

Shipra Tewary V. M/s Coal India Limited

- ❖ **TOPIC** : Considering Female Candidate For Employment Only In Absence Of Male Nominee Is Gender Discrimination
- ❖ **BENCH** : Justice Sanjay Kumar Dwivedi



- ❖ **FORUM**: Jharkhand High Court

❖ **MAIN ISSUE**

- Whether denial of employment to a female candidate only on the basis of gender is against the provisions of Articles 14 and 15 of the Constitution of India.

❖ **BACKGROUND**

- As per the factual matrix of the case, the Eastern Coalfields Limited entered into an agreement with the father of the Petitioner for use of the land/extracting the coal.
- Thereafter, the proposal regarding the procurement of land was also initiated, but the General Manager advised the Agent/Manager to make an agreement with the land owners.
- The father of the Petitioner then moved the Court by filing a writ petition in 2005, whereby the single judge bench directed the Eastern Coalfields Limited to pay compensation as well as employment to the dependent of the father of the petitioner, which was challenged by the Eastern Coalfields Limited by way of filing an LPA which was dismissed in 2013 with the direction to the Eastern Coalfields Limited to ascertain the amount of compensation and to pay the same along with the interest @ 6% per annum within a period of three months from the date of receipt of a copy of that order.
- The Eastern Coalfields Limited was further directed to provide opportunity of employment to the dependents of the land losers within a period of six months from the date of receipt of a copy of that order.
- Notably, a portion of compensation was received, however, employment was not provided and the

same was challenged by the petitioner in the High Court.

❖ **OBSERVATIONS**

- The Jharkhand High Court has reiterated that denial of employment to a female candidate only on the basis of gender is against the provisions of Articles 14 and 15 of the Constitution of India.
- The court noted that in exceptional cases, where there is no male nominee, the proposal for female employment was being considered by the Eastern Coalfields Limited and, as such, on the basis of

gender, the company was denying employment.

- Justice Sanjay Kumar Dwivedi observed, “denial of employment to the female candidate is against the provision made in Articles 14 and 15 of the Constitution of India. The Court further finds that in paragraph 30 of the counter affidavit itself, it is stated that in exceptional cases where there is no male nominee, the proposal for female employment was being considered by the Eastern Coalfields Limited and, as such, on the basis of gender, denying the employment is against the mandate of the Constitution of India. The Constitution of India is the fountain of the statute and this aspect has been dealt with by the Hon'ble Supreme Court in the case of Secretary, Ministry of Defence v. Babita Puniya and others (supra).”
- It was submitted by the Petitioner that the ground for denying employment to the female was based on the premise that only male candidates can be provided employment. Furthermore, it was submitted that an absolute bar on women seeking criteria or command appointments would violate the guarantee of equality under Article 14 of the Constitution of India. The Petitioner relied upon the judgment in Secretary, Ministry of Defence v. Babita Puniya & Ors.
- Alternatively, the Respondent submitted that employment in exchange land should be provided to males only in view of the limited employment opportunities in mining. Additionally, it was submitted that in exceptional cases where there is no male nominee, the proposal for female employment should be placed before the Board for its consideration.
- The Court rejected Eastern Coalfields Limited's argument with respect to the age of the petitioner at the time of the acquisition of land while observing that there was no statement in the counter affidavit.
- “Even if the argument of the counsel for the

**FOLLOW
US**



PW Mobile APP
<https://www.pw.live/>



[https://www.youtube.com/
@JudiciarybyPW](https://www.youtube.com/@JudiciarybyPW)



<https://t.me/pwlawwallah>

Eastern Coalfields Limited was accepted that the petitioner was aged about 6 years at that time, the direction of the Division Bench was there to provide employment to the dependent of the petitioner and it was incumbent upon the Eastern Coalfields Limited to request the father of the petitioner to nominate another person for employment; the Eastern Coalfields Limited has failed on that point and, as such, that argument is not acceptable to the Court,” the Court stated.

- Furthermore, the Court observed that Bharat Coking Coal Limited/Eastern Coalfields Limited had appointed the persons in dispute even 16 to 18 years after the land acquisition, and as such rejected this contention as well.
- Additionally, the Court pointed out that the plea was not raised in earlier litigation, which was affirmed up to the Division Bench and that order had attained finality.
- “The land in question is situated in Santhal Pargana Division particularly in Jamtara district. Thus, the cause of action is also there in the State of Jharkhand,” the Court affirmed.
- Accordingly, the letter issued by Eastern Coalfields Limited was quashed by the Court and the respondents were directed to pay the remaining compensation to the petitioner.
- The Court further issued directions to the petitioner, namely, Shipra Tewary to be provided employment by the Eastern Coalfields Limited within the specified period.
- Consequently, the petition was allowed.

Dana Ram v. State of Rajasthan

- ❖ **TOPIC :** Mere Filing of FIR/Chargesheet Not Enough To Reject Candidature, Each Case Must Be Examined To Determine Involvement Of Moral Turpitude
- ❖ **BENCH :** Justice Vinit Kumar Mathur



- ❖ **FORUM:** Rajasthan High Court
- ❖ **MAIN ISSUE**
 - Whether the rejection of the candidature of a meritorious candidate for the post of a government teacher is correct or not.
- ❖ **BACKGROUND**
 - A petition filed by a successful candidature (Petitioner) for the post of Government Teacher, whose name was included in the list of successful candidates.
 - However, before the declaration of the result, a case under Section 498A, IPC (cruelty against women by husband or in-laws) was filed by his wife leading to the cancellation of his appointment. Hence, the petition was filed by the candidate.
- ❖ **OBSERVATIONS**
 - Setting aside the rejection of the candidature of a meritorious candidate for the post of a government teacher, the Rajasthan High Court has ruled that in the event of filing of a criminal complaint against the candidate, the Government is required to scrutinize the matter considering the facts involved to reach a decision, whether the act done by the candidate involved moral turpitude that would disentitle the candidate for the appointment.
 - The bench of Justice Vinit Kumar Mathur observed that not every FIR or even conviction would itself involve a refusal of a certificate of good character or consequent disqualification.
 - “Thus, in the opinion of this Court, each individual case is required to be examined from the angle that whether the act/offence committed by such person involves moral turpitude or not and whether a person who has committed such act can be granted a certificate of 'Good character' or not. Without examining each case on the facts and circumstances of that criminal case, the candidature cannot be rejected merely on the ground that an FIR/Charge-sheet has been filed...”
 - It was argued by the petitioner that the case had been filed solely due to marital discord and the allegations levelled against him did not constitute an offence of moral turpitude.
 - Furthermore, the petitioner also made reference to a Department of Personnel circular/notification dated December 12, 2019 (“the Circular”) as per which the Government was required to take into account the allegations in the charge sheet for deciding on the appointment of the candidate.
 - It was argued that such exercise was not undertaken by the Government which gave a decision only on the basis of involvement of the

FOLLOW US



PW Mobile APP
<https://www.pw.live/>



<https://www.youtube.com/@JudiciarybyPW>



<https://t.me/pwlawwallah>

petitioner in a criminal case.

- Aligning with the argument put forth by the petitioner, the Court observed that as per the reply of the Government, the only ground to reject the candidature of the petitioner was the appearance of the offence under Section 498A in the list given under the Circular.
- In this light, the Court opined that the Circular could not be applied in a mechanical manner by the Government to the effect of denying appointment to the petitioner merely for being involved in any criminal case.
- However, the authorities were required to examine the charge sheet filed against the concerned candidate for making a decision on whether the character of the candidate was good or bad.
- “The principle for arriving at a decision that a person is not entitled for appointment in the services of the State is based on the fact that whether the act/offence committed by a candidate/person involves moral turpitude or not? If a person has committed an act which can come in the ambit of moral turpitude and the act done by such person shall have negative impact in discharge of his duties on the post on which he will be appointed, then in these two situations that person/candidate is certainly dis-entitled for appointment on that post.”
- In the background of this analysis on the principle of reaching a decision on appointment for a public post, the Court ruled that every case needed to be examined from the angle of whether the act involved moral turpitude of the person because mere involvement or conviction in a criminal case was no indication of bad character.
- Hence, it was held that since such scrutiny was not done by the Government in the present case of the petitioner, the decision of rejecting his appointment was contrary to the law.
- Accordingly, the petition was allowed directing the Government to consider the case of the petitioner taking into account facts of the case filed against him.

Shanid @ Shani v. State of Kerala

- ❖ **TOPIC** : Refusal Of Passport Not Arbitrary If Foreign Travel Not In Public Interest/ May Prejudice India's Friendly Relations: Kerala High Court
- ❖ **BENCH** : Justice K Babu
- ❖ **FORUM**: Kerala High Court



❖ **MAIN ISSUE**

- Whether permission to travel abroad can be granted to a 32-year-old man accused of committing human and drug trafficking or not.

❖ **BACKGROUND**

- It was alleged that the petitioner trafficked the 23-year-old son of the 'de facto' complainant to Qatar on a visiting visa and by offering him a job. The petitioner allegedly gave the complainant's son a bag of 4 kg of narcotic drugs for taking it to Qatar.
- The de facto complainant's son, who was unaware of the contents in the bag, was found by the Qatar police.
- The petitioner was booked in the FIR for allegedly committing offences punishable under IPC Sections 370 (human trafficking), 420 (cheating and dishonestly inducing delivery of property) read with Section 34 (common intention) and Section 23 (punishment for illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances) of the NDPS Act.
- The petitioner thereafter moved a plea under Section 22 (a) of the Indian Passports Act to leave India while the FIR is pending, which was rejected by the Special Court considering the seriousness of the allegations against him.

❖ **OBSERVATIONS**

- The special court observed that the investigation is only in the preliminary stage and so granting permission to the petitioner to leave India would tantamount to modifying the conditions under which he was granted bail.
- The Kerala High Court recently refused to interfere with a Special Court's decision to refuse a 32-year-old man accused of committing human and drug trafficking, permission to travel abroad, adding that the order stands the "test of constitutionality".
- A single judge bench of Justice K Babu in its order observed, "The genuine apprehension that the presence of a citizen of India in a foreign country is not in the public interest and is likely to prejudice the friendly relations of India with any foreign country is a ground to refuse passport and related

FOLLOW
US



PW Mobile APP
<https://www.pw.live/>



[https://www.youtube.com/
@JudiciarybyPW](https://www.youtube.com/@JudiciarybyPW)



<https://t.me/pwlawwallah>

travel documents to him. Such a restriction is just and reasonable and not arbitrary or oppressive".

- Before the High Court the petitioner's counsel submitted that he has to travel to Abu Dhabi for employment and that he would lose his job if he is not permitted to travel abroad.
- The State opposed his plea and argued that permitting the petitioner to go abroad is not in the public interest and that it might affect the friendly relations between India and the other foreign country due to serious allegations like human and drug trafficking.
- Referring to Section 6 of the Passports Act, the High Court noted that persons accused of criminal offences and whose cases are pending before criminal court can be denied permission to travel abroad. It further noted that as per a August 25, 1993 notification issued by the Ministry of External Affairs, the Government of India has exempted Indian citizens from application of Section 6, against whom proceedings in respect of an offence alleged to have been committed by them are pending before a criminal court in India, if they produce orders from the concerned Court permitting them to depart from India.
- The High Court thereafter said, "If the Court concerned permits a person to leave India, the passport authority may issue a travel document to him even if he is accused of an offence."
- Observing that the right to travel abroad is a valuable and integral part of the right to personal liberty, the high court said that any law interfering with personal liberty of a person must satisfy the triple test of constitutionality. These are, the court noted,
 - (1) It must prescribe a procedure
 - (2) The procedure must withstand the test of one or more of the fundamental rights conferred under Art.19, which may be applicable in a given situation.
 - (3) It must also be liable to be tested with references to Art.14."
- In the facts of the case, the Court observed that the Special Court denied permission to the petitioner to travel abroad due to the nature of serious allegations raised against him. It thereafter dismissed the plea.

Smt Kriti Goyal v. Dev Suman Goyal And 3 Others

- ❖ **TOPIC :** Matrimonial Dispute Remains Between Couple, No Impleadment Can Be Allowed In Divorce Proceedings U/S 13B Hindu Marriage Act: Allahabad HC
- ❖ **BENCH :** Justice Saumitra Dayal Singh and Justice Donadi Ramesh



- ❖ **FORUM:** Allahabad High Court
- ❖ **MAIN ISSUE**
 - Regarding the divorce proceedings (matrimonial disputes) are only between the parties to the marriage.
- ❖ **OBSERVATIONS**
 - The Allahabad High Court has held that the divorce proceedings (matrimonial disputes) are only between the parties to the marriage, no third person can seek impleadment in proceedings under Section 13B of the Hindu Marriage Act.
 - The bench comprising Justice Saumitra Dayal Singh and Justice Donadi Ramesh held, "Piquant as it may be, the impleadment sought may never be justified. A matrimonial dispute remains a dispute between the couple in question who may be finding difficulties in their matrimonial relationship. All other persons remain strangers to that dispute."
 - Some respondents, being creditors of the parties (husband and wife), sought impleadment in the proceedings for mutual divorce filed by them.
 - Respondents pleaded that since money was due to them, they perceived that the separation between the parties would impact their rights.
 - Appellant approached the High Court against the order of the Principal Judge, Family Court, Aligarh allowing the impleadment.
 - The Court held that though divorce may alter some civil rights of the parties, third parties can never be made party to the proceedings for divorce by mutual consent.
 - "To that extent materialistic goals of the world at

**FOLLOW
US**



PW Mobile APP
<https://www.pw.live/>



[https://www.youtube.com/
@JudiciarybyPW](https://www.youtube.com/@JudiciarybyPW)



<https://t.me/pwlawwallah>

large may remain overshadowed by the primacy to be given to resolve the matrimonial discord.”

- Accordingly, the appeal was allowed holding that the respondents would remain entitled to their claims even after dissolution of marriage.

XXXX v. XXXX

- ❖ **TOPIC:** Husband Can't Make Voluntary Deductions Like EMI From His Income To Grant Less Maintenance To Wife
- ❖ **BENCH :** Justice Sumeet Goel



- ❖ **FORUM:** Punjab and Haryana High Court
- ❖ **MAIN ISSUE**
 - Regarding the quantum of maintenance to be granted to a wife or not.
- ❖ **OBSERVATIONS**
 - The Punjab and Haryana High Court, while deciding the quantum of maintenance to be granted to a wife, said that the husband cannot be permitted to make voluntary deductions from his gross income which are not legally compulsory.
 - The Court enhanced the maintenance amount by modifying the family court's decision wherein it had allowed the husband to deduct an amount of Rs.10,000, which he was allegedly paying for EMI.
 - Justice Sumeet Goel said, "The statutory deductions, which are mandated by law and beyond the control of the husband, can be taken into account. The respondent-husband cannot be allowed to reduce his financial liability towards the maintenance of his spouse or children by resorting to voluntary deductions or expenses that do not have legal compulsion. The primary obligation to maintain the dependents is not diluted through artificial reduction of income."
 - The Court was hearing a revision plea against the order passed by the Family Court filed by the wife, praying for modification of the said order and for enhancing the quantum of interim maintenance awarded by the said order.
 - The wife was awarded interim maintenance under

Section 125 CrPC at the rate of Rs.8,000 per month (i.e. Rs.3,000/- per month to wife and Rs.2500 per month each to two minor daughters).

- Counsel for the petitioner argued that the Family Court ought to have considered the disparity between the actual income of the respondent and the paltry sum awarded, which is grossly inadequate to meet even the basic necessities of life.
- Opposing the plea, the husband argued that he had to look after his ailing mother and there are other obligations as well. He also submitted that the wife has done Masters in History and is earning Rs.20,000 per month.
- After examining the submissions, the Court said that, "it goes without saying that a decision upon the aspect (especially quantum) of interim maintenance, being result of some element of estimation, has to be construed accordingly as the entitlement of the applicant (making a plea for grant of interim maintenance) cannot be based upon exact arithmetical calculations at such stage."
- The judge noted that the Family Court found the gross monthly income of the husband as Rs. 39,051 and his net income has been found to be Rs.34,976 per month.
- However, the Family Court granted deduction of Rs.10,872 towards EMI being paid by the husband and has accordingly assessed the net income received in hand as Rs.24,104 per month.
- Considering the principles governing the assessment of quantum of maintenance (whether interim or final) under Section 125 of CrPC, the Court said, "it is indubitable that the deduction made from the gross income of the husband, which are on account of own volition of the husband, cannot be permitted."
- Justice Goel highlighted that it is only the statutory deductions, which are beyond the control of the husband, which can be taken into account.
- Consequently, the Court allowed the plea and modified the Family Court's order to the extent that the husband shall pay to the wife a sum of Rs.4000 per month and Rs.3500 per month each to the minor daughter.

Pramod v. The Secretary, The Sultanpet Diocese Society and Another

- ❖ **TOPIC :** Tenant Who Hasn't Paid Rent Can't Seek Protection From Eviction
- ❖ **BENCH :** Justice C. Jayachandran
- ❖ **FORUM:** Kerala High Court

FOLLOW US



PW Mobile APP
<https://www.pw.live/>



<https://www.youtube.com/@JudiciarybyPW>



<https://t.me/pwlawwallah>



❖ **MAIN ISSUE**

- Regarding Eviction.

❖ **OBSERVATIONS**

- The Kerala High Court has held that a tenant, who has failed to pay rent, cannot seek protection from the Court against eviction proceedings.
- Calling it a "disquieting litigative trend", Single bench of Justice C. Jayachandran held that a Landlord is the paramount title holder of the tenanted premises and the tenant's right to occupy the same is wholly dependent on his obligation to pay the rent.
- It added that allowing a tenant to continue proceedings against eviction will not only be oppressive but amount to harassment of the landlord, who will be forced to bear a tenant, without receiving rent.
- Court thus issued the following directions:
- The tenant, who approaches a court seeking injunction from forcible eviction shall swear to an affidavit to be submitted along with the plaint stating that the agreed rent, which falls due up to the month previous to the month of filing has been paid to the landlord and that he will continue to do so, pending the litigation. This has to be followed even in cases where the tenant enters as a defendant and applies for injunction from forcible eviction.
- In case, the rent is not being paid, the tenant/plaintiff shall explain in the affidavit the reasons justifying such non-payment.

- In cases where the tenant has submitted the sworn affidavit that the rent is being paid regularly, the courts shall generally grant an ex-parte ad-interim order of injunction restraining eviction. If the affidavit says that the rent is not paid regularly, the Court shall examine the reasons and order accordingly.
- Upon the defendant/landlord entering appearance, if it is shown that the agreed rent has not been paid - contrary to the affidavit sworn to by the plaintiff/tenant - the court, after hearing the parties, and on being satisfied of the same, will issue an order directing the tenant/plaintiff to deposit the arrears of rent, within a time frame fixed by the court.
- If the plaintiff/tenant deposits such arrears of rent, along with an undertaking to continue to pay/deposit further rent pending litigation, the interim order of injunction shall be made absolute till the final disposal of the case
- However, if the tenant/plaintiff fails to make such a deposit, the interim order of injunction shall be vacated at the first instance and court shall grant further time to the tenant to deposit such arrears.
- If within the given time, the arrears are paid, the injunction order shall revive on the condition that the tenant undertakes to pay future rent as well.
- However, if the arrears are not paid within the given time, the pleading shall be struck off.
- The Court added that these are general guidelines and courts can deviate from these if the individual facts and circumstances require so.

FOLLOW US



PW Mobile APP
<https://www.pw.live/>



<https://www.youtube.com/@JudiciarybyPW>



<https://t.me/pwlawwallah>