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THE LABOURTORIALS™

Monthly updates on Industrial and Labour Laws

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When work was all about togetherness & celebration|
PC: officechai, timesofindia and monsterindia

Word of the month:

COST TO COMPANY (CTC)-

Cost to Company (CTC) is the yearly expenditure that a company spends on an employee. CTC is calculated by adding salary and additional benefits that an employee receives such as EPF, gratuity, house allowance, food coupons, medical insurance, travel expense and so on. CTC in colloquial terms is the cost an employer bears to hire and sustain its employees.

The labour laws in India do not talk about this concept. It is only out of the usual practice.

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- Civil court lacks jurisdiction to entertain suit based on Industrial Disputes Act.
- Section 22C(2), Section 22C(1) does not use the term 'director, manager, secretary or other officer of the company' to impute vicarious liability.
- Cheque issued pursuant to settlement agreement presumed to be for discharge of debt.

LATEST FROM THE HIGH COURTS

- Countless employees laid off amid COVID in violation of legal procedures: Madras High Court seeks report
- Resignation once accepted cannot be taken back: Delhi High Court

LATEST FROM THE CENTRAL GOVERNMENT

- Government approves 8.5% interest rate on EPF for fiscal year 2021.

LATEST FROM THE STATE GOVERNMENTS

- Final notification of the Industrial Relations (Gujarat) Rules, 2021.
- Revised rates of Minimum wages.

LATEST FROM THE SUPREME COURT OF INDIA

Civil court lacks jurisdiction to entertain suit based on Industrial Disputes Act.

The SC held that **civil courts lack jurisdiction to entertain a suit structured on the provisions of the Industrial Disputes Act** (ID Act) [**Milkhi Ram v Himachal Pradesh State electricity Board**].

The matter pertained to a daily wage employee under the Himachal Pradesh State Electricity Board, whose services were terminated by an order dated January 1, 1985.

The employee challenged the order by filing a civil suit, and claimed to have rendered uninterrupted service for 2,778 days. He also asserted the 'right to be regularized' after completion of 240 days of continuous service.

The civil court framed two main questions in the matter:

- Whether it has jurisdiction?

- Whether the plaintiff had completed 240 days of uninterrupted service?

The civil judge relied on Sections 25B and 25F of the ID Act and noted that the plaintiff had rendered service for well above 240 days in one year and therefore, his service cannot be terminated without complying with the statutory requirement.

The defendant was directed to regularise and reinstate the petitioner in service with back wages.

The decision was challenged by the Electricity Board before the District Judge, Dharamshala.

The jurisdiction of civil court was again questioned but the appellate court observed that the question of jurisdiction is a mixed question of law and facts and since the litigation is continuing for long, it would not be proper to relegate the plaintiff to the labour court.

The judgment debtor's further challenge to the decree was not entertained and then the Board made the offer to appoint the terminated daily wager to the post of LDC in the regular pay scale, with effect from September 1, 2001. Responding to the appointment offer, the appellant gave a joining report on September 1, 2001 but since the same was hedged with various conditions, the joining report was not acted upon by the management.

Following the above, the decree holder applied for execution of the decree. The Board was directed to give effect to the decree of the civil court.

The Electricity Board challenged this order before High Court of Himachal Pradesh. The High Court held that the civil court lacked inherent jurisdiction to entertain the suit based on the ID Act and the judgment and decree so passed, are nullity. The High Court further held, that **the plea of decree being a nullity can also be raised at the stage of execution. Therefore, the decree passed by the civil court was set aside.**

This led to the appeal before the Supreme Court. The SC after examining the rival contentions observed that the authorities specified under the ID Act including the appropriate government and the industrial courts perform various functions and the ID Act provides for a wider definition of "termination of service", the condition precedent to termination of service. The consequence of infringing those, are also provided in the ID Act, the Court noted. When a litigant opts for common law remedy, he may choose either the civil court or the industrial forum. In the present matter, the appellant clearly founded his claim in the suit, on the provisions of the ID Act and the employer was, therefore, entitled to raise a jurisdictional objection to the proceedings before the civil court. Hence, the apex court upheld the findings of the High Court. The appeal was dismissed.

However, considering the hardship to the terminated employee, the Court directed that that arrear sum paid to the petitioner/workman pursuant to the court's decree, should not be recovered.

Click here to read the judgment.

Compliance under section 9A of the ID Act is necessary even in cases of irregular employees.

The Supreme Court has observed that the Fourth Schedule and Section 9A of the Industrial Disputes Act, 1947 would be attracted if the transfer of workmen results in change of service conditions and nature of work.

Section 9A of the ID Act says that employers should give notice to employees regarding any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule.

The hon'ble Court in the present matter was considering civil appeals assailing Madhya Pradesh High Court's judgment of upholding Labour Court's award in which the Court declared the order of transfer of employees as illegal and void (**Caparo Engineering India Ltd. V. Ummed Singh Lodhi And Anr.**).

Considering the evidence on record the bench observed that, "It emerged from the evidence on record that the respective respondents – employees were employed at Dewas and working at Dewas for more than 25 to 30 years; all of them came to be transferred suddenly from Dewas to Chopanki, which is at a d distance of 900 Kms. from Dewas; they came to be transferred at the fag end of their service career; that the place where they were transferred had no educational and medical facilities and that the place where they were transferred had no residential area within 40-50 Kms. from the plant with no means of transport. It also emerges that the number of workers at Dewas factory has been reduced by nine by transferring the workmen to Chopanki."

The bench in the judgment also considered that the respondents were workmen u/s 2(s) of the Act and therefore would have protection under the provisions of the Act and that because of their transfer to Chopanki they will have to work in the

The Supreme Court of India | PC: the wire

capacity of supervisor and would therefore be deprived of the provisions of the Act.

Observing that the appellant's submission that transfer was a part of the service condition and that section 9A would not be applicable has no substance, the bench noted that '**The question is not about the transfer only, the question is about the consequences of the transfer. In the present case, the nature of work/service conditions would be changed and the consequences of transfer would result in the change of service conditions and the reduction of employees at Dewas factory, for which the Fourth Schedule and Section 9A shall be attracted**."

Consequently, all the appeals were dismissed and it was held that all the concerned workmen shall be entitled to the consequential benefits including the arrears of salary etc., as if they were not transferred from Dewas and continued to work at Dewas and whatever benefits, which may be available to the respective workmen including the arrears of salary/wages, retirement benefits etc. shall be paid to the concerned workman within a period of four weeks from today. All these appeals are accordingly dismissed with costs, which is quantified at Rs.25,000/- qua each workman also to be paid to the concerned workman within a period of four weeks from today.

Click here to read the judgment.

Section 22C(2), Section 22C(1) does not use the term 'director, manager, secretary or other officer of the company' to impute vicarious liability.

The Supreme Court quashed a summoning order and proceedings issued by the Judicial Magistrate, First Class, Sagar, Madhya Pradesh taking cognisance of the offence under Section 22A of the Minimum Wages (Central) Rules,1950 as per the complaint filed by the Labour Enforcement Officer (Central) against the appellant, Dalye De'Souza, a director of M/s. Writer Safeguards Pvt. Ltd. ("the Company") and one Mr. Vinod Singh, Madhya Pradesh head of M/s. Writer Safeguards Pvt. Ltd.

The Supreme Court observed that Section 22A of the Act being a general provision for punishment, an elaborate discussion on Section 22C, which deals with the ingredients of the offences, would be of greater relevance for the case at hand. As per sub-section (1) of Section 22C, where an offence is committed by a company, **every person who at the time of the commission of the offence who were 'in-charge of' and was 'responsible for conducting business' of the company, as well the company itself would be deemed to be guilty of the offence.** However, proviso to **Section 22C(1) curves out a route to escape liability** under Section 22C(1), wherein the accused gets an opportunity to prove **that the offence was committed without their knowledge or that they had execrised all due** diligence to prevent the commission of such offence. Placing reliance on certain judgments **the Supreme Court inferred that the onus under the proviso would come into effect only when the prosecution has discharged its burden under the main provision i.e. Section 22C(1).**

Unlike Section 22C(2), **Section 22C(1) does not use the term 'director, manager, secretary or other officer of the company' to impute vicarious liability. Considering that the complaint had no specific averments that the appellant or Mr. Vinod was in-charge of and responsible to the company, the Supreme Court held that the prosecution in the present case does not and cannot rely on Section 22C(2) of the Act.**

Finally, observing that the Courts should refrain from issuing summons in a mechanical and routine manner, without applying their minds to see if a prima facie case for taking cognisance is at all made out, as it frustrates the entire purpose of laying down a detailed procedure under Chapter XV of the 1973 Code, the Supreme Court quashed the summoning order and the proceedings thereunder.

Click here to read the judgment.

Part-time employees of government institutions cannot claim salary parity with regular employees.

The top court was hearing an appeal filed by the Centre challenging an order of P&H High Court wherein the Central Administrative Tribunal had directed the Centre to re-examine the whole issue, complete the exercise to reformulate their regularisation/absorption policy, and take a decision to sanction the posts in a phased manner.

The apex court held that "The HC cannot, in the exercise of the power under Article 226, issue a Mandamus to direct the Department to sanction and create the posts. The HC, in the exercise of the powers under Article 226 of the Constitution, also cannot direct the Government and/or the Department to formulate a particular regularisation policy.

Further, the Court held that the part-time temporary employees in a government-run institution cannot claim regularisation and parity in salary with regular employees on the principle of equal pay for equal work." (**Union of India vs Ilmo Devi**)

Click here to read the judgment.

Section 25F ID Act will apply to employee's retrenchment even if appointment was irregular.

The Supreme Court has held that the requirements specified under Section 25F of the Industrial Disputes Act 1947 for the retrenchment of an employee will apply even if the appointment was irregular.

"**The nature of employment and the manner in which the workman has been employed is not significant for consideration while invoking the mandatory compliance of Section 25F of the Act 1947**", the Supreme Court observed.

The apex court laid special emphasis on the fact that Section 25F uses the words "for any reason whatsoever" with respect to its application to retrenchment.

The Court noted that condition precedent for the application of the conditions under Section 25F of the Act 1947 is that workman employed in any industry who has been in continuous service for not less than one year. The scheme of the Act 1947 contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and **if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of the twin clauses (a) and (b) of Section 25F of the Act 1947.**

The Court observed : "It leaves no manner of doubt that the nature of every termination of a kind, by the service of a workman, for any reason whatsoever, which the Legislature in its wisdom made a clarification in its intention to be known to the employer that such of the workman whose services, if to be terminated, will amount to retrenchment under Section 2(oo) of the Act except those expressly excluded in the section.

Click here to read the judgment.

Cheque issued pursuant to settlement agreement presumed to be for discharge of debt.

The Supreme Court has held that **a cheque issued pursuant to a deed of settlement between parties will be presumed to have been issued towards discharge of a debt or liability under Section 138 of the Negotiable Instruments Act (NI Act), which fastens criminal liability in cheque bounce cases (M/s Gimpex Private Limited v. Manoj Goel**).

The hon'ble Court also held that a complainant cannot pursue two parallel prosecutions for the same underlying transaction. **Once the parties have entered a settlement agreement, the proceedings in the original complaint cannot be sustained** and a fresh cause of action accrues to the complainant under the terms of the settlement deed.

The Court further observed that the determination of whether a cheque pursuant to a settlement agreement arises out of legal liability would be dependent on various factors, such as the underlying settlement agreement, the nature of the original transaction, and whether an adjudication on the finding of liability was arrived at in the original complaint, the defense raised by the accused, etc.

Click here to read the judgment.

LATEST FROM THE HIGH COURTS

Countless employees laid off amid COVID in violation of legal procedures: Madras High Court seeks report

The Madras High Court expressed concerns that there were many cases of employees or workers who were laid off during the COVID-19 pandemic and who were not subsequently reinstated despite the relaxation of lockdown regulations and resumption of business and economic activity (**Labour Liberation Front and ors v. State of Tamil Nadu**).

Justice MS Ramesh observed that **there is no doubt that the COVID-19 pandemic was a disaster that affected the conditions of workers and employees as well as the activities of industries, factories and other labour establishments.**
However, non-reinstatement of employees despite improvement in the pandemic situation led the Court to voice concern over whether employers exploited the situation to disengage their workers without following the applicable labour laws.

"Though the Covid-19 pandemic situation could be termed as a misfortune, the employers cannot be permitted to make a fortune out of this misfortune. This Court has not come across any Government Orders or notifications addressing this crisis, whereby countless numbers of workers/employees have been retrenched/laid off by violating the legal procedures for such retrenchment/lay off," the Court said.

It, therefore, directed the Secretary of the Labour Welfare and Skill Development Employment, Tamil Nadu to file a detailed report with particulars of the conditions of service and non-employment of workers or employees in Tamil Nadu. The said report must contain comparative information before the onset of the COVID-19 pandemic and the post-lockdown situation.

The Court passed the interim order in a petition filed by a Union named the Labour Liberation Front, which told the Court that some of its members were also not reinstated despite the relaxation of the COVID-19 lockdown.

Click here to read the Order.

Resignation once accepted cannot be taken back: Delhi High Court

Observing that a resignation once accepted cannot be taken back, the Delhi High Court dismissed the plea filed by a former Professor of the Jamia Milia Islamia University, seeking to rejoin the duty after one year of tendering his resignation.

Khan had sought directions on the University to permit him to re-join his duty as a professor. He had returned to India after one year of service at a University in Saudi Arabia.

The petitioner on February 17, 2010 applied for the post of Professor in King Abdulaziz University, Saudi Arabia. It was his case that after completing one year of contract service there, he came back to India on August 25, 2011 and reported for duty at the University, However, his request for joining was not acceded to by the authorities.

The petition was thus filed praying for a declaration that the action of University in depriving him of the benefit of his job was illegal, arbitrary and violative of his fundamental right as enshrined under Article 19(1)(g) of the Constitution of India.

The Court noted, "**...the request of the petitioner for EOL (Extra Ordinary Leave) was rejected, he could not have left the University for taking the assignment in Saudi Arabia. He should have at least made inquiries about his resignation, before leaving for Saudi Arabia. A resignation once accepted cannot be taken back**."

During the course of hearing, the Court had asked the petitioner's counsel as to his current status of employment to which it was responded that he was in employment in Nigeria from 2013.

"In any case, I find that petitioner has resigned which request having been accepted, he cannot be allowed to rejoin his duties. In the facts of this case, I do not see any merit in the petition. The same is dismissed," the Court said while dismissing the plea.

Click here to read the judgment.

FOR YOUR INFORMATION!

- Service of notice, summons, dak through electronic mode is here to stay after the Delhi High Court on Monday restored its circular of May 3, 2021 which permitted service of notice and summons through electronic modes including WhatsApp, email, fax etc.

Click here to read the Circular.

- There will be complete resumption of physical hearings in the Delhi High Court and in Delhi District Courts with effect from November 22, 2021.

Click here to read the Circular.

LATEST FROM THE CENTRAL GOVERNMENT

Circular regarding special provision in respect of international workers - exemption granted under the comprehensive economic cooperation agreement between India and Singapore (CECA-2005) to Singapore citizens working in India from contributing to Social Security schemes in India (dated - 21.10.2021) - EPFO

Click here to read more.

Government approves 8.5% interest rate on EPF for fiscal year 2021.

Click here to read more.

LATEST FROM THE STATE GOVERNMENT

Amended notification of the Tamil Nadu Labour Welfare Fund (Amendment) Act, 2021

In section 15 of the Tamil Nadu Labour Welfare Fund Act, 1972, for sub-section (1), the following sub-section shall be substituted, namely:

"(1) Every employee shall contribute a sum not exceeding fifty rupees, per year, as may be prescribed, from time to time, to the Fund and every employer shall, in respect of each such employee, contribute a sum not exceeding hundred rupees, per year, as may be prescribed, from time to time, to the Fund and the Government shall, in respect of each such employee, contribute a sum not exceeding fifty rupees, per year, as may be prescribed, from time to time, to the Fund.".

Click here to read the notification.

Final notification of the Industrial Relations (Gujarat) Rules, 2021.

The Industrial Relations (Gujarat) Rules, 2021 shall extend to the whole of Gujarat in respect to the industrial establishments and matters for which the Gujarat Government is the appropriate Government. They shall come into the force from the commencement of the Industrial Relations Code, 2020. The Industrial Relations Code has subsumed the laws pertaining to the Trade Unions, Industrial Disputes, and the Standing Orders.

Click here to read the notification along with rules.

New Labour Codes bring stringent Industrial rules | PC: business standard

REVISED MINIMUM WAGES

State Govts. have revised the Variable Dearness Allowance (VDA) resulting in an overall increase in the rates of Minimum wages given to different categories of employees. The chart shows the states with the dates from which these rates are coming into effect.

S. NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1.	Central	01.10.2021	Government Notification
2.	Madhya Pradesh	01.10.2021	Government Notification
3.	Chhattisgarh	01.10.2021-31.03.2022	Government Notification
4.	Bihar	01.10.2021	Government Notification
5.	Gujarat	01.10.2021-31.03.2022	Government Notification
6.	Andhra Pradesh (Footwear & leather industry)	01.10.2021-31.03.2022	Government Notification
7.	Uttarakhand	01.10.2021-31.03.2022	Government Notification
8.	Uttar Pradesh	01.10.2021-31.03.2022	Government Notification
9.	Uttar Pradesh (Glass Bangle Industry Workers)	01.10.2021-31.03.2022	Government Notification
10.	Uttar Pradesh (Qualeen Industry Workers)	01.10.2021-31.03.2022	Government Notification
11.	Goa	01.01.2021	Government Notification
12.	Rajasthan (Tobacco Manufacturing Industry)	01.10.2021-30.09.2022	Government Notification
13.	Jharkhand	01.10.2021-31.03.2022	Government Notification
14.	Telangana	01.10.2021-31.03.2022	Government Notification

P.K. Agarwal & Associates deals in :

- Compliance under all labour related statutes;
- Drafting and vetting of appointment Letters, agreements, standing orders, notices, and such other documents required by the establishment in lieu of employer-employee relationship;
- Handling of court cases under all the labour statutes before Labour Inspectors, Officers, Commissioners, Tribunals, District Courts as well as High Court and Supreme Court; and
- Providing time to time consultancy on all labor-related matters.

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