

Labour & Employment Update

June & July 2025; Issue No. 24

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1. Legal Updates

The Indian Contract Act, 1872 (in short “Contract Act”)

1. Exclusive jurisdiction clause under the employment contract is not violative of Sec 28 of the Contract Act held SC.

Rakesh Kumar Verma V. HDFC Bank Ltd. [CA No. 2282 & 2286 of 2025; dt. April 4, 2025]

The subject matter of the present appeal/s is the order passed by the High Courts of Patna and Delhi in connected appeals. The factual back ground of the present appeal is, petitioner was appointed as an executive with the respondent bank at Patna. As per the appointment letter, in case of any dispute only the courts in Mumbai have an exclusive jurisdiction. Service of the petitioner was terminated on allegations of fraud and misconduct by the respondent bank that was challenged by a civil suit before sub-judge - I, Patna. The respondent HDFC bank filed a written statement contending that only the courts in Mumbai have jurisdiction to entertain the suite, which was dismissed by the trial court. On appeal, the Patna High Court allowed the petition and held that as per the exclusive jurisdiction clause in appointment letter only courts in Mumbai have jurisdiction.

In another connected appeal Deepti was appointed as a clerk with the HDFC bank at Janak Puri, Delhi and whose services were terminated on allegation of fraud and misconduct. Aggrieved Deepti instituted a civil suit before the Senior Civil Judge, Rohini Courts, Delhi. HDFC bank has contended that the cause of action arose wholly in Mumbai and the courts in Delhi have no jurisdiction. The trial court held that exclusive jurisdiction clause did not fully oust the jurisdiction of the courts in Delhi. HDFC bank has challenged the order of trial court in Delhi High Court which stand dismissed.

The SC on perusal of the service contract and relying on its own decisions held that Sec 28 of the Contract Act does not bar exclusive jurisdiction clauses. What has been barred is the absolute restriction of any party from approaching a legal forum. The right to legal adjudication cannot be taken away from any party through contract but can be relegated to a set of courts for the ease of the parties. In the present dispute, the clause does not take away the right of the employee to pursue a legal claim but only restricts the employee to pursue those claims before the courts in Mumbai alone.

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

2. EPFO cannot initiate coercive action merely because it has a different interpretation of the stay order.

Bajaj Finance Limited V. Central Board of Trustees Employees Provident Fund Organisation and Anr. [WP No.15894/2025; May 06, 2025]

The subject matter of instant Writ Petition is the order passed by the Regional Provident Fund Commissioner – I (in short "RPFC") u/s 8F of the EPF Act for recovery of provident fund dues.

Petitioner establishment is covered under the provisions of the EPF Act w.e.f January 10, 2017, however an inquiry was initiated by the RPFC for the period April 2014 to March 2019. Subsequent to the inquiry, the RPFC passed an order u/s 7A of the EPF Act assessing the dues to an extent of Rs. 1,10,75,77,891. Out of the ascertained amount, Rs. 58,19, 94, 462/- is towards dues u/s 7A and Rs. 52, 55,83,434/- towards interest u/s 7Q. Since the order is passed u/ss 7A and 7Q as a composite order same was challenged on its legality before the Central Government Industrial Tribunal (in short "CGIT").

CGIT has directed the respondents not to take any coercive action until it heard the parties and if any action is there it is only for deposit of 25% of the amount assessed u/s 7A of the EPF Act. The RPFC has undertaken the recovery of the money from petitioner unaware of the stay order issued by the CGIT.

On perusal of the order of the CGIT the Bombay HC held that CGIT has directed to deposit "25% of the amount assessed u/s 7A EPF Act only". Use of the word 'only' by the CGIT after Sec 7A of the Act would necessarily create an impression as if the petitioner was required to deposit 25% of the amount of dues ascertained under Sec. 7A of the Act.

3. Petition filed after the further period of limitation is un-condonable held Madras HC.

M/S. Mandala Apparels Pvt. Ltd V. The Regional Provident Fund Commissioner [W.P.No. 8698 of 2021; dt. May 29, 2025]

The brief facts of this case are the petitioner, an apparel company, has filed the present Writ Petition challenging the order passed by the respondent u/s 14B of the EPF Act where it directed the petitioner to pay damages for belated provident fund remittances. The contention of the petitioner is that delay was unintentional and was due to financial losses, which was rejected by the respondent. The petitioner has filed the present writ petition after a delay of 683 days from the date of receipt of the order. Petitioner

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contended, the establishment ceases to operate since then it was facing litigation from Debt Recovery Tribunal and Income Tax authorities due to which there was a delay in filing the Writ Petition.

The Madras HC relying on various decisions of the Supreme Court, while dismissing the petition, held that delay can be condoned for a further period not exceeding sixty days as provided under the Act.

4. Writ petition cannot be entertained when there is an alternative remedy available held Mad. HC.

M/s Bafna Pharmaceuticals Limited V. The Assistant Commissioner of Provident Fund, Regional Office [W.P No. 23638 of 2021; dt. May 29, 2025]

The issue before the Madras HC in the instant case is to examine whether the writ petition is maintainable in view of the availability of an efficacious alternative remedy under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (in short “IBC”).

The brief facts of this case are petitioner establishment was admitted to corporate insolvency resolution process u/s 9 of the IBC that was approved by National Company Law Tribunal (in short “NCLT”) and National Company Law Appellate Tribunal (in short “NCLAT”).

Petitioner has challenged the recovery notice issued by the respondent u/ss 7Q and 14B of the EPF Act. The question for consideration before the High Court is regarding the maintainability of the writ petition by virtue of remedy available u/s 60 (5) of the IBC, where only the NCLT has jurisdiction to entertain any claims. Petitioner contended that existence of alternative remedy does not oust the writ jurisdiction of the High Court.

The Madras HC relying on the decision of SC in ***Embassy Property Developments Pvt. Ltd. V. State of Karnataka***¹ wherein it held that high courts ought to refrain from exercising jurisdiction under Article 226 in the matters falling within the purview of NCLT or NCLAT except in exceptional circumstances. While dismissing the petition it further held that the high court will not entertain a petition under Article 226 if an effective alternative remedy is available to the person aggrieved.

5. The site allowance which is not paid universally will not form part of ‘wages’ for the purpose of provident fund deductions held Kerala HC.

Employees Provident Fund Organisation V. M/S. Gobins India Engineering Private Limited [WP (C) No 17990 of 2016’ dt. June 11, 2025]

¹ (2020) 13 SCC 308

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The subject matter of the present writ petition is the order passed by the Employees' Provident Fund Appellate Tribunal (in short "**Tribunal**"). The brief facts of this case are the respondent establishment has challenged the order of the Assistant Provident Fund commissioner, passed u/s 7A of the EPF Act, in the Tribunal wherein 'site allowance' was considered for the calculation of provident fund contributions. The contention of the respondent is that site allowance is not being paid universally to all the employees but only to few employees, hence, it does not form a part of wages as held by the Supreme Court in *Manipal Academy of Higher Education V. Provident Fund Commissioner*². The Tribunal set aside the order of the petitioner holding that site allowance will not form part of wages.

The Kerala HC relying on the decisions of the Hon'ble Supreme Court in *TI Cycles of India V. M.K.Gurumani*³ and *the Regional Provident Fund Commissioner (II) West Bengal V. Vivekananda Vidaymandir and others*⁴ held that the test is one of universality. If the allowance has been paid only to some employees, then that does not satisfy the test of universality and employer is not liable to discharge the provident fund on such allowance.

Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981

6. Casual workers engaged by the milk co-operative are entitled to permanent status after rendering 480 days of service held Madras HC.

The Management, Tamil Nadu Co-operative Milk Producers Federation, Aavin Milk and Milk Power Industry, Ammapalayam V. The Deputy Director, the Industrial Safety and Health Department and ors. [W.P. No. 25636 and 25642 of 202' dt. May 29, 2025]

Petitioner is a Co-operative Milk Producers Union of Tiruvannamalai District. These writ petitions have been filed challenging the orders passed by the first respondent, and the first respondent is the competent authority under the Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981.

By the impugned orders, the first respondent directed the petitioner to confer permanent status upon 19 workmen who had completed 480 days of service within a continuous period of 24 calendar months, thereby satisfying the statutory requirement for conferment of permanent status. The contention of the petitioner is that workmen in question were engaged on daily wage basis and had not rendered 240 days of service in

² (2008) 5 SCC 428

³ (2001) 7 SCC 204

⁴ (2020) 17 SCC 643

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each year, further government order pertaining to permanent status is not applicable to them, hence, they are not entitled to permanent status.

The Madras HC on perusal of the wage records, provident fund and ESI remittances held that workmen had rendered more than 240 days of service in each calendar year and entitled to permanent status.

2. Circulars/Notifications

EPF Act

1. Simplification of transfer claim process – overlapping of service

EPFO in its circular (# *WSU/Transferclaim/E-52972/2025-2026/07*) dt. May 20, 2025 issues directions to the field office in settlement of transfer claims having overlapping of service. As per the circular transfer claims where there is an overlapping of service due to genuine reasons shall not be disqualified. Source office can seek clarification for overlapping service if there is a genuine need and claims would be processed after obtaining the requisite clarification.

2. Declaration of rate of interest for the year 2024-2025

EPFO in its circular (#*INV-11/2/2021-INV/3557*) dt. May 26, 2025 notified the approval of the Central Government to credit interest of 8.25% for the year 2024-2025 to each member of the EPF Scheme u/p 60 of the EPF Scheme, 1952.

3. EPFO has extended the due date to activate UAN and seed bank account with Aadhar to avail benefits under ELI scheme.

The EPFO in a circular dt. May 30, 2025 (*No:ELI/UAN Activation/2025/930083*) extended the due date to activate UAN and seed bank account of the members with Aadhar to June 30, 2025.

UAN activation and seeding the Aadhar with the bank account of the members who joined during the financial year 2024-2025 is essential to avail benefits under Employment Linked Incentive (“**ELI**”) Scheme’ which was proposed in the budget 2024-2025.

Employees whose UAN is activated and have their Aadhar seeded with the bank account are entitled to receive benefit under the ‘Direct Benefit Transfer scheme’ (“**DBT**”).

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Tamil Nadu Shops and Establishment Act, 1947 (in short “TN S&D Act”)

4. Amendments to TN S&D Act

The Government of Tamil Nadu vide GO dt. June 6, 2025 notified the Tamil Nadu Shops and Establishment (Amendment) Act. 2025 (in short “**Amended Act**”). As per the Amended Act ‘Chapter IX’ comprising penalties and compounding of offences substituted with the following sections (Sec 45), Compounding of offences (Sec 46), Adjudicating officer (Sec 46-A) and Appeal (Sec 46-B) and Recovery (46-C).

According to the Amended Act penalty for contravention of Sec 41 -A (Payment of full wages to person employed pending proceedings in Higher Courts) may be extended to rupees fifty thousand, in case of continuing offence two hundred for every day and aggregate penalty shall not exceed rupees one lakh. Punishment by the way of imprisonment has been done away with under the Amended Act.

The Punjab Shops and Establishment Act, 1958 (in short “Punjab S&D Act”)

5. Opening of establishments for 365 days in Punjab

The Government of Punjab vide its notification dt. June 17, 2025 notified that all the establishments registered under the Punjab S&D Act shall be permitted to open all 365 days in a year subjected to certain conditions. The notification will be in force for one year from the date of publication.

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This newsletter has been intended to you for informational purposes only. The information provided in the current issue of the ‘Labour & Employment Update’ does not constitute a legal advice/opinion. In case of any queries in relation to any of the issues reported herein please feel free to contact at narahari@nharico.com.