



EMPLOYMENT LAW UPDATES

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FAILURE TO OBTAIN LICENSE BY CONTRACTOR DOES NOT CONFER EMPLOYMENT RIGHTS ON THE CONTRACT LABOUR AGAINST THE PRINCIPAL EMPLOYER

The petitioner workers claimed that they were directly employed by ONGC and later shifted to contract work through contractor continuing their work in ONGC. Their claim of direct employment was based on the fact that the contractor was unlicensed under the Contract Labour (Regulation & Abolition) Act, 1970 and argued that the shift from direct employment to contractor was a sham designed to hide their true employee-employer relation. The ONGC contended that the petitioners were always employed through contractor despite contractor obtaining license at a later date. The Guwahati High Court in this WP(C)/3871/2020 observed that no evidences were adduced to establish existence of direct employee-employer relationship, the absence of contractor's license only attracts penal consequences and does not automatically render ONGC as employer.

THE DELHI HIGH COURT HOLDS THAT PERSONAL INFORMATION OF EMPLOYEES CANNOT BE DISCLOSED UNDER THE RTI ACT

The respondent filed a Right to Information ("RTI") application before the Public Information Officer ("PIO"), Directorate of Education, seeking information such as service book of employees, names of presently working employees, promotion orders, etc. from Ryan International School i.e. the petitioner. The PIO denied the disclosure on the grounds that the petitioner school does not fall within the purview of the RTI Act as it is not a public authority. An appeal was preferred by the respondent before the Central Information Commission ("CIC"), which directed the petitioner to provide the information. The petitioner school challenged the decision of CIC vide W.P.(C) 8984/2019. The petitioner contended that the information directed to be disclosed is the personal information of its employees, exempted from disclosure under the RTI Act. The court allowed the petition and held that the information sought pertains to sensitive personal information and the order of CIC is unsustainable and accordingly set aside.



THE MADHYA PRADESH HIGH COURT REITERATES RECOVERY OF EXCESS PAYMENT IS IMPERMISSIBLE

The petitioner vide Writ Petition no. 1603 of 2016 challenged the recovery order issued by the Public Health and Welfare Department i.e. employer on account of wrong fixation of her pay. The petitioner argued that the fixation of pay was improper due to the fault of the employer and recovery from retired government employee cannot be made unless the fixation of pay is a result of any misrepresentation or fault of an employee. The Madhya Pradesh High Court relying on various decisions of the Supreme Court quashed the recovery order and directed employer to refund the recovered amount stating that there was no misrepresentation or fraud by the petitioner hence the recovery could not be enforced.



THE PUNJAB AND HARYANA HIGH COURT REITERATE THE CIRCUMSTANCES FOR JUDICIAL REVIEW OF DISCIPLINARY PROCEEDINGS

The petitioner challenged the dismissal order issued to him by his employer for the acts of misconduct committed by him. He contended punishment to be disproportionate and further prayed for an alternate remedy of compulsory retirement. It was argued by the counsel for the petitioner that, the petitioner was dismissed following disciplinary proceedings on a minor charge of speaking loudly to a superior officer. The court observed that petitioner was subjected to 52

disciplinary proceedings including multiple instances of embezzlement, misbehavior, etc. Repeated violations suggest a pattern of behavior that posed a nuisance to the employer. Further, relying on the decision of Supreme Court in U.O.I v. P. Gunasekaran (2015) wherein the apex court had laid down that High Court cannot reappreciate the evidence or question the proportionality of punishment unless it is so disproportionate that it shocks the conscience of the Court. Considering the evidence on record the court in this CWP -14078-2000 (O & M) held that the dismissal was justified based on the substantial evidence of repeated misconduct.

RESIGNATION CANNOT BE ACCEPTED LATER IF PREVIOUSLY TURNED DOWN DUE TO INCOMPLETE FORMALITIES

The brief facts of the case involve that the respondent tendered his resignation without fulfilling the condition of depositing 3 months' salary and specifying a date in the resignation. Due to the said shortfalls, resignation of the respondent was denied. Later, the employer accepted the resignation regardless of the fact that respondent sought to withdraw the resignation. The Chhattisgarh High Court opined that the resignation must comply with all prescribed conditions before it can be validly accepted. Since the resignation was rejected for non-compliance, the burden shifted on the employer to ensure all conditions were met before accepting the resignation. Considering the procedural lapses the court in this WA No. 655 of 2024 held resignation to be invalid.

MADRAS HIGH COURT OBSERVES MISCONDUCT MUST BE ESTABLISHED WITH CONCRETE PROOF

A workman was terminated on the charges of serious misconduct of theft of food grains, sugar, fabricating false account and generating bogus bills. An FIR was also lodged against the workman under section 457 and 380 of IPC. Later he was acquitted by the criminal court pursuant to which the workman challenged the disciplinary proceedings before the Labour Court. The Labour Court upon reappreciation of evidence found



that the charge of theft cannot be proved merely on the basis of the letter of inspector of police; additionally, no stock records were presented before the Labour Court and it was accepted by the management witness that the charge of deficit stock cannot be proved unless stock registers are produced, further the charges of bogus bill was found unsubstantiated. Based on the findings, Labour Court invalidated the disciplinary proceedings. The management challenged the order of the Labour Court before Single Judge bench and the Single Judge bench also arrived at similar conclusion. The management further appealed before the division bench vide W.A. No. 1402 of 2024 and C.M.P. No. 10142 of 2024, wherein the Division Bench found the order of Labour Court to be valid and dismissed the appeal.

**ONCE THE WORKMAN CLAIMS
CONTINUOUS EMPLOYMENT, BURDEN
SHIFTS TO THE EMPLOYER TO DISPROVE
THE SAME**

The present Misc. Petition No. 6329 of 2022 was preferred by the workman challenging the validity of an award passed by Labour Court wherein his claim for retrenchment compensation was denied on the ground that no documentary evidence was provided, proving his continuous employment for 240 days in the preceding calendar year. It was argued by the workman that the Labour court has erroneously shifted burden of proof onto the workman to establish continuous service. The Madhya Pradesh High court observed that Labour court had erred by placing burden of proof on the workman. Once the workman deposes that he has completed 240 days of service, the burden is on the employer to disprove the same. The respondent employer failed to present any document disproving the claim of the workman and the oral testamentary of the respondent stating no availability of records for evidence were held insufficient to rebut the workman's evidence and the court ordered reinstatement of workman with back wages and consequential benefits.

**THE EMPLOYEES PROVIDENT FUND ORGANIZATION
ISSUES OFFICE ORDER FOR RATIONALIZATION OF
REGIONAL OFFICES UNDER BENGALURU ZONE
ALONG WITH OPENING OF TWO NEW OFFICES**

The Employees Provident Fund Organization vide

Office Order HRD/50/2023/Rationalizationofbigoffices/Bengaluru/1129 dated October 25, 2024 ("Order") has accorded approval for rationalization of big regional offices as per the criteria mentioned in para 8 and para 9 of the Agenda item no. 10 placed before 103rd EC meeting dated October 19, 2024.

As per the approved basic principles/norms, redistribution of the workload would be done among the existing regional offices sharing common jurisdiction or to other regional offices with geographically contiguous jurisdiction. Further, approval for two new regional offices in Bengaluru.

The redistribution of officers and employees among the regional offices is to be done in proportion to the workload in such a manner that total sanctioned strength remains the same for now. The list of regional offices, their jurisdictions, pin code distribution, etc. are attached in the annexures to the order.

**ESIC HAS ISSUED DIRECTIVES FOR URGENT
IMPLEMENTATION OF AADHAR SEEDING FOR
INSURED PERSONS (IP), ESIC EMPLOYEES AND
PENSIONERS**

Based on the observation of drastic and unacceptable decline in daily Aadhar seeding count across all regional offices and sub-regional offices, the Insurance Commissioner (ICT), the Employees State Insurance Corporation (ESIC) has issued direction in file no. I-21013/1/2022-ICT-Part(1) dated October 21, 2024, directing concerned offices to take immediate corrective actions in this regard.

ESIC HQ has devised the following provisions to address the issue:

1. Aadhar seeding through IP portal.
2. Aadhar seeding through employer's portal. The employers are empowered to generate new insurance numbers for employees using Aadhar through OTP or biometric verification.
3. Facility of bulk Aadhar seeding for employers
4. Assistance from ESIC branches and facilities
5. AAA+ mobile app – Convenient Aadhar seeding through OTP or face identification.



THE ADDITIONAL CENTRAL PROVIDENT FUND COMMISSIONER (COMPLIANCE) ISSUES GUIDELINES FOR PROCESSING OF DIGITAL SIGNATURE CERTIFICATE / E-SIGN REQUEST

The Employees Provident Fund organization (EPFO) in its File No. Compliance /SOP(DSC)/2022/5550 dated October 10, 2024, as a part of e-governance initiative, allowed the DSC/E-sign for the authentication of establishment related documents and submission of statutory returns related to ownership and to avoid any misuse. The EPFO has prescribed the following guidelines among others for the field offices before processing any request letter for the approval of DSC/E-sign:

1. The DSC/E-sign must be on the letterhead of the establishment.
2. Three specimen signatures of the proposed signatory must be placed on the request letter.
3. DSC/E-sign must be properly countersigned by the employer whose name should be legibly placed below the signature and the name should be confirmed from the employer details mentioned in Form 5A.
4. The request letter must be duly stamped with the seal of the employer.
5. An up-to-date Form 5A must be available in the establishment profile or else must accompany the DSC/E-sign request letter. In the absence of form 5A, request letters should be rejected.

THE GOVERNMENT OF KERALA INTRODUCES KERALA LABOUR WELFARE FUND (AMENDMENT) RULES, 2024

Labour and Skills department vide Notification No. G.O.(P)No.68/2024/LBR dated October 1, 2024 has amended the Kerala Welfare Fund Rules, 1977. The changes brought in through the amendment are- the inclusion of online payments, transfer of funds to the account of beneficiaries either through NEFT or through modern Banking Fund Transfer System and maintaining registers and filing forms manually or electronically.

THE GOVERNMENT OF HARYANA WITH THE AIM OF ENHANCING EASE OF DOING BUSINESS INTRODUCES ONLINE DASHBOARD TO PROVIDE CERTAIN INFORMATION

The Labour Department, Government of Haryana through Office order No. 3741 dated October 15, 2024, in compliance with reforms circulated by DPIIT aimed at enhancing Ease of Doing Business across country to accelerate growth of industrial sector, has published an online dashboard in public domain containing the following features:

1. The dashboard will display information and number of applications received, approved applications, statutory fee paid by applicant, etc.
2. The dashboard shall be updated on a real time basis or regularly (weekly/fortnightly/ monthly) with the last updated date along with time being displayed on the portal.
3. The dashboard shall have functionality where applicant can get information of day wise and application wise along with statutory fee paid by the applicant.

The abovementioned features shall be for the following services:

1. License for contractors under provision of the Contract Labour (Regulation & Abolition) Act, 1970 (“CLRA”)
2. Principal employer’s establishment under CLRA
3. Shops and Establishment Act
1. Building and Other Construction Workers Act
2. Establishment under Interstate Migrant Workmen (RE & CS) Act, 1979
3. Factories Act.

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