



cyril amarchand mangaldas  
ahead of the curve

# the employment quarterly

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## Index

### Legislative Updates

- Key Central Legislative Updates  
Page 02
- Key State Legislative Updates  
Page 05

### Judicial Updates

- Supreme Court  
Page 11
- Delhi High Court  
Page 12
- Bombay High Court  
Page 13
- Karnataka High Court  
Page 14
- Allahabad High Court  
Page 17
- Rajasthan High Court  
Page 17
- Gauhati High Court  
Page 18

This issue of *The Employment Quarterly* covers key Central and State level legislative updates, such as those pertaining to standard operating procedure for joint declaration for member profile updation in Employees' Provident Fund Organization (EPFO), draft Rights of Persons with Disabilities (Amendment) Rules, 2024, registration of gig and platform workers on the eShram portal, permission for operating shops and commercial establishments on a 24x7 basis in Karnataka and remaining open all 365 (three hundred sixty-five) days of the year in Punjab subject to conditions, amendments to the Tamil Nadu Shops and Establishments Act, 1947 and the Jharkhand Platform Based Gig Workers (Registration and Welfare) Bill, 2024, 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 those of various High Courts in matters pertaining to lock-in-clauses in employment contracts, liability to pay dues under the Employees' State Insurance Act, 1948, voluntary retirement on grounds of physical and mental ailments, menstrual leave policy, scope of the 'employee' definition under the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and contractual employees' entitlement to maternity benefits, 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](mailto:cam.publications@cyrilshroff.com).

Regards,  
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## LEGISLATIVE UPDATES

### I. Key Central Legislative Updates

#### A. Rights of Persons with Disabilities (Amendment) Rules, 2024 (RPwD Amendment Rules)

The Ministry of Social Justice and Empowerment (MoSJE) has, on July 2, 2024, notified the RPwD Amendment Rules to amend Rule 15 of the Rights of Persons with Disabilities Rules, 2017 by inserting a new clause (p) under Rule 15 sub-rule (1) prescribing accessibility standards and guidelines for the banking sector, as specified in the notification of the Department of Financial Services, Ministry of Finance, Government of India *vide* notification no. F.No. 7/32/2022-BOA-I dated February 2, 2024.

#### B. Central Government releases the draft Right of Persons with Disabilities (Amendment) Rules, 2024 (Draft RPwD Amendment Rules) inviting objections/suggestions from persons likely to be affected

The MoSJE *vide* notification dated July 29, 2024, published the Draft RPwD Amendment Rules inviting objections/suggestions to be submitted within 30 (thirty) days from the date of their publication. By amending Rule 17 and 18 of the RPwD Rules, the Draft RPwD Amendment Rules propose to provide amendments that would allow persons with disabilities to apply for a Unique Disability Identity (UDID) Card and a disability certificate in Form IV in the prescribed manner. The UDID Card may be of 3 (three) types, namely, White Band Card, Yellow Band Card and Blue Band Card, depending on the disability percentage. The formats for various forms relating to certificate of disability are also proposed to be changed.

#### C. Employees' State Insurance Corporation (ESIC) clarifies valid documents to be accepted for correction in date of birth of insured persons and family members/dependents

On July 2, 2024, the ESIC clarified that any correction/updates in the date of birth of insured persons and their family members/dependents must follow the guidelines outlined in Regulation 80(2) of the Employees' State Insurance (General) Regulations, 1950 and Paragraph 1.73 of the ESIC Branch Office Manual, which prescribe documents acceptable as proof of age of insured persons and their family members/dependents. This clarification was issued in light of several complaints and queries that the ESIC received pursuant to withdrawal of its earlier instructions regarding use of Aadhar Card as a valid document for correcting/updating the date of birth of insured persons.

#### D. ESIC issues circular regarding removal of Aadhar card from list of acceptable documents for proof of date of birth

The ESIC *vide* circular dated July 29, 2024, has reiterated the position of the Unique Identification Authority of India that Aadhaar will no longer be accepted as a proof of date of birth of insured persons and their dependents.

#### E. ESIC to determine contributions for factory/establishment employees as per time limit in Section 45A of the Employees' State Insurance Act, 1948 (ESI Act)

The ESIC has *vide* circular dated July 24, 2024, directed all regional offices to adhere to the time limit under Section 45A of the ESI Act for determining contribution and issuing orders, given assessment of contribution for a period beyond the limitation period of 5 (five) years under Section 45A has resulted in protracted litigation and infructuous expenditure. Further, where employer disputes coverage/claim of contributions in the court and further proceedings are stayed, it is for the ESIC to make a request to the court that the period of stay be excluded for the purpose of the limitation period under Section 45A.

## F. ESIC notifies user manual for bulk Aadhaar seeding of ESIC beneficiaries through employer portal

The ESIC *vide* circular dated August 6, 2024, notified the user manual for bulk Aadhaar seeding in the employer portal. Using this facility, employers will be able to seed Aadhaar details of insured persons and their family members in bulk by providing their Aadhaar number and attached mobile number in the bulk Aadhaar Seeding Template downloaded from the link given at the employer portal.

## G. Employees' Provident Fund Organization (EPFO) frames Standard Operating Procedure (SOP) for transaction-less and inoperative accounts in EPFO

On August 2, 2024, the EPFO issued a circular setting out an SOP for transaction-less and inoperative accounts with an aim to reduce the risk of fraud, impersonation, identity theft, etc., while also ensuring that rightful claimants are not inconvenienced in any way only because their account has been rendered transaction less or inoperative. The SOP outlines the specific procedure to be followed for Universal Account Number (UAN) generation/linking, Know Your Customer (KYC) seeding, blocking, unblocking and settling claims in relation to transaction less and inoperative accounts, including scenarios where UAN is unavailable or UAN is available but not KYC compliant, etc. The SOP also sets out the timeline matrix for the verification process and follow-up actions to be taken in case verification fails, which include taking criminal action against the perpetrators, recovery of fraudulently withdrawn money along with due interest component and re-credit it to the account of the genuine member, etc.

## H. EPFO frames SOP for joint declaration for updating member profile

The EPFO *vide* a circular dated July 31, 2024, has issued an SOP for joint declaration for member profile correction (JD SOP), to maintain correct profile of the member, reduce rejection of the joint declaration, and minimise fraud owing to UAN identity change. Joint

declaration refers to a joint request made by employees duly authenticated by the employer for the modification/addition of the members' basic profile parameters of member name, gender, date of birth, parents' name, spouse's name, marital status, date of joining, reason of leaving, date of leaving, nationality, and Aadhar number. The JD SOP, *inter alia*, specifies the competent authority to approve minor and major corrections, and the documentary proof required to support the corrections.

## I. Revision of Tables B and D under the Employees' Pension Scheme, 1995 (Pension Scheme) for calculating past service and withdrawal benefits

The EPFO has issued circulars dated June 24, 2024, reiterating that under the Employees' Pension (Amendment) Scheme, 2024 and Employees' Pension (Second Amendment) Scheme, 2024 notified by the Ministry of Labour and Employment (MoLE), Table B and Table D under the Pension Scheme have been amended, respectively.

Table B has been amended to provide for corresponding factors for calculation of past service benefits under Para 12(3)(i)(b) of the Pension Scheme, accounting for further period up to 42 (forty-two) years. This will facilitate calculation of past service benefit in respect of those who attain the age of 58 (fifty-eight) years after a time span of 34 (thirty-four) years or more as counted from November 16, 1995.

Table D, used for the calculation of withdrawal benefits under Para 14 of the Pension Scheme, has been substituted. The revised table will be applicable for all withdrawal benefit cases settled after June 14, 2024, regardless of the members' date of leaving service, in accordance with Para 6A of the Pension Scheme. The only exception is for members who attained the age of 58 (fifty-eight) years prior to June 14, 2024, in which case the erstwhile Table D will be applicable.

Accordingly, necessary modifications are being made in the application software for handling pension claims.

## J. EPFO issues SOP for managing and regulating exempted establishments under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act), and third-party audit format

The EPFO *vide* circular dated July 11, 2024, has set out the format (Form RM 6) for third-party audit that is to be adopted by establishments exempted under the EPF Act. Form RM-6 is issued under Condition 24(a) of Appendix A of Para 27AA of the Pension Scheme and requires, *inter alia*, details such as the auditor's statement, audit firm, the establishment, the exempted trust, employee enrolment, remittances and returns, claims and settlements, rate of interest, investments made, losses and expenditure, International Workers (as defined under the EPF Act), amounts lying in the forfeiture account of the trust, amounts lying with the trust, amounts to be transferred to the senior citizens welfare fund, number of disabled workers, details to be submitted, in case of cancellation/surrender of exemption.

## K. EPFO issues circular for deployment of online system for surrender of exemption and transfer of past accumulations

The EPFO *vide* circular dated August 13, 2024, has launched a new online system for the surrender of exemption and transfer of members' previous accumulations. It is designed for employers of exempted establishments to file applications and necessary documents online, which will be processed by the EPFO's regional offices. The online system adheres to the SOP for the Surrender of Exemption issued on October 10, 2023.

## L. Centralised Pension Payments System (CPPS) approved under the Pension Scheme

The Union Minister of Labour and Employment has approved the CPPS under the Pension Scheme as a national-level centralised system for enabling pensioners to receive pensions through any branch of any bank across India. This facility will be launched from January 1, 2025, as a part of EPFO's IT modernisation project named CITES 2.02, and in the



next phase, CPPS will transition to an Aadhar-based payment system. The CPPS is expected to simplify pension disbursement by eliminating the need for transfer of Pension Payment Orders when pensioners move or change banks, especially after retirement. Pensioners will no longer need to visit branches for verification and pension will be credited immediately upon release.

## M. Registration of gig and platform workers on the eShram portal

The MoLE, *vide* notification dated September 16, 2024, has extended the services of the eShram portal for onboarding platform aggregators and facilitating registration of platform workers to provide them access to various welfare schemes. The platform aggregators have been invited to register themselves and their platform workers on the eShram portal. Upon registration, the platform worker will be issued a UAN, which may be linked electronically by the aggregator in their database to facilitate portability of such worker. When a platform worker is already registered on the portal and has a UAN, or when they exit the aggregator's platform, the aggregator may intimate the UAN of such worker on the portal. The aggregators may upload platform worker data and details of monthly engagement, including the number of days worked, amount paid/payable, either directly or indirectly through outsourcing third party for the month on a quarterly basis.

## II. Key State Legislative Updates

### MAHARASHTRA

#### A. Government of Maharashtra amends the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Rules, 2018 (MSE Rules)

The Industries, Energy, Labour and Mining Department of the Government of Maharashtra *vide* notification dated July 22, 2024, notified the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) (Amendment) Rules, 2024 (**MSE Amendment Rules**) to amend the MSE Rules. The MSE Amendment Rules have introduced a new entry each in Form A (Application for Registration), Form D (Application for Renewal of Registration Certificate), Form F (Application for Intimation), and Form R (Annual Return) for insurance certificate and insurance policy details of an establishment.

### HARYANA

#### A. Government of Haryana issues a notification regarding the payment of contributions under the Punjab Labour Welfare Act, 1965 through the online portal

The Haryana Labour Welfare Board through a letter dated July 9, 2024, clarified that the payment of labour welfare fund contributions under the Punjab Labour Welfare Fund Act, 1965 (as applicable to Haryana) can be made online.

#### B. NGOs in Gurugram to furnish details under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 (POSH Act)

The Office of the Additional Deputy Commissioner-cum-District Officer under the POSH Act, Gurugram *vide* a memorandum dated September 3, 2024, directed all Non-governmental organisations (**NGOs**) in Gurugram to form an internal committee under Section 4 of the

POSH Act. The notification also directed NGOs to furnish details of the internal committee members, complaints, etc., as per the formats prescribed therein, to comply with the provisions of the POSH Act, by September 5, 2024.

### KARNATAKA

#### A. Time limit extended for obtaining valid insurance policy under the Karnataka Compulsory Gratuity Insurance Rules, 2024 (Gratuity Insurance Rules)

The Government of Karnataka *vide* a corrigendum dated July 4, 2024, has amended the time limit prescribed for obtaining insurance for the payment of gratuity under the Gratuity Insurance Rules. As per this corrigendum, employers may obtain a valid insurance policy within 6 (six) months from the commencement of the Gratuity Insurance Rules, as opposed to the erstwhile prescription of 60 (sixty) days.

#### B. Government of Karnataka permits shops and commercial establishments in Karnataka employing 10 (ten) or more persons to operate on a 24x7 basis for 3 (three) years

The Government of Karnataka *vide* a notification dated September 27, 2024, in exercise of powers under Section 11(1) read with Section 12(2) of the Karnataka Shops and Commercial Establishments Act, 1961, has permitted all shops and commercial establishments with 10 (ten) or more persons to operate 24x7 throughout the year for 3 (three) years from the date its publication in the official gazette. This permission is subject to fulfilment of certain prescribed conditions such as compliance with provisions on weekly holidays, payment of wages and overtime wages, daily and weekly working hours limits, provision of restroom, safety lockers and other basic amenities, constitution of an internal committee under the POSH Act, etc. Further, female employees will not be allowed to work beyond 8 pm unless their written consent has been obtained for the same and adequate protection and safety has been provided to them.



## TAMIL NADU

### A. Government of Tamil Nadu enforces certain amendments to the Tamil Nadu Shops and Establishments Act, 1947 and the Tamil Nadu Shops and Establishments Rules, 1948

The Government of Tamil Nadu has notified the Tamil Nadu Shops and Establishments (Amendment) Act, 2018, which requires all employers with 10 (ten) or more workers to apply for registration of their establishment in the prescribed form, with effect from July 2, 2024. Amendments to the Tamil Nadu Shops and Establishments Rules, 1948, have also been notified, with effect from July 2, 2024, for bringing the following key changes:

- i) Employers of establishments employing 10 (ten) or more workers are required to apply for registration and obtain a registration certificate within 6 (six) months of commencing business. If the registration certificate is not issued within 24 (twenty-four) hours of receiving the application, it would be deemed to be granted;
- ii) Any changes to the details mentioned in the registration application are to be made on the web portal of the Labour Department, along with the prescribed fee, within 30 (thirty) days of the change. Upon receiving the intimation, the Inspector will either amend the registration certificate or issue a fresh one;
- iii) Within 30 (thirty) days of the closure of the establishment, the employer is required to give an intimation of closure to the Inspector and upon receipt of such intimation, the Inspector will cancel the registration certificate;
- iv) Employers of all existing establishments employing 10 (ten) or more workers on the date of commencement of the Tamil Nadu Shops and Establishments (Amendment) Act, 2018 shall furnish the details of the establishment along with a self-declaration to the Inspector in the prescribed form within 1 (one) year of the Act's commencement;



- v) The fine for non-compliance has been increased to a maximum of INR 2,000 (Indian Rupees Two Thousand) from a maximum of INR 50 (Indian Rupees Fifty).

## JHARKHAND

### A. Government of Jharkhand publishes the Jharkhand Platform-Based Gig Workers (Registration and Welfare) Bill, 2024

On July 1, 2024, the Labour Department of the Government of Jharkhand, published the Jharkhand Platform-Based Gig Workers (Registration and Welfare) Bill, 2024 (**Jharkhand Gig Workers' Bill**) and invited public comments/suggestions from stakeholders. The Jharkhand Gig Workers' Bill applies to (i) all aggregators or primary employers operating in Jharkhand; (ii) all aggregators or primary employers providing services specified in the schedule of the Jharkhand Gig Workers' Bill (**Schedule**); and (iii) all service or work being carried out that meets the definitions of "gig worker" or "platform" as defined under the legislation.

The Schedule lists the following as services provided by aggregators: (i) ride sharing services; (ii) food and grocery delivery services; (iii) logistics services; (iv) e-market places for wholesale/retail sale of goods and/or services Business to Business/Business to Consumer (B2B/B2C); (v) professional services provider;

(vi) healthcare; (vii) travel and hospitality; and (viii) content and media services.

The Jharkhand Gig Workers' Bill *inter alia* provides for:

- i) The establishment of the Jharkhand Platform-Based Gig Workers' Welfare Board (**Welfare Board**) that will be responsible for, *inter alia*, registering gig workers and aggregators, implementing various social security benefits for gig workers, and ensuring compliance with the Jharkhand Gig Workers' Bill.
- ii) The aggregators to mandatorily provide their database of all gig workers registered with them to the Welfare Board within 60 (sixty) days of the enforcement of the Jharkhand Gig Workers' Bill.
- iii) The establishment of "The Jharkhand Platform-Based Gig Workers' Social Security and Welfare Fund" (**Welfare Fund**) for the benefit of registered gig workers along with the introduction of a welfare fee at a prescribed rate to be deposited quarterly into the Welfare Fund.
- iv) Welfare measures for gig workers including *inter alia* access to general and specific social security schemes, grievance redressal mechanisms, participation rights in decisions impacting their welfare through representatives on the Welfare Board.
- v) The aggregators to be responsible for simplifying contracts between themselves and gig workers, making them available in Hindi, English or any other language listed in the Eighth Schedule of the Constitution of India known to the gig worker. They also must notify the gig workers of any changes to the contract terms not less than 14 (fourteen) days before implementing the proposed changes. Additionally, the gig workers have the right to *inter alia* terminate the contract without facing any adverse consequences on their existing entitlements. They are also allowed to refuse or reject, with reasonable cause, a specified number of gig work requests per week, without any adverse consequences.

- vi) The obligation of the aggregator to communicate certain information to the gig worker, as and when sought by the gig workers including *inter alia* the main parameters that are important for determining, among other things, the allocation, distribution, assessment and denial of work, and the rating systems, if any, set up by the aggregator.
- vii) Requirement to provide compensation to the gig workers at least on a weekly basis with no delay in disbursement of pay, 14 (fourteen) days prior notice of termination, along with valid reasons, safe and healthy working environment. Requirement for every aggregator with more than 50 (fifty) gig workers to constitute an internal dispute resolution committee.
- viii) The penalty ranging between INR 50,000 (Indian Rupees Fifty Thousand) and INR 5,00,000 (Indian Rupees Five Lakh) for contravention of the Jharkhand Platform Based Gig Workers' Bill.

## GOA

### A. Government of Goa releases the draft Goa Factories (Seventeenth) Amendment Rules, 2024 (Draft Goa Factories Amendment Rules)

The Inspectorate of Factories and Boilers of the Government of Goa has on July 25, 2024 published the Draft Goa Factories Amendment Rules to further amend the Goa Factories Rules, 1985 (**Goa Factories Rules**) inviting public comments/suggestions to be submitted within 45 (forty-five) days from the date of publication in the Official Gazette. The Draft Goa Factories Amendment Rules propose to *inter alia* introduce the following key amendments:

- i) A new fee schedule aimed at replacing the erstwhile fee schedule in the Goa Factories Rules. The fees will be increased by 5% (five per cent) of the fees last payable at the beginning of each calendar year from January 01, 2026.
- ii) Introduction of new formats for Form 1 (Application for Approval of Plans to Construct, Extend or take

into use any Building as a Factory or Revision in Plant and Machinery Layout or Revision in Site on which the Factory is situated), and Form 2 (Application for Registration and Grant of License and/or Notice of Occupation or Amendment of License or Transfer of License).

## TELANGANA

### A. Government of Telangana extends applicability of Rule 84 of the Telangana Factories Rules, 1950 for a further period of 5 (five) years

The Labour, Employment Training and Factories Department of the Telangana Government has issued a notification dated July 24, 2024, extending the applicability of Rule 84 of the Telangana Factories Rules, 1950 for another 5 (five) years with effect from December 27, 2023. Rule 84 provides for exemptions to certain classes of factories engaging adult workers on specified work from specified provisions of the Factories Act, 1948 (**Factories Act**), subject to some conditions. These exemptions *inter alia* relate to working hours, overtime, compensatory off entitlements provided under the Factories Act for work such as urgent repairs, work on lighting, loading and unloading of railway wagons, paddy soaking, boiling, drying, lifting in boiled rice mills, all works in canning industry and perfumeries.

## UTTAR PRADESH

### A. Draft Uttar Pradesh Factories (Seventy Fourth Amendment) Rules, 2024 (Draft UP Factories Amendment Rules)

The Government of Uttar Pradesh has on June 25, 2024, published the Draft UP Factories Amendment Rules to further amend the Uttar Pradesh Factories Rules, 1950 (**UP Factories Rules**) inviting objections/suggestions to be submitted within 45 (forty-five) days of publication of the Draft UP Factories Amendment Rules in the Official Gazette. The Draft UP Factories



Amendment Rules propose to remove the prohibition on employment of women in certain classes of employment/operations' in an employment as mentioned in Schedule XV, Schedule XXVII, Schedule XXVIII and Schedule XXIX of the UP Factories Rules. The UP Factories Rules, as they currently stand, *inter alia* prohibit the employment of women in certain classes of employment/operations such as crushing, dry grinding, loading and unloading of saggars in manufacture of pottery, carding and spinning of raw fibre in carpet and woollen durgget making, degreasing and cleaning in brassware making.

## MADHYA PRADESH

### A. Madhya Pradesh promulgates the Madhya Pradesh Private Security Agencies (Regulation) Rules, 2024 (MP PSA Rules 2024)

The Government of Madhya Pradesh *vide* a notification dated August 7, 2024, promulgated the MP PSA Rules 2024. The MP PSA Rules 2024 will supersede the erstwhile Madhya Pradesh Private Security Agencies (Regulation) Rules, 2012 and deal with various procedural aspects of regulating private security agencies, such as, *inter alia*, conditions and forms for granting/renewing licenses, security training, standard of fitness for security guards, etc.



## ODISHA

### A. Odisha announces 1 (one) day paid menstrual leave for all public sector and private sector employees

The Government of Odisha on August 16, 2024, announced a 1 (one) day paid menstrual leave for all employees belonging to the public and private sector. It has stated that this leave will be optional, and women can take the leave on the first or second day of the menstrual cycle. However, detailed guidelines are awaited in this regard.

## PUDUCHERRY

### A. Puducherry notifies the Puducherry Transgender Persons (Protection of Rights) Rules, 2024

The Union Territory of Puducherry *vide* notification dated August 5, 2024, promulgated the Puducherry Transgender Persons (Protection of Rights) Rules, 2024 (**Puducherry TP Rules**). The Puducherry TP Rules deal with *inter alia*, the procedure for obtaining a Certificate of Identity, welfare measures by the Government, non-discrimination in areas of education, employment, healthcare, public transportation, participation in public life, sports, leisure and recreation and opportunities to hold public or private office, among others.

The Puducherry TP Rules also require employers to adopt an equal opportunity policy and display the same, along with details of the Complaints Officer, at conspicuous places in their premises or on their websites. Such policy must, *inter alia*, contain details of infrastructural facilities and amenities, details regarding the service conditions of transgender employees, confidentiality of gender identity and Complaints Officer's details. Every employer is required to appoint a Complaints Officer within 30 (thirty) days of the Puducherry TP Rules being notified.

## PUNJAB

### A. Government of Punjab permits state's shops and commercial establishments to remain open 365 (three hundred sixty-five) days of the year

The Department of Labour, Government of Punjab, through a notification dated July 15, 2024, has granted an exemption to all establishments from Section 9 and Section 10(1) of the Punjab Shops and Commercial Establishments Act, 1958, thereby allowing them to remain open all 365 (three hundred sixty-five) days of the year for the period up to May 31, 2025, subject to certain prescribed conditions. These conditions include, among other things, a weekly holiday with wages for the employees, compliance with provisions on intervals of rest, daily and weekly working-hour limits, spread over and overtime, and constitution of an internal committee under the POSH Act etc.

## HIMACHAL PRADESH

### A. Himachal Pradesh Factories (Amendment) Rules, 2024

The Government of Himachal Pradesh has, *vide* a notification dated August 30, 2024, published the Himachal Pradesh Factories (Amendment) Rules, 2024, amending the existing Himachal Pradesh Factories Rules, 1950. The key amendments *inter alia* include revision in the fees for grant of factory license for 1 (one) year, and in the fees for amendment, transfer and loss of license, besides the introduction of a provision for recognition of competent persons for examination and certification of specific aspects in a factory.



## DELHI

### A. Advisory on payment of bonus to outsourced employees, employed through contractors

The Government of Delhi has, *vide* an advisory dated September 23, 2024, highlighted the issue of complaints from outsourced workers concerning contractors' failure to pay bonuses under the Bonus Act. The advisory has emphasised the statutory responsibility of the contractor to pay bonus to their employees and of the principal employer to ensure compliance with various labour laws by their contractors.

## ASSAM

### A. Assam Private Placement Agencies for Recruitment of Workers (Regulation) Rules, 2024

The Government of Assam has, *vide* notification dated July 2, 2024, issued the Assam Rules under Section 15(1) of the Assam Private Placement Agencies for Recruitment of Workers (Regulation) Act, 2019. The primary objective of the rules is to regulate the operation of the private placement agencies and *inter alia* set out the process for grant/renewal of license to an agency, besides the conditions for such grant/renewal, and functions/duties of private placement agency like furnishing details of employment of workers, etc.

## JUDICIAL UPDATES

### I. Supreme Court (SC)

#### A. Government to consider framing of a menstrual leave policy

In *Shailendra Mani Tripathi v. Union of India and others* (WP (Civil) No. 327/2024), the petitioner invoked the jurisdiction of the SC under Article 32 of the Constitution of India for directing the Union Government, States and Union Territories to implement policies for the grant of menstrual leave to women under the Maternity Benefit Act, 1961 (**MB Act**).

Previously, the petitioner had filed a writ petition before the SC, whereunder the SC allowed the petitioner to submit a representation before the Union Ministry of Women and Child Development (**MoWCD**) to consider the menstrual leave policy. However, the petitioner did not receive any response despite submitting the said representation to the MoWCD and other relevant authorities. Recognising that the issue raised multifarious policy aspects, the SC believed it must be addressed by both the Union and States.

Accordingly, the SC permitted the petitioner to approach the Secretary in the MoWCD once again and directed the Secretary in the MoWCD to examine the matter at a policy level after consulting all stakeholders at both Union and State levels. The Court directed that the Union Government may consider whether it would be appropriate to frame a model policy for stakeholder considerations and clarified that State Governments can independently take an appropriate decision on this matter.

#### B. No discrimination in conferring the benefit of regularisation on similarly placed personnel

In *Ushaben Joshi v. Union of India and others* (Civil Appeal No. 9729 of 2024), the SC held that the appellant must be regularised on the same terms as a similarly-placed personnel.

The appellant was engaged as a “water woman” in the office of the Superintendent of Post Offices, Kutch Division. Another lady namely, Smt. K.M. Vaghela joined services in the same office as a “Safai Karamchari” in the year 1991. The appellant as well as Smt. Vaghela were both performing duties as contingency workers. The respondents subsequently regularised the services of Smt. Vaghela. However, the departmental authorities denied the appellant’s representation for regularisation. The Central Administrative Tribunal (**CAT**) hearing the appellant’s appeal against this decision, disposed of the matter by directing the respondent-authorities to consider the appellant’s case for conversion to a full-time employee in terms of a 1992 circular which provided a scheme for regularisation of part-time labourers. The representation made by the appellant pursuant to the CAT order was also rejected by the concerned authorities stating that the appellant is only a contingency worker. Subsequently, the appellant approached the CAT and the High Court of Gujarat, who dismissed its applications. Aggrieved, the appellant approached the SC.

The SC noted that the respondents had not indicated anything to show that the nature of duties or the hours of work being performed by Smt. K.M. Vaghela were any different from that of the appellant. The SC held that a similarly-placed employee, who was inducted in the service after nearly 6 (six) years from the date of employment of the appellant with the respondent, had been conferred the benefits of confirmation in service. It therefore, observed that the appellant was entitled to claim the same benefits. Further, the prevailing circulars applicable to the Posts and Telegraphs Department mandated that a temporary employee who had worked in the department continuously for more than 240 (two hundred and forty) days in the preceding 12 (twelve) months would be entitled to claim the relief of regularisation. The appellant had served the Posts and Telegraphs Department for more than 3 (three)

decades. Accordingly, the SC set aside the impugned orders and directed the respondents to treat the appellant at par with Smt. K.M. Vaghela and pass the order of regularisation/appointment in her favour, on similar terms, and make it effective from the date on which, Smt. K.M. Vaghela was appointed with all consequential benefits.

### C. Resignation is not final if communication of acceptance is not made to the employee

In *SD Manohara v. Konkan Railway Corporation Limited and Others* (Civil Appeal no. 23218/2021), the appellant employee had tendered his resignation on December 05, 2013, to the respondent company stating it may be considered effective exactly after 1 (one) month. However, the employer did not communicate its acceptance or rejection of the resignation to the employee. Subsequently, the employee sought to withdraw his resignation on May 26, 2014. The respondent rejected his request for withdrawal by letter dated June 23, 2014, and relieved the employee. The employee filed a writ petition before the single judge of the Karnataka High Court challenging this letter. The single judge of the Karnataka High Court allowed the writ petition and directed the reinstatement of the appellant employee with all benefits. The employer challenged this decision before the division bench of the Karnataka High Court which allowed the appeal. Aggrieved, the appellant employee filed an appeal with the SC.

The employer claimed that the resignation of the employee was accepted through a letter dated April 15, 2014, with effect from April 07, 2014. The employee argued that the letter dated April 15, 2014, was an internal communication that was never communicated to him and also did not fix any date for relieving him from his duties. The employee emphasised that despite submitting his resignation, he continued in service and had reported for work on May 19, 2014. He also referred to a letter dated May 10, 2014, issued by the employer where the employer had directed the employee to report to duty pursuant to his application for casual leave for 2 (two) days.



The SC held that there was no clear evidence of the communication of acceptance of resignation to the employee. The facts do not reveal whether the employment contract expressly required the resignation to be accepted for it to come into effect. Further, the employee and the employer had been in continuous touch even after the employee had tendered his resignation. The SC held that it is an established principle of law that resignation can be withdrawn before its acceptance. Therefore, the SC directed the employer to reinstate the employee in service within 30 (thirty) days from the date of the order and pay 50% (fifty per cent) of his salary for the period for which the employer had considered the employee to be relieved from service.

## II. Delhi High Court (Delhi HC)

### A. Reasonable lock-in-period clauses are not violative of the Constitution of India

In *Lily Packers Private Limited v. Vaishnavi Vijay Umak and others* (ARB. P. 1210/2023, ARB. P. 1211/2023, ARB. P. 1222/2023), the Delhi HC held that reasonable lock-in-clauses in employment contracts that apply during the term of employment are valid in law and do not violate fundamental rights as enshrined in the Constitution and hence, disputes relating to lock-in periods that apply during the subsistence of



employment contracts, are arbitrable in terms of the Arbitration Act, 1996.

The agreement between the respondent employees and the petitioner provided for a lock-in-clause which prohibited the respondent employees from leaving the petitioner company for 3 (three) years from their date of joining. However, the employees exited employment of the company prior to completion of 3 (three) years. The employment agreements also contained other covenants such as on exclusivity in employment, confidentiality, intellectual property protection and data protection. As per the agreement, disputes that arose out of the agreement were to be referred to arbitration. Given this, the company issued notices of arbitration to the employees for *inter alia* the violation of the lock-in-clause and other covenants provided in the agreement. However, the employees did not agree for the disputes to be referred to arbitration claiming that the lock-in-clause was violative of their fundamental rights and consequently, the matter was not arbitrable in nature.

The Delhi HC relied on various judgments of the SC and High Courts, including the landmark judgment of *Niranjan Shankar Golikari v. Century Spinning and Manufacturing Co.*, AIR 1967 SC 1098, which had held that negative covenants operating during the period of employment wherein the employee is bound to serve the employer exclusively are generally not contrary to law. The Delhi HC opined that the lock-in-clauses do not violate fundamental rights of the employees and that the fixation or prescription of a lock-in period in employment contracts merely means that the employee would serve the employer for a certain period. In employment contracts, the terms which the employees agree to, such as the lock-in clause, are usually the subject matter of negotiation. Such clauses in an agreement are usually decided upon voluntarily, just as employment contracts are entered into by the parties by their own individual consent and volition and may in fact be necessary for the health of the employer institution as it provides the required stability and strength to the employer institution and its framework, especially at the executive level. Accordingly, the Delhi

HC rejected the contention that the lock-in clause is a violation of any fundamental right as enshrined in the Constitution of India. It was further observed that employment contracts in general are contractual disputes and not disputes which raise issues of violation of fundamental rights, in such fact situations. There may be certain employment conditions which could be considered unreasonable curtailment of an employee's right to employment but a 3 (three) years period of lock-in cannot be held to be such a condition.

Accordingly, the Delhi HC held that the matter could be referred to arbitration and clarified that all the observations made in the order will not be binding on the arbitrator who would look into the fact-situation and take an independent view on all the issues that may arise in accordance with law, without being influenced by any observations made by the Court.

### III. Bombay High Court (Bombay HC)

#### A. Occupier of a factory does not have personal liability to make payment of dues under the ESI Act

In *ESIC v. Dinendra Ratansi and others (First Appeal No. 731 of 1992)*, the Bombay HC had to determine whether an occupier (who was also a director of the company) could be held personally liable for the payment/recovery of ESIC contributions if the company fails to remit them.

The first respondent was the director of M/s Gold Mohur Mills Limited (**Company**) and an occupier of the Company's factory. The ESIC issued notices demanding that he personally pay outstanding dues under the ESI Act for various periods. The ESI court decided that the ESIC was not entitled to recover such dues and subsequently, this decision of the ESI court was challenged in appeal.

The Bombay HC, after examining the various recovery provisions under the ESI Act, held that the liability to pay dues under the ESI Act rests is of the company and in the event of there being an occupier having ultimate control over the affairs of the factory, the occupier is

liable to meet the demand. However, this liability is not personal. If the company's dues to the ESIC are outstanding, they can only be recovered from the assets of the company. Accordingly, the appeal was dismissed by the Bombay HC.

## IV. Karnataka High Court (Karnataka HC)

### A. "Employee" under the POSH Act is intended to cover all possible means and modes of engagement of a person in furtherance of business activity

In *Ms. X v. ANI Technologies Private Limited and others*, the Karnataka HC had to determine *inter alia* whether ANI Technologies Private Limited (OLA) and its internal complaints committee (IC) was in violation of the POSH Act for not taking action against its driver-subscriber despite several attempts of the petitioner to initiate a complaint of sexual harassment.

The petitioner was a victim of sexual harassment by a driver-subscriber of OLA. After the incident, the petitioner had issued a legal notice to OLA, requesting action under the POSH Act against the driver-subscriber. OLA responded to the notice, claiming it had no jurisdiction over the complaint as its drivers were independent contractors, and not employees. The petitioner also attempted to file a complaint under Section 9 of the POSH Act with the IC, but the petitioner's e-mail with her complaint bounced back since OLA's policy only allows employees to file complaints. Further efforts on behalf of the petitioner to escalate the issue by contacting OLA's Chief Executive Officer and senior management were unsuccessful. Aggrieved by OLA's inaction and its failure to register the complaint, the petitioner filed a writ petition before the Karnataka HC.

The primary contention raised by the IC and OLA was the lack of an employer-employee relationship between OLA and its driver-subscriber, preventing the IC from initiating an inquiry based on the petitioner's complaint. OLA argued that it was merely an intermediary, which does not have any control over

either the driver-subscriber or rider-subscriber except providing a technology-based platform for the two to come together. The Karnataka HC, however, examined the definitions of "employer" and "employee" under the POSH Act, the terms of the subscription agreement between OLA and the driver-subscriber and the terms and conditions of use of OLA. The Court also relied on various Supreme Court judgments that delved into the question of who qualifies as an employee as well as certain international judgments concerning gig workers and concluded that the driver-subscriber was undeniably an "employee" under the POSH Act. The Karnataka HC's key analysis in this case is summarised below:

#### i) Definition of "employee" under the POSH Act

The Karnataka HC analysed the definition of "employee" under the POSH Act and noted its broad scope. It held that the definition included various legally recognised working arrangements, whether contractual or otherwise, and applied to anyone engaged in activities for the employer's business, commercial, or entrepreneurial purposes, under the employer's control and supervision. It was noted that the term "employee" under the POSH Act was intended to encompass any kind of relationship between the employer and another individual related to the employer's business activities. Moreover, to advance the purpose and intent of POSH Act, it was necessary to extend the definition of "employee" to cover individuals such as the driver-subscriber and anything short of this would render the POSH Act ineffective.

#### ii) Subscription agreement between OLA and the driver-subscriber

The Karnataka HC scrutinised the subscription agreement between OLA and its drivers to determine whether terms like "driver-partner," "driver-subscriber," "independent contractor," or "principal-to-principal" were being used as a façade to mask the true nature of the relationship. The Karnataka HC found that OLA exercised significant

control, supervision, and management over each and every facet of the services provided by its driver-subscribers. The subscription agreement detailed how OLA regulated the method and mode of service delivery, restricted drivers from making independent decisions (such as choosing routes or engaging in conversations with users), from using their mobile phones while providing services and imposed consequences for breaches of these terms. Although the agreement referred to the relationship between OLA and the drivers as one of independent contractors, the Karnataka HC held that such terminology could not negate the actual status of the drivers. The Karnataka HC also examined the commercial aspects of the subscription agreement, which revealed that OLA maintained full control over the revenue generated from its business. This control clearly demonstrated that the relationship between OLA and the driver-subscriber went beyond the mere usage of its platform as an intermediary. OLA played an active role in managing, supervising, and controlling the entire business process. The subscription agreement also included a clause about paying incentives to the driver-subscribers, beyond the regular charges agreed upon. This further confirmed that OLA had effectively employed the driver-subscribers for its commercial activities, reinforcing the employer-employee relationship under the POSH Act.

iii) *Tests by Indian courts on employer-employee relationship*

The Karnataka HC also relied on various judgments of Indian courts, such as *Silver Jubilee Tailoring House and Others v. Chief Inspector of Shops and Establishments and Another*, (1974) 3 SCC 498, *Royal Talkies Hyderabad and Others v. Employee State Insurance Corporation*, (1978) 4 SCC 204, and *Indian Overseas Bank v. Workmen*, (2006) 3 SCC 729 which have laid down various factors, including the test of control and supervision to determine who



constitutes an “employee” under Indian labour laws. A particular reference was made to an observation in the case of *Indian Overseas Bank v. Workmen*, (2006) 3 SCC 729, which held that if contractors were substantially responsible for the main and sole business, they would be treated as workers. Applying these principles, the Karnataka HC found that OLA’s control over the driver-subscribers was evident in several ways. The device used by the drivers was provided by OLA, and even if a non-OLA device was used, it had to meet OLA’s specifications. The installation and maintenance of this device by the driver-subscriber furthered OLA’s business activities. OLA retained control over critical information such as the passenger’s name, contact details, intended destination, and fare negotiations. Additionally, the Court noted that driver bookings were allocated at OLA’s discretion, and drivers had no autonomy in choosing customers, locations, or fares. If a driver cancelled a ride without explanation, OLA could withhold part or all of the driver’s earnings. Drivers were required to keep the OLA device switched on while providing services. These factors demonstrated OLA’s significant control over the manner in which services were rendered by driver-subscribers, further supporting their status as employees under the POSH Act.

iv) *Terms and conditions of OLA i.e., the contract entered into between OLA and its customers*

The Karnataka HC reviewed the terms and conditions that users must accept to when utilising OLA's services, specifically analysing the company's management, supervision, control, and involvement in the process. The Court found that OLA's role extended beyond merely receiving, storing, or transmitting electronic records on behalf of others. In fact, the Court emphasized that OLA wields significant and unilateral power over both the driver-subscriber and rider-subscriber regarding various contract terms. This includes the authority to determine fees and charges for rides under these agreements, as well as *inter alia* control over the nature and manner of services, device maintenance, booking acceptance or rejection, payment methods, cancellation policies, and indemnifications.

v) *Reference to international case laws on whether individuals such as the driver-subscriber in this case would be "employees"*

The Karnataka HC referred to relevant international case law, including the United Kingdom Supreme Court's judgement in the case of *Uber BV & Others v. Aslam & Others, UKSC/0002/2021 UKSC*, wherein it examined the terms of the agreement between Uber and its drivers and concluded that Uber controlled and defined the services offered by the drivers and held that the drivers qualified as workers employed by Uber. A similar conclusion was also arrived at in the case of *Commissioner of State of California in Barbara Berwick v. Uber Technologies, case no. 11-46739 EX. and Uber France v. Mr. AX, Court of Cassation in France, No. ECLI:FR:CCAS:2020:SO 00374*.

vi) *Grave negligence on part of the respondents*

The Karnataka HC found that both the IC and OLA were guilty of deliberate negligence and inaction. It referenced OLA's zero tolerance policy, designed to ensure customer safety and security, and held that

OLA was not only in contravention of the POSH Act but also its own policy. The Court pointed out that there was no mention on OLA's website or in any agreements that it would not accept complaints or be held responsible for any incidents during rides due to the assertion that its driver partners were not its employees. The Court also noted that OLA and IC failed to disclose that the vehicle involved in the incident admittedly belonged to OLA Fleet Technologies Private Limited, a subsidiary of OLA. Further, the Court observed that OLA was in breach of the Karnataka on Demand Transportation Technology Aggregator Rules, 2016 (**Aggregator Rules**) which *inter alia* required it to hold a valid and subsisting license, not permit unauthorised use of taxis and report the licensing authority of any untoward incident. OLA had breached these requirements. Additionally, the Court held that the renewal application of the license under the Aggregator Rules had been pending before the respondent Karnataka State Transport Authority which had also displayed deliberate inaction and negligence in fulfilling its statutory obligations. Despite being vested with the power and responsibility to investigate and take action under the Aggregator Rules, the Karnataka State Transport Authority had failed to do so.

Based on these findings, the Karnataka HC *inter alia* directed the IC to hold an inquiry into the petitioner's complaint as per the POSH Act. It directed the IC and OLA to pay INR 5,00,000 (Indian Rupees Five Lakhs) to the petitioner towards compensation and an additional INR 50,000 (Indian Rupees Fifty Thousand) towards litigation expenses, and directed the Karnataka State Transport Authority to pay INR 1,00,000 (Indian Rupees One Lakh) for negligence on its part and to take further necessary action against OLA.

The Karnataka HC's decision has been currently stayed in appeal before a division bench of the same Court in *ANI Technologies Private Limited v. Ms. X, (WA No. 1493/2024)*. (**Note: We will cover any necessary updates in the pending appeal in the next edition of the newsletter.**)



**B.** A single-judge bench of the Karnataka HC had previously in *Stone Hill Education Foundation v. Union of India and others*, (WP No. 18486/012 (L-PF) C/W) *inter alia* declared that paragraph 43A of the Employees Provident Funds Scheme, 1952 and paragraph 83 of the Employees Provident Fund Scheme, 1995, which covered international workers under the respective schemes, without any salary threshold limit were unconstitutional. **Please refer to our update on this case [here](#).** The Regional Provident Fund Commissioner has now filed a writ appeal (WA No. 886/2024) before a division bench of the Karnataka HC against the order of the single-judge bench. The writ appeal is currently pending before the Karnataka HC. **(Note: We will cover any necessary updates in relation to the pending appeal in the subsequent editions of the newsletter.)**

## V. Allahabad High Court (Allahabad HC)

### A. Respondent company directed to reconsider voluntary retirement application considering physical and mental ailments of the petitioner employee

In *AS v. State of Uttar Pradesh through additional chief secretary, Medical and Health Services, Lucknow, Uttar Pradesh and others* (WA No. 9427/2023), the Allahabad HC gave directions for reconsideration of the rejection of an application for voluntary retirement made by an employee and passing of a fresh order in light of the severe physical and mental ailments suffered by the petitioner employee.

The petitioner employee had made an application for voluntary retirement under extant rules and had satisfied the required conditions to get voluntary retirement. The petitioner had produced medical certificates as proofs of her being severely depressed with 7 (seven) anxiety neurosis as well as a progressive cervical spondylosis and that she was advised long rest and to avoid prolonged sitting. However, the competent authority turned down her application for voluntary retirement since there was scarcity of employees in the

cadre to which she belonged. The Allahabad HC recognised that the competent authority had the jurisdiction to turn down such an application of an employee since it is the prerogative of the employer to accept the application for voluntary retirement or to turn down the same. However, the Allahabad HC noted that if the petitioner was compelled to discharge her duties, she may suffer irreparable loss and injury, which cannot be compensated in terms of money. Further, her life may be endangered and her fundamental right enshrined under Article 21 of the Constitution of India would be violated if she was made to continue in employment. The Allahabad HC set aside the impugned order holding it as arbitrary and made without proper application of mind, and directed the Director (Administration), Medical and Health Services, Lucknow, Uttar Pradesh to pass a fresh order, strictly in accordance with law, considering the medical and physical ailment of the petitioner and also in the light of the observation of the Allahabad HC.

## VI. Rajasthan High Court (Rajasthan HC)

### A. Female employees are entitled to maternity leave of 180 (one hundred and eighty) days, irrespective of regulations of the organisations

In *Minakshi Chaudhary v. Rajasthan State Road Transport Corporation and others* (S.B. Civil WP No. 15769/2016), the petitioner, a conductor with the Rajasthan State Road Transport Corporation (**RSRTC**), was granted maternity leave of 90 (ninety) days in accordance with the internal regulations of RSRTC. Subsequently, an amendment was brought into force under the MB Act in 2017, which increased the maternity leave entitlement of female employees to 180 (one hundred and eighty) days. Accordingly, after the birth of the petitioner's child, she made an application seeking the enhanced maternity benefit of 180 (one hundred and eighty) days. However, the respondents refused the application on the grounds that the regulations of the RSRTC permitted only 90 (ninety) days of maternity leave.

The Rajasthan HC relied on various judgments of the SC and held that it was indisputably clear that maternity benefits are not merely derived from statutory rights or contractual agreements between employer and employee, but they are fundamental and integral aspect of a woman's identity and dignity, when she chooses to start a family and bear a child. It further observed that the benefit of enhanced maternity leave to female employees was undoubtedly a piece of welfare legislation, which was intended to give women equal opportunity in public employment. Therefore, granting only 90 (ninety) days of maternity leave to the female employees working at RSRTC would amount to discrimination against them. Hence, all female employees are entitled to get the benefit of maternity leave of 180 (one hundred and eighty) days, in terms of the 2017 amendment to the MB Act. The Rajasthan HC directed the RSRTC to grant 180 (one hundred and eighty) days of maternity leave to the petitioner after adjusting the 90 (ninety) days of maternity leave, with all consequential benefits. If grant of enhanced maternity leave was not feasible due to lapse of time, the RSRTC was directed to additionally pay 90 (ninety) days' salary to the petitioner as compensation.



was filed by the petitioner before the Gauhati HC challenging this communication. The respondents argued that the petitioner had not disclosed the fact that she was pregnant during her service period and had made a claim only after she had delivered her baby. Further, she had submitted an undertaking in writing that she would not claim any benefit apart from the remuneration given to her and would also not claim regular appointment. Therefore, she has no right to claim maternity benefits.

The Gauhati HC relied on the SC's judgment in the case of *Hindustan Antibiotics Limited v. Workmen*, AIR 1967 SC 948, where it had held that the MB Act nowhere provides that it only applies to regular employees and would be applicable to woman employees irrespective of the nature of engagement. The Gauhati HC noted that the undertaking given by the petitioner will not come in the way of her entitlements under the MB Act. Relying on SC judgments, the Gauhati HC held that although the petitioner was not in employment with the Kendriya Vidyalaya when she made the claim (but she was employed with Kendriya Vidyalaya during her pregnancy), she would still be entitled to maternity leave in terms of the relevant provisions of the MB Act. Accordingly, the Gauhati HC directed the petitioner to submit her claim for maternity benefit by incorporating all relevant materials and documents and instructed the Principal, Kendriya Vidyalaya, to examine and process the matter and grant the benefit to the petitioner without delay.

## VII. Gauhati High Court (Gauhati HC)

### A. Maternity benefits are also applicable to contractual employees

In *Sangeeta Kormel Yadav v. Union of India and others* (WP (C) No. 6973/2015), the petitioner was appointed as a part time teacher at Kendriya Vidyalaya, ONGC, Sivasagar from June 29, 2012 to March 28, 2013, April 01, 2013 to March 28, 2014, and subsequently for a period from April 01, 2014 to March 04, 2015. She delivered a baby boy in April 2015 after her last engagement with Kendriya Vidyalaya and did not subsequently apply for continuation of service. The petitioner's husband made an application through RTI to Kendriya Vidyalaya, enquiring whether contractual teachers were also entitled to maternity benefits. In response, the petitioner and her husband were informed that maternity leave benefits were only extended to permanent employees. Subsequently, a writ petition

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