



THE LABOURTORIALS[®]

P. K. AGARWAL & ASSOCIATES

Monthly updates on Industrial and Labour Laws

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INTERNATIONAL WORKERS' DAY

May day is observed every year on May 1. It is also known as Labour Day or the International Worker's Day. We honour and celebrate the accomplishments and contributions of labourers and workers. This day is dedicated to the working class and encourages them to be conscious of their rights.

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- 'Conveyance Allowance' paid to employees is not part of 'Wages' for the purpose of computation of ESI contribution.
- Salary-wages during CIRP are costs for asset distribution under S. 53 IBC

LATEST FROM THE HIGH COURTS

- There should be no discrimination in public employment based on place of residence of candidate: Kerala High Court

LATEST FROM THE CENTRAL GOVERNMENT

- Relaxation of time limit for depositing and filing ESI Contribution.

LATEST FROM THE STATE GOVERNMENTS

- Notification of the Telangana Haritha Nidhi that 1% contribution to be made to the Telangana Green Fund from all the factories for issue or renewal of license.

AND YOU MUST KNOW!

- Gist on taxability on interest accrued on employee's contribution to Provident Fund.

LATEST FROM THE SUPREME COURT OF INDIA

Conveyance Allowance' paid to employees is not part of 'Wages' for the purpose of computation of ESI contribution.

The Hon'ble Court considered the recent decision of this Court in the case of Employees State Insurance Corporation v. Texmo Industries by which on interpretation of Section 2(22)(d) of the ESI Act, it was observed and held that the "conveyance allowance" is equivalent to the traveling allowance and therefore any **conveyance allowance/ traveling allowance is excluded from the definition of "wages"** in the above clause.

The SC had held that there is no difference between Conveyance Allowance and

Travelling Allowance to justify the stand of the ESIC that Conveyance Allowance would not fall within the ambit of Travelling Allowance. **"Had it been the intention of Section 2(22) to exclude only occasional long distance travel from one city to another, from the definition of wages, the Act would have specifically provided so.** The expression 'travel' is also often used interchangeably with the expression 'commute' which means "to travel regularly by bus, train, car etc. between one's place of work and home, as per the said dictionary. An example

given in the said dictionary is "she commutes from Oxford to London everyday". Another example given is "people are prepared to commute long distances if they are desperate for work. The ESIC Court was right in holding that there was no difference between Conveyance Allowance and Travelling Allowance.", it was observed thus.

In light of the above, the SC quashed and set aside the Order of the High Court.

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

Ad-hoc payments pursuant to interim order of court not 'wages' under Payment of Gratuity Act.

The SC held that monthly ad-hoc payments made pursuant to interim orders cannot be considered "wages" under Section 2(s) of the Payment of Gratuity Act [Chairman-cum-Managing Director Fertilizer Corporation of India and Anr. vs Rajesh Chandra Shrivastava and ors.].

It is a fundamental principle of law that a party who is in

enjoyment of an interim order, is bound to lose the benefit of such interim order when the ultimate outcome of the case goes against him.

The last drawn pay does not include ad-hoc payment made in pursuant to the interim orders. The Court relied on The Straw Board Manufacturing Co. Ltd. vs. Its Workmen wherein this

Court clarified the meaning of the expression "wages" under Section 2(s) of the Gratuity Act, as follows: **"We clarify that wages will mean and include basic wages and Dearness Allowance and nothing else".**

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

Salary-wages during CIRP are costs for asset distribution under S. 53 IBC



The SC held that **salary wages of employees during the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC) are to be treated as costs for asset distribution purposes under the IBC** [Sunil Kumar Jain & Ors vs Sundaresh Bhatt & ors].

The Apex Court held that the wages/salaries of the workmen/employees of the Corporate Debtor for the period during CIRP can be included in the CIRP costs provided it is established and proved that the Interim Resolution Professional/Resolution Professional managed the operations of the corporate debtor as a going concern during the CIRP and that the concerned workmen/employees of the corporate debtor actually worked during the CIRP and in such an eventuality, the wages/salaries of those workmen/employees who actually worked during the CIRP period when the resolution professional managed the operations of the corporate debtor as a going concern, shall be paid treating it and/or considering it as part of CIRP costs and the same shall be payable in full first as per Section 53(1)(a) of the IB Code.

For that purpose, the Court directed

appellants to submit their claims before the Liquidator and establish and prove the same. The Liquidator is directed to adjudicate such claims in accordance with law and on its own merits and on the basis of the evidence which may be laid/produced. **If it is found that in fact the IRP/RP managed the operations of the corporate debtor as a going concern during the CIRP and the concerned workmen/employees actually worked during CIRP, their wages and salaries be considered and included in CIRP costs and they will have to be paid as per Section 53(1)(a) of the IB Code in full before distributing the amount in the priorities as mentioned in Section 53 of the IB Code.**

Further, considering Section 36(4) of the IB code and when **the provident fund, gratuity fund and pension fund are kept out of the liquidation estate assets**, the share of the workmen dues shall be kept outside the liquidation process and the concerned workmen/employees shall have to be paid the same out of such provident fund, gratuity fund and pension fund, if any, available and the Liquidator shall not have any claim over such funds.

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

Anganwadi workers entitled to gratuity under Payment of Gratuity Act

The Court ruled that the Payment of Gratuity Act will be applicable to Anganwadi centres, observing that time has come to improve the working conditions of such workers. [Maniben Maganbhai Bhariya vs District Development Officer Dahod and ors].

The Supreme Court accordingly overturned a Gujarat HC judgment that had ruled that the Payment of Gratuity Act will not be applicable to Anganwadi centres.

The petitioners were retired Anganwadi workers and helpers based in Gujarat, who had moved the High Court on being denied gratuity after retirement. The Division Bench had held that Anganwadi workers and helpers are not employees as per Section 2(e) of the 1972 Act, and the Integrated Child Development Scheme (ICDS) cannot be said to be an industry. Therefore, remuneration or honorarium paid to them cannot be treated as wages within the meaning of Section 2(s) of the 1972 Act, and they are disentitled to gratuity.

Counsel for the appellants submitted that the 1972 Act is a legislation for social security recognising the loss of work prospects due to age etc. Anganwadi



PC: Latestlaws

centres fall under the broad definition of establishments and non-teaching staff too are entitled to gratuity as per the SC decision in Ahmedabad Pvt. Primary Teachers' Assn. v. Administrative Officer and others, it was contended.

Further, the decision in Bangalore Water Supply and Sewerage Board vs A Rajappa and others was relied on to stress that in such centres, there is a systematic and organised activity being carried out and thus it can be classified as industry too in an education setup.

The appellants also cited the decision in Jaya Bachchan v Union of India to argue that merely because the monthly remuneration paid to Anganwadi workers is termed an honorarium, it cannot be separated from the definition of wages as the work is full-time involving multiple duties concerning women and children.

The counsel for Gujarat government highlighted the financial burden of ₹25 crore if gratuity is held to be payable to all such workers in the State.

On the problems faced by them, Justice Rastogi observed, "The first and foremost,

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SCC BLOG

Anganwadi Workers/Helpers entitled to payment of gratuity; 'Time to take serious note of their plight'

Contd....

they are not holders of civil posts due to which they are deprived of a regular salary and other benefits that are available to employees of the State. Instead of a salary, they get only a so-called paltry 'honorarium' (much lower than the minimum wages) on the specious ground that they are part-time voluntary workers, working only for about 4 hours a day."

Justice Oka in his judgment said that Anganwadi centres run pre-primary schools and this educational activity is an integral part of it and the duty of running the same falls on the workers.

The use of the word 'honourary' is not determinative of their status, Justice Oka said.

"Considering the nature of duties specified ... it is full-time employment," he added.

Ad-hoc employee can be replaced only by regular employee and not another ad-hoc employee

The SC observed that **an ad-hoc employee can be replaced by only a regular employee who is appointed following the procedure prescribed and not by another ad-hoc employee** [Manish Gupta and Another v. President, Jan Bhagidari Samiti and Ors].

The appellants in the present case were appointed as guest faculty teachers in govt. colleges on a contractual basis under the 'Jan Bhagidari Scheme' of the State of MP. After the end of the academic year, the service of the appellants were discontinued and fresh advertisements for the said position were issued.

In the present appeal, the SC noted that though the respondents have strenuously

Anganwadi centres, being an extended arm of the government in implementing the ICDS, is an establishment within the meaning of clause (e) of Section 2 of the Contract Labour Act, Justice Oka ruled.

The Court also opined that **Anganwadi centres have to be viewed as a whole and not individual units, and they thus employ more than ten people to meet the definition of an establishment under the 1972 Act.**

The appeals were, therefore, allowed and the State of Gujarat was directed to pay the gratuity. "All eligible AWWs and AWHs shall be entitled to simple interest @ 10% per annum from the date specified under sub-section 3A of Section 7 of the 1972 Act," the Court further directed.

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

urged that the appointments of the appellants were as guest lecturers and not as ad-hoc employees, from the nature of the advertisements, it could clearly be seen that the appellants were appointed on an ad-hoc basis. The top court found no error in the single-judge's decision to allow the appellants to continue in their respective posts till the regular appointments are made. However, the Court made it clear that the direction of the single-judge stating that the appellants would be entitled to get the salary in accordance with the UGC circular is not sustainable since the advertisements clearly provide that the selected candidates would be paid the honorarium to be determined by the Jan Bhagidari Committee.

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

LATEST FROM THE HIGH COURTS

There should be no discrimination in public employment based on place of residence of candidate: Kerala High Court

The Hon'ble Court held that the decision of the Panchayat Committee refusing appointment to the petitioner for the sole reason that she is not a resident of Annamanada is liable to be set aside.

The other question is whether the decision of the Panchayat not to fill up the post of Accountant-cum-Data Entry Operator, despite the publication of rank list after a due process of selection is sustainable? No doubt, mere inclusion in the rank list does not confer any vested right for appointment on a candidate. But the appointment is under the MNREGS. Hence, the question is whether the Panchayat can unilaterally decide not to fill up a post created for the purpose of implementation of the Scheme. Even though the financial crises faced by the Panchayat is put forth as a reason for not filling up the post, no material is placed before this Court to substantiate that reason. Moreover, this Court is not expected to decide such

factual disputes in a proceeding under Article 226.

The Hon'ble Court finally set aside Order of the High Court and declared that the Panchayat cannot deny appointment to the most meritorious candidate for the reason that she is not a resident of the Panchayat. It further held that the Secretary to the Department of Local Self Government shall take a decision on the validity of this decision, with reference to the

provisions of the MNREGS Act and relevant Government orders, after affording an opportunity of hearing to the petitioner and the third respondent Panchayat.

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



High Court of Kerala | PC- Business Standard

LATEST FROM THE CENTRAL GOVERNMENT

Ministry of Finance notifies 7.1% as the rate of interest under the special deposit scheme.

The deposits made under the **Special Deposit Scheme for Non-Government Provident, Superannuation and Gratuity Funds** shall w.e.f. 1st April, 2022 to 30th June, 2022 bear interest at 7.1 percent.

The Special Deposit Scheme was launched with an aim to provide better returns to non-government provident funds, gratuity and superannuation funds, surplus funds of LIC, ESIC etc. The funds invested in SDS grow at the interest rate announced by the govt. These funds also earn by investing in govt. securities and mutual funds.

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



Relaxation of time limit for depositing and filing ESI Contribution.

One time opportunity as the employers are allowed to **deposit contribution** for the month of March 2022 **up to 30.04.2022** instead of 15.04.2022. Accordingly, the employers are also allowed to file the return of contribution **up to 26.05.2022** instead of 11.05.2022 for the contribution period from October, 2021 to March 2022.

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

Circular under Employees' Pension Scheme, 1995 wherein employees have attained 58 years of age.

EPFO released a Circular that reads as "You are aware that as per The Employees' Pension scheme, 1995 an employee shall cease to be the member of the Pension fund from the date of attaining 58 years of age or from the date of vesting admissible benefits under the scheme, whichever is earlier. But it is observed that **many employers are remitting pension contribution for employees who have attained 58 years also. This is causing hardship to the member when he applies for final settlement as such claims are rejected for want of clarification from employer.** Apart from this, this office has to put in a lot of effort to correct the same.

The employer needs to be more vigilant while uploading ECR and has to verify ECR statement before clicking on the 'Accept' button in the portal. A link 'Employee attaining 58 years of age in the current month' is provided in the Home Page of Unified Employer Portal and on clicking 'PDF', the list opens in a new window. You are therefore advised to make use of this option to check if any member has attained 58 years in a particular month before uploading ECR and make sure that pension contributions are not uploaded for such members."

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

Circular regarding timely settlement of medical reimbursement claim bills of insured person- ESIC.

The Competent Authority has directed that **medical reimbursement claim of IPs should be settled within 30 days from receipt of the bill.**

Further, in order to expedite the process, financial power has been delegated to SRO I/C of sub-regional offices, up to an amount of Rs. 50,000/-, so that bill can be scrutinized by medical referee and sanctioned by SRO I/C and paid at SRO level itself with timely electronic transfer of the reimbursement amount in the IP's bank account. While sanctioning the bill, RD/SRO (I/c) may need not to sign every page of the bill and may sign on the statement containing a list of bills with amount involved only. Henceforth, the monitoring of settlement of medical reimbursement claim will be done by Regional Director/SRO (I/C) on fortnightly basis.

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

Circular on Clarification regarding final withdrawal of PF for International Workers (IWs).

It is clarified that the IWs from Non-SSA (Social Security Agreement) countries are eligible for full withdrawal of their PF accumulations as per the provisions, after they attain the age of 58 year, provided they have ceased to be in employment of an EPF covered establishment.

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

Notification regarding eligibility condition of “ESIC COVID-19 RELIEF SCHEME”

The ESIC relaxes the eligibility condition of ESIC COVID-19 RELIEF SCHEME with effect from 24.03.2020 as under:-

“The deceased **Insured Person must have been in employment** on the date of diagnosis of COVID-19 disease and **contributions for at least 35 days should have been paid or payable** in respect of him/her during a period of maximum one year immediately preceding the diagnosis of COVID-19 disease resulting in death.”

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



LATEST FROM THE STATE GOVERNMENTS

Notification of the Telangana Haritha Nidhi that 1% contribution to be made to the Telangana Green Fund from all the factories for issue or renewal of license.

Govt. has issued orders for the contribution of Telangana Green Fund with each issue or renewal of license from Shops and Business Establishment for an amount of Rs.1000/-.

Further, every occupier of the factory shall contribute and remit one percent of the annual license fee prescribed towards the Telangana Green Fund into the account of Telangana Haritha Nidhi, for issue or renewal of license, subject to collection of Telangana Green Fund from 01.04.2022.

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

Circular regarding resuming the crèche facilities "Balavadi" for Factories in the State of Karnataka

In reference to the Govt. of India notification which stated that the Protocols/ restrictions followed in order to control the spread of Covid-19 Pandemic need not be continued further. Therefore all the protocols/ restrictions followed in factories are withdrawn by Govt. of Karnataka and going forward there will not be any restrictions in factories, with this **the Creche Facility can be started in Factories.**

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

Govt. of West Bengal issues notification under Payment of Bonus Act, 1965.

It is appealed that all payments of bonus should be completed by 23.09.2022 and in respect of Muslim employees/workers before Id-UI-Fitr of 2022.

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



Notification under sub- sec (1) of Sec 5 of Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976

W.E.F. 1st April 2022 every employer liable to be registered under said Act shall submit an application for a certificate of registration, electronically.

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

AND YOU MUST KNOW

Gist on taxability on interest accrued on employee's contribution to Provident Fund.

EPFO has notified that **Interest** accrued on the contribution (employee share) **exceeding Rs. 2.5 Lakh in one financial year will be taxable.**

What is the effective date?

It shall be applicable to all EPF members and shall come into force on **01.04.2022** for the Financial Year 2021-22. The effective date of TDS shall be 01.04.2022 or final settlement or transfers whichever is later.

It is important to note that interest in EPF accounts is credited on annual basis, however, members' accounts are maintained on monthly basis. Thus, if no transfers/final settlements are made during the financial year, then TDS will be deducted at the time of crediting of interest.

What is the Minimum Amount upto which No Tax is deducted?

The threshold limit is 2.5 Lakhs.

At What Rates will TDS be Deducted?

- If PF account is linked with PAN - 10%
- If PF account is not linked with PAN - 20%
- For non-resident PF members and International Workers - 30%



PC: india.com



Applicability

The TDS will be applicable in the following cases -

- PF Final Settlement
- Transfer Claims
- Transfer from Trust to EPFO and vice-versa
- Transfer from one Trust to another
- Transfer of past/ old accumulations
- In death cases
- International Workers

How TDS will be deducted?

To understand how TDS will be deducted from the interest earned on excess contribution, EPFO has given certain illustrations -

Contd...

ILLUSTRATION

Suppose, Mr A's monthly contribution to EPF account is Rs 30,000 (Rs3.5 lakh yearly). The closing balance of his/her EPF account on March 31, 2021 is Rs 50 lakh. The calculation of taxable & non-taxable portions of the contribution will be as follows:

Period	Monthly Contribution (In Rs)	Cumulative balance at end of month		Interest accrued @8.1%	
		Non-taxable account	Taxable account	Non-taxable account	Taxable account
Apr-21	30000	30000	0	203	0
May-21	30000	60000	0	405	0
Jun-21	30000	90000	0	608	0
Jul-21	30000	120000	0	810	0
Aug-21	30000	150000	0	1013	0
Sep-21	30000	180000	0	1215	0
Oct-21	30000	210000	0	1418	0
Nov-21	30000	240000	0	1620	0
Dec-21	30000	250000	20000	1688	135
Jan-22	30000	250000	50000	1688	338
Feb-22	30000	250000	80000	1688	540
Mar-22	30000	250000	110000	1688	743
Total	360000	250000	110000	14044	1755

Thus, the amount available under taxable and non-taxable accounts on March 31, 2022 will be

Particulars	Non-taxable account	Taxable account
Closing balance as on March 31, 2021	50,00,000	0
contribution during FY 2021-22	2,50,000	1,10,000
Interest accrued	14044	1755
Total amount at the end of FY 2021-22	52,64,044	1,11,755
TDS @10% (where PAN is available)	0	176
Opening balance as on April 1, 2022	52,64,044	1,11,580

Details in taxable and non-taxable contribution account

Starting from FY 2021-22, the non-taxable contribution account will have details of the opening balance, contribution below the threshold of Rs 2.5 lakh, interest earned and withdrawals made. Similarly, the taxable contribution account will have details of contributions exceeding Rs 2.5 lakh, interest earned and withdrawals made.

Interest earned in the taxable contribution account will be **taxable at the tax rates applicable to his/her income.**

[Click here](#) to read in detail.

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begins
great
works;
labour
alone
finishes
them"** - Joseph Joubert

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