Labour & Employment Update

April 2025; Issue No - 22

The *'Labour & Employment Update – April 2025'* comprises latest judicial decisions and circulars/notification issued under Labour Law as outlined below.

1. Legal Updates

The Employees Provident and Miscellaneous Provisions Act, 1952 (*in short* ***"EPF Act"***)

1. **Newly set up establishment of lessee cannot be treated by the EPFO as the continued business of the previous unit that operated in the same premises.**

   Amicus Pharmaceuticals Private Limited V. the Regional Provident Fund Commissioner [W.P No. 3778 of 2007; dt. March 11, 2025]

   The subject matter of the present Writ Petition is the order passed by the respondent. Brief facts of this case are the petitioner engaged in the business of manufacturing and selling of pharmaceutical products with a valid license obtained under the Drugs and Cosmetics Act, 1940. Petitioner received a notice from the respondent directing to comply with the provisions of the EPF Act under the code number allotted to M/s Abril Pharmaceutical Private Limited, which is an erstwhile tenant of the premise occupied by the petitioner engaging in similar business. Petitioner contended that its establishment is a newly set up unit employing less than twenty employees. Further, petitioner submitted that it took only part of the machinery of the erstwhile tenant on lease. The petitioner submitted that due to financial problems, M/s. Abril Pharmaceuticals Pvt. Ltd. closed down its operation completely, sold a major part of its plant & machinery and surrendered its tenancy to the landlord.
   The MP HC held, none of the license of the previous entity is being utilised by the petitioner which has obtained license of its own. Only part of the plant and machinery are being utilised by the petitioner without taking over the entire unit. The business of the previous unit, hence, cannot be said to have been continued by the petitioner. There is no interconnection between the petitioner unit and the previous unit. The entire setup of the petitioner is new, hence, it cannot be said that the previous entity and the petitioner entity are one and the same. The respondent has erred in holding that previous entity has transferred its establishment in favour of the petitioner.

2. **Establishment cannot treat same class of employees differentially.**

   The India Jute & Industries Limited & Anr. V. The Regional Provident Fund Commissioner & Ors. [WPA 23925 of 2009; dt. March 26,2025]
   Petitioner invoked the writ jurisdiction against the order passed by the respondent u/ss 7Q and 14B of the EPF Act.
   Factual matrix of this case is petitioner establishment has been declared as a sick unit by the Board of Industrial and Financial Restructuring. Central Government vide notification dt. April 4, 1997 reduced the rate of contribution from 12% to 10% in case of sick units. However, the petitioner establishment which is non-cognizance of the notification has been contributing 12% of the wages. During the period May 2000 to March 2004 petitioner has remitted the provident fund contributions belatedly resulting in levy of interest u/s 7Q and penalty u/s 14B by the respondent. The contention of the petitioner is that it had paid 12% of contribution instead of 10% hence, the respondent should adjust the excess amount paid towards interest levied which was rejected by the respondent.

The respondent held that that if the prayer of the petitioner is granted, two classes of beneficiaries would be created in the same establishment for the same period one who have already withdrawn their P.F. contribution at the enhanced rate of 12% along with interest thereon and secondly those who are still in the service are to lose their P.F. contribution from 12% to 10 % from the retrospective date, which is not justified in the eye of law.
The Calcutta HC held that the orders passed by the respondent are in accordance with the law and does not warrant interference.

The Payment of Gratuity Act, 1972 (*in short* ***"Gratuity Act"***)

3. **Badly worker who rendered long service entitled to gratuity from the employer**

Hooghly Infrastructure Pvt. Ltd. C & C R v. Sk. Alam Ismail & Ors. (WPA 28770 of 2024; dt. March 18, 2025)

The subject matter of this Writ Petition is the order passed by the Controlling Authority and Appellate Authority under the Gratuity Act.
Factual background of this case is, first respondent had been serving the petitioner since May 1978 till he superannuated in July 2015 as a badly worker. On his superannuation, first respondent applied for gratuity, the Controlling Authority directed the petitioner to pay gratuity along with the simple interest. Petitioner contended that first respondent had not completed qualifying service of five years and 240 days in each year. Aggrieved petitioner challenged the order before the Appellate Authority who upheld the order passed by the Controlling Authority.
On perusal of the documents *Calcutta HC held*, employee has admittedly worked for 37 years and has rendered his service towards the work to be carried out by a regular employee. The facts as seen proves that the employee has provided selfless service towards permanent posts for a period of 37 years. Hence, he is entitled to gratuity from the petitioner.

4. **Principal employer liable to pay the Gratuity in case of default by the contractor.**

Hindustan Petroleum Corporation Limited V. the Appellate Authority under the Payment of Gratuity Act, 1972 & Ors. [WPA 25774 of 2024; dt. March 12, 2025]

The present writ application has been preferred against the order passed by the Appellate Authority under the Gratuity Act wherein it held that the principal employer is liable to pay the gratuity in case of default by the contractor.
The appellant engages same set of contract workers through multiple contractors at different time periods. The workers are being paid by the appellant through various contractors who keep on changing from time to time. The Principal Employer, the petitioner, and contract workmen remains permanent with changing contractors, resulting same set of workmen have been serving the petitioner for many years. On appeal the Appellate Authority held that there is no cessation of employment in absence of which the question of payment of gratuity does not arise. However, as and when the payment of Gratuity

is due petitioner being the Principal Employer shall become liable to make the payment of Gratuity to the worker.

The Calcutta HC on perusal of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 and facts of the present case *held*, petitioner, being the principal employer, is liable to make the payment of Gratuity to the contract workmen as and when it arises and he shall be at liberty to recover the said amount from the contractor.

The Industrial Disputes Act, 1947 (*in Short* "***ID Act"***)

5. **Long term employees should not be continued as daily wagers, contrary to the statutory and equitable norms.**

The Registrar, Thiruvalluvar University V. the Principal Labour Court, Vellore and ors. [W.A.Nos.496 to 499 of 2020; dt. March 25, 2025]

The subject matter of the present writ appeal is the order passed in the writ petition dt. May 29, 2020 by the single judge bench, wherein it modified the award of the Labour Court.

The brief fats of this case are the petitioner university established under a state enactment in the year 2002 with a sanctioned employee strength of 22 non- teaching staff. The petitioner engaged the required staff on temporary basis on various dates who served for quite long time before they were terminated by the petitioner. The respondent workmen raised an industrial dispute seeking reinstatement with back wages.

On reference, the Labour Court held that there is an unfair labour practice by the petitioner against 66 employees and directed reinstatement in permanent posts with 30% back wages. Aggrieved workmen, seeking 100% back wages, and petitioner university filed separate writ petitions invoking writ jurisdiction. The contention of the petitioner is that there are only 22 sanctioned posts in the university, workmen are appointed for non-sanctioned posts without proper recruitment process and they did not possess required qualification.

The Madras HC on perusal of the factual back ground and decision of apex court in ***State of Karnataka V. Umadevi and others***[1] *and* ***Shripal and another V. Nagar Nigam, Ghaziabad***[2] *held*, long term employees are not indefinitely retained as daily wagers and directed to reinstate them in service. It further directed to regularise their service as and when the regular vacancies arise.

[1] 2006(4) SCC 1
[2] 2025 SCC online SC 221

2. Circulars/Notifications

1. **Andhra Pradesh Government exempted IT and ITeS establishments from certain provisions of the AP S&D Act.**

   The Government of Andhra Pradesh vide notification dt. March 25, 2025 exempted the IT and ITeS establishments from the operation of Sec 15, 16, 21. 23. 31 and 47 of the AP S&D Act for a further period of five years from the date of notification.

2. **Haryana Labour Welfare Fund enhancement**.

   Government of Haryana by notification (*# HLWB/REV/2025/1531-35*) dt. March 7, 2025 enhanced the monthly Labour Welfare Fund contributions. According to the notification employee's monthly contribution towards labour welfare fund shall be 0.2% of his/her salary subject to a limit of Rs. 34 (post amendment it was Rs. 31) and employer is required to contribute every month twice the amount contributed by the employee.

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