

# Labour Law Insights

June 2024



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# Labour Law Insights for the month of June 2024

## Minimum wages

Central/ State Labour dept.: **GOA**

### Notification details

Commissioner, Labour & Employment, Goa has vide notification dated 18.06.2024 released rates of revised variable dearness allowance to INR 125/- per day for various categories of employees employed in Scheduled employments as provided below and the same is effective from 01.04.2024.

- Employment in any shop and commercial establishment other than a residential hotel, restaurant or eating house
- Employment in any residential hotel, restaurant or eating house.
- Employment in Watch and Ward
- Employment in any commercial or Industrial Establishment engaged in commercial, manufacturing and servicing activities other than those covered in the Schedule.
- Employment in construction/ maintenance of roads, stone breaking/ crushing and maintenance of building.
- Employment in pharmaceutical industry and units engaged in manufacture, sale and distribution of medicines and pharmaceutical products.
- Employment in cashew factories and Establishments.
- Employment in Cinema Exhibition Industry
- Employment in Units engaged in the manufacture, assembling of Electronic Goods and Components and distribution and sale of electronic products.
- Employment in Automobile Repairing Workshops und Garages.
- Employment in Public Motor Transport Undertaking and Employment in Private Motor Transport Undertaking.
- Employment in Private Hospital, nursing homes, dispensaries, medical clinics, radiology, pathology laboratories, surgical clinics including such establishments where medical treatment is given to patient.
- Employment in any industry in which any process of printing by letter press, lithography, photogravure or other similar work incidental to such process or book binding is carried on.
- Employment in processing and canning of food stuff including fish and beverages.

Employment in Breweries and Distilleries, Readymade Garments Manufactory, Bricks and Tiles Manufacture, employment in Sawmills, Agriculture, cotton Textile, cotton spinning, cotton pressing, manufacture of cotton fibre, thread yarn spinning and weaving including handloom weaving.

**GT Insights:** Employers at factories/establishments in Goa shall follow the revised rates of variable dearness allowance as applicable to them pursuant to the notification issued by the Goa Labour Department.

# Karnataka labour law updates

## Exemption to startups/Tech firms/ other similar industries from applicability of Standing Orders

Labour department of Karnataka vide notification dated 10.06.2024 has exempted the knowledge based industrial establishments including IT/ ITES/ Startups/ Animations/ Gaming/ Computer Graphics/ Telecom/ BPO/ KPO and other knowledge-based industries from applicability of The Industrial Employment (Standing Orders) Act, 1946, for a period of five years from the date of this publication subject to the certain conditions. This exemption is released in continuation to the earlier notification dated 25.05.2019 which also provided similar exemption for a period of five years.

### Exemption conditions:

#### 1. Constitution of Internal Committee under POSH Act-

The exempted industries/entities shall constitute an Internal Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act) and rules made thereunder.

#### 2. Constitution of Grievance Redressal Committee

The exempted industries/entities shall set up a Grievance Redressal Committee (GRC) consisting of equal number of persons representing both the employer and employees, to address employees' complaints and grievances.

#### 3. Intimation of disciplinary action against employee

The exempted industries/entities shall intimate the details of the cases of disciplinary action like suspension, discharge, termination, demotion, dismissal, etc. of its employees to the Jurisdictional Deputy Labour Commissioner and the Commissioner of Labour, Karnataka.

#### 4. Submission of information to Labour department

The exempted industries/entities shall submit from time to time any information regarding service conditions of employees of the specific industries sought by the Jurisdictional Deputy Labour Commissioner and Commissioner of Labour, Karnataka.

**GT Insights:** The exemption provided to the knowledge-based industrial establishments including IT/ ITES/ Startups/ Animations/ Gaming/ Computer Graphics/ Telecom/ BPO/ KPOs is part of the continuous effort to ease the burden of compliance on certain industries. However, with introduction of the conditions to be fulfilled, the Government has also protected the rights of employees of such establishments.

IT and ITeS companies in Karnataka will not be required to comply with the Standing Orders Act until 10 June 2029, provided that the employer adheres to the conditions.

Exemption notification mentions that in the event The Industrial Relations Code, 2020 is to be implemented, the same shall apply to all.

However, the exemption has not been received well by Karnataka IT Employees union (KITU) raising its concerns regarding the failure of companies to comply with the conditions laid down during the previous exemption continuous.

Despite the protests by KITU, government has not issued any further clarification w.r.t. this exemption notification.

# Telangana labour law updates

## Exemption from certain working conditions of the Telangana Shops and Establishments Act, 1988:

The Labour Department of Telangana vide notification dated 07.06.2024 has provided for exemption to all the Information enabled Services (ITES) and Information technology Establishments from the following provisions of sections 15, 16, 21, 23 and 31 of the Telangana Shops and Establishments Act, 1988.

**Period of exemption:** 4 years w.e.f. 30.05.2024

**Key comparatives are drawn below:**

Provisions exempted for ITES/ITE Industry	Exemption conditions for ITES/ITE Industry
<b>Sec 16- Working hours</b> <ul style="list-style-type: none"><li>Daily- 8 hours per day</li><li>Weekly- 48 hours per week</li><li>Overtime allowed subject to 6 hours per week</li></ul>	Weekly hours- 48 hours per week Beyond 48 hours- Overtime wages applicable
<b>Sec 19- Holidays</b> Weekly- One holiday per week. However, employee whose period of employment in last week was less than 6 days including authorized leave is exempted.	Employee shall be given one weekly off
Sec 21- Young person shall not work in any establishment before 6 A.M and after 7 P.M.	Young persons and Women employees can be engaged during night shift subject to provision of adequate security during the course of employment and transport facility to/from their respective residences.
Sec 23- Women employee shall not work in any establishment before 6 A.M and after 8:30 P.M.	
<b>Sec 31- Other Holidays</b> <ul style="list-style-type: none"><li>Every employee is entitled to 9 holidays in a year and establishments shall remain closed on such days</li><li>Employee in any residential hostel, restaurant, eating house, theatre or any place of public amusement or entertainment may be required to work on such declared days subject to providing them with a compensatory holiday in lieu of same.</li></ul>	Every employee shall be given a compensatory holiday in lieu of notified holidays, with wages u/s 31(2) of the Telangana Shops and Establishments Act, 1988 if they work on notified holidays.

### Other exemption conditions:

- Every employee shall be provided with identity cards and all other welfare measures to which they are entitled as per the rules in force.
- The companies shall obtain biodata of each Driver and conduct pre-employment screening of the antecedents of all Drivers employed on their own or through outsourcing. The details such as driving license, photographs, address, telephone No/Mobile No. etc. of Drivers shall be available with the respective companies. The schedule and route of the pickup and drop shall be decided by the supervisory officer of the company on every Monday (if Monday is holiday the next working day in a week). In case of exigencies change of drivers/routes/shifts shall be allowed only with the prior knowledge of supervisory officers/employees.

- iii The telephone number particularly mobile phone numbers and addresses of the women employee shall not be disclosed to unauthorized persons.
- iv Careful selection of routes shall be made in such a way that no women employees shall be picked up first and dropped last.
- v It is desirable that the company shall provide security guards for night shift vehicles.
- vi The designated supervisors of the company shall randomly check the vehicle on various routes.
- vii Company shall have a control room/ travel desk for monitoring vehicle movements; and
- viii The time after / before which security should be provided to women employees for cab drop offs / pickups should be specified. Suggested as before 6 am and after 8 pm.
- ix General exemption from maintenance of various statutory registers in hard copies and recognition of soft copy of Registers as sufficient compliance.
- x If the above conditions are violated, the exemption orders issued to the company shall be revoked by the Government at any time without prior notice.
- xi The conditions stipulated above shall not be detrimental to the employees working in the said establishments.
- xii The Integrated Registers shall be maintained and integrated Returns to be filed in terms of G.O.Ms.No.23, LET&F Department, dt:24.03.2016.

**GT Insights:** The move to exempt the ITES/ITE industries from certain working conditions related provisions of the Telangana Shops and Establishments Act allows flexibility to such entities to work at different times increasing the productivity, however, subject to conditions that will also ensure all due benefits of employees remains intact.

Similar guidelines were also introduced by Karnataka Government in 2020 through which women were allowed to work at night.

## Maharashtra labour law updates

### Revised rate for Labour Welfare Fund

The Maharashtra Labour Welfare Board vide public notice dated 05.06.2024 has revised the Section 6BB(2) leading to revision in the rates of employers and employees contribution. The said change shall be applicable to all the establishments (factories, establishments, trade associations, hotels, restaurants, banks, hospitals, societies etc.) falling within the scope of the Maharashtra Labour Welfare fund Act, 1953.

**The new half yearly contribution rates shall be effective from June 2024 and are as follows-**

Employee	INR 25/-
Employer	INR 75/-

**GT Insights:** The employers in Maharashtra will deposit LWF contributions as per revised rates.

## Maharashtra Factories (Safety Audit) (Amendment) Rules, 2024

The Industries, Energy, Labour and Mining Department of Maharashtra vide notification dated 19.06.2024 released the Maharashtra Factories (Safety Audit) (Amendment) Rules, 2024, which introduced several significant changes aimed at enhancing the safety standards in factories. Here are the key takeaways from the amendments:

### Expanded definition of “Safety Auditor”

The term "Safety Auditor" now includes both individuals and institutions, broadening the scope of who can perform safety audits.

### Revised safety audit procedures

Safety audits must now align with the Indian Standard IS 14489: Code of Practice on Occupational Safety and Health Audit. The Chief Inspector has the authority to establish additional checklists and procedures, which can be updated annually.

### Lowered threshold for mandatory audits

The requirement for mandatory safety audits now applies to factories employing 50 or more workers, a reduction from the previous threshold of 250 workers. This change aims to ensure that smaller factories also adhere to stringent safety standards.

### Submission of Internal Audit report

After completion of internal audit, the occupier shall submit the executive summary of observations and action taken report of the audit to the concern office of the Chief Inspector of Factories within 30 days from the date of completion of safety audit.

### Annual updates and public availability

The Directorate of Industrial Safety and Health will publish the additional checklists and procedures on its official website, ensuring transparency and ease of access for factory management and auditors.

### Qualification, registration, audit procedure for safety auditors and safety audit report proforma

The amendments have enhanced the qualification criteria for safety auditors and includes amendments on category of safety auditor who shall perform safety audit for specific prescribed factories, procedure for registration as safety auditor and SOP/conditions to be adhered to conduct safety audit.

**GT Insights: The amendments to the Maharashtra Factories (Safety Audit) Rules, 2014 is welcome step towards stricter compliance with respect to below aspects:**

- The scope of mandatory safety audits now applies to factories employing 50 or more workers, a reduction from the previous threshold of 250 workers.
- It involves strict safety protocols.
- It ensures conduct of audit by qualified auditors.
- It includes enhanced mechanism/SOP for conducting safety audit.

## Madhya Pradesh labour law updates

### Building and Other Construction Disabled Assistance Grant Scheme, 2024

The Labour department of Madhya Pradesh vide notification dated 14.06.2024, has notified the “Building and Other Construction Disabled Assistance Grant Scheme, 2024” for the Building and other construction workers holding the UDID (Unique Disability ID) wherein the grant amount of 100% of the purchase price subject to maximum of INR 35,000/- shall be

provided to the disabled construction workers and their dependent family members for purchasing the motorized tricycle and all other handicapped equipment for their transportation.

#### Key features of the scheme:

- The scheme prohibits the selling of the motorized tricycle from 3 years from date of purchase
- The validity of UDID shall be permanent.
- The date of issue of UDID scheme shall be 01.04.2023 or later.
- The tricycles and equipment shall be manufactured by **Artificial Limbs Manufacturing Corporation of India.**
- The benefits of scheme shall be payable only once for each worker and the member registered in the registration card subject to maximum 2 times per registration card.

#### Process to claim grant:

- The applicant shall apply for grant on the Board's Portal(<https://labour.mp.gov.in/>) **after purchasing the tricycle or any equipment.**
- Ancillary documents to be submitted
  - UDID
  - Bill for purchase of tricycle or equipment
  - Photograph of the registered worker or member included in his registration card with the tricycle, or the equipment purchased.
- The designated officer shall verify all the documents and issue DBT for the benefit to be paid in applicants bank account. The officer shall not force for any physical presence.
- The designated officer shall dispose of the application within 30 days from the receipt of the application.
- The scheme also provides for random verification of 10 % of the beneficiaries every financial year. In case, verification fails, or self-declaration is found to be false, legal/punitive action will be taken by the government.

## Grant Scheme for Building and Other Construction E-scooters, 2024

The Labour department of Madhya Pradesh vide notification dated 14.06.2024, has notified the "Grant Scheme for Building and Other Construction E-scooters, 2024" for the Building and other construction workers wherein the grant amount of 50% of the purchase price subject to maximum of INR 40,000/- shall be provided to the construction workers for purchasing the e-scooters for travelling to work.

#### Key features of the scheme

- The e-scooter shall be registered by the disabled person with RTO in his own name.
- The benefit shall be payable only if the construction worker has valid registration for continuously for 5 years.
- The purchased vehicle shall be banned from sale for a period of 3 years from the date of purchase.
- The benefit shall be payable only once in lifetime.
- "Purchased with the grant of MPSSC Board" shall be written on the scooter mandatorily.

#### Process to claim grant

- The applicant shall submit an application for grant on the Board's Portal(<https://labour.mp.gov.in/>) after purchasing the e-scooter.
- Ancillary documents to be submitted
- Registration Card of the e-scooter.
- Bill for purchase of e-scooter.
- Photograph of the worker with the e-scooter.
- Driving License
- The designated officer shall verify all the documents and issue DBT for the benefit to be paid in applicants bank account.

**Timeline:** The designated officer shall dispose of the application within 10 days from the receipt of the application.



**Random Verification:** The scheme also provides for random verification of 10 % of the beneficiaries every financial year. In case, verification fails, or self-declaration is found to be false, legal/punitive action will be taken by the government.

**FCFB:** The grant for the e-scooter shall be provided on first come first basis to the maximum of 1000 applicants with 60 e-scooters reserved for disabled workers. The applications received over and above the 1000 applicants shall apply next year.

**GT Insights:** The first scheme, i.e., the Madhya Pradesh Building and Other Construction Disabled Assistance Grant Scheme, 2024, aims to provide financial assistance to building and construction workers who become disabled due to work-related accidents. The scheme ensures that such workers receive monetary support to help them cope with their disabilities and maintain a decent standard of living.

On the other hand, the second scheme, i.e., Grant Scheme for Building and Other Construction E-scooters, 2024 in Madhya Pradesh aims to promote the adoption of electric scooters among construction workers.

## Rajasthan Labour law updates

### Exemption from prohibition of employment of women or child during night

The Labour Department of Rajasthan vide extraordinary gazette dated 20.06.2024 has notified notification dated 07.03.2024, wherein they have provided exemption to the establishments registered under the Rajasthan Shop and Establishment Act, 1958, from the compliance of Section 22 which provides for **Prohibition of employment of women or child during night**.

**Period of exemption: 3 years**

**Exemption conditions:**

- Prior consent of women employees is required to work at night.
- Employer shall issue appointment letters and ID card to all women employees.
- Employers to ensure the safety of women employees with arrangement of transport for women travelling in night.
- Employers to ensure separate restrooms and lockers for women employees.
- No pregnant women shall be called to work at night during the period 3 months before her expected delivery and 3 months after her delivery.
- Employer to ensure arrangements for preventing sexual harassment in the workplace.

**GT Insights:** The Rajasthan government has in similar lines with the notification issued by the Government of Karnataka in 2020, and the recent notification by the government of Telangana in June 2024 has provided the establishments registered under Rajasthan Shop And Establishment Act, 1958, to allow the women to work at night subject to compliance of certain conditions ensuring safety of women during such period.

# Chandigarh Labour law updates

## Exemption from certain working conditions of the Punjab Shops and Commercial Establishments Act, 1958:

The Labour Department of Chandigarh Administration has vide notification dated 25.06.2024 provided exemption to the establishments registered under the Punjab Shops and Commercial Establishments Act, 1958, from the compliance of following sections subject to compliance of exemption conditions:

- Section 9- Opening and closing hours
- Section 10(1)- Every establishment shall remain close on Sunday and
- Section 30- Condition of employment of women which restricted the women from working at night

### Exemption conditions:

- **Opening & Closing:** All the Shops and Commercial Establishments registered in Chandigarh are permitted to keep open on all 365 days and operate 24 hours.
- **Exemption period:** The exemption shall remain in operation for **1 year** from the date of publication of this notification in Gazette.
- **Weekly rest:** Every employee working in the said shops and establishments shall be given one day rest in a week without making any deduction from his/her wages on account thereof.
- **Rest interval:** Every employee shall be given a rest period of at least half an hour after 5 hours of continuous work.
- **Daily hours:** No employee shall be required to work for more than 9 hours in day or 48 hours in a week.
- **Safety:** The management shall ensure the safety and make adequate arrangement for the employees as well as visitors, if any shop or establishment remains open after 10.00 pm on any day.
- **Facility to women employees:** The employer shall ensure that the women employees are provided with separate lockers and rest rooms.
- **Spread over:** The spread over of an employee shall not exceed 10 hours in a day inclusive of interval for rest.
- **Holidays:** Employee shall be given national and festival holidays with wages
- **Working hours for female employees:** The female employees shall not be allowed to work after 08:00 p.m. However, in case they are allowed to work after 08:00 p.m. the written consent from female employees shall be taken from them.
- **CCTV vigilance:** The CCTV camera with minimum 15 days recording backup shall be installed on the shop/establishment premises.

### Additional guidelines for women employees:

Further, the detailed guidelines have been issued for the employers for allowing women to work at night. Some of the important guidelines are as follows:

- To ensure protection from sexual harassment at workplace and abide by the provisions of POSH Act
- To ensure adequate security and safe transport facility
- To ensure there is security in-charge responsible for maintaining records of transport details like name of driver, model of car etc.
- To ensure annual self-defence training for women employees
- To ensure that the vehicle windows are not tinted/curtained and emergency numbers are displayed in vehicle
- To ensure minimum of 5 women to be employed in the night shift

**GT Insights:** The Chandigarh Administration has issued notification for exemption to establishments w.r.t. certain working conditions related provisions under the Punjab Shops and Commercial Establishments Act, 1958 allowing the shops/establishments to open for 24 hours/ 7 days a week. The notification also allows the shops/establishments to allow women to work at night subject to certain conditions.

This is a welcome step towards increasing productivity which allows the shops to generate more revenue and increase overall employment in the union territory.

# The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

The Employees' Provident Fund Organisation (EPFO) has notified some recent circulars/notifications which are as follows-

## Launch of a new software functionality for online filing of the PF member to update/correct their member profile

The Ministry of Labour & Employment vide its press release dated 01 June 2024 stated the EPFO has operationalised a software for online filing of the changes in the member's Know Your Customers (KYC) details. It is further stated that the members may request for change/rectification in the Member Data like Name, Gender, Date of Birth, Parent Name, Marital Status, Nationality, Aadhaar, etc online and upload the relevant prescribed documents.

The Ministry also mentioned that members have started filing their requests using this new facility out of which around 40,000 are already approved by the field offices of EPFO. The requests land at the employers' end, who after verification recommend it for approval.

**GT Insights:** The consistency of the member's data in the EPFO's records is important to ensure that the services are supplied seamlessly and to the correct member. The facility to ensure a proper KYC and matching member profile will facilitate EPFO in providing instant services like auto settlement of advances, auto transfer of PF account, e-nomination etc. to the member without the need for the member to physically visit any PF office.

## Discontinuation of Covid Advances under para 68L (3) – Vide circular WSU/2020/COVID-19/Agenda Item/1701, dated 12 June 2024:

The Employees Provident Fund Organisation (EPFO) had inserted an enabling provision vide notification GSR.225(E) dated 27 March 2020, whereby the members were allowed to avail a non-refundable advance during the outbreak of Covid-19 pandemic. The members could withdraw up to three months' basic pay and dearness allowance or 75% of their EPF balance, whichever was less.

However, since this advance was a temporary measure to provide financial relief to the members and as Covid-19 is no longer a pandemic, the EPFO has decided to eliminate this provision with immediate effect. This notification is valid for both EPFO-managed accounts and exempted trusts.

**GT Insights:** The Covid-19 advance was a temporary provision introduced by the EPFO in 2020 during the first wave of Covid-19 and was continued during the second wave of Covid-19 in 2021 as well. Keeping in view that it was a temporary provision and since Covid-19 is not a pandemic anymore, the EPFO's decision to discontinue this advance was expected.

## Reduction in the penal charges/damages for delayed contribution by the employer: Notification dated 14 June 2024-

The Ministry of Labour & Employment vide its notification no CG-DL-E-15062024-254723, dated 14 June 2024 amended the penal provisions under the Employee's Provident Fund Scheme, 1952 (EPF Scheme), Employee's Pension Scheme, 1995 (EPS Scheme) and Employee's Deposit Linked Insurance Scheme, 1976 (EDLI Scheme). Earlier, the rates of damages were as follows:

Sl. No	Period of default	Rates of damages (per annum)
1	0-02 months delay	5%
2	02-04 months delay	10%
3	04-06 months delay	15%
4	For delays above 06 months	25% (subject to a maximum of 100%)

However, according to notification dated 14 June 2024, the defaulter companies will now be liable to pay 1% of the contributing amount per month as penal charges. This translates into 12% of the contributions per annum. The move will mean a lower burden for defaulting employers.

**GT Insights:** The Ministry has announced reduced penal charges for employers failing to deposit contributions on time, aiming to alleviate financial burdens and streamline compliance. It is to be noted that this notification is effective from 14 June 2024 and shall be beneficial to employers where the order u/s 7A/14B has not yet been passed. Where the order is already passed and interest and damages are already levied, such establishments would not be benefitted by such notification. Such notification has a prospective effect.

## Initiation & Disposal of 14B & 7Q Inquiries – circular dated 21 June 2024

The EPFO vide Circular No. RRC/ (01)2024/Recovery Dues/1884 dated 21 June 2024 has instructed all the Regional Provident Fund Commissioners (RPFC) to close all the inquiries initiated under section 14B & 7Q of the Employees Provident Fund & Miscellaneous Provisions Act, 1952 (EPF Act), by 31 August 2024. Where the inquiries have not yet been initiated, it is instructed to initiate such enquiries by 31 July 2024 and close them within next three months of initiation.

Also, the inquiries where the dues are above INR 50 lakhs may be given special emphasis and disposal of such cases must be taken on priority.

Further, it is instructed to all the Zonal offices to closely monitor the officer-wise performance in their jurisdiction and submit a progress report on 15<sup>th</sup> of each month to the Head Office.

**GT Insights:** The ministry of Labour & Employment has set internal targets for Financial Year 2024-25 for the recovery to be made by the department. Owing to the same, the EPFO has released this circular to ensure that timely recoveries are made by making sure that the pending inquiries are disposed by 31 August 2024 and new inquiries are initiated by 31 July 2024 and disposed within next 3 months. We anticipate that as a result of this circular, employers may experience quicker disposal of their inquiries or receive new/additional notices from the department.

## Modification in Table B for the purpose of calculation of past service benefit under Para 12 (3) (i) (b) of the EPS Scheme, 1995- dated 24 June 2024.

Table B is a critical component within EPS Scheme as it provides the multiplication Factor for computation of past service benefit under the [Ceased] Family Pension Scheme for existing members on exit from the employment.

The EPFO vide File No: e-37633/1921 dated 24 June 2024 read with the notification number G.S.R. 326(E) dated 14 June 2024 of the Ministry of Labour & Employment, has updated the Table B and has laid down corresponding Factor for calculation of past service benefits under Para 12(3)(i)(b) of the EPS Scheme taking into account a further period of up to 42 years. Earlier, the Table B took into account the past service period up to 34 years only but post issuance of this circular, the Table B is modified to cover the period from Year 1 to Year 42.

**GT Insights:** The EPFO has extended the past service benefits to members who attain the age of 58 years after a time span of 34 years or more as considered from 16 November 1995. Earlier the maximum multiplication factor available for up to 34 years of past service was 13.173, however, the same has now been extended to up to 42 years of past service with 24.38586 as the maximum factor.

## Modification in Table D under EPS'95 for the purpose of calculation of withdrawal benefits in terms of Para 14 of the EPS Scheme, 1995- dated 24 June 2024.

The EPFO vide File No: e-37633/1920 dated 24 June 2024 read with the notification number G.S.R. 326(E) dated 14 June 2024 of the Ministry of Labour & Employment, has modified the Table D under the EPS Scheme 1995 which is used for calculation of withdrawal benefits in terms of para 14 of the Scheme.

As per the notification, instead of taking number of years of service as the basis of calculation, henceforth in cases not ill-eligible for pension, the completed months of contributory service shall be taken into account for calculation of the withdrawal benefits. The notification also clarifies that the revised Table D is applicable for all withdrawal benefit cases settled after the date of this notification, irrespective of date of leaving the service.

However, the notification specifies an exception to the applicability of Table D. The only exception shall be of cases where member may have attained the age of 58 years prior to 14 June 2024. In such cases, since date of completing 58 years i.e., date of exit from the EPS Scheme is prior to date of notification of revised Table D, the calculation will continue to be based on the erstwhile Table D.

**GT Insights:** Previously, withdrawal benefits were determined by the number of complete years of contributory service and the wages on which EPS contributions were made. Consequently, only members with six months or more of contributory service were eligible for this benefit. This led to numerous claim denials and disputes as many members left before completing the required six months of service.

Pursuant to this notification, the Table D has been modified to calculate the lumpsum payment an employee is eligible to receive if he/she quits the pension scheme before completion of 10 years. on the basis of the months of service completed by an individual instead of the erstwhile method of considering the number of years of services.

## EPFO discontinues GIS deductions from the salary of EPFO employees vide circular dated 21 June 2024

The EPFO vide circular no HRD-II/49/2024/GIS-Matters/1047 has decided to discontinue the GIS benefits provided to its employees and refund the past deductions made from the employees' salaries. Such deductions shall discontinue for employees who joined EPFO after 01 September 2013 and such employees are expected to be eligible for the refund of deductions for GIS made till the date of issue of this circular.

The discontinuation of deductions under GIS will increase the take-home salaries of such employees. Previously, deductions were made from employees' monthly salaries as per their pay-scales to fund the GIS. With this scheme no longer in effect, employees will receive higher net in hand salaries, enhancing their disposable income.

**GT Insights:** GIS or Group Insurance Scheme was created with a view to provide a low cost and on a self-financing basis the insurance cover to help the families of the government employees in the event of death of the employees while in service and a lump sum payment to the employees or to their families on cessation of employment on account of resignation, death, retirement etc. Such discontinuance of GIS is likely driven by two primary reasons. Firstly, it aims to reduce the financial burden on the government by minimizing liabilities associated with such schemes. Secondly, EPFO might be encouraging the employees to explore and opt for insurance schemes available in the market that offer comparable or superior benefits. This shift could empower the EPFO employees to have more flexibility in choosing plans that best suit their needs and preferences.

As of now, EPFO has not provided specific details regarding the mechanism or timeline for refunding deductions made under GIS. However, it is anticipated that refunds will be processed through the employees' payroll, either as arrears or as a refund for any erroneous deductions

# Important Judgements for June 2024

## Industrial Disputes Act, 1947

Bombay Dyeing & Manufacturing Co. Ltd. and Ors. Vs. Yogesh Vinayak Tipre [HCOB]

**Case Note: Whether dismissal from employment as a punishment is justified for absence for few hours from the workplace.**

The employee was dismissed by the employer for being absent from the workplace from 2:48 p.m. to 4:24 p.m. The employer in his reason for dismissal stated that the hours at which the employee was absent from workplace were hours of heavy workload and he did so by not taking any permission and without any reason. However, court decided in favour of the employee and ordered reinstatement with a lump sum compensation of Rs. 25,00,000 to be paid by the Petitioner, in addition to the back wages already deposited.

**Case was decided on: 09.05.2024.**

**Brief facts:** Bombay Dyeing & Manufacturing Co. Ltd. ("Petitioner") challenged an Award dated 26 April 2007 from the Labour Court, Mahad, which ordered the reinstatement of the Respondent with full back wages and continuity of service from 24 September 1999. The Respondent was employed as an Accounts Assistant (Weigh bridge) at Petitioner's Di-Methyl Terephthalate (DMT) factory. Allegations against him included unauthorized absence from duty on 28 June 1999 during critical operational hours, causing delays in truck dispatches and monetary losses to the company.

Following a show cause notice and charge sheet, an enquiry was conducted, leading to the Respondent's dismissal on 24 September 1999. The dismissal was challenged through various legal proceedings, including a complaint before the Labour Court and subsequent appeals.

The Labour Court, in its Part-II Award dated 26 April 2007, found in favour of the Respondent, citing procedural flaws in the enquiry process and disproportionality of the dismissal as punishment.

**Decision:** Writ petition allowed

**Rationale for decision is given below:**

- **Procedural fairness:** The High Court noted that the Labour Court had initially found the enquiry unfair and the dismissal unjustified in its Part-I Award. This finding was upheld through subsequent judicial reviews, highlighting procedural irregularities in the conduct of the enquiry.
- **Evidence consideration:** Despite the Petitioner presenting evidence of witnesses and documentary proof regarding the alleged misconduct, including a computerized statement and testimonies, the Labour Court disregarded these on grounds of procedural lapses in document verification.
- **Admissions by respondent:** The Respondent's admission of absence during the stated period was considered significant by the High Court. However, it was noted that the Labour Court's refusal to admit and consider the charge sheet and show cause notice as evidence was erroneous, especially since their authenticity and the Respondent's acknowledgment were not in dispute.
- **Disproportionate punishment:** The High Court agreed with the Petitioner that the penalty of dismissal was harsh considering the nature of the misconduct, which involved temporary absence during a critical work period. Past disciplinary actions against the Respondent were also taken into account, where previous incidents had not resulted in severe penalties.
- **Relief granted:** Considering the prolonged litigation and the Respondent's age and lengthy period of unemployment since 1999, the High Court modified the Labour Court's award. It substituted the reinstatement order with a lump sum compensation of Rs. 25,00,000 to be paid by the Petitioner, in addition to the back wages already deposited.

## R. Mohanakrishnan vs. The Deputy Inspector General of Police, Coimbatore Range and Ors. [HCOM]

**Case note: The jurisdictional delineation between the Industrial Court and the Labour Court for disputes arising from transfer-related unfair labour practices under Schedule IV of the Industrial Disputes Act, 1947.**

**Case was decided on: 15.01.2020**

**Brief facts:** The employee was appointed on June 6, 1985, as a Professional Service Representative in Sagar, Madhya Pradesh. He was later promoted to Field Sales Officer Grade FM-One. The employer had the right, as per the appointment terms, to transfer the employee to any affiliate or subsidiary. The employee was transferred to Mumbai on March 21, 2005, but did not join. Subsequently, his service was terminated on April 15, 2005. The employee, along with a union, filed a complaint before the Industrial Court under the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, challenging the transfer and termination.

**Decision:** The High Court upheld the transfer as per the terms of employment. The termination, although contested by the employee, was considered valid as it was issued and sent, regardless of actual receipt by the employee. Allegations of unfair labour practices (mala fide transfer) were dismissed because there was no evidence of personal bias or improper motive in the transfer decision. Jurisdictional issues were discussed, stating that termination disputes fall under the Labour Court's jurisdiction, not the Industrial Court.

Hence, the appeal was dismissed.

### **Rationale:**

The Industrial Court's jurisdiction includes deciding complaints related to unfair labour practices, except those specified under Item 1 of Schedule IV. According to Section 7 of the relevant statute, unfair labour practices listed in Item 1 of Schedule IV are specifically under the jurisdiction of the Labour Court. Therefore, the Industrial Court lacks jurisdiction to examine issues of termination resulting from a transfer order. The statute provides specific forums for addressing grievances related to termination of services, and jurisdiction must be invoked in accordance with these statutory provisions. Allegations of termination due to failure to join a transferred position do not fall within the Industrial Court's jurisdiction. Any dispute concerning termination as an act of victimization exclusively falls within the Labour Court's jurisdiction.

Consequently, the Supreme Court found no merit in the appellant's arguments challenging the High Court's decision. The Labour Court alone has the competence to adjudicate the issue of alleged unlawful termination.

The Supreme Court dismissed the appeal, affirming the High Court's decision that the transfer was valid under the terms of employment and the termination was lawful. It clarified that, issues of termination as a consequence of transfer fall under the Labour Court's purview, not the Industrial Court.

## The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

### R. Mohanakrishnan vs. The Deputy Inspector General of Police, Coimbatore Range and Ors. [HCOM]

**Case note: The case deals with the working of the Internal complaints committee and the limitation of timeline under The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.**

**Case was decided on 11.06.2024**

**Brief facts:** The petitioner was appointed as a Junior Assistant in 1995 on compassionate grounds and was subsequently promoted to Assistant and then Superintendent. While serving as Superintendent in the District Police Office, Nilgiris District, the petitioner audited the use of two Scorpio vehicles intended for community policing but found they were misused by officers. After submitting a report on this misuse, the petitioner went on leave due to his mother's illness.



During the petitioner's absence, a co-employee, Mrs. AAA, allegedly made false allegations of sexual harassment against him, dating back to 2018. The allegations emerged after the petitioner submitted the audit report, suggesting a potential connection to retaliation or manipulation by those implicated in the audit findings. The Internal Complaints Committee (ICC) was formed under the POSH Act to investigate the allegations, despite the complaint being filed outside the statutory timeframe. The petitioner alleges procedural irregularities and violations of natural justice during the ICC's proceedings:

- 1 Delay in providing the petitioner with a copy of the complaint.
- 2 Lack of opportunity for cross-examination or a fair hearing.
- 3 Mishandling of witness statements and failure to distinguish between prosecution and defence witnesses.
- 4 Delay in issuing the charge memorandum and providing necessary documents.

#### Questions before the court were as follows:

**Question No. 1: The main issue under consideration is whether Mrs. AAA's complaint of sexual harassment against the petitioner is barred by limitation. The arguments presented include:**

Mrs. AAA initially reported instances of sexual misconduct by the petitioner, including unwanted calls and messages, escalating to a serious allegation of forcible sexual intercourse in April 2018.

The complaint was filed in December 2022, well beyond the typical statutory period for filing such complaints. The judiciary's interpretation of "continuing offence" is referenced to determine if the complaint can still be considered valid despite the delay. The argument is made that continuous mental trauma and stress suffered by the victim due to the alleged misconduct qualify it as a continuing offence.

Precedents and legal principles cited emphasize that the nature of the injury caused by the alleged offence determines whether it qualifies as a continuing wrong. The court rejects the petitioner's argument that the complaint is time-barred, stating that serious allegations such as those involving continuous harassment are exceptions and not bound by strict timelines.

**Question No. 2: This question pertains to procedural fairness in the conduct of the ICC enquiry:**

The ICC issued a charge memorandum based on its findings related to sexual harassment allegations made by Mrs. AAA and two other victims, Ms. BBB and Ms. CCC. However, the charge memorandum specifically addressed allegations by Mrs. AAA alone, raising questions about procedural redundancy. The court acknowledges the sensitive nature of the allegations and the need to protect victims from direct confrontation with the accused. Despite this sensitivity, the court finds that the petitioner was not given adequate opportunity for cross-examination during the enquiry. It notes discrepancies in how witnesses were treated, particularly those perceived as prosecution witnesses versus defence witnesses. The court concludes that while the overall conduct of the ICC may not entirely violate principles of natural justice, the lack of opportunity for cross-examination by the petitioner's side is a significant flaw.

As a remedy, the court orders that the matter be remitted back to the ICC for continuation of the enquiry, ensuring proper opportunities for cross-examination and adherence to procedural fairness.

**Decision:** The Writ Petition in question has been allowed by the court with the following broad terms:

- 1 Setting Aside the Enquiry Report: The impugned enquiry report dated 06.02.2023 by the 3rd respondent (ICC) is set aside.
- 2 Continuation of Enquiry: The ICC, preferably with the same composition, will continue the enquiry proceedings. If any members are unavailable, they may be replaced to ensure continuity.
- 3 Next Hearing Date: The ICC is directed to reassemble or reconstitute for the next phase of the enquiry scheduled for 01.07.2024.
- 4 Cross-Examination: The petitioner (accused) will have the opportunity to indicate which witnesses he wishes to cross-examine. The ICC will then re-summon these witnesses for cross-examination on the specified date.
- 5 Protection of Victims: Victims (Mrs. AAA, Ms. BBB, and Ms. CCC) may be protected from direct exposure to the petitioner during questioning, potentially through a screen or by administering questions via a designated employee.
- 6 Final Arguments and Report Submission: After completion of evidence and cross-examination, the petitioner may present oral or written arguments. The ICC will then objectively consider all evidence and submit a fresh enquiry report.
- 7 Completion Timeline: The ICC is instructed to complete the entire process within 60 days from 01.07.2024, aiming for conclusion on or before 31.08.2024.

**Disciplinary Action:** Upon receipt of the fresh enquiry report, the disciplinary authority must take further steps within four weeks. If considering disciplinary action, a second show cause notice should be issued to the petitioner, followed by a decision after hearing.

## The Payment of Gratuity Act, 1972

### Mercedes Benz India Private Limited Vs. Noshir Nadir Desai

**Case Note-** The case deals with the question of continuity of service in case of transfer of employee between two companies under same management

**Case was decided on 15.01.2024.**

**Brief facts:** The subject of this case, Mr. Noshir Desai, worked at Mercedes-Benz India Pvt. Ltd. (Mercedes-Benz) from 1996 until 2004. Mercedes-Benz made the decision to send him on a foreign assignment to Daimler AG, the host business, in Germany. As a result, Mercedes-Benz and Mr. Desai signed an Agreement of Assignment of Contract of Appointment, which placed his services with the Host Company on March 1, 2004. Mr. Desai worked under the terms of the agreement until June 25, 2012, when the Host Company relieved him due to his resignation, which he had submitted on April 5, 2012.

The disagreement stemmed from the payment of a gratuity for services provided by Mr. Desai from 1996 to 2012, since Mercedes-Benz declined to treat Desai's connection with the Mercedes Benz after he was assigned to the Host Company. Mr. Desai, who was upset, applied for a gratuity under the Gratuity Act before the Controlling Authority. The application was granted by the Controlling Authority and ordered the payment of Rs. 16,51,652/- against the gratuity due.

Mercedes-Benz against the order of the Controlling Authority filed an appeal with the Appellate Authority, which remanded the proceedings to the Controlling Authority to determine the precise amount of gratuity that would be due to Mr. Desai. Followed by this Mercedes Benz challenged the order of Appellate authority before Bombay High Court against the treatment of two spells of services between Mercedes Benz and Host Company as continuous.

**Questions before the court were as follows:**

- Continuity of service in case of transfer of employee to another company under the same management.
- Computation of gratuity amount payable to employee.

**Decision:** The Bombay High Court ruled in favour of the employee.

- The Hon'ble High Court made it clear that mere transfer of employees to another company wherein the ultimate management is common cannot be termed as discontinuation of service.
- High Court rejected the contention of Mercedes Benz that two companies were different and that is why continuity of service doesn't arise.
- High Court rejected the argument of the Mercedes Benz on the basis of the clause in the Agreement dealing with termination and re-integration and made it clear that the said clause cannot be read in isolation.
- High Court on the basis of the plain reading of the Agreement concluded that there could be no doubt to the position that Mercedes Benz continued to be the primary/parent employer even during assignment of the employee to the Host Company Daimler AG
- High Court also observed that it is because of the common management of both the companies that this transfer took place and also referred Clause I of the Agreement where it was clearly mentioned that **"the provisions of the existing employment contract with the Home Company shall continue to apply unless this Supplementary Agreement provides otherwise"**
- The High Court ruled that the gratuity must be calculated using the definition of "wages" under Section 2(s) of the Gratuity Act, which includes all employee emoluments, including Dearness Allowance, but excludes all other allowances. The Controlling Authority was then instructed to base the gratuity calculation on the emoluments that Mr. Desai was receiving at the time of his service termination.



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