



THE LABOURTORIALS[®]

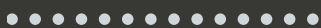
P. K. AGARWAL &
ASSOCIATES

Monthly updates on Industrial and Labour Laws

MARCH 2022
VOL. 2, ISSUE 8



WORD OF THE MONTH



VICARIOUS LIABILITY

The principle of vicarious liability is based on the master-servant or principal-agent relationship. The basic idea of vicarious liability is that the master will be the person who is liable for the acts of his servant which are done under the course of the employment of the servant.

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- SC sets aside P&H HC order staying Haryana law on 75% domicile reservation in private sector jobs.
- Employer defaulting in paying EPF contribution must pay damages; mens rea/actus reus not relevant.
- Post offices, banks vicariously liable for fraud, wrongs by employees during employment.
- [S. 33C ID Act] Labour Court cannot adjudicate on questions of employer-employee relationship.

LATEST FROM THE CENTRAL GOVERNMENT

- Circular on clarification on NEEM Trainees.

LATEST FROM THE STATE GOVERNMENTS

- Govt. of Gujarat gave clarification note under section 8 of the Payment of Gratuity Act, 1972.
- Notification of the Contract Labour (Regulation and Abolition) Himachal Pradesh Amendment Act, 2020.

LATEST FROM THE SUPREME COURT OF INDIA

Supreme Court sets aside Punjab & Haryana HC order staying Haryana law on 75% domicile reservation in private sector jobs.

The Supreme Court set aside an order of the Punjab & Haryana High Court staying the Haryana State Employment of Local Candidates Act, 2020, which grants 75 per cent reservation in private sector jobs with a monthly salary of less than ₹30,000 from January 15, 2022 to persons domiciled in Haryana [State of Haryana v. Faridabad Industries Association].

The Court noted that the Punjab &

Haryana Court has not given sufficient reasons for staying the Haryana State Employment of Local Candidates Act, 2020.

The Bench of Justices L Nageswara Rao and PS Narasimha, however, also ordered the **Haryana government not to take any coercive action against employers.**

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

State cannot deny pensionary benefits to ad-hoc employee after availing 30 years of his service.

The Supreme Court recently berated the State of Gujarat denying pension to an ad-hoc employee who had rendered more than 30 years of continuous service [State of Gujarat and Others v. Talsibhai Dhanjibhai Patel].

The SC while deciding the appeal held that **“It is unfortunate that the State continued to take the services of the respondent as an ad-hoc for 30 years and thereafter now to contend that as the services rendered by the respondent are ad-hoc, he is not entitled to pension/pensionary benefit.** The State cannot be permitted to take the benefit of its own wrong. To take the Services continuously for 30 years and thereafter to contend that an employee who has rendered 30 years of continuous service shall not be eligible for pension is nothing but unreasonable. As a welfare State, the State as such ought not to have taken

such a stand. In the present case, **the High Court has not committed any error in directing the State to pay pensionary benefits to the respondent who has retired after rendering more than 30 years of service.** Hence, the Special Leave Petition stands dismissed.”

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



The Supreme Court of India

Employer defaulting in paying EPF contribution must pay damages; mens rea/ actus reus not relevant.

The facts are that the appellant establishment is covered under the provisions of the EPF & MP Act. For non-compliance, proceedings were initiated under Section 7A and dues towards contribution of EPF for the intervening period of 01.01.1975 to 31.10.1988 amounting to Rs.74,288/- were assessed after adjudication by the competent authority that was paid by the appellant to the EPFO.

Thereafter, **the authorities issued a notice under Section 14B of the said Act to charge damages for the delayed payment of provident fund amount** which was levied for the period from January 1978 to September 1988 and called upon the appellant(s) to pay damages of Rs.85,548/-. The High Court in the impugned judgement held that once the default in payment of contribution is admitted, the damages as being envisaged under Section 14B of the Act are consequential and the employer is under an



obligation to pay the damages for delay in payment of contribution of EPF under Section 14B of the Act, which then became the subject matter of challenge in the appeal before the SC.

The Act is a legislation for providing social security to the employees working in any establishment and engaging 20 or more persons on any day and casts an obligation upon the employer to make compulsory deduction for provident fund and to deposit in the workers account in the EPF office. Similar is the provision which is pari materia to recover damages under Section 85B of the Employees State Insurance Act, 1948 providing insurance and pensionary benefits to the

employees.

Taking note of three-Judge Bench judgment of this Court in Union of India and Others v. Dharmendra Textile Processors and others, the Hon'ble Court held that "we are of the considered view that **any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non (an essential requirement) for imposition of levy of damages under Section 14B of the Act and mens rea (intention) or actus reus (act) is not an essential element for imposing penalty/ damages for breach of civil obligations/ liabilities.**

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

Compassionate appointment can be granted to children from second wife.

The SC held that condition imposed by a Railway Board circular that compassionate appointment cannot be granted to children born from the second wife of a deceased employee is discriminatory [Mukesh Kumar vs Union of India].

The facts are that after the employee's death, the son from the second wife applied for induction in the Railways under compassionate appointment scheme. The application was dismissed, and the dismissal was upheld in a departmental appeal by the Central Administrative Tribunal and thereafter by the Patna High Court.

The SC stated that the policy is violative of Article 16(2) of the Constitution as it cannot discriminate against a person only on the ground of descent by classifying children of the deceased employee as legitimate and illegitimate and recognizing only the right of legitimate descendant.

Post offices, banks vicariously liable for fraud, wrongs by employees during employment.

Post Office, as an abstract entity, functions through its employees. Employees, as individuals, are capable of being dishonest and committing acts of fraud or wrongs themselves or in collusion with others. **Such acts of bank/post office employees, when done during their course of employment, are binding on the bank/post office** at the instance of the person who is damnified by the fraud and wrongful acts of the officers of the bank/post office. Such



"Once Section 16 of the Hindu Marriage Act regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would violate Article 14 if the policy or rule excludes such a child from seeking the benefit of compassionate appointment," the judgment said.

Thus, the Court held that **the appellant, cannot be denied consideration under the scheme only because he is the son of the second wife and directed that his case be considered as per the policy.**

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

liable for fraud, wrongs by

acts of bank/post office employees being within their course of employment will give a right to the appellants to legally proceed for injury, as this is their only remedy against the post office. Further, the Court clarified that **the employer shall be entitled to proceed against the defaulter-employee for the loss caused due to fraud or wrongful act but this would not absolve them from their liability.**

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

[Section 33C ID Act] Labour Court cannot adjudicate on questions of employer-employee relationship.

The Supreme Court observed that **under Section 33(C)(2) of the Industrial Disputes Act, 1947, it is not open for the Labour Court to entertain disputed questions and adjudicate upon the employer-employee relationship** [M/s Bombay Chemical Industries v. Deputy Labour Commissioner and Another].

The Court held that **under Section 33(C)(2) of ID Act, the Labour Court's jurisdiction is like that of an executing court and it can only interpret the award or settlement on which the claim is based.**

When there was no prior adjudication on the issue whether the workman herein was in employment as a salesman as claimed by him and there was a serious dispute raised that the workman was never in employment as a salesman and the documents relied upon by him were seriously disputed by the Management, thereafter the Labour Court ought not to have proceeded further with the application under Section

33(C)(2) of the Industrial Disputes Act.

The Court relied on the case of Union of India and another Vs. Kankuben (Dead) By Lrs. and Others, and held that whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C (2) of the ID Act. It is further observed that the **benefit sought to be enforced under Section 33C (2) of the ID Act is necessarily a pre-existing benefit or one flowing from a pre-existing right.** The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under Section 33C (2) of the ID Act while the latter does not.

The Hon'ble SC finally held that the Workman/



Respondent No.2 is relegated to avail any other remedy which may be available under the Industrial Disputes Act, including that of reference to adjudicate his right as an employee of the appellant as claimed by him. As and when such proceedings are initiated the same to be considered in accordance with law and on its own merits and without in anyway being influenced by the present order, as this Court has not expressed anything in favour of either of the parties on the aspect of employer employee relationship between the appellant and respondent No.2.

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

LATEST FROM THE CENTRAL GOVERNMENT

Circular on clarification on NEEM Trainees.

The EPFO, Ministry of Labour & Employment has issued a circular clarifying that the National Employability Enhancement Mission (NEEM) trainees are employees under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

- The NEEM trainees are not exempted from the definition of "employee" under section 2(f) of the EPF and MP Act, 1952 and the Regulation 15.2 of the NEEM Regulation, 2017 is ultra vires to the provisions of the Act.
- However certain criteria have been laid down in HO circular dated 12 Oct 2015 (copy annexed with circular) to distinguish a student-trainee from an employee engaged by an establishment covered under the Act. EPF Scheme, 1952 after ascertaining the facts and circumstances of each case on merit.

- Further, a mechanism under para 26B of the EPF Scheme has already been provided whereby a Regional PF Commissioner has been vested with the power to decide a question whether an employee is entitled to, or required to become a member of the scheme, after ascertaining the facts and circumstances of each case on merit.
- Cases of subterfuge shall be distinguished from genuine arrangements for training.
- Whether a person is a trainee or employee may be decided as per law and considering the circular dated 12 May 2015.

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



Employees' Provident Fund
Ministry of Labour & Employment, Government



For Your Information!

EPFO members **can now change their Provident Fund or PF nominee online** by logging in at the EPFO website – epfindia.gov.in. New EPF nomination will override the previous nomination and the latest EPF/EPS nomination will be considered as final one.

[Click here](#) to read more.

LATEST FROM THE STATE GOVERNMENTS

Govt. of Gujarat gave clarification note on section 8 of the Payment of Gratuity Act, 1972.

The query was raised regarding the interpretation of section 8 of the Payment of Gratuity Act, 1972 In which clarification was sought on whether the Controlling Authority is required to issue the certificate only with regard to the unpaid amount of gratuity by the employer to the person entitled thereto or the said authority is required to issue the certificate not only with regard to the unpaid amount of gratuity but also including the amount of compound interest on such unpaid amount of gratuity.

The Legal Department of Gujarat State clarified that:

(1) Under the provision of section 8 of the said Act, "that amount" means the amount of gratuity which is payable under the Act by the employer to the person entitled thereto but has not been paid by the employer within the prescribed time limit. **And, the Controlling Authority is required to**

issue a certificate only with regard to the unpaid amount by the employer to the concerned person.

(2) Further as provided in section 8, **after the Controlling Authority issues the certificate of the unpaid amount, the duty is cast upon the District Collector to recover the said unpaid amount along with the compound interest** at such rate as the Government of India may specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

However, as provided in section 8, before the Controlling Authority issues the certificate, he is required to give the employer a reasonable opportunity of showing cause against the issue of such certificate and while recovering the unpaid amount along with the compound interest thereon, the District Collector shall measure that the amount of compound interest,

payable shall, in no case exceed the amount of gratuity payable under the Act.

Click here to read the Circular.

Extension of shops and establishments enactment in certain local areas of Madhya Pradesh.

The MP state Government, hereby directs that the provisions of the said Act shall apply to the towns of Bilhara, Malthon, Surkhi and Bandri with effect from the date of publication of this Notification.

Click here to read the notification.

REVISED MINIMUM WAGES

S. NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1.	Maharashtra	01.01.2022- 30.06.2022	Government Notification
2.	Rajasthan	01.07.2021- 30.06.2022	Government Notification
3.	Tripura (Palatana power project)	01.10.2021	Government Notification

Notification of the CLRA Himachal Pradesh Amendment Act, 2020.

The President of India has granted his assent to the Contract Labour (Regulation and Abolition) Himachal Pradesh Amendment Act, 2020 on 26.11.2021 and now it shall be deemed to have come into force w.e.f. 9th day of July, 2020.

The provisions shall now be applicable to the establishments with thirty or more workers.

The Himachal Pradesh Ordinance No. 3 of 2020 and savings stands repealed. Notwithstanding such repeal, anything done or any action taken under the Ordinance so repealed, shall be deemed to have been validly done or taken under the corresponding provisions of this Act.

Click here to read the notification.

Govt. of Meghalaya issues notification regarding the extension of Online Registrations and Auto Renewals of Certificates of Registrations and Licences.

In continuation to this Department Notification LBG.39/2014/Pt/255 dated 2.12.2020 and whereas the Ease of Doing Business is a priority of the Govt. of Meghalaya, in consonance with the Business Action Reform Plan of the Department of Promotion of Industry and Internal Trade, Ministry of Commerce & Industry, Govt of India. The Govt. of Meghalaya has decided to extend the implementation of Online Registrations and Auto renewals of Certificates and Registrations and Licenses with regards to the **Motor Transport Worker's Act, 1961** and **The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996.**

Automatic, Non-Discretionary Deemed Renewals will be enabled with collection of reasonable fees done in a transparent online, non- discretionary and automatic manner.

Click here to read the notification.

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“Take away my people, but leave my factories, and soon grass will grow on the factory floors. Take away my factories, but leave my people, and soon we will have a new and better factory.”

~ANDREW CARNEGIE

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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