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the employment quarterly

July to September, 2022

Index

Legislative Updates

Judicial Updates

Welcome to the Employment Quarterly – our quarterly newsletter on key employment and labour updates for the July-September 2022 period.

This issue covers key legislative updates at the Central and State levels, such as notification for Work from Home in Special Economic Zones; issuance of Standard Operational Procedure for settlement of claims by the EPFO; notifications permitting employment of women workers in factories during night shifts in Himachal Pradesh and in shops and establishments in Madhya Pradesh; amendment to the Uttar Pradesh Dookan Aur Vanijya Adhishthan Niyamawali, 1963.

Additionally, this issue provides an update on the recent draft rules under the Labour Codes, published by various State Governments, such as the release of draft rules under the Occupational Safety, Health and Working Conditions Code, 2020, by Maharashtra, and the Code on Social Security, 2020, by Andhra Pradesh and Mizoram.

Besides legislative updates, this issue also delves into key developments in labour laws, brought forth by various judicial pronouncements. We have analysed key decisions of the Supreme Court and those of various High Courts, which deal with issues pertaining to policy framework for transgender persons' employment in establishments, constitutional validity of the amendment to the Payment of Gratuity Act, extending gratuity benefit to teachers with retrospective effect, reinstatement on violation of Section 25F under the Industrial Disputes Act, retirement age of employees in private sector, among others.

We hope you will find this edition of the newsletter to be useful.

Please feel free to send any feedback, suggestions, or comments to cam.publications@cyrilshroff.com.

Regards,
Cyril Shroff

Managing Partner
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India's leading law firm

LEGISLATIVE UPDATES

I. Key Central Legislative Updates

A. Employees' Provident Fund Organization ("EPFO") issued Standard Operational Procedure (SOP) for settlement of claims in cases of death due to Industrial Accident.

The EPFO issued a letter dated August 08, 2022 (**"EPFO Letter"**), regarding the SOP for settlement of claims in cases of death due to industrial accident. As per the EPFO Letter, employers have been directed to provide full particulars of all deceased persons to the Regional Provident Commissioner so that immediate follow up action can be taken on priority to settle the claims. The EPFO Letter further states that failure to provide such information on an urgent basis, will constitute a violation under the Employees' Provident Funds and Miscellaneous Provision Act, 1952 (**"EPF Act"**), and schemes framed thereunder.

Family members of those already enrolled as PF members are eligible to receive certain benefits under the EPF Act and schemes thereunder. The EPFO Letter lists the same. These include, employee provident fund (**"EPF"**) accumulation in their EPF account with up to date interest; EDLI benefits as per the Employees' Deposit Linked Insurance Scheme, 1976; monthly family pension as per the Employees' Pension Scheme, 1995 i.e. until the widow/ widower's death/ re-marriage (whichever is earlier); and monthly children pension for up to two children at a time until they attain 25 years of age, and when one child attains 25 years of age, the third child (if any) would start receiving till they become 25 years old and so on.

B. Work from Home in Special Economic Zones (SEZ)

On July 14, 2022, the Central Government notified the Special Economic Zones (Third Amendment) Rules, 2022, to amend the Special Economic Zones Rules, 2006 (**"SEZ Rules"**), to *inter alia*, incorporate a new Rule 43A on Work from Home (**"WFH"**). As per the newly inserted Rule 43-A, a unit may permit the following employees, including contractual employees, to work from home; (a) employees of IT/ITeS Special Economic Zone units; (b) employees who are temporarily incapacitated; (c) employees who are travelling; and (d) employees who are working offsite, subject to certain conditions, such as:

i. Every proposal for WFH permission or an application for extension of the permission shall be submitted at least fifteen days in advance to the Development Commissioner, except in case of employees who are temporarily incapacitated or travelling. The proposal shall contain the terms and conditions of WFH, including the date of commencement of WFH, and details of employees to be covered by such permission. For SEZ units whose employees are already in WFH, the proposal has to be submitted within 90 days from July 2022.

ii. The permission of the DC will be valid for a period of one year and may be subsequently extended by one year at a time, on receipt of an extension application.

iii. The proposal shall cover a maximum 50% of the total employees (including contractual employees) of the unit.

iv. The unit shall maintain accurate attendance record for the entire period of permission to WFH and shall submit it to the DC, from time to time.

v. The unit shall ensure export revenue of the resultant products or services to be accounted for by the unit to which the employee is tagged. Where an employee ceases to be a part of the project of the unit, the employee shall be un-tagged from the unit and the unit shall surrender the identity card as per the SEZ Rules.

vi. DC may approve a higher number of employees to WFH for any bona-fide reason to be recorded in writing.

vii. The work to be performed by the employee permitted to WFH under this rule shall be as per

the services approved for the unit, and the work will be related to the project of the unit.

viii. The units will also be required to comply with the conditions for temporary removal of goods to domestic tariff areas.

In this regard, the Department of Commerce has also published standing operating procedure vide Instruction No. 110, dated August 12, 2022, which provides proposal content, and manner of calculation of percentage of employees.

C. Employees' State Insurance Corporation ("ESIC") directs online issuance of Regulation Certificates for cash benefits to Insured Persons ("IP")

Manual issuance and transfer of regulation certificates have resulted in increasing number of pending cash benefit claims. To resolve this issue and to make the process of payment of cash benefits to IPs end-to-end online, by way of a letter dated July 22, 2022, the ESIC has directed that with effect from August 1, 2022, no regulation certificate for cash benefit will be issued by ESIC dispensaries in physical form. All ESIC/ESIS dispensaries have been directed to issue regulation certificate through specified online modules.

Further, the IP will have a choice to receive medical/ fitness certificate either in physical form or in soft copy in his/her email.

II. Key State Legislative Updates

A. Notification permitting employment of women workers in factories during night shifts in Himachal Pradesh

The Department of Labour and Employment of Himachal Pradesh issued a notification dated August 12, 2022 (**"HP Exemption Notification"**), allowing employment of women workers in factories in the State of Himachal Pradesh during night shifts i.e., from 7:00 PM to 06:00 AM, subject to certain conditions. The HP Exemption Notification has been issued in supersession of the previous notification dated May 1, 2017. The HP Exemption Notification shall remain valid for a period of 3 (three) years, subject to the conditions specified

thereunder. Some of the key conditions are:

i. No woman worker shall be bound to work without her consent before 06:00 AM and after 07:00 PM.

ii. Adequate transport facilities, along with guard, shall be provided to women employees for pick up from and drop to her residence.

iii. The employer shall provide safe, secure, and healthy working conditions such that no woman employee is disadvantaged in connection with her employment.

iv. The provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (**"POSH Act"**), are to be complied with.

v. Employers are required to send a fortnightly report to the inspector, mentioning the details of employees engaged during the night shift. Express reports are also to be sent to the inspector and local police station whenever there are some untoward incidents.

B. Madhya Pradesh permits employment of women during night shifts in shops and establishments

The Government of Madhya Pradesh issued a notification dated August 1, 2022, directing that Section 25 of the Madhya Pradesh Shops and Establishments Act, 1958 (**"MPSEA"**), relating to working hours of women between 9.00 PM and 7.00 AM will not apply to

shops and commercial establishments in the State of Madhya Pradesh, subject to the terms and conditions specified under the aforesaid notification. Some of the key conditions are:

i. It shall be the duty of the employer to prevent sexual harassment and ensure prosecution in case of sexual harassment by taking all the required steps.

ii. The employer shall ensure that at least 10 women workers are employed per batch, and the number of women workers employed at night-time is not less than 2/3rd of the total strength.

iii. Sufficient women security must be provided during night-time at entry and exit points, and separate transportation facility must be provided by the employer.

iv. During night-time not less than 1/3rd of the strength of supervisors or shift-in-charge or foreman or other supervisory staff shall be women.

v. The employer is required to send a monthly report to the labour officer/ assistant labour commissioner regarding the details of employees engaged during night shifts, and must also send an immediate report to the labour officer/ assistant labour commissioner and local police station in case some untoward incident occurs.

C. Amendment to Kerala Shops and Establishments Rules to simplify procedural compliances

In an effort to minimise the regulatory compliance burden and promote ease of doing business, the Government of Kerala, on August 02, 2022, notified the Kerala Shops and Commercial Establishments (Amendment) Rules, 2022, (**"KSE Amendment Rules"**), which was brought into effect from August 10, 2022. The key changes to the Kerala Shops and Commercial Establishments Rules, 1961 (**"KSE Rules"**), as a result of the KSE Amendment Rules are set out below:

i. the requirement to obtain duplicate registration certificate in case of loss/ theft/ destruction of the registration certificate has been done away with; and

ii. the compliance requirement of submission of quarterly returns in Form-H as per Rule 12A of the KSE Rules, by establishments having 10 or more employees, has also been done away with.

D. Online portal of Delhi Labour Welfare Board for online contributions from employer/ employees

By way of an office order dated July 1, 2022, the Delhi Labour Welfare Board has directed employers/ employees covered under the Bombay Labour Welfare Fund Act, 1953 (as extended to the National Capital Territory of Delhi) (**"DLWF Act"**), to utilise the services available on the online portal available at https://dlabourwelfareboard.delhi.gov.in/index.php, with effect from July 1, 2022. The services available in the above portal include online registration of establishment under the DLWF Act, amendment/ updation of establishment details, including the number of employees, online deposit of unpaid accumulations/fine, contributions under the DLWF Act, online closure of establishment.

E. Online portal for applying for certain exemptions under the Delhi Shops and Establishments Act

The Delhi Government launched an online portal (https://dlabourwelfareboard.delhi.gov.in/shopexemption/), by way of an office order dated August 5, 2022, for receiving applications for the following exemptions under Sections 14, 15 and 16 of the Delhi Shops and Establishment Act, 1954 (**"DSEA"**):

i. Exemption under Section 14 of the DSEA for allowing young persons and women to work between 9 PM and 7AM during the summer and between 8 PM and 8 AM in the winter.

ii. Exemption under Section 15 of the DSEA for allowing change in working hours.

iii. Exemption under Section 16 of the DSEA for allowing opening of shops/establishments on weekly off day or on national holidays of India.

With effect from August 8, 2022, all concerned stakeholders have been directed to utilise the above-mentioned services on the website as thereafter no physical applications for the above exemptions will be received by the authorities.

F. Amendment to the Uttar Pradesh Dookan Aur Vanijya Adhishthan Niyamawali, 1963

The Uttar Pradesh Dookan Aur Vanjiya Adhishthan (Navam Sanshodhan) Niyamawali, 2022 (**"UP Shops Amendment Act"**), was notified and brought into effect on August 3, 2022, amending the Uttar Pradesh Dookan Aur Vanijya Adhishthan Niyamawali, 1963 (**"UPSEA"**). The key change brought about by the UP Shops Amendment Act is that the requirement to renew the registration certificate under the UPSEA every five years has now been done away with, instead establishments are required to obtain a one-time registration by paying the prescribed registration fee, which will be levied only once. However, in case of shops and establishments that run on yearly contract basis, the registration can be applied for that year upon payment of 1/15th of the prescribed fee. The shops and establishments, which are already registered for 5 years, are required to renew once on deposit of prescribed fees.

III. Status on Labour Codes

A. Rules released under the Occupational Safety, Health and Working Conditions Code, 2020 ("OSH Code"), by various states

During the period between July 01, 2022, and September 31, 2022, the draft rules under the OSH Code were released by the Government of Maharashtra and were open to the public for objections and suggestions.

B. Rules released under the Code on Social Security, 2020 ("SS Code"), by various states

During the period between July 01, 2022, and September 31, 2022, the draft rules under the SS Code were released by the Governments of Andhra Pradesh and Mizoram and were open to the public for objections and suggestions.

JUDICIAL UPDATES

I. Supreme Court (SC)

A. Central Government directed to devise a policy framework for transgender persons' employment in establishments covered under the Transgender Persons (Protection of Rights) Act, 2019 ("TPPR Act")

In ***Shanavi Ponnusamy v. Ministry of Civil Aviation (W.P. (C)1033 of 2017)***, the petitioner, a transgender woman, had sought employment as a cabin crew in Air India, pursuant to an advertisement for recruitment under the "female category". However, she was not selected for employment. Aggrieved, the petitioner sought to challenge the rejection of her candidature in the above proceedings before the SC.

The SC recognised that although the immediate contours of the case relate to the civil aviation industry, the issues raised cover a broader spectrum and highlight the importance of extending the benefit of TPPR Act, to transgender persons, particularly in the context of employment in both the public and private sector.

In this context, the SC examined various provisions of the TPPR Act which was brought into force on January 10, 2020, for protecting the rights of transgender persons and for their welfare and connected matters, and also took note of its ruling in *National Legal Services Authority v. Union of India*[1], wherein it was held that transgender persons have equal right to access all facilities, to achieve full potential as human beings, including proper education, employment opportunities etc. This was recognised as incidental to their fundamental right to live with dignity under Article 21 of the Constitution.

Highlighting the need to implement the TPPR Act in letter and spirit by formulating appropriate policies, the SC tasked the Union Government to take the lead on this and provide clear guidance and enforceable standards to all other entities, including those of the Union Government, State Governments and establishments governed by the TPPR Act (which would include private sector establishments as well). The SC observed that it is necessary for the Central Government, in consultation

with the National Council, constituted under the TPPR Act to devise a policy framework in terms of which reasonable accommodation can be provided for transgender persons in seeking recourse to avenues of employment in establishments covered by the provisions of the TPPR Act. The SC, accordingly, directed the Union Government to formulate a suitable policy framework, in collaboration with the National Council and place the policy on record before it by the next date of hearing (i.e. December 6, 2022).

B. BCCI covered within the meaning of "shop" for the purposes of Employees' State Insurance Act, 1948

In ***Board of Control for Cricket in India ("BCCI") vs. Regional Director, ESIC, (Special Leave Petition (C) No. 13554-13555/2022)***, the issue before the Supreme Court was whether the BCCI is covered within the meaning of "shop" for the purposes of Employees' State Insurance Act, 1948 (**"ESI Act"**), thereby attracting the provisions of the ESI Act to it.

The above petition was filed by the BCCI, challenging the decision of the Bombay High Court, declaring BCCI as a "shop" and remitting the matter for determining the contributions from BCCI. The SC adopted the test as observed in the Bangalore Turf Club case, wherein the SC held that turf clubs are "shops" for the purpose of extending the benefits under the ESI Act, given that the activities at the turf club are organised and systematic

[1] (2014) 5 SCC 438

transactions, and it provides services to members as well as to the public in lieu of consideration. The SC observed that the term "shop" should not be understood and interpreted in its traditional sense as the same would not serve the purpose of the ESI, and instead an expansive meaning may be assigned to the word "shop" for the purposes of the ESI Act. Applying the law laid down in the Bangalore Turf Club case, the SC held that given the systematic activities being carried out by the BCCI namely, selling tickets of cricket matches; providing entertainment; rendering the services for a price; receiving income from international tours and income from the Indian Premier League, the ESI Court as well as the High Court have rightly concluded that the BCCI is carrying out systematic economic commercial activities and, therefore, the BCCI can be said to be "shop" for the purposes of attracting the provisions of the ESI Act.

C. SC upholds constitutional validity of amendment to Payment of Gratuity Act, 1972, extending gratuity benefit to teachers with retrospective effect

In ***Independent Schools Federation of India vs Union of India (Civil Appeal No. 8162 OF 2012)***, common question in the batch of writ petitions filed by various private schools was regarding the constitutional validity of the amendment to the definition of "employee" under Section 2(e) and insertion of Section 13A to the Payment of Gratuity Act, 1972 (**"Gratuity Act"**), with retrospective effect from April 3, 1997, vide the Payment of Gratuity (Amendment) Act, 2009 (**"Amendment Act"**).

Prior to the Amendment Act, the Gujarat High Court in *Ahmedabad Private Primary Teachers' Association v. Administrative Officer and Others*[2], held that teachers did not fall within the ambit of "employees" as then defined under the Gratuity Act. Pursuant to the Amendment Act, the definition of "employee" under the Gratuity Act was widened to cover persons employed "in any kind of work". The object and reasons for the Amendment Act draws reference to the judgment in *Ahmedabad Private Primary Teachers' Association*, and states that the legislature, to cover the definition of "employee" to all kinds of employees, has used language similar to the definition of employee under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Given this, the SC opined that it is crystal clear that the Parliament has passed and enacted the Amendment Act to confer, with retrospective effect from April 3, 1997, benefit of gratuity to teachers. The two main grounds of challenge against the Amendment Act were:

i. One of the contentions was that the legislature vide the Amendment Act overruled the judicial decision in *Ahmedabad Private Primary Teachers' Association*, which violates the doctrine of separation of powers. The SC negatived the above contention, and held that when the legislature acts within its power to usher in a valid law and rectify a legal error, even after a court ruling, the legislature exercises its constitutional power to enact the law and does not overrule an earlier court decision; and

ii. The second contention was that the retrospective amendments are unreasonable, excessive and harsh, and therefore, unconstitutional. The above contention was also held to be devoid of any merit by the SC. By way of a notification dated April 3, 1997, educational institutions having 10 or more employees were covered under the Gratuity Act. However, the definition of "employee" was not changed at that point to include teachers within its ambit. The legislature sought to rectify this defect by introducing the Amendment Act to widen the definition of "employee" and giving it retrospective effect from April 3, 1997.

Notably, the SC also rejected the contention of the employers that they were taken by surprise by the amendments in the Amendment Act, and held that marginal inconvenience in the form of financial outgo or difficulty is of little weight, when curing an inadvertent defect is made retrospectively in greater public interest, which consideration will overrule the interest of one or some institutions.

[2] (2004) 1 SCC 755

D. Continuity of service can be directed with back wages, if retrenchment is not bona fide

In ***Armed Forces Ex Officers Multi Services Cooperative Society Ltd. Vs. Rashtriya Mazdoor Sangh (C.A. 2393 of 2022),*** the SC held that the principle of law that re-employment of retrenched workmen does not entitle them to claim continuity of service, will only apply to cases where the retrenchment is bona fide.

The appellant in the above case was engaged in the business of providing transportation, housekeeping and security services to companies and government establishments. Around 55 employees of the appellant went on a strike upon failure to reach a settlement. The Industrial Tribunal directed them to refrain from obstructing movement and holding violent demonstrations and asked the appellant to allow them to rejoin duties. After the employees rejoined, the appellant retrenched the services of all 55 employees on account of closure of transport business and offered them retrenchment compensation. The appellant then offered them re-employment on fresh terms and conditions of employment, without continuity of service.

The Industrial Tribunal was of the view that the retrenchment appeared to be a retribution to the strike, given the fact that transportation services were not completely shut down and the retrenched employees were later being offered re-employment (without continuity of service), and set aside the retrenchment order and directed reinstatement with continuity of service and back wages. The High Court also upheld the decision of the Industrial Tribunal. The SC upheld and affirmed the judgment of the High Court, directing reinstatement with 75% back wages on account of the retrenchment not being bona fide. The SC also observed that once the orders of retrenchment are set aside, the workmen will naturally be entitled to continuity of service with order of back wages as determined by a tribunal or court of law.

II. Allahabad High Court

A. Restriction on availing maternity leave within two years from the earlier maternity leave, would fall foul of the Maternity Benefits Act, 1961 ("MB Act")

In ***Satakshi Mishra vs. State of U.P. Thru. Prin. Secy. Secondary Edu Dept. Lucknow and 4 Others (Writ A No. 5114 of 2022)***, the petitioner's application for maternity leave, was rejected on the ground that she had availed maternity leave previously, which ended less than two years ago. The respondent contended that the rejection of maternity leave application was in line with Rule 153(1) of Financial Handbook Volume II to IV (**"Handbook"**), which imposed a restriction on availing maternity leave when there is less than two years of difference between the end of the previous maternity leave period and grant of the subsequent maternity leave.

On perusal of the provisions of the MB Act, the High Court observed that the MB Act does not contain any stipulation on the time gap between the grant of maternity benefit for the first and second child as stipulated in Rule 153 (1) of the Financial Handbook. Further, Section 27 of the MB Act categorically provides that the provisions of the MB Act shall have effect

notwithstanding anything inconsistent therewith contained in any other law or terms of any agreement, contract, etc., whether made before or after coming into force of the MB Act. Taking note of these provisions, the High Court held that the MB Act, which has been enacted by the Parliament, would prevail over the Handbook, which are only pre-constitutional executive instructions and would be subsidiary to the MB Act. Accordingly, the High Court allowed the writ petition, and directed the respondent to grant maternity benefits to the petitioner in terms of the MB Act.

III. Andhra Pradesh High Court

A. Sudden death of workmen when no previous indication of disease treated as work stress

In ***National Insurance Co Ltd v. Sambireddy Venkataramana (C.M.A.No.864 Of 2008***), the High Court held that sudden death shall be treated as caused by stress and strain of work when there is no indication of previous disease, and as such, the death shall be treated to have occurred during the course of employment.

In the above case, the deceased employee was a school van driver and died while driving the bus. The insurance company argued that the death was due to heart failure and there is no evidence to show that he died due to work related stress and strain. The High Court held that there was no evidence to indicate that the deceased had suffered any ill health prior to the incident, and that the death will be treated as though it occurred during the course of employment and accordingly, his legal heirs will be entitled to compensation under the Employees' Compensation Act, 1923 (**"EC Act"**). The High Court also noted that the EC Act being a beneficial legislation is to be given liberal interpretation, such that its objectives are achieved.

IV. Gujarat High Court

A. When a worker has consented to be engaged on a contract basis, they cannot later turn around and seek benefits under Section 25F of the ID Act

In ***Rasmilaben R Thakker v. Indext/C Industrial Extension Cottage (R/Special Civil Application No. 12240 of 2008)***, the petitioner was employed on a fixed term basis for a period of one year, and her employment was terminated in accordance with the terms of her employment contract at the end of one year period. The petitioner challenged the termination as being violative of the provisions of the Industrial Disputes Act, 1947. The petitioner argued that her appointment on a fixed term basis was a mere camouflage, especially since a new recruitment was done even after her termination, and that since she had been working with the respondent continuously for a period of 5 years (prior to the contract appointment), she is entitled to various protections under the ID Act, such as retrenchment compensation, notice, re-employment etc.

The Gujarat High Court took note of the letter of appointment executed between the petitioner and the respondent, which clearly stipulated that the contract was for a period of one year. Further, the High Court also noted that the signatures on the said letter were not disputed by the petitioner. Accordingly, it was held that the petitioner having accepted the terms of the contractual appointment, cannot now agitate that the respondent institution had to consider her for continuation in service. Further, as per Section 2(oo)(bb) of the ID Act, termination of service of the workman due to non-renewal of the contract of employment between the employer and the workman, on its expiry or of such contract being terminated pursuant to the contractual stipulation in that behalf, has been excluded from the definition of "retrenchment". Given the facts and circumstances of the case, the Gujarat High Court held that the termination of the petitioner, which was on account of expiry of contract would not amount to retrenchment under the ID Act, by virtue of exemption under Section 2 (oo)(bb), and the High Court upheld the rejection of the petitioner's claim.

B. Reinstatement would be a 'normal course' that ought to be followed once violation of Section 25F under the Industrial Disputes Act is established

In ***Savitaben Mangalbhai Harijan v. Superintendent (C/SCA/1793/2019)***, the challenge was against the order of the Labour Court, which had awarded the petitioner a lumpsum compensation for his termination, which was in violation of Section 25F of the ID Act. As per Section 25F of the ID Act, certain conditions such as retrenchment compensation, retrenchment notice, etc., are required to be fulfilled, prior to effecting retrenchment of workmen who have been in continuous service of not less than one

year (i.e. at least 240 days). The Labour Court found that the termination of the petitioner was done in violation of Section 25F of the ID Act, however, the Labour Court only awarded a compensation of INR 54,000 on the ground that 12 years have passed since the termination, and reinstatement may not be plausible. The Gujarat High Court held that the Labour Court had materially erred in not granting the benefit of reinstatement, and that the petitioner could not have been deprived of the benefits of reinstatement, which is a normal course that ought to have been followed once violation of Section 25F is otherwise proved. Accordingly, the award of the Labour Court was held to be misconceived to the extent of grant of compensation and the petitioner was directed to be reinstated with continuity of service.

C. Ex-gratia amounts received by workmen directed to be deposited for adjudication of claim on unlawful termination

In ***Raja Laxman Chopada v. Aditya Birla Nova Limited (C/SCA/21086/2019)***, the petitioner employees raised references before the Labour Court, challenging their purported termination from employment by the respondent employer. The stand of the respondent employer was that there was no termination of employment, but voluntary resignation pursuant to which an amount of ex-gratia was paid and accepted by the workmen, and they cannot now turn and challenge the end of such engagement as termination. The Labour Court issued an interim order directing the petitioner employees to deposit the ex-gratia amounts they received from the employer at the time of termination. The said interim order of the Labour Court was the subject matter of challenge before the Gujarat High Court, in the above case. The Gujarat High Court observed that while deciding the issue, whether the end of services was in fact termination or acceptance of voluntary resignation, the order of the Labour Court seeks to balance equities pending the reference and cannot be said to be a stand prejudicial to workmen. The Gujarat High Court found no fault with the interim order passed by the Labour Court and the above petition was dismissed.

V. Karnataka High Court

A. Retirement age of employees in private sector

In ***The Management Of M/S Grasim Industries Ltd v. The General Secretary Harihar Polyfibers, Employees Union (Writ Appeal No. 100250 OF 2021),*** the subject matter of the challenge was the certification of modified standing orders whereby the retirement age was increased from 58 years to 60 years.

The model standing orders applicable in Karnataka were revised to increase the retirement age to 60 years. Around this time, the employees' union of the petitioner had applied for modification of the certified standing orders of the petitioner's establishment to enhance the retirement age to 60 years from 58 years. The certifying authority certified the above modification, thereby enhancing the retirement age to 60 years in the certified standing orders of the respondent, consistent with the model standing orders. Such certification was challenged by the petitioner on various grounds, including that the age of retirement was set at 58 years based on a settlement arrived between the management and the employees under Section 12(3) of the ID Act, which cannot be altered by the authorities at the behest of the employees' union, the financial burden involved in implementing the enhanced retirement age, etc.

The High Court held that the settlement of retirement age at 58 years was way back in 1971, and now that enormous changes (such as increase in life expectancy, etc.) have taken place since then, employees cannot be forced to adhere to such settlement. With respect to financial burden, it was observed that the enhancement was only marginal, and the employer had not submitted any material to evidence the additional financial burden either before the statutory authorities or before the High Court. The Court also observed that vacancies created by the retired employees will normally be filled up by new recruits in any case. The Court also took note of the fact that in several industries, the retirement age "norm" is 60 years, to repel the contention that the amendment to the standing orders is unjust and unreasonable.

The High Court upheld the amendment to the certified standing orders, and further directed the petitioner to, inter alia, reinstate with continuity of service and full back wages, workmen who had retired after September 17, 2021 (the day on which the writ petition was dismissed), if on medical examination they are found to be fit for re-employment, and those who are found to be unfit for employment, will be paid only 50% of the back wages for the period between the retirement date and date of medical examination.

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