Editor's Note

We, at Singhania & Partners LLP, have always strived to disseminate knowledge about new and upcoming regulations and developments in the field of law. With an aim to achieve this objective, we present our newest compilation on Employment Laws in India which is inclusive of recent case laws and central/state regulations. This newsletter attempts to give a brief insight on central and state employment law notifications from the past few months. It broadly inculcates the newest declaration of ROI for the Employees' Provident Fund Member Account, Kerala Minimum Wages Notification, Enforcement of Medical Benefits in Thoothukudi District of Tamil Nadu, to name a few.

We also bring before you numerous High Court judgements stretching from the celebrated case of *Management Of KSRTC v. K.Shivaram* to the Gujarat (HC) case of *Gemalbhai Motibhai Solanki v. Deputy Executive Engineer* and the Bombay High Court case between *Narayan s/o. Chokhoba Waghbhije* and *Sangita w/o. Chandrakant Gharat & The New India Assurance Company Ltd*.

We hope you find this read a knowledgeable experience and take back insightful points!

Recent Labour Law Regulations

1. Central Notifications

a. Employer to link the UAN number of their employees registered under EPFO via ESIC portal

ESIC has issued an advisory circular as on 08th November, 2021 via notification number: P-11/12/UAN/2021-Rev.II. Employer of every organization now need to do the UAN ESIC IP linking for all the employees who were covered under ESI Act, 1948 and EPF and Miscellaneous Provision Act, 1952.

b. Declaration of rate of interest for the employees' provident fund member account for the year 2021-22

The Ministry of Labour and Employment issued a notification dated 03.06.2022 via notification number INV-11/2/2021-INV stating the rate of interest for EPF Member Account for the year 2021-2022 under the Employees' Provident Fund Scheme, 1952. Credit interest is set @ 8.10 % for the year 2021-22 to the account of member of the EPF Scheme as per the provisions under Para 60 of EPF Scheme, 1952.

c. Extension of provision of the ESI Act, 1948 to certain classes of establishments

The Central Government, in consultation with the Employees' State Insurance Corporation, extended the provisions of the Employees' State Insurance Act, 1948 to certain classes of establishments specified in column (1) and situated within the areas specified in column (2) of the Schedule mentioned in the Gazette notification dated 30.05.2022

d. Enforcement of provision of the ESI Act, 1948 in Bajali district of Assam

The Ministry of Labour and Employment issued a notification dated 30th May 2022 enforcing the following provisions of Employees' State Insurance Act, 1948 in all areas of Bajali district in the State of Assam -

(i) Sections 38, 39, 40, 41, 42, 43 and Sections 45A to 45H of Chapter IV;

(ii) Sections 46 to 73 of Chapter V; and

(iii) Sections 74, 75, sub-Sections (2) to (4) of Section 76, 80, 82 and 83 of Chapter VI;

2. State - wise notification

a. Withdrawal of order postponing the payment of VDA In Karnataka

The Department of Labour, Government of Karnataka withdraws its notification on deferment of VDA payable under various Minimum Wage Notifications by employers for the period from 01.04.2020 to 31.03.2021.

b. Kerala Minimum Wages Notification 2022

Department of Economics and Statistics, Kerala on 02.07.2022 issued a notification numbered DES/859/2022-P3(1) mentioning the Consumer Price Index (Cost of Living Index) Numbers applicable to employees in employment under the Minimum Wages Act (Central Act XI of 1948) for the month of May 2022 as ascertained by the Director General of Economics & Statistics under clause (C) of Section 2 of the Act.

c. Enforcement of Medical Benefits in Thoothukudi District of Tamil Nadu

Employees' State Insurance Corporation issued a notification dated 7th July 2022, number N-17011/1/2022-P&D enforcing medical benefits as laid down in the Regulation 95-A and the Tamil Nadu Employees' State Insurance (Medical Benefit) Rules, 1955, extending them to the families of insured persons in the entire area of Thoothukudi district (Earlier Tuticorin) in the State of Tamil Nadu, in addition to the already implemented area in the district.

Case Laws

1. **Karnataka High Court concludes that Labour Court has no jurisdiction adjudicating workplace claims**

In the case of *Management Of KSRTC v. K. Shivaram*[1], the Karnataka High Court, in a single judge bench of Justice K. S. Mudagal, observed that a workman who seeks compensation for injuries

[1] 2022 LiveLaw (Kar) 153
https://www.livelaw.in/news-updates/karnataka-high-court-employees-compensation-act-ksrtc-Section-33c-industrial-dispute-act-labour-court-198622

sustained during the course of his employment must file his claim under the Employees Compensation Act, 1923 with the Employees Compensation Commissioner rather than in the Labour Court.

Facts

The respondent suffered injuries during the course of his employment as a driver in the petitioner's organization. He was awarded compensation with interest under the Motor Vehicles Act, 1988 ("MV Act") Later, a notice was issued to the petitioner claiming compensation under the Employee's Compensation Act, 1923 ("ECA Act") as the respondent suffered disability due to his injuries. Then, he preferred claim petition before the Labour Court of Mangaluru, Karnataka under Section 33C (2) of the Industrial Disputes Act, 1947 ("ID Act") claiming compensation and Silver Medal Allowance.

Labour Court Stand

The Labour Court allowed the claim petition and awarded compensation as well as the silver medal allowance without considering the question of maintainability of the petition under Section 33C (2) of the ID Act. Assailing this, the present petition was filed.

Issue raised

Whether the respondent is entitled to silver medal allowance?

Whether the respondent is entitled for another claim after receiving compensation under the MV Act?

Appellant's Arguments

Counsel for the petitioner, Ms. Shwetha Anand contended that Sections 33C(1) and 33C(2) of the ID Act, should be read holistically and comprehensively. Only awards or settlements contemplated by Section 33C (1) of the ID Act, can be the subject of an invocation of Section 33C (2). After the accident, the respondent was not eligible for the silver medal allowance since he did not fulfill his responsibility as the driver under a particular circular. The petitioner also contested the application on the ground of maintainability without raising any industrial dispute.

Respondent's Arguments

The respondent's counsel, Mr. VS Naik, contended that Section 33C (2) of the ID Act is a stand-alone clause and is not subject to the requirement of an award. hence it creates the right to make a claim under the ECA Act regardless of whether the worker has received compensation under the MV Act.

Cases referred

The Karnataka High Court relied on the Supreme Court judgment in the case of *State of U.P. and Another Vs Brijpal Singh (2005) 8 SCC 58* and *Municipal Corporation of Delhi Vs Ganesh Razak and Another (1995) 1 SCC 235* and stated "admittedly after the incident, the respondent received remuneration in the pay scale of drivers, therefore, whether he was entitled to claim compensation under the head of loss or earning capacity, was a matter of adjudication.

Judgment

After hearing both sides, the Court held that the labour court committed an error in assuming jurisdiction under Section 33C(2) of the ID Act. The award is liable to be set aside and therefore, the petition is allowed.

Analysis

The labour court's power is similar to the executing court's power in that it does not have the authority to first determine the workmen's claim before proceeding to calculate the benefit so determined. This case covers the jurisdiction of labour courts and how they do not hold any jurisdiction when it comes to cases regarding injury claims during employment.

2. Institutions engaging in commercial activity registered with Wakf board comes under purview of Industrial Dispute Act, 1947: Gujarat High Court

In the case of *Darul Ullunarabiyyah Islamiyyah v. Maulavi Mahmrudul Hasan & 1 other*[2], Justice AY Kogje of the Gujarat High Court concluded that a Wakf Board-registered institution that participates in commercial operations such as printing magazines, qualifies as an "industry" and a

[2] 2022 LiveLaw (Guj) 236
https://www.livelaw.in/news-updates/gujarat-high-court-wakf-board-educational-institution-teacher-workmen-id-act-202088

"Maulvi" supervising such commercial activity, is regarded as a "workman." Under the Industrial Dispute Act, 1947, hereinafter referred to as (“ID Act”).

Facts

After obtaining religious education at the institution, the respondent joined the same institution in April 1993. In November 2008, the respondent was not allowed to carry out his duties. A legal notice was sent to the petitioner to which he replied that there were allegations lying against the respondent and that he had to be discharged of his duties.

Issue raised

Whether an institution registered with the Wakf Board and conducting business was subject to the ID Act.

Arguments made by the petitioner

- The learned counsel of the petitioner argued that the petitioner's institution wasn't involved in any business ventures and was instead running a non-profit to educate the youth about religion.

- The petitioner's work in no way resembles any of the industries listed in Section 2(j) of the ID Act.

- By judging the petitioner's action to be an industry-specific activity, the Labour Court erred, as the respondent was a student of petitioner institution and was afterwards taken into service.

Arguments made by the respondent

- The learned counsel for the respondent argued that the respondent practicing his religion does not take him out of the definition of a workman.
- Since the petitioner institution was not registered as an educational institution, the allegation that the petitioner institution is not an industry as it engages in religious teachings cannot be recognized.

Judgment

- The High Court observed that the Labour Court correctly determined the respondent's termination constituted a breach of Section 25F of the ID Act.
- The institution that filed the petition not only provided religious instruction but also printed periodicals and textbooks. Due to this, it still qualifies as an "industry"
- When compared to other workers, the job performed by instructors in the Haryana Unrecognized Schools Association case was found to fall inside the definition of employee.
- The Court that the Wakf Committee was an industry and persons gainfully employed under it were workmen and the petition was accepted.

Analysis

The Gujarat High Court has ruled that the petitioner institution, though registered with the Wakf Board, is an 'industry'. The institution was involved in various activities including education, publishing magazines and educational books. Due to its engagement in commercial activity, it failed to convince the Court that it was not an 'Industry' but an educational institution.

3. Gujarat HC highlights retrenchment and re-employment procedures outlined in Section 25(G) and 25(H) of the ID Act, 1947

In the case of *Gemalbhai Motibhai Solanki v. Deputy Executive Enginner*[3], the Gujarat High Court observed that a reinstatement order must be issued when a worker's employment is terminated in contravention of the retrenchment and re-employment procedures outlined in Sections 25(G) and 25(H) of the Industrial Disputes Act, 1947, hereinafter referred to as the ("ID Act"). In light of this, Justice Biren Vaishnav reversed the Labour Court's decision to reinstate the terminated workers' back pay to the amount of Rs. 72,000 and ordered their continued employment, with continuity of service.

Facts

The petitioners asserted that they were fired without cause and due course of law. The Labour Court had to decide whether to provide the Petitioners compensation or back wages after

[3] 2022 LiveLaw (Guj) 235
https://www.livelaw.in/news-updates/gujarat-high-court-industrial-disputes-act-termination-employment-reinstatement-202070

concluding that the termination was indeed illegal and in breach of the law. Additionally, it was noted that the Petitioners had delayed bringing the case up for three years.

Issue

A civil application was filed that dealt with the issue of whether to grant the petitioners back earnings or compensation.

Cases Referred

Gujarat High Court relied on the judgment *Gauri Shanker vs. State of Rajasthan, 2015* as it was held that "The order of termination is void ab-initio in law for non-compliance with the mandatory provisions of the Act referred to supra (Sections 25F, 25G and 25H of the Labour Act)".

The Gujarat High court also relied on the Supreme Court's ruling in *Director, Fisheries Terminal Division v. Bhikubhai Meghjibhai Chavda, AIR 2010 SC 1236,* reinstatement should have occurred after the Labour Court found a breach of Sections 25(F) of the ID Act.

Arguments of Petitioner

Mr. Dipak Dave, learned counsel for the petitioners, would submit that once the labour court came to the conclusion that the termination was bad, a meager compensation of Rs.72,000/- could not have been awarded. He relied on a decision of the Co-ordinate Bench rendered in Special Civil Application No. 10316 of 2019 and allied matters dated 13.09.2021. The learned council claimed that apart from a delay of two years in raising the dispute, the work at the canal had been outsourced, and therefore reinstatement was not possible.

Judgment

The court held that the petitioners were eligible for reinstatement with continuity of employment until the date of superannuation since they had reached the age of retirement. On the basis of the adjusted award, they were also qualified for retirement benefits within a 12-week period.

Analysis

Workmen terminated in violation of Retrenchment & Re-Employment Procedure U/S 25G & 25H are entitled to reinstatement, per the ID Act. In this case, the petitioners had attained the age of

superannuation and the court set aside the order of lump-sum compensation and instead granted reinstatement with continuity of service.

4. Special Civil Application claiming unlawful termination: Gujarat High Court

In the case of *Rajnibhai Ranchoodbhai Patel v. Gandhinagar Jilla Sahakari Kharid Vechan Sangh Limited*[4], the Gujarat High Court determined that the Petitioner's termination was lawful and declined to intervene with his retrenchment after finding that the medical store where he worked as a pharmacist had closed down and that the Respondent Sangh no longer owned or exercised control over it. Significantly, the Justice Aniruddha Mayee led Bench made notice that the Petitioner had willingly taken certain sums as legal debts and other terminal benefits. As a result, the Bench declined to declare the Petitioner's termination to be unlawful.

Facts

With a monthly salary of INR 1,775, the petitioner was employed as a pharmacist by the Respondent Sangh for 11 years. His employment was, however, terminated in March 1992. Unhappy, the petitioner brought a case before the Labour Commissioner, who dismissed the petitioner's complaint. The complaint of the petitioner was rejected. In the current Special Civil Application, the Petitioner contested the Labour Commissioner's ruling.

Issues

A Special Civil Application was filed against the Labour commissioner's ruling.

Arguments of Petitioner

The main argument put forth by the Petitioner was that despite providing the Respondent with 11 years of nonstop service, his employment was terminated on the pretext that the drugstore was closing. It was claimed that his termination was unlawful because the store had now been rented to another person. He argued that the Court should "lift the curtain" and declare his firing illegal.

Argument of Respondent

[4] 2022 LiveLaw (Guj) 198
https://www.livelaw.in/news-updates/gujarat-high-court-retrenchment-violative-law-201146?infinitescroll=1

The Respondent contested that the store was closed since the business was in losses and all the employees were retrenched. The Respondent Sangh did not have any control or administration over the premises. The decision of the Labour Court, was therefore, proper and legal.

Judgment

The court had observed that the respondent Sangh had shut down the medical store's operations, the court had noted, based on the evidence and records that were available. After receiving all retrenchment money and other terminal benefits, which the petitioner lawfully accepted, the employee was laid off in line with the law. Due to this and the aforementioned factors, this Court does not identify any flaws in the assailed judgment and award made by the experienced Labour Court. As a result, the current Special Civil Application is rejected without a cost order. The rule is annulled.

Analysis

In conclusion, the medical store in which the petitioner was employed had closed down and the respondent Sangh did not exercise control over the store anymore, the High Court found the termination to be lawful and refused to interfere with his retrenchment.

5. Bombay High Court dismisses appeal in regards to claim compensation under Motor Vehicle Act

In the case *Narayan s/o. Chokhoba Waghbhije v. Sangita w/o. Chandrakant Gharat & The New India Assurance Company Ltd*[5], the Bombay High Court's single bench of Justice S.G. Mehare concluded that the right to claim compensation under Workmen Compensation Act 1923 ("WCA") is not forfeited upon receiving compensation under the Motor Vehicles Act ("MV Act"). The Court was adjudicating whether the compensation granted under chapter X of the MVA forfeits the right of the employee to claim the compensation under Section 3 of the WCA.

Facts

Appellant was a truck driver. The truck was owned by Sangita and was insured with an insurance company. The appellant met with an accident whereby he sustained 35% physical disability. An

[5] MANU/GJ/1580/2022

application for compensation under Section 167 of the MVA was rejected by the Commissioner for Workmen's Compensation and Judge labour court. Aggrieved by this order the appellant approached the High Court. The appeal was dismissed on the grounds that he had already received compensation from the Motor Accident Claims Tribunal.

Issue

Appeal filed in High Court after petitioner's application for compensation under Section 267 of the MVA was rejected by the Commissioner for Workmen’s Compensation and Judge Labour Court.

Appellant arguments

The appellant's attorney, B.R. Kedar, argued that the Commissioner misunderstood Section 167 of the MVA. According to him, a claim for compensation made under either the Workmen's Compensation Act or the MVA is maintainable and an application made under Section 140 of the MVA has been exempted from the bar envisioned in Section 169 of the MVA.

Respondent arguments

Chapalgaonkar, attorney of the respondent claimed that the appellant had submitted a second application under Section 166 of the MVA following the entry of the contested judgment. He claimed that the appellant had misrepresented the situation to the court by claiming that the application in question had been withdrawn. He also argued that the application was dismissed for default based on the copy of the order that was passed in the aforementioned case.

Judgment

The Court held that the reliefs granted under chapter X of the M.V Act would not come in the way of claiming compensation before the Commissioner of Employee's Compensation or the Claims Tribunal. The appeal was allowed and the order of Commissioner for Workmen's Compensation was quashed and set aside.

Analysis

The case highlights whether the compensation granted under chapter X of the Motor Vehicle Act (MV Act) forfeits the right of the employee to claim compensation under Section 3 of the Workmen Compensation Act, 1923 as provided under Section 167 of the MVA.