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SUPREME COURT CLARIFIES THAT DISCIPLINARY PROCEEDINGS TO BEGIN BEFORE THE END OF EMPLOYEE'S SERVICE

[1] The Supreme Court has reiterated that disciplinary proceedings under the United Commercial Bank Officer, Employees (Discipline and Appeal) Regulations 1976 are initiated only after the service of a chargesheet, not a show-cause notice. This decision was made in a case involving a former bank officer who faced disciplinary action post-retirement. The court referred to a number of previous cases and emphasized that disciplinary proceedings can only be invoked if initiated before the end of an employee's service. In this case, the court noted that the bank officer had reached superannuation on 31.07.1991, while the chargesheet was issued on 07.12.1991. As a result, no disciplinary proceedings were pending against him at the time of his superannuation. The court dismissed the appeal filed by the appellant-bank with costs of Rs. 25,000/- and directed all service benefits due to him along with interest @ 7% per annum from the date of his retirement till the payment is made, shall be paid by the appellant bank to his legal heirs within 3 months.

SUPREME COURT DIRECTS APPOINTMENT OF A COLOUR BLIND MAN

[1] Civil Appeal No. 8516 of 2011

[2] The Supreme Court has granted relief to a person with ‘colour blindness’, directing the Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) to appoint him as an Assistant Engineer (Electrical) at an appropriate grade of pay. The court said that it was undeniable that he had requisite education qualifications, qualified in the recruitment process and was selected for the post of Assistant Engineer. The court ordered TANGEDCO to appoint and continue the appellant in its service as Assistant Engineer (Electrical) at the appropriate stage of the grade of pay from the day his appointment was canceled and accommodate him in a suitable department where he can be given appropriate responsibilities. The court said that the appellant shall also be entitled to 50% of full arrears of salary and allowances and his service shall be reckoned from the original date of appointment with full continuity.

SUPREME COURT CLARIFIES INSTANCES IN WHICH TWO ESTABLISHMENTS MAY BE CLUBBED TOGETHER FOR EPF ACT COVERAGE

[3] A Division Bench of the Supreme Court recently clarified the legal position regarding the clubbing of different institutes for coverage under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act). The court observed that the mere fact that two Institutes, managed and controlled by the same management, offer different courses or were established at different times is not relevant for their clubbing under the EPF Act. The fact that one of the institutes receives 100% grant-in-aid from the 19 governments while the other is receiving to the extent of 70%, is also not relevant.

The court after perusing the material available on record and the settled position of law affirmed that there exists financial integrity between the two institutes and both the institutes are functioning from the same premises, and upheld the decision of the High Court of Karnataka for clubbing of both institutes for the purpose of EPF Act.

SUPREME COURT ISSUES FRESH DIRECTIONS UNDER THE POSH ACT

[4] The Supreme Court has issued certain directions to States and Union Territories (UTs) to ensure the effective implementation of the Sexual Harassment at Workplace

(i) identifying a ‘nodal person’ within the Women and Child Development Ministry of every State/UT to oversee and coordinate with the Union Government on matters relating to the POSH Act and its implementation;

(ii) each State/UT Government to submit a consolidated report of its compliance to the Union Government within 8 weeks;

(iii) the appointment of “District Officers”. The District Officer’s role is pivotal in coordinating and ensuring accountability related to the POSH Act. They are responsible for appointing nodal officers in every block, taluka, tehsil, ward or municipality, constituting a Local Committee (LC), and forwarding the contact details of these nodal officers and LCs to the State Government Ministry of Women and Child Development;

(iv) the State/UT Governments and Union Government are directed to set out the financial resources allocated and or needed to developing educational, communication and training material for spreading awareness of the provisions of the POSH Act to the public, and formulating orientation and training programmes as elaborated;

(v) annual compliance report should be collected from the employers by the District Officers and the District Officers to prepare a brief report to be shared with the State Governments; and

(vi) directions to the concerned authorities are issued to monitor the internal committees and compliance by employers; and specific directions are issued to hospitals, nursing homes, sports institutes, stadiums, sports complex, or competition or games venues to establish ICs, and report compliance as per the duties under the POSH Act.

[2] Civil Appeal No. 6785 of 2023 [SLP (Civil) No. 12671 of 2022]

[3] Civil Appeal No.4188 OF 2013

[4] W.P. (Civil) No. 1224 of 2017



DENIAL OF MATERNITY RIGHTS TO CONTRACTUAL EMPLOYEES IS AGAINST THE PRINCIPLE OF SOCIAL JUSTICE – DELHI HIGH COURT

[5] The Delhi High Court has decided that a woman's entitlement to maternity leave is an essential aspect of her life and cannot be taken away because of her line of work. The case concerned an ad hoc female attendant at a Delhi University dormitory who was fired after being denied pay for her maternity leave. In accordance with the Maternity Benefits Act of 1961, the court granted her reinstatement and awarded her maternity benefits. She also received Rs 50,000 as payment for the wrongful termination. The court also cited a January 2022 notification from Delhi University that requires 26 weeks of paid maternity leave for women hired on a contract or as-needed basis.

PUNJAB AND HARYANA HIGH COURT REPRIMANDS A NATIONALISED BANK AS THEY TRANSFERRED NEW MOTHER AWAY FROM HER HUSBAND'S WORKPLACE

[6] When the female employee was on sick leave and had a baby that was only a few months old, she was transferred to Rajkot, Gujarat. The employee requested to revoke the transfer order, however, the bank initiated disciplinary process for not attending to work at Rajkot and remaining absent from duty. Subsequently, she tendered her resignation, but the bank refused to accept it stating that the resignation should be tendered at Rajkot.

The court while citing the bank's policy that stipulates that as far as possible, placement/transfer of married female employee, on her request, may be done at a place where her husband is stationed or as near as possible to that place or vice versa, held that the respondent bank is not supposed to behave in the manner in which they have behaved with a married woman having a child of few months. The bank was ordered by the court to review her resignation application and issue a new ruling, ignoring her non-joining at Rajkot.

PATNA HIGH COURT OPINES THAT EMPLOYEE'S FAILURE TO RESPOND TO CHARGES DOES NOT MITIGATE THE RESPONSIBILITY OF THE DEPARTMENT TO PROVIDE EVIDENCE DURING INQUIRY PROCESS

7The Hon'ble Patna High Court has overturned the dismissal of a Senior Jail Superintendent, stating that the department cannot be absolved of its duty to provide evidence during the inquiry, even if the employee fails to respond to charges related to financial irregularities. The Court emphasized that findings can be entered into on the evidence led, even if the delinquent employee does not cooperate. The Court disagreed with the Single Judge's findings, particularly because they did not examine whether there was any evidence on which the employee could be found guilty, even on preponderance of probability, in the inquiry proceeding. The Court stated that it could interfere under judicial review if the Inquiry Officer and the Disciplinary Authority relied on extraneous matters and if there was no evidence to find the complicity of the delinquent employee.

The Court observed that there was no list of witnesses or documents supplied to the delinquent employee. It was noted that while the Vigilance Report was mentioned in the evidence column, there was no document relating to evidence made available, and none of the enclosures in the Vigilance Report were supplied to the appellant. The Court set aside the enquiry and the punishment imposed and held that the appellant is entitled to full back wages during his suspension till he attained retirement and pension thereafter. The court clarified that the judgment shall have no bearing on the criminal trial pending; if it is so pending.

SUPREME COURT CLARIFIES: ADVOCATES CAN'T CLAIM LEGAL REPRESENTATION UNDER INDUSTRIAL DISPUTES ACT

[8] The Supreme Court of India has upheld that an advocate does not have the right to legal representation under the Industrial Disputes Act, 1947 ("ID Act"), agreeing with the view expressed in a previously pronounced judgement [9]. The court was

[5] W.P.(C) 2959/2023

[6] CWP – 23783 – 2019

[7] Letters Patent Appeal No.1302 of 2017

[8] Civil Appeal No. 6586 of 2019

[9] Civil Appeal No. 766 of 1976

considering whether the provisions of the ID Act, which deal with representation by a specific lawyer and limitations thereon, needed to be revisited.

DISCIPLINARY PROCEEDINGS AND CRIMINAL PROCEEDINGS OPERATE IN DIFFERENT DOMAINS AND HAVE DIFFERENT OBJECTIVES: SUPREME COURT

[10] The Hon'ble Supreme Court of India recently ruled on a case involving a bank employee who was dismissed from service following disciplinary proceedings related to allegations of financial irregularities. The court clarified that an acquittal in criminal proceedings does not automatically result in a corresponding discharge in disciplinary proceedings. The two proceedings operate in different domains and have distinct objectives.

In this specific case, the disciplinary proceedings against the employee had been initiated well after the one-year period mentioned in the Memorandum of Settlement (MoS). The employee had not raised objections based on the MoS at the outset, and there was no indication of prejudice caused by simultaneous proceedings. Consequently, the Supreme Court set aside the High Court's judgment and restored the employee's dismissal from service based on the disciplinary proceedings.

ACQUITTAL IN CRIMINAL CASE DOES NOT DISENTITLE EMPLOYER FROM CONDUCTING ENQUIRY PRIOR TO GRANTING EMPLOYMENT: KERALA HIGH COURT

[11] The Kerala High Court ruled that the government can conduct an independent enquiry to assess a candidate's character for public service employment, even if acquitted in a criminal case. The case involved a petitioner who was denied a police constable position due to criminal antecedents. The court stated that the government can consider allegations and materials from the criminal case to assess the candidate's character and integrity. The court emphasized that an acquittal for lack of evidence does not preclude the government from conducting an independent enquiry if it cannot form an opinion about the candidate's character based on prosecution allegations alone.

JHARKHAND HIGH COURT RULES THAT THE CHAIRMAN OF A COMPANY CANNOT BE HELD VICARIOUSLY LIABLE UNDER THE MINIMUM WAGES ACT IF THE COMPANY IS NOT BEING IMPLICATED IN THE CHARGE

[12] The Jharkhand High Court recently ruled that under the Minimum Wages Act, 1948, the Chairman of a company cannot be proceeded against without taking cognizance against the company itself when vicarious liability arises based on the allegations in a complaint. The ruling was made in a case involving a company, represented by its Chairman and Regional Head (ER), who were accused of failing to display the notice showing the extract of the Act and Rules in Hindi and English at the workplace.

The court observed that criminal jurisprudence envisages both direct and vicarious liability for an offence under the penal provision. It highlighted that the requirement of impleading the company arises when the accused is vicariously held liable for the acts of the company. Referring to a Supreme Court ruling [13], it emphasized the mandatory requirement of including the company as an accused when an individual is vicariously liable due to their position in the said company. Consequently, it concluded that the order to take cognizance of the case was not sustainable and set it aside.

JHARKHAND HIGH COURT OPINES THAT ESTABLISHMENTS ONCE DEEMED TO BE UNDER THE FOLD OF ESI WILL CONTINUE TO BE OBLIGATED TO MAKE CONTRIBUTIONS EVEN IF THE NUMBER OF EMPLOYEES SUBSEQUENTLY FALLS BELOW THE THRESHOLD

[14] The Jharkhand High Court has upheld that establishments covered under the Employees' State Insurance Corporation Act, 1948 (ESI Act), are obligated to deposit employee subscriptions to contribute to the ESI fund, irrespective of the number

[10] Civil Appeal No.2518 of 2012

[11] OP (KAT) No. 267 of 2021

[12] Cr. M. P. No. 1069 of 2018

[13] Criminal Appeal No. 838 of 2008

[14] L.P.A. No. 187 of 2023

of employees. This ruling was made in a case involving an entity that had been served a notice by the ESI Inspector for failing to provide necessary records and make ESI contributions. The court dismissed the entity's claim of the Act's prospective application and emphasized that it was the entity's responsibility to contribute to the ESI fund.

The court also ruled that the entity was not eligible for any leniency regarding the payment of interest on its dues. It noted that the entity's failure to remit payments as required by the Act frustrated its purpose, as the intended benefits could not be realized due to non-deposit of funds into the ESI fund.

WORKMAN TAKES PROLONGED UNAUTHORISED LEAVE DUE TO DEPRESSION AND ENTITLED TO REINSTATEMENT: KARNATAKA HIGH COURT

[15] The Karnataka High Court upheld a Single Judge's order to reinstate an employee, who was dismissed from service by the Karnataka Power Transmission Corporation Limited (KPTCL) due to prolonged unauthorized absence caused by mental depression. A Station Attendant (Grade 2) since 2008, had been absent without prior permission from 2010, totaling 632 days of absence, leading to his dismissal in 2014.

The Station Attendant challenged this in the labour court, citing his mental depression and providing medical evidence for the same. The labour court set aside the dismissal order in 2019, reinstating him without back wages but with continuation of service. The KPTCL's appeal against this decision was dismissed by the High Court, which emphasized that state entities must be fair and that the labour court order was reasoned properly.

AMENDMENT TO THE TAMIL NADU SAFETY OFFICERS (DUTIES, QUALIFICATION AND CONDITIONS OF SERVICE) RULES

This notification contains amendments to the Tamil Nadu Safety Officers (Duties, Qualifications and Conditions of Service) Rules, 2005. The changes have been made in exercise of the powers conferred by the Factories Act, 1948.

The key changes include the substitution of an existing clause with a new clause that specifies the qualifications required for a safety officer in a factory. The new clause states that a safety officer must possess any Diploma in Industrial Safety conducted by any Institute under the Directorate General, Factory Advice Service and Labour Institutes (DGFASLI), Ministry of Labour and Employment, Government of India or possess a full-time degree or a full-time Diploma in Industrial Safety and duration of not less than one year awarded by any University incorporated under the Central or State Acts or Department of Technical Education or Board of Technical Education of any State / Union Territories / Government of India. Additionally, the occupier of the factory must ensure that the Safety Officer appointed in the factory acquires adequate knowledge of the language spoken by the majority of the workers in the factory within one year of the date of such appointment.

Further, under the procedure for appointment of the Safety Officer, the rules now specify that job advertisements for the Safety Officer post must be published in English and on a prominent online job portal. Further changes have been made to the procedures for filling the position of Safety Officer on a deputation basis, and it is now to be done through the Directorate of Industrial Safety and Health, with specific provisions regarding the recruitment process.

In cases where the post is intended to be filled by transfer or promotion from among the existing staff within the factory or related factories under the same Occupier or from Central or State Government Public Sector Undertakings or Government Establishments, the vacancy must be widely publicized among prospective staff using suitable methods.

Selection for the post of Safety Officer, whether through direct recruitment, transfer, promotion, or nomination, is to be made through a Selection Committee appointed by the occupier of the factory.

[15] WP No.31883 of 2019 (L-RES)



ENHANCEMENT OF THE LIMIT FOR NON-CLAIMING OF INTEREST FOR DELAYED PAYMENTS

The ESI Corporation has notified all relevant field offices that the limit for non-claiming interest for delayed payment of contributions has been revised. It explains that previously, no interest was claimed if the interest amount for a contribution period was Rs. 100 or less, as per a memorandum from 2003. However, in consideration of the wage ceiling increases over the years, administrative convenience, and the costs associated with interest claims and recovery, it has been decided that interest payable for delayed contribution payment, not exceeding Rs. 300 for any contribution period as a whole, will not be claimed. This directive will be effective from November 1, 2023, and does not apply to cases that have already been settled.

AADHAR SEEDING IN RESPECT OF INSURED PERSONS AND THEIR FAMILY MEMBERS

The letter is a communication addressed to various offices and departments of the Employees' State Insurance Corporation (ESIC) regarding the Aadhar seeding process for insured persons and their family members. It highlights the unsatisfactory progress of Aadhar seeding and the inability of field offices to meet daily targets. The main issue raised is the problems faced with OTP-based authentication, such as non-receipt of OTP and changes in mobile numbers. To address this, it is suggested that biometric authentication be introduced alongside OTP-based authentication. The ICT Division has developed an application for biometric authentication, and two approved models of biometric devices are recommended. The devices should be procured following the due process. Each office has specific quantities to procure based on their requirements. All field offices are directed to use these biometric devices to achieve daily targets. The letter also provides details of the approved biometric devices and the process for procurement.

AMENDMENT TO TAMIL NADU SHOPS AND ESTABLISHMENT RULES, 1948

The Tamil Nadu government has proposed draft amendments to the Tamil Nadu Shops and Establishments Rules, 1948, under the authority of the Tamil Nadu Shops

and Establishments Act, 1947. These amendments aim to streamline the registration process for establishments and enhance workplace safety. The proposed changes include the introduction of a new form for the application of establishment registration, which must be made online and accompanied by a fee of Rs. 100. Registration certificates are to be issued within 24 hours from the application date, and a register of establishments will be maintained. Existing establishments must furnish details through a new form, and amendments to registration certificates should be made online with prompt issuance of the certificate. Additionally, a new amendment mandates the provision of first-aid facilities based on the number of employees, with distinctively marked first-aid boxes containing basic medical supplies. Penalties for violations have also been increased. The draft amendments are open for consideration, objections, or suggestions for two months from publication in the Tamil Nadu Government Gazette. Complaints or suggestions must be addressed to the Additional Chief Secretary to Government, Labor Welfare, and Skill Development Department in Chennai.

SOP FOR MANAGEMENT AND REGULATION OF EPF EXEMPTED ESTABLISHMENT

The Standard Operating Procedure (SOP) pertains to the management and regulation of EPF (Employees' Provident Fund) Exempted Establishments and supersedes all previous instructions and circulars. It outlines the compliance process for establishments that have received exemptions under the EPF Act to manage their Provident Fund for employees while ensuring that employee benefits are at least as favorable as those provided by EPFO (Employees' Provident Fund Organization). The SOP applies to exempted establishments operating under the EPF Act, 1952, and describes EPFO's methodology for monitoring and regulating their compliance. The forms detailing the Trust Fund's Balance Sheet and Third-Party Audit format, are to be prepared separately.



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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

609, 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

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 8244634375
Email: mangalore@ksandk.com