



KING STUBB & KASIVA

ADVOCATES AND ATTORNEYS

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

EMPLOYMENT LAW UPDATES

MARCH 2023

Employment

Labour and Employment Bytes

- ▶ **SUPREME COURT AFFIRMS THE NCLAT JUDGEMENT ON PAYMENT OF PROVIDENT FUND AND GRATUITY DUES TO WORKERS OF THE CORPORATE DEBTOR**
- ▶ **DELHI HIGH COURT LEVY COST AGAINST THE EMPLOYER FOR DRAGGING INQUIRY IN A POSH COMPLAINT**
- ▶ **KERALA HIGH COURT DIRECTS THE EPFO NOT TO CURTAIL/ LIMIT/ STOP THE PENSION**
- ▶ **SUPREME COURT ON MENSTRUAL LEAVE FOR WORKING WOMEN**
- ▶ **EPFO INSTRUCTIONS ON SUBMISSION OF JOINT OPTION FOR A HIGHER PENSION**
- ▶ **HARYANA GOVERNMENT LAYS DOWN CONDITIONS FOR EMPLOYING WOMEN IN NIGHTSHIFTS**
- ▶ **AUTHORITIES UNDER THE MAHARASTRA SHOPS ACT NOTIFIED**
- ▶ **GUJARAT AMENDS THE RULES UNDER THE CONTRACT LABOUR ACT**
- ▶ **HIMACHAL PRADESH AMENDS THE BUILDING AND OTHER CONSTRUCTION WORKERS RULES**
- ▶ **WEST BENGAL GOVERNMENT NOTIFICATION ON TRADE LICENSE PORTAL**
- ▶ **THE FACTORIES (KARNATAKA AMENDMENT) BILL, 2023**

SUPREME COURT AFFIRMS THE NCLAT JUDGEMENT ON PAYMENT OF PROVIDENT FUND AND GRATUITY DUES TO WORKERS OF THE CORPORATE DEBTOR

The Supreme Court[1] refused to interfere with the judgement of the National Company Law Appellate Tribunal (NCLAT) in the cases filed by the workers of Jet Airways (India) Limited and connected matters, in which the NCLAT had held that the payments towards provident fund, pension fund and gratuity due to the corporate debtor's workmen and employees should not be used for recovery in liquidation for dues of other creditors since those dues are exclusive to workmen and employees.

The NCLAT had directed the Successful Resolution Applicant to make payment of unpaid provident fund and gratuity to the workmen and employees till the date of insolvency commencement, after adjusting any amount towards provident fund and gratuity paid under the Resolution Plan.

DELHI HIGH COURT LEVY COST AGAINST THE EMPLOYER FOR DRAGGING INQUIRY IN A POSH COMPLAINT

The Delhi High Court[2] in a writ petition filed by the petitioners against the order of the employer directing the internal committee to re-examine the complaint of sexual harassment at the workplace held that: In such complaints and matters, the constitution of the internal committee is of utmost importance and the same has to be in accordance with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. The management and authorities of the organisations have to behave in a responsible manner and on the mere ground that the constitution was incorrect, a re-examination of the whole proceedings cannot be directed under the present facts and circumstances of the case.

The court also observed that the complaint is dated back to 2019; and the complainant cannot be harassed and put to inconvenience to appear again and again before the internal committee (even if such internal committee is related to a connected organisation) and be expected to produce witnesses to support her case, all over again. The court said that even the witnesses may not be available now in the organisation.

The court concluded stating that institutions cannot escape liability for dragging on these sensitive complaints and ordered Rs.1,00,000/- as costs against the employer, which was directed to be paid to the petitioner.

[1] *Jalan Fritsch Consortium Vs. Regional Provident Fund Commissioner & Anr.* (Civil Appeal Nos. 407/2023)

[2] *W.P.(C) 14403/2022 and CM APPL. 43979/2022*

KERALA HIGH COURT DIRECTS THE EPFO NOT TO CURTAIL / LIMIT / STOP THE PENSION

The Regional Provident Fund Commissioner, Kaloor, had issued a directive, which allowed it to identify cases where higher pension was granted on account of the judgment of the Supreme Court in the case of EPFO and Another v. Sunil Kumar B and Others[3]. The directive further stated that in such cases, a favourable order shall be obtained from the concerned court before going ahead with stopping/restoration of pension to wages up to ceiling of Rs.5000 or Rs.6500/-

In a writ petition[4] filed by pensioners against the abrupt stoppage/reduction of pension, the High Court of Kerala directed the EPFO not to curtail/limit/stop the pension that was being received by the petitioners without getting specific orders from the High Court.

SUPREME COURT ON MENSTRUAL LEAVE FOR WORKING WOMEN

A writ petition[5] seeking direction to the State governments to frame a policy for menstrual pain leave for female students and working women under the provisions of the Maternity Benefit Act 1961 was heard by the Supreme Court on February 24, 2023.

The Supreme Court refused to entertain the petition by stating that the matter has policy dimensions and suggested that it would be appropriate if the petitioner submits a representation to the Union Ministry of Women and Child Development for an appropriate decision in this regard.

EPFO INSTRUCTIONS ON SUBMISSION OF JOINT OPTION FOR A HIGHER PENSION

The Employees' Provident Fund Organisation (EPFO) on February 20, 2023[6] has instructed the field offices that they should implement the directions of the Hon'ble Supreme Court in EPFO Vs Sunil Kumar and Ors.[7], within the stipulated timeline.

As per the circular, the following employers with their employees may submit joint options under para 11(3) and (4) to the regional office:

- 1.The employees and employers who had contributed under para 26(6) of the Employees' Pension Scheme, 1995 ("EPS Scheme") on salary exceeding the prevalent wage ceiling of INR 5,000 or INR 6,500;
- 2.Had not exercised joint option under the proviso to para 11 (3) of the pre-amendment scheme while being members of the EPS Scheme; and
- 3.Were members prior to September 1, 2014 and continued to be a member on or after September 1, 2014.

The instructions also set out guidelines as to the manner in which the employees will have to apply for a higher pension, save for further clarifications required to be issued by the EPFO; and provide for a grievance redressal process for employees.

HARYANA GOVERNMENT LAYS DOWN CONDITIONS FOR EMPLOYING WOMEN IN NIGHTSHIFTS

The State government of Haryana by its earlier notifications had allowed IT, ITeS, Banking establishments, three-star or above hotels, hundred percent export-oriented establishments, logistics and warehousing establishments to seek exemption from employing women during night shifts (8.00 pm to 6.00 am) under the Punjab Shop and Commercial Establishments Rules, 1958.

The government in its notification dated February 21, 2023 has laid down certain guidelines for granting exemption to such establishments engaging women in night shift in supersession of all earlier notifications in this regard.

The notification states that no application for the grant of such an exception shall be entertained unless received by the labour authorities within one month prior to the date of commencement of the period in respect of which the exemption is prayed for. Such exemption will be valid for one year from the date of order of exemption unless there is any change in security, transportation agreements and other details of the occupier/director/ manager.

[3] 2022 SCC Online SC 1521 [6] No. Pension/2022/56259/654

[4] WP(C) NO. 4958 OF 2023 (T) [7] SLP (C) No. 8658-8659 of 2019

[5] Writ Petition(s)(Civil) No(s).172/2023

For the grant of such an exemption, certain conditions have been placed on the employers which includes:

The employers must comply with the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, ensure express prohibition of sexual harassment, lay down rules and regulations relating to conduct and discipline prohibiting sexual harassment, provide for appropriate penalties against the offenders and introduce necessary amendments to their Standing Orders. The employers to ensure appropriate working conditions for women, initiate appropriate actions in accordance with penal law against the offenders, maintain a complaint redressal mechanism, make provisions for a special counsellor or other such support services as may be required and provide all necessary assistance to the affected person(s).

Additionally, a declaration stating that consent has been obtained from all women employees intended to work during the night shift, provision of security guards, adequate lighting both inside and outside the establishment, work sheds to be used during arrival and departure prior to and post the shift, transport facilities equipped with CCTVs to and from the establishment, and separate canteens (if the number of women employees is more than 50) except in IT and ITeS, would be necessary pre-requisites from the employer's end for grant of such an exemption.

Furthermore, it is provided that not less than 1/3rd of the total workforce employed in a shift in logistics and warehousing establishments must be women, wherever an establishment provides boarding and lodging, such boarding and lodging must be exclusively for women and must be under the control of women wardens/supervisors. The exemption is also subject to compliance with EPF, ESI and State Labour Welfare Fund requirements.

AUTHORITIES UNDER THE MAHARASTRA SHOPS ACT NOTIFIED

The Maharashtra Government by notification dated February 22, 2023 declares Nagar Panchayats constituted under section 341A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, and panchayats established or deemed to have been established under the Maharashtra Village Panchayats

Act, 1959, to be the local authorities for the purpose of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017.

The notification further conferred powers to the mentioned authorities in respect of the enforcement of the provisions of Section 36A of the said Act regarding Name Boards to be in Marathi in the areas within their territorial jurisdiction with effect from February 22, 2023.

GUJARAT AMENDS THE RULES UNDER THE CONTRACT LABOUR ACT

An amendment to the Contract Labour (Regulation and Abolition) (Gujarat) Rules, 1972 has been notified by the government on February 20, 2023. As per the notification, the Contract Labour (Regulation and Abolition) (Gujarat) (Amendment) Rules, 2023 shall come into force on the date of its publication in the Official Gazette.

The amended Rules fix a timeline of 45 days for approval of an application for registration/ licence under the Contract Labour (Regulation and Abolition) Act, 1970. If satisfied with the eligibility of the applicant, the Registering Authority/ Licensing Officer shall issue the registration/license within the said period, failing which such registration/license will be deemed as approved.

HIMACHAL PRADESH AMENDS THE BUILDING AND OTHER CONSTRUCTION WORKERS RULES

The Himachal Pradesh amends the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Rules, 2008, with effect from the date of publication in the Gazette. The amended Rules require that the application for registration of a worker under the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996, must be accompanied by any of the following documents: a certificate or wage slip or copy of Muster Roll or Attendance Register from the employer/ contractor to the effect that the applicant is a construction worker with particulars about the period of employment, the employer's/contractor's name, name of work/title of the work and cost and whether employer/ contractor has paid cess for the work executed.



The applicant to apply for registration should have worked for at least 90 days during the preceding twelve months and the documents should be verified by the Authorised Officer.

WEST BENGAL GOVERNMENT NOTIFICATION ON TRADE LICENSE PORTAL

Released in pursuance of the earlier notification dated December 19, 2023 which had stated that the Department's service of Certificate of Enlistment (Trade License) would be routed through the Silpasathi portal, the government has issued a notification^[8] which states that due to the difficulties being faced by the general public in obtaining the Certificates of Enlistment via the Silpasathi portal, the service would be routed through the e-District portal with effect from February 2, 2023 until further orders and such time as the aforementioned issues are resolved.

THE FACTORIES (KARNATAKA AMENDMENT) BILL, 2023

On February 22nd, 2023, the Karnataka Legislative Assembly (subsequently the Legislative Council) passed a Bill to amend the Factories Act, 1948, to allow women to work night shifts in factories. Furthermore, the change allows people who work 12 hours a day for four consecutive days to have a three-day break each week.

The Bill allows women to work night shifts (between 7 pm to 6 am) in factories, subject to employer-specified safety measures. The Bill requires businesses to combat sexual harassment and provide women workers with CCTV and GPS-equipped transportation during night hours. Employers must also provide acceptable working conditions for women and not discriminate against any employee in the course of their employment. The Bill requires that women be hired in groups of at least ten and that factories have enough lighting and CCTV coverage, with film kept for at least 45 days.

With regard to hours of work and overtime, the Bill seeks to empower the State Government to extend the daily maximum hours of work up to 12 hours (including the breaks/rest intervals), provided that the maximum weekly hours of work do not exceed 48 hours. Such extension may be subject to conditions laid down by the government and

requires the written consent of the workers to work for extended hours of work.

As per the extant Factories Act, 1948, the workers are entitled to rest intervals every 5 hours of work, however, the Bill seeks to extend the same to 6 hours. Further, the total overtime hours in a quarter shall not exceed 144 hours.

The Bill also requires that the workers should consent to work overtime.

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.

[8] Dated February 1, 2023

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, Jamnalal 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