



# THE LABOURTORIALS

P. K. AGARWAL &  
ASSOCIATES

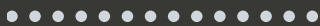
Monthly updates on Industrial and Labour Laws

JULY 2022  
VOL. 2, ISSUE 12



PC | iStock

## IMPLEMENTATION OF NEW LABOUR CODE



The new labour Codes which were to be implemented, as per media reports, with effect from 1st July 2022 have been deferred again by the Government of India. Once implemented the code will replace and subsume 29 existing labour laws.

## KEY HIGHLIGHTS

### LATEST FROM THE SUPREME COURT OF INDIA

- Pension is a continuous cause of action; arrears can't be denied on ground of delay.

### LATEST FROM THE HIGH COURTS

- Employer harassing employee by not releasing gratuity and leave encashment; Appeal allowed: Tripura HC
- BCCI engaged in commercial activities; liable to pay employees contribution under ESI Act: Bombay High Court

### LATEST FROM THE CENTRAL GOVERNMENT

- Declaration of rate of interest for the Employees Provident Fund members' account for the year 2021-2022

### LATEST FROM THE STATE GOVERNMENTS

- Notification regarding permitting all Shops and Establishments to keep open for 24x7 on all days of the year extended for period of 3 years - Tamil Nadu
- SOPs for various manufacturing process in the factories- Haryana

# LATEST FROM THE SUPREME COURT OF INDIA

The Supreme Court, recently, held that arrears of pension cannot be denied on the ground of delay in approaching the Court as pension is a continuous cause of action. **[ML Patil (Dead) through LRs v. State of Goa and Another]**

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



The Hon'ble Supreme Court of India

## LATEST FROM THE HIGH COURTS

### Employer harassing employee by not releasing gratuity and leave encashment; Appeal allowed: Tripura HC

The petitioner was an employee and had served for 40 years under the respondents. There was no adverse entry in his service record. After his retirement, a letter was sent to him alleging that there were some outstanding dues and that he could not produce vouchers relating to the expenditure under the various schemes of the government for some financial years.

Before his retirement there was no allegation of financial irregularities or misappropriation levelled against him. The petitioner also offered an explanation by letter that he had duly submitted the vouchers.

The Court remarked that **since the respondents**

**could not level any allegation against the petitioner during his service period, he should not be deprived of his legitimate gratuity and leave encashment.**

The Court said that if there was any irregularity it could have been brought to the notice of petitioner within a reasonable period of time, which in Court's opinion would have been one and a half years at maximum. The Court noted that it was a case of merely harassing the petitioner.

Therefore, in view of the above facts, the Court ordered to release the gratuity and other retiral benefits to the petitioner within a period of 3 months

with statutory interest of 6% till the release of the gratuity. **[Prabhati Debbarma v. State of Tripura]**  
[Click here](#) to read the Judgment.

---

### Delhi HC rejects plea of 97 employees seeking regular employment on completion of apprenticeship.

The Delhi HC held that in the absence of a binding obligation on the employer to absorb apprentices as regular employees, the latter cannot claim a right to be absorbed in the company on completion of apprenticeship.

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

## **BCCI engaged in commercial activities; liable to pay employees contribution under ESI Act: Bombay HC**

The Board of Control for Cricket in India (BCCI) is engaged in commercial activities and earning profits from the same and is, therefore, covered under the Employees State Insurance (ESI) Act, the Bombay High Court has held [BCCI vs Regional Director, ESI Corporation].

"... its activities are not only restricted to providing entertainment, but TV broadcasting rights are also sold by the Board to TV companies by auction, which is again a systematic commercial activity. By conducting Indian Premier League (IPL) and exercising control over this tournament, founded by the BCCI in the year 2007, which is the most attended cricket league in the world and ranked 6th by average attendance amongst all sports leagues is the major sporting event in the world to be broadcast live on various channels," the judge noted.

Hence, though the Memorandum of Association of the BCCI prescribe that the income, funds and properties of the BCCI shall be utilized solely for promotion of objects of

BCCI, to aid and assist financially, or otherwise to promote, encourage, advance and develop the game of cricket, the fact that the Board engages itself in its various commercial activities would mean that BCCI is 'shop' under the provisions of Mumbai Shop and Establishment Act. Consequently, it will come under the ambit of ESI Act, the Court ruled.

The BCCI on the other hand, claimed that it couldn't be covered under the ESI Act, since it is a governing body for cricket in India and its primary object is to administer, promote and control the game of cricket throughout the country. Therefore, it is not covered or registered as 'shop' under Mumbai Shop and Establishment Act.

Justice Dangre noted that the ESI Act, 1948, seeks to secure maintenance of health of an insured workman by recognising the right to medical benefit under the Constitution. "Thus, the enactment is intended to operate as a beneficial piece of legislation to attain

general welfare of the employees." the judge held.

"The Board is admittedly involved in entertaining and carrying out systematic commercial activity and is engaged in providing services to public at large by engaging its employees, organizing events, promoting cricket as a source of entertainment and thereby collecting funds. It is also engaged in acquisition or purchase of movable or immovable assets, tangible or intangible and authorized to sale or transfer the same for achieving its objectives," the judge noted further.

Therefore, the Court upheld the decision of the ESI court to hold that BCCI falls under the ambit of ESI Act.

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



## LATEST FROM THE CENTRAL GOVERNMENT

### Declaration of rate of interest for the Employees Provident Fund members' account for the year 2021-2022 - EPFO

The Ministry of Labour and Employment has conveyed the approval of the Central Government under para 60(1) of Employees Provident Fund Scheme, 1952 to credit interest @ 8.10% for the year 2021-2022 to the account of each member of the EPF Scheme.



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

## LATEST FROM THE STATE GOVERNMENTS

### Notification regarding permitting all Shops and Establishments to keep open for 24x7 on all days of the year extended for period of 3 years - Govt. of Tamil Nadu

The Governor of Tamil Nadu exempts all shops and establishments employing 10 or more persons, from conditions of restricted Opening and Closing hours as prescribed under the Act and permits to keep open for 24x7 on all days of the year, for a period of three years with effect from 05.06.2022. The above exemption is subject to certain conditions.

[Click here](#) to read more.

### Order regarding Telangana Haritha Nidhi (Telangana Green Fund)- Govt. of Telangana

The Govt. of Telangana orders for collection of Rs.1000/- as Registration and Renewal fee prescribed towards the Telangana Green Fund into the account of Telangana Haritha Nidhi from 01.04.2022 under the Contract Labour Act, Inter-State Migrant Workmen Act and Building and other Construction Workers Act.

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

### Amendment notifications under Tamil Nadu Manual Workers (Construction Workers) Welfare Scheme, 1994.

Various substitutions were made.

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



Government of Tamil Nadu

## SOPs for various manufacturing process in the factories- Haryana

In order to minimize the fire accidents and the dangerous occurrences in the factories, the Labour Department has prepared the Standard Operating Procedure (SOPs) for the Factories, where the hazardous chemicals, gases and inflammable substances are being used.

All the factory/stake holders are advised to carry out their manufacturing process in accordance to these SOPs. After 60 days from the date of this advisory, the officers of the Labour Department may inspect/check the status of compliance.

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

## Notification under Punjab Shop and Commercial Establishments Act for Employment of working women during night shift.

The Govt. of Haryana has laid down certain conditions for employing women in night shifts in respect of their security and safety so as to safeguard the interest of the women workers working in any IT, ITEs, Banking establishments, three star or above Hotels, hundred percent export oriented establishments and logistics and warehousing establishments in the State of Haryana.

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



PC | iStock

**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.

# PLEASURE IN THE JOB PUTS PERFECTION IN THE WORK.

Aristotle

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.

