



GOA

Judicial Services Exam

CIVIL JUDGE CADRE

High Court of Bombay

Judgement

Volume - 3



Goa JUDICIAL SERVICES

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Indian constitution

S. No.	Case Name	Facts	Date
1.	Niravkumar Dilipbhai Makwana Versus Gujarat Public Service Commission (2019 SC)	(Article - 16 (4) of Constitution of India) A Candidate Once Availed Age Relaxation for Reserved Category Cannot Later Migrate to General Category.	July 4, 2019
2.	Union of India and ORS. Versus Sitaram Mishra and ANR. (2019 SC)	[Article 226 of. Constitution of India] Acquittal In Criminal Case By Itself Does Not Vitiating Disciplinary Enquiry Findings of Misconduct.	July 11, 2019
3.	Ritesh Sinha Versus State of Uttar Pradesh & ANR.	(Article 142 of the Constitution of India) Right to privacy is not absolute and must bow down to compelling public interest.	August 02, 2019
4.	The state of Tamil Nadu & ORS.	(Article 226 of Constitution of India)	28 August, 2019

[Section 11 Arbitration Act]

Mere allegation of fraud does not make an arbitration clause inapplicable.

Rashid raza
Versus
Sadaf Akhtar

Three Judges Bench of Hon'ble Supreme Court

Hon'ble Rohinton Fali Nariman, R. Subhash Reddy and Surya Kant JJ.

Dated: September 04, 2019.

Delivered by: R.F. Nariman J.

In this case, the appellant filed an application under section 11 of the arbitration Act, before the High Court for the appointment of the arbitrator under the arbitration clause which is to be found in the partnership deed between the parties

The High Court dismissed the application by holding that the nature of the dispute involves serious allegations of fraud of complicated nature. Such allegations are not fit to be decided in an arbitration proceeding as it may require voluminous evidence on the part of both the parties to come to a finding which can only be properly undertaken by a civil court of competent jurisdiction.

Assailing the said decision of the High Court, Appellant filed an appeal before the Hon'ble Supreme Court.

The only issue involve in this case was whether the High Court was justified in dismissing the application of the appellant?

The Hon'ble Supreme Court held that the decision in *A. Ayyasamy v. A. Paramasivam and Others* [(2016) 10 SCC 386), make a distinction between serious allegations of forgery/ fabrication in support of the plea of fraud as opposed to in support of the plea of fraud as opposed to "simple allegation".

Two working test lead down was Dose the plea permeate the entire contract and above all, the agreement of arbitration rendering it void, or;

Whether the allegations of fraud touch upon the internal affairs of the parties inter se having no implication in the public domain

By applying this test, it was clear that this is a case which falls on the side of simple allegation as there is no allegation of fraud which would vitiate the partnership deed as a whole or in particular the arbitration clause concerned in the said deed. All the allegations made which have been relied upon by the respondent pertinent to the affair of the partnership and siphoning funds therefrom and not to any matter in the public domain.

1.	Versus G. Hemalathaa & ANR.	High Court in exercise of powers under Article 226 of the Constitution cannot modify /relax the Instructions issued by the Commission.	
2.	Pradeep Singh dehal (appellant) v. The state of Himanchal Pradesh (respondent)	Article 16(4) of the Constitution of India Conducting separate interviews for General and Reserved category candidates is illegal.	17 th September 2019
3.	Chandana das (Malakar) (appellant) v. State of west school is irrelevant bengal & ors. (respondent)	Article 26 and 30 of the Constitution of Medium of Instruction of to discover whether it is a linguistic minority institution or not.	25 th September 2019

4.	H. S. Yadav versus Shakuntala Devi Parakh	[Article 246 and seventh schedule of 2019 the Indian Constitution]	October 15, 2019
5.	Hari Niwas Gupta appellant v state of Bihar and another respondent	High Court can dismiss the Judicial Officer from services without holding any disciplinary proceedings/inquiry meaning thereby without an to case opportunity present his contrary to Disciplinary Rules- albeit, such order for dispensation of inquiry shall be a speaking one - High court derives its power from Article 311(2)(b) read with Article 235 and Article 227	08 November 2019
6.	M.siddiq (d) The Ayodhya verdict lrs versus Mahant Suresh das & ors	Ayodhya Verdict	November 09, 2019
7.	R. r. Inamdar Versus state of Karnataka & ors.	Article 16(4) and 226 of the Constitution of India] Rule of reservation does not apply in the case of solitary post.	November 28, 2019

8.	R. Srinivas Kumar versus r. Shametha	[Article 142 of Constitution of India]	December 10, 2019
9.	Anuradha Bhasin versus union of India and Ghulam Nabi Azad versus union of India and Anr.	The power under section 144, Cr. P.C., being remedial as well as preventive, is exercisable not only where there exists present danger, but also when there is an apprehension of danger.	January 10, 2020

[Article - 16(4) of Constitution of India]

A Candidate Once Availed Age Relaxation for Reserved Category Cannot Later Migrate to General Category.

Niravkumar Dilipbhai Makwana
Versus
Gujarat Public Service Commission (2019 SC)

Division bench

Hon'ble S. Abdul Nazeer and Indira Banerjee JJ.

Dated: July 4, 2019.

Delivered by: S. Abdul Nazeer, J.

Law Point

1. Reservation is purely a matter of discretion of the State Government to formulate a policy for concession, exemption, preference or relaxation either conditionally or unconditionally in favour of the backward classes of citizens.
2. The manner and the extent to which reservation is provided has to be spelled out from the orders issued by the Government from time to time.

Issue

Whether a candidate who has availed of an age relaxation in selection process as a result of belonging to a reserved category, can thereafter seek to be accommodate in or migrated to the general category seat?

Brief facts

Gujarat Public Service Commission (GPSC) had issued an advertisement dated 01.03.2010 and corrigendum thereafter for 47 posts of Assistant Conservator of Forests ('ACF') (Class-II) and 120 posts of Range Forest Officer ('RFO') (Class-II). As per the said advertisement and corrigendum, total 84 posts were to be filled in from unreserved (general category) candidates. Out of the said 84 posts, 26 posts were reserved for women candidates, 48 posts were to be filled in from socially and economically backward classes (for short 'SEBC') category candidates. Out of 48 posts for SEBC category candidates,

18 posts were reserved for women candidates, 9 posts were to be filled in from Scheduled Caste (for short 'SC') category candidates, out of which 2 posts were reserved for women candidates. Similarly, 26 posts were to be filled in from Scheduled Tribe (for short 'ST') category candidates, out of which 8 posts were reserved for women candidates. It was also stipulated in the advertisement that 25% of the vacancies shall, as far as practicable, be filled up by appointing candidates who possess BSc degree with Forestry as the principal subject. GPSC had stipulated in the advertisement that the candidates should submit their on-line applications from 01.03.2010 to 06.04.2010. The details about the educational qualifications, age, and mode of examination as well as the steps to submit the application have been narrated in the advertisement. GPSC conducted preliminary test on 30.05.2010 and main written examination was held from 27.05.2013 to 02.06.2013. The result of the main written examination was declared on 21.05.2014. 505 candidates who cleared the main written examination were called for physical measurement test. Personal interviews were conducted from 16.06.2014 to 31.07.2014.

The appellant submitted an application in the category of SEBC. He successfully passed the examination conducted by GPSC. In the list of selected candidates published on 09.2014, he was shown at serial no. 138. in the list of selected candidates. The case of Appellant was that while preparing the merit list, GPSC has ignored the judgment of the Hon'ble Supreme Court in *Jitendra Kumar Singh and Anr. v. State of Uttar Pradesh and Ors.* The Appellant filed special civil Application before the Ld. Single Judge of the High Court of Gujarat challenging correctness of the aforesaid select list.

Decision of single bench of the high court

The single bench of the Hon'ble High Court allowed, the application of the Appellant and held that the action of considering the meritorious reserved category candidates (who secured their position in general/open category on account of their performance in their respective reserved category only because they availed benefit of "concession" which cannot be considered as "relaxation in merits" also set aside since it is found to be contrary to the decision of Hon'ble Apex Court in the case of *Jitendra Kumar Singh (supra)* Dissatisfied GPSC filed letters patent appeal praying for setting aside of the order passed by Id. Single judge.

Decision of the division bench of the high court

The Division bench of the High Court allowed the appeal and set aside the order of the Single Judge and opined that the state of Gujarat has framed the reservation policy by government resolution and circulars as well as in view of the statutory provisions. The Division Bench of High Court held that all those candidates belonging to a reserved category, if they avail the benefit of age relaxation, the same is to be considered as relaxation in the standard and therefore such candidates who got the benefit of age relaxation are not entitled to be considered in general category and their cases are required to be considered for reserved category cases only. Further held that the Decision in the case of Jitendra Kumar Singh (Supra) would not be applicable to the facts of the present case and the relaxation of age in view of the Policy of the government can be said to be relaxation in standard and the same cannot be considered to be concession.

Dissatisfied Appellant challenged the said decision and filed an appeal before the Hon'ble Supreme Court.

Decision of the Hon'ble Supreme Court

After considering the facts and circumstances, the Hon'ble Supreme Court dismissed the appeal on the ground that:

- * There was no merit in the submission of the Appellant that relaxation age at the initial qualifying stage would not fall foul of circulars.
- * The distinction sought to be drawn between the preliminary and final examination was totally misconceived.
- * The age relaxation granted to the candidates belonging to SC/ST and SEBC-category was an incident of reservation under Article 16(9) of the constitution of India.

The Hon'ble Supreme Court observed and held that

1. Article 16(1) of the constitution is an enabling provision empowering the state to make any provision or reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the state is not adequately represented in the service under the state.
 2. It is purely a matter of discretion of the State Government to formulate a policy for concession, exemption, preference or relaxation either
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conditionally or unconditionally in favour of the backward classes of citizens.

3. The reservation being the enabling provision, the manner and the extent to which reservation is provided has to be spelled out from the orders issued by the Government from time to time.

Further, in *Jitendra Kumar Singh (supra)*, the Hon'ble Supreme Court, considering the interpretation of sub-section (6) of section 3 of U.P. Public Services (Reservation for Scheduled Castes, Scheduled Tribes and OBC) Act, 1994, held that that grant of age relaxation to a reserved category candidate does not militate against him as general category candidate if he has obtained more marks than any general category candidates.



Article 226 of Constitution of India

Acquittal In Criminal Case by Itself Does Not Vitiating Disciplinary Enquiry Findings of Misconduct.

Union of India and ors.
Versus
Sitaram Mishra and Anr. (2019 SC)

Division Bench

Hon'ble Dr. Dhananjaya Y. Chandrachud and Indira Banerjee. JJ.

Dated: July 11, 2019.

Delivered by: Dr. Dhananjaya Y. Chandrachud J.

Law Point

1. The acquittal in the criminal case was not a ground for setting aside the penalty which was imposed in the course of the disciplinary.
2. It is well settled law that High Court, in its writ jurisdiction, can only interfere in a situation where the finding is based on no evidence otherwise, the finding is rendered perverse.

Brief Facts

The first Respondent (R1) was enlisted as a constable in the CRPF on 20 September 1971. He was posted in the 41st Battalion in September 1989. In February 1998, he was functioning as Head Constable and was deployed at Ractiacherra, Police Station Jirania, West Tripura. A carbine was issued to him. It was alleged that, on 18 February 1998 at about 09:45 hours, while he was clearing the barred of his loaded 9 mm carbine in the barracks, he did not remove the magazine and proceeded to clean the carbine carelessly. As a result, eight rounds were fired. One of the bullets hit a co-constable who was present in the barracks. He died as a result of the injuries. A First Information Report was lodged. The Commandant initiated a disciplinary proceeding against RI was charged under section 11 (1) of CRPF Act, 1949, punishable under Rule 27 (a) of CRPF Rules, 1955. After conducting a disciplinary enquiry, the Enquiry Officer submitted a report on 12th March 1999. RI was held to be guilty of misconduct by the disciplinary authority, as

a result of which the penalty of dismissal from service was imposed under section 11 (1) of the CRPF Act 1949 read with Rule 27(a) of the CRPF Rules 1955. The appeal as well as the revision petition filed by R. Both were dismissed. R1 was also tried of an offence under section 304 of IPC, 1860, in which, he was acquitted by the Judicial Magistrate First class, Agartala Tripura west.

R1 filed a writ petition under Article 226 of the constitution of India to challenge his dismissal from service before single judge of High Court.

Decision of Single Judge of High Court

The Single judge of the High Court dismissed the writ petition. Assailing the said dismissal, R1 filed writ appeal before the Division Bench.

Decision of division bench of the high court

The Division Bench interfered with the judgment of the Id. Single Judge on the ground that the charge of misconduct was not established. Since, RI had, in the meantime, retired from service, the Bench directed that RI be treated in service until he attained the age of superannuation and be paid full back wages after adjusting the subsistence allowance paid during the period of suspension.

Contention of the appellant

Counsel appearing on behalf of the Appellant, Submitted that:

1. The High Court erred in interfering with the dismissal of the writ petition by the Ld. Single Judge, where the charge of Misconduct was duly proved on the basis of the evidence adduced in disciplinary enquiry.
 2. A case of negligence was clearly established which warranted dismissal from service.
 3. The charge of criminal wrong doing has to be proved beyond reasonable doubt whereas the disciplinary proceeding is governed by a preponderance of probability.
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Contention of RI

Magistrate acquitting the R1 of Charges under section 304 IPC and submitted that:

1. It is evident that there is no substance in the case that RI was guilty of a rash and negligent.
2. RI has since retired from service and his pensionary durs should be directed to be released.

Issue

Whether the Division bench of the High Court was justified in interfering with the findings of the misconduct in a disciplinary enquiry, in exercise of its power under Article 226 of the Constitution of India?

Decision of the Hon'ble Supreme Court

Considering the given facts and circumstances, the Hon'ble Supreme Court allowed the appeal and restore the judgment of the Ld. Single judge dismissing the writ petition filed by R1 under Article 226 of the constitution of India. The Hon'ble Supreme Court held that the Judgment of the Division Bench of the High Court was unsustainable and therefore, set aside, because of following reasons:

1. It is well settled law that High Court can only interfere in a situation where the finding is based on no evidence otherwise, the finding is rendered perverse.
2. The admission of RI clearly indicates that it was as a result of the handing of the weapon by RI that the bullets were fired and the death of his colleague occurred in consequence.
3. The High Court was manifestly in error in interfering with the finding of the disciplinary enquiry, particularly when a Ld. Single Judge had, in the course of his judgments found no irregularity in the enquiry. The punishment of dismissal is not disproportionate to the misconduct proved.
4. The fact that RI was acquitted in the course of the criminal trial cannot operate ipso facto as a ground for vitiating the finding of misconduct which has been arrived at during the course of the disciplinary proceedings.
5. The Hon'ble High Court has drawn an erroneous inference from the decision in Capt M Paul Anthony v. Bharat Gold Mines Ltd.² where it was

held that in the departmental proceedings the standard of proof is one of preponderante of the charge has to be proved by the prosecution beyond reasonable doubt but the High Court failed to understand that the charge of misconduct was on the ground of the negligence of RI in handing his weapon and his failure to comply with the departmental instructions in regard to the manner in which the weapon should be handled.

6. The acquittal in the criminal case was not a ground for setting aside the penalty which was imposed in the course of the disciplinary.



[Article 142 of the Constitution of India]

Right to privacy is not absolute and must bow down to compelling public interest.

Ritesh Sinha
Versus
State of Uttar Pradesh & Anr.

Hon'ble Bench of Supreme Court

Hon'ble CJI Ranjan Gogoi, Deepak Gupta and Sanjiv Khanna, JJ.

Dated: August 02, 2019.

Delivered by: Ranjan Gogoi, CJI.

Law point

A Judicial Magistrate is empowered to order any person to give voice sample for the purpose of investigation of a crime by a process of judicial interpretation and in exercise of jurisdiction vested in the Hon'ble Supreme Court under Article 142 of the Constitution of India.

Brief facts

An FIR was lodged alleging that one Dhoom Singh in association with the appellant Ritesh Sinha, was engaged in collection of money from different people on the promise of jobs in the Police. Dhoom Singh was arrested and investigating authority wanted to verify whether the recorded conversation in the mobile phone was between Dhoom Singh and the appellant Ritesh Sinha. For proving that they needed the voice sample of the appellant and accordingly filed an application before the learned jurisdictional Chief Judicial Magistrate (CJM) praying for summoning the appellant appear before the Court for the purpose of recording his voice sample.

The learning CJM ordered appellant to appear before the investigating officer and to give voice sample.

Challenging the order of the Trial Court, the appellant filed an application under section 482 CrPC before the High Court.

The High Court navigated the challenged and upheld the decision of the Trial Court. Aggrieved by the judgment of the High Court, the appellant filed an appeal before the Hon'ble Supreme Court.

Point of determination

1. Whether protection of an accused for being compelled to be witness against himself under article 20 (3) of the Constitution of India, extends to giving voice sample in the course of investigation?
2. Whether in the absence of any specific provision in CrPC would a court be competent to authorise the investigating agency to record the voice sample of a person accused of an offence?

Decision of the Hon'ble Supreme Court

As to issue No.1 it was observed that

Article 20 (3) of Constitution of India provides protection to the accused against self-incriminatory statement only. In *State of Bombay v. Kathi Kalu Oghad and Ors* (1961 SC), the then Chief Justice B.P. Sinha speaks on behalf of the majority that the prohibition contemplated in article 20(3) of the constitution would come in only in cases of testimony of an accused which are self-incriminatory or of tendency of incriminating the accused himself.

self-incriminatory statements within the meaning of article 20 (3) of the Constitution means conveying information upon personal knowledge which can throw some light on the point of controversy but contain no statement of accused personal knowledge. Only the testimony by an accused person comes within the prohibition of the constitutional provision. Such testimony must be of such a character that by itself it should have the tendency of incriminating the accused. A specimen of handwriting, signature or finger impressions by themselves are no testimony because they are unchangeable and for that reason the specimen of handwriting, signature or finger impressions does not covered within the ambit of article 20(3) of the Constitution. Same concept applies in the case of voice sample. Therefore, the constitutional probation of article 20(3) doesn't apply on the voice sample. Thus, the first question answered negative.