

# Employment Law Alert

October 2022

## EDITOR'S NOTE

We at Singhania and Partners, have always strived to keep our readers up to date on the current legal situation across the country, as well as the most recent updates that you should not miss. With the hope of accomplishing this goal, we present to you our most recent updates on Employment Laws in India.

Our Employment Law Alert, which serves as your one-stop-shop for a monthly dose of employment law updates from across the country will provide you with the recent circulars issued by the central and state governments pertaining to employment law. It is also a healthy mix of recent Supreme Court and High Court decisions that answers a significant question of law.

We hope you find our efforts useful and knowledgeable. Happy reading!

## I. CIRCULARS

### CENTRAL

#### a) EPFO issues a [circular](#) on withdrawal of prosecutions cases related to non-submission of KYC

The Employees' Provident Fund Organisation ("EPFO") via circular dated 26 September 2022 has authorized Regional Provident Fund Commissioners ("RPFC") to consider applications for withdrawal of prosecutions against employers for non-submission of KYC documents as per the following terms and conditions:

- Employer should request for withdrawal of prosecution by application before RPFC / Competent court;
- The application shall only be for withdrawal of prosecutions filed against employers for non-filing / non-submission of KYC document(s) of the member(s) under the EPF Scheme;
- Subsequent to filing of the said prosecution case, the employer must have made the necessary compliance for the concerned employees' required KYC document(s);
- The employer shall submit an undertaking to comply with the statutory provisions for filing / submission of KYC document(s) in the future.

This is a positive development for employers who previously struggled with technical issues, such as when employee's failed to link their Universal Account Numbers (UAN) with KYC information like their PAN or Aadhaar numbers, which made it difficult for employers to deposit employees' provident fund contributions on time.

## **b) EXTENSION OF PUBLIC UTILITY SERVICE STATUS OF CERTAIN INDUSTRIES BY THE MINISTRY OF LABOUR AND EMPLOYMENT**

The Ministry of Labour and Employment vide its [notification](#) dated October 20, 2022, has extended the public utility service status on services of the following industries:

- Iron ore mining, which is covered in the First Schedule to the Industrial Disputes Act, 1947, for a period of 6 (Six) months with effect from October 14, 2022.
- Transport (other than railways) for the carriage of passengers or goods, by land or water which is covered in the First Schedule to the Industrial Disputes Act, 1947, for a period of 6 (Six) months with effect from October 20, 2022.

## **STATE**

### **APPLICABILITY OF PAYMENT OF BONUS ACT, 1965 ON EMPLOYERS IN DADRA & NAGAR HAVELI AND DAMAN & DIU**

The Administration of Dadra & Nagar Haveli and Daman & Diu Labour Department, vide its [circular](#) dated October 10, 2022, has directed all the industrial and other establishments, i.e., hotels, shops etc., and the labour contractors to whom the Payment of Bonus Act, 1965 (“**Payment of Bonus Act**”) applies to pay bonus to all the eligible employees in accordance with the provision of the Payment of Bonus Act taking into consideration the productivity of the employee so that congenial industrial environment could be created leading to overall economic development of the region.

The employers shall submit Annual Return in Form ‘D’ under the Payment of Bonus Act immediately after making payments of bonus to employees.

### **THE GOA GOVERNMENT HAS [UNVEILED](#) ITS PROPOSED INDUSTRIAL GROWTH AND INVESTMENT PROMOTION POLICY, 2022.**

The Government of Goa, vide its [notification](#) dated October 13, 2022, has published the **Goa Industrial Growth and Investment Promotion Policy, 2022** (“**Policy**”) . The Policy is open to all sectors and types of investments in the state except those included in the exclusions section of the notification. Thrust areas of the Policy are ecotourism, adventure tourism, entertainment, food processing, education and research and development, and other white and green category industries.

The objectives of the Policy include:

- To simplify the role of the Investment Promotion Board (**IPB**) as the single window system and create common application for all pre-establishment clearances, including land allotment through the Goa Industrial Development Corporation (**GIDC**). This strengthens the online single window to provide time-bound clearances with no physical touchpoint.
- To provide support to local and existing businesses as well as attract new investment in the state by providing specific incentives and enabling infrastructure.
- To promote local employment and skill development through incentives and other Policy provision.

- Facilitation for private landowners to lease/sell to investors for setting up industry. Goa Investment Promotion Board/Goa Industrial Development Corporation (“**IPB/GIDC**”) may invite landowners to register their land with the department. Fixed rates, zoning change and other clearances may be facilitated through IPB/GIDC. Database of such land parcels will be maintained and shared with prospective investors when required.
- Provision for development of industrial infrastructure in a public private partnership model, such as industrial/sectoral parks, incubator and accelerators, logistics park, convention center, food parks, etc.

## **REVISION OF MINIMUM WAGES**

**Delhi:** The Government of Delhi, vide an order dated October 14, 2022, has revised the minimum rates of wages for scheduled employment to 365.75 (Three Hundred Sixty Five Point Seven Five) for the period of January 2022 to June 2022, i.e. an increase of 8.11 (Eight Point Eleven) points, the dearness allowances and minimum wages payable for all clerical and supervisory staff has been revised with effect from October 1, 2022.

**Punjab:** The Office of the Labour Commissioner, Punjab, vide a circular dated October 11, 2022, has revised the consumer price index and minimum wages for skilled, unskilled, semi-skilled and highly skilled laborers employed in (i) Agriculture, and (ii) Brick Kiln sectors. The new monthly minimum rate of wages with effect from September 1, 2022 are:

- Unskilled workers: Rs. 9907.68 (Rupees Nine Thousand Nine Hundred Seven and Sixty Eight Paise);
- Semi skilled workers: Rs. 10687.68 (Rupees Ten Thousand Six Hundred Eighty Seven and Sixty Eight Paise);
- Skilled workers: Rs. 11584.68 (Rupees Eleven Thousand Five Hundred Eighty Four and Sixty Eight Paise);
- Highly skilled workers: Rs. 12616.68 (Rupees Twelve Thousand Six Hundred Sixteen and Sixty Eight Paise).

**Odisha:** The Government of Odisha, vide its notification dated October 19, 2022, has notified the minimum wages effective from October 1, 2022 for the state of Odisha. The new minimum wages with variable dearness allowance are:

- Unskilled labour: INR 333 (Rupees Three Hundred Thirty Three);
- Semi-Skilled labour: INR 373 (Rupees Three Hundred Seventy Three);
- Skilled labour: INR 423 (Rupees Four Hundred Twenty Three);
- Highly Skilled labour: INR 483 (Rupees Four Hundred Eighty Three).

**Jammu & Kashmir:** The Government of Jammu and Kashmir, vide a notification dated October 12, 2022, has revised the minimum rates of wages in the following manner with effect from October 17, 2022:

- Unskilled labour: INR 311 (Rupees Three Hundred Eleven);
- Semi-Skilled labour: INR 400 (Rupees Four Hundred);
- Skilled labour: INR 483 (Rupees Four Hundred and Eighty Three);
- Highly Skilled labour: INR 552 (Rupees Five Hundred Fifty Two);
- Administrative/Ministerial: INR 449 (Rupees Four Hundred Forty Nine).

## FROM THE BENCH

### SUPREME COURT CASES

#### 1. The parties are bound by the order of termination approved by the Industrial Tribunal, and the labour court cannot take a different position: Supreme Court

In the case of [Rajasthan State Road Transport Corporation v. Bharat Singh Jhala \(Dead\) Son of Shri Nathu Singh, through Legal Heirs](#) the Division Bench consisting of Justices MR Shah and Krishna Murari of Supreme Court ("SC") observed that an order of termination approved by the Industrial Tribunal on appreciation of evidence led before it is binding on the parties. The labour court cannot take a contrary view against it.

#### Brief facts

A workman was subjected to departmental enquiry on allegedly not issuing tickets to 10 passengers though he collected the amount for tickets. He was found guilty in departmental enquiry thereby the employer Rajasthan State Road Transport Corporation terminated his services. The order of termination was upheld.

The Labour Court set aside the order of termination in an appeal. The decision of the Labour Court was challenged before the High Court and hence the instant appeal was moved.

#### Judgement

The court observed that once the order of termination was approved by the Industrial Tribunal, which as such is a higher forum than the labour court, thereafter a fresh hearing under [Section 10 of the Industrial Disputes Act, 1947](#) challenging the order of termination was not permissible.

*"It is required to be noted that the order dated 21.07.2015 passed by the Industrial Tribunal which as such is a higher forum than the Labour Court had attained the finality."*

The Supreme Court held that the award passed by the Labour Court confirmed by the High Court was unsustainable. It was held that the High had committed a grave error in dismissing the writ petition confirming the award passed by the Labour Court and setting aside the order of termination.

*"The High Court has committed a very serious error in dismissing the writ petition/writ appeal confirming the judgment and award passed by the Labour Court setting aside the order of termination."*

Hence, the petition was allowed in this case.

## **2. False declaration or non disclosure of material information on employment verification forms can result in termination from service: Supreme Court**

Supreme Court (“SC”), in the case of [Satish Chandra Yadav v. Union of India](#)<sup>1</sup> has opined that suppressing or giving false information in regard to the matters having a bearing on fitness or suitability to the post can lead to termination.

SC further iterated that suppression of material information and making a false statement in the verification form relating to arrest, prosecution, conviction, etc., has a clear bearing on the character, conduct and antecedents of the employee.

### **Background of the case**

- The Appellant, in the present case, was serving as a constable in CRPF.
- While filing up his recruitment verification form in August 2011, responding to the question as to whether any case was pending against him, he answered in the negative. Later, it was found that a case was registered against the appellant under sections [147](#), [323](#), [324](#), [504](#), and [506](#) of IPC.
- The respondent, after the conclusion of inquiry in this behalf, terminated the services of the appellant in the exercise of the powers conferred under [Rule 5\(1\) of the Central Civil Services \(Temporary Service\) Rules, 1965](#) on the ground of concealment of information while filing up his verification form.
- Aggrieved by the judgement of Delhi High Court which upheld the termination, an appeal was thereby preferred in the Supreme Court by the appellant.

### **Appellant’s contention**

The main contention put forth by the appellant was that prosecution against him was very trivial in nature and it did not involve any moral turpitude. The suppression, even if believed, by itself, cannot be a ground to deny public employment, it was contended.

### **Respondent’s contention**

Respondents asserted that the appellant is guilty of "suppression" of material facts which, by itself, was sufficient to terminate his services.

### **Judgement referred**

Various decisions were referred to by the SC, including [Avtar Singh v. Union of India](#)<sup>2</sup>, which dealt with the question of suppression of information or submitting false information in the verification form. The

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<sup>1</sup> 2022 SCC OnLine SC 1300

<sup>2</sup> (2016) 8 SCC 471

court noted that the principles of law laid therein governing the subject are a bit inconsistent, and different courts have adopted different principles, in spite of the larger bench decision in the case of Avtar Singh.

### **Principles laid down by the court**

The Court went ahead elucidating the broad principles of law which should be observed in cases of similar nature, the principles are –

- The public employer concerned should scrutinize each case thoroughly, through its designated officials, especially in the case of recruitment for the police force.
- Even on a truthful and correct declaration of a concluded criminal case by the employee, the employer reserves the right not to appoint the employee considering his antecedents. Acquittal in a criminal case is no guarantee for appointment to the post.
- Grounds such as career prospects and age of the candidates leading to condonation of the offenders' conduct and other such generalizations should be avoided and not enter the Judicial Verdict.
- The Court should inquire as to whether Authority concerned acted mala-fide and with any element of bias.
- The procedure of inquiry adopted by the Authority concerned must be fair and reasonable.

### **3. An appointment made out of compassion is a concession, not a right: Supreme Court**

Supreme Court (“SC”) in the case of **Fertilizers and Chemicals Travancore Ltd. & Ors v. Anusree K.B**<sup>3</sup> has ruled that compassionate appointment is a concession and not a right and thereby flows purely out of humanitarian consideration.

The Division Bench of SC consisting of justices M. R. Shah and Krishna Murari, further observed that the whole object of granting compassionate employment is to enable the family tide over the sudden crisis i.e to meet out the difficulties created on account of sudden death of the sole bread earner.

### **Brief facts**

- Father of the respondent was employed as a loading helper with Fertilizers and Chemicals Travancore Ltd. (“Appellant”). He expired while on duty in April, 1995.
- After a period of 14 years, post the death of the deceased employee, his respondent daughter made a representation seeking appointment on a compassionate basis.
- Her application for compassionate appointment was rejected on grounds that her name was not in the list of dependents submitted by the deceased employee and that the policy was to give employment to widow or son or unmarried daughter of such employee.

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<sup>3</sup> 2022 SCC OnLine SC 1331

- Aggrieved, the respondent moved to the High Court, which asked the appellant to consider the application of the respondent. The appellant, dissatisfied, moved to a Division Bench of the High Court, which dismissed the appeal. This eventually prompted the appellants to move to this Court.

### **Issue**

Whether appointment on compassionate ground after 14 years of the death of the deceased would be against the object and purpose of appointment on compassionate ground ?

### **Judgement referred**

The court relied on the judgement of [N.C. Santhosh v. State of Karnataka](#)<sup>4</sup>, wherein it was observed that no aspirant has a right to compassionate appointment and such appointment is an exception to the general rule that for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution.

### **Judgement**

Setting aside the judgement of a Division Bench of the Kerala High Court, SC ruled that since it had been 14 years to the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. Since there was no question of the family not being able to make both ends meet, such appointment shall be against the object and purpose for which the appointment on compassionate ground is provided.

Additionally, the court opined that the primary test of scheme to be met that deceased employee should be the "sole breadwinner of his family" was not satisfied in present case since the wife of the deceased was gainfully employed with the Kerala State Health Services Department at the occurrence of his death.

### **HIGH COURT CASES**

#### **1. Criminal Proceedings and Disciplinary Enquiry can go on in parallel: Andhra Pradesh High Court**

In the case of [Subba Rao v. Enquiry Officer, Cotton Corporation of India & Ors](#)<sup>5</sup> the single judge bench of Justice Ravi Nath Tilhari reiterated the point that disciplinary proceedings should not be stayed solely because criminal proceedings are pending.

### **Brief Facts**

- The petitioner in the present case was employed by the responded company namely Cotton Corporation of India Limited from 1979 to 2011 till he attained the age of superannuation.

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<sup>4</sup> (2020) 7 SCC 617

<sup>5</sup> R. Subba Rao vs. The Chief Vigilance Officer The Cotton Corporation of India Limited and Ors. (25.08.2022 - APHC) : MANU/AP/1841/2022

- In 2006, the CBI filed cases against the Petitioners and his family members for alleged possession of disproportionate assets, as well as an FIR for criminal conspiracy, cheating, and abuse of official position. The respondent initiated the disciplinary proceedings against the petitioner under its Conduct Rules.
- The department proceeding continued even after the request of the petitioner to keep it at abeyance till the disposal of the criminal case. Aggrieved by this, the respondent filed a writ petition before the Hon'ble High Court on the ground that department proceedings cannot be proceeded with before the conclusion of the criminal case.

### **Issue**

Whether departmental proceedings against the accused can be continued during the pendency of criminal proceedings?

### **Judgement referred**

The court relied on the judgement of [K. Sridhar v. Andhra Pradesh State Road Transport Corporation](#)<sup>6</sup> in which the Andhra Pradesh High Court after reviewing various Supreme Court's judgments, reiterated that disciplinary and criminal proceedings can coexist and that the pendency of criminal proceedings is not a legal impediment to conducting departmental proceedings.

The Court also relied on the judgement of [Pravin Kumar v. Union of India](#)<sup>7</sup> where the Supreme Court held that regardless of the outcome of a criminal proceeding, the employer retains the right to conduct an independent disciplinary proceeding. Furthermore, the strict rules of evidence and procedure that govern criminal trials do not apply to disciplinary proceedings.

In the case of [Indian Overseas Bank, Anna Salai v. P. Ganesan](#)<sup>8</sup>, the Supreme Court in respect of undue delay in the criminal proceedings held that:

*"There may be cases where the trial of the case gets prolonged by the dilatory method adopted by the delinquent official. He cannot be permitted, on one hand, to prolong the criminal case and at the same time contend that the departmental proceedings should be stayed on the ground that the criminal case is pending."*

### **Judgement**

The High Court reaffirmed the settled legal position that a criminal case was unduly delayed, that could be a good reason for proceeding with disciplinary proceedings, as the delinquent official could not be allowed to prolong the criminal case on the one hand while arguing that the disciplinary proceedings be stayed on the other. For all the aforesaid reasons, the writ petition was dismissed.

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<sup>6</sup> Kanijam Sridhar v. A.P. SRTC, 2022 SCC OnLine AP 1747

<sup>7</sup> Pravin Kumar v. Union of India, (2020) 9 SCC 471

<sup>8</sup> Indian Overseas Bank, Anna Salai and Ors. vs. P. Ganesan and Ors. (23.11.2007 - SC) : MANU/SC/4310/

## **2. Mere Emails & Form 16A not Sufficient to establish Employer-Employee Relationship with Freelancer: Delhi High Court**

The Delhi High Court in the case of [Kaushal Kishore Singh v. M/S Sita Kuoni World Travel India Ltd.](#)<sup>9</sup> has held that the employer-employee relationship between the Company and a freelancer cannot be construed solely on the basis of emails and [Form-16A](#).

According to the Delhi High Court, there is no master-servant relationship in freelancing because the freelancer is his own master and has the ability to pick and choose his assignments, allowing him to work for himself as well as multiple employers.

### **Brief Facts**

- The petitioner-workman began working for the respondent company but was not given an appointment letter. The respondent management illegally terminated the petitioner's employment without giving any notice, conducting any investigation, or assigning any valid reason.
- The petitioner sent a demand notice, and the management released the petitioner's debts but did not reinstate him. Following that, the petitioner filed a labour dispute.
- The existence of an employee-employer relationship was denied by management. To establish an employer-employee relationship, the petitioner relied on email communication between himself and management.
- The petitioner, according to the management, was a freelancer who also worked for other agencies. The petitioner filed a writ petition seeking to set aside the order passed by the Presiding Officer, Labour Court, Dwarka Court which had held that he failed to establish an employer-employee relationship with the company and thus the question of illegal or unjustifiable termination was of no question.

### **Issues**

Whether the petitioner-workman be considered an employee?

### **Petitioner contention**

1. The Labour court erred in appreciating the evidence on record which included eight emails, duly supported by a Certificate u/s [65B of Evidence Act, 1872](#) to show correspondence between the workman and the management, the four [Form Nos.16 A](#) to show payments made for the services “hired and rendered” by the Petitioner as a Part-Time German Tourist Guide; license of the petitioner issued by the Ministry of Tourism reflecting the petitioner to be an Approved Part Time German Linguistic Guide
2. Section 2(s), Industrial Dispute Act, 1947 entails an exhaustive definition of the term ‘workman’ and includes within its ambit any person, including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward, and it is immaterial that the terms of employment are not reduced into writing.

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<sup>9</sup> MANU/PIBU/4260/2022

### **Respondent contention**

The counsel for the respondent contends that in order to be classified as a part-time employee, the nature of the work must be regular and continuous, whereas the assignments given to the Petitioner, in this case, were irregular in nature.

### **Judgement**

The High Court upheld the decision of the labour court and said "A bare perusal of the documents filed as evidence on behalf of the petitioner workman, which includes the various emails and the forms under 16A, do not, in any way, prove that there existed any relationship of employer – employee between the parties."

It went on to say that the [Form 16A](#) clearly shows that TDS was deducted by management in respect of payments made to the petitioner "under the 'head of payments made to contractors and sub-contractors,'" thus disqualifying the petitioner from falling under the definition of workman as enumerated in [Section 2\(s\) of the Industrial Dispute Act, 1947](#).

The Court also noted that the petitioner, who was working as a Guide on assignment basis with the company, was not provided any regular amount as salary or otherwise and was only paid on assignment basis.

### **3. Employer has the power to change promotion policy unless Malafide/Arbitrary: Chhattisgarh High Court**

The Chhattisgarh High Court in the case of [Vidya Bhushan and ors v. State Of Chhattisgarh](#)<sup>10</sup> recently observed that employers have the authority to change their policy regarding employee promotions. It went on to say that the Court cannot interfere with such a policy simply because it believes that another policy would have been fairer, wiser, more scientific or logical.

A division bench of Justices Arup Kumar Goswami and Deepak Kumar Tiwari made the observation in relation to certain changes made by the State government in the [Chhattisgarh Secretariat Service Recruitment Rules, 2012](#).

### **Brief Facts**

The Petitioner sought the revocation of the notification by which the State added a new [Clause-\(6\) in Rule 13 of the said Rules](#), requiring a relaxation of the minimum length of service in promotions from AG-II to AG-I only for the calendar year 2016.

### **Petitioner contention**

Petitioners claimed that all 97 selected candidates took the Computer Skill and Hindi Typing examinations as per the conditions stipulated in the appointment order, and that their probation period would begin from

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<sup>10</sup> 2022 SCC OnLine Chh 1559

the next date of passing the examination, but that in the final gradation list, seniority of some of the candidates was mentioned from the date of their joining, which violated Article 14 of the Indian Constitution. It was also argued that the contested notification, dated 21.6.2016, provides only a one-year reprieve, which is illegal and arbitrary.

### **Respondent contention**

- The Counsel claimed that no discrimination occurred, and that the candidates' seniority was not affected in any way. The petitioners passed only the written examination, but they failed the Hindi Typing and Computer Skill tests.
- 61 candidates, including the petitioners, were unable to pass the aforementioned examination, whereas other candidates passed the aforementioned tests in the first instance during their initial appointment.
- As a result, such candidates were treated as appointed from the date of the appointment order's issuance, and the petitioners and other candidates who passed the Skill test were subsequently placed below the other candidates who had already cleared the aforementioned tests.

### **Judgement referred**

The Court took note of the ruling in [Rajendra Kumar Agrawal v. State of U.P.](#)<sup>11</sup>, wherein on the issue relating to power of relaxation for filling up the posts by promotion, the Court observed that “*we do not find any material to show that the State Government resorted to exercise of power under Regulation 20 for some unauthorized purpose.*”

### **Judgement**

The court held that the petitioners have failed to demonstrate that the notification dated 21.6.2016 by the state government where it has amended the subject rules by adding a new Clause-(6) in Rule 13 was issued with an oblique purpose showing the arbitrariness by the government. Also, the court cannot strike down a policy merely on the grounds that another policy feels to be wiser or logical or more scientific as it is not within the domain of the court to decide to test the degree of its beneficial or equitable disposition. Therefore the impugned order cannot be held bad in law.

### **4. The Injury/accident caused must be incidental to the duties of Service to claim under Workman's Compensation Act: Andhra Pradesh High Court**

The Andhra Pradesh High Court recently held in the case of [The New India Assurance Company Ltd. v. Smt. M. Lakshmi Ramateertham](#)<sup>12</sup> that there must be a connection between the accident and the employment in order to file a claim under the Workmen's Compensation Act.

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<sup>11</sup> (2015) 1 SCC 642

<sup>12</sup> The New India Assurance Company Ltd. vs. M. Lakshmi Ramateertham and Ors. (13.09.2022 - APHC) : MANU/AP/1532/2022

The court observed that in an award made under the [Workmen Compensation Act, 1923](#), the Commissioner must make a specific finding on whether the employee's injury was caused by an accident arising out of the course of employment or if the employee contracted any occupational disease peculiar to that employment.

### **Brief Facts**

The Husband of the 1st respondent died in 2005. The respondent filed for compensation under the [Workmen Compensation Act, 1923](#) claiming that the husband while discharging his duties in the course of employment suffered stomach pain and was shifted to the hospital where he died.

The commissioner passed an award allowing workmen compensation of Rs. 3,33,034. This award under Section 30 of the [Workmen's Compensation Act, 1923](#) has been challenged by The New India Assurance Company.

### **Issues**

1. Whether the order of the Commissioner is correct in view of the law laid down that the disease suffered by the workman should be related to the work done by him?
2. Whether the order of the Commissioner is correct when the disease suffered by the workman does not fall under occupational disease as specified under Schedule-III of [Workmen Compensation Act, 1923](#)?"

### **Judgement referred**

The court relied on the judgement of [Mackinnon Machenzie and Co. v. Ibrahim Mahmmmed Issak](#)<sup>13</sup> which held that in case of accident *"the burden of proof rests upon the workman to prove that the injury has resulted from some risk incidental to the duties of the service, which unless engaged in the duty owing to the master it is reasonable to believe the workman would not otherwise have suffered. There must be a causal relationship between the accident and the employment."*

### **Judgement**

The Andhra Pradesh High Court observed that a successful claim under the [Workmen Compensation Act, 1923](#) depends upon proof of the fact that the accident/injury arose out of the course of employment. As a result, the Commissioner is required to record a specific finding on that aspect based on the evidence on record. In the absence of such a finding, the Commissioner's order would be invalid under the law because the aforesaid is a jurisdictional fact. The circumstances under which the claim was allowed were not mentioned.

*"The jurisdictional fact of relationship between the accident and the employment had not been recorded."*

Thus the appeal was allowed and the matter was remitted to the commissioner for a fresh hearing.

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<sup>13</sup> 1970 AIR 1906, 1970 SCR (1) 869