

THE LABOUR TUTORIALS

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS



PC | News18 | BQ Prime | Companies to increase workforce | Industrial Production

PRINCIPLE OF “NO WORK, NO PAY”

The Principle of “No Work, No Pay” depicts that if an employee has not worked for any day or period, the employee will not be eligible for payment of any salary. This is applicable only when the employee was not kept away from work by any order of the employer.

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- Apex Court upholds judgment treating daily wage employee working on sanctioned post as Central Govt. employee for child's admission in Kendriya Vidyalaya.
- Appeal from workmen's compensation commissioner can be entertained only if there is a substantial question of law.

LATEST FROM THE HIGH COURTS

- Employing a School Guard with a salary of ₹150 amounts to forced labour: Allahabad High Court.
- FCI to pay employee's Gratuity, says it can only be stopped if employment terminated: Calcutta High Court.

LATEST FROM THE CENTRAL GOVERNMENT

- Circular regarding request for registration of new employees by seeding of Aadhaar Number -ESIC.

LATEST FROM THE STATE GOVERNMENTS

- Revised Minimum Wages.

LATEST FROM THE SUPREME COURT OF INDIA

Apex Court upholds judgment treating daily wage employee working on sanctioned post as Central Govt. employee for child's admission in Kendriya Vidyalaya.

In the pertinent case, the petitioner was a bona-fide Himachali and belonged to the scheduled tribe category. He had applied for admission to Class IX being ward of a Central Government Employee. The father of the petitioner was serving in the Income Tax Department as daily wage employee for more than 18 years. Relying on that ground, **Kendriya Vidyalaya refused admission, contending that as per the guidelines for admission, a daily wage employee does not fall within the definition of Central Government employee.**

As per the Kendriya Vidyalayas Revised Admission Guidelines session 2022-23, children of an employee working in the Central Government in

substantive capacity can be granted admission in the Kendriya Vidyalaya. Therefore, as per respondents, father of the petitioner is not a regular employee of Income Tax Department and hence, refused admission in Kendriya Vidyalaya.

Considering the peculiar facts and circumstances of the case, the High Court noted that the petitioner who appeared to be brilliant student cannot be estopped from getting education in good school like Kendriya Vidyalaya. **[Kendriya Vidyalaya Sangathan & Anr. v. Swastik Thakur & Anr.]**

[Click here](#) to read Judgment.



PC | The Kendriya Vidyalaya | The Supreme Court of India | Bhopal Indian Wire | Colaboratory



Employee found unsuitable for job can be dismissed without Notice during probationary period.

The Supreme Court reiterated the distinction between simple termination and punitive termination. This distinction is important because if the order of termination is punitive in nature then it becomes mandatory to conduct an investigation following the procedure and the opportunity to be heard should be given. Failure to do so may render such termination illegal and in violation of the principles of natural justice.

The respondent was appointed as a constable and joined for duty on 12 November 1989. During his probation period, he remained absent without notice. **The Superintendent of Police at the Training Center recommended his dismissal on the grounds that he was not likely to become an efficient police officer under Rule 12.21 of the Punjab Police Rules, 1934.**

“If he is not found suitable for the post then the

Master reserves the right to terminate his service without doing anything further during the probation period. Merely holding a preliminary inquiry where an explanation is sought from an employee will not render an otherwise harmless order of dismissal or termination from service punitive in nature. Therefore, **the High Court was clearly in error in holding that the absence of the respondent from duty was the basis for the order, which required the inquiry envisaged under Rule 16.24 of the Rules.**”

The Court held that the approach taken by the High Court and the lower courts is completely wrong in law and deserves to be set aside. **[State of Punjab and Others v. Jaswant Singh]**

[Click here](#) to read Judgment.

Candidate accused of heinous offence can't claim Right to Appointment when acquittal was on 'Benefit of doubt'.

In a significant ruling, the Supreme Court held that **an acquittal in a criminal case does not automatically qualify a candidate for a sensitive law enforcement post, particularly when the acquittal is based on technical grounds or on giving benefit of doubt.** The Court emphasized that employers retain the right to assess a candidate's suitability for a position. **[The State of Madhya Pradesh and Others. v. Bhupendra Yadav]**

[Click here](#) to read Judgment.



PC | The Supreme Court of India | New Indian Express



Appeal from workmen's compensation commissioner can be entertained only if there is a substantial question of law.

The Supreme Court has held that **an appeal under the Workmen Compensation Act (WCA) [now, Employee's Compensation Act] against the commissioner's order is sustainable if a 'substantial question of law' is to be decided** or if the findings are perverse.

The Court allowed a Civil Appeal challenging the High Court's decision that overturned the Commissioner's order. The Commissioner granted compensation to the legal representatives of the deceased employee, who died after being struck by a log while tying logs onto a trailer.

The Appellants i.e. the mother and the wife of the deceased Ramakant Yadav, claimed that he died while working as a driver for Kutch Carrier. They alleged that he was tying logs onto a trailer when one fell on his left leg, causing his death before he could receive medical treatment. However, insurer denied the deceased's employment with Kutch Carrier due to a lack of documents and proof of income. The insurer denied the claim for

compensation of ₹3,94,120/-.

Despite the insurer's denial, the Court ordered the Respondents to pay the compensation amount with interest from the date of the deceased's death. The employer was also ordered to pay a penalty of 50% of the compensation amount. A Civil Appeal was filed challenging the judgment of the High Court whereby the Court had set aside the order of the Commissioner for WCA, awarding compensation in favour of legal representatives of the deceased employee.

The Hon'ble SC observed that **the impugned judgment must stand true on two grounds, (i) statutory text and (ii) whether the materials on record support the conclusion drawn therein or not.**

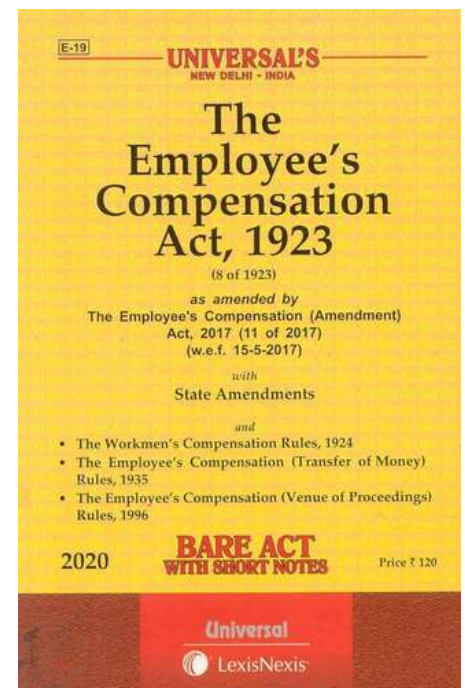
The Court noted that as per WCA, an appeal can only be made from an order of the Commissioner if there is 'a substantial question of law' to be considered and the phrase is to be interpreted according to its general meaning, based on the Code of Civil Procedure (CPC). **The Court observed**

that the CPC rule states that framing a substantial question of law is essential.

The Bench, while emphasizing that the WCA was designed to promote social welfare, noted that the WCA should be interpreted in a way that favours the employees.

Accordingly, the Court allowed the Appeal and set aside the impugned orders. **[Fulmati Dhrmdev Yadav & Anr. New India Assurance Co. Ltd. & Anr.]**

[Click here](#) to read Judgment.



PC | The Employees' Compensation Act, 1923- Bare Act | Amazon.in



LATEST FROM THE HIGH COURTS

Employing a School Guard with a salary of ₹150 amounts to forced labour: Allahabad High Court.

The Allahabad High Court at Lucknow while dealing with a Writ Petition filed by a Security Guard, working at a Government School, seeking regularization of his employment status and a salary equivalent to the pay scale of a Class IV employee, stated that **receiving a salary of Rs. 150 per month since 1998 amounted to forced labour by the State of Uttar Pradesh and was strictly prohibited by law.**

The Single Judge Bench after finding that the Petitioner joined the post of Chowkidar in 1992 on the fixed salary of Rs.30/- which was increased to 150 since 1998, in its order stated, "**In case the State Government forces labour at such ridiculously low rate, on which no human being can maintain himself or even exist, the exaction of work cannot be treated other than a exploitation of human labour, violating basic human rights and right to work with dignity violating Article 21 of the Constitution of India.**"

The High Court after considering the submissions noted that the petitioner completed many years of service without any break on the post of Choukidar that he joined on the fixed salary of

Rs.30/- which was increased to Rs.150 in 1998. The Court also observed that the **Petitioner has been working in the school daily from 10 a.m. to 4 p.m. like other employees since 1992** and there is no complaint in regard to the work and conduct of the Petitioner.

Accordingly, the Court held that **the duty of the Petitioner is to maintain security in the school and the nature of work involves regularity, responsibility** and the same, if not more working hours as regular employees and ordered that considering in totalities of facts and circumstances of the case, this writ petition is disposed of with a **direction to the respondents to pay current wages equivalent to the minimum of pay scale admissible to Class IV employees.**

The Court also stated that the candidature of the Petitioner shall also be considered for regularization by the Respondents. [**Amar Singh v. State Of U.P**]

[Click here](#) to read Judgment.

Gravity of misconduct, past conduct, previous penalty necessary factors before Dismissal from service: Allahabad High Court.

The Allahabad High Court held that **while awarding major punishment of dismissal from service, surrounding factors along with past record need to be considered by the disciplinary authority.** "Gravity of misconduct, past conduct, nature of duties, position in organisation, previous penalty, if any and

requirement of discipline to be enforced were relevant to be considered by the disciplinary Authority before awarding punishment to the respondent. [**Union of India & 3 Ors. v. Yashpal**]

[Click here](#) to read Judgment.



Sister cannot seek compassionate appointment upon death of married brother: Karnataka High Court.

The Karnataka High Court has dismissed an appeal filed by a woman claiming a job on compassionate grounds upon the death of her brother in harness on the ground that **sister cannot be construed as a member of her brother's family.**

The Bench said that the **appointment on compassionate ground is an exception to the general rule of equality** in public employment enacted in Articles

14 & 16 of the Constitution.

In this case, the appellant was a sister of the deceased employee.

The Court said that **a sister does not figure in the definition of the said Rule 2(1) (b) of 1996 Rules** and hence, the Rules providing for such appointment need to be construed strictly.

The Court concluded that the **appellant has placed no**

material on record to show that she was dependent on the income of her brother at the time of his death in harness and that there is no material to assume that the deceased's family was in financial distress as would justify the claim for appointment on compassionate ground. **[Pallavi G.M. v. The Managing Director Karnataka Power Transmission Company Limited (KPTCL) & Ors.]**

[Click here](#) to read Judgment.

Health Dept to release Gratuity withheld since 16 yrs, says it's no 'Bounty' dependant on employer's sweet will: Karnataka High Court.

Observing that **“gratuity is not a bounty that can be withheld at the sweet will or whim of the employer,”** the Karnataka High Court directed State's Health Secretary to disburse the gratuity amount of a former employee which has been pending for the last 16 years, within 30 days.

“The entitlement of gratuity and interest on its delayed payment are both statutorily mandated,” High Court observed at the outset. It referred to Section 7(3)(a) of the Act which depicts entitlement of an employee for simple interest as notified by the Central Government from time to time.

The bench said, “Admittedly in the case at hand, 11 years have passed by, pursuant to the directions issued by the Controlling Authority



PC | The Karnataka High Court | Navbharat Times

for payment of gratuity and 16 years have passed by with the petitioner attaining the age of superannuation. Therefore, it is not delay alone, but culpable delay on the part of the respondent in not paying the amount of gratuity that the petitioner was at all time entitled to.” **[Babu s/o Shankarappa Mukkannvar And Union of India & Others]**

[Click here](#) to read Judgment.



FCI to pay employee's Gratuity, says it can only be stopped if employment terminated: Calcutta High Court.

The Calcutta High Court has directed the **Food Corporation of India ("FCI") to pay a former employee's gratuity along with 8% interest, within four weeks** in a challenge against withholding of his gratuity due to ongoing criminal investigations under allegations of 'moral turpitude.'

These observations came in a plea by a superannuated employee of FCI challenging the order of the Deputy Chief Labour Commissioner, which denied him payment of his gratuity and requesting for a direction upon his employers to release his dues along with interest.

Petitioner had joined FCI in 1978, and was placed on suspension in 2012 due to audits conducted after a shortage of grains found in some FCI sheds. Such suspension was revoked later that year, and the petitioner was reinstated.

In January 2013, a charge sheet was issued against the petitioner and he was summoned for disciplinary hearings, soon after which he superannuated in November of the same year. Pursuant to the inquiry in to the petitioner, the FCI issued a punishment against him for a token recovery of Rs 1 lakh "from retiral dues other than gratuity."

Petitioner contended that he had not received gratuity and approached the Regional Labour Commissioner (Central), Kolkata for a payment of gratuity worth Rs. 10,00,000/-.

Respondents contended that the petitioner did not '**serve faithfully**' and that it would count as **an offence of moral turpitude u/s 4(6) of the 1972 Act.**



PC | The Food Corporation of India | Wikipedia

Finally, in deciding whether the petitioner's gratuity could be forfeited under Section 4(6) of the 1972 Act, the Court held that such a statutory clause could only be invoked when **termination of employment on grounds of such "offences involving moral turpitude",** are established in a court of law." [Surenra Prasad v. The Union of India & Ors.]

[Click here](#) to read Judgment.

Married daughter can't challenge denial of compassionate appointment in absence of dependency, financial hardship of bereaved family: Madras High Court.

The Madras High Court has made it clear that even though daughters of the deceased are **equally eligible to be considered for compassionate employment regardless their marital status,** the appointment has to be considered on touchstone of criteria like dependency, financial status of the bereaved family. [A Chinnaponnu v. Union of India and Others]

[Click here](#) to read Judgment.



Recovery of interest on delayed Pension payment from responsible Public Officers: Himachal Pradesh High Court.

In the instant case, **the petitioner had retired prematurely as a Medical Officer on 24-8-2021.** Thereafter his retirement, as per the Central Civil Services (Pension) Rules, 1972 ('the Rules'), **the petitioner became entitled to pension, gratuity, leave encashment, General Provident Fund and benefits of Group Insurance.**

Despite the lapse of about eight months from the date of the petitioner's retirement, his benefits were not disbursed. Thus, the petitioner filed the writ petition before the Court.

The Court noted that **the petitioner had served the State Government for twenty-eight years and nine months and was entitled to pension and all other retiral benefits**

admissible to him as per the Rules.

The Court further stated that two years had passed since the petitioner's retirement and he had not been disbursed his entire dues till date. The State Government had yet not been sure about the timeline within which it will be able to discharge the liability.

The Court opined that **the situation in the instant case was not a solitary instance** and the instances of delay in disbursement of retirement benefits were being brought before the Courts repeatedly. Further, the Court opined that the public authority that was responsible for discharge of duties without any delay, if failed to do so, should be made accountable for its lapses. Public authorities

hold the public funds in trust and public money could not be allowed to be wasted by unjustified delays caused by them.

Thus, the Court directed the respondents to **pay the balance of retirement dues along with an interest at the rate of 6% per annum within six weeks** from the date of this judgment and also issued direction to Respondent 1, to conduct an independent and impartial inquiry regarding delay in the petitioner's case and recover the amount of interest payable to the petitioner from the public officer found for the lapse. **[Vinay Patyal v. State of Himachal Pradesh]**

[Click here](#) to read Judgment.



PC | The Himachal Pradesh High Court | hphighcourt.nic.in | Wikipedia



Daily wage workers entitled to claim Subsistence Allowance during suspension: Kerala High Court.

The Kerala High Court has held that under **the Kerala Payment of Subsistence Allowance Act 1972, a daily wage employee is entitled to subsistence allowance during suspension.** The Court observed, “Section 2(a) does not exclude a daily wage employee for the purpose of payment of subsistence allowance and accordingly held that the 1st respondent, who was working as a driver of the Petitioner, a government company, on daily wages was placed under suspension and a claim for subsistence allowance as per the Kerala Payment of Subsistence Allowance Act was allowed by the Conciliation Officer. Writ

Petition, preferred against the same on the ground that a daily wager is not entitled to Subsistence Allowance, was turned down by the Court holding that, a driver, is a skilled worker who comes within the definition of an employee under S.2(a) and it does not exclude a daily wage employee for the purpose of payment of subsistence allowance. **[Kerala State Horticultural Products Development Corporation Limited v. Sunil Kumar S & Ors.]**

[Click here](#) to read Judgment.

Period of absence of convicted employee who is later acquitted to be counted towards seniority and Subsistence Allowance but not backwages: Delhi HC.

The Delhi High Court has ruled that the period under which an employee is placed under suspension, cannot be treated as period “not spent on duty” for all intents and purposes. **The court remarked that the period can be treated as “not spent on duty” only for the purposes of back wages and not for the purposes of seniority and promotion.**

The court also said that an employee who is placed under suspension and dismissed from criminal proceedings, and later

re-instated on his acquittal in appeal, **will not be entitled to back wages or any pay or allowances for the period of suspension on the basis of the principle of “no work, no pay”.** However, the employee would be **entitled to subsistence allowance** during the suspension period, adding that **the denial of the same would amount to violation of Article 21 of the Constitution of India.**

“The very nomenclature of subsistence allowance

demonstrates that the same is given to an employee to sustain himself and his family during the period of suspension. **Subsistence allowance is not a largesse, but the statutory right of an employee,** and any denial of the same would amount to violation of Article 21 of the Constitution of India,” the bench said. **[Vinod Kumar vs G.N.C.T. of Delhi and Ors.]**

[Click here](#) to read Judgment.



Workman's unauthorised absence from work due to ill health, not wilful or negligent: Telangana High Court.



PC | The High Court of Telangana | tshc.gov.in

The petitioner's husband worked as a conductor since 1986 till he was removed from service by the respondent after an order in 2006 on **the charge that he was absent from duties from 05-03-2006 to 23-03-2006 and that he maintained irregular attendance.** The petitioner stated that her husband died in November 2006 and aggrieved by the order of removal, the petitioner raised Industrial Dispute (I.D) before the Labour

Court to treat her husband as in service from the date of removal till the date of death with all attendant benefits and back wages as her husband remained unemployed during the said period.

The Court noted that **the deceased was sick for some time before the date of charged unauthorised absence,** as he underwent surgery in January 2006 and was advised to take bed rest for

two months, even after surgery; thereafter, illness of the deceased did not cure, and the sickness developed side-effects and it was probable to believe that they consumed the life of deceased.

The Court opined that the charged absence was unauthorised but not wilful or by negligence, hence, the punishment of removal was unjustified. Thus, the Court allowed the petition and while setting aside the order of removal, **directed the respondents to count the service of the petitioner from the date of removal till his death with all attendant benefits payable to the petitioner** but without backwages within a period of two months. **[Amrutamma v. Managing Director APSRTC]**

[Click here](#) to read Judgment.

Situs of workman's place of employment vital to confer territorial jurisdiction on Labour Court: Delhi High Court.

The Delhi High Court has observed that **the situs of a workman's place of employment is a determinative factor in conferring territorial jurisdiction on a labour court** for deciding a labour dispute raised by a workman although

not specified in the Industrial Disputes Act. **[J. Balaji v. The Hindu New Delhi & Anr.]**

[Click here](#) to read Judgment.



LATEST FROM THE CENTRAL GOVERNMENTS

Circular regarding request for registration of new employees by seeding of Aadhaar Number -ESIC.

Provision for seeding Aadhaar has been deployed in the online application and **new employees can be registered by providing the Aadhaar number, on voluntary basis.**

The Employee shall be benefited by seeding of Aadhaar in the online application ESIC data base /creation of ABHA number.

[Click here](#) to read Circular.



PC | Aadhaar Card | ESIC | Formatplanets | Hindustan Times

Notification regarding extension of Atal Beemit Vyakti Kalyan Yojana for period of 01/07/2022 to 30/06/2024 - ESIC



PC | Atal Bimit Vyakti Kalyan Yojana | Sarkari Yojana

The ESIC vide earlier notification had extended Atal Beemit Vyakti Kalyan Yojana for a period 01.07.2021 to 30.06.2022.

Now **it has been decided to extend the same for the period 01.07.2022 to 30.06.2024** with the relaxed eligibility conditions and enhanced rate of relief notified in the Gazette of India.

[Click here](#) to read Circular.



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.	Kerala (Electronic equipment's, home appliance and operation of software system industry)	07.09.2023	Government Notification
2.	Maharashtra (Security Guard Board)	01.07.2023	Government Notification
3.	Puducherry (Building Operation Industry)	19.09.2023	Government Notification
4.	Madhya Pradesh Scheduled Employment	01.10.2023 – 31.03.2024	Government Notification

Erratum to Various notification on revision of minimum rate of wages for loading and unloading operation in markets, shandies(fairs & market places), Paper and other incidental processes: Govt. of Tamil Nadu

[Click here](#) to read Notification.

Notification regarding certain exemptions to all the factories in Punjab under the provisions of Sections 51, 52, 54 and 56 of the Factories Act, 1948.

The Govt. of Punjab exempted all the factories from provisions of Sections 51-(Weekly Hours),52-(Weekly Holidays),54-(Daily Hours) and 56-(Spread over) of the Factories Act with subject to certain conditions. Click here to read notification.

[Click here](#) to read Notification.



PC | Government of Punjab | Wikipedia

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the office, with hard work put
in by a team.**

—EMILY CHANG

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