

THE LABOURTORIALS[®]

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS

WORD OF THE MONTH

PENSION

An amount of money paid regularly by a government or a private Organisation to a person who does not work anymore because they have retired or have become ill.



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KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- In the absence of sanctioned post, Govt can't be compelled to create posts & absorb those in service.

LATEST FROM THE HIGH COURTS

- 'Loss of confidence' in terminated workman must be based on objective consideration of facts: Karnataka High Court

LATEST FROM THE CENTRAL GOVERNMENT

- Circular regarding aadhaar implementation in ESIC.
- Circular regarding extension of the ESI Scheme to construction site workers: ESIC.

LATEST FROM THE STATE GOVERNMENTS

- Revised rates of minimum wages.

EDITORIAL

- All you need to know about pension on higher wages.

LATEST FROM THE SUPREME COURT OF INDIA

In the absence of sanctioned post, Govt can't be compelled to create posts & absorb those in service.

The Supreme Court held that in absence of sanctioned posts, the State cannot be compelled to create posts and absorb people who are continuing in service of the State. **[Government of Tamil Nadu and Anr etc. v. Tamil Nadu Makkal Nala Paniyalargal and Ors. etc.]**

In 1989, the Tamil Nadu Government introduced a scheme providing employment to the educated youth in rural areas who had completed 10th standard, in village panchayat. A total of 25,234 MNPs (Makkal Nala Paniyalargal/Village Level Workers) were engaged throughout the State. In 1991,

the scheme was disbanded by the Government. Consequently, the employment of the persons appointed under the scheme were terminated.

The Court observed that the High Court had held that the employees who were discontinued by the Government order passed in 2011 disbanding the Government scheme are not only entitled to reinstatement but also deserve to be regularised in service after creation of post. Referring to a catena of judgments, the Apex Court opined that **Courts cannot direct for creation of posts.** The MNPs were not

appointed against a cadre post; **they were appointed under a scheme and were paid honorarium.** The Court noted that **MNPs were not entitled to reinstatement and for regularisation of service beyond the term of the scheme.** It set aside the said finding of the High Court.

However, the Apex Court granted MNPs who had not joined the 2022 scheme to accept their payment for the period from 1st December, 2011 (scheme disbanded) to 31st May, 2012 (initially scheme extended).

[Click here](#) to read judgement

Senior Govt. servants required to be at the disposal of Govt all the time; can't claim overtime allowance under the Factories Act.

The bench was deciding the issue whether employees working as supervisors at the Security Printing & Minting Corporation of India (a company under the Ministry of Finance responsible for minting currency notes) are entitled to double overtime allowance as per Chapter VI of the Factories Act 1948.

"Persons who are not holders of



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civil posts nor in the civil services of the State but who are governed only by the

(Factories Act) 1948 Act, may be made to work for six days in ... Contd.



Contd. ...

a week with certain limitations as to weekly hours under Section 51, weekly holidays under Section 52, daily hours under Section 54, etc. Workers covered by Factories Act do not enjoy the benefit of automatic wage revision through periodic Pay Commissions like those in Govt. service. Persons holding

civil posts or in the civil services of the State enjoy certain privileges and hence, the claim made by the respondents ought to have been tested to see whether it is an attempt to get the best of both the worlds", the court observed.

Here, the claim of the employees were not based on

any service rule but on Section 59(1) of the Factories Act. Since, the governing services rules did not provide for any overtime allowance, their claim was held to be untenable.

[Security Printing & Minting Corporation of India Ltd. & Ors. Etc vs Vijay D. Kasbe & Ors. Etc.]

[Click here](#) to read judgement.

Government servants can't be denied annual increment merely because they retired the very next day of earning it.

The SC held that govt. servants cannot be denied their annual increment merely because they retired the very next day after earning the same **[The Director (Admn. and HR) KPTCL and Others v. CP Mundinamani and Others]**.

The Division Bench disapproved the decision of a single-judge of the Karnataka HC which stated that the increment is in the form of incentive and, therefore, when employees are not in service, there is no question of granting them any annual increment.

By way of background, the appellant-employer had denied annual increments to the respondent-employees on the ground that they had retired the very next day of the increment becoming due. The appellants had relied upon Regulation 40(1) of the Karnataka Electricity Board Employees Service Regulations



PC | Times of India | The Supreme Court of India

1997, which provides that an increment accrues from the day after it is earned. Therefore, the appellant had denied the annual increment on the ground that the day on which the increment accrued, the employees were not in service.

"The entitlement to receive increment therefore crystallises when the government servant completes requisite length of service with good conduct and becomes payable on the succeeding day.

In the present case the word "accrue" should be understood liberally and would mean payable on the succeeding day," the Court observed.

Therefore, the Court stated that the moment a government servant has rendered service for a specified period with good conduct, in a time scale, he is entitled to the annual increment and it can be said that he has earned the annual increment.

[Click here](#) to read judgement.



LATEST FROM THE HIGH COURTS

'Loss of confidence' in terminated workman must be based on objective consideration of facts: Karnataka High Court

The Karnataka HC has said that in cases **where employer expresses loss of confidence in the workman, the Labour Court or the Industrial Tribunal, would have to consider the said contention in light of the surrounding facts and circumstances and ascertain if such a suspicion is based on objective set of facts or on the basis of any extraneous factor.**

"There cannot be such a straight jacket formula in all cases of dismissal, whether wrongful or otherwise, if the

employer were to plead loss of confidence".

It observed, "If that were to be accepted, then in all cases, the employer would come before the Labour Court and/or Industrial Tribunal and contend that the employer has no confidence in the workman resulting in the Labour Court and/or the Industrial Tribunal being prevented from ordering reinstatement in all matters... Though loss of confidence is a subjective feeling and an individual reaction, it is only when an objective set of facts and motivations give rise to

loss of confidence, that the same would have to be considered by the Labour Court."

It added, **"The aspect of the employer losing confidence in the employee would have to be taken into consideration if all actions taken by the employer are proper and correct and the actions of the workman give rise to suspicion."**

Rudresh is an Ex-Serviceman who worked in the Army for 17 years having discharged combat duty in Kargil and other forward sectors and had



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received 'Long Service and Good Conduct Medal' in the year 1999. He joined the service with the employer as a Security Guard.

In August 2006, a complaint was filed by a Security Officer alleging that Rudresh did not show respect to him in the canteen by not saluting him. It was also alleged that when Rudresh was on duty at the main gate, he allowed a truck to pass with one additional two wheeler loaded. Show cause notice then came to be issued alleging negligence in work and for not giving respect to his superior.

A domestic enquiry was conducted in respect of both notices and the Enquiry Officer submitted his report holding that all the charges against Rudresh had been proved. Following which a second show cause notice came to be issued calling upon him to show cause why he should not be dismissed from service.

After receiving his reply, the Disciplinary Authority proceeded to accept the report of the Enquiry Officer and imposed the punishment of dismissal. Aggrieved, Rudresh challenged the order of punishment which was set

aside by Labour Court. Hence, the present proceedings.

The workman opposed the plea claiming that vehicles are loaded in the warehouse where a security guard is stationed; the number of loaded vehicles is supervised by the Supervisor and certified by the Supervisor and cross-checked by the security guards and certified. Thus, he was not responsible.

It was further claimed that entire disciplinary proceedings were initiated against him of the security officer being unhappy with him for not saluting in the canteen. "The action taken against the workman has nothing to do with excess loading otherwise. The number of vehicles loaded is mentioned as 51 and subsequently, the same has been overwritten reducing the number to 50," he submitted.

On going through the records the bench said "The employer having let go of the Supervisor and the security guard as also the contract labourers who had loaded the vehicles into the truck who are primarily responsible for loading the extra vehicle in my considered opinion could not have proceeded only against the workman."

It held that "**Having come to a conclusion that there is no negligence on part of the workman and that there is no loss of confidence which can be objectively pleaded by the employer, I am of the considered opinion that there can be no misconduct said to have committed by the workman requiring any punishment to be imposed on him. Though not relevant, there is also no allegation against the workman of having enriched himself by way of misconduct and the vehicle has also been accounted for by the dealer.**"

Accordingly it allowed the petition filed by the workman and set aside the labour court order and directed that employer to settle all the dues of the workman who has superannuated as if no punishment had been imposed on the workman with continuity of service and with consequential benefits as also 25% back wages within a period of 60 days from the date of receipt of copy of this order. [**Rudresha And The Management of M/s TVS Motor Company.**]

[Click here](#) to read judgement.



EPFO to allow opting of higher pension without insisting on submission of option form under Para 26(6) of the Scheme: Kerala High Court

The Kerala High Court directed the Employees Provident Fund Organization to modify its online system to allow employees/pensioners to comply with the directives of the Supreme Court for opting for higher pension without having to provide copies of the permission under paragraph 26(6) of the Employees Provident Fund Scheme, 1952.

The petitioners' case was that even though they were allowed to pay higher contribution based on their salary, above the ceiling limit prescribed, as provided under para 26(6) of the Scheme, no formal option had been submitted by them as the EPFO had never insisted on submission of such option.

The court however, found the balance of convenience to be in favour of the petitioners and granted the interim order as prayed for: "the only view that can possibly be taken is that the petitioners have succeeded in establishing

a prima facie case, warranting an interim order in the matter. It is to be noted that the balance of convenience also favours the petitioners. Evidently, the Honourable Supreme Court fixed the cut-off date as 03.05.2023 for submitting the options. Now on account of the insistence from the EPFO to furnish the details of the option under para 26(6) of the Scheme, 1952, and also in view of the peculiar nature of the online facility provided for such submissions, they are now prevented from submitting the said options. There cannot be any dispute that if they were not permitted to submit their options before the cut-off date, they would be deprived of their opportunity to claim the benefits of the judgment of the Honourable Supreme Court forever. Therefore, the petitioners deserve an interim order for that reason, i.e. the balance of convenience, as well." **[Shaheer v. Union of India]**

[Click here](#) to read judgement.



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LATEST FROM THE CENTRAL GOVERNMENTS

Circular regarding Aadhaar implementation in ESIC.

In pursuance to the Gazette Notification dated 13-01-2023 regarding Aadhaar, the provision for seeding and authentication of Aadhaar of the newly registered insured Persons, ESIC employees and Pensioners has been implemented in the system.

Now, an employer can seed Aadhaar Number while registering an Employee. After Authentication of Aadhaar, the personal details of the employee will get auto populated in the system.



PC | Mint | Aadhaar | ESIC

Also, by providing consent, ABHA (Ayushman Bharat Health Account) No. of the employee will also be generated on the basis of provided Aadhaar Number. ABHA number is a unique identity and shall identify a person, and update his health

records across multiple Healthcare service providers.

[Click here](#) to read Circular.

Circular regarding extension of the ESI Scheme to construction site workers: ESIC



PC | iStock | Workers at construction site

The Hon'ble Supreme Court has passed an interim Order dated 27.01.2023 that the adjudication proceedings which are pending before the Employees' State Insurance Corporation authorities will be restricted to those employees 'who are covered under the circular No. P-12(11)-11/27/99-Ins. IV dated 14.06.1999, i.e., workers who are employed on regular employment and not those employed periodically or on temporary basis.

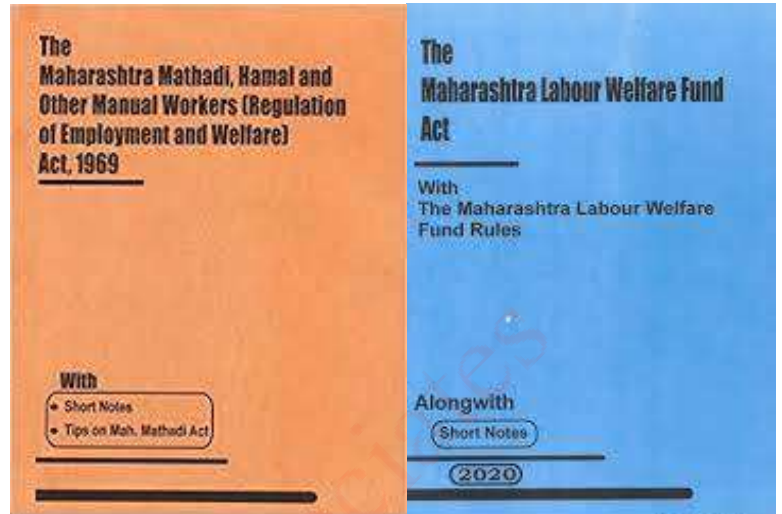
[Click here](#) to read Circular.



LATEST FROM THE STATE GOVERNMENTS

Amendments Under Various Labour Laws In Maharashtra.

The Government of Maharashtra amended penal provisions under various labour laws including: the Maharashtra Industrial Relations Act, 1947, the Maharashtra Labour Welfare Fund Act, 1953, the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969, the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981, and the Maharashtra Workmen's Minimum House-rent Allowance Act, 1983.



PC | Law.all | Maharashtra Labour Laws

[Click here](#) to read notification.

Notification of the Factories (Goa Amendment) Act, 2019-Govt. of Goa.

The Govt. of Goa has made amendments in the Goa Factories Act, 2019. Such amendments are made under sub-section (2) and (3) of section 65 providing for powers of the Chief Inspector, section 66 providing for safety of women, section 105 and section 106. Also, a new section 92A and schedule IV for compounding of certain offences has been inserted in the said Act, 2019.

[Click here](#) to read notification.

Notification of the Andhra Pradesh Rights of Persons with Disabilities Rules, 2023 -Govt. of Andhra Pradesh.

The Governor of AP has made rules as to Education, Skill Development and Employment etc to the Rights of Persons with Disabilities Act, 2016. This notification shall come into effect from 19.04.2023

[Click here](#) to read notification.

Notification of the Punjab Shops and Commercial Establishments (First Amendment) Rules, 2023-Govt. of Punjab.

In regard to the earlier circular dated 03.02.2023 issued by the Govt. of Punjab, an amendment notification in the Punjab Shops and Commercial Establishments Rules, 1958 has been issued mandating the display of name

boards of every establishment in Gurumukhi script failing which fine shall be imposed for not exceeding Rupees One Thousand for first offence and Rupees Two Thousand for every subsequent offence.

[Click here](#) for notification.



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.	Andhra Pradesh (Scheduled Employments)	01.04.2023	Government Notification
2.	Haryana	01.01.2023	Government Notification
3.	Jharkhand (Scheduled Employments)	01.04.2023	Government Notification
4.	Gujarat [Under Contract Labour (Regulation and Abolition) Act, 1970]	01.04.2023	Government Notification
5.	Delhi	01.04.2023	Government Notification
6.	Punjab	01.03.2023	Government Notification
7.	Uttarakhand	01.04.2023 – 30.09.2023	Government Notification
8.	Bihar	01.04.2023	Government Notification
9.	Tamil Nadu	01.04.2023	Government Notification

Letter for declaration of paid holiday on occasion of general elections in Karnataka- Election Commissioner.

As per the Karnataka Industrial Establishments (National and Festival Holidays) Act, 1963, the Secretary, Labour Department has requested the Government to grant every employee whose name is included in the electoral roll of the constituency where such election is held, a day's paid holiday to enable him to exercise his franchise on the polling day i.e., 10.05.2023

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PC | The Hindu | Election Commission of India



EDITORIAL

All you need to know about the pension on higher wages!

As you may be aware that the Hon'ble Supreme Court of India vide its judgment dated 04.11.2022 has given clarity regarding the eligibility of employees who can opt for a pension on higher wages (hereinafter referred to as PoHW). In this regard, EPFO has also issued circulars on 29.12.2022, 05.01.2023 and 20.02.2023.

In order to bring clarity in the mind of our readers, we have tried to explain the eligibility criteria and procedure for filing application in simple and crisp language.

Background in Brief

The EPF & MP Act, 1952 originally did not provide for any pension scheme. **The Pension scheme was introduced by way of an amendment made in the year 1995 and w.e.f. 16.11.1995 the Employees Pension Scheme 1995 (also known as EPS-95) came into force.**

At the time of inception of the said scheme, the maximum pensionable salary was Rs. 5000/- and this sum was enhanced subsequently to Rs. 6500/- w.e.f. 01.06.2001. The Pensionable salary was again

raised to Rs. 15000/- w.e.f. 01.09.2014 vide G.S.R. 609(E) dated 22.08.2014 which brought certain other modifications in the scheme mainly restricting its coverage.

• What Major Changes were brought by the Notification dated 22.08.2014?

The said notification brought the following major modifications -

- i. The wage ceiling was hiked to Rs. 15000/- from prevailing Rs. 6500/-;
- ii. For calculating the pension, the average monthly pay was to be considered for 60 months preceding the date of exit/ death instead of the prevailing 12 months;
- iii. The employees who were EPF members as on 01.09.2014 were given an opportunity to exercise an joint option with the employer within six months to contribute on more than 15000/- with a condition that such member would have to contribute the Government's share of contribution @1.16% on salary exceeding Rs. 15000/-;
- iv. Further, with effect from



SWAPNIL GUPTA
ADVOCATE
(ASSOCIATE, P.K.
AGARWAL & ASSOCIATES)

01.09.2014 the provision for contribution on higher wages was deleted and as such the employees who became EPF member post 01.09.2014 earning salary exceeding Rs. 15000/- could not become the EPS member.

• How did the issue reach the Court?

Being aggrieved by the modifications brought about by the 2014 amendment, several employees association knocked the doors of the Court. It is pertinent to mention that the Hon'ble High Court of Kerala vide its judgment dated 12.10.2018 set aside the Employees Pension Amendment Scheme, 2014. The Hon'ble High Court of Rajasthan and Delhi also passed similar judgments in separate cases.

The EPFO then went in appeal to the Hon'ble Supreme Court of India in 2019, which was dismissed, aggrieved by which

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the EPFO filed review petition before the three judge bench.

• **What did Hon'ble Supreme Court said?**

The Hon'ble Supreme Court of India passed the following judgment on 04.11.2022 -

i. The Employees Pension Amendment Scheme 2014 brought about vide GSR 609 (E) dated 22.08.2014 is legal and valid.

ii. The employee's who did not exercise an option for contributing in EPS on salary more than the prevailing statutory limit **would now be entitled to exercise such option.**

iii. The employees **who retired prior to 01.09.2014 without exercising any option** and exited from the membership thereof **would not be entitled** to the benefit of this judgment.

Hence, on the basis of the above judgment, EPFO has

come up with several guidelines in order to implement the same which we will now discuss.

Who is Eligible for PoHW?

In view of the above-said judgment and circular of EPFO dated 20.02.2023, the following employees are eligible to apply for a pension on higher wages -

1. The employees and employers who had contributed on salary exceeding the then wage ceiling of Rs. 5000/- or Rs. 6500/-;
2. Who did not exercise/ opted for a joint option for pension on higher wages prior to 01.04.2014; and
3. They were members of EPF/EPS prior to **01.09.2014 and continued to be a member on or after 01.09.2014.**

How To Apply?

All the eligible employees may apply for pension on higher wages online through the member portal by following the **link**.

The employees need to also submit an undertaking to deposit the contributions along with the Interest due till the date of payment.

Do I need to upload any

permission under Paragraph 26(6) of the EPF Scheme?

In view of the recent judgment of Hon'ble Kerala High Court in the matter of Jayaprasad B.K. & Ors. v. Union of India & Ors. [WP(C) no. 9979 of 2023] dated 12.04.2023, the requirement for uploading permission under Para 26(6) of the EPF Scheme has been done away with and the portal is not compulsorily asking to upload the said permission.

What is the Last Date?

Initially the due date was 03.03.2023, which was later extended to 03.05.2023 and now as per the information available on the EPF portal, all the eligible members may apply for the pension on higher wages by **26.06.2023.**

Can I delete the application once submitted?

As per the EPFO Circular no. Pension/PoHW/2023/69114/6 15 dated 03.05.2023, a "Delete" button has now been provided to the employees. After deleting, the member may file fresh application if he/ she so desires. However, the same may be done only if application is not approved by the employer.

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In case the employer has approved the request then employee cannot be used delete button, however, an opportunity will be given to rectify the errors after scrutiny of the application.

In case of any deficiency/ lack of information, will my application by outrightly rejected?

As per the EPFO circular no. Pension/SupremeCourt/judgment/HPM/2022/405 dated 23.04.2023, in case of any errors/ deficiency found in an application, the EPFO will not outrightly reject the application instead 1 month's time will be provided to rectify the errors/ deficiency.

How my Pension on Higher Wages will be calculated?

As per clause vi of para 6 of the EPFO circular no. Pension//2022/56259/1654 dated 20.02.2023, the method of deposit and that of computation of pension **will follow through subsequent circulars.**

Do I need to pay 1.16% of contribution in addition to

the 12% or will this be a part of the employer's 12% of contribution?

The Ministry of Labour & Employment vide its notification dated 03.05.2023 has notified that in respect of members **who have exercised option for PoHW and who are found eligible,** the employer's contribution shall be **9.49%** of the EPF Wages with an increase of 1.16% from the existing **8.33%**.

Such rate of **9.49%** towards EPS shall be applicable to wages **exceeding Rs. 15000/-**. The same shall be deemed to have come into force on **01.09.2014**.

If I found eligible for PoHW, the deficit amount will be diverted from my available PF Accumulation or I have to pay separately?

If the employee is found eligible, EPFO will do the required calculations on the basis of information available with them and with that provided by the employer and issue a demand note. While applying, portal provides both options, if you have sufficient balance in your PF

accumulation you may allow EPFO to divert the requisite amount from your available corpus otherwise you may opt to pay the required amount separately by submitting a self-declaration.

What is the role of the Employer?

The employer will **assist the eligible employees in applying for the application online.** After submitting the application, the employer must upload the wage details first in the format prescribed by the EPFO by selecting "Approve POHW Request" under the "Member" tab thereafter the application must be approved by the employer. After necessary approval the same will be forwarded to EPFO for further action.

Conclusion

In view of the above, it is advised to all the interested/ eligible members to think twice before applying and ascertain whether applying for PoHW would be beneficial in the long run and take a conscious decision.

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Let's celebrate the labour that built up this great land from field to field to desk to desk they built it hand in hand.



INTERNATIONAL WORKER'S DAY 2023

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