

# THE LABOURTORIALS<sup>®</sup>

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS

## WORD OF THE MONTH

### NON-COMPETE AGREEMENT

A non-compete agreement is a contract restricting an employee from obtaining employment with a competitor within a specified industry, distance and/or time frame.



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## KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- Employees of a Board can't be treated as State Govt. employees.
- CCS (Pension) Rules- service rendered as contractual employee won't qualify for pensionary benefits.

LATEST FROM THE HIGH COURTS

- Woman entitled to Maternity leave even after birth of child as per Maternity Benefit Act 1961: Allahabad High Court.

LATEST FROM THE CENTRAL GOVERNMENT

- Circular regarding ensuring registration of all schools affiliated with CBSE under EPF & MP Act, 1952: EPFO.

LATEST FROM THE STATE GOVERNMENTS

- Revised rates of minimum wages.
- Notification of the Karnataka Tax on Profession, Trades, Callings and Employments (Amendment) Act, 2023: Govt. of Karnataka

# LATEST FROM THE SUPREME COURT OF INDIA

## Employees of a Body Corporate established by the State can't be treated as State Govt. employees.



PC | The Supreme Court of India

The Supreme Court has held that **the employees of a body corporate established by a State Government cannot be treated at par with the employees of the State Government.**

"Even when the State has established the Board to carry out its obligations in terms of Article 43 of the Constitution of India, it cannot follow as a corollary that the employees of this body corporate have to be

treated as State Government employees in all respects. Such a corollary proposition would practically amount to merging of the Board with the State Government; rather making it as one of the Departments of the Government", the Court observed while allowing the State's appeal against the High Court's judgment which held that the Board's employees are entitled to pension at par with the Government employees.

The Supreme Court noted that the service conditions of the Board's employees are specifically governed by the regulations made in this regard- Orissa Khadi and Village Industries Board Regulations, 1960 ('Regulations, 1960'). The Regulations specifically contain the stipulation in Regulation 52 that they shall not be entitled to pension. Hence, the employees cannot claim a right overriding this regulation. **[State of Orissa v Orissa Khadi and Village Industries Board Karmachari Sangh]**

[Click here](#) to read judgement.

## Mere acquittal in criminal case does not entitle an employee to reinstatement in service.

The Supreme Court observed that mere acquittal does not entitle an employee to reinstatement in service. **[Imtiyaz Ahmad Malla v State of Jammu & Kashmir]**

If a person is acquitted or discharged, it cannot obviously be inferred that he was falsely involved, or he had no criminal antecedents, the bench observed.

In this case, the petitioner was appointed to the post of constable in the Jammu and Kashmir Executive Police. However, the appointment order was cancelled on the ground that the

Petitioner was involved in a criminal case and was under arrest for four days and he consciously concealed the said information.

The SC upheld the dismissal of the employee's writ petition filed against the cancellation of appointment, by the Jammu and Kashmir High Court which held that the decision of the Director General of Police, the highest functionary in the hierarchy of police department, to consider the suitability of the appellant for induction into police force, could not be called into question.

[Click here](#) to read more.



## In Labour cases, workers should furnish their own permanent address instead of union's; service of notice should be on worker.

The Supreme Court recently took note of practical difficulties which arise in labour disputes, as most cases of workers are filed through the labour unions without mentioning their own permanent addresses. Hence, in many cases, notices are served on the Union, and if the Union is not interested in pursuing the matter, the affected worker goes unrepresented. **[M/s Creative Garments Ltd v Kashiram Verma]**

In this backdrop, the following directions were issued:

1. In future all the cases to be filed and in all the pending cases, the parties shall be required to furnish their permanent address(es).

2. Even if the representative of the workman is appearing, he shall furnish permanent address of the workman as well.

3. Even in proceedings subsequent to first stage, it shall be mandatory to provide permanent address of the party for his service.

4. Merely mentioning through Labour Union or authorised representatives, who are sometimes union leaders or legal practitioners, will not be sufficient.

5. Service of notice of workman will have to be effected on the permanent address of the workman.

[Click here](#) to read judgement.

## CCS (Pension) Rules- service rendered as contractual employee won't qualify for pensionary benefits.

The Supreme Court has held that as per Central Civil Services (Pension) Rules 1972, the period of services rendered as a contractual employee cannot be said to be service rendered on a substantive appointment. Hence, such service as a contractual employee will not qualify as service for the purpose of pensionary benefits. **[Director General, Doordarshan Prasar Bharti Corporation v Smt. Magi H Desai]**

"Therefore, the services rendered on a substantive post or services rendered as officiating or temporary service shall be treated as qualifying service. **Service rendered as casual/contractual cannot be said to be officiating or temporary service.**

The Court further clarifying the status held that even the services rendered as temporary service can be considered as qualifying service provided

that the officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post. Service rendered as casual/contractual cannot be said to be service rendered on a substantive appointment.

"The appellant - Doordarshan Prasar Bharti Corporation of India is an autonomous independent department / body. Therefore, **neither the rule nor the regularisation scheme provide that services rendered as casual / contractual shall be treated as temporary service and/or the same shall be counted for the purposes of pensionary / service benefits**", the bench observed.

[Click here](#) to read judgement.



# LATEST FROM THE HIGH COURTS

## Woman entitled to Maternity leave even after birth of child as per Maternity Benefit Act 1961: Allahabad High Court

The Allahabad High Court recently observed that **the provisions of the Maternity Benefit Act 1961 allowing for the grant of benefits to a woman would be applicable even after the birth of the child.**

Further, taking into account the spirit of the 1961 Act, the Court also observed thus:

"The Act of 1961 was enacted to secure women's right to pregnancy and maternity leave and to afford women with as much flexibility as possible to live an autonomous life, both as a mother and as a worker, if they so desire."

The Court also stressed that the grant of **maternity leave is intended to facilitate the**

**continuance of women in the workplace** and that no employer can perceive childbirth as detracting from the purpose of employment.

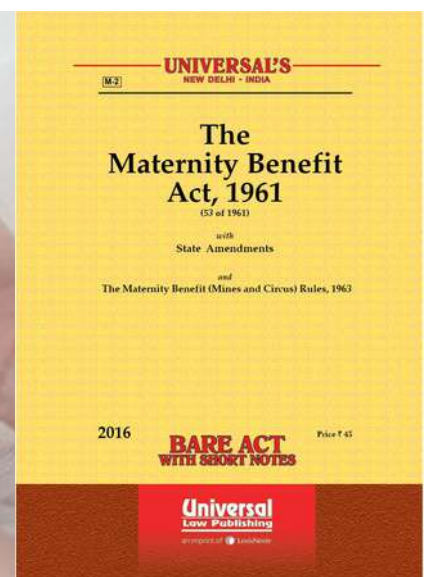
Petitioner Kumari gave birth to a girl child in a hospital on October 15, 2022, and after her discharge from the hospital, she immediately applied for maternity leave for the period 18.10.2022 to 15.4.2023 (for 180 days).

However, her request for maternity leave was denied on the ground that maternity leave cannot be granted after childbirth and that she can only apply for childcare leave under the 1961 Act.

In this regard, the Court referred to the preamble of

the Act along with Section 5 and observed that the Maternity Benefit can be extended even after birth of a child. The court further observed that the only restriction would be that the maternity leave may not be granted for entire 180 days or 26 weeks. It was further observed that availability of Child Care Leave to the petitioner or grant of the same cannot dis-entitle the petitioner for grant of maternity benefit as they both operate in different fields and are mutually exclusive. **[Saroj Kumari v State Of U.P. And 5 Others ]**

[Click here](#) to read judgement.



## "Doctrine Of Piercing Through Veil" applied to ascertain if employee's termination is punitive, stigmatising: Jammu and Kashmir High Court

The Jammu and Kashmir and Ladakh High Court recently ruled that **merely because a termination order is worded in the simplest form, it can't be not stigmatizing and in such cases, the doctrine of piercing through the veil is to be applied, to ascertain the real intent behind such termination.**

In the case, the termination order is worded quite simply yet on piercing through it is manifest that the order imputes stigma to the petitioner and on that ground is liable to be quashed, the court pointed.

Referring to the Apex Court judgment in State

of Punjab and another v. Sukh Raj Bahadur (1968), the court said if an aspersion is cast on the character of a person, it is to be considered a termination by way of punishment, even if the person claiming thereunder, is a probationer. Therefore, in view of the aforesaid settled legal position, it can be concluded that the termination was not simpliciter but stigmatizing and thereby warrants the interference of the court, the bench underscored. **[Rokade Santosh Sandashiv & Anr v Union of India & Anr.]**

[Click here](#) to read judgement.

## LATEST FROM THE CENTRAL GOVERNMENTS

### Circular regarding ensuring registration of all schools affiliated with CBSE under EPF & MP Act, 1952: EPFO

The Reference is given to letter no. CBSE/ AFF /VIP Ref. /2023 dated 18.01.2023 and letter no. CBSE/AFF/VIP Ref /2023 dated 10.01.2023 with circular No. 14/2022 dated 17.11.2022 issued by Central Board of Secondary Education regarding compliance of its affiliated Schools under EPF & MP Act, 1952.

It is requested to utilize the website link provided by CBSE (<https://saras.cbse.gov.in/SARAS/AffiliatedList/ListOfSchoolDirReport>) to verify coverage status of the schools and take necessary action, wherever required.

In cases where it is required to verify the records of the establishment for ensuring coverage, the instructions as per circular no. CAIU/011(26)2016/Inspection dated 05.03.2021 shall be followed.

[Click here](#) to read Circular.

### Circular regarding inclusion of millets in patient's diet in ESIC/ ESIS Hospitals- ESIC.

The Competent Authority has decided to incorporate millets in patients' diet at least one preparation for 2-3 times in a week in ESIC hospital in order to promote the health and nutritional benefits of millets. Further, the hospitals are advised to promote the use of millets which are locally produced so that it is cost effective.

[Click here](#) to read Circular.

### Notification regarding extending the ESI coverage in Gandhinagar district and already notified areas of said district: State of Gujarat

[Click here](#) to read notification.

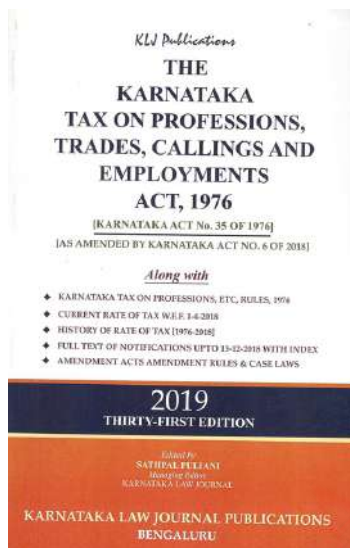


# LATEST FROM THE STATE GOVERNMENTS

## 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.	Tamil Nadu	01.04.2023	<a href="#">Government Notification</a>
2.	Karnataka	01.04.2023	<a href="#">Government Notification</a>
3.	Kerala	01.01.2023	<a href="#">Government Notification</a>
4.	Chhattisgarh	01.04.2023- 01.09.2023	<a href="#">Government Notification</a>
5.	Gujarat	01.04.2023	<a href="#">Government Notification</a>



### Notification of the Karnataka Tax on Profession, Trades, Callings and Employments (Amendment) Act, 2023: Govt. of Karnataka

The Government of Karnataka amended various provisions of the Karnataka Tax on Profession, Trades, Callings, and Employments Act, 1976, including the provision regarding escaped tax, interest on delayed payments, and consequences of failure to deduct or to pay tax.

[Click here](#) to read notification.

### Notification of amendment under The Meghalaya Trades, Callings and Employment (Amendments) Rules, 2022: Govt. of Meghalaya

The Government of Meghalaya amended the Meghalaya Professions, Trades, Callings and Employment Rules, 1947, inserting the provision regarding certificate of registration and enrolment, and the procedure and forms to obtain the certificate.

[Click here](#) to read Order.



PC | The Government of Meghalaya



# A team is a reflection of its leader.

Sunday Adelaja

“quote”

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- 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.

