



# EMPLOYMENT LAW UPDATES

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ESIC releases office memorandum to direct timely disposal of grievances by the concerned head of the offices and the grievance redressal officers





**THE SUPREME COURT UPHOLDS LABOUR COURT'S DECISION OF REINSTATEMENT**

Brief facts of the case involve an appellant being married to the daughter of the landowner, whose land was acquired by the employer and pursuant to such acquisition the landowner as rehabilitation asked employment for the appellant who is son-in-law of the landowner. Later, matrimonial differences arose between the appellant and the daughter of the landowner, consequently the appellant filed for divorce under Sec. 13 of the Hindu Marriage Act, 1955. The court granted divorce. Thereafter, the landowner alleged that the appellant is not married to his daughter and therefore he is not entitled to secure job intended for the family member of the landowner, which led to the termination of his employment. The termination was challenged under the Industrial Disputes Act, 1947. The Industrial Tribunal cum Labour Court concluded that by virtue of the divorce proceedings, the appellant was married to the daughter of land owner, thus was entitled for the job and should be reinstated with full back wages. The employer filed

an appeal before the single judge, which overturned the decision resulting in the present Civil Appeal NOS. 6591-6592 of 2024 before the Supreme Court. The Supreme Court upheld the decision of the Labour Court ordering reinstatement within 4 weeks.

**THE SUPREME COURT HOLDS UNAUTHORIZED ABSENCE FOR A LONG TIME AMOUNTS TO ABANDONMENT OF SERVICE**

The present Civil Appeal No.(s) 4393/2010 emanates from the order of the High Court of Himanchal Pradesh wherein, L.I.C. i.e. appellant's order for termination of respondent's service was turned down by the High Court on the ground of not providing due opportunity to the respondent. The appellant had served several notices to the respondent followed by charge sheet cum show cause notice, which remained unanswered by the respondent. It was further contended by the appellant that the respondent absented from duty for 90 days without intimation to the employer and since the notices were unanswered, conducting an enquiry was impossible, therefore the appellant had rightly treated this as an abandonment of service and terminated the respondent. The Supreme Court considering the appellant's contention set aside the High Court's order holding appellant's action to be justified as per the L.I.C. Regulations.





**EMPLOYER CANNOT DENY EMPLOYMENT TO SELECTED EMPLOYEE, MERELY DUE TO DELAY IN PRODUCING RELIEVING LETTER**

The employee was selected and was offered the post of vice president (finance) in Hindustan Urvarak and Rasayan Limited i.e. the respondent, he consequently resigned from his post of general manager (finance) at Brahmaputra Valley Fertilizer Corporation Limited (“BVFCL”), however BVFCL delayed in processing his resignation. The respondent revoked the joining of the employee citing that he was not relieved from BVFCL. The Delhi High Court in this W.P.(C) 11818/2024 observed that BVFCL had already relieved the employee and mere non furnishing of relieving letter within 30 days of joining as per the undertaking given by him shall be considered as an obstacle in way of employee from joining the respondent. Hence, the court ordered respondent to permit employee to join on the post within a period of 1 week with all consequential benefits.



**SECOND REFERENCE TO LABOUR COURT ON THE SAME CAUSE OF ACTION WHERE AWARD IS ACCEPTED IS BARRED BY PRINCIPLE OF RES JUDICATA**

The petitioner workman who was engaged through contractor was terminated from service. He challenged the termination before the Labour Court contending it to be illegal. However, the petitioner workman failed to establish that he was either appointed or terminated by the respondent. Apart from this, another dispute erupted between the respondent and the petitioner workmen with respect to minimum wages payable as per Minimum Wages Act, 1948 (“1948 Act”). The division bench directed respondent to make payment

to those who had filed execution on furnishing necessary surety for restitution of amount or excess amount. Pursuant to the said order, respondent paid the petitioner workman in accordance with the 1948 Act. Due to the payment of differential wages, the petitioner workman made another reference, the Labour Court dismissed the claim on the ground that payment of differential wages under the 1948 Act does not make any workman a worker of principal employer and the reference is hit by res judicata. The petitioner claimed that res judicata was not applicable as fresh cause of action arose on account of payment of wages by the respondent, this payment of differential wages confirmed that workman was directly appointed by the management. The Punjab and Haryana High Court in this CWP-14449-2024 (O & M) held that the petitioner workman accepted that he was engaged through contractor, he accepted the award and did not challenge the same, subsequent payment of differential amount did not create a fresh cause of action or wipe out principle of res judicata. The said principle is universal, and is meant to end litigation.

**RETENTION ALLOWANCE PAID TO SEASONAL WORKERS MUST BE INCLUDED IN BASIC WAGES**

The Maharashtra State Co-operative Cotton Growers Marketing Federation Limited (“Petitioner”) approached the Bombay High Court vide Writ Petition No. 1268 of 2011 to challenge the order of appellate tribunal, Employees’ Provident Fund, whereby the Petitioner was ordered by the Assistant Provident Fund Commissioner to pay INR 14,21,145/-to the credit of respective EPF accounts of the employees. This order was challenged with the contention that retention allowance paid by the Petitioner to the employees is not basic wage as defined under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952. Further, the employees are engaged on seasonal basis, there is no continuity of employment and therefore payment of provident fund is not attracted. It was observed by the Bombay High Court, Nagpur bench observed that the Petitioner is paying retaining allowance therefore it will be under obligation to contribute to the provident fund.





**TEMPORARY PAYMENTS ARE NOT WAGES UNDER THE EMPLOYEES' STATE INSURANCE ACT, 1948 ("ESI ACT")**

The petitioner being the dependent of the deceased workman, challenged the refusal of Employees' State Insurance Corporation ("ESIC") to grant benefit under ESIC Covid 19 Scheme. ESIC rejected the claim on the ground that workman did not fall with the meaning of employee under the ESI Act, Further the workman was also paid an additional sum of INR 2,674/- per month towards incentive thereby making his monthly salary more than the threshold as a consequence of which the petitioner is not entitled to receive the benefit under the ESIC Covid 19 Scheme. The Delhi High Court in this W.P.(C) 16407/2022 held, considering the benevolent nature of Covid Scheme, coupled with nomenclature of the monthly payment of INR 2,674/-, it is not acceptable to add the said amount to monthly wages, this amount is special incentive granted to the workman during the pandemic. The purpose of such additional payment was to enable working class to bear additional expenditure in form of mask, gloves, etc., which was temporary in nature, and such cannot be considered as wages making the petitioner eligible for the benefits.

**MADHYA PRADESH HIGH COURT OBSERVES THAT THE CANDIDATE APPLYING FOR THE JOB SHOULD BE GIVEN BENEFIT, IF QUALIFICATION REQUIREMENTS ARE HAZY**

Respondents invited applications via advertisement for the post of General Manager (Contractual) in the project implementation unit, the qualification requirement for the post was that the candidate should be retired assistant engineer with 15 years of experience on the post of assistant engineer, out of which 10 year of field experience was necessary. The petitioner being an eligible candidate applied for the post but his application was rejected and was not called for interview. It was contended by the respondents that the petitioner during the tenure of his service did not continuously hold the post of assistant engineer, instead he held the additional charge of the post and at the time of retirement he was performing duties as executive engineer. The High Court in this Writ Petition No. 31629 of 2024 observed that the executive

engineer is a superior post and disqualification of such vague grounds is wrong, qualification for working in a higher post cannot be treated as a disqualification, thus it was ordered by the High Court to reconsider the petitioner's application.

**THE DELHI HIGH COURT RULES IN FAVOUR OF RE-EMPLOYED PENSIONERS, HOLDS LAST PAY DRAWN INCLUDES ALL OTHER ALLOWANCES**

The Delhi High Court in CONT .CAS (C) 534/2021 & CM APPL 24240/2022, wherein petitioners were retired judicial officers from the District Court, Delhi and retired from executive department of GNCTD were appointed as members of State Consumer Disputes Redressal Commission & District Consumer Redressal Forums in Delhi, as per the Delhi Consumer Protection Rules, 1987 ("Rules") the members were entitled to receive salaries based on the last pay drawn minus the pension. The respondent excluded allowances and other emoluments for the purpose of calculation of last pay drawn salary. Aggrieved by the same, petitioners approached the High Court. After scrutiny of the of the rules, the Delhi High court held that 'last pay drawn' would include all emoluments including contributory fund contributions along with basic pay and dearness allowances, for re-employed pensioners.

**ESIC NOTIFIES INSTRUCTIONS FOR SETTLEMENT OF PHYSICAL CLAIMS WITHOUT SEEDING AADHAR**

ESIC vide Notification No. WSU/2020/Claim settlement without UAN-clarification/8726 dated November 29, 2024, has made passport ID, Citizenship Identification Certificate or document, a substitute ID for settlement of the claims of international workers, Indian workers who permanently migrated to foreign country & subsequently obtained its citizenship, citizens of Nepal and subjects of Bhutan and Non- Resident Indian (NRI). The individuals mentioned herein are exempted from seeding Aadhar with their UAN due to their inability to get Aadhar now, accordingly physical claims need to be accepted from these members on the basis of genuineness of the alternate ID.





**EPFO ORDERS THE EMPLOYERS TO DIRECT THEIR EMPLOYEES TO ACTIVATE UAN AND SEED BANK ACCOUNT WITH AADHAR FOR AVAILING BENEFITS UNDER EMPLOYEES LINKED INCENTIVE SCHEME (“ELI-SCHEME”)**

The EPFO vide Notification No. ELI/UANActivation/2024 dated November 22, 2024, in the light of directions received from Ministry of Labour and Employment, has directed employers to ensure that all the eligible employees should activate their Universal Account Number (“UAN”) and Aadhar seeded in their bank account to take benefit of ELI-Scheme which was announced in the Union budget 2024-25.

**THE GOVERNMENT OF WEST BENGAL EXTENDS JURISDICTION (BOTH TERRITORIAL AS WELL AS SUBJECT MATTER) OF JUDGES/PRESIDING OFFICERS OF THE INDUSTRIAL TRIBUNALS, LABOUR COURTS, EMPLOYEES’ COMPENSATION COURT, EMPLOYEES INSURANCE COURT:**

The Labour Department, West Bengal vide Notification No. LABR/562/23099/17/2023(LITECEIC) dated November 19, 2024 has empowered all presiding officers (including the Judges-in-Charge) of Industrial Tribunals, Labour Courts, Employees’ Compensation Court, Employees’ Insurance Court for adjudication disputes/cases under following:

- i. Industrial Disputes Act, 1947
- ii. Employees’ Compensation Act, 1923
- iii. Payment of Wages Act, 1936
- iv. The Minimum Wages Act, 1948
- v. Employees’ State Insurance Act, 1948

Further, the Heads of Directorate/Judge-in-Charge of Industrial Tribunals, Employees’ Compensation Court, W.B. Employees’ Insurance Court, W.B. are empowered to distribute the pending cases and other cases filed on regular basis, if required, for adjudication and quick disposal.

**THE GOVERNMENT OF RAJASTHAN AMENDS RAJASTHAN PRIVATE SECURITY AGENCIES (REGULATION) RULES, 2022**

The Government of Rajasthan vide G.S.R. 76 dated November 19, 2024, issued Rajasthan Private Security Agencies (Regulation) (Amendment) Rules, 2024 which introduces online payment of fees and online submission of application to the controlling authority.

**ESIC RELEASES OFFICE MEMORANDUM TO DIRECT TIMELY DISPOSAL OF GRIEVANCES BY THE CONCERNED HEAD OF THE OFFICES AND THE GRIEVANCE REDRESSAL OFFICERS**

ESIC vide No. C-12012/54/2021-PG dated November 21, 2024 has reiterated to all head of the offices and the grievance redressal officers to attend public grievances received through CPGRAMS portal, email, hardcopy, post, etc. on priority and resolve them within a period of 21 days. Qualitative and self-speaking reasoned reply should be given to the complainant. Public grievances related to medical reimbursement, medical facility, cash benefit, corruption, non-compliance among others should be given priority. Public grievances received in Hindi shall necessarily be replied in Hindi language only.

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# KEY CONTACTS



**Jidesh Kumar**  
Managing Partner  
jidesh@ksandk.com



**Rajesh Sivaswamy**  
Senior Partner  
rajesh@ksandk.com



**Rohitaashv Sinha**  
Partner  
rohitaashv@ksandk.com



**Aurelia Menezes**  
Partner  
aurelia@ksandk.com

## NEW DELHI

RNM Tower, 5th Floor, Metro pillar no 331, i4, B 1, NH-19, Mohan Cooperative Industrial Estate, New Delhi, 110044  
Tel: +911141318190/41032969  
Email: delhi@ksandk.com

## BANGALORE

1A, 1B, 2B & 3B 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 1

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

## MUMBAI 2

301A, 3rd floor, Piramal Towers, Peninsula Corporate Park, Senapati Bapat Marg, Lower Parel, Mumbai, 400013  
Tel: +91 22 62372076/22020080  
Email: mumbai@ksandk.com

## HYDERABAD

609, Shangrila Plaza, Road no. 2, Banjara Hills, Hyderabad, Telangana  
Tel: +91 40 48516011/+91 40 48506011  
Email: [hyderabad@ksandk.com](mailto:hyderabad@ksandk.com)

## KOCHI

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

## PUNE

Bootstart Cowork, 1st Floor, Arcadian Building Plot No 12, Lane 5A, Koregaon Park, Pune  
Tel: +91 9833555232  
Email: pune@ksandk.com

## MANGALORE

Office No. 406, 4th Floor, Ajanta Business Center, Kapikad, Bejai, Mangalore- 575004  
Tel: +91 8244634375  
Email: mangalore@ksandk.com