

Labour & Employment Update

February 2026; Issue No. 31

The 'Labour & Employment Update – February 2026' comprises latest judicial decisions of the Supreme Court of India, various High Courts, Labour Tribunals and Circulars/Notification issued under Indian Labour Law.

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1. Legal Updates

The Factories Act, 1948 (*in short “Factories Act”*)

1. Ordinary rate of wages includes all the salary components excluding bonus and wages for overtime work held SC.

Union Of India V. Heavy Electricals Factory Employees Union and Another [C.A. No.-005185-005192 – 2016; dt. January 20, 2026]

Present appeals have been filed challenging the order of the division bench of the Madras High Court.

The substantial question of law before the SC is *whether allowances, such as House rent allowance, Transport allowance, Clothing and Washing allowance and small family allowance, would fall within the term “ordinary rate of wages”* for calculation of overtime wages in terms of Section 59(2) of the Factories Act.

Various ministries of Central Government have issued directions, in respect of salary components to be included for calculating overtime wages, to the second respondent at different time periods. Accordingly, the second respondent calculated the ordinary rates of wages by including basic wage and dearness allowance only. First respondent union contended that there is no power vested with the aforesaid ministries to issue any clarifications with reference to Section 59(2) of the Factories Act in calculating overtime wages.

SC relying on its own decisions and factual background held, only the state government is empowered to issue the directions under the Factories Act. Further it held, ‘ordinary rate of wages’ includes all allowances being paid to the workers other than the exclusions provided u/s 59(2).

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

2. Principal employer is not liable to pay the retrenchment compensation to a worker engaged by a contractor.

Shobha V. M/s Amazon Transportation Service Pvt. Ltd. and Anr. [CNR No. DLCT13-000634-2024; dt. January 30, 2026]

The petitioner was working with second respondent company as a "Lady Guard" since December 11, 2007. Second respondent did not provide any appointment letter and deputed her at the site of first respondent, the principal employer, who had given contract of manpower supply to the second respondent, contractor.

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Petitioner contended that second respondent illegally terminated her services on March 19, 2020 on the direction of first respondent without citing any reason and without conducting any domestic enquiry violating the provisions of sec 25F and sec 25G of the ID Act. Post termination of services, petitioner served a demand notice to both the respondents with no reply. Finally, petitioner approached the Conciliation Officer but no settlement was arrived at.

First respondent, M/s Amazon Transportation Services Pvt. Ltd. filed written statement contending that petitioner was employed by the second respondent as a "Lady Guard" and there is no employer-employee relationship between petitioner and first respondent company. Second respondent contended that petitioner has abandoned the employment but no proof was submitted.

The labour Court held that workman has employer-employee relationship with the second respondent only. Second respondent failed to prove the abandonment of service by the workman, the cessation of work must be treated as termination of service by the second respondent. Further it held, there is nothing on record that the management has complied with the mandatory provisions of Sec 25F of ID Act and there is a violation of statutory provisions.

3. MP HC reinstated the services of a worker for illegal termination.

Indrabhan Yadav V. Superintending Engineering Public Health Department and Others [Misc. Petition No. 3483 of 2025; dt. January 30, 2026]

Present petition has been filed challenging the award of the Labour Court whereby the Labour Court has granted lumpsum compensation to the petitioner in lieu of reinstatement as a relief for illegal termination of employment.

The issue before the MP HC is *whether reinstatement should have been ordered by the Labour Court instead of lumpsum compensation.*

Factual background of this case is petitioner who was a daily rated employee with the respondent, had initiated proceedings under the ID Act for termination of his services which was referred to the Labour Court. Petitioner contended that he had been engaged in the Public Health Engineering Department and had worked during 1999 to 2018 till his services were terminated without payment of any retrenchment compensation.

The MP HC modified award of the Labour Court to the extent that the petitioner would be entitled to reinstatement without back wages. Petitioner would be allowed to discharge his service on the same status that he had at the time of retrenchment i.e, as a daily rated employee.

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

4. All directors of a Company are not employers held Calcutta HC.

Jai Chand Agarwala and Ors V. the State of West Bengal & Ors. [CRR 429 of 2025' dt. January 13, 2026]

The issue before the Calcutta HC is *whether directors are criminally liable for non-remitting of employees' share of provident fund dues.*

Factual background of the present case is, petitioners are directors of the tea plantation garden namely, "*Green Way Agriculture (P) Limited*". The Enforcement officer of the provident fund department lodged a criminal complaint, u/ss 406 and 409 of the Indian Penal Code, 1860, for non-remitting employees' share of provident fund contributions which was deducted from the employees.

Petitioners relying on *Employees' State Insurance Corporation V. S.K. Agarwal & Others*¹ have prayed for quashing of the criminal proceeding against them, contending that though they are the directors they will not fall under the ambit of 'employer' definition as provided under the EPF Act.

The Calcutta HC while quashing the criminal proceedings held that as per section 14A of the EPF Act every person who is in charge at the time of commission of the offence and who is responsible for the conduct of the business of the company shall be deemed to be guilty of the offence along with the company.

5. U/s 468 of the Code of Criminal Procedure, 1973 ("Cr. P. C") the Magistrate can take cognizance of offence within the one year held Calcutta HC.

Om Prakash Saxena & Others V. State of West Bengal & Another. [C.R.R. 3533 of 2017; dt. January 14, 2026]

Present petitioned was filed to quash the criminal proceedings-initiated u/ss 14. 14A, and 14(2A) of the EPF Act and order passed by the learned Magistrate u/s 468 of the Cr. P. C, who took cognizance of the offences against the petitioners.

The brief facts of this case are the accused persons are the Directors of *M/s Bengal Water proof Limited*. The second respondent contended that they were responsible for the conduct of its business and are bound to comply with the provisions of the EPF Act. However, they failed to submit the monthly returns for the period 08/2013 to 10/2013 under the provisions of Clause 16 of Appendix "A" to Paragraph 27AA of the

¹ 1998 C Cr LR (SC) 396

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Employees' Provident Fund Scheme, 1952. Therefore, they committed an offence punishable under various clauses of Section 14 of the EPF Act.

Petitioner contended that *M/s Bengal Waterproof Limited* has been non-operational since 2013. All the employees of the establishment resigned in the month of November, 2011. The fact of resignation was also brought to the notice of the second respondent. Accordingly, second respondent settled employee's claims. Not a single complaint has been made by any of the employees of the said establishment against the petitioners.

The Calcutta HC while quashing the criminal proceeding observed that "the learned Magistrate has taken cognizance of the offence beyond the period of limitation, which is barred by Section 468 of the Cr. P. C, and the order of taking cognizance under Sections 14 (1A), 14A (1) and 14 (2A) of the EPF Act without assigning any reason, is bad in law.

2. Circulars/Notifications

1. Retrospective application of ESI Act to the Educational and Medical institutions in the state of Maharashtra.

Government of Maharashtra, in consultation with the Employees' State Insurance Corporation and with the approval of Central Government, by notification dt. January 30, 2026 has extended the provisions of ESI Act to the Educational and Medical institutions, retrospectively w.e.f August 28, 2025, where 10 or more persons are employed on any day of the preceding twelve months.

Disclaimer:

Current update has been intended for informational purposes only. The information provided in the current issue of the 'Labour & Employment Update' neither constitute a legal advice/opinion nor it intend to solicit any work. In case of any queries in relation to any of the issues reported herein please feel free to contact at narahari@nharico.com.

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