

THE LABOURTORIALS

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS



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LEX NON COGIT AD IMPOSSIBILIA

Abovementioned is a legal maxim which means that the law does not compel a man to do anything in vain or impossible or to do something which he cannot possibly perform.

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- To claim backwages, initial burden is on employee to establish that he was not gainfully employed during period of dismissal.
- SC rules against Jet Airways; says employer can't override Industrial Employment (Standing Orders) Act to curtail employee rights.

LATEST FROM THE HIGH COURTS

- Victim can invoke PoSH Act when sexually harassed by man working in department other than her own: Delhi High Court.

LATEST FROM THE CENTRAL GOVERNMENT

- Notification for Employees State Insurance (Central) Amendment Rules, 2023.

LATEST FROM THE STATE GOVERNMENTS

- Revised Minimum Wages.
- Notification of the Kerala Headload Workers (Regulation of Employment and Welfare) Amendment Scheme and Rules, 2023 - Govt. of Kerala.

LATEST FROM THE SUPREME COURT OF INDIA

Supreme Court rules against Jet Airways; says employer can't override Industrial Employment (Standing Orders) Act to curtail employee rights.

The Supreme Court emphasised that a beneficial law like the Industrial Employment (Standing Orders) Act, 1946 cannot be overridden by employers through settlements or contracts which effectively curtail workers' rights and dues. **[Bharatiya Kamgar Karmachari Mahasangh vs M/s. Jet Airways Ltd].**

In this case, the bench observed that the provisions of the Bombay Model Standing Order for workmen could not have been waived by Jet Airways with respect to workers it had engaged for various tasks through fixed term contracts.

The appellants were treated as temporary loader-cum-cleaners, drivers, and operators by Jet Airways despite completing over 240 days of regular work. Disputes arose after their fixed-term contracts were not renewed.

A settlement was reached in 2002 between the

airlines and another union, the Bharatiya Kamgar Sena, which dropped the demands for back-wages and permanency.

The Mahasangh then moved the CGIT for relief. The tribunal, relying on Section 25-H of the Industrial Disputes Act, held that it was not a case of retrenchment since a non-renewal of fixed-term contracts did not amount to retrenchment.

This led to the appeal before the Supreme Court.

"The Standing Order implies a contract between the employer and the workman. Therefore, the employer and workman cannot enter into a contract overriding the statutory contract embodied in the certified Standing Orders," the Court explained.

[Click here](#) to read judgement.



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To claim backwages, initial burden is on employee to establish that he was not gainfully employed during period of dismissal.

The Supreme Court relied upon its judgment in National Gandhi Museum v. Sudhir Sharma (2021) 12 SCC 439 in which it was held that the fact whether an employee after dismissal from service was gainfully employed is something which is within his special knowledge. **[Ramesh Chand v. Management of Delhi Transport Corporation]**

The Court noted: **“Considering the principle incorporated in Section 106 of the Indian Evidence Act, 1872, the initial burden is on the employee to come out with the case that he was not gainfully employed after the order of termination.** It is a negative burden. However, in what manner the employee can discharge the said burden will depend upon on peculiar facts and circumstances of each case. It all depends on the pleadings and evidence on record. Since, it is a negative burden, in a given case, an assertion on oath by the employee that he was unemployed, may be sufficient compliance in the absence of any positive material brought on record by the employer.”

It was observed by the Court that there is a specific case made out by the workman/appellant that he was not gainfully employed atleast as on August 8, 1997 on which he filed the statement of claim before the Labour Court.

“Therefore, in the statement of claim filed thirteen months after termination, a specific assertion was made by the appellant that he was unemployed. Neither any material has been placed by the respondent on record to show that the appellant had a

source of income nor anything material has been elicited by the respondent while cross-examining the respondent,” the Court noted.

Thus, **the Court after considering directed the DTC to pay a sum of Rs. 3 Lakhs to the appellant in lieu of back wages** within 2 months failing which the said amount will carry interest at the rate of 9 percent p.a. from the date of reinstatement in service.

[Click here](#) to read judgement.



PC | The Supreme Court of India



LATEST FROM THE HIGH COURTS

Victim can invoke PoSH Act when sexually harassed by man working in department other than her own: Delhi High Court.

The Delhi High Court has ruled that the scope of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 or PoSH Act is not limited to cases where a woman employee is sexually harassed by another employee working in her own office or department but also extends to cases where the delinquent employee is employed elsewhere. **[Dr. Sohail Malik v. Union of India & Anr.]**

The court was hearing a plea moved by a 2010 batch IRS officer accused of sexually harassing an officer in a different department i.e. Department of Food and Public Distribution of Union Ministry of Consumer and Public Distribution.

The woman employee moved a complaint before the Internal Complaints Committee of her own department after which the officer received a meeting notice from the ICC asking him to appear. However, the IRS officer moved Central Administrative Tribunal and questioned the jurisdiction of the ICC to examine the complaint of the woman employee.

The Tribunal dismissed the officer's case, compelling him to move before the High Court. The Accused **contended that one has to be sexually harassed by a colleague in one's own department for the Sexual Harassment of Women at Workplace Act to apply.**

It was the petitioner officer's case that ICC of one department cannot conduct an inquiry under the Act on a complaint by its officer against an employee who belongs to another department as he would not be within the disciplinary control of the department where the complainant is working.

The court said **such an interpretation, as contended by the petitioner officer, would strike at the very root of the Sexual Harassment at Workplace Act and its ethos and philosophy.**

"That said, however, there is some force the Accused's contention that the Court cannot rewrite the statute, or provide casus omissus and, if the PoSH Act cannot be so read as to protect a woman working in one department of the Govt.

from harassment by an officer or employee of another department, the Court may have to defer to the statute," the court said.

The bench also observed that **the Act does not insulate from action, those men, who sexually harass women in offices, other than those in which they are themselves working.**

"Having read Section 11(1), we are in agreement with the learned Tribunal in its finding that there is nothing in the said provision which would restrict its application only to cases where the respondent i.e., the officer against whom sexual harassment is being alleged, is the employee of the department where the complainant is working," the court said.

It added: "Thus seen, and given the width of the definition of employer in Section 2(m), we are of the considered opinion that, in order to make the provisions of the PoSH Act meaningful and applicable even **in a case where the alleged perpetrator of sexual harassment is an employee of**



Contd. ...

Contd. ...

another department, the definition of employer under Section 2(g)(i) of the PoSH Act has to be read as including the employer of including the employer of the department

where the alleged perpetrator of sexual harassment is working."

[Click here](#) to read Judgement.



Setting aside requirement of 'Bonafide Himachali Certificate' for compassionate employment: Himachal Pradesh High Court.

The Himachal Pradesh High Court has struck down the requirement of furnishing a 'Bonafide Himachali Certificate' for obtaining compassionate appointment, holding such a condition to be violative of Article 16(2) of the Constitution, which prohibits discrimination on the basis of residence. [Sandeep Kaur v. State of HP]

The petitioner, one of the deceased's daughters, sought employment with the respondent-Corporation as a Clerk following the demise of her father while in service. Her application was initially rejected by the authorities, citing non-submission of certain required documents, including a Character Certificate issued by the Executive Magistrate or Tehsildar.

The petitioner, a resident of

Punjab, submitted a Character Certificate issued by the Senior Superintendent of Police from her State, arguing that obtaining the specific certificate as demanded by the authorities in Himachal Pradesh was not possible in Punjab.

Furthermore, the petitioner submitted that she was asked to provide a Bonafide Himachali Certificate, but the relevant rules mandating such a certificate had been abolished by the State Government after 20.04.1974. She contended that this insistence on producing a Bonafide Himachali Certificate was unconstitutional, as it violated Article 16(2) of the Constitution, which ensures equal treatment of citizens in matters of employment.

Adjudicating upon the matter the bench emphasized the principle of "**Lex non cogit ad**

impossibilia," which means that the **law does not compel a person to do what is impossible for them to perform.**

"As per Art.16(2) of the Constitution no citizen can be discriminated on basis of residence. So insisting that petitioner produces such a certificate when it is undisputed that she is an Indian citizen and daughter of the deceased employee of the 2nd respondent cannot be countenanced", the bench said while adding "So insisting that petitioner produces such a certificate when it is undisputed that she is an Indian citizen and daughter of the deceased employee of the 2nd respondent cannot be countenanced".

[Click here](#) to read Judgement.



Pension a valuable right of government servants, should not be denied on technicalities: Bombay High Court.

The Bombay High Court on Monday emphasised that the **right to pension is a valuable right vested with government servants** which should not be denied on technical grounds. [Dr Pradeep Rangrao Nalawade v. Poona College of Pharmacy].

The petitioner was appointed as a professor of Pharmacy in the college in October 1999. Till April 2009, he served on the post with intermittent breaks. The breaks occurred as the post was reserved for candidates from Scheduled Tribes (ST) and the petitioner's services were being

used due to there being no eligible ST candidate appointed to hold the post.

From July 2009 to September 2020, the petitioner rendered continuous service, after being appointed in an open category vacancy.

However, he was denied post-retirement benefits by the Directorate of Technical Education (DTE), Maharashtra on the ground that there was a shortage of 1 month and 16 days for him to be eligible for pension. There was a gap of 674 days in his service owing to

technical breaks and vacations.

The Court held that **DTE had clearly erred in computing the qualifying service of the petitioner and wrongly rendered him ineligible for receiving a pension.**

It proceeded to hold that the payment of salary, even during technical breaks, implied a contract. Thus, it concluded that there was no gap in service at all.

[Click here](#) to read Judgement.

Reinstatement of bus conductor dismissed from service for non-issuance of ticket, having excess 7 Rupees in bag: Madras High Court.

The Madras High Court directed the reinstatement of a Bus Conductor, Ayyanar, who was terminated from service for non-issuance of a bus ticket to a lady passenger and for having an excess of seven rupees with him. [A. Ayyanar v The General Manager]

“The punishment meted out is grossly disproportionate to the offence and it shakes the conscience of the Court. Moreover, this Court does not appreciate this procedure

adopted by the respondent Corporation by referring to earlier concluded proceedings for holding the latest charge against the petitioner. For all these reasons, the Writ Petitioner is entitled to relief from this Court,” the court observed.

“It is really surprising that in respect of such a charge, the respondent has removed the petitioner from service by imposing maximum penalty. It is needless to state that in such

cases of charges of be it Rs.7/- or Rs.2/- no malafide or malice can be imputed and the same could have even been the result of inadvertent or unintentional act of the petitioner, which does not warrant penalty in the nature of terminating the petitioner from service,” the court noted.

[Click here](#) to read Judgement.



Maternity leave a basic human right; assault on woman's dignity if denied: Orissa High Court.

The Orissa High Court recently emphasised that **maternity leave is a basic human right** and that its denial would amount to an assault on the dignity of woman employees [Swornalata Dash v. State of Odisha and ors].

The Court held that **maternity leave cannot be compared to or equated with any other leave as it is an inherent right for every woman employee.** Maternity leave cannot simply be denied on technical grounds.

The Court was dealing with a writ petition filed by a teacher working in an aided girls' high school in Keonjhar district.

The teacher applied for and took maternity leave in 2013. She rejoined for work in December 2013 and the school headmaster accepted her joining report and fitness certificate.

However, the District Education Officer at Keonjhar refused to sanction the maternity leave. On filing an application under the Right to Information Act (RTI Act), the teacher was informed that her maternity leave sanction could not be considered as there was no leave



PC | The High Court of Orissa

rule applicable for employees of the school.

This prompted the teacher to file a writ petition before the High Court for relief.

The District Education Officer countered the writ plea by contending that the Grant-In-Aid Orders of 1994 and 2013 were silent on the issue, as was the Odisha Education Recruitment and Conditions of Service and Staff of Aided Educational Institutions Rules, 1974.

The provisions of the Odisha Service Code relating to maternity leave was only applicable to regular government servants and not the employees of block grant high schools, the Court was further told.

However, Justice Mishra rejected such technical arguments and ordered the District Education Officer to sanction the teacher's maternity leave within four weeks.

[Click here](#) to read judgement.



LATEST FROM THE CENTRAL GOVERNMENTS

Notification for Employees State Insurance (Central) Amendment Rules, 2023.

In Rule-55(Sickness Benefit) in Sub-Rule (1) after the third proviso insertion was made as: “Provided also that a person appointed before 1st April, 2020, shall be qualified to claim sickness benefit for the period 1st January, 2021 to the 30th June 2021, if the contributions in respect of such person were payable for not less than thirty-nine days during the contribution period 1st April, 2020 to the 30th September, 2020, or for not less than seventy-eight days during the contribution period 1st October,

2019 to the 31st March, 2020, and the daily rate of sickness benefit for that person shall be as provided in sub-rule (2) calculated on basis of standard benefit rate applicable during the contribution period 1st April, 2020 to the 30th September, 2020 or during the contribution period 1st October, 2019 to the 31st March, 2020, as the case may be.”;

In Rule-56 (Maternity Benefit) in Sub-Rule (1) insertion was made as: “Provided that an insured woman shall be eligible to claim

maternity benefit for a confinement occurring or expected to occur during the benefit period 1st January, 2021 to the 30th June, 2021, if the contributions to such woman were payable for not less than thirty-five days in the immediately preceding two consecutive contribution periods, namely, the 1st October, 2019 to the 31st March, 2020 and the 1st April, 2020 to the 30th September, 2020.”

[Click here](#) to read notification.

Notification regarding receiving objection and suggestions from the stakeholders/public on extension of Atal Beemit Vyakti Kalyan Yojana Scheme- ESIC.

The ESIC has decided to **extend the Atal Beemit Vyakti Kalyan Yojana for the period 01.07.2022 to 30.06.2024** with the relaxed eligibility conditions and enhanced rate of relief and further **any objections and suggestions received in respect of the same will be considered by the ESIC within a period of 30 days** from the date of publication of the notification.

[Click here](#) to read notification.

TRIVIA

The EPFO has declared **to credit interest @ 8.15%** to the account of each member of EPF Scheme for the year 2022-23.

[Click here](#) to read notification.



LATEST FROM THE STATE GOVERNMENTS

REVISED MINIMUM WAGES

Some 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.	Nagpur & Chandrapur (Security Guard Board)	01.05.2022	Government Notification
2.	Himachal Pradesh (Scheduled Employment- Unskilled Workers)	01.04.2023	Government Notification
3.	U.T. of Andaman & Nicobar Islands (Scheduled Employments)	01.07.2023	Government Notification
4.	West Bengal (30 Scheduled Employments)	01.07.2023	Government Notification

Amendment notification under the Tamil Nadu Fire and Match Workers' Social Security and Welfare Scheme, 2021.

In the said scheme, **the amount of compensation payable as Relief** in case of death under sub-clause (2) of clause 17 **has been revised from Rs.1, 25,000 to Rs.2, 00,000.**

[Click here](#) to read notification.

Notification under Section 29 of the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976.

The Government of Karnataka exempts the tax payable for certain class of person's w.e.f 13.07.2023 as mentioned in the notification.

[Click here](#) to read notification.

Notification for the Industrial Disputes (Assam Amendment) Act, 2020.

Under the Industrial Disputes Act, 1947, in its application to the State of Assam after Section 36B a **new Section 36C is to be inserted** namely: "**Power to exempt new industries**" stating that where the State Government is satisfied in relation to any new industrial establishment or new undertakings excluding tea industry and activities related to tea processing and manufacturing that it is necessary in the public interest to do so, it may, by notification in the official gazette, exempt, conditionally or unconditionally, any such new establishment or new undertaking or class of new establishments or new

undertakings...from all or any of the provisions of this Act **for a period of one thousand days from the date of establishment of such new industrial establishment** or new undertaking or class of new establishments or new undertakings, as the case may be."

Also, **the Industrial Disputes (Assam Amendment) Ordinance, 2020 has been repealed.**

[Click here](#) to read notification.



Bill of the Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023.

The State of Rajasthan enacted a bill to be called as “Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023” in order **to constitute a Welfare Board and to setup a welfare fund** for platform based gig workers, to register platform based **gig workers, aggregators and primary employers in the State;** and **to facilitate guarantee of social security** to platform based gig workers and to provide for matters connected therewith.

[Click here](#) to read bill.

Notification of the Kerala Headload Workers (Regulation of Employment and Welfare) Amendment Scheme and Rules, 2023.

The Kerala Government has decided to extend the Kerala Headload Workers scheme, 1983 framed as per sub-section (1) of Section 13 of the Kerala Headload Workers Act, 1978 to entire area of Thrissur and Malappuram Districts.

Further, in the Kerala Headload Workers Rules, 1981, the word “Chief Executive” shall be replaced by word “Chief Executive Officer”

Notification regarding the unorganised sector workers Database in the State of Maharashtra.

The Maharashtra Government has vide Annexure-I revised the categories and job roles for the Unorganized sector labours in the database of the State of Maharashtra providing a total of

Standard Operating Procedure (SOP) with operational guidelines and instructions for easy compliance in case of industrial accidents.

The Provisions under Factories Act, 1948 and the Andhra Pradesh, Factories Rules, 1950 prescribes an obligation on the occupiers and managers of the factories to maintain safety of the workers required to work in "**Confined Spaces**".

The detailed guidelines/instructions are mentioned under Rule 12-B of Andhra Pradesh, Factories Rules, 1950 in Annexure -I & Annexure -II.

[Click here](#) to read more.

wherever occurs, and **after Rule 16, a new Rule 16A shall be inserted specifying about the appointment of Secretary** who shall supervise the implementation and related matters of various schemes made under the provisions of the Kerala Headload Workers Act, 1978.

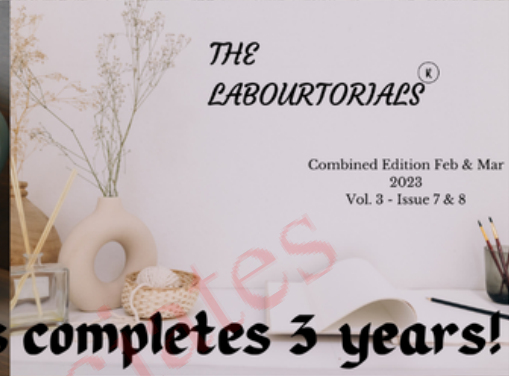
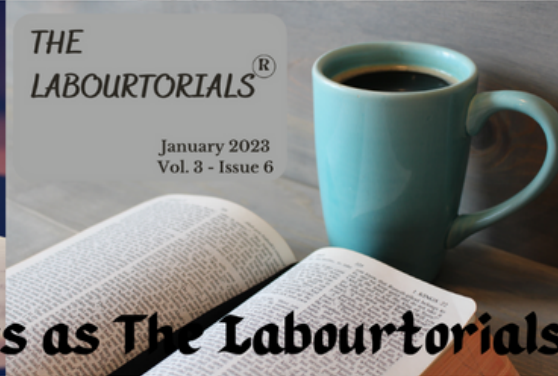
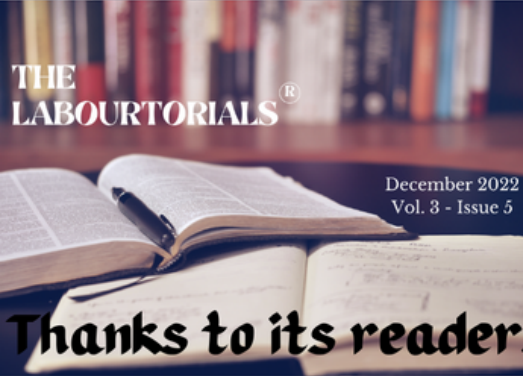
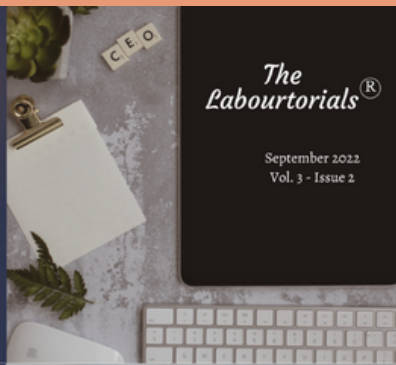
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39 categories including 340 Job roles therein.

[Click here](#) for Annexure.

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