 4th July 2017. By the impugned judgment, the High Court rejected the prayer of quashing the offence.

SUBMISSIONS

5. The submission of the learned counsel appearing for the appellants is that even going by the case made out by the third respondent, the deceased was under tension as he could not repay the amount borrowed by the third respondent and had received a notice from Sandeep, as cheque issued to Sandeep was dishonoured. Learned counsel submitted that taking the suicide note and complaint of the third respondent as correct, by no stretch of the imagination, an offence punishable under Section 306 of IPC is made out.

6. The learned counsel appearing for the State and learned counsel appearing for the respondents supported the impugned judgment. Their submission is that the allegations in the suicide note are sufficient to make out a prima facie case against the appellants. Their submission is that the issue of whether the offence under Section 306 of IPC is made out can be decided only after evidence is adduced.

OUR VIEW

7. The suicide note records that the third respondent had borrowed a sum of Rs.60,000/-. According to the deceased, he had paid more than half of the amount to Sandeep. The suicide note records that as he could not pay the rest of the money, the first appellant came to his house and started abusing him.

He stated that the first appellant had assaulted him, and therefore, he complained to the police. He further noted that the business of giving money on interest was prospering. He stated that the third respondent is not a prudent woman, and due to her habit of intoxication and due to her conduct, she got trapped in this. In the suicide note, it is further stated that the first appellant has made his life a hell.

8. According to the complaint of the third respondent, the incident in her shop of the first appellant threatening and assaulting her and her husband was on 15th June 2017. After that, notice under Section 138 of the Negotiable Instruments Act, 1881, was issued by Sandeep to the deceased on 27th June 2017. The suicide note was written three days after that, on 30th June 2017.

The deceased committed suicide three days thereafter. Neither in the complaint of the third respondent nor in the suicide note, it is alleged that after 15th June 2017, the appellants or Sandeep either met or spoke to the third respondent and her deceased husband. Section 306 of the IPC makes abetment to commit suicide as an offence. Section 107 of the IPC, which defines the abetment of a thing, reads thus:

"Section 107 - Abetment of a thing.- A person abets the doing of a thing, who-

First.-Instigates any person to do that thing; or

Secondly.-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that thing.

Explanation 1.- A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing."

(underline supplied)

9. In the facts of the case, secondly and thirdly in Section 107, will have no application. Hence, the question is whether the appellants instigated the deceased to commit suicide. To attract the first clause, there must be instigation in some form on the part of the accused to cause the deceased to commit suicide. Hence, the accused must have mens rea to instigate the deceased to commit suicide. The act of instigation must be of such intensity that it is intended to push the deceased to such a position under which he or she has no choice but to commit suicide. Such instigation must be in close proximity to the act of committing suicide.

10. In the present case, taking the complaint of the third respondent and the contents of the suicide note as correct, it is impossible to conclude that the appellants instigated the deceased to commit suicide by demanding the payment of the amount borrowed by the third respondent from her husband by using abusive language and by assaulting him by a belt for that purpose.

The said incident allegedly happened more than two weeks before the date of suicide. There is no allegation that any act was done by the appellants in the close proximity to the date of suicide. By no stretch of the imagination, the alleged acts of the appellants can amount to instigation to commit suicide. The deceased has blamed the third respondent for landing in trouble due to her bad habits.

11. Therefore, in our considered view, the offence punishable under Section 306 of IPC was not made out against the appellants. Therefore, the continuation of their prosecution will be nothing but an abuse of the process of law.

12. Accordingly, we set aside the impugned judgment and quash the summoning order dated 23rd January 2019 in Criminal Case No. 454 of 2019 passed by the learned Additional Chief Judicial Magistrate Ist, Dehradun, District Dehradun.

13. The appeal is, accordingly, allowed.

.....J. (Abhay S. Oka)

.....J. (Pankaj Mithal)

Bani Amrit Kaur Vs. State of Haryana and Ors. 2023 Latest Caselaw 901 SC

Citation : 2023 Latest Caselaw 901 SC

Judgement Date : **30 Nov 2023**

Case No : C.A. No.-003322-003322 / 2015

Bani Amrit Kaur Vs. State of Haryana and Ors.

[Civil Appeal No. 3322 of 2015]

Rajesh Bindal, J.

1. The successor-in-interest of the plaintiff is before this Court challenging the judgment and decree¹ of the High Court² in Second Appeal.³ Vide aforesaid judgment, the judgments and decrees of the courts below were reversed.

2. The predecessor-in-interest of the appellant- Sukhjot Singh (deceased) filed a Suit⁴ challenging the first sale deed⁵, which was got registered by his father-Gurinder Singh (now deceased). The first sale deed was registered for the land measuring 166 kanals and 15 marlas in favour of Harjit Singh, who subsequently sold 118 kanals and 06 marlas to the State of Punjab (now falling in the State of Haryana), vide second registered sale deed⁶ for total consideration of ₹14,784/- . The balance land was transferred by Harjit Singh in favour of his mother, namely, Smt. Davinder Kaur. The possession of the land was delivered to the buyers.

3. Challenging the first sale deed, the predecessor-in-interest of the appellant filed a Civil Suit on 03.10.1972 on the plea that his father sold the land when he was minor without taking permission of the Court in terms of Section 8 of the Act.⁷

The same was not for need and welfare of the minor as nothing is stated therein. Harjit Singh, first buyer of the land from late-Gurinder Singh, did not contest the litigation as he had already transferred the land in favour of the State and his mother. The Trial Court⁸ decreed the suit. The first Appellate Court⁹ upheld the judgment and decree of the Trial Court, however the High Court in Second Appeal reversed the judgments and decrees of the courts below.

4. Learned counsel for the appellant submitted that the finding recorded by the High Court with reference to the date of birth of the appellant is erroneous and against the documentary evidence produced on record. Merely oral evidence has been relied upon which was just an estimation of age. He further referred to a certificate of Doon School showing the date of birth of late-Sukhjot Singh as 16.08.1951.

If counted from that date, legal notice under Section 80 C.P.C. was issued by late-Sukhjot Singh to the State well before expiry of three years and the suit was filed within three years and two months from the date of attaining the age of majority by late-Sukhjot Singh. The same could not be dismissed as time barred.

The High Court had gone beyond the pleaded case of the State. Once there was no permission from the Court to sell the property of the minor and the sale was not for the need and welfare of the minor, the same was rightly set aside by the Trial Court and the first Appellate Court.

5. On the other hand, learned counsel for the State submitted that from the facts of the case, it is evident that it is a dishonest litigation initiated with a view to extract more money from the State. There were number of other sale deeds registered in the similar fashion as was done in the case of sale in favour of Harjit Singh from whom the State had purchased the same by way of second registered sale deed. The consideration as settled at that time was duly paid.

Even if the date of birth of late-Sukhjot Singh is taken as 16.08.1951, still the suit filed by him was not maintainable as there is no document produced on record by late-Sukhjot Singh while filing the suit or in evidence that the property was ever registered in his name or had fallen to his share. It is merely a recital in the first sale-deed executed by Late Gurinder Singh in favour of Harjit Singh, where it is mentioned that the sale-deed is being registered as a guardian of Sukhjot Singh who was minor at that time.

6. He further submitted that it was a bona fide purchase by the State from Harjit Singh who was the recorded owner. In the revenue record, the land was shown in the name of late-Sukhjot Singh. In any case, it is the admitted fact by the appellant that late-Sukhjot Singh was studying in Doon School, Dehradun and the certificate of date of birth from that school has been produced on record. The sale consideration was ₹14,784/-, from which it can very well be taken that the land was sold for need and welfare of the child who was minor at that time and studying in Doon School.

It was further argued that reliance is sought to be placed on Section 56 of the Act but the fact remains that the Act came into force on 25.08.1956 and the first sale deed was registered on 28.09.1956. It was merely one month after the Act was enacted. Though there is no estoppel against the statute but still the fact remains that in those times, the people may not be even aware of the provisions of the new Act for making compliance thereof, especially the father of late- Sukhjot Singh, who executed the first sale deed on 28.09.1956.

In case any such permission was required, it was his duty to have taken the same. The recital in the first sale deed executed by late-Gurinder Singh, may be for the reason that on account of agrarian response, the family having huge chunk of land, who claim themselves to be Jagirdars, wanted to sell the same from being declared surplus.

7. Heard learned counsel for the parties and perused the relevant referred record.

8. The predecessor-in-interest of the appellant- Sukhjot Singh (deceased) filed the civil suit challenging the first sale deed relying on the recital in the sale deed wherein Gurinder Singh mentioned that he is executing the sale on behalf of his minor son- Sukhjot Singh.

Otherwise, there is no pleading or document produced on record by the plaintiff to show that the property in dispute was ever recorded in the name of late-Sukhjot Singh or it had fallen to his share ever as Gurinder Singh was survived by three sons and two daughters. The first sale deed was got registered by him during his lifetime as he expired on 08.08.1968.

9. As far as the date of birth of late-Sukhjot Singh (now deceased) is concerned, though the High Court in its judgment has referred to oral evidence while disbelieving the documents placed on record by the predecessor-in-interest of the appellant, however, we may not subscribe to the material relied upon by the High Court to record that finding as the plaintiff had claimed his date of birth as 16.8.1951 and it had come only in his oral evidence that in the year 1968, he was about 18 years old.

The additional document in the form of a certificate from Doon School, Dehradun has been produced by the appellant before this court which shows that the date of birth of the plaintiff was 16.08.1951, as was claimed in the suit filed by Sukhjot Singh. If taken from that date, in our opinion, the suit as such may not be time-barred as it was filed after issuance of notice under Section 80 C.P.C. within a period of three years and two months from the date of registration of sale deed.

10. However, otherwise, we find the suit to be totally misconceived. There is no document placed on record by the plaintiff showing his right in the property as on the date when Gurinder Singh (deceased) got the first sale deed registered in favour of deceased- Sukhjot Singh, who is trying to derive title only from the recital in the first sale deed that the property is being sold as a guardian of the minor.

There is no pleading or document produced to show that the property in question was ever transferred in his name, in a family partition and the corresponding shares of other daughters and sons of late-Gurinder Singh. In the absence thereof, in our opinion, in a litigation of the type where a sale deed registered in 1956 was sought to be challenged after 16 years by the plaintiff may be to extract some more money from the State, which had purchased the same from the 1st purchaser.

11. Even otherwise, from the certificate produced by the plaintiff on record showing that he was studying in Doon School, Dehradun would clearly establish that the property may have been sold for need and welfare of the child to provide him best education. The consideration mentioned in the second sale deed was merely for ₹14,784/-.

12. The burden in such cases is heavy on the plaintiff who seeks to challenge the sale transaction entered into 16 years back.

13. The transaction in favour of the State may otherwise be protected in terms of Section 41 of the Transfer of Property Act, 1882 as the stand taken before the court was that there was due diligence before the sale transaction was entered into and there is nothing on record produced by the plaintiff to dislodge the stand taken by the State.

14. To resolve the issue, this Court impressed upon the authorities to settle the issue. As transpired on the date of hearing, the State without prejudice to its rights had offered

to pay ₹1,00,00,000/- more to the appellant, which was not acceptable to her as it was claimed that the present value of the property may be more than ₹15,00,00,000/-. She seems to be too greedy.

15. For the reasons mentioned above, may be for different reasons, we do not find that any case is made out for interference in the present appeal. The same is accordingly dismissed.

.....J. [Vikram Nath]

LATEST NOTIFICATION



उच्च न्यायालय मध्यप्रदेश, जबलपुर

// विज्ञापन //

विज्ञापन क्रमांक : 113/परीक्षा/सी.जे./2022

दिनांक- 17/11/2023

व्यवहार न्यायाधीश, कनिष्ठ खण्ड (प्रवेश स्तर) भर्ती परीक्षा-2022

- ऑनलाइन आवेदन करने की प्रारंभ तिथि :- 17 नवम्बर, 2023 (09:00 P.M. बजे से)
- ऑनलाइन आवेदन करने की अंतिम तिथि (भुगतान सहित) :- 18 दिसम्बर, 2023 (09:00 P.M. बजे तक)
- आवेदन में त्रुटि सुधार करने की प्रारंभ तिथि :- 22 दिसम्बर, 2023 दोपहर 12:00 (P.M.) बजे से
- आवेदन में त्रुटि सुधार करने की अंतिम तिथि :- 24 दिसम्बर, 2023 रात्रि 11:55 (P.M.) बजे तक
- ऑनलाइन प्रारम्भिक परीक्षा की तिथि :- 14 जनवरी, 2024 (रविवार)
- ऑनलाइन प्रारम्भिक परीक्षा का परिणाम घोषित करने की तिथि :- 26 फरवरी, 2024 (सोमवार)
- मुख्य परीक्षा की तिथि :- 30 मार्च, 2024 (शनिवार) एवं 31 मार्च, 2024 (रविवार)
- मुख्य परीक्षा का परिणाम घोषित करने की तिथि :- 10 मई, 2024 (शुक्रवार)
- साक्षात्कार की तिथियां :- सफल अभ्यर्थियों की संख्या के अनुसार बाद में अधिसूचित की जाएंगी।
- अंतिम परिणाम घोषित करने की तिथि :- अंतिम साक्षात्कार समाप्त होने की दिनांक से 10 दिवस के भीतर।

(9) विज्ञापित पदों हेतु ऑनलाइन आवेदन पत्र उच्च न्यायालय मध्यप्रदेश की वेबसाइट www.mpnc.gov.in पर विहित कालावधि में उपलब्ध रहेगा।

(10) अभ्यर्थी ऑनलाइन आवेदन पत्र भरने के पूर्व विज्ञापन में दिये गये सभी निर्देश व जानकारी सावधानीपूर्वक पढ़ व समझ लें।

खंड – "ख"

पदों का विवरण

- (1) श्रेणी :- व्यवहार न्यायाधीश, कनिष्ठ खंड (प्रवेश स्तर)
- (2) वेतनमान :- रु. 77840-136520 लेवल J-1
- (3) रिक्त पदों की संख्या :- व्यवहार न्यायाधीश, कनिष्ठ खण्ड (प्रवेश स्तर) के पदों के लिए आवेदन पत्र आमंत्रित किये जा रहे हैं। वर्गवार पदों की संख्या निम्नानुसार है :-

क्र.	संवर्ग	वर्ष 2022 के पदों की संख्या	बैकलॉग पदों का विवरण
1	अनारक्षित	31	17
2	अनुसूचित जाति	09	11
3	अनुसूचित जनजाति	12	109
4	अन्य पिछड़ा वर्ग	09	01
योग		61	138 (06 दिव्यांग सहित)

नोट :-

1. वर्ष 2022 की रिक्तियों में से 6 प्रतिशत (छह प्रतिशत) पद, प्रमस्तिष्क घात को अपवर्जित करते हुए चलन दिव्यांगता, जिसमें रोगमुक्त कुष्ठ, बौनापन, पेशीय दुष्पोषण और तेजाब आक्रमण सम्मिलित है, पीड़ित व्यक्तियों के लिए, जैसा कि दिव्यांगजन अधिकार अधिनियम, 2016 की धारा 34 के अधीन विनिर्दिष्ट है, केवल प्रारंभिक भर्ती के समय, क्षैतिज रूप से आरक्षित रखे जाएंगे;

परन्तु यदि उपयुक्त अभ्यर्थियों के उपलब्ध न होने के कारण दिए गए भर्ती वर्ष

MCQ'S

Q1: Section 112 of Evidence Act applies when there is a dispute regarding

- (a)maternity of a child
- (b)paternity of a child
- (c)both (a) & (b)
- (d)either (a) or (b).

Q2: Section 114 of Evidence Act provides for certain

- (a)presumption of facts
- (b)rebuttable presumptions of law
- (c)Irrebuttable presumption of law
- (d)presumption of facts & law both.

Q3: Presumption

- (a)is an evidence
- (b)is a proof
- (c)shows on whom the burden of proof lies
- (d)all the above.

Q4: Presumption under section 113A of Evidence Act can be raised if the suicide by the married woman is committed

- (a)within 7 years of marriage
- (b)within 5 years of marriage
- (c)within 3 years of marriage
- (d)within 1 year of marriage.

Q5: Presumption under section 114 of Evidence Act can be raised having regard to the common course of

- (a)natural events
- (b)human conduct
- (c)public and private business
- (d)all of the above.

Q6: The doctrine of estoppel is a

- (a)substantive law
- (b)rule of equity
- (c)rule of evidence
- (d)law of pleadings.

Q7: Estoppel is a rule of

- (a)civil action
- (b)criminal action
- (c)both civil and criminal action
- (d)only (b) and not (a).

Q8: The estoppel in section 115 of Evidence Act

- (a)is an estoppel by record
- (b)is an estoppel by deed
- (c)is n estoppel by pais
- (d)all the above.

Q9: Estoppel can be

- (a)by silence
- (b)by negligence
- (c)by election
- (d)all the above.

Q10: Estoppel

- (a) is a cause of action in itself
- (b) creates a cause of action
- (c) both (a) & (b) are correct
- (d) neither (a) nor (b) is correct.

Q11: Rule of estoppel of tenants and of licence of person in possession is contained in

- (a) section 116 of Evidence Act
- (b) section 117 of Evidence Act
- (c) section 118 of Evidence Act
- (d) section 119 of Evidence Act.

Q12: U/S 116 of Evidence Act, the tenant is estopped

- (a) from denying the title to the property, of the landlord
- (b) from denying the title to the property, of the actual owner
- (c) both (a) & (b)
- (d) only (a) & not (b).

Q13: U/S 118 who amongst the following are competent witness

- (a) child
- (b) accused
- (c) lunatic
- (d) all the above.

Q14: Husband & wife both are competent witness for & against each other

- (a) in civil proceedings
- (b) in criminal proceedings

- (c) in both civil & criminal proceedings
- (d) neither in civil nor in criminal proceedings.

Q15: Privilege in respect of judges & magistrates under section 121 of Evidence Act relates to

- (a) questions which a witness cannot be compelled to answer
- (b) question which a witness cannot be permitted to answer
- (c) both (a) & (b)
- (d) neither (a) nor (b).

16: Privilege in respect of husband & wife under section 122 of Evidence Act relates to

- (a) question which a witness cannot be compelled to answer
- (b) question which a witness cannot be permitted to answer
- (c) both (a) & (b)
- (d) only (b) & not (a).

Q17: A communication made to the spouse during marriage, under section 122 of Evidence Act

- (a) remains privileged communication after the dissolution of marriage by divorce or death
- (b) does not remain privileged after the dissolution of marriage by divorce or death
- (c) does not remain privileged after the dissolution of marriage by divorce, but remains privileged even after death
- (d) remains privileged after the dissolution of marriage by divorce but not so on after death.

Q18: A husband or wife are permitted to disclose any communication between them during marriage

- (a)in civil proceedings between the parties
- (b)in criminal proceedings between the parties
- (c)in matrimonial proceedings between the parties
- (d)either (a) or (b).

Q19: Protection U/S 122 of Evidence Act is

- (a)confined to confidential communication and not applicable to general communication between the husband &wife
- (b)not confined to confidential communications only but extends to communication of whatever nature
- (c)confined to confidential communication and may be extended to communications of general nature
- (d)only (c) and not (a) or (b).

Q20: Communication in respect of the affairs of the state are privileged communication on the grounds of public policy

- (a)U/S 123 of Evidence Act
- (b)U/S 124 of Evidence Act
- (c)U/S 125 of Evidence Act
- (d)U/S 126 of Evidence Act

Q21: Section 124 of Evidence Act provides for privileged in respect of

- (a)professional communications
- (b)official communications

(c)communications as to information of commission of offence

(d)none of the above.

Q22: The professional privilege U/S 126 of Evidence Act is available in respect of communication made

- (a)for the purposes of professional employment
- (b)in the cause of employment
- (c)both (a) & (b)
- (d)neither (a) nor (b).

Q23: The protection U/S 126 of Evidence Act extends to

- (a)communication made in furtherance of any illegal design
- (b)any fact observed showing the communication of any offence or fraud committed since commencement of employment
- (c)both (a) & (b)
- (d)neither (a) nor (c).

Q24: An accomplice is a person

- (a)who participates in the commission of the crime for which the accused has been charged
- (b)who is a pretended confederate
- (c)all the above
- (d)both (a) & (b).

Q25: Question as to admissibility of evidence

- (a)should be decided as they arise
- (b)should be reserved until judgment

(c) may be decided as they arise or may be reserved until judgment

(d) either (b) or (c).

Q26: Re-examination of a witness

(a) shall be by the party calling the witness

(b) shall be by the adverse party

(c) both (a) & (b)

(d) either (a) or (b).

Q27: Cross-examination of witness

(a) must relate to relevant facts and has to be confined to what the witness testified in examination in chief

(b) must relate to relevant facts but need not be confined to what the witness testified in examination in chief

(c) may not relate to relevant facts but must relate to what the witness testified in examination in chief

(d) may not relate to relevant facts & may not be confined to what the witness testified in examination in chief.

Q28: After re-examination of a witness, the adverse party has

(a) right to further cross-examine the witness afresh in general

(b) has no right to further cross examine the witness

(c) right to further cross-examine the witness only when a new matter is introduced in the re-examination

(d) either (a) or (b).

Q29: A co-defendant in a case

(a) cannot be cross-examined by another co-defendant under any circumstance

(b) can be cross-examined by another co-defendant if their interests are identical

(c) can be cross-examined by another co-defendant when their interests adverse to each other

(d) can be cross-examined by another co-defendant as a matter of right.

Q30: Court can permit leading questions during examination in chief or re-examination

(a) if they refer to the matters which are introductory

(b) if they refer to the matters which are undisputed

(c) if they refer to the matter which are sufficiently proved

(d) if they refer to either (a) or (b) or (c).

Q31: During examination in chief or re-examination

(a) leading questions cannot be asked under any circumstances

(b) leading questions on certain matters can be asked without the permission of the court, as a matter of right

(c) leading question on certain matter can be asked only with the permission of the court

(d) only (a) and not (b) or (c).

Q32: U/S 145 of Evidence Act, a witness may be contradicted as to previous statement in writing

- (a) without proving the same and without showing the same to the witness
- (b) without proving the same but only after showing the same to the witness
- (c) after proving the same may be before showing the same to the witness
- (d) after proving the same & showing the same to the witness.

Q33: A party/person who calls the witness can be permitted to cross-examine the witness so called by him, as provided

- (a) U/S 152 of Evidence Act
- (b) U/S 153 of Evidence Act
- (c) U/S 154 of Evidence Act
- (d) U/S 155 of Evidence Act.

Q34: Court question U/S 165 of Evidence Act can be put to

- (a) any witness
- (b) any party
- (c) both (a) & (b)
- (d) neither (a) nor (b).

Q35: The right to cross-examine on an answer to court question is available

- (a) to the adverse party only
- (b) to the party calling the witness only
- (c) to either of the parties if the answer is adverse to either of the parties
- (d) only (a) and not (b).

Q36: The presumption U/S 41 of Evidence Act is

- (a) Presumption of fact
- (b) rebuttable presumption of law
- (c) Irrebuttable presumption of law
- (d) presumption of fact & law.

Q37: Where there are three different dying declarations, Higher Court is

- (a) not to uphold the conviction awarded by lower court
- (b) to uphold the conviction awarded by lower court
- (c) to go through the circumstantial evidence to uphold the conviction awarded by lower court
- (d) to rely upon the versions of witness to uphold the conviction awarded by lower court.

Q38: Examination of witness in criminal cases through video conferencing is

- (a) permissible
- (b) impermissible
- (c) permissible at the option of the witness
- (d) permissible at the option of the accused.

Q39: For taking the dying declaration from the deceased, the presence of Magistrate is

- (a) mandatory
- (b) not mandatory
- (c) required at the request of the police
- (d) required at the request of the relative of the deceased

Q40: The possession or ownership of property of the grandfather of defendant on the basis of documents 30 years old can

- (a) be proved
- (b) not to be proved
- (c) be proved at the option of plaintiff
- (d) be proved at the option of defendant.

Q41: Falsus in uno, falsus in omni bus in

- (a) a rule of evidence
- (b) a rule of criminal law
- (c) a rule of evidence in criminal trial
- (d) not a rule of evidence in criminal trial.

Q42: A judgment in an election petition is not one of the judgments specifically recognised by

- (a) section 41 of the Evidence Act
- (b) section 42 of the Evidence Act
- (c) section 56 of the Evidence Act
- (d) section 57 of the Evidence Act

Q43: What essential change was made in section 154 of the Indian Evidence Act, 1872 vide Criminal Law(Amendment) Act, 2005?

- (a) two statements to be contradicted in addition should be drawn to previous statement
- (b) the party is entitled to rely on any part of the evidence of the witness to whom he has called to put any question to him, which might be put in cross-examination by the adverse party
- (c) corroborating a witness by questioning him on surrounding circumstances

(d) former statement of witness may be proved to corroborate later testimony as to same fact.

Q44: The provision "hostile witness" is provided under section.....of Indian Evidence Act

- (a) section 155
- (b) section 133
- (c) section 154
- (d) section 145

Q45: Circumstantial evidence is considered weaker evidence as compared to direct evidence

- (a) Because it has two errors of fallibility (i) of the fact from which inference is drawn being proved and (ii) of the inference to be drawn from the fact proved
- (b) Because the inference in circumstantial evidence is based upon a presumption
- (c) Because circumstances sometimes may tell a lie
- (d) Because circumstances evidence is based upon the process of deductive logic.

Q46: A dying-declaration is relevant evidence under section 32 of the Evidence Act notwithstanding it being hearsay evidence because:

- (a) A statement by a person as to the cause of his death is treated in law as a solemn statement
- (b) if a person is dead and anything said by the person as to the cause of the death is relevant, since the dead person cannot be brought before

the court to testify, necessity makes it inevitable to admit said statement

(c) Because it is believed that a person would not meet his maker with lies in his mouth

(d) Because society owes a duty to dead persons to give them justice.

Q47: The question is whether the murder of X was committed by Y. The fact that Y produces an admission slip of hospital indicating dislocation of his hip bone during the period of alleged murder. Which one among the following is the correct provision of the Indian Evidence Act under Which it is relevant?

(a) Section 6

(b) Section 9

(c) Section 10

(d) Section 11.

Q48: In which of the following cases the Supreme Court of India said that 'It is not absolute rule of law that dying –declaration must be corroborated by other evidence before it can be acted upon?

(a) Sharad Birdichand Sharda v State of Maharashtra

(b) Pakala Narayana Swami V Emperor

(c) Kaushal Rao V State of Bombay

(d) Harjit Kaur V State of Punjab

Q49: Indian Evidence Act deals with:

1. Relevancy of evidence

2. Reliability of evidence

3. Admissibility of evidence

Select the correct answer using the code given below:

(a) 1 and 2 only

(b) 1 and 3 only

(c) 3 only

(d) 1, 2 and 3.

Q50: The Indian Evidence Act declares that anything said, done or written by any one of the conspirators' is relevant to prove conspiracy, if it was in:

(a) pursuance of their common intention

(b) reference to their common intention

(c) prosecution of their common intention

(d) redeeming their common intention

Q51: Oral account of the contents of a document by a person who has seen it is:

(a) testimonial evidence

(b) primary evidence

(c) circumstantial evidence

(d) none of the above.

Q52: A wishes to prove a dying declaration by B. The burden to prove that B is dead is on:

(a) the State

(b) family members of B

(c) legal heirs of B

(d) A.

Q53: Section 105 of the Indian Evidence Act requires that the court.....presume the absence of such circumstances which brings a

case with the purview of the General Exceptions in the Indian Penal Code.

- (a) must
- (b) shall
- (c) may
- (d) ought to.

Q54: Section 111 of the Indian Evidence Act speaks of such situations where one person stands in a position of..... to the other.

- (a) active faith
- (b) passive faith
- (c) active confidence
- (d) confidence.

Q55: Proof of a fact depends upon

- (a) accuracy of the statement and not upon the probability of its existence
- (b) not upon the accuracy of the statement but upon the probability of its existence
- (c) artificial probative value assigned to a fact
- (d) rigid mathematical demonstration.

Q56: Which of the following admissions is no evidence

- (a) an admission by one of several defendants in a suit against another defendant
- (b) an admission by some guardian ad litem against a minor
- (c) an admission by one of the partners of a firm against the firm or other partner
- (d) only (a) & (b).

Q57: The evidence unearthed by a sniffer dog falls under

- (a) oral evidence
- (b) documentary evidence
- (c) hearsay evidence
- (d) scientific evidence.

Q58: Privilege to withhold documents/information under the administrative law is

- (a) Section 140
- (b) Section 153
- (c) Section 123
- (d) Section 127.

Q59: Necessity rule as to admissibility of evidence has been given under which section of the Indian Evidence Act, 1872

- (a) Section 65B
- (b) Section 33
- (c) Section 32
- (d) Section 31.

Q60: An admission under section 17 of Indian Evidence Act, 1872 can be

- (a) Oral only
- (b) Oral and documentary
- (c) Oral, documentary, or a statement contained in electronic form
- (d) None of the above.

Q61: Test Identification of parade conducted during investigation of a case is admissible in

evidence under which section of the Evidence Act, 1872?

- (a)Section 5
- (b)Section 9
- (c)Section 8
- (d)Section 14.

Q62: Which one of the following is correctly matched under the Indian Evidence Act, 1872?

- (a)Burden of Proof – Section 101
- (b)Accomplice – Section 116
- (c)Dumb witness – Section 117
- (d)Dowry Death – Section109.

Q63: Circumstantial evidence is considered weaker evidence as compared to direct evidence

- (a)Because it has 2 errors of fallibility (i) of the fact from which inference is drawn being proved and (ii) of the inference to be drawn from the fact proved
- (b)Because the inference in circumstantial evidence is based upon a presumption
- (c)Because circumstance sometimes may tell a lie
- (d)Because circumstantial evidence is based upon the process of deductive logic.

Q64: Only such facts are made relevant by the Evidence Act as are encompassed by

- (a)Section 5 of section 55 of the Evidence Act
- (b)Section 5 of section 32 of the Evidence Act
- (c)All the sections of the Evidence Act

(d)Only such facts which can be proved as per section 59 and Section 60 of the Evidence Act.

Q65: Accused 'A' makes a confession in front of his friend 'B' when 'B' goes to meet 'A' as 'A' is to be produced for remand in the court. The confession is that he i.e., 'A' has murdered 'C'.The confession is

- (a)Inadmissible in evidence since it is made in police custody
- (b)Admissibly in evidence as made in the court room
- (c)Admissible in evidence as made before a friend
- (d)Inadmissible in evidence as made out of fear.

Q66: Learning question cannot be asked in

- (a)Examination-in-chief
- (b)Cross-examination
- (c)Re-examination
- (d)Both (a) & (c) above.

Q67: In which of the following cases the Supreme Court held that “ any information or material that is subsequently discovered with the help of voluntarily administered test result can be admitted in advance with section 27 of the Indian Evidence Act, 1872”?

- (a)Selvi v State of Karnataka
- (b)C. Muniappam V state of Tamil Nadu
- (c)Sunderial Kanaiyalal V state of Maharashtra
- (d)C. Mangesh V state of Karnataka.

Q68: Section 114A of the Indian Evidence Act, 1872 is related to

- (a) Presumption as to abetment of suicide by a married woman
- (b) Presumption as to absence of consent in certain prosecution for rape
- (c) Presumption as to abetment of suicide by an woman
- (d) None of the above.

Q69: Which one of the following section of Indian Evidence Act, 1872, contains provisions regarding cross examination and re-examination witness character?

- (a) Section 142
- (b) Section 140
- (c) Section 139
- (d) Section 141.

Q70: 'Leading question' may be asked in

- (a) Re-examination
- (b) Cross-examination
- (c) Examination in chief
- (d) All of the above.

Q71: Under Indian Evidence Act, 1872 a public document can be proved by

- (a) Certified copy
- (b) Oral evidence
- (c) Affidavit of giver by document
- (d) None of the above.

Q72: In which section of the Indian Evidence Act, 1872 provision for 'presumption as to genuineness of certified copies' is given?

- (a) Section 78
- (b) Section 74
- (c) Section 79
- (d) Section 80.

Q73: Without appearing before Court statement of some persons, in certain circumstances mentioned in section 32 of the Indian Evidence Act, are considered relevant, who among the following is not included in this category?

- (a) Who cannot be found
- (b) who has become incapable of giving evidence
- (c) Whose attendance cannot be procured without delay
- (d) Who is not willing to appear before the court.

Q74: Which of the following are public Documents?

- (a) Document of Sovereign Authority
- (b) Document of Official bodies
- (c) Document of Tribunals
- (d) All of the above.

Q75: Factum Probandum means:

- (a) conclusive fact
- (b) the fact that is probable
- (c) the fact that has to be believed
- (d) the principle fact to be proved.

Q76: 'B' has been robbed and murdered. Soon after, the stolen goods are found with 'A'. In these circumstances, what may/may not be presumed?

- (a)The court may presume that 'A' committed the robbery of 'A' committed the robbery of 'B', but not his murder
- (b)The court may presume that 'A' committed murder of 'B', but not robbery
- (c)The court may presume that 'A' committed both robbery and murder of 'B'
- (d)Mere recovery of the stolen articles from 'A' would not justify the court in presuming that 'A' committed either the robbery or the murder of 'B'.

Q77: The previous sexual experience of a prosecutrix in a case of rape where the question of consent is an issue

- (a)can be used to impeach the creditworthiness of the prosecutrix, under Section 155 of the Indian Evidence Act
- (b)is irrelevant
- (c)is relevant, only if the accused is a person known to the prosecutrix
- (d)is relevant to prove consent.

Q78: In an appeal from a decision by the trial court, the appellate court finds that certain necessary

Evidence was not taken by the trial court. The appellate court

- (a)can only remand the matter to the trial court for taking additional evidence
- (b)shall decide the

matter only on the basis of the evidence before it

- (c)shall presume that the missing evidence would have adversely impacted the case of the party who should have brought that evidence
- (d)may take additional evidence itself.

Q79: U/S 33 of the Evidence Act, evidence of witness 'A' recorded in an earlier judicial proceeding can be produced in another judicial proceeding where

- (a)witness 'A' is alive
- (b)witness 'A' is alive and is incapable of giving evidence
- (c)criminal proceedings are pending against the witness 'A'
- (d)there was no right but opportunity of cross-examination of 'A' was granted in the first judicial proceedings.

Q80: Bar of exclusion of oral evidence by documentary evidence under section 91 and 92 of the Indian Evidence Act, 1872 applies

- (a)When fact to be proved would invalidate the document
- (b)when fact to be proved shows in what manner the language of a document was related to existing facts
- (c)when fact to be proved relates to want or failure of consideration
- (d)when fact to be proved relates to term of a contract reduced in form of a document.

ANSWER KEY

1(B)

2(A)

3(C)

4(A)

5(D)

6(C)

7(A)

8(C)

9(D)

10(D)

11(A)

12(A)

13(D)

14(C)

15(D)

16(C)

17(A)

18(D)

19(B)

20(A)

21(B)

22(C)

23(D)

24(A)

25(A)

26(A)

27(B)

28(C)

29(C)

30(D)

31(C)

32(B)

33(C)

34(C)

35(C)

36(C)

37(A)

38(A)

39(B)

40(A)

41(D)

42(A)

43(B)

44(B)

45(A)

46(B)

47(D)

48(C)

49(B)

50(B)

51(B)

52(D)

53(B)

54(C)

55(A)

56(D)

57(D)

58(C)

59(C)

60(C)

61(B)

62(A)

63(A)

64(A)

65(A)

66(D)

67(A)

68(B)

69(B)

70(B)

71(A)

72(C)

73(D)

74(D)

75(D)

76(C)

77(B)

78(D)

79(B)

80(d)