

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

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1. Legal Updates

The Employee Compensation Act, 1923 (In short “Employee Compensation Act”)

1. Insurer required to pay 12% interest for delayed payment of compensation.

Cause Title: Shanti & Ors V. National Insurance Company [C. A No. 2586 of 2025; dt. February 17, 2025]

The question for consideration before the SC is whether insurer is liable to pay interest in case of default in payment of compensation within one month from the date it fell due.

In the instant case the deceased was employed as a cleaner in the truck owned by his father. The mother and the other siblings were the claimants/appellants. The appellants contended that there is a statutory mandate to award interest u/s 4A(3)(a) of the Employee Compensation Act at 12 % per annum and the discretion conferred on the Commissioner is only to the extent of granting a higher rate, which again should not exceed the lending rate specified by scheduled banks. Respondent Insurance Company refutes the claim, on the contention that the insurer is not liable to indemnify the insured for the default committed by the insured. Further, it contended that there was no intimation about the accident. It is submitted that even if the liability is mulcted on the Insurance Company, they are entitled to recover the interest awarded from the insured.

The SC held, the Employee Compensation Act envisages payment of interest at 12 %. The discretion provided is only with respect to applying a higher rate not exceeding the lending rate prescribed for scheduled banks. Hence, 12 % simple interest per annum necessarily has to be applied. Further *it held*, the Insurance Company can neither escape from its liability to pay interest nor can be recovered from the insured.

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

2. Suppression of material information at the time of appointment would constitute an offence involving moral turpitude and employee not entitled to gratuity.

Cause Title: Western Coal Fields Ltd. V. Manohar Govinda Fulzele [C.A No. 2608 of 2025; dt. February 17, 2025]

The question for consideration in these appeals is whether gratuity can be forfeited in the event of termination of service in an offence involving moral turpitude without involving in criminal case.

The subject matter of these appeals is impugned order passed by the High Court wherein it does not permit forfeiture of gratuity. The appellant is a public sector unit, respondent at the time joining concealed his correct date of birth to obtain appointment and served the appellant for 22 years. Post his termination, the respondent claimed gratuity which was forfeited by the appellant on the ground of moral turpitude.

The Supreme Court relying on its decision laid down in *Devendra Kumar V. State of Uttaranchal*¹ held that suppression of material information at the time of selection or appointment would constitute an offence involving moral turpitude and respondent not entitled to gratuity. It further held, the appointment itself being illegal, there is no question of the terminated employee seeking fruits of his employment by the way of gratuity. The decision of the appellant in forfeiting entire gratuity amount of the respondent upheld.

The EPF & MP Act, 1952 (In short “EPF Act”)

3. Persons employed as commission agents on a ‘contract for service’ are not entitled to coverage under the EPF Act.

Cause Title: Orissa State Co-Operative Bank Ltd V. Union of India and Ors. [W.P.(C) No.6323 of 2010; dt. February 28, 2025]

The question for consideration before the Orissa HC is whether ‘Sanchayan Daily Deposit Agents’ are entitled to coverage under the EPF Act.

Brief facts of this case are, appellant has engaged 35 persons as Sanchayan Deposit Agents (in short “Agents”) for collection of deposits under ‘Sanchayan Daily Deposit Account scheme’ and were paid 3% commission on total deposits collected. Post to the closure of the scheme, employment of the Agents ceased. On an application made by the Agents, seeking coverage under EPF Act, to the second respondent, Regional Provident Fund Commissioner, an inquiry was initiated and orders u/s 7A of the EPF Act were passed, directing the petitioner to extend the provident fund benefits to the Agents. On an appeal by the petitioner, the EPF Tribunal held, Agents falls under the definition of ‘employee’ as contemplated under the EPF Act and commission falls under definition of ‘basic wages’. EPF Tribunal upheld the order of the second respondent.

Aggrieved petitioner invoked the writ jurisdiction of the Orissa HC. It *held*, the Agents were being paid remuneration as commission which is excluded from the definition of basic wages, considering the agreement between the petitioner and the Agents which is of ‘contract for service’ not ‘contract of service’ an employer and employee relation cannot be established between the two. Hence, Agents are not entitled to coverage under the EPF Act. The Orissa HC remanded the matter to the second respondent for fresh consideration.

4. Order passed u/s 7A of the EPF Act is a composite order passed u/ss 7A and 7Q.

Cause Title: Vijai Shree Ltd. & Anr V. Regional P.F. Commissioner [WPA 19799 of 2005; dt. February 25, 2025]

The petitioner establishment was exempted from the provisions of the EPF Act and exemption was revoked post to the declaration of the establishment as sick industrial unit under *the Sick Industrial Companies (Special Provisions) Act, 1985*. Subsequently, the petitioner got defaulted in remitting the provident fund contributions and an inquiry u/s 7A was initiated by the respondent. However, petitioner had not attended the proceedings resulting in passing of the orders by the respondent u/s 7A.

¹ (2013) 9 SCC 363

Aggrieved petitioner invoked the writ jurisdiction of the Calcutta HC with a contention that, in a proceeding u/s 7A of the EPF Act, an order u/s 7Q has been passed, no separate hearing was provided u/s 7Q and order of the authority is bad in law.

The Calcutta HC held that, the competent authority while determining the monies due from the employer shall be required to conduct an inquiry and pass an order. An order u/s 7A is an order that determines the liability of the employer under the provisions of the EPF Act. At that stage, the delay in payment of the dues and component of interest are also determined. It is a composite order passed under Section 7A and 7Q together. The orders passed being in accordance with law does not requires interference.

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

5. Reference can be made by the appropriate government, if dispute exists or it apprehend a dispute.

Cause Title: Cadila Pharmaceuticals Limited vs Xyz (Marina Stratieva) [Special Civil Application No. 15359 of 2024; dt. February 25, 2025]

The subject matter of the present writ petition is the reference of dispute made to the Labour Court by the appropriate government. First respondent was appointed by the petitioner as a personal assistant pursuant to an agreement for a period of one year. As per agreement, the respondent was drawing a salary of \$7500 i.e approximately Rs.6,00,000/- per month. First respondent tendered resignation and petitioner had issued the service certificate, no objection certificate and relieving letter. Subsequently, first respondent raised an industrial dispute seeking reinstatement with all consequential benefits, which was referred to Labour Court for adjudication.

The petitioner contended that there is no dispute exists or apprehended between the petitioner and the respondent and it was also claimed that respondent does not fall under the ambit of workmen as defined u/s 2(s) of the ID Act, hence, not entitled to raise a dispute.

Relying on the decision of apex court in ***National Engineering Industries Limited versus State of Rajasthan and others***², wherein it held if there is no industrial dispute in existence or apprehended appropriate government lacks power to make any reference, the *Gujarat HC held*, it does not suggest of application of mind with regard to the forming a prima facie opinion as to whether there is an industrial dispute between employer and workman concerned exists or was apprehended. Impugned order of reference set aside and the reference is remanded to the appropriate government to pass fresh orders.

² 2000 1SC 371

2. Circulars/Notifications

The Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Act, 1996 ("*BOCW Act*")

1. Amendment to the Telangana Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Rules, 1999 (in short "*TG BOCW Rules*").

Government of Telangana notified the amended TG BOCW Rules amending rule 27. Rule 27 prescribes fee for registration of establishment under the BOCV Act. As per the amended rule 27 registration fee to be paid in case of establishment employing up to 100 workers shall be Rs. 2000, for 100-500 workers fee shall be Rs. 10,000, if the number of workers exceeds 500 fees shall be Rs. Rs.10,000 + Rs.10,000 for every additional 500 workers or part thereof.

The Chhattisgarh Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (in short "*CG Shops Act*")

2. Appointed day of the CG Shops Act:

The Government of Chhattisgarh notified the CG Shops Act and rules framed thereunder by notification dt. February 13, 2025.

The EPF Act

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

The Employees' Provident Fund Organisation ("*EPFO*") in a circular dt. February 21, 2025 (No:*ELI/UAN Activation/2025*) extended the due date to activate UAN and seed bank account of the members with Aadhar to March 15, 2025.

UAN activation and seeding the Aadhar with the bank account of the members who joined during the current financial year 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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