

THE LABOUR TUTORIALS

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS



PC | Labour Law | The Young Jurist

GOLD- BRICKING

It is the practice of doing less work than one is able to, while maintaining the appearance of working. The term originates from the confidence trick of applying a gold coating to a brick of worthless metal—while the worker may appear industrious on the surface, in reality they are less valuable.

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- Supreme Court grants relief to UP School teachers who were not paid salary for alleged manipulation in securing appointment.

LATEST FROM THE HIGH COURTS

- Delhi HC sets aside Industrial Tribunal order increasing retirement age of Indian Express workers; directs fresh adjudication.
- Right to become a mother is Fundamental/Human Right of women; Maternity Benefits Act provisions must be strictly enforced: Himachal Pradesh High Court.

LATEST FROM THE CENTRAL GOVERNMENT

- Notification regarding extension of five months' time for Employers to upload wage details etc. regarding Pension on Higher Wages: EPFO.
- Circular regarding revised guidelines related to home delivery of drugs to the IPs and Beneficiaries as entitled: ESIC

LATEST FROM THE STATE GOVERNMENTS

- List of Holidays for the Year 2024.

LATEST FROM THE SUPREME COURT OF INDIA

Supreme Court grants relief to UP School teachers who were not paid salary for alleged manipulation in securing appointment.

The Supreme Court allowed appeals filed by some teachers of a school in Uttar Pradesh whose salaries were halted in 2005.

Assuming the State's case to be true, the Bench noted that the situation was that while the state-sanctioned two vacancies, the school recruited three. However, the State had no evidence of any malpractice by the Appellants. The State approved their appointments, and the approval order remains valid. The appointments have not been terminated, and no action has been taken against the school, which continues to receive aid.

The appellants had no blameworthy conduct and were bona fide applicants from the open market. The alleged wrongdoing, even according to the State, lies with the School and its Manager. The Bench observed that denying relief to the appellants would be a travesty of justice and cause enormous prejudice to them.



PC | New building of the Supreme Court of India | Bhaskar

The Court held that **the Appellants were not at fault, and the State's abrupt stoppage of their salaries was unwarranted.** The State was directed to pay the Appellants' salaries in full from June 25, 1999, to January 2002, and 50% of the back wages from October 2005 until the present.

The Appellants were declared to be in **continuous service with all associated benefits,** and the State was instructed to implement these directives within four weeks.

Additionally, the Court granted

liberty to the Committee of Management, junior High School to issue a show-cause notice to address the alleged manipulation charges. After an inquiry, if found guilty, the Committee may be liable to contribute one-third of the ordered arrears.

Accordingly, the Court allowed the Appeals and set aside the impugned judgments. **[Radhey Shyam Yadav & Anr. Etc. v State Of U.P. & Ors]**

[Click here](#) to read Judgment.



LATEST FROM THE HIGH COURTS

Delhi HC sets aside Industrial Tribunal order increasing retirement age of Indian Express workers; directs fresh adjudication.

The Delhi High Court has set aside an order passed by the Industrial Tribunal which **increased the age of retirement or superannuation of workers of the Indian Express from 58 years to 60 years**, with effect from 15th October, 2009.

The Court noted that **while the Tribunal did exercise its jurisdiction correctly, it considered irrelevant materials and made an irrational order.**

The dispute had arisen when The Indian Express Group contested an Industrial Tribunal's order issued on July 31, 2023. The order required the group to raise the retirement age to 60 years, along with associated benefits, effective from October 15, 2009. The Tribunal had instructed the group to implement the order within sixty days, warning of interest payments if they failed to comply.

The High Court illustratively listed a few parameters for comparison, if at all, had to be made with other institutions. In that context, the Court noted,

"relative standing, extent of the labour force, extent of respective customers, profits and losses for a few years, financial position, productive capacity, wage structure in neighboring industries, inflexibility or flexibility of retirement age, totality of the basic wage structure, additional liability which would be imposed upon the employer, consideration whether the employer would be able to bear it for a sufficient period in the future, and the different classes of employees for which it is sought to be employed."

It was observed that **the mentioned parameters and others become necessary for any assessment which has a large financial impact.**

It was said that, "Needless to say, if it was an issue that was so obvious, the retirement age would have been increased to 60 years across the board for this establishment and others. The Industrial Tribunal has also **erred in taking the option of extendibility of the retirement age from 58 to 60 years in other newspaper establishments**, as a fixed retirement age of 60 years.

There is a clear **difference between a fixed retirement age and the option of extending the same by 2 years** based on the health, performance, and other factors relating to the employee. Importantly it is noted, that **existing Model Standing Order still defines the age of superannuation at 58 years.**

Therefore, displacing the same in its application to the establishment, necessitates proper consideration of materials. This is further necessitated in view of the fact that an application for adducing additional evidence was made by the respondent herein which was subsequently rejected by the Tribunal".

Accordingly, the impugned order was set aside and the matter was remanded to the Industrial Tribunal for fresh adjudication after considering all materials which may be placed by the parties in detail to be examined with a fresh nuanced outlook and robust reasoning. **[The Indian Express P Ltd. vs The Indian Express Newspapers Workers Union Regd. & Anr.]**

[Click here](#) to read Judgment.



Family Pension of deceased employee need not be considered while assessing family's income: Madras High Court.

In a writ petition filed against the order passed by District Education Officer ('DEO') and to direct DEO to provide suitable job to the petitioner under compassionate ground on the death of his mother on 19-12-2018 as per the petitioner's application dated 30.09.2020, the Court noted that **if any person in the deceased Government Servant's family was employed even before the death of the Government Servant but was living separately without extending any help to the family, then the case of other eligible dependant will be considered.** Thus, it quashed the impugned order and **directed the DEO to provide a suitable job to the petitioner under compassionate ground** within 12 weeks from the date of this order.

In the present case, the petitioner's mother was working as Head Mistress in Panchayat Union Middle School. While in service, she passed away and was survived by her husband, the petitioner and her daughter. Even before the death of the petitioner's mother, the petitioner's father was residing faraway leading an independent life.

On 30-09-2020, **the petitioner made an application seeking appointment on compassionate ground.** However, the respondents rejected the petitioner's application and the impugned order came to DEO because the petitioner's father is working at Krishnapuram Amaravathy co-operative Sugar Mills as Assistant and drawing a salary



PC | The Madras High Court | Hindustan Times

of Rs. 25,898/-. Further relying upon the Government order of the Labour and Employment (Q1) Department, dated 23-01-2020, **the petitioner's application was rejected for the sole reason that the father is employed.**

After perusing the said Government order, the Court noted that the said order also provides if any person in the deceased Government Servant's family was employed even before the death of the Government Servant but was living separately without extending any help to the family, then the case of other eligible dependant will be considered. Further, **the family pension of the deceased employee need not be considered while assessing the family's income.**

The Court viewed that the petitioner's application should have been properly appreciated by the DEO, however, the said exercise was not properly done.

[M Yogamagi v Secretary to the Government]

[Click here](#) to read Judgment.



Right to become a mother is Fundamental/Human Right of women; Maternity Benefits Act provisions must be strictly enforced: Himachal Pradesh High Court.

The Himachal Pradesh High Court observed that **the right to become a mother is a fundamental/human right of a woman** and the provisions of Maternity Benefits Act must be strictly enforced wherever applicable.

In this case, the Secretary, Managing Committee of Loreto Convent Tara Hall School approached the Court as the order passed by the Labour Inspector Circle-1 Shimla in a case was affirmed with modification by granting additional payment of three months salary to the claimant/respondent as per provisions contained in Section 17(2)(a)(b) of the Maternity Benefit Act, over and above the relief granted by the

Authorised Inspector directing the school to pay Rs. 2,45,592/- as maternity benefit and salary for the month of September 2019 to the complainant and also to take joining of the complainant on the same post as Assistant Teacher which she was holding before her proceeding on maternity leave.

“Relationship of an employer and an employee requires mutual trust between them, particularly in an education institution, where congenial atmosphere for teaching and learning is required. Therefore, **in case petitioners do not intend to accept joining of the respondent,** as directed by the Authorities below, then they shall, **in addition to the maternity benefits already**

granted by the Authorities below, **pay compensation** to the respondent **amounting to Rs. 15 lakhs** (fifteen lakhs) **in lieu of her reinstatement because any intent to thwart the grant of maternity benefits should be dealt with seriously** in order to ensure implementation of the Act in letter and spirit”, further said the Court.

Accordingly, the **High Court dismissed the petition and refused to interfere** in the impugned orders passed by the concerned authorities. **[The Secretary, Managing Committee of Loreto Convent Tara Hall School v. Sharu Gupta and Others]**

[Click here](#) to read Judgment.

Open-mindedness, empathy & understanding expected from employers: Kerala High Court in pleas filed by women against their transfer by ESIC.

The Kerala High Court granted an interim stay on transfer to the two women who were transferred from Employees State Insurance Corporation (ESIC) Hospital, Udyogamandal to ESIC Hospital, Asramam, Kollam. Both were working mothers having **family responsibilities including the responsibility of taking care of aged parents** suffering from severe diseases.

The Kerala High Court observed that, “When working women are transferred to new destination, they often encounter challenges like

arrangements and maintaining a work-life balance in an unfamiliar environment. They also find it difficult in coping with the stress of relocation, including establishing new social networks and support systems. ... Mainly women play the major role in taking care of the parents who are sick due to old age. In such situations, open-mindedness, empathy and understanding are expected from the employers.” **[Dr. Kala C. Mohan v. Employees State Insurance Corporation & Ors.]**

[Click here](#) to read Judgment.



S.14 B does not mandate imposition of 100% damages on Employer as penalty: Kerala High Court .

The Kerala High Court held that as per Section 14B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (Act) imposition of a 100% penalty is not mandatory.

The Court noted that **the Tribunal had only reduced the penalty to 50%, which is permissible despite the absence of mens rea or actus reus being necessary for the levy of damages** under Section 14-B of the EPF Act.

The Central Board of Trustees of the Employees Provident Fund filed an appeal challenging the order of the Tribunal reducing amount of damages to 50% of the amount levied for reasons stated in the order.

The Court observed that the reasons compelling the Tribunal to reduce the damages to 50% were clearly outlined in its order. The **Bench emphasized that the necessity of proving mens rea and/or actus reus was no longer essential for imposing penalties and**

damages for breach of civil obligations and liabilities.

The Court, referring to the case of *SEBI v. Shriram Mutual Fund* [(2006) 5 SCC 361] and *Union of India v. Dharamendra Textile Processors* [(2008) 13 SCC 369], noted **the imposition of penalties irrespective of the presence of guilty intention.** The Court noted that these decisions do not mandate the imposition of 100% damages in all cases.

In this case, the **Bench noted, “the Tribunal has not set aside the damages under Section 14-B of the EPF Act. It has only reduced the quantum of penalty to 50%. This, in my view, is permissible even when the requirement of mens rea and/or actus reus is no longer a necessary ingredient for levy of damages under Section 14-B of the EPF Act”.** [**Central Board Of Trustees v Bake ‘n’ Joy Hot Bakery**]

[Click here](#) to read Judgment.

Absence after expiry of authorised leave is 'non-duty' for all purposes other than Pension: Kerala HC.

The Kerala High Court upheld a Single Bench order that set aside the promotion of an employee due to a break in his service, after the expiry of his authorized leave, which was treated as unauthorized and non-duty for all purposes other than pension.

"There is no doubt...that any Administrative Order if remain unchallenged would have its effect," the Court observed in this regard.

However, perusing Fundamental Rule 17A and Rule 27 of the CCS Pension Rules, the Court ascertained that the said **period of absence was to be treated as unauthorized and non-duty for all purposes, save for pension.** [**Sabu Varghese v. Viju P. Varghese & Ors.**]

[Click here](#) to read Judgment.



Employee accepted salary after TDS deduction, employer responsible for non-deposit: Delhi High Court.

The Delhi High Court **sheds light on the responsibility of employers concerning Tax Deducted at Source (TDS)** and its implications on employees.

The petitioner, an Associate Vice-President at Tulip Telecom Ltd. from November 2011 to May 2013, faced tax-related challenges post his resignation. Despite the employer deducting TDS on salaries for the assessment years 2011-12 and 2012-13, **the deducted tax for 2012-13 was not deposited. The employer also failed to issue the necessary TDS certificate**, prompting the petitioner to inform tax officials, albeit with no consequential action.

The subsequent demand notices raised by the revenue department led to legal proceedings. The petitioner contended that the respondent's demand for outstanding tax liability was unjust, considering the employer's



PC | The Delhi High Court | Architectural Digest India

failure to fulfill its TDS obligations. The respondent argued that the employer was not obliged to deduct tax for certain months, thus absolving them from the duty to deposit TDS.

The court underscored the legislative framework of Chapter XVII, which governs TDS, **emphasizing that once the employer retains money towards TDS, the deductee (employee) is entitled to the credit of the amount. The Court clarified that an employee, having accepted salary after TDS deduction, is not liable for the employer's failure to deposit TDS.** The employer, acting as the tax-collecting agent, holds the responsibility. The petitioner is exempted from the tax demand, and the court directs the revenue to allow credit for TDS deducted by the employer for the Assessment Year 2013-14. **[Harshdip Singh Dhillon vs. Union of India]**

[Click here](#) to read Judgment.



Nominee of Govt. employee merely a custodian, benefit after death of employee conferred to legal heirs: Allahabad High Court.

The Allahabad High Court reiterated the position settled by the Supreme Court in *Shipra Sengupta v. Mridul Sengupta and others* (2009) that **a nominee of a government employee is merely a custodian, however, any benefits that accrue after the death of such government employee can only be conferred upon his/her legal heirs.**

Petitioner's ex-husband died after retiring as an Assistant Teacher at Maharaja Tej Singh, Junior High School Aurandh, Vikash Khand Sultanganj, District Mainpuri. Though the husband had wedded again, the petitioner's name was recorded as his nominee. **Petitioner claimed entitlement to the retiral**

benefits based on her name being mentioned as his nominee and the fact that she was his wife for many years.

It was argued that though Sri Usha Devi was the lawfully wedded wife of the deceased employee, she had abandoned him many years ago. It was argued that in proceedings under Section 125 CrPC for maintenance, she compromised on maintenance allowance and had never claimed in future. Accordingly, she had abandoned her right.

The Court relied on *Shipra Sengupta v. Mridul Sengupta and others* wherein the Supreme Court had held: "In view of the clear legal position, it is made abundantly clear

that the amount under any head can be received by the nominee, but **the amount can be claimed by the heirs of the deceased in accordance with the law of succession governing them. In other words, nomination does not confer any beneficial interest on the nominee.** In the instant case the amounts so received are to be distributed according to the Hindu Succession Act, 1956."

The bench upheld the benefit granted to Shri Usha Devi as being the legal heir of the deceased employee. Accordingly, the writ petition was dismissed. **[Rajni Rani vs. State of UP and others]**

[Click here](#) to read Judgment.

Suspended employee not required to mark daily attendance for subsistence allowance: Bombay High Court

The challenge in the writ petition was that the Union's claim for seeking subsistence allowance was denied by the company on the **ground that the suspended employee did not attend the factory premises to mark his attendance** at the factory gate in the muster/register provided for the purpose during his suspension.

As per the Union, it was not the requirement

under law to call upon a suspended employee to mark his physical attendance and sign the muster everyday at the factory gate as a pre-requisite for being paid subsistence allowance.

The question for adjudication before the High Court was whether the act of the Company is in consonance with the provisions of Section 10(A) of Industrial Employment (Standing Orders) Act.



Contd. ...

The Court said, “**It is unfair, unjust and malafide condition which is contrary to the provision of Section 10 (A) of the said Act.** What is required under the law is for the suspended employee **to inform the employer that he is not gainfully employed elsewhere and nothing more.** Once the statutory provisions does not provide for requiring marking of attendance everyday, **such introduction of a stipulation as per a customary practice is illegal in law,** no matter what the concerned employer desire

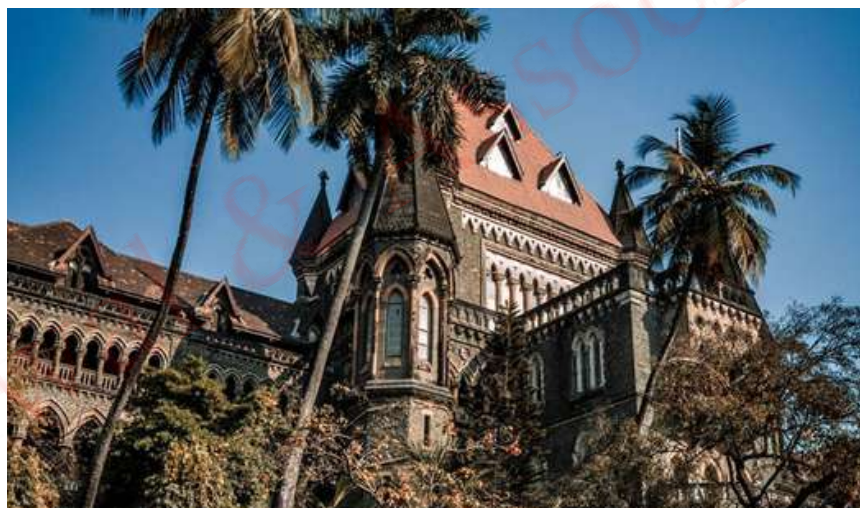
from introducing such a condition,” it said.

Accordingly, the High Court allowed the petition, quashed the impugned award, and directed the company to pay the entire amount along with the interest to the suspended employee within one week. **[M/S Hindustan Level Employees Union v. M/S Hindustan Unilever Limited]**

[Click here](#) to read Judgment.

Gratuity calculated on the last drawn salary at the time of final resignation if employee transferred among Institutes of same management: Bombay HC.

The Bombay High Court clarified that when an **employee is transferred among institutes under the same management with continuity in service, gratuity should be calculated based on the last drawn salary** at the time of the final cessation of service.



PC | The Bombay High Court | LiveLaw

Randale, a lecturer, served at Terna Polytechnic from September 17, 1992, to June 30, 2004, and then was transferred to Terna Engineering College on July 1, 2004, until his resignation on July 21, 2011.

The Court observed that **there was continuity in employment with the same management and the absence of a fresh recruitment process and a gap between**

the spells of service established the connectivity.

While **acknowledging an error in bifurcating the gratuity amount between the two institutes,** the court deemed it inconsequential due to the common management.

The Court held that **Randale is entitled to gratuity based on the last wages drawn** as of July 21, 2011 for his entire

service from September 17, 1992, to July 21, 2011.

The judgment concluded that Terna Engineering College should be directed to pay the entire gratuity amount, and the writ petitions were dismissed. **[M/s. Terna Polytechnic v. Ravi Bhadrappa Randale and connected cases]**

[Click here](#) to read Judgment.



LATEST FROM THE CENTRAL GOVERNMENTS

Notification regarding extension of five months' time for Employers to upload wage details etc. regarding Pension on Higher Wages: EPFO

An online facility in order to comply with the order of the Supreme Court dated 04.11.2022 was made available by EPFO for submitting Applications for Validation of Option/Joint Options for Pension on Higher Wages which was launched on 26.02.2023 and was to remain available only till 03.05.2023. The same was further extended till 26.06.2023 considering the representations of the employees.

However, more than 3.6 lakhs Application for

Circular on Implementation of the Digital Joint Request under Para 26(6) of the EPS Scheme, 1952: EPFO

The Joint request and permission under Para 26(6) of the EPF Scheme, 1952 is **a prerequisite for an employee to contribute on a pay more than the statutory limit**. Accordingly, a format has been prescribed by CBT to prefer joint request for existing employee/new employee and undertaking by the employer.

[Click here](#) to read Circular.

Circular regarding regulating EPS entitlement of members having multiple account numbers: EPFO

Vide this Circular, the EPFO has reiterated that whenever an EPS member possesses multiple account numbers for concurrent employment, simultaneously in two or more establishments, the prescribed criteria shall be followed.

[Click here](#) to read Circular.

Validation of Option/Joint Options are still pending with the employers for processing. Therefore, in order to ensure that the employers process these remaining Applications, the Chairman, CBT EPF has approved the proposal to **grant another extension** of time for the employers for uploading wage details online etc. **till 31st May 2024**.

[Click here](#) to read notification.



PC | The EPFO | Business Manager HR Magazine

Circular regarding removal of Aadhaar from the list of acceptable documents as date of birth proof: EPFO

The UIDAI has stated that use of Aadhaar as a proof of DoB needs to be deleted from the list of acceptable documents, therefore, **the Aadhaar is being removed from the list of acceptable documents** for correction in date of birth.

[Click here](#) to read Circular.



Circular regarding forwarding of user manual for Aadhaar seeding for face authentication using AAA+ Mobile App and other developments: ESIC

In regard to the process of Aadhaar seeding through OTP Based authentication & Biometric authentication, it is informed that ICT Branch (HQ) has recently made provisions/changes in AAA+ Application in order to speed up Aadhaar seeding wherein the AAA+ mobile app has been **facilitated with a new feature for Aadhaar seeding and ABHA generation using face-authentication** for the IP log-in. By using this facility, the IP shall be able to seed Aadhaar for self and family using face-authentication.

[Click here](#) to read Circular.

Circular regarding revised guidelines related to home delivery of drugs to the IPs and Beneficiaries as entitled: ESIC

The ESIC has revised SOP/guidelines in respect to **home delivery of drugs** to the IPs and beneficiaries which provides **operational guidance for the ESIC Hospitals and beneficiaries** of the Corporation.

[Click here](#) to read Circular.



PC | The ESIC | Zee Business

Circular regarding State wise list of notified and non-notified districts under ESIC Scheme: ESIC

The ESIC has updated the statewide list of notified and non-notified districts under the ESI Scheme.

[Click here](#) to refer Circular.

LATEST FROM THE STATE GOVERNMENTS

Few states have released the List of Holidays for the year 2024. Click on the links below to view complete list of holidays.

S.NO.	STATE	CLICK HERE TO VIEW NOTIFICATION
1.	Uttarakhand	Government Notification
2.	U.T. of Andaman & Nicobar Islands	Government Notification
3.	Arunachal Pradesh	Government Notification
4.	Nagaland	Government Notification



Notification regarding certain extension of the Provision of ESI Act for the Municipal bodies including Municipal Corporation (Nagar Nigam), Municipal Councils, Nagar Palika & Other Urban Local Bodies

The Govt. of Punjab has extended the provisions of Employees' State Insurance Act, 1948 to **the Municipal Bodies including Municipal Corporation (Nagar Nigam), Municipal Councils, Nagar Palika & Other Urban Local Bodies** run by State Government wherein ten or more persons on casual or contractual or both, basis are employed, or were employed for wages on any day of the preceding twelve months.



PC | The Government of Punjab | ANI News

[Click here](#) to read notification.

Notification of the Karnataka Compulsory Gratuity Insurance Rules, 2024

The Government of Karnataka had issued rules namely Karnataka Compulsory Gratuity Insurance Rules, 2024 with respect to obtaining insurance for Payment of Gratuity, Recovery of the amount of Gratuity, Registration of Establishment, Continuation of Approved Gratuity Fund and Incorporation of Gratuity Trust.

[Click here](#) to read notification.

Notification of the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) (Karnataka) (Amendment) Rules, 2024

The Govt. of Karnataka has made various amendments and insertions regarding the "Competent Person" under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) (Karnataka) Rules, 2006. The notification in this regard shall come into force on 12th January 2024

[Click here](#) to refer notification.

Final Notification of the Puducherry Factories (Amendment) Rules, 2023.

The Govt. of Puducherry has made certain rules thereby making amendments in the Puducherry Factories Rules, 1964.

[Click here](#) to read notification.



PC | The Government of Puducherry | Other Acts & Rules



Overcoming barriers to performance is how groups become teams.

-John Katzenbach

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