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LABOUR & EMPLOYMENT BYTES

- **WORKMAN CANNOT CLAIM GRATUITY WHEN HE HAS QUESTIONED HIS DISMISSAL FROM SERVICE: KARNATAKA HIGH COURT**
- **TERMINATION OF WORKMAN OVER PROVOCATIVE FACEBOOK POSTS UPHELD: BOMBAY HIGH COURT**
- **RESIGNATION CAN ONLY BE WITHDRAWN BY THE EMPLOYEE: KARNATAKA HIGH COURT**
- **THE LONGEVITY OF PAST SERVICE IS ORDINARILY ADVANTAGEOUS TO THE WORKMAN: KARNATAKA HIGH COURT**
- **ALLOW AGE RELAXATION FOR APPOINTMENT ON COMPASSIONATE GROUNDS AS APPLICATION WAS MADE WITHIN THE PRESCRIBED TIME LIMIT OF ONE YEAR: HIGH COURT OF KARNATAKA DIRECTS LIC**
- **SUPREME COURT SLAMS FAVOURITISM GIVEN TO OFFICER OF SAME CADRE WITH HIGHER PAY THAN OTHERS**
- **RULE RELATING TO PUBLIC EMPLOYMENT MUST ACCOMMODATE THE CONCERNS OF PREGNANT WOMEN AND YOUNG MOTHERS: KERALA HIGH COURT**
- **EPFO PREPARES FAQs ON SOP FOR INSPECTION OF ESTABLISHMENTS AND RELATED CIRCULARS**
- **EPFO ISSUES REVISED FAQs FOR IMPLEMENTATION OF SUPREME COURT JUDGEMENT ON HIGHER PENSION**
- **ESI BRINGS CHANGES TO ESIC AADHAAR SEEDING APPLICATION DUE TO E-KYC CHANGES BY UIDAI**
- **AMENDMENTS TO MAHARASHTRA BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) RULES, 2007**
- **EPFO ISSUES STANDARD OPERATING PROCEDURE FOR FREEZING/DE-FREEZING OF MID/UAN/ESTABLISHMENT**
- **MANIPUR PROMULGATES ORDINANCE AND PUBLISHED IN THE GAZETTE 'THE MANIPUR LABOUR LAWS (EXEMPTION FROM RENEWAL OF REGISTRATION AND LICENSE BY ESTABLISHMENTS) ORDINANCE, 2023'**

WORKMAN CANNOT CLAIM GRATUITY WHEN HE HAS QUESTIONED HIS DISMISSAL FROM SERVICE: KARNATAKA HIGH COURT

The respondent was a workman in Karnataka State Road Transport Corporation (“KSRTC”) and was dismissed from service on an act of misconduct. Thereafter, the respondent raised a dispute before the Labour Court, Bengaluru, which came to be dismissed. On questioning the award through a writ petition, the matter came to be remanded to the Labour Court. Meanwhile, the workman filed an application before the Controlling Authority seeking payment of gratuity. The Controlling Authority determined the gratuity and directed payment by KSRTC. The appeal filed against the said order by KSRTC was rejected by the Appellate Authority. The said orders of the Gratuity Authorities

were called into question in Writ Petition No. 3649 of 2023 (L-PG). The Hon’ble Karnataka High Court therein noted that an employee is eligible for payment of gratuity in the event of superannuation, retirement, resignation and death or total disablement due to accident of deceased employee. In the present case, the Hon’ble Court observed that the workman is dismissed from the service, and he has not accepted the order of dismissal and further, has questioned the same before the Labour Court. Hence, he cannot file an application claiming payment of gratuity.

TERMINATION OF WORKMAN OVER PROVOCATIVE FACEBOOK POSTS UPHELD: BOMBAY HIGH COURT

The respondent workman was one of the office bearers of the recognized union of the petitioner company. The

office bearers involved themselves in agitations to pressurize the petitioner. During the interregnum of a dispute over wage settlement, the respondent workman made two posts on his Facebook account which were alleged to be defamatory and made with an intention to instigate and incite the workmen during pendency of wage settlement. After due enquiry, the respondent's services were terminated by issuance of a termination order. Subsequently, the workman challenged his termination by raising an industrial dispute, which was decided in favour of the respondent. Aggrieved by the said order, the petitioner approached the Hon'ble Bombay High Court vide Writ Petition No.: 13192 of 2023. The Hon'ble High Court held that the act committed by the respondent stands squarely covered by the applicable clauses of the Model Standing Orders i.e. clauses 24(d), 24(k) and 24(l) on the basis of facts and circumstances of the case and evidence placed on record. Therefore, the writ petition was allowed.

RESIGNATION CAN ONLY BE WITHDRAWN BY THE EMPLOYEE: KARNATAKA HIGH COURT

In an appeal filed before the division bench of the Hon'ble High Court of Karnataka challenging the order passed by single judge bench in Writ Appeal No. 1312 of 2022 (CS), the Hon'ble High Court dismissed the appeal of the appellant stating that resignation is voluntary decision taken by the employee and only the employee can withdraw resignation prior to the acceptance of resignation by the employer unless service rules/law provides otherwise. In the instant case, it's the wife of the appellant who has applied for withdrawal of resignation of her husband. Accordingly, the Hon'ble High court dismissed the appeal on the grounds of being unworthy of merits, as the wife has no legal ground to seek withdrawal of resignation.

THE LONGEVITY OF PAST SERVICE IS ORDINARILY ADVANTAGEOUS TO THE WORKMAN: KARNATAKA HIGH COURT

The Hon'ble High Court of Karnataka in Writ Appeal No. 997 of 2023 (L-TER) has dismissed an appeal by the appellant management and has upheld the order passed by the single judge bench of the Hon'ble High Court which had confirmed the award passed by the

labour court reinstating a workman who was dismissed as punishment for intermittent unauthorised absence on account of health grounds of the workman's father and spouse. The Hon'ble High Court made an observation that long service in any industrial establishment, needs to be recognized as something advantageous to the workman, ordinarily.

ALLOW AGE RELAXATION FOR APPOINTMENT ON COMPASSIONATE GROUNDS AS APPLICATION WAS MADE WITHIN THE PRESCRIBED TIME LIMIT OF ONE YEAR: HIGH COURT OF KARNATAKA DIRECTS LIC

The Hon'ble High Court of Karnataka allowed a plea in WP No. 31445 of 215 (S-RES) by the petitioner who is son of a former LIC employee for appointment on compassionate grounds. The petitioner's father had been dismissed from service on August 12, 1990 by LIC, the matter was raised and referred to Central Government Industrial Tribunal cum labour court. Subsequently, the petitioner's father passed away during the pendency of the proceedings on October 23, 1999. On October 01, 2007, the tribunal accepted petitioner's claim and set aside the order of dismissal. LIC challenged the award before the High court, which held that the tribunal award passed by the tribunal was justified. The petitioner filed a plea in the Hon'ble High Court for appointment in LIC on compassionate grounds after LIC passed an order rejecting the application for compassionate employment of the petitioner. The Hon'ble High Court opined that petitioner could not have made an application seeking appointment on compassionate ground and even if he had staked a claim for being appointed on compassionate ground, it is obvious that the LIC would not even have considered it, since it had not accepted that its order of termination was wrong. Accordingly, LIC was directed to consider the employment on compassionate grounds to the petitioner and was directed to complete the process within a period of three months from the date of the order.

SUPREME COURT SLAMS FAVOURITISM GIVEN TO OFFICER OF SAME CADRE WITH HIGHER PAY THAN OTHERS

The Hon'ble Supreme Court in Civil Appeal No. 7747 of 2012, has observed that rules that were set to govern a single post of the same cadre cannot be isolated and granting a higher pay scale considering the qualifications of the single post is a clear violation of the rules and regulations. In this case, the Hon'ble Supreme Court ordered a direct recovery of the excess amount paid to respondent no. 4, though in instalments and from the officers who were directly involved in the decision-making process for granting benefit to respondent no 4.

RULE RELATING TO PUBLIC EMPLOYMENT MUST ACCOMMODATE THE CONCERNS OF PREGNANT WOMEN AND YOUNG MOTHERS: KERALA HIGH COURT

The choice to be a mother and proceed with having jobs or admissions in academic institutions can be hard. Recently the Hon'ble Kerala High Court in OP (KAT) No. 507 of 2023 and OP (KAT) No. 521 of 2023 was dealing with petitions by two women. As per job notification, they were not eligible for a job vacancy, because they could not fulfil the criteria fixed by Kerala State Public Service Commission (PSC) as they gave birth while undergoing masters and their compulsory senior residency program commenced belatedly. The Hon'ble Court had permitted them to apply for the post before the deadline provisionally through an interim order. The Hon'ble High Court addressed the disadvantages women may face due to their biological differences from men in getting opportunities in public employment. The Hon'ble High Court also said that the rule relating to public employment must accommodate the concerns of pregnant women and young mothers so that they do not face discrimination. The Hon'ble High Court made its interim order absolute and set aside the orders of the tribunal, it also clarified that the petitioners would have to produce necessary certificates within such time as PSC insists upon them.

EPFO PREPARES FAQs ON SOP FOR INSPECTION OF ESTABLISHMENTS AND RELATED CIRCULARS

The Employees Provident Fund Organisation ("EPFO") has issued Frequently Asked Questions on the Standard

Operating Procedure for inspection of establishments and related circulars for ready reference of Zonal and Field Offices through a circular dated December 1st, 2023 bearing Ref.No. CAIU/056/V-III/2023/2291. Among others, EPFO has clarified several matters including the following:

a) The field officers will undertake periodic desk review ("PDR") of establishments at least once a year following selection-cum-prioritization criteria, i.e., (i) in the sequence that all establishments starting from oldest registration code; and (ii) in all cases where physical inspection is assigned.

b) PDR to be completed before a physical inspection.

c) Centralized nudging with respect to ECR based defaulting establishments be carried out by the IS Division. In respect of other cases, nudging will be carried out by the regional/ district officers.

d) Nudging email/sms will be sent through official email/number of the Regional Office and on the registered email/mobile number of the establishment and the owner.

e) During PDR, associated activities such as data cleaning, marking correct activity status of the establishment, correction of establishment details (PAN, address, ownership, etc.), updation/collection of Form 5A, DSC/e-sign, etc., and correction of coverage section shall be mandatorily carried out.

f) Inspection in respect of an establishment undergoing process of liquidation/resolution under NCLT, occurrence of an Industrial accident involving an establishment or its employees, or any specific case assigned by CAIU based on intelligence inputs/recommendation by Field Officers through ZO, are exempted from CAIU permission as well as nudging.

EPFO ISSUES REVISED FAQs FOR IMPLEMENTATION OF SUPREME COURT JUDGEMENT ON HIGHER PENSION [1]

[1] Employees' Provident Fund Organisation and Others v. Sunil Kumar B. and Others, (Civil Appeal No. 8143-8144 of 2022 [SLP (C) Nos. 8658-8659 of 2019])

The EPFO has updated the Frequently Asked Questions through a circular dated December 13th, 2023 bearing No.: e-399180/2543 for implementation of judgement of the Honourable Supreme Court dated November 4th, 2022 for ready reference of zonal and field offices. Some key features addressed are as follows:

a) Proof of joint option under Para 26 (6) of the Employees' Provident Fund Scheme, 1952 ("EPFS"): Permission under Para 26(6) of EPFS uploaded by the applicant at the time of submission of application for validation of option or joint option or available in office is considered as a documentary proof of joint option. If the said permission is not readily available, the field offices have to verify factors including whether employer's share of provident fund contribution has been remitted on employee's pay exceeding the prevalent statutory wage ceiling, payment of administrative charges applicable to employer etc.

b) Computation of pension: Pension shall be calculated as per Para 12 of the Employees' Pension Scheme, 1995. The date of commencement of pension will determine the applicable formula for calculation of pensionable service, pensionable salary and pension.

c) Payment of arrears of pension: The arrears of pension shall be paid to the pensioners in accordance with the existing process, in compliance with income tax provisions relating to Tax Deducted at Source (TDS).

ESI BRINGS CHANGES TO ESIC AADHAAR SEEDING APPLICATION DUE TO E-KYC CHANGES BY UIDAI

In light of the updated e-KYC response by UIDAI, if the date of birth is recorded as "declared or approximate", only the year of birth shall be shared on ESIC Aadhaar Seeding application. The Employees State Insurance Corporation ("ESIC") has accordingly developed and updated the portal to enable the users to select the date and month in (Date/MM) format at the time of seeding Aadhaar details basis the available documentary evidence. The Aadhaar will be seeded upon matching of declared date of birth with the ESIC

records. In case of any mismatch, a request will be generated for updation of IP details to obtain approval as per the existing system. If only the year is visible in date of birth column after seeding of Aadhaar details, the functionary involved in Aadhaar seeding work will enter the date and month in appropriate column on the basis of Aadhaar Card or other documentary evidence of Insured Person/Beneficiary and Aadhaar number will be seeded. However, such cases will be marked distinctly in profile of IP as declared date of birth which may be subject to verification at the time of service delivery or as and when required. ESI has informed of the changes through a circular dated December 6th, 2023 bearing No.: P-11014/3/2022-Bft-II (Part-I).

AMENDMENTS TO MAHARASHTRA BUILDING AND OTHER CONSTRUCTION WORKERS (REGULATION OF EMPLOYMENT AND CONDITIONS OF SERVICE) RULES, 2007

The Government of Maharashtra has made rules to amend the Maharashtra Building and other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2007. Rule 45 thereon has been substituted vide notification dated November 30th, 2023 bearing No.: EBAKA0523/ CR 76/Lab-7 to provide the Board with the following functions, subject to fulfilment of applicable terms and conditions:

- a) Financial assistance for the construction of house of beneficiary not exceeding INR 2 Lakhs;
- b) Financial assistance for education of children of beneficiaries;
- c) Financial assistance for marriage of beneficiary;
- d) Financial assistance for marriage of daughter of beneficiary;
- e) Financial assistance to beneficiary for family planning after one daughter;
- f) Supply of utensils to beneficiary;
- g) Supply of safety kit to beneficiary;
- h) Supply of essential kit to beneficiary;
- i) Supply of health kit to beneficiary;
- j) Financial assistance to beneficiary in case of death;
- k) Supply of meal or nutritious food to beneficiaries;
- l) Establishment of District Building Workers Facilitation Centre (DBWFC), Taluka Building Workers Facilitation Centre (TBWFC) and

construction of shed for building workers (Kamgar Naka).

It is to be noted that if the beneficiary has availed the benefits of any scheme implemented by the Central Government or the State Government, the said beneficiary shall not be eligible to avail the benefits of the scheme implemented by the Board.

EPFO ISSUES STANDARD OPERATING PROCEDURE FOR FREEZING/DE-FREEZING OF MID/UAN/ESTABLISHMENT

The EPFO has issued a Standard Operating Procedure (“SOP”) through circular dated December 22nd, 2023 bearing No.: FIA/11(22)/SOP/FreezingUAN/2022 (E-49005)/11 for time-bound freezing of MIDs/UANs/Establishments for mitigating risks of frauds, impersonation and forgery and subsequent defreezing on completion of verification of genuineness. Among others, the SOP outlines the specific procedure in respect of following aspects:

- a) Identification of cases for freezing;
- b) Executing the freezing;
- c) Intimation of freezing to the stakeholders;
- d) The duration of freezing shall not exceed 30 days from the date of freezing, except in cases where there is a confirmation of fraud;
- e) Establishing genuineness or verifying the frozen account suo-moto or on request; and
- f) Verification process of MID/UAN/establishment at different levels.

MANIPUR PROMULGATES ORDINANCE AND PUBLISHED IN THE GAZETTE ‘THE MANIPUR LABOUR LAWS (EXEMPTION FROM RENEWAL OF REGISTRATION AND LICENSE BY ESTABLISHMENTS) ORDINANCE, 2023’

The Government of Manipur has published the Manipur Labour Laws (Exemption from renewal of registration and license by establishments) Ordinance, 2023 in the Manipur gazette by promulgating an ordinance by the Governor of Manipur on December 22, 2023 bearing No. 2/38/2020-Leg/L. This ordinance

shall extend to the whole of the state of Manipur. The said ordinance provides for the exemption of employer of establishment from renewal of registration of his establishment and renewal of his license under certain labour laws such as the Contract Labour (Regulation and Abolition) Act, 1970, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979 and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, provided that such employer shall furnish a Self-Certification in the form specified in the Second Schedule to the Ordinance within the month of January of every year or 30 days of the completion of the relevant work, business or operation.

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