

Labour Law Alert – October Edition 2021

Notifications:

Central

Declaration of Rate of Interest for the Employees Provident Fund Members Account

Employee Provident Fund Organization (“EPFO”) vide circular dated October 29, 2021 has requested all zonal offices and regional offices to issue instruction for crediting interest at the rate 8.50 per cent for the year 2020-2021 to members account in regard to Central Government convey of approval.

Rate of Minimum Wages (Variable Dearness Allowance) Revised for Central Sphere Workers

The Ministry of Labour & Employment, Government of India has notified and revised the rate of Variable Dearness Allowance (“VDA”) with effect from October 1, 2021 which will benefit around 1.5 crore workers engaged in various scheduled employment in the central sphere across the country i.e. (a) Construction, maintenance of Roads, Runways, building operations etc.; (b) Sweeping and cleaning; (c) Loading and unloading; (d) Watch and ward; (e) Mines & (f) Agriculture.

EPFO Circular for International Workers in Singapore

Singapore citizens working in India purely as temporary workers and who do not hold the status of permanent residents in India are to be treated as "Excluded employee" under the special provisions of Para 83 of the Employee's Provident Fund Scheme, 1952 (“Scheme”) as applicable to International Workers. Further, as per para 2(f) (ii) under para 83 of the Scheme an international worker, who is contributing to a social security programme of his country of origin, either as a citizen or as a resident, with whom India has entered into a bilateral comprehensive economic agreement containing a clause of social security prior to October 1, 2008, which specifically exempts natural persons of either country to contribute to the social security fund of the host country.

In view of this development, it is advised to regulate the receipt of contributions taking into consideration this certification, received through the employer of such workers, either in physical or electronic form.

Further, the Legal Division of the EPFO Head Office has opined that the India Singapore CECA embeds SSA in itself and Singapore nationals fall under the scope of substituted Para 69(4) under Para 83 of the Scheme. Accordingly, claims submitted by Singapore nationals can be processed treating India Singapore CECA on par with SSAs signed by India.

State

Revision of rates with respect to Minimum Wages

The following states have revised the rates with respect to minimum wages w.e.f. October 2021:

1. Delhi
2. Telangana
3. Jharkhand
4. Andhra Pradesh
5. Uttar Pradesh
6. Gujrat
7. Uttarakhand
8. Uttar Pradesh
9. Madhya Pradesh
10. Tamil Nadu

Tamil Nadu

Amendment to Tamil Nadu Factories Rules, 1950

The Governor of Tamil Nadu vide notification No. SRO A-20/2021 has amended Schedule XX towards handling and processing of asbestos, manufacture of any article of asbestos and any other process of manufacture or otherwise in which asbestos is used in any form. As per the amendment, (1) Schedule shall apply to all manufacturing process carried on in a factory involving exposure of workers to asbestos and/or product containing Asbestos, (2) It apply to all workers exposed to asbestos in the factory and it shall be the responsibility of the occupier of the factory to comply with the provisions of this schedule in respect of the workers, (3) The occupier of the factory wherein asbestos or substances containing asbestos are in use, shall prepare work procedures and practices, in the light of scientific research and technological progress for approval by the Chief Inspector.

Tamil Nadu

The Tamil Nadu Labour Welfare Fund (Amendment) Act, 2021

Government of Tamil Nadu vide notification No. 455 has amended Section 15 of the Tamil Nadu Labour Welfare Fund Act, 1972. As per the amendment, the Government has increased the contribution of employees from ten rupees to fifty rupees and contribution of employer from twenty rupees to hundred rupees.

Case Laws:

1. PERSON HAVING SUFFERED LOSS OF EARNING CAPACITY TO THE EXTENT OF 100% IS ENTITLED FOR COMPENSATION UNDER EMPLOYEES COMPENSATION ACT, 1923

High Court of Himachal Pradesh at Shimla set aside the order of Commissioner under the Employees Compensation Act, 1923¹

In the Hon'ble High Court of Himachal Pradesh, by way of instant appeal, Meena Ram (“**Appellant**”) has assailed award dated June 8, 2012 passed by the Commissioner under Employees Compensation Act, 1923. Appellant was employed as driver by Vinay Nanda (“**Respondent**”) to drive a bus. During the course of his employment with Respondent, on May 02, 2007 the bus owned by Respondent met with an accident while being driven by the Appellant. Appellant suffered multiple injuries. His right arm got seriously fractured, resulting in permanent disablement to the extent of 40%.

Appellant approached the Commissioner for award of compensation under the Employees Compensation Act, 1923. The Appellant pleaded that though the disability suffered by him was assessed at 40% but due to the nature of the injuries, he was unable to drive the commercial vehicle, therefore, his loss of earning capacity was to the extent of 100%. Further, the Appellant stated that he was paid Rs. 5,000/- per month as salary, besides Rs.100/- per day as daily allowance. As per Appellant, his age was 41 years at the time of accident. He accordingly prayed for grant of Rs.6,00,000/- as compensation along with interest and penalty. Respondent, being owner of the vehicle, contested the petition on the grounds that he had suitably compensated the Appellant immediately after the accident and, as such, he was estopped from filing the petition.

The Hon'ble High Court held, that the Appellant having suffered loss of earning capacity to the extent of 100% was entitled for grant of compensation of Rs.4,35,288/- with interest @ 12% per annum from May 2, 2007 plus 50% penalty.

2. THE TIME FRAME FOR CALCULATING THE AMOUNTS OWED TO THE LABOURERS WILL BE BETWEEN THE WORKMEN'S TERMINATION DATES AND THEIR SUPERANNATION DATES, OR THE DATE OF THE AWARD, WHICHEVER COMES FIRST.

The High Court of Bombay at Goa Bench set aside the order of Commissioner, Labour and Employment in a matter of consequential benefits in lieu of reinstatement and back wages²

In The Hon'ble High Court of Bombay, Bench at Goa, by this writ petition, Vishal Gomantak Shipping Company Private Limited (“**Petitioner**”) has challenged order dated June 07, 2021 passed by the Commissioner, Labour and Employment in proceedings initiated by the Mormugao Water Front Workers Union (“**Respondent**”) under Section 33-C (1) of the Industrial Disputes Act, 1947, for recovery of the amount due from the Petitioner.

The present writ petition was filed to challenge the impugned order of the Industrial Tribunal passed on November 30, 2018 holding that the termination of service of the workers in the present case was illegal. But, it was found that due to subsequent events and the fact that the Union in question was closed, the relief of reinstatement of service could not be granted. Instead, the Tribunal held that it would be in the interest of justice that the workers are paid

¹ MANU/HP/0631/2021

² MANU/MH/3541/2021

compensation by directing payment of 50% of back wages, to be calculated on the basis of notifications and orders pertaining to minimum wages, that were placed on record before the Tribunal.

In view of the above, the Hon'ble court held that the impugned order is unsustainable. Since, the application filed before the Commissioner necessarily involves calculations, the matter will have to be remitted back to the Commissioner for decision afresh by strictly adhering to the contents of paragraphs 32 and 33 of the Award passed by the Tribunal. This would mean that the Commissioner will have to calculate the amounts payable to the workmen by taking into consideration only the notifications and orders pertaining to minimum wages placed on record before the Tribunal on behalf of the petitioner when the Award dated November 30, 2018 was passed. It is made clear that the time period on the basis of which the amounts due to the workmen will have to be calculated will be between the dates of termination of services of the workmen till the dates of superannuation of the workmen or the date of the Award, whichever is earlier.

3. THE LOWER AUTHORITY OR THE TRIBUNAL CANNOT DETERMINE THE LIABILITY MERELY BASED ON ASSUMPTIONS AND THEY HAVE TO CONSIDER ALL THE RELEVANT FACTS PRODUCED BY THE PERSON CONCERNED

The High Court of Madras set aside the order of Labour Court in the matter of calculating liability based merely on assumptions³

The appeal has been filed by the Welcord Component Industries and Ors. ("**Appellant**"), challenging the impugned order dated March 30, 2021 passed by the Employees State Insurance (Industrial Tribunal cum Labour Court) on the primary ground that the appellant was not given sufficient opportunity to produce all the documents to prove that they are not liable to pay the Employee State Insurance ("**ESI**") contribution as demanded by the Regional Director, Employees State Insurance Corporation ("**Respondent**") under Section 45- A of the Employees State Insurance Act, 1948 ("**ESI Act**").

According to them, without any basis and purely on presumption, the appellant has been directed to pay a sum of Rs.31,51,932/- as ESI contribution for their employees under the Order dated October 30, 2015 passed by the respondent Corporation under Section 45-A of the E.S.I. Act, 1948. As seen from the impugned order passed by the ESI Court on March 30, 2021 as well as by the Original Authority dated October 31, 2015 passed under Section 45-A of the E.S.I. Act, 1948, the ESI contribution amounting to Rs.31,51,932/- has been determined not based on any documentary evidence, but based only on presumption. Since the appellant is now willing to produce all the relevant documents in support of their contentions that they are not liable to pay the determined ESI contribution, one more opportunity must be given to them to produce all the relevant documents in support of their contention that they are not liable to pay the demanded ESI contribution.

The Hon'ble Court held that the original authority is directed to afford a fair hearing to both the parties and also permit the appellant to produce all the relevant records/documents in support of their contention that they are not liable to pay the ESI contribution and pass final orders on merits and in accordance with law within a period of four months from the date of receipt of a copy of this order.

³ MANU/TN/7774/2021

4. Conveyance Allowance not to form part of "wages" as defined under Section 2(22) of Employees' State Insurance Act 1948

The Madras High Court in the matter of ESIC Vs. M/s. Texmo Industries held that conveyance allowance shall not form part of "wages" as defined under Section 2 (22) of Employees State Insurance Act, 1948 ("ESI Act").⁴

The said order was challenged before the Hon'ble Supreme Court of India by way of Special Leave Petition filed by the Employees State Insurance Corporation ("Petitioner") wherein, the Petitioner had alleged that M/s Texmo Industries ("Respondent") was liable to pay Employees State Insurance Contribution in respect of its employees as provided in Section 39 of ESI Act. The question involved in this SLP is whether 'wages' as defined in Section 2(22) of ESI Act would include conveyance allowance or not.

The Hon'ble Supreme Court has interpreted that 'wages' as per section 2 (22) of the ESI Act means "all remuneration paid or payable in cash to an employee, under a contract of employment, express or implied, as consideration for discharging his duties and obligations under such contract of employment. The definition of 'wages', however, expressly excludes any contribution paid by the employer to any pension fund or provident fund or under the ESI Act, any travelling allowance or the value of any travelling concession, any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment or any gratuity payable on discharge. The definition of wages in Section 2 (22) of the ESI Act, it is amply clear that wages includes remunerative payments, but does not include compensatory payments. Travelling allowance including the value of travelling concession has expressly been excluded from the definition of wages, as also any payment made to an employee to reimburse or compensate for special expenses that an employee might incur by reason of the nature of his employment. Further, travelling allowance includes conveyance allowance. The use of the expression "any travelling allowance" in Section 2 (22) (b) makes it clear that all kinds of travelling allowance are excluded from the definition of wages."

5. Hon'ble Supreme Court of India dismissed the said SLP filed by the Corporation vide its Judgment dated March 08, 2021.

The said judgement brings clarity in a certain way as to what components form part of wages as per the ESI Act. The staffing companies now are at a free will to exclude compensatory components such as conveyance allowance from the definition of wage while computing the contribution amounts.

⁴ 2021 SCC OnLine SC 434