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1. Legal Updates

Service Matter

1. Excess payments made by the employer to an employee on account of wrong interpretation or understanding of circulars is not recoverable: SC

Jogeswar Sahoo & Ors. V. The District Judge, Cuttack & Ors. [SLP(C) No. 5918 of 2024; dt. April 4, 2025]

The issue for consideration before the SC is *whether recovery of the amount extended to the appellants while they were in service is justified after their retirement.*

The subject matter of this petition is the order passed by the Orissa High Court wherein the order of recovery of emoluments was upheld. Brief facts of this case are appellants were working as stenographer and personal assistant in the district judiciary of Cuttack, Orissa. Appellants were granted financial benefit during their promotion on the recommendation of one Shetty Commission. Subsequently, the appellants were superannuated from service. First respondent ordered the recovery of the financial benefits extended to the appellants contending that it was erroneously granted to the appellants. Aggrieved appellants invoked the writ jurisdiction of the High Court which was dismissed. Appellants contended that financial benefit granted without any fraud or misrepresentation, therefore, recovery after three years after their superannuation is illegal and arbitrary.

The SC on perusal of catena of its judgements including the decision laid down in ***Thomas Daniel vs. State of Kerala & Ors***¹ held, if the excess amount was not paid on account of any misrepresentation or fraud on the part of the employee or if such excess payment was made by the employer by applying a wrong principle for calculating the pay/allowance or on the basis of a particular interpretation of rule/order, which is subsequently found to be erroneous, such excess payments of emoluments or allowances are not recoverable. It further held that such relief against the recovery is not because of any right of the employee but in equity, exercising judicial discretion to provide relief to the employee from the hardship that will be caused if the recovery is ordered.

The Employees' State Insurance Act, 1948 (in Short "***ESI Act***")

2. The person acting as an agent of the owner or occupier held to be 'principal employer' u/s 2(17) the ESI Act: SC

Ajay Raj Shetty V. Director and Anr. [Spl. No. 3743 of 2024; dt. April 17, 2025]

The subject matter of this appeal is the order passed by the Karnataka High Court. Factual matrix of this case is the establishment of second respondent was declared sick by the Board of Industrial and

¹ (2022) SCC online SC 536

Financial Restricting (in short “**BIFR**”). The BIFR ordered change in the management of the second respondent. Aggrieved by the order of BIFR, second respondent approached the appellate authority which dismissed the appeal. Second respondent filed a writ petition before the High Court, in which the Employees’ State Insurance Corporation (in short “**ESIC**”) was also a party, wherein the High Court remanded the matter to BIFR for fresh consideration. BIFR directed the company to negotiate with secured creditors. ESIC inspected the establishment and assessed the dues for the period 1-02-2010 to 31-12-2010. ESIC in its report mentioned the petitioner as ‘General Manager’ or ‘Principal Employer’ of the second respondent establishment,

A private complaint was filed by the first respondent, ESIC, against the petitioner and second respondent before the Trial court, Bangalore which convicted the petitioner and sentenced him for six months imprisonment and imposed a fine of Rs. 5000. First appellate court and the Karnataka High Court upheld the order of the trial court in convicting the petitioner. It was contended before the SC that appellant was working only as a ‘Technical Coordinator’ in the Company and one Mr. Ajit Hegde was the Principal Employer of second respondent during the relevant time. The first respondent contended that appellant had a chance to produce the relevant document to show that he was a ‘Technical Coordinator’ which was not done. Appellant had not made any effort to summon the second respondent to produce the relevant documents.

On perusal of the Sec 2(17) of the ESI Act the SC held that ‘principal employer’ encompasses not only the owner or occupier of the factory but also any person acting as his agent. The SC upheld the decision of the trial court.

3. Section 1(6) of ESI Act is not applicable where the coverage is sought for first time: AP HC

The Regional Director, ESI Corporation V. M/s. Sri Ramakrishna Rice Mill & 4 others [CMA No: 801 of 2008; dt. March 24, 2025]

The brief facts of this case are the respondent rice mill is a registered partnership firm established in 1980 had challenged the orders passed by the petitioner u/s 45A of the ESI Act contending that employee strength of the respondent establishment had not exceeded the limit prescribed under the Act. First respondent ESIC has contended that on the date of inspection in 1998, the establishment has employed more than 10 employees and by virtue of sec 1(6) of ESI Act, establishment is liable to make the contributions. The ESI court rejected the contention of the ESI corporation. Aggrieved ESIC, filed the appeal before the High Court.

The AP HC held that Section 1(6) applied only to factories or establishments already governed by the ESI Act. Sec 1(6) ensures continuity of coverage irrespective of the number of employees engaged by the establishment subsequent to the coverage. However, this section does not apply to the establishment which is not covered under the ESI Act.

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

4. Gratuity Act does not provide any limitation period in making an application for gratuity payment: MP HC

Little World Higher Secondary School V. State of M.P. and Others [W.P No. 563 to 572 of 2023; April 15, 2025]

The subject matter of the present Writ Appeal is the order passed by the single judge bench. The third respondent was employed as a teacher and rendered 10 years of continuous service with the appellant and was not paid gratuity after cessation of employment. Subsequently, the third respondent filed a petition before the Controlling Authority u/s 7(4) of the Gratuity Act. The Controlling Authority directed the petitioner to pay gratuity along with the interest. Aggrieved petitioner challenged the order of the Controlling Authority before single judge bench which upheld his decision.

The appellants contended that as per Rule 7(1) of the Madhya Pradesh Gratuity Rules, the employee must apply for gratuity within 30 days of it becomes payable. As no such application was made by the employee the claim is not maintainable. The contention of the respondent is that section 7(2) of the Gratuity Act mandates that gratuity becomes payable as soon as it becomes due, irrespective of any application made by the employee. Further it was submitted that the Gratuity Act does not prescribe any limitation period, and the M.P. Rules cannot override the parent Act.

The MP HC held that the Gratuity Act does not contemplate any limitation for making a claim for gratuity by an employee. Obligation on the employer to pay gratuity does not depend on application to be submitted by the employee who has exited from the employment. Section 7(2) of the Gratuity Act operates independently and it triggers as soon as gratuity ‘becomes payable’ and independent of making an application to the employer. According to section 7(3) the employer is required to pay gratuity within 30 days of it becoming payable.

2. Circulars/Notifications

1. EPFO has dispensed with bank KYC approval by employer

EPFO vide its circular (#WSU/IssuesofBKG/E-49885/2024-25/16) dt. April 03, 2025 made certain procedural changes in bank KYC approval. According to the circular, henceforth, members are not required to upload the cancelled cheque leaf or attested bank pass book at the time of filing claim application. However, it is subject to the validation of bank account seeded with the UAN by the respective bank. There shall be no requirement of employer approval in bank account seeding process.

2. Retrospective payment of contributions through Demand Draft, instead of electronic mode in certain cases.

EPFO vide its circular (#Compliance/DD/Remittances/M/SLabournet Services India Pvt. Ltd./2025/2209) dt. April 04, 2025 directed the field offices to accept the contributions for past period in demand draft form in case the employer is not able to remit the past dues through electronic challan cum return (ECR) mode. However, this option is restricted to the past dues and employer is required to give an undertaking for verification of beneficiaries if any claim arises in future.

3. EPFO made UAN allotment and activation simpler.

EPFO vide its circular (#WSU/Memberprofile/E-710137/2025-269885/2024-25/17) dt. April 08, 2025 notified the facilities provided in Unified Mobile Application for New-age Governance Application ("*UMANG App*").

According to the EPFO, following features are provided in the UMANG App:

- a) Direct UAN allotment and activation;
- b) UAN activation for existing UANs; and
- c) Face authentication service for existing activated UANs.

Members can avail this facility without the intervention of employer. By opting this facility members can access EPFO services such as pass book viewing, KYC updates, claim submission etc.

4. Simplification of transfer claim process

EPFO vide its circular (# WSU/Amendments in IT, 1961/E-33306/2025-26/21) dt. April 25, 2025 made certain amendments to the previous circular dt. April 06, 2022 to provide speedier and seamless service to the members.

According to the circular, EPFO intends to dispense with the 3-level approval process of transfer claims. Once the transfer claim is approved by the transferor (source) office the provident fund accumulations and pension service of the member pertaining to his previous account will automatically get added to the transferee (destination) office without any additional processing. In the revamped Form - 13 functionality, taxable and non-taxable components of Provident Fund accumulations will be bifurcated.

5. Bulk generation of UANs

EPFO vide its circular (# WSU/Past Accumulation/E-683907/2025-26/19) dt. April 25, 2025 notified the changes made to its software functionality for UAN bulk generation by exempted establishments. Exempted establishment in the event of surrender or cancellation of exemption or in case of quasi-judicial /recovery proceedings to ensure proper compliance and credit of the past accumulations, members Aadhar is not mandated in generation of UAN. UAN can be generated based on the member ID and other information. However, such UANs and member accounts would be kept in frozen state till the completion of Aadhar seeding.

Narahari & Co.

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