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EMPLOYMENT AND LABOUR NEWSLETTER

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I. NOTIFICATIONS / CIRCULARS

Ministry of Commerce and Industry on Special Economic Zones (Third Amendment) Rules, 2022 – guidelines with respect to Work from Home ("WFH") for SEZ Units.

The Ministry of Commerce and Industry has issued Special Economic Zones (Third Amendment) Rules, 2022 ("**SEZ Rules**") thereby inserting Rule 43A – WFH across all SEZ units, which relaxes the earlier conditions which restricted employees of SEZ units to work from any location other than the SEZ premises. This is a welcome step as it addresses the persistent demand of the employees in the IT/ITeS sector operating in the SEZ units for clarification on WFH arrangements and it offers the Units considerable relief in terms of retaining employees who were seeking flexibility.

The notification highlights the following under Rule 43A with respect to WFH:

- SEZ Units may permit their employees (including contractual employees) – to WFH or any place outside the SEZ; provided, permission from the Development Commissioner ("**DC**") is obtained.

- The Unit shall submit its proposal for WFH to the DC through email or physical application, which shall contain the:

  - terms and conditions of WFH;
  - date from which the permission for WFH shall be utilised; and
  - details of employees to be covered by such permission for WFH.

- The DC, on receipt of the proposal, if satisfied that the proposal complies with this rule, may grant the permission to the proposal of the Unit.

  - permission shall be valid for a 1 year from the date of such permission.

- On an application for permission extension, DC may extend the permission for a period, not exceeding 1 year at a time, provided the Unit and employees have complied with Rule 43A.

- Conditions for proposal for permission of WFH or application for permission extension:

  - Proposal shall cover a maximum 50% of total employees (or such higher number of employees as approved by DC for bona fide reasons), including contractual employees.
  - Unit shall maintain accurate attendance record for the entire period of permission for WFH and shall submit to DC, from time to time.
  - Proposal is to be submitted within 90 days from date of commencement of SEZ Rules.

- Application for extension shall be submitted at least 15 days in advance, to the DC, except in case of the employees who are temporarily incapacitated or travelling.

- Work shall be as per the approved services related to a Unit's project and shall ensure export revenue of resultant products/services to be accounted for to which the employee is tagged.

- An employee who ceases to be part of the Unit's project, shall be un-tagged from the Unit and his ID card shall be surrendered.

- Temporary removal of goods, including laptop, computer, video projection system, etc. to Domestic Tariff Area can be undertaken by the Unit without payment of duty or IGST, may be allowed, with the prior permission of the specified officer, subject to compliance with certain conditions.

II. CASE LAWS

1. Section 5 of the Limitation Act can be applied to condone the delay in filing appeal under Section 18 of POSH Act: Delhi High Court

Case: DB Corp. Ltd. vs. Shailja Naqvi and Ors., CM (M) 705/2022, CM Appl. 31978/2022 and CM Appl. 31979/2022

The Delhi High Court has held that a delay in filing an appeal under Section 18 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal), Act 2013 **("POSH Act")** can be condoned under Section 5 of the Limitation Act, 1963, because if a Court were to refuse to condone a delay of as little as 36 days to an alleged victim of sexual harassment preferring an appeal against the inquiry committee's report, the very purpose of the POSH Act would fail.

The respondent filed a complaint against the accused of sexually harassing her at the workplace, which was then referred to an internal complaints committee which exonerated the accused. The respondent preferred an appeal under Section 18 of the POSH Act before the Central Government Industrial Tribunal **("CGIT")** wherein the order was passed condoning the delay of 36 days.

The Delhi High Court relied on New India Assurance Company Ltd. v. Hilli Multipurpose Cold Storage Pvt. Ltd, (2020) 5 SCC 757 and held that the approach of CGIT is completely in accordance with the POSH Act that a sexual harassment victim who is in a state of trauma cannot be expected to immediately rush to a Court to seek appellate remedies. The Court observed that the POSH Act is an ameliorative statute, intended to redress a serious social evil and victims of sexual harassment at the workplace suffer untold trauma, mental, physical, and spiritual and thus a delay – if properly explained – should, clearly, not stand in the way of the appeal of the alleged victim of sexual harassment being decided on merits.

The Court further affirmed the view of CGIT that a victim of sexual harassment remains in a state of trauma, and it cannot be expected that she would immediately rush to a Court seeking appellate remedies.

2. Merely having a technical qualification, is no ground to conclude that he was a technical person and not working in supervisory capacity: Gujarat High Court

Case: Hirenbhai Karshanbhai Kamaliya v. The Managing Director, / Special Civil Application No. 12710 of 2019

The Gujarat High Court has held that the cadre of Deputy Engineer and Executive Engineer who have largely supervisory duties are covered by exception-(iv) of Section 2(s) of the Industrial Disputes Act, 1947 **("ID Act")** and thereby stand excluded from the ambit of the definition of workman under Section 2(s) of the Act.

The Court observed that merely because the appellant was having technical qualification, is not the

ground to conclude that he was a technical person and not working in supervisory capacity. The Court, by relying upon the observations made by the Supreme Court in the case of *Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. The Burma shell Management Staff Association & Ors. Shah, 1970 (3) SCC 378* held that *"even if the person is a technical person or qualified as a technical engineer, if they are supervising work of other technical persons, the work undertaken by them can be said as supervisory work and not technical work".* The Court further observed that it can be said that the appellant was also discharging work in managerial capacity since they had to not only supervise the work of subordinate staff, but also take decisions in managerial capacity.

3. Workman in Continuous Service for Years Without Any Break Can't Be Denied Benefit u/s 25(F) ID Act Merely Because Of Contractual Engagement: Gujarat HC

Case: Jamnagar Municipal Corporation V. Avdesh Kishorbhai Solanki, C/SCA/10126/2018

The Gujarat High Court has held that a workman cannot be denied the benefit of Section 25F of the ID Act which prescribes conditions precedent to retrenchment simply because he is engaged on contract basis, given that he rendered continuous services for several years, without any break.

The Court dismissed the petition filed by the Jamnagar Municipal Corporation against the award passed by the Labour Court that had directed reinstatement of one contractual workman whose services were terminated by the Municipal Corporation due to outsourcing of contract work.

The Court heavily relied on Gujarat Agro Industries Corporation Ltd. Vs. Ramniklal Talsibhai Sitapara, 2017 (1) GLR 108 where it was held that *"the fact that consecutive orders repeatedly appointing the claimant for short duration are passed from time to time, go to show that the such arrangement is a conscious decision and attempt of the respondent to give artificial breaks in the service of the claimant so as to circumvent or frustrate the statutory provisions, more particularly section 25F of the Act and to misuse, rather abuse, the provisions under clause (bb) of section 2(oo) of the Act with a view to depriving the claimant of his legal rights conferred by various provisions under different Labour Laws".*

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