

# EMPLOYMENT LAW UPDATES

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# LABOUR & EMPLOYMENT

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**RESIGNATION NOT VALID UNTIL  
ACCEPTANCE OF RESIGNATION IS  
COMMUNICATED TO THE EMPLOYEE**

In a case where an employee was relieved from his services despite the withdrawal of the resignation, the Supreme Court of India ordered the reinstatement of the employee within 30 days from the date of the order stating that there was no clear evidence about the service of the resignation acceptance letter by the employer. The decision emphasized the requirement to communicate the acceptance of the resignation letter by the employer. The court also ordered 50% salary for the period between the relieving date of the employee and the date of reinstatement along with continuity of service for pensionary benefits. (SLP (C) No. 15788 of 2021).

**THE DIVISION BENCH OF THE GUJARAT  
HIGH COURT REITERATES PRINCIPLE OF  
EQUAL PAY FOR EQUAL WORK**

The appellant company had entered into a settlement dated 21st March 1996 with its employees. The terms of settlement and benefits arising out of the settlement were only applicable to the employees who were in employment before 31st December 1994. The respondent employees joined after 31st December 1994 and as a reason of this they were not entitled to benefits under the settlement. However, the Industrial Tribunal and the Single Judge bench extended the benefits to the respondent employees quoting the principle of 'equal pay for equal work' relying on the decision of the Supreme Court in Jagjit Singh & Ors. The division bench in this R/Letters Patent Appeal No. 746 of 2024 in R/Special Civil Application No. 12844 of 2018 held that the respondent employees are doing the same work as their colleagues who are signatory to the settlement, hence cannot be denied the allowances/wages on the principle of equal pay for equal work. The appellant company cannot deny the allowances attached to the basic wage structure.





**CONTRACT-LABOUR MUST BE GIVEN AN OPPORTUNITY OF BEING HEARD BEFORE CHANGING THEIR CONDITIONS OF SERVICE**

Hindustan Aeronautics Limited (HAL) revised comprehensive service contract applicable to the contract workers, represented by their Union herein the respondents. The respondents claimed that the revised comprehensive service contract is violative of Article 14, 21, 23, 39, 42, and 43 of the Indian Constitution and Contract Labour (Regulation and Abolition) Act, 1970 (the "1970 Act"). The single judge bench found that it is only an internal correspondence between the officers in respect of conversion of existing contract to comprehensive service contract and the Writ Petition is premature thereby directing HAL to invite objections from likely to be affected persons. It was contended by the HAL that there is no provision under the 1970 Act requiring consultations with labour engaged by the contractors in the matter of entering into a contract where such contract is permitted. The division bench after considering the contentions advanced from both the sides observed in this Writ Appeal No. 1122 of 2021 that, while there are no provisions in the 1970 Act enabling consideration of the contentions of the contract labour before drawing up a contract, it is equally true that nothing precludes the hearing of the representatives of contract labour before a comprehensive change in the nature of contract, and the HAL being State under Article 12 have to grant the opportunity of being heard to the authorized representatives of the contract labour following the principles of natural justice.



**THE DIVISION BENCH OF DELHI HIGH COURT REITERATES PROPORTIONALITY PRINCIPLE FOR DELINQUENT AND CO-DELINQUENT EMPLOYEES**

The brief facts of the case involve the petitioner employee being charged with the allegations of misconduct, and the appellant bank claimed that the employee in connivance with an officer and a gunman, engaged in financial misconduct for personal gains. In the disciplinary proceedings all three employees were held liable and the officer was penalized with two stage demotion, while the gunman was compulsorily retired and the petitioner employee was dismissed from service. Aggrieved by the quantum of punishment, the petitioner employee challenged the order of dismissal from service before the Single Judge bench. It was argued by the appellant bank that the employee being a branch manager held a position of greater responsibility compared to his co-delinquents, who were in lower ranks. However, the Single Judge found no substantial difference in the nature of charges. The charges against the petitioner employee and his co-delinquents related to same incidence and acts of connivance, hence all of them must be treated on same footing in terms of disciplinary action and punishment, further by applying proportionality principle it was observed the punishment must be commensurate with the nature of misconduct. The Single Judge modified the punishment of employee from dismissal to compulsory retirement, thereby entitling petitioner employee for pensionary benefits from his past service. The bank appealed against this order before the Division Bench. The Division Bench relying on the decision of Supreme Court in Union of India & Ors. v. Sri Sankar Prosad Ghosh and Anr. wherein it was held that livelihood is recognized as fundamental aspect of the right to life by observing dismissal from service renders employee unemployable and deprives them of livelihood resulting in civil death, in this LPA 410/2023 & CM APPL. 53223/2024, upheld the decision of the Single Judge Bench.

**GRATUITY CANNOT BE WITHHELD UNDER SECTION 4(6) OF THE PAYMENT OF GRATUITY ACT, 1972 (THE "1972 ACT") UNLESS CRIMINAL ALLEGATIONS ARE PROVED BEFORE THE COURT OF LAW**



The respondent employee was found guilty of sexual harassment by the Internal Committee (“IC”) and was dismissed from service, following which a show cause notice was issued against him asking him to give reasons as to why on account of his acts of moral turpitude, his gratuity be not forfeited. Finding the employee’s reply to show cause notice unsatisfactory, his gratuity was forfeited citing misconduct involving moral turpitude under Section 4(6) of the 1972 Act which talks about conditions to be satisfied for forfeiture of gratuity.

The respondent employee obtained an order from the Regional Labour Commissioner (Central) directing gratuity with interest to be released in favor of the respondent employee. Aggrieved by this order, the appellant bank approached the Delhi High Court. It was contended by the appellant bank that the acts of respondent employee amounts to moral turpitude and the conviction from criminal court is not mandatory for offence of moral turpitude. It was further contended that sexual harassment enquired by IC qualifies for the same apart from that an act in itself may constitute an act of moral turpitude without there being any criminality or criminal conviction. The respondent employee claimed that there were no criminal proceedings initiated against him by the appellant bank or the complainant thus the contention of the appellant bank is unsustainable. The Division Bench in this CM APPL. 52155-52157/2024 observed that no FIR was registered against the respondent and allegations were never proved before the court of law, additionally to invoke Section 4(6) of the 1972 Act, precondition for forfeiture of gratuity is that the terminated employee must be convicted for an offence punishable by law and the said offence must be an offence involving moral turpitude. Further, payment of gratuity must be denied only if dismissal is on account of an act, willful omission or negligence of employee which causes damage or loss, destruction of property of employer. The Division Bench relying on the observations ordered gratuity to be released.

**MINISTRY OF LABOUR AND EMPLOYMENT,  
GOVERNMENT OF INDIA NOTIFIES  
REGISTRATION OF GIG AND PLATFORM  
WORKERS BY AGGREGATORS**

The Ministry of Labour and Employment vide

Notification No. W-11015/15/2024-RW (GPW) dated 16th September 2024 has asked aggregators (digital intermediary) to enroll platform workers on e-Shram portal to provide them access to various welfare schemes and bring them into the social security net. In this regard, a standard operating procedure and details of information to be provided have been attached in Annexures to the notification.



**ANDAMAN & NICOBAR FACILITATES ONLINE  
SUBMISSION OF FORM C UNDER THE A & N  
ISLANDS SHOPS AND ESTABLISHMENT  
REGULATIONS, 2004**

The Department of Labour, A & N Islands has issued a press release A/1/2022-Estt.Sec-LAB\_AN/874 dated 2nd September 2024 in alignment with ease of doing business, which facilitates online submission of ‘Form C’ (Notice of Change) for employers of Shops and Establishment with effect from 3rd September 2024.

**THE GOVERNMENT OF HIMACHAL PRADESH  
AMENDS HIMACHAL PRADESH FACTORIES  
RULES, 1950**

Department of Labour, Employment and Overseas Placement issued Notification No. Shram(A)3-4/2022 dated 30th August 2024 publishing the Himanchal Pradesh Factories (Amendment) Rules, 2024 (“New Rules”). The New Rules have revised the fee for grant of factory license and has inserted Rule 12A which empowers the Chief Inspector to recognize any person as a ‘competent person’ for the purpose of carry out test, examination, inspections and certification for buildings, machinery, etc.



**THE GOVERNMENT OF ODISHA TO IMPROVE  
EASE OF DOING BUSINESS INTRODUCES  
SERVICES IN PARESHRAM PORTAL**

The Labour and E.S.I. department issues Notification No. 6584-LESI-LL2-LABGNC-0002/2024/LESI dated 23rd August 2024 to improve ease of doing business in the State and implementation of reforms under the Business Reform Action Plan-2024. It has introduced changes in PARESHRAM portal which include inclusion of detailed information in the dashboard of the PARESHRAM portal showing total applications received and approved, processing time, average fees, etc., which shall be updated on real time basis.

Following services such as grant of license under Contract Labour (Regulation and Abolition) Act, 1970 (“CLRA”), registration of principal employer under CLRA, registration of establishment under Odisha Shops and Commercial Establishment Act, 1956, registration under Factories Act, 1948 among other services are made available.



**THE GOVERNMENT OF WEST BENGAL  
ISSUES NOTIFICATION UNDER PAYMENT OF  
BONUS ACT, 1965 IN VIEW OF DURGA PUJA**

Labour Department vide Notification No. Labr./909/(LC-IR)/22013/56/2019 dated 5th September 2024 makes an appeal to all employees and employers covered under Payment of Bonus Act, 1965 (the “1965 Act”) to stick to the following guidelines among others while setting the legitimate dues of the workers in respect of payment of bonus in view of ensuing Durga Puja, 2024:

- All establishment where bonus was paid in the previous year are requested to see that the rate of bonus payable this year is not lower than that of the last year. In case of dispute the same may be settled amicably by negotiations. Further the employers are requested to consider payment of ex-gratia in lieu of bonus for the employees who have crossed the eligibility limit as per the 1965 Act.
- All employees whether casual or re-employed after retirement or employed through contractors and have worked for not less than 30 days during the year should be paid bonus.
- All payments of bonus should be completed by 30th September 2024 i.e. before commencement of Durga Puja, 2024.
- Government has noted with concern that in many cases in previous years, employees of IT establishments, hotels and restaurants, shops and establishment, security workers and some workers in jute mills did not get any bonus. It is hoped that the situation will not be similar this year.



**THE GOVERNMENT OF KERALA ISSUES  
KERALA FACTORIES (AMENDMENT) RULES,  
2024**

The Labour and Skills (B) Department vide Notification No. G.O.(P)No.65/2024/LBR dated 11th September 2024 has introduced the Kerala Factories (Amendment) Rules, 2024. The amendment exempts certain distressed factories from the payment of fee for transfer of license except the amendment fee.

**KARNATAKA GOVERNMENT PERMITS  
SHOPS AND ESTABLISHMENTS TO OPERATE  
24X7 ON ALL DAYS**

The Karnataka government by notification No. E-LD 4LET 2019 dated September 27, 2024 has permitted all shops and commercial establishments in the state employing 10 or more persons to be open on 24X7 basis on all days of the year for a period of three years



from the date of publication of the notification in gazette, subject to the conditions laid down in the notification.

The conditions include –

- The employer shall appoint additional staff to ensure weekly holiday for each employee on a rotational basis. The details of every employee shall be exhibited by the employer at a conspicuous place in the shop or commercial establishment;



- The employer to exhibit details of employees on holiday/leave on a daily basis in a conspicuous place in the shop or commercial establishments;
- The wages, including overtime wages, to be credited to the savings bank account of the employee as prescribed under the Payment of Wages Act, 1936;
- The daily and weekly hours of work shall not exceed 8 hours and 48 hours. The period of work including overtime shall not exceed 10 hours in a day and 50 hours in a period of 3 consecutive months;
- Women employee shall not be allowed to work beyond 8.00 pm on any day in normal circumstances, except with her consent and subject to providing adequate protection to her dignity, honour and safety;
- Transport arrangements shall be provided to the woman employee who works in shifts. A notice to this effect shall be exhibited at the main entrance of the shop or commercial establishment indicating the availability of the transport, etc.



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