cyril amarchand mangaldas
ahead of the curve

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Index

This issue of *The Employment Quarterly* covers key legislative updates at the Central and State levels, such as notifications/ circulars/ handbook/ guidelines pertaining to combating gender stereotypes, standard operating procedure for management and regulation of establishments permitted to operate exempted private provident fund trust, draft Rights of Persons with Disabilities (Amendment) Rules, 2023, welfare schemes for gig and platform workers, implementation of National Apprenticeship Promotion Scheme-2, State Creche Policy issued in Haryana, 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 *inter alia* effective implementation of *the Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017* and *the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013*, rights of fixed term/ contractual employees to maternity benefits, scope of the definition of 'workman' under the Industrial Disputes Act, 1947.

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

Managing Partner
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LEGISLATIVE UPDATES

I. Key Central Legislative Updates

A. Supreme Court (SC) releases handbook on combating gender stereotypes

The SC, on August 16, 2023, released a handbook on combating gender stereotypes (**Handbook**) aimed to actively challenge and dispel harmful gender-based stereotypes. The Handbook recognises that some phrases and terms reflect archaic ideas with patriarchal undertones, and the usage of these phrases and terms must be altered. For this purpose, the Handbook *inter alia* identifies a few phrases and terms that promote gender stereotypes and provides alternative language for the same, as follows:

Stereotype promoting language	Alternative language
Ladylike	Use a gender-neutral description of behaviour or characteristics (e.g., amusing or assertive)
Hormonal (to describe a woman's emotional state)	Use a gender-neutral term to describe the emotion (e.g., compassionate or enthusiastic)
Housewife	Homemaker
Marriageable age	A woman who has attained the legal age required to marry
Transsexual	Transgender
Mistress	Woman with whom a man has had romantic or sexual relations outside of marriage
Provocative clothing /dress	Clothing/dress
Survivor or Victim	An individual who has been affected by sexual violence may identify themselves as either a "survivor" or "victim". Both terms are applicable unless the individual has expressed a preference, in which case the individual's preference should be respected.

The Handbook also debunks certain stereotypes, such as "women are very likely to make false allegations," "women who are also mothers are less competent in the office," "women are overly emotional, illogical, and cannot take decisions."

The Handbook further makes use of judicial precedents to explain concepts and for raising awareness.

B. Employees' Provident Fund Organisation (EPFO) releases Standard Operating Procedure (SOP) for management and regulation of establishments permitted to operate an exempted private provident fund (PF) trust

The EPFO on October 6, 2023, released an SOP for management and regulation of establishments permitted to operate an exempted private PF trust under the provisions of the *Employees' Provident Funds and Miscellaneous Provisions Act, 1952* (***EPF Act***). This SOP is in supersession of all previous instructions and circulars issued so far on the subject.

The following are some of the key features of the SOP:

i. The board of trustees (**BOT**) of the exempted PF trust is required to notify covered employees about

the receipt and withdrawal of contributions as well as the crediting of interest in their individual accounts. The BOT may do this by sending messages via SMS, mobile phones, email, or e-passbooks.

ii. The SOP also covers the expected responsibilities of the regional offices of the EPFO in terms of reviewing online returns and conducting an annual compliance audit of exempted establishments.

iii. The term of office of the trustees of the exempted establishment has been reduced to 3 (three) years, from the current term of 5 (five) years.

iv. The BOT is to form an investment committee composed of financial experts. It will be the committee's responsibility to ensure optimal trust fund management.

v. The EPFO has created a priority matrix through the SOP to take appropriate action against exempted businesses. The establishments are divided into 3 (three) groups, namely, Category A, B, and C based on the severity and materiality of the contraventions.

   a. *Category A* includes offences like establishments' failure to report losses for 3 (three) consecutive financial years, non-payments of employee PF contributions and other obligations, and non-compliance with government investment guidelines for 3 (three) consecutive years. If any of these violations occur, a show-cause notice will be issued followed by immediate revoking of the exemption given to the businesses.

   b. *Category B* includes, among other things, non-compliances stemming from businesses' inability to credit and transfer prior accumulations to employees' accounts, pay inspection fees, and keep thorough records demonstrating the crediting and withdrawing of employees' contributions.

   c. *Category C* includes the employer's failure to provide a copy of the approved trust rules on the notice board of the establishment and to provide the employees with annual statement of accounts or passbooks within 6 (six) months after the end of the financial year.

C. Employees' State Insurance Corporation (ESIC) notifies the minimum amount of interest for delayed payment of contribution that cannot be claimed

The ESIC *via* circular dated October 11, 2023, notified that the interest payable due to delayed payment of contribution, not exceeding INR 300 (Indian Rupees Three Hundred only), cannot be claimed. This was done considering the enhancement of the wage ceiling over the years, the administrative inconvenience, and the cost in the process of claiming interest and recovery. The earlier limit was set at INR 100 (Indian Rupees One Hundred only) or lower. This notification was brought into force on November 1, 2023. The cases that are already decided have been mandated to not be re-opened.

D. EPFO issues notification regarding transfer of accounts after death

The EPFO, *vide* a notification dated November 25, 2023, directed that in cases, particularly in cases under the Employees' Deposit-Linked Insurance (**EDLI**) Scheme, 1976, where the amount payable to the beneficiary of a deceased member is less than the minimum assurance benefit, i.e., INR 2,50,000 (Indian Rupees Two Lakhs Fifty Thousand only), the service rendered by the members under different PF member IDs (**MID**), if any, should mandatorily have been transferred and taken into account for the calculation of the payable benefit.

This direction was issued after the observation in several cases that the deceased members had multiple MIDs linked to their universal account number. This had resultantly led to beneficiaries receiving very less amounts in the settlement of EDLI claims of deceased people. Therefore, the EPFO has now made manual verification of previous membership of the deceased members from the management information system a prerequisite before settling the death claims.

E. Ministry of Social Justice and Empowerment issues the Draft Rights of Persons with Disabilities Amendment Rules, 2023

The Department of Empowerment of Persons with Disabilities (Divyangjan) under the Ministry of Social Justice and Empowerment, *vide* a notification dated December 6, 2023, released a draft amendment (**Draft Amendment**) to the Rights of Persons with Disabilities Rules, 2017 (**Disabilities Rules**), in accordance with the *Rights of Persons with Disabilities Act, 2016*. The Draft Amendment published for public information, allows a 30 (thirty) day period for objections and suggestions. The Draft Amendment introduced a new clause (k) under sub-rule 1 of Rule 15 (dealing with rules for accessibility) of the Disabilities Rules. The aforementioned new sub-clause requires establishments to comply with accessibility standards in the port sector as specified in a notification issued by the Ministry of Ports, Shipping and Waterways, Government of India, dated November 8, 2023, which provides for guidelines for accessibility standards in the port sector. These guidelines provide guiding principles for accessibility standards to be met while constructing cruise and passenger terminals, transport hubs in ports and harbours.

F. Ministry of Labour and Employment issues a press release regarding welfare schemes for gig workers and platform workers

The Ministry of Labour and Employment issued a press release dated December 7, 2023, regarding the formulation of welfare schemes for gig and platform workers. It mentioned the initiation of framing a new scheme for gig and platform workers in the unorganised sector, in accordance with the Code on Social Security, 2020, which envisages framing of suitable social security schemes by the Central Government for gig and platform workers on matters relating to (i) life and disability cover; (ii) accident insurance; (iii) health and maternity benefits; (iv) old age protection; (v) crèche; and (vi) any other benefit as may be determined by the Central Government. The press release also stated that a Memorandum of Understanding was signed between the EPFO and the

Centre for Labour Studies, National Law School of India University, Bangalore, for assistance in the framing of the new scheme.

G. Ministry of Skill Development and Entrepreneurship releases guidelines for implementation of National Apprenticeship Promotion Scheme-2 (NAPS-2)

The Ministry of Skill Development and Entrepreneurship, Government of India, *vide* a notification dated August 25, 2023, released guidelines for implementing the NAPS-2, replacing the earlier version (**NAPS-1**). NAPS-2 maintains the stipend cost-sharing model from NAPS-1 but introduces certain changes. Previously, establishments had to pay the full stipend amount to apprentices and then seek reimbursement. According to NAPS-2, establishments only need to pay 75 per cent (seventy-five per cent) of the stipend directly to the apprentice through the apprenticeship portal, with the government transferring the remaining 25 per cent (twenty-five per cent) within 72 (seventy-two) hours. Large private establishments are encouraged to bear the full cost without government support. In relation to apprenticeship contracts, NAPS-2 mandates establishments to issue contracts only to individuals with updated Aadhaar numbers and completed e-KYC on the apprenticeship portal. NAPS-2 also tasks apprenticeship advisors with quarterly physical verification of 10 per cent (ten per cent) of establishments in their jurisdiction. This aims to ensure

on-the-ground implementation of apprenticeship training. Advisors are also entrusted with overseeing the stipend payment lifecycle for establishments in their purview. Apprentices, employers, third-party aggregators, and apprenticeship advisors have the option to raise concerns or questions using the query redressal tool on the apprenticeship portal or by contacting the NAPS-2 helpline.

H. EPFO extends the last date for employers to upload wage details for higher pension by 5 (five) months

The Ministry of Labour and Employment, in a press release dated January 3, 2024, announced the EPFO's extension of the last date for employers to upload wage details for higher pension by a further period of 5 (five) months (i.e., till May 31, 2024).

Earlier, the EPFO had introduced an online facility for eligible pensioners and members to submit applications regarding pension options on higher wages in furtherance to the SC's order of November 2022. The order ruled that employees who were members of the Employees' Pension Scheme, 1995, before or on September 1, 2014, but could not apply for higher pension could now submit fresh options.

The deadline to upload wage details was earlier extended until December 31, 2023. However, given the high number of pending applications with the employers for processing/validation, the deadline was re-extended (i.e., till May 31, 2024).

II. Key State Legislative Updates

A. Haryana Women and Child Development Department issues notification on State Creche Policy

The Women and Child Development Department of the Haryana Government published the Haryana State Creche Policy, 2022, *vide* a notification dated July 21, 2023 (**Haryana Creche Policy**) with the concurrence of the Finance Department of Haryana.

The Haryana Creche Policy was introduced with the Government of Haryana acknowledging the importance

of investment in "Early Childhood Development" programmes given the social and economic benefit it accrues; these programmes *inter alia* focus on children from disadvantaged backgrounds and in difficult or special circumstances. Recognising the limitations of employers in providing crèche services due to many reasons, the Haryana Creche Facility states that there should be a new way for provisioning of creches. The salaries of creche workers, rent, and utilities that would be part of the operational cost could include contributions from employers. The management cost and supervision would also include the responsibility of the employer.

The Haryana Creche Policy also reiterates that any additional compliances relating to creche prescribed under any other legislation (such as under the *Factories Act, 1948* (**Factories Act**)), would need to be complied with.

B. Government of Meghalaya permits establishments to be open for 365 (three hundred sixty five) days in a year

The Government of Meghalaya, *vide* a notification dated July 19, 2023, in continuation of a previous notification dated March 10, 2004, and in exercise of the powers conferred under the *Meghalaya Shops and Establishments Act, 2004* (***Meghalaya Shops Act***) exempted all establishments from the provisions of Section 6 of the *Meghalaya Shops Act* (governs weekly off), and subject to conditions (e.g., employees being

entitled to a one-day holiday each week without wage deductions, compliance with daily 9 (nine)-hours and weekly 48 (forty-eight)-hours work limit, and safety measures by establishments open after 10 P.M., constituting an internal committee under the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (**POSH Act**), obtaining consent from the employees, etc.), permitted all establishments registered under the *Meghalaya Shops Act* to be open on all 365 (three hundred sixty-five) days of the year up to December 31, 2023.[1]

In case of any statutory violation of any of the prescribed terms and conditions or any other provision of the *Meghalaya Shops Act*, the exemption could be cancelled by the competent authority after being heard on the matter.

C. Male and female construction workers to be paid the same wages in Delhi

The Office of the Commissioner (Labour), Labour Department, GNCT of Delhi issued a circular dated October 18, 2023, prescribing that all employers/ contractors/ establishments of a construction site are required to:

i. pay minimum wages as prescribed by the Labour Department, GNCT of Delhi;

ii. pay the same wages to the female workers as is paid to the male workers for the same work, as prescribed under the *Equal Remuneration Act, 1976*;

iii. maintain separate toilets for male and female construction workers on construction sites as mandated under the *Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996* and Delhi Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2002.

Failure to comply would attract penal consequences.

D. Uttar Pradesh exempts Information Technology and Information Technologies Enabled Services Establishments (IT/ITeS) establishments from certain working conditions

The Government of Uttar Pradesh, *vide* a notification dated August 7, 2023, in exercise of the powers conferred under the *Uttar Pradesh Dookan aur Vanijya Adhisthan Adhiniyam, 1962* (***UP Shops Act***) added IT/ ITeS establishments to Schedule II of the UP Shops Act. As a result, these establishments are now exempt from the requirement to comply with the opening/closing hours and the closed days prescribed under the UP Shops Act.

E. Labour Department office issues order on reducing the compliance burden on the principal employer/contractor

The Office of the Commissioner (Labour), Labour Department, GNCT of Delhi, *vide* an office order dated November 10, 2023 (**Office Order**), reduced the compliance burden on the principal employer/ contractor under *the Contract Labour (Regulation and Abolition) Act, 1970* (***CLRA Act***).

The current Office Order supresses the earlier order dated March 7, 2014 (**March Order**), which directed all contractors deploying contract workers to upload the details of the category of workmen employed, wages being paid, and other statutory records maintained by them on their website. If the contractor does not have a website, the burden would fall on the principal employer to do the same until the contractors upload the required information on their website. The March Order further directed that the principal employer/ contractor must also submit the hard copy of such information to the concerned registering/licensing officer.

In the interest of ease of doing business, compliances mandated by the March Order have been removed and the registering/ licensing officers are now directed to

[1] As on the date of publication of this newsletter, no information regarding extension of this notification is available in the public domain.

process the registration applications strictly under the *CLRA Act* and the rules made thereunder.

F. Telangana issues notification appointing appellate authority for sexual harassment at workplace cases

The Government of Telangana, *vide* a notification dated August 11, 2023, appointed an appellate authority for cases of sexual harassment of women at workplace. As per Section 2(a) of the *Industrial Employment (Standing Orders) Act, 1946* (***IESO Act***) read with Rule 11 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013 (**POSH Rules**), the State Government is the appropriate authority for the appointment of the authority for preferring appeals in the cases of sexual harassment of women at workplace.

The Government of Telangana, therefore, appointed 8 (eight) Labour Courts & Industrial Tribunals in Telangana constituted under Section 7 of the *Industrial Disputes Act, 1947* (***ID Act***) as the appellate authority in their respective jurisdictions. The following are the appellate Labour Courts:

i. Labour Court-I, Hyderabad

ii. Labour Court-II, Hyderabad

iii. Labour Court-III, Hyderabad

iv. Additional Industrial Tribunal-cum-Labour Court, Hyderabad

v. Industrial Tribunal-I, Hyderabad

vi. Industrial Tribunal-II, Hyderabad

vii. Industrial Tribunal - cum - Labour Court, Godavarikhani

viii. Industrial Tribunal-cum-Labour Court, Warangal

G. Tamil Nadu notifies draft amendments to Tamil Nadu Shops and Establishments Rules, 1948 (TN Shops Rules)

The Government of Tamil Nadu, *vide* a notification dated October 9, 2023, released draft amendments to the TN Shops Rules (**TN Shops Rules Amendment**)

inviting objections and suggestions. The TN Shops Rules Amendment is to be taken into consideration on or after the expiry of the period of 2 (two) months from the publication of the same. The following new rules were introduced:

i. **Rule 2A**: New establishments are required to file an application in Form Y to the inspector of the area in which the establishment is located along with a fee of INR 100 (Indian Rupees One Hundred only) for registration.

ii. **Rule 2B**: The inspector will issue a registration certificate, pursuant to the application, in Form Z within 24 (twenty-four) hours. A register of establishments is also to be maintained by the inspector in Form ZA.

iii. **Rule 2C**: Existing establishments must inform the area inspector about details of the establishment through the Tamil Nadu Labour Department's official website in Form ZB.

iv. **Rule 2D**: An application for amendment of a registration certificate also needs to be made online. The inspector is to issue a fresh certificate in Form Z, within 24 (twenty-four) hours from the time of making the amendment application.

v. **Rule 6A**: Every establishment needs to provide a first-aid box, at the rate of not less than 1 (one) box for every 150 (one hundred fifty) persons.

Further, the penalty for non-compliance with any provisions under Rule 18 of the TN Shops Rules has also been increased from INR 50 (Indian Rupees Fifty only) to INR 2000 (Indian Rupees Two Thousand only).

H. Karnataka amends the *Factories Act*

The Government of Karnataka, on August 7, 2023, announced amendments to the *Factories Act* in its application to the state of Karnataka. The following provisions have been included/modified:

i. Section 54 (2) of the *Factories Act* has been introduced, which states that the State Government may extend the daily maximum hours of work up to 12 (twelve) hours, inclusive of the interval for rest in any day, subject to a maximum of 48 (forty-eight) hours in any week as specified in Section 51 of the Factories Act, in respect of factories, on such conditions as it may deem expedient. This is subject to the written consent of such worker for such work. The remaining days of the said week for the worker shall be paid holidays. Section 54 of the *Factories Act* earlier only prescribed that no adult worker shall be required or allowed to work in a factory for more than 9 (nine) hours a day, subject to the provisions in Section 51 of the *Factories Act*.

ii. Section 55 (3) of the *Factories Act* has been introduced, which provides that the State Government may extend the total number of hours of work of a worker without an interval to 6 (six) hours in respect of factories, on such conditions as it may deem expedient due to the provision of flexibility in working hours as specified in Section 54 (2) of the *Factories Act*. Section 55 (1) of the *Factories Act* as it stood earlier in Karnataka, provided for 5 (five) hours of work before an interval for rest of at least 30 (thirty) minutes.

iii. Section 56 (2) of the *Factories Act* has been introduced, which states that the State Government can increase the spread-over period to up to 12 (twelve) hours inclusive of intervals for rest on such conditions as it may deem expedient, due to the provision of flexibility in working hours as specified in Section 54 (2) of the *Factories Act*. Section 56 of the *Factories Act* had earlier only prescribed that the periods of work of an adult in a factory could not be spread over more than 10 (ten) and half hours in any day.

iv. Section 66 of the *Factories Act* (provides for further restrictions on employment of women), which previously prohibited women from working in factories except between 6 A.M. and 7 P.M., has been amended. The Section now allows women to work in a factory between 7 P.M. and 6 A.M. under specific conditions, such as the employer's duty to prevent or deter sexual harassment; ensuring appropriate working conditions in respect of leisure, health, and hygiene; establishing complaint redressal mechanisms; providing security measures; and offering transportation with safety features for night shifts; etc.

I. Manipur releases the Manipur Shops and Establishments (Regulation on Employment and Conditions of Service) Act, 2021 (Manipur Shops Act)

The Government of Manipur released the *Manipur Shops Act* that repeals the *Manipur Shops and Establishments Act, 1972*, and the *Manipur Shops and Establishments (Regulation of Employment and Conditions of Service) Ordinance, 2021*, *via* notification dated November 2, 2023, which was published in the *Manipur Extraordinary Gazette* dated November 6, 2023. The Act is deemed to have come into force on June 29, 2021, and it applies to establishments employing 10 (ten) or more employees.

The *Manipur Shops Act* sets out the following:

i. The employer of every establishment employing 10 (ten) or more employees should register their establishment and obtain a Labour Identification Number. The registration obtained shall be valid for 1 (one) calendar year and has to be subsequently renewed every year.

ii. Various duties of the employer and includes taking steps to ensure health and safety of workers,

compliance with working hours, spread-over limits, shift working and rest. *The Manipur Shops Act* also specifically prohibits discrimination against female workers.

iii. Leaves (including annual, casual, and sick leave and other holidays) that need to be provided to the employees of the establishments.

iv. Employee welfare provisions, such as provision of conveniently accessible drinking water, sufficient latrines and urinals for male and female workers, a crèche in every establishment employing 30 (thirty) or more woman workers, etc.

v. Records and registers to be maintained and annual returns to be filed by the employers.

vi. The provisions of the *Manipur Shops Act* are not applicable to *inter alia* (a) workers occupying position of confidential, managerial or supervisory character in a shop or in an establishment; (b) shops and establishments run by the Union or State Government or any local authority; and (c) an establishment used for the treatment or care of the sick, infirm, destitute or mentally ill, etc.

J. Government of Punjab exempts factories from restrictions on working hours and weekly holidays

The Government of Punjab, *vide* a notification dated September 20, 2023, granted an exemption to factories from specific provisions of the *Factories Act*, pertaining to weekly hours of work, weekly holidays, daily hours, and spread-over. This exemption is subject to the adherence to certain conditions—a maximum of 12 (twelve) working hours per day and daily spread-over period not exceeding 13 (thirteen) hours per day (including rest intervals), a weekly work limit of 60 (sixty) hours (inclusive of overtime), overtime working hours not exceeding 115 (one hundred fifteen) hours in a quarter, and not require workers to work for more than 7 (seven) days at a stretch. The notification also states that non-adherence to these conditions will result in revoking of the exemption for such defaulters.

K. Draft bill proposes menstrual leave for women employed in shops and establishments in Maharashtra

The Government of Maharashtra on July 26, 2023, introduced the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) (Amendment) Bill, 2023 to amend the *Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) Act, 2017*. The bill proposes to introduce a new provision granting additional leave to female employees during their menstrual period. It has been introduced taking into consideration the physical and mental stress experienced by menstruating women and the special care and hygiene required during this period.

JUDICIAL UPDATES

I. Supreme Court (SC)

A. Directions for the government and establishments under the *Human Immunodeficiency Virus and Acquired Immune Deficiency Syndrome (Prevention and Control) Act, 2017 (HIV Act)*

In the case of ***CPL Ashish Kumar Chauhan (Retd.) v. Commanding Officer and Others (Civil Appeal No. 7175 of 2021)***, the SC issued directions to the Central and State governments and courts for the effective implementation of the *HIV Act*.

This judgment comes from an appeal against the order of the National Consumer Disputes Redressal Commission filed by the appellant who was a radar operative/ technician with the Indian Air Force. Upon falling sick while on duty, he was admitted to a military hospital, where he was advised to undergo a blood transfusion. As his health deteriorated, it was found that he was suffering from the acquired immunodeficiency syndrome (AIDS) after contracting the human immunodeficiency virus, caused due to the transfusion of virus-infected blood at the military hospital. The hospital, which lacked proper facilities, was not military-authorised and was in fact an *ad hoc* blood bank. The SC ruled and ordered compensation for medical negligence in favour of the appellant. With respect to establishments, the SC reiterated the obligations for providing safe working environment and designating a complaints officer for disposing complaints of violations as prescribed under the *HIV Act*.

B. Fixed-term employees entitled to full maternity benefits even post expiry of their contractual term

In the case of ***Dr. Kavita Yadav v. The Secretary, Ministry of Health and Family Welfare Department and Ors. (Civil Appeal No(s). 5010/2023)***, the appellant was appointed as a senior resident at a hospital on June 12, 2014, for a term of 1 (one) year, which was extendable on a yearly basis for a maximum of 3 (three) years. Her services were extended twice, for 1 (one) year period each, on June 12, 2015, and June 12, 2016. The last extension of her services was for the period of 1 (one) year from June 12, 2016, to June 11, 2017. On May 24, 2017, she applied for maternity benefits from June 1, 2017, in accordance with Section 5 of the *Maternity Benefit Act, 1961* (***MB Act***), but the hospital stated that she would be entitled only to 11 (eleven) days of maternity benefits as her contract was due to expire on June 11, 2017, and no further extension was permissible.

While the *Delhi High Court* (***Delhi HC***) denied her maternity benefits beyond the term of her contract as Section 5(1) of the *MB Act* entitles women to maternity benefits at the rate of average daily wage *"for the period of her actual absence..."*, thereby presupposing that the woman employee would be "present" at work but will be on maternity leave. However, the SC observed that Section 12(2)(a) of the *MB Act* encapsulates the principle of continuation of maternity benefits despite cessation of employment as the term "discharge" used in the provision is of wide import and would include "discharge on conclusion of contractual period." The SC noted that on the fulfillment of conditions of Section 5(2) of the *MB Act*, maternity benefits accrue to the individual and can travel beyond the term of employment as well. For this, the SC relied on the proviso to Section 5(3) of the *MB Act*, which entitles a woman's successors to the entirety of her eligible maternity benefits in case of her death during or post the delivery of her child, to indicate that maternity benefits are not co-terminus with the woman's tenure of employment. Moreover, the SC noted that the expression used in Section 2 (h) of the *MB Act* is maternity "benefits" and not maternity "leave," and accordingly the *MB Act* does not prerequisite the continuation of employment for the entire duration of 26 (twenty-six) weeks. The SC further observed that Section 27 of the *MB Act* overrides any agreement or contract of service inconsistent with the *MB Act*.

The SC also overruled the Delhi HC's decision to conclusively hold that once a woman employee had fulfilled the entitlement criteria specified in Section 5(2) of the *MB Act*, fixed-term employees would be entitled to full maternity benefits under Section 5 of the *MB Act* even post the expiry of their contractual term.

C. Advocates cannot claim the right of legal representation under the *ID Act*

In the case of ***Thyssen Krupp Industries India Private Limited & Ors. v. Suresh Maruti Chougule & Ors. (Civil Appeal No. 6586/2019 with Writ Petition (Civil) No. 1169/2018, Civil Appeal No. 6587/2019, Civil Appeal No. 3905/2022)***, the SC reframed the position of the *Paradip Port Trust, Paradip v. Their Workmen ((1977) 2 SCC 339)* (**Paradip Case**) to hold that either party (i.e., worker or employer) can be represented through a specific lawyer and the *ID Act* being a specific legislation will prevail over the general legislation of the *Advocates Act, 1961* (***1961 Act***). This case came before a 3 (three) judges' bench as a consequence of a Division Bench order passed in 2019, wherein it had been held that the Paradip Case needed to be relooked.

The appellants in this case assailed the constitutional validity of Section 36(4) of the *ID Act*, which provides that a party to a dispute in a proceeding before a Labour Court, Tribunal or a National Tribunal may be represented by a legal practitioner with the consent of the other parties to the proceeding and with the leave of the Labour Court, Tribunal or National Tribunal as the case may be. The scope of this provision was examined in the Paradip case, and the SC's decision was in consonance with the earlier view adopted in the Paradip case to hold that the *ID Act* is a specific legislation with the objective of labour welfare and is concerned with the representation of legal practitioners only under particular conditions before the mentioned authorities. Regarding the appearance of lawyers before all courts, tribunals, and other authorities, the SC agreed that the *ID Act* (being a special legislation) should prevail over the general legislation of the *1961 Act*. Further, the rights and

limitations under the *ID Act* are to be determined from the point of view of the parties (employers and workers) as that is of primary consideration. The same will take precedence over the rights of legal practitioners. The restriction placed under the *ID Act* is upon the parties and not with respect to the rights of attorneys. Consequently, advocates cannot claim the right of legal representation under the *ID Act*.

D. Establishments can be clubbed for coverage under the *EPF Act* when there is financial integrity between them

In the case of ***M/s Mathosri Manikbhai Kothari College of Visual Arts v. The Assistant Provident Fund Commissioner (Civil Appeal No. 4188 of 2013)***, the appellant had filed an appeal against the orders passed by a Single Judge and a Division Bench of the High Court of Karnataka (**Karnataka HC**) where the application of the *EPF Act* to the appellant's institution had been upheld.

The appellant's institution along with another fine arts institute, were run by the same society within the same premises, employed 18 (eighteen) and 8 (eight) employees respectively. While the enforcement officer construed the establishment to fall within the ambit of the *EPF Act* due to the employment of 26 (twenty-six) employees in total, the appellant contended that both institutes were independent of each other even if they were managed by the same society. This view was

based on Section 1(3)(b) of the *EPF Act*, which states that an establishment employing 20 (twenty) or more persons is covered under the provisions of the *EPF Act*.

On the issue of clubbing 2 (two) institutions run by the same society for the purpose of coverage under the *EPF Act*, on the basis of judicial precedents, the SC observed that several tests may be conducted to find true relations between the establishments (e.g., "unity of ownership, management and control," "financial integrity," "general unity," or "unity of employment"). As no straitjacket test was applicable to every case, the SC decided to determine the functional integrity between these institutions and if one could exist conveniently and reasonably without the other. Consequently, the Court held that a total of 26 (twenty-six) employees working in both institutions were managed by the same society and were located within same premises. Moreover, considering the society had advanced substantial funds to both institutes, it was evident that financial integrity existed between the appellant's institution and the other institute. Therefore, the Karnataka HC was right in holding that establishments would be clubbed and covered under the *EPF Act*.

E. Payment of PF and gratuity to an employee cannot be withheld if actual loss caused cannot be proved

In the case of ***Jyotirmay Ray v. The Field General Manager, Punjab National Bank & Ors. (Civil Appeal No. 6611 of 2015)***, the appellant, a compulsorily retired senior manager, had been denied payments such as leave encashment, employer's contribution of PF, gratuity, and pension by the Punjab National Bank (**Bank**) on account of being found guilty of irregularities in granting loans and cash credit facilities, thereby causing loss to the Bank. Upon the appellant's representation being rejected by the authorities, a challenge was filed before the High Court, whereby the Single Judge directed the Bank to release the employer's contribution of PF, gratuity with interest, and leave encashment in terms of Regulation 38 of the Punjab National Bank (Officers') Service Regulations, 1979 (**1979 Regulations**), while denying pension for the reason that the appellant was not an in-service candidate when the scheme for shifting to the pension regime had become operational. Upon a special appeal by the Bank, the Division Bench of the High Court maintained the order of grant of leave encashment, but set aside the grant of PF and gratuity. Against the order of denial of employer's contribution of PF and non-payment of gratuity due to the disciplinary authority's order of compulsory retirement, the appellant approached the SC.

With respect to the forfeiture of PF, the SC observed that Regulation 45(1) of the 1979 Regulations binds every officer as a member of the PF trust constituted by the Bank, which is in turn governed by the Employees' Provident Fund Trust Rules (**PF Trust Rules**). As per Rules 13 and 14 of the PF Trust Rules, the Bank has first lien on its contributions made to any member's individual account along with the interest or accretions thereon, to recover any loss, damages, and liabilities sustained by the Bank or incurred due to any member's dishonest act/deed/omission/gross misconduct. In the present case, the SC found that the allegations causing loss to the Bank and quantification of such loss were not specified in the chargesheet and the Board of Directors had unilaterally passed the resolution alleging loss without a notice to the appellant or affording him any opportunity. Thus, in light of this, the SC upheld the order of the Single Judge for directing the Bank to release the employer's contribution of the PF.

With respect to the gratuity payment being withheld, the SC observed that while Regulation 46 of the 1979 Regulations provides that every officer is eligible for gratuity on specific conditions, it is silent on the contingency of an officer being penalised with compulsory retirement. Based on a reading of Section 4(6) of the *Payment of Gratuity Act, 1972* (***Gratuity Act***), and the judicial precedents, the SC noted that the provisions of the Gratuity Act have superiority over that of the Regulations. Further, Regulation 4 of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations 1977 (**1977 Regulations**) provided for compulsory retirement as a major penalty; however, a circular issued by the Bank in this regard did not

include the major penalty of compulsory retirement as a reason for denial of gratuity to an employee. Therefore, based on a holistic view of the 1977 Regulations, 1979 Regulations, and the circular issued by the Bank, which were silent on the aspect of forfeiture in case of compulsory retirement, and the facts pertaining to absence of any findings regarding loss or quantification of loss and no opportunity of hearing being given, the findings of the Single Judge to pay the gratuity amount to the appellant were upheld by the SC.

F. Employer cannot bind workmen through a private settlement/contract/agreement that overrides the certified standing orders

In the case of ***Bharatiya Kamgar Karmachari Mahasangh v. Jet Airways Limited (Civil Appeal No. 4404 of 2023 (Arising out of SLP(c) No. 14886 of 2023)***, the appellant trade union had filed an appeal against the judgment of the High Court of Bombay (**Bombay HC**) whereby their demand for reinstatement with full back wages had been denied. The appellant, representing 169 (one-hundred and sixty-nine) workmen who had been temporarily engaged on a fixed-term contract, contended that they were treated as temporary despite having completed 240 (two hundred and forty) days in service in terms of the model standing orders provided under the Bombay Industrial Employment (Standing Orders) Rules, 1959 (**MSO**) and the nature of work being permanent. Post a settlement between the parties for benefits being conferred in lieu of dropping the demand for permanency, the respondent employer claimed that the workers were not entitled to permanency as per the settlement. Thus, the issue of whether a private agreement/ settlement between the parties would override the standing orders came before the SC.

Based on judicial precedents, the SC observed that certified standing orders have a statutory force, and the *IESO Act* is a special legislation specifically designed to define employment terms and workmen's conditions of service in industrial establishments. Relying on the provisions of the *IESO Act*, the SC

observed that when the provisions of the MSO stated that a workman who has worked for 240 (two hundred forty) days in an establishment would be entitled to become permanent, any settlement/ contract/ agreement abridging such rights could not override the standing orders. Thus, it was held that the workers were entitled to all benefits under the MSO.

G. Since the *EPF Act* specifically defines basic wage, there is no need to refer to the *Minimum Wages Act, 1948 (MW Act)* for interpreting "basic wage" based on the understanding of "minimum rate of wages"

In the case of ***Assistant Provident Fund Commissioner v. G4S Security Services (India) Limited and Anr. (Civil Appeal No. 9284 of 2013)***, the appellant had impugned the order passed by the Appellate Tribunal (later contested before Single and then Division Bench of the High Court of Punjab and Haryana) under the *EPF Act* while determining the issue regarding the respondent's liability under Section 7A of the *EPF Act*. All these forums had turned down the appellant's stand that the respondent was incorrectly splitting employees' wage structure and treating the reduced wage as the basic wage under the *EPF Act* to the detriment of employees, thereby evading its liability to contribute the correct amount towards the PF. According to the appellant's contention, the definition of "minimum rate of wages" under the *MW Act* should have been referred to for determining the basic wage under the *EPF Act*.

However, the SC held that since the *EPF Act* specifically defines basic wage, there is no need to refer to the *MW Act* to give it a different or expansive connotation and that was also not the legislative intention.

H. Long-serving workers appointed on a contractual basis do not have a vested legal right for being regularised

In the case of ***Ganesh Digamber Jambhrunkar and Ors v. State of Maharashtra and Ors. (Petition for Special Leave to Appeal (C) No. 2543/2023)***, the SC decided in the negative, in consonance with the Bombay HC, on the issue of whether contractual workers working for a longer period of time acquire a vested legal right for being regularised in the respective posts. The petitioners had been appointed on a contractual basis in an engineering institute and wished to be regularised in the posts for which regular recruitment process had started. The SC observed that in the event of there being a scheme for regularisation, the petitioners could have availed such scheme; however, in the absence of such a scheme, they had no right to seek regularisation of their service.

I. SC issues directions for the government under the POSH Act for its effective implementation read with the POSH Rules

In the case of ***Initiatives for Inclusion Foundation and Anr. v. Union of India and Ors. (Writ Petition (Civil) No. 1224 of 2017)***, in view of the writ petition filed by the petitioner organisation under Article 32 of the Constitution of India, 1950 (**Constitution**), SC issued directions to the government, public authorities, and employers for the effective implementation of the *POSH Act* read with the POSH Rules in addition to the directions issued in the case of *Aureliano Fernandes v. State of Goa* ***(Civil Appeal No. 2482/2014)***.

Observing the importance of the role of district officers in the implementation of the *POSH Act*, the SC noted that the State/UT governments must ensure that every district has a district officer at all times. To render the *POSH Act* workable and ensure its effective implementation, the SC directed the Women and Child Development Ministry of every State/UT to identify a nodal person for overseeing and coordinating with the Central Government on matters relating to the *POSH Act*. The SC further directed the Central Government to consider amending the POSH Rules for recognising a reporting authority and/or a fine-collecting authority. The SC also asked for identifying one department (preferably the Women and Child Department) to create the post of a nodal person in the said department to ensure coordination and uniformity in implementation of the *POSH Act*. Each district officer of the State was directed to collect reports/information from the internal committee (**IC**)/employers and Local Committee for the preparation of annual reports in compliance with the *POSH Act*. Further, the State/UT governments were directed to supply a list of establishments that fell within the scope of Section 2(o) of the *POSH Act* to the respective district officer who could write to such employers and ensure that they were well-versed with their duties under the *POSH Act*. This would also enable the collection of annual reports as envisaged under the *POSH Act*.

II. Allahabad High Court

A. A Labour Court is bound to grant back wages if the termination of a worker is held illegal

In the case of ***Vidya Rawat v. State of Uttar Pradesh and Others (Writ C No. 11692 of 2007)***, the petitioner was terminated from service without getting an opportunity of hearing or payment of retrenchment compensation. The Labour Court held that the termination was illegal and directed for her reinstatement in service but did not award any back wages without assigning any reason. A writ petition was filed to the Allahabad High Court (**Allahabad HC**) in this regard.

The Allahabad HC emphasised on the principle that when a Labour Court deems the termination of a worker as illegal and orders reinstatement, it must also grant back wages. The Allahabad HC held that setting aside

an illegal termination implies the termination order never existed, which made reinstatement with full back wages the natural consequence. It was held that the principle of "no work no pay" did not apply to the case at hand, as the termination of the services of the employee was erroneous in law in the first place. The Allahabad HC noted that back wages should be granted once the termination is deemed illegal and held that the petitioner in this case was entitled to back wages from the date of her termination until her reinstatement.

B. Medical representatives are considered "workmen" under the *ID Act*

In the case of ***Nicholas Piramal India Ltd. and Ors v. Presiding Officer Labour (Writ C No. 1004529 of 2007)***, a medical representative, was accused of submitting false call reports of having visited doctors and faced dismissal based on proven charges after a domestic inquiry. The Labour Court found the evidence submitted by the medical representative conclusive and held that the domestic enquiry was illegal and arbitrary, and set aside the order of dismissal.

The petitioner filed a writ petition to the Allahabad HC, arguing that he was not given an opportunity to adduce further evidence. Further, it was argued that the medical representative was not a "workman" under the *ID Act*.

The Allahabad HC has affirmed that post the enactment of the *Sales Promotion Employees (Conditions of Service) Act, 1976* (***SPE Act***), medical representatives are considered "workmen" under the *ID Act*, irrespective of the wages they earn.

III. Bombay High Court

A. Employees carrying out additional tasks than merely carrying out sales promotion activities could be treated as workmen under the *ID Act*

In the case of ***Kiran P. Pawar v. Bata India Ltd. (Writ Petition No(s). 5862, 2606, 1758, 2585, 2586, 2587,***

2588, 2589, 2590, 5668, 8024, 8026, 6953, 5667, 6948 of 2018 with Writ Petition No. 1815 of 2016 along with Civil Appeal No. 1782 of 2016), the employer, a footwear company, had decided to operate its showrooms in 3 (three) cities for 7 (seven) days in a week in 2007 with extended hours to reduce losses. Some salesmen refused to work as per the roster. This was treated as misconduct by the employer, which led to the discontinuation of the salesmen's services. The salesmen approached the Labour Court by filing complaints under the *Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971* (***MRTU Act***); however, the employer questioned the salesmen's status as "workmen" under the *ID Act* and consequently as "employee" under the *MRTU Act*. While the Labour Court held them to be workmen under the *ID Act* and passed the direction of reinstatement with 50 per cent (fifty percent) back wages, the employer challenged the same.

Based on an interpretation of Section 2(s) of the *ID Act*, which defines "workman" and the judicial precedents, the Bombay HC observed that the law is clear that employees engaged purely on sales promotion activities cannot be treated as workmen under the *ID Act*. It was noted that the *SPE Act* had been enacted to regulate certain conditions of services of sales promotion employees in specific establishments, i.e., the pharmaceutical industry or in any notified industry as per Section 2(a) of the *SPE Act*. However, in the

present case, not only did the employer not fall within the ambit of Section 2(a) of the *SPE Act*, but considering the nature of duties and responsibilities of the salesmen engaged (like cash memo preparation, mercantile packing, stock maintenance, price marking, opening-closing of shop, etc.), the Bombay HC held that it was difficult to hold that the salesmen did not perform manual, unskilled, skilled, clerical work, and just did sales promotions. Therefore, the Bombay HC agreed with the Labour Court's decision that the salesmen employed in these outlets were workmen under the *ID Act* and their termination was illegal. The Bombay HC further ordered payment of lump-sum compensation of approximately 75 per cent (seventy-five percent) back wages to each employee.

B. Since the employer takes the decision of accepting or refusing a resignation or of accepting it conditionally/at a future date, a part of cause of action is said to have taken place in the employer's jurisdiction

In the 6 (six) separate suits ***(Suit (L) Nos. 24922, 24961, 25045, 25219, 25293 and 25426 of 2023)*** filed by SNV Aviation Private Limited (an airline company operator) against their erstwhile pilots/officers, 6 (six) leave petitions were filed before the Bombay HC for deciding whether a part of cause of action (viz., the action of resignation being tendered by the defendant pilots without complying with the terms of their employment and training agreements) had arisen within the jurisdiction of the Bombay HC. To decide this issue, the Bombay HC noted that the parameters of place of execution of the agreements, place of performance of these agreements, and place of breach need to be seen.

With regard to the place of execution of the agreements, the Bombay HC decided to give a decision at a subsequent stage due to the dispute on facts by both parties. With regard to the place of performance and resignation, the Bombay HC noted that the place where the resignation through email was received (i.e., the place where the employer takes the decision to accept or reject the resignation) could certainly be considered a factor for deciding the cause of action.

IV. Calcutta High Court

A. A person accused of sexual harassment under the *POSH Act* participating in the complainant's performance appraisal defeats the object of the *POSH Act*

In the case of ***Anjali Kumari v. Yamuna Kumar Chaubey, DIR(Tech) NHPC & Ors. (WPA 1935 of 2022)***, a petition was filed before the Calcutta High Court (**Calcutta HC**), challenging the petitioner-employee's performance appraisal that was prepared by the respondent. The petitioner had earlier raised an allegation of sexual harassment against the respondent under the provisions of *POSH Act*.

While relying on Rule 8 (a) of the POSH Rules, the Calcutta HC emphasised that a person against whom a complaint of sexual harassment has been made cannot, under any circumstances, be a party to the performance appraisal of the complainant. The Calcutta HC further held that the participation of the respondent in the petitioner's performance appraisal process defeats the object of the *POSH Act* and the safeguards introduced by it.

V. Delhi High Court

A. The *MB Act* is applicable to contractual employees, and terminating a female contractual employee's services (who is on maternity leave) without notice is arbitrary

In the cases of ***Neelam Kumari v. the University of Delhi & Ors. (W.P.(C) 2959/2023),*** *and* ***Annwesha Deb v. Delhi State Legal Services Authority (W.P.(C) 11016/2017 & CM APPL. 2071/2022)***, the petitioners, who filed these instant petitions under Article 226 of the Constitution, were contractual employees seeking maternity benefits as per the *MB Act*. While one petitioner did not receive her salary for her maternity leave period and upon rejoining services was apprised of her services being terminated, the other petitioner had applied for 7 (seven) months of maternity leave that was denied.

The Delhi HC, in these judgments on the basis of judicial precedents noted that it is a well-settled principle that contractual employees cannot be terminated without a notice. Moreover, female contractual employees are entitled to maternity benefits even if it exceeds their contract period. The Delhi HC noted that Section 3(o) of the *MB Act* provides that women employed for wages in any establishment directly or through any agency are subject matters of the *MB Act*. If the petitioner was being paid a fixed daily fee in exchange of her contractual services, it was apparent that she was receiving remuneration in terms of appointment, thereby being covered under the definition of wages as defined under Section 3(n) of the *MB Act*.

Besides relying on other judicial precedents, the Delhi HC also reiterated the decision given by the SC in *Female Workers (Muster Roll) case (2000) 3 SCC 224*, to hold that the *MB Act* and the entitlements arising thereto should extend to women employee in an organisation (organised or unorganised) irrespective of the nature of their employment. The Delhi HC also held that the respondent's action of terminating petitioner's services without notice was arbitrary.

B. Site of employment determines territorial jurisdiction of a labour court

In the case of ***J. Balaji v. Hindu, New Delhi and Anr. (LPA 640/2022 & CM APPL. 47792/2022)***, the appellant employee challenged the termination of his employment before the Labour Court in Delhi under Section 2A of the *ID Act*. His employment had been transferred from Vishakhapatnam to Delhi and then from Delhi to Chennai where his employment was terminated for taking a prolonged leave. The Labour Court dismissed the claim, stating that it lacked jurisdiction.

The appellant filed an appeal to the Delhi HC, where citing the origin of the transfer order, he argued that the Labour Court in Delhi had the territorial jurisdiction. However, the Delhi HC upheld the decision of the Labour Court, emphasising the situs of employment in Chennai when the employment was terminated. It relied on precedents supporting the significance of the workman's prevailing employment location for determining jurisdiction.

VI. Kerala High Court

A. An employee who acquires a disability during service cannot be dispensed with or reduced in rank

In the case of ***Hindustan Organic Chemicals Ltd. and Ors. v. Lissiamma James and Others (OP CAT No. 72 of 2022)***, an employee suffered a severe accident during the course of employment, which led to unresolved claims for 14 (fourteen) years until his death. The employer challenged a tribunal's order to disburse the employee's unpaid salary and benefits to his legal heirs before the High Court of Kerala (**Kerala HC**) on the ground that the workmen compensation commissioner had already granted compensation to the employee, pursuant to an agreement between the employee and employer, which thereby estopped the employee from claiming any further amount.

The Kerala HC while dismissing the employer's arguments, highlighted that an employee who acquires a disability during service cannot be dispensed with or reduced in rank according to Section 47 of the *Persons with Disabilities Act, 1995* (***PWD Act***). The Kerala HC reiterated that the *PWD Act*, being a beneficial legislation, needed to be interpreted keeping in mind

its purpose and object, i.e., to ensure equal opportunities, protection of rights, and full participation of persons with disabilities. It further rejected the argument that an earlier Chief Commissioner's decision prevents further remedies. The Kerala HC also looked into whether the grant of compensation under the *Workmen's Compensation Act, 1923* (**WC Act**) would preclude reliefs under the *PWD Act*. It notes that Section 72 of the *PWD Act* stipulates that it is in addition to and not in derogation of any other law conferring benefits to the persons with disabilities. Further, the *WC Act* provided for compensation for injury caused by an accident arising out of or during the course of employment, whereas the *PWD Act* protects the rights of persons with disabilities. The Court reiterated that both the legislations occupy different fields and the remedy availed in one cannot preclude the remedy under the other.

VII. Madhya Pradesh High Court

A. A complaint under the *POSH Act* cannot be filed after the 3 (three)-month window without recording reasons for extension of time limit

In the case of ***Mukesh Khampariva v. State of Madhya Pradesh Thr. its Secretary Department of Home Ministry and Others (W.P. No. 21852 of 2018)***, the petitioner challenged an order and an inquiry report alleging sexual harassment at workplace under the *POSH Act* by filing a writ petition to the High Court of Madhya Pradesh (**MP HC**).

The petitioner, a former Station House Officer, was accused of committing sexual harassment against the respondent. Pursuant to the complaint, an IC was constituted as per the *POSH Act*, which found no evidence supporting the claims on May 26, 2017. Later, another report was prepared on July 25, 2018, wherein the charges against the petitioner were found to be proved. The petitioner contended *inter alia* that since the alleged incident of sexual harassment had taken place on October 12, 2016, and the complaint was preferred after the statutorily prescribed period on March 16, 2017, and no conscious decision was taken by any authority to condone the delay, the complaint itself was not entertainable.

The MP HC, while scrutinising Section 9 of the *POSH Act*, observed that the second proviso, which allows an extension of complaint window, was not invoked in this case by the IC and the complaint was thus time-barred. Further, the MP HC held that no provision exists of preferring appeal under the *POSH Act* to a departmental authority. The MP HC also criticised the findings of the subsequent inquiry report, stating that there was no material evidence against the petitioner. The report was deemed to rely on surmises and conjecture rather than substantive evidence. Consequently, the MP HC set aside the impugned order and the inquiry report, allowing the writ petition.

VIII. Madras High Court

A. An employee has a right to vent on a private WhatsApp group against the management

In the case of ***A. Lakshminarayanan v. Assistant General Manager - HRM/Disciplinary Authority (W.P(MD) No. 9754 of 2023 and WMP(MD) No. 8689 of 2023)***, the petitioner, an office assistant in the Tamil Nadu Grama Bank and a trade union activist filed writ petitions before the High Court of Madras (**Madras HC**) under Article 226 of the Constitution assailing the disciplinary action by the management against him. He was suspended and later a charge memo was issued for posting objectionable messages mocking the administrative process/decisions and belittling higher authorities in a private WhatsApp group. This was in pursuance of circular issued by the management regulating the conduct to be followed by the employees while expressing views on social media.

The Madras HC read down the circular to bring it in conformity with the *ID Act*, which forbids unfair labour practices, and noted that if the employer interferes with the exercise of workmen's right to organise a trade union or to engage in concerted activities for the

purposes of collective bargaining or other mutual aid or protection, it would amount to unfair labour practice. The Madras HC observed that while Article 19(1)(a) of the Constitution guarantees freedom of speech and expression, a government servant like the petitioner cannot claim the same extent of right as a private citizen. However, the Madras HC mentioned the significance of an employee's right to vent for nurturing a sense of grievance, which is in interest of the organisation. Thus, the Madras HC, based on judicial precedents, held that members of a WhatsApp group merely discussing matters of common interest cannot be the target of an attack and the petitioner cannot be said to attract the conduct rules laid down by the management. Recognising the right to vent and the opinion not being expressed publicly but on a private chat group, the Madras HC quashed the charge memo, for it did not amount to misconduct.

B. Declaration of a festival holiday on a weekly holiday is a deprivation of the right of the workmen to the festival holidays they're entitled to under the *Tamil Nadu Industrial Establishments (National & Festival Holidays) Act, 1957, (TN Holidays Act)*

In the case of ***Maiva Pharma Employees Union v. Joint Director, Industrial Health & Safety and Others (W.P. No. 2247 of 2023 and W.M.P. Nos. 2328, 2330 & 2332 of 2023)***, the Madras HC considered whether a festival holiday coinciding with Sunday, a weekly holiday, can be observed on another day. The employer declared 5 (five) festival holidays for 2023 unilaterally. Out of the 5 (five) festival holidays, 3 (three) festival holidays fall on Sunday, which is a weekly holiday. The union suggested 5 (five) alternative festival holidays but, talks on the same between the union and the employer failed.

A writ petition was filed before the Madras HC, which had to decide whether a festival holiday can be declared on an existing weekly holiday by the employer.

The Madras HC emphasised the significance of providing workers with a decent standard of life and leisure, aligning with Article 43 of the Constitution. It delved into the purpose of weekly holidays and the legislative intent behind defining the term "employee" used in the *TN Holidays Act*, which is much wider than "workmen."

The Madras HC stressed on the importance of balancing round-the-clock production needs with the workers' entitlement to leisure. It scrutinised Section 3 of the *TN Holidays Act* asserting that festivals falling on weekly holidays should not be treated as holidays, emphasising the need for a consultative process. It declared the impugned order as perverse and arbitrary due to non-compliance with these principles and set it aside. It also directed adherence with consultation procedures for future festival declarations.

IX. Punjab and Haryana High Court

A. The Punjab and Haryana High Court (P & H HC) strikes down the Haryana State Employment of *Local Candidates Act, 2020 (HSELC Act)*

In the case of ***IMT Industrial Association and Anr. v. State of Haryana and Anr. (CWP Nos. 26573 of 2021 and other connected matters)***, multiple petitions challenging the constitutionality of the *HSELC Act* were decided and the P & H HC declared the *HSELC Act* unconstitutional and ineffective from the date of its enforcement i.e., January 15, 2022. The *HSELC Act* was applicable to various entities, including companies, societies, trusts, limited liability partnership firms, partnership firms, and any individual employing 10 (ten) or more persons and mandated a 75 per cent (seventy-five per cent) reservation in new jobs, with a monthly gross salary not exceeding INR 30,000 (Indian Rupees Thirty Thousand only), for individuals domiciled in Haryana.

It was held to be unconstitutional on the following grounds.

i. It contradicts with Article 35 of the Constitution, as the State legislature is prohibited from enacting laws related to matters under Article 16(3) of the Constitution. Article 16 also guarantees equality of opportunity in public employment and grants the

power to make laws regarding residence requirements to the Parliament, and not to the State legislatures.

ii. The 75 per cent (seventy-five per cent) reservation for local candidates was discriminatory, and the State cannot discriminate against individuals based on their origin. It promotes negative discrimination and sought to create artificial barriers in the country.

iii. It infringes on the right to equality under Article 14 of the Constitution and categorised non-residents of Haryana as migrants and treats them like second-class citizens.

iv. It violates the freedom granted under Article 19 of the Constitution and the legislation's restrictions on the right to move freely within the country were unreasonable.

X. Rajasthan High Court

A. Mothers who beget children through surrogacy cannot be denied maternity leave

In the case of ***Chanda Keswani v. State of Rajasthan and the Joint Director (HRD), Department of College Education (S.B. Civil Writ Petition No. 7853/2020)***, the petitioner had begotten twins through surrogacy and had applied before the State authorities for getting maternity leave to take care of the newly born babies. Her request was refused on the grounds the Rajasthan Service Rules, 1951 (**Service Rules**) had no provision for the same. The petitioner approached the High Court of Rajasthan (**Rajasthan HC**) praying *inter alia* that the respondents be directed to grant maternity leave for 180 (one hundred eighty) days to her and pay her leave salary equivalent to the pay drawn by her immediately prior to commencing maternity leave.

The Rajasthan HC observed that while Rule 103 of the Service Rules provides that maternity leave may be granted to a female government servant, the term "maternity leave" is not defined under the Service

Rules, but it commonly refers to the condition of being a mother and motherhood. With such an interpretation, the Rajasthan HC noted that it would be improper to distinguish between a natural and biological mother and a mother who has begotten a child through surrogacy. Further, the concepts of surrogacy, commissioning couple, and their maternity leave have been recognised under the law through the *Surrogacy (Regulation) Act, 2021*, Assisted *Reproductive Technology (Regulations) Act, 2021*, and various High Court judgments. Moreover, Article 21 of the Constitution includes within its ambit the right to motherhood and right of every child to full development. In view of this, it was held that the State government could not make any distinction between a natural mother, a biological mother, and a commissioning mother, thereby directing the respondents to sanction 180 (one hundred eighty) days of maternity leave to the petitioner.

B. A dispute under the Apprentices Act, 1961 *(Apprentices Act)* cannot be treated as an industrial dispute under the *ID Act*

In the case of ***Indian Oil Corporation Limited v. Narendra Singh Shekhawat and Anr. (S.B. Civil Writ Petition No. 8182/2005)***, the respondents were undergoing a training for a period of 11 (eleven) months with the petitioner, and an apprenticeship agreement

was agreed upon and executed between the parties. After the completion of the 11 (eleven) months' training period, the respondents raised an industrial dispute before the Industrial Tribunal cum Labour Court challenging the validity of their termination order under Sections 25F and 25H of the *ID Act*. However, the petitioner submitted that the respondents were engaged as apprentices and not as workmen, and as per Section 18 of the *Apprentices Act*, the labour law provisions would not be applicable in such cases.

The Rajasthan HC held that the *Apprentices Act* is a special enactment that has provisions relating to apprentices governed thereunder; therefore, it would prevail over the general law of the *ID Act* and while relying on Section 18 of the Apprentices Act, disallowed the applicability of the *ID Act* in matters dealing with apprenticeship. The Rajasthan HC also relied and drew reference to an earlier judgment to conclude that the *ID Act* would not apply to the apprentices governed under the *Apprentices Act*. Further, given that the *Apprentices Act* is not exhaustive and does not cover all types of apprentices, the other categories of apprentices that fall outside its purview would be covered within the scope of the *ID Act*. It was noted that in the present case the respondents, having executed an apprenticeship agreement, could not claim to be workmen under *ID Act*.

XI. Registrar of Companies, Karnataka

A. The Board of a company as part of the Board's report is mandatorily required to issue a statement to disclose its compliance with constitution of an IC under the *POSH Act* regardless of the number of the employees and any complaints being raised in that financial year

The Registrar of Companies, Karnataka found Ceeta Industries Limited (**Company**) in violation of Section 134(3) of the *Companies Act, 2013* (***Companies Act***), which requires the inclusion of a statement in the Board of Directors report regarding compliance pertaining to the constitution of IC under the *POSH Act*. The Company failed to disclose compliance with the constitution of an IC under the *POSH Act* in its Board reports for the financial years ending on March 31, 2019, and March 31, 2020. The Company argued that having fewer than 10 (ten) employees at each of its establishments, it was not obligated to constitute such an IC. They claimed that no complaints had been received and that the non-disclosure in the reports was unintentional. However, the adjudicating officer imposed penalties on the Company and its officers in default as per Section 134(8) of the *Companies Act*. The Company appealed the quantum of the penalty that was eventually reduced and paid by the Company.

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