



KING STUBB & KASIVA
ADVOCATES AND ATTORNEYS



EMPLOYMENT LAW UPDATES

AUG 2024



LABOUR & EMPLOYMENT BYTES

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SUPREME COURT URGES PETITIONER TO MOVE ITS PROPOSAL BEFORE THE UNION MINISTRY OF WOMEN AND CHILD DEVELOPMENT

The Supreme Court while hearing W.P.(C) No. 327/2024 which sought menstrual leave for female students and working women across India observed that having menstrual leave policy may encourage women to be a part of the workforce but on the other hand mandating such policies will impose some sort of bar on women being employed because the employer will then shun women in the workplace. Considering this the Supreme Court requested the Secretary of Union Ministry of Women and Child Development to look into the matter at a policy level and after due consultation with all the stakeholders at union and the state level on whether it would be appropriate to formulate a model policy.

FACTORS DETERMINING TERMINATION OF A FIXED TERM CONTRACT OF EMPLOYMENT

The petitioner was appointed as junior physiotherapist by the respondent university on a contractual basis. Initially the contract of employment was for a period of 6 months which was subsequently extended from time to time for over a decade. Later in 2022 her contract was refused to be extended further by the respondent university. Petitioner challenged this order in Punjab & Haryana High Court vide CWP-29101-2022 (O & M) wherein the High Court observed that the respondent university refused to grant extension ignoring the long service rendered by the petitioner along with good work and conduct hence the termination was arbitrary. The court also noted that the petitioner was appointed for a period of 6 months or till the regular incumbent joined the post. Following this the court ordered that the petitioner has right to continue in service till joining of a regular incumbent along with that the petitioner is also entitled to recover cost of litigation worth INR 75,000/-.



REFUSING VOLUNTARY RETIREMENT UNDER SERIOUS COMPELLING CIRCUMSTANCES VIOLATIVE OF ARTICLE 21

Petitioner was employed as head assistant in Malkhan Singh District Hospital, Aligarh. She requested for voluntary retirement after completing 30 years of service on the grounds of her severely suffering from physical and mental ailment. The authorities turned down her request of voluntary retirement for the reason of scarcity of employees in Group C Clerical Cadre. The Allahabad High Court in this Writ Appeal No. 9427 of 2023 observed that such an order by authority is violative of Article 21 of the Indian Constitution. This is not a case where petitioner has applied for voluntary retirement in a casual manner only after completing requisite term of service, instead her application for voluntary retirement has been filed under serious compelling circumstances, therefore, the rejection of application by authority is perverse and without application of mind. The court observed that she is suffering from severe anxiety neurosis and severe depression and is under heavy medication, as per the opinion of the orthopedic surgeon prolonged sitting or desk work may endanger her life which is violative of the fundamental right enshrined under Article 21.

THE JAMMU & KASHMIR HIGH COURT UPHOLDS EMPLOYER'S DECISION OF TERMINATION OF AN ABSCONDING EMPLOYEE

A CRPF constable i.e. the petitioner overstayed his sanctioned leave and did not return to duty. Following this, the CRPF started enquiry proceedings and sent multiple communications to the residential address of the petitioner. Even after repeated summons the petitioner failed to appear in the proceedings and an ex parte order was passed against him by the enquiry officer. The petitioner argued that his dismissal was in violation of natural justice principles. He claimed that all the communications including the order of dismissal were in Hindi language which he did not understand, and he overstayed due to psychological disturbances and chronic marital discord. The court opined that the principles of natural justice do not operate in vacuum. When the facts are admitted, the holding of fresh enquiry and allowing opportunity of hearing to

delinquent employee would be an empty formality. Thus, from the material on record the petitioner had no justification for remaining unauthorizedly absent from duty. Thereafter, the court in SWP No. 181/2016 stated that an employer is not expected to launch a manhunt for absconding employee in the whole world, it would be enough for an employer to send communications at the residential address of the absconding employee.

THE BOMBAY HIGH COURT DISREGARDED INDUSTRIAL COURT'S REASONING FOR INTERIM STAY ON TRANSFER AND PROMOTION OF EMPLOYEE

Indian Express being the employer filed Writ Petition No. 8387 of 2024 in the Bombay High Court seeking order to quash Industrial Court's interim stay order on transfer of respondent employee who claimed transfer order by the employer was unfair labour practise and was a systematic harassment on account of previous litigation with the employer. The employer supported its claim by producing documentary evidence citing retirement of an employee created a vacancy which the respondent was required to fill. This decision of the employer comes from the urgency of maintaining print quality in the absence of a supervisor at Aurangabad. The employer also promoted respondent and offered a higher pay scale, further the contract of respondent also empowered employer to transfer him anywhere in India. Hearing arguments from both the sides, High Court ruled in favour of employer stating that mere filing of earlier litigation is not a reason to infer existence of mala fides for interdicting the order of transfer, the employer has made a prima facie case for existence of an administrative exigency necessitating the transfer. As a reason of this, the High Court ordered quashing of interim stay order of transfer.

RAJASTHAN HIGH COURT UPHOLDS PRIVACY OF CONTRACT

The petitioners who were hired on contractual basis claimed permanent employment from the government contending that they gave best part of their life working for the government college hence their employment with the government must be regularised. The court delving into the matter observed that the contract was primarily entered into between the contractor and the

government, making petitioners the third party and alien to the contract with respect to privity of contract that existed between the parties. The court while deciding the matter referred to several Supreme Court cases to arrive at its decision in S.B. Civil Writ Petition No. 4381/2024 affirming that rendering service for long time does not entitle the contractual employees to get a vested right of employment in their favour.

DISMISSAL ORDER QUASHED BY THE MADRAS HIGH COURT DUE TO PROCEDURAL LAPSES

An employee was charged for demanding and accepting bribe in connection with his official duties. An oral enquiry was conducted, and the enquiry officer's report concluded that the charges were not proven. Despite this, a further show cause notice was issued against the employee to which he submitted his response denying charges. Subsequently, disciplinary authority charged employee of demanding and accepting bribery and imposed the punishment of dismissal. The employee filed Writ Petition no. 11754 of 2024 seeking to quash dismissal order claiming it to be arbitrary and illegal. The single judge bench observed that the disciplinary authority did not issue proper second show cause notice as it did not include tentative findings and specific reasons for the authority's disagreement with the Enquiry officer's report. A fair opportunity was not afforded to the employee to respond to the reasons of disagreement. Therefore, the dismissal order had procedural lapses and the employer is directed by the court to proceed afresh from the stage of issuing a proper second show cause notice.

ARBITRABILITY OF NEGATIVE COVENANT CONTAINED IN EMPLOYMENT CONTRACTS

The Delhi High Court, in the case of Lily Packers Pvt. Ltd. v. Vaishnavi Vijay Umak & Connected Matters (ARB. P 1210/2023), where the respondent was an employee of Lily Packers Pvt. Ltd., addressed the issue of the arbitrability of the lock-in period. The contract of employment had a lock in period of 3 years during which the employee cannot terminate the employment. The respondent abandoned the job and never returned. Petitioner concerned about potential breaches invoked arbitration clause to which respondent refused to

submit to arbitration claiming it to be harassment and humiliation. The High Court relying on the decisions of the Supreme Court observed that negative covenants during the term of employment which require exclusive service are generally not contrary to law. Advancing further the High Court noted that these lock in periods are prevalent at executive levels in various industries and are essential for reducing employee attrition and ensuring organizational continuity. Therefore, the 3-year lock in period is a reasonable curtailment and employer is not seeking to restrain employee from employment with any competitor post termination hence the dispute is arbitrable under the Arbitration and Conciliation Act, 1996 and a sole arbitrator was appointed to adjudicate the dispute.

THE EMPLOYEES' COMPENSATION ACT, 1923 AIMS TO PROVIDE IMMEDIATE FINANCIAL RELIEF TO THE WORKERS

The insurance company challenged the award of compensation passed by Commissioner under the Employees Compensation Act, 1923 in relation to an incident wherein the employee sustained serious injury in eye due to stone pelting in incident at Bijbihara while working as driver for plying vehicle. The insurance company contended that the employer is not the registered owner of the vehicle and there existed no employee-employer relation, hence employee cannot claim insurance bought by employer. The High Court upheld the findings of commissioner on existence of employee-employer relation and delved into the object of the Act highlighting that the Act intended to provide immediate financial relief to workers without hinderance of extended legal battles and such procedural wrangles and further litigation frustrating the very purpose of the Act. The present appeal FAO(WC) 6/2021 CM(2206/2022) does not constitute any substantial question of law or any question of law, the disputed relationship between employer and employee has been rightly averted to and addressed by the commissioner on the basis of credible evidence.

PROVISIONS OF LAW SUPERSEDE CONTRACTUAL ARRANGEMENTS: DELHI HIGH COURT REITERATES

A disabled employee aggrieved by the transfer order issued by employer filed a writ petition before single

judge bench of Delhi High Court stating that transfer would hinder his cure given his medical condition and ongoing treatment along with that it was argued, transfer was influenced by interpersonal problems between him and co-workers. The single judge bench relying on the provisions of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1955 and the circulars/OMs issued by DoPT set aside the transfer order. The employer filed appeal before the division bench of Delhi High Court. The division bench in this LPA 133/2024 and C.M. No. 9793/2024 observed that the employer has burden to prove transfer order was passed due to administrative exigencies or constrains. Further contractual arrangement between parties including an employment contract is always subordinate to the legislative framework governing the field occupied by the subject contract. Thus, the division bench upheld the previous decision of setting aside the transfer order.

THE GOVERNMENT OF TAMIL NADU HAS NOTIFIED DATE FOR COMMENCEMENT OF TAMIL NADU SHOPS AND ESTABLISHMENTS AMENDMENT ACTS OF 2023

The Labour Welfare and Skill Development department by notification No. II(2)/LWSD/520(b-2)/2024 has notified 2nd July 2024 as the date on which Tamil Nadu Shops and Establishment (Amendment) Act, 2023 shall come in force. The Amendment Act of 2023 requires that the establishments in Tamil Nadu to ensure sufficient supply of wholesome drinking water, latrines and urinals, rest room and lunch room with adequate drinking water, ventilation and chairs and benches with back-rests.

Further vide notification No. SRO A-13(e)/2024 dated 2nd July 2024 the department has amended Tamil Nadu Shops and Establishment Rules, 1948. The amendment includes inclusion of online filing of forms through web portal of Labour Department and introduction of new forms among other changes.

THE GOVERNMENT OF KARNATAKA EXTENDS TIME PERIOD FOR OBTAINING INSURANCE UNDER KARNATAKA COMPULSORY GRATUITY INSURANCE RULES, 2024

The Government of Karnataka vide Notification No. LD 325 LET 2023 dated 4th July 2024 has extended the time limit from 60 days to 6 months to obtain Insurance under Karnataka Compulsory Gratuity Insurance Rules, 2024.

EPFO ISSUES LETTER TO ALL ADDITIONAL CENTRAL PROVIDENT FUND COMMISSIONER AND REGIONAL PROVIDENT FUND COMMISSIONERS TO PROMOTE FACIAL AUTHENTICATION TECHNOLOGY

EPFO has launched targeted promotional campaign to increase adoption of Facial Authentication Technology (FAT) for submission of Digital Life Certificate (DLC) which will reduce the dependence of pensioners on banks and other intermediaries for updation of DLCs.

The field offices are requested to coordinate with banks to facilitate smooth updation of life certificates. Pension disbursing banks must deploy iris scanners and fingerprint scanner for this purpose. A prominent display of Facial Authentication facility and procedure. The concerned banks shall also educate the pensioners about using their mobile phones to update DLC.

Field offices shall hold awareness sessions with employers' associations and all employees' unions among such other strategies must be adopted to facilitate services related to DLC.

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