



KING STUBB & KASIVA

ADVOCATES AND ATTORNEYS

NEW DELHI | MUMBAI | BANGALORE | HYDERABAD | CHENNAI | KOCHI | KOLKATA | PUNE | MANGALORE

EMPLOYMENT LAW UPDATES

APRIL 2023



Labour and Employment Bytes

- **WORKERS TO FURNISH THEIR PERMANENT ADDRESS, NOT UNION'S, SAYS THE HON'BLE SUPREME COURT**
- **CBSE TO PROVIDE SOCIAL SECURITY BENEFITS TO EMPLOYEES OF CBSE-AFFILIATED SCHOOLS**
- **JUVENILE RECORDS NOT RELEVANT FOR SELECTION OF A CANDIDATE**
- **ALLAHABAD HIGH COURT ALLOWS INDIAN EXPRESS AND ITS WORKMEN TO SETTLE THE DISPUTE PERTAINING TO DEDUCTION OF WAGES DURING THE PANDEMIC PERIOD**
- **EMPLOYEES OF A STATE BOARD NOT AT PAR WITH STATE GOVERNMENT EMPLOYEES**
- **NOTIFICATION REGARDING ADJUDICATION OF LABOUR DISPUTES SUBJECT TO CONCILIATION**
- **AMENDMENT TO MAHARASHTRA STATE TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS ACT, 1975**
- **KARNATAKA TAX ON PROFESSION, TRADES, CALLINGS AND EMPLOYMENTS (AMENDMENT) ACT, 2023**
- **THE GOVERNMENT SHALL PROTECT THE INTEREST OF WORKMEN IN ACCORDANCE WITH THE INDUSTRIAL DISPUTES ACT, 1947**
- **SOCIAL SECURITY TO UNORGANIZED WORKERS UNDER THE CODE ON SOCIAL SECURITY, 2020**
- **MINIMUM WAGES WILL BE MADE UNIVERSAL ACROSS EMPLOYMENTS THROUGH THE CODE ON WAGES, 2019**
- **SOCIAL SECURITY BENEFITS FOR GIG AND PLATFORM WORKERS UNDER THE CODE ON SOCIAL SECURITY, 2020**

WORKERS TO FURNISH THEIR PERMANENT ADDRESS, NOT UNION'S, SAYS THE HON'BLE SUPREME COURT

In a judgment dated 16 March 2023, the Supreme Court issued directions that, all parties to a labour dispute, whether pending or

future, are required to furnish their permanent address, even if a representative appears on behalf of the workman. It held that, merely mentioning "through Labour Union" or authorized representatives will not be sufficient and any notice to be served on the workman will be affected on his/her permanent address.

CBSE TO PROVIDE SOCIAL SECURITY BENEFITS TO EMPLOYEES OF CBSE-AFFILIATED SCHOOLS

The Employees Provident Fund Organization (EPFO) issued a letter on 16th March 2023 to all heads and management of CBSE affiliated schools regarding the compliance of all affiliated schools under the Employees' Provident Fund and Miscellaneous Provisions Act of 1952, requiring them to utilise the link provided by CBSE to verify the coverage status of all schools and to take necessary actions as required.

The circulars by CBSE required all affiliated schools to ensure compliance with statutory requirements such as EPF, ESI and labour laws; and register at the Shram-Suvidha Portal to grant the benefits of provident fund, pensions to the retired, permanently disabled employees, widow/widower/children/orphan/dependent of deceased employees and life insurance coverage.

JUVENILE RECORDS NOT RELEVANT FOR SELECTION OF A CANDIDATE

The division bench of the Rajasthan High Court in its recent decision has upheld that the juvenile records of a successful candidate are not relevant in selection and recruitment of the candidate into government service as the employer is prohibited by law from referring to or taking in consideration the judgment of conviction so as to deprive a successful candidate, who was a child in conflict with the law at some point of time.

ALLAHABAD HIGH COURT ALLOWS INDIAN EXPRESS AND ITS WORKMEN TO SETTLE THE DISPUTE PERTAINING TO DEDUCTION OF WAGES DURING THE PANDEMIC PERIOD

In a petition filed by the workmen of Indian Express against the deduction of wages during the pandemic period, the Allahabad High Court has directed the

prescribed authority under Working Journalists and other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 to refer the dispute to Labour Court within a stipulated time in accordance with provisions of the said Act for its determination. The court further stated that the employer is also at liberty to have a meeting with its workmen, who have supported their employer during the Covid-19 pandemic, to settle the dispute with regard to the deduction of salary, and if possible, refund proximate money to them.

The court further refused to quash the Ministry of Home Affairs (MHA) notification dated 29.03.2020 which required that the district magistrate shall take measures that all the employees, be it in industry or in the shops and commercial establishments, shall make payment of wages of their workers, at their workplaces, on the due date, without any deduction, for the period their establishments are under closure during the lockdown.

EMPLOYEES OF A STATE BOARD NOT AT PAR WITH STATE GOVERNMENT EMPLOYEES

The Supreme Court has observed that the employees of a body corporate under a state government cannot be treated in a similar manner as employees of the state government.

This observation was made by the court while stating that employees of Orissa Khadi and Village Industries Board are not entitled to pension on a par with government employees.

The decision was arrived at based on the reasoning that the service conditions are governed by specific regulations under the Orissa Khadi and Village Industries Board Regulations, 1960 ('Regulations, 1960') which specifically states that the employees shall not be entitled to a pension.

The respondents' arguments were based on the reasoning that pension is paid for services rendered in the past and not as charity or gratuitous payments, which was dismissed on the grounds of the existence of a specific condition under the regulation, which cannot be devolved from by the judiciary.

NOTIFICATION REGARDING ADJUDICATION OF LABOUR DISPUTES SUBJECT TO CONCILIATION

The Ministry of Labour and Employment issued a notification on 17th March 2023 under the Industrial Disputes Act, 1947 stating that the powers exercised by the Central Government, under the said Act can be exercised by the officers as specified;

All industrial disputes conciliated by Labour Enforcement Officer (Central) or Assistant Labour Commissioner (Central) or Regional Labour Commissioner (Central) can be referred for adjudication by the Deputy Chief Labour Commissioner (Central) (having appropriate jurisdiction) and those disputes conciliated by Deputy Chief Labour Commissioner (Central) or Additional Chief Labour Commissioner (Central) can be referred for adjudication by the Chief Labour Commissioner (Central).

AMENDMENT TO MAHARASHTRA STATE TAX ON PROFESSIONS, TRADES, CALLINGS AND EMPLOYMENTS ACT, 1975

The Maharashtra State Tax on Professions, Trades, Callings and Employments (Amendment) Bill, 2023, was introduced in the Maharashtra Legislative Assembly on 20th March 2023 to amend the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 in order to give effect to the proposals contained in the budget speech for the financial year 2023-24. The amendments to Section 27A and Schedule I were made to exempt professional tax payable by women who draw a monthly salary of up to twenty-five thousand rupees; and to further expand the scope of the exemption for persons with benchmark disabilities with respect to the provisions of the Rights of the Persons with Disabilities Act, 2016. The changes are brought into force with effect from April 1, 2023.

KARNATAKA TAX ON PROFESSION, TRADES, CALLINGS AND EMPLOYMENTS (AMENDMENT) ACT, 2023

Rates of taxes on professions, trades, callings, and employment mentioned in the schedule of the Act have been amended and new definitions for the terms agent and assessment have been added.

Further, the penalty on assessment of escaped tax is now fixed at 100% of the escaped tax, from the earlier penalty of one and a half times or 150% while there has been a change in the interest provision on delayed tax payment whereby the applicable tax rate has gone up to 2% from the earlier provision of 1.5%. Further still, the provisions for the delayed payment of taxes deducted against salary have been reduced from 1.5% to 1.25% and the penalty for non-payment has been fixed at 10% from the earlier provision providing for the discretionary ability of the authority to charge up to 50%. The notification will be effective from April 1, 2023.

THE GOVERNMENT SHALL PROTECT THE INTEREST OF WORKMEN IN ACCORDANCE WITH THE INDUSTRIAL DISPUTES ACT, 1947

The Minister of State for Labour and Employment, Shri Rameswar Teli in a written reply to a question in Lok Sabha on March 13, 2023 informed that employment and retrenchment including lay-offs are a regular phenomenon in industrial establishments. Matters relating to lay-offs in industrial establishments in the country are governed by the provisions of the Industrial Disputes Act, 1947 (ID Act) which also regulates various aspects of lay-off and conditions precedent to retrenchment of workmen.

The Hon'ble Minister further stated that based on their respective jurisdictions as demarcated in the ID Act, Central and State governments take actions to address the issues of the workmen and protect their interests as per the provision of the Act. In the establishments that lie in the jurisdiction of the Central Government, the Central Industrial Relations Machinery (CIRM) is entrusted with the task of maintaining good industrial relations and protecting the interest of workers including on matters relating to layoff and its prevention. The jurisdiction in the matters with regard to multi-national and Indian companies in the IT, social media, Edu Tech firms, online shop traders, start-up companies, and related sectors lies with the respective State Governments.

SOCIAL SECURITY TO UNORGANIZED WORKERS UNDER THE CODE ON SOCIAL SECURITY, 2020

On 20th March 2023, Shri Rameshwar Teli, Minister of State for Labour and Employment in a reply to a question in Lok Sabha clarified that code on social security, 2020 provides social security to all unorganized workers including domestic workers.

In his reply, it was stated that government schemes such as Pradhan Mantri Jeevan Jyoti Beema Yojana (PMJJBY) and Pradhan Mantri Suraksha Beema Yojana (PMSBY) provide for life and disability cover while Pradhan Mantri Shram Yogi Man Dhan Pension Yojana (PM-SYM) covers pension to unorganized workers. Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (AB-PM-JAY) provides health cover of Rs.5 lakhs per family per year for hospitalization to vulnerable families. The proposed Labour Law Codes cover a plethora of factors including decent working conditions, wages, occupational safety, grievances redressal mechanisms, and social security benefits to all categories of workers including domestic workers.

Further, a national database of unorganized workers has also been launched on the eSHRAM portal by the Ministry of Labour & Employment for the registration of unorganized workers including domestic and household workers. The number of registered entries on the portal, as on 15th March 2023, totalled 2.79 cr.

MINIMUM WAGES WILL BE MADE UNIVERSAL ACROSS EMPLOYMENTS THROUGH THE CODE ON WAGES, 2019

While detailing the procedure for the calculation of minimum wages, Shri Rameshwar Teli, Minister of State and Labour Employment, on 20th March 2023, clarified in an answer to a question in Lok Sabha that the Central government revises the cost-of-living allowances called Variable Dearness Allowance (V.D.A.), biannually on 1st April and 1st October every year (last revised on 01.10.2022) based on the Consumer Price Index for industrial workers to protect against inflation.

He further clarified that the provisions of the Minimum Wages Act, 1948, governing the cost-of-living allowances will be subsumed under the Code on Wages, 2019, which makes minimum wages universally applicable across all employments, unlike the former Act which has restrictive applicability.



SOCIAL SECURITY BENEFITS FOR GIG AND PLATFORM WORKERS UNDER THE CODE ON SOCIAL SECURITY, 2020

Shri Rameshwar Teli, Minister of State for Labour and Employment, in an answer to a question put forth in Lok Sabha on 20th March 2023 clarified that the Central Industrial Relations Machinery (CIRM) is responsible for maintaining good industrial relations and protecting the interest of workers in such establishments which lie under the jurisdiction of Central government, while matters regarding delivery personnel are under the jurisdiction of respective state governments.

He further mentioned the launch of the eSHRAM portal on 26th August 2021 for creating a national database of unorganized workers including gig and platform workers, on which a person can register themselves on a self-declaratory basis.

It was further stated that the definitions of “gig workers” and “platform workers” have been added for the first time in Code on Social Security, 2020, which envisages providing social security to gig and platform workers via schemes implemented through Employees’ Provident Fund Organisation (EPFO) and Employees’ State Insurance Corporation (ESIC). The Code further envisages grants of other social security benefits which are generally available to organized sector workers, including the setting up of a Social Security Fund.

Lastly, it facilitates the setting up of a toll-free helpline no. for unorganized workers to disseminate information regarding available schemes and the processes of availing of their benefits.

DISCLAIMER

King Stubb & Kasiva (“KSK”) Newsletters are meant for informational purpose only and do not purport to be advice or opinion, legal or otherwise, whatsoever. The information provided is not intended to create an attorney-client relationship and not for advertising or soliciting. KSK does not intend to advertise its services or solicit work through this update. KSK or its associates are not responsible for any error or omission in this newsletter or for any action taken based on its contents. Unsolicited emails or information sent to KSK will not be treated as confidential and do not create an attorney-client relationship with KSK. © 2022-23 King Stubb & Kasiva, India. All rights reserved.

KEY CONTACTS



Jidesh Kumar
Managing Partner
jidesh@ksandk.com



Rajesh Sivaswamy
Senior Partner
rajesh@ksandk.com



Suma RV
Partner
suma@ksandk.com



Aurelia Menezes
Partner
aurelia@ksandk.com

NEW DELHI

Unit-14, Ground Floor, DLF Tower-A, Jasola, New Delhi
Tel: +911141318190/41032969
Email: delhi@ksandk.com

BANGALORE

1A & 1B, Lavelle Mansion, 1/2, Lavelle Road, Bangalore
Tel: +91 80 41179111/41179222,
Email: bangalore@ksandk.com

CHENNAI

211, Alpha Wing, Second Floor, Raheja Towers, #177, Anna Salai, Chennai
Tel: +91 44 28605955/28606955
Email: chennai@ksandk.com

MUMBAI

61, Atlanta Building, Jammalal Bajaj Road, Nariman Point, Mumbai
Tel: +91 22 62372076/22020080
Email: mumbai@ksandk.com

HYDERABAD

404, Shangrila Plaza, Road no. 2, Banjara Hills, Hyderabad, Telangana
Tel: +91 40 48516011/+91 40 48506011
Email: hyderabad@ksandk.com

KOCHI

1st Floor, Manavalan Building, Banerji Road, Ernakulam, Kochi
Tel: +91 484-3592950
Email: kochi@ksandk.com

KOLKATA

Unit 116, Siddha Weston, 1st Floor, 9, Weston Street, Bow Bazar, Kolkata
Tel: 033 48045821
Email: kolkata@ksandk.com

PUNE

Bootstart Cowork, 1st Floor, Arcadian Building Plot No 12, Lane 5A, Koregaon Park, Pune
Tel: +91 9952966619
Email: pune@ksandk.com

MANGALORE

Office No. 406, 4th Floor, Ajanta Business Center, Kapikad, Bejai, Mangalore- 575004
Tel: +91 9844093300
Email: mangalore@ksandk.com