

THE LABOURTORIALS

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS

WORD OF THE MONTH

CORUM NON-JUDICE

Coram non judice is a Latin Legal Maxim meaning for “**not before a judge**,” basically used to indicate a proceeding which is legal in nature that is outside the authority of a judge with improper presence, or without legal jurisdiction.



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KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- 'Uncontested claim of wife regarding husband's income be taken as Gospel Truth': SC increases compensation for deceased workman.

LATEST FROM THE HIGH COURTS

- Burden to prove 'Workman' status is on employee, not Management: Guwahati High Court.
- Maternity leave is a fundamental human right; its denial violate Articles 29, 39 Of Constitution: Himachal Pradesh High Court.

LATEST FROM THE CENTRAL GOVERNMENT

- EPFO circular on applications for Validation of option or Joint option.
- EPFO extends time period for availing option of Pension on Higher Wages (PoHW).

LATEST FROM THE STATE GOVERNMENTS

- Notification regarding increasing the contribution limit under Section 9A of the Labour Welfare Fund Act, 1965 in Haryana: Govt. of Haryana.

LATEST FROM THE SUPREME COURT OF INDIA

'Uncontested claim of wife regarding husband's income be taken as Gospel Truth': Supreme Court increases compensation for deceased workman.

Mr. Vakil Choudhary (Employee) was employed by Respondent No. 2 as a truck driver and had met with an accident on 21.04.2011 wherein he lost his life. The Appellants (Claimants) are wife, son and parents of late Mr. Vakil Choudhary, who filed a claim petition before the 'Deputy Labour Commissioner-cum-Commissioner for Workmen Compensation', seeking compensation for his death which occurred during the course of employment. The Appellants contend that Sri Vakil was earning a wage of Rs.6,000/- per month in the said employment and the amount of wage was admitted by the Employer.

The Insurer of the offending vehicle, Reliance General Insurance Company Ltd., filed its written statement but the matter was not pursued further by the Employer or the insurer.

In absence of any proof of income, the Deputy Labour Commissioner considered the income of the deceased to be Rs. 3,900/- per month, in accordance with the minimum wage rate of Rs. 150 per day. Accordingly, an Award was passed for a lower sum of Rs. 4,31,671/- alongwith 6% p.a.



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interest, to be payable by the Insurer to the Appellants. The Appellants challenged the Award before the High Court.

The High Court set aside the Award on the ground that **the dispute raised was a contested case and it was coram-non-judice**. It was held that the Appellants were supposed to pursue their grievance before the jurisdictional Labour Court. In view of Section 20(1) and 20(2) of the Workmen's Compensation Act, 1923, the appropriate Government had issued a notification, whereby the presiding officers of the Labour Court were entrusted with adjudication of all contested claims of arising under the Act, 1923.

The Appellants challenged the High Court's order before the Supreme Court.

"The insurer of the offending vehicle having filed the written statement seems to have not cross examined the claimants and their witnesses. Thus, the claim lodged by the claimants seeking for compensation would not partake the character of a **"contested claim"** as stipulated under the notification issued by the appropriate Government under Section 20 (1) and (2) of the W.C. Act", the Bench opined.

The Bench observed that the Deputy Labour Commissioner erroneously computed the deceased employee's wage as per minimum wage, despite

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there being a statement by his wife on oath with respect to his monthly wage.

The Bench held that **there being no dispute to the fact that the deceased employee was drawing wage of Rs. 6,000/- per month, the statement of deceased's wife deserves to be accepted as gospel truth.**

An empathetic view was taken by the Bench, since the widow, children and parents of the deceased have been awaiting a reasonable compensation. Therefore, instead of remitting the matter back to the High Court, the Bench set aside the High Court's order and awarded an enhanced compensation of Rs. 6,64,110/- with interest @ 12% p.a. The

interest component is to be calculated from one month from the date of accident till date of payment, excluding the amount already deposited by the insurer. **[Mamta Devi & Ors. v The Reliance General Insurance Company Limited & Anr.]**

[Click here](#) to read Judgement.

LATEST FROM THE HIGH COURTS

Burden to prove 'Workman' status is on employee, not Management: Guwahati High Court.

The Guwahati High Court recently held that the burden to prove that one is a **'workman' covered by the Industrial Disputes Act, lies on the employee making such a claim and not the management of the organisation.**

"Once an objection as to the maintainability of the reference was raised by the management by taking the plea that the employee was not a workman, regardless of whether any written statement is filed or not, it was incumbent upon the learned Labour Court to record a finding on the above aspect of the matter based on the materials produced by the employee. The burden to prove that the employee is a workman for the purpose of section 2 (s) would be upon the employee and not the Management," the High Court held.

The High Court was dealing with a plea filed by the Industrial Cooperative Bank Limited challenging a labour court's ex-parte order which had set aside the decision to terminate

an employee accused of involvement in financial irregularities.

The labour court had called for the reinstatement of the employee, who was earlier in charge of administration and human resources. The order had also directed the payment of back wages and service benefits in arrears to the employee.

The bank had not appeared before the labour court after its objection to the maintainability of the proceedings had been dismissed, and since its Managing Director at the time was embroiled in criminal proceedings.

The High Court noted that it is well-settled that issues of jurisdiction go into the heart of legal matters and, therefore, can be raised at any stage of proceedings. **[Industrial Cooperative Bank Ltd and anr vs State of Assam and ors.]**

[Click here](#) to read Judgement.



Gratuity has to be calculated from the day it became payable and not from date of disbursement: Kerala High Court

The Kerala High Court observed that **the maximum amount of gratuity payable under the Payment of Gratuity Act, 1972 must be calculated from the date on which gratuity became payable** and not on the date the amount was actually disbursed.

The Court was considering the plea of a retired Regional Engineer from the Kerala State Housing Board whose DCRG and last month pay was withheld due to audit objections. The Petitioner retired in the year 2002. He had earlier approached the Court, and the Secretary of the Board was directed to disburse the withheld amounts. However, according to the petitioner, in light of the 2010 Amendment to the Payment of Gratuity Act, 1972 under Section 4(3) he is entitled to a maximum gratuity of Rupees Ten Lakhs.

The gratuity is payable to an employee on the termination of his employment. **The gratuity payable to an employee shall not exceed the maximum that is notified under the respective enactments as on the date on which the gratuity becomes payable.** Even if it is assumed that the petitioner's claim for gratuity was under the Payment of Gratuity Act, 1972, the maximum amount of gratuity payable under the said Act has to be determined with respect to the date on which the gratuity became payable and not on the date on which sanction was accorded for payment of DCRG or the date on which the amount was actually disbursed to him. Therefore, there is no merit in the contention of the petitioner that he is entitled to the maximum gratuity of Rs.10,00,000/- as per section

4(3) of the Payment of Gratuity Act, 1972, as amended by Act 15 of 2010."

The Court further observed, "**He has to claim gratuity either under the Payment of Gratuity Act, 1972 or under the KSR.** If he claims gratuity under the Payment of Gratuity Act, 1972, the amount will be determined under section 4 of the said Act, subject to the maximum amount notified under section 4 (3). If he claims under the KSR, the amount of DCRG will be determined under Rule 68 of the said Rules, subject to the maximum provided therein. He cannot have gratuity under the KSR with the ceiling limit payable under the Payment of Gratuity Act, 1972 and vice versa. " **[K. Rajendra Prasad V State Of Kerala]**

[Click here](#) to read Judgement.

Court can't enquire financial dependency of person seeking compassionate appointment when another family member is in Govt. service: Chhattisgarh HC



PC | The Chattisgarh High Court

The Chhattisgarh High Court held that if Rules for 'compassionate appointment' prohibit appointment of family members of a deceased government employee on the ground that a family member is already in government service then the **High Court cannot order enquiry to determine dependency of other family members upon that family member who is already a government servant.** **[State of Chhattisgarh & Ors. v. Umesh Thakur]**

[Click here](#) to read Judgement.



Employment contract cannot be given colour of commercial dispute; will clog commercial courts: Karnataka High Court

In the present case, the petitioner, who was initially employed by Elior India Food Services LLP (referred to as "the firm"), later became a partner and minor partner in the firm with a specific share. Due to certain actions and omissions on the part of the petitioner, the firm initiated an enquiry by issuing a chargesheet on 10 May 2022.

In response to these proceedings, the petitioner filed a Commercial Arbitration Application invoking Section 9 of the Arbitration and Conciliation Act, 1996 before the Commercial Court on 13 May 2021 based on an arbitration clause in the employment agreement. On 15 December 2022, the Arbitral Tribunal issued an order of interim or partial award in favour of the petitioner and directed the respondents to make the specified payments. However, the respondents, feeling dissatisfied with the decision of the arbitral tribunal, approached the Commercial Court.

The issue before the judge was whether an Employment Agreement would come within the meaning of Section 2(1)(c)(xvii) of the Act, for the agreement to become a commercial dispute.

Rajasthan High Court directs State to release retiral benefits of retired audit inspector who died fighting for Pension, imposes cost.

The Rajasthan High Court has ordered the release of retiral benefits to the legal representatives of a retired Audit Inspector from the Cooperative Department who died in between of his years-long battle with the State over withheld pension. [**Dayachand Arya v. State of Rajasthan**]

The Bench held, "**Retiral dues of an employee like the petitioner cannot be allowed to withhold** because the documents were not

In this regard. The Court observed, "Interpretation of whatever nature that can be placed to the definition of commercial dispute, as obtaining under Section 2(1)(c)(xviii) will not lead to the subject agreement, to become an agreement for services, as obtaining under the afore-quoted provision. The provision relates to agreement of sale of goods or provision of services. They cannot be read in isolation. **A pure and simple employment contract cannot be given a colour of commercial dispute by dressing it to be a provision of services.**"

The court remarked that **if every Employment Agreement is brought within the ambit of commercial dispute, it would then be opening a pandoras' box or will be opening flood gates of litigation before the Commercial court(s) that would clog the Court.** This in effect would defeat the very reason why the commercial Court was constituted. [**Sanjay Kumar v Elior India Food Services LLP**]

[Click here](#) to read Judgement.



PC | The Rajasthan High Court

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received by any department from the other department. The respondents cannot be allowed to take shelter that the delay was caused by any authority in not sending the required file and paper of the petitioner, such action on the part of the respondent/authority is unfounded and virtually arbitrary, illegal and contrary to law."

The petitioner (since deceased) had retired in January 2018. The court said more than half a decade had passed and yet the respondent-

authorities were sitting on his retiral benefits, without any valid reason. There were no pending departmental inquiries or criminal cases against the petitioner.

Based on these considerations **the court ordered release of all retiral benefits with interest within 30 days** and also imposed a cost of Rs. 50,000 on the State, payable to the petitioner's kin.

[Click here](#) to read judgement.

Maternity leave is a fundamental human right; its denial violate Articles 29, 39 Of Constitution: Himachal Pradesh High Court

"The respondent in the instant case was a daily wage woman employee at the time of advance pregnancy could not have been compelled to undertake hard labour, as it would have been detrimental to not only to her health and safety but also to the child health, safety and growth. **The maternity leave is a fundamental human right of the respondent, which could not have been denied.** Therefore, clearly the action of the petitioner is violative of Articles 29 and 39(D) of the Constitution of India."

Article 29 pertain to Protection of interests of minorities. Article 39(D) relates to adequate means of livelihood to all the citizens.

These observations were made while hearing Sate's plea against an order passed by the H.P. Administrative Tribunal whereby the respondent had been granted the benefit of deemed maternity leave and consequential benefit of conferment of workcharge status on completion of 8 years service.

In 1996, the respondent had taken maternity

leave for three months after giving birth and due to her pregnancy and delivery, she had worked only 156 days instead of the required 240 days in a year.

The Tribunal ruled that **the respondent's maternity leave should be considered continuous service under Section 25(B)(1)** of the Industrial Dispute Act.

Aggrieved, the State filed the instant petition and argued that since there is no provision in the department for granting maternity leave to female daily wage worker, therefore, the Tribunal could not have directed the petitioners to grant said relief.

The court however held that **denying maternity benefits to any woman, regardless of her employment status, would amount to a violation of the principles of equality** that the Constitution so ardently champions. **[State of HP v. Sita Devi]**

[Click here](#) to read Judgement.



Construction workers can't be deprived of Right of Pension merely due to hyper-technical issues: Delhi High Court

The right of pension of construction workers cannot be deprived of merely due to hyper-technical issues or requirements such as production of original MR Slips or serial number of the notary records, the Delhi High Court has observed. **[Badam Verva v. Delhi Building and Other Construction Workers Welfare Board & Anr.]**

The court noted that entry 372 of the Delhi (Right of Citizen to Time Bound Delivery of Services) Act, 2011, specifies 30 days as the period during which the pension application has to be processed. However, it added, that the SOP of the Delhi Building and Other Construction Workers Board stipulates disposal of such application made by construction workers within 60 days.

“Thus, it is clear that **once a pension benefit application is made by the construction**

worker, bearing in mind the financial status of such workers, **the said application ought to be processed without any delay,**” the court said.

The observations were made while granting relief to a construction worker who had applied to the Delhi Building and Other Construction Workers Welfare Board for release of her pension as per Rule 372 but the pension benefits were not released.

It was her case that despite an order of a coordinate bench directing expeditious processing of applications for grant and release of pensionary benefits by the Board, she and other beneficiaries received deficiency letters in respect of their pension applications.

The application for pension of the petitioner was rejected on the ground that she was not a member of the Board on the

date of superannuation.

Justice Singh noted that the construction worker was registered with the Board since September, 2009, and that at the time of superannuation, she had worked as a building and other construction worker for more than one year. It was also noted that she had paid her contribution for the entire period.

“The fact that the period of contribution extended by beyond her retirement or that the renewal of membership was done after the age of superannuation cannot lead to the denial of pensionary benefits,” the court said.

The court thus directed that **the applicable pension to the construction worker shall be disbursed to her with an interest at the rate of 6%** with effect from February 06, 2022.

[Click here](#) to read Judgement.



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LATEST FROM THE CENTRAL GOVERNMENTS

EPFO circular on applications for Validation of option or Joint option.

The Employees' Provident Fund Organisation, has received references from all stakeholders as to the list of admissible documents for the purpose of scrutiny and verification of applications for validation of Option/Joint Option.

Further, a situation has arisen where joint request/undertaking / permission are not readily available with most of the applicants who have filed applications for Validation of Option/ Joint Options covered under Hon'ble Supreme Court judgement dated 04.11.2022. Therefore, in case of applicants otherwise eligible for pension on higher wages as per directions as per the Hon'ble Supreme Court judgement, the following procedure may be followed:

(i). Filed Officers will verify that:

(a) Employer share of PF contribution has been remitted on employee's pay exceeding the prevalent statutory wage ceiling of Rs. 5000/6500/

15000 per month from the day the pay exceeded the wage ceiling or 06.11.95 whichever is later, till date/till the date of retirement or superannuation as the case may be; and

(b) Administrative charges payable by employer have been remitted on such higher wages; and

(c) Provident fund account of employee has been updated with interest as per para 60 of EPFS, 1952 on the basis of such contribution received; and

(d) Any of the following documents have been submitted along with applications for Validation of Option/Joint Option as proof of joint option and permission under Para 26(6)

- Wage details submitted by the employer along with Application for Validation of Option/Joint Options
- Any salary slip /letter from employer authenticated by employer.

- Copy of Joint request and undertaking from employer.
- Letter from PF office issued prior to 04.11.2022 indicating PF contribution on higher wages.

(ii). The applicants who qualify conditions mentioned therein under clause (i) and are already contributing/have contributed till retirement/superannuation on actual (higher) pay, if they have not submitted their joint requests and undertaking of employer, can submit the same at the time of final claim settlement through their last employer. Joint request and undertaking of employer for permission under Para 26(6) can be submitted by pensioners/members anytime before the grant of pension on higher wages in accordance with decision of Hon'ble Supreme Court dated 04.11.2022.

[Click here](#) to read circular.



Circular on joint request under the EPF Scheme, 1952.

EPFO directed existing members paying more than higher wages to submit their joint request and undertaking during the time of final settlement and has instructed for regulating joint request under Para 26(6) of EPF Scheme 1952.

Para 26(6) of the EPF Scheme 1952 provides for enrolment of employee as a member of the Scheme whose monthly pay is more than the statutory wage ceiling (presently Rs. 15,000/- per month) i.e., who is excluded from the mandatory membership of the Scheme.

The joint requests under Para 26(6) will henceforth be made and allowed as follows:

(a) Any employee who intends to become a member of the Scheme and contribute to it on actual (higher) pay exceeding the statutory limit shall



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submit a joint request with his employer in the prescribed pro forma.

(b) The said joint request will be made through the employer to the jurisdictional Regional Office.

(c) The employer shall, further, undertake to pay the administrative charges as payable on actual (higher) pay and to comply with all statutory provisions in respect of such employee.

[Click here](#) to read circular.

EPFO extends time period for availing option of Pension on Higher Wages (PoHW).

The online facility by EPFO for submitting **Applications for Validation of Option/Joint Options for pension on higher wages was launched on 26.02.2023** which was extended till 26.06.2023 on the representations made by the employees. However, this period has been **further extended to 11.07.2023** as the last opportunity to remove any difficulty faced by the eligible pensioners/members. Further, the Employers are directed to upload the wage details in respect of all the applicants by **30.09.2023**.

[Click here](#) to read notification.



Alternatives for death certificate for settlement of death claims related to deceased members who lost their lives in the train mishap in Odisha: EPFO

To Mitigate the hardship faced by family/beneficiaries of deceased, and to speed up claim settlements, it has been decided by the competent authority to relax requirement of Death Certificates for EDLI and Pension Claim related to deceased members who lost their lives in the train mishap in Odisha. The documents provided by the Indian Railways/Police or District Authorities to such

family members may also be allowed as proof of death.

SOP to settle claims in cases of death due to industrial accidents shall be followed. Special cell be formed to monitor all cases till settlement of claims.

[Click here](#) to read notification.

Circular regarding online registration through MCA portal and inspection of the units: ESIC



PC | Employee State Insurance Corporation

Registered employers under MCA with zero number of employees have informed that 'dormant' option is not reflecting in their employer id. For which application has been developed that Companies registered in ESIC through MCA portal have to declare the status of the company with in six month of registration to avoid defaulter action and further extended before the end of the 'inactive' mode. The option of declaring 'inactive mode is not available to employer after expiry of six months'.

[Click here](#) to read circular.

LATEST FROM THE STATE GOVERNMENTS

Notification regarding increasing the contribution limit under Section 9A of the Labour Welfare Fund Act, 1965 in Haryana: Govt. of Haryana

The Haryana Labour welfare board **increased the contribution limit of Labour welfare fund.**

Each employee shall contribute to the fund every month an amount equal to 0.2% of his salary or wages or any remuneration subject to a **limit of Rs.31/-** and each employer in respect of each such employee shall contribute to fund

every month, twice the amount contributed by such employee.

Provided that the limit specified shall indexed annually to the consumer price index beginning from first January each year.

[Click here](#) to read notification.



Notification of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) (Amendment) Rules, 2023: Govt. of Maharashtra

In rule 16 of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Rules, 2018, in sub-rule (1), for the words “**website and**” the words “**website or**” shall be substituted.

Now the said **Rule 16** reads as under:

Notice of shift schedule, weekly holiday of workers engaged in shift: “In case of establishment operating in shift, the employer shall display well in advance a shift schedule, alongwith weekly holiday showing the names

and designation of all persons working in that shift, so that each worker is aware of his weekly holiday and the shift in which he has to work. Such notice shall be in Form ‘N’ and shall be kept in every establishment and made available for inspection to the Facilitator on demand. The notice shall be displayed on the **website or** at a conspicuous place of the premises of the establishment on the notice board. A copy of the same shall be send to the Facilitator electronically or otherwise”.

[Click here](#) to read notification.



PC | Mint | Workers at manufacturing industry

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LEADERSHIP IS AN ACTION, NOT POSITION

-Donald Mc Gannon

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