

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

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3.	Gujarat High Court (“ Gujarat HC ”) <i>Jayanti Ishwarbhai Parmar V. Sheth Shri Sabbir Mohammed Zubair,</i>
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1. Legal Updates

The Uttar Pradesh Industrial Disputes Act, 1947 (in short “UP ID Act”)

1. Retrenched workers who are engaged directly by the employer as casual labour entitled to reinstatement with consequential benefits held SC.

Cause Title: Shri Pal & Anr. V. Nagar Nigam, Ghaziabad [C.A Nos. 8158-8179 of 2024; dt. January 31, 2025]

The subject matter of these appeals is the judgement passed by the Allahabad High Court (in short “Allahabad HC”) wherein it considered the two conflicting judgements passed by the Labour Court, Ghaziabad.

The appellants were engaged by the respondent as gardeners (Malis) and had been discharging horticultural and maintenance duties since 1998. In the year 2004 the appellant workmen raised an industrial dispute seeking regularisation of their services with statutory benefits. During the pendency of conciliation proceedings, the services of the appellants were terminated verbally without any notice and payment of retrenchment compensation. On reference, the Labour Court held that the termination of certain class of workers is violative of sec 6N of the UP ID Act and awarded reinstatement with 30% back wages. On the other hand, Labour Court dismissed the claim of other set of workers holding that they were not engaged directly by the respondent. Aggrieved parties invoked the writ jurisdiction of the Allahabad HC, wherein the order of the Labour Court was slightly modified by directing the respondent to engage the appellants on daily wages with pay equivalent to the regular pay scale of gardeners. Both the parties approached the SC challenging the impugned order of the Allahabad HC.

The SC on perusal of the factual matrix and considering the provisions of the UP ID Act held, the appellants were engaged directly by the respondent and wages were paid directly, they were engaged in essential and perennial duties. It further held, workmen are entitled to 50% back wages with continuity of service with consequential benefits.

The Payment of Gratuity Act, 1972 (in short “Gratuity Act”)

2. Employer cannot withhold the gratuity of a delinquent employee without initiating recovery proceedings for alleged misappropriation held Karnataka HC.

Cause Title: Central Warehousing Corporation V. G.C. Bhat & Anr. [W.P No. 102635 OF 2024; dt. January 10, 2025]

First respondent was working as a junior superintendent with the petitioner and was suspended from service on the charges of misappropriation of funds and misconduct. Petitioner has initiated an inquiry

resulting in dismissal of the first respondent from service. First respondent raised a claim for gratuity along with interest before the second respondent, Controlling Authority under the Gratuity Act, after a gap of seven years from the date of dismissal. Second respondent directed the petitioner to pay gratuity along with the interest to the first respondent from the date of dismissal to actual date of payment. Aggrieved by the order of the second respondent, petitioner invoked the writ jurisdiction. Petitioner contended that first respondent misappropriated the funds causing loss to the corporation hence, his gratuity amount is adjusted towards the losses incurred.

The Karnataka HC held that employer have to initiate recover proceeding to recoup the loss made by the delinquent employee. The Corporation could not, without initiating proceedings for recovery, retain the gratuity amount. Karnataka HC while dismissing the petition directed the petitioner to pay the gratuity to the first respondent.

The Industrial Disputes Act, 1947 (in short “ID Act”)

3. Labour Court jurisdiction u/s 33 (c) (2) of the ID Act is limited to pre-existing rights or one flowing from a preexisting right held Gujarat HC.

Cause Title: Jayanti Ishwarbhai Parmar V. Sheth Shri Sabbir Mohammed Zubair, [C.A No. 17361 of 2024; January 13, 2025]

The subject matter of the present appeal is the order passed by the Labour Court, Anand, wherein the claim for certain benefits was rejected.

The petitioner was joined in the establishment of respondent in February 2002 and was terminated on December 1, 2013. Dispute raised by the petitioner was referred to the Labour Court. Labour Court directed the respondent to pay 25% of the wages from May 2014 till the date of superannuation i.e. May 31, 2016 along with the benefits petitioner was entitled to. Recovery application filed by the petitioner was rejected by the Labour Court. Aggrieved petitioner approached the Gujarat HC. The Contention of the petitioner is that he is entitled to benefits like bonus and leave encashment for the relevant period.

On perusal of the facts and relying on the decision of the Supreme Court in ***Bombay Chemical Industries v. Deputy Labour Commissioner***¹ wherein it held, u/s 33 (C) (2) of the ID Act, the Labour Court has no jurisdiction to adjudicate the entitlement on the basis of the claim of workmen. It can only interpret the award or settlement on which the claim is based, its jurisdiction is like that of an executing court. The Gujarat HC held, as there is no pre-existing right established by the present petitioner, hence, no error has been committed by the learned Labour Court in rejecting the application filed by the petitioner.

The EPF & MP Act, 1952

4. Authority which has passed the original order cannot invoke writ jurisdiction unless the appellate Tribunal acted without jurisdiction held Madras High Court.

¹ (2022) 5 SCC 629

Cause Title: Employees' Provident Fund Organisation V. the Presiding Officer, Employees' Provident Fund Appellate Tribunal and Ors. [W.P No. 37603 of 2015; dt. January 2, 2025]

The issue for consideration before the Madras High Court ("**Madras HC**") is "*whether the original authority which has passed the order can invoke write jurisdiction against the order of the appellate Tribunal*".

The present writ petition was filed by the EPFO to quash the order passed by the first respondent Employees' Provident Fund Appellate Tribunal (*in short* "**Tribunal**") in favour of second respondent establishment.

The second respondent is a co-operative bank covered under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 and schemes framed thereunder (*collectively referred as* "**EPF Act**"). The petitioner had passed an order u/s 14B of the EPF Act directing the second respondent to pay penalty for delayed Provident Fund remittances. The establishment has challenged the order of the EPFO in the Tribunal contending, there no *mens rea* in delayed payment of provident fund dues, however, the appeal was filed by the second respondent after the period of limitation, including extended period, prescribed under the EPF Act. The first respondent Tribunal allowed the petition. Aggrieved petitioner invoked the writ jurisdiction under Article 226. Petitioner contended that appeal is time barred and *mens rea* is applicable only in the criminal proceedings as held by the apex court in ***Union of India V. M/s Dharamendra Textiles Processors and others***².

Madras HC held, the appeal was filed after a period of 1 year from the date of passing of the original order which was barred by the period of limitation provided under the EPF Act. As the Tribunal has passed an order in a matter where cause of action has already been barred by limitation, the impugned order passed by the Tribunal is without jurisdiction. Relying on its own decision in ***the Assistant Provident Fund Commissioner, Employees Provident Fund Organization, Coimbatore and others Vs. Employees Provident Fund Appellate Tribunal (Ministry of Labour and Employment, Government of India) and others***³, it held, any erroneous order passed without jurisdiction by the Tribunal, the authority that has passed the original order can challenge the same by filing a writ petition under Article 226 of the Constitution of India.

² 2008 (13) SCC 369

³ MANU/TN/2251/2011

2. Circulars/Notifications

The EPF & MP Act, 1952

1. EPFO simplified the provident fund transfers.

EPFO in its circular dt. January 15, 2024 (# 2819993/2025/WSU-1) dispensed with the requirement of routing transfer claims through present or previous employer in the following scenarios:

1. Transfer between member IDs linked with unique UAN which is seeded with Aadhar and UAN was allotted on or after October 1, 2017.
2. Transfer between member IDs linked with different UANs, such UANs seeded with same Aadhar and UAN was allotted on or after October 1, 2017.
3. Transfer between member IDs linked with unique UAN, which was allotted prior to October 1, 2017, seeded with Aadhar and demographics like name, date of birth, gender etc. identical across all member IDs.
4. Transfer between member IDs linked with different UANs, where at least one was allotted prior to October 1, 2017, seeded with Aadhar and demographics like name, date of birth, gender etc. identical across all member IDs.

2. Delinking of member IDs from UAN

In a circular dt. January 17, 2025 (#WSU/ ErroneouslinkingofUAN/E-838432/2024-2025/10) EPFO has directed the field offices to bring awareness among the employers and members to delink the member IDs that are inadvertently linked to the UAN of the members. In this regard EPFO has made a facility in the UAN member portal to delink erroneous member IDs from the UAN.

The Factories Act, 1948 (*in short "Factories Act"*)

3. The Karnataka State Factories Self-Certification Scheme, 2024 (*in short "Self-Certification Scheme"*)

Government of Karnataka notified the Self-Certification Scheme on January 4, 2025 with an objective of voluntary compliance by the occupier of the factories, minimal inspection without compromising safety, health, welfare and working conditions of the workers. The scheme is applicable to the factories registered under the Factories Act, other than those factories engaged in hazardous manufacturing process, factories engaging more than 250 workers and those engaged in dangerous manufacturing process that are enumerated under Rule 129 of the Karnataka Factories Rules, 1969.

4. The Meghalaya Factories (Amendment) Rules, 2025.

Government of Meghalaya notified amended the Meghalaya Factories Rules, 2025 (*in short "Amended Rules"*) by notification dt. January 16, 2025, by amending the Meghalaya Factories Rules 1980 (*in short "Existing Rules"*).

As per the Amended Rules, sub-rule (2) of Rule 6 of Existing Rules substituted by new sub-rule. According to the new sub-rule (2) of Rule 6, every license granted or renewed shall remain valid or be

in force for a minimum period of one year to a maximum period of 10 years as the case may be. The license so granted or renewed shall remain valid up to the end of the tenure period."

Further, sub-rule (2) of Rule 8 of the Existing Rules was substituted by new sub-rule (2). As per the Amended Rules application for license or renewal shall be made electronically in the designated portal and shall be made not less than two months before the date on which license expires.

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