



cyril amarchand mangaldas
ahead of the curve

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This issue of *The Employment Quarterly* covers key legislative updates at the Central and State levels, such as notification/circulars pertaining to work-from-home in Special Economic Zones and the Employees' Pension Scheme, 1995, Apprenticeship (Amendment) Rules, 2022, introduction of maternity benefit claim portal; notifications/circulars permitting employment of women workers in shops and establishments during night shifts in Telangana and in factories in Andhra Pradesh; and amendment to Kerala Child Labour (Prohibition and Regulation) Rules, 1993, among others.

Besides legislative updates, this edition also delves into the advisories issued on impending Covid-19 outbreak and 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 in matters pertaining to imposition of exemplary costs for frivolous petition filed by employer to cause delay in adjudication of workman's compensation claim, death of an employee while on duty considered to be in course of employment under the Employees Compensation Act, 1923, limitation on powers of an inspector to adjudicate on the quantum of wages payable to employees as compensation for working on national and festival holidays, among others.

We hope you will find the above to be useful. Please feel free to send any feedback, suggestions or comments to cam.publications@cyrilshroff.com.

Regards,
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LEGISLATIVE UPDATES

I. Key Central Legislative Updates

A. National Employability Enhancement Mission Scheme (“NEEM Scheme”) to be discontinued

The Ministry of Education Department of Higher Education, Government of India vide a letter dated December 23, 2022 issued to All India Council for Technical Education (“**AICTE**”), has requested AICTE to discontinue the NEEM Scheme with immediate effect (i.e. from December 23, 2022). The NEEM Scheme was an initiative by the AICTE and the Government of India with an objective to offer on-the-job practical training to enhance employability of a person either pursuing his or her post-graduation/graduation/ diploma in any technical or non-technical stream or has discontinued studies after Class X to enhance his/her employability.

B. Circular with respect to Employees’ Pension Scheme, 1995 (“EPS”)

The Employees Provident Fund Organisation (“**EPFO**”) vide a circular dated December 29, 2022, has issued instructions with respect to the applicability of the Employees’ Pension (Amendment) Scheme, 2014 (“**2014 EPS Amendment**”) in accordance with the judgment passed by the Supreme Court (“**SC**”) in the case of *Employees Provident Fund Organisation v. Sunil Kumar B.* (refer to the summary in Part 1 (A) of the judicial updates) on November 4, 2022, (“**SC Judgement**”). In its judgment, the SC had upheld the constitutional validity (with certain riders) of the 2014 EPS Amendment, which *inter alia* increased the cap on the maximum salary on which contributions under the Employees’ Provident Funds And Miscellaneous Provisions Act, 1952 (“**EPF Act**”) are to be computed (“**Pensionable Salary**”), from INR 6,500 (Indian Rupees Six Thousand Five Hundred) to INR 15,000 (Indian Rupees Fifteen Thousand) per month. The other key change brought about by the 2014 EPS Amendment is that the employees earning more than INR 15,000 (Indian Rupees Fifteen Thousand) would not be entitled to pension benefits under EPS.

The circular clarifies the eligibility criteria for employees seeking higher pension after the SC Judgment and the manner in which an identified category of employees can

exercise their option under the 2014 EPS Amendment. In this regard, following are the key points in the circular:

- i. The identified category of pensioners who are eligible to validate their options as per the 2014 EPS Amendment are employees: (a) who have been contributing under the EPF Scheme on their entire salary above the prescribed monthly wage limit of INR 5,000 (Indian Rupees Five Thousand) or INR 6,500 (Indian Rupees Six Thousand Five Hundred) (at the relevant time), (b) who have exercised their joint option under the EPS prior to the 2014 EPS Amendment to contribute on Pensionable Salary exceeding INR 6,500 (Indian Rupees Six Thousand Five Hundred) and (c) whose exercising of such option was declined by the provident fund authorities.

In order to validate their options under the 2014 EPS Amendment, if any, the eligible employees may apply online at www.epfindia.gov.in to the concerned regional office. The process for applying has been discussed briefly in point (iii) below.

- ii. The circular further reiterates that the employees who had retired prior to September 01, 2014 (whether they had exercised their options or not) will not be eligible for higher pension.
- iii. For eligible employees specified in point (i), the circular provides the process for validating their options at the EPFO regional office and also prescribes the specific manner of exercising the fresh joint option under the 2014 EPS Amendment, including submission of supporting documents such as proof of the joint option under EPF Scheme verified by the employer and proof of remittance in provident fund/ pension fund (though the form in which a request is made to the EPFO regional office is to be specified by the Commissioner). The Regional PF Commissioner is required to process the application forms within a specified time period (which is yet to be clarified) and after due process and examination, an order will be intimated to the application through post, e-mail and potentially through telephone and/or SMS. In case the

applicant has any grievance, then a complaint can be raised on the EPFiGMS portal after submission of the request form and payment of due contribution, if any.

C. Employee's State Insurance Corporation ("ESIC") notification pertaining to Employee's State Insurance ("ESI") compliances by companies registered through Ministry of Corporate Affairs ("MCA") in case of non-applicability of ESI Act

The ESIC vide a notification dated November 21, 2022 has provided certain clarifications to companies registered through the MCA portal in relation to compliance with the Employees' State Insurance Act, 1948 ("ESI Act"). As per this notification, the regional and sub-regional ESIC offices are required to issue mails to MCA registered units for starting compliance with the ESI Act. If the MCA registered companies are not found coverable under the ESI Act, they are not required to comply with the ESI Act for the next 6 (six) months or till they reach the ESI coverage threshold, whichever is earlier. If the company does not reach the ESI coverage threshold in 6 (six) months, it has to login on the ESIC website to further extend the 'dormant' mode. If this extension is not made, the ESIC registration will automatically activate and the company has to start compliance under the ESI Act. Non-compliance of this process may lead to necessary actions under the existing provisions of ESI Act.

Further, in line with the above, the regional offices of ESIC in the states of Haryana and Odisha have issued similar notifications, on December 1, 2022 and November, 2022 (undated), respectively.

D. Notification of Apprenticeship (Amendment) Rules, 2022

The Ministry of Skill Development and Entrepreneurship has notified Apprenticeship (Amendment) Rules, 2022 vide notification dated November 15, 2022, amending Clause 4(a), Paragraph I of Schedule V of the Apprentices Rules, 1992 ("Apprentices Rules") pertaining to "Obligations of Employer (both in the case of major and minor Trade Apprentices)". The newly-amended clause clarifies that while the employer will pay the stipend to the trade apprentice as per the rates specified in Rule 11 (Payment of stipend to Apprentices) of the Apprentices Rules, the Central Government and the employer shall bear cost of stipend up to such limits as may be laid



down by the Central Government. The manner and extent to which the Central Government shall assist in bearing the aforesaid stipend costs is not clarified yet.

E. Introduction of a unified portal by EPFO in Delhi

The Office of the Commissioner (Labour), Government of NCT of Delhi has issued an advisory on December 28, 2022 in relation to the EPFO's 'unified portal' (rolled out centrally vide an EPFO circular dated February 01, 2021) for use of principal employers under the Contract Labour (Regulation and Abolition) Act 1970 ("CLRA") to keep a check on the provident fund compliances in respect of their contractors and their contract workers.

The advisory specifies that all the principal employers and their contractors, whether covered under the CLRA or not but are governed by the provisions of EPF Act and are deducting and depositing EPF contributions, should get themselves registered on the unified portal. The object behind this is stated to facilitate principal employers to regularly monitor, assess compliance and universal account number (UAN) wise remittance by the contractors. This advisory has been made applicable to *inter alia* principal employers operating and outsourcing manpower in the private sector whether as proprietorship, partnership firm, private limited/limited/public limited companies, multinational companies, international companies having offices in India and subsidiary of international companies.

F. Online ESIC maternity benefit claim portal launched

The Union Minister of Labour & Employment and Environment, Forest & Climate Change on November 11, 2022 has launched an ESIC online maternity benefit

claim facility. This portal attempts to make the maternity benefits easily accessible to the beneficiaries insured under the ESI Act as the process has now been made online, where the beneficiaries at their convenience can claim the maternity benefits from anywhere. Earlier, the beneficiaries, had to visit the respective branch offices physically for claiming the maternity benefits.

G. ESIC directs employers to exercise strict control and vigil over usage of login credentials while registering employees on portal

The ESIC, *vide* a circular dated October 25, 2022, has directed all employers to exercise stricter control and vigilance over the usage of their login credentials while registering employees on the ESI portal. The circular also asks to ensure that the data on the ESI portal is fed only on the basis of valid supporting documents.

While scrutinising the records of employers and the employee database attached to the employers, the ESIC found that the bank account numbers of many employees were tagged to a common bank account number. This paves way for misuse of the insurance benefits and the ESIC suspects that HR personnel/ external consultants who have been assigned with the task of employee registration on the portal using the firms login credentials, are misappropriating and siphoning off the benefits payable into their accounts. As per the circular, the aforesaid action amounts to 'cheating' under the India Penal Code, 1860 ("IPC") and since the interpolation is being done using the firm's credentials, "the firm" too can become a party to the connivance and stand exposed to prosecution under IPC.

Accordingly, the circular was issued to alert the employers of misuse of benefits payable to insured persons and to ensure that each employee should have a unique bank account number.

H. Special Economic Zones (Fifth Amendment) Rules, 2022 ("SEZ Amendment Rules") relating to work from home ("WFH") in Special Economic Zones ("SEZ")

The Ministry of Commerce and Industry has notified the SEZ Amendment Rules *vide* a notification dated December 08, 2022, which further amends the former notification dated July 14, 2022 that inserted Rule 43A

enabling WFH for SEZ units. According to the aforesaid notification, Rule 43A empowers/enables a unit to permit the following employees, including contractual employees, to work from home; (i) employees of IT/ITeS SEZ units; (ii) employees who are temporarily incapacitated; (iii) employees, who are travelling; and (iv) employees who are working offsite.

Significantly, the SEZ Amendment Rules has further liberalised WFH for employees in the IT/ITeS sector operating in the SEZ units by replacing the approval-based framework with an intimation-based regime. Some of the key changes under the SEZ Amendment Rules have been highlighted below:

- i. SEZ units may permit their employees to WFH or any place outside the SEZ and the same shall be intimated to the Development Commissioner ("DC") on or before the date of granting such WFH permission to their employees.
- ii. Employees of the SEZ units can be permitted to WFH based on the requirements under Rule 43A until December 31, 2023. Previously, SEZ units could only allow 50% (Fifty Percent) of its employees to WFH or work remotely, but this condition has now been omitted under the amended Rule 43A.
- iii. For the SEZ units that had already permitted its employees to WFH or work from any place outside the SEZ before the commencement of the SEZ Rules, an intimation shall be sent by email to the DC on or before January 31, 2023.
- iv. The requirement for SEZ units *inter alia* to submit the names of the employees to the DC who have been permitted to work remotely has now been omitted. Now, SEZ units are only required to maintain a list of employees who have been permitted to work remotely. This list would have to be made available to the DC for verification purposes, as and when required.
- v. The remote working benefits will be available to an SEZ unit only if it continues to operate from its premises as per the letter of approval originally granted to such SEZ unit.
- vi. The SEZ unit may provide an employee duty-free goods such as laptop computers, desktop computers

and other electronic devices which are needed by the employees to work remotely, and employees will be allowed to take such duty-free goods out of the SEZ without payment of any duty or integrated goods and service tax. However, the SEZ units are required to maintain adequate records of such duty-free goods. If an SEZ unit fails to bring back such duty-free goods within the stipulated time frame, it will be required to pay the applicable duty on such goods.

- vii. The definition of ‘employees’ under the SEZ Amendment Rules includes (a) individuals who are employed on the rolls of an SEZ unit under a direct contract and (b) where the SEZ unit is the principal employer under a contract with another organization and exercises control over the attendance of such contract workers who are expected to report daily for work.

II. Key State Legislative Updates

A. Women employees permitted to work during night shifts in establishments in Telangana

The Government of Telangana *vide* a notification dated October 13, 2022 (published on October 17, 2022 in the Telangana Gazette), has exempted all establishments (subject to the satisfaction of certain conditions) from the applicability of Section 23 (*Special Provision for Women*) of the Telangana Shops and Establishments Act, 1988 (“**TSEA**”) which restricts the employment of women at night shifts. Some of the key conditions to be complied with for availing this exemption are highlighted below:

- i. Consent of women employees shall be obtained in writing to work in night shifts and employment of women employees shall be on rotation basis.
- ii. The establishment is required to provide transport facilities from the residence of the woman employee to the workplace and back, free of cost and with adequate security. Such transport facility shall have GPS for tracking and monitoring.
- iii. The safety and security measures shall include provision of shelter, rest rooms, lunchrooms, night crèches and ladies toilets, adequate protection of



their privacy, dignity, honor and safety, protection from sexual harassment, employment of at least 5 (five) women employees together and adequate number of security guards shall be posted during night shift.

- iv. This relaxation/exemption shall not apply to a woman employee during the period of 16 (sixteen) weeks before and after her childbirth, of which at least 8 (eight) weeks shall be before the expected childbirth, and for such additional period, if any, as specified in the medical certificate stating that it is necessary for the health of the woman employee or her child.
- v. The notification also prescribes that adequate transport and safety measures should be taken/provided such as bio-data and pre-employment screening of each driver, careful selection of routes to ensure that no women employees are picked up first and/or dropped last, among others.

The notification further states that if any establishment fails to comply with the prescribed conditions, it may lead to the cancellation of the registration certificate and/or withdrawal of the exemption. Additionally, it has stated that the exemption granted under the order may be revoked at any time without any prior notice.

B. Draft amendment to the Madhya Pradesh Factories Rules, 1962 (“MP Factory Rules”)

The Madhya Pradesh Government *vide* a notification dated November 23, 2022 has notified the draft

amendment to the MP Factory Rules, for public consultation and the same will be taken into consideration on the expiry of 45 (forty-five) days from the date of its publication.

As per the existing rule, the licence obtained under the MP Factory Rules is valid only up to 31st of December of the year for which the licence was granted/renewed. The draft amendment proposes to change the validity of the aforesaid registration certificate to 1 (one) to 10 (ten) years or more, as chosen by the occupier from the date of grant of licence or date of renewal of licence.

C. Kerala Child Labour (Prohibition and Regulation) Amendment Rules, 2022

The Government of Kerala *vide* its notification dated November 18, 2022 has amended various provisions of the Kerala Child Labour (Prohibition and Regulation) Rules, 1993 (“**Kerala Child Labour Rules**”) under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 (“**Child Labour Act**”). Some of the key amendments to the Kerala Child Labour Rules have been highlighted below:

- i. The newly-inserted Rule 2B provides that the child (i.e. a person who has not completed 14 (fourteen) years of age) may, without affecting his/her school education, help his/her family subject to certain conditions (such as restriction on providing help in any hazardous occupation, performing tasks during school hours and between 7 PM and 8 AM, among others).
- ii. The newly-inserted Rule 2C specifies conditions subject to which a child may be allowed to work as an artist.
- iii. The hours of work specified in Rule 3 for an ‘adolescent’ (the word ‘child’ has also been substituted to ‘adolescent’ in Rule 3) to work in any day has been increased from 4^{1/2} (four and a half) hours to 5 (five) hours. As per the Child Labour Act, ‘adolescent’ has been defined as a person who is under 18 (eighteen) years but has completed the age of 14 (fourteen).

D. Circular pertaining to women workers employed in night shifts in factories in Andhra Pradesh

The High Court of Andhra Pradesh *vide* its judgment in *Triveni K.S. and Ors. v Union of India (UOI) and Ors.* dated November 02, 2001, had struck down Section 66(1) (b) of the Factories Act, 1948 (“**Factories Act**”), which prohibited women from working in any factory beyond the 6 AM -7 PM window. Further to this judgment, the Director of Factories *vide* a circular dated April 04, 2015 had clarified that women maybe employed in factories in night shifts subject to the condition that managements of such factories provided women employees with *inter alia* occupational and health safeguards along with amenities like rest rooms, lunch rooms, creche, and toilets.

In continuation of the aforesaid clarification, the Government of Andhra Pradesh *vide* its circular dated October 25, 2022 has enabled women workers in factories to work during night hours (i.e. from 7 PM until 6 AM) subject to certain health and safety-related conditions. Some of these key conditions are highlighted below:

- i. Consent of each women worker required or allowed to be engaged in the night shifts shall be taken in writing in advance.
- ii. No women worker shall be employed against the maternity benefit provisions laid down under the Maternity Benefit Act, 1961.
- iii. Adequate transportation facilities shall be provided to all women workers including pick up and drop off from and to their residences.
- iv. The workplace including passage towards conveniences or facilities concerning toilets, washrooms, drinking water and entry and exit of women employees should be well lit.
- v. The toilet, washroom and drinking facilities should be near the workplace where such women workers are employed.
- vi. Provision of safe, secure and healthy working conditions such that no women worker is disadvantaged in connection with her employment.

vii. The provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 as applicable to the establishments, shall be complied with.

E. Andhra Pradesh Government allows all retail enterprises to stay open every day of the year for a period of 5 (five) years

The Andhra Pradesh Government vide a notification dated November 01, 2022 has exempted retail enterprises from the applicability of Section 7 (*opening and closing hours of shop*), Section 9 (*daily and weekly hours of works in shops*), Section 12 (*closing of shops and grant of holidays*), Section 23 (*special provision for women*), Section 31 (*other holidays*) and Section 37 (*wages for overtime work*) of the Andhra Pradesh Shops and Establishments Act, 1988 (“**APSEA**”). The aforesaid exemption allows such retail enterprises (i.e. a ‘shop’ defined under the APSEA) to stay open every day of the year for a period of 5 (five) years from the date of issue of this notification and is subject to the following key conditions:

- i. Working hours shall be a maximum of 8 (eight) hours per day and 48 (forty-eight) hours a week and overtime wages should be paid at twice the ordinary rate of wages.
- ii. Employees working on a national, festival, or other holiday are to be given compensatory holiday (within 30 (thirty) days from the date of holiday) with wages at twice the ordinary rate of wages for work on a holiday. Further, employees are to be given compensatory, compulsory weekly holiday on a preferential basis without any deduction of benefits, monetary and otherwise.
- iii. Employment of women is permitted in all shifts, subject to ensuring safe, secure work environment and secure conveyance from workplace to their place of residence.
- iv. Retail enterprises are allowed to offer part-time employment to individuals subject to working hours of part-time employees being expressly specified. The minimum per hour wage rate shall be proportionately determined based on the Minimum Wages Act, 1948. Further, the total number of part time employees should not exceed 25% (Twenty-Five Percent) of the total employee count.



- v. Each employee is to be provided with appointment letters in proper format at the time of joining the establishment.

F. Exemption under Puducherry Shops and Establishments Act, 1964 (“PSEA”) on opening and closing hours

The Government of Puducherry, Labour Department vide a notification dated October 27, 2022 has exempted all shops and establishments employing 10 (ten) or more persons from the applicability of Section 10(1) and Section 11(1) of the PSEA which deals with opening and closing hours of shops and commercial establishments, respectively for a period of 3 (three) years, subject to certain conditions.

G. Registration and Licensing Services through single window ‘Silpasathi’ portal in West Bengal

The Government of West Bengal vide its notification dated December 27, 2022 has mandated that all applications for registrations and licenses under various labour legislations should be made through a single state window i.e. the ‘*Silpasathi*’ portal (www.silpasathi.wb.gov.in). This portal will have the provisions for investors (i.e. employers) to obtain licenses/registrations/approvals/no-objection certificates online for setting up industries and operation of business in the state. There are 13 (thirteen) services that have been integrated end-to-end and shall be provided exclusively with this single window portal, which *inter alia* includes license/auto-renewal under the Factories Act, license for principal employer’s/contractors under the provision of the CLRA and registration under the Building and

Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

The notification further specifies that all applications can only be submitted through the portal with effect from January 01, 2023. For registrations/licenses/approvals availed through department portal before January 01, 2023, the renewal for the same shall be issued from the concerned departmental portals.

H. Circular relating to the Payment of Bonus Act, 1965 (“Bonus Act”) for Dadra & Nagar Haveli and Daman & Diu

The Administration of Dadra & Nagar Haveli and Daman & Diu, U.T. Labour Department, Silvassa vide its circular dated October 28, 2022 has directed all factories, industrial establishments including contractors to which the Bonus Act applies in Dadra & Nagar Haveli to ensure that they pay bonus to their eligible workers in accordance with the provisions of the Bonus Act for the economic development of the region. The circular reiterates that the Bonus Act is in force in Dadra & Nagar Haveli and is applicable to all employees irrespective of status, drawing a salary or wages (which includes dearness allowance) not exceeding INR 21,000 (Indian Rupees Twenty One Thousand) per month.

Further, the circular states that contract workers are also entitled to bonus from their contractors, failing which the principal employers (i.e. the factories or establishments engaging the services of contract workers through contractors) shall be held liable to pay bonus and recover it from the contractors. However, this position would need to be analysed from a CLRA perspective as well, which is the key statute determining the *inter se* rights between the contractors and principal employers.

III. Covid Updates

A. Indian Medical Association issues advisory on impending Covid-19 outbreak

The Indian Medical Association has issued a Covid-19 advisory on December 22, 2022 in light of the sudden surge of Covid-19 cases in different countries. Some of the key points in this advisory are highlighted below:

- i. Face masks are to be used in all public places.
- ii. Social distancing is to be maintained.
- iii. Public gatherings like marriages, political or social meetings, etc., are to be avoided.

B. Covid-19 advisory by the Commissioner, Health & Family Welfare Services, Karnataka

The Commissioner of Health & Family Welfare Services, Karnataka, has issued a Covid-19 advisory/ few guidelines on December 22, 2022. Some of the key points in this advisory/guidelines are highlighted below:

- i. It has advised the general public to wear face masks, particularly the elderly and those with co-morbidities, in all indoor areas and closed places such as offices, shopping malls, restaurants, among others.
- ii. Event organisers are expected to follow certain guidelines such as keeping, as far as possible, public social activities/events outdoor or in well ventilated areas preferably during the day-time, avoiding exposure to chill and cold in the early mornings and late evenings, ensuring face masking for indoor events, ensure maintenance of basic social distancing norms in such gatherings. Congregation of large number of people more so in indoor areas need to be strictly avoided.

JUDICIAL UPDATES

I. Supreme Court

A. Provisions of the 2014 EPS Amendment have been held legal and valid (with certain riders)

In *The Employees Provident Fund Organisation v Sunil Kumar B.* (AIR 2022 SC 5634), the SC examined the provisions of the 2014 EPS Amendment and upheld its constitutional validity, with certain riders. This case was a result of appeals from various high courts, such as Kerala, Rajasthan and Delhi, which had previously held the 2014 EPS Amendment to be unconstitutional.

The 2 (two) key takeaways from the SC Judgment are as follows: (i) from September 1, 2014, new membership into the pension scheme is restricted to only those employees earning up to the monthly wage ceiling of INR 15,000 (Indian Rupees Fifteen Thousand), and (ii) members of the EPS with Pensionable Salary above INR 15,000 (Indian Rupees Fifteen Thousand) per month, and who have made contributions on such higher salary, may exercise the option contemplated under the 2014 EPS Amendment to receive enhanced pension benefits, and such option is to be exercised within 4 (four) months from the date of the SC Judgment.

Please refer to a detailed summary of this judgment accessible [here](#).

B. Order of termination approved by the industrial tribunal is binding on parties and it cannot be challenged by a fresh reference

In *Rajasthan State Road Transport Corporation v Bharat Singh Jhala (Dead) Son of Shri Nathu Singh (Civil Appeal No. 6942 of 2022)*, a departmental enquiry was initiated against a workman (a conductor who did not issue tickets to 10 (ten) passengers though he collected the fare), who was found guilty for misconduct. Accordingly, his employment was terminated by the employer, Rajasthan State Road Transport Corporation (“RSRTC”). Subsequently, RSRTC filed an application under Section 33(2)(b) of the Industrial Disputes Act, 1947 (“ID Act”) before the Industrial Tribunal for obtaining approval of the termination order passed by it. In this context, the Industrial Tribunal held the enquiry proceedings to be bad but allowed RSRTC to prove the charge before



it. Upon appreciation of evidence and submissions by both parties, the termination orders were upheld by the Industrial Tribunal. Subsequently, an appeal was raised by the workman before the Labour Court after a period of 19 (nineteen) years from the passing of the order of termination by RSTRC. During the proceedings of the Labour Court, the workman passed away. However, the Labour Court passed an order in favour of the workman awarding 50% (Fifty Percent) back wages from the date of termination till the workman’s death. The judgment and the award passed by the Labour Court was challenged by the appellant RSRTC before a single judge of the High Court through a writ petition, which was dismissed. This decision was again challenged before the division bench of the High Court, where it was dismissed as well. Therefore, the present appeal was made before the Supreme Court.

In its judgment, the SC held that once the order of termination was approved by the Industrial Tribunal on appreciation of evidence led before it, a fresh reference under Section 10 of the ID Act challenging the order of termination was not permissible. The SC also stated that the order passed by the Industrial Tribunal upholding the termination order by RSRTC had attained finality and was binding on the parties. Therefore, the SC held that no contrary view could have been taken by the Labour Court contrary to the findings recorded by the Industrial Tribunal. The judgment and award passed by the Labour Court that was confirmed by the High Court was held to be unsustainable.

II. Bombay High Court

A. Court imposes exemplary costs on employer for filing frivolous petition to delay adjudication of workman's compensation claim.

In *JIK Industries Co. Ltd. v Maruti Nashik Mene (Writ Petition No.6315 of 2019)*, the respondent employee had filed a claim before the Commissioner for Employee's Compensation at Thane under the Employee's Compensation Act, 1923 ("ECA") in 2007, on account of being seriously injured (with this leg having to be amputated) while discharging his duties as a watchman, due to a chemical explosion in the employer's premises.

The employee made an application for condonation of delay before the Commissioner for Employees' Compensation, which was dismissed. Thereafter, the employee filed an application before the Labour Court for condonation of delay and restoring the application to its original position. During the proceedings before the Labour Court, the employer had taken a stand that the restoration and condonation of delay application was not signed by the employee but someone else. Accordingly, the employer made an application to the Labour Court to initiate enquiry into the allegation of fraud and misrepresentation by the employee, which was dismissed. This was challenged by the employer before the High Court which set aside the Labour Court's order to dismiss this application. However, the SC allowed the appeal by the employee and restored the order of the Labour Court to dismiss the application on the fraud and misrepresentation allegation.

Thereafter, the Labour Court passed its order to condone the delay of 2 (two) years by the employee in filing the application under the ECA and allowed the restoration application. This order by the Labour Court was challenged by the employer in the present case before the Bombay High Court.

The Bombay High Court did not find any reason to take a view different from the one taken by the Labour Court in condoning the delay and allowing the restoration application based on principles enunciated by the SC in *Esha Bhattacharjee v Managing Committee of Raghunathpur Nafar Academy and others ((2013) 12 SCC 649)*. The HC opined that there should be a liberal, pragmatic, justice oriented, non-pedantic approach

in such condonation of delay matters, and technical considerations should not be given undue and uncalled emphasis. The Bombay High Court noted that the objections raised by the petitioner employer were hyper technical in nature, leading to a delay in the adjudication of the claim petition of the employee on merits. Accordingly, the Court imposed exemplary costs of INR 50,000 (Indian Rupees Fifty Thousand) on the employer for filing a frivolous petition causing unnecessary distress to the employee. Further, the Bombay High Court directed that the original application before the Labour Court on merits in this matter is expediated, in the interest of justice.

III. Delhi High Court

A. Death of employee even if caused due to unknown reasons while on duty is considered within the course of employment under ECA

In *The National Insurance Co. Ltd. v Renu (2022/DHC/005593)*, a claim petition was filed under the provisions of the ECA, after an employee driver was found deceased while undertaking a cargo for delivery for his employer. An appeal was filed under Section 30 of the ECA before the Delhi High Court by the appellant insurance company challenging the order passed by the Commissioner, Employees' Compensation, which held that the deceased had died during the course of his employment and accordingly, compensation under the ECA was payable.

The appellant contended that while at the time of the incident, a valid insurance policy was subsisting, the death of the employee cannot be said to have occurred during the course of employment as the dead body was found abandoned in the fields and the truck which he was driving was not found involved in any accident.

In its judgment, the Delhi High Court *inter alia* highlighted the principle that for a claim under the ECA to succeed, there has to be a causal connection between the incident and the employment. It noted that the deceased employee had a valid driving licence, and at the time of the incident was on duty as a driver for his employer, travelling from Bihar Sharif to Karnal. The court observed that the expression '*arising out of and in the course of employment*' under the ECA is wide enough

to include death of an employee while performing duties of a driver, and does not only apply to cases where death occurred while driving a vehicle. Thus, the court established the employer-employee relationship between the deceased employee and his employer, and the presence of a causal connection between the incident and the employee's employment. It also opined that in exercise of jurisdiction under Section 30 of the ECA, courts should not interfere with an award passed by Commissioner, Employees' Compensation, except when there is a substantial question of law involved. Accordingly, the appeal by the insurance company was dismissed by the court.

IV. Kerala High Court

A. Inspector has no jurisdiction to adjudicate on the quantum of wages payable as compensation under the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 ("KNFHA")

In *Lt. Col. EV Krishnan v State of Kerala (W.P.(C) No.22622 of 2012)*, the Kerala High Court analysed whether the inspector appointed under the KNFHA has the authority to adjudicate and decide the quantum of wages payable to employees at double the rate of wages for working on national and festival holidays.

In this case, an assistant labour officer inspected the premises of Poornam Info Vision Private Limited and found several irregularities under various labour legislations including non-payment of double the rate of wages to employees working on national and festival holidays, and to provide compensatory off to employees. Consequently, the petitioners (i.e. chairman and managing director and administrative manager of the company) were directed by the inspector to pay INR 48,72,678 (Indian Rupees Forty Eight Lakh Seventy Two Thousand Six Hundred and Seventy Eight) to the employees for the aforesaid violations under the KNFHA. The petitioners contended *inter alia* that KNFHA was not applicable to the company's establishment and this amount was not paid to the employees as directed by the inspector. Further to this, revenue recovery proceedings were initiated personally against the petitioners, who challenged it before the Kerala High Court.



In its judgment, the Kerala High Court noted that Section 5(2) of the KNFHA creates a right upon the employee to receive twice the wages if he/she works on a national and festival holiday and also to receive a compensatory holiday. However, it observed that the inspector had no right to adjudicate upon the matter. It held that quantifying the amount due to an employee or adjudicating on the right of a person to be entitled to a particular sum and the corresponding obligation of another person to pay a certain quantified sum, are matters that are required to be decided after considering competing claims. Accordingly, the court held that the legislature has not conferred such a power of adjudication or a power of quantifying the amount due to an employee on the inspector under the KNFHA. The court noted that the inspector is entitled to inspect, identify and file complaints but his power stops there and it cannot be extended to confer the power of adjudication.

Further, it was clarified by the court that an employee who claims that he/she is entitled to double wages for having worked on a holiday has the option to move the Labour Court under Section 33C(2) (*Recovery of money due from an employer*) of the ID Act or the civil court in accordance with law, and it is not a situation where he/she is left without any remedy. Accordingly, the court quashed the notice and proceedings in this matter against the petitioners (including the revenue recovery proceedings) for lack of jurisdiction and admitted the writ petition.

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