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Labour and Employment Law Newsletter

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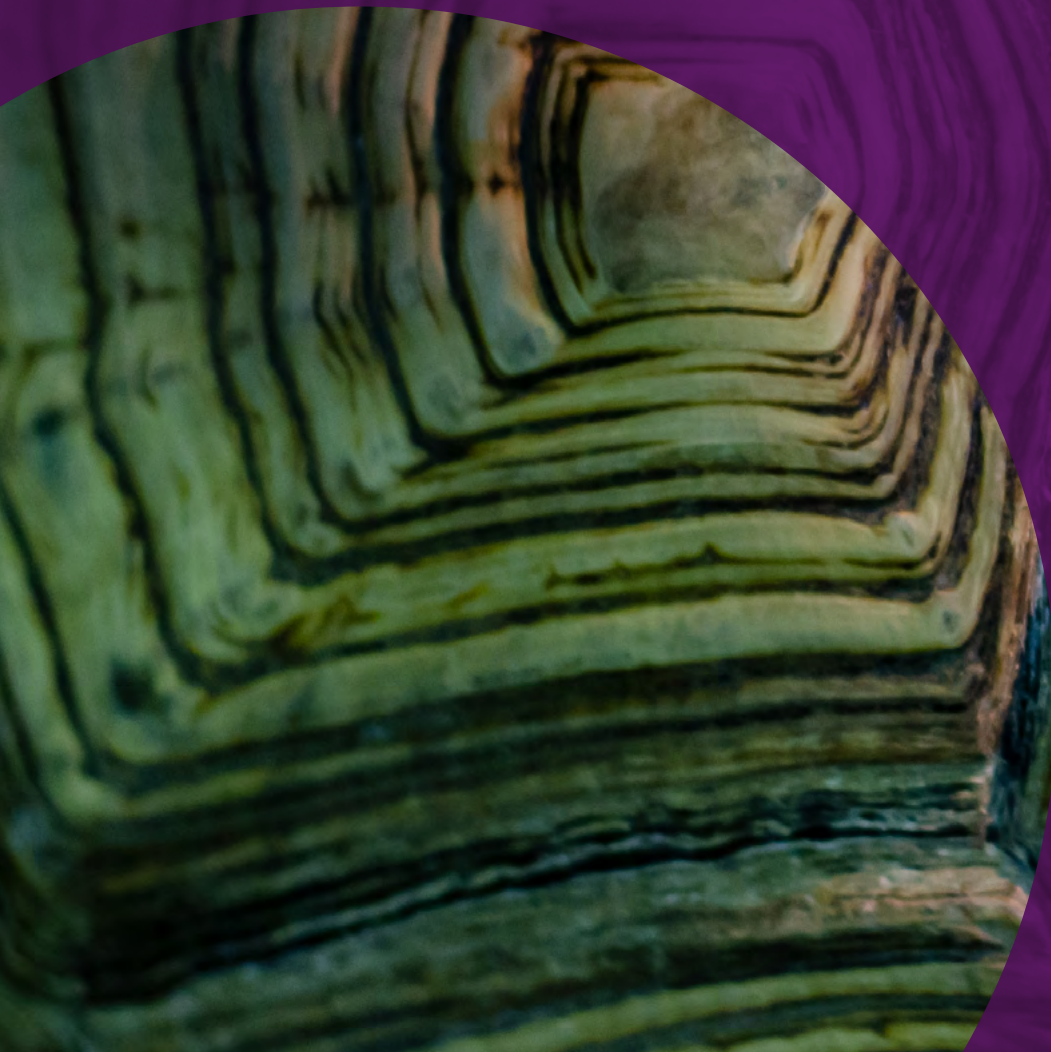


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The obligation of corporations under the Apprenticeship Act: Legislative scheme, obligations, penalties and court intervention

Apprentices Act, 1961

The main purpose of the Act is to provide practical training to technically qualified persons in various trades. The objective is the promotion of new skilled manpower. The scheme is also extended to engineers and diploma holders.

The Act applies to areas and industries as notified by the Central government.

Scheme of the Act

There are 38 Sections in total and 1 Schedule. This Schedule is about modifications in the Workmen's Compensation Act, 1923 concerning its application to apprentices under the Apprentices Act, 1961.

Obligation of Employer

Every employer is under obligation to provide the apprentice with the training in his trade in accordance with the provisions of this Act and the rules made there under.

- i. If the employer is not himself qualified in the trade, he has to ensure that a person who possesses the prescribed qualification is placed in charge of the training of the apprentice.
- ii. Every employer has to provide adequate instructional staff, possessing such qualifications as may be prescribed for imparting practical and theoretical training and facilities for trade tests of apprentices.
- iii. Every employer is under obligation to take apprentices in the prescribed ratio of the skilled workers in his employment in different trades. In every trade, there will be reserved places for scheduled castes and scheduled tribes. The Central Government shall determine the ratio of trade apprentices to workers.
- iv. Employer can engage a greater number of apprentices than the prescribed minimum.
- v. The employer has to make arrangements for the practical training of the apprentice.
- vi. Employer will pay stipends to apprentices at prescribed rates. If the employees are less than 250, 50% of the cost is shared by Government. If the employer is employing more than 250 workers, he has to bear the full cost of training.

Obligations of Apprentices

Every trade apprentice undergoing apprenticeship training shall have the following obligations, namely:

- i. To learn his trade conscientiously and diligently and endeavour to qualify himself as a skilled craftsman before the expiry of the period of training.
- ii. To attend practical and instructional classes regularly.
- iii. To carry out all lawful orders of his employer and superiors in the establishments; and
- iv. To carry out his obligations under the contract of apprenticeship.

Who can be an Apprentice

Apprentice should be of a minimum age of 14 years and he should satisfy the standard of education and physical fitness as prescribed.

Reservation of training places for scheduled castes

The law provides that in every designated trade, training places shall be reserved by the employer for the Scheduled Castes and Scheduled Tribes (as defined in clauses (24) and (25) of Article 366 of the Constitution) and where there is more than one designated trade in an establishment, such training places shall be reserved on the basis on the total number of apprentices in all the designated trades in the establishment. The reservation shall be such as may be prescribed having regard to the population of the Scheduled Castes and Scheduled Tribes in the State concerned.

Duration of Training

Duration of training period and the ratio of apprentices to skilled workers for different trades have been prescribed in Apprenticeship Rules, 1991. Duration of Apprenticeship may be from 6 months to 4 years depending on the trade, as prescribed in the Rules. The period of training is determined by National Council for training in Vocational Trades (established by the Government of India).

Contract with Apprentice

Apprentice appointed has to execute a contract of apprenticeship with the employer. The contract has to be registered with Apprenticeship Adviser. If an apprentice is a minor, the agreement should be signed by his guardian. Apprentice is entitled to a casual leave of 12 days, medical leave of 15 days and extraordinary leave of 10 days in a year.

- i. The employer shall send the contract to the apprenticeship adviser for registration within three months of the date on which it was signed.
- ii. Registration of contract of apprenticeship under Section 4(4) is not a necessary ingredient of definition of apprentice. (Bhaskaran v. KSEB (1986) 1 LLN 869).

Terms and conditions of contract

This can be decided between the parties. The Central Government after consulting the Central Apprenticeship Council may make any rule varying the terms and conditions of apprenticeship training of any category of apprentices and in such it shall prevail against the terms and conditions of every contract relating to that category of apprentices.

Payment to apprentice

This is a contractual as well as statutory obligation imposed under the Act. The employer is required to pay to every apprentice during the period of training such stipend at a rate not less than the prescribed minimum rate and this rate will be specified in the contract. An employer is required to pay such stipend at such intervals and subject to such conditions as may be prescribed. However, an apprentice is not entitled to be paid on the basis of piece work nor he shall take part in any output bonus or other incentive scheme.

Termination of contract

The contract of apprenticeship training shall terminate on the expiry of the period of apprenticeship training. Either party can make an application for termination of contract to the Apprenticeship Adviser and thereafter send a copy of the same to the other party, who on being satisfied that the parties are acting bonafide shall register the same. However, the employer shall pay the prescribed amount of compensation to the apprentice when the contract is terminated for failure on the part of the employer to honour the contract. Where the contract is terminated for failure on the part of the apprentice, he or his guardian shall refund the cost of the training to the employer.

Legal Position of Apprentices

An apprentice is not a workman during apprentice training. Provisions of labour law like Bonus, PF, ESI. Act, gratuity, Industrial Disputes Act etc. do not apply to an apprentice. However, provisions of Factories Act regarding health, safety and welfare will apply to him/her. The apprentice is also entitled to get compensation from the employer for employment injury.

An employer is under no obligation to employ the apprentice after completion of the apprenticeship. However, in *UP State Road Transport Corpn v. UP Parivahan Nigam Shishukh Berozgar Sangh* AIR 1995 SC 1114 = (1995) 2 SCC 1, it was held that other things being equal, a trained apprentice should be given preference over direct recruits. It was also held that he need not be sponsored by the employment exchange. The concerned institute should maintain a list of persons already trained and in between trained apprentices, preference should be given to those who are senior. – the same view was taken in *UP Rajya Vidyut Parishad v. State of UP* 2000 LLR 869 (SC).

Disputes under contract and settlement thereof

Section 20 of the Act provides that if out of the terms and conditions of the contract any dispute arises, it will be referred to the Apprenticeship Adviser for decision. An appeal can be preferred by the aggrieved party within 30 days of the communication of the Adviser's decision to the Apprenticeship Council and such appeal shall be heard and determined by the Committee of that Council appointed for the purpose, and the decision of the Committee shall be final.

Holding of Test and Grant of Certificate and Conclusion of Training

- i. Every trade apprentice, after the completion of training is required to appear for a test to be conducted by the National Council to determine his proficiency in the designated trade in which he has undergone his apprenticeship training.
- ii. Every trade apprentice who passes the test referred to in sub-Section (i) shall be granted a certificate of proficiency in the trade by the National Council.
- iii. Notwithstanding anything in sub-Section (i), if it is agreed in a contract of apprenticeship that after the successful completion of the apprenticeship training, serve the employer, the employer in such condition is bound to offer suitable employment to the apprentice, and the apprentice is also bound to serve the employer.

Offences and Penalties

Offences by Companies

- i. If the person committing an offence under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, the individual can plead in his defence that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.
- ii. Further, where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officers of the company, such director, manager, secretary, or other officers shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

For the purposes of this Section, - (a) "company" means a body corporate and includes a firm or other association of individuals; and (b) "director" in relation to a firm means a partner in the firm.

Recent developments in Labour & Employment Law in India

I. Standard Operating Procedure notified for EPF Exempted Establishments¹

On October 6, 2023, the Employees' Provident Fund Organisation (EPFO) issued a Standard Operating Procedure (SOP) addressing the management and regulation of establishments permitted to operate an exempted private provident fund trust under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

The SOP outlines various aspects, including the responsibilities of the trust and EPFO. It introduces digital communication facilitated by EPFO for the issuance of annual statements or passbooks to members. The Board of Trustees (BOT) is tasked with communication through channels such as SMS, mobile phones, email, or e-passbook regarding contributions, withdrawals, and interest credits. There is provision for the constitution of an investment committee of financial experts by BOT to ensure best investment practices, although this is not mandatory. The SOP also delineates the responsibilities of EPFO regional offices, zonal offices, and head offices for scrutiny, compliance audit, and monitoring.

A notable change is the reduction in the term of office for trustees from 5 years to 3 years, as specified in the Employees' Provident Funds Scheme, 1952.

The SOP introduces a priority matrix classifying establishments into three categories (A, B, and C) based on the severity and materiality of violations. Category A violations, such as non-compliance in reporting loss for three consecutive financial years, default in EPF contributions, and failure to follow the investment pattern, result in immediate cancellation of exemption. Category B violations, including deficiencies related to the transfer and credit of accumulations and failure to pay inspection charges, require rectification. Persistent violations lead to

cancellation after consecutive occasions. Category C violations, such as failure to display trust rules or not issuing annual statements, require vigilance. Cancellation occurs after three consecutive occasions without rectification.

The issuance of SOPs by EPFO reflects progress in consolidating and streamlining compliance efforts. The priority matrix introduces an effective enforcement mechanism. Exempted establishments can benefit from the streamlined SOP for effective regulation and compliance monitoring, reducing the risk of adverse actions by EPFO. Amendments to the EPF Scheme may follow, reflecting changes introduced by the SOP, including the tenure of trustees of the exempted trust.

II. Maharashtra Shops and Establishment Act, 2017 Amendment Bill 2023: Proposal for Additional Paid Leave During Menstrual Period for Female Employees

The Maharashtra Legislative Assembly has introduced the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) (Amendment) Bill, 2023, with the aim of amending the existing Maharashtra Shops and Establishment Act, 2017. The proposed amendment includes a provision granting additional paid leave to female employees during their menstrual period.

The primary objective behind this amendment is to establish a more efficient and effective system for female employees to avail themselves of paid leave during menstruation. The bill seeks to address concerns related to the health and well-being of female employees by ensuring that the lack of leaves does not compromise their physical and mental well-being during this period.

1. https://www.epfindia.gov.in/site_docs/PDFs/Circulars/Y2023-2024/SOP_Exemption_06102023.pdf

III. Changes in Working Hours: Factories in Punjab Exempted from Factories Act, 1948 Regulations

The Government of Punjab, recognizing the unique challenges faced by industries in the state, has issued a notification (No. E-517838-943) dated September 20, 2023, granting exemptions to all factories from specific provisions of the Factories Act, 1948. This move aims to address the extraordinary work pressure experienced by industries in Punjab.

The total daily working hours for any employee in a day are not to exceed 12 hours. The cumulative working hours in any week, inclusive of overtime, should not surpass 60 hours. The duration of work, including rest intervals, should not extend beyond 13 hours in a single day. Workers are restricted from working overtime for more than 7 consecutive days. Additionally, the total overtime hours in any quarter should not exceed 115 hours.

Employees engaged in overtime work are entitled to minimum wages as per Section 59 of the Act. The payment should align with the wages specified for overtime in the Minimum Wages Act, 1948, and the Punjab Minimum Wages Rules, 1950. A comprehensive logbook/register must be maintained, documenting all instances of overtime worked by employees. This record is open to inspection by officials from the Labour Department.

Failure to adhere to the specified conditions or provisions outlined in the Act and subsequent rules will lead to the withdrawal of the overtime facility for defaulting entities.

This initiative by the Punjab Government reflects a pragmatic approach to balancing the needs of industries with the welfare of workers, providing flexibility while ensuring adherence to essential labour standards.

International developments in Labour and Employment Law

- I. **December 3, 2023:** New York City has implemented a law mandating the Department of Consumer and Worker Protection to release a workers' bill of rights by March 1, 2024. The bill outlines the rights and protections afforded to all NYC workers, irrespective of immigration status, including the right to unionize. Passed by the NYC Council without the mayor's signature, employers must display and distribute copies to employees starting July 1, 2024.
- II. **November 30, 2023:** In *Sanders v. County of Ventura*, the Ninth Circuit ruled that opt-out fees from union and employer-sponsored health plans are not included in the regular rate of pay for overtime calculation under the FLSA. The court cited Section 207(e)(4) of the FLSA, exempting these fees as "contributions irrevocably made by an employer to a trustee or third person under a bona fide plan for providing health insurance."
- III. **Fiji, December 15, 2023:** The Fiji Parliament has passed the Employment Relations (Amendment) Bill 2023, aligning the country's labor laws with ILO standards. The bill redefines essential services and extends the time for employees to file grievances, benefiting sectors such as civil aviation. This legislative change, passed on November 23, 2023, grants freedom of association rights to workers in various sectors, addressing ILO concerns about restrictions on workers' rights. The reform reflects Fiji's commitment to international labor standards, with ongoing support from the ILO's Office for Pacific Island Countries.





Important case laws related to Labour and Employment Law

I. Supreme Court of India:

UP Singh v. Punjab National Bank

Supreme Court of India | 2023 INSC 1077 | 2023 LiveLaw (SC) 1063

In a recent order on December 14, 2023, the Supreme Court, represented by Justices Hima Kohli and Rajesh Bindal, clarified the continuity of the master-servant relationship during a suspension period. The court held that a workman under suspension is obligated to follow all rules governing their post, and the relationship with the employer persists. The case involved a workman in a bank who, after disciplinary action and a transfer order, was deemed to have voluntarily retired in 1984. The court rejected the argument that the workman's suspension equated to voluntary retirement, emphasizing that the master-servant relationship endures during suspension, and all post-related rules apply. The petitioner, who raised a dispute six years later, contended the deemed retirement was illegal due to various reasons, including the distance of the new posting. The court, noting the workman's strategic inactivity, upheld the bank's actions and dismissed the appeal, emphasizing that failure to challenge the order implies acceptance and duty-bound compliance.

UP Singh v. Punjab National Bank

Supreme Court of India | 2023 INSC 1077 | 2023 LiveLaw (SC) 1063

The Supreme Court, in a recent ruling on December 16, 2023, emphasized that an employee's failure to challenge a Transfer Order indicates acceptance of the order and imposes a duty to comply with it. Justices Hima Kohli and Rajesh Bindal stated that an employee cannot unilaterally decide the order is illegal and refuse compliance; instead, the individual should avail remedies against the order if aggrieved. The case involved a worker appointed as a Clerk-cum-Cashier in 1977, who faced disciplinary action in 1982 and was later deemed to have voluntarily retired in 1984 for failing to report to a new posting. Despite challenging the decision in subsequent legal proceedings, the worker's strategic inactivity, exceeding 90 days without leave application, led to

his deemed retirement. The court noted the worker's manipulative tactics, including a hunger strike, omission of his address, and attempts to claim non-payment of allowances while pursuing a legal career. Despite warnings and notices, the worker persisted in non-compliance, resulting in the Supreme Court affirming the order and dismissing the appeal.

State of West Bengal & Ors. v. Mitul Kumar Jana

Supreme Court of India | Civil Appeal No. 8510 of 2011.

The appeal arose from a judgment of the High Court of Judicature at Calcutta, dated 16.12.2010, in 'WPST No. 600 of 2010' filed by the respondent, Mitul Kumar Jana. The High Court set aside the order of the West Bengal Administrative Tribunal, directing the Superintendent of Police to appoint the respondent as a constable in the West Bengal police force.

The respondent underwent selection procedures for the constable position and was declared fit. The police verification report alleged his involvement in a criminal case pending at the time of the interview and physical test. The respondent, in his verification form, answered 'No' to the question of arrest, detention, or conviction. The Deputy Inspector General of Police, Intelligence Branch, opined that the respondent suppressed the fact of his involvement in a criminal case. The Tribunal, in its order dated 23.11.2010, found no suppression of information but recommended considering the appointment after acquittal. The High Court, considering the vague nature of the information sought in the verification form, directed the issuance of the appointment letter, subject to the outcome of the pending criminal case.

The court addressed two key issues:

- i. Whether there was suppression of material information by the respondent in the verification form.
- ii. Whether the High Court erred in directing the issuance of the appointment letter during the pendency of a criminal case.

The appellants argued that the High Court's direction affects the morale of the police force, and the respondent suppressed material information. The respondent argued that the information sought was vague, and he truthfully answered as required. The criminal case resulted in an honourable acquittal.

The respondent was honourably acquitted in a case involving petty offences. The information sought in the verification form was vague, and the respondent truthfully answered as required. The Court affirmed the findings of the Tribunal and the High Court on the issue of suppression of material information. The High Court erred in directing the issuance of the appointment letter; thus, the Court modified the order. The appellant was directed to consider the respondent's case and issue the appointment order within four weeks, with only notional benefits.

The Court emphasized that information given by a candidate must be true, but vague questions do not warrant information beyond their scope. The employer has discretion in assessing a candidate's suitability and antecedents, even after truthful disclosure of a concluded criminal case.

The appeal was disposed of, affirming findings on suppression but modifying the direction for the issuance of the appointment letter.

Mohmedalli v. Union of India

Supreme Court of India | 1963 Supp (1) SCR 993

In a recent ruling, the Supreme Court has held that the Central Government can issue a notification under clause (b) of sub-Section (3) of Section 1 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, for factories not specified in Schedule I. The court deliberated on the applicability of the EPF Act to factories not listed in Schedule I, determining that while clause (a) of sub-Section (3) applies to factories in specified industries, clause (b) covers all establishments not included in clause (a). Citing the constitution bench judgment in *Mohmedalli v. Union of India*, 1963 Supp (1) SCR 993, the bench, comprising Justice Abhay S Oka and Justice Sanjay Karol, emphasized the need for a purposive interpretation due to the social welfare nature of the EPF Act.

State of Punjab & Ors. v. Jaswant Singh

Supreme Court of India | Civil Appeal No. 11871 of 2014

In the case of *State of Punjab and Ors. vs. Jaswant Singh*, the respondent, a constable with Punjab Police, was discharged during probation under Rule 12.21 of Punjab Police Rules, 1934, based on prolonged absence without intimation. The respondent challenged the discharge in a suit, claiming a violation of natural justice. The Trial Court partially decreed the suit, citing the discharge as illegal. The first appellate Court upheld the decision, granting the respondent entitlement to service benefits. The State appealed to the High Court, but both appeals were dismissed. The present appeals contest the High Court's judgment.

The respondent, appointed in 1989, was absent without notice after a special duty assignment in 1990. The Superintendent of Police recommended discharge, citing a lack of interest and responsibility. The Senior Superintendent of Police discharged the respondent under Rule 12.21, deeming him unlikely to become an efficient police officer. The respondent filed a suit challenging the discharge, alleging a violation of natural justice.

The Trial Court found the discharge procedurally irregular and directed the State to rectify it. The first appellate Court affirmed the decision, allowing the respondent's appeal and granting him service benefits. The High Court upheld this judgment. The State contends the discharge was lawful, while the respondent argues it was punitive and required a formal inquiry.

The Supreme Court analyzed Rule 12.21, emphasizing a probationer's terminable status during the probation period. It cited precedents clarifying the distinction between a simpliciter discharge and a punitive action, stressing that a termination is not stigmatic unless misconduct is the motive or foundation.

The Court found the respondent's discharge a simpliciter termination, not punitive. It dismissed the contention that the discharge order implied misconduct, stating there was no foundation of misconduct in the order. The Court distinguished cases cited by the respondent, noting the absence of serious misconduct allegations in the present case.

ii. High Courts:

Hitachi Astemo Fie Pvt. Ltd v. Nirajkumar Prabhakar Rao Kadu

Bombay High Court | Writ Petition No. 13192 of 2023

The Bombay High Court recently upheld the termination of an employee from Hitachi Astemo Fie Pvt. Ltd., an auto parts manufacturer, who was dismissed for posting provocative content on Facebook. Justice Milind N Jadhav emphasized that freedom of speech should not transgress beyond reasonableness, as it could lead to disastrous consequences. The court observed that such acts needed to be curbed at the outset to avoid conveying a wrong signal to society. The employee, a union office bearer, had posted defamatory content inciting violence and hatred against the company's management during wage negotiations. The court deemed the Facebook posts as acts of misconduct, setting aside the Labour Court's order that deemed the charges illegal. The judgment highlighted the lack of evidence supporting hacking claims and stressed the need for restraint from union office bearers during sensitive negotiations. The court directed the completion of the hearing on remaining issues within eight months.

President / Secretary, Uttar Bhartiya Education Society & Anr. v. Naresh Tejan Thakur & Anr.

Bombay High Court | Writ Petition No. 4232 of 2022

The Bombay High Court recently emphasized that even hearsay evidence is admissible in domestic inquiries, as strict rules of evidence do not apply in such proceedings. Justice Sandeep V Marne noted that in domestic inquiries, the test of preponderance of probability is sufficient to establish misconduct, allowing even hearsay evidence to be considered. The court's observation came in response to a case where the petitioner-management challenged the School Tribunal's decision to set aside the termination order of Respondent No.1. The termination was based on allegations of sexual assault on the headmistress's minor daughter. The court found it implausible that a mother would falsely implicate a peon in such a serious matter and held that the evidence provided by the headmistress was credible. Consequently, the court allowed the petition, affirming that the penalty imposed on Respondent No.1 was proportionate to the gravity of the proven misconduct.

B.Suresh v. Chief Engineer & Administrator

Kerala High Court | 2023/KER/78726

The Kerala High Court has ruled that prolonged absence from service without proper notice constitutes abandonment of service. In a case where an employee was absent for nearly 17 years without informing the employer, the court held that such extended absence without communication amounts to abandonment of service. The court rejected the petitioner's claim of seeking leave extension, stating that for termination, positive action by the employer is required, while abandonment of service results from unilateral action by the employee. Citing the Supreme Court's position, the court affirmed that prolonged unauthorized absence for an extended period amounts to voluntary abandonment of service, leading to automatic termination without further employer action. The court dismissed the original petition, supporting the employer's argument that the absence was tantamount to abandonment of service.

Bharat Sanchar Nigam Ltd. v. Vihaan Networks Ltd

Delhi High Court | O.M.P. (Comm) 405 of 2023, IA No. 19196 of 2023 & 19198 of 2023.

In the recent case of BSNL vs. Vihaan Networks Limited, the Delhi High Court made a significant ruling regarding compensation for preparatory work in construction projects. The court held that parties undertaking preparatory work based on the instructions of the other party are entitled to compensation, even in the absence of a finalized contract.

The dispute involved a contract for the supply, installation, and maintenance of a 2G GSM BSS Network in certain uncovered areas of India. The respondent, Vihaan Networks Limited, accepted the tender and began preparatory work as directed by BSNL (Bharat Sanchar Nigam Limited). Despite the respondent incurring expenses, BSNL failed to issue the final purchase order and withdrew the Advance Purchase Order (APO). This led to the respondent invoking the arbitration clause.

The arbitral tribunal ruled in favor of BSNL on issues related to the absence of a concluded contract and the legality of APO withdrawal. However, it recognized the respondent's right to compensation for specific preparatory work, even without a formal contract.

The central legal issue was whether the absence of a finalized contract prevented the respondent from seeking compensation for preparatory work. The court emphasized the principle of quantum meruit, incorporated in Section 70 of the Indian Contract Act, which obliges parties to compensate those who undertake work and incur expenses based on instructions, irrespective of a formal contract.

The court upheld the tribunal's decision, affirming the respondent's right to claim compensation for preparatory work conducted at the petitioner's request. It emphasized that parties must be compensated for work performed in good faith, even without a formal contract.

The court highlighted the applicability of the principle of quantum meruit, ensuring reimbursement for work performed at the request of another party. This endorsement reinforces the equitable foundation of contract law.



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