



THE LABOURTORIALS™

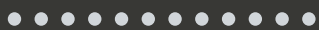
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Monthly updates on Industrial and Labour Laws

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Word of the month:



RES IPSA LOQUITUR-

Res ipsa loquitur translates to "the thing speaks for itself". The principle that the mere occurrence of some type of accident is sufficient to imply negligence on part of the employer/Management.

KEY HIGHLIGHTS

LATEST FROM THE HIGH COURTS

- Delhi HC held Management strictly liable for accident at work and grants ₹20 lakh compensation to a 'barely alive' disabled man.
- Protective provisions of Factories Act cannot stand in the way of a woman being considered for employment for which she is otherwise eligible: Kerala HC

LATEST FROM THE CENTRAL GOVERNMENT

- Your EPF account will now show taxable and non-taxable balance.
- Notification on Relief to establishments covered under EPF & MP Act, 1952 from levy or penal damages for delay in deposit of dues / filing of ECR for wage month may, 2021 in r/o EPF members due to non-seeding of Aadhaar in UANs - EPFO

LATEST FROM THE STATE GOVERNMENTS

- Notification on Submission of Information on accidents in Factories on Online system- Govt. of Maharashtra

AND YOU MUST KNOW

- It's a win-win situation- the best of both worlds!

LATEST FROM THE HIGH COURTS

Equal pay for equal work is not a fundamental right but a constitutional goal: Bombay HC

In *Gajanan Ghule & Anr. v. State of Maharashtra and connected petitions* the seminal issue involved in these petitions is whether the Minimum Competency Vocational Course ("MCVC") Instructors are justified in claiming Pay Scale at par with the Full-Time Teachers in MCVC on the principle of "Equal Pay For Equal Work", which is enshrined in Articles 14 and 39(d) of the Constitution of India.

The obiter dicta in the case were that "The principle of 'Equal Pay For Equal Work' is not a fundamental right but a constitutional goal."

The petitioners contend that though designated as Instructors, the nature of duties discharged is identical with the duties discharged by Full Time Teachers. The thrust of the contentions is to emphasize on the anvil of quantum and nature of duties, that the differentiation in the Pay Scales is invidious and falls foul of the constitutional guarantee of "Equal Pay For Equal Work".

The respondents contend in rebuttal, that the principle of "Equal Pay For Equal Work" does not come into play since neither the qualifications prescribed nor the nature of duties discharged is similar, much less identical, as would justify according to parity in Pay Scales to Full-Time Instructors.

The court concluded that "The consistent judicial view is that the doctrine of "Equal Pay For Equal Work" is not abstract and does not operate in a vacuum. The principle "Equal Pay For Equal Work" is not a fundamental right but a constitutional goal and **entitlement to parity in Pay Scale would depend on several factors such as educational qualifications, nature of the job, duties to be performed, responsibilities to be discharged and experience.**"

The petitions were dismissed with no order as to cost.

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

Kerala High Court reinstates woman fired for availing maternity leave.

The petitioner was terminated from service allegedly for unauthorized absence. In her plea, she contended that her request for maternity leave was turned down, and to aggravate her agony, she was terminated from service when she proceeded to take the leave.

It was also submitted before the Court that the Director of the Department had gone to extent of threatening to take action against the District Child Protection Officer for appointing the petitioner "without proper care", thus implying that he ought not to have offered employment to her solely because she had recently delivered, thus being in need for leave to care her child. The Court after hearing the parties asserted as follows:

While dealing with a plea where maternity leave was denied to a woman, the Kerala High Court deprecated the State for terminating her service as the counsellor at the Women and Child Development Department and set aside the order of termination. Justice Devan Ramachandran while pronouncing the judgment observed that "only a woman knows how acutely difficult it is to balance motherhood and her career."

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

Delhi HC held Management strictly liable for accident at work and grants ₹20 lakh compensation to a 'barely alive' disabled man.

Though Bharat is living, he is barely alive, the Delhi High Court said as it awarded a 28-year-old disabled man ₹20 lakh compensation after he suffered a fall in 2014 while performing his job as an electrician.

Hon'ble Justice Anup Jairam Bhambhani held Bryn, a construction company and BSES Rajdhani Power Limited (BRPL) jointly and severally liable for his injuries.

On April 25, 2014, Bharat, who was 21, had climbed an electricity pole to fix the power fluctuation at a farm house in Bijwasan, New Delhi, when the pole snapped and fell, bringing him down.

"Bharat suffered a fall in the course of performing the task assigned to him by Bryn, which has resulted in him being rendered 100% disabled. Today Bharat is unable to perform even the most basic, personal, daily chores himself and is all but 100% dependent on others; and as a result, though Bharat is living, he is barely alive," the judgment read.

Therefore, the case in the Court's opinion was squarely covered by the principle of *res ipsa loquitur*, whereby no detailed evidence, let alone a trial, was required to establish *ex-facie* negligence on the part of BRPL and Bryn.

Without getting into the argument as whose fault it was, **the Court referred to the principle of "strict liability" to hold both Bryn and BRPL jointly and severally liable to compensate** Bharat for putting him in his current state.

"To reiterate, whether or not Bharat was provided any safety gear is in any case irrelevant, since that would not absolve Bryn and/or BRPL of their obligation to compensate Bharat, as that obligation is based on the 'strict liability' principle and therefore arises *de-hors* any negligence on the part of either of the respondents," it noted.

The Court further held, "Upon a conspectus of the statutory and precedential landscape as discussed above,

this court is well and fully empowered in exercise of its extraordinary powers under Article 226 of the Constitution to award in favour of Bharat and against Bryn and/or BRPL 'just and fair compensation'; and to issue other directions to provide monetary and non-monetary relief, with all its limitations and restrictions, to enable Bharat to survive the rest of his natural life with a semblance of dignity and self-worth."

BRPL had opposed the petition questioning its maintainability and argued that the victim was an employee of its contractor wherein an agreement with the contractor put the liability of any compensation of the workers employed upon him only. Bryn, on the other hand, contended that the accident took place at the BRPL's premises and during the course of Bharat's work for and at the instance of BRPL. Therefore, Bryn was not liable for Bharat's injuries.

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



Protective provisions of Factories Act cannot stand in the way of a woman being considered for employment for which she is otherwise eligible: Kerela HC

A notification was published inviting applications for the permanent post of Safety Officer by the Respondent Company. However, it was stated in the notification that only male candidates need to apply for the post. The petitioner approached this Court challenging the said provision in the notification on the ground that it is discriminatory and that the right of the petitioner for being considered for appointment as Safety Officer is violated due to the said provision. The petitioner further contends that any provision as contained in Section 66(1)(b) of the Factories Act, 1948 to the extent it denies the right of the petitioner to participate in the selection for appointment as Safety Officer is violative of the valuable rights guaranteed to the petitioner under Articles 14, 15 and 16 of the Constitution of India and is, therefore, liable to be set aside.

The Respondents contended that as per Section 66(1)(b) of the Factories Act, 1948, women employees shall not be required or permitted to work except between 6 a.m. and 7 p.m. It is

submitted that Graduate Engineer Trainee (Safety) is required to work only from 9 a.m. to 5 p.m. However, it is submitted that Safety Officer is a round-the-clock post and that the person engaged as Safety Officer will have to work even during nighttime if required.

The Hon'ble Justice Anu Sivaraman held that **"I reiterate the finding of the Division Bench that the provisions of Section 66(1)(b) are only protective in nature. I make it clear that such protective provisions cannot stand in the way of a woman being considered for employment for which she is otherwise eligible. That 'only male candidates can apply' is violative of the provisions of Articles 14, 15, and 16 of the Constitution of India."**

The Hon'ble Court, therefore, set aside the abovementioned clause in the "job offer" notification.

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

Karnataka High Court quashes ESIC hospital order denying maternity leave to doctor.

The Court said that the doctor who was employed on a contract basis, had completed 125 days of service, well past the requirement of 80 days as prescribed by an office memorandum to be eligible for maternity leave and therefore, the order passed by the officials of Employees State Insurance Corporation Medical College and Hospital (ESIC hospital), Kalaburagi which denied maternity leave to a doctor employed by the hospital stood quashed. **[Dr Swetha vs Union of India and others]**



ESIC Medical College and Hospital, Kalaburagi, Karnataka

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

LATEST FROM THE CENTRAL GOVERNMENT

Ministry of Labour and Employment mandates Aadhar to avail benefits under National Pension Scheme for Traders, Shopkeepers and Self-Employed Persons, 2019.

The Scheme aims at providing pension support to the persons who are primarily small shopkeepers or retail traders, self-employed persons, small rice mill owners, oil mill owners, atta chakki owners, workshop or garage owners, commission agents, brokers of real estate, owners of small restaurants, etc. (hereinafter together referred to as the beneficiaries), as per the extant Scheme guidelines. Under the Scheme, a minimum monthly assured pension of three thousand rupees per month is given to the beneficiaries after attaining the age of sixty years.

The Central Government shall for the purposes of this Scheme, establish a Pension Fund to be administered in consultation, wherever required, with the National Social Security Board for Unorganized Workers. The Central Government shall also contribute to the Pension Fund the equal amount (hereinafter referred to as the benefits) as contributed by an eligible subscriber.

In pursuance of the provisions of section 7 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (18 of 2016) (hereinafter referred to as the said Act), the Central Government makes Aadhar mandatory for availing the benefits under the scheme.

An individual desirous of availing the benefits under the Scheme shall be required to furnish proof of possession of Aadhaar or undergo Aadhaar authentication and for those who does not possess the Aadhaar number or has not yet enrolled for an Aadhaar, shall have to apply for Aadhaar enrolment provided he is entitled to obtain Aadhaar as per the provisions of section 3 of the said Act, and such individual may visit any Aadhaar enrolment center (list available at Unique Identification Authority of India website www.uidai.gov.in) for Aadhaar enrolment.

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

The Central Government has launched the e-Shram portal

The Government aims to register 38 crore unorganised workers, such as construction labourers, migrant workforce, street vendors and domestic workers, among others. The workers will be issued an e-Shram card containing a 12 digit unique number, which, going ahead, will help in including them in social security schemes, officials said.

The government had earlier missed deadlines for creating the database, inviting criticism from the Supreme Court.

The Ministry for Labour and Employment on 26 August 2021 has formally launched e-Shram portal and handed it over to the States/UTs.

[Click here](#) to read more.



The Government of India has launched e-shram portal on 26th August 2021 for registration of unorganized workers.

ESI & PF UPDATES

Your EPF account will now show taxable and non-taxable balance.

The interest earned on the Employee PF contribution w.e.f. 01/4/2021 on the amount above Rs. 2.5 lakh shall be chargeable to tax that is if the Contribution is more than 2.5 lakhs per annum, the interest amount earned on the Employee PF contribution above Rs.2.5 lakh shall be taxable.

The Employer's contribution is not part of this clause. Thus, only the Employee share of contribution of above Rs. 2.5 lakhs will be considered.

Earlier, interest on EPF was completely exempted from tax, with no limits.

Also, the past accumulated balance is safe and no tax will be levied on that amount.

The upshot of these changes is that the EPF subscriber's account will henceforth have two components- taxable and non-taxable. The Central Bureau of Direct Taxes (CBDT) notified Rule 9D for calculating the taxable portion of interest on contribution in excess of the threshold limit.

[Click here](#) to read more.

Notification on Relief to establishments covered under EPF & MP Act, 1952 from levy or penal damages for delay in deposit of dues / filing of ECR for wage month may, 2021 in r/o EPF members due to non-seeding of Aadhaar in UANs – EPFO

The Field offices are advised that delay in filing of ECRs for wage month of May 2021 statutorily due on or before 15.06.2021 only in respect of EPF members due to non-seeding of Aadhaar in the UANs should not be presumed as employers default and to appreciate each case in its own facts under section 14B of the EPF & MP Act, 1952.

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

Clarification Circular issued to employers for correction in Names and other details of PF members in KYC.

EPFO has issued circulars to all employers regarding correction in the name and others details. etc.

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

ESIC notifies Covid-19 relief scheme for insured Covid victims.

The Employees State Insurance Corporation on 11th August 2021 has notified the Covid-19 Relief Scheme under section 19 of the Act as a welfare measure for the Insured Persons and for the dependents of ESI insured persons in case of their death due to COVID-19.

The Eligible conditions to avail the scheme are as follows:

- The IP who died due to COVID-19 disease must have been registered on the ESIC online portal at least three months prior to the date of diagnosis of COVID-19 disease resulting in his/ her death.
- The deceased IP must have been in employment on the date of diagnosis of COVID-19 disease and

contributions for at least 70 days should have been paid or payable in respect of him/ her during a period of a maximum of one year immediately preceding the diagnosis of COVID-19 disease resulting in death.

Further, In case of death due to COVID-19, the spouse, son up to 25 years of age, unmarried daughter, and widowed mother of the insured would be eligible for the relief.

The scheme shall be effective for two years from March 24, 2020, and the minimum relief under the scheme shall be Rs 1800/- per month.

[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.	Tripura (Construction & Building operation workers)	01.04.2021	Government Notification
2.	Tripura (Domestic workers)	01.04.2021	Government Notification
3.	Tripura (Loading & un-loading workers)	01.04.2021	Government Notification
4.	Tripura (Gold smith)	01.04.2021	Government Notification
5.	Tripura (Incense stick)	01.04.2021	Government Notification
6.	Tripura (Public motor transport)	01.04.2021	Government Notification
7.	Assam	01.06.2021	Government Notification
8.	Maharashtra	01.06.2021- 31.12.2021	Government Notification
9.	Haryana	01.07.2021	Government Notification
10.	West Bengal (Construction & Building operations, Hotels & Restaurant, Power looms and security services)	01.07.2021- 31.12.2021	Government Notification

Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Ordinance, 2021

The ordinance seeks to protect the basic rights of employees of Shops and Establishments at Manipur. Special protection is extended to women at the workplace. The ordinance also lays down provisions to govern maximum working hours, holidays, working days overtime wages, compensatory holidays, etc.

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

Notification on Submission of Information on accidents in Factories on Online system-Govt. of Maharashtra

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

Amended notification of the Labour Welfare Fund (Gujarat) (Amendment) Rules, 2021

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

Auto-renewal of Registration under Andhra Pradesh Shops and Commercial Establishments Act, 1988

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

AND YOU MUST KNOW!

It's a win-win situation- the best of both worlds!

Resolving individual labour rights disputes in recent years has taken new significance and prominence for both domestic and multinational corporations, especially in a country like India, wherein traditional justice delivery mechanism is overburdened, time consuming and costly. **Alternative Dispute Resolution (ADR) has evolved as a perfect alternative in such a situation, for speedy and cheaper settlement of the disputes.**

Considering the delay in resolving the dispute Abraham Lincon has once said:

"Discourage litigation. Persuade your neighbors to compromise whenever you can point out to them how the nominal winner is often a real loser, in fees, expenses, and waste of time".

ADR mechanisms prescribed by the Civil Procedure Code under Sec. 89(1)-(2), include arbitration, mediation, conciliation, judicial settlement, judicial settlement through lok adalat (people's court). ADR being an informal process, provides quick, interim solutions to parties of a dispute thereby mitigating conflicts by large. The arbitral institutes can broker an agreement between the parties in 2-3 successive meetings whereas the other dispute resolution methods

would take several months, if not years.

International Commercial Arbitration rules which serves as a guideline to arbitration institutions around the globe and, have been adopted by the Indian Council of Arbitration, also provide that Arbitration tribunals have the power to conduct proceeding via video conference, telephone or any such other means of communication as may be deemed fit. This transposed the concept of ADR towards a highly advanced and far more cost-effective method of **Online Dispute Resolution (ODR)**. ODR also helps overcome jurisdictional issues, eliminate geographical barriers, automate administrative tasks, improve productivity of professionals, promote eco-friendly processes, and finally, deliver a quick, economical and effective solution to disputes.

Industrial Disputes Act, 1947 was the first legislation in India to introduce concept of ADR in labour disputes. The provision in the Act makes it attractive for disputing parties to mutually agree by negotiation also called **"Collective Bargaining"**. Collective bargaining is a key means through which employers and their organizations and trade unions can establish fair wages



SMRITI AGARWAL
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and working conditions. It also provides the basis for sound labour relations. Typical issues on the bargaining agenda include wages, working time, training, occupational health and safety and equal treatment. The objective of these negotiations is to arrive at a collective agreement that regulates terms and conditions of employment. Collective agreements may also address the rights and responsibilities of the parties thus ensuring harmonious and productive industries and workplaces.

Failing Negotiations can thereafter be settled through **conciliation by an officer** of the Government, before resorting to litigation. The long title of the act underlines its goals which says, "An Act to make provision for the investigation and settlement of industrial disputes ...".

The Industrial Disputes Act also provides for **Voluntary submission of disputes to Arbitration.**

The settlement so arrived or award so passed by the Arbitrator is binding upon the parties and enforceable in the Court of law.

To be honest unlike Civil Courts, the Labour Courts are labour centric where the Management is usually left to run post to pillar between multiple authorities.

Also, the employees as backed by Union leaders are sometimes pressurized to drag the Management into multifarious allegations and litigations which eventually creates a difference and kills scope of reconciliation between the parties.



Courtesy: SpicyIP

After the widespread of Coronavirus and imposition of consequential lockdown, 'n' number of disputes arose between the Management and employees whether it be layoffs, termination, pay cuts, or transitional work culture.

The Supreme Court of India after going through the legal provisions, hearing the professionals and considering the practical situation deem the alternative dispute resolution to be the only way out of conflicts arising between the Management and the employees.

The Apex Court, by way of an interim order dated 12th

June 2020 directed that **private establishments, industries and employers, who are willing may negotiate terms and enter into settlements with their workers and/or employees regarding payment of wages** for the period with effect from the MHA order till May 18, 2020 (the "50 Days Period") or for any other period as applicable in any particular state during which their industrial establishment(s) was closed down due to lockdown.

Negotiation was the only solution as the employees are equally responsible to drive the Company out of the economic crises.

Hence, the process of ADR is not technical and complex as it is in traditional court system. In ADR, unlike court system, parties discuss and co-operate each other with the help of third neutral party. **There is no winner and loser. It therefore maintains the good relationship between the parties, which is the key to run efficiently any business, industry or factory.**

ADR may not produce the result in each case but it will definitely be helpful in reducing the disputes.

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There are four ingredients in true leadership: brains, soul, heart and good nerves.

Klaus Schwab
Founder and Executive Chairman
World Economic Forum

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- 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
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