



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 Rights of Persons with Disabilities Rules, 2017, method of computation of pension fund, passing of Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023, proposed amendment to the Tamil Nadu Shops and Establishments Act, 1947, permitting establishments in Punjab and Telangana to be open for 365 day of a year, notification of Maharashtra Labour Laws (Amendment) Act, 2022, among others.

Besides legislative updates, this edition also delves into the 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 effective implementation of the Rights of Persons with Disabilities Act, 2016 and Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, permissibility of clawback benefits after termination of employment, determination of maximum gratuity amount payable, 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. Ministry of Social Justice and Empowerment notifies amendment to Rights of Persons with Disabilities Rules, 2017

The Ministry of Social Justice and Empowerment *vide* notification dated June 5, 2023 has amended the Rights of Persons with Disabilities Rules, 2017 (“**Disabilities Rules**”) by way of the Rights of Persons with Disabilities (Amendment) Rules, 2023 (“**Amendment Rules**”).

The Amendment Rules amends Rule 15 of the Disabilities Rules, which deals with accessibility. Under the said rule, every establishment is required to comply with certain standards relating to physical environment, transport and information and communication technology. In this regard, Rule 15 (1) (a) of the Disabilities Rules referred to the Harmonised Guidelines and *Space Standards for Barrier Free Built Environment for Persons with Disabilities and Elderly Persons as issued by the Government of India, Ministry of Urban Development in March, 2016.*

The Amendment Rules substitutes the abovementioned provision and now refers to the Harmonised Guidelines and *Standards for Universal Accessibility in India - 2021, notified by the Government of India in the Ministry of Housing and Urban Affairs, vide notification number O-17/4/2022-works-3-UD dated the October 18, 2022, (as amended from time to time)* that must be followed by public buildings under the Disabilities Act.

B. The Employee Provident Fund Organisation (“EPFO”) issues circular on allowing joint requests for employees under Employees’ Provident Funds Scheme, 1952 (“Scheme”)

Please refer to our previous newsletter for the quarter January – March 2023 [\[here\]](#) in relation to aspects pertaining to joint option for contribution on higher salary and payment of pension.

On June 2, 2023, the EPFO issued a further circular setting out the manner in which a joint request under

Paragraph 26(6) of the Scheme can be made allowing employees earning a monthly pay of more than INR 15,000 to join the EPF Scheme or, if already a member, to contribute on higher than the statutory wage ceiling (presently INR 15,000). For reference, Paragraph 26(6) of the EPF Scheme provides for the enrolment of an employee as a member of the Scheme whose monthly pay is more than the statutory wage ceiling.

The abovementioned circular provides that the employer shall submit a joint request and undertaking in the proforma application (*as provided in the circular*) duly signed by the employee and the employer to the jurisdictional regional office digitally. Further, the employer shall undertake to pay the administrative charges payable on the actual pay and comply with all statutory provisions of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 (“**EPF Act**”) and schemes framed thereunder in respect of such employee. All such requests will be processed expeditiously.

C. EPFO issues a circular with respect to method of computation of pension

The EPFO *vide* circular dated June 1, 2023, has provided the method of computation of pension. As per the said circular, the pension amount shall be calculated in accordance with the following method:

- i. *cases found eligible for pension on higher wages where date of commencement of pension is prior to September 1, 2014* – pension shall be calculated based on the average monthly pay drawn during the contributory period of service in the span of 12 months preceding the date of exit from the membership of the pension fund.
- ii. *cases found eligible for pension on higher wages where date of commencement of pension is after September 1, 2014* – pension shall be calculated based on the average monthly pay drawn during contributory period of service in the span of 60 months preceding the date of exit from the membership of the pension fund.

D. Ministry of Labour and Employment (“MOLE”) issues notifications in relation to contribution towards pension fund and notified certain provisions of the Code on Social Security, 2020 (“Code”)

While delivering its judgement in the case of *Employees’ Provident Fund Organisation and another v Sunil Kumar and others* (AIR 2022 SC 5634) (“Judgement”), the Supreme Court upheld the validity of the amendments made to the Employees’ Pension Scheme, 1995 (“Scheme”). However, it also noted that the requirement of the members to make an additional contribution at the rate of 1.16% of their salary to the extent it exceeds INR 15,000 per month under the aforesaid amended scheme is *ultra vires* of the provisions of the EPF Act. The Supreme Court also directed the authorities to make necessary adjustments in the Scheme within a period of 6 (six) months in order to generate the additional contribution of 1.16% from some other legitimate source within the scope of the EPF Act.

In light of the above, the MOLE issued the following 2 (two) notifications:

- i. The first notification provides that in respect of employees who have been members of the Scheme and have exercised a joint option for making contributions on monthly wages exceeding INR 15,000, the employer’s contribution towards the pension fund shall be 9.49% of basic wages, dearness allowance and retaining allowance. This is a 1.16% increase from the previous contribution rate of 8.33%. Further, the increased contribution is made applicable to basic wages, dearness allowance and retaining allowance to the extent that such components together exceed INR 15,000. The notification has been made effective retrospectively from September 1, 2014.
- ii. The second notification brings into effect the following provisions of the Code to implement the aforementioned amendment and accordingly, the corresponding provisions of the EPF Act shall stand repealed and subsumed with effect from May 3, 2023:
 - a. Section 15 (3) pursuant to which the Central Government has brought the Scheme within the ambit of the Code;
 - b. Section 16 (1) (a) and (b) and 16 (2) which provides that the employer would be required to contribute



to the employees’ pension fund at the rate of 8.33% of wages, unless a different rate has been notified by the Central Government; and the employer of an exempted establishment would be required to make contributions towards pensionary benefits of employees in the manner specified under Section 143 of the Code; and

- c. Section 143 which provides that the government may subject to certain conditions exempt an establishment from the pension-related provisions of the Code.

II. KEY STATE LEGISLATIVE CHANGES

A. Rajasthan passes the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023

The Government of Rajasthan on July 24, 2023 passed the Rajasthan Platform-Based Gig Workers (Registration and Welfare) Act, 2023 (“Gig Workers Act”). With this proposed legislation, Rajasthan has become the first state in India which seeks to facilitate guarantee of social security to platform based ‘gig workers’.

The Gig Workers Act defines ‘gig worker’ as a person who performs work or participates in a work arrangement and earns from such activities outside of traditional employer-employee relationship and who works on contract that results in a given rate of payment, based on terms and conditions laid down in such contract and includes all piece-rate work.

The Gig Workers Act envisages the State Government to constitute the Rajasthan Platform Based Gig Workers

Welfare Board (“**Board**”). The Board shall *inter alia* have the following duties:

- a. register platform-based gig workers, aggregators and primary employers operating in the State of Rajasthan;
- b. ensure that welfare cess deduction mechanism is integrated into the application of the aggregator or primary employer;
- c. notify schemes for social security of registered platform-based gig workers;
- d. ensure that workers have access to the benefits as per the schemes;
- e. engage with registered unions working with platform-based gig workers and hold regular open consultations with them.

The Gig Workers Act requires aggregators / principal employers to provide to the Board its database of all platform-based gig workers onboarded or registered with them. Every platform-based gig worker onboarded or registered with any platform will be automatically registered with the Board and will be provided with a unique ID, which will be deemed valid in perpetuity.

Further, the Gig Workers Act also aims to establish a fund to be called “The Rajasthan Platform Based Gig Workers Social Security and Welfare Fund” for the benefit of registered platform-based gig workers. The following amounts shall be credited to the abovementioned fund:

- a. The ‘Platform Based Gig Workers Welfare Cess’ levied from an aggregator or primary employer which shall not exceed 2% but shall not be less than 1% of the value of each transaction related to platform-based gig worker;
- b. all contributions made by individual platform-based gig workers;
- c. all sums received as grant-in-aid from the State Government;
- d. all sums received by way of grants, gifts, donations, benefactions, bequests or transfers; and
- e. all sums received from other sources.

The Gig Workers Act also seeks to establish a grievance redressal mechanism allowing platform-based gig workers to register under the said legislation to file a petition before the relevant authorities designated by the State Government in relation to any grievance arising out of entitlements, payments, and other benefits under the Gig Workers Act. It also imposes a monetary fine of up to INR 50,00,000 for aggregators and up to INR 2,00,000 for primary employers in case of violation of provisions of the Gig Workers Act.

B. The Government of Tamil Nadu introduces a bill to amend the Tamil Nadu Shops and Establishments Act, 1947 (“TNSEA”)

The Government of Tamil Nadu on May 17, 2023 introduced the Tamil Nadu Shops and Establishments (Amendment) Act, 2023 (“**2023 Amendment**”). The same has received assent of the Governor of Tamil Nadu and shall come into force on such date, as the Government of Tamil Nadu may by notification appoint. Under the 2023 Amendment, the following provisions after Section 22-A of the TNSEA in relation to certain facilities that should be available in the establishment have been inserted:

- i. 22-B - Drinking water: Arrangement to provide sufficient supply of wholesome drinking water;
- ii. 22-C - Latrine and Urinals: Provision of sufficient number of latrine and urinal accommodation at all times during the working hours;
- iii. 22-D - Rest room and lunchroom: Provision of adequate and suitable rest room and lunchroom with provision for drinking water. Such rest room and lunchroom should be sufficiently ventilated and lighted and shall be maintained in a clean and tidy condition. Further, they should be adequately furnished with chairs or benches with back-rests.
- iv. 22-E - First Aid: Provision of first aid facilities at the place of work.

The current TNSEA does not have any requirement for shops and establishments in Tamil Nadu to register. In 2018, an amendment was introduced in relation to

registration for shops and establishments under the TSEA (“**2018 Amendment**”). The 2018 Amendment sought to replace Section 3 of the TSEA (which deals with ‘references to time of day’¹), with the registration requirement. However, this 2018 Amendment was not notified and therefore, not enforced.

The key changes that the 2023 Amendment seeks to incorporate to Section 3 of the 2018 Amendment are set out below:

- i. Under the 2018 Amendment, every employer employing 10 or more workers shall, within a period of 6 months from the date of commencement of business, apply for registration and obtain a registration certificate. If registration or renewal of a registration certificate is not issued within a period of 30 days from the date of receipt of application by the inspector, the registration certificate shall be deemed to have been granted or renewed, as the case may be, under the 2018 Amendment.

The 2023 Amendment provides that if the registration certificate is not issued within 24 hours from the date of receipt of application by the inspector, the registration certificate shall be deemed to have been granted.

- ii. As per the 2018 Amendment, the registration certificate shall be valid for a period of 5 (five) years and shall be renewable once in 5 (five) years on payment of such fees as may be prescribed. Under the 2023 Amendment, there is no requirement to periodically renew the registration.
- iii. As per the 2018 Amendment, employer of every existing establishment employing 10 or more workers on the date of commencement of the 2018 Amendment, shall intimate the details of the establishment along with a self-declaration within a period of six months from the date of commencement of the 2018 Amendment. However, as per the 2023 Amendment, the requirement to intimate the details of the establishment along with the self-declaration has been increased to 1 (one) year from the date of commencement of the 2018 Amendment.

¹ References to time of day—References to time of day this Act are references to Indian Standard Time which is five and a half hours ahead of Greenwich Mean Time.



C. Government of Punjab permits all establishments to be open for 365 days of a year

The Government of Punjab vide notification dated on June 2, 2023 under Section 28 of the Punjab Shops and Commercial Establishments Act, 1958 (“**PSEA**”) exempts all establishments from applicability of Sections 9 (*opening & closing hours*) and 10 (*close day*) and thus, permits all establishments registered under the PSEA to remain open for 365 days. This notification will be applicable for a year from the date of the notification i.e. till May 31, 2024.

The aforesaid exemption is subject to the following key conditions:

- i. Employees shall be granted a weekly off once in a week;
- ii. Employees shall be granted an interval of rest of 1 (one) hour after every 5 (five) hours of work and shall not be required to work more than 9 (nine) hours a day or 48 hours a week;
- iii. If the establishment remains open after 10 pm, adequate safety measures shall be ensured;
- iv. The spread over shall not exceed more than 11 hours a day;
- v. Employees shall be given paid national and festival holidays; and

- vi. The following provisions for female employees shall be adhered to:
 - a. Separate locker, security and restrooms to be provided;
 - b. Employers employing female employees to constitute an Internal Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013;
 - c. Female employees cannot be made to work after 8 P.M. without their consent. Consent letter must be taken from all female employees and should be well recorded;
 - d. It shall be ensured that female employees reach their homes safely after their work is over.

In case any of the conditions are violated, the exemption granted to the establishment will stand withdrawn.

D. Government of Telangana permits establishments to be open for 365 days of a year

The Government of Telangana *vide* notification dated May 18, 2023 extends the permission to all shops and establishments as defined under Section 2(21) of the Telangana Shops and Establishments Act, 1988 (“TSEA”) to remain open on all days of the year for a further period of 3 years with effect from June 16, 2022. Under Section 2(21) of the TSEA, ‘shop’ means any premises where any trade or business is carried on or where services are rendered to customers and includes a shop run by a co-operative society, an office, a store room, go-down, warehouse or work place, whether in the same premises or otherwise, used in connection with such trade or business and such other establishments as the Government may, by notification, declare to be a shop for the purposes of the TSEA, but does not include a commercial establishment.

The exemption is subject to the following key conditions:

- i. The working hours shall be 8 (eight) hours a day or 48 hours a week and record of overtime shall be maintained in wage register;
- ii. Employees shall be allowed to avail weekly holidays on a rotation basis;
- iii. Working hours shall be between 9 AM to 11 PM;

- iv. Transport arrangements shall be provided to women employees working after 8:30 PM;
- v. Appointment letter shall be provided to all employees and a copy of the same shall be furnished to the jurisdiction inspector;
- vi. Visit book shall be maintained exhibiting copy of the exemption; and
- vii. Compliance with welfare and social security provisions under various labour statutes shall be ensured .

The abovementioned exemption is valid for a period of 3 (three) years and in case of any statutory violation committed by the employer, the exemption will be cancelled.

E. Government of Telangana permits establishments for operating 24*7

The Government of Telangana *vide* notification dated April 4, 2023 has granted exemption to all shops and establishments as defined under Section 2(21) of the TSEA (*as stated in the abovementioned update*) from Section 7 (*opening and closing hours*) of the TSEA and to operate 24*7, subject to the following conditions:

- i. ID Cards shall be issued to employees;
- ii. Weekly off shall be allowed and compliance with weekly hours under the TSEA shall be maintained;
- iii. Overtime wages shall be paid to eligible employees;
- iv. Compensatory holiday with wages in lieu of the employees working on a notified national / festival holiday, shall be provided; and
- v. Adequate safety of women employees and transportation facilities shall be provided and consent from the women employees to work during night shift shall also be obtained.

F. Industrial units in Madhya Pradesh exempt from obtaining approval and inspection requirements

The Government of Madhya Pradesh *vide* notification dated April 6, 2023 notified the Madhya Pradesh Udyogon Ki Sthapna Evam Parichalan Ka Saralakaran Adhiniyam, 2023 (“Rules”), which has repealed the Madhya Pradesh

Udyogon Ki Sthapna Evam Parichalan Ka Saralakaran Adhyadesh, 2023. The Rules exempts industrial units in notified areas in Madhya Pradesh from obtaining approval and inspection requirements under various labour legislations which *inter alia* includes Employees' State Insurance Act, 1948; Contract Labour (Regulation and Abolition) Act, 1970; Payment of Bonus Act, 1965; Madhya Pradesh Shops and Establishments Act, 1958; Payment of Gratuity Act, 1972, etc.

In this regard, companies would be obligated to inform the nodal agency of their intention to start an industrial unit in the notified area. Upon receipt of the intention to invest, the nodal agency may issue an acknowledgment certificate. The aforesaid certificate will have the effect of an approval for a period of 3 (three) years from the date of its issuance, during which, no inspection will be conducted provided that inspections shall be carried out only when the industrial unit applies for approvals prior to the commencement of commercial operation or after the expiry of 3 (three) years from the date of issuance of acknowledgment certificate.



Workmen's Minimum House-rent Allowance Act, 1983. The amendment has increased the threshold of fines that may be levied for contravention of the abovementioned legislations to INR 10,00,000 and also provides for compounding of offences in certain instances.

G. Maharashtra Labour Laws (Amendment) Act, 2022 notified

The Government of Maharashtra *vide* notification dated April 11, 2023 has notified the Maharashtra Labour Laws (Amendment) Act, 2022 ("**Amendment Act**"). The Amendment Act amends provisions in relation to penalties including fines and imprisonment under the Maharashtra Labour Welfare Fund Act, 1953, the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981, the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969, the Maharashtra Industrial Relations Act, 1947, and the Maharashtra

H. Andhra Pradesh Rights of Persons with Disabilities Rules, 2023 notified

The Government of Andhra Pradesh, *vide* notification dated April 24, 2023 has notified the Andhra Pradesh Rights of Persons with Disabilities Rules, 2023 which *inter alia* addresses, aspects related to health and medical treatment, appointment of limited guardianship, limited guardianship, appointment of nodal officer, non-discrimination in employment and appointment of grievance redressal officer.

JUDICIAL UPDATES

I. Supreme Court (SC)

A. SC directs non-compliant States/UTs to ensure implementation of the Disabilities Act

In April 2023, the SC in the case of *Seema Girija Lal and Anr. vs. Union of India and Ors.* issued notice to the state governments in relation to the implementation of the provisions of the Rights of Persons with Disabilities Act, 2016 and the rules formulated thereunder (“**Disabilities Act**”). This order comes from a writ petition filed by the members of a forum for parents, professionals and other stakeholders dealing with the rights of children with disabilities, who highlighted that the diverse provisions of the Disabilities Act have not been implemented by the states – such as constitution of district level committee (for the purpose of ensuring that the needs of persons with disabilities are met), framing of rules for the implementation of the legislation.

Subsequently, the SC has directed the non-compliant states to constitute district level committees on or before June 30, 2023. With this recent directive, employers may note that the authorities under the Disabilities Act may actively start scrutinising the compliance of the Disabilities Act by the employers. In this regard, employers may consider taking steps towards ensuring that their workplaces are inclusive and compliant with the provisions of the Disabilities Act.

B. Directions for effective implementation of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”)

In its recent judgment in *Aureliano Fernandes Vs. State of Goa and Others (Civil Appeal No. 2482 of 2014)*, the SC observed that even after a decade of the POSH Act being formulated, its implementation and enforcement is still inadequate. To remedy the situation, the SC issued various directions for effective implementation of the POSH Act.

In the instant case, an inquiry was initiated against Mr. Aureliano Fernandes (“**Appellant**”) by the internal committee constituted by Goa University (“**University**”) after it received multiple complaints against the Appellant from female students, alleging sexual harassment. The internal committee, after passing an ex-parte order against the Appellant on account of his

absence during the inquiry proceedings on multiple occasions, held that his acts amounted to grave misconduct and consequently, recommended that his services be terminated by the University. Subsequently, in view of the gravity of the charges levelled against him, the Appellant was terminated from his services and was disqualified from future employment at the University.

The Appellant challenged the aforesaid order before the High Court in Bombay (Goa Bench) (“**High Court**”) by way of a writ petition. The High Court observed that the internal committee had granted ample opportunities to the Appellant, but he had failed to appear before it. In such circumstances, the internal committee could not be blamed for proceeding ex-parte against him. The plea of the Appellant questioning the internal committee’s constitution, alleging inclusion of persons junior to him in the department, was also rejected on the grounds of it being without any merit. Further, the Appellant’s contention that the inquiry had been conducted in haste, and deprived him of a fair and reasonable opportunity to defend himself, was also turned down. Aggrieved by the judgment of the High Court, the Appellant challenged it before the Supreme Court.

The Supreme Court observed that the inquiry was indeed completed in a “tearing hurry” and the Appellant was not given reasonable time to effectively participate in the proceedings. The Supreme Court noted that although the Appellant missed several dates, those were on medical grounds. The hasty manner in which the inquiry proceedings were conducted were against the principles of natural justice as it did not give the Appellant a proper opportunity of being heard. On grounds of procedural irregularities, the Supreme Court quashed and set aside the judgment passed by the High Court and the matter was sent back to the internal committee for conduct of a fresh inquiry, in accordance with the principles of natural justice.

Through this case, the Supreme Court noticed serious lapses in the enforcement of the POSH Act. Accordingly, in order to “fulfil the promise that the POSH Act holds out to working women all over the country”, the Supreme Court inter alia issued the following directions:

- a. The Union of India, the State Governments and Union Territories must undertake a time-bound exercise to verify whether all the concerned ministries, departments, government organisations, authorities,

public sector undertakings, institutions, bodies, etc., have constituted LCs (local committees)/ ICs (internal committees), as the case may be, and that the composition of the said committees are strictly in terms of the provisions of the POSH Act.

- b. Ensure that necessary information regarding the constitution and composition of LCs/ ICs, details including e-mail IDs and contact numbers of the designated person(s), the procedure prescribed for submitting an online complaint, as also the relevant rules, regulations and internal policies are made readily available on the website of the concerned authority/ functionary/ organisation/ institution/ body, as the case may be. The information furnished shall also be updated from time to time.
- c. Immediate and effective steps to be taken by the authorities/ managements/ employers to familiarise members of the LCs/ ICs with their duties and the manner in which an inquiry ought to be conducted on receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the report is submitted.
- d. The authorities/ management/ employers must regularly conduct orientation programmes, workshops, seminars and awareness programmes to upskill members of LCs/ ICs and to educate women employees and women's groups about the provisions of the POSH Act, the rules and relevant regulations.

II. Bombay High Court

A. Clawback of benefits after termination of employment: Whether permissible

The division bench of the Bombay High Court (“**Bombay HC**”) in *Chanda Kochhar v. ICICI Bank Limited (2023 SCC OnLine Bom 1023)*, upheld the order of the single judge of the Bombay HC, which dismissed the interim application filed by the appellant (Chanda Kochhar) seeking specific performance of the resignation acceptance letter issued by the respondent and reinstatement of her Employee Stock Options (“**ESOP**”).



The issues broadly were:

- i. Whether the respondent (ICICI Bank), after having accepted the appellant's request for early retirement, could subsequently and retrospectively treat cessation of her employment as “termination for cause”; and
- ii. Whether the respondent could seek clawback of retirement benefits including vested and unvested ESOPs, bonuses earned during the period of her employment by the appellant.

The appellant, who was the Chief Executive Officer (“**CEO**”) and Managing Director (“**MD**”) of the respondent, faced allegations of nepotism in granting loans to certain companies, which in turn invested in a company where the appellant's husband was a promoter (“**Investment Company**”). In 2016, pursuant to the allegations, the respondent conducted an internal inquiry, which concluded in favour of the appellant basis the documents and information shared at that time. However, in 2018, the respondent received whistleblower letters containing primarily the same allegations - abuse of position by the appellant, and the business dealings between the Investment Company, and the appellant's husband. After this, the Justice Mr. BN Srikrishna (retired) Committee (“**Srikrishna Committee**”) was appointed to conduct an independent inquiry into these allegations.

During the pendency of the Srikrishna Committee inquiry, the appellant's request for early retirement was accepted by the respondent, along with a condition that the grant of ESOPs would be decided by the board of the respondent upon conclusion of the inquiry. The resignation acceptance letter also enclosed an undertaking given by the appellant in 2016, to the effect that in the event of any breach of the employment terms, the respondent could forfeit any benefits provided to the appellant.

Based on the information provided by the appellant and the review of documents, the Srikrishna Committee concluded that the appellant committed gross violations of the respondent's policies, particularly the code of conduct and disclosure requirements. Based on the findings of the Srikrishna Committee, the board of the respondent unanimously resolved to treat the cessation of the appellant's employment from the respondent as "termination or cause" with all attendant consequences (i.e. with effect from date of her early retirement – pursuant to a direction given by the Reserve Bank of India (without whose approval, termination of the engagement of a chairman, managing director, will not have effect)). This, in effect also led to revocation of all existing and future entitlements of the Appellant, such as any unpaid amounts, unpaid bonuses or increments, vested and unvested and unexercised stock options and medical benefits, and claw back of all bonuses paid during her period of appointment as a CEO and MD of the respondent (nearly 10 (ten) years).

The appellant thereafter approached the writ court (both the Bombay HC and the SC) for adjudication of her dispute, which the court dismissed on the ground that the dispute being a contractual dispute, was not amenable to writ jurisdiction. Thereafter, the matter came before the single judge of the Bombay HC (by way of a suit), where the respondent contended that the appellant having violated its policies, is not entitled to benefits as mentioned above, in accordance with the terms of the undertaking. The appellant in turn contended that the revocation of acceptance after cessation of employer-employee is not valid, and that the disciplinary inquiry could not have continued after cessation of employment. The single judge determined that the revocation of the early retirement acceptance

as valid, since the acceptance was given when the respondent was not fully aware of all the fact and held that the disciplinary inquiry could be continued (it was also observed that the appellant having been given an opportunity to present her own case before the Srikrishna Committee could not then contend otherwise).

Accordingly, the single judge dismissed the case of the appellant, and also granted interim reliefs as prayed by the respondent which *inter alia* included injunction restraining the appellant from dealing with the ESOP already exercised during the period between cessation of employment and conclusion of the inquiry and also directed the appellant to disclose if she has sold or dealt with any of such shares as well as disclose her gain from such sale. In appeal before the division bench, the reliefs sought by the appellant were considered to be those in the nature of final reliefs (and matter of trial), and any grant of such reliefs would amount to decreeing the suit. Further, the division bench reasoned that the grant of the interim reliefs would cause irreparable injury to the respondent (it was observed that the balance of convenience was completely in favour of the respondent). The matter is pending adjudication and listed on August 4, 2023.

III. Karnataka High Court

A. Karnataka High Courts directs police to require the private employer to hold back benefits payable to a mother until she hands over custody of her daughter to the father

The Karnataka High Court ("Karnataka HC") in the case of **Rajeev Giri v State of Karnataka (WPHC 30/2023)**, directed the police to contact the employer of the wife of the petitioner i.e., Manipal Health Enterprise Private Limited to hold back all the benefits payable to her until the custody of the daughter is handed over to the petitioner i.e., the father.

This decision arose from a writ petition filed by the petitioner seeking execution of the family court directing the wife of the petitioner to hand over the custody of the daughter to the petitioner, who despite such an order had not handed over the custody.

IV. Kerala High Court

A. Gratuity has to be determined as per the date of termination of employment and not as per the date of sanction or actual disbursement

In *K. Rajendra Prasad v. State of Kerala (WP(C) No. 19171 of 2012)*, the petitioner employee being a regional engineer at Kerala State Housing Board (“KSHB”), was aggrieved by the pensionary benefits he was sanctioned, upon his retirement as from the total amount payable, KSHB withheld his Death-cum-Retirement Gratuity (“DCRG”) amounting to INR 2,57,400, and the last payment for May 2002 amounting to INR 21,712 towards his liability on account of audit objections.

The petitioner employee contended that the DCRG was determined and disbursed to him as per the ‘then existing rule’ and argued that in view of the amendment introduced in 2010 to Section 4(3) of the Payment of Gratuity Act, 1972 (“Gratuity Act”), he is entitled to the maximum gratuity of INR 10,00,000. Therefore, the petitioner prayed for a direction to KSHB to disburse the DCRG as provided under the amended section of the Gratuity Act along with 9% interest.

The Kerala High Court observed that the petitioner being an employee of KSHB was regulated by the Kerala State Housing Board Employees’ (Pension and other Retirement Benefits) Regulations, 1990 (“KSR”). The Kerala High Court analysed the relevant provisions of the KSR regarding pension, other retirement benefits as well as the amount of gratuity payable and pointed out that Section 14 of Gratuity Act would have an over-riding effect. It was observed that Section 4 of the Gratuity Act requires payment of gratuity to an employee on



termination of employment, which was May 31, 2002, in the instant case. Thus, the gratuity shall be payable with effect from the same day (i.e., May 31, 2002). The Kerala High Court suggested that the petitioner has to choose between the Gratuity Act and KSR for claim of gratuity or DCRG, since he cannot have gratuity under the KSR with the ceiling limit payable under Gratuity Act.

It was further noted that even if the petitioner claims gratuity under Gratuity Act, the maximum amount payable must be determined according to the date on which gratuity became payable and not when the sanction was accorded for payment of DCRG or on the date of actual disbursement. The Kerala High Court, thus, did not find any merit in the petitioner employee’s contention of being entitled to maximum gratuity based on the 2010 amendment to the Gratuity Act. However, the Court left it open for him to claim interest for delay in disbursement of DCRG.

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