BLOGS

Key Constitutional Law Developments in March for CLAT 2022

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The following article in continuation of our series of articles on the key constitutional developments since September, 2021 discusses some of the key developments in the field of Constitutional Law in the month of March 2022. Prospective CLAT UG and PG aspirants might find the updates useful in course of their preparation for the test.

NATIONAL UPDATES

The following article covers certain key constitutional law developments for March 2022.

1. Promotion is governed by rules; no vested right to promotion: Supreme Court

Case Title: ***Union of India v. Manpreet Singh Poonam [Civil Appeal 517-518 of 2017]***

A Division Bench of Justices **Sanjay Kishan Kaul** and **MM Sundresh in the immediate case** opined that a mere existence of vacancy per se will not create a right in favor of an employee for retrospective promotion since no officer has a fundamental right to promotion.

"It is trite law that once an officer retires voluntarily, there is cessation of jural relationship resorting to a "golden handshake" between the employer and employee. Such a former employee cannot seek to agitate his past, as well as future rights, if any, sans the prescription of rules. This would include the enhanced pay scale. The Respondent in Civil Appeal No.517 of 2017 was rightly not considered in the DPC in 2012 since he was no longer in service at the relevant point of time," the Court stated.

The Supreme Court additionally noted that a right in favour of an employee for retrospective promotion will not be created by a mere existence of vacancy per se. Specifically, when the vacancies in the promotional post is prescribed under the rules, which also mandate clearance through a selection process.

"A right to promotion and subsequent benefits and seniority would arise only with respect to the rules governing the said promotion, and not a different set of rules which might apply to a promoted post facilitating further promotion which is governed by a different set of rules," the judgment said.

2. Employee has no fundamental right to posting or transfer but State should consider 'family life' while crafting policy: Supreme Court

Case Title: ***SK Nausad Rahaman and Others v. Union of India and Others [Civil Appeal 1243 of 2022]***

A Division Bench of Justices **DY Chandrachud** and **Vikram Nath** ruled in this case that the State cannot be oblivious to basic constitutional values, including the preservation of family life which is a facet of Article 21 of the Constitution of India 1950, while drafting policy.

However, the Court clarified that an employee has no fundamental or vested right to claim a transfer or posting of his or her choice. It took in consideration the fact that executive instructions and administrative directions related to transfers and postings did not approbate an indefeasible right on an individual to claim the same.

However, the court once again clarified that a policy governing the same has to give due consideration to the importance of protecting family life as an element of the dignity of the person and their privacy.

"How a particular policy should be modulated to take into account the necessities of maintaining family life may be left at the threshold to be determined by the State. In crafting its policy however the State cannot be heard to say that it will be oblivious to basic constitutional values, including the preservation of family life which is an incident of Article 21," the top Court stated.

3. No Constitutional infirmity in 'One Rank One Pension' policy introduced by Central Govt: Supreme Court

Case Title: ***Indian Ex-Servicemen Movement (An All India Federation of Military Veterans Organization Represented v. Union of India Department of Ex-Servicemen Welfare Ministry of Defense Secretary [Writ Petition (Civil) 419/2016]***

The One Rank One Pension (OROP) scheme introduced by the Central government via notification of November 7, 2015, was upheld by a three-judge bench of Justices **DY Chandrachud**, **Surya**

Kant and **Vikram Nath** who further stated that there is no legal mandate that everyone who held the same rank must have the same pension. The top court opined in this case that the OROP scheme was a policy decision taken by the Central government and that the government was empowered to do so and there exists no unconstitutionality in the same.

"All pensioners who hold the same rank may not for all purposes form a homogenous class. For example, amongst Sepoys differences do exist in view of the MACP and ACP schemes. Certain Sepoys receive the pay of the higher ranked personnel; ...It is not a legal mandate that pensioners who held the same rank must be given the same amount of pension. The varying benefits that may be applicable to certain personnel which would also impact the pension payable need not be equalized with the rest of the personnel," the top Court observed in its judgment.

However, the Court directed that a refixation task must be undertaken by the government for a period of 5 years regarding pension payable to Army personnel as stated in the OROP policy as per the November 7, 2015 notification.

4. No basis to treat Vanniyar as a separate group: Supreme Court strikes down 10.5% reservation

Case Title: ***Pattali Makkal Katchi v. A Mayilerumperumal and Others [Civil Appeal 2600 of 2022]***

A division bench of Justices **L Nageswara Rao** and **BR Gavai** quashed a law enacted by the Tamil Nadu government providing 10.5 per cent reservation in educational institutions and government jobs to persons from the Vanniyar caste as being in infringement of Articles 14, 15 and 16 of Constitution of India.

The court opined that there is no substantial basis for differentiating the Vanniyar community from the other MBCs and DNCs. Regarding the issue of caste being the determinant for internal reservation, the Bench opined that caste can be the starting/focal point for providing internal reservation, but the State government has to explain that it was reasonable and exhibit that caste was not the sole criteria for classification.

5. Hijab Ban Judgement of Karnataka HC

The Karnataka High Court delivered its verdict on the contentious hijab ban issue by upholding the Government Order of February 5th. The petition filed by female Muslim students challenging

the order of a government PU college preventing entry of students wearing a hijab was dismissed.

The Court held that wearing hijab is not an essential religious practice in Islam and hence, not protected under Article 25 of the Constitution. For this, the Court went into a reading of the Holy Quran and the commentaries of the same and concluded that nowhere is hijab mentioned as essential to Islam.

Wearing of the hijab is merely recommendatory and can be said to have developed in response to the prevailing socio-cultural conditions then when there was a legitimate threat to women's safety. It is thus, at best a cultural practice to wear the Hijab and not a religious one.

The Court went on to say that the prescription of a uniform or a uniform dress code is a reasonable restriction on the rights of students under Article 19(1)(a) of the Constitution. The Court observed that it serves 'constitutional secularism' as it aims to break down the differences in race, religion, ethnicity, caste, place of birth, etc. and bring students on an equal footing within the educational institute.

Since these are places of learning and youth are at an impressionable stage in their lives, they need to learn without these apparent differences on display in order for them to overcome their prejudices. The petitioners had heavily relied on the case of **KwaZulu-Natal and Others v. Pillay** wherein the Constitutional Court of South Africa had upheld a South Indian girl's right to wear a nose pin with her school uniform.

The Court rejected the applicability of this case to the present case due to the differences in the way the Constitutions of both countries have developed. Thus, a case of a foreign jurisdiction cannot be the only basis for adoption of a certain model.

The Court held that mandating the wearing of purdah, veil or hijab would hinder the emancipation of women. That such insistence goes against individual dignity and constitutional morality was argued by the respondents and ultimately accepted by the Court. Thus, exclusion of such religious symbols like hijab from uniform would be a step towards emancipation of women and their right to pursue education.

6. State's power to legislate over local bodies

The Supreme Court held recently that the state government has power to legislate over local bodies which has not been diminished by the 74th Constitutional amendment. The power of the State government to legislate with respect to local bodies has to be however consistent with Part

IXA of the Constitution.

This was decided in an appeal against the Rajasthan High Court's decision to set aside a notification to declare Gram Panchayat Roopbas as a municipal board since the same was not a notification per Article 243Q(2). The Supreme Court held that the High Court misread the scope of Part IXA and Article 243Q in this regard to hold that the notification has to be one under Article 243Q(2). The State Government has rightly exercised its statutory powers to establish Municipality in terms of Section 5 of the Municipalities Act.

The next part of this series will cover the key constitutional law developments for April, 2022.