

THE LABOURTORIALS[®]

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS

WORD OF THE MONTH

LEAVE TRAVEL CONCESSION

Leave travel concession (LTC) is an allowance given by an employer to an employee for meeting travel expenses when the employee is on leave from work.



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KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- The provisions of the Employees' Pension (Amendment) Scheme, 2014 are legal and valid.
- Government employees cannot avail Leave Travel Concession for foreign trips.

LATEST FROM THE HIGH COURTS

- Govt should not allow workers to remain as temporary employees for an unreasonably long time: Jammu & Kashmir & Ladakh HC

LATEST FROM THE CENTRAL GOVERNMENT

- Newly registered Companies on MCA portal if do not reach the threshold under the ESI Act in six months, they have to login the website and extend the 'dormant mode'.

LATEST FROM THE STATE GOVERNMENTS

- Revised rates of minimum wages
- Exemption to all Retail Enterprise to remain open for all days of the year: Andhra Pradesh
- List of Holidays for the year 2023.

LATEST FROM THE SUPREME COURT OF INDIA

The provisions of the Employees' Pension (Amendment) Scheme, 2014 are legal and valid.

BACKGROUND

What was the Employees' Pension Scheme (EPS), 1995?

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 originally did not provide for any Employees' Pension Scheme. In 1995, through an amendment, a scheme was formulated for employees' pension, wherein **the pension fund was to comprise a deposit of 8.33 per cent of the employers' contribution to be made towards the provident fund corpus.** At that time, the maximum pensionable salary was Rs. 5,000/- per month which was later raised to Rs. 6,500/-.

The EPS, administered by the EPFO, aims to provide employees with pension after the age of 58. Both the employee and the employer contribute 12 per cent of the employee's basic salary and dearness allowance to the EPF. The employee's entire part goes to EPF, while the 12 per cent contribution made by the employer is split as 3.67 per cent contribution to EPF and 8.33 per cent contribution to EPS. Apart from this, the Government of India contributes 1.16 per cent as

well for an employee's pension. Employees do not contribute to the pension scheme.

What was the amendment in 2014?

The EPS amendment of 22 August 2014 had **raised the pensionable salary cap to Rs 15000 a month from Rs 6500 a month, and allowed members along with their employers to contribute 8.33 per cent on their actual salaries** (if it exceeded the cap) towards the EPS. It gave all EPS members, as on September 1, 2014, six months to opt for the amended scheme. This was extendable by another six months at the discretion of the Regional Provident Fund Commissioner.

The amendment, however, required such members (with actual salaries over Rs 15,000 a month) **to contribute an additional 1.16 per cent of their salary exceeding Rs 15,000 a month towards the pension fund.**

Those who did not exercise the option within the stipulated period or extended period, were deemed to have not opted for contribution over the pensionable salary cap and the extra contributions already

made to the pension fund were to be diverted to the Provident Fund account of the member, along with interest.

Referring to the case of RC Gupta dealing with the pre-2014 position of the scheme, the Supreme Court observed that a beneficial scheme ought not be allowed to be defeated by reference to a cut-off date in a situation where the employer was not following the ceiling limit of Rs. 5,000 or Rs. 6,500, and had deposited 12 per cent of the actual salary.

What did earlier court judgments say on this issue?

The High Courts of Delhi, Kerala, and Rajasthan have earlier given judgments on this matter. The Kerala High Court in its judgment delivered on October 12, 2018 set aside the EPS (Amendment) Scheme, 2014.

The Delhi High Court in its judgment on May 22, 2019 followed the view expressed by the Kerala High Court and quashed a circular issued by the provident fund authorities on May 31, 2017, precluding exempted establishments from the benefits of higher pension. In a decision on August 28, 2019, the Rajasthan High Court



also expressed the same opinion.

As many as 54 writ petitions have been filed by employees belonging to both exempt and unexempt establishments under Article 32 of the Constitution seeking invalidation of the notification of August 22, 2014.

CASE SUMMARY

Appeals were filed by the Employees Provident Fund Organisation (EPFO) against a decision of the Kerala High Court setting aside amendments on “**determination of pensionable salary**” under the Employees’ Pension Scheme (EPS) of 1995 as “ultra vires”.

The dispute revolves around the controversial amendments made to Clause 11(3) of the EPS-1995. Challenges to the EPS amendments said they were skewed. The people who challenged the amendments came from all walks of life and work. They sought a more secure life with a decent pension.

In the earlier version of EPS-1995, the maximum pensionable salary cap was ₹6,500. However, members whose salaries exceeded this cap could opt, along with their employers, to contribute up to



PC | The Supreme Court of India

8.33% of their actual salaries.

The amendment to the EPS in September, 2014 raised the cap from ₹6,500 to ₹15,000.

But the amendments said only employees, who were existing EPS members as on September 1, 2014, could continue to contribute to the pension fund in accordance with their actual salaries. They were given a window of six months to opt for the new pension regime.

In a judgment in **R.C. Gupta case, the Supreme Court had said that a “beneficial scheme” like EPS-1995 “ought not to be allowed to be defeated by reference to a cut-off date like September 1, 2014”.**

Besides, the amendments created additional obligations for members whose salaries exceeded the ₹15,000 ceiling.

They had to contribute at the rate of 1.16% of the salary in addition to their EPF contribution. Besides, these employees had to make a fresh option within six months. The

amendments had also extended the period of calculation of average salary from 12 months to 60 months.

Below are the highlights of the judgment delivered by the Hon'ble Supreme Court:

- **The provisions of the Employees' Pension (Amendment) Scheme, 2014 are legal and valid.** Certain provisions have been read down for existing members.
- Deadline to join the scheme has been extended for a period of 4 months for all employees who did not exercise option but are



entitled to do so. Rest of the requirements as per amended provisions shall be complied with.

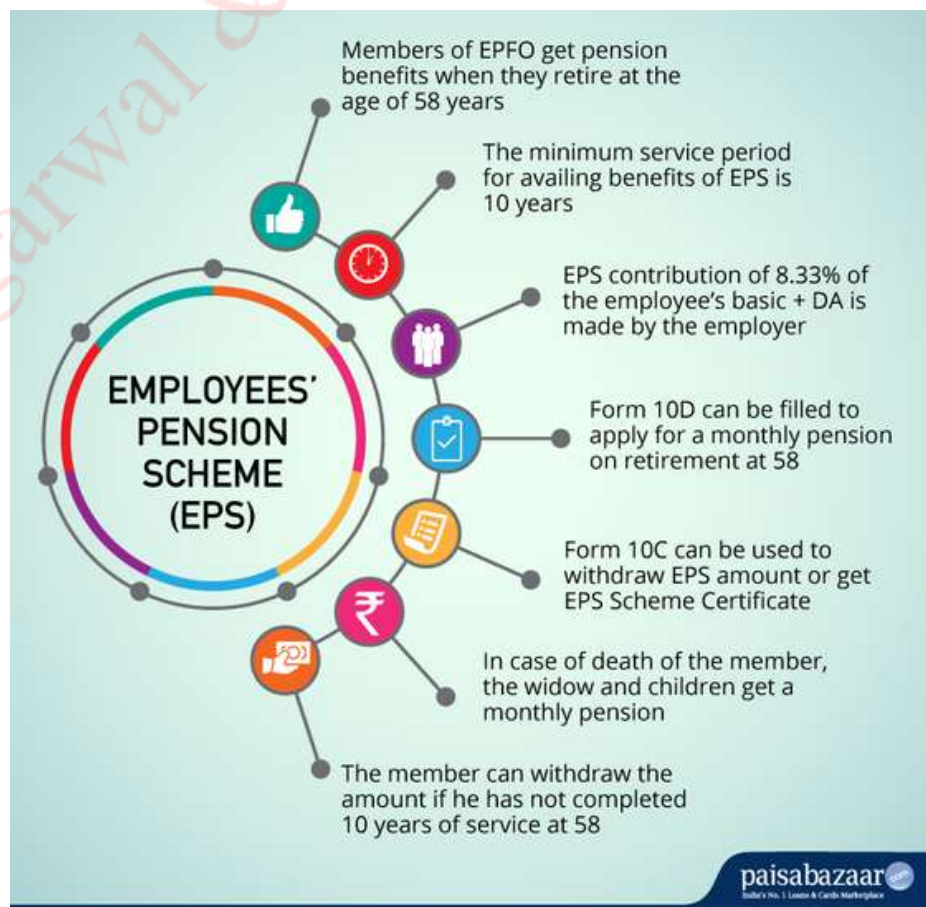
- Employees who had retired before 1st September 2014 without exercising the option under the pre-amendment scheme would not be entitled to the benefit of this judgement as they have already exited the scheme.
- The employees who retired before September 1, 2014 and who exercised the option shall be covered by 11(3) of Pension scheme as it stood prior to the 2014 Amendment.
- The requirement of members to contribute at 1.16% if the salary exceeds Rs. 15,000 as an additional contribution under the Amended scheme has been held to be invalid. But this part of the judgment is suspended for 6 months to enable authorities to make adjustments in the scheme so that additional contribution can be generated from other legitimate sources. For the above said period of 6 months or till such time any Amendment is made, whichever is earlier, employee contribution shall be a stop gap measure. The said sum shall be

adjustable on the basis of the alteration to the scheme that may be made.

- No flaw found in altering the basis of computation of pensionable salary.
- **The judgment of division bench in RC Gupta vs Regional Provident Fund Commissioner (2016) accepted as regards interpretation to paragraph 11(3) of the pre-amended scheme. Fund authorities shall implement the direction in RC Gupta judgment within 8 weeks.**

- All appeals of the EPFO and the Union Government against the High Court judgments are allowed in the above terms and the judgements which are impugned are modified accordingly. **[Employees Provident Fund Organization versus B Sunil Kumar and connected cases.]**

[Click here](#) to read judgement.



Government employees cannot avail Leave Travel Concession for foreign trips.

The Supreme Court held that government employees cannot claim the leave travel concession (LTC) for their foreign travel or for a long circuitous trip **[State Bank of India vs Assistant Commissioner of Income Tax]**.

The Court further said that the **LTC is a payment to an employee which is exempted as 'income' and hence cannot be brought under any tax, however, it should be claimed within the framework of law.**

The bench, therefore, dismissed an appeal filed by the State Bank of India (SBI) against a ruling that the bank failed to deduct the income of its employees at the source.

By way of background, several employees of SBI had travelled

to foreign countries and claimed LTC. But the employees, as argued by SBI, did not claim LTC for their foreign trips but only for their travel within India.

For instance, some of the employees travelled from Delhi-Madurai-Columbo-Kuala Lumpur-Singapore-Columbo-Delhi, adopting a circuitous route. And their claims were fully reimbursed by SBI. This, the Income Tax department claimed was in violation of the LTC scheme and also the Income Tax Act and Income Tax Rules.

The contention of SBI that there is no specific bar on foreign travel and, therefore, a foreign journey can be availed as long as the starting and destination points remain within India, was also without merits, the Court said.

The court observed, "**LTC is for travel within India, from one place in India to another place in India. There should be no ambiguity on this.**"

"The basic objective of the LTC scheme was to familiarise a civil servant or a government employee to gain some perspective of Indian culture by traveling in this vast country. It is for this reason that the 6th Pay Commission rejected the demand of paying cash compensation in lieu of LTC and also rejected the demand of foreign travel," reads the order authored by Justice Dhulia.

With these observations, the bench dismissed the appeal.

[Click here](#) to read judgement.

Mere non- supply of documents not a ground to set aside disciplinary proceedings if it did not cause any prejudice to delinquent employee.

The Hon'ble Supreme Court observed that "From the impugned judgment and order passed by the High Court, it appears that the High Court has set aside the order passed by the disciplinary authority solely on the ground that some documents were not supplied to the delinquent. However, it is required to be noted that as such there is no finding that non-supply of some documents has resulted into any prejudice caused to the delinquent-employee.

Mere non-supply of the documents which may not have resulted any prejudice caused

to the employee, the order passed by the disciplinary authority cannot be set aside".

The bench, while allowing the appeal, however, modified the punishment of withholding four increments to withholding of two increments. This is after bench took into account the nature of the misconduct and the fact that the employee has died. **[State of Punjab vs Nachhattar Singh]**

[Click here](#) to read judgement.



Period during which the Interest is payable u/sec 39(5)(a) ESI Act cannot be reduced.



The Supreme Court observed that **ESI Court has no authority to restrict the period during which the interest is payable under Section 39(5)(a) of Employees State Insurance Act, 1948.**

Section 39(5)(a) provides that if any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment.

In this case, Employees State Insurance (ESI) Court, restricted the levy of interest leviable under Section 39(5)(a) of the ESI Act, 1948 for two years only. The appeal against the said order was dismissed by the Allahabad HC. In appeal filed by the ESIC, the issue raised was whether the ESI Court was justified in restricting the levy of interest under Section 39(5)(a) of the ESI Act for a period of two years only.

Referring to Section 39(5), the SC bench observed that reduction of period to two years

is not supported by any statutory provision.

"The interest leviable/payable is a statutory liability to pay the interest. Neither the Authority nor the Court have any authority to either waive the interest and/or reduce the interest and/or the period during which the interest is payable... While going through Section 39(5)(a) of the ESI Act, the liability to pay the interest is from the date on which such contribution has become due and till the date of its actual payment."

The court further said that the ESI Court erred in relying upon the decision in Employees State Insurance Corporation Vs. HMT Ltd. (2008) 3 SCC 3) while considering the levy of interest under Section 39(5)(a) of the ESI Act. The court said that the said judgment dealt with Section 85-B where the word used is "may". The word used in Section 39(5)(a) of the ESI Act is "shall", the court added. **[Regional Director/ Recovery Officer vs Nitinbhai Vallabhai Panchasara]**

[Click here](#) to read judgement.



LATEST FROM THE HIGH COURTS

Government should not allow workers to remain as temporary employees for an unreasonably long time: Jammu & Kashmir & Ladakh High Court

The J&K and Ladakh High Court recently observed that **the security of work should, as far as possible, be assured to the employee** so that he may contribute the maximum efforts for the development. **[Showkat Ahmad Najar & Ors Vs UT of J&K & Ors.]**



PC | The High Court of Jammu & Kashmir & Ladakh

The Court observed that **"Government in particular should not allow workers to remain as temporary employees for an unreasonably long period of time; this kind of exploitation of decades makes a temporary employee suffer to the great extent."**

The Court was hearing a plea in terms of which the petitioner had sought direction upon the respondent J&K Board of School Education to regularize services of the petitioners against the Class-IV posts, as has been adopted in the case of other similarly placed Consolidated Workers.

The court further noted that as per the policy decision taken by the respondent Board, an employee engaged

on daily rated/Consolidated Worker, after completion of seven years of service, is entitled to regularization against class IV post and accordingly the respondents had from time to time, regularized the services of various Consolidated Workers, thereby, implementing the Policy decision taken by the Board in this behalf.

However, in the case of petitioner, despite making various representations the same had been ignored by the respondents without any plausible reasons, meaning thereby that the respondents have implemented the policy decision only in respect of their favorites in total disregard of the fact that the petitioners were appointed much prior to the Consolidated Workers, who have been regularized by the respondent Board.

Relying upon Secretary, State of Karnataka and Ors Vs. Umadevi and Ors:

"There may be cases where irregular appointments (not illegal appointments) of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without intervention of orders of courts or of tribunals.

The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly



sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed.

In view of the above the respondent J&K State Board of School Education was directed to pass a speaking order within a period of two months from the date copy of this Judgment is made available to the respondents, the bench concluded.

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

Palki Sharma restrained from divulging Zee Media's confidential information to third party: Delhi High Court

The High Court of Delhi in a suit filed by Zee Media Corporation Limited against Palki Sharma Upadhyay, the Journalist, Anchor and former Managing Editor of WION, has **restrained Palki Sharma Upadhyay from divulging any confidential and proprietary information belonging to Zee Media Corporation Limited to any third party or to the benefit of any third party.**

Hon'ble Court however refused to restrain the journalist from joining or continuing employment with Network 18 news channel.

The development came in a suit filed by Zee News alleging violation of its mandatory policy of notice period by the journalist and also claiming that she was in possession of confidential information which could be used in managing Network 18 channel.

In addition to the interim direction passed by the High Court of Delhi, **the Defendant appearing on advance notice has given an undertaking that the Defendant would not divulge in any confidential or proprietary information belonging to Zee Media to any other third party.**

Keeping disciplinary proceedings pending against employee after 1.5 yrs of inquiry report submission 'unreasonable': Allahabad High Court

In this case, the Complainant has challenged his suspension order passed by the UP Government in June 2020 in contemplation of departmental proceedings initiated against him.

It was his grievance that neither a show cause notice has been given to him, nor disciplinary proceedings have been concluded despite the fact that an inquiry report has already been submitted to the Disciplinary Authority in March 2021.

The Court opined that **if the inquiry report was submitted in March, 2021, there was no reason as to why disciplinary proceedings have not been concluded within a reasonable time, thereafter.**

It was his submission before the Court that as petitioner would be superannuated on 31st December 2022 and likely to retire during his suspension, therefore, pendency of the disciplinary proceedings would adversely affect his post-retiral dues and other service benefits admissible to him.

The Allahabad High Court observed that **a period of 1.5 years is an 'extremely unreasonable long time' to keep disciplinary proceedings pending against an employee** after the submission of an inquiry report. **[Yatendra Kumar v. State Of U.P. Thru. Addl. Chief Secy./Prin. Secy. Public Works Deptt. Lko. And 4 Others]**

[Click here](#) to read judgement.



LATEST FROM THE CENTRAL GOVERNMENTS

Newly registered Companies on MCA portal if do not reach the threshold under ESI Act in six months, they have to login the website and extend the 'dormant mode'.

The Headquarters of Employees State Insurance Corporation, New Delhi has instructed Companies/ establishments/ units/ factories registering through the Ministry of Corporate Affairs (MCA) Portal, to comply with various applicable provisions of the Employees' State Insurance Act, 1948 (ESI Act) from the date of reaching the threshold limit of employees. In case the companies registered through MCA portal are not coming under the purview of statutory provisions of the ESI Act, no need to make compliance for next 6 months or till they reach the threshold of ESIC coverage, whichever is



PC | The ESIC Headquarters, New Delhi

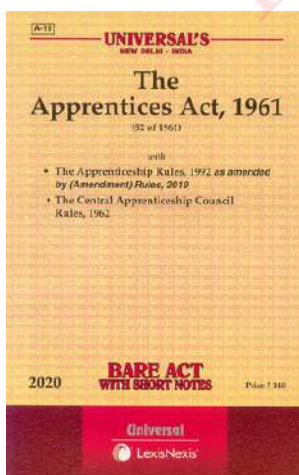
earlier.

Further, if the company does not reach the threshold in these six months, they have to login in the ESIC website to further extend the **'dormant mode'**. In case the above mode is not extended immediately, the registration will automatically be activated and company has to start compliance under ESIC Act.

Furthermore, if the same is not followed by the respective employers, necessary actions under the existing provisions of the ESI Act may be taken against the defaulting units.

[Click here](#) to read notification.

Amendment under clause 4(a) of Schedule V of the Apprenticeship Rules, 1992.



The Government of India amended Clause 4(a) of Schedule V of Apprenticeship Rules, 1992, thereby substituting the sub-clause namely: "The employer shall pay stipend to the apprentice at the rate specified from time to time under Rule 11. However, the cost of the stipends shall be borne by the Central Government and the employer up to such limits as may be laid down by the Central Government."

[Click here](#) to read notification.



LATEST FROM THE STATE GOVERNMENTS

REVISED MINIMUM WAGES

Few states have revised the rates of Minimum wages. Click on the link below for updated rates.

S.NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1.	Ladakh	02.11.2022	Government Notification
2.	Chandigarh	01.10.2022	Government Notification
3.	Kerala	01.09.2022	Government Notification

Exemption to all retail enterprise to remain open for all days of the year: Andhra Pradesh

The Government of Andhra Pradesh has allowed all retail enterprises to keep open every day of the year for a period of five years from the date of issue of the notification subject to certain specified conditions.

[Click here](#) to read conditions.

The Kerala Child Labour (Prohibition and Regulation) Amendment Rules, 2022

The Government of Kerala amended various provisions of the Kerala Child Labour (Prohibition and Regulation) Rules, 1993, including provisions pertaining to the Payment of amounts to child or adolescents from and out of the Child and Adolescent Labour Rehabilitation Fund.

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

Amendment under Rule 11-A of the Tamil Nadu Labour Welfare Fund Act, 1972: Govt. of Tamil Nadu



The Government of Tamil Nadu

The Government of Tamil Nadu has made amendments in rule 11-A of the Tamil Nadu Labour Welfare Fund Rules, 1973 thereby substituting the expression "rupees ten" occurring in two places to expression "rupees twenty"; and the expression "rupees twenty" to expression "rupees forty".

[Click here](#) to read notification.



LIST OF HOLIDAYS FOR THE YEAR 2023

Some states have released the List of Holidays for the year 2023. Click on the link below for the complete list of holidays.

S. NO.	STATE	CLICK HERE TO VIEW NOTIFICATION
1.	Odisha	Government Notification
2.	Gujarat	Government Notification
3.	Manipur	Government Notification
4.	Telangana	Government Notification
5.	Delhi Union Territory	Government Notification
6.	Tripura	Government Notification
7.	Karnataka	Government Notification
8.	Nagaland	Government Notification
9.	Andhra Pradesh	Government Notification
10.	Assam	Government Notification
11.	Uttar Pradesh	Government Notification



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Teamwork is the engine for a high performance work culture.

-Rick Conlow

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