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 those pertaining to additional payments under the Employees' Deposit-Linked Insurance Scheme, 1976 in case of death of an eligible employee, settlement of physical claims without seeding of Aadhaar for certain classes of members, urgent implementation of Aadhaar seeding for insured persons under the Employees' State Insurance Act, 1948, increasing the maximum validity period for renewal of a factory license in Kerala, amendments to the Kerala Labour Welfare Fund Rules, 1977, proposal by the Government of Karnataka to provide paid menstrual leave to women employees, draft Industrial Relations (A & N Islands) Rules, 2024, direction issued by deputy commissioner cum district officer to submit annual returns under the Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (**POSH Act**) by a specified date, 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 employer's liability in relation to an employee's suicide in the absence of any direct indictment, termination of employment by paying in lieu of notice period in case of a non-workman, termination on grounds of job abandonment, jurisdictional limitation of Industrial Court to determine a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, ability of an employer to revoke offer of employment in the absence of any barrier in appointment, implied power of the appellate authority under the POSH Act, treatment of trainees performing similar duties as regular employees under the provident fund law, reinstatement in absence of employer-employee relationship, rate of interest applicable in case of delayed payment of gratuity 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,
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LEGISLATIVE UPDATES

I. Key Central Legislative Updates

A. Employees' Deposit-Linked Insurance (Second Amendment) Scheme 2024

The Ministry of Labour and Employment (**MoLE**) notified the Employees' Deposit-Linked Insurance (Second Amendment) Scheme 2024, on November 18, 2024, amending Paragraph 22(3) of the Employees' Deposit-Linked Insurance Scheme, 1976.

Under the amended Paragraph 22(3), upon the death of an eligible employee, who has at least 12 months of continuous service preceding the date of their death, the beneficiaries (i.e. those who will be entitled to receive the provident fund accumulations of the deceased) shall, in addition to such accumulations, be paid an amount equal to the average monthly wages drawn (subject to a maximum of INR 15,000 (Rupees Fifteen Thousand) multiplied by 35 (thirty-five) plus 50 (fifty) percent of the average provident fund balance in the last 12 months, subject to a ceiling of INR 1,75,000 (Rupees One Lakh Seventy Thousand).

The assurance benefit, calculated as above, shall not be less than INR 2,50,000 (Rupees Two Lakh Fifty Thousand) or exceed INR 7,00,000 (Rupees Seven Lakh).

The amendment will have retrospective effect and is deemed to have come into force with effect from April 28, 2024.

B. Employees Provident Fund Organization (EPFO) issues circular on settlement of physical claims without seeding of Aadhaar for certain classes of members

The EPFO, *vide* a circular dated November 29, 2024, has issued instructions for settlement of physical claims without the seeding of Aadhaar for: (a) International Workers (as defined under the Employees' Provident Funds Scheme, 1952), people who left India without obtaining Aadhaar; (b) Indian workers, who permanently migrated to a foreign country and obtained citizenship there; (c) citizens of Nepal and subjects of Bhutan and non-resident Indians.

While UAN must be necessarily generated, the requirement of seeding of Aadhaar with UAN is dispensed with for the abovementioned categories of members. The circular also mentions the substitute ID that can be submitted by these members, manner of submission of proofs, mode of settlement, and risk mitigation measures to be adopted.

C. Employees State Insurance Corporation (ESIC) issues circular for urgent implementation of Aadhaar seeding for Insured Persons (IP), ESIC Employees and Pensioners

The ESIC issued a circular for urgent implementation of Aadhaar seeding for IP, ESIC employees and pensioners on October 21, 2024, since it has observed a drastic and unacceptable decline in Aadhaar seeding counts across its offices. To address this issue, the ESIC has directed usage of the following provisions:

i. IP Portal: IPs can seed their (and their family members') Aadhaar details, through the IP Portal.

ii. Employer Portal: Employers can generate new insurance numbers for employees and seed Aadhaar for existing IPs and their dependents through OTP or biometric verification.

iii. Bulk Aadhaar Seeding for Employers: Employers can perform (a streamlined and efficient approach) Bulk Aadhaar Seeding by uploading a pre-defined template, containing the Aadhaar numbers and mobile numbers of IPs and their beneficiaries.

iv. AAA+ Mobile App: To facilitate easier compliance, ESIC has also launched the 'AAA+' mobile app for IPs to seed their (and their family members') Aadhaar using OTP or face authentication.

II. Key State Legislative Updates

KERALA

A. Government of Kerala amends the Kerala Factories Rules, 1957

The Labour and Skills Department of the Government of Kerala, *vide* a notification dated November 23, 2024, has notified the Kerala Factories (Amendment) Rules, 2024 (**KFA Amendment Rules**), to amend the Kerala Factories Rules, 1957 (**KFA Rules**). The KFA Amendment Rules have increased the maximum validity period for renewal of a license issued under Rule 7 of the KFA Rules from 5 (five) years to 10 (ten) years.

B. Government of Kerala amends Kerala Labour Welfare Fund Rules, 1977

The Labour and Skills Department of the Government of Kerala, *vide* a notification dated October 1, 2024, notified the Kerala Labour Welfare Fund (Amendment) Rules, 2024 (**KLW Amendment Rules**), to amend the Kerala Labour Welfare Fund Rules, 1977 (**KLW Rules**). The KLW Amendment Rules provide for online payment of fines and unpaid accumulation, as well as employee and employer contributions. Additionally, the KLW Amendment Rules also update the KLW Rules to provide for electronic transfer from the labour welfare fund to the bank accounts of the beneficiaries.

KARNATAKA

A. Government of Karnataka issues proposal for granting menstrual leave

By way of a circular published on October 30, 2024, the Government of Karnataka has sought public comments on its proposal to provide 6 (six) days paid menstrual leave per year to women workers employed in factories, mines, plantations, shops, and commercial establishments, among others in various industries. The aim is to enhance the efficiency, performance, and morale of women workers.

ANDAMAN AND NICOBAR

A. Andaman and Nicobar Administration issues draft Industrial Relations (A & N Islands) Rules, 2024

Lieutenant Governor (Administrator) of the Andaman and Nicobar administration issued the draft Industrial Relations (A & N Islands) Rules, 2024 (**Draft AN IR Rules**), under Section 99 of the Industrial Relations Code, 2020 (**IR Code**), by way of a notification dated October 9, 2024, and has invited objections and suggestions.

HARYANA

A. Organisations required to submit annual reports under the POSH Act by February 28

Gurugram deputy commissioner cum district officer issued a letter to all government and non-government organisations, directing them to submit their annual reports as per calendar on harassment cases in the workplace, and re-iterated the statutory penalty of INR 50,000 in case of non-compliance, under the POSH Act, 2013.

JUDICIAL UPDATES

I. Supreme Court (SC)

A. Employers not liable for abetment of an employee's suicide in the absence of direct incitement

In *Nipun Aneja and Ors. v. State of Uttar Pradesh* (Criminal Appeal No. 654 of 2017), the SC held that appellants should not be subject to trial for abetment of suicide allegations under Section 306 of the Indian Penal Code, 1860 (**IPC**), in the absence of evidence indicating any direct and alarming incitement by the accused, leaving no option but to commit suicide.

In the instant case, the deceased was an employee of Hindustan Lever Limited. He committed suicide in his hotel room. Thereafter, his brother filed a first information report against certain senior executives of the company, alleging that they had humiliated the deceased, which led to his suicide shortly thereafter. Based on witness statements, the police thought it fit to file a chargesheet, culminating into legal proceedings against the said senior executives of the company. Aggrieved the senior executives filed an application before the High Court of Judicature at Allahabad, Lucknow Bench for quashing of the criminal proceedings against them, which the court rejected. Aggrieved, the senior executives then filed an appeal before the SC. The primary legal issue is whether the appellants' actions amounted to 'abetment' of suicide under Section 306 of IPC, which necessitates a clear demonstration of intent and instigation to commit the act of suicide.

The SC noted that the High Court's approach in denying the quashing of proceedings was flawed. It held that the ingredients constituting an offence of abetment of suicide would stand fulfilled if the suicide is committed by the deceased due to direct and alarming encouragement/ incitement by the accused, leaving no option but to commit suicide. It found no direct nexus between the conduct of the appellants and the suicide and accordingly allowed the appeal by quashing the criminal case against the appellants, noting that prosecuting the appellants based on insufficient evidence would be abuse of the process of law.

B. Termination of employment on payment of notice upheld for an employee who is not a "workman"

In *Lenin Kumar Ray v. Express Publications (Madurai) Ltd.* (Civil Appeal No. 11709 of 2024), the SC overturned the Orissa High Court's decision regarding the employee's status as a "workman". The SC found the employee's role was supervisory in nature and his salary exceeded the statutory limit for workman status under the Industrial Disputes Act, 1947 (**ID Act**).

Lenin Kumar Ray, employed as an engineer, was terminated by Express Publications with 1 (one) month's salary in lieu of notice. The Labour Court was of the view that the employee was a "workman" and ordered reinstatement, along with back wages. The High Court set aside the Labour Court's order but agreed with the "workman" status of the employee. Both parties appealed to the SC. The employee argued that his termination was illegal on the grounds that he was a "workman" and that his employment was terminated, without providing any reason and without following the procedure set out under the ID Act. The management argued that he was performing duties of supervisory in nature and was earning a salary higher than the threshold provided under Section 2(s) of the ID Act. Therefore, he would not be a "workman" and the termination of employment was valid and in accordance with the terms of employment, which stated that employment can be terminated by either party by providing 1 (one) months' notice or payment in lieu thereof.

The SC held that the employee would not be considered as a workman under Section 2(s) of the ID Act as the nature of duties and functions performed by him was supervisory, and his salary exceeded the statutory limit. Further, the employee had accepted the 1 (one) month's salary, which was paid to him by the

management, also confirming the legality of the termination. Therefore, the SC dismissed the employee's appeal and allowed the management's, upholding the termination of employment.

C. Termination of service on ground of abandonment upheld

In *Life Insurance Corporation of India & Ors. v. Om Parkash* (Civil Appeal No(s). 4393/2010), the SC allowed the appeal setting aside the High Court's order, which had reinstated the respondent. The SC held that the respondent's actions constituted abandonment of service, justifying termination of his employment under Regulation 39(4)(iii) of the Life Insurance Corporation (Staff) Regulation, 1960 (**LIC Staff Regulation**).

The respondent, an Assistant Administrative Officer in Life Insurance Corporation (**LIC**), was absent from duty, without informing his employer from September 25, 1995, onwards. LIC sent 3 (three) letters to his address, requiring him to resume duty immediately, however, no response was received from the respondent. Thereafter, LIC issued a chargesheet-cum-show cause notice, proposing his removal from service, which too went unanswered. Consequently, LIC invoked Regulation 39(4)(iii) of the LIC Staff Regulation terminating his employment. The respondent's appeal against the termination was rejected by the Appellate Authority. He then filed a writ petition before the High Court, which ruled in his favour, setting aside the termination and granting consequential benefits.

The SC observed that the High Court had granted relief to the respondent on the grounds that reasonable opportunity was not provided, and employment was terminated without inquiring into the charge of abandonment of service. However, it overlooked the fact that he had not only abandoned his service but had also subsequently secured employment with Food Corporation of India (**FCI**). The SC deemed the respondent's subsequent employment with FCI and its concealment in his writ petition as strong evidence of abandonment. The SC concluded that such conduct could not be condoned and that LIC was justified in invoking Regulation 39(4)(iii) of the LIC Staff Regulation.

II. Bombay High Court (Bombay HC)

A. Jurisdictional limitation of Industrial Court to determine a complaint under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971

In *M/s Tata Steel Ltd. v. Maharashtra Shramjivi General Kamgar Union and Anr.* (W.P. No. 9664 of 2024), the Bombay HC has held that when the existence of an employer-employee relationship is under dispute, the Industrial Court will not have jurisdiction to decide on a complaint of unfair labour practice under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (**MRTU & PULP Act**).

In the instant case, a complaint was filed before the Industrial Court under the MRTU & PULP Act by a union on behalf of contract workers working in the canteen established by the petitioner-company. Through the complaint, the contract workers were seeking declaration that they are permanent employees of the said company and, therefore, depriving them of benefits being provided to permanent employees would constitute unfair labour practice. The petitioner's primary contention was that when the existence of an employer-employee relationship is under dispute, the Industrial Court would not have jurisdiction to decide on an unfair labour complaint under the MRTU & PULP Act. Accordingly, the petitioner company urged the Industrial Court to dismiss the complaint. However, the Industrial Court rejected the company's pleadings and held that there was direct employment between the company and the canteen employees prior to 2018 and therefore, it had jurisdiction to decide on the complaint. The petitioner company filed a writ petition challenging the order of dismissal.

The Bombay HC noted that there was no specific averment in the complaint to indicate that any of the contract workers were directly engaged by the petitioner or that they were paid salaries directly by the petitioner company. The Bombay HC in fact noted that the tenor of the complaint is that the canteen employees were always treated as contract workers and held that the Industrial Court does not have the jurisdiction to adjudicate on a complaint of unfair trade practice under the MRTU & PULP Act.

III. Delhi High Court (Delhi HC)

A. Employer cannot revoke offer of employment in the absence of any barrier in appointment

In *Matthew Johnson Dara v. Hindustan Urvarak and Rasayan Ltd.* (W.P.(C) 11818/2024), the Delhi HC held that once an employee has been offered a position by an employer, their offer of appointment cannot be revoked in the absence of any barrier with respect to the employee's joining. In the instant case, the petitioner challenged the order passed by the respondent, revoking his appointment on the ground that he had not been able to provide the relieving letter by his erstwhile employer within 30 (thirty) days of joining.

The petitioner was engaged as General Manager (Finance) with Brahmaputra Valley Corporation Limited (**BVCL**), and on receiving the appointment letter from the respondent for the position of Vice President, the employee resigned from the services of BVCL. Since the petitioner was on probation and there was no provision for serving any notice period, he resigned from BVCL requesting to relieve him within 15 (fifteen) days. However, BVCL retrospectively confirmed his services and consequently extended the notice to 1 (one) month. Thereafter, the petitioner proceeded to join the respondent with an undertaking that he will submit his relieving letter from BVCL within 30 (thirty) days of joining.

However, BVCL issued a show cause notice, asking the petitioner to explain why disciplinary action should not be initiated against him for joining the respondent without fulfilling his notice period under the previous employer. The petitioner approached the Guwahati HC, challenging the show cause notice. The Hon'ble Court, while staying any proceeding based on the show cause notice, directed that the stay will not prevent BVCL from processing the petitioner's resignation. Thereafter, BCVL accepted the petitioner's resignation. In the meantime, the respondent issued an order unilaterally revoking the petitioner's joining, which led to filing of this writ petition before the Delhi HC.

The Delhi HC stayed the fresh process for filling up the position of Vice President (Finance) by the respondent. It noted that both parties agreed that the petitioner had been appointed to the post by the respondent after successfully clearing the selection process, and the sole reason for revocation of his joining was not furnishing the relieving letter. The Delhi HC held that the petitioner should be allowed to join the respondent corporation since there wasn't any impediment to his joining the respondent any longer as his resignation had been accepted by BVCL.

IV. Karnataka High Court (Karnataka HC)

A. Appellate authority has implied power to grant interim relief under the POSH Act

In *Nagaraj v. Labour Comm.* (W.P. No. 28361 of 2024), the Karnataka HC clarified that the appellate authority under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (**POSH Act**), has implied power to consider stay applications, despite the absence of an explicit provision. The Court directed the appellate authority to consider the petitioner's stay application within two weeks.

The petitioner challenged the recommendations of the internal committee in the final enquiry report and consequent transfer order issued by the employer. The petitioner filed an application for stay, along with the appeal. However, the appellate authority only issued a notice of the appeal without grating the stay order, which has caused irreparable loss to the petitioner. Hence, the petitioner approached the Karnataka HC.

The Court held that since the appellate authority has the power to set aside impugned proceedings, it can be construed that the authority also has implied power to pass an interim order of stay as well. While the POSH Act does not explicitly grant this power, it does not prohibit it as well. The Court accordingly directed the appellate authority to consider the stay application within 2 (two) weeks.

V. Kerala High Court (Kerala HC)

A. Trainees performing similar duties as regular employees to be covered under the EPF Act

In *M/s. Malabar Dazzle India Pvt Ltd, Edappal, Malappuram v. Employee Provident Fund Appellate Tribunal* (W.P. (C) No. 29166 of 2014), the Kerala HC held that if trainees are performing work similar to regular employees then they would be considered as employees under Section 2 (f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (**EPF Act**).

The petitioner in this case did not extend the benefits under the EPF Act to certain individuals categorized as trainees and also placed drivers, attenders, electricians, receptionists, accountants etc., in the category of trainees. Accordingly, pursuant to an inquiry initiated by the Employees' Provident Fund Organisation (**EPFO**) under Section 7A of the EPF Act, the EPFO alleged non-payment of contributions in respect of such trainees.

The companies argued that while an apprentice was included in the definition of employee under Section 2(f) of the EPF Act, it excludes an apprentice appointed under the Apprenticeship Act, 1961, or under the standing orders. The companies further argued that their trainees were apprentices appointed under their certified standing orders and therefore, were excluded from the applicability of the EPF Act. The EPFO organization on the other hand argued that the nature of work performed by the trainees was similar to regular employees and that the standing orders were used to avoid liability under the EPF Act.

The Court held that the trainees appointed under certified standing orders will not be covered under the EPF Act. However, the Court noted that the trainees in the present case were performing the same work, function and responsibility as regular employees and, therefore, should be considered as employees under the definition of Section 2(f) of the EPF Act.

VI. Guwahati High Court (Guwahati HC)

A. Reinstatement denied in absence of employer-employee relationship

In *Jatin Rajkonwar and Ors. v. Union of India and Ors.* (W.P. (C) 3871/2020), the Guwahati HC upheld the award passed by the Labour Court dismissing the petitioners' claim for reinstatement and regularisation with Oil and Natural Gas Corporation Limited (**ONGC**). The Court found that the petitioners had failed to prove an employer-employee relationship with ONGC.

The petitioners claimed they were initially employed directly by ONGC and later engaged through a contractor in a sham arrangement. The petitioners argued their initial direct engagement and the contractor's lack of license under the Contract Labour (Regulation and Abolition) Act, 1970 (**CLRA**), at that time established their status as ONGC employees. ONGC on the other hand argued that the petitioners were always engaged through the contractor. ONGC stated that the Labour Court's findings were based on evidence and that the lack of any appointment letter or salary slips issued by ONGC to the petitioners proved there was no direct employment of the petitioners with ONGC.

The Guwahati HC held that the petitioners failed to provide sufficient evidence of direct engagement by ONGC to establish an employer-employee relationship. The contractor's testimony and payment records supported ONGC's claim, i.e., that the petitioners were engaged through the contractor. The petitioners had no document to prove that they had been directly engaged by ONGC, or that they were being paid by ONGC. The Court further noted that the only consequence of not obtaining a license is the penal provisions under the CLRA and therefore, absence of a contractor license by itself would not deem the contract workers to be direct employees of ONGC.

VII. Jharkhand High Court (Jharkhand HC)

A. Interest at the rate of 10% (ten percent) is applicable in case of delayed payment of gratuity

In *Tata Steel Limited v. State of Jharkhand* (W.P.(L) No. 2120 of 2023), the Jharkhand HC dismissed the writ petition challenging the orders of the Labour Commissioner and Deputy Labour Commissioner, directing Tata Steel to pay 10% (ten percent) interest on delayed payment of gratuity. The Court held that the notification dated October 1, 1987, issued under Section 7(3-A) of the Payment of Gratuity Act, 1972 (**Gratuity Act**), specifying 10% (ten percent) as the interest rate, is valid and not contrary to Section 7(3-A) of the Gratuity Act.

Tata Steel challenged the orders directing them to pay 10% (ten percent) interest on delayed payment of gratuity to an employee, arguing that Section 7(3-A) of the Gratuity Act allows for a maximum of rate of interest to be specified, implying that a lower rate could be applied based on factual circumstances. They pointed out that the Central Government's notified simple interest rate for long-term deposits was lower (6%) and relied on judgments from other High Courts where lower rates were awarded. They also argued that the employee worked beyond his superannuation date (which was also the reason for delay in payment), which was not considered by the authorities.

The Jharkhand HC analysed Section 7(3-A) and the 1987 notification, concluding that the notification has the force of law and is binding until modified by a fresh notification. The Court reasoned that fluctuations in long-term deposit interest rates do not automatically impact the gratuity interest rate. The Court distinguished cases cited by Tata Steel, noting that they either did not involve challenges to statutory authorities' orders or were based on different facts. The Court also dismissed the argument about continued employment beyond superannuation, stating that it does not negate the interest payable for delayed gratuity.

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