



LABOUR LAW MONTHLY UPDATE

JANUARY 2024

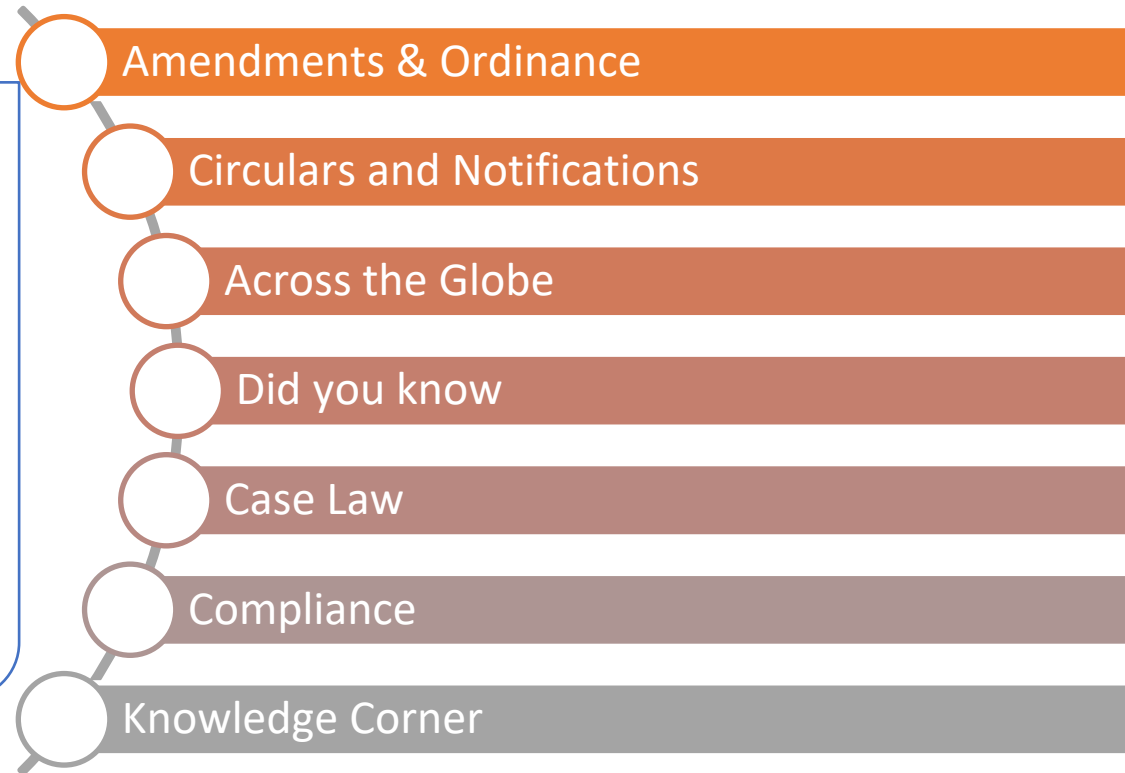


DISCLAIMER

- This Presentation is meant for informational purpose only and do not purport to be advice or opinion, legal or otherwise, whatsoever.
- This is not intended to advertise services or solicit work through this monthly update.



Let's
take
a
tour





AMENDMENTS AND ORDINANCE



Karnataka Compulsory Gratuity Insurance Rules, 2024

Notification Dated: 10.01.2024



Karnataka Compulsory Gratuity Insurance Rules, 2024

- Came into force from 10.01.2024.
- Compulsory insurance to cover liability to pay gratuity as per the provisions of the Act.
- Amounts to be recovered from the Insurance Funds by the Authority.
- Registration of establishments
- Continuation of approved gratuity fund.
- Incorporation of Gratuity Trust.



**Amendment to the Building and Other Construction Workers
(Regulation of Employment and Conditions of Service)
Karnataka Rules, 2006**

Notification Dated: 12.01.2024

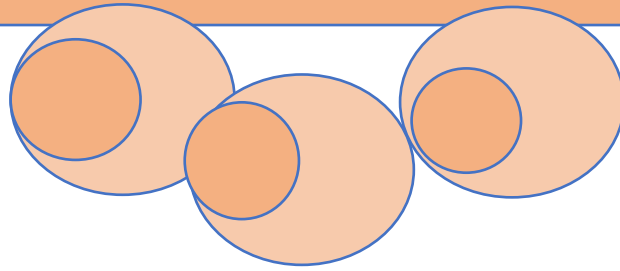


Amendment to the Building and Other Construction workers' (Regulation of Employment and Conditions of service) Karnataka Rules, 2006

- Recognition of Competent person.
- Competent person for Testing, examination or annealing and certification of lifting appliance, lifting gears, wire ropes or pressure plant or equipment.



Circulars and Notifications





Removal of Aadhaar from the list of acceptable documents

Circular dated: 16.01.2024



Removal of Aadhaar from the list of acceptable documents

- Use of Aadhar, as a Proof of date of birth to be deleted from the list of acceptable documents by the EPFO.
- Aadhar cannot be used as a proof for date of birth as emphasized by UIDAI, the competent authority.
- Catena of decisions pronounced by the Courts of Law not to consider the Aadhar Card as proof of date of birth of an individual, the latest being the decision in *State of Maharashtra Vs. Unique Identification Authority of India and Ors* dated 28.07.2023 relied by UIDAI while requesting the EPFO to remove Aadhar from the list of acceptable documents.



Seeding and Authentication of Aadhaar of Insured persons, ESIC employees and Pensioners

Notification dated: 08.01.2024



Seeding and Authentication of Aadhaar of Insured persons, ESIC employees and Pensioners

- Correspondence issued to all the offices of ESI Corporation enunciating the various facilities available for seeding and authentication of Aadhar of IPs, ESIC employees and Pensioners.
- Directed to formulate a team for supervising the work of all the officials involved in the Aadhar Seeding work.
- Directed to create awareness amongst the users so as to complete the procedure within the time stipulated.



Corrigendum by Government Of Meghalaya Department of Labour, Employment & Skill Development

Circular Dated: 10.01.2024



Corrigendum by Government Of Meghalaya Department of Labour, Employment & Skill Development

- Vide the Government Notification dated 19.07.2023, the shops registered under the Meghalaya Shops and Establishments Act in the State were permitted to keep the shops open all the 365 days of the year., i.e., upto 31.12.2023 subject to certain conditions to be followed by the establishments during the currency of the Notification.
- The error occurred in point (ix) pertaining to permission for female workers to work after 7 p.m. in the said notification, was rectified vide this corrigendum as follows;

"If female employee(s) is/are required to work after 7.00 P.M, her/their written consent in this regard shall be taken. Adequate safety and security arrangements of female employees shall be made during working hours and it shall be ensured that they safely reach home after their work is over. "



QUIZ!



In case of death of an employee arising out of and in the course of his employment, whether the payment of compensation by the employer directly to the legal representative of the deceased employee is legally valid?

- ☐ Yes
- ☐ No



ACROSS THE GLOBE



Australia introduces Right to Superannuation in the National Employment Standards (NES)

- The National Employment Standards (NES) includes a right to superannuation contributions for employees where unpaid or underpaid superannuation can be enforced under the Fair Work Act.
- Presently, workers who are not covered by a modern award or an enterprise agreement containing a term requiring an employer to make superannuation contributions have to rely on the Australian Taxation Office (ATO) to recover their lost superannuation entitlements. However, due to the inclusion of this new right in the NES, workers will now have the right to directly pursue superannuation owed to them.
- Employers may also face civil penalties if they do not comply with the entitlement. Penalties up to \$82,500 per breach apply to companies that are found to have contravened with the NES.
- Infact, the ATO's most recent estimate of unpaid superannuation indicates that workers have lost \$3.4 billion in unpaid superannuation benefits in the year 2019-2020.





Occupational Safety and Health Administration (OSHA) expands injury & illness submission requirements in United States

- Employers in high-hazard industries are required to submit information regarding Work-Related Injuries and Illnesses electronically to OSHA.
- Some of the data collected on the OSHA website will be published to allow employers, employees, potential employees, employee representatives, current and potential customers, researchers and the general public to use information about a company's workplace safety and health record to make informed decisions so as to reduce occupational injuries and illnesses.







- A United States-based startup has a leave policy which makes it mandatory for employees to take at least 20 days leave every year.



**RAJA Vs. HINDUSTAN UNILEVER LTD.,
2023 SCC OnLine MAD 3790**



Raja Vs. Hindustan Unilever Ltd.

- The workman was terminated by the management due to the use of abusive language and disruptive behaviors against the management.
- The workman raised an industrial dispute challenging the dismissal before the Labour Court which found the punishment of dismissal to be disproportionate and ordered reinstatement of the workman with 50% back wages.
- Feeling aggrieved by the order of the Labour Court, the management filed a writ petition before the Hon'ble Madras High Court whereby the Learned Single Judge allowed the writ petition and set aside the Labour Court's award as not being in line with the established legal principles.
- The workman preferred an appeal before the division bench of the Hon'ble Madras High Court by contending that his dismissal was a result of his trade union activities and that the enquiry conducted by the management was unfair.



Raja Vs. Hindustan Unilever Ltd.

- The management maintained that the appellant's behavior warranted termination, considering his past misconduct and the disruption caused. They argued against the Labour Court's interference with the punishment, emphasizing the gravity of the charges against the appellant.
- The Hon'ble Madras High Court, partly allowed the writ appeal granting reinstatement with continuity of service and all attendant benefits but without back wages. It also ruled that the period of non-service should be considered continuous for the purpose of terminal benefits and that the Appellant could be transferred to a different location upon reinstatement.

2023 SCC OnLine MAD 3790



**Dr. Kavitha v. The Secretary, Ministry of Health and
Family Welfare Department & Ors.
2023 LLR 1299**



Dr. Kavitha v. The Secretary, Ministry of Health and Family Welfare Department & Ors., 2023 LLR 1299

- The Petitioner was a temporary employee who applied for the maternity benefit and was allowed to have 11 days of maternity benefit since her temporary services would end within 11 days. The Petitioner challenged the action of the employer in Central Administrative Tribunal and the same was dismissed.
- Aggrieved, she challenged the same before the Hon'ble High Court which concluded in favour of the employer. Subsequently, she filed civil appeal challenging the orders of the Lower Courts.
- The Petitioner contended that once she fulfills the pre-requisite for availing maternity benefits, as contemplated in Section 5(2) of the Maternity Benefit Act, even as a contractual employee she would be entitled to full benefits as envisaged in the Act.



Dr. Kavitha v. The Secretary, Ministry of Health and Family Welfare Department & Ors., 2023 LLR 1299

- The Hon'ble Apex Court on perusal of the provisions of the Maternity Benefit Act, 1961 held the following:
 - Employees who fulfil the entitlement criteria envisaged under Section 5(2) of the Maternity Benefit Act, 1961 would be eligible for full maternity benefits even if such benefits exceed the duration of contract.
 - The Maternity Benefit Act, 1961 not only provides benefits to those who are regular employees but also to those engaged on casual basis or on muster roll on daily-wage basis and to contractual employees.
 - Proviso to Section 5(3) of the said Act makes benefits applicable even in a case where the employee dies after delivery of child, for the entire period.
 - Section 27 of the said Act overrides any agreement or contract of service that is found to be inconsistent with the Act.



LexPOSH



LexPOSH

**Banani Chattopadhyay
Vs.
Union Of India & Ors,
2022 SCC OnLine Cal 3592
Dated: 11.11.2022**



Banani Chattopadhyay Vs. Union Of India & Ors, 2022 SCC OnLine Cal 3592

- The Writ Petitioner was a Deputy Manager and was posted at its corporate office. Following a decision of the cabinet to close down the company, a voluntary retirement scheme was floated and the Writ Petitioner applied under said scheme and was allowed to retire from service on 31.01.2017.
- Thereafter, she was engaged on a temporary basis against consolidated consultancy fees from time to time and was ultimately released from her temporary engagement as Advisor on 30.04.2018. Immediately, thereafter she lodged a complaint to the Department of Heavy Industries (DHI) and before other authorities vide a letter dated 09.05.2018, stating that she had been subjected to sexual harassment by Respondent No. 9 since the beginning of the last quarter of 2016.
- It was categorically stated in the said letter that there is no Internal Committee (ICC) where she can lodge a complaint and therefore requested the authorities to investigate her complaint through a committee consisting of neutral members as per law. DHI forwarded the complaint to the employer and the employer constituted a committee as per the POSH Act.



Banani Chattopadhyay Vs. Union Of India & Ors, 2022 SCC OnLine Cal 3592

- IC submitted its report holding that the allegation made against the Respondent No. 9 has not been proved and therefore no action is required to be initiated against Respondent No. 9.
- The Petitioner contended that the IC was not constituted in accordance with the provisions of the POSH Act and that the internal members of the ICC had to report to Respondent No. 9 as he was the head of the Company and the external members were also influenced by the said Respondent. Thus, owing to the element of bias, the inquiry was vitiated as the members of the IC cannot be said to be impartial.
- The Petitioner's counsel referred to the judgment of Nagaram Balakrishna vs. State of AP in support of his contention that if the complaint is against the employer, such complaint is to be referred to the LC. The principal argument of the Petitioner's counsel was that IC lacks jurisdiction to inquire into the complaint of the writ petitioner as the person against whom such complaint was made was the employer himself.

Banani Chattopadhyay Vs. Union Of India & Ors

2022 SCC OnLine Cal 3592



LexPOSH

The Court held that:

- The Board of Directors are responsible for the formulation and administration of policies for an organization. The Chairman cum Managing Director is answerable to the Board of Directors. Therefore, this Court is of the considered view that the Board of Directors, being the ultimate authority, the Board was the employer as defined under Section 2(g) of the 2013 Act, and that the Respondent no. 9 cannot be said to be the employer for the purpose of this Act and concluded that the IC was constituted in accordance with the provisions of the POSH Act 2013.
- Further as the writ petitioner had neither produced any other witness nor adduce any evidence to prove her allegations.
- The Court hence concluded that the IC cannot be faulted for arriving at a conclusion that the allegations against the Respondent no. 9 were not proved.



Banani Chattopadhyay Vs. Union Of India & Ors, 2022 SCC OnLine Cal 3592

- The contention of the Petitioner is that the alleged incidents started since the beginning of the last quarter of 2016. Thereafter, the petitioner's prayer for Voluntary Retirement was accepted and she was allowed to retire on 31.01.2017. She subsequently accepted the temporary assignments offered by the employer which were for a specific purpose. After the Petitioner was released from such temporary assignment on 30.04.2018, the complaint was lodged on 09.05.2018. The delay in filing the complaint, however, remains unexplained. The aforesaid events coupled with the fact that the writ petitioner was only interested in challenging the authority of IC on frivolous grounds rather than making any attempt to prove her allegations the Court opined that the veracity of such allegations were in doubt.
- The appointment of the Petitioner after she was granted voluntary retirement was purely on temporary basis and the company released her from such temporary assignment on the ground that her service is no longer required by the company.
- A Writ of mandamus cannot be issued under such circumstances directing the employer to reinstate her to the post of advisory assignment which was purely on temporary basis.



QUIZ!



In case of death of an employee arising out of and in the course of his employment, whether the payment of compensation by the employer directly to the legal representative of the deceased employee is legally valid?

☐ Yes

☐ No

Often employers are under an erroneous impression that the compensation can be paid directly to the legal heir. This is an incorrect understanding of law.



RETRENCHMENT UNDER THE INDUSTRIAL DISPUTES ACT, 1947



SECTION 2(OO) OF THE INDUSTRIAL DISPUTES ACT, 1947



RETRENCHMENT

- 2 (oo) “retrenchment” means the **termination** by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but **does not include**—
 - (a) voluntary retirement of the workman; or
 - (b) Retirement after superannuation:
 - (bb) Non-renewal of the employment agreement
 - (c) Termination of employment due to an employee’s ill-health:



SECTION 25F

- Applicable to industries where not less than 50 workers are employed.

COMPLIANCE UNDER SECTION 25F

- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until
 - a notice to workman one month is issued before intending to retrench him with reasons for retrenchment or to be paid wages in lieu of notice.
 - Retrenchment compensation equivalent to 15 days average pay for every completed year of continuous service or any part thereof in excess of six months;
 - (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.



WHOSE TERMINATION CAN BE DEEMED AS RETRENCHMENT ?

- Termination of service of a probationer.
- Termination of services of daily rated employees.
- Termination of casual employees.
- Termination on the ground that appointment of the employees is illegal.



NATIONAL SMALL INDUSTRIES CORPORATION VS. LAKSHMINARAYANAN., **(2007)1 SCC 214**



- This is an appeal before the Apex Court by the Management challenging the orders of the Labour Court and both Benches of the High Court.
- The case of the employee herein was that he was engaged as a daily wager with the Management. While being so, he applied for the interview to the post of Apprenticeship Trainee, wherein he was interviewed and accordingly posted as an apprentice trainee for a period of two years was promised to be taken in the service permanently after the training. However, as he was terminated from service after the training, he raised the industrial dispute before the Labour Court which decided the case in favour of the employee and directed reinstatement of his service with attendant benefits.
- Aggrieved by the said award, Management preferred an appeal before the Single Bench of the High Court which directed the Management by way of an interim order, to deposit a sum of Rs.63,000/- before the Labour Court within 12 weeks and further directed that the said sum be invested in fixed deposit in a nationalized bank and the interest of the same be released to the respondent once in six months. There was a further direction upon the appellant to pay Rs.750/- per month to the respondent and to pay all the arrears within 12 weeks from the date of the order.



NATIONAL SMALL INDUSTRIES CORPORATION VS. LAKSHMINARAYANAN., (2007) 1 SCC 214

- The Management went on appeal before the Division Bench against the interim order of the Single Bench. In the meantime, the hearing before the Single Bench had concluded and the award by the Labour Court was confirmed by the Single Bench.
- Aggrieved, the Management filed a writ appeal which was also dismissed on the ground that though the employee was designated as an apprentice, in fact, he was not an apprentice but an employee doing full-time work in the establishment.
- The Apex Court dealt with the definition of 'workman' under the Industrial Disputes Act and 'apprentice' under the Apprentices Act while determining the issue in hand and accordingly held that, from the letters issued by the parties, it is amply clear that the employee was taken on rolls as an apprentice trainee and also the request by the employee to be absorbed on a permanent roll categorically acceding to the role as a trainee. Furthermore, the Court held that even if the employee is to be treated as a workman under the ID Act, as per the provisions of Section 2(o)(bb), the termination of service on account of expiry of tenure of the contractual period would not attract Section 25F.



DELHI CLOTH & GENERAL MILLS LTD VS SHAMBHU NATH MUKHERJEE & ORS., (1977) 4 SCC 415

- The Employee was working as a Motion-setter with the Management. When the post got abolished, he was given the job of a trainee on probation for the post of Assistant Line-Fixer (Assistant Grade 1). The management, having found him unsuitable for the job even after extending his probation period upto nine months, offered him the post of a fitter on the same payscale which he had received as a Motion-setter.
- The same was communicated to the employee vide a letter which stated that unless the offer was accepted within two days of receiving it, it would be presumed that the employee had rejected the offer and consequently be retrenched by the management. Though pleaded with the management to provide him another opportunity, without any response/ reply to his letter, his name was struck off from the rolls, without complying with the provisions of section 25F of the ID Act.
- Dispute between the parties arose, resulting in reference to the Labour Court which ultimately passed an Award in favour of the employee.



DELHI CLOTH & GENERAL MILLS LTD VS SHAMBHU NATH MUKHERJEE & ORS., (1977) 4 SCC 415

- The Management unsuccessfully challenged the Award before the Single Bench and the Division Bench of the High Court in appeal.

- The Apex Court held that:

(1) Merely questioning the vires of section 2A in the writ application does not dispense with the requirement of stating facts in order to support the legal ground. If the ground was taken by making the appropriate allegation that the dispute relating to the termination of service of the workman was not espoused by the union, it would have been necessary for the Labour Court to call for a report from the Administration, and it would have been possible for the workman to show that his case was, in fact, espoused by a substantial number of workmen or by a Union.



DELHI CLOTH & GENERAL MILLS LTD VS SHAMBHU NATH MUKHERJEE & ORS., (1977) 4 SCC 415

(2) No order, even under Section 27(c) of the Standing Orders can be passed against the workman who is not absent for "more than eight consecutive days." Striking off his name from the rolls by the management, is termination of his service and such termination of service is retrenchment within the meaning of Section 2(oo) of the ID Act. Any order of retrenchment, in violation of the mandatory provisions of Section 25F(a), the proviso apart, and (b), is invalid.

(3) The law has been laid down by this Court holding that Section 10 of the Act does not violate Article 14 of the Constitution.



K.V.ANIL MITHRA AND ANOTHER VS. SREE SANKARACHARYA UNIVERSITY OF SANSKRIT AND ANOTHER., 2021 SCC OnLine SC 982

- The facts of the case are as follows.
 - Non-teaching staff in the University were engaged based on the orders of the then Vice Chancellor. Subsequently, an order of de-regularisation was passed by the University, the validity of which was decided in favour of the University leaving open the question non-observance of the provisions of the ID Act to be decided in appropriate proceedings.
 - The Industrial Tribunal, considering the evidence and material on record, found that the termination of workmen from service was in violation of Section 25F of the Act.



**K.V.ANIL MITHRA AND ANOTHER VS. SREE
SANKARACHARYA UNIVERSITY OF SANSKRIT AND ANOTHER.,
2021 SCC OnLine SC 982**

- On an appeal before the High Court, it was held that if the appointments made are not in accordance with the procedure prescribed in law, protection cannot be sought by employees under the ID Act.
- The aforesaid view of the High Court was held as unsustainable in law. The condition precedent for retrenchment under the ID Act does not postulate the existence of a valid appointment to claim the benefits of retrenchment under the ID Act.
- The Apex Court, while allowing the appeals directed the University to pay compensation to the workmen by modifying the Award of the Industrial Tribunal in part.



COMPLIANCE





REPORTING PERIOD – JANUARY 2024

Act	Location/s	Due Date	Activity
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Feb	PF Remittance
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Feb	IW Returns
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	25-Feb	Monthly Returns-For Exempted Employer Under EDLI Scheme (FORM 7(IF))
Employees State Insurance Corporation Act	Pan India	15-Feb	ESIC Remittance
Payment of Bonus Act	Pan India	01-Feb	Form D
Professional Tax Act	Andhra Pradesh, Telangana, Madhya Pradesh	10-Feb	Professional Tax Remittance cum Return
	Gujarat	15-Feb	Professional Tax Remittance (Employer & Employee)
	Karnataka	20-Feb	Professional Tax Remittance cum Return
	West Bengal	21-Feb	Professional Tax Remittance cum Return
	Maharashtra, Orissa, Assam	29-Feb	Professional Tax Remittance cum Return
	Nagaland, Meghalaya, Mizoram, Sikkim, Manipur, Tripura	29-Feb	Professional Tax Remittance
	Kerala	29-Feb	Professional Tax Remittance (Employer & Employee)
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	05-Feb	WWF Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	15-Feb	WWF Return



**Let's Connect again at
On
4PM on 24th February, 2024**



*Thank
you*



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