KING STUBB & KASIVA
ADVOCATES AND ATTORNEYS

EMPLOYMENT LAW UPDATES

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LABOUR & EMPLOYMENT BYTES

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SUPREME COURT UPHOLDS EMPLOYER'S AUTHORITY OVER EMPLOYMENT TERMS

[1] The respondent employee was appointed as the Regional Business Head (South) in 2009, thereafter he resigned in 2011. However, he filed a petition before the deputy labour commissioner alleging that his resignation was forced. The labour court in 2017 passed an award stating that the employee failed to prove that he was a 'workman' and was performing the role of a manager. The respondent filed a petition before the High Court which was partially allowed holding that he was a 'workman'. The company's appeal was dismissed by the Division Bench, which led them to approach the Supreme Court. The Supreme Court while deciding whether the respondent would or would not come within the definitional stipulation of a "workman" as laid out under Section 2(s) of the Industrial Disputes Act, 1947 ("ID Act") held that mere absence of power to appoint, dismiss or hold disciplinary inquiries against other employees, would not and could not be the sole criterion to determine such an issue.

The court further observed that a person, in the employment of any company, cannot dictate the terms of his employment to his employer. Only because things did not turn out the way the respondent wanted them to, or that his grievances were not adequately or appropriately addressed, cannot lead to the presumption that the resignation was forced upon him by the Company. Bearing due regard to the nature of duties performed by the respondent, the court held that it was satisfied that the same do not entail him being placed under the cover of Section 2(s), ID Act.

COMMUNICATION OF ACCEPTANCE OF RESIGNATION TO EMPLOYEE IS IMMATERIAL: SUPREME COURT

The Hon'ble Supreme Court in SLP (C) No. 21401 of 2022 decided on the requirement for communication of acceptance of a resignation letter. In the instant case, the appellant had sent his letter of resignation to his employer but soon after sending it, he withdrew his resignation and claimed that his termination was unjust. The appellant contended that since he didn't receive any formal acceptance of the resignation, the termination should be cancelled. The Supreme Court held that even if the acceptance of the resignation is not communicated to the employee, it is still

[1] Civil Appeal No. 5187 of 2023

considered accepted when the employer accepts it. The court referred to the Maharashtra Employees of Private Schools ("MEPS") (Conditions of Service) Regulation Act, 1977 and Rules framed thereunder applicable to the respondent employer and held that as this law does not specify how resignation should be accepted, non-communication of acceptance to the employee will not invalidate the termination of employment.

SUPREME COURT EMPHASISES ON GRANTING CHILD CARE LEAVE

In a Special Leave to Appeal (C) No. 16864/2021, the Supreme Court directed the Himachal Pradesh government to review its policies on Child Care Leaves (CCL) by constituting a committee headed by the Chief Secretary, State of Himachal Pradesh, and to reconsider the entire aspect of grant of CCL to mothers who are bringing up children with special needs. The court observed that the participation of women in the work force is not a matter of privilege, but a constitutional entitlement protected by Articles 14, 15 and 21 of the Constitution; besides Article 19(1)(g). The State as a model employer cannot be oblivious to the special concerns which arise in the case of women who are part of the work force. The provision of CCL to women subserves the significant constitutional object of ensuring that women are not deprived of their due participation as members of the work force.

THE KARNATAKA HIGH COURT STRUCK DOWN THE SPECIAL PROVISIONS FOR INTERNATIONAL WORKERS UNDER THE EPF ACT AS UNCONSTITUTIONAL

[2] The Central Government vide notification dated 01.01.2008 introduced para 83 under the Employees' Provident Fund Scheme, 1952 and Para 43A under the Employees' Pension Scheme, 1995 covering "international workers" as a special category of employees for the Employees' Provident Fund (EPF) coverage.

A petition challenging the said notification was filed before the Karnataka High Court and the High Court pronounced its judgement on April 25, 2024, stating that

(a) there is a discrimination between the Indian employees working in a non-SSA country (who are not international workers as per definition) and foreign employees from non-SSA working in India who are classified as international workers. There is no rational basis for this classification nor there is reciprocity that compels to classify foreign employees from non-SSA countries as international workers;

(b) introduction of special provisions for working journalists and cine workers under para 80 and 81 of the EPF Schemes cannot be equated with the special provisions for international workers, considering that the working journalists and cine workers undergo a lot of risk on duty;

(c) non-citizen employees working in India and employees who are citizens of India, when working in India, are equals, however, they are treated differently which violates Article 14 of the Constitution; and

(d) the classification made is unreasonable, does not have intelligence differentia and there is no presence of nexus between the object of the EPF Act and the basis of classification.

The High Court held that the special provision is arbitrarily and unreasonably enacted and violative of Article 14 of the Constitution, and consequently, all the orders passed thereof are unenforceable.

BOMBAY HIGH COURT REDUCES BACK WAGES TO 50% CITING THE FINANCIAL CONDITION OF THE EMPLOYER

In WP No. 2574 of 2017, the Respondent was an employee at Maharashtra State Road Transport Corporation ("MSRTC") working as a driver. The Respondent did not report to duty after his transfer which resulted in a charge sheet being filed against him for unauthorized absence. Subsequently, the Respondent was dismissed after an inquiry. The Respondent challenged the dismissal and the labour court awarded reinstatement with 25% backwages as MSRTC had failed to provide evidence during the

[2] WP No. 18486/2012 (L-PF)

disciplinary proceedings. The Respondent approached the Industrial Tribunal for an increase in backwages to 100% and the Industrial Tribunal awarded the same. The High Court in the appeal filed by MSRTC stated that the Respondent didn't follow the appropriate procedure to obtain sanctioned leave during his absence, even if there were valid reasons. The Court emphasized the financial strain on MSRTC due to increased back wages and its status as a government transport undertaking facing losses. Ultimately, the Industrial Court's order was set aside, and the High Court decided to award 50% back wages, considering the prolonged absence period.

KARNATAKA HIGH COURT HOLDS THAT PERSONS HOLDING MANAGERIAL OR SUPERVISORY ROLES ARE NOT 'WORKMEN' UNDER THE ID ACT

In W.P. No. 49982/2018, the applicant was working as an executive secretary but her employment was terminated so she raised a dispute in labour court. The point of contention was whether she would be classified as a 'workman' within the scope of Section 2(s) of the ID Act. The labour court observed that the applicant qualifies as workman pursuant to ID Act and the court directed the respondent to pay Rs 5,00,000/- as compensation and directed to reinstate her. The applicant filed a writ petition in the Hon'ble Karnataka High Court for claiming higher compensation and the respondent also filed a writ petition in the High Court against the ruling of the labour court. The High Court observed that from the appointment letter and the applicant's resume, it was evident that her responsibilities included assisting the Chairman, Managing Director and Director in their day-to-day tasks. The High Court observed that the applicant had an experience of 17 years in secretarial assistance before joining the respondent, which influenced her appointment. The High Court concluded that the duty of the applicant is more closely with that of a manager and is not within the scope of workman as per the provisions of ID Act. The respondent's writ petition was allowed, and the order passed by the labour court was set aside.

EMPLOYEES ARE ENTITLED TO ENQUIRY REPORTS EVEN IF IT IS NOT PROVIDED FOR IN THE RULES: JAMMU & KASHMIR HIGH COURT

The Hon'ble Jammu and Kashmir High Court in SWP No. 2900/2016 emphasized the importance of providing employees facing disciplinary actions with a copy of the enquiry report even if the rules governing disciplinary proceedings do not explicitly provide for the same. This ruling is in line with the previous Supreme Court judgement in the case of Union of India and others v Mohd Ramzan Khan1991 AIR 471, where it was established, that delinquent employees should have access to the report when the enquiry officer finds them guilty of charges. Further, it was observed that this principle applies to all types of employees whether in government, non-government, public, or private sectors, even if the disciplinary rules do not specifically mention it. The employee must receive the report of the enquiry to have the opportunity to respond before the Disciplinary Authority regardless of the potential punishment.

SUPERVISION OF ACTIVITIES OF CONTRACT WORKERS OR TRANSPORTERS DOES NOT RESULT IN CEASING OF SUPERVISORY CAPACITY OF THE EMPLOYEE: BOMBAY HIGH COURT

The Hon'ble Bombay High Court in Writ Petition No 2579/2017, stated that just because an employee supervises non-direct employees, it does not mean that he is not in a supervisory role. The Hon'ble High Court observed that the nature of the supervisor's duties takes prominence and not who he supervises. This ruling arose in the case where the petitioner, a senior sales executive challenged a decision of labour court which held that he is not an 'employee' as per Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 ("MRTU & PULP Act"). The High Court observed that petitioner was neither a 'workman' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 nor a 'sales promotion employee' within the meaning of Section 2(d) of the Sales Promotion Employees (Conditions of Service) Act, 1976. Therefore, the petitioner was not an 'employee' within the meaning of Section 3(5) of the MRTU & PULP Act and his complaint before the Labour Court was clearly not maintainable.

PUDUCHERRY ISSUES ADVISORY ON PREPARATORY MEASURES TO MINIMISE ADVERSE EFFECTS OF EXTREME HOT WEATHER

The Office of the Commissioner of Labour, Government of Puducherry has issued a circular dated April 16, 2024 No.: 2130/LAB/AIL/G/2024 to occupiers/employers/construction companies/industries for management and mitigation of adverse effects of extreme hot weather. Some of the crucial steps are as follows:

a) rescheduling of working hours for employees/workers in different sectors;

b) ensuring necessary arrangements for regulating piece rate and requirement/urgency for undertaking physical work during summer;

c) ensuring adequate drinking water facilities at workplaces;

d) ensuring provision of emergency ice packs and heat illness prevention material to construction workers;

e) coordinating with the competent authorities for regular health check-ups of the employees; and

f) adherence to health advisory issued by the Ministry of Health and Family Welfare for employers and workers such as cautioning workers to avoid direct sunlight, reminders to stay hydrated, scheduling strenuous outdoor jobs in cooler times of the day, distributing informational templates and organizing trainings, etc.

EPFO ENHANCES ELIGIBILITY LIMIT TO ONE LAKH FOR AUTO CLAIMS PROCESSING UNDER PARA 68J

EPFO has intimated all concerned stakeholders that the Competent Authority has approved the limit of auto claim settlements under para 68J (Advance from the fund for illness in certain cases) from INR 50,000/- to INR 1,00,000/- vide circular dated April 16, 2024 bearing No. WSU/E-13719/697. The same has also been deployed in the application software on April 10, 2024.

JHARKHAND AMENDS RULE 18 OF THE PAYMENT OF WAGES RULES, 1937

The Government of Jharkhand has issued a notification dated March 15, 2024 bearing File No. 02/Shrama.Ka. (PW Act)-01/2015 L&E 563 for amending Rule 18 of the Jharkhand Payment of Wages Rules, 1937. It shall come into force with immediate effect. Rules 18 has been amended to state that in respect of every factory in which fines/deductions have been imposed on wages during any calendar year for breach of contract or loss or damage, a return in Form IV shall be sent so as to reach the Inspector of Factories in case of factories and Labour Superintendent in case of other establishments in their respective jurisdictions not later than February 15, following the end of the calendar year.

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