

## Labour Law Newsletter – September Edition 2021

### Government Notifications

#### A. CENTRE

##### 1. Government of West Bengal issues guidelines for Durga Puja Bonus, 2021

**The Governor of West Bengal issues guidelines for all employers and employees to follow certain guidelines while setting the legitimate dues of workers in respect of payment of bonus, in view of ensuing Durga Puja, 2021.**

The Governor of West Bengal issued guidelines for employers and employees of the state covered under Payment of Bonus (Amendment) Act, 2015 ('Act') to follow the guidelines in view of ensuing Durga Puja, 2021 with regard to the dues of the workers as mentioned below:

- Employers shall adopt a flexible attitude on the issue of payment of bonus.
- Employers shall consider payment of an amount of ex-gratia in lieu of bonus as is admissible at the maximum stage to workmen and employees who have crossed the eligibility limits.
- All employees, whether in casual employment or re-employed after retirement or employed through contractors worked for not less than 30 days during the year should be paid bonus.
- The employers who are in default towards payment of bonus for the previous years are also being requested to make such payments this year along with the payment of bonus.
- All trade unions, and employer's organizations shall extend their co-operation in maintenance of a climate of industrial peace and exercise their good offices for peaceful and effective settlement of industrial disputes.
- Employees of IT sector, hotels and restaurants, shops & establishments, security workers and some workers in jute mills should get bonus.
- The payments of bonus should be made before commencement of Durga Puja, 2021.

All employers including the public sector undertakings will act according to this appeal.

## **2. Employees Provident Fund Organization Extends Time for Linking of Aadhaar Card in North East Region**

**The Employees Provident Fund Organization has extended the time till 31st December 2021 towards linking of Aadhaar for administrative zone of north east region**

The Employees Provident Fund Organisation (“EPFO”) has directed that the regional offices and district offices will facilitate and coordinate with Unique Identification Authority of India (“UIDAI”) to organize camps for Aadhaar enrolment and correction in Aadhaar data of Employees Provident Fund member to facilitate Aadhaar linking in Universal Account Numbers (“UAN”) and monitor the progress on weekly basis. The notification is applicable on North Eastern states comprising of Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland and Tripura and establishments in remote localities. These are the areas affected by insurgency, frequent change of work site of workers, other attendant constraints in classes establishments such as beedi making, building and construction and plantation industries. The delay in filing Electronic Challan cum Return for wage month August 2021 and September 2021, due to non-linking of Aadhaar in establishments located other than those areas as mentioned shall not be considered as employer's default.

### **B. TRIPURA**

#### **3. Enforcement of Provisions of Employees' State Insurance Act, 1948 in Districts of Tripura**

**Enforcement of provision of Employees' State Insurance Act in Dhalai, Gomati, North Tripura and Sepahijala Districts of Tripura**

Employees' State Insurance Corporation (“ESIC”) has implemented provisions towards Chapter IV (Contribution), Chapter V (Benefits), Chapter VI (Adjudication of Disputes and Claims) effective from 1st day of October, 2021 in all the areas of Dhalai, Gomati, North Tripura and Sepahijala district in the State of Tripura.

### **C. MANIPUR**

#### **4. Extension of Provisions of Employees' State Insurance Act, 1948 to Districts of Manipur**

**The Government of Manipur has extended provisions of Employees' State Insurance Act to areas under Employees State Insurance Corporation**

The Government of Manipur has extended the provisions of The Employees' State Insurance Act, 1948 (“Act”) to the classes of establishments situated within the areas in consultation with the ESIC. The provisions of ESIC will be applicable on Shops, Hotels, Restaurants, Road Motor Transport establishments, Cinemas including preview theatres, newspaper establishments, educational institutions, medical institutions, Municipal Corporation, municipal board, municipal council and other Local bodies controlled by the State Government.

## 5. Draft Rules on Wages Code

The following States have published draft rules in September 2021, which the State Government proposes to make in exercise of the powers conferred by section 67 of the Code on Wages, 2019 (29 of 2019) read with section 24 of the General Clauses Act, 1897

The Government of Maharashtra and Telangana have introduced the Code on Wages (“Code”) on 3<sup>rd</sup> September 2021 and 29<sup>th</sup> September 2021 respectively. The Code contains important provisions for the standard working-class regarding their expenditures, number of working hours, bonuses, and wage period. Based on the floor wages determined by the Central Government, the Government will set the minimum wage under the Rules.

**Till date following state governments have come up with their draft rules in the year 2021:**

1. Code on Wages (Bihar) Rules, 2021 - 18<sup>th</sup> February 2021
2. Code on Wages Karnataka Rules, 2021 – 02<sup>nd</sup> March 2021
3. Uttar Pradesh Code on Wages Rules, 2021 – 25<sup>th</sup> February 2021
4. Madhya Pradesh Code on Wages Rules, 2020 – 24<sup>th</sup> December 2021
5. Jammu and Kashmir - Code on Wages Jammu and Kashmir Rules, 2021 – 15<sup>th</sup> January 2021
6. Maharashtra Code on Wages Rules, 2021 – 3<sup>rd</sup> September 2021
7. Telangana Code on Wages Rules, 2021 – 29<sup>th</sup> September 2021
8. Jharkhand Code on Wages Rules, 2021 – 14 July 2021

## **LATEST CASES**

### **1. Mens-Rea a ‘Condition Precedent’ Under Section 14B of Employees Provident Funds And Miscellaneous Provisions Act<sup>1</sup>**

**The Delhi High Court stated that the presence of mens-rea is a condition precedent to impose section 14B of Employees Provident Funds and Miscellaneous Provisions Act, 1952.**

In the present case the High Court of Delhi (“**Court**”) on 9<sup>th</sup> July 2021 dismissed the petition filed by the Central Board of Trustees (“**Petitioner**”) of the Employee Provident Fund Organisation (“**EPFO**”) wherein they had challenged an order of the Central Government Industrial Tribunal (“**CGIT**”) passed in favour of B2R Technologies Pvt. Ltd (“**Respondent**”)

The Court held that the damages imposed on the employer are not sustainable under Section 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (“**Act**”) if there is no ‘mens rea’ on the part of the employer. Under Section 14B of the Act the company is liable to pay damages to the EPFO; such damages can be levied on the companies in the form of penalty by the authority. The Respondent contended that they were a social enterprise, engaged in training and providing employment to Rural Youth and had paid the entire interest imposed on them. They had incurred huge operating losses and were struggling to survive. The Petitioner did not counter the submission of the respondent and they never gave any findings on the elements of mens rea on the part of respondent.

Therefore, the Court held that the imposition of damages is not justified until and unless there is mens rea on the part of employer, and findings of mens rea is an essential condition before passing of an order of damages under section 14B of the Act and directed the petitioner to refund the already recovered money from the respondent, failing which simple interest @ 9% per annum would be applicable.

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<sup>1</sup> Central Board of Trustees EPF Organisation vs. B2R Technologies Pvt. Ltd.

## 2. Part Time Sweepers Employees under Section 2(F) Employees Provident Funds and Miscellaneous Provisions Act, 1952

### High Court of Allahabad holds that Part Time Sweepers Are Employees under Section 2(F) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 despite of Any Bipartite Settlement<sup>2</sup>

In the present case, the High Court of Allahabad (“**Court**”), on 21<sup>st</sup> January, 2020 held that the ‘Safai Karmcharis’ are part-time sweepers covered within the ambit of “employee” u/s 2 (f) of the Employees' Provident Funds And Miscellaneous Provisions Act, 1952 (“**Act**”).

The U.P. Gramin Bank (“**Petitioner**”) had contended that since the Safai Karamcharis were made to work only for one hour a day and there existed a prior bipartite agreement with them, thus they could not be subject to benefits of Provident Funds (“**PF**”) under the Employees Provident Funds Scheme. The respondent lodged a complaint with Employees Provident Fund (“**EPF**”) Authority, which led to an enquiry under section 7A of the Act. The Authority the directed bank to pay amount determined.

The Petitioner challenged order of EPF Authority through the writ petition before the Court and held that the Safai Karamchari are employees under the Act entitled to the benefits under the Act. Any bipartite settlement contrary to Act cannot restrict the benefits under the Act, the Petitioner also failed to establish that Safai Karamchari were also working in other establishments. Hence, the Court upheld the order of the tribunal and dismissed the writ petition.

## 3. Remunerative Payments Under the Definition of Wages<sup>3</sup>

### The Apex Court Discusses the Definition of Wages And Clarifies The Components Of Remunerative Payments Liable On An Employer

The Supreme Court of India (“**Court**”) on 8<sup>th</sup> March 2021 held that The Employees State Insurance Corporation (‘**Petitioner**’) passed order under section 45A of the Employees' State Insurance Act, 1948 (“**Act**”) by computing wages including conveyance allowance, leave salary, etc. directing employer, i.e. M/s Texmo Industries (“**Respondent**”) to pay

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<sup>2</sup> C/M Baroda, U.P. Gramin Bank vs. Presiding Officer, Employees Provident Fund and Others

<sup>3</sup> The Employees State Insurance Corporation v. M/s Texmo Industries

contributions with interest. The Respondent challenged order of the Petitioner before Employees Insurance Court in respect of conveyance allowance. The Employees Insurance Court allowed the application of the Respondent by rejecting claim raised by the Petitioner in respect of conveyance allowance.

The Respondent challenged the order of Employees Insurance Court by filing appeal which was dismissed by High Court of Madras. Hence a leave petition was filed by petitioner.

The Supreme Court of India (“**Court**”) on 8<sup>th</sup> March 2021 held that under Section 2(22) of the Employees' State Insurance Act, 1948, the wages includes remunerative payments, but does not include-

- (i) Compensatory payments,
- (ii) Travelling allowance/concession/free transport from residence to his place of work and would not cease to be 'travelling allowance' only because it was a fixed sum paid along with wages or at regular intervals,
- (iii) Any payment to reimburse or compensate for special expenses, incurred by reason of the nature of his employment – Including 'conveyance allowance' in 'wages' as it is paid every month to every employee to meet to and from conveyance expenses.

The court thus dismissed the petition and held that the petitioner had made an erroneous construction of Section 2(22) of the Act.

#### 4. Dismissal After a Fixed Term of Employment Legal<sup>4</sup>

The High Court of Himachal Pradesh on 7<sup>th</sup> July 2021 held that not allowing resuming of duty after a fixed term of appointment is not an illegal dismissal of services

The Kewal Singh (“**Petitioner**”) worked as a driver in DAV Senior Secondary School, Ambota (“**Respondent**”) from 15.09.2009 to 08.07.2011. As per the fact stated by the Petitioner, the school remained closed from 09.07.2011 to 14.08.2011 on account of summer vacations. The appointment letter of the Petitioner stated a working period up to 31.03.2012. However, the Petitioner was not allowed to resume duty from 14.08.2011. He had continuously worked for more than 240 days in twelve calendar months preceding date of his dismissal. He stated that by tempering the date had been converted to

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<sup>4</sup> Kewal Singh vs. The Principal, DAV Senior Secondary School Ambota and Anr.

08.07.2011 and a no show-cause notice or a charge-sheet was issued to him. The Petitioner raised an industrial dispute which was rejected by the Labour Court.

A Writ Petition filed by workmen in the High Court of Himachal Pradesh (“**Court**”) challenging award passed by Labour Court which dismissed on the ground that appointment of Petitioner was for a fixed time on contract basis. Since, he worked intermittently on contractual basis for different spells. Therefore, the Petitioner did not work continuously for 240 or more days, and, he had accepted his relieving order issued to him. The appointment came to an end as per contract.

The Court while dismissing the petition held that non-allowance of resumption of duty after fixed term of appointment is over is not illegal dismissal of services. Court also held that the workman worked for not more than 240 or more days continuously during preceding 12 calendar months, as the Appointment was contractual for different spells of periods. Therefore, non-renewal of term of contractual engagement cannot bring petitioner within the ambit of the word ‘retrenchment’ under the provisions of the Industrial Disputes Act, 1947. And the Termination was not in violation of Sections 25F and 25H of the Industrial Disputes Act, 1947.

## 5. Himachal Pradesh High Court Elaborates the Grant of Maternity Leaves<sup>5</sup>

**The Court decided in favour of an employee who was refused basic benefits of Maternity Leave and elaborated the Section 11A of Maternity Benefit Act, 2017.**

The High Court of Himachal Pradesh (‘**Court**’) on 27<sup>th</sup> July 2021 held that Bahra University, Shimla (“**Petitioner**”) failed to extend maternity benefits to employee. In pursuance to this order the Petitioner was directed to release maternity benefits as leave wages with interest and accept the joining of the employee post maternity leaves.

Dr. Pooja Bhardwaj (“**Respondent**”) had applied for maternity leaves and was allotted a leave period of six months. However, on her re-joining she was denied remuneration for the period of her maternity leave. The Respondent lodged an appeal with the labour inspector and Petitioner was directed to release the pending maternity benefit along with

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<sup>5</sup> Bahra University, Shimla vs. Dr. Pooja Bhardwaj and others

an immediate re-joining. The Petitioner filed a Writ Petition in the Court against lower courts wherein their petition was dismissed.

The Court deciding the present case highlighted Section 11A of Maternity Benefit Act, 2017 (“Act”) which mandates that every establishment having fifty or more employees shall have crèche within such distance, as may be prescribed, either separately or along with common facilities and the employee shall be allowed four visits a day to the crèche until the child attains the age of fifteen months.

**The Key Takeaways on Maternity Benefits stated in the above judgement:**

A woman employee is entitled to maternity benefits consisting of salary for maternity leave and Rs. 3,500/ as medical bonus.

- An employer is liable to extend maternity benefits to woman employee including leave with salary for the prescribed period.
- Non-payment of maternity benefits will attract interest from the date of entitlement to the date of actual payment by the employer.
- Every establishment having fifty or more employees shall have creche within such distance, as may be prescribed, either separately or along with common facilities with nursing facilities required for newly born child.
- Every woman employee who returns to duty, after delivery, shall, in addition to the interval for rest allowed to her, be allowed in the course of her daily work two breaks of the prescribed duration, i.e. , four visits to creche for nursing the child till the child attains the age of fifteen months.
- Under norms of National Minimum Guidelines for setting up and Running Creches under Maternity Benefit (Amendment) Act, 2017, creche facility has to be provided for the children of employees up to the age of 6 years.