



THE LABOURTORIALS[®]

P. K. AGARWAL &
ASSOCIATES

Monthly updates on Industrial and Labour Laws

APRIL 2022
VOL. 2, ISSUE 9

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- Interest on compensation under the Employees' Compensation Act payable from date of death and not date of order.

LATEST FROM THE HIGH COURTS

- Bombay HC holds Tata Motors liable for unfair labour practice, orders compensation for 52 temporary employees.
- Proper opportunity of being heard must be given to the employee in case of change in the payment policy.

LATEST FROM THE CENTRAL GOVERNMENT

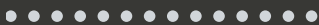
- Circular regarding Reimbursement of expenditure incurred by IPs and their families on medical care treatment taken during emergency from non ESI Hospitals
- The CBDT recommends 8.10% rate of interest to EPF subscribers for the year 2021-22.

LATEST FROM THE STATE GOVERNMENTS

- Revised rates of Minimum wages.
- Introduction of auto renewals of registration under Andhra Pradesh Shops and Establishments Act, 1988.



WORD OF THE MONTH



Ex Gratia Payment-

Ex Gratia means "by virtue of grace". It is a form of voluntary compensation that organizations pay to individuals in case of any damage caused to them or claims made by them. Although a liability for an organization, it is not necessarily a legal obligation that organizations must fulfill. These are not very common and are subject to taxes.



LATEST FROM THE SUPREME COURT OF INDIA

Interest on compensation under the Employees' Compensation Act payable from date of death and not date of order.



The Supreme Court held that **the liability under the Employees Compensation Act of 1923 to pay the compensation and the interest on the same would arise from the date on which the deceased died and not from the date of the order of compensation by Commissioner. [Shobha v. The Chairman, Vitthalrao Shinde Sahakari Sakhar Karkhana Ltd].**

While cutting the sugarcane, the deceased died of a snake bite. Neither the sugar factory nor the contractor paid the compensation payable under the Act, 1923 and therefore the appellants herein – heirs of the deceased filed a claim before the Commissioner Workmen's Compensation. By the order dated 25.01.2017, the Commissioner directed the respondents to jointly and severally pay the compensation amount of Rs. 3,06,180/- alongwith simple interest @ 12% p.a. from the date of accident, i.e., 29.11.2009 till its full realization. The Commissioner also imposed the penalty of 50% on the compensation amount, i.e., Rs. 1,53,090/-.

Feeling aggrieved the Respondents filed an Appeal before the High Court. The HC dismissed the appeal and set aside the penalty and modified the interest @ 12% p.a. payable from the period after expiry of one month from 25.01.2017.

Feeling aggrieved and dissatisfied the claimants preferred the appeal to the SC of India.

The Hon'ble Supreme Court held that as per Section 4A(1) compensation under section 4 shall be paid as soon as it falls due. Therefore, on the death of the employee the amount of compensation can be said to be falling due. Therefore, the liability to pay the compensation would arise immediately on the death of the deceased. Even as per Section 4A(2), in cases, **where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment** based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the employee, **without prejudice to the right of the employee to make any further claim. Since the liability to pay the compensation would arise from the date on which the deceased died for which he is entitled to the compensation and therefore, the liability to pay the interest on the amount of arrears/compensation shall also be from the date of accident and not from the date of the order passed by the Commissioner.**

As per Section 4A(3)(b), if the Commissioner is

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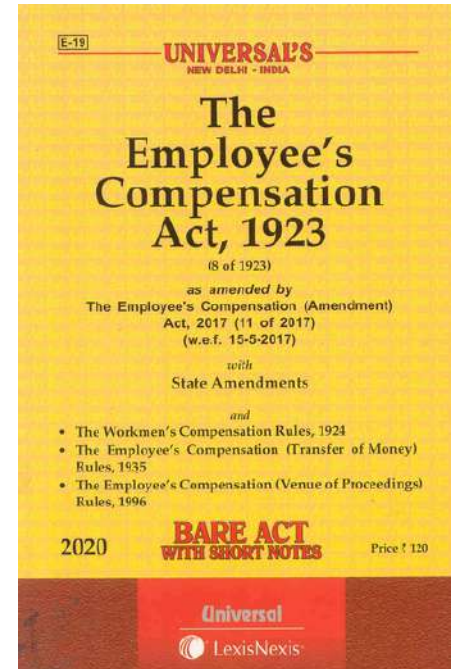
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As per Section 4A(3)(b), if the Commissioner is satisfied that there is no justification for the delay, it can direct the employer, in addition to the amount of the arrears and interest thereon, to pay a further sum not exceeding 50% of such amount by way of penalty.

Thus, provision for interest and provision for penalty are different. The provision for levy of interest would be u/s 4A(3)(a) and for levy of penalty would be u/s 4A(3)(b). While directing the employer to pay the interest from the date of the order passed by the Commissioner, the HC has not at all considered Section 4A(3)(a) and has considered Section 4A(3)(b) only, which is the penalty provision.

The Hon'ble Court finally held that the present appeal succeeds. The original claimants shall be entitled to the interest @ 12% p.a. on the amount of compensation as awarded by the Commissioner from the date of the incident i.e., 29.11.2009.

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



LATEST FROM THE HIGH COURTS

Proper opportunity of being heard must be given to the employee in case of change in the payment policy.

It is an admitted position that the appellant - Bata India Limited and the first respondent - Workmen of Bata India Limited, an association of the appellant's employees, had entered into the settlements dated 11.03.1998 and 14.12.1998. **By virtue of the settlements, the workmen had agreed to produce a minimum of 1,200 pairs of shoes per shift.**

It is a case of the appellant that after 01.02.2001, **workmen had deliberately adopted "go slow" tactics** and did not produce the minimum agreed production as per the settlement. The **production was below 50 per cent of the normal production. Despite repeated requests and warnings, the workmen did not pay any heed to increase production. Consequently, the appellant decided to pay pro-rata wages to those not meeting the mutually agreed target.** However, the **workmen refused payment and resorted to stay-in strike.**

Apprehending danger to safety, the management declared lockout on 08.03.2000, which was lifted on 03.07.2000.

The impugned judgment by the High Court of Karnataka dated 11.04.2008 partly allowed the Writ appeal filed by the appellant, inter alia, holding that "go slow" is nothing but sort of intentional refusal to work. In such a situation, the management could be justified in reducing or paying pro-rata wages. **The mere presence of the employee at work without the workmen contributing and doing work would not entitle them to wages.** The judgment observes that the workmen, 40 in number, had given normal production but significantly large number of workmen had deliberately not given adequate production in view of the call to "go slow". The impugned judgment also records that the

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authorities could not decide the issue under Section 33-C (1) of the Act as the amounts could not be determined with certainty. Nevertheless, the appellant was at fault as it was required to adhere to the principles of natural justice, especially when the workmen were disputing the factual position that there was fall in production by 50 per cent. **The appellant should have heard the Union or the workmen before the management proceeded to deduct the pro-rata wages for “go slow” work.** Having held so, the Division Bench took notice of the argument of the appellant that they had put notices on the notice board justifying the deduction of wages on a pro-rata basis. This, the Division Bench observed, was a matter of fact that cannot be gone into while exercising writ jurisdiction. What was required and necessary was giving proper opportunity to the affected person before making any deduction on pro-rata basis.



PC: Livemint



The Hon'ble High Court of Karnataka

Having observed so, the management was directed to pay the deducted/reduced wages to the employees within one month from the date of receipt of the order passed by the Division Bench. However, liberty was reserved for the appellant to take appropriate steps regarding “go slow” strategy adopted by a large section of the workmen and proceed in accordance with law.

The Hon'ble Court held that we do not think that most of the findings recorded in the impugned judgment require any interference or even clarification. We perceive and believe that the impugned judgment protects the interest of the appellant and the workmen by prescribing the right procedure which should be followed in case the appellant is of the opinion that the workmen, though present on duty, are not working and are not giving the agreed production on the basis of which wages and incentives have been fixed. This would depend upon the factual matrix and have to be ascertained in case of dispute to render any firm opinion. The procedure prescribed should be followed.

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

Bombay HC holds Tata Motors liable for unfair labour practice, orders compensation for 52 temporary employees.



The Bombay High Court in India ordered Tata Motors to pay back 52 of its former temporary employees after it decided that the company was liable for unfair labour practices.

In the case, '**Shankar Bhimrao Kadam & Ors. vs Tata Motors Ltd**', Justice RV Ghuge was of the view that the employees were terminated strategically so as to ensure that they were not employed continuously for more than 240 days, which would then meet the criteria to be deemed a permanent employee.

52 workers had filed the writ petition in the Bombay High Court in 2019, however, this dispute dates back to 2005 when the workers first raised the issue. The Labour Court had rejected references of over 1,500 employees, however, only 52 appealed the orders in the HC.

The bench observed that the company had a monitoring department to ensure temporary workers were disengaged before they completed the mandatory days of continuous employment. The research also showed that after the termination of the temporary workers, the employees were again recruited after a gap of half a year and the pattern repeated for around 2,500 to 3,000 such temporary

employees.

Justice Ghuge noted that some of the temporary workers worked for almost 238 days in one round, several of them have worked in several rounds in between 225 to 235 days.

Judge Ghuge added, "I have come to a firm conclusion that in hundreds of cases, the company has created a farcical picture by posing that the work allotted to the temporaries was limited only to the maximum extent of 7 months. The dedicated department for the engagement of temporary workers apparently kept a close watch on the duration of employment of these employees. This indicates that **the company has created an eye-wash and paperwork with the intention of creating evidence that no worker had completed 240 days.**"

The Hon'ble Court called it unfair labour practice under the Industrial Disputes Act 1947 for hiring hundreds of workers in its manufacturing unit as temporary employees to deprive them of the status and privilege of permanent workers.

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

LATEST FROM THE CENTRAL GOVERNMENT

Circular regarding Reimbursement of expenditure incurred by IPs and their families on medical care treatment taken during emergency from non ESI Hospitals.



PF & ESI PAYMENT

It is clarified that expenditure incurred by Insured Persons and their families on medical care shall be regulated in accordance with regulation 96B.

An Insured person and his family (where such medical benefit is extended to his family) shall be entitled to receive reimbursement of medical treatment in emergent condition to the extent rates prescribed and published by State Govt. or the corporation or for the Central Government Health Scheme (CGHS).

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

For Your Information!

The Central Board of Direct Taxes recommends 8.10% rate of interest to EPF subscribers for the year 2021-22.

Notification of the Employees' State Insurance (Central) Amendment Rules, 2022.

The notification retrospectively inserts a proviso to Rule 55, effective from 20.01.2017 the date from which the maternity benefit was enhanced from 12 weeks to 26 weeks.

The present notification provides that in case of an insured woman who is in receipt of maternity benefit and due to reason of which a shorter contribution period is available to her in the contribution period in which the maternity benefit falls, she shall be qualified to claim sickness benefit in the corresponding benefit period if the contribution in respect of her was payable for not less than half the number of days available for working in such contribution period.

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

LATEST FROM THE STATE GOVERNMENTS

REVISED MINIMUM WAGES

S. NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1.	Chhattisgarh	01.04.2022	Government Notification
2.	Karnataka	01.04.2022- 31.03.2022	Government Notification
3.	Haryana	01.01.2022	Government Notification
4.	Gujarat	01.04.2022	Government Notification
5.	Madhya Pradesh	01.04.2022	Government Notification
6.	Tamil Nadu	01.04.2022	Government Notification
7.	Uttar Pradesh	01.04.2022	Government Notification
8.	Uttarakhand	01.04.2022	Government Notification

Notification regarding introducing auto renewals of registration under Andhra Pradesh Shops and Establishments Act, 1988.

All Labour department authorities in the state are instructed to pursue the auto renewal process by all shops and establishments in order to comply with said G.O and also inform the employers/stake holders to utilize the facility and remit the requisite fee directly through Mee- Seva.

[Click here](#) to read more.

Notification under provision of regulation of 76 of the ESIC (General) Regulation, 1950 - Govt. of Himachal Pradesh

Governor of Himachal Pradesh constitutes Medical Appellant Tribunal on the state of Himachal Pradesh to entertain appeals of against the decision of Medical Board or Special Medical Board.

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

Amendment notification under Andhra Pradesh Factories Rules, 1950.

Govt. of Andhra Pradesh has made certain amendments to the Factories rules for minimizing the compliance burden for the state.

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

Govt. of Jharkhand has issued notification regarding conditions on factories for female workers.

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

Notification regarding Exemption on Working Hour under the Madhya Pradesh Shops and Establishments Act, 1958

It provides that in Restaurant and eating houses every employee shall be given one day holiday in a week and no employee shall be called for work for more than 48 hours in a week.

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

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All Wealth Is The Product Of Labour

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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