Volume 5

May 1993

Part 2

Judicial Postings

The following judicial officers in the Cadre of District Judges have been transferred to the posts mentioned in brackets following their names with effect from May 31:

Padmaraj, District & Sessions Judge, Dharwad (District & Sessions Judge Manga lore), B.N. Mallikarjuna, District & Sessions Judge, Mangalore (District & Sessions Judge, Karwar), B. S. Sreenivasa Rao, District & Sessions Judge, Shimoga (District & Sessions Judge, Dharwad), K. Sreedhara Rao, District & Sessions Judge, Karwar (District & Sessions Judge, Karwar (District & Sessions Judge, Dharwad).

Syed Nissar Ahmed, Commission of Inquiry, WAKFS, Bangalore (I Additional District & Sessions Judge, Mangalore), V. N. Kulkarni, Registrar, KAT, Bangalore (Presiding Officer, Labour Court, Chikmagalur), P. Seetharamaiah, X Addl. City Civil & Sessions Judge, Bangalore (XXI Addl. Civil & Sessions Judge, Bangalore), M. Thipperudrappa, XXI Addl. City Civil & Sessions Judge, Bangalore (Member, KAT, Bangalore), Y. S. Venkata Rao, Member, KAT, Bangalore (Presiding Officer. Labour Court, Hubli), Iqbal Ahmed, Presiding Officer, Labour Court, Mangalore (Commissioner of Inquiry WAKFS Bangalore).

B. Shankaranarayana Bhat Addl. District & Sessions Judge, Shimoga (Addl. District & Sessions Judge, Mandya), S. B. Chanal, I Addl. District & Sessions Judge, Mangalore

(Presiding Officer, Labour Court, Mangalore), K. Sathyamoorthy Holla, XVIII Addl. City Civil & Sessions Judge, Bangalore (XXII Addl. City Civil & Sessions Judge, Bangalore) B. S. Shambu IX Addl. City Civil & Sessions Judge, Bangalore (Registrar, KAT, Bangalore), S. Ramamurthy, XIII Addl. City Civil & Sessions Judge, Bangalore (Member, KAT, Bangalore), S. Indudhara, XV Addl. City Civil & Sessions Judge, Bangalore (Presiding Officer, Addl. Labour Court, Bangalore), B. N. Balakrishna, Presiding Officer Labour Court, Hubli (X Addl. City Civil & Sessions Judge, Bangalore), Rama Rao Kulkarni, Presiding Officer, Addl. Labour Court, Bangalore (Addl. Registrar, Karnataka Lokayukta, Bangalore).

P. V. Hegde, II Addl. District & Sessions Judge, Raichur (XVIII Addl. City Civil & Sessions Jubge, Bangalore City), A. C. Kabbin, XXII Addl. City Civil & Sessions, Judge Bangalore (II Addl. District & Sessions Judge, Mysore), V. Jaganathan, Addl. District & Sessions Judge Mandya (II Addl. District & Sessions Judge Raichur), Jawad Rahim, II Addl. District & Sessions Judge, Mysore (Addl. District & Sessions Judge, Shimoga).

Retired

Justice K. Jagannatha Shetty retired on 2.5.93 as a judge of the High Court of Karnataka. On 23-4-93 a farewell address was arranged in Court Hall No. 1 of the High Court.

Saves Office but not grace

Justice V. Ramaswamy retains his position as a Judge of the Apex consequent upon Court the failure of the Lok Sabha to adopt the impeachment motion on 11.5.93. The unprecedented motion moved by noted parliamentarian and leader of the CPI(M) group in the Lok Sabha Mr. Somnath Chatterjee failed to muster the required 2/3rd's majority. The motion when voted gained 196 votes to 205 abstentions with none voting against. The ruling party at the Centre played the vital role in the loss of impeachment motion. Thus Jusice Ramaswamy continues to hold the exalted post but in the process lost his grace.

Resigns in a huff

As per the press ralease issued by the private Secretary to Justice V. Ramaswamy the latter has decided to resign It has been his post. stated that Justice V. Ramaswamy has no desire or inclination to continue in office after the fall of the impeachment motion against him in the Loksabha. While stating that Justice Ramaswamy will tender his resignation to the President in due course it is made clear that the judge will not continue in office after the summer vacation

Miscellany

- On 16-4-93 Lahari had arranged a get-together.
- On 24-4-93 AAB had organised the Annual Day Celebrations and a "farewell" to Justice K. Jaganatha shetty at the Banquet Hall.

Promotions-Postings

The following Munsiffs are temporarily promoted to officiate as Civil Judges and posted to the charges mentioned in brackets following their names to take effect from the forenoon of 31st May. 1993.

T. H. Narayanagowda, Prl. Munsiff & JMFC, Tumkur. (Cival Judge & JMFC, Tiptur), Sidde gowda Prl Munsiff & JMFC Chikmagalur (XIX Addl Judge Court of Small Couses, Bangalore.) Mouneshappa S. Bilki Munsiff & JMFC. Jamkhandi. (IX Addl. Judge, Court of Small Causes, Bangalore) R. S. Beerannavar Munsiff & JMFC Koppal (Deputy Regista rar, Karnataka Lokayuktha, Bangalore) Mahantagowda Biradar, Prl. Munsiff, Dharwad (Deputy Secretary, Law Dept. Bangalore), Moosekunhi Nayar Moole, Munsiff & JMFC, Belur (Registrar Karnataka StateConsumersDisputes Redressal Commission, Bangalore) K. Rachaiah, Under Secretary to the Govt. Law Dept (Additional CJM Bangalore Rural District), Rachappa A. Chinival, JMFC Davanagere (Deputy Registrar, Lokayuktha, Bangalore), K. C. Ramakrishnaiah, Munsiff & JMFC, Nanjangud (XI Addl, Judge, Court of Small Causes, Bangalore City), Shankar N, Naik, Prl. Munsiff, Mangalore. (XVII Addl. Judge, Court of Small Bangalore City), Causes. Jayatheertha N. Havanur, Munsiff & JMFC, Harihar. (XVIII Addl, Judge, Court of Small Couses, Bangalore), Syed Ameen Ali, Prl. Munsiff, Bellary. (Civil Judge & JMFC Ramanagaram), Karnappa Rastapur, Munsiff & JMFC. Athani (XII Addl. Judge, Court of Small Causes, Bangalore) A hundred rabbits do not make a horse; and a hundred suspicions will never amount to proof

—an English Proverb

Futile Exercise

n retrospect if the manner in which the contempt of court case initiated against the Manipur Speaker Dr. H. Borobabu Singh is seen it is discernible that the Apex Court of the land acted more in exhibiting its authority than in dealing the case on its merits. In the process it has done little to uphold its stature and or to the office of speakership of a legislature.

The contempt proceeding initiated on the basis of a petition presented by Mr. I. Manilal Singh, the then Secretary of the Manipur Assembly on the ground that the Speaker of the Assembly had failed to honour the Apex Court's order regarding payment of salary and allowances to the complainant. No doubt Dr. Singh invoked the theory of separation of powers of the traditional three branches of the State-viz. the Executive, Legislature and Judiciary-and claimed constitutional immunity from appearing before the Apex Court. He further contended that there can't be judicial review of the legislative business and it is the sole prerogative of the Speaker to decide upon the functioning of the Legislature. It is another thing the Court did not agree with this contention since it concerned the administrative functioning of the Speaker. No doubt immediate confrontation between the Judiciary and Legislature is averted by dropping of the proceedings against the Speaker. But at the same time this case has created more problems requiring immediate attention of the legislative wing of the State vis-a-vis the Judiciary. At the same time the Apex Court hashardly resolved any areas of friction involved in the determination of the inter-relationship of the Legislature and the Judiciary.

Considering the manner in which the proceedings were dropped against Dr. Singh numerous questions requires answer which include (a) as to why the presence of the Speaker was required before the court, (b) what prompted a direction to be issued to the Union Government to use minimum force required to secure the presence of the Speaker before the court, (c) if the case was of serious nature why the proceedings were dropped summarily and (d) was complaint frivolous on account of which the court need not have decided whether any contempt of court order had infact taken place as alleged by the complainant?

Apart from not getting answer to these aspects one cannot fail to notice that the Apex Court had made it a question of prestige in securing the presence of the Speaker and thereby establish its authority. If that was the sole objective in ordering for securing the presence of the Speaker before the Court it has to be stated that cause of democracy has suffered a lot.

News Focus

On 20.4.93 Dr. Chatterjee, Scientist, Indian Institute of Astro-physics, Bangalore, addressed the members of AAB at the High Court Unit. The topic of his lecture was "Dunkel proposals".

On 25.4.93 a batch of Advocates from Bangalore left for high altitude trekking in the Himalayas.

Winding up of Companies

Udaya Holla, Advocate

(from the last issue)

business in India notwithstanding that body corporate has been dissolved or ceased by virtue of the laws in the country in which it has been incorporated. All the provisions relating to winding up of incorporated company through court shall apply to winding up of unregistered company.

Foreign company can also be wound up by the Courts in India in respect of the business carried on by the company in India. Bombay High Court in M/s Strauss & Co. Ltd's case [7 Com. Cases 187] held that the foreign company can be wound up in India. Similar view was expressed in Raju Nagindas Doshi Vs. Burma Petroleum Co. Ltd. [1972(421)Comp. Cases 197]. It would be of interest to all of us to know that BCCI Bank which is alleged to have committed fraud can be wound up in India by taking recourse to Section 582 to 584 of the Companies Act.

It is clear from Section 582 and 583 that a partnership which has more than 7 members or even an association can be wound up. Our High Court in the case of GP Ganapath Mayya Vs. MTR Associates reported in 1986 (59) Company Cases 359 held that the famous MTR which was ow ned by the MTR Associates and which firm was a partnership firm consisting of more than 7 persons is an unregistered company as defined under Section 582 and as such the same is liable to be wound up.

An association can be wound up by Courts of law when such association has more than 7 members. In a case decided by our High Court viz., Bangalore Timber Indutries Vs. Madras Engineering Sappers Employees Rehabilitaion Association and another, [1987 (3) KLJ 547] it is held that an association which is unable to pay its

debts is liable to be wound

Section 484 stipulates that a company may be wound up voluntarily: i) if the period, if any, fixed for the duration of the company under the articles has expired or any specified event has occured on the occurrance of which the articles provide that the company is to be dissolved and the company in general meeting passes a resolution requiring the company to be wound up; orii) if the company passes a special resolution that the company be wound up voluntarily.

Within 14 days of a resolution being passed to voluntarily wind up the company, company shall advertise notice of resolution in the official gazette and in some newspapers circulating in the area where the company's registered office is situated. A voluntary winding up shall be deemed to commence at the time of the resolution for winding up is passed. Under Section 488 a declaration of solvency is required to be made by its directors.

Voluntary winding up is of two types. Members voluntary winding up and creditors voluntary winding up. Voluntary winding up will be a members voluntary winding up if the directors make a declaration and deliver it to the Registrar of Companies as specified in Section 488 that the company has no debts or that it will be able to pay its debts in full within 3 years. If such a declaration is not made and delivered, the winding up will be deemed to be creditors voluntary winding up.

The company in a general meeting shall appoint one or more liquidators for purposes of windingup of the

(to be continued)

Transfers | Postings

The following transfers and postings of Officers of Judicial Department in the cadre of Civil Judges to the posts mentioned in brackets following their names are ordered to take effect from the forenoon of 31st May 1993.

A. R. Siddiqui, I Addl. Civil Judge Dharwad (Judge, Court of Small Causes; Bangalore, M. Shambulingappa, Prl. Civil Judge & CJM., (I Addl. CMM, Mandya Bangalore, G.H. Prasad, Prl. Civil Judge & CJM, Mysore (Deputy Secretary to Govt. Law Dept.), H.P. Devendraiah I Addl. CMM, Bangalore (Prl. Civil Judge & CJM, Kolar), D. A. Lathe, Civil Judge & CJM, Raichur (Addl. Civil Jamakhandi). Judge, Kukkaje Ramakrishna Bhat Prl. Civil Judge, Bangalore Rural District (XIV Addl. Judge, Court of Small Causes Bangalore), R. Venkatesh, Civil Judge & JMFC, Holenarasipur (Presiding Officer, Special Court for Economic Offences, Bangalore), R. S. Reddy Presiding Officer, Special Court (Economic Offences) Bangalore. (Prl. Civil Judge & CJM, Bijapur), K.G. Hosur, Deputy Secretary to Govt. (Civil Judge & CJM, Raichur), Shetkar Subhash, Addl. Secretary Karnataka Legal Aid Board (Prl. Civil Judge & CJM, Mandya), G.V. Hegde, Civil Judge & CJM, Madikeri (VIII Addl. Judge, Court of Small Causes, Bangalore City), S. T. Kudasomannavar, Addl. Civil Judge, Hubli (I Addl. Civil Judge, Dharwad), M.G. Sudheendra, Civil Judge & CJM, Hassan (Civil Judge, Virajpet), K. H. Malleshappa, Deputy Secretary to Govt. Law Dept. (Addl. Civil Judge, Hubli), B. Narayana Poojari, Judge, Court of Small Causes, Bangalore (Deputy Registrar, KAT, Bangalore), K.M. Thammaiah, Civil Judge & JMFC, Hunsur (Prl. Civil Judge & CJM, Mysore), K. G. Lakshmipathy, Civil Judge & JMFC, Ramanagaram

(Prl. Civil Judge, Bangalore Rural District), Diwakar Rao, Prl. Civil Judge & CJM, Kolar (Addl. Civil Judge, Kolar), S. S. Nagarale, Prl. Civil Judge & CJM, Bijapur (I Addl. Civil Judge, Bijapur), B. K. Manohar, I Addl. Civil Judge, Bijapur (Civil Judge & JMFC, Holenarasipur), Jayaram Ramakrishna Hegde, Civil Judge & JMFC, Tiptur (Civil Judge, Gokak), Basavaraj K. N. Patil, Addl. Civil Judge, Kolar (Civil Judge & CJM, Hassan), H.M. Judge, Bajentri, Addl. Court of Small Causes, Bangalore (Civil Judge & JMFC, K G.F.), I. S. Antin, X Addl. CMM, Bangalore (Addl. Secretary, Karnataka Legal Aid Board), K.V. Krishna Murthy, Civil Judge & JMFC, Madhugiri (Civil Judge & JMFC, Hunsur), N. Subba Rao, Civil Judge & JMFC, Gokak (XV Addl. Judge, Court, of Small Causes, Bangalore), S. N. Vadnikop, XVII Addl. Judge, Court of Small Causes, Bangalore (Civil Judge & JMFC Kodagu-Madikeri), G Srinivasa Murthy, Registrar, Karnataka State Consumers Dis putes Redressal Commission, (X Addl. Chief Bangalore Magistrate, Metropolitan Bangalore City), F.N. Guddakar, Civil Judge, Virajpet (II Addl. Civil Judge Dharwad), Sudhakar A. Pandit, VIII Addl. Judge, Court of Small Causes, Bangalore (I Addl. Civil Judge Bangalore Rural District), Srinivasa, Deputy Registrar, Karnataka Lokayuktha, Bangalore (Civil Judge & JMFC Madhugiri), M. T. Ananda Setty, Addl. CJM, Bangalore Rural District (Deputy Director of Prosecutions, Bangalore).

Literary Union

On 25-4-93 Bangalore Literary Union had organised an excursion to Kaiwara, Nandi Hills, Ghati Subramanya, Vidurashwatha and Lepakshi.

News Spectrum

Recently the highest Court of UAE has upheld death penalty for the two men convicted for raping of an Indian woman and her daughters in front of their grand mother who died of shock. A lower Court in July 1992 found the two UAE nationals guilty of kidnapping the two girls aged 12 & 14, raping them at knife point in a desert region. Execution of the convicts carried out by sword.

Recently a federal Judge of the US ruled that the First Lady, Mrs. Hillary Clinton must be treated as an outsider working for the White House. Refusing to accept the argument of the Administration that Mrs. Clinton is the "functional equivalent of a federal employee" the judge held that the closed door meetings of the health care task force, headed by Mrs. Clinton, must be held annulled as a law enacted by the US Congress in 1972 says that advisory boards comprising non federal employees must meet in public The judge said that the President cannot legally deny the public the right to attend the task force meetings. During the first week of April Ms. Maria Rosaluna Henson and Ms. Julia Porras, the two Filipino women representing themselves and 16 others filed a lawsuit against the Japanese Government in Tokyo District Court seeking compensation for their suffering being forced into sexual slavery by Japanese soldiers during World War II. Besides seeking an apology from the

On 26-4-93 four gunmen rammed into the Supreme Court building in Costa Rica and held the 22 judges including the Chief Justice as hostages demanding 2,25 million dollars in ransom.

Japanese Government and in-

clusion of wartime atrocity in

Japanese text books they are

seeking 20 million Yen (175

400 dollars) in compensation

for each of the women.

All India Lawyers Conference

In a press note Sri K. M. Manamohan, General Secretary of the All India Lawyers Conference has notified that a National Level Conference of Lawyers will be held at Bangalore on 2nd & 3rd June 1993. During the Conference discussion will be held on (i) the need to simplify procedural law to prevent delay in administration of justice, (ii) apprenticeship to new entrants to the Bar should be reintroduced and made compulsory to improve the standard of legal profession.

Eminent jurists of national & international fame and top national leaders are expected to take part in the Conference. The organisers also propose to bring out a Souvenir.

Anniversary

(Report: K.G. Ramakrishnaiah)

On 30 - 4 - 93 a function was organised to celebrate the 1st Anniversary of its establishment of the Court of Munsiff & J M F C at Hoskote. Mr. Justice Shivaraj Patil, Judge. High Court of Karnataka inaugurated the programme. Mr. N. Chikkegowda, Ex-Minister & MLA. Mr. N. S. Veerabhadraiah, Principal District & Sessions Judge, Bangalore Rural District, Mr. T. Thimmegowda, Chief Secretary, Zilla Parishad, Bangalore Rural Dist, and Mr. K. N. Subba Reddy, President. AAB Bangalore, were the Chief guests. Mr. H. N. Muniswami Gowda, President, Advocates Association, Hoskote, Presid-

Editor Appointed

Ms. Prabha Murthy has been appointed as the Editor of the Kannada edition of I L R Karnataka for a period of 3 years commencing from 19-4-93.

Annual Day Sports

The following are the winners in the Athletic Meet held on the occasion of Annual Day celebration by the AAB:

For men below 35 years: 100 metres sprint: 1st. H. S. Chandraiah; 2nd. Narayan; 3rd, K.Srinivas.

400 metres Sprint; 1st, H.S. Chandraiah; 2nd, A.N Ganga-dharaiah; 3rd, M.R. Ravindra

Shot Put 1st H.B. Udaykumar; 2nd, S.K. Nagaraja Reddy; 3rd, B.R. Krishna.

Long Jump: 1st, H.S. Chandraiah; 2nd, I.M. Devaiah; 3rd. H. B. Udaykumar.

High Jump:1st S.N. Ravindra; 2nd, S. K. Nagaraja Reddy; 3rd, A.N. Gangadharajah.

800 metres (open): 1st, H.S. Chandraiah; 2nd, S.N.Ravindra; 3rd, A.N. Gangadharaiah.

Men In the age group of 35-45: 100 metres sprint; 1st G. Vijaykumar; 2nd S. Mahadevan; 3rd, Jayaram.

Long Jump: 1st, S. Mahadevan; 2nd, Jayaraj: 3rd S. P. Shankar.

High Jump: 1st, H. R. Viswanatha; 2nd, S.P. Shankar; 3rd, M.A. Kupplur.

Shot Put:1st, G.Vijay Kumar; 2nd, H. R. Viswanath; 3rd, S. P. Shankar.

Men in the age group of 46 & above: 100 metres walking: 1st, N.V. Narasimha; 2nd H. T. Narayan; 3rd, Munibyrappa.

100 metres running: 1st, Panduranga Swamy; 2nd, Ranganath; 3rd, N. V. Narasimha.

Long Jump: 1st Paduranga Swamy; 2nd N. V. Narasimha; 3rd Ranganath.

Shot Put: 1st, Panduranga Swamy; 2nd, Markande Gowda; 3rd, N.V. Narasimha Women in the age group of below 35; 100 metres sprnt; 1st, N. Shoba; 2nd, Lakshmamma; 3rd, Kokila Sudha.

50 metres sprint (open); 1st, Sujatha; 2nd, Raj kumari; 3rd, Lakshmamma.

800 metres (open); 1st, Lakshmamma; 2nd, N.Shobha. ; 3rd, Kokila Sudha.

Shot put; 1st, Nanda; 2nd, Rajkumari; 3rd, Kokila Sudha Musical Chair; 1st, Kokila Sudha; 2nd, Thejaswini; 3rd, Rajkumari.

Lemon&Spoon race: 1st,Kokila Sudha; 2nd, Anjana Sundar; 3rd, Sujatha.

In the age group of 35 & above;

100 metres walking; 1st, Shobha; 2nd, Sudha Ramesh.

Shot put; 1st, Sarawathi; 2nd, Sudha Ramesh; 3rd, Renuka Raju Naidu.

Musical chair; 1st, Saraswathi; 2nd, Prabha Girimaji; 3rd, A. N. Shanthala.

Lemon & Spoon race; 1st, Prabha Girimaji; 2nd, Tharuni.

100 metres sprint for AAB Staff; 1st, A.S. Venkatesh; 2nd, R Manohar; 3rd, Narasimhaiah; Consolation prizes Mayanna. Amarnath.

50 metres sprint for Advocates' children; 1st, Kum. Rachana; 2nd, Kum. Pannaga; 3rd, Master Rana.

Law Secretary Resigns

On the basis of the reported move of the Government to create a second post of Law Secretary and to shift him to that post the State Law Secretary Mr. B. P. Jayakar has sought for voluntary retirement to take effect from 14-8-93. In preparation to retirement Mr. Jayakar has gone on leave for 90 days. In the usual course he would have retired one year later.

Obituary

On 7-5-93 S. G. Doddakale Gowda, a former Judge of the High Court of Karnataka, passed away in Bangalore.

Decries Populism

While participating in a seminar on "Secularism, Rule of Law and the Role of Lawyers" organised by the Karnataka Chapter of Commission of Jurists, held on 18-4-93 in the Holiday Inn, Bangalore the noted lawyer Mr. Fali S. Nariman called upon the Judges, Lawyers and the public to speake out freely without fear for populism, in favour of the secular traditions of India. Delivering the keynote address on the occsion Mr. Nariman expressed anguish at the hypocracy which was creeping into every walk of Indian life. He particularly emphasised the role of lawyers in propagati ng the ideals of secularism which he defined as nothing but the practice of the spirit of tolerence. He cautioned that if this is not done immediately there is a danger of the international community classifying India in par with the Serbs and Croats who are fighting war in the erstwhile Republic of Yugoslavia seeking balconisation.

Acting Chief Justice K. A. Swami who inauguarated the seminar, called upon the State to practice positive secularism and to prevent every form of exploitation or abuse of any caste, community or religion by the other. He regretted that the political parties were using religion as a tool to build up vote banks. He said that community has become a tool for fanatics and unscrupulous eliments gain economic and political advantage. He felt that secularism was a part of our ancient culture and all should strive to carryon the secular message.

Retired Justice P. P. Bopanna, who is also the chairman of the Commission of Jurists welcomed the gathering

Supreme Court

On Employees Provident

On 13.5.93 the Supreme Court held that the director of a company, who is neither an occupier nor a Manager, is criminally liable for the offence under the Employees Provident Fund Act, 1952 for the failure to deposit contribution. Justice K.Ramaswamy and Justice R.M.Sahai, constituting the bench in their judgment rejected the contention of Srikanta Datta Narasimharaja Wodiyar that as a mere director of M/s. Ideal Jawa (India) Ltd., he cannot be prosecuted by the enforcement officer designated under the Employees Provident Fund Act.

Book Released

On 15.4.93 Justice K. J. Shetty released a book on Civil Procedure Code, authored by Ganesh Shenoy and D.R. Rajashekarappa, Advocates at the High Court Unit. K.N. Subba Reddy, President, AAB presided.

Accused Shot at

On 12.4.93 Mr. Muthappa Rai, an accused, was shot at in the Magistrates Court compound at Bangalore by one Narayana Saliyan, from Dakshina Kannada, who was later overpowered and caught by the police. Incidentally Narayana Saliyan was wearing the garb of an advocate at that time.

Silver lubilee Celebrations

On 9.4.93 Hon'ble Mr Justice M. N. Venkatachalaiah, Chief Justice of India, inaugurated the Silver Jubilee Celebrations of the establishment of District & Sessions Court at Mandya. Chief Minister Mr. Veerappa Moily, State Law Minister Harnahalli Ramaswamy, Acting Chief Justice K.A. Swami and other dignatories participated in the function.

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