

**GUJARAT NATIONAL LAW UNIVERSITY
GANDHINAGAR**

Course: Legislative Drafting and Interpretation of Statutes
Semester-V (Batch: 2018-23)

End Semester Online Examination: December 2020

Date: 26th December, 2020

Duration: 8 hours

Max. Marks: 50

Instructions:

- The respective marks for each question are indicated in-line.
- Indicate correct question numbers in front of the answer.
- No questions or clarification can be sought during the exam period, answer as it is, giving reason, if any.

Q.1	<p>A Claim Petition was filed before the Railway Claims Tribunal, Ernakulam Bench (hereinafter referred to as the 'Tribunal') by the husband and a minor son of Smt. Abja who died on 23.5.1996 in a train accident at Varkala Railway station. The Tribunal rejected the claim. But the appeal against the said decision was allowed by the Kerala High Court. By the impugned judgment dated 25.6.2001, the High Court awarded compensation of Rs. 2 lakhs along with interest at the rate of 12% from the date of the petition till the date of payment was granted. Aggrieved by this judgment, an appeal has been filed by the Union of India before the Supreme Court. <i>There is no dispute that Smt. Abja was a bona fide passenger holding a second class season ticket and an identity card issued by the Southern Railway.</i> As per the forensic report the cause of death was due to multiple injuries in the accident. The deceased fell on to the railway track and was run over by train No. 6349 Parasuram Express.</p>	<p>Marks (3x4= 12)</p>
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Before the Tribunal the prosecution witness, K. Rajan, deposed that while he was at Varkala railway station he found one passenger falling from the Parasuram Express and the train was stopped, he went to the north side of the platform and saw the injured lying on the platform. He further stated that the person who fell down was a lady, who died on the spot. Also stated that, the deceased fell down from the compartment of the train when the train was moving.

The Tribunal held that the prosecution witness is an interested witness, because, if he was present on the spot he would have definitely helped the Station Master in removing the dead body from the railway track. Further, the police would have definitely recorded his evidence. For this reason, the Tribunal disbelieved the evidence of prosecution witness. However, the evidence of defense witness, D. Sajjan, who was the Station Master at the railway station, corroborated the evidence of prosecution witness. Defense Witness deposed that he saw a girl running towards the train and trying to enter the train and in that course she fell down. He has further stated that the deceased Abja had attempted to board the train and fell down from the running train. For this reason, the

Tribunal held that this was not an 'untoward incident' within the meaning of the expression in Section 123(c) of the Railways Act, 1989 as it was not an accidental falling of a passenger from a train carrying passengers.

The Union of India has challenged the Judgment of High Court of Kerala before the Supreme Court which reversed finding of the Railway Claims Tribunal that a bona fide passenger who suffered fatal injury consequent to fall from a train while trying to board it, is not entitled to compensation as definition of 'untoward incident' takes in only passengers falling out of the train while travelling in it.

The relevant provisions of law are as under:

Section 2(29) of the Railways Act, 1989 defines 'passenger' to mean a person traveling with a valid pass or ticket.

Section 123(c) of the Railways Act, 1989 defines 'untoward incident' to include the accidental falling of any passenger from a train carrying passengers.

Section 124A of the Railways Act, 1989 states: Compensation on account of untoward incident – When in the course of working a railway an untoward incident occurs, then whether or not there has been any wrongful act, neglect or default on the part of the railway administration such as would entitle a passenger who has been injured or the dependent of a passenger who has been killed to maintain an action and recover damages in respect thereof, the railway administration shall, notwithstanding anything contained in any other law, be liable to pay compensation to such extent as may be prescribed and to that extent only for loss occasioned by the death of, or injury to, a passenger as a result of such untoward incident:

Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to –

- 1) Suicide or attempted suicide by him;*
- 2) Self-inflicted injury;*
- 3) His own criminal act;*
- 4) Any act committed by him in a state of intoxication or insanity;*
- 5) Any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident.*

Explanation – For the purposes of this section, "passenger" includes –

- (i) A railway servant on duty; and*
- (ii) A person who has purchased a valid ticket for traveling by a train carrying passengers, on any date or a valid platform ticket and becomes a victim of an untoward incident.*

In the light of the above mentioned material facts and provisions of law discuss the following:

- a) What are the possible contentions of both of the parties?
- b) What are the rules of interpretation/construction be applied to decide the case?
- c) Clearly give the reasons for the application of particular rules of interpretation/construction.

Q.2 In 1920, 'C' was employed in the Education Department of the State of Uttar Pradesh and in due course, was promoted in the United Provinces Education Service in the year (10)

1946 (Junior Scale). In the year 1948, 'C' was appointed as an officer-on-special duty and managing editor of a quarterly journal issued by the Education Department under the style "Shiksha". While holding the post of officer-on-special-duty, 'C' was also appointed as a member of the Book Selection Committee. He continued to function as such until 1951. His conduct as a member of that Committee was not found to be satisfactory and the Board of Education Department discovered that, he had allowed his private interests to come in conflict with his public duties. He was found to have shown favours in the selection of books on approved list, in respect of certain books said to have been written by a nephew of his, aged only 14 years, and by another relation of his, as also to a firm of publishers who had advanced certain sums of money to him on interest. In July, 1952, 'C' was transferred as Headmaster of a certain High School, however, he did not join his post and went on leave on medical grounds. While on leave, he was suspended from service with effect from 2nd August, 1952. In September, the same year, the Director of Education issued orders, framing charges against him and calling upon him to submit his written statement of defense and giving him an opportunity to call evidence in support of it. Of the charges being that, he did not inform the Committee of his relationship with the alleged authors of the books, the selection of which (books) was calculated to bring pecuniary benefit to those relations. Another charge related to having benefited a certain firm of publishers whose books, about a dozen in numbers, had been selected by the Committee of which he was a member. 'C' submitted a lengthy written statement in his defense and did not insist on oral examination of witnesses, however enclosed with his explanation certain affidavits in support of his case.

The Director of Education, after a thorough inquiry into the charges framed against 'C', submitted a report to the effect that, the charges framed against him have been substantially proved. He recommended that the 'C' be demoted to the subordinate education service and be compulsorily retired. After considering the report aforesaid, the Government decided on November 7, 1952, to call upon 'C', under Art. 311(2) of the Constitution, to show cause why the punishment suggested in the departmental inquiry report should not be imposed upon him. In pursuance of the show cause notice served upon 'C' on November 13, 1952, he put in a long written explanation on November 26, 1952, on the same lines as his written statement of defense submitted earlier as aforesaid, bearing on the merits of the findings as also objecting to the procedure adopted at the inquiry. A Government notification dated January 9, 1953, was published showing the names of the officers of the Education Department, who would retire in due course on superannuation, that is to say, at the age of 55, and the corresponding dates of superannuation. 'C' is shown therein as one of those, and in the last column meant for showing the dates of retirement, September 15, 1953, is mentioned as against his name. On 2nd February, 1953, 'C' filed the first petition (Writ Petition No. 121 of 1953) challenging the validity of the order of the Government suspending him and calling upon him to show cause why he should not be reduced in rank with effect from the date of suspension, and also compulsory retirement. In that petition, he challenged the legality of the entire proceedings and prayed for a writ of mandamus directing the Government to pay his full salary during the period of suspension until he attained the age of superannuation as aforesaid.

The State Public Service Commission (hereinafter shall refer to as the Commission) was also consulted by the Government as to the punishment proposed to be imposed as a result of the inquiry. Presumably, the Commission was supplied with all the relevant material up to the date of the second show cause notice. The Commission was consulted however, it appears from the findings of the High Court that, 'C's one of the written explanations submitted, was not before the Commission. The explanation so submitted, was a much more elaborate one dealing not only with the three charges which had been made against him, but also with other irrelevant findings of the inquiry officer who had made several observations against the 'C's efficiency and conduct, which were not the subject-matter of the several heads of charge framed against 'C' and therefore, not called for. After consideration of the opinion of the Commission, the inquiry report and the several explanations submitted by 'C' the State Government passed its final order dated September 12, 1953, reducing 'C' in rank with effect from August 2, 1952, and compulsorily retiring him.

A Division Bench of the High Court, presided over by the Chief Justice, by its judgment and order dated January 8, 1954, disposed of the writ petition holding that the orders impugned were invalid for the reason that the provisions of Art. 320(3) (c) of the Constitution had not been fully complied with because the last written explanation of 'C' submitted had not been placed before the Commission. The High Court, therefore, quashed the orders of the Government reducing him in rank and reducing his emoluments with effect from the date of suspension as aforesaid. The State Government has filed an appeal against this judgment and order of the High Court in the Supreme Court.

Discuss in detail the reasoning of the Supreme Court and name the rules of interpretation adopted by the Supreme Court in the above mentioned case.

- Q.3 On 26th February, 1996 the Chief Minister of Punjab while addressing dairy farmers at a State level function said that, *the State Government has abolished purchase tax on milk and milk products in the State for the period 1.4.96 to 4.6.97. This announcement was given a wide publicity in several newspapers in the State.* (3+3+
+3+4
=13)

The Finance Minister of the State while presenting the budget for the year 1996-97, like all other budget speeches, it consisted of a review of achievements and a delineation of future economic measures proposed to be taken for the development of the State. It was said that:

In a package of measures, special relief was given to the farming community which is the backbone of the State's economy. Furthermore, last month the Chief Minister has abolished the purchase tax on milk. While this would reduce the inflow of tax revenue to the extent of Rs.6.93 crores, it will assist the milk producers, and also the milk co-operatives.

The next circumstance was a letter of the Financial Commissioner dated 26.4.1996 addressed to the Excise and Taxation Commissioner, the relevant extract of which reads as follows:

Pursuant to the announcements made by the Finance Minister, Punjab, on the floor of the House and the announcement made by the Chief Minister, Punjab on 26.2.1996, while addressing a public

function organized by the Milk-fed in connection with Milk Day at Milk Plant, Ludbiana relating to exemption of purchase tax on milk, it has been decided in principle, to abolish the purchase tax on Milk with effect from 1.4.1996. You are requested to send proposal along with the financial implication involved therein, immediately.

In response to the above mentioned letter, a circular dated 26th April 1996 was issued by the Excise and Taxation Commissioner, Punjab to the entire Deputy and Assistant Excise and Taxation Commissioners and the Deputy Directors (Enforcement) in the State. Which states:

The Government has decided to abolish purchase tax on milk and to exempt dhoop agarbatti, kumkun, kirpan, pens and ball-pens from the levy of sales tax. It has also decided to reduce rate of tax on stainless steel utensils from 10% to 4% on tractor parts from 8% to 2% and on bullion from 2% to 0.5% all these exceptions/reductions will be effective from 1.4.1996. To implement these decisions, necessary notifications are under process and likely to be issued shortly. This position may be brought to the notice of all the officers/officials for information and necessary action. The receipt of this communication may please be acknowledged.

On 27th June 1996, a meeting was held under the chairmanship of the Chief Minister which was attended by the Finance Minister, the Excise and Taxation Minister and various Financial Commissioners. At the meeting, the decision to abolish purchase tax on milk was reiterated and it was decided to issue a formal notification in a day or two.

On 4th June 1997, the Council of Ministers held a meeting headed by the Chief Minister to consider various items on the agenda. One of the items was related to the abolishing of purchase tax on milk. The minutes cryptically record that the decision to abolish purchase tax on milk was not accepted. Consequently on 3rd July 1997 the Excise and Taxation Officer issued notices to the respondents requiring them to pay the amount of purchase tax for the whole of the year 1996-97.

The State Government has the power under section 31 of Punjab General Sales Tax Act, 1948 to amend Schedule itself and thereby remove goods from imposition of tax altogether. It provides:

‘The State Government after giving by notification not less than twenty days’ notice of its intention so to do, may by notification add to, or delete from, schedule C any goods, and thereupon Schedule C shall be deemed to be amended accordingly.’

In addition, the State Government has the power to exempt the payment of tax under Section 30 of Punjab General Sales Tax Act, 1948 which reads:

Power to exempt: (1) *The State Government, if satisfied that it is necessary or expedient so to do in the interest of cottage industries, may by notification exempt any class of co-operative societies, or persons from the payment of tax under this Act on the purchase or sale of any goods subject to such conditions as may be specified in such notification. Every notification made under sub-section (1) shall as soon as may be after it is made, be laid before the State Legislature.*

In the light of the above mentioned factual matrix elucidate the following along with your own views:

- a) What was the issue before the Court? (3 Marks)
- b) What were the contentions of the parties before the Court? (3 Marks)
- c) Reasoning and decision of the Court/Courts and (3 Marks)
- d) Different rules of interpretation/construction applied by the Court. (4 Marks)

Q.4 Attempt the following in brief:

(3x5=
15)

- a) "It is general judicial experience that in matters of law involving questions of construing statutory or constitutional provisions, two views are often reasonably possible and when judicial approach has to make a choice between the two reasonably possible views, the process of decision making is often very difficult and delicate". Describe.
- b) "Every statute other than a pure consolidating statute is, after all, enacted to make some change, or address some problem or remove some blemish or effect some improvement in the national life. The courts task within the permissible bounds of interpretation is to give effect to the Parliament's purpose. Therefore, the controversial provisions should be read in the context of the statute as a whole which led to its enactment." Discuss the above mentioned statement in the light of *Standard Chartered Bank and others v. Directorate of Enforcement and others* case (AIR 2005 SC 2622).
- c) It is possible that in some special cases a statute may have to be historically interpreted "as if one were interpreting it the day after it was passed." However, generally statutes are of the always "speaking variety" and the court is free to apply the current meaning of the statute to present day conditions. There are at least two standards covered by this principle. The first is that courts must apply a statute to the world as it exists today. The second strand is that statute must be interpreted in the light of the legal system as it exists today. Elucidate.
