SEPTEMBER 2023 • VOL. 4 ISSUE 2

THE LABOURTORIALS

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS

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KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- Retired employees can't claim benefit of subsequent Govt. decision to increase retirement age.
- 'Basic Wage' under EPF Act cannot be equated with 'Minimum Wage' under Minimum Wages Act.

LATEST FROM THE HIGH COURTS

- Employee has "Right to vent", management cannot take action for messages sent in private WhatsApp group: Madras High Court.
- Dispute under Apprentices Act 1961 cannot be treated as 'industrial dispute': Rajasthan High Court.

LATEST FROM THE CENTRAL GOVERNMENT

- Circular on relaxation of the eligibility conditions for sickness benefit and maternity benefit during Covid-19: ESIC.

LATEST FROM THE STATE GOVERNMENTS

- Revised Minimum Wages.
- Sikkim announces 12-month maternity & 1-month paternity leave.

DOCTRINE OF LEGITIMATE EXPECTATION

The doctrine means that a person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment.

LATEST FROM THE SUPREME COURT OF INDIA

Retired employees can't claim benefit of subsequent Govt. decision to increase retirement age.

The Supreme Court has dismissed a petition filed by a group of teachers in Homeopathic Medical Colleges in Kerala seeking increase of their retirement age from 55 years to 60 years at par with the teachers of other Medical Colleges. **[Dr. Prakasan MP and others v. State of Kerala and others]**

PC | The Supreme Court of India | Scroll.in

The appellants approached the Supreme Court in 2010 challenging the refusal of the Kerala High Court to grant them relief. While the appeal was pending in the Supreme Court, **the Government of Kerala issued an order in April 2012 enhancing the age of superannuation of teaching staff in Homeopathic Colleges to 60 years.** In the same year, the Government issued other orders enhancing retirement age of teachers in Ayurvedic and Dental Colleges. Therefore, appellants sought an alternate relief for retrospective application of the 2012 Government Order to them.

The bench explained rejecting the reliefs sort by the Applicants that the "**the age of retirement is purely a policy matter that lies within the domain of the State Government**".

The bench referred to the 2021 decision of Supreme Court in New Okhla Industrial Development Authority and Another vs. B.D. Singhal and Others which disapproved of a direction issued by Allahabad High Court to enhance the age of superannuation of NOIDA employees, observing that it was purely a matter of State policy.

The Court rejected the plea for retrospective application based on the Doctrine of Legitimate Expectation.

"The appellants herein cannot claim a vested right to apply the extended age of retirement to them retrospectively and assume that by virtue of the enhancement in age ordered by the State at a later date, they would be entitled to all the benefits including the monetary benefits flowing on the ground of legitimate expectation", it said.

Click here to read Judgement.

Maternity benefits must be granted even if period of benefit overshoots term of contractual employment.

The appellant had joined as a pathology doctor on a contractual basis at Janakpuri Hospital run by NCT, Delhi. Her contract was subject to renewal every year for up to max 3 yrs. **[Kavita Yadav v. Secy, Ministry of Health and Family Welfare]**

On 24th May, she applied for maternity leave from 1st June 2017 in terms of section 5 of Act,1961. The employer however provided benefits only up to 11th June on the ground that after the end of 3 yr contractual period, she became disentitled to any benefit under said statute.

The appellant unsuccessfully challenged said action before CAT and Delhi High Court.

The Supreme Court was hearing an appeal against a Delhi High Court ruling that had restricted maternity benefits to a mere 11-day period, citing the expiration of a contractual agreement.

The Supreme Court held that **maternity benefits have to be granted even if the period of benefit overshoots the term of contractual employment. Maternity benefits can travel beyond the term of contractual employment.** The court directed the employer to pay maternity benefits as would have been available in terms of Sections 5 and 8 of the Maternity Benefits Act, 1961 and payment to be made within 3 months.

The court observed **"Section 12(2(a) of the Maternity Benefit Act, 1961 contemplates entitlement even for an employee who is dismissed/discharged during her pregnancy.** Thus, inbuilt in the statute itself there is a provision for extending benefits for a period beyond the term of employment. What the statute contemplates is the entitlement of medical benefit which accrues by fulfillment of condition under section 5 and benefit can travel beyond the term of employment also and it's not co-terminus with the employment period."

The court also referred to previous judgments which had upheld the principle of extending maternity benefits and noted that section 27 of the Act overrides other laws and agreements.

Click here to read judgement.

'Basic Wage' under EPF Act cannot be equated with 'Minimum Wage' under Minimum Wages Act.

The Supreme dismissed an appeal by the Assistant Provident Fund Commissioner against an order of a division bench of the Punjab and Haryana High Court holding that **when the term 'basic wage' has been described under Section 2(b) of the Employee Provident Fund Act 1952, there is no need to make a reference to definition of 'minimum rate of wages'** under Section 4 of the Minimum Wages Act, 1948. **[Assistant Provident Fund Commissioner v. M/S G4S Security Services (India) Ltd. & Anr.]**

Click here to read Judgement.

Once appointment is declared illegal & void ab-initio, one cannot legally continue in service & claim salary.

In a case pertaining to an Assistant teacher claiming the release of her unpaid salary from 2001 onwards, the Supreme Court held that **once the appointment has been declared illegal and void ab initio by the Director of elementary education in Assam in 2001, continuing in service becomes untenable** in the absence of challenge to the cancellation order. **[Smt Dulu Deka v. State of Assam]**

The Supreme Court expressed skepticism about the plausibility of an individual working for an extended period, nearly two decades, without receiving any salary.

It observed "**Even otherwise, it is difficult to believe that a person has been working for two decades without any salary.** Even the writ petition was filed by her in the High Court in the year 2008, claiming salary from 12.03.2001 onwards i.e., seven years later."

The Court refused to interfere in the concurrent finding of fact by HC and dismissed the appeal.

Click here to read Judgement.

LATEST FROM THE HIGH COURTS

Employee can't be penalised for shortfall in service due to delay by authority in making appointment: Calcutta High Court.

A single-judge bench held that the **delay in appointing the petitioner is solely attributable to the conduct of the respondent authorities** and directed the authorities to consider the petitioner's claim for pensionary benefit, treating him notionally appointed on the date the decision was taken to forward his name for approval. **[Goalbadan Mandal v. State of W.B.]**

In the instant matter, the petitioner, an assistant teacher in a primary school retired from service on superannuation on 31.08.2020 after serving for 9 years, 5 months, and 17 days.

The qualifying service period for receiving pension as per the service rules is 10 years and due to a shortfall of about 6 months and 13 days, the petitioner was denied retiring pension.

The petitioner contended that the delay in the petitioner's appointment was due to the respondent authorities, and thus, the petitioner should not be deprived of pensionary benefits. Petitioner relied on State of W.B. v. Sumohan Mondal, MAT 1211 of 2019, Niharendu Som v. State of W.B., WPA 12444 of 2017, and State of W.B. v. Aparesh Chandra Datta.

The Court held that the delay in appointment of the petitioner is solely attributable to the conduct of the respondent authorities and "**the date on which the decision is taken to forward the name of the petitioner before the Director of Secondary Education shall be treated as the date of appointment notionally** only for the purpose of computing the period of qualifying service for consideration of the claim of the petitioner for pensionary benefit."

Click here to read notification.

Employee has "Right to vent", management cannot take action for messages sent in private WhatsApp group: Madras High Court.

The petitioner works as a Group B Office Assistant in the Tamil Nadu Grama Bank. He was facing disciplinary action at the hands of the management. The petitioner was suspended on 05-08-2022 on the ground that **he had posted certain objectionable messages mocking the administrative process/decisions and belittling the higher authorities in a WhatsApp group** on 29-07-2022. The suspension order was stayed on 18-08-2022. After revoking the suspension, the impugned charge memo came to be issued. Challenging the same, the present writ petition was filed. **[A. Lakshminarayanan v Assistant General Manager]**

The respondent contended that employees have to comply with and obey the instructions issued vide Circular No.82/2019-20 dated 23-07-2019. Since the petitioner has contravened the same, Regulation 39 which provides for penalties for breach stands attracted.

The Court said that the petitioner admittedly posted the subject message in a WhatsApp group. WhatsApp is essentially a communication platform. It is end-to-end encrypted. Messages can be sent from one to another. In the alternative, there can also be a group of persons among whom the messages can be privately shared. Someone who is not a part of the group cannot have access to the conversation exchanged among the WhatsApp group members.

The Court said that as per the petitioner **the said WhatsApp group is a private group that exists to organize their union activities and to communicate among them**.

The Court relied on Bharathidasan University v. All-India Council for Technical Education, (2001) 8 SCC 676 and said that if the circular is applied literally and verbatim, the act of the petitioner does amount to misconduct. Further, it refused to strike down the circular, and agreed to read it down, so that it is in conformity with the law.

The Court also said that if the employer interferes with, restrains or coerces workmen in the exercise of their right to organize a trade union or to engage in activities for the purposes of collective bargaining or other mutual aid or protection, that amounts to unfair labour practice. The very purpose of the employees coming together is to negotiate with the management in respect of their service conditions. If necessary, the employees will have to fight with the management for acceptance of their demands. These are legitimate activities in a democratic republic. **Article 19(1)(a) of the Constitution of India guarantees freedom of speech and expression, subject to reasonable restrictions.**

The Court coined the term '**Right to vent'** and said that **every employee or a member of an organization will have some issue or the other with the management. To nurture a sense of grievance is quite natural**. It is in the interest of the organization that the complaints find expression and ventilation. It will have a cathartic effect. If in the process, the image of the organization is affected, then the management can step in but not till then.

Contd. ...

Contd. ...

While reiterating the common law principle that “every man’s home is his castle”, the Court said that a group of employees if having a chat in one of their homes, so long as it is a private chat, it cannot attract the regulatory framework of the management. If bar room gossip is published, that would attract contempt of Court. But, as long as it remains private, cognizance cannot be taken. The principles applicable to a chat in a home can be applied to what takes place in an encrypted virtual platform that has restricted access. Such an approach alone will be in consonance with liberal democratic traditions.

While reiterating the Right to privacy, the Court said that not only individuals but even groups have privacy rights. It’s time to recognise the concept of “group privacy”. So long as the activities of a group do not fall foul of the law, their privacy must be respected. Thus, when the members of a WhatApp group are merely discussing among them, matters of common interest cannot be a target of attack. However, if the members of a WhatsApp group share child pornographic content, it is a crime and a punishable activity. If they conspire to commit any unlawful act, then the regulatory framework will step in.

The Court said that the members of WhatsApp group formed by the petitioner felt aggrieved by some of the actions of the Bank. The petitioner expressed his views. **The manner of expression cannot be said to be in good taste, but, everyone has his own way of articulating.**

The Court took note of Retheesh P.V vs. Kerala State Electricity Board Ltd, wherein the Kerala High Court said that posts made in a private WhatsApp group without any access to the public, even if denigratory, cannot ipso facto be construed as a disciplinary infraction by an employee.

Thus, the Court held that **the message posted by the petitioner cannot be said to attract the Conduct Rules laid down by the management.** Any employee is bound to show courtesy to the superior officer in his dealings. But while gossiping privately with a fellow employee, the officer may come in for all kinds of criticism. If this had taken place over a cup of tea outside a shop, the management could not have taken note of it. Merely because the same exchange took place among a group of employees on a virtual platform with restricted access, it cannot make a difference.

Click here to read Judgement.

PC | The High Court of Madras | The WhatsApp | Prime Legal | Andriod Central | WhatsApp Welcome Screen

TN Police to reinstate inspector who took 'unauthorised' paternity leave: Madras High Court.

The Court noted that paternity leave is not provided in various states in India, including Tamil Nadu, and called for legislation to this end. **[B Saravanan v. The Deputy Inspector General of Police, Tirunelveli Region]**

Sarvanan, an inspector of police at Kadayam Police Station in Tenkasi District of Tamil Nadu, applied for paternity leave for 90 days from May 1, 2023 to July 29, 2023.

While such leave was initially granted to him, on April 30, just a day before he was to go on leave, the concerned Superintendent of Police cancelled his leave citing a "cryptic reason."

Sarvanan then approached the High Court, which allowed him to stay away from police duty till May 15 and make a fresh representation for leave. He did so, but was granted leave only from May 1 till May 30.

His wife, who was in a critical condition owing to the IVF pregnancy, gave birth on May 31. Sarvanan said he had no choice but to take time off to take care of his wife and child. He sent a written representation to his superiors seeking extension of leave and also sent them WhatsApp messages informing them of the urgency of the situation.

Despite this, the authorities on June 22 issued a desertion notice against Sarvanan, suspending him and asking him to give an explanation to the concerned Deputy Inspector General (DIG) for going on unauthorised leave.

Sarvanan then filed the present petition in the High Court seeking quashing of the desertion notice and a direction for his reinstatement to his former position.

The Court noted that a **TN Police Standing Order permitted striking off officers who desert the force or are absent from work without notice or approval for two months or more**.

It added that such desertion notice or order was in breach of the constitutional right to life of Sarvanan's child.

"**The role of both the mother and father during the pre-natal care and post-natal care days gains importance from the perspective of the child's right to survive...**The right to protection of life guaranteed to every child by Articles 21 and 15(3) of the Constitution of India, culminates in the fundamental human right of the biological parents/adopting parents seeking maternity/paternity/parental leave. Thus, **the action of the respondents cancelling and refusing paternity leave to the petitioner would amount to violation of Article 21 of the Constitution of India**," the Court said.

It thus directed the concerned SP and DIG to give further time to Sarvanan to give an explanation and to "consider the case of the petitioner with a considerate mind and pass appropriate orders reinstating the petitioner," within a period of four weeks from the date of its order.

Click here to read Judgement.

Dispute under Apprentices Act 1961 cannot be treated as 'industrial dispute': Rajasthan High Court.

PC | The High Court of Rajasthan | Bar and Bench

The Rajasthan High Court at Jaipur has held that a **dispute under the Apprentices Act 1961 cannot be treated as an 'industrial dispute' under the Industrial Disputes Act, 1947**. It was cited "Section 18 of the 1961 Act which states that apprentices are trainees, not workers and that provisions of any law with respect to labour shall not apply to or in relation to an apprentice." **[Indian Oil Corporation Limited v. Shri Narendra Singh Shekhawat & Anr.and Other Connected petitions]**

The bench thus set aside an award passed by the Industrial Tribunal, Jaipur which directed the Indian Oil Corporation to reinstate private respondents, who were engaged with it as apprentice for a period of 11 months. **It held the respondents cannot claim themselves as 'Workmen' to invoke the jurisdiction of the Labour Court.**

It observed, "Bare perusal of the record indicates that all the respondents have executed Apprenticeship Contract / agreement for 11 months by reading the terms and conditions mentioned therein from their naked open eyes. Hence, they are bound by the same and they are estopped to challenge the same after expiry of their term as Apprentice. Now, they cannot claim themselves as 'Workmen' to invoke the jurisdiction of the Labour Court under the provision of the Act of 1947 as the same was not applicable in their case as per Section 18 of the Act of 1961."

The respondents had joined IOCL as petrol fillers after signing a contract of apprenticeship. On completion of the 11-month period, they raised an industrial dispute before the Industrial Tribunal cum Labour Court, Jaipur under Section 10 of ID Act, challenging the validity of their termination letters as violative of Section 25F and Section 25H of ID Act.

The Court further observed, "**Section 18 of the Act of 1961 clearly excludes the applicability of the labour laws in relation to apprentice**, meaning thereby the provisions of the Act of 1947 are not applicable in the matters dealing with the apprenticeship. As **the Act of 1947 is a general law whereas the Act of 1961 is a special statue** and thus it would prevail over the general law as Section 18(3) clearly provides for non-applicability of such labour laws in the matters covered under the Act of 1961."

The Court placed reliance on State of Maharashtra and ors. v. Anita and Anr. (2016) where Apex Court held that looking to the nature of the appointment having duly accepted the term of it, the candidate is estopped from challenging the nature of appointment at the end of his service.

The court held that **the State Government was not competent to make a reference under Section 4(K) of the ID Act**.

Click here to read Judgement.

Pregnant working women entitled to maternity benefits, can't be barred solely due to nature of employment: Delhi High Court.

The Delhi High Court has observed that pregnant working women are entitled to maternity benefits and cannot be denied reliefs under the Maternity Benefit Act, 2017, solely due to the nature of their employment. **[Annwesha Deb v. Delhi State Legal Services Authority]**

The court said that **maternity benefits do not merely arise out of a statutory right or contractual relationship between an employer and employee but are a fundamental and integral part of a woman's identity who chooses to start a family and bear a child**.

The observations were made while granting relief to a pregnant woman, engaged in a contractual employment with Delhi State Legal Services Authority, seeking consecutive maternity benefits to her as applicable to regular female employees.

Her request for maternity benefit was **declined on the ground that there was no provision for grant of maternity benefits for Legal Services Authorities**.

Justice Singh said that while DSLSA admittedly extends benefits arising out of the Maternity Benefit Act to its permanent or regular employees, it was denying such benefits to contractual employees.

Observing that the authority should have extended the benefits and reliefs under the Maternity Benefits Act to the petitioner as being extended to other similarly situated employees, the court directed DSLSA to release all medical, monetary and other benefits that accrued in favour of the woman on account of her pregnancy as per law.

Furthermore, the court said that the work environment should be conducive enough for a woman to facilitate **"unimpaired decision making regarding personal and professional life"**. It added that it must be ensured that a woman who chooses to have both, a career and motherhood, is not forced to make an "either-or" decision.

Click here to read judgement.

PC | Welcome to Delhi High Court | delhihighcourt.nic.in

Contractor cannot deny payments to 'Sub-Contractor' merely on the ground that it has not received the payments from the 'employer': Delhi High Court.

The Delhi High Court dismissed a petition preferred under **Section 34 of the Arbitration and Conciliation Act, 1996** assailing the Arbitral Award finding that the Arbitral Tribunal (AT) had reasonably evaluated the claims and that a contractor cannot deny payments to the 'Sub-contractor' merely on the ground that the contract was on back-to-back basis and it has not received payments from Principal employer. **[Gannon Dunkerley And Co Ltd. v. M/S Zillion Infraprojects Pvt Ltd.]**

Click here to read Judgement.

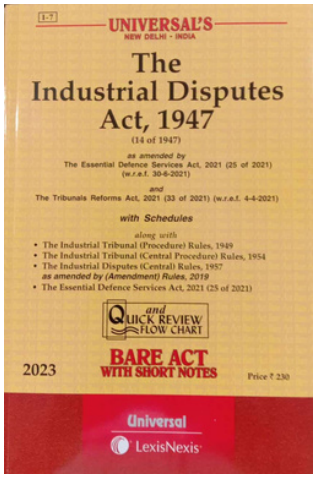
Principal employer not liable for interest/penalty on delayed compensation for accident/ death of contractor's employee: Bombay High Court.

The Bombay High Court clarified the responsibilities of contractor's employer in case of an accidental death or injury. The court ruled that **the Principal employer's responsibility is restricted to providing compensation as specified in Section 12 of the employee compensation act**. It clarifies that any penalty or interest for default is not part of the principal employer's liability in such cases. **[Chief Executive Officer, Zilla Parishad, Ahmednagar and Anr. v. Suraiyya Rafik Khalifa and Ors.]**

PC | The Bombay High Court | Dreamstime

Click here to read Judgement.

Employer's failure to assign work to employee deemed retrenchment: Jammu & Kashmir High Court.



PC | The Industrial Disputes Act, 1947 | LexisNexis

The Jammu & Kashmir and Ladakh High Court ruled that even if an employer corporation does not explicitly issue a termination order, its behaviour of not assigning work to an employee while doing so for others can still be considered as retrenchment under the Industrial Disputes Act of 1947. **[Managing Director JK Handicrafts v. Aga Syed Mustafa & Anr.]**

Click here to read Judgement.

LATEST FROM THE CENTRAL GOVERNMENTS

Circular on relaxation of the eligibility conditions for sickness benefit and maternity benefit during Covid-19: ESIC.

During nationwide lockdown in view of Covid-19 the large number of ESI units were not functional and many IPS/IWs were facing the hardship for getting maternity benefit/sickness benefit.

Amendments were made under **Rule 55 and 56 of the ESI Rules for relaxing 78 days contributory conditions in order to provide sickness benefit** to IPs and IWs who do not fulfil the required and eligibility condition for sickness benefit and maternity benefit for the period January-June 2021.

In view of the amendment all regional offices and sub-regional offices are **requested to scrutinize all such claims received from IPs/IWs for the respective benefit period from 01/01/2021 to 30/06/2021** and to settle the same.

Click here to read Circular.

Circular regarding extension of ESIC Scheme to the Casual/Contractual workers under Municipal Corporation/Municipal Bodies under the control of State Government/ UTs: ESIC.

The Meghalaya and Sikkim Government issued final notification for the extension of **coverage to the Casual and Contractual workers** engaged under Municipal Corporations and Municipal Councils in the respective States/Union Territories under Employees' State Insurance Act, 1948.

Click here to read Circular.

The ESIC has **updated the State-wise list of notified/non-notified districts** under ESIC.

Click here to read Circular.

PC | The ESIC | SightsIn Plus

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.	Maharashtra	01.07.2023 – 31.12.2023	Government Notification
2.	Mumbai & Thane (Security Guard Board)	01.07.2023	Government Notification
3.	Goa (Scheduled Employment)	11.08.2023	Government Notification
4.	Uttarakhand (Engineering Industry)	01.08.2023 – 31.01.2024	Government Notification
5.	Pune (Security Guard Board)	01.07.2023 – 31.12.2023	Government Notification
6.	U.T. of Dadra & Nagar and Daman & Diu	01.04.2023	Government Notification
7.	Uttar Pradesh (Engineering Industry)	01.08.2023 – 31.01.2024	Government Notification
8.	Haryana	01.07.2023	Government Notification
9.	Madhya Pradesh Scheduled Employment	01.04.2023 – 30.09.2023	Government Notification

Notification regarding permitting all Shop and Establishments to keep open on all 365 days for the further period of 1 year till 31st December 2023 under Meghalaya Shops and Establishment Act, 2003.

This notification is in supercession of Notification No. LBG.132/82/Pt/Vol.1/73, dated 28th February, 2022. The Governor of Meghalaya is pleased to exempt all establishments from the provisions of section 6 of the Meghalaya Shops and Establishments Act, 2003 and permits all the establishments registered under the said Act in the State of Meghalaya to **keep open on all 365 days of the year for a further period of one year** i.e., upto 31st December 2023 subject to certain conditions. This will come into immediate effect and until further orders.

Click here to read Notification.

Notification on appointment of appellate authority under Industrial Employment (Standing Orders) Act, 1946 in the cases of Sexual Harassment of Women at Workplace.

The Government of Telangana **appoints eight (8) Labour Courts and Industrial Tribunals** in the Telangana State constituted under section 7 of the Industrial Disputes Act, 1947 to exercise the functions of an Appellate authority under the said Act in respect of the Industrial establishments in relation to which the **State Government is the appropriate authority for preferring appeals** in the cases of sexual harassment of Women at Workplace.

Click here to read notification.

Sikkim announces 12-month maternity & 1-month paternity leave.

The Sikkim Government has announced **one year of maternity and leave and one-month paternity leave for its employees**. This announcement has been made to benefit the government employees since the state has the **lowest population in India at around 6.32 lakhs**.

Click here to read more.

Public Notice on Standard Operating Procedures for various manufacturing processes in the factories.

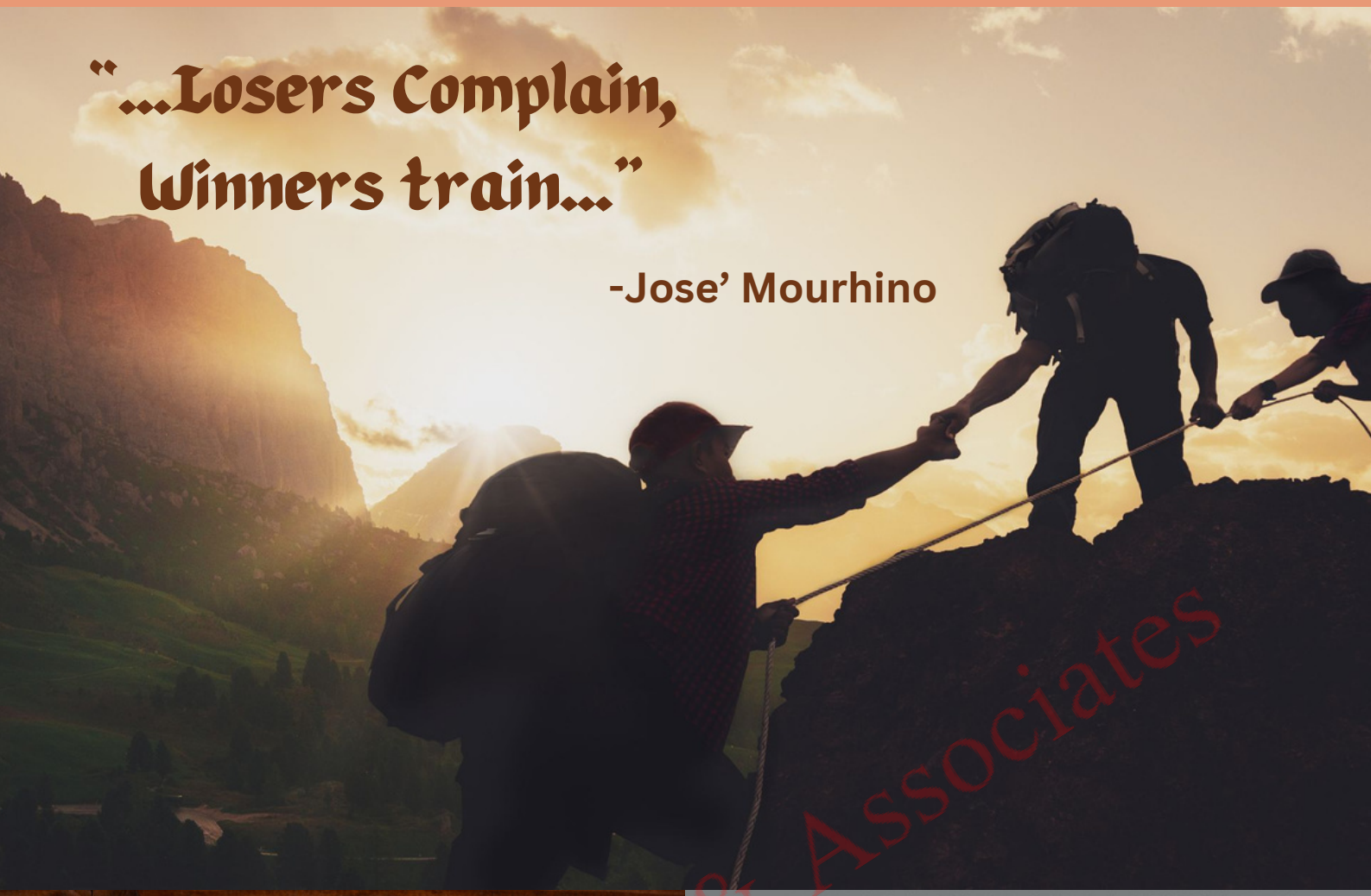
The Government of Haryana introduced **Standard Operating Procedures (SOPs) to reduce the fire accidents and the dangerous occurrences in the factories** where the hazardous chemicals, gases and other flammable substances are being used. All the Factory owners/Stake holders are advised to **carry out their manufacturing process safely and in accordance with these Standard Operating Procedures**.

Click here to read notice.

Guidelines for implementation of National Apprenticeship Promotion Scheme-2(NAPS-2) .

National Apprenticeship Promotion Scheme-2 (NAPS-2) **aims to promote apprenticeship training in the country, by providing partial stipend support to the apprentices** engaged under the Apprentice Act, 1961, undertaking capacity building of the apprenticeship ecosystem, and **providing advocacy assistance to the stakeholders**.

Click here for extensive guidelines.



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- 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
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