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EMPLOYMENT LAW UPDATES

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LABOUR & EMPLOYMENT **BYTES**

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NO REGULARISATION EVEN AFTER WORKING FOR LONG PERIOD ON CONTRACTUAL BASIS: SUPREME COURT

The Supreme Court has ruled that long-term contractual employment does not grant individuals a vested legal right to be regularized in their positions. This decision came in response to an appeal by individuals working on a contractual basis at Shri Guru Govind Singh Institute of Engineering and Technology since 2011 and seeking regularization in their roles. The Court, while acknowledging the petitioners' long service at the institute, affirmed the view of the Bombay High Court that their continuous work did not create a legal right for regularization. The High Court had rejected their claims because they



had no right to seek regularization, a decision upheld by the Supreme Court.

DISCHARGE DURING PROBATIONARY PERIOD IF FOUND UNSUITABLE FOR JOB: SUPREME COURT

The Supreme Court distinguished between simpliciter and punitive termination, emphasizing that disciplinary termination requires a formal inquiry and an opportunity for the employee to be heard. The Court referred to its earlier decisions to clarify that it's punitive if an inquiry aims to uncover misconduct and leads to termination. In contrast, if it assesses an employee's suitability for a job, it's simpliciter termination. The Court heard an appeal involving the discharge of a probationary constable and upheld the discharge, stating that it wasn't punitive but based on the employee's prolonged absence for training without any intimation. The authority found that the probationer constable had no interest in training, and no sense of responsibility, hence, he could not prove himself a good, efficient police officer. The Court highlighted that termination orders must be clear and specific to impute misconduct, and in this case, the discharge was simple. Therefore, the Court allowed the appeal and rejected the previous judgments in favor of the employee.

ACQUITTAL ON TECHNICAL GROUNDS OR DUE TO BENEFIT OF DOUBT WILL NOT CONFER THE ACCUSED THE RIGHT TO APPOINTMENT: SUPREME COURT

The Supreme Court has ruled that an employer can consider an employee's antecedents even after an acquittal in a case involving moral turpitude or a severe offense on technical grounds. The issue before the court involved a respondent who had been acquitted of a criminal case under the Protection of Children from Sexual Offences Act, 2012, but had disclosed the criminal case and subsequent acquittal when applying for a constable position. However, the Superintendent of Police deemed him unfit for selection, leading to a legal challenge. The Supreme Court upheld the importance of assessing an employee's antecedents for suitability, especially in cases involving moral turpitude. It noted that the respondent's acquittal could not be considered a "clean acquittal," given the nature of the charges and the circumstances

surrounding the case. Consequently, the Court allowed the state government's appeal and upheld the single-judge bench's decision, setting aside the division bench's ruling.

SUPREME COURT EXPRESSES SERIOUS CONCERN ABOUT THE USE OF EXCESSIVE CONTRACTUAL STAFF

The Supreme Court has expressed serious concerns about the National Law University, Jodhpur, operating with predominantly contractual teachers. The Court emphasized that this situation is unacceptable and goes against University Grants Commission regulations, which allow only 10% of staff to be contractual. Although the NLU recently amended its rules to have a 50% permanent and 50% contractual staff ratio, this change has yet to be implemented. The Court also noted that the NLU needs a Vice Chancellor and a permanent Registrar. Despite the university's claim of being self-financed without government aid, the Court stressed the need for excellence in such institutions. It urged the university to address the situation without court interference. As a result, the Court granted an adjournment, and the matter will be considered again on October 31, 2023. The case involves a Special Leave Petition filed by NLU-J against a Rajasthan High Court judgment that struck down some service regulations and expressed concerns about the excessive use of contractual staff.

MEDICAL COLLEGES NOT PAYING STIPENDS TO MBBS INTERNS- SUPREME COURT SEEKS NATIONAL MEDICAL COMMISSION'S RESPONSE

The Supreme Court has directed the National Medical Commission (NMC) to respond to a complaint that 70% of medical colleges must pay the minimum stipend to MBBS interns. This directive came during a hearing of a petition filed by medical interns seeking stipend payments from the Army College of Medical Sciences (ACMS). The ACMS argued that it operates on a non-profit basis to serve the children of armed personnel and faces financial constraints. However,



the Court emphasized that economic conditions cannot justify denying stipends to students and passed an interim order against the college to pay at least Rs 25,000 per month as a stipend to its medical interns. Additionally, the Court acknowledged that 70% of colleges are not paying stipends and directed the NMC to respond to this claim and file an affidavit.

NO REINSTATEMENT IF GAINFULLY EMPLOYED AND PROBATION IS NOT CONFIRMED: KARNATAKA HIGH COURT

The Karnataka High Court has upheld that reinstatement is not applicable when a person is gainfully employed. The case involved a limited company manufacturing and selling diesel generators and an employee whose probation was extended several times. After the final extension, the employee did not secure alternate employment, and claimed wrongful termination, leading to a dispute taken to the Labour Court, which ruled in his favor. However, the High Court overturned the ruling, emphasizing that reinstatement was not warranted as the employee was gainfully employed elsewhere and his probation had not been confirmed.

ANY ORDER HAVING CIVIL CONSEQUENCES MUST SATISFY PRINCIPLES OF NATURAL JUSTICE: ALLAHABAD HIGH COURT

The Allahabad High Court has ruled that once a person has been appointed to a position, they have a vested right to continue in that role, and any decision with civil consequences should only be made after providing them with an opportunity to be heard. In a case involving the cancellation of a petitioner's appointment as a Sub Inspector in the Civil Police due to the alleged concealment of past criminal proceedings, the petitioner argued that the criminal proceedings occurred when he was a minor and was unaware of them. The state's counsel claimed deliberate concealment. The court found that the petitioner had yet to be given a chance to be heard before the appointment was canceled, and as a result, the order was deemed flawed. The court allowed the writ petition and granted the state the option to issue a new ruling by the principles of natural justice.

NO AUTOMATIC CONFIRMATION OF PROBATION UNLESS EXPRESSLY PROVIDED OR IN EXCEPTIONAL CASE: KARNATAKA HIGH COURT

The Karnataka High Court has ruled that a person appointed on probation does not automatically become a permanent employee upon the expiry of the probationary period unless the rules expressly provide for automatic confirmation. The court dismissed the appeal of a woman who was not confirmed to the stenographer post after completing her probation in the Court of Civil Judge, Virajpet. The court explained that the purpose of probation is to assess the suitability of both the employee and the employer for the job. During this period, the employee has fewer rights than a confirmed employee. The court noted that no rule indicating automatic confirmation was presented, and therefore, the appellant's plea was rejected.

GRAVITY OF MISCONDUCT, PAST CONDUCT, PREVIOUS PENALTY TO BE CONSIDERED BEFORE DISMISSAL FROM SERVICE: ALLAHABAD HIGH COURT

The Allahabad High Court has ruled that when imposing a significant punishment such as dismissal from service, the disciplinary authority should consider various factors, including the gravity of misconduct, past conduct, nature of duties, position in the organization, previous penalties, and the need to enforce discipline. The case involved an employee dismissed from service due to unauthorized absence for about ten months. The Central Administrative Tribunal set aside the significant punishment and remanded the matter to the disciplinary authority. The court upheld the Tribunal's decision, stating that all relevant factors should have been examined before awarding the punishment of dismissal.

GRATUITY IS NOT 'BOUNTY' NOR DEPENDANT ON THE EMPLOYER'S SWEET WILL: KARNATAKA HIGH COURT

The Karnataka High Court has directed the State's Health Secretary to release the pending gratuity

amount of a retired employee, which has been pending for 16 years, within 30 days. The court emphasized that gratuity is not a discretionary benefit but a statutorily mandated employee entitlement. The petitioner, a retired employee of Jawaharlal Nehru Medical College, Belgaum, had initially approached the Controlling Authority under the Payment of Gratuity Act, 1972, which allowed the application. However, the amount still needs to be disbursed. The court noted the culpable delay on the part of the state and stated that such delays display apathy towards retired employees who rely on these benefits in their advancing old age. Consequently, the court ordered the release of the gratuity amount and interest.

CALCUTTA HIGH COURT HOLDS THAT EMPLOYEE'S GRATUITY CAN ONLY BE STOPPED IF EMPLOYMENT IS TERMINATED

In a challenge by a former employee against Food Corporation of India (FCI) for withholding his gratuity citing ongoing criminal investigations against him for alleged moral turpitude, the Calcutta High Court has directed FCI to pay the withheld gratuity along with 8% interest thereon, within 4 weeks. The petitioner had merely been suspended for a brief period in 2012 after audits revealed shortage of grains in the sheds of FCI. However, the suspension was subsequently revoked later that year and the petitioner was reinstated. The court observed that as the petitioner had never been dismissed/terminated from service on grounds of committing moral turpitude, gratuity cannot be withheld merely because of any pending cases which bear the possibility of the petitioner being found guilty at a later stage.

MADRAS HIGH COURT UPHOLDS MOTHER'S ENTITLEMENT FOR TERMINAL AND PENSIONARY BENEFITS OF DECEASED SON

The Madras High Court has ruled in favor of a mother seeking a share of her deceased son's terminal and pensionary benefits payable under the Tamil Nadu Pension Rules. The court noted that the deceased had nominated his wife to receive these benefits, but the mother was entitled to a share as a senior citizen and one of the legal heirs. The deceased had passed away while in service and was survived by his mother, wife, and two

minor children. The mother had incurred substantial medical expenses for her son's treatment and had sent representations to the authorities requesting her share in the benefits, which were not considered. The court directed the officers to consider her representation and disburse her share within 12 weeks.

MINISTRY OF LABOUR AND EMPLOYMENT SIGNS MOUS WITH PRIVATE JOBS PORTALS/EMPLOYERS

The Ministry of Labour and Employment has signed Memorandums of Understanding (MoUs) with prominent private job portals, companies, employers, and skill providers to integrate their services with the National Career Service (NCS) portal. These MoUs aim to enhance employment opportunities and benefits for job seekers on the NCS portal. Private job portals partnering with the Ministry will share their job vacancies on the NCS platform, allowing registered job seekers to apply for these vacancies easily.

KARNATAKA GOVERNMENT ISSUES ORDER ON GIG WORKERS' WELFARE

Karnataka is the second state government to provide social security of Rs 4 lakhs (2 lakhs - as life cover and two lakhs as accidental insurance) for gig workers in the state. The Karnataka government has relied on the NITI Ayog Report 2022 for the estimated number of gig workers in the state. The GO has stated that any gig workers between 18 and 60 who have worked for one year will be eligible for the social security scheme. If a gig worker is hospitalized, Rs 1 lakh will be reimbursed. To register for this scheme, the gig workers must register on the Seva Sindhu portal with their details, including passport-size photo and E-Shramik card, along with their proof of address and bank account details. This scheme won't be eligible for gig workers with a provident fund, ESI, or income tax payees. There are certain exceptions regarding the system provided to gig workers.

EPFO EXTENDS THE DEADLINE TO UPLOAD DETAILS BY EMPLOYERS FOR HIGHER PENSION OPTIONS BY 3 MONTHS TILL DECEMBER 31.



The Employees' Provident Fund Organization (EPFO) has extended the deadline for employers to upload wage details regarding pension on higher wages by three months until December 31, 2023. This extension comes after receiving representations from Employers and Employers' Associations. Initially, the deadline was set for September 30, 2023.

EXTENSION OF ESIC SCHEME TO THE CASUAL/CONTRACTUAL WORKERS UNDER MUNICIPAL CORPORATIONS/MUNICIPAL BODIES UNDER THE CONTROL OF STATE GOVERNMENT/UT ADMINISTRATION.

The notification dated 27.07.2023, published by the Government of Maharashtra, has extended the coverage of the ESIC (Employees' State Insurance Corporation) Scheme to include Casual and Contractual workers employed under Municipal bodies, including Municipal Corporation (Nagar Nigam), Municipal councils, Nagar Palika, and other Urban Local Bodies governed by the State Government of Maharashtra, where ten or more persons are employed or were employed on any day of the preceding twelve months on a casual or contractual or both basis. This extension of coverage, as per Section 1(5) of the ESI Act, 1948, will be effective from 01.08.2023.

EXTENSION OF EMPLOYEES STATE INSURANCE COVERAGE TO CASUAL/CONTRACT EMPLOYEES UNDER MUNICIPAL BODIES AND STATE GOVERNMENT OF TAMILNADU, ODISHA AND MEGHALAYA

The Employees State Insurance coverage has been extended to the municipal bodies including municipal corporations, municipal councils and other bodies constituted by the respective state government wherein ten or more persons have been employed on casual or contractual basis or both for wages or were so employed in the preceding 12 months. The said extension has been effected by virtue of notification issued by the concerned State governments.

EPFO ISSUES GUIDELINES FOR INSPECTION OF ESTABLISHMENTS WITH EXISTING IT TOOLS

The EPFO issued guidelines on September 4, 2023 to streamline the inspection process and improve its effectiveness. The guidelines include a periodic desk review, which involves fortnightly nudging of establishments via SMS/emails/letters for three months, recording replies in an e-file, and requesting physical inspection if replies are unsatisfactory. For establishments reported for closure, the guidelines involve verifying proofs of closure, updating employee exit dates and contributions, and optional physical inspection. Physical inspections without nudging are allowed for cases requiring urgent processing or redressal. Urgent/emergency physical inspections are for cases requiring immediate action, with no permission or nudging required. The guidelines also cover general physical inspections, emphasizing the quality of inspection reports and efficient use of available IT tools and resources.

GOVERNMENT OF PUNJAB EXEMPTION TO ALL FACTORIES FROM CERTAIN PROVISIONS OF THE FACTORIES ACT, 1948

The Punjab Government has issued a notification dated September 20, 2023 that supersedes a previous order, granting temporary exemptions to all factories from certain provisions of the Factories Act, 1948, to manage exceptional work pressure in the industry. However, these exemptions come with conditions: daily work hours must not exceed twelve, the spread-over should not exceed thirteen hours a day, weekly work hours including overtime should not exceed sixty, and overtime work by a worker should not exceed seven consecutive days with a quarterly limit of 115 hours. Factories must maintain an overtime logbook for inspection by Labor Department officers. Non-compliance with these conditions or other provisions of the Act and Rules will result in the withdrawal of the overtime facility. Factories are also required to pay minimum wages for overtime as per the Factories Act, 1948, and wages fixed for overtime under the Minimum Wages Act, 1948, and The Punjab Minimum Wages Rules, 1950.

MAHARASHTRA STATE RIGHTS OF PERSONS WITH DISABILITIES RULE 2023

The Persons with Disabilities Welfare Department, Maharashtra has framed a draft of Maharashtra State Rights of Persons with Disabilities Rules, 2023. It includes key provisions such as formation of State Committee for research on disability, limited guardianship, certificate of disability. It will be considered after 30 days from the date of publication of the notification in the Maharashtra state government gazette.

LADAKH RIGHTS OF PERSONS WITH DISABILITIES RULES 2023

The Department of Social & Tribal Welfare, Ladakh has published a draft of Ladakh Rights of Persons with Disabilities Rules, 2023, proposing to bring into effect, key provisions such as among others, rights and entitlements against discrimination, limited guardianship, employment and vacancies for persons with benchmark disabilities, accessibility and certificate of disability. It will be considered after 30 days from the date on which the copies of the gazette notification are made available to public.

WEST BENGAL ISSUES GUIDELINES FOR PAYMENT OF BONUS IN VIEW OF DURGA PUJA

On September 15, 2023, the Governor of West Bengal issued guidelines and an appeal to employers and employees in the state, emphasizing the importance of maintaining industrial peace and harmony. Employers are urged to adopt a flexible attitude while adhering to the statutory provisions of the Payment of Bonus Act, 1965, as amended in 2015. They are encouraged to ensure that the bonus rate for this year is not lower than the previous year's rate and to consider ex-gratia payments if applicable. All employees who have worked for at least 30 days during the year should receive a bonus, and employers who have defaulted on bonus payments in previous years are urged to make such payments along with the current year's bonus. Trade unions and employers' organizations are called upon to cooperate in maintaining industrial peace and help settle bonus-related disputes without disrupting work. Employees from sectors like IT, Hotels and Restaurants, Shops & Establishments, Security Workers,

and some workers in jute mills who did not receive bonuses in previous years are to be paid bonuses this year. All bonus payments should be completed by October 6, 2023, before the commencement of Durga Puja. The government expects all employers, including public sector undertakings, to adhere to this appeal. Employers' organizations are expected to advise their members to follow this appeal. Employers in the unorganized sector, not covered under the Payment of Bonus Act, 1965, are to pay bonus/ex-gratia to their workers by October 6, 2023.

EPFO ALLOWS OFFLINE PROCESSING OF JOINT DECLARATIONS FOR MEMBER PROFILE UPDATION

[1] As the software application is still being developed, EPFO has allowed joint declarations to be taken in offline mode. However, strict adherence is required with respect to its instructions specified in the concerned SOP including parameters, classification of changes, competent authority for approval of changes, documentary proofs to be submitted by the members for member profile correction, timelines for completing the joint declaration, frequency of changes and monitoring mechanism.

UP GOVERNMENT EXEMPTS IT & ITES ESTABLISHMENTS FROM CERTAIN PROVISIONS OF UTTAR PRADESH DOOKAN AUR VANIJYA ADHISTHAN ADHINIYAM

Uttar Pradesh exempts Information Technology and Information Technologies Enabled Services establishments from the provisions governing hours of business and close day set out in the Uttar Pradesh Dookan aur Vanijya Adhistan Adhinyam, 1962 by insertion of the said establishments in Schedule II in view of public interest.

EXTENSION OF ATAL BEEMIT VYAKTI KALYAN YOJANA: ENHANCED RELIEF AND RELAXED ELIGIBILITY UNTIL 2024

[1] WSU/2022/Rationalisation of work areas/Joint Declaration/284



The Atal Beemit Vyakti Kalyan Yojana, an unemployment scheme under the Employees' State Insurance Corporation, has been extended for an additional two years, continuing until June 30, 2024. This marks the scheme's third extension, with previous extensions granted in both 2020 and 2021. The scheme was initially introduced on a pilot basis in 2018, intended to run for two years. However, due to the outbreak of COVID and the ensuing lockdown, the government extended the unemployment scheme beyond its initial duration. This scheme serves as a welfare initiative for employees falling under the ESI Act, 1948, offering them relief payments in the event of unemployment.

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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

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

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