



KING STUBB & KASIVA
ADVOCATES AND ATTORNEYS



**EMPLOYMENT
LAW**

**EMPLOYMENT LAW
UPDATES
FEB 2024**





LABOUR & EMPLOYMENT BYTES

- **EMPLOYERS TO EXHIBIT OPEN-MINDEDNESS AND EMPATHY WHILE TRANSFERRING WORKING WOMEN: KERALA HIGH COURT**
- **POSSIBLE UNEMPLOYMENT OF WORKERS CANNOT BE GROUND TO REFUSE CLOSURE OF LOSS MAKING ESTABLISHMENT: BOMBAY HIGH COURT**
- **ORDER INCREASING RETIREMENT AGE OF INDIAN EXPRESS WORKERS TO 60 YEARS SET ASIDE: DELHI HIGH COURT**
- **100% DAMAGES NOT MANDATORY UNDER SECTION 14-B OF EPF ACT: KERALA HIGH COURT**
- **MADHYA PRADESH HIGH COURT RULES AGAINST ARBITRARY CONTRACT WAGE REDUCTION**
- **ALLAHABAD HIGH COURT'S DECISION ON THE IMPORTANCE OF TRANSPARENCY IN EMPLOYMENT APPLICATIONS**
- **DURING RESIGNATION THE LAST DRAWN SALARY WILL BE CONSIDERED FOR CALCULATING GRATUITY IF THE EMPLOYEE IS TRANSFERRED AMONG INSTITUTIONS UNDER THE SAME MANAGEMENT: BOMBAY HIGH COURT**
- **EMPLOYEE DISMISSED FROM SERVICE WITHOUT ENQUIRY TO BE REINSTATED: KARNATAKA HIGH COURT**
- **DISPUTES REGARDING ABSORPTION AND REGULARISATION CAN BE RAISED ONLY BY LABOUR UNION ON BEHALF OF WORKMAN: KARNATAKA HIGH COURT**
- **DEPARTMENTAL PROCEEDINGS CANNOT BE CONTINUED POST RETIREMENT IN THE ABSENCE OF SPECIFIC PROVISION: ORISSA HIGH COURT**
- **TELANGANA HIGH COURT REINSTATES 'BADLI FILLER' WORKER AFTER 32 YEARS**
- **ALLAHABAD HIGH COURT'S DECISION ON EMPLOYEE REINSTATEMENT AND EMPLOYER'S ASSUMPTIONS**
- **EPFO REMOVES AADHAAR CARD FROM LIST OF ACCEPTABLE DOCUMENTS AS PROOF OF DATE OF BIRTH**
- **ESI REVISES GUIDELINES FOR HOME DELIVERY OF DRUGS**
- **IMPROVEMENTS IN AAA+ APP FOR FACILITATING AADHAAR SEEDING**
- **EPFO REITERATES GUIDELINES REGULATING EPS ENTITLEMENT OF MEMBERS HAVING MULTIPLE ACCOUNT NUMBERS**
- **KARNATAKA MAKES KARNATAKA COMPULSORY GRATUITY INSURANCE RULES, 2024**
- **EXTENSION OF TIME FOR UPLOADING WAGE DETAILS REGARDING PENSION ON HIGHER WAGES.**
- **ESIC UPDATES STATE WISE LIST OF NOTIFIED/NON-NOTIFIED DISTRICTS**

EMPLOYERS TO EXHIBIT OPEN-MINDEDNESS AND EMPATHY WHILE TRANSFERRING WORKING WOMEN: KERALA HIGH COURT

The petitioners are working women employees of Employees State Insurance Corporation Hospital who were transferred from Ernakulam to Kollam. Subsequently, they challenged the transfer orders before the Central Administrative Tribunal Ernakulam. Aggrieved by the refusal of the Tribunal to interfere with the transfer orders, the petitioners approached the Kerala High Court through O.P (CAT) Nos. 185 & 186 of 2023. The High Court observed that both the petitioners had the responsibility of taking care of their

children and aged parents. Further, it noted that the matter was pending before the Tribunal and directed for the matters to be maintained status quo until they are disposed of by the Tribunal. It further observed that working women play major roles in taking care of their children and aged parents and thus, they may find it difficult to maintain a work-life balance in an unfamiliar environment. Thus, it remarked that employers should exhibit open-mindedness and empathy when issuing transfer orders to working women.



POSSIBLE UNEMPLOYMENT OF WORKERS CANNOT BE GROUND TO REFUSE CLOSURE OF LOSS MAKING ESTABLISHMENT: BOMBAY HIGH COURT

General Motors applied for the closure of Talegaon Plant in November, 2020 which was rejected by the government on January 18, 2021. Subsequently, on filing review application, the government referred the matter to the Industrial Tribunal on March 19, 2021. During Covid-19 pandemic, lay-off notices were issued and around 484 workers availed separation benefit of INR 25 to 35 Lakhs each under its Voluntary Separation Scheme and others were terminated. Subsequently, the union filed an application claiming that the reference had become infructuous which was rejected by the tribunal on April 28, 2023. Thereafter, the Talegaon plant was sold to Hyundai in 2023 and the company filed a second closure application during pendency of reference before Industrial Tribunal. The Industrial Tribunal eventually passed an award permitting closure of the Talegaon plant on June 30, 2023 which along with the order of April 28, 2023 was challenged before the Bombay High Court in Writ Petition No. 7992 and 9311 of 2023. After noting accumulated loss of INR 9656.87 Crores till 2022, the Hon'ble Bombay High Court upheld the impugned orders passed by the Industrial Tribunal allowing General Motors to close its Talegaon Plant and dismissed both writ petitions filed by the union.

ORDER INCREASING RETIREMENT AGE OF INDIAN EXPRESS WORKERS TO 60 YEARS SET ASIDE: DELHI HIGH COURT

The Hon'ble Delhi High Court in W.P.(C) 11128/2023, CM APPL. 43199/2023 and CM APPL. 45368/2023, set aside the order passed by the Tribunal increasing the age of retirement or superannuation of the workers of Indian Express from 58 years to 60 years with effect from October 15, 2009, with all consequential benefits and remanded the matter back to the Industrial Tribunal for fresh adjudication. It further observed that the Industrial Tribunal relied merely on the basis that the retirement age in some other newspapers was extendable to 60 years and that the same would benefit the establishment which was a flawed, inadequate and

insufficient assessment

100% DAMAGES NOT MANDATORY UNDER SECTION 14-B OF EPF ACT: KERALA HIGH COURT

The Central Board of Trustees of the Employees Provident Fund approached the Kerala High Court vide WP(C) No. 35163 of 2019, challenging the order of the Tribunal for reduction of penalty from 100% to 50% under Section 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. The Hon'ble Kerala High Court upheld the impugned order stating that the said Section does not mandatorily prescribe that 100% amount of damages has to be imposed as penalty and there is no illegality in reduction of amount of damages from 100% to 50%.

MADHYA PRADESH HIGH COURT RULES AGAINST ARBITRARY CONTRACT WAGE REDUCTION

Hon'ble Madhya Pradesh High Court in Writ Petition No. 11632 of 2020, ruled that contract wages cannot be reduced arbitrarily or illegally upon delegation of work to a delegate, while considering a batch of petitions by employees who were initially engaged by the National Health Mission ("NHM") for various subsidiary jobs. NHM had delegated the services of these employees to Rogi Kalyan Samiti ("RKS") who subsequently deducted wages that had been initially agreed upon with NHM. The court concluded that there cannot be any reduction of wages on delegation of work to RKS or sub-delegation of work to a contractor and therefore respondents have failed to make out a case for a reduction of wages for doing the same nature of work for the same duration in the hands of a delegate or a sub-delegatee.

ALLAHABAD HIGH COURT'S DECISION ON THE IMPORTANCE OF TRANSPARENCY IN EMPLOYMENT APPLICATIONS

The Hon'ble Allahabad High Court in Special Appeal No. 777 of 2023 ruled that any petitioner seeking employment must disclose accurate information about

their criminal history. The Hon'ble High Court emphasized that suppressing or providing false information can lead to the cancellation of candidature or dismissal from service. The petitioner had applied for a position in the Hon'ble Allahabad High Court and marked 'No' against the column whether any criminal complaint have been registered against him. Despite an opportunity to correct this information, the candidate failed to do so for 10 months. The Hon'ble High Court upheld the cancellation of the candidate's candidature emphasizing that he deliberately concealed the information and failed to demonstrate any special circumstance in his favor. This decision by the Hon'ble High Court reinforces the importance of transparency and honesty in the employment application process particularly regarding criminal history and underscores the repercussions for candidates who suppress or provide false information.

GAUHATI HIGH COURT SETS ASIDE ORDER PASSED FOR AWARD OF COMPENSATION TO DRIVER WHO ALLEGEDLY LOST VISION IN ONE EYE

The Hon'ble Gauhati High Court in MFA/266/2010 overturned an order passed by the Commissioner of Workmen's Compensation which awarded compensation to the driver who lost vision in one eye due to an accident. The Hon'ble High Court observed that procedure as per Section 4 (1) (c) (ii) of the Employees Compensation Act, 1923 were not followed as there was no assessment by qualified medical practitioner. Moreover, disability certificate was not issued by a medical practitioner showing the disability to be to the extent of 75%.

DURING RESIGNATION THE LAST DRAWN SALARY WILL BE CONSIDERED FOR CALCULATING GRATUITY IF THE EMPLOYEE IS TRANSFERRED AMONG INSTITUTIONS UNDER THE SAME MANAGEMENT: BOMBAY HIGH COURT

The Hon'ble Bombay High Court in Writ Petition No. 11864 of 2019 held that there is nothing on the record to prove that there was termination/cessation of services when the employee resigned. The employee filed an

application for gratuity as it was not paid to him. The Controlling Authority directed the employer to pay gratuity. The petitioner approached the Hon'ble High Court after the Appellate Authority bifurcated payment of gratuity between the two institutions where the employee was transferred. The Hon'ble High Court held that there was continuity in the two spells of service, it determined that gratuity must be calculated based on last drawn salary of the employee. The Hon'ble High Court also held that as there is continuity in service, the entire payment of gratuity amount must be made by the employer from whom the employee has last drawn salary.

EMPLOYEE DISMISSED FROM SERVICE WITHOUT ENQUIRY TO BE REINSTATED: KARNATAKA HIGH COURT

A division bench of the Karnataka High Court in Writ Appeal No. 543 of 2023 set aside the appeal filed by Attikaribettu Grama Panchayath challenging a single judge's order directing reinstatement of the employee who had been dismissed from service. The Hon'ble Court noted that no employee can be punished by way of dismissal from service without affording them an opportunity to be heard in accordance with the principles of natural justice. Further, it observed that although ordinarily where an employee is convicted and sentenced for an offence involving moral turpitude, as the employee in the instant case has not been convicted and sentenced, he cannot be removed from service on that ground per se in the instant case.

DISPUTES REGARDING ABSORPTION AND REGULARISATION CAN BE RAISED ONLY BY LABOUR UNION ON BEHALF OF WORKMAN: KARNATAKA HIGH COURT

An employee of one of the labour contractors of the petitioner company filed a plea before the Labour Commissioner, expressing grievances about his employment. Subsequently, the Labour Commissioner transferred the petition to the jurisdictional Deputy Labour Commissioner where the conciliation proceedings failed and the Conciliation Officer submitted a factual report to the Government. Thereafter, the Department of Labour passed an order



of reference dated February 6th, 2023 directing the Tribunal to adjudicate whether the contract worker was justified in raising the dispute regarding regularization/permanency of his job with the petitioner company and subsequent relief, if any. The said order came to be challenged before the Hon'ble Karnataka High Court in Writ Petition No. 7674/2023, which held that a claim before the Industrial Tribunal by an individual contract worker regarding his absorption and regularization in a company can be raised only through a union representing workman not by himself.

DEPARTMENTAL PROCEEDINGS CANNOT BE CONTINUED POST RETIREMENT IN THE ABSENCE OF SPECIFIC PROVISION: ORISSA HIGH COURT

During the employment of the petitioner, departmental proceedings were initiated against him under Rule 22 of the Orissa Education (Recruitment and Conditions of Service of Teachers and Members of the Staff of Aided Educational Institutions) Rules, 1974. However, the same was never finalized until his superannuation. After perusal of the said Rules, the Hon'ble Orissa High Court in W.P. (C) No. 4066 of 2016 noted the absence of any specific provision and held that as the proceedings could not be completed during the petitioner's service, the same cannot continue to his detriment after his superannuation.

TELANGANA HIGH COURT REINSTATES 'BADLI FILLER' WORKER AFTER 32 YEARS

The Hon'ble Telangana High Court in Writ Petition No.12932 of 2011 reinstated a Badli Filler worker who had been kept out of work for 32 years. The Hon'ble High Court observed that the petitioner was kept out of service as he was neither given any posting after his transfer nor any disciplinary proceedings were initiated against him for his absence. The Hon'ble High Court held that the petitioner must be reinstated with all consequential benefits.

ALLAHABAD HIGH COURT'S DECISION ON EMPLOYEE REINSTATEMENT AND EMPLOYER'S ASSUMPTIONS

The Hon'ble Allahabad High Court in Writ No.14824 of 2023 where an employer did not provide oral evidence to substantiate charges against an employee, stated that the seriousness of a charge does not permit the employer to make assumptions without proper evidence. The Hon'ble High Court directed the reinstatement of the employee emphasizing that the more serious the charge the stricter the requirement for procedural fairness in departmental inquiry. The Hon'ble High Court held that the employer must prove their charges first, the only exception being if the delinquent employee admits to the charges. In the absence of such admission, the employer must lead oral evidence and witnesses.

EPFO REMOVES AADHAAR CARD FROM LIST OF ACCEPTABLE DOCUMENTS AS PROOF OF DATE OF BIRTH

The Employees' Provident Fund Organisation (EPFO) has issued a circular dated January 16th, 2024 bearing No.: WSU/2024/1/UIDAI Matter/4090 notifying removal of Aadhaar Card from the list of acceptable documents for correction of date of birth as mentioned in Table B of Annexure-1 of the Standard Operating Procedure on Joint Declaration issued on August 22nd, 2023. The said circular has been issued basis a letter issued by Unique Identification Authority of India (UIDAI) which requires deletion of Aadhaar Card as a proof of date of birth from the list of acceptable documents. Among others, it draws attention to the Office Memorandum issued by MeitY dated December 20th, 2018 and recent judgement of the Bombay High Court in State of Maharashtra v. Unique Identification Authority of India and Others dated July 28th, 2023 which reiterate that an Aadhaar Card can be used for establishing identity of an individual subject to authentication and thereby, per se it is not a proof of date of birth.

ESI REVISES GUIDELINES FOR HOME DELIVERY OF DRUGS

The Employees' State Insurance Corporation ("ESI") has issued revised guidelines related to home delivery of drugs to insured persons and beneficiaries in respect of

the guidelines circulated on November 3rd, 2023. Pursuant thereto, a Standard Operating Procedure has been introduced with respect to home delivery of drugs vide circular dated January 10th, 2024 bearing No.: U-11013/2/2024-MED-I. Some of the key features thereunder are as follows:

a) The facility can be availed by all senior citizens with chronic illnesses entitled to treatment with ESI, receiving consultations from hospital and prescribed medicines for more than 30 days and are desirous of having their drugs delivered at home. Additionally, all ESI beneficiaries, ESI employees and their dependents, pensioners seeking teleconsultation through e-sanjeevani and handicapped and bed ridden patients on medication for chronic disease shall be eligible to avail the facility.

b) The home delivery facility shall be offered only in certain defined districts as decided by the Dean/MS of the concerned hospital.

c) The hospital shall float a bid on the GeM Portal for hiring services for doorstep delivery of drugs. Each hospital shall develop its own standard operating procedure as per local needs and process flow requirement, guidance for the vendor, pharmacist and other stake holders and grievance redressal system in place. Medicines up-to-maximum of 90 days may be issued to the entitled patient through home delivery option.

d) The selected vendor shall be responsible for intimating the beneficiary regarding the tracking number and webpage for tracking after collection of drug packet from the drug delivery cell. Proof of delivery shall be OTP based or basis the signature of the authorized recipient in a pre-defined format.

IMPROVEMENTS IN AAA+ APP FOR FACILITATING AADHAAR SEEDING

The Employees' State Insurance Corporation ("ESI") has informed of the provisions and changes made in the AAA+ mobile app for speeding up Aadhaar seeding through its circular dated January 10th, 2024 bearing No.: P-14015/3/2022-HIT-11-Part (1). Consequently, the

said app shall facilitate Aadhaar seeding and ABHA generation using face authentication for the Insured Person's log-in. The Insured Person shall be able to seed Aadhaar for self and family using face-authentication. The user manual for the same is also issued by ESI for information and necessary action. Further, all field offices of ESI have been requested to provide wide publicity of the said new feature in their jurisdiction for expediting the Aadhaar seeding of Insured Persons and their family members.

EPFO REITERATES GUIDELINES REGULATING EPS ENTITLEMENT OF MEMBERS HAVING MULTIPLE ACCOUNT NUMBERS

The Employees' Provident Fund Organisation (EPFO) has vide letter dated January 29th, 2024 bearing No.: e-597452/4406 reiterated the guidelines issued by it vide a circular dated November 30th, 1998. In the event that an EPS member possesses multiple account numbers for concurrent employment, simultaneously in two or more establishments, it is essential to take note of the following procedure:

a) Pension from each establishment has to be worked out at the date of exit on actual basis;

b) Pension payable from all establishments shall be aggregated provided that aggregate of pensionable salaries at any point of time shall not exceed wage ceiling, and as and when it exceeds wage ceiling, the contribution received on such excess salary shall be diverted to the PF account;

c) The minimum pension criteria will be applied to the aggregated pension i.e., only on the total pension amount.

d) When a member of EPS on account of his joining being not more than the wage ceiling of INR 15,000/-, upon his joining another establishment without exiting from the first establishment, the RO where other establishment is covered shall be responsible to ensure that the total contribution into EPS shall not exceed contribution payable on wage ceiling of INR 15,000/-. Further, from September 1st, 2014, it shall be ensured that if the wages in a single establishment exceeds INR

15,000/- or aggregate of wages at the time of joining exceeds INR 15,000/- in multiple establishments (concurrently and simultaneously), the full 24% PF contribution shall be retained in the Provident Fund account only, as in such cases, the member shall not be eligible for membership of EPS, 1995.

KARNATAKA MAKES KARNATAKA COMPULSORY GRATUITY INSURANCE RULES, 2024

The Karnataka Government by issue of notification dated January 10th, 2024 bearing No. LD 397 LET 2023, made the Karnataka Compulsory Gratuity Insurance Rules, 2024 (“Rules”). They shall come into force from the date of their publication in the official gazette. Some of the significant provisions of the Rules are as follows:

- a) Every new employer shall be required to obtain a valid insurance policy for his liability for payment towards gratuity to all eligible employees in accordance with the provisions of the Payment of Gratuity Act, 1972 (“Act”) within 30 days of applicability of the Rules and employer of an existing establishment shall obtain the insurance policy within 60 days from the date of commencement of the Rules;
- b) Every employer shall further register themselves with the concerned Controlling Authority by submitting an application under Form-I within 30 days from the date of obtaining insurance along with the list of employees insured;
- c) Every employer of an establishment who has already established an approved gratuity fund in respect of his employees and who desires to continue such arrangement and every employer employing 500 or more persons who establishes an approved gratuity fund may opt to continue or adopt such arrangement by submitting an application in Form II, provided such existing approved gratuity fund covers the entire liability of all the employees of the establishment under the provisions of the Act. Further, such employers shall register the Gratuity Trust with five but not equal number of representatives of the employer and employees with the concerned registration authority.

EXTENSION OF TIME FOR UPLOADING WAGE DETAILS REGARDING PENSION ON HIGHER WAGES

The Ministry of Labour and Employment in a press release dated January 03, 2024 has announced that EPFO has extended the time period for uploading wage details of applicant pensioners / members from December 31, 2023 to May 31, 2024. The period was extended because more than 3.6 Lakh applications for validation of option / joint options are still pending with the employers for processing.

ESIC UPDATES STATE WISE LIST OF NOTIFIED/NON-NOTIFIED DISTRICTS.

Employees’ State Insurance Corporation (“ESIC”) in a circular bearing no. N-15015/1/2023-P&D dated January 17, 2024, released updated list of notified districts of ESIC scheme as of January 11, 2024. The total number of States/Union Territories (UT) whose entire area is notified is 17 and where it is partially notified is 19. The number of fully notified districts is 556, partially notified districts are 105 and non-notified districts are 117. Annexure-A of the circular details the names of the districts which have been fully notified, partially notified and non-notified districts.

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.

KEY CONTACTS



Jidesh Kumar
Managing Partner
jjidesh@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