

# THE LABOURTORIALS<sup>®</sup>

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS

## **WORD OF THE MONTH**

### **QUID PRO QUO HARASSMENT**

Quid pro quo harassment occurs when someone in a position of authority over another directly or indirectly demands sexual favors in exchange for some benefit or to avoid some detriment (termination, demotion, etc.) at the workplace.

## **KEY HIGHLIGHTS**

### LATEST FROM THE SUPREME COURT OF INDIA

- Service can't be counted for pension if appointment has been held to be illegal & void.
- Cannot deny appointment merely because candidate was tried for offence u/s 498A IPC if he was acquitted.

### LATEST FROM THE HIGH COURTS

- Directions for registry to issue practice directions for arraying workman as first respondent in pleas challenging Labour Court orders: Delhi High Court.

### LATEST FROM THE CENTRAL GOVERNMENT

- Guidelines in compliance of orders pronounced by the Hon'ble Supreme Court in its judgement dated 04.11.2022- EPFO
- Change of domain Name of ESIC websites- ESIC

### LATEST FROM THE STATE GOVERNMENTS

- Revised rates of minimum wages.
- List of Holidays for the year 2023.



# LATEST FROM THE SUPREME COURT OF INDIA

## Service can't be counted for pension if appointment has been held to be illegal & void.

The Supreme Court dismissed the petition filed by Dr. Rajasree MS seeking to review the judgment which set aside her appointment as the Vice Chancellor of the APJ Abdul Kalam Kerala Technological University.

The bench observed, **"So far as the claim of pension on the ground that she would be entitled to for the services rendered of about four years is concerned, once the appointment is held to be illegal and void ab initio the services rendered cannot be considered/counted for the purpose of pension"**.

[Click here](#) to read judgement.



PC | The Supreme Court of India

## Cannot deny appointment merely because candidate was tried for offence u/s 498A IPC if he was acquitted.

Pramod Singh Kirar applied for the post of Constable in the year 2013 and was found eligible to be appointed as Constable. In the verification form itself he declared that he was tried for the offence under Section 498A IPC earlier and was later acquitted in the said case. Later his candidature was rejected on the ground that he was involved in this criminal case.

The Madhya Pradesh High Court upheld this rejection observing that if the candidate is found to be involved in a criminal case, even in a case of acquittal and/or even in a case where the employee has made declaration truthfully of a concluded criminal case the employer still has the right to consider antecedents, it cannot be compelled to appoint the candidate.

In appeal, the Apex Court bench noted that the offence for which he was tried ultimately resulted into acquittal and had arisen out of the matrimonial dispute which ultimately ended in settlement out of the court. It was further noticed that there was no suppression of material fact in this case.

"Under the circumstances and in the peculiar facts of the case, the appellant could not have been denied the appointment solely on the aforesaid ground that he was tried for the offence under Section 498A of IPC and that too, for the offence alleged to have happened in the year 2001 for which he was even acquitted in the year 2006 may be on settlement (between husband and wife).", the bench said. **[Pramod Singh Kirar vs State of Madhya Pradesh]**

[Click here](#) to read judgement.



# LATEST FROM THE HIGH COURTS

## Directions for registry to issue practice directions for arraying workman as first respondent in pleas challenging Labour court orders: Delhi High Court

The direction was issued by Justice Rekha Palli on the judicial side while hearing petitions filed by the Delhi Municipal Corporation against recovery certificates issued in favour of the workmen by the Deputy Labour Commissioner.

Justice Palli said that when the writ petitions assailing the awards or orders passed by the labour court are filed by the management including the municipal corporation, the Delhi Government is impleaded

as first respondent and the workmen are generally impleaded as respondent 2 or 3. The court said due to such practice, the title of the petitions assailing different awards becomes identical and it causes confusion to the workmen.

The court said it is therefore deemed necessary to direct the Registry to issue the following practice directions:

"In any writ petition which is

filed assailing the order / award passed by the learned labour court or any other statutory authority where the workman is a contesting respondent, the petitioner will be required to array the workman as respondent no.1 so that the workman is easily able to locate the writ petition in the cause list." **[Municipal Corporation of Delhi vs Govt. of NCT of Delhi & Anr.]**

[Click here](#) to read judgement.

## No departmental action against retired employee for event that occurred four years prior to issuance of chargesheet: Punjab & Haryana HC

The Punjab and Haryana High Court quashed the departmental proceedings initiated against a retired police inspector from Haryana in 2021 for an alleged misconduct which took place between 1986-88.

In this case, the petitioner retired in 2019, after which he was granted one year's extension in service until 30.06.2020. Thereafter, an order dated 05.10.2021 was passed and charge-sheet was filed, initiating departmental proceedings against him under Rule 12.2(b) of the Haryana Civil Services (Pension) Rules, 2016 on the ground that between the years 1986-88, while he was posted as an Inspector at Karnal, he had also passed his LLB course from Rajasthan. Since he could not have been present at two places at the same time, the department argued that he must have fudged his record at either of the two places.

The petitioner stated that as per Rule 12.2(b), departmental proceedings could not be issued for an event which took place more than four years before the initiation of such proceedings.

The Court said, "The alleged misconduct on his part should be allowed to settle with the efflux of time...The rationale also appears to be based on the phrase **'let bygones be bygones'** for retirees and **because memory fades with age as also for the reason that it is not easy for a retiree to have access to the relevant record or his colleagues, who may have also retired and settled elsewhere, making it difficult for him to effectively defend himself,**" **[Raj Pal v. State of Haryana and Others]**

[Click here](#) to read judgement.



## Transgender Persons To Apply For Police Constable Post- Bombay High Court

The Maharashtra government on Friday informed the Bombay High Court that it will provide the option of third gender apart from male and female in the online applications for police constable recruitment by end of December 13, 2022. It also told the court that it will frame rules for transgender candidates within three months.



The court directed the state to **frame rules according to the Central Government's Transgender Persons (Protection of Rights) Rules, 2020 and complete the physical tests of all candidates except transgender candidates within two and a half months, i.e., by February 28, 2023.**

Physical examination of transgender candidates will be done in the last fortnight, said the court. Till the rules are framed and the physical tests are conducted, the state shall not proceed with the tests for all candidates, the court stated in its order.

The bench was hearing state's plea against Maharashtra Administrative Tribunal's direction to include transgender persons in recruitment for all posts of the Home Department.

The court agreed with state's contention that the MAT "travelled beyond the scope of jurisdiction" to give such directions regarding all posts of the Home Department. Therefore, the court modified the tribunal's order and clarified that it will only be applicable to the present recruitment proceedings.

The court granted liberty to the transgender candidates who had approached MAT to submit their applications offline. **[State of Maharashtra v. Arya Pujari]**

[Click here](#) to read judgement.

## LATEST FROM THE CENTRAL GOVERNMENTS

### Change in domain Name of ESIC website.

The Domain Name of ESIC Websites, 'www.esic.nic.in' & 'www.esic.in' have been changed to 'www.esic.gov.in'. All the information pertaining to ESIC and its Scheme can be accessed on this new Unified Website, i.e. 'www.esic.gov.in'.

[Click here](#) to read notification.

### Claim request for submission for Maternity Benefit- IP portal - ESIC

Now using IP Portal, an Insured Woman can claim maternity benefit on the basis of a certificate issued either online or offline by the ESIC/ESIS dispensaries without visiting Offices.

[Click here](#) to read notification.





## Guidelines in compliance of Order of the Hon'ble Supreme Court dated 04.11.2022-EPFO

The last edition of our Labourtorials summarized judgement of the Hon'ble SC pronounced in the matter of **EPFO & Ors. v. Sunil Kumar & Ors.** dated 04.11.2022 (SLP (C) Nos. 8658-8659 of 2019) wherein it was held that **the provisions of Employees' Pension (Amendment) Scheme 2014 are legal and valid.**

This month, **in compliance of the directions of the Hon'ble Supreme Court, EPFO has issued following guidelines for Employee Pension Scheme -**

1. The request will be made in such form and manner, as may be specified by the Commissioner.
2. The application form for validation will contain the disclaimer as ordered in the aforesaid govt. notification.
3. In case of share requiring adjustment from Provident Fund to Pension Fund and if any, re-deposit to the fund, the explicit consent of the pensioner will be given in the application form.
4. In case of transfer of funds from exempted provident fund trust to Pension Fund of EPFO, an undertaking of the trustee shall be submitted. The undertaking shall be to the effect that

due contribution along with interest-up to the date of payment, will be deposited within the specified period.

5. The method of deposit of such funds will follow through subsequent circulars.

6. Aforesaid application form must contain the following specified documents for evidence and for further processing: -

- i. Proof of joint option under Para 26(6) of the EPF Scheme duly verified by the employer; and
- ii. Proof of joint option under the proviso to erstwhile Para 11(3) duly verified by the employer; and
- iii. Proof of remittance in Provident Fund on higher wages exceeding the prevalent wage ceiling of Rs. 5000/6500; and
- iv. Proof of remittance in Pension Fund on higher wages exceeding the prevalent wage ceiling of Rs. 5000/6500; and
- v. Written refusal of APFC or any other higher authority of EPFO to such request/remittance.

Also, the above application

forms when received in the specified time period will be dealt with in the following manner by Regional PF Commissioner.

A facility will be provided for which URL will be informed shortly. Once received, the Regional PF Commissioner shall put up adequate notice and banners on the noticeboard for wider public information.

- b. Each application will be registered and digitally logged. The receipt number will be provided to the applicant.
- c. The application will land into employer's login whose verification with e-sign will be essential for further processing.
- d. RPFC will cause each application to be converted into e-file, as far as possible.
- e. The concerning dealing assistant will examine the papers including the note on receipt of due amount in the Pension Fund, and mark the case to Section Supervisor/Account Officer.
- f. The Concerning SS/AO will mark out any discrepancies and send it with



the rule position to APFC/RPFC-II who after due examination will put the case to Officer-in Charge of RO.

g. The OIC shall examine each case of pension on higher salary and dispose it by passing a speaking order that shall be intimated to the applicant through e-mail/post. Efforts will be made to intimate them through telephone/SMS.

It was anticipated that the EPFO would also clarify the eligibility of new employees, on basis of order passed by the Supreme Court in the matter of EPFO & Ors. v. Sunil Kumar & Ors. earning a monthly pay in excess of INR 15,000 per month to become a member of the EPS Scheme or make higher contributions thereunder, considering that the Court cannot specifically deal with

the case of such employees. But, surprisingly EPFO has failed to comply with the directions of Hon'ble SC in all aspects and in true spirit. However, it is believed that EPFO will come out with more clarifications with regard to the same in the near future.

[Click here](#) to read notification.

## **Circular regarding multiple rejections of same PF claims for different reasons of rejections-EPFO**

It is noticed that various complaints are being received from PF members/beneficiaries and other stakeholders of EPFO in the matter of delay and harassment caused to the members in regulating and providing the statutory services within the prescribed time limits and it has also that applications are being returned multiple number of times for different reasons by field offices.

Therefore, certain guidelines have been issued in this regard i.e., conducting preventive vigilance exercise by all the OICs and other officers, thoroughly checking of every claim at first instance, sample monthly checking of rejected claims, etc.

[Click here](#) to read circular.



## **LATEST FROM THE STATE GOVERNMENTS**

### **Notification regarding declaration of 13 services under Labour Department integrated into State Single Portal (Silpasathi Portal) - Govt. of West Bengal**

Thirteen services will be provided exclusively through State Single Window Silpasathi Portal and all the applications are to be submitted online through this portal only with effect from 1st January 2023 instead of the Department's standalone systems.

For Registrations/Licenses/Approvals availed through Departmental Portal before 1st January 2023, Renewal of such Registrations / licenses /Approvals will be issued from Departmental Portal.

[Click here](#) to read notification.



## Amendment notification under Tamil Nadu Factories Rules, 1950- Govt. of Tamil Nadu.

The Government of Tamil Nadu has made amendments to the Tamil Nadu Factories Rules, 1950 under rule 63-B and Schedule XVII and Schedule XXIV of rule 95 that after the expression "Saint John's Ambulance Association", the expression "or Tamil Nadu Apex Skill Development Centre for Health Care" shall be inserted.

[Click here](#) to read notification.

## Notification of the Maharashtra Private Security Agencies (Regulations) Rules, 2022- Govt. of Maharashtra

In application of the Maharashtra Private Security Agencies (Regulations) Act, the Government of Maharashtra has amended previous rules and has made certain rules namely Maharashtra Private Security Agencies (Regulations) Rules, 2022.

[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 links below for the complete list of holidays.

S.NO.	STATE	CLICK HERE TO VIEW NOTIFICATION
1.	Haryana	<a href="#">Government Notification</a>
2.	Rajasthan	<a href="#">Government Notification</a>
3.	Telangana	<a href="#">Government Notification</a>
4.	Dadar and Nagar Haveli and Daman & Diu	<a href="#">Government Notification</a>
5.	Maharashtra	<a href="#">Government Notification</a>
6.	Vishakhapatnam	<a href="#">Government Notification</a>

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"A leader is one who knows the way,  
goes the way,  
and shows the way."

-John Maxwell

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