cyril amarchand mangaldas
ahead of the curve

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This issue of The *Employment Quarterly* covers key Central and State-level legislative updates, such as notification/circulars pertaining to the revision of rates at which damages may be recovered from employers for defaults in payment of provident fund contributions, conditions to remain open for 365 days in a year for shops and commercial establishments located in Rajasthan and the Union Territory of Chandigarh, extension of the exemption provided to startups and establishments in IT/ITeS and certain other sectors from the applicability of the Industrial Employment (Standing Orders) Act, 1946 in Karnataka, the proposed bill on welfare of the platform-based gig workers in Karnataka, extension of the exemption provided to IT/ITeS establishments under the Telangana Shops and Establishment Act, 1988, among others.

Besides legislative updates, this edition also delves into the key developments in labour laws brought forth by various judicial pronouncements. We have analysed key decisions of the Supreme Court and various High Courts in matters pertaining to when a resignation becomes effective, proportionality of disciplinary sanctions, unconstitutionality of the provisions relating to international workers under the provident fund and pension law, applicability of provisions on maternity benefits to private education institutions, and payment of gratuity in case of overseas transfer of employees, among others.

We hope you will find the above to be useful. Please feel free to send any feedback, suggestions or comments to cam.publications@cyrilshroff.com.

Regards,
Cyril Shroff

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LEGISLATIVE UPDATES

I. Key Central Legislative Updates

A. Revision of rates at which damages may be recovered from employers for defaults in payment of contributions under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act)

The Ministry of Labour and Employment has notified amendments to the Employees' Provident Funds Scheme, 1952 (**EPF Scheme**), Employees' Pension Scheme, 1995 (**EPS**) and the Employees' Deposit Linked Insurance Scheme, 1976 (**EDLI Scheme**) (collectively, **Schemes**) by way of notifications dated June 14, 2024. The purpose of these changes (collectively referred as **Amendments**) is to establish a new uniform rate at which damages may be recovered from employers in cases of defaults. The Amendments came into force from the date of their publication in the Official Gazette (i.e., June 14, 2024).

The abovementioned defaults pertain to: (a) payment of any contributions made under the Schemes; (b) transfer of accumulations that the employer is required to transfer under Section 15 (2) *(Special Provisions relating to Existing Provident Funds)* or Section 17 (5) *(Power to Exempt)* of the EPF Act; and (c) payment of any charges payable under any other provisions of the EPF Act, Schemes or under any of the conditions specified under Section 17 *(Power to Exempt)* of the EPF Act.

Accordingly, paragraph 32A (1) of the EPF Scheme has been modified, which now states that in cases of aforesaid defaults, damages recoverable from an employer will be at the rate of 1% of the arrear of contribution per month or part thereof. The new rate will apply regardless of the period of default. Prior to the Amendments, the rates for levy of damages in cases of defaults ranged from 5% to 25% of arrears per annum, depending upon the duration for which default subsists.

Similar changes have been introduced to paragraph 5 (1) of the EPS and paragraph 8A (1) of the EDLI Scheme *(which previously provided for a range of rates for levy of damages, similar to the EPF Scheme)* to stipulate a uniform rate for levy of damages irrespective of the duration of default.

II. Key State Legislative Updates

CHANDIGARH

A. The Government of Chandigarh permits shops and commercial establishments to operate 24*7 and employ women in night shifts

The Government of Chandigarh *vide* notification dated June 25, 2024, has exempted all shops and commercial establishments registered under the Punjab Shops and Commercial Establishments Act, 1958 as applicable to the Union Territory of Chandigarh (**Punjab Shops Act**) from the applicability of Section 9 *(Opening and Closing Hours)*, Section 10(1) *(Close Day)* and Section 30 *(Condition of Employment of Women)* of the Punjab Shops Act. The exemption came into force on the date of publication in Official Gazette (i.e., June 25, 2024) and shall remain in force for a period of 1 (one) year from the date of notification.

The notification permits all the shops and establishments located in the Union Territory of Chandigarh to remain open on all 365 (three hundred and sixty-five) days and operate 24 (twenty-four) hours subject to certain conditions *inter alia*:

i. The shops and commercial establishments must comply with the provisions of the Punjab Shops Act and other applicable labour laws.

ii. Every employee must be given 1 (one) day of paid leave per week and must also receive wages during national and festival holidays.

iii. No employee may be required to work more than 9 (nine) hours a day or 48 (forty-eight) hours in a week and must receive at least half an hour of rest after 5 (five) hours of continuous work.

iv. The total spread-over of an employee must not exceed 10 (ten) hours in a day including the interval for rest.

v. An employee's overtime cannot exceed 50 (fifty) hours in a quarter and the overtime wages would be twice the rate of his normal wages.

vi. The management, when keeping a shop or establishment open after 10 p.m. on any day, is required to ensure adequate safety and security for all employees and visitors.

vii. For safety purposes, the management must install CCTV cameras with minimum 15 (fifteen) days backup and an emergency alarm to counter any emergent situation.

viii. In case of female employees, the employer must ensure *inter alia*:

a) protection from sexual harassment at the workplace in terms of the judicial and legislative guidelines (including Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013);

b) a minimum of 5 (five) female employees must be employed during the night shift;

c) the management must provide adequate security and proper transport facility to female workers including female employees of contractors during the evening/night shifts;

d) no female employee can work after 8 p.m. unless she has given her consent in writing and the employer has made adequate safety and security arrangements. The employer must ensure that female employees reach their homes safely post the working hours;

e) female employees will be provided separate locker, security and rest rooms at the workplace;

f) the management is required to execute the Security and Transport Facility contract with a licensed security agency if the transport service is being provided by service providers;

g) the management must ensure that female employees board the vehicle in the presence of security guard on duty and the driver leaves the dropping point only after the female employee enters her residence;

h) the management will ensure that a boarding register or computerised record consisting of the necessary information, attendance register of the security guards and movement register are being maintained by the security in-charge, transport vehicle in-charge or the management (as the case may be);

i) the management must ensure that the vehicle does not have black or tinted glasses or curtains and its inside is clearly visible from all sides;

j) the management will ensure that emergency contact numbers are clearly displayed inside the vehicle; and no female employee shall be the first to be picked up and last to be dropped off by the driver;

k) self-defence workshop/training for female employees to be conducted annually; and

l) the management must ensure that no female employee is employed during the 6 (six) weeks following the day of her confinement or miscarriage.

In case of violation of the terms and conditions of the notification, the exemption, in respect of that establishment, shall be cancelled. However, this action will be taken only after giving the offending establishment adequate opportunity of being heard before the Competent Authority.

KARNATAKA

A. The Government of Karnataka exempts startups, establishments engaged in IT/ITeS and certain other sectors from the applicability of the Industrial Employment (Standing Orders) Act, 1946 (IESO Act)

In exercise of powers under Section 14 of the IESO Act, the Government of Karnataka, by way of a notification dated June 10, 2024, has exempted startups, establishments engaged in IT/ITeS, animation, gaming, computer graphics, telecom, BPO, KPO, and other knowledge-based sectors from the applicability of the provisions of the IESO Act for a further period of 5 (five) years from the date of publication of the notification. Previously, the Karnataka Government had twice exempted the above-mentioned establishments from the requirements of the IESO Act by way of notifications dated January 1, 2014 and May 25, 2019 for a period of 5 (five) years each.

The current exemption is subject to the following conditions:

i. constitution of an internal committee as per the Sexual Harassment of Women at Workplace (Prevention, Prohibition, and Redressal) Act, 2013;

ii. constitution of a grievance redressal committee consisting of equal number of persons representing employers and employees, to address any employee grievances and complaints;

iii. intimating the jurisdictional Deputy Labour Commissioner and Commissioner of Labour in Karnataka in relation to cases of disciplinary action like suspension, discharge, demotion, termination, dismissal, etc., of employees; and

iv. promptly and fully submitting to the jurisdictional Deputy Labour Commissioner and Commissioner of Labour in Karnataka any information sought in respect of the service conditions of employees, within the reasonable time frame fixed by the authority.

This notification also clarifies that when implemented, the Industrial Relations Code, 2020 will apply to all establishments across various sectors (including those mentioned in this notification).

B. Karnataka Government released the Karnataka Platform Based Gig Workers (Social Security and Welfare) Bill, 2024 inviting objections/suggestions from persons likely to be affected.

The Labour Department of the Government of Karnataka has released the Karnataka Platform Based Gig Workers (Social Security and Welfare) Bill, 2024 (**Bill**) vide public notice dated June 29, 2024, for public comments and objections, for a period of 10 (ten) working days from the date of publication in the labour department website. The Bill aims to inter alia protect the rights of platform-based gig workers by placing obligations on aggregators in relation to social security, occupational health and safety, transparency in automated monitoring and decision-making systems. The Bill shall be applicable to aggregators providing one or more services as specified in Schedule

I (such as ride sharing, food and grocery delivery, logistics, and e-market place) through gig workers and platforms as defined under the Bill. It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

Some of the key provisions of the Bill are as follows:

i. The Bill provides for the establishment of the "Karnataka Platform Based Gig Workers Welfare Board" (**Board**), which will implement and monitor general/sector-specific social security or other benefits notified by the State Government.

ii. The platform-based gig workers, after their onboarding to any platform, will have the right to be registered with the State Government irrespective of the duration of the work. They will also receive a unique ID along with the right to access general and specific social security benefits as well as tap into grievance redressal mechanism provided under the Bill.

iii. An aggregator is defined as *"a digital intermediary for a buyer of goods or user of a service to connect with the seller or the service provider, and includes any entity that coordinates with one or more aggregators for providing the services"* and is required to be registered with the Board within 60 (sixty) days of commencement of the Act.

iv. The aggregators are required to: (a) provide the database of all gig workers onboarded or registered with them to the Board within 60 (sixty) days from the date of commencement of this Act; (b) register the gig workers onboarded or registered with the aggregator after commencement of the Act, within 60 (sixty) days of being so onboarded; and (c) update the Board about any changes i.e., increase or decrease, in numbers of gig workers in the data provided to the Board.

v. The contracts between aggregators and the platform-based gig workers will follow both the provisions of the Bill and the State Government prescribed specific guidelines. The platform-based gig workers must be given 14 (fourteen)-day prior notice for changing the terms of the contract, who will have the option to terminate it without any adverse consequences on their existing entitlements under the previous contract.

vi. The platform-based gig workers shall have the right to refuse or reject, with reasonable cause, a specified number of gig work requests per week, in accordance with the contractual agreement executed with the aggregator, without any adverse consequences.

vii. Among other things, the aggregator must provide gig workers with a written notice of the main parameters for allocation/ assessment of work, grounds for denial of work, rating system, categorisation of workers, purposes for processing of available personal data of gig workers, the manner of deploying the automated monitoring and decision-making systems to get information of their working conditions such as fares, earnings, customer feedback and any other information as may be prescribed by the State Government.

viii. The contract between the aggregator and platform-based gig workers is required to contain an exhaustive list of grounds for termination of the contract by the aggregator or deactivation of the platform-based gig workers; and no gig worker can be terminated without giving valid reasons in

writing and without serving a 14 (fourteen)-day notice period.

ix. The aggregator is required to inform the reasons for payment deductions within the invoice raised by the platform-based gig workers for the work performed by them and the aggregator shall compensate them at least on a weekly basis.

x. The aggregator must ensure, as far as reasonably practicable, safe working environment that does not pose health risks for the workers and that the information on the grievance redressal mechanism and dispute resolution mechanism (as provided in this Bill) is easily available to the gig workers.

xi. The aggregator is required to provide a point of contact to each platform-based gig workers for all clarifications under the provisions of this Bill.

xii. The State Government will establish "The Karnataka Gig Worker's Social Security and Welfare Fund" (**Gig Worker Fund**) for the benefit of the registered platform-based gig workers and the "Platform Based Gig Workers Welfare Fee" will be charged and collected from the aggregator in the manner notified by the State Government and be deposited with the Gig Worker Fund.

xiii. All payments generated on platforms, payments made to gig workers and the welfare fee deducted must be recorded on the Central Transaction Information and Management System administered by the State Government.

xiv. A platform-based gig worker can file a petition before a grievance redressal officer as notified by the State Government or make a petition through the web portal in respect of any grievances arising out of the entitlements, payments and other benefits provided under the Act. An order passed by the grievance redressal officer can be appealed before an appellate authority prescribed by the state government within 90 (ninety) days from the date of order.

xv. Aggregators with more than 50 (fifty) gig workers registered on their platform are required to constitute an Internal Dispute Resolution Committee for the resolution of disputes specified in Schedule II and all disputes must be resolved within 30 (thirty) days of receipt of written complaint.

xvi. If an aggregator contravenes any provision of the Bill or rules / regulation / standards made thereunder, it will be liable for a fine ranging between INR 5000 (Indian Rupees Five Thousand) and INR 1,00,000 (Indian Rupees One Lakh). If the contravention continues, an additional penalty extending up to INR 5000 (Indian Rupees Five Thousand) for each day will be levied until such contravention continues.

xvii. Any offence punishable under this Bill can be compounded, either before or after institution of prosecution, by payment of a compounding amount, on an application made by the alleged offender. However, no compounding will be allowed where offence of the same nature has been committed by the same offender on more than 3 (three) occasions.

RAJASTHAN

A. The Government of Rajasthan permits shops and commercial establishments to be open 365 (three hundred sixty-five) days a year.

The April 15, 2024, notification of the Labour Department of the Government of Rajasthan has granted exemption to shops and commercial establishments registered under the Rajasthan Shops and Commercial Establishment Act, 1958 (**RSEA**), from the application of Section 12 (1) of the RSEA for 3 (three) years from the date of publication of this notification. Section 12 (1) of the RSEA *(Weekly Holidays)* mandates that shops and commercial establishments be kept closed for 1 (one) day per week.

The exemption is subject to certain conditions, including those provided under the orders issued by the Government of Rajasthan from time to time and inter alia those listed as follows:

i. All employees are to be provided with one weekly paid holiday, on a rotation basis.

ii. Employees will be required to work for a maximum of 9 (nine) hours a day and 48 (forty-eight) hours a week. If employees are required to work for more than the stipulated hours, a record must be maintained and employees paid overtime as per the RSEA.

iii. All employees are to be provided with appointment letters by the employer.

iv. Employees will continue to receive other benefits as per the RSEA.

v. Any violation of the conditions mentioned in this notification will result in automatic termination of the exemption, and the employer will be liable for penalties provided under the RSEA.

SIKKIM

A. The Draft Sikkim Occupational Safety, Health, and Working Conditions Rules, 2024 (Draft Sikkim OSH Rules) published

The Labour Department of the Government of Sikkim on April 25, 2024 has published the Draft Sikkim OSH Rules under Section 133 and 135 of the Occupational Safety, Health, and Working Conditions Code 2020 (**OSH Code**). The OSH Code aims to consolidate and amend laws regulating the occupational safety, health, and working conditions of persons employed in an establishment, which include *inter alia* the Factories Act, 1948, Contract Labour (Regulation and Abolition) Act, 1970, Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979, and the Building and Other Construction Workers (Regulation of Employment and Conditions of Service) Act, 1996.

It may be noted that the rules are still in the draft stage and will come into force only from the date of their final publication in the Official Gazette and subsequently extend to the entire state of Sikkim. The Labour Department of Sikkim has invited objections and suggestions to the draft rules within 45 (forty-five) days of the date of their publication pursuant to which they will be considered for legislative approval.

TELANGANA

A. Extension of the exemption provided to IT/ITes establishments under the Telangana Shops and Establishment Act, 1988 (TSEA) for a period of 4 (four) years

The June 7, 2024, notification of the Government of Telangana has extended the exemption provided to IT/ITeS establishments from the provisions of Section 15 *(Opening and Closing Hours)*, 16 *(Daily and Weekly*

Hours of Work), 21 *(Special provision for young persons)*, 23 *(Special provision for women)*, *and* 31 *(Other Holidays)* of the TSEA for 4 (four) more years. The extension will come into effect from May 30, 2024. The State Government had initially granted the exemption through its May 30, 2002, notification and since then it has issued several extension notifications on June 20, 2007, May 30, 2012, June 21, 2013, July 25, 2019, and November 15, 2023.

The exemption is subject to certain conditions, including inter alia the following:

i. Weekly working hours for employees should not exceed 48 (forty-eight) hours, beyond which the employee will be entitled to overtime wages.

ii. Every employee should be given a weekly off.

iii. Management is permitted to engage young and female employees in night shifts, subject to adequate security during the course of employment and provision of transport to and from their respective residences.

iv. Every employee should be provided with identity cards and all other welfare measures to which they are entitled as per applicable law.

v. Every employee should be given compensatory holiday (with wages) in lieu of notified holidays.

vi. Employers are required to obtain a bio-data, conduct pre-employment screening, and maintain records of certain personal details (address, phone numbers, etc.) of drivers, whether engaged directly or through a third party.

vii. Employers are required to provide security guards for night-shift vehicles.

viii. The employer's supervisory officer is required to decide the schedule and route of the pickup and drop every Monday (or the next working day of the week if Monday is a holiday). In case of exigencies, change of drivers/routes/shifts must be allowed only with the prior knowledge of supervisory officers/employees. The selection of routes must ensure that no woman employee is picked up first and dropped last.

ix. Employers are required to have a control room/ travel desk for monitoring vehicle movement.

x. The notification provides for a general exemption from the maintenance of various statutory registers in hard copies and recognises maintaining them in soft copy as sufficient compliance.

TRIPURA

A. Exemption from registration of shops and establishments under Tripura Shops and Establishments Act, 1970 (Tripura Shops Act)

The Labour Directorate, Government of Tripura, has issued a memorandum dated April 26, 2024, to clarify that the State Government has deleted Section 16 of the Tripura Shops Act, by way of the Tripura Shops and Establishments (Fifth Amendment) Act, 2021, to promote 'Ease of Doing Business' in the state. Accordingly, no shopkeeper or employer is required to apply for registration (and renewal of registration) of shops and establishments under the Tripura Shops Act. In this regard, it should be noted that although the requirement of obtaining registration has been done away with, employers will still need to comply with other provisions of the Tripura Shops Act.

JUDICIAL UPDATES

I. Supreme Court (SC)

A. Communication of the employer's acceptance of the resignation is not necessary for the resignation to be effective

In the *Sriram Manohar Bande vs. Uktranti Mandal & Ors (AIR 2024 SC 2325)* case, the Appellant–employee resigned from services of the Respondent–school on October 10, 2017, but withdrew the resignation on October 25, 2017, before the school's management communicated their acceptance of the resignation. On November 23, 2017, the Appellant was denied access to the school. However, upon receiving a letter on November 27, 2017, stating that a resolution dated October 14, 2017, had accepted the resignation, the Appellant challenged this termination before the Maharashtra Employees of Private School Tribunal (**MEPS Tribunal**), as constituted under the Maharashtra Employees of Private Schools (Conditions of Services) Regulation Act, 1977 (**MEPS Act**). The MEPS Tribunal ruled in the Appellant's favour, which the Respondent appealed. The Nagpur Bench of the Bombay HC then reversed the MEPS Tribunal's decision, stating that non-communication of acceptance did not invalidate the termination. The present appeal was filed against the Bombay HC's decision.

The SC, upholding the Bombay HC's decision, observed that MEPS Act and its rules do not require formal communication of acceptance of resignation for the acceptance to be effective. Hence, it held the Appellant's resignation effective even in the absence of communication of such acceptance. The SC also relied upon the decision of *North Zone Cultural Centre and Anr. Vs. Vedpathi Dinesh Kumar*, (2003) 5 SCC 455 wherein it was held that a resignation would be effective when it has been accepted by way of an order, even if such order of acceptance was not communicated, as long as rules or guidelines governing the resignation do not mandate communicating acceptance of the resignation.

II. Bombay HC

A. Dismissal from service for being absent from place of work for just few hours is disproportionate

In the *Bombay Dyeing & Manufacturing Co. Ltd. vs. Mr. Yogesh Vinayak Tipre (Writ Petition No. 4916 of 2007)* case, the Respondent–employee was issued with a show-cause notice alleging misconduct for absence without permission during a heavy workload period and was subsequently terminated from employment after an enquiry. The Respondent raised an industrial dispute that was referred to the Labour Court, which ordered his reinstatement to the original post with continuity of service and full back-wages. The Petitioner–company challenged the award passed by the Labour Court.

The Bombay HC noted that the Respondent's reply to the show-cause notice had specifically admitted to the allegation of absence being correct, concluding that this duly proved the charges levelled against the Respondent. However, on the proportionality of penalty, the Bombay HC noted that misconduct levelled against the Respondent was not of a serious nature and the imposition of a penalty of dismissal was disproportionate and excessive given the gravity of proven misconduct.

Regarding the relief to be granted, noting that the Respondent was out of the Petitioner's employment for 25 (twenty-five) years, the Court held that a lump-sum compensation of INR 25,00,000 (Indian Rupees Twenty-Five Lakh) was appropriate *(in place of reinstatement with back-wages)*.

B. Deprivation of leave encashment without statutory provision providing for the same is a violation of constitutional rights

In the *Dattaram Sawant & Anr vs. Vidarbha Konkan Gramin Bank (Writ Petition No. 12161 of 2019)* case, the Petitioners who were former employees of the Respondent bank (whose employment ceased by way

of resignation), sought the encashment of privilege leave accumulated over their course of service. The bank refused the request for encashment, citing that the facility for encashment of privilege leave for resigning employees was introduced after their resignation dates. The Petitioners then approached the Bombay HC, arguing that leave encashment is a right and not a discretionary benefit.

The bank had formulated its own service regulations named Vidharbha Konkan Gramin Bank (Officers and Employees) Service Regulations, 2013 (**Bank Regulations of 2013**), which stipulated that the employees were eligible for privilege leave computed at one day for every 11 (eleven) days of service on duty, which could be accumulated. At the relevant time, these regulations allowed accumulated privilege leave to be encashed at the time of *inter alia* superannuation and death only. The question before the Bombay HC was whether resignation took away the Petitioners' right to claim leave encashment to which they would have been entitled in case of superannuation.

The Bombay HC noted that right to privilege leave was the Petitioners' statutory entitlement in terms of the Bank Regulations of 2013, which they earned during the term of their employment upon fulfilling certain criteria and that, for the period of privilege leave, they were entitled to full emoluments as if they were on duty. The Bombay HC ruled in the favour of the Petitioners, holding that leave encashment is not a bounty but a right akin to salary, thus, constituting property. Depriving a person of property without statutory provision would violate Article 300A of the Constitution. The Court further held that no provision under the Bank Regulations of 2013 restricted Petitioners' accrued right to encash privilege leave on resignation. Accordingly, the Court held that denial of leave encashment in absence of any statutory provision to that effect amounts to arbitrary denial of a vested right and that the right to leave encashment is a statutory right, which once earned, cannot be forfeited without any statutory provision to that effect. The Court, therefore, directed the Respondent bank to

calculate the amounts payable towards the encashment of the Petitioners' privilege leave and pay the same with 6% annual interest.

C. No loss of gratuity upon overseas transfer of the employee

In the *Mercedes-Benz India Private Limited vs. Noshir Nani Desai (Writ Petition No. 12201 and 12202 of 2023)* case, the Respondent–employee had worked for the Petitioner–company from 1996 to 2004. Subsequently, the Respondent was posted on an international assignment with Daimler AG (**Host Company**) in Germany, a group company of the Petitioner. This assignment lasted until June 25, 2012, following the Respondent's resignation in April 2012.

The core dispute in the case was regarding the payment of gratuity for the Respondent's entire period of service, spanning both India and international tenures. Upon assignment of the Respondent's service with the Host Company, the Petitioner refused to treat his relationship with itself as employment. The Respondent applied to the Controlling Authority under the Payment of Gratuity Act, 1972 (**Gratuity Act**), which ruled in his favour, directing the Petitioner to pay gratuity, taking into account the duration of service rendered with the Host Company. The Petitioner filed an appeal against this decision, where the Appellate Authority partly allowed the appeal in respect of the

quantum of gratuity to be paid to the Respondent and remanded the case for reassessment of the exact amount of gratuity.

This Appellate Authority decision was challenged before the Bombay HC, and the Court held that the Respondent's service with the Petitioner and subsequent international assignment constitute continuous service under the Gratuity Act. The Court based its decision on the assignment agreement signed between the Petitioner and the Respondent, which showed that the Petitioner continued to be the parent employer throughout the term of the Respondent's assignment with the Host Company assignment. The Bombay HC further emphasised that mere transfer within the same management would not interrupt the continuity of service for the purposes of the Gratuity Act. Therefore, the Bombay HC remanded the case back to the Controlling Authority for the determination of the exact amount of gratuity payable under the Gratuity Act.

III. Delhi High Court (Delhi HC)

A. Lawyers providing professional services in exchange of an honorarium are not 'employees' under the Maternity Benefit Act, 1961 (MBA)

In the *Delhi State Legal Services Authority vs. Annwesha Deb (LPA 701/2023, CM Appls. 52932/2023, 52933/2023, 63165/2023 and 64284/2023)* case, the Respondent was appointed by the Appellant–authority as a panel lawyer for a pay of INR 1750 (Indian Rupees One Thousand Seven Hundred Fifty) per day for a period of 3 (three) years. The issue was whether the Respondent would be entitled to maternity benefits under the MBA at par with the Appellant's regular employees. The Single Bench of the Delhi HC decided in the Respondent's favour by holding her to be a contractual employee entitled to receiving maternity benefits under the MBA. The Single Bench also held that the renumeration received by the Respondent would amount to "wages" under the MBA.

Overturning the decision of the Single Bench, the Division Bench of the Delhi HC concluded that the Respondent was paid an honorarium and not "wages". Relying on the SC's decision in *Karbhari Bhimaji Rohamare vs. Shanker Rao (1975 1 SCC 252)*, the Delhi HC observed that honorarium implies a fee for professional service rendered, as opposed to a salary, which implies a fixed payment made periodically as remuneration for the service rendered.

Further, the Delhi HC observed that the Respondent was not required to attend cases every day and that she would not be paid any fee for the day she did not attend court. Further, the Appellant did not supervise or control the services the Respondent provided. Accordingly, the Court held that her engagement as a panel advocate on a day-to-day basis was as a "professional" and not as an "employee" *(as defined under the MBA)*. Therefore, it held that the Appellant Authority was not liable to provide maternity benefits to the Respondent.

IV. Karnataka High Court (Karnataka HC)

A. Para 83 of the EPF Scheme and Para 43A of the EPS, which deal with 'International Workers' (Iws), declared unconstitutional

In *Stone Hill Education Foundation vs. Union of India and others (WP No. 18486/2012)*, the Single Bench of the Karnataka HC has struck down as unconstitutional Paragraph 83 of the EPF Scheme and Paragraph 43A of the EPS governing the treatment of IWs under the EPF Act for being arbitrary and in violation of Article 14 of the Constitution. Broadly, the following points explain the grounds on which these paragraphs were struck down:

a) Article 14 of the Constitution encompasses the right to equality before the law, and prohibits unreasonable discrimination between 2 (two) persons/classes of persons; unless the distinction in treatment under law is reasonable and has a

nexus with the object sought to be achieved by the legislature.

b) The object behind the EPF Scheme and EPS is primarily to institute a contributory fund for the retirement benefits of the workforce in lower salary brackets, to provide for their future savings. The Karnataka HC noted that the object of the law nowhere recognises coverage of employees, regardless of their salary, and the aim of the legislation does not contemplate extending such benefits to employees drawing large monthly salaries.

c) The Karnataka HC further noted that the EPF Scheme and the EPS, being subordinate legislations under the EPF Act, cannot travel beyond the scope of the parent legislation. Accordingly, since a monthly salary capped at INR 15,000 (Indian Rupees Fifteen Thousand) is prescribed under the EPF Act, there cannot be an unlimited salary threshold under the EPF Scheme and EPS, as is currently the construct under the IW regime.

d) The Government's stand was that the primary purpose to enact Paragraph 83 of the EPF Scheme (and Paragraph 43A of the EPS) was to ensure reciprocity of social security benefits with countries that have social security agreements (**SSAs**) with India. The Karnataka HC held this contention to be untenable considering that Paragraph 83 of the EPF Scheme primarily lays down provisions governing IWs from non-SSA countries, with whom there is no reciprocal arrangement on social security benefits.

e) Further, even within Paragraph 83 of the EPF Scheme, the Karnataka HC noted that the distinction in treatment between Indian workers working in foreign SSA-countries (for whom contributions can be capped on salary of up to INR 15,000 (Indian Rupees Fifteen Thousand)) and foreign workers from SSA countries not in possession of any certificate of coverage and working in a covered Indian establishment *(for whom contributions are required to be made on their total 'basic wages')*, although both these categories are considered IWs under the EPS Scheme, is discriminatory, without any rational basis. The Karnataka HC also found discrimination in the treatment of Indian employees working in non-SSA countries *(who are not IWs as per the definition in Paragraph 83)* and foreign employees from non-SSA countries working in India *(who are IWs)*, without any reasonable basis for the classification, thus, in violation of Article 14.

f) Therefore, the Court held that there is no commonality of interests, aims or objectives of the EPF Act with Paragraph 83 of the EPF Scheme and Paragraph 43A of the EPS, and that the classifications made thereunder were unreasonable and would defeat the EPF Act's purpose and intent. Consequently, the Court struck down these provisions for being incompatible, arbitrary, unconstitutional, and *ultra vires* and all orders passed thereunder were held to be unenforceable.

The Regional Provident Fund Commissioner has filed an appeal *(bearing number Writ Appeal No. 887 of 2024)* against the Single Bench's decision before the Division Bench of the Karnataka HC, which is currently pending.

V. Kerala High Court (Kerala HC)

A. Provisions of MBA applicable to private education institutions post the issuance of notification dated March 6, 2020

In its decision titled *Chairman, PSM College vs. Reshma Vinod (WP (C) No. 13201 of 2018)*, the Kerala High Court has clarified that the provisions of the MBA were not applicable to private education institutions prior to the issuance of notification dated March 6, 2020.

The Petitioner, a private Dental College & Research Centre, was served a show-cause notice by the Inspector under MBA in 2017 for non-payment of maternity benefit to the Respondent–employee. An

order passed against the Petitioner–institute mandated payment of maternity benefit and medical bonus to the Respondent. The Petitioner's appeal in terms of the MBA against this order was dismissed. Accordingly, a writ petition was filed to challenge the Appellate Authority's order.

Before the Kerala HC, the Petitioner contended that the provisions of the MBA were not applicable to it since educational institutions are not shops or establishments falling within the meaning of Kerala Shops and Commercial Establishments Act, 1960 (**Kerala Shops Act**), or any other law. The Respondent contested that the MBA is a beneficial legislation and the Kerala Shops Act has no exemption for private education institutes.

Relying on the SC's decision in the case of *Ruth Soren vs. Managing Committee*, the Kerala HC held that private educational institutions are not "establishment" under the Kerala Shops Act, where any trade, business, or profession is carried out *(although they are 'industry' for the purposes of the ID Act)*. Further, the Kerala HC noted that the Government of Kerala as per Section 2(b) of the MBA in its notification dated March 6, 2020, had extended the provisions of MBA to private educational institutions. Accordingly, it held that the provisions of MBA were not applicable to private educational institutes prior to the issuance of the notification. Given this, the impugned order passed by the Appellate Authority was set aside considering it was with respect to the period prior to March 6, 2020.

VI. Punjab & Haryana High Court (Punjab HC)

A. Exemplary penalty imposed on the employer for violation of principles of natural justice

In the *Virender Kumar vs. Additional Registrar, Cooperative Societies (CWP-9494-2020(O&M)* case, the Punjab & Haryana HC imposed exemplary costs of INR 10,00,000 (Indian Rupees Ten Lakh) on the employer for flagrant violation of the principles of natural justice, which resulted in delay due to the matter being remanded back 3 (three) times over a span of 40 (forty) years.

The Petitioner–employee was appointed as a secretary with the Respondent–bank and his services were subsequently terminated. He appealed against his termination and was allowed to rejoin his duties along with the payment of back wages. Thereafter, the Petitioner was issued a charge sheet, alleging that he was engaged in embezzlement of INR 13,000 (Indian Rupees Thirteen Thousand). The Petitioner was dismissed thrice on the same charge; however, on all 3 (three) occasions, the orders were set aside for the violation of principles of natural justice. By way of the current writ petition, the Petitioner sought direction for *inter alia* payment of arrears of salary by the Respondent from the date of his suspension until reinstatement and also sought pensionary benefits. However, during the litigation, the Petitioner passed away.

The Punjab HC noted that over 40 (forty) years, the Petitioner was forced to approach different authorities because the Respondent repeatedly violated principles of natural justice in their departmental enquiries. As a result, the matter was remanded back to the inquiry stage thrice. Hence, the Court held that the Petitioner's legal representatives would be entitled to his retirement benefits along with an interest of 6% per annum. It also held that Petitioner would be entitled for grant of salary along with all consequential benefits from the date of his initial suspension until the date he attained the age of superannuation.

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