



# THE LABOURTORIALS<sup>®</sup>

P. K. AGARWAL &  
ASSOCIATES

Monthly updates on Industrial and Labour Laws

JUNE 2022  
VOL. 2, ISSUE 11

## KEY HIGHLIGHTS

### LATEST FROM THE SUPREME COURT OF INDIA

- SC: Can't force staffer to refund raise given erroneously long back.

### LATEST FROM THE HIGH COURTS

- Last Come First Go principle cannot be departed with even in cases of temporary employees: Orissa HC
- Delayed deposit of ESI contribution when explained, no damages can be levied: Madras HC
- Employment Obtained Through Fake Caste Certificate is Void: Madras HC

### LATEST FROM THE STATE GOVERNMENTS

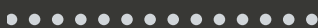
- Notification regarding the Night Shift rules for women workers in U.P. under the Factories Act, 1948.
- Notification under Goa Shops and Establishments (Amendment) Act, 2021.
- Revised Minimum wages



**#ENDOFCHILDLABOUR**

## WORLD DAY AGAINST CHILD LABOUR

12 June 2022



The 2022 theme of the world day is Universal Social Protection to End Child Labour. The eradication of child labour requires a systemic approach and effective policies to strengthen social protection systems, education, and decent work opportunities for parents and caregivers to address the conditions that drive child labour.



# LATEST FROM THE SUPREME COURT OF INDIA

## SC: Can't force staffer to refund raise given erroneously long back.

In this case, the teacher took study leave in 1973 but that leave period was not considered while granting him promotion. Twenty-four years later in 1997 he was issued notice and recovery proceedings were initiated against him after he retired in 1999.

The apex Court came to the rescue of a government teacher from Kerala against whom recovery proceedings were initiated by the state for wrongly granting him increments. The SC brought to an end his legal battle of 20 years during which he had lost the case in the Kerala High Court.

“This court in a catena of decisions has consistently held that **if the excess amount was not paid on account of any misrepresentation or fraud of the employee or if such excess payment as made by the employer by applying in a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/**



Supreme Court of India | PC: The New India Express

**order which is subsequently found to be erroneous, such excess payment of emoluments or allowances are not recoverable,”** the bench said.

“This relief against the recovery is granted not because of any right of the employees but in equity, exercising judicial discretion to provide relief to the employees from the hardship that will be caused if the recovery is ordered. This court has further held that if in a given case, it is proved that an employee had knowledge that the payment received

was in excess of what was due or wrongly paid, or in cases where error is detected or corrected within a short time of wrong payment, the courts may...order for recovery of amount paid in excess,” the bench said.

The court said that employees cannot be held responsible in such a situation and recovery of the excess payment should not be ordered, especially when the employee has subsequently retired.

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

## Applications for compassionate appointment must be decided within 6 months: SC

The SC recently observed that the applications for appointment on compassionate grounds must be considered and decided by the authorities at the earliest, but not beyond a period of six months from the date of submission of such completed applications [Malaya Nanda Sethy v. State of Orissa and Others].

If the object and purpose of appointment on compassionate grounds have to be achieved, then it is necessary that such applications are considered well in time and not in a tardy way, the Bench remarked.

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

## LIC bound by Article 14; cannot substitute open recruitment with absorption of part-time workers: SC

A public employer such as LIC cannot be directed to carry out a mass absorption of over 11,000 workers on such flawed premises without following a recruitment process which is consistent with the principles of equality of opportunity governed by Articles 14 and 16 of the Constitution. Such an absorption would provide the very back-door entry, which negates the principle of equal opportunity and fairness in public employment [Ranbir Singh v SK Roy, Chairman, Life Insurance Corporation of India & Anr.].

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

## LATEST FROM THE HIGH COURTS

### Last Come First Go principle cannot be departed with even in cases of temporary employees: Orissa HC

The Orissa High Court has held that the principle of "last come first go" cannot ordinarily be departed from by employers while retrenching labourers under the Industrial Disputes Act, 1947 (ID Act). While departing from the principle, it is a pre-condition that the employer has to record 'reasons in writing'.

The hon'ble court relying on its judgments held that how when admittedly, the workmen had worked for more than 240 days continuously, there could be no departure from Section 25F of the ID Act even if, the workmen had



High Court of Orissa | PC: Law Insider India

not been regularly employed.

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

## Delayed deposit of ESI contribution when explained, no damages can be levied: Madras HC

The unit of Neyveli Lignite Corporation Limited other than mines were retrospectively brought under the purview of the ESIC Act, 1948 with effect from 01.01.2011 but the ESI authorities have allotted the code number to the respondent-Corporation through Form C-11 only on 12.01.2012, therefore, the respondent herein was unable to remit the contribution before 12.01.2012. In the meanwhile, the process of enrolling thousands of contract workers for the purpose of the ESI scheme and also the particulars of each of the individual contract workers have taken considerable time. Besides, most of the contract workmen were not in a position to furnish the requisite information for completion of Form-I. However, the respondent-Corporation have admittedly paid the contribution with effect from 01.01.2011 along with interest on the belated payment.

The Court held that “by virtue of the proviso (c) to Regulation 31-C of the Employees' State Insurance (General) Regulations that says that **in exceptional cases, the damages on contribution or any other amount due to the delay in making the payment, may be waived totally or partially.**” Hence, “the impugned orders passed by the Employees Insurance Court (Labour Court), Cuddalore do not call for any interference”.

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



क.रा.बी.नि.  
ESIC



## Employment obtained through fake Caste certificate is void: Madras HC

The Question of consideration which arose was whether D Ganesan who has admittedly submitted a fake/false certificate of himself belonging to the Scheduled Caste (SC) Community when although he belonged to the Backward Class (BC) and thereby enjoying a relaxation of 5 years of upper age limit as a Trainee in BARC under the In-plant Training Programme vitiates and renders entire process of appointment as void.

The Hon'ble Court

observed that such an employee could not be allowed to get the benefits on technical grounds and **he could not get a premium or bounty, as the initial appointment itself was void ab initio** (void from the beginning).

However, taking note of the fact that he had received the Presidential award, a sympathetic view was taken by granting only 40% of the pensionary benefits, in the exercise of the powers of this court, the judges said.

The order stated, "This court ought not to have granted even this relief to the applicant, had the department approached the court well within time. It is made clear that he is not eligible for any other terminal benefits, such as gratuity, DCRG (death cum retirement gratuity) and the like, excluding the provident fund contribution, if any was made by him."

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

## Departmental proceedings are necessary even for termination of temporary employee: Madras HC

The Madras High Court recently observed that the employer shall follow the procedures in departmental proceedings including framing of charge, giving an opportunity to the employee, conducting a disciplinary enquiry and thereafter deciding the issue even with respect to temporary employees.

The court also found merit in the submission of the petitioner that **even**

**termination of a temporary employee must be by following due procedure of law.** The petitioner argued that even though he was a temporary employee, the impugned order clearly indicates that it was not a termination simpliciter and caused stigma. Therefore, the respondents were duty-bound to conduct an enquiry by following the due procedure of law by giving the petitioner an

opportunity to refute the allegations against him. However, no such procedure was followed in the present case.

The Hon'ble Court held that the impugned order was unsustainable in law and liable to be set aside.

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

# LATEST FROM THE STATE GOVERNMENTS

## Notification regarding the Night Shift rules for women workers in U.P. under the Factories Act, 1948.

The Governor is pleased to exempt, in public interest, w.e.f. the date of publication of this Notification in the official Gazette all the Factories of the state employing women worker from restrictions provided in the clause(b) of sub section(1) of the said section in respect of employment of women workers, subject to certain conditions.

[Click here](#) to read more.



## Notification of the Punjab Shops and Commercial Establishments (Haryana Amendment) Rules, 2022(dated -17.05.2022)-Govt. of Haryana.

In the Punjab Shops and Commercial Establishments Rules, 1958, in rule 15 in sub rule (2), after clause (iv) for existing proviso, the following proviso shall be substituted, namely:

“Provided that nothing contained in clause (iv) shall be applicable to a woman working in Information Technology establishment, Information Technology enabled establishments, Banking establishments, three star or above hotels, hundred per cent export oriented establishments and Logistics and Warehousing establishments, when exemptions from provision of section 30 of the Act is granted”.

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

## Amendment notification under Telangana Factories Rules, 1950

The Government of Telangana has notified the amendment to “Schedule XVIII - Handling and Processing of Asbestos, Manufacture or otherwise in which Asbestos is used in any Form” under Rule 95 of the Telangana Factories Rules, 1950. Schedule XVIII under rule 95 shall be substituted.

[Click here](#) to read extensively.

## Notification under Goa Shops and Establishments (Amendment) Act, 2021.

The Govt. of Goa has notified May 2nd, 2022, as the effective date for the Goa Shops and Establishments (Amendment) Act, 2021. The amendment act implements provisions on electronic filing, auto-renewal, and restriction for employment of women employees in certain cases. It has further revised the penalty in case of non-compliance with the provisions of the act

[Click here](#) to read the notification. Refer Page 10.

## Notification of the Goa Private Security Agencies (Regulation) Rules, 2022.

The Goa Private Security Agencies (Regulation) shall come into effect from 12.05.2022. The Rules provide for entire procedure of applying for Private Security Agency license and regulating the registered Agencies.

[Click here](#) to read the notification. Refer Page 33.

## Notification under Section 11 of the Contract Labour (Regulation and Abolition) Act, 1970 - Govt. of Madhya Pradesh

Govt. of Madhya Pradesh appoints Assistant Labour Commissioner, Labour Commissioner Office, Madhya Pradesh, Indore as the licensing officer for the purposes of Chapter-V of the said Act.

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

## REVISED MINIMUM WAGES

S. NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1.	Odisha	01.04.2022	<a href="#">Government Notification</a>
2.	Assam	01.04.2022	<a href="#">Government Notification</a>
3.	Goa	01.04.2022	<a href="#">Government Notification</a>
4.	U.T. of Chandigarh	01.04.2022- 30.09.2022	<a href="#">Government Notification</a>
5.	Meghalaya	01.04.2022	<a href="#">Government Notification</a>
6.	NCT of Delhi	01.04.2022	<a href="#">Government Notification</a>
7.	Himachal Pradesh	01.04.2022	<a href="#">Government Notification</a>

**Disclaimer:** This document is prepared and furnished for information and knowledge enhancement of all interested. You may choose to reproduce or redistribute this document for non-commercial purposes in part or full to any other person with due acknowledgement of the author. The opinions and analysis expressed herein are entirely those of the author. Even though the content of the document has been extracted or analysed from the government notifications, orders, circulars, news reports etc., it is not to be taken as complete and accurate in all respects.



There are four ingredients in true leadership: brains, soul, heart and good nerves.

Klaus Schwab  
Founder and Executive Chairman  
World Economic Forum

## P.K AGARWAL AND ASSOCIATES

P.K. Agarwal & Associates deals in :

- Compliance under all labour related statutes;
- Drafting and vetting of appointment Letters, agreements, standing orders, notices, and such other documents required by the establishment in lieu of employer-employee relationship;
- Handling of court cases under all the labour statutes before Labour Inspectors, Officers, Commissioners, Tribunals, District Courts as well as High Court and Supreme Court; and
- Providing time to time consultancy on all labor-related matters.

