

THE LABOURTORIALS

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS

WORD OF THE MONTH

RETENTION BONUS

A retention bonus is a targeted payment or reward outside of an employee's regular salary that is offered as an incentive to keep a key employee on the job during a crucial business cycle.



PC | Adobe Stock

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- Supreme Court rejects claim of employees to count entire period of work-charged service for Pension.

LATEST FROM THE HIGH COURTS

- No sympathy or compassion for employees submitting forged documents to employer: Delhi High Court.
- Departmental proceedings cannot be initiated against employee after four years of retirement: Allahabad High Court.

LATEST FROM THE CENTRAL GOVERNMENT

- EPFO circular on deleting and resubmitting application for validation of option or joint option.
- Enforcement of provisions of ESI Act in some Districts of Bihar.

LATEST FROM THE STATE GOVERNMENTS

- Amendment under the Andhra Pradesh Labour Welfare Fund Rules, 1988.
- Preparatory measures to minimize heat-wave in Puducherry.

LATEST FROM THE SUPREME COURT OF INDIA

Supreme Court rejects claim of employees to count entire period of work-charged service for Pension.

The Supreme Court held that **service rendered as work charged employee cannot be counted for the purpose of pension.** The Court refused to accept a plea to consider the entire period of work charged service as service for computing pension and upheld a rule framed by the Bihar Government by which the work-charged service will be counted only to the extent of shortfall in the qualifying minimum period of service for pension for an employee, who was subsequently regularised.

The bench was considering the following question:

“Whether the entire service rendered as work charged establishment shall have to be counted and/or considered for the determination of the amount of pension after the work charged employees are regularized under the Work Charged Establishment Revised



Pc | Jurist | The Supreme Court of India

Service Conditions (Repealing) Rules, 2013?

The bench observed that **since work charged employees are not appointed on a substantive post or after due process of selection and in accordance with recruitment rules, their services rendered as work charged employees cannot be counted for the purpose of pension or its quantum.**

However, at the same time, after rendering such service for

a number of years and subsequently being regularised, such employees cannot be denied the pension on the ground that they have not completed the qualifying service for pension. The bench concluded, “That is why, the service rendered as work charged is to be counted and/or considered for the purpose of qualifying service for pension, which is provided under Rule 5(v) of the Rules, 2013.” **[Uday Pratap Thakur & Anr. v. State of Bihar & Ors.]**

[Click here](#) to read Judgement.



Pension can't be denied to employee citing wrongful deductions made towards CPF Scheme.

In the present case, Respondent no.1 was appointed in the Calcutta State Transport Corporation as a conductor in 1981. At that time there was no pension scheme in force, only Contributory Provident Fund Scheme was applicable. In 1991, the Calcutta State Transport Corporation Employees' Service (Death cum Retirement Benefits) Regulations, 1990 were framed providing for pension scheme for the employees, which was effective from April 1, 1984. The existing employees were to give an option to avail benefit under the 1990 Regulations. Prior to this, Contributory Pension Fund Scheme was in force. The Respondent no.1 had submitted his option within time. He sought voluntary retirement in 2017. Though certain retiral

benefits were paid to him, no pension was paid on the ground that he did not exercise the option for pension under the new pension regulations. He filed a representation shortly after.

However, the court found that the corporation had failed to act on the option exercised by the employee to receive pension under the pension regulations. The fact that deductions continued from his salary is not a ground to deny his claims. These deductions were wrongful as they were made in disregard of the option given by the employee.

"The argument that there are number of similarly situated employees who will also stake their claims, will not deter this

Court in granting the relief to the respondent, which is legitimately due to him. Rather this argument shows that the Corporation was at fault in implementing the 1990 Regulations in the cases of number of employees though these were notified on 4.1.1991 and were given retrospective effect from 1.4.1984. Technical objections are sought to be raised, which are not tenable. **For any fault on the part of the Corporation, the employees cannot be made to suffer**", said the Court. **[Calcutta State Transport Corporation vs Ashit Chakraborty]**

[Click here](#) to read Judgement.

LATEST FROM THE HIGH COURTS

No sympathy or compassion for employees submitting forged documents to employer: Delhi High Court.

The bench upheld the termination order of a woman who was dismissed from services by the Bihar Bhavan for submitting a forged class 8th pass certificate. **[Kiran Thakur vs Resident Commissioner Bihar Bhavan]**

While holding that Thakur was guilty of suppression of material facts and documents even from the court, the bench remarked, "Employees who are guilty of submitting forged documents to their employer have to be dealt

with in a strict manner. If a person submits forged and fabricated documents, then such a person is certainly unfit to be employed. No sympathy or compassion can be shown to such an employee. Thus, when the charge against petitioner stands proved, the punishment of dismissal from service imposed by the respondent cannot be faulted with."

[Click here](#) to read Judgement.



Transfer of employee to maintain internal harmony in organization not punishment, enquiry not required: Kerala High Court.

The Kerala High Court held that **"When an employee is transferred to maintain the smooth running of an organization, it is not to be understood as a punishment.**

The element of punishment is absent therein. The idea is to maintain the internal harmony of the organisation and to safeguard its smooth functioning. In every case of erratic or inappropriate behaviour by a subordinate, the employer is not bound to initiate departmental action and to impose punishment. For effecting a transfer, there need not be any enquiry conducted to first ascertain whether there was misbehaviour or conduct unbecoming of an employee. To hold otherwise would frustrate the very purpose of transferring an employee in public interest or exigencies of administration, to enforce a decorum and ensure probity."

The Court was considering a challenge to transfer orders issued by the Kerala State



Pc | J Onmanorama | The Kerala High Court

Road Transport Corporation (KSRTC) based on the report of the Executive Director (Vigilance) that certain persons were causing disharmony in office and affecting the smooth functioning of the office.

The Court observed that an employee has no legal rights in the matter of transfer and that courts should refrain from interfering with transfer orders unless there are statutory violations or malicious intent.

The Court observed, **"The power to transfer an employee in a transferable**

service is within the prerogative of the employer.

It is he who knows best, where an employee should be deployed for an effective discharge of his/her duties for the establishment. The inconvenience caused to the employee and his family consequent on the transfer are not sufficient to interfere with the orders of transfer. A transfer can always be done in public interest." **[Nixy James V Kerala State Road Transport Corporation]**

[Click here](#) to read Judgement.

Departmental proceedings cannot be initiated against employee after four years of retirement: Allahabad High Court.

The Court held that the department proceedings cannot be initiated against an employee four years after his retirement from service **[Surendra Kumar Tyagi v.**

State of Uttar Pradesh Through Add. Chief Secretary Public Work and Others].

The petitioner had retired on

Dec 31, 2011 from the post of Chief Engineer in the Public Works Department. Prior to this, he was posted in the UP Rajkiya Nirman Nigam Limited

Contd. ...



Contd. ...

from the year 2006 to 2011.

In January 2016, the petitioner was served with a chargesheet wherein it was alleged that during his posting in the Rajkiya Nirman Nigam Limited from the year 2006 to 2011, the petitioner had committed several irregularities and, therefore

huge loss was caused to the government exchequer.

By an order of November 18, 2021, the secretary of the department directed that after the conclusion of departmental proceedings against the petitioner, 5 percent shall be deducted from his pension.

The Court noted that **Regulation 351A of the Civil Services Regulations as applicable in Uttar Pradesh, prohibits initiation of the departmental proceedings against an employee after more than four years from the date of his retirement.**

[Click here](#) to read Judgement.

Rajasthan High Court grants relief to RSRTC driver, says service period of daily wage required to be taken into account for grant of retiral benefits.



Pc | J Careerindia | The Rajasthan High Court

Granting relief to a former driver of Rajasthan State Road Transport Corporation Ltd, the Rajasthan HC said **the services rendered by him as daily wager shall be "taken into account while computing twenty years of qualifying service" for the grant of the pensionary benefits.**

The petitioner was denied retiral benefits on the ground that he had not completed twenty years of qualifying service on the date of his voluntary retirement. He had served as a Driver on a daily wage basis from 1995 to 1999, thereafter his service was regularized in the year 1999.

The petitioner approached the respondents by way of filing a detailed representation for

voluntary retiral benefits. The impugned order, issued in 2022, denied the retiral dues to the petitioner on the grounds that he had not completed 20 years of qualifying service.

The court opined that, "a plain reading of the Explanation given in the Notification dated 12/10/2015 (Regulation 18(D)(2) Voluntary retirement) shows that **while computing the qualifying service of an employee in the respondent Department, period of twenty years spent on duty as Permanent, Temporary &/or Officiating basis will be taken into consideration**".

The court also noted that the Notification "**only envisages the Explanation**" of qualifying service "**for the purpose of pension**" and not for any other purpose.

In light of the above, the order for rejection of the retiral benefits was set aside. **[Bhagwan Singh v. State of Rajasthan & Ors.]**

[Click here](#) to read Judgement



LATEST FROM THE CENTRAL GOVERNMENTS

EPFO circular on deleting and resubmitting application for validation of option or joint option.

Since many representations have been received from pensioners/members with request to provide online facility to correct errors in their Applications for validation of Option/Joint option and to file uploads, the Employees' Provident Fund Organisation (EPFO), introduced the facility to delete an application made for validation of Option/Joint Option.

The employee after deleting application can, if he/she so desires, file a fresh application for validation of Option/Joint Option with correct details/uploads.

[Click here](#) to read Circular.

Enforcement of provisions of ESI Act in some Districts of Bihar.

The Government of India implemented the provisions towards Chapter IV (Contribution), Chapter V (Benefits), and Chapter VI (Adjudication of Disputes and Claims) of The Employees' State Insurance Act, 1948 (ESI Act) effective from 1st day of June 2023, in all the areas of Arwal, Jamui, Kaimur, Khagaria, Kishanganj, Madhepura, Madhubani, Nawada, Purnia, Sheikhpura and West Champaran, in addition to the already notified areas of the said districts, in the State of Bihar.

[Click here](#) to read Circular.



Pc | Lexplosion | The ESI Act, 1948

Amendment in Paragraph 68NN, 69 O and 69 and introduction of new paragraph 68NNNN in the EPF Scheme.

The Central Government hereby makes amendment in the Employees' Provident Funds Scheme, 1952, namely substitution of figures and word "57 years" for the figures and word "54 years" under paragraph 68 NN of the said scheme; for the figures, letters and word "68-N and 68-NN" the figures, letters and word "68-N, 68-NN, 68-NNN and 68-NNNN" shall be substituted.

occur, the figures and word "58 years" shall be substituted; in sub-para (1), clause (e) shall be omitted and sub-para (2) and (5) shall be omitted.

Also, after para 68-NNN of the said scheme, a new para shall be inserted namely 68-NNNN: Option for withdrawal on cessation of employment.

Further, in para 69 of the said scheme, for the figures and word "55 years" wherever they

[Click here](#) to read notification.



LATEST FROM THE STATE GOVERNMENTS

Amendment under the Andhra Pradesh Labour Welfare Fund Rules, 1988.

The Government of Andhra Pradesh added Rule 22A providing for appointment of Authorities and Appellate Authorities under Section 25 and 30 of the Act; and Rule 22B regarding Form of appeal, its mode of submission and procedure to be followed by the Appellate Authority.. Also, a new Rule 25 shall be added specifying the penalty for contravention of any of the provisions of these Rules.

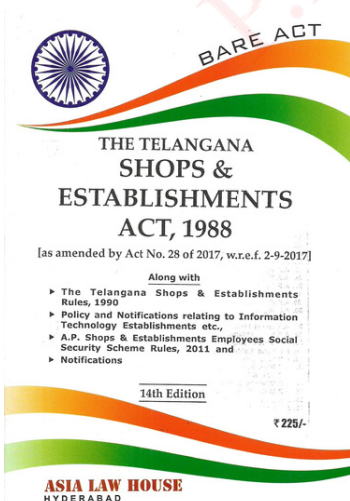
[Click here](#) to read notification.

Extension of medical benefits under the Employees' State Insurance in the Valsad District of Gujarat

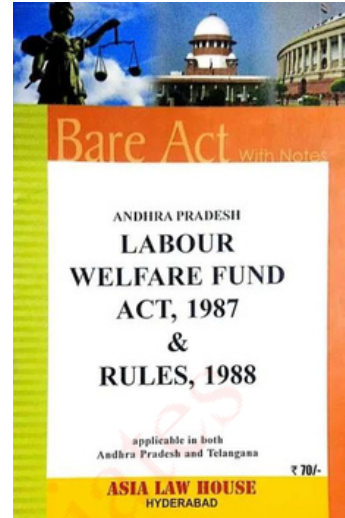
The Government of India extended medical benefits, provided under Regulation 95-A of the Employees' State Insurance (General) Regulations, 1950, to the families of all insured persons in the entire area of Valsad district in the State of Gujarat, with effect from 01 April 2023.

[Click here](#) to read conditions and notification.

Permission to keep all Shops & Establishments open on all days of the year in Telangana state.



Pc | Wikipedia | The Telangana Shops & Establishments Act, 1988 | The Government of Telangana



Pc | Lawrels | The Andhra Pradesh Labour Welfare Fund Act, 1988

Extension of closing hour under The Himachal Pradesh Shops and Establishments Act, 1969.

The Government of Himachal Pradesh extended the closing hours of Shops & Commercial Establishments from 9:00 P.M. to 11:00 P.M., under the Himachal Pradesh Shops And Commercial Establishments Act, 1969 with immediate effect, till 31st July 2023.

[Click here](#) to read notification.

The Government of Telangana extended the permission to all the Shops & Establishments under Telangana Shops & Establishments Act, 1988 to keep open on all the days of the year in Telangana State for a further period of 3 years subject to certain conditions.

[Click here](#) to read conditions and notification.



Preparatory measures to minimize heat-wave in Puducherry.

The Administrator of Puducherry directed occupiers, employers, construction companies, and industries to adopt precautionary measures for mitigating the adverse effects of extremely hot weather. Some of them are listed below:

1. Rescheduling of working hours,
2. Ensuring adequate drinking water facilities at work places,
3. Making provision for emergency ice packs and heal illness prevention material to construction workers,
4. Coordinating with Health Department to ensure regular health check-up of the workers,
5. Special attention to be paid to construction workers, and brick kiln workers.



GOVERNMENT OF PUDUCHERRY
புதுச்சேரி அரசு

Pc | iStock | Construction Worker drinking water | Government of Puducherry

[Click here](#) to read more.



Pc | Wikipedia | Government of Chhattisgarh

Amendment under The Chhattisgarh Factories Rules, 1962.

The Government of Chhattisgarh removed the procedures on white washing and colour washing of Latrines and Urinals under the Chhattisgarh Factories Rules, 1962.

[Click here](#) to read notification.

Disclaimer: This document is prepared and furnished for information and knowledge enhancement of all interested. You may choose to reproduce or redistribute this document for non- commercial purposes in part or full to any other person with due acknowledgement of the author. The opinions and analysis expressed herein are entirely those of the author. Even though the content of the document has been extracted or analysed from the government notifications, orders, circulars, news reports etc., it is not to be taken as complete and accurate in all respects.



Teamwork is the heart of great achievement.

-John C. Maxwell



P.K AGARWAL AND ASSOCIATES

P.K. Agarwal & Associates deals in :

- Compliance under all labour related statutes;
- 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.

