AILET

Key Constitutional Law Developments in September for CLAT (Part 2/2)

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The following article is a continuation of the post discussing some of the Key Constitutional Law Developments in the month of September 2021.

1. SC allows classification based on educational qualification for promotion.

The Supreme Court in a recent case held that educational qualification is a valid ground for classification amongst persons of the same class for promotion. It was held to be necessary for the executive's intent to improve 'administrative efficiency'. Thus, such classification is not violative of articles 14 and 16.

Further, the Apex Court opined that such classification was a reasonable leeway given to the legislature and the executive for realizing its public policy objectives including public employment.

Certain important principles also emerged in this case while relying on several landmark precedents-

1. Classification between persons must not create artificial inequities. To align with Articles 14 and 16, the classification must be built on a reasonable basis and must have a nexus to the object and purpose sought to be achieved.
2. In matters of classification, judicial review is restricted to determining whether the classification is reasonable and has a connection to the goal pursued. Courts cannot perform a mathematical analysis of the categorization basis or substitute their own wisdom for that of the legislature or its delegate.

- In general, educational qualifications are a valid basis for classifying people of the same social class.

1. For the purpose of promotion, persons drawn from various sources and integrated into a common class can be differentiated based on educational qualification, where this has a nexus

with the efficiency required in the promotional post;

2. Educational qualification can be used to introduce quotas for promotion for a specific class of people, or it can even be used to restrict promotion. This can be done even at the exclusion of some.
3. Educational qualifications may be employed as a criterion for promotion categorization in order to improve administrative efficiency at higher levels of management; and

- A classification based on educational credentials, on the other hand, should be related to the classification's objective or the extent of variations in qualifications.

Further Readings:

1. Chandan Banerjee v. Krishna Prosad Ghosh: The judgement of the Apex Court being discussed above can be located here.
2. State of Jammu and Kashmir v. Triloki Nath Khosa:The article references the case of State of Jammu and Kashmir v Triloki Nath Khosa for its judgment (1974) 1 SCC 19 on which the court heavily relied while delivering its judgment, in the above-stated case. Two other principal judgments, in this case, are Ganga Ram and Ors. v Union of India (1970) AIR 2178 & Roop Chand Adlakha and Ors. vs Delhi Development Authority (1989) AIR 307.

2. Availability of an "alternative remedy" not an absolute bar to writ application.

In the case of The Assistant Commissioner of State Tax and Others v. M/S Commercial Steel Limited, a three-judge bench of the Supreme Court reiterated the exceptions to the general rule of alternative remedies and the maintainability of a writ petition under Article 226 of the Constitution.

The appeal before the Supreme Court arose from a Division Bench judgement of the High Court of Telangana under Article 226 wherein it set aside the applicant's action of collecting Rs. 4,16,447 from the respondent towards tax and penalty payment under CGST Act 2017 and SGST Act and directed a refund along with an interest @ 6% P.A. from 13th December 2019.

The amount was charged from the respondent for evading SGST and CGST in the guise of inter-state sale after issuing due notices post which the goods and conveyance were released.

However, the order of the Division Bench was challenged before the Supreme Court on the grounds of availability of a statutory alternative remedy under Section 107 of the CGST Act which

was overlooked by the High Court and the writ petition was thereby wrongly entertained.

The Court while granting the appeal held that though the existence of an alternate remedy is not an absolute bar on the writ jurisdiction of the High Courts, a writ petition should not be entertained unless there is- i) a breach of Fundamental Rights; ii) violation of the principles of natural justice; iii) exercise of excessive jurisdiction; and iv) when the constitutional vires of a statute or delegated legislation are under challenge.

Since none of the exceptions was established in the instant case and notice was duly issued to the respondent, the Supreme Court held that the High Court was wrong in entertaining the writ petition and therefore set the impugned order aside. However, the Court held that the respondent is free to take his grievance under the appropriate alternate remedy available under Section 107 of the CGST Act.

Further Readings:

1. Whirlpool Corporation v. Registrar of Trademarks Mumbai (1998) 8 SCC 1– A landmark judgement with respect to the writ jurisdiction of High Courts and the exceptions to the general rule of alternate remedy.
2. Explained: Rule of alternate remedy and maintainability of writ petitions under Article 226 of the Constitution– This article explains the rule of alternate remedy and the Writ jurisdiction of the High Courts under Article 226.

3. No retrospective operation of any rule or law can be construed unless the contrary is expressed.

In the recent case of ***Assistant Excise Commissioner, Kottayam and Ors v. Esthappan Cherian & Anr.,***the Supreme Court observed that a rule of law cannot be construed to have a retrospective operation unless a clear intention to the contrary is expressed.

In the instant case, the license of the respondent, a successful bidder for arrack shops in the State of Kerala, was cancelled on the alleged failure of monthly payments for the license after providing due show-cause notices. The license which was effective from 01-04-1993 to 19-08-1993 was tried to be re-auctioned seven times. However, despite various efforts no bidder could be found as a consequence of which the state itself assumed the charge from 13-09-1993.

Till the time the state had the possession (i.e. 31-03-1994), money was collected as the Departmental Management Fee and Excise duty, however, the state contended that had the license continued, it would have obtained a higher amount and accordingly demanded dues from the respondent.

The major contention was with respect to Rule 13 of the Akbari Shops Departmental Management Rules, 1972 which provided for the credit of departmental management fee collected during the management by the state against the liability of the previous licensee. However, with an amendment dated 23-12-1993, the amount collected as a departmental management fee is no longer adjustable.

Brought before the Kerala High Court, a Division Bench while relying upon its previous judgement dealing with the same issue (Lucka v. State of Kerala) held that the amended Rule 13 would not be applicable since the contract was entered into before the amendment was passed and therefore, the respondent is liable to pay only the actual loss suffered by the Government.

The Supreme Court while upholding the order passed by the Division Bench observed that there are a plethora of judicial decisions which clearly says that a rule or law cannot be construed to have retrospective effect unless a clear intention to the contrary is expressed. Similarly, rules and regulations passed by delegated legislation cannot be assumed to have retrospective operation, unless the contrary is expressed.

Therefore, the departmental management fee collected by the state cannot be recovered again from the respondent and has to be accordingly adjusted. The Supreme Court further issued directives to the parties and dismissed the appeal.

Further Readings:

1. Commissioner of Income Tax v Vatika Township– A judgement by the Constitutional Bench explaining the rule which says that legislation cannot be presumed to have a retrospective operation unless the contrary appears.
2. Union of India v M.C. Ponnose– A landmark judgement which spelt out the rule with respect to delegated legislation not having retrospective effect unless the contrary is expressed.
3. Prospective and Retrospective Operations of Statutes-Understanding the concept of retrospective and prospective operation of statutes

4. The Transgender Community should be included in the Covid Relief Scheme, the Manipur High Court recommends.

The High Court of Manipur on 22nd September, 2021 directed the state government to include members of the transgender community within the ambit of the state's Covid-19 relief scheme. The directive was issued in response to a PIL filed by Santa Khurai, secretary of All Manipur Nupi Maanbi Association (AMNMA).

The petition deals with various issues associated with the Manipur State government's management of the COVID-19 pandemic. The petitioner has relied on ***Swaraj Abliiyan v. Union of India*** that the right to free ration even without ration cards exists and hence, the state authorities cannot insist on any conditions.

The petitioner along with the same highlights the police excesses during the lockdown/curfew in the guise of enforcing COVID-19 guidelines. The pandemic does not license the authorities to act outside the law and violate the guarantee of a dignified life under Article 21 of the Constitution.

Further Readings:

1. Thangjam Santa Singh v. State of Manipur & Ors: The following article analyses the petition filed by Santa Khurai in the month of March 2021. The original PILcan be located here.
2. Bring transgender community under the ambit of Covid relief scheme: Manipur HC to govt: This article analyses the PIL and the decision of the Manipur High Court delivered recently, in the month of September.

5. Permitting only a Muslim priest to perform rituals of both Hindus and Muslims at Datta Peeta is violative of Article 25 of the Constitution.

In the case of ***Sri Guru Dattatreya Peeta Devasthana Samvardhana Samithi v. The State Of Karnataka,*** a single judge bench of the Karnataka High Court has observed that permitting only a Muslim Priest to perform rituals at Sree Guru Dattatreya Swamy Peetha, a commonplace of worship for both Hindus and Muslims is violative of Article 25 of both the communities.

The writ petition was filed by Guru Dattatreya Petra Samvardhan Samithi seeking a writ of certiorari against the State Government order by which it appointed only a Muslim priest (Mujawar) to distribute "teertha" to both Hindus and Muslims at Datta Peetha, and directions for

implementation of the Endowment committee's report submitted before the Apex Court dated 10.03.2010.

In an earlier SLP No. 29429/2008, on the directions of the Apex Court, the Endowment Committee submitted a report suggesting the appointment of a Hindu Archak for performing the daily puja, however, on certain objections by the respondents, the State Government took a stand and contended that given the sensitive nature of the case, the State Cabinet would be looking into the matter before arriving at a decision.

However, the State Government appointed a High-Level Committee to consider the recommendations which submitted its report on 03.12.2017 and suggested continuation with the nature and character of religious practices as prevailing on 15th August 1947. The State Government while acting on the High Committee's report passed the impugned order.

Therefore, the Samithi challenged the order before the Karnataka High Court wherein a single judge bench has quashed the impugned order on the ground that it infringes the Freedom of Conscience and free profession, practice and propagation of religion of both the communities guaranteed under Article 25 of the Constitution.

The court added that the order not only prevents the Hindus from performing puja as per their faith, but it also compels the Mujawar to offer puja contrary to his faith, since the Muslim community does not recognise idol worship. Further, the court stated that the impugned order is contrary to the law because of-

A. The State Government though contended that the Cabinet would be considering the recommendations, appointed a High- level Committee in its place;

B. The recommendations of the High-level Committee were based on an Earlier Endowment Commission report dated 25.02.1989 which was quashed by the Apex Court and are, therefore, vitiated;

C. The High-level Committee is not free from bias since the recommendation of one of its members was rejected by the Endowment Committee; and

D. Lastly, since it is a commonplace of worship for both Hindus and Muslims, having a Mujawar only for offering the puja is violative of Article 25 of the Constitution.

Therefore, the Court quashed the order and directed the State Government to consider the matter afresh without referring to the High-Level Committee's report.

Further Readings:

1. Muslim professor facing protest at BHU switches faculty: Earlier in 2019, a similar case emanated from Varanasi when a Muslim scholar was enrolled with the Sanskrit department at Banaras Hindu University (BHU).
2. The case against customary exclusion:The article analyses the application of basic postulates of Article 25 with the Sabarimala issue.
3. Triple Talaq: Personal Law and Colonial Shadows in Contemporary India: This article argues that the colonial past of India has contributed to the conflicting and exclusionary development of personal law in India through the prism of the Triple Talaq case.
4. State Govt Order permitting only a Muslim priest to perform rituals at Datta Peeta violates the Right to Religion of both Hindus and Muslims: This article carries out a detailed analysis of the judgement delivered by the Karnataka HC.

The next post covers some key Constitutional Law Developments in the month of October 2021. Read here!