

# THE LABOURTORIALS<sup>®</sup>

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS

## WORD OF THE MONTH

### CONTINGENT WORKERS

Contingent workers are non-employee workers such as independent contractors, leased workers or staffing agency employees. They are defined as freelancers, consultants, or other outsourced and non-permanent workers who are hired on a per-project basis.

## KEY HIGHLIGHTS

### LATEST FROM THE SUPREME COURT OF INDIA

- Employee can be terminated for suppression or false information regarding suitability.
- Employee dismissed after disciplinary proceedings cannot be reinstated merely because he was acquitted in related criminal case.

### LATEST FROM THE HIGH COURTS

- Excluding married daughter from definition of dependent for compassionate appointment discriminatory: Rajasthan High Court

### LATEST FROM THE CENTRAL GOVERNMENT

- Amendment under Section 33 of the Rights of Persons with Disabilities Act, 2016: Ministry of Social Justice & Employment

### LATEST FROM THE STATE GOVERNMENTS

- Revised minimum wages
- Declaration of list of holidays for Financial year 2023: Govt. of Bihar



Industrial workers | PC: iStock & Adobe Stock

# LATEST FROM THE SUPREME COURT OF INDIA

## Employee can be terminated from service for suppression or giving false information regarding suitability.

The Supreme Court observed that **an employee can be terminated from service if it is found that he had suppressed or given false information/ statement** in regard to verification form relating to arrest, prosecution, conviction etc., which has a

clear bearing on the character, conduct and antecedents of the employee and also the matters having a bearing on his fitness or suitability to the post.

The court proceeded to shortlist the broad principles of law which should be made

applicable to the litigations of the present nature. **Satish Chandra Yadav vs Union of India.**

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

## Employee dismissed after disciplinary proceedings cannot be reinstated merely because he was acquitted in related criminal case.

Phool Singh had entered Rajasthan Police Service as a constable. A departmental proceeding was initiated against him alleging that: (1) he had consumed the alcohol (2) indecently abused and demanded for a bribe of Rs.100/- from a person, (3) fired at public that was chasing him. All the three charges were ultimately proved against him and he was dismissed from service.

Though the Trial court Convicted him, the Appellate Court allowed his appeal and acquitted him giving the benefit of doubt.

After his acquittal, he moved an application before the

authorities for his reinstatement. Since the authorities did not respond favourably, he filed a writ petition. The Rajasthan High Court, taking note of this acquittal, allowed his plea and directed his reinstatement.

In appeal, the State raised the issue whether he can be reinstated in service for the reason that now on the same set of charges he has been acquitted by a criminal court?

The court also added that there are a large number of cases where it was consistently held that the two proceedings, i.e., **criminal and departmental, are entirely different and merely because one has**

**been acquitted in a criminal trial that itself will not result in the reinstatement in service when one has been found guilty in a departmental proceeding.**

Taking note of the fact that in the present case **the acquittal is not an honourable acquittal, but an acquittal given due to a "benefit of doubt"**, the bench allowed the appeal and set aside the High Court judgment. **State of Rajasthan vs Phool Singh**

[Click here](#) to read judgement.



## **Appointment on compassionate grounds cannot be extended to heirs of retired employees.**

The SC held that appointment on compassionate grounds cannot be extended to the heirs of employees on their superannuation and/or retirement. **Ahmednagar Mahanagar Palika v. Ahmednagar Mahanagar Palika Kamgar Union**

**"If such appointments are permitted, outsiders shall never get an appointment though they may be more meritorious, better educated or more qualified"**, the Court observed.

It also concluded that appointment on compassionate grounds (varas hakka) is not supported by any scheme and is violative under Articles 14 and 15 of Constitution of India.

The Apex Court also observed that appointment on compassionate grounds is not automatic and

## **Leave encashment benefit is part of salary.**

The appellants were appointed against sanctioned posts by a senior secondary school in 1993. The Rajasthan HC had dismissed their plea by holding that neither gratuity nor leave encashment was covered by the expression "salary", under Rule 10 of the Rajasthan Voluntary Rural Education Service Rules, 2010 or under the Rajasthan Non-Government Educational Institutions (Recognition Grant-In-Aid and Service Conditions, Etc.) Rules, 1993.

The Apex Court relied on State of Rajasthan and Anr. v. Senior Higher Secondary School Lachhmangarh and observed that the **expression 'salary' includes benefit of leave encashment which is nothing but salary for the unavailed leave to the credit of the employee.**



The Hon'ble Supreme Court of India

shall be subject to the strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the members of the family.

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

The Court held that the condition in Rajasthan Voluntary Rural Education Service Rules, 2010 that **barred carry forward of balance privilege leave is an arbitrary and unconscionable condition, which cannot be enforced.**

The Court also noted that **"...Ordinarily no public employer can be faulted in imposing pre-conditions before it recruits an employee. However, such conditions cannot be arbitrary, or so onerous as to be unconscionable..."**.

**Jagdish Prasad Saini vs State of Rajasthan**

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



## **Pension Rules must be interpreted in favour of employee when more than one interpretation is possible.**

When Pension Rules are capable of more interpretations than one, the Courts should lean towards that interpretation which goes in favour of the employee, the Supreme Court observed in **State of Rajasthan vs O P Gupta**.

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



## **SC orders reinstatement of watchman who was illegally dismissed 20 years ago.**

The Supreme Court granted relief to a watchman who was wrongfully terminated from service in 2002, by ordering his reinstatement within 6 weeks. The Court also directed that the man should be paid back wages for the period from January 1, 2002 to January 1, 2022. **Jeetubha Khansangji Jadeja v. Kuttch District Panchayat**

He was terminated from the services on 30.12.2002 for no cause, without notice and without following the procedure prescribed by the Industrial Disputes Act, 1947.

The Supreme Court observed that the High Court's interference in the facts of the case were unwarranted. It noticed that the appellant had applied under the RTI Act, eliciting relevant documents to substantiate his claim that employees who were junior to him were retained in service. The management was unable to refute the material on record.

[Click here](#) to read judgement.

## **Centre to frame policy for employment of transgender persons**

The Supreme Court by way of an interim order, asked the Central Government in consultation with the National Council for Transgender Persons to devise appropriate policy framework in terms of which reasonable accommodation can be provided to transgender persons in seeking recourse to avenues of employment in all establishment covered by the provisions of the **Transgender Persons (Protection of Rights) Act, 2019 (2019 Act)**, within a period of 3 months.

The Bench was hearing a plea filed by a transgender woman named Shanavi Ponnuswamy who was refused a cabin crew position by Air India allegedly owing to her gender identity. **Shanavi Ponnusamy v. Ministry of Civil Aviation And Anr.**

[Click here](#) to read more.



# LATEST FROM THE HIGH COURTS

## Excluding married daughter from definition of dependent for compassionate appointment discriminatory: Rajasthan High Court

The Rajasthan High Court has observed that the use of the word 'unmarried' in Rule 2(c) of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servant Rules, 1996 depriving a married daughter from right of consideration for compassionate appointment, violates the equality clause and cannot be countenanced.



The Rajasthan High Court | India Legal

The Rule 2(c) which defines dependent, stands amended w.e.f. 28.10.2021, wherein the married daughter has also been included in the definition, subject to certain conditions.

The bench overruled *Sumer Kanwar v. State of Raj. & Ors.*, 2012(3) RLW 2546 (Raj.) and all other judgments, which have followed *Sumer Kanwar*, upholding the denial of compassionate appointment to married daughter.

The court added that the proposition holding the married daughter as eligible for compassionate appointment, has the sanction of the Supreme Court as well.

The court ruled that **the marriage by itself cannot be a disqualification and, therefore, the definition barring a married daughter from seeking compassionate appointment merely on the**

**ground of her marriage is apparently arbitrary and violative of Articles 14, 15 and 16(2) of the Constitution of India.**

**Priyanka Shrimali v. State of Rajasthan & Ors. with other connected matters**

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



# LATEST FROM THE CENTRAL GOVERNMENTS

## Amendment under Section 33 of the Rights of Persons with Disabilities Act, 2016: Ministry of Social Justice & Empowerment.



The Central Government, under section 33 of the Rights of Persons with Disabilities Act, 2016 makes amendment in order to cover the persons with Spinal Deformity and Spinal Injury without any associated neurological/limb dysfunction under Locomotor disability in addition to OA, OL, BA, BL, OAL, BLOA and BLA, as the case may be.

[Click here](#) to read notification.

### Availing medical services by Delhi, Noida ESI beneficiaries from any ESIC dispensaries located in Delhi, Noida under “Kahin Bhi Kabhi Bhi”: ESIC

During a recently held meeting with the Medical Superintendent of ESIC Hospitals, it has been decided that the IPs of Delhi/Noida may visit any dispensary irrespective of dispensary allotted to the beneficiary card.

[Click here](#) to read more.

### Circular regarding claim request submission for cash benefit through IP portal: ESIC

The online submission of Maternity Claim has been deployed. The I.W. whose UAN number has been seeded in the system, can claim for Maternity Benefit through IP Portal.

[Click here](#) to read more.



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ESIC



# LATEST FROM THE STATE GOVERNMENTS

## REVISED MINIMUM WAGES

S.NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1.	Karnataka	01.04.2022 – 31.03.2023	<a href="#">Government Notification</a>
2.	Bihar (Scheduled employments)	01.09.2022	<a href="#">Government Notification</a>
3.	Gujarat (Ship breaking activities)	01.10.2022	<a href="#">Government Notification</a>
4.	Tamil Nadu (Fire work manufactory)	01.04.2022	<a href="#">Government Notification</a>
5.	Maharashtra	01.07.2022	<a href="#">Government Notification</a>
6.	Assam (Workman employed through contractors)	01.07.2022	<a href="#">Government Notification</a>
7.	Uttarakhand (Scheduled employments)	01.10.2022 – 31.03.2023	<a href="#">Government Notification</a>

### Declaration of list of holidays for the calender year 2023: Govt. of Bihar

The Bihar Government notifies that for the year 2023, all offices under the State Government and all Revenue Magistrate courts shall be observing general holiday on the festivals mentioned in the Schedule attached with the order.

[Click here](#) to read order.



The Government of Bihar

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-John C. Maxwell

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