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**EMPLOYMENT LAW  
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## LABOUR & EMPLOYMENT BYTES

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### **DENYING BENEFITS TO CONSTRUCTION WORKERS FOR NON-PAYMENT OF REGISTRATION RENEWAL CONTRIBUTIONS IS INCORRECT: DELHI HIGH COURT**

The Delhi High Court in WP (C) 2130/2024 recently delivered a significant ruling regarding the entitlement of benefits to construction workers enrolled with the Delhi Building & Other Construction Workers Welfare Board. The Court declared that denying benefits to workers who fail to renew their registration and pay contributions after the registration validity ends is incorrect. The Court further stated that any unpaid contributions should be adjusted against the benefits due to the workers. This decision came in response to a PIL filed by the National Campaign Committee for Central Legislation on Construction Labour,

challenging the Board's methodology for categorizing workers' registration status under the Building and Other Construction Workers Act, 1996. The Court emphasized that the Act aims to ensure construction workers' welfare, safety, health, and welfare measures. It highlighted that any interpretation leading to the denial of benefits contradicts the legislative objective and established legal principles. However, the Court acknowledged the requirement for workers to be engaged in construction work for at least ninety days a year to qualify for payment of benefits under the said Act. Consequently, the Court directed the Board to



reconsider all rejected or cancelled applications for benefits promptly, adhering to the interpretation of Section 17 of the Act.

### **PREGNANT WOMAN'S RIGHT TO JOIN SERVICE UPHELD: UTTARAKHAND HIGH COURT**

The Uttarakhand High Court in Writ Petition (S/S) No. 241 of 2024, has issued a significant ruling stating that a woman cannot be denied joining in service merely because she is pregnant, providing relief to a 13-week pregnant woman who was denied joining as a Nursing Officer. After being selected, the petitioner was issued an appointment letter but denied joining on the grounds of temporary unfitness as per the medical fitness certificate. The Court observed that the denial based on pregnancy amounted to gender bias and violated constitutional rights. The Court noted that a woman joining the service and later becoming pregnant would be entitled to maternity leave, questioning the logic behind denying joining due to pregnancy and directed the authorities to allow the petitioner to join immediately, quashing the impugned order.

### **PERSONS WITH DISABILITIES ARE NOT DISABLED BUT DIFFERENTLY ABLED DELHI HIGH COURT**

The Delhi High Court, emphasizing equality and inclusivity, stated that individuals recognized under the Rights of Persons with Disabilities (RPwD) Act, 2016, should be referred to as "differently abled" rather than "disabled" in W.P.(C) 75/2024. It highlighted that the RPWD Act aims to neutralize disabilities so that individuals can stand on equal footing. The Court's decision underscores the importance of integrating differently abled individuals into mainstream society and ensuring equal opportunities for all.

### **CONTRACTUAL EMPLOYEES CANNOT BE DENIED MATERNITY LEAVE: CALCUTTA HIGH COURT**

The Calcutta High Court in WPA 29978 of 2013 with CAN 4 of 2020 (Old CAN 982 of 2020), recently ruled that differentiating between contractual and permanent employees regarding maternity leave would amount to discrimination, potentially endangering both the mother and fetus. The case involved a petitioner, employed as an Executive Intern at the Reserve Bank of India (RBI)

on a contractual basis, who was refused maternity leave. The petitioner argued that the Maternity Benefits Act of 1961 superseded her employment contract, and RBI, an employer of more than ten people, was subject to the provisions of the said Act. It further observed that the RBI fell under the Shops & Establishments Act and observed that denying maternity benefits to the petitioner created discrimination and violated Article 14. The Court emphasized the importance of maternity benefits for the well-being of both mother and child, ruling in favour of the petitioner and directing the RBI to provide compensation in the form of leave with pay for the denied leave period.

### **TERMINATING WOMAN OFFICER SOLELY ON THE GROUND OF MARRIAGE IS MANIFESTLY ARBITRARY: SUPREME COURT**

In Civil Appeal No. 1990 of 2019, the Supreme Court denounced the termination of a woman nursing officer from the Military Nursing Service (MNS) solely on the grounds of marriage as a blatant case of gender discrimination and inequality. The petitioner, a nursing officer commissioned to Lieutenant in the MNS, was released from service after marrying an Army officer. The termination order, issued without notice or opportunity to defend, cited marriage as the reason, as per Army Instruction No. 6 of 1977. However, the Supreme Court found such rules applicable only to women nursing officers as manifestly arbitrary and violative of fundamental rights.

### **THERE SHALL BE NO LETHARGIC APPROACH IN PAYMENT OF REINSTATED EMPLOYEE'S WAGES: RAJASTHAN HIGH COURT**

The Rajasthan High Court in S.B. Civil Writ Petition No. 5408/2023, has reprimanded the state's lethargic and negligent approach to implementing a Labour Court's award in 2020, ordering the Chief Secretary of the Government to appear before the Court the following day. Despite the matter attaining finality in 2022 with the dismissal of the respondent State's special leave petition, no substantial measures were taken to comply with the labour court's award upheld by the Supreme Court. The Court deemed the situation as one necessitating judicial intervention and instructed the



Chief Secretary to appear physically or virtually on the next hearing date. The petitioner, an employee who was unjustly terminated in 2015, sought reinstatement and payment of back wages, as directed by the Labour Court in 2020.

### **DISCIPLINARY PROCEEDINGS AGAINST RETIRED EMPLOYEES NOT ALLOWED UNLESS EMPOWERED BY STATUTE: ALLAHABAD HIGH COURT**

The Allahabad High Court in WRIT - A No. - 4338 of 2019, has ruled that the employer cannot initiate or continue disciplinary proceedings against a retired employee unless specifically authorized by statute. The court emphasized that extended disciplinary jurisdiction over retired employees can only be exercised through statutory provisions, not otherwise. The High Court observed that disciplinary jurisdiction ceases upon an employee's retirement as per the general principle, and such jurisdiction can only be extended post-retirement if provided for in the statute governing the employee's service conditions. Since no such provision existed in the Corporation's Regulations, the Court quashed the orders imposing punishment and rejecting the petitioner's appeal.

### **EMPLOYER LIABLE TO PAY WAGES IF CONTRACTOR FAILS: JAMMU & KASHMIR COURT**

The Jammu, Kashmir, and Ladakh High Court held in CM(M) no.223/2022 c/w CM(M) no.224/2022 that the employer must ensure payment of all wages required under the Act, even if a contractor or designated person fails to do so. The case involved challenge to Labour Court awards directing government departments to pay workers directly despite payments initially being routed through a contractor. The Court dismissed the petitions, affirming the Labour Court's orders and highlighting the employer's obligation under Section 3(2) of the Payment of Wages Act, 1936 to ensure wage payment.

### **EXGRATIA PAYMENT GRANTED TO THE WIFE OF A DECEASED EXECUTIVE ENGINEER DURING COVID: RAJASTHAN HIGH COURT**

The Rajasthan High Court in Civil Writ Petition No. 7194/2022 directed Jodhpur Vidyut Vitran Nigam (JdVVNL) Ltd to disburse an ex-gratia amount of Rs 70 Lakhs to the dependent of an executive engineer who died from Covid-19 while on duty. The Court emphasized the significant role played by the deceased engineer in ensuring uninterrupted electricity supply to Covid Care Centres during the pandemic. It noted that the Finance Department of Rajasthan had proposed Rs 50 Lakhs as ex-gratia to dependents of those who died while on duty fighting COVID-19. JdVVNL adopted and approved this proposal, adding it to existing pension regulations. The Court observed that the deceased engineer contracted the virus while discharging his duties, as acknowledged by the supervising Chief Engineer. Despite this, JdVVNL rejected the wife's claim for the ex-gratia amount, citing a lack of conclusive proof. After reviewing relevant documents, including the RTPC test and death certificate, the Court concluded that the deceased fell within the category entitled to the additional ex-gratia amount. It quashed JdVVNL's order and directed payment of Rs 70 Lakhs to the deceased's wife. The Court has also mandated interest at 9% per annum if the amount is not paid in full within three months.

### **MINOR MISTAKES DUE TO CANDIDATE'S DISABILITY SHOULD NOT RESULT IN LOSS OF JOB OPPORTUNITY: BOMBAY HIGH COURT**

The Bombay High Court, in Writ Petition No. 10813 of 2023, emphasized that the refusal to rectify errors arising from a candidate's disability violates the principle of equality, and employers must ensure that such mistakes do not result in the loss of job opportunities. The High Court set aside the cancellation of the candidature of a 31-year-old, 100 per cent visually impaired woman, who mistakenly entered the wrong birth year in her application for a railway post. Despite passing the exam, her candidature was rejected during document verification. The Court stressed that visually impaired individuals may make errors due to their impairment or reliance on others, and such errors should not lead to discrimination. It emphasized that legislation for people with disabilities should be applied with sensitivity and flexibility, ensuring reasonable procedure accommodations. The Court highlighted the



mandate of the Rights of Persons with Disabilities Act, 2016, for equal opportunities and reasonable adjustments. The Court allowed the petitioner's writ petition, directing the Railway Recruitment Cell (RRC) to process her candidature within six weeks.

### **MINISTRY OF LABOUR AND EMPLOYMENT ISSUES ADVISORY FOR EMPLOYERS TO PROMOTE WOMEN WORKFORCE PARTICIPATION**

The advisory highlights various initiatives undertaken by the Government to increase women's participation in the workforce and address gender disparities, ultimately aiming to promote a diverse work environment. It also provides an overview of welfare, health, and safety measures prescribed for women employees under existing labour laws and forthcoming labour codes. Additionally, it outlines provisions related to wages, social security, working hours and dispute resolution, emphasizing the legislature's intent to create a secure and conducive workplace for women. It emphasizes that although the Government has taken various policy measures to support women in all aspects of work life, it is imperative that employers should also take the lead in implementation of such policies and programs in the right perspective to encourage women to join the workforce.

### **ITES AND FINANCIAL SERVICES EXEMPTED FROM SECTION 12 AND 14 OF GUJARAT SHOPS AND ESTABLISHMENTS (REGULATION OF EMPLOYMENT AND CONDITION OF SERVICES) ACT, 2019**

The Government of Gujarat, by exercising its powers under the Gujarat Shops and Establishments (Regulation of Employment and Condition of Services) Act, 2019, has issued Notification No. GHR/2024/19/LED/TGS/e-file/11/2023/2453/M.3 stating that establishments of IT related services, IT-enabled services, and financial services are exempted from the provisions of sections 12 (Fixing of hours of work) and 14 (Spread-over) of the aforementioned Act, subject to compliance with other requirements, for a period of two years from the date of issuance of the said notification in the official gazette.

### **EPFO IMPOSES RESTRICTIONS ON DEPOSITS AND CREDIT TRANSACTIONS IN PAYTM PAYMENT BANK ACCOUNTS**

The Employees Provident Fund Organisation (EPFO) has issued a circular dated February 8, 2024 bearing File No: BKG/1/2021-BKG/C-32521/23 regarding restrictions on deposits and credit transactions in Paytm Payment Bank Accounts. It has advised all field offices to refrain from accepting claims associated with bank accounts in Paytm Payment Bank Limited with effect from February 23, 2024. Further, it has directed that wide publicity should be initiated to raise awareness about this change. The direction has been issued in the light of a press release on March 11, 2022 issued by the Reserve Bank of India (RBI), exercising its authority under section 35A of the Banking Regulation Act, 1949, directing Paytm Payments Bank Ltd (PPBL) to cease onboarding new customers immediately. Earlier, the Ministry of Labour & Employment, Government of India had issued a circular dated November 1, 2023, regarding payment of EPF benefits to subscriber's payment bank accounts, including Paytm Bank Limited among the scheduled commercial payment banks for settling EPF payments by Para 72(e) of EPF provisions.

### **ESIC DIRECTS CONCERNED AUTHORITIES TO GUIDE INSURED WOMEN FOR SUBMISSION OF MATERNITY BENEFIT CLAIMS ON IP PORTAL**

In a memodated February 12, 2024 bearing No. R-14011/5/2023, addressed to all Regional and Deputy Regional Directors of the Regional Offices of the Employees' State Insurance Corporation, has brought attention to the difficulties faced by Insured Persons (IPs) in submitting maternity benefit claims online due to the absence of Universal Account Numbers (UANs). This issue was discussed in light of a previous communication dated September 22, 2022, which highlighted that IPs with UANs linked to the system could access maternity benefits through the IP Portal. Numerous representations indicated that IPs could not submit their benefit claims via the IP Portal in the absence of UANs. Following an examination at the headquarters level, it was noted that IPs could obtain their UANs, even if they were not covered under the Employees' Provident Fund Organization (EPFO), by



utilizing the unified portal. Employers were encouraged to seed the UANs for their respective employees. It was advised to guide IPs without UANs to approach Branch Offices to obtain their UANs and facilitate the submission of benefit claims online through the IP Portal. Additionally, emphasis was placed on ensuring that all cash benefit claims were processed exclusively online.

### **ESIC ISSUES CLARIFICATIONS ON SOP FOR REFERRAL OF PATIENTS FOR SECONDARY/SST TREATMENT**

The ESIC (Employees' State Insurance Corporation) has issued a directive dated February 19, 2024 to all concerned authorities in Delhi and Noida for removal of difficulties faced by serving employees in secondary/SST treatment. In reference to its previous letter dated April 28, 2023 regarding Standard Operating Procedure/instructions for referral of patients for secondary/SST treatment, ESIC clarified that these instructions do not apply to serving employees and their dependents covered under the ESIC Contributory Health Scheme. Therefore, all concerned parties are instructed to strictly adhere to the guidelines provided by ESIC when considering referrals of serving employees and their dependents within their respective jurisdictions.

### **GOVERNMENT OF INDIA INTRODUCES MATERNITY BENEFIT FOR WOMEN IN THE UNORGANISED SECTOR BILL, 2023**

The Maternity Benefit for Women in the Unorganized Sector Bill, 2023 (Bill No. LXIV of 2023) has been introduced in the Rajya Sabha on February 2nd, 2024. The Bill seeks to provide state-sponsored maternity benefits to women working in the unorganized sector by establishing a National Maternity Welfare Board, Maternity Benefit fund, etc., and for matters connected therewith and incidental thereto. It shall come into force on the appointed dates as notified by the Central Government. Some key features include:

1. Prohibition of employment during maternity: The Bill mandates that no woman can be engaged in any workplace during the six weeks following delivery,

miscarriage, or medical termination of pregnancy. Additionally, pregnant women cannot be required to perform arduous work that may jeopardize their health or pregnancy.

2. Right to payment of maternity benefit: The legislation ensures that every registered woman in the unorganized sector is entitled to maternity benefits from the appropriate Government. These benefits will be calculated based on the woman's average daily wage, with a minimum requirement of thirty work days in the twelve months preceding the expected delivery date.

3. Notice of claim for maternity benefit: Women are empowered to give written notice at designated facilities, such as hospitals or Anganwadi Centres, to claim maternity benefits. This notice shall include details of their absence from work and the period they intend to claim benefits.

4. Payment of maternity benefit in case of death: In the unfortunate event of a woman's death before receiving maternity benefits, the appropriate Government will ensure that the benefits are paid to her nominee or the caregiver of her child.

5. Crèche facility: The Bill mandates that every woman in the unorganized sector has the right to access common crèche facilities provided by the appropriate Government and municipality in the vicinity of her workplace.

6. Dismissal for absence during pregnancy: Employers are prohibited from dismissing or discharging women due to their absence during pregnancy. This provision safeguards women's employment rights during maternity leave.

7. Registration for maternity benefits: Women must register for availing benefits under the said Act. Upon registration, they will receive a unique Maternity Benefit Card, facilitating the process of accessing benefits.

8. National Maternity Benefit Welfare Board: The establishment of a National Maternity Benefit Welfare Board is proposed to manage the Maternity Benefit Fund and oversee the effective implementation of the Act. This Board will play a crucial role in collecting and



disbursing contributions and ensuring compliance with the Act's provisions.

9. Helpline, facilitation center, and awareness measures: To support women in accessing benefits, the Bill mandates the establishment of toll-free helplines, facilitation centres, and awareness campaigns to disseminate information and assist with registration.

10. Maternity Benefit Fund: A dedicated Fund will be set up for implementing the provisions of the Act.

### **GOA ENACTS GOA LABOUR WELFARE FUND (AMENDMENT) ACT, 2024**

The Legislative Assembly of Goa has enacted Goa Labour Welfare Fund (Amendment) Act, 2024 for amending the provisions of the Goa Labour Welfare Fund Act, 1986 (“Act”) vide notification dated March 1, 2024 bearing Reg. No. RNP/GOA/32/2024-2026. The provisions of the said amendment shall come into force with immediate effect. Section 5 of the Act has been amended to substitute “Commissioner, Labour” with the expression “Secretary to the Government in Labour Department.” Further, sub-section 1 to Section 20 of the Act shall be substituted to the effect that the Government shall appoint the Commissioner, Labour and Employment as the Secretary of the Board, who shall be the Chief Executive Officer of the Board.

### **EPFO CIRCULAR ON INDIA’S SSA WITH THE FEDERATIVE REPUBLIC OF BRAZIL**

The EPFO has issued a circular on February 13, 2024, in light of the enforcement of the Social Security Agreement (the “SSA”) between India and the Federative Republic of Brazil, effective January 1, 2024.

The EPFO, in its circular, stated that under the SSA, the employees of one country deputed by their employers to the other country on short-term assignments up to a period of 36 months are exempted from social security contributions in that country on the basis of a “certificate of coverage” (“COC”). In view of the same, the concerned employee, through his or her employer, may apply for COC at the concerned Regional Office,

EPFO. The Regional Offices are directed to ensure that on receipt of the application in all respects, necessary action is taken for issuing COC in accordance with the consolidated guidelines issued by the Head Office by letter No. IWU/7(15)2011/Gen(Software)/9209 dated August 13, 2013 and IWU/7(31)2017/Application for COC and COC Software dated November 20, 2018.

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