



Estd. 1950

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- * In service law, there is no place for adverse possession or holding over. 184
- * Plea of res judicata is a restraint on the right of a plaintiff to have an adjudication of his claim. 222
- * Procurement price included the element of purchase tax under the Levy Order 1985. 209

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an authority for the proposition that when once the retiral benefits reach the hands of the retired employee or his/her L.Rs., on his/her death, it does not lose its character as such.

Though the Apex Court in the above decision also observed that the same principle as in *Calcutta Dock Board's* case (supra) was reiterated in *Hingareni's* case (supra) and *Shitala Prasad Nagendra and others'* case (supra), in fact, a perusal of the above said decisions go to show that it is not the case and the facts obtaining in both the cases are totally different, as already noticed above.

It appears that the facts in the above two cases were not brought to the notice of the Hon'ble Supreme Court, as except referring to the two decisions by names, neither facts were discussed nor referred to.

The Supreme Court also observed that the decision in *Jyoti Chit Fund* case (supra) has been watered down by subsequent decisions referred to in paras 15 and 16, but in fact, in those decisions the decision in *Jyoti Chit Fund* case was referred to and followed. It was not demonstrated in the present case as to how the decision in *Jyoti Chit Fund* case was watered down.

Therefore, the settled legal position obtaining on the point as held in *Jyoti Chit Fund* Case and also *Hingareni's* case, is that when once the retiral benefits reach the hands of the employee, it loses its character as such and merge with his assets and thus susceptible for attachment.

By its recent decision in *Radhey Sham Gupta's* case (supra), the Supreme Court in effect, unsettled the already settled legal position on the point, without actually distinguishing or referring to the facts in the above decisions.

As per the law of precedents, since the decision in *Radhe Shyam Gupta's* case (supra)

referred to the earlier decisions on the point, it has to be followed being latest in point of time, until the Supreme Court itself clarifies the issue on the point.

GRIEVANCE PROCEDURE: ITS ROLE IN THE RESOLVING OF DISPUTES – A STUDY

By

Dr. Mukund Sarda*

1. Labour agreements provide for one of the methods of resolving disputes, as 'Grievance Procedure'. If the procedure is strictly followed as per the agreement or standing orders applicable to the industry, it may lead to the grievance being resolved easily and amicably.

2. The source for a grievance to arise may be attributable to the following factors:-

- (i) Employee's dissatisfaction relating to the employment relationships or a feeling of personal injustice. This might arise frequently on account of violation of terms and conditions of service or standing orders or any rule applicable to the industry;
- (ii) An agreement between employer/management and workers being violated solely with the intention of the party to commit a breach of the agreement;
- (iii) Working condition or past company practices resulting in dissatisfaction to employers or loss or deprivation of benefits due to them; and
- (iv) Safety standards being violated resulting in injury to employee/employees. There is no denial of the fact, that violations affect health standards as well.

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3. Grievance procedure must be detailed. It must lay down norms to establish the following procedures:-

- (i) The procedure for the initiation of the grievance and its formulation in specific terms;
- (ii) Laying down the process in terms of specific steps to be taken in the proper order;
- (iii) Persons to be identified to represent the parties on either side; and
- (iv) Time-stipulation of each step and for the subsequent steps to be strictly followed and hearings should be fair.

4. The usual guidelines, which are observed in handling a grievance may be stated thus:-

- (i) Each department must constantly endeavour to avoid problems, before they ripen into a grievance. In other words, early steps should be taken to resolve the problem at the level of concerned department;
- (ii) Persons handling a grievance must be 'good listeners' i.e., workers must be allowed to freely speak and argue. The tendency to prevent the worker from raising his grievance by frequent interruptions will have to be restrained. If this is not done, then the basis for raising a grievance will not be found and it follows as a consequence, that no solution can be offered for resolving it;
- (iii) The need to adopt a 'positive or friendly' approach is vital. Only then the workers will have confidence and an assurance that their grievance will be heard. Aggressiveness on the part of the listener will damage the cause of resolution of the grievance;

- (iv) Persons handling the grievance must possess 'abundant patience'. By shouting or becoming impatient, the real nature of the problem will not be known;
- (v) Personal consideration are to be avoided in order to find out, as to the rightfulness of the issue;
- (vi) If no resolution is found, parties should not get either upset or frustrated. They should not resort to threats, exchange of heated arguments or resort to unfair methods, as other procedures are available under Industrial Disputes Act for resolving the disputes, such as Arbitration, Conciliation and adjudication. A special mechanism exists for resolving the disputes through above methods;
- (vii) Parties must exhibit a keen desire to settle the grievance by understanding the problems of each other. The legitimate interest of management should be appreciated by the workers and vice versa;
- (viii) Persons handling the grievance should realize that they have to work with the aggrieved employee for a long period. It is therefore, necessary that harmonious relationship should subsist between the parties on the basis of proper understanding;
- (ix) Parties must understand each other's right. Strictly insisting on one's own right without understanding the rights of the other side will not result in the 'balancing of conflicting interest' but result in more 'conflicts' being created. To quote a worthwhile example, when an establishment is running on recurring losses, the employees demanding more bonus

than the minimum statutorily eligible bonus, will only result in more conflicts which will not result in the resolution of the grievance at all;

- (x) Where number of issues are involved, care has to be taken to settle each issue on merits. The tendency of settling one issue at the expense of another, should be avoided, as otherwise unsettled issues would again crop up as a fresh grievance, sooner or later. Thus, the grievance settlement itself becomes the cause or reason for another grievance to arise;
- (xi) The aggrieved worker must be informed constantly at every stage at which the grievance rests. Inordinate delay and secrecy in handling the grievance creates suspicion and lack of good-will between the parties. In the result, the grievance remains unresolved;
- (xii) No ego should come in the way and there is nothing like 'prestige issue'. Parties must be able to rectify their errors in order to ascertain the real truth. Then only appropriate solutions can be found. In the absence of real truth being ascertained, no solution worth the name can be found and the entire exercise may end in futility;
- (xiii) Whenever a solution is found and a decision is taken, no time should be allowed to lapse in implementing the decision; and
- (xiv) It is desirable to publish a book-let on 'grievance procedure', wherever it is not done so far. It must be circulated amongst all the workmen so that they can avail profitably the remedy through grievance settlement mechanism. It is also

advisable to arrange a lecture session for all employees so that they understand the grievance procedure correctly.

5. In conclusion, it may be stated that the above guidelines on 'grievance procedure' may considerably help the parties to resolve their grievances amicably and peacefully and thereby avert a grievance becoming a major industrial dispute highly complicated and not easier for settlement. After all, the object of the Industrial Disputes Act is primarily to 'prevent industrial disputes; which may pose a threat to industrial peace affecting the production and the consequent adverse affect on the economy of the Country. The officer to be appointed as 'Grievance Settlement Officer' must possess besides educational qualifications, certain other qualities mentioned in this study, so that he is able to play a very helpful role in ensuring peaceful atmosphere in the industry, rather than becoming a bottle-neck or obstacle in maintaining such peaceful conditions.

GENDER JURISPRUDENCE – HUMAN RIGHTS PERSPECTIVE.

By

Prof.(Dr). A.S.Raju*

"Human rights issues are so interwoven that no advance can be made in one area with out reference to another. Perhaps the most important is need to strengthen the perception that all human rights are inter linked to the protection of women's rights"

— Kay Fraleigh, representative of the International Alliance of women at the U.N.

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