SELECTION FOR APPOINTMENT AS SHORTHAND WRITER GR.II/CONFIDENTIAL ASSISTANT GR. II IN THE HIGH COURT OF KERALA

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October 9, 2004

Q.No. 1 :- Passage for dictation:

We have earlier noticed that the valuable writ is capable of multiple uses as developed in the American Jurisdiction. Such is the view expressed by many legal writers. In Harvard Civil Rights and Civil Liberties Law Review 1970 Vol. 9, the view has been expressed that beyond the conventional blinkers, courts have begun to examine the manner in which an inmate is held or treated during the currency of his sentence. Similar is the thinking expressed by other writers, R.J. Sharpe in "The Law of Habeas Corpus" (1976) Edn Juvenal, Satires in 72 Yale Law Journal 506 (1963). In American / Jurisprudence there is a pregnant observation: 2d, Vol. 39 p. 185 para 11:

The writ is not and never has been a static, narrow formalistic remedy. Its scope has grown to achieve its purpose – the protection of individuals against erosion of the right to be free from wrongful restraints on their liberty.

Corpus Juris, 2d, Vol. 39, page 274, para 7 strikes a similar note, away from the traditional strain. The courts in America have, through the decisional process, brought the rule of law into the prison system pushing back, pro tanto, the hands-off doctrine. In the leading case of / Coffin v. Raichard, 143 F 2d 443 at p. 445 the Court of Appeal observed, delineating the ambit and uses of the writ of habeas corpus:

> The Government has the absolute right to hold prisoners for offences against it but it also has the correlative duty to protect them against assault or injury from any quarter while so held. A prisoner is entitled to the writ of habeas corpus when, though lawfully in custody, he is deprived of some right to which he is lawfully entitled even in his confinement, the deprivation of which serves to make his imprisonment more / burdensome than the law allows or curtails his liberty to a greater extent than the law permits.
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> When a man possesses a substantial right, the court will be diligent in finding a way to protect it. The fact that a person is legally in prison does not prevent the use of habeas corpus to protect his other inherent rights ..... The

Judge is not limited to a simple remand or discharge of the prisoner's civil rights be respected .....

It is significant that the United States Supreme Court has even considered as suitable for habeas relief, censorship of prisoners' mail / and the ban on the use of law students to conduct interviews with prison inmates in matters of legal relief. In (1974) 40 L Ed 2d 224 these two questions fell for decision and the court exercised jurisdiction even in such an internal matter. In Johnson v. Avery (1969) 21 L Ed 2d 718 a disciplinary action was challenged by a prisoner through a writ of habeas corpus. This indicates the extension of the nature of the writ in the American jurisdiction. Incidentally and interestingly, there is reference to some States in the United States experimenting with programmes of allowing / senior law students to service the penitentiaries. At a later stage, when we concretise definite directives we may have occasion to refer to the use of senior law students for rendering legal aid to prisoners; and so it is worthwhile extracting a passage from Johnson v. Avery (supra) with reference to the Kansas Law School Programme in Prisons at Leavenworth:

The experience at Leavenworth has shown that there have been very few attacks upon the (prison) administrations; that prospective frivolous litigation has been screened out and that where the law school felt the prisoner had a good cause of action / relief was granted in a great percentage of cases. A large part of the activity was disposing of long outstanding detainers lodged against the inmates. In addition, the programme handles civil matters such as domestic relations problems and compensation claims. Even where there has been no tangible success, the fact that the inmate had someone on the outside listen to him and analyse his problems had a most beneficial effect. We think that these programs have been beneficial not only to the inmates but to the students, the staff and the courts. Incidentally, the presence of law students at the / elbow of the prisoner has a preventive effect on ward and warden.

The content of our constitutional liberties being no less, the dynamics of habeas writs there developed help the judicial process here. Indeed, the full potential of Arts. 21, 19, 14, after Maneka Gandhi (AIR 1978 SC 597), has been unfolded by this Court in Hoskot (AIR 1978 SC 1548) and Batra (AIR 1978 SC 1675). Today, human rights jurisprudence in India has a constitutional status and

sweep, thanks to Art. 21 so that this magna carta may well toll the knell of human bondage beyond civilised limits.

The / supplementary statement of the Superintendent of the Central Jail (partly quoted earlier) is hair-raising when we find that far from rehabilitation, intensification of criminality is happening there and the officials are part of this sub-culture. We certainly do not wish to generalise but do mean to highlight the facts of life behind the high walls as demanding constitutional and administrative attention. Homage to human rights, if it springs from the heart, calls for action. Prisons, prison staff and prisoner – all three are in need of reformation. And this milieu apparently is not unique to Tihar but common to many penal / institutions.

It is refreshing and heartening that the learned Solicitor General widened our vista and argued that this court, having been seized of the problem of prisoners' fundamental freedoms and their traumatic abridgement, should give guidelines in this uncharted area, design procedures and devise mechanisms which will go into effective action when the restricted yet real rights of prisoners are overtly or covertly invaded. The jurisdiction of this court to remedy the violations of prisoners'

residuary rights was discussed at the bar, as also the package of plausible measures which may appropriately be issued to ensure the functional success of / justice when rights are infringed by officials or fellow-prisoners. Both sides appreciated the gravity of the jail situation, the sensitivity of security considerations, the virginity of this field of law and the necessity for normative rules and operative monitoring within the framework of judicial remedies. This constructive stance of counsel, unusual in litigative negativity, facilitated our resolution of the problems of jail justice, despite the touch of jurisprudential novelty and call to judicial creativity.

We must formulate the points argued before we proceed to state our reasoning and record our conclusions.

1. Has the court jurisdiction to consider prisoners' grievance, / not demanding release but, within the incarceratory circumstances, complaining of ill-treatment and curtailment short of illegal detention? Yes. We have answered it. (Marks: 80)

Q. No. 2: - Write the following words in longhand?

1. caveat emptor
2. res ipsa loquitor
3. ex-gratia
4. non-obstante clause
5. infructuous
6. persona nongrata
7. extra-judicial confession
8. gruesome act
9. malafide
10. res judicata
11. sine-qua-non
12. substratum
13. suo motu
14. mutatis mutandis
15. sine die
16. ejusdem generis
17. volenti nonfit injuria
18. actio legis equilae
19. loco parentis
20. stare decisis

(Marks : 20)

Q.No. 3: - Write an essay on "Should there be reservation in the Private Sector? If so, will it help the Nation fulfill the presidential vision of a prosperous India by 2020?"

(Marks : 40)

(Time allotted for questions 1 and 2 is 2 hours 30 minutes. Time allotted for question No. 3 is 30 minutes - Total 3 hours)