

LABOUR LAW MONTHLY UPDATE

MARCH 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.

**SHOULD I PAY MY EMPLOYEES
IF THEY GO FOR VOTING ??**

**SHOULD I GIVE HOLIDAY FOR
EMPLOYEES WORKING IN
THE NIGHT SHIFT ?**



Let's
take
a
tour

Amendments & Ordinance

Circulars and Notifications

Across the Globe

Did you know

Case Law

Compliance

Knowledge Corner



AMENDMENTS AND ORDINANCE

Amendment of Notification under the Building and Other Construction Workers Welfare Cess Act, 1996

Notification Dated: 15.03.2024

Amendment of Notification under the Building and Other Construction Workers Welfare Cess Act, 1996

The Government of Madhya Pradesh has made an amendment to the notification dated 15.06.2016 under the Building and Other Construction Workers Welfare Cess Act, 1996 on 15.03.2024 stating that the total amount of exemption from the cost of construction shall not exceed **3%** of the total cost in technical sanction of that building and other construction project.

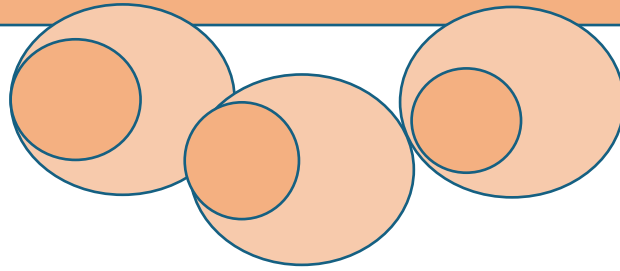
Amendment in Maharashtra Labour Fund Act 2024

Dated 18.03.2024

Maharashtra Labour Welfare Fund (Amendment) Act, 2024

Section 6 BB of the Maharashtra Labour Welfare Fund Act, 1953 has been amended in the Maharashtra Labour Welfare Fund (Amendment) Act, 2024 regarding the amount of contribution payable by the Employer and the Employee. The Amendment Act states that, in respect of an employee, whose names appear on the rolls on the 30th June and 31st December, the rate of contribution payable shall be **Rs.25/-** and the rate of contribution payable by the Employer shall be **thrice** the amount of contribution payable by an Employee.

Circulars and Notifications



Conditions for employing women workers in Night Shift

Notification Dated: 14.03.2024

Conditions for employing women workers in Night Shift

- The Government of **Haryana** vide notification dated 14.03.2024 had issued certain conditions to the factories which apply for exemption to employ women workers in the factory during night shift (07.00 PM to 06.00 AM). This exemption shall be valid for one year from the date of issuance of the notification.
- The Women workers shall be made to work in the night shifts with consent.
- They shall be provided with
 - transportation facilities with proper safety measures in the vehicle
 - installation of proper lighting and CCTV cameras in and around the workplace
 - the security guards and shift supervisors deputed for women during the night shifts shall be a women and shall be made to work with a batch of not less than ten.
- The occupier shall be responsible to protect the Women Workers from Sexual Harassment within the factory premises and constitute an Internal Committee in this regard and display the constitution of Internal Committee and Policy on prohibition of sexual harassment at conspicuous places at the workplace and workshops, orientation programs and awareness programs should be conducted at regular intervals in this regard.

Enforcement of certain provisions of the ESI Act in certain areas

Notification Dated: 08.04.2023

Enforcement of certain provisions of the ESI Act in certain areas

The following provisions of the Employees' State Insurance Act, 1948 shall be applicable to areas like Almora, Bageshwar, Chamoli, Champawat, Pithoragarh, Rudraprayag and Uttarkashi districts, in the State of **Uttarakhand** with effect from 01.04.2024.

- Sections 38 to 43;
- Sections 45A to 45H;
- Sections 46 to 73;
- Sections 74 and 75;
- Sub-section (2) to (4) of section 76; and
- Sections 82 and 83.

The Rights of Persons with Disabilities Act, 2016

Notification Dated: 11.03.2024

Authority to receive Applications under the Rights of Persons with Disabilities Act, 2016

The Government of Kerala vide notification dated 11.03.2024 has notified that the Joint Director of Social Justice Department as the authority to whom a person with disability shall apply for the high support requirement and the said receive applications and certify the needs of that high support requirement.

ESIC Circular on Cleansing/Updating Employers' Data

Circular Dated: 22.03.2024

ESIC Circular on Cleansing/Updating Employers' Data

The ESIC vide its circular dated 22.03.2024 had advised to update the status of the Employers' Data and had issued a list of Employers who partially contribute or never contribute and to take an action against those Employers in prescribed manner. It has been stated that these actions to be performed within two months of issuance of this circular and an action taken report shall be submitted to the ESIC.

The Manipur Labour Laws (Exemption from Renewal of Registration and License by Establishments) Act, 2024

Notification Dated: 15.03.2024

The Manipur Labour Laws (Exemption from Renewal of Registration and License by Establishments) Act, 2024

- The Manipur Labour Laws (Exemption from Renewal of Registration and License by Establishments) Act, 2024 has got the assent of the Governor of Manipur on 13.03.2024 and has been published in the Official Gazette on 15.03.2024.
- The Act provides provisions for an exemption to an Employer of an Establishment from renewal of registration of their establishment and renewal of their license under the Labour Laws.
- The Act requires the employers to provide a **self-certification** in the prescribed form given in the Act, within the month of January each year or within 30 days of completing the relevant operation instead of renewal of registration and license.
- The Employer who fails to furnish the said self-certification shall be punishable with a fine of Rs. 10,000/-.

QUIZ!

**Can an employee waive the right to receive minimum bonus under the
Payment of Bonus Act?**

- ☐ Yes
- ☐ No



ACROSS THE GLOBE



ACROSS THE GLOBE

NEW YORK RESTRICTS EMPLOYER ACCESS TO EMPLOYEE SOCIAL MEDIA ACCOUNTS

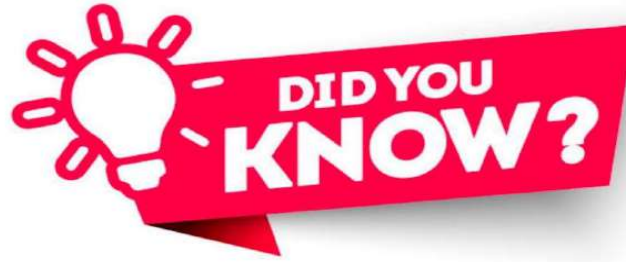
- Employers are prohibited from requesting or compelling employees or job applicants to disclose their usernames, passwords, or other login information for personal social media accounts.
- Employers cannot demand individuals to access their personal accounts in the employer's presence or reproduce any content from personal accounts. This legislation marks a significant shift in the employer-employee relationship regarding online privacy.
- This legislation distinguishes "personal accounts" exclusively used for personal purposes from that of "nonpersonal accounts" where it exempts access to "nonpersonal accounts" used for business purposes, provided that prior notice has been given to the employee regarding the employer's right to request such access.
- While the law restricts employer access to personal social media accounts, it allows for certain exemptions. Employers may access personal accounts under specific circumstances, such as compliance with legal obligations, accessing employer-provided business accounts, or restricting access to certain websites while using employer networks or devices.



FRENCH SUPREME COURT RULES NO DISCIPLINARY ACTION AGAINST EMPLOYEE FOR SENDING PRIVATE RACIST MESSAGES VIA PROFESSIONAL EMAIL SYSTEM

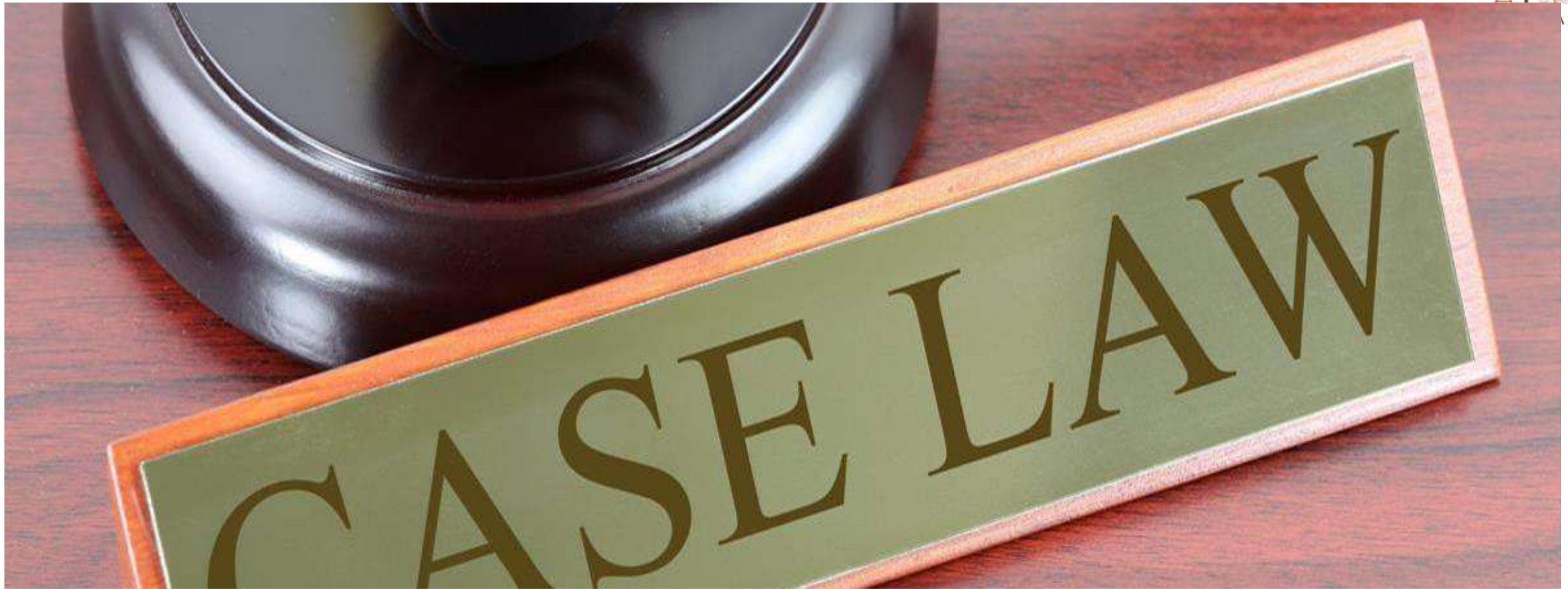
- One of the emails sent by an Employee to his colleagues came to the knowledge of the Employer which included a racist comment.
- The Employee was dismissed for gross misconduct and the termination was challenged by the Employee claiming violation of his private life by the Employer as the emails were titled as “personal and confidential”.
- The Employer contended that a reason relating to an employee’s personal life can justify the dismissal if it constitutes as a breach of an obligation arising from the employee’s employment contract. The Employer also claimed that the employee misused the professional email system for personal purposes.
- The French Supreme considered that:
 - The messages were part of private exchanges between two employees.
 - The messages were not intended to be made public.
 - The employer was aware of the messages due to an error caused in one of the recipients.
- Hence ruled that an Employer cannot terminate an employee who has sent racist and xenophobic messages to a colleague via the professional email system, if the messages were private.





- The Inter-State Migrant Workmen(Regulation of Employment & Conditions of Service)Act, 1979 mandates the Contractor to pay 50% of the monthly wages to the Migrant workmen as Displacement Allowance at the time of recruitment.
- It also requires to pay the fare travelling from home state to work state and consider the travel as on duty.
- In the event of contractor failing, the principal employer is responsible to pay the above and shall deduce the same from the contractor's bill.





B.R. FILMS VS K. RUKMINI
WP.NO.533 OF 2018
Dated:13.3.2024

B.R. Films VS K. Rukmini

WP.NO.533 OF 2018

Dated:13.3.2024

- The workmen joined the employer in 1991 as a Computer Data Entry Operator.
- The employer alleged that the employee had a history of late arrivals, early departures, and frequent absences without proper justification.
- Despite warnings and show cause notices, the employees attendance did not improve and this led to her termination in May 2005.
- The employee then raised an industrial dispute, leading to the Reference before the Labour Court.

CONTINUATION...

- The Labour Court's Award directed the reinstatement of the employee continuity in service and 50% backwages. The employer challenged this decision, arguing that the Model Standing Orders under the Industrial Employment (Standing Orders) Act of 1946 did not apply to their establishment and that they had followed proper procedures under the Industrial Disputes Act.
- The Hon'ble High court of Bombay analyzed the evidence and found that while the termination was for unauthorized absence, the employer had not conducted a proper domestic enquiry as required by law. The court also addressed the applicability of Model Standing Orders, ultimately upholding the Labour Court's decision regarding reinstatement and backwages but modifying the backwages to a lump-sum compensation of Rs. 5,36,870 in lieu of reinstatement and backwages.
- The Hon'ble High court of Bombay dismissed the employee's petition seeking 100% backwages, considering the **delay in filing** and the **compensation** already received by the respondent.

WP.NO.533 OF 2018

Dated:13.3.2024



**JYOTIRMAY RAY VS THE FIELD GENERAL MANAGER,
PUNJAB NATIONAL BANK & ORS.
CIVIL APPEAL NO. 6611 OF 2015**

JYOTIRMAY RAY VS THE FIELD GENERAL MANAGER, PUNJAB NATIONAL BANK & ORS. CIVIL APPEAL NO. 6611 OF 2015

- The Appellant had faced a departmental enquiry, which concluded with imposition of punishment of compulsory retirement and denial of various terminal benefits.
- They challenged this denial through a writ petition before the High Court.
- The writ petition challenged the denial of terminal benefits like leave encashment, employer's provident fund contribution, gratuity, and pension. The High court vide order dated 03.04.2012 allowed the said writ Petition in part and directed the Bank to release the employer's contribution of the provident fund as well as gratuity and leave encashment and denied the benefit of pension because the appellant was not an in service candidate when the scheme for shifting to the pension regime became operational.

CONTINUATION...

- The Bank preferred a Writ Appeal and the Division Bench allowed the same in part maintaining the order of Grant of leave encashment, but set aside the grant of provident fund(Bank's Contribution) and Gratuity on the pretext that by an act of appellant, loss has been caused to the Bank.
- The appellant's counsel argued that the bank's action was not justified under the relevant rules and regulations. They pointed out that no specific loss caused by the appellant was quantified in the chargesheet or enquiry report. Bank claimed a right to withhold its contribution to the provident fund based on alleged losses caused by the appellant. However, the court found that the allegations lacked specific details about the quantified loss caused by the appellant. The Board of Directors' unilateral resolution to withhold this contribution was deemed unjustified without proper evidence of loss.

CONTINUATION...

- The regulations and circulars related to gratuity were analysed. It was noted that gratuity can be forfeited only under specific circumstances such as causing damage or loss to the employer's property or involvement in riotous behaviour or criminal cases. Since these circumstances were not established against the appellant, and no opportunity for a hearing was provided before the decision to withhold gratuity, the court found the denial of gratuity unjustified.
- The Hon'ble Supreme Court had refers to legal precedents and regulations governing provident fund contributions and gratuity, Full Bench judgment of the Punjab & Haryana High Court regarding the need for specific evidence and an opportunity for a hearing before forfeiture of gratuity.
- The Hon'ble Supreme Court upheld the appellant's right to receive the provident fund, citing procedural lapses and lack of quantified loss as reasons and directed the Bank to release gratuity. It emphasized the principles of natural justice and the need for specific evidence before denying such benefits to an employee.

QUIZ!

**Can an employee waive her right of minimum bonus under the
Payment of Bonus Act?**

☐ Yes

☒ No



IMPORTANT CITATIONS OF THE SUPREME COURT ON RETRENCHMENT

RECAP

WHEN TERMINATION DOES NOT AMOUNT TO RETRENCHMENT

Gangadhar Pillai vs Siemens Ltd (2007)1 SCC 533

Gangadhar Pillai vs Siemens Ltd (2007)1 SCC 533

- The Appellant was appointed on temporary basis since 1978 based on the duration of the projects/ work assigned to the Respondent Management. Every time, upon completion of the project, his services used to be terminated and fresh appointments were given. In the year 2000, the services of the Appellant was terminated.
- Challenging the termination, the Appellant raised an industrial dispute before the Tribunal, stating that the breaks in the Appellant's appointments were artificial and the termination of services of the appellant was an unfair labour practice .
- The Tribunal decided the case in favour of the Management on the premise that the Appellant failed to prove the breaks were artificial, that the Appellant was not in employment at the time of raising the dispute to be entitled to the relief of reinstatement and other attendant benefits.

Gangadhar Pillai vs Siemens Ltd (2007)1 SCC 533

- The Appellant unsuccessfully challenged the award of the Tribunal by way of a writ petition as well as a writ appeal.
- The Apex Court observed and held as follows;
 - The period of employment of the Appellant was commensurate with the projects undertaken by the Respondent.
 - The Services which is put to an end upon completion of the projects would come under Section 2(oo)(b) of the ID Act and such would not amount to unlawful termination of services of an employee.
 - Merely because an employee completes 240 days of service with an employer, he would not be entitled to benefits of the Industrial Disputes Act.
- As the Respondent Management was willing to provide him services in the upcoming works, the same was recorded however, the appeal was dismissed as devoid of merits.

**Kalyani Sharp India Ltd
Vs
Labour Court No.1, Gwalior and Another.,
(2002) 9 SCC 655**

Kalyani Sharp India Ltd Vs Labour Court No.1, Gwalior and Another., (2002) 9 SCC 655

- The Respondent herein was employed by the Appellant Management as a probationer trainee for a period of one year from the date of joining. The Respondent, during his training failed to report for work which made the Management to issue a letter of termination from the services. Aggrieved by the said order, the Respondent raised an industrial dispute before the Labour Court which decided the case in favour of the Respondent by holding that as the Respondent has worked for 240 days in a year, the non-compliance of provisions of Section 25F is bad in law and hence directed the Management to reinstate him into service with back wages.
- Aggrieved by the same, the Management preferred a writ petition which was dismissed by observing that though a probationer, the Respondent is entitled to protection under Section 25 F of the Act.

Kalyani Sharp India Ltd Vs Labour Court No.1, Gwalior and Another., (2002) 9 SCC 655

- When the matter came up to the Apex Court subsequently, two objections were raised by the Respondent that the contention of the Petitioner that the termination of the Respondent from its services did not attract Section 25 F of the ID Act was not raised before the Labour Court and that neither any notice was issued nor any enquiry was conducted before terminating his services.
- The Apex Court held that the contention of the Appellant that the services did not attract Section 25F was based on documents produced before the Labour Court and hence the objection is not tenable.
- As regards the contention of issuance of notice before terminating the services, the Court was of the view that the terms of employment makes it amply clear that the services of the Respondent would be confirmed/ regularised only on completion of the probationary period to the satisfaction of the Appellant. As the same has not been fulfilled, there is no injustice caused on account of termination of services of the Respondent and hence the appeal was allowed.

**DISTRICT RURAL DEVELOPMENT AGENCY Vs.
MUKESHKUMAR GANDALAL JADAV., SLP(C) No.15480 of 2022**

DISTRICT RURAL DEVELOPMENT AGENCY

Vs. MUKESHKUMAR GANDALAL JADAV., SLP(C) No.15480 of 2022

- The Respondent herein, workman of the Management was terminated from the service in 2007. Question of non-compliance of Section 25F raised before the Labour Court. Labour Court passed an Award in favour of the Respondent employee.
- On appeal by the management before the Gujarat High Court, appeal was dismissed, reinstatement granted but without backwages on the assertion that no person would have remained idle for long time.
- Against the same, the present SLP was filed by the Management.
- The Apex Court held as follows;
 - By catena of decisions, law is settled that mere want of notice under Section 25F will not give the workman to claim reinstatement with backwages.
 - Impugned Order set aside by the Court, however granted compensation of Rs.5 lakhs in addition to 1 lakh already paid to the Respondent employee.

**M.D., KARNATAKA HANDLOOM DEVELOPMENT CORPORATION LTD.
VS.
MAHADEVA LAXMAN RAVAL.,
APPEAL NO. 3251 OF 2005**

**M.D., KARNATAKA HANDLOOM DEVELOPMENT CORPORATION LTD.
VS.
MAHADEVA LAXMAN RAVAL**

- Employee was appointed on a contract basis at specific intervals as a weaving trainer under a Scheme sponsored by the Corporation. Upon introduction of "Vishwa" programme by the State Government, the employee was not called for work. Aggrieved by the same, he raised an industrial dispute before the Labour Court.
- The Labour Court allowed the employee's claims and directed the Corporation to reinstate him into service without back wages. The Corporation unsuccessfully challenged the Award of the Labour Court before the High Court.
- Before the Supreme Court, the issue as to whether the employee engaged on a contract basis as a weaving trainer can be considered as a workman and thus be entitled to reliefs was considered.
- The Apex Court held that;
 - The Labour Court and the High Court is not justified in ordering reinstatement of the workman as the employee's engagement was seasonal and falls under sub clause (bb) of Section 2(oo) of the Act which does not provide for termination of such seasonal engagement based on contracts as retrenchment.
 - The Appeal was allowed, setting aside the decisions of the Courts below.

WHEN RETRENCHMENT OF A WORKMAN IS VALID

**Om Oil and Oil Seeds Exchange Ltd
Vs The Workmen.,
1966(II) LLJ 324**

Om Oil and Oil Seeds Exchange Ltd Vs The Workmen., 1966(II) LLJ 324

- The Appeal was preferred by the Management against the decision of the Labour Court directing to provide additional compensation to the workmen who were retrenched not on the basis of “first come last go” rule.
- The Appellant Management contended that the retrenchment of employees is not maintainable merely because few other junior employees were retained. It was the further contention of the Management that appropriate compensation was given to all the retrenched employees as per the provisions of Section 25 F of the ID Act and that the rule of first com last go is not immutable and may be departed by the Management for valid reasons.
- The Apex Court, considering the reasoning of the Tribunal held that when the procedure for retrenchment of employees has been duly complied with and the said decision has not been set aside by the Tribunal, it is incorrect to grant additional compensation to the retrenched employees and resultantly allowed the appeal.

WHEN RETRENCHMENT IS HELD TO BE ILLEGAL

**Mackinon Mackenzie and Company Ltd.
Vs.
Mackinnon Employees Union., (2015)4 SCC 544**

Mackinon Mackenzie and Company Ltd. Vs. Mackinnon Employees Union., (2015)4 SCC 544

- The Management was engaged in shipping business with various departments doing different activities. Out of 150 employees originally employed by the Management, notice retrenching services of 98 workmen was served. As per the Union espousing the case of the workmen, no seniority list was put up on the notice board though the said contention was denied by the Management. Question of unfair labour practice was also raised by the Union along with non-compliance of various other procedures as contemplated under the Act.
- The Industrial Court decided the case in favour of the workmen and set aside the notice of retrenchment served upon them. The Industrial Court further passed an interim order directing the Appellant-Company to cease and desist from the unfair labour practice, continue the employment of retrenched workmen in service and pay them full wages every month, to pay arrears of all such wages to the retrenched workmen from the date of alleged retrenchment till the date of the said award and to pay them future wages regularly from the date they are actually allowed or continued to work as per the award of the Industrial Court.

Mackinnon Mackenzie and Company Ltd. Vs. Mackinnon Employees Union., (2015)4 SCC 544

- Aggrieved by the award, the Appellant Management challenged the award before the Single Bench as well as the Division Bench, but was unsuccessful. Before the Apex Court, though elaborate arguments were made by the counsel for the Appellant by relying on various citations, the Apex Court negated the submissions made and held that non-compliance of the provisions of Section 25 G of the ID Act renders the retrenchment invalid and illegal. The Appeal was accordingly dismissed.



COMPLIANCE



REPORTING PERIOD - APRIL-2024

Act	State	Due Date	Activity
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Apr	PF Remittance
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	15-Apr	IW Returns
Employees Provident Fund & Miscellaneous Provisions Act	Pan India	25-Apr	Monthly Returns-For Exempted Employer Under EDLI Scheme (FORM 7(IF)
Employees State Insurance Corporation Act	Pan India	15-Apr	ESIC Remittance
Professional Tax Act	Andhra Pradesh	10-Apr	Professional Tax Remittance cum Return
	Telangana	10-Apr	Professional Tax Remittance cum Return
	Madhya Pradesh	10-Apr	Professional Tax Remittance
	Gujarat	15-Apr	Professional Tax Remittance
	Jharkhand	15-Apr	Professional Tax Remittance cum Return (15th of each Quarter (Apr, Jul, Oct, Jan)
	Karnataka	20-Apr	Professional Tax Remittance cum Return
	West Bengal	21-Apr	Professional Tax Remittance
	Maharashtra	30-Apr	Professional Tax Remittance cum Return
	Odisha	30-Apr	Professional Tax Remittance cum Return
	Assam	30-Apr	Professional Tax Remittance cum Return
	Nagaland	30-Apr	Professional Tax Remittance
	Meghalaya	30-Apr	Professional Tax Remittance
	Mizoram	30-Apr	Professional Tax Remittance
	Sikkim	30-Apr	Professional Tax Remittance
	Manipur	30-Apr	Professional Tax Remittance
	Tripura	30-Apr	Professional Tax Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	05-Apr	WWF Remittance
Kerala Shops & Commercialized Establishments Workers Welfare Fund Act	Kerala	15-Apr	WWF Return

**Let's Connect again at
On
4PM on 27th APRIL, 2024**



*Thank
you*



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