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EMPLOYMENT AND LABOUR NEWSLETTER

I. NOTIFICATIONS

IN THIS ISSUE:

1. The tax exemption limit for leave encashment upon retirement for non-government salaried employees has been hiked to Rs 25 lakh: Central Board of Direct Taxes ("CBDT")

In an employment related notification under the Income Tax Act, 1961 ("**IT Act**"), the CBDT vide notification dated 24 May 2023 (deemed to have come into force from 1 April 2023), has notified the increase in the tax exemption limit under section 10(10AA)(ii) of the IT Act to a maximum of Rs. 25,00,000 (Rupees Twenty Five Lakhs Only) for leave encashment receivable by non-government employees in respect of the period of earned leave at their credit at the time of their retirement, whether superannuation or otherwise. The earlier limit was up to Rs. 3,00,000 (Rupees Three Lakhs Only).

2. Clarifications regarding the process to be followed for filing exemption application under Sections 14, 15 and 16 of the Delhi Shops and Establishments Act, 1954 ("Delhi S&E Act"): Labour Commissioner of Delhi

The Labour Commissioner of Delhi's office has issued a public notice on 9 May 2023, explaining the procedure for submitting an exemption application under Sections 14, 15, and 16 of the Delhi S&E Act. According to the notice, applicants must submit their exemption application through the designated online portal and details of the establishment provided in the exemption application must match the information provided during the registration of the relevant shop or establishment, the latter of which can be accessed at ***www.labourcis.nic.in***. In the event of any inconsistencies between the two sets of information, the exemption application will be put on hold until the establishment's registration details are appropriately updated using Form D, or a fresh application is submitted.

3. Andhra Pradesh has made amendments to the Andhra Pradesh Labour Welfare Fund Rules, 1988 ("AP LWF Rules"): Government of Andhra Pradesh

The Government of Andhra Pradesh vide notification dated 4 May 2023 amended the AP LWF Rules to insert the following provisions:

- Rule 22A allows the government to appoint officers from the labour department who have the authority to exercise power under Sections 25(3) and 30(3) of the Andhra Pradesh Labour Welfare Fund Act, 1987.
- Rule 22B introduces the procedure to be followed by the appellate authority when handling appeals on fines.
- Rule 25 provides penalties for violation of the AP LWF Rules. Employers who violate the AP LWF Rules may face fines ranging from INR 25,000 to INR 1,00,000 for repeated violations.
- A new Form-H has been included after Form-G in the LWF Rules, which serves as a register for appeals on fines.

4. Telangana has permitted all shops and establishments in the state to remain open on all 365 days of the year for a period of 3 years: Government of Telangana

The Government of Telangana vide notification dated 15 May 2023, has extended the period that permitted all Shops & Establishments to remain open on all 365 days of the year in the State for a further period of 3 years (with effect 16 June 2022), subject to certain conditions, some of which include:

- Employees shall not work for more than 8 hours per day and 48 hours per week;
- Every employee shall be allowed to avail themselves of a Weekly Holiday as per the list which shall be exhibited (in Form 24) at the main entrance of the shop on a rotation basis;
- Unauthorized work on holidays or beyond regular hours will lead to cancellation of exemption;
- Shop hours: 9:00 AM to 11:00 PM;
- Transport shall be provided for female employees who work past 8:30 P.M. – notice to this effect shall be exhibited at the main entrance of the shop;
- Appointment Letters to be given to employees;
- Visit Book shall be maintained for Inspector verification;
- Exemption shall be valid for 3 years, subject to compliance with these conditions and labor laws.
- Wages shall be credited to employees' bank accounts;
- Employer shall cooperate in implementing the "Duties of Inspection" under rule 28 of the Telangana Shops & Establishments Rules, 1990 with regard to inspection and labor law compliance.

II. CASE LAWS

1. Supreme Court issues various guidelines / directions to fulfil the promise of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("POSH Act"): Supreme Court of India

Case: Aureliano Fernandes v. State of Goa and Others, Civil Appeal Number 2482 of 2014

The Supreme Court of India recently issued directions for the effective implementation of the POSH Act. It was observed that despite the enactment of the POSH Act a decade ago, its enforcement is still inadequate. The case involved an inquiry against Mr. Aureliano Fernandes, who was accused of sexual harassment by female students at Goa University.

The Supreme Court found that the inquiry was conducted hastily, depriving the appellant of a reasonable opportunity to participate effectively. The appellant had made various requests for postponement of proceedings, the internal committees ("**IC**") had proceeded ex-parte against the appellant establishing sexual harassment and consequently terminating his services. The Supreme Court deemed the proceedings to be against the principles of natural justice and quashed the High Court judgment. The Court ordered a fresh inquiry, emphasizing adherence to the principles of natural justice.

In light of the deficiencies in implementing the POSH Act, the Supreme Court issued several directions to ensure effective enforcement, including but not limited to the following:

(a) The Union of India, the State Governments and Union Territories must undertake a time bound exercise to verify if all relevant government bodies have constituted local committees ("**LC**") / IC and that the composition of the said committees are strictly in accordance with the POSH Act.

(b) Ensure that information on LC / IC composition, contact details, complaint procedures, rules, and policies is readily available on official websites.

(c) Taking immediate and effective steps by the authorities / managements / employers to familiarize members of the IC with their duties and the manner in which an inquiry ought to be conducted, i.e., on

receiving a complaint of sexual harassment at the workplace, from the point when the complaint is received, till the inquiry is finally concluded and the report is submitted;

(d) Conduct regular orientation programs, workshops, seminars, and awareness programs to educate IC members, women employees, and women's groups about the POSH Act and related regulations.

2. A private school management does not need to communicate adverse remarks or initiate disciplinary proceedings in probationary employee termination if the termination is not stigmatic: Bombay High Court

Case: Gramin Yuvak Vikas Shikshan Mandal Kinhi Naik And Anr. v. Shivnarayan Datta Raut And Anr., Writ Petition No. 5998 Of 2019

The Bombay High Court held that a private school management is not obligated to write a confidential report or communicate adverse remarks to an employee appointed on probation. The court emphasized that a probationary employee has no indefeasible right to continue in employment until confirmed to the post and that termination during probation does not amount to dismissal or punishment. Further, it was observed that probation serves the purpose of ensuring satisfactory performance and suitability for the post, without granting the probationer the same rights as permanent or temporary employees.

Shivnarayan Raut, a Shikshan Sevak at a school in District Buldhana, was terminated during his probation period, and the School Tribunal ordered his reinstatement with back wages. The Petitioner-School challenged the School Tribunal's decision through a writ petition.

The Court clarified that Rules 15(1) to 15 (5) of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 ("**MEPS Rules**") which require writing and communication of confidential reports, do not apply to probationers. Rule 15(6), however, mandates objective assessment and record keeping during probation.

The Court observed that *"in the case of probationer, he has no right to his post and whose termination of service does not amount to a dismissal or removal by way of punishment, there is no requirement to initiate disciplinary proceedings or departmental enquiry to terminate the service of a probationer on the ground of unsatisfactory behaviour or performance…therefore, the objective assessment of performance, during the period of his probation by maintaining the record of such assessment under Rule 15(6) of the MEPS Rules, is sufficient. Hence, there is no requirement to write and maintain confidential report of the probationer"*

The court stated that the principles of natural justice do not need to be followed when terminating a probationer unless the termination order carries a stigma. Adverse remarks need not be communicated, and a probationer is not entitled to make a representation under Rule 15(4) of the rules. The court concluded that maintaining an objective assessment record of the probationer's performance during the probation period, as per Rule 15(6) of the rules, is sufficient for termination.

3. Relationship between consultant doctor and the hospital can't be seen as employer employee unless there exist specific rules and provisions in the contract of appointment between the consultant and hospital: The Chennai Bench ITAT

Case: Deputy Commissioner of Income Tax v. M/s. Kovai Medical Centre and Hospital Limited, ITA No: 1004/Chny/2022

While this is a tax-related matter, it is important to note the Chennai Bench ITAT's observation that highlights that professional doctors who obtain professional indemnity coverage through their personal insurance policies are not considered to have an employer-employee relationship. The Chennai ITAT ruling states that unless there are explicit contractual rules and provisions along with the provision of statutory benefits, the relationship between hospitals and consultant doctors cannot be classified as an employer-employee relationship. In this case, the tax authorities were seeking to contend that withholding should have been done on the amounts paid to the consultants on the basis that this was salary which attracts a higher withholding rate.

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