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SUBJECT-INDEX**ADMINISTRATIVE LAW:**

(i) Administrative order - Judicial Review - Scope of - Held: Interference with the order of administrative authority is permissible, if it is irrational, unreasonable or there is procedural impropriety.

(ii) Administrative decision - Scope of - Held: Administrative decision must be related to the purpose of enabling provisions of Rules or Statutes - The authority has to act within the limits of the Rules framed delineating the powers of the authority as well as the procedure to be followed.

(iii) Administrative decision - Decision of predecessor officer - Overturning of - By the successor officer - Held: The successor officer is not entitled to review and reopen the cases decided by his predecessor, unless the order is without jurisdiction, or ultra vires or was ex facie an act of favouratism.

(iv) Administrative review - Held: Illegal or ultra vires decisions which fall within scope of judicial review, can be undone by the administrative authorities themselves by review of such orders, by following principles of natural justice.

Vinod Kumar v. State of Haryana & Ors. 471

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APPEAL:

(1) Appeal against acquittal - Scope of jurisdiction of appellate court.

Joginder Singh v. State of Haryana 446

(2) Right of appeal.

(See under: Service Law) 314

(3) Right to appeal - Held: Cannot be assumed to exist unless expressly provided for by a statute.

M/s. Arcot Textile Mills Ltd. v. The Regional Provident Fund Commissioner and Ors. 371

ARBITRATION:

Irrigation project - Agreement with State Government - Clause in the agreement - Nature of - Distinction between expert determination and arbitration - Tender submitted by appellant for irrigation project accepted by respondent-State Government - Parties entered into agreement - Disputes arose from execution of the project - Clause 30 of the agreement - If contemplated arbitration and could be construed as an arbitration clause - Plea of appellant that Clause 30 of the agreement made the decision of the Superintending Engineer binding on all parties to the agreement and, the trial Court was right in treating the same as an arbitration clause - Held: Nothing in the language of Clause 30 from which it can be inferred that the parties had agreed to confer the role of arbitrator upon the Superintending Engineer of the Circle - Power conferred upon the Superintending Engineer of the Circle was in the

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nature of a departmental dispute resolution mechanism - Supervisory control was given to the Superintending Engineer for smooth execution of the works in accordance with the approved designs and specifications and also to ensure that quality of work was not compromised - Further, inherent danger in treating the Superintending Engineer as an Arbitrator - Task of deciding the dispute could not have been assigned to the Superintending Engineer as he could not be expected to make adjudication with an un-biased mind - Even if he may not be actually biased, the contractor will always have a lurking apprehension that his decision will not be free from bias - High Court rightly held that Clause 30 of the agreement was not an Arbitration agreement - Contract.

Vishnu (dead) by L.Rs. v. State of Maharashtra and others 340

ARMS ACT, 1959:
ss. 25 and 27. 446
(See under: Penal Code, 1860)

BIHAR GOVERNMENT SERVANTS
(CLASSIFICATION, CONTROL AND APPEAL)
RULES, 2005:
r.24. 427
(See under: Service Law and Letters Patent)

CODE OF CRIMINAL PROCEDURE, 1973:
s.306 - Approver/accomplice - Evidentiary value of - Held: For being an approver, it is not necessary that the person has to inculcate himself in the offence and has to be privy to the crime - After

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grant of pardon accomplice is removed from the category of co-accused and put into the category of witness, and evidence of such witness is admissible in evidence as per s. 133 of Evidence Act - However, as a rule of prudence, presumption as provided u/s. 114 Illustration (b) of Evidence Act is against the accomplice, unless he is corroborated in material particulars - Evidence Act, 1872 - ss.133 and 114 Illustration (b).

State of Rajasthan v. Balveer @ Balli and Anr. 557

CONSTITUTION OF INDIA, 1950:
Article 311(2). 395
(See under: Service Law)

CONTRACT:
(See under: Arbitration) 340

CRIME AGAINST WOMEN:
Dowry death. 328
(See under: Penal Code, 1860)

DOCTRINES/PRINCIPLES:
Principle of natural justice. 371
(See under: Employees Provident Funds and Miscellaneous Act, 1950)

EMPLOYEES PROVIDENT FUNDS AND
MISCELLANEOUS PROVISIONS ACT, 1950:
(i) s.71 and 7Q - Appeal u/s. 71 against the order passed u/s. 7Q - Maintainability of - Held: An order is amenable to appeal u/s. 71 if it is passed as a composite order u/ss. 7A and 7Q - But if the order is an independent order u/s. 7Q alone, such order

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is not appealable.

(ii) s. 7Q - Demand u/s. 7Q - Applicability of principle of natural justice (Audi alteram partem) - Held: The principle of natural justice is applicable to the demand u/s. 7Q only in a narrow manner i.e. limited to the realm of computation which is statutorily provided - Principle of Natural Justice.

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EVIDENCE:

Dying declaration.
(See under: Penal Code, 1860) 328

EVIDENCE ACT, 1872:

(1) ss.133 and 114. Illustration (b).
(See under: Code of Criminal Procedure, 1973) 557

(2)(i) s.157 - Corroboration of testimony of witness - Held: In order to corroborate testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate, may be proved.

(ii) s.27 - Recovery under - On the basis of statement made by the accused while in police custody - Evidentiary value of - Held: Such recovery can be utilized against the accused, for the purpose of corroboration.

State of Rajasthan v. Balveer @ Balli and Anr. 557

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HARYANA CIVIL SERVICES (ASSURED CAREER PROGRESSION) RULES, 1998:

r.5(1) and (2) - Benefit under - Whether can be granted by treating the work charge service as regular service - Held: Cannot be granted, because as per rules, a service can be treated as regular service only if there is regular recruitment in accordance with the prescribed procedure or rules - This is in total contrast with work-charge service.

State of Haryana and Ors. v. Sita Ram and Ors. 529

JUDICIARY:

Subordinate judiciary - Protection of - It is duty of the High Court to protect judicial officers against unjustified allegations and to see that hostile work environment for junior judicial officers is eliminated, in order to encourage them to put in good judicial work without fear or favour.

Registrar General High Court of Gujarat & Anr. v. Jayshree Chamanlal Buddhhatti 395

JUDICIAL REVIEW:

(See under: Administrative Law) 471

LETTERS PATENT (PATNA HIGH COURT):

Letters Patent Appeal - Maintainability - Dismissal from service on charges of misconduct - Writ petition - Review Committee constituted to review the case of appellant in terms of the directions given by Single Judge of High Court - Review Committee virtually exonerated the appellant from the charges except a mild adverse comment - On that basis, as per the direction of the Single Judge,

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the Government was required to pass fresh order of punishment - However, the State Government filed LPA - Plea by appellant regarding maintainability of the LPA - Held: If the State Government was not satisfied with the course of action adopted by the writ court (Single Judge), proper course was to challenge the order by filing appeal thereagainst - However, it chose to implement the direction passed by the Single Judge and constituted Review Committee, as contemplated under Rule 24 (2) of the CCA Rules - But finding that report of the Review Committee was not palatable to the Government, it decided to challenge the order of the Single Judge - It was too late in the day to do so, after deciding not only to accept the judgment of the Single Judge but even implementing the direction contained therein by constituting the Review Committee and allowing the Review Committee to accomplish its task - In this backdrop, LPA filed by the State Government should not have been entertained - Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 - r.24.

Shobha Sinha v. The State of Bihar & Ors. 427

MAXIMS:

Audi alteram partem - Applicability of.

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NATURAL JUSTICE:

(See under: Employees Provident Funds and Miscellaneous Act, 1950) 371

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PAYMENT OF GRATUITY ACT, 1972:

s.4(6)(a) and (b) - Employer's right to withhold gratuity pending departmental enquiry - Held: A three Judge Bench judgment of Supreme Court passed in *Ram Lal Bhaskar's case is contrary to the dicta laid down in **Jaswant Singh's case passed by a Division Bench of Supreme Court which laid down that employer does not have right to withhold gratuity pending departmental enquiry - Hence matter referred to larger Bench.

Ch. cum Man. Director Mahanadi Coalfield Ltd. v. Rabindranath Choubey 513

PENAL CODE, 1860:

(1) s.302 - Murder - Three victims - 'S', and his wife and minor son - Accused-appellant allegedly assaulted the deceased persons with a knife after having invited them at his house for lunch - Motive of appellant in brutally assaulting 'S' with a knife allegedly stemmed from his abhorrence for his wife's relationship with 'S' - Conviction of appellant u/s.302 IPC - Held: Justified - Evidence of the two eye-witnesses, PW-5 and PW-7, found credible and trustworthy - Defence version that the incident occurred when 'S' attempted to rape the wife of appellant and on her resistance threatened to assault her with the knife, apparently unnatural and improbable - Plea of right to private defence and non-orchestrated nature of the offence vitiated by evidence of PW-9 - Prosecution case well supported and established by the evidence of PWs 5, 7, 9 and 18 coupled with the evidence of doctors, the post-mortem report and medical

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evidence - No doubt as to the guilt of the appellant.

Gudda @ Dwarikendra v. State of Madhya Pradesh 293

(2) ss. 302 and 307 r/w. s. 34 - Arms Act, 1959 - ss. 25 and 27 - Prosecution under - Of three accused including appellant-accused - Acquittal of all the accused by trial court giving them benefit of doubt - High Court convicted the appellant-accused while maintaining the acquittal order in respect of other accused - Held: The High Court has unsettled the reasonable findings of trial court in a cryptic manner - Trial court has rightly acquitted the accused in view of the material contradiction in oral evidence and ballistic report, non-examination of material witnesses including injured witnesses - Conviction set aside.

Joginder Singh v State of Haryana 446

(3) s.304B - Dowry death - Prosecution case inter alia based on dying declaration (Ext.4) and statements made by PWs 13 and 14, the brother and mother of the deceased - Conviction of appellants (parents-in-law of the deceased) -Held: Not justified - Statement made by PW13 not reliable since no evidence to suggest that just before the death PW-13 had talked to deceased or that deceased was in the condition to make statements - Her statement corroborated by PW-14, but not corroborated by PW-12 - Ext.4, the dying declaration also suffers from infirmities - ASI who recorded the dying declaration was not produced by the prosecution for examination or cross-

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examination - The dying declaration (Ext.4) was not certified by any medical expert stating that the deceased was in medically fit condition for giving statement - Though such certificate is not mandatory, it was the duty of the officer who recorded the same to mention whether deceased was in mentally and medically fit condition for making such statement, particularly when the case was of a third degree burn which could lead to death - Ominous allegations were made against the in-laws of the deceased - No specific incident stated by the PW-13 or PW-14 in their statements - Nothing to suggest that deceased was subjected to cruelty and harassment "soon before her death" and "in connection with the demand of dowry" - Moreover, deceased did not make any statement in her dying declaration indicating demand of dowry - Evidence of cruelty and harassment in general not sufficient to attract s.304B IPC - Prosecution miserably failed to prove the case beyond reasonable doubt.

Panchanand Mandal @ Pachan Mandal & Anr. v. State of Jharkhand 328

(4) s. 376(2)(g) and 302/34 - Rape and murder - FIR against three accused - One of the accused examined as witness after tendering him pardon u/s. 306 Cr.P.C. - Conviction and sentence of 10 years RI and death sentence for the offences u/ss. 376(2)(g) and 302/34 respectively - High Court acquitted both the accused - Held: The prosecution case is proved by the evidence of the approver,

and the same is admissible in evidence having been corroborated by direct and circumstantial independent evidence - Hence conviction u/ ss.376(2)(g) and 302/34 is upheld - However, the death sentence reduced to life imprisonment as the case does not fall in the category of rarest of rare cases - Sentence of 10 years RI imposed by trial court confirmed.

State of Rajasthan v. Balveer @ Balli and Anr. 557

PUNJAB POLICE RULES, 1934:

r. 16.32.
(See under: Disciplinary proceeding) 471

REFERENCE TO LARGER BENCH:

Question as to employer's right to withhold gratuity pending departmental enquiry - Referred to larger bench.
(See under: Payment of Gratuity Act, 1972) 513

SENTENCE/SENTENCING:

(1) Death sentence - Reduction of.
(See under: Penal Code, 1860) 557

(2) Murder case - Three victims - Conviction u/ s.302 IPC and Death sentence awarded to appellant - Challenge to - Held: Awarding of life sentence is the rule, death is an exception - Application of "the rarest of the rare case" principle is dependent upon and differs from case to case - Reasonable proportion has to be maintained between brutality of the crime and the punishment - In the case at hand, the factum of the crime being pre-ordained and the motive of the appellant in

brutally assaulting the deceased-'S' with a knife after having invited him at his house for lunch stemmed from his suspicion on his wife's fidelity and his abhorrence for her relationship with the deceased-'S' - However, the same motive to murder the wife of 'S' and their only child does not find favor with the facts of the case - The other two murders seem to have translated due to the sudden realization of appellant and his extreme fear of being caught for the murder of 'S' and also, to save himself from being shunned by the society - Further, appellant is a young man of about 35 years and not having any criminal antecedents - Future possibilities of his reform also not ruled out - In the contextual facts, the brutality as evinced by the appellant would not fall within the ambit of the "rarest of the rare" cases so as to exercise the discretion of imposing capital punishment - Therefore, conviction of appellant u/ s.302 affirmed, however, the sentence of death imposed on him commuted to imprisonment for life.

Gudda @ Dwarikendra v. State of Madhya Pradesh 293

SERVICE LAW:

(1)(i) Annual confidential Report - Adverse entry - Representation against - Rejection of - Second representation against the adverse entry after substantial lapse of time, after having exhausted all the departmental remedies unsuccessfully - Expunction of the remarks - Restoration of adverse remark on the ground that second representation not permissible - Held: Second representation was

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against the Office Policy Instructions of the year 1962 and Standing Order of the year 1999 and also made after lapse of substantial time - Restoration of adverse remarks was correct.

(ii) Annual Confidential Report - Adverse entry - Representation against - Rejection of - Review against - Before higher authority - Expunction of adverse remarks - Restoration of adverse remarks on the ground that second representation against the remarks not maintainable - Held: Restoration of adverse remarks were not correct, as there is no second representation to the same authority - In fact, it is review to higher authority within statutorily prescribed period which is permissible under the Service Rules - Dismissal of the official on the basis of the adverse remarks also not tenable. (iii) Disciplinary Proceeding - Penalty imposed on the officials - Revoked on their moving mercy petition, which was moved by them after exhausting all the departmental remedies - Restoration of penalty - Held: The penalty was rightly restored - Under disciplinary rules, no remedy is available after revision petition - In the present cases, after dismissal of revision petition, another petition raising plea of mercy would not be permissible - The mercy petition was also not filed within time - Punjab Police Rules, 1934 - r. 16.32.

Vinod Kumar v. State of Haryana & Ors. 471

(2) Assured Career Progression.

(See under: Haryana Civil Services (Assured Career Progression) Rules, 1998) 529

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(3) Dismissal from service.
(See under: Letters Patent) 427

(4) Gratuity.
(See under: Payment of Gratuity Act, 1972) 513

(5) Judicial service - Subordinate judicial officer - Termination of service - During probation period - Without affording opportunity of hearing - Termination order set aside by High Court on the ground that it was in breach of Art.311 of the Constitution - Held: If the inquiry is conducted to assess the suitability of the probationer, it cannot be faulted - But if in the course of inquiry any allegations are made against the probationer, which results into a stigma, the probationer ought to be afforded protection u/Art. 311(2) - In the instant case, no opportunity was afforded to the officer - The facts of the case, also did not establish her unsuitability to the post - Constitution of India, 1950 - Article 311(2).

Registrar General High Court of Gujarat & Anr. v. Jayshree Chamanlal Buddhbhatti 395

(6) Misconduct - Dereliction of duty - Departmental Inquiry - Dismissal of appellant - Writ Petition allowed by Single Judge of High Court - Review Committee constituted to review the case of appellant in terms of the directions given by the Single Judge - Review Committee virtually exonerated the appellant from the charges leveled against her except a mild adverse comment - On that basis, as per the direction of the Single Judge, the Government was required to pass fresh order

of punishment - However, the State Government filed LPA - Order of the Single Judge set aside by the Division Bench - Held: Review Committee had categorically stated that the enquiry officer had not undertaken deep perusal and analysis of evidentiary documents while conducting the enquiry - It was not a case of lack of devotion to duty or any financial irregularities on the part of the appellant - On the report of the Review Committee, appropriate penalty order was to be passed by the State Government which it failed to do after the receipt of the said report - Direction given to respondent-Government to pass penalty order on the basis of Review Committee report and also the observations of the Single Judge that it was the first case in her entire service career where the appellant faced departmental proceedings - Since the punishment to be awarded would not be dismissal, removal or compulsory retirement, but lesser punishment, appellant directed to be reinstated in service forthwith - Bihar Government Servants (Classification, Control and Appeal) Rules, 2005 - r.24.

Shobha Sinha v. The State of Bihar & Ors. 427

(7) Misconduct - Punishment - Imposition of, by higher/ appellate authority - Justification - Held: A higher authority may pass order imposing punishment, if the right of appeal is not taken away - If the appellate authority passes order as the primary authority and there is provision for further appeal or revision or review, it cannot be said that the said order suffers from any illegality - In the

case at hand, the Chairman the competent authority to pass order of punishment against delinquent employee, while appeal/representation from the order of the Chairman lay before the UPSEB - However, by virtue of order of punishment having been passed by the UPSEB itself, remedy of appeal was denied to the delinquent employee and consequently, Tribunal and High Court were justified in setting aside the order of UPSEB - U.P. State Electricity Board (Officers and Servants) (Conditions of Service) Regulations, 1975 - Regulation 6.

U.P. Power Corporation Ltd. and another v. Virendra Lal (Dead) through L.Rs. 314

UTTAR PRADESH STATE ELECTRICITY BOARD
(OFFICERS AND SERVANTS) (CONDITIONS OF
SERVICE) REGULATIONS, 1975:
Regulation 6.
(See under: Service Law) 314