cyril amarchand mangaldas
ahead of the curve

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Index

Legislative Updates

Judicial Updates

This issue of *The Employment Quarterly* covers key legislative updates at the Central and State levels, such as notifications/ circulars pertaining to the Employees' Pension Scheme, 1995; the Factories (Karnataka Amendment) Bill, 2023; provision of creche facilities in the SEEPZ, Special Economic Zone, Mumbai; the Contract Labour (Regulation and Abolition) (Gujarat)(Amendment) Rules, 2023; and the Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) (Gujarat) (Amendment) Rules, 2023, among others.

Besides legislative updates, this edition 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 in matters pertaining to the treatment of provident fund and gratuity dues in a corporate insolvency resolution process; reinstatement of workmen in sham contract labour arrangements; and applicability of the Limitation Act, 1963, to gratuity claims, 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,
Cyril Shroff

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LEGISLATIVE UPDATES

I. Key Central Legislative Updates

A. Circular providing for re-examination of cases where higher pension has been paid under the Employees' Pension Scheme, 1995 ("EPS") to employees who retired before September 1, 2014, without exercising any option for contribution on higher salary under the EPS

By way of background, the Supreme Court ("**SC**") passed a judgment in the case of *Employees Provident Fund Organisation v. Sunil Kumar B* on November 4, 2022, ("**SC Judgement**"), upholding the constitutional validity (with certain riders) of the Employees' Pension (Amendment) Scheme, 2014 ("**2014 EPS Amendment**"). The 2014 EPS Amendment *inter alia* provided for existing members for whom contributions were being made on a monthly salary of more than INR 6,500 (Indian Rupees Six Thousand Five Hundred), to execute a fresh option jointly with their employer, to contribute on a salary of more than INR 15,000 (Indian Rupees Fifteen Thousand) (which would result in their pension being determined on the basis of such higher salary).

Subsequently, the Employees Provident Fund Organisation ("**EPFO**"), *vide* a circular dated December 29, 2022 ("**Circular I**"), clarified the manner in which an identified category of pensioners can exercise their option for higher pension under the 2014 EPS Amendment. As per Circular 1, the identified category of pensioners, who are eligible to validate their options as per the 2014 EPS Amendment, are individuals: (a) who had contributed under the Employees' Provident Fund Scheme, 1952 ("**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 a salary exceeding INR 6,500 (Indian Rupees Six Thousand Five Hundred) and (c) whose exercise of such option was declined by the provident fund authorities.

The EPFO then issued a circular dated January 25, 2023 ("**Circular II**"), to provide for re-examination of cases of payment of pension on higher salary to employees who had retired before September 1, 2014 (i.e., before the date of effectiveness of the 2014 EPS Amendment), without exercising any option for contribution on higher salary under the EPS. It is pertinent to note that the SC Judgment specifically excludes the above category of employees from claiming higher pension.

Circular II sets out the following directions:

i. In order to discontinue any overpayments, cases of payment of pension being made on a higher salary to employees who retired prior to September 1, 2014, without exercising an option to contribute on such higher salary, would be re-examined to ensure that such pensioners are not provided with a higher pension from January, 2023 onwards. Pension payments to such individuals would immediately be subject to the ceiling of INR 5000 (Indian Rupees Five Thousand only) or INR 6500 (Indian Rupees Six Thousand Five Hundred only), as applicable;

ii. Prior to the revision of any pension entitlement, an advance notice will be issued to the pensioner, providing them an opportunity to prove the exercise of option to contribute on a higher salary before their retirement prior to September 1, 2014;

iii. The provident fund authorities have been advised to ensure that provision of pension on higher salary is sanctioned/ continued only in cases which fall within the directions contained in the SC Judgment; and

iv. Utmost care would be adopted to identify cases where higher pension was granted to pensioners on account of a judgement of any Court. In such cases, a favourable order would have to be obtained by the provident fund authorities from the concerned Court, citing the SC Judgment, prior to stopping any overpayment.

B. Circular setting out directions for joint options that may be exercised in respect of employees who contributed on higher salary under the EPF Scheme without exercising an option under the EPS for payment of pension on higher salary

Further to Circular I and Circular II, the EPFO vide a circular dated February 20, 2023 ("**Circular III**"), directed that an identified category of employers and employees, i.e., (a) employees and employers who had contributed under the EPF Scheme on a salary exceeding the prevalent wage limit of INR 5000 (Indian Rupees Five Thousand only) or INR 6500 (Indian Rupees Six Thousand Five Hundred only); (b) who did not exercise the joint option under the EPS for payment of pension on a higher salary, prior to the 2014 EPS Amendment; and (c) who were members of the EPS prior to September 1, 2014, and continued to be members on or after September 1, 2014, may submit a joint option for contributing towards the EPS on a higher salary.

For the identified employees and employers specified above, Circular III sets out certain directions regarding the application for joint option, including the following:

i. In case an adjustment of funds is required between the provident fund and pension fund or in case any redeposits are required to be made to the pension fund, employees are explicitly required to consent to the same in the joint option form;

ii. In case funds are required to be transferred from an exempted provident fund trust fund to the pension fund maintained by the EPFO, the trustee of the exempted provident fund trust fund is required to submit an undertaking to the effect that due contribution along with interest up to the date of payment will be deposited to the pension fund, within a specified period.

iii. In case of employees of unexempted establishments, any refund of the employer's share of contributions from the provident fund trust will be deposited to the employer along with accrued interest.

iv. The joint option that will be submitted by the employer and employee is required to contain the proof of remittance of the employer's share of provident fund on higher wages and proof of exercise of joint option under the EPF Scheme.

Circular III also provides for the manner in which the provident fund authorities will deal with the submitted joint option forms and states that applicants may register any grievances in relation to claims of higher pension pursuant to the SC Judgment on the EPFiGMS portal.

C. Ministry of Labour and Employment ("MOLE") press releases on last date to submit joint options for pension on higher salary

The MOLE *vide* press releases dated March 4, 2023, and March 13, 2023, has stated that the online facility for submitting joint options is available up to May 3, 2023.

II. Key State Legislative Updates

A. The Factories (Karnataka Amendment) Bill, 2023 ("Factories Amendment Bill")

The Factories Amendment Bill published in the Official Gazette on February 22, 2023, proposes the following amendments to the provisions of the Factories Act, 1948 ("**Factories Act**") as applicable to the state of Karnataka. The Factories Amendment Bill has been introduced in the legislative assembly, but is yet to be passed:

i. Section 54 (Daily Hours): A new sub-section (2) is proposed to be introduced in Section 54, pursuant to which the State Government will be empowered to extend the daily maximum hours of work up

to 12 (twelve) hours (inclusive of interval for rest on any day). This extension will be subject to the written consent of the impacted workers and the workers not being required to work for more than 48 (forty-eight) hours in any week. The proposed amendment also provides for the remaining days of the said week after the worker has worked 48 (forty-eight) hours to be treated as paid holidays. This exemption may be granted to any group or class or description of factories, on such conditions as the State Government may deem expedient.

Section 54 currently restricts requiring or allowing adult workers to work in a factory for more than 9 (nine) hours a day, which may only be exceeded in order to facilitate shift changes, with the previous approval of the Chief Inspector appointed under the Factories Act.

ii. Section 55 (*Interval of rest*): A new sub-section (3) is proposed to be introduced in Section 55, pursuant to which the State Government will be empowered to extend the total number of work hours of a worker, without an interval of rest, to 6 (six) hours. This exemption may be granted to any group or class or description of factories on such conditions as the State Government may deem expedient due to the provision of flexibility in working hours as specified under Section 54 (2) (*under paragraph (i) above*).

Section 55 (1) requires the periods of work of adult workers in a factory to be fixed in such a manner that no worker is required to work for more than 5 (five) hours before he/ she has had an interval for rest of at least half an hour. Further, do note that Section 55(2) already empowers the State Government to exempt factories from the above requirement, provided that the total number of hours worked without an interval of rest does not exceed 6 (six). However, the proposed amendment allows for an exemption to be granted under Section 55, specifically in cases where an exemption is also granted under Section 54.

iii. Section 56 (*Spread over*): A new sub-section (3) is proposed to be introduced in Section 56, pursuant to which the State Government will be empowered to increase the spread over up to 12 (twelve) hours, inclusive of intervals for rest, in respect of any group or class or description of factories on such conditions as the State Government may deem expedient, due to the provision of flexibility in working hours as specified in Section 54 (2) (*under paragraph (i) above*).

Section 56 provides that the periods of work of an adult worker in a factory are to be arranged in such a manner that, inclusive of rest intervals, the spread over does not exceed 10.5 (ten decimal five) hours on any day. Further, do note that Section 56(2) already empowers the Chief Inspector to increase the spread over up to 12 (twelve) hours. However, the proposed amendment allows for an exemption to be granted under Section 56, specifically in cases where an exemption is also granted under Section 54.

iv. Section 59 (*Extra wages for overtime*): Subsection (1) of Section 59 is proposed to be replaced to state that, where a worker works in any factory: (i) for more than 9 (nine) hours on any day or for more than 48 (forty eight) hours during any week, working for 6 (six) days in any week; or (ii) for more than 10 (ten) hours on any day or for more than 48 (forty eight) hours in any week, working for 5 (five) days in any week; or (iii) for more than 11.5 (eleven decimal five) hours on any day, working for 4 (four) days in any week; or (iv) works on paid holidays, he/she shall in respect of overtime work, be entitled to wages at the rate of twice their ordinary rate of wages.

Subsection (1) of Section 59, as it currently stands, only provides that workers are entitled to wages at the rate of twice their ordinary rate of wages where they have worked for more than 9 (nine) hours on any day or for more than 48 (forty-eight) hours in any week.

v. Section 65 (*Power of government to make exempting orders*): Subsection (3) of Section 65 is proposed to be amended.

Section 65 provides that the State Government may exempt any or all adult workers in any factory or group or class or description of factories from the provisions of Sections 51 (*Weekly Hours*), 52 (*Weekly Holidays*), 54 (*Daily Hours*) and 56 (*Spread over*), where such exemption is required to enable the factory to deal with an exceptional pressure of work. Such exemptions are subject to various conditions prescribed under Section 65(3), including the total number of overtime hours in any quarter not exceeding 75 (seventy-five).

The proposed amendment seeks to increase the overtime limit specified above from 75 (seventy-five) to 144 (one hundred forty-four) hours, per quarter. Additionally, a new requirement is proposed to be introduced, whereby a worker may be required to work overtime only after their consent is obtained.

vi. Section 66 (*Restriction on employment of women*): Section 66 is proposed to be replaced to provide the following:

a. Women may be allowed or required to work between the hours of 7:00 P.M to 6:00 A.M, subject to the fulfilment of conditions such as: (i) employer or other responsible persons at the work place preventing or deterring acts of sexual harassment, including expressly prohibiting sexual harassment in any form and having procedures in place for the resolution or prosecution of acts of sexual harassment; (ii) employer providing appropriate working conditions in respect of work, leisure, health and hygiene to ensure that the environment is not hostile towards women and they are not disadvantaged in connection with their employment; (iii) employer ensuring that women workers are employed in a batch of not less than 10 (ten); (iv) employer providing women security during the night shift at the entry as well as exit points; and (v) employer providing transportation facility to women workers from their residence and back (for night shift), security guards (including female security guard) and equipping each transportation vehicle with CCTV camera and GPS.

b. Change in shifts of women workers may be permitted only after a weekly holiday or any other holiday.

Section 66(1) as it currently stands does not permit women employees to work in any factory except between the hours of 6:00 A.M. and 7:00 P.M (which may be varied by the State Government, but in any case, women may not be required to work between the hours of 10:00 P.M. and 5:00 A.M).

It is pertinent to note that the Karnataka High Court in *Natural Textiles Pvt. Ltd. vs The Union of India*[1], struck down Section 66(1). Further, the Government of

Karnataka vide notification dated November 20, 2019, noted that Section 66(1)(b) has been struck down and allowed the employment of women workers during night shifts i.e. from 7:00 P.M to 6:00 A.M, subject to specified conditions. The proposed amendment seeks to reflect this position in the Factories Act itself.

B. Employing women employees in night shifts in commercial establishments in Haryana

On February 21, 2023, the Government of Haryana issued a notification prescribing certain conditions for employment of women at night ("**February Notification**").

By way of background, Section 28 (Power to *grant exemptions*) of the Punjab Shop and Commercial Establishments Act, 1958 (as applicable to Haryana) ("**HSEA**"), empowers the State Government to exempt any establishment or any class of establishments from all or any of the provisions of the HSEA. Further, Rule 15 (*Conditions for grant of exemption*) of the Punjab Shop and Commercial Establishments Rules, 1958 (as applicable to Haryana), prescribes the conditions for grant of exemptions under Section 28, including one which states that any exemption granted under Section 28 will be subject to the condition that no women shall be allowed or required to work in an establishment between 8.00 P.M. to 6.00 A.M ("**Condition**"). However, a proviso to Rule 15 clarifies that the Condition shall not be applicable to IT, ITeS, banking establishments,

[1] 2007 (3) Kar LJ 286

three star or above hotels, 100% (one hundred per cent) export-oriented establishments and logistics and warehousing establishments ("**Establishments**"). Further, Section 30 (*Conditions of Employment of Women*) of the HSEA states that no woman shall be required or allowed to work at night and grants power to the State Government to prescribe further conditions in respect of employment of women.

Further, the Government of Haryana has previously issued notifications, setting out the conditions that have to be complied with for grant of an exemption under Section 28, allowing the Establishments to employ women at night. The Government of Haryana has now issued the February Notification in this regard, in supersession of all such earlier notifications.

The conditions prescribed under the February Notification include the following. We have also set out key differences between the February Notification and the earlier notifications, below:

i. Application for exemption has to be made 1 (one) month prior to the date of commencement of the period in respect of which the exemption is prayed for;

ii. Exemptions are valid for 1 (one) year from the date of order of exemption, unless there is any change in security, transportation agreements and other details of the occupier/ director/ manager;

iii. Employer or other responsible person at the workplace to prevent or deter the commission of acts of sexual harassment and to take all steps required as per the provisions of the Sexual Harassment of Women at Workplace (Prevention Prohibition and Redressal) Act, 2013 ("**POSH Act**");

iv. A declaration has to be submitted stating that consent has been obtained from each women employee to work during the night shift from 08:00 PM to 06:00 AM (as opposed to the earlier requirement to obtain such consent for work performed between 07:00PM to 06:00AM);

v. Sufficient security guards have to be provided during the night shift;

vi. Sufficient number of work sheds have to be provided for female employees to arrive in advance and also leave after the working hours;

vii. Separate canteen facility has to be provided, if the number of female employees exceeds 50 (fifty), except in IT, ITeS establishments (previously IT and ITeS establishments were also required to comply with this requirement);

viii. Transportation facility has to be provided to women employees from their residence and back (for the night shifts) and in case of buses, the vehicles shall also be equipped with CCTV cameras;

ix. Details of employees engaged during night shifts are to be included in an annual report to be sent to the Labour Commissioner, Haryana (as opposed to the earlier requirement for submission of a half-yearly reports to the Labour Commissioner, Haryana, containing details of employees engaged during night shifts and also an immediate report, upon occurrence of any untoward incident, to the Labour Commissioner and the local police station); and

x. Employer has to ensure compliance with the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("**EPF Act**"), the Employees' State Insurance Act, 1948, and the labour welfare fund legislation applicable in Haryana (i.e. the Punjab Labour Welfare Fund Act, 1965) (this is a new requirement introduced by the February Notification).

C. Notification on enforcement of the requirement to display name of establishments in Marathi under the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 ("MSEA")

The Government of Maharashtra *vide* a notification dated February 22, 2023, has declared that the Municipal Corporation of Brihanmumbai, all other Corporations, Municipal Councils, Nagar Panchayats and Village Panchayats, shall, within their respective jurisdiction, have the power to enforce Section 36A of the MSEA.

Section 36A requires that the name boards of all establishments in Maharashtra be in Marathi language, in addition to any other language.

D. Circulars regarding provision of creche facilities in SEEPZ, Special Economic Zone, Mumbai ("SEEPZ")

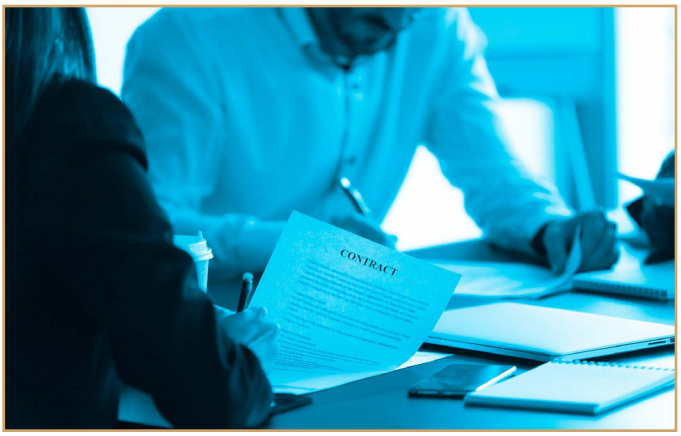
The SEEPZ, *vide* a circular dated January 12, 2023 ("**SEEPZ Circular**"), drew attention to the mandatory nature of the following requirements set out in the Factories Act and the MSEA: (a) every factory wherein more than 50 (fifty) women are ordinarily employed being required to maintain suitable room or rooms for the use of children under the age of 6 (six) years, as per the Factories Act, read with the Maharashtra Factories Rules 1963; and (b) every establishment wherein 50 (fifty) or more workers are employed being required to provide and maintain a creche facility, with suitable room or rooms as creche, as per the MSEA.

The SEEPZ Circular thereafter states that where a unit is unable to provide a creche facility, they may use the common creche facility provided by the SEEPZ authority, by making payment of an amount of INR 5000 (Indian Rupees Five Thousand only) per annum. The SEEPZ Circular further requests units to provide information about the provision of creche facilities or avail services of the common creche facility provided by the SEEPZ authority by paying necessary charges.

Further to the SEEPZ Circular, the SEEPZ has, *vide* a letter dated January 19, 2023, directed all SEEPZ units (though the SEEPZ Circular appears to be addressed to specific units only), to submit details of their employees in a prescribed format (the prescribed format includes heads such as the name and address of the unit, the total number of workers and details of male and female workers), within 7 (seven) days of receipt of the letter and also on or before April 7, every year.

E. Contract Labour (Regulation and Abolition) (Gujarat) (Amendment) Rules, 2023 ("Gujarat CLRA Amendment Rules")

The Labour, Skill Development and Employment Department, Sachivalaya, Gandhinagar, *vide* a notification dated February 20, 2023, published the Gujarat CLRA Amendment Rules, which shall come into force upon publication in the official gazette. The Gujarat CLRA Amendment Rules seek to amend the provisions of the existing Contract Labour (Regulation and Abolition) (Gujarat) Rules, 1972, by introducing a requirement for the registering officer/ licensing officer



to grant a registration/ license under the Contract Labour (Regulation and Abolition), 1970 ("**CLRA**"), within 45 (forty-five) days of receiving the application for registration/ license (provided that the officer is satisfied with the eligibility of the applicant). If the registering/ licensing officer fails to issue such registration/ license within the stipulated time, the registration/ license shall be deemed to be granted.

F. Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) (Gujarat) (Amendment) Rules, 2023 ("Gujarat ISMW Amendment Rules")

The Labour, Skill Development and Employment Department, Sachivalaya, Gandhinagar, *vide* a notification dated February 20, 2023, published the Gujarat ISMW Amendment Rules, which shall come into force upon publication in the official gazette. The ISMW Rules seek to amend the provisions of the existing Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) (Gujarat) Rules, 1981, by introducing a requirement for the registering authority/ licensing authority to grant a registration/ license under the Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) Act, 1979, within 45 (forty-five) days, after receiving the application for registration/ license (provided the authority is satisfied with the eligibility of the applicant). If the registering/ licensing authority fails to issue such registration/ license within the stipulated time period, the registration/ license shall be deemed to be granted.

G. Mandatory online filing of applications by factories located in Puducherry, Mahe and Yanam regions for obtaining and renewing licenses under the CLRA

The Government of Puducherry *vide* an order dated January 12, 2023, mandated online filing of applications by factories located in Puducherry, Mahe and Yanam regions for obtaining and renewing licenses under the CLRA. The online portal can be accessed on the website of the Labour Department, Puducherry. Adoption of the online mode was brought into force with immediate effect and the practice of issuing signed copies of the licenses has been dispensed with.

H. Announcement of the Rajasthan Workers Welfare Act, the Gig Workers Welfare Board and allocation of funds towards the Gig Workers Welfare and Development Fund

The Chief Minister of Rajasthan, while presenting the State budget for the financial year 2023-24 on February 10, 2023, announced that a Gig Workers Welfare Act would be enacted to ensure protection of gig workers from exploitation and to provide social security benefits to such workers. He also announced that a Gig Workers Welfare Board would be set up and that INR 2,00,00,00,000 (Indian Rupees Two Hundred Crores only) would be allocated towards creation of a Gig Workers Welfare and Development Fund. However, as on date, no legislation/ draft legislation has been made publicly available.

I. Permission for establishments in Meghalaya to remain open all 365 (three hundred sixty-five) days in a year

The Government of Meghalaya *vide* notification dated December 23, 2022, published in the Official Gazette on February 9, 2023, has exempted all establishments from the application of Section 6 of the Meghalaya Shops and Establishment Act, 2003 (which provides for closure of shops for one day in a week), and has permitted establishments to remain open all 365 (three hundred sixty-five) days of the year, for a period of 1 (one) year from the date of publication of the notification in the Official Gazette, subject to certain conditions, including those set out below:

i. Employees working in the establishment being provided 1 (one) day holiday in a week without any deductions from their wages;

ii. Employees being provided a rest period of 1 (one) hour after 5 (five) hours of continuous work;

iii. Employees not being required to work for more than 9 (nine) hours in a day or 48 (forty-eight) hours in a week;

iv. If the establishment remains open after 10:00 P.M. on any day, adequate safety and security arrangements being ensured for employees and visitors;

v. New staff being appointed for the extended timing; and

vi. Every employer employing women employees constituting an Internal Committee under the POSH Act.

J. The Government of Kerala launches a POSH Act compliance portal

In January 2023, the Government of Kerala launched a POSH Act compliance portal.

Employers are required to register themselves on the POSH Act compliance portal and upload details of the Internal Committee constituted and annual reports filed by the employers, under the POSH Act.

Do note that while no notification in this regard is publicly available, this information is available on e-bulletins on Kerala Government websites. The portal is also accessible by the public.

III. STATUS ON LABOUR CODES

A. Status of rules released under the Code on Wages, 2020, by State governments

The Government of Mizoram vide notification dated January 19, 2023, published the Mizoram Code on Wages Rules, 2022 ("**Mizoram Wage Rules**"), in the Official Gazette. The Mizoram Wage Rules will come into force on such date as may be notified in the Official Gazette.

JUDICIAL UPDATES

I. Supreme Court

A. Provident fund and gratuity dues are required to be disbursed in full to workmen and employees during a corporate insolvency resolution process

In ***Jalan Fritsch Consortium v. Regional Provident Fund Commissioner and Anr. (2023 SCC OnLine SC 106)***, the SC upheld the decision of the National Company Law Appellate Tribunal ("**NCLAT**"), which inter alia held that provident fund and gratuity dues of workmen and employees of Jet Airways (India) Limited ("**Jet Airways**") up to the insolvency commencement date, were required to be disbursed in full.

The corporate insolvency resolution process ("**CIRP**") under the Insolvency and Bankruptcy Code, 2016 ("**IBC**"), is a recovery mechanism initiated at the behest of the creditors of a corporate debtor (i.e., the company), or by the corporate debtor itself, on the corporate debtor's failure to pay its debts. The objective of the CIRP is to revive the business of the corporate debtor and to satisfy the debts of its creditors, and this objective is achieved by a resolution applicant acquiring the corporate debtor and reviving its operations, pursuant to a resolution plan submitted by the applicant. Once the CIRP application is admitted by the NCLT, a resolution professional, appointed by the committee of creditors of the corporate debtor, conducts the entire CIRP and controls the operations of the corporate debtor. The CIRP ends either with the revival of the corporate debtor, pursuant to a successful resolution plan, or in case no resolution plan succeeds, initiation of liquidation of the corporate debtor under the IBC.

During the CIRP of Jet Airways, in the resolution plan submitted by Jalan Fritsch Consortium, provident fund and gratuity dues of workmen were only admitted in part and that of non-workmen employees were not admitted at all. Additionally, no amount towards the provident fund dues of the workmen and employees was deposited by Jet Airways after February 2019, even though the insolvency commencement date was June 20, 2019.

The NCLAT made the following key observations related to the employees' and workmen's claims for provident fund and gratuity dues:

i. The gratuity fund, pension fund and provident fund of Jet Airways are not assets of the corporate debtor, which may be used to satisfy all liabilities of the corporate debtor, but are assets of the employees and workmen held in trust (even if the funds are in the possession of Jet Airways), and must be utilised fully for the payments due to the employees and workmen; and

ii. As an extension of point (i) above, the NCLAT observed that the amount levied as damages on unpaid provident fund dues, under Section 14B of the EPF Act, would form a part of the provident fund dues payable by Jet Airways and must be paid in full.

In light of the above, the NCLAT ordered that the employees and workmen are entitled to the entire provident fund and gratuity dues up to the date of commencement of the insolvency of the corporate debtor, minus the amount paid towards the same under the approved resolution plan. The NCLAT further held that the successful resolution applicant, i.e., the Jalan Fritsch Consortium would be responsible for discharging the liability towards the outstanding provident fund and gratuity dues.

II. Bombay High Court

A. Eviction of workmen from accommodation granted by an employer cannot be termed as an industrial dispute

In ***All India Service Engineers Association v. UoI (WP (L) No. 34307 of 2022)***, employees of Air India Ltd. challenged an order of the Central Government declining to refer an 'industrial dispute' to the Industrial Tribunal under Section 10 of the IDA. The alleged industrial dispute was in relation to the eviction of employees from residential accommodations allotted to them, in accordance with the provisions of Air India Housing Allotment Rules, 2017 ("**Housing Allotment Rules**"), post the privatisation of Air India Ltd.

The employees alleged that the proposed action of eviction would amount to withdrawing a privilege, which is a service condition, and no such change should be permitted without following the procedure under the IDA. Accordingly, the employees claimed that given that there was a dispute relating to a term of their employment, the Central Government ought to have referred it as an 'industrial dispute' to the Industrial Tribunal under Section 10 of the IDA.

Air India Ltd. contended that the eviction of employees from the accommodation granted to them was done with the motive of monetising all assets of Air India Ltd., and that provision of housing was never a condition of employment at Air India Ltd. and accordingly, the Central Government was correct to decline to refer this matter under Section 10.

The High Court of Bombay ("**Bombay HC**") examined the Housing Allotment Rules, and *inter alia* held that: (i) the rules by themselves, did not create or confer any right on the employees for allotment of accommodation; (ii) while the rules clarified that employees are permitted to retain accommodation during the tenure of their service, it also clarified that housing was simply a welfare function; and (iii) the rules were not generally applicable to all employees, and became applicable only post allotment of the accommodation to the employee, as the rules only dealt with the terms and conditions of such occupation. The Bombay HC also observed that the employees had entered into leave and license agreements with Air India Ltd. and that the employees were only licensees of the accommodation.

The Bombay HC also delved into the contours of an 'industrial dispute' under Section 2(k) of the IDA, which states:

"(k) "industrial dispute" means any dispute ... which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;" (**emphasis added**)

The Bombay HC opined that issues remotely connected with employment would not automatically constitute an industrial dispute under Section 2(k) of the IDA, and that the employees in this case could not adduce any evidence from their appointment letters, leave and license agreements and the Housing Allotment Rules to indicate that the provision of housing was one of the terms of their employment with Air India Ltd.

Considering the above, the Bombay HC held that the demand of the employees would not fall under the definition of 'industrial dispute' under Section 2(k) of the IDA as the provision of accommodation is not a term of their employment with Air India Ltd., and accordingly, the Central Government's decisions to not refer the dispute to the Industrial Tribunal did not have any errors.

The ruling of the Bombay HC clarifies that it may not be possible for workmen to raise an 'industrial dispute' in relation to matters that do not have a reasonable nexus to their terms of employment.

III. Karnataka High Court

A. Workers engaged through a sham contract labour arrangement should be reinstated as employees of the principal employer, subject to vacancies

In ***Mysore Electrical Industries Limited (MEIL) v. Engineering & General Workers Unions (Writ Petition No. 3788 of 2012 (L-RES))***, certain contract workers claimed reinstatement as permanent employees of MEIL.

A group of contract workers were terminated from employment by third-party contractors engaged by MEIL after MEIL terminated its arrangement with the contractors. The dispute between the contract workers and MEIL was placed before the Industrial Tribunal, which directed MEIL to restore the services of the

contract workers as 'workmen' of MEIL. MEIL then filed an appeal against the order of the Industrial Tribunal before the High Court of Karnataka ("**Karnataka HC**").

The contract workers contended that they had been engaged by MEIL independently, prior to third-party contractors being engaged, and the contract workers were only moved into the services of the contractor from the rolls of MEIL subsequently, in order to skirt applicability of labour laws and that in any case no contractor agreements existed between the contractors and MEIL as no such agreements were produced before the Industrial Tribunal. Additionally, the contract workers argued that the work being discharged by them was essential and perennial in nature and that MEIL had engaged regular employees to render similar services as the contract workers and therefore the contract workers must be treated at par with such employees.

The Karnataka HC opined that the arrangement between MEIL and the third-party contract agencies were a sham, entered into with the intention of depriving workers of the employment benefits due to them, particularly as the workers were engaged in perennial activities directly by MEIL for several decades prior to being engaged through contractors for the same activities. The court also emphasised on the fact that MEIL could not produce any copy of the agreements between itself and the contractors before the court, thereby indicating that the entire arrangement was a camouflage.

In light of the above, the Karnataka HC ordered that the contract workers must be treated as permanent employees of MEIL and must be reinstated to the services of MEIL, subject to availability of vacancies.

IV. Delhi High Court

A. Inquiry proceedings under the POSH Act cannot be quashed merely because the Internal Committee ("IC") failed to complete the inquiry within 90 days

In ***CA Nitesh Parashar v. ICAI & Ors. (2023 SCC OnLine Del 381)***, the respondent in a complaint of sexual harassment sought to have the IC proceedings against him quashed. The respondent contended that under the POSH Act, IC inquiry into a compliant of sexual harassment is required to be completed within 90

(ninety) days from the date of the complaint and that since the inquiry against him was not completed within the 90 (ninety) days, the entire IC proceedings should be quashed.

The High Court of Delhi ("**Delhi HC**") observed that the respondent's contention had no substance as the respondent could not adduce any evidence that any prejudice was caused to him on account of the delay by the IC in the inquiry proceedings. The Delhi HC therefore held that inquiry proceedings under the POSH Act cannot be quashed merely for the reason that the IC had failed to complete the inquiry within the 90 (ninety) days' time frame, given under Section 11(4) of the POSH Act.

The Delhi HC also opined that all complaints containing allegations of sexual harassment deserve to be treated with a certain amount of seriousness and responsibility, and therefore must be inquired into and taken to their logical conclusion in the interest of the complainant and the respondent.

V. Kerala High Court

A. Delay in filing appeals under the Payment of Gratuity Act, 1972, cannot be condoned by taking aid of the provisions of the Limitation Act, 1963

In ***Sree Avittom Thirunal Hospital v. State of Kerala (2023 SCC Online Ker 595)***, a petition was filed before the High Court of Kerala ("**Kerala HC**") for condonation of delay of one year in filing an appeal from an order of the gratuity authority.

While the period for filing an appeal from an order of the gratuity authority under Section 7(7) of the Payment of Gratuity Act, 1972 ("**Gratuity Act**"), is 60 (sixty) days (extendable by another 60 (sixty) days at the discretion of the Government or appellate authority), the petitioner contended that the Gratuity Act did not exclude the applicability of the Limitation Act, 1963 ("**Limitation Act**"), and delay in filing the appeal must be condoned under Section 5 of the Limitation Act. Section 5 of the Limitation Act permits condonation of delay in filing any appeal or application if the appellant/ petitioner shows sufficient cause for not being able to file the same within the prescribed time period (and there is no limit placed on the duration of delay that may be condoned).

The Kerala HC observed that under Section 29(2) of the Limitation Act, if a local or special law prescribes a specific limitation period for any suit, appeal or application, the provisions of the Limitation Act would only apply to the extent to which, they are not expressly excluded by such special or local law. In light of the above, the Kerala HC observed that the phrasing of Section 7(7) of the Gratuity Act clearly specifies the timelines within which any appeal must be filed (including in case of any delay) and therefore, excludes the application of the Limitation Act.

Hence, in light of the above, the Kerala HC held that delay in filing an appeal under the Gratuity Act, cannot be condoned under the provisions of the Limitation Act.

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