

THE LABOURTORIALS[®]

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS

WORD OF THE MONTH

COMPASSIONATE APPOINTMENT

Compassionate Appointment is a social security scheme launched by the Government of India to grant appointment to a dependent family member on a compassionate basis when a Government servant dies while in service or retires on medical grounds.



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KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- "Suitable Employment" for compassionate appointment must be understood with reference to the post held by the deceased employee.
- Payment of gratuity cannot be categorized as a windfall or a bounty payable by the private schools as it is one of the minimal conditions of service.

LATEST FROM THE HIGH COURTS

- Industrial Tribunal order cannot be challenged on question of fact under Article 226: J & K High Court
- Right to pension a Constitutional right; not bounty to be paid at employer's whims: Kerala High Court

LATEST FROM THE CENTRAL GOVERNMENT

- EPFO to give award to the establishment for filing E-nomination.

LATEST FROM THE STATE GOVERNMENTS

- Conditions for employing women workers in factory during night- Govt. of Himachal Pradesh

LATEST FROM THE SUPREME COURT OF INDIA

“Suitable Employment” for compassionate appointment must be understood with reference to the post held by the deceased employee.

In **Suneel Kumar vs State of UP**, the son of a deceased employee who was a graduate with computer literacy, was offered a post of Sweeper (the post which was held by his late father) as compassionate appointment. He rejected this offer and filed a representation seeking appointment as Gram Panchayat Officer, a post which is borne on the cadre of Class-III post.

The court, referring to **State of Uttar Pradesh**

& Ors. v. Premlata, observed: "The father of the appellant was working as a Sweeper borne in Class-IV post. ...the law as declared is to the effect that the words 'suitable employment' in Rule 5 must be understood with reference to the post held by the deceased employee. The superior qualification held by a dependent cannot determine the scope of the words 'suitable employment'".

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

Maternity leave under CCS Rules can't be denied because woman's husband has two children from his previous marriage.

According to Rule 43 of the Central Civil Services (Leave Rules) 1972, only a female employee with less than two surviving children can seek maternity leave. In this case, the woman's husband had two children from previous marriage and she had previously availed child care leave for her non-biological child. When a child was born to her in the marriage, the authorities denied her maternity leave, citing the bar under Rule 43.

Deepika Singh v. CAT

The Apex Court held that Rule 43 of the Central Civil Services (Leave Rules) 1972 has to be given purposive interpretation in terms of the Maternity Benefit Act and Article 15 of the Indian Constitution which

mandates the State to adopt beneficial provisions for protecting the interest of women.

"The fact that he (spouse) had two biological children from prior marriage would not impinge upon the statutory entitlement for grant of maternity leave for her sole biological child in the present case."

When the Bench asked the Counsel for the authorities whether maternity leave is granted to women who adopt children, he could not point out any such provision. However, the Bench indicated that **maternity leave should also be extended to cases of adoption.**

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



The Hon'ble Supreme Court of India



Payment of gratuity cannot be categorized as a windfall or a bounty payable by the private schools as it is one of the minimal conditions of service.

The Supreme Court has upheld the amendment of Payment of Gratuity Act, 1972 extending the benefit of gratuity to teachers. **The amendment with retrospective effect remedies the injustice and discrimination suffered by the teachers on account of a legislative mistake. Independent Schools Federation of India v. Union of India**

Interpreting the definition of employee in Section 2(e) of the Gratuity Act, the Supreme Court in **Ahmedabad Private Primary Teachers' Association v. Administrative Officer and Others**, had held that the teachers who impart education to students were not "employee" as they do not perform any kind of skilled, unskilled, semi-skilled, manual, supervisory, managerial, administrative, technical or clerical work. Later, the Gratuity Act was amended and post amendment, the Section 2(e) reads thus : "employee" means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act

applies, but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity." Several private schools challenged the constitutional validity of the amendments.

The appellants/petitioners raised these two contentions:

a) The legislation vide the Amendment Act 2009 overrules the judicial decision in Ahmedabad Private Primary Teachers' Association and violates the doctrine of separation of powers.

(b) The retrospective amendments are unreasonable, excessive and harsh, and therefore, unconstitutional.

Rejecting the first contention, the bench observed that the earlier decision in Ahmedabad Private Primary Teachers' Association case had interpreted the law, that is, Section 2(e) of the PG Act, as it then existed in the statute.

"The judgment even acknowledged and prompted the legislature to enact a legislation granting the benefit of gratuity to teachers, who had been excluded because of the legal flaw. When the

legislature acts within its power to usher in a valid law and rectify a legal error, even after a court ruling, the legislature exercises its constitutional power to enact the law and does not overrule an earlier court decision", it said.

Regarding the second ground, the bench noted that, *the amendment enforces and gives effect to what was intended by the notification, but could not be achieved on account of the technical and legal defect. The lacuna, a distortion in the language that had the unwitting effect of leaving out teachers, has been rectified so as to achieve the object and purpose behind the issuance of the notification, making the PG Act applicable to all educational institutions... Private schools, when they claim a vested right arising from the reason of defect, should not succeed, for acceptance would be at the expense of teachers who were denied and deprived of the intended benefit. Marginal inconvenience in the form of financial outgo or difficulty is of little weight, when curing of an inadvertent defect is made retrospectively in greater public interest,..."*

Click here to read the judgement.



Continuity of service with back wages can be directed in cases where the retrenchment was not Bona fide.

Armed Forces Ex Officers Multi Services Cooperative Society Ltd. retrenched the services of fifty-five employees, on the grounds that it had closed its business.

Retrenchment compensation as per Section 25F of the Industrial Disputes Act, 1947, was also offered.

The labour department referred the dispute regarding a demand of the workmen for reinstatement of fifty-five drivers with continuity of service and full back wages to the Industrial Tribunal. The orders of termination were set aside by the Tribunal and the workmen were directed to be reinstated with continuity of service and 75% back wages, other than the 8 employees who admitted to gainful employment post retrenchment.

In appeal, the Apex Court agreed with the view of the Tribunal that the method and manner by which the workmen were retrenched clearly demonstrates that it is virtually a closure and that the entirety of business is not lost due to the strike and the retrenchment seems to have been imposed as retribution against the workmen for going on a strike.

The court then observed: "*Even here, there is no quarrel with the principle of law that reemployment of retrenched*



workmen does not entitle them to claim continuity of service as held in Cement Corpn. of India Ltd. v. Presiding Officer Industrial Tribunal-cum-Labour Court and Anr., as well as the Maruti Udyog Ltd v. Ram Lal and Ors.. However, the principle laid down in these judgments will only apply to cases where the retrenchment is bona fide.

The Tribunal has held that the retrenchment of all the drivers followed by an offer of re-employment on new terms and conditions is not bona fide. Once the orders of retrenchment are set aside, the workmen will naturally be entitled to continuity of service with order of back wages as determined by a Tribunal or a Court of law.

Regarding the submission that the management has a right to organise its business based on economic considerations, the court observed: "*There is also*

no quarrel... that a bona fide policy decision for reorganising the business based on economic considerations is within an enterprise's proprietary decision and retrenchment in this context must be accepted as an inevitable consequence. The answer is here itself, and pertains to the material requirement of bona fide of the decision. In the present case, the Tribunal has come to the conclusion that the entirety of business is not lost due to the strike and the retrenchment seems to have been imposed as retribution against the workmen for going on a strike. Armed Forces Ex Officers Multi Services Cooperative Society Ltd vs Rashtriya Mazdoor Sangh

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



LATEST FROM THE HIGH COURT

Industrial Tribunal order cannot be challenged on question of fact under Article 226: Jammu & Kashmir HC

A plea was filed under Article 226 of the Constitution of India challenging an award passed by the Industrial Tribunal/Labour Court, Jammu under Section 10 of the Industrial Disputes Act, awarding ₹1 lakh to a workman.

The Court recorded that **the petitioner raised disputed question of fact with regard to the salary component and the eligibility of the petitioner as Workman in terms of Section 2(s) of the Industrial Disputes Act and therefore the Court is not inclined to exercise the writ jurisdiction as it cannot go into the disputed question of fact** as all the question of facts have been gone in detail by the Tribunal by adducing

the evidence by passing a reasoned order. **M/s Manu Mohit Industries v. State of J&K & Ors.**

Explaining the law further on the subject the bench observed that only if in addition to the correctness of the award if the petitioner seeks to challenge the vires of any other provision of Industrial Disputes Act or of any other provision or the very jurisdiction of the labour court to pass the award or on the ground that suffered from error or law apparent on the face of record, it needs to be considered under Article 226 or otherwise not.

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

Benefits of the reservation should be granted to people with disability as they have statutory and constitutional rights to it: Kerala HC

The HC observed that the benefit of reservation as envisaged under the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act of 1995 and the Rights of Persons with Disabilities Act of 2016 cannot be taken away by placing limiting clauses. **KJ Varghese v. State of Kerala and others**

The issue related to various government orders with regard to reservations for persons with disabilities in aided institutions, particularly the ones which fixed cut-off dates so that reservations would be provided in vacancies that arise only after such dates. The petitioners contended that fixation of such cut-off dates violated the provisions of the two statutes.

It was further contended that the action being taken by the educational authorities under the State government to grant approval to appointments without providing for reservation in the appointment of teachers in the schools, is violative of the fundamental rights guaranteed to them under Articles 14 and 15 read with Article 41 of the Constitution of India.

The Court, after considering the issues raised, opined that **the benefit of reservation as envisaged under the 1995 Act/2016 Act has to be extended to persons with disabilities without placing any stumbling blocks.**

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



Right to pension a Constitutional right; not bounty to be paid at employer's whims: Kerala High Court

The Kerala HC held that **"Pension is no longer a bounty to be paid at the whims and fancies of the employer. On the other hand, pension is deferred salary, akin to property under Article 300A. The right to pension, if not a fundamental right, is definitely a constitutional right.** A retired employee cannot be deprived of this right, save by authority of law." **K Aravindan & Ors. v. State of Kerala & Anr.**

The Court was adjudicating upon petitions moved by current and retired employees of the Kerala Books and Publications Society (KBPS), a registered Society wholly owned by the State Government. The Employees Provident Fund, Miscellaneous Provisions Act and Employees' Pension Scheme were made applicable to the KBPS employees.

Soon, the labour unions highlighted the significant difference in salary and pension between government employees and KBPS employees, despite it being fully owned by the government. As per Labour Court's direction, an expert committee was constituted to submit a report. The report suggested payment of pension as provided under Part III of Kerala Service Rules with

budgetary support from the Government and the State eventually accorded sanction for publishing the KBPS Employees Contributory Pension and General Provident Fund Regulations, 2014.

The retired employees argued that they were entitled to get full pension from the date of their retirement in accordance with the Pension Regulations.

On the other hand, the current employees contended that the Government Order notifying the Pension Regulations should be quashed citing that the EPF scheme was more beneficial.

The KBPS submitted that the society was not running on huge profits and that in any event, under the prevailing circumstances, the revenue generated by the society could not be utilised for payment of pensions to retired employees. It was further submitted that full pension can be paid only if the contribution already made is refunded by the EPFO or the huge amounts due from the government are paid.

The Court found that as per the Pension Regulations, an employee becomes entitled to pension from the next day of his retirement. **The Regulations did not contain any provision**



The High Court of Kerala

enabling the employer to pay any amount lesser than what is legitimately due to the pensioner.

"It may be true that a significant portion of the corpus of the pension fund consists of the amount to be refunded by the EPF Organisation. The fact that no amount has so far been repaid is also not disputed. Even then, the question is whether the retired employees can be denied pension on that ground."

Upon perusing the Supreme Court precedents it was held that the KBPS is bound to pay the pension dues in full at the earliest.

"Having formulated the pension regulations and having stopped payment of contribution to the EPF pension fund, the society cannot wriggle out of its responsibility by pleading paucity of funds."

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



LATEST FROM THE CENTRAL GOVERNMENTS

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- The EPFO, Head Office has decided to give award to one establishment from each region i.e., East, West, North, South, & North-East Region who will be completing highest no. of filling of e-nominations by 31.03.2023.

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

LATEST FROM THE STATE GOVERNMENTS

Online services to apply for exemption under Delhi Shops and Establishments Act, 1954 – Govt. of NCT of Delhi

The Govt. of NCT of Delhi has launched online services to receive applications for exemption under the provisions of Section 14 (Young persons and women to work during day time), Section 15 (Opening and closing hours), Section 16 (Close day) of the Delhi Shops and Establishments Act, 1954.

The services are available with effect from August 08, 2022, through URL <https://dlabourwelfareboard.delhi.gov.in/shopexemption/>.

[Click here](#) to read notification.

Conditions for employing women Workers in factory during night - Govt. of Himachal Pradesh

The Government of Himachal Pradesh listed the conditions for employing women during the night shift in factories.

The conditions include measures for the security and safety of women employees, which include the prevention of acts of sexual harassment, provision for transportation facilities, the requirement of prior consent from women workers, etc.

[Click here](#) to read more.



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