Labour Law Alert- November 2021

Notifications:

Central

Implementation of Employees' State Insurance Act, 1948 in the districts of Tamil Nadu

The Employees' State Insurance Corporation ("ESIC") vide circular dated November 1, 2021 notified the implementation of Employees' State Insurance Act, 1948 ("ESI Act"), under Section 1(3) of the ESIAct,which provides that the ESI Act shall come into force on such dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act,in the entire region of Thanjavur and Coimbatore districts of Tamil Nadu.

Conveyance Allowance shall not fall within the ambit of "wages" as defined under Section 2(22) of Employees' State Insurance Act 1948

The Supreme Court vide its judgement dated March 8, 2021, upheld that conveyance allowance shall not form a part of the wages of the employees as defined under Section 2(22) of the Employees' State Insurance Act, 1948. A copy of the judgement (SLP No. 811/2021) was circulated for strict compliance vides notification dated November 8, 2021.

Extension of Atal Beemit Vyakti Kalyan Yojana Scheme

Atal Beemit Vyakti Kalyan Yojana ("ABVKY") scheme introduced with effect from July 1, 2018 is a welfare measure for employees covered under Section 2(9) of ESI Act, 1948, which provides relief payment up to 90 days, once in a lifetime. It offers cash compensation to insured person when they are rendered unemployed and was initially launched for a period of two years. However, the Employees' Provident Fund Organisation ("EPFO") vide circular dated November 8, 2021, further extended ABVKY for the period of July 1, 2021 to June 30, 2022, with additional relaxations on the eligibility condition and enhancement of the rate of relief as notified in the Gazette of India (Extraordinary), Part III Section 4 (Sl. No. 436) dated October 16, 2020 and Sl. No. 15 dated January 11, 2020 and published in the Gazette of India, (Extraordinary), Part III Section 4 (Sl. No. 329) dated August 13, 2021.

Introduction of Universal Account Number in the Insurance Module

As per the directions of the Secretary (L&E) vide order dated November 8, 2021, the Universal Account Number ("UAN") of a minimum of 75 Lakh workers has to be incorporated into the Insurance Module of ESIC latest by February 24, 2022. Additionally, regions have been instructed to submit a weekly report to the headquarters regarding the number of UAN data incorporated into the system.

Mandatory seeding of Aadhaar Number with UAN for filing of Electronic Challan cum Return

EPFO vide circular dated November 15, 2021 mandated the seeding and verification of Aadhaar with UAN which is generated under The Employees Provident Fund and Miscellaneous Provisions Act, 1952 ("**EPF Act**") latest by November 30, 2021 thereby amending the circular dated June 15, 2021.

Time limit relaxed for filing and depositing Employees' State Insurance contribution

In compliance with Regulation 100 of the Employees' State Insurance (General) Regulations, 1950, the Director General vide circular dated November 16, 2021 relaxed the time limit for

filing and deposit of ESI contribution. In pursuance of the circular, ESI for the month of October 2021 may be remitted up till November 30, 2021 in lieu of November 15, 2021 and Return of contribution for the period of April 2021 to September 2021 may be filed up to December 15, 2021, in lieu of November 11, 2021.

ESI is a social security scheme offered by the Government of India as per the Employees' State Insurance Act, 1948. The scheme provides protection to employees against the impact of incidences of sickness, maternity, disablement and death due to employment injury and to provide medical care to insured persons. ESI is a contributory fund that has contributions from both the employer and employee at4.75% and 1.75% respectively as of July 1, 2019. An employer is liable to pay his contribution in respect of every employee and deduct employees' contribution from wages bill and shall pay these contributions at the specified rates to the Corporation.

Delegation of Financial Powers towards settlement of claims in respect to closed establishments as well as non-contributing establishments

The Central Provident Fund Commissioner in exercise of the powers vested under Section 24(3) of The Employees Provident Funds Scheme, 1952 ("**EPFS**") revised the delegation of financial powers for settlement of claims with respect to closed establishments and non-contributing establishments wherein no contribution has been received continuously since the last 24 months vide circular dated November 24, 2021.

In furtherance of the circular claims totalling INR 50,000/- shall be approved by the Accounts Officer (Accounts); claims above INR 50,000/- shall be approved by APFC/RPFC-II; and claims amounting to or a above INR 5,00,000/- shall be approved by RPFC-I/RPFC-II, In-Charge of Region.

STATE

Revision of rates with respect to Minimum Wages

The following states have revised the rates with respect to minimum wages w.e.f. October 2021, following a notification passed in November 2021:

1. Odisha
2. Goa
3. Kerala
4. Delhi

Delhi - Amendment to the Delhi Shops and Establishments Rules, 1954

Draft Rules namely, the Delhi Shops and Establishments (Amendment) Rules, 2021 were published with the approval of the Lieutenant Governor, Delhi vide notification dated November 15, 2021 post the lapse of 15 days to file an objection as was notified in the Delhi Gazette, Extra Ordinary Part IV vide notification dated September 24, 2021.

Gujarat - The Code on Social Security (Gujarat) Rules, 2021

In furtherance of the powers conferred by Section 154(1) and Section 156(1) of the Code on Social Security, 2020,authorizing the government to make rules consistent with the Code, read with Section 24 of the General Clauses Act, 1897 and in supersession of the Gujarat

Maternity Benefit Rules, 1964; the Payment of Gratuity (Gujarat) Rules, 1973; the Gujarat Workmen's Compensation Rules, 1967, the State Government vide notification dated November 16, 2021, notified that the draft would be taken into consideration by the Government of Gujarat after the lapse of 45 days from the date of its publication.

Tamil Nadu - Declaration of Automobile Manufacturing Industry as a public utility service under the Industrial Disputes Act, 1947

Vide order dated November 2, 2021, the Governor of Tamil Nadu in exercise of the powers conferred by Section 2(n)(vi), which states that "any industry specified in the First Schedule which the appropriate Government may, if satisfied that public emergency or public interest so requires, by notification in the Official Gazette, declare to be a public utility service for the purposes of this Act, for such period as may be specified in the notification," of the Industrial Disputes Act, 1947 ("**ID Act**") declared 'Automobile Manufacturing Industry' as a public utility service for the purposes of the ID Act for a period of 6 months w.e.f. the date of publication of the notification in the Tamil Nadu Government Gazette.

CASE LAWS:

1. **Reinstatement is not an Automatic Consequence of Wrongful Termination, Especially when the Workman has During the Pendency of Litigation, not Performed any Services with the Management**

The High Court of Delhi disposed of the petition by awarding a relief of lump sum compensation to the Workmen.[1]

In the Hon'ble High Court of Delhi, a petition has been filed by the Management of G4S Secure Solutions India Pvt. Ltd ("**Appellants**") challenging the Award dated January 18, 2020, passed by the Presiding Officer, Labour Court-V, Rouse Avenue Court, Delhi. Vide the said Awards; the Labour Court had awarded reinstatement along with full back wages to all the four workmen ("**Respondents**"). The Respondents in this case were engaged by the appellants in 1997-2006 and they worked till 2011 i.e., for a period between 5 to 14 years. It has, however, been ten years since they were terminated from service.

An incident had occurred in June 2011 due to which a show cause notice was issued by the Appellants to the Respondents. To the said show cause notice, replies were filed by the Respondents, and thereafter, on June 9, 2011, the Appellants had terminated the services of the Respondents. This termination was challenged before the Labour Court by way of a claim petition that was filed by the Respondents. In the claim petition before the Labour Court, a declaration was sought by the Respondent that the termination was illegal and compensation for unemployment, earned wages along with other legal entitlements were also sought.

The Court opined that the Respondents ought to be given lump sum compensation, and not reinstatement with full back wages. The Apex Court in the past has recognised that reinstatement is not an automatic consequence of wrongful termination, especially when the Respondents during the pendency of litigation, have not performed any services with the appellants.[2]

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[1]G4S Secure Solutions India Pvt. Ltd. v Sanjeev Pawar and Ors, MANU/DE/3250/2021

2. Disability Percentage Assessed by the Dotor must be taken into Consideration for Fixing the Loss of Earning Capacity Under Section 4(1)(C)(Ii) of the Workmen's Compensation Act, 1923

The High Court of Bombay (Nagpur Bench) dismissed the appeal for it was devoid of any merit and no good grounds were made out to interfere with the order passed by the Learned Commissioner.[3]

The Insurance Company ("**Appellant**") has challenged the judgment and award dated September 18, 2008, passed by the Commissioner under the Workmen's Compensation Act and Labour Court at Gondia in N.F.W.C.A. No. 1 of 2005. The Appellant is the insurance company with which the offending vehicle was insured. **Respondent no. 1** is the claimant while **Respondent no. 2** is the owner of the offending vehicle. Respondent no. 1 claimant filed a proceeding under Section 4 and Section 22 of the Workmen's Compensation Act, stating therein that he was in the employment of Respondent no. 2 for the work of loading and unloading of the material on the offending vehicle tractor.

The claimant claimed that due to accident his movement got restricted and he is required to walk with the help of a stick. He stated that he was getting daily wage of Rs. 75/-. He claimed compensation along with 50% penalty and interest. The Appellant denied that the claimant was the employee of the owner of the insured vehicle to load and unload the material on daily wages of Rs. 75/- and Rs. 2,250/- per month. The Appellant also denied the occurrence of the incident and loss of 90% earning capacity of the claimant due to the accident. It was further stated by the Appellant that the claimant at his own negligence suffered the injuries and there is no fault on the part of the driver and owner of the vehicle. Respondent no. 2, the owner of the vehicle denied his liability to pay any compensation. He also denied the fact that the claimant was his employee on his tractor to load and unload the material at Rs. 75/- per day and Rs. 2,250/- per month. This Respondent also denied the occurrence of the incident.

The Appellant raised a question that the doctor, who assessed the workman, had not given any certificate regarding the loss of earning capacity in terms of Section 4(1)(c) (ii) of the Workmen's Compensation Act, 1923. As per Section 4(1)(c)(ii) of the Act, the doctor has to assess the loss of earning capacity of the workman. The disability certificate issued by the Medical Board for physically handicapped, General Hospital, Gondia, certifying 60% permanent physical disability of the injured/claimant was issued by the medical board and the same is duly proved by the claimants, there is no substance in the contention urged by the Learned Counsel of the appellant.

With regard to the interest payable by the appellant as the amount of compensation, the liability of the insurance company emanates from the terms and conditions of the contract of insurance. The learned counsel for the appellant could not point out from the terms and conditions of the insurance policy that the insurer is not liable to reimburse the insured.

In view of the above, the Hon'ble High Court held that no good grounds are made out to interfere with the order passed by the Learned Commissioner. Consequently, the appeal was dismissed.

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[2]Oriental Insurance Co. Ltd. v Shamlal and Ors., MANU/MH/3652/2021

3. The Payment of Back Wages has a Discretionary Element Involved in it and has to be Dealt with, in the Facts and Circumstances of Each Case and No Straight-Jacket Formula can be Evolved

The High Court of Andhra Pradesh at Amaravati, directed the respondents to pay backwages at the rate of 50% for the concerned period.[4]

Y.V.V. Satyanarayana ("**Appellant**") filed a Writ of Mandamus to declare the Award, dated July 10, 2007, passed by the Labour Court, Guntur, as illegal, improper and violative of Articles 14 and 21 of Constitution of India and consequently to reinstate the Petitioner with continuity of service, backwages and all other attendant benefits. Petitioner joined as a motivator in engineering section in Tadepalligudem Municipality on March 1, 1982 and worked for a period of two years. Thereafter, he worked as a motivator in Low Costs Sanitation Works till March 31, 1992 in the same Municipality. On April 1, 1992, the Appellant was orally terminated from the service without issuing any notice as required under Section 25-F of the Industrial Disputes Act, 1947. Since, the action of the Respondents was contrary to law, the writ petitioner i.e., Appellant filed I.D. No. 139 of 2003 before the Labour Court, challenging his termination from service. After conducting an enquiry, the Labour Court dismissed the I.D. holding that the Petitioner cannot claim to be a regular worker or a casual worker as he has not put in 240 days of service preceding the date of termination. It was further held that the order of termination was not in violation of Section 25-F of the I.D. Act.

The **Appellant** submits that the burden of proving the period of service, is on the petitioner and as he failed to demonstrate the same, the learned Single Judge erred in holding that the petitioner has put in 240 days of continuous service.

Having regard to the orders referred to above and in view of precedents laid out by the Apex Court in Management of Madhurantakam Cooperative Sugar Mills Limited v S. Viswanathan , and Hindustan Motors Limited v Tapan Kumar Bhattacharya , it was held by the Hon'ble Court that the respondents are entitled to be paid backwages at the rate of 50% for the concerned period.

4. Even if the Dismissal or Termination of an Employee from Service is Illegal, He is not Entitled to Whole of the Back-Wages as a Matter of Right, and the Court Needs to Award a Suitable Compensation after Considering all the Facts and Circumstances of the Case before it

The Hon'bleHigh Court of Shri Naresh Kumar Laka Additional District Judge, Saket Court, New Delhi disposed of the appeals by modifying the impugned judgement/decree dated January 20, 2021.[5]

Aggrieved by the decision in the judgment/decree dated January 20, 2020, passed by Shri Vinod Joshi, Ld. Civil Judge-05, Central District, Tis Hazari Court in Suit No. 91/18, both the parties preferred separate appeals under Section 96 CPC. The Plaintiff was appointed by the Defendant as Law Officer (Taxation) in its Department of Accounts vide appointment

[3]Y.V.V. v Municipal Commissioner and Others, 2021 SCC Online AP 3741
[4]Ashok Gupta v Modi Rubber Limited, RCA No. 25/2020

letter dated January 24, 1980. The services of the Plaintiff were confirmed by the defendant on October 24, 1981. It is alleged that on September 8, 1997, the Defendant company did not allow the Plaintiff to enter into the premises of the defendant company and the Plaintiff was informed that the Defendant company has terminated his services with immediate effect.

The Plaintiff filed an appeal bearing RCA No. 117 of 2013 against the said judgment. The Appellate Court of Ld. ADJ remanded the matter back to the Ld. Trial Court with a direction to calculate the compensation as per law. Aggrieved by the aforesaid decision, the Plaintiff again filed an appeal bearing RCA No. 35/17 on 07.04.2017 and the Appellate Court of Ld. ADJ vide judgment dated 13.11.2017 remanded the matter back to the Trial Court to calculate the compensation as per law. Third time, the suit of the Plaintiff was decreed by enhancing the compensation to Rs. 3 lakhs and the said judgment/decree is under challenge in the present appeal.

In the instant case, the termination letter provides that the services of the plaintiff were terminated due to business exigencies and administrative reasons and, therefore, it cannot be said that the termination of the Plaintiff was infliction of a punishment. Section 2(oo) of the Industrial Dispute Act, 1947 defines retrenchment. It may be noted that the termination by way of retrenchment can be for any reason whatsoever. The Section 25F provides for the employer to fulfil certain conditions before retrenching any employee. In the instant case, there is a finding of the Ld. Trial Court that the notice of termination was not served upon the plaintiff. It can be said that the plaintiff was not properly retrenched as per the procedure provided in the ID Act. Therefore, he cannot be said to be entitled for the compensation as per the aforesaid provision of Section 25F of the ID Act.

In the light of the aforesaid facts, the Court held that the Plaintiff is entitled only for one month's salary of Rs. 9373/- as per the original employment contract for one month's notice period besides the other service dues which has been decided by Ld. Trial Court in its first judgement dated January 4, 2012 i.e. Rs. 2187/-, totalling to Rs. 11,560/- along with interest @ 12% from the date of termination of service i.e. September 9, 1997 till the date of realization along with the costs of the suit. In the present appeal, the Plaintiff has also claimed provident fund, DA, HRA, Bonus, LTA and Gratuity. The said reliefs were not the part of the original prayers of the suit; therefore, they cannot be considered and allowed. Further, when it has already been held that the Plaintiff is not entitled for full back wages, he cannot be said to be entitled for the aforesaid reliefs. Secondly, HRA and LTA are permissible only when a person is into service which is not the case herein. The Bonus and Gratuity can be claimed from the competent authority as prescribed in the Bonus Act and Gratuity Act as per law. The amount already received by the Plaintiff is deductible and excess, if any, to be refunded to the defendant within 30 days.

5. Gratuity Amount Payable to Employee can only be Forfeited if Circumstances Fall within the Purview of Section 4(6)(A) and Section 4(6)(B) of the Payment of Gratuity Act, 1972

The High Court of Bombay (Nagpur Bench) dismissed the Writ Petition for there was no perversity or any illegality warranting interference in exercise of the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution.[6]

[5]Air India Ltd. vDharman K. Patil, MANU/MH/3666/2021

Mr. Patil ("**Respondent**") was in the employment of the petitioner. He joined the Petitioner's establishment on November 24, 1983. On November 29, 2012 which is after 29 years of service, the Respondent was issued a charge-sheet by the petitioner under Clause 19(2) (xxii) of the Certified Standing Orders, alleging that respondent no.1 at the time of seeking employment had wilfully furnished false information of his age. It was alleged that Respondent no. 1's actual date of birth was January 1, 1950; however, he had submitted documents depicting his date of birth to be January 1, 1956. On such charges, an enquiry was conducted which resulted in the disciplinary authority passing an order dated June 26, 2013 against the Respondent inter alia of dismissal. By such order, the amount of gratuity payable to the respondent was also directed to be forfeited.

The Respondent aggrieved by the gratuity being forfeited under the dismissal order, approached the Controlling Authority under Payment of Gratuity Act, 1972. The Controlling Authority, after hearing the parties on the respondent's application, passed the impugned order holding that the respondent is entitled to receive payment of gratuity amounting to Rs. 4,72,845/-, for the period of continuous service rendered by him from November 24, 1983 to July 4, 2013.

A common thread running through clauses (a) and (b) of Section 4(6) of the Payment of Gratuity Act ("**Act**") as discernible, is that these provisions target a wrongful act of an employee which would cause damage, loss or destruction of the property belonging to the employer and/or the services of the employee having been terminated for his riotous or disorderly conduct and/or for any act which constitutes an offence involving moral turpitude, if committed during the course of employment
However, as per the Hon'ble Court, it is crystal clear that none of the circumstances fall within the purview of clauses (a) and (b) Section 4(6) of the Act in the present case, which can authorise the petitioner to forfeit the gratuity amount payable to the respondent. An appointment on a reserved post being sought on a false caste certificate stands on a completely different footing. Such appointment has been held to be a fraud on the Constitution, thereby depriving the legitimate entitlement of a reserved category candidate to such appointment. This decision is also not an authority in the context of the provisions of Payment of Gratuity Act. Thus, the ratio of the decision of the Apex Court in the case of R. Vishwanatha Pillai[7] would not be applicable in the facts of the present case. As per the Hon'ble Court, none of the circumstances fall within the purview of clauses (a) and (b) of Section 4(6) of the Act in the present case, which could authorise the petitioner to forfeit the gratuity amount payable to the respondent. The impugned order was accordingly dismissed.

[5]R. Vishwanatha Pillai v State of Kerala &Ors, MANU/SC/0023/2004