

THE LABOUR TUTORIALS

MONTHLY UPDATES ON INDUSTRIAL AND LABOUR LAWS



PC | The Hindu | The News Time | Workers lining up for job | Labour Union pushes for workers' safety

DOXING

Doxing is a form of cyberbullying that uses sensitive or secret information of a person for his/her harassment, exposure, financial harm or other exploitation. It is the act of publicly providing personally identifiable information about an individual or organization, usually via the Internet and without their consent.

KEY HIGHLIGHTS

LATEST FROM THE SUPREME COURT OF INDIA

- Can an employee withdraw prospective resignation before it becomes effective? Supreme Court explains.

LATEST FROM THE HIGH COURTS

- Employee who has voluntarily retired from service by accepting benefits cannot be treated as 'Workman' U/S. 2(s) of Industrial Disputes Act: Karnataka High Court.
- No recovery of excess payment from employee's leave encashment benefit after retirement in case payment was made due to employer's fault: Orissa High Court.

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LATEST FROM THE SUPREME COURT OF INDIA

Can an employee withdraw prospective resignation before it becomes effective? Supreme Court explains.

In the present case, the appellant **was appointed as Principal on 01.07.1992** in “B.M. Ruia Girls and G.D. Birla Girls College” affiliated to SNDT University and run by Marwadi Sammelan Trust. Her appointment was permanent and she was discharging the duties for a decade long period. However, in the month of December 1998, the management of the Trust was changed and the functioning of the School was taken over by the new management. In 2001, one Mr. Biani was appointed as Governor and it is alleged that there was an interference in the day-to-day functions and passing of lewd and inappropriate comments. Distressed by it, the appellant along with her colleagues wrote a letter dated 18.02.2003 containing some allegations and raised a protest.

It was also noticed that **a letter was sent to the appellant by one of the Trustees on 05.03.2003, stating that there are certain allegations of financial irregularities and indiscipline against her** and she was called upon to submit

her justification. However, the appellant did not submit any response to the said letter and vide letter dated 04.03.2003, **withdrew her protest letter.** Further, on 24.03.2003, due to serious health issues, the appellant submitted **an intimation of resignation** of the President of Trustees and informed **that she wishes to resign from future date i.e., 24.09.2003.** The president on the same date informed the appellant that the Management Committee has decided to conduct a detailed enquiry by a “Fact Finding Committee”.

Shortly, within three days, i.e., on 28.03.2003, the President informed the appellant to submit a fresh unconditional resignation. To this, the appellant did not submit a fresh resignation and **reiterated and requested the management to accept her resignation from prospective date i.e., 24.09.2003.** Thereafter, the management vide letter dated 08.04.2003 accepted the said resignation from future date and unilaterally mentioned as: *“hereby accept your unconditional resignation with*

six months’ notice w.e.f. 24.09.2003 as final, binding and irrevocable.”

The Court observed, **“It does not appear to us that the resignation was submitted by the appellant to foreclose the commencement of any enquiry against her.** Nothing has been placed on record to demonstrate that the resignation was submitted in lieu of the waiving of any departmental enquiry.

The Court further stated that the unconditional resignation waiving the requirement of six months’ notice as demanded by the Trust was not accepted by the Appellant. Without prior consent, the acceptance of resignation vide letter dated 08.03.2003 **using the words, final, binding and irrevocable was unilateral.** As also, the averments made therein under the letter dated 11.08.2003, does **not disclose any implied agreement between the management and the appellant.** Hence, the dismissal of the petition of the appellant on the line of reasonings recorded by the three fora are



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not correct and unsustainable.

Accordingly, the Court allowed the said appeal and **reiterated that in the absence of anything contrary** in the provisions governing the terms and conditions of the office or post and in the end **in the absence of any legal contractual or constitutional bar, a prospective resignation**

can be withdrawn at any time before it becomes effective.

The Court further **directed the Trust to regularize the service period of the Appellant** from 24.09.2003 till the date of joining the duty at the new institution as Principal on 01.10.2007 thereby entitling her to Pension and other retiral benefits. However, in facts of

the case, the principle of 'no work no pay' would apply and the appellant would not be entitled to back wages and salary for such regularized period, as she has not worked with the Trust. **[Dr. Mrs. Suman V. Jain v. Marwadi Sammelan through its Secretary and Others]**

[Click here](#) to read Judgment.



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LATEST FROM THE HIGH COURTS

Employee who has voluntarily retired from service by accepting benefits cannot be treated as 'Workman' U/S. 2(s) of Industrial Disputes Act: Karnataka High Court.

The Karnataka High Court has held that **the employees who have voluntarily retired from service and accepted the benefits under the voluntary retirement package, cannot be treated as a workman under Section 2(s) of the Industrial Disputes Act, 1947.**

The Voluntary Retirement Scheme (VRS) was floated by the petitioner company in the year 2020 and 46 employees had voluntarily opted to avail the benefits under the same. Five employees voluntarily tendered resignation and nominated a person of their choice as a nominee in case of untoward incident. The Management accepted their offers of voluntary retirement/resignation and relieved them from the service.

51 employees claimed gratuity under the Payment of Gratuity Act, 1972 by submitting prescribed application. 46 of them relived under VRS after obtaining a no-due certificate and remaining 5 were relieved after accepting their resignation and settling entire service benefits.

The **memorandum of settlement was signed by the said 46 employees, the company made payments, and it cleared all the statutory benefits.** The question that arose for consideration before the court was –

“Whether the order of reference made under Section 10 (1) of the Industrial Disputes Act, 1947 would raise a question of industrial dispute in the event the employee has voluntarily retired from service and has accepted the benefits of voluntary retirement, can be treated as a workman as defined under Section 2(s) of the ID Act?”

The High Court in view of the facts and circumstances of the case noted, **“The relationship of the employer and employee comes to an end on receipt of his retirement benefits.** This is not a case where the infirmity in the reference can be shown only after evidence has been adduced, it would be a futile exercise, if the dispute were referred to the Industrial Tribunal.

Once an application is made by the employee and accepted by the employer, the contract gets concluded and both the parties are bound by the terms and conditions as contained under the voluntary retirement scheme.”

The Court added that **the employees, having taken the entire benefits, cannot seek the revaluation of the amount of voluntary retirement scheme benefits** and the reference made by the appropriate government would not be justified. It further said that as per the settled legal position, it is a precondition to deposit the entire amount received, including the service benefits before making any further claim.

The Court also observed that in the case, neither the dispute is in existence nor is the dispute apprehended since employees have admitted that they have opted for voluntary retirement from service and the benefits received under the scheme and this being the position, the Government ought to have arrived at a subjective

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satisfaction as to **whether a prima-facie dispute is in existence or is apprehended from the material on record.**

“... it is evidently clear that **the appropriate government has mechanically referred the matter** without discharging its

obligation as required under law and a serious error of law has been committed by the appropriate authority, which is apparent on the face of the record”, it concluded.

Accordingly, the High Court

allowed the writ petition and quashed the order of reference made by the government. **[Triveni Turbine Limited v. Government of Karnataka & Ors.]**

[Click here](#) to read Judgment.

State to pay additional ₹20 Lakhs to family of Manual Scavengers who lost their lives: Delhi High Court.

In the present matter, the petitioners were the widows of workers who lost their lives in manual scavenging. They **approached the Court for a direction to the respondents to pay a sum of Rs. 20 lakh to the petitioners in terms of the judgment passed by the Supreme Court in Balram Singh's case.**

It was stated that the State Government under its policy had given a sum of Rs. 10 lakhs to the family of the persons who died in between, including the petitioners in the present case.

Therefore, the **Delhi High Court has directed the State Government to make endeavors to pay additional ₹ 20 Lakhs to families of manual scavengers** who lost their lives.

Pertinently, the Supreme Court in *Balram Singh v. Union of India*, has



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observed as under: “...(4) **The court hereby directs the Union and the States to ensure that the compensation for sewer deaths is increased** (given that the previous amount fixed, i.e., Rs. 10 lakhs) was made applicable from 1993. The current equivalent of that amount is Rs. 30 lakhs. This shall be the amount to be paid, by the concerned agency, i.e., the Union, the Union Territory or the State as the case may be. In other words, **compensation for sewer deaths shall be Rs. 30 lakhs.** In the event, dependents of any victim have not been paid such amount, the above amount shall be payable to them. Furthermore, **this shall be the amount to be hereafter paid, as compensation...**” [Maya Kaur & Ors v. Union Of India & Ors.]

[Click here](#) to read Judgment.



No recovery of excess payment from employee's leave encashment benefit after retirement in case payment was made due to employer's fault: Orissa High Court.



PC | The Orissa High Court | theorissahighcourt.nic.in

In the present case the question that arose for consideration before the court was- **“Whether the petitioners could have recovered the excess payment made to the respondent from his leave encashment benefit?”**

The Court perused the Rule 39(2) of the Central Civil Services (Leave) Rules, 1972 (‘the Rules, 1972’) and said that the **competent authority is authorized to withhold either whole or a part of cash equivalent of earned leave** of a Government servant who retires from service while under suspension or while disciplinary or criminal proceedings are pending against him.

In the matter at hand, the Court said that the petitioner-Authority failed to produce any material to show that the respondent was under

suspension, or that he was facing any disciplinary or criminal proceeding as on 31-07-2017, i.e. on the date of his retirement. Therefore, **none of the above pre-conditions were satisfied, which could have empowered the authorities to withhold the encashment of earned leaves** by the respondent.

Further, the Court said that the petitioner-Authority did not produce any order by virtue of which recovery of the excess amount which was wrongly sanctioned to the respondent towards 3rd MACP benefit was done. Hence, the Court said that the petitioner-Authority was at fault for not passing an order in accordance with law for effectuating the deduction from the leave encashment benefits. The Court referred to *State of Jharkhand v. Jitendra Kumar Srivastava*, (2013) 12 SCC 210, wherein it was held that

withholding or taking away a part of the leave encashment without the statutory mandate cannot be upheld.

The Court stated that **it is no more res integra that the Government cannot be allowed to recover excess payment of allowances** if the said payment was made by the employer by applying a wrong principle for calculating the pay or on the basis of erroneous interpretation of the rules. The Court relied on catena of precedents and held that **the petitioner-Authority erred in deducting the excess payment made to the respondent from the leave encashment benefits** and thus, the action was not acceptable and the same was invalidated.

The Court upheld Tribunal’s order directing the petitioner-Authority to disburse the amount of Rs. 3,88,548/- to the respondent along with interest on such amount from 01-08-2017 till the actual date of disbursement to the respondent at the rate of 9 per cent per annum. **[Union of India v. Md. Ahmed Baig]**

[Click here](#) to read Judgment.



Abandonment of Scheme under which employees were appointed can be sole reason for their non-absorption: Delhi High Court.

The Delhi High Court observed that the **abandonment of the scheme under which employees were initially appointed can be the sole reason for their non-absorption.**

The employees in these cases were hired by the respondent Council through advertisements after the approval of the *Technology Vision 2020 (TV 2020 scheme)* in 2005. They received offer letters with specific terms, indicating an initial one-year period. Despite completing probation and receiving extensions, they were not regularized, prompting them to file writ petitions.

The High Court observed that, "the petitioners in all the cases were appointed under the TV 2020 umbrella scheme and were initially appointed for a specific period which got extended due to requirement of manpower on the project, however, **the decision of closure of the said scheme would also lead to end of the employment of the employees working under the said scheme.**"



PC | The Delhi High Court | delhihighcourt.nic.in | The News Minute

In light of the same, it was held that the petitions were devoid of any merit and were subsequently dismissed. **[Ravindra Kumar & Anr. vs Technology Information, Forecasting & Assessment Council & Ors.]**

[Click here](#) to read Judgment.



LATEST FROM THE CENTRAL GOVERNMENTS

Circular regarding issuing of e-Pehchan Card to all IP's after Registration under ESI-ESIC.

As per the directions of the Ministry of Labour & Employment, it has been decided that the **e-Pehchaan card must be given to all insured persons immediately after registration**. Hence, all ROs/SROs are directed to issue suitable directions to all the employers under their jurisdiction to download e-Pehchaan card from ESI Portal and hand it over to their respective employees/insured persons immediately after registration under ESI Scheme and **also ensure to issue the same to existing IPs also**.

[Click here](#) to read Circular.

Circular regarding restrictions on deposits and credit transactions in Paytm Payment Bank Accounts- EPFO.

The RBI has imposed restrictions on deposit and credit transactions in the customer accounts of Paytm Payments Bank after 29.02.2024 which has been extended on 12.02.2024 by RBI till 15th March 2024. In reference to the same, all field officers have been advised to **refrain from accepting claims associated with bank accounts in Paytm Bank Limited** w.e.f. February 23, 2024.

[Click here](#) to read Circular.

Notification regarding Enhancement in Rate of Permanent Disablement Benefit / Dependant Benefit under Employees' State Insurance Act, 1948- ESIC.

The ESIC has **approved and notified the enhancement in the rate of Permanent Disablement Benefit / Dependant Benefit under Employees' State Insurance Act, 1948 w.e.f. 01.08.2022** in cases where the employment injuries resulting in disablement or death occurred on or before 31.12.2021. Increase to an extent of **5.9 % of the basic amount in respect to cases where disablement or death has occurred on or after 01.10.2021 to 31.12.2021** has been proposed w.e.f. 01.08.2022.

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LATEST FROM THE STATE GOVERNMENTS

REVISED MINIMUM WAGES

Some states have revised the rates of Minimum wages. Click on the link below for updated rates.

S. NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1.	Maharashtra	01.01.2024	Government Notification
2.	Uttarakhand (Engineering Sector)	01.01.2024	Government Notification
3.	Uttar Pradesh (Engineering Sector)	01.01.2024 – 01.07.2024	Government Notification
4.	Assam (Workers under CLRA)	01.07.2023	Government Notification
5.	Maharashtra (Pune District Security Guard Board)	01.01.2024	Government Notification
6.	Maharashtra (Mumbai & Thane District Security Guard Board)	01.01.2024	Government Notification
7.	Haryana (Scheduled Employment)	01.01.2024	Government Notification

Notification regarding opening of Shops and Establishments under Assam Shop and Establishment Act, 1971.

The Governor of Assam is pleased to suspend the operation of Section 6- (Daily and weekly hours), Section 9-(Spread over), Section 10 - (Opening and closing hours), Section 11 - (Closing of shops and grants of weekly holidays for religious purposes), throughout the State of Assam **during the festivals for a period of 70 days** as mentioned in the notification.

The Shops and Establishments will remain open for 70 days subject to condition that **the employees shall be paid compensation for overtime work and for work on weekly off days** by employers concerned.

[Click here](#) to read notification.

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A leader needs enough understanding to fashion an intelligent strategy.

-John P. Kotter -

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