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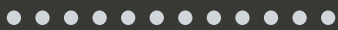
Monthly updates on Industrial and Labour Laws

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Gig workers knock the doors of the Judiciary demanding Social Security benefits.

Word of the month:



GIG WORKERS-

Gig workers are independent contractors, online platform workers, contract firm workers, on-call workers and temporary workers. Gig workers enter into formal agreements with on-demand companies to provide services to the company's clients.

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- Extension of limitation period to file cases ends on October 2, 2021.
- "Gig workers" move Supreme Court against Zomato, Swiggy, Uber, Ola seeking social security.
- Burden is on employee to prove he was not gainfully employed after dismissal.
- An Employee is not estopped from questioning terms & conditions of employment at a stage where he finds himself aggrieved.

LATEST FROM THE HIGH COURTS

- Both management and workmen can be represented by advocates before labour courts: Delhi High Court

LATEST FROM THE STATE GOVERNMENTS

- Govt. of West Bengal issue notification regarding guidelines for payment of bonus or ex-gratia to the employees.
- Amended notification of the Himachal Pradesh Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Amendment Rules, 2021

LATEST FROM THE SUPREME COURT OF INDIA

Reinstatement with full back wages is not automatic in every case of unlawful termination: Supreme Court

The bench of R. Subhash Reddy and Sanjiv Khanna, JJ has held that **reinstatement with full back wages is not automatic in every case, where termination/dismissal is found to be not in accordance with procedure prescribed under law.**

The ruling came in the matter where a Clerk-cum-Cashier was dismissed by the Allahabad Bank, alleging his involvement in the incident relating to burning of relevant Bank records.

The Industrial Tribunal-cum-Labour Court found that though there was a strong suspicion, but there was no sufficient evidence to prove his misconduct to dismiss from service. However, on the ground that a case is made out by the management of loss of confidence, ordered payment of compensation of Rs.30,000/- in lieu of reinstatement.

The respondent, aggrieved by the award of the Industrial Tribunal-cum-Labour Court, seeking reinstatement with back wages, carried the matter to the High Court wherein it was held that suspicion, however, high may be, can under no circumstances be held a substitute to legal proof. The High Court, hence, directed reinstatement with all consequential benefits.

The directions issued by the High Court of Allahabad for reinstatement were stayed by this Court on 23.08.2019. During the pendency of these proceedings, the respondent - workman had attained age of superannuation.

Considering the aforementioned facts and circumstances, the Supreme Court held,

“Though, there was strong suspicion, there was no acceptable evidence on record

for dismissal of the workman. However, as the workman has worked only for a period of about six years and he has already attained the age of superannuation, it is a fit case for modification of the relief granted by the High Court.”

Noticing that reinstatement with full back wages is not automatic in every case, where termination / dismissal is found to be not in accordance with procedure prescribed under law, the Court held that in the present case, the ends of justice would be met by awarding lump sum monetary compensation. It, hence, directed payment of lump sum compensation of Rs.15 lakhs to the respondent, within a period of eight weeks, failing which, the respondent will be entitled for interest @ 6% per annum, till payment.

[Click here](#) to read the judgment.

Extension of limitation period to file cases ends on October 2, 2021.

The Supreme Court has ordered that the extension granted with respect to the limitation period to file cases in courts in view of the COVID-19 pandemic situation, will end on October 2, 2021 (In Re: Cognizance for Extension of Limitation).

Consequently, the limitation period will start running from October 3, 2021, and the period from March 15, 2020, till October 2, 2021, shall stand excluded in computing limitation.

[Click here](#) to read the final Order.

“Gig workers” move Supreme Court against Zomato, Swiggy, Uber, Ola seeking social security.



A petition has been filed by "gig workers" before the Supreme Court praying for social security benefits from employers including food delivery apps Zomato and Swiggy and taxi aggregator apps, Ola and Uber.

The petitioners have contended that since they are in an employment relationship with the aggregators, they are covered under the definition of "workman" as per social security legislation. Also that they are unorganised workers under the Unorganised Workers' Social Welfare Security Act, 2008, and are therefore entitled to social security.

It was contended that the State's failure to register them under the Act is violative of their fundamental rights, especially since the legislation has been enacted pursuant to Directive Principles of State Policy with a view to ensure

basic human dignity of the workers.

"Denial of social security to the said "gig workers" and the "platform workers" has resulted in their exploitation through forced labour within the meaning of Article 23 of the Constitution. The right to livelihood includes the right to work on decent and fair conditions of work," the plea said.

The petitioners stated that the respondent companies have been claiming that there exists no contract of employment between them and the petitioners, and that their relationship with the petitioners are in nature of partnership.

"If such a claim were to be accepted, this would be inconsistent with the purpose of social-welfare legislations," the petitioners submitted.

In this regard, it was claimed that respondent companies

exercise complete supervision and control over the manner and method of work with those who are allowed to register on the apps.

"The mere fact that their employers call themselves "aggregators" and enter into the so-called "partnership agreements" does not take away the fact that there exists a jural relationship of employer and employee; master and servant and worker within the meaning of all applicable laws," the petition said.

Further, it was submitted that **the fixed-term employment contracts are in the nature of 'take it or leave it' and the workmen have no choice but to sign the said contracts for their livelihood.**

"The contracts are a mere device to disguise the nature of relationship, which is de-jure, and de-facto relationship of employer and worker being a contract of employment."

The petitioners also relied on the judgment of the UK Supreme Court which had held that Uber drivers are "workers" entitled to minimum wage, paid annual leave and other workers' rights.

The petition has been settled by Senior Advocates Indira Jaising and Gayatri Singh.

Burden is on employee to prove he was not gainfully employed after dismissal.

In this case, the respondent was appointed as a Museum Assistant by the appellant. It is alleged by the appellant that on 27th December 2003, the respondent assaulted its Assistant Director and thus committed misconduct. Accordingly, a charge sheet was served upon the respondent. Inquiry Report was submitted by the Inquiry Officer holding that the respondent was guilty of acts of subordination, creating a scene, causing disturbance to others in performance of their duty and causing violence in the office. By the Office Order dated 16.09.2004, the appellant imposed the penalty of compulsory retirement on the respondent. When the matter reached the Apex Court, it was held that

considering the nature of the misconduct proved against the respondent, the grant of reinstatement will not be in the interest of justice. The long gap of 17 years will be also one of the considerations for not granting reinstatement especially considering the nature of the activities of the appellant and the conduct of the respondent.

Further, the Court relied on the case of Talwara Cooperative Credit and Service Society Ltd. (supra), wherein this Court has held that **the fact whether an employee after dismissal was gainfully employed is within his special knowledge** and therefore, considering the principles laid down in Section 106 of the Indian Evidence Act, 1872, the burden is on the employee to

come out with a case that he was not gainfully employed during the relevant period. We must note that whether such burden is discharged or not is an issue to be decided in the facts of each case. The issue has to be decided by taking into consideration the entire material on record.

The Court thereafter taking into consideration the facts of the case partly allowed Museum's appeal by setting aside the order of reinstatement and of payment of back wages.

The bench also observed that compensation in the range of Rs. 6,50,000/- to Rs.7,00,000/- in lieu of reinstatement was just and proper in the facts of the case.

[Click here](#) to read the judgment.

Chairman, Directors & Officers can't be summoned in the criminal complaint against the company without specific allegations about their individual role.

While dismissing the appeal, the Hon'ble Supreme Court held that **"The learned Magistrate has to record his satisfaction about a prima facie case** against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings

against them. Looking at the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director

and/or Deputy General Manager and/ or Planner/ Supervisor of Appellant 1 (A1) & Appellant 6 (A6), without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly **they cannot be held vicariously liable for the offences committed by A1 & A6.**

[Click here](#) to read the judgment.

An Employee is not estopped from questioning terms & conditions of employment at a stage where he finds himself aggrieved.

In this case, the division bench of the Supreme Court held that the employee has the right to challenge the conditions if they are not in compliance with the law's statutory requirements. An employee is not estopped from questioning at a point where he feels he has been wronged. It was established that the employer always has the upper hand and can dictate the terms of employment. An employee receiving arbitrary employment terms and conditions can hardly complain. This Court stated that it is aware that an



employee who questions employment terms and conditions risks losing their job. The employer has the bargaining power, and the employee has no choice but to accept the authority's terms. It was stated that the employee

has the right to challenge the conditions if they do not meet the legal requirements, and he is not barred from doing so.

[Click here](#) to read the judgment.

An employee can't insist on transfer to particular place.

In a petition filed in the high court, the woman, who was posted as a lecturer in Amroha district, had said that she had made a representation for her transfer to a college at Gautam Buddha Nagar and it was rejected in September 2017 by the authority.

Her counsel had argued before the high court in 2017 that she was working at Amroha for the last four years and under the government policy, she was entitled to a transfer.

The high court had noted that the order passed by the authority concerned showed

that she had remained posted at a college at Gautam Buddha Nagar for about 13 years from the date of her initial appointment in December 2000 to August 2013 and, therefore, her request for posting her again at the same institution was not justified.

The high court had said that in case the petitioner has completed the requisite number of years at the place of her present posting, she may request for transfer to some other place but not to a place where she had already worked for 13 years.

“It is not for the employee to insist to transfer him/her and/or not to transfer him/her at a particular place. It is for the employer to transfer an employee considering the requirement,” an apex court bench of justices M R Shah and Aniruddha Bose said in its Order.

The apex court observed this while dismissing a petition by a lecturer challenging an October 2017 order of the Allahabad High Court.

[Click here](#) to read more.

LATEST FROM THE HIGH COURTS

Both management and workmen can be represented by advocates before labour courts: Delhi High Court

The Single Judge Bench was hearing an appeal against an order of an Industrial Tribunal, before which counsel for the management was not allowed to represent their client and whose request for cross-examination of the workmen's witnesses was also rejected.

It was submitted that it is usual practice for advocates to appear before labour courts for the management and the workmen.

“The Management would be enormously prejudiced if the Workmen are permitted to be represented by an expert and the Management is not allowed to engage an Advocate.”

The Court examined Section 36 (4) (Representation of parties) of the Industrial Disputes Act, 1947 and concluded that a perusal of the above provision

clearly shows that both parties i.e., the workmen and the management, are permitted to be represented by a legal practitioner with the consent of the other party and with the leave of the Court.

Further, Justice Singh emphasized on the judgment of the Supreme Court in Thyssen Krupp Industries India Private Limited v. Suresh Maruti Chougule where the Court directed that the workman is at liberty to engage an advocate as long as his fee is paid by the management, and the management can also be represented by an advocate.

Considering these precedents and several other judgments, the Court concluded that **once procedural formalities are completed between the parties and the matter**

reaches trial, it would be inapt to not allow the workmen or management to engage lawyers.

Thus, the Court set aside the order under challenge and directed the labour court to first hear submissions of the parties and decide whether the management can be represented by an advocate.

It was also directed that the labour court give the management an opportunity to cross-examine witnesses and record the management's evidence.

[Click here](#) to read the judgment.



LATEST FROM THE STATE GOVERNMENTS

Govt. of West Bengal issued notification regarding guidelines for payment of bonus or ex-gratia to the employees.

The Governor of West Bengal makes an appeal to all employers and employees of the state covered under the Payment of Bonus Act, 1965 to stick to the following guidelines while setting the legitimate dues of workers in respect of payment of bonus, in view of ensuing Durga Puja for the year 2021 in terms of the said Act in the interest of maintenance of industrial peace and harmony.

It is expected that the employers would adopt a flexible attitude on the issue of payment of bonus.

All establishments where the bonus was paid in the previous year are requested to see that the rate of bonus payable this year is not lower than that of the last year. In case, however, where there is a dispute, the same may be settled amicably through negotiations. Employers are also requested to consider payment of an amount of ex-gratia in lieu of bonus as is admissible at the maximum stage, to those workmen and employees who have crossed the eligibility limit as per payment of Bonus Act, 1965.



All employees, whether in casual employment or re-employed after retirement or employed through contractors and have worked for not less than 30 days during the year should be paid bonus.

The employers who are in default towards payment of bonus for the previous years are also being requested to make such payments this year along with the payment of bonus for the current year.

The Government also appeals to all trade unions, and employers' organizations to extend their co-operation in maintenance of a climate of industrial peace and exercise their good offices for peaceful and effective settlement of industrial disputes concerning bonus without any disruption of work.

Government has noted with

concern that in many cases, in previous years, employees of IT sector, Hotels and Restaurants, Shops & Establishments, Security Workers and some workers in jute mills did not get any bonus amidst the COVID pandemic situation. It is desired that the situation will not be similar this year.

All payments of bonus should be made before commencement of Durga Puja, 2021.

The Government expects that all employers including the public sector undertakings will act according to this appeal. The Government also expects that all employers' organizations will advise their constituents to act according to this appeal.

[Click here](#) to read the notification.

Amended notification of the Himachal Pradesh Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Amendment Rules, 2021

This notification has come into effect from 24.09.2021.

Amendment of rule 281(1)- For the existing provision against sub-rule(1) of rule 281 of the Himachal Pradesh Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2008 (hereinafter referred to as the 'said rules') the following shall be substituted, namely:

“(1) The Board may provide financial assistance for education of the children of the beneficiary from the Fund at the following rates:

- 1st to 8th standard -Rs. 700/- per month (Rs. 8,400/- Per Annum).
- 9th to 10+2 standard-Rs. 1000/- per month (Rs. 12,000/- Per Annum).
- Graduation classes:
Bachelor of Arts
B.Sc./ B.Com/ BBA or its equivalent - Rs. 3000/- per month (Rs. 36,000/- Per Annum).
Post-Graduation:
Arts and commerce Stream
Science Stream -Rs. 5000/- per month (Rs. 60,000/- Per Annum).
Diploma Courses duration of:
One year to Three Years -All diploma courses including
ITI Courses- Rs. 4000/- per Month (Rs. 48,000/- Per Annum).
- Professional courses/Degrees -Polytechnic Diploma (3 years) courses- Rs. 5000/- Per Month (Rs. 60,000/- Per Annum).
Ph.D., Research Courses -Technical Courses such as Engineering, Medicine, MBA,
Law, Ph.D. and Research Courses- Rs. 10,000/- Per Month (Rs. 1, 20,000/- Per Annum).”.

... Contd.



Contd....

Addition of rules 298, 299, 300, 301, and 302.After rule 297 of the 'said rules', the following rules shall be added, namely:

298. Female Birth Gift Scheme- The Board may provide a sum of Rs. 51,000/- (fifty-one thousand) only in the shape of FDR which may be given to the beneficiary on the birth of his/her female child (up to two girls), which will be encased on the completion of eighteen years of the said daughter. If the girl in whose name an FDR has been made, unfortunately, dies before attaining the age of eighteen years, the FDR will be transferred to the third girl child of the beneficiary if any, otherwise the entire amount will be paid to the nominee.

299. Mentally Retarded Children Benefit Scheme- A financial assistance for the care of mentally retarded or handicapped children with disability of 50% and above of a beneficiary @ Rs. 20,000/- per year will be provided to him/her on production of a valid medical certificate issued by the competent authority.

300. Widow Pension- The widow of a deceased beneficiary will be provided pension of a sum of Rs. 1500/- per month after the death of the said beneficiary, provided that she is not employed in any Govt./semi-Government or autonomous body under the Government of India/Government of Himachal Pradesh on a regular, contract, or daily wages basis.

• **301. Hostel Facility Scheme.** A beneficiary will be provided a maximum amount of Rs. 20,000/- for the expenses incurred by him/her on lodging, boarding, and food of his children living in any Hostel.

302. Mukhyamantri Awas Yojna- A beneficiary who is already enrolled either under Pradhan Mantri Aawas Yojna or Mukhya Mantri Aawas Yojna, will be provided financial assistance of Rs. 1, 50, 000/- to build his/her house.

[Click here](#) and scroll to page 7 to know more.

REVISED MINIMUM WAGES

Notification regarding revision of minimum rate of wages for various scheduled employment w.e.f 01.04.2021 (dated - 09.09.2021) - Govt. of Himachal Pradesh.

[Click here](#) to read the notification.

Notification on revision of VDA payable for Industrial workers (dated - 15.09.2021) - Govt. of Rajasthan

[Click here](#) to read the notification.

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**" PLEASURE IN
THE JOB PUTS
PERFECTION IN
THE WORK "**

- ARISTOTLE

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