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Labour and Employment Law Newsletter

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A. Supreme Court Judgments

1. *Vinod kumar & ors. Etc. v. Union of India & ors.* (SLP(c) No. 22241-42of 2016)

In a recent decision, the Supreme Court emphasized that procedural formalities cannot be used to deny regularization of service to an employee whose appointment was initially termed "temporary" but has effectively performed the duties of a regular employee over a significant period. Justices Vikram Nath and KV Viswanathan set aside the High Court's decision that denied regularization to employees serving continuously in capacities akin to regular employees.

The Court underscored that the employees were appointed through a valid selection process similar to that of regular employees and had served continuously for approximately 25 years. Failing to recognize the substantive nature of their roles and their continuous service akin to permanent employees was deemed contrary to principles of equity, fairness, and employment regulations.

The order dictated by Justice Vikram Nath highlighted that the continuous service of the appellants in capacities resembling regular employees, along with their selection process mirroring that of regular recruitment, constituted a departure from the temporary nature of their initial engagement.

Addressing the respondent's reliance on the *Secretary State of Karnataka* v. *Umadevi* case to support the High Court's decision, the Supreme Court distinguished the present case from Umadevi's precedent. It emphasized that the appellants had undergone a valid selection process, including written exams and interviews, unlike the irregular appointments addressed in Umadevi's case.

The Supreme Court's decision reaffirmed the distinction between "irregular" and "illegal" appointments, emphasizing the importance of considering appointments made through valid procedures, even if not strictly in accordance with prescribed rules.

2. *Shriram Manohar Bande Versus Uktranti Mandal & Ors.* (2024 SCC OnLine SC 647)

The Supreme Court affirmed that the acceptance of a resignation by the appropriate authority effectively terminates employment, regardless of communication to the employee. Justices PS Narasimha and Aravind Kumar clarified that once a resignation is accepted by the appropriate authority, the employment is deemed terminated, even if the acceptance is not communicated to the employee.

The Court emphasized that the Maharashtra Employees of Private Schools (MEPS) Act does not provide specific guidelines on how resignation letters should be accepted. In the absence of such procedural details in the Act and Rules, the court referred to precedent, particularly the North Zone case, to determine the validity of resignation acceptance. Consequently, the Court upheld the acceptance of resignation by the school committee, noting that MEPS Rule 40 does not mandate communication of acceptance to the employee.

It affirmed that the non-communication of acceptance does not invalidate the termination, as the resignation is deemed accepted upon approval by the appropriate authority. In summary, the Court's decision clarifies that the mere non-communication of acceptance of resignation to the employee does not render the termination invalid under the MEPS Act and Rule 40.

B. High Court Judgments

1. *Godrej and Boyce Manufacturing Company Ltd vs. Shivkranti Kamgar Sanghatana (2024 SCC OnLine Bom 938)*

This judgement pronounced by the hon'ble underscores the importance of critically evaluating the actual duties performed by employees in order while adjudging whether the employee is workman or not

The dispute arose in 2015 when the union, representing approximately 44 employees, presented a Charter of Demands seeking enhanced wages and benefits. Following unsuccessful conciliation attempts, the matter was referred to the Industrial Tribunal for resolution. The Tribunal, through an order dated 9th June 2021, determined that the individuals related to the dispute were 'workmen' under the ID Act.

The management contested this classification, arguing that the employees' duties were predominantly managerial or administrative and therefore did not fall under the definition of 'workmen' as per Section 2(s) of the ID Act. It further contended that the burden of proving the employees' status as 'workmen' rested on them, which they failed to discharge adequately.

In its observations, the High Court emphasized significant amendments to the ID Act in 1956 and 1982, which broadened the definition of "workman" to include supervisory and technical roles. It stressed that the determination of an individual's status as a 'workman' depends on the actual duties performed, regardless of designation or salary. Regarding the management's contention of employees performing supervisory or managerial duties, the court considered Section 2(s) of the ID Act, defining a supervisor as one responsible for overseeing and correcting the work of subordinates, emphasizing human labor oversight over machine operation.

The court ruled that to qualify as a supervisor, it is necessary to demonstrate direct oversight of others' work. Despite management witnesses testifying to the supervisory nature of certain roles, the court found insufficient evidence of direct oversight of subordinate employees. Instead, it noted that the employees predominantly performed manual, skilled, and unskilled work, with their primary function being machine operation.

Consequently, the High Court upheld the Industrial Tribunal's decision, dismissing the management's writ petition against the classification of the employees as 'workmen' under Section 2(s) of the ID Act.

2. *Executive Engineer Electricity Transmission Division vs. Mahesh Chandra And Another* (2024 AHC 69169; Writ Petition No. 61111/2012)

The Allahabad High Court, in a recent judgment involving proceedings under Section 33C(2) of the Industrial Disputes Act, 1947, ruled that Labour Courts lack the authority to grant interest to employees for delayed payments by employers.

Justice Rohit Ranjan Agarwal clarified that Section 33C proceedings are considered execution proceedings, not adjudicatory. The case stemmed from an employee seeking adjustment of his final pension from his provisional pension, with the Labour Court initially awarding interest on delayed payments. However, the High Court overturned this decision, citing precedents and the statutory framework of Section 33C proceedings.

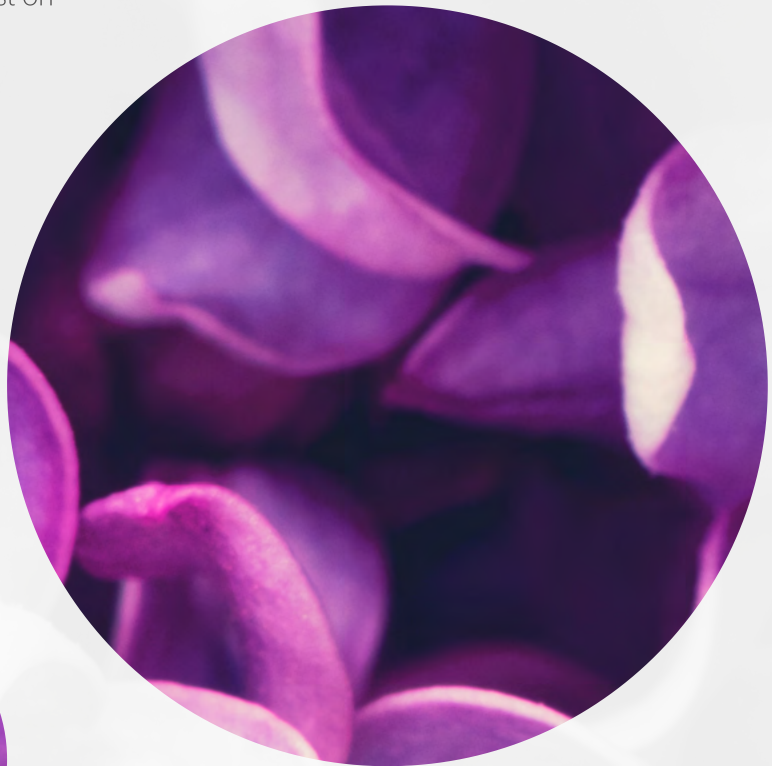
The case involved a former employee of the U.P. State Electricity Commission seeking adjustment of his final pension from his provisional pension. The employee filed an application under Section 33C(2) of the Industrial Disputes Act before the Labour Court, which initially granted interest on delayed payments.

The High Court referred to Section 33C(2) of the Industrial Disputes Act and relied on judicial precedents, including the Supreme Court's decision in *Central Inland Water Transport Corporation Ltd. vs. The Workmen*, ((1974) 4 SCC 696) to emphasize that Section 33C proceedings are execution proceedings. Therefore, Labour Courts cannot adjudicate rights beyond the scope of execution. The High Court disagreed with the Labour Court's decision to grant interest on delayed payments, setting aside this aspect of the ruling.

The Court relied on Central Inland case the Supreme Court observed

"Therefore, when a claim is made before the Labour Court under Section 33-C(2) that court must clearly understand the limitations under which it is to function. It cannot arrogate to itself the functions—say of an Industrial Tribunal which alone is entitled to make adjudications in the nature of determinations (i) and (ii) referred to above, or proceed to compute the benefit by dubbing the former as 'Incidental' to its main business of computation," held the Apex Court.

Accordingly, the order of the Labour Court was set aside to the extent of the grant of interest.



3. *Smt. N. Bhuvaneshwari vs The Management of M/s Ambuthirtha Power Pvt. Ltd.* (Writ Petition No. 49982/2018, and 6531/2019)

The High Court of Karnataka, in a ruling by Justice K.S Hemalekha, held that individuals with managerial and supervisory responsibilities do not fall within the definition of 'workman' as per Section 2(s) of the Industrial Disputes Act.

The court emphasized that once it's established that a person does not qualify as a 'workman', the labor court lacks jurisdiction to adjudicate their termination. The analysis of Section 2(s) highlighted exceptions for individuals in managerial or supervisory roles earning over a specified wage threshold.

The case involved an 'Executive Secretary' whose duties were managerial and supervisory despite her designation. The court concluded that her responsibilities aligned more with those of a manager than a 'workman'. Consequently, the termination of her employment was not within the labor court's purview, leading to the setting aside of the labor court's order.

4. *Delhi State Legal Services Authority v. Annwesha Deb* (2024 DHC 3146)

In a significant ruling, the Delhi High Court held that Advocates empanelled with Delhi State Legal Services Authority (DSLA) are not considered 'employees' and therefore, not eligible for maternity benefits under the Maternity Benefit Act, 1961. The Division Bench of Justice V Kameswar Rao and Justice Saurabh Banerjee set aside an earlier order of a Single Judge, which directed DSLA to provide medical, financial, and other benefits to its empanelled legal aid Counsel, Annwesha Deb.

The Court referred to Section 2(s) of the Maternity Benefit Act, 1961, and emphasized that Advocates empanelled with DSLA operate on a day-to-day basis without fixed terms of engagement, indicating a professional relationship rather than employment. Allowing empanelled advocates to claim maternity benefits would, according to the Bench, lead to erroneous interpretation of the Act and have serious repercussions.

The Court highlighted that Deb voluntarily agreed to be governed by the terms and conditions outlined during her empanelment, which did not include maternity benefits. Consequently, the Court concluded that Deb is estopped from seeking maternity benefits under the Act, as they were not part of the agreed terms during her empanelment. The Court held that there cannot be a comparison between an Advocate and an employee appointed as per the Recruitment Rules of the Authority. Therefore, the Appeal was allowed, and the impugned Judgment was set aside.

5. *Shakuntla Devi v. State of Punjab and others* (CWP No. 4660/2022)

In the present case before the hon'ble Punjab and Haryana High Court the petitioner, Devi, moved the High Court in 2021 seeking resolution of pending gratuity and leave encashment dues from the Municipality. Despite a court directive to decide the matter within a month, no action was taken by the respondents. It was revealed during the proceedings that a significant portion of the dues remained unpaid, despite partial payments made via multiple cheques.

The respondents argued against granting interest, citing the Municipality's financial crisis. However, the Court rejected this contention, citing precedent (*Ram Karan Vs. Managing Director, Pepsu Road Transport Corporation*) that financial difficulties cannot justify withholding pensionary benefits from retired employees.

Justice Kumar emphasized that financial instability is not a valid reason to deny pensionary benefits. Therefore, the Court ruled in favor of the petitioner, granting interest at 9% per annum on the overdue amount. Additionally, the Municipal Council was directed to cover the petitioner's legal costs within six weeks. This decision underscores the importance of upholding pensionary benefits for retired employees and highlights the legal principle that financial challenges cannot justify withholding such dues.

C. Recent developments in Labour & Employment Law in India

1. Certain provisions of ESI Act, 1948 gets enacted in the state of Uttrakhand.[1]

On March 8, 2024, the central government took a significant step to enhance social security coverage in Uttarakhand. By exercising its powers conferred by the Employees' State Insurance Act, 1948 (ESI Act), the government enacted certain sections, effective from April 1, 2024, in Almora, Bageshwar, Chamoli, Champawat, Pithoragarh, Rudraprayag, and Uttarkashi districts.The newly enacted sections includes:

i. Section 38 to 43;

ii. Section 45A to 45H;

iii. Section 46 to 73;

iv. Section 74 and 75;

v. Sub Section (2) to (4) of Section 76; and

vi. Section 82 and 83.

2. The monetary limits of ESI to enter into a contract increased from Rs 5 crore to Rs.25 crore.[2]

In a significant development, the Central Government, through a notification dated February 26, 2024, amended the proviso of sub-rule (2) of Rule 29 in the Employees' State Insurance (Central) Amendment Rules. As a result of this amendment, the Employees' State Insurance (ESI) can now enter into contracts up to a value of ₹25 crore without seeking permission from the Standing Council. This move aims to streamline processes and enhance the ESI's operational efficiency.

3. The State of Rajasthan issued a directive for employees on employing women in night shifts.[3]

The Labour Department of the Government of Rajasthan has issued a directive dated March 07, 2024, identified as No.: F.14 (11) (1) Bomb: Law: 2017, regarding the employment of female workers during nighttime hours in Rajasthan, within establishments covered under the Rajasthan Shops and Commercial Establishments Act, 1958. Key provisions include obtaining explicit consent from female employees assigned to night shifts, issuance of formal appointment letters and photographic identification cards to all female employees, implementation of measures to prevent incidents of sexual harassment in the workplace for female employees working at night, and provision of transportation arrangements for female employees commuting between their residences and workplaces during nighttime hours.

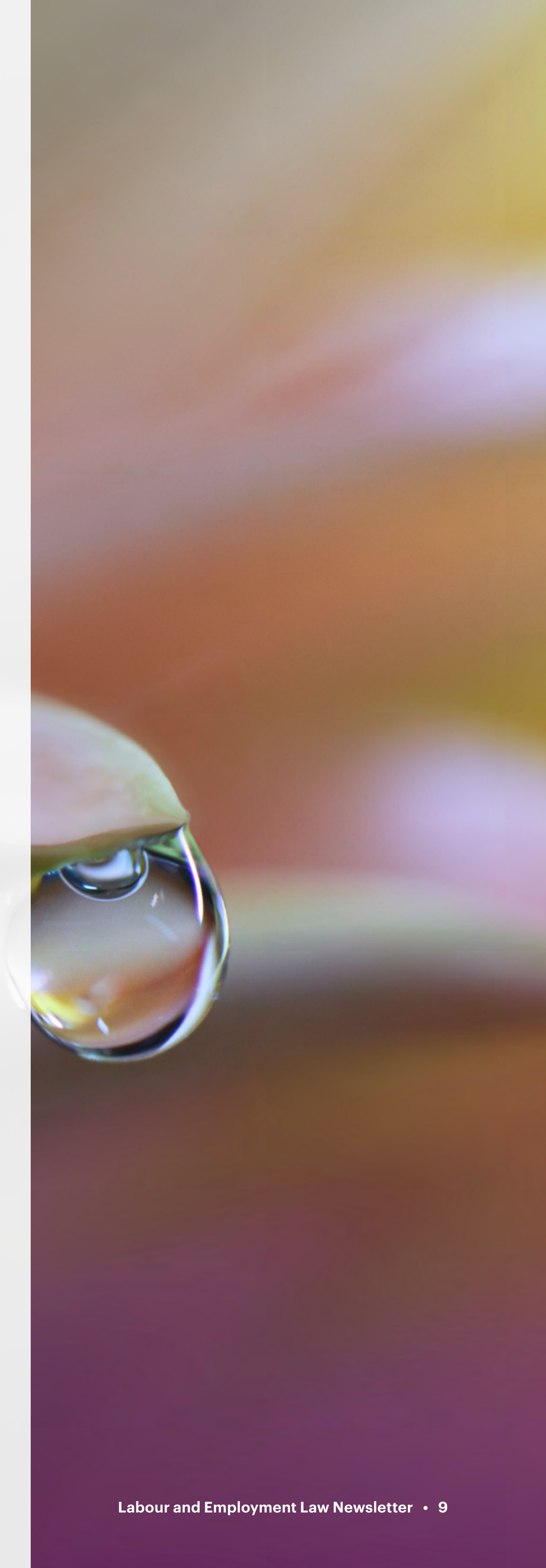
1. https://egazette.gov.in/(S(cvm10leot0qm3rfc3ulzzfdv))/ViewPDF.aspx
2. https://egazette.gov.in/(S(cvm10leot0qm3rfc3ulzzfdv))/ViewPDF.aspx
3. https://dms.rajasthan.gov.in:9080/omnidocs/dist/#/webApi/main/document

4. State Government Of Haryana revised the Conditions for Employing Female Employees during Night Shift[4]

The state government of Haryana, via a notification dated 14th March 2024, has issued new guidelines superseding previous notifications regarding exemption from employing women during night shifts in various establishments, including IT, ITeS, banking, hotels, export-oriented, logistics, and warehousing.

According to the latest notification, employers seeking exemption from such guidelines must apply within one month before the desired period, and the exemption will be valid for one year unless there are changes in security or transportation agreements. Further, the employers must comply with the Sexual Harassment of Women at Workplace Act, establish rules against sexual harassment, provide appropriate penalties, and maintain a complaint redressal mechanism. Furthermore, the employer must ensure suitable working conditions, provide necessary support services, and obtain consent from women employees for night shifts.

The pre-requisites for exemption include security guards, adequate lighting, work sheds, CCTV-equipped transport, and separate canteens for more than 50 women employees. In logistics and warehousing, at least one-third of the workforce in a shift must be women, and boarding and lodging provided must be exclusively for women and supervised by female wardens/supervisors. Compliance with EPF, ESI, and State Labour Welfare Fund requirements is mandatory for exemption. These guidelines aim to balance the employment of women during night shifts with ensuring their safety and welfare in the workplace.



4. https://storage.hrylabour.gov.in/uploads/labour_laws/Y2024/March/W3/D20/1710927667.pdf

D. Foreign Developments

1. Singapore's Tripartite Guidelines on Flexible Work

Singapore's Tripartite Guidelines on Flexible Work Arrangement Requests (introduced on 16th April 2024) provide a structured framework for employees to formally request flexible work arrangements (FWAs) and for employers to handle such requests effectively. Here are the key aspects:

- **Formal FWA Request:** The employee seeking such flexibility has to submit a formal request for the same to their employer. The request shall include details such as the model of FWS sought, expected frequency, duration, reasons, etc.
- **Open Discussion on the Request:** The employer and employees shall mutually discuss the request; any disagreement should be addressed through an internal grievance redressal procedure. While accepting or Rejecting the request, the employer should give due consideration to reasons like cost increase, detriment to productivity, and practicality, while ignoring reasons like personal bias, preference for direct supervision of the employee, etc.
- **Communication of the Decision:** The employer shall communicate his decision on the formal request made by the employee within two months of making of such a request. Further, in case of rejection of request, the same shall be recorded in writing in the communication by the employer.

2. USA's Department of Labour takes additional steps to secure critical healthcare protections.[5]

On 29th April 2024, the American Department of Labor's Employee Benefits Security Administration (EBSA) announced a final rule aimed at strengthening healthcare protections for consumers in plans offered by small employers or on the individual market. This action aligns with the US administration's commitment to expanding access to quality health coverage.

The new rule rescinds the 2018 regulation that expanded Association Health Plans (AHPs), which were exempt from certain critical consumer protections under the Affordable Care Act (ACA). Additionally, it reverses lenient criteria established by the previous administration, which allowed more employers to offer health insurance coverage without complying with key ACA provisions. The decision to rescind the 2018 rule follows a 2019 ruling by the U.S. District Court for the District of Columbia, which invalidated certain provisions of the regulation as unreasonable interpretations of the law.

The American Assistant Secretary for Employee Benefits emphasized that this action aims to ensure compliance with federal law and improve the comprehensiveness of coverage for consumers. By rescinding the entire 2018 rule, the Department of Labor aims to eliminate uncertainty surrounding the standards it established, while maintaining longstanding pre-rule guidance on AHPs. This move reinforces the administration's commitment to protecting consumers and ensuring access to quality healthcare coverage.

3. Employment Laws to be Strengthened for Causal Workers in UK.[6]

Department of Enterprise Isle of Man (UK) has announced new strong employment laws for casual workers, with effect from 1st April 2024. The reforms will extend the right to a written statement with employment details and an itemised pay statement to all workers, including those on zero-hours contracts.

The reforms will entail updates to employment paperwork requirements, including the inclusion of information on paid leave, benefits, and terms and conditions related to hours of work. Additionally, pay statements for workers on variable hours contracts will now be mandated to include the hours worked. These amendments mirror a similar measure implemented in the UK in 2020.

5. https://www.dol.gov/newsroom/releases/ebsa/ebsa20240429
6. https://www.gov.im/categories/working-in-the-isle-of-man/employment-rights/written-statements-and-itemised-pay-statements/

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