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# **Labour and Employment Law Newsletter**

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Grow | Protect | Operate | Finance



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# A. Supreme Court Judgments

## 1. Supreme Court Affirms Regularization Rights Of Employees Performing Permanent Services

*Vinod Kumar and Ors. v. Union of India and Ors.* (2024 SCC OnLine SC 1533)

The Hon'ble Supreme Court observed that the employment rights should be assessed based on the evolved duties and responsibilities over time, rather than the original temporary terms of their appointment. The uninterrupted service, which mirrored the functions of regular employees, along with a selection and promotion process akin to that for permanent positions, indicated a significant departure from their initial temporary engagement. The absence of any formal reiteration of their temporary status or the specification of employment duration necessitated a re-evaluation of their roles. Consequently, the Hon'ble Supreme Court found that procedural formalities at the beginning of employment cannot indefinitely deny the substantive rights that have been established through prolonged, continuous service. Ignoring the employee's substantial role and ongoing service comparable to that of permanent employees contradicts the principles of equity, fairness, and the intended spirit of employment regulations. Therefore, the Hon'ble Supreme Court upheld the plea for regularization by Appellants.

## 2. Employer's Financial Capacity is major factor in fixing Wage Structure

*The VVF Ltd. Employees Union v. M/s. VVF India Ltd. & Anr.* (2024 SCC OnLine SC 534)

The Employees union filed a review petition against a 2019 judgment, claiming oversight of their demands for allowances. Originating from a 2008 charter, they sought revised wages and allowances, which the Tribunal partially granted in 2014, including Medical Allowance. The Hon'ble Bombay High Courts set aside the Tribunal's Award on a few demands and held the decision for the rest of the demands. The key issue in the matter was Whether the financial capacity of the employer is a relevant factor in fixing wage structures.

The Hon'ble Supreme Court highlighted the 'industry-cum-region test' as a standard for wage revision, which necessitates comparing wages with similar units in the region. However, it stressed the employer's financial capacity as a key factor in this comparison. Citing cases like *A.K. Bindal v. UOI* and *Mukand Ltd. v. Mukand Staff & Officers' Assn*<sup>1</sup>, the Hon'ble Supreme Court noted the importance of considering the employer's financial health when setting wages.

The Hon'ble Supreme Court observed that the employer's financial status was not properly evaluated, despite evidence to the contrary. Consequently, the Hon'ble Supreme Court overturned the Hon'ble High Court's decision, affirming that the employer's financial capacity cannot be overlooked when applying the industry-cum-region test to determine wage revisions and allowances.

1. AIR 2004 SC 3905



## B. High Court Judgments

### 1. Leave Encashment Once Earned, Constitutes Employee's Property (Bombay High Court)

*Dattaram Atmaram Sawant and Anrs v. Vidharbha Konkan Gramin Bank* (2024 SCC OnLine Bom 1253)

The Petitioner filed a writ of Mandamus to direct the Vidharbha Konkan Gramin Bank ("**Bank**") to pay the amounts of privilege leave standing to their credit with an interest. The Petitioners had resigned, and after tendering their resignations, they requested the Bank to encash their privilege leave. Aggrieved by this refusal, the Petitioner approached Hon'ble Bombay High Court.

The Hon'ble High Court stated that the right to leave is a statutory entitlement granted to employees as per the provisions of the law. Additionally, the Hon'ble High Court held that a leave encashment is akin to a salary, which is a property. Depriving a person of his property without any valid statutory provision would violate Article 300-A of the Constitution.

Therefore, the Hon'ble High Court opined that any attempt to deprive an employee of pension, gratuity, or leave encashment without a statutory provision is untenable and stated that leave encashment which was acquired by the Petitioners constituted their property and any deprivation of such property without statutory backing is not permitted.

### 2. No Work No Pay Principle Does Not Apply In Illegal Termination (Delhi High Court)

*Manisha Sharma v. Vidya Bhawan Girls Senior Secondary School and Anr.* (2024 SCC OnLine Del 3813)

The Petitioner had challenged multiple orders by the Delhi School Education Department, alleged wrongful dismissal due to a grudge held by the Head of School ("**HoS**"), who claimed the Petitioner lacked necessary qualifications. Despite reinstatement with full back wages by the Directorate of Education ("**DST**"), subsequent orders denied these wages, leading to a contempt petition. The Petitioner contended that any denial of back wages should be predicated on evidence of gainful employment during the dismissal period, which was not presented. The Deputy Director of Education's application of "no work no pay" was also contested based on established Court judgments.

The Hon'ble High Court quashed the contested orders, ruling in favour of the Petitioner without imposing costs. It determined that the DST's finding of illegal dismissal warranted full back wages, and the "no work no pay" principle was inapplicable here, referencing Hon'ble Supreme Court and Hon'ble High Court judgments that provide exceptions to this rule. This case highlights the judicial stance on ensuring employees are fairly compensated in instances of wrongful termination and sets a precedent against the indiscriminate application of the "no work no pay" principle, especially without proof of the employee's gainful employment during the period of dismissal.





### 3. EPF Contribution For Foreign Workers Struck Down As Unconstitutional (Karnataka High Court)

*Stone Hill Education Foundation and Ors. vs. Union of India and Ors. (2024 SCC OnLine KAR 49)*

In a significant development concerning the Employee Provident Fund (“EPF”), the Honb’le Karnataka High Court has scrutinized amendments made in 2008 that impact International Workers. Previously, the EPF mandated contributions from both employers and employees, capped at a wage ceiling of ₹15,000 per month. However, the introduction of para 83 in the EPF and para 43A in the Employee’s Pension Scheme (“EPS”) removed this cap for International Workers, requiring contributions based on their total wages without an upper limit.

The petitioners challenged this amendment, arguing it contradicts the EPF Act by not imposing a wage ceiling for International Workers, thus placing an undue burden on employers. In contrast, the government defended the provisions, citing Bilateral Social Security Agreements (“BSSA”) with several countries that extend EPF benefits to International Workers.

The High Court’s observations highlighted discrimination between Indian employees in non-BSSA countries and foreign employees from non-BSSA countries working in India, deeming it unjustifiable and in violation of Article 14 of the Constitution. The Court also noted that the amendments failed to align with the EPF Act’s objectives, as they imposed an unlimited contribution threshold on International Workers, contrary to the established wage ceiling. Consequently, the Court declared the impugned provisions discriminatory, arbitrary, unconstitutional, and ultra vires, calling for a re-evaluation of the EPF Scheme to ensure





#### **4. Retrospective Salary And Pension Adjustment After Retirement Are Illegal (Madras High Court)**

*R.Rajamani v. State of Tamil Nadu, (2024 SCC OnLine Mad 957)*

The Hon'ble High Court observed that the Petitioner had retired from service due to superannuation, terminating the employer-employee relationship between the Petitioner and the University. Consequently, the University lacked the authority to re-adjust the Petitioner's salary and associated benefits. Citing the precedent set in *Manonmaniam Sundaranar University v. State Of Tamil Nadu*, where it was established that only the Syndicate has the jurisdiction to appoint University staff and determine their salaries, the Hon'ble High Court concluded

that retroactively revising the Petitioner's salary and pension benefits after retirement was not legally permissible. Therefore, the challenged orders were deemed invalid and overturned by the Hon'ble High Court. The Hon'ble High Court, in quashing the University's order, directed both the State and University to reimburse the deducted amount along with interest within 12 weeks from the date of receiving a copy of the order.

## C. Recent developments in Labour & Employment Law in India

### 1. EPFO notifies new Actuarial Factors for calculation of Pension<sup>2</sup>

In a significant update, the Ministry of Labour and Employment has rolled out the Employees Pension (Amendment) Scheme, 2024. As per the notification dated June 14, 2024, the amendment introduces a new set of actuarial factors within Table B, specifically designed for employees opting for early retirement, that is, before reaching 42 years of age.

The revised scheme presents a graduated scale of pension benefits, which is calibrated to more closely match the contributions made and the age at which employees retire. This move is aimed at improving the fairness and sufficiency of the pension amounts disbursed to beneficiaries, ensuring that the pension system is more responsive to the individual circumstances of each retiree.

### 2. Central Government notifies New Proportions of Wages to be returned to employees upon exit from employment<sup>3</sup>

In a move to streamline the process of calculating the return of contributions for employees, the Ministry of Labour and Employment has introduced the Employees Pension (Second Amendment) Scheme, 2024. Officially announced through notification dated June 14, 2024, this amendment supersedes Table D of the longstanding Employees' Pension Scheme, 1995.

The newly implemented table delineates the proportion of wages to be returned to employees upon their exit from employment, based on the length of service. The scale starts at '0.08' for a single month of service and incrementally rises to '9.33' for those who have served 109 months or more. This revision is designed to offer a transparent and structured method for the return of contributions, ensuring that employees are compensated fairly and in accordance with their tenure. The government's initiative is expected to provide clearer guidelines for both employers and employees, fostering a more equitable work environment.

2. [egazette.gov.in/\(S\(edqmov044c3rpmw5xgee1fiu\)\)/ViewPDF.aspx](https://egazette.gov.in/(S(edqmov044c3rpmw5xgee1fiu))/ViewPDF.aspx)

3. [Employees Pension Second Amendment Scheme 2024.pdf \(legalitysimplified.com\)](#)



### 3. Central Government cuts the penalty for delayed contribution to the EPF, EPS, and EDLIS<sup>4</sup>

Providing a big relief to employers, the Central Government on 14th June 2024 issued three Gazette Notifications introducing a significant reduction in the penalty structure for employers who fail to make timely contributions to the Employee Provident Fund (“EPF”), Employee Pension Scheme (“EPS”), and Employee Deposit Linked Insurance (“EDLIS”). The move is designed to streamline the penalty structure and make it easier for employers to comply with their obligations.

The employer must make contributions on or before the 15th of each month, and any contribution post the 15th of the month is considered a delay. Under the new notifications, a uniform penalty of 1% of the arrears of contribution per month or part thereof will be applied. Previously, there was a graded penalty system for delayed contributions. For instance, under the Employees’ Provident Scheme, 1952, a delay of up to 2 months incurred a penalty of 5% of arrears per annum. This penalty increased with the duration of the default, reaching a maximum of 25% of arrears for delays of 6 months or more.

### 4. Andhra Pradesh Government revised the Minimum Wages<sup>5</sup>

The government of Andhra Pradesh, via notification dated 26th April 2024, has notified a significant rise in the minimum wage for industrial and agricultural workers in the state. The raise is based on the raise in the average Consumer Price Index (CPI).

### 5. The Gujarat Private Security Agencies (Regulations) Rules, 2024<sup>6</sup>

The Government of Gujarat has notified the Gujarat Private Security Agencies (Regulation) Rules, 2024. These Regulations replace the earlier Gujarat Private Security Agencies Rules, 2007, with the goal of improving transparency and efficiency.

The key amendments brought up these rules include:

- Online submission of applications for license by an agency along with required forms and proof of payment
- Controlling authority to grant license after verification and inspection of information submitted by the applicant within 15 days
- Mandatory maintenance of registers
- Direction to private security agencies for installation of ATMs<sup>7</sup>

4. [egazette.gov.in/\(S\(edqmov044c3rpmw5xgee1fiu\)\)/ViewPDF.aspx](https://egazette.gov.in/(S(edqmov044c3rpmw5xgee1fiu))/ViewPDF.aspx)  
[egazette.gov.in/\(S\(edqmov044c3rpmw5xgee1fiu\)\)/ViewPDF.aspx](https://egazette.gov.in/(S(edqmov044c3rpmw5xgee1fiu))/ViewPDF.aspx)  
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5. [uploadGazette\\_view \(cg.gov.in\)](https://cg.gov.in/uploadGazette_view)  
6. [Notification\\_sb1\\_1082\\_04072024.pdf \(gujarat.gov.in\)](https://gujarat.gov.in/Notification_sb1_1082_04072024.pdf)  
7.

## 6. The Karnataka Platform-Based Gig Workers (Social Security and Welfare) Bill, 2024<sup>8</sup>

The Government of Karnataka has issued the draft of The Karnataka Platform Based Gig Workers (Social Security and Welfare) Bill, 2024, with an aim to protect the rights of gig workers and impose obligations on aggregators regarding social security, occupational health, and safety. The key highlights of the Bill are:

- The Bill defines “Aggregator” as a digital intermediary that connects a buyer and seller of any goods or service and includes an entity that coordinates with one or more aggregators to provide services.
- The Bill also defines “Gig Workers” to as a person who performs work or participates in a work arrangement for a given rate of payment, or piece-rate work and whose work is sourced through a platform in the specified services.
- Establishment of a state-level Welfare Board to secure the welfare of Gig workers.
- The Bill mandates fair contracts, advance notice for changes, and transparency in work allocation and assessment.
- The Bill proposes a Welfare Fund for gig Workers, as funded by Aggregators.

## 7. Exemption To IT, ITES And Other Knowledge Based Industries from Industrial Employment (Standing Orders) Act, 1946 in Karnataka<sup>9</sup>

The Government of Karnataka notified a circular, announcing a five-year extension of the exemption for IT/ITES companies from certain provisions of the Industrial Employment (Standing Orders) Act, 1946. However, it specifies that once the labour codes come into effect, the provisions of the Industrial Relations Code, 2020, will apply to these companies. The notification also applies to start ups, animation, gaming, computer graphics, telecom, business process outsourcing (BPO), knowledge process outsourcing (KPO), and other knowledge-based industries.

## 8. Karnataka Compulsory Gratuity Insurance Rules, 2024<sup>10</sup>

The Government of Karnataka notified the Karnataka Compulsory Gratuity Insurance Rules, 2024, on January 10, 2024. The key highlights of the notification are:

- Every new employer (other than an employer or establishment under the control of the Central Government or a State Government or exempted by the appropriate Government) shall, within a period of thirty days from the date on which the rules become applicable to the establishment, obtain a valid insurance policy for his liability for payment towards the gratuity to all eligible employees under the Payment of Gratuity Act, 1972.
- The time frame for obtaining insurance for existing employers is fixed at sixty days.
- The Bill further mandates employers to register themselves with the Controlling Authority.
- The Controlling Authority is empowered to recover the amount of the Gratuity payable to an employee, from the Life Insurance Corporation of India or any other insurance company with whom an insurance has been taken.
- Employers with an existing approved gratuity fund can continue using it. This option is also available for employers with more than five hundred employees who establish a new approved gratuity fund, ensuring it covers all employee liabilities under the Payment of Gratuity Act, 1972.

## 9. Notification of the Maharashtra Factories (Safety Audit) (Amendment) Rules, 2024<sup>11</sup>

The Government of Maharashtra issued the Draft Maharashtra Factories (Safety Audit) (Amendment) Rules, 2024 to further amend the Maharashtra Factories (Safety Audit) Rules, 2014, with an aim to enhance workplace safety, and streamline the procedure for undertaking safety audits. The key amendments brought up by these rules include:

8. draft notification (karnataka.gov.in)

9. Industry not in sync with K'taka IT union's demands to end labour exemption | News - Business Standard (business-standard.com)

10. Microsoft Word - 18.docx (karnataka.gov.in)

11. notification-of-the-maharashtra-factories-safety-audit-amendment-rules-2024.pdf (bombaychamber.com)



- The threshold for applicability of safety audit requirements has been cut down from 250 workers to just 50 workers.
- Institutions can also be appointed as Safety Auditors.
- The internal audit must be undertaken by a team of personnel from different departments.
- The report of the internal audit must be put before the Chief Inspector of Factories ("CIF") within 30 days.
- The CIF may introduce additional compliance and safety checklists for special classes of factories.
- Safety Audit of hazardous factories employing more than 250 workers, must be conducted by reputed institutions.

## 10. Public notice regarding revision of Labour Welfare Fund contributions in Maharashtra<sup>12</sup>

The Government of Maharashtra has notified a public notice regarding the revision of the Labour Welfare Fund contributions, following amendments made to the Maharashtra Labour Welfare Fund Act, 1953. The amendment increases the employee contribution rate uniformly to Rs 25 every six months for all employees, regardless of their income and, the corresponding contributions from the employers have also been raised to Rs 75.

## 11. Rajasthan Government Lifted the Exemption of Employment of Women in Night Shifts<sup>13</sup>

On June 20, 2024, the Rajasthan Government published a gazette notification allowing women to work night shifts in shops and commercial establishments. This notification will be in effect for three years from the date it was published in the Rajasthan Gazette. To ensure the safety and rights of women working at night, the policy includes several important conditions:

- Women employee must give their "consent" to work night shifts.
- Employers must provide "safe transportation" to and from the workplace.
- There must be "separate restrooms" and "locker rooms" for women employees.
- Employers must take necessary measures to "prevent sexual harassment".

## 12. Telangana Government Exempts IT/ITeS Sector from Certain Provisions of the Shops And Establishment Act<sup>14</sup>

The Telangana Government has exempted IT and ITeS establishments from certain provisions of the Telangana Shops and Establishments Act, 1988, effective from May 30, 2024, for four years. Establishments must meet specific conditions to qualify for the exemption, including:

- The maximum weekly working hours of an employee must not exceed 48 hours. In case of weekly working hours exceeding 48 hours, the employee must be paid overtime wages.
- Every employee must receive a minimum of one day weekly off.
- In the event that an employee is working on a notified holiday, such an employee must be provided a compensatory paid holiday, as per the Telangana Shops and Establishment Act, 1988.
- Young employees, including women, can be employed in night shifts, provided necessary safety measures are put in place by the employer.

12. Screenshot 2024-06-06 134739 (datocms-assets.com)

13. Document (rajasthan.gov.in)

14. Labour Laws Relaxation: Telangana extends labour laws relaxation for IT & ITeS for 4 years, boosts flexibility | Hyderabad News - Times of India (indiatimes.com)

## D. Foreign Developments

### 1. New Yorkers Will Get Paid Breast Milk Expression Breaks

Beginning on June 19, 2024, New York employers will need to provide such employees with 30-minute paid breaks for breastfeeding and must also allow employees to use other paid breaks or mealtime for purposes of expressing breast milk each time they have a reasonable need to do so in excess of 30 minutes. Paid break time for breast milk expression requirements will apply for up to three years following childbirth.<sup>15</sup>

### 2. New York Employers Must Now provide Paid Prenatal Leave

New York has become the first state in the USA to mandate paid prenatal leave. Eligible employees will get 20 hours of paid leave within a 52-week calendar period for prenatal medical appointments, in addition to existing paid leave benefits.

The new legislation was signed on April 22, 2024, to expand the New York Paid Family Leave Laws. The new law takes effect January 1, 2025<sup>16</sup>

### 3. Singapore to Increase the Local Qualifying Salary Threshold

Firms hiring foreign workers under a Work Permit or S Pass will have to pay all their local workers at least the Local Qualifying Salary (“**LQS**”) (or Progressive Wage Model wages where applicable). The LQS determines the number of local employees who can be used to calculate a firm’s Work Permit and S Pass quota entitlement (this quota is the maximum ratio of foreign workers to the total workforce that a company in each sector can employ under a Work Permit or S Pass). The Singapore government will raise the LQS threshold from \$1,400 to \$1,600 per month. These changes will be implemented from 1 July 2024.<sup>17</sup>

- 15. [https://www.duanemorris.com/alerts/new\\_york\\_employees\\_will\\_soon\\_receive\\_pay\\_breast\\_milk\\_expression\\_time\\_prenatal\\_care\\_leave\\_0424.html](https://www.duanemorris.com/alerts/new_york_employees_will_soon_receive_pay_breast_milk_expression_time_prenatal_care_leave_0424.html)
- 16. <https://www.nelsonmullins.com/insights/blogs/the-hr-minute/pregnancy/new-york-employers-must-now-provide-paid-prenatal-leave>
- 17. <https://www.lexology.com/library/detail.aspx?g=b0163d70-ee57-4c58-8d09-f30d7f0e1899>





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