



## EMPLOYMENT AND LABOUR NEWSLETTER

### I. NOTIFICATIONS

#### IN THIS ISSUE:

- Notifications
- Case Laws

#### **1. Maharashtra amends penal provisions under various labour laws: Government of Maharashtra**

The Maharashtra government has implemented the Maharashtra Labour Laws (Amendment) Act, 2022 ("**Maharashtra Labour Act**") vide notification dated 11 April 2023. The Maharashtra Labour Act brings changes to the penalties stated in various legislations, namely: (a) Maharashtra Industrial Relations Act, 1947; (b) Maharashtra Labour Welfare Fund Act, 1953; (c) Maharashtra Mathadi, Hamal and Other Manual Workers (Regulation of Employment and Welfare) Act, 1969; (d) Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981; and (e) Maharashtra Workmen's Minimum House-rent Allowance Act, 1983, replacing the previous penalties with higher penalties that range from INR 5,000 to INR 10,00,000.

#### **2. The Madhya Pradesh Udyogon Ki Sthapna Evam Parichalan Ka Saralikaran Adhiniyam, 2023 ("MP Udyogon Adhiniyam 2023"): Governor of Madhya Pradesh**

The Governor of Madhya Pradesh, on 5 April 2023, gave assent to the MP Udyogon Adhiniyam 2023 to provide for exemption from obtaining specified approvals and inspections for establishing and operating industrial units in Madhya Pradesh under 21 laws, including the Factories Act, 1948, the Contract Labour (Regulation & Abolition) Act, 1970, the Minimum Wages Act, 1948, the Payment of Wages Act, 1936, the Employees' State Insurance Act, 1948, the Payment of Bonus Act, 1965, the Payment of Gratuity Act, 1972, the Madhya Pradesh Shops and Establishments Act, 1958, the Legal Metrology Act, 2009, the Madhya Pradesh Municipal Corporation Act, 1956, the Environment (Protection) Act, 1986, etc. Various procedures and conditions have been specified in the said legislation.

#### **3. Tamil Nadu proposes Bill to amend the Shops and Establishments Act to improve employee welfare by adopting provisions on drinking water, latrines, first-aid facilities, etc: Government of Tamil Nadu**

The Tamil Nadu government vide government gazette dated 13 April 2023, proposed a Bill to amend the Tamil Nadu Shops and Establishments Act, 1947, called the Tamil Nadu Shops and Establishments (Amendment) Act, 2023 ("**Tamil Nadu S&E Bill**"). The Tamil Nadu S&E Bill aims to improve the working conditions of employees in shops and establishments proposing the inclusion of new sections, such as provisions for drinking water, sufficient latrine and urinal accommodations, rest and lunch rooms, and first-aid facilities to employees working in shops and establishments in the state of Tamil Nadu.

The amendment is based on the Model Shops and Establishments (Regulation of Employment and

Conditions of Service) Bill, 2016, approved by the Ministry of Labour and Employment, Government of India, and is being implemented to benefit the welfare of all employees working in shops and establishments.

## **II. CASE LAWS**

### **1. Bombay High Court Upholds Industrial Tribunal's Order Directing Sandoz To Re-Employ/ Pay Security To Retrenched Workers: Bombay High Court**

Case: *Sandoz Private Limited v. Bhartiya Kamgar Karmachari*, Writ Petition No. 10475 of 2023

The Bombay High Court upheld an interim order of the Industrial Tribunal against the Petitioner, directing it to re-employ retrenched workers or provide security over applicable wages till pendency of the industrial complaint on the grounds that the Petitioner violated Section 33(1)(a) of the Industrial Disputes Act, 1947 (“**ID Act**”) by retrenching employees during the pendency of the complaint. Section 33(1)(a) of the ID Act states that *“During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before an arbitrator or a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall- (a) in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding.”*

In this case, the Petitioner employed 179 Professional Service Representatives (“PSRs”) to market certain brands in India. The Respondent-Union filed a complaint alleging unfair labour practices by the Petitioner. Eventually, the Petitioner announced discontinuation of its commercial activities in India and introduced a Voluntary Retirement Scheme, and during pendency of the complaint, the Petitioner terminated the employment of its PSRs, and deposited retrenchment compensation in their respective accounts.

Ordering the reinstatement, the High Court observed that *“The prohibition is against altering conditions of service in regard to any matter connected with the dispute. It is the nexus between the matter in dispute and the action complained of, that determines the applicability of Section 33(1) (a) of the Act, 1947... retrenchment, in the circumstances of the case, squarely altered the condition of service as the PSRs were demanding work, and they were eventually terminated.”*

### **2. By no stretch of imagination can a person working as a lawyer and looking after all legal affairs of the Company be treated as a workman under the ID Act: Delhi High Court**

Case: *Jagbir Singh Malik v. Energy Infrastructure India Ltd.*, LPA 153/2023

The Delhi High Court upheld the decision of the Labour Court, which determined that the Appellant was not a 'Workman' under the ID Act because he held a managerial position as the Head of the Legal Department, performed legal duties as a lawyer representing the company, and was enrolled with the Bar Council of Delhi, inter alia. The Court observed that albeit the Appellant's duties were multifarious, the primary nature of his duty or purpose of employment should be considered when deciding whether a person falls under the definition of 'Workman' under the ID Act. Therefore, to determine whether an individual is a 'Workman,' the nature of their primary duty must be examined.

The Delhi High Court held that *“even if it is presumed for a moment that the duties being performed by him are multifarious in nature, the primary nature of the duty or the purpose of employment needs to be ascertained in order to decide whether a person is a 'Workman', or not. The documents on record establish that the Appellant was coordinating with various Government Authorities; he was coordinating with officials in the Government for procurement of land; he was playing an active role in marketing; he was giving recommendations for cost cutting; he has regularly coordinated with lawyers engaged by the Respondent company; he was filing replies to notices issued by various Authorities and describing himself as Team Leader of the Legal Department; he has, in fact, performed all managerial activities and by no stretch of imagination, it can be said that he was working as a 'Workman' in the company as claimed by him.”*

### **3. Before changing its position on fairness of domestic enquiry, Labour Court must grant employer opportunity to establish charges against terminated workman: Karnataka High Court**

Case: M/s TTK Healthcare Ltd And P V Ravi, Writ Petition No. 29197 Of 2014 (L-Ter)s

The Karnataka High Court has reiterated that the Labour Court before coming to a conclusion that domestic enquiry conducted by the employer against terminated employee is not fair and proper, it has to grant opportunity to the employer to establish the Articles of Charge, levelled by it against the workman.

In this case, the Respondent, a workman, who was working on a mixing machine and allegedly caused the death of a contract worker. The Petitioner-employer terminated his services after an enquiry. Initially, the Labour Court concluded that the enquiry was fair and proper, however, while passing its final order, the Labour Court changed its position and held that the enquiry was perverse in nature and set aside the termination order directing the Petitioner-employer to reinstate Respondent with back wages and benefits, without giving the Petitioner-employer another opportunity to establish the charges against the Respondent.

The Karnataka High Court while remanding the matter back to the labour court for fresh disposal, held that *“In the event of the labour court intending to change the finding insofar as the enquiry being fair and proper is concerned, then the labour Court would have to provide an opportunity to the employer to lead evidence to establish the charges alleged against the workman. In the present case, that has not been done.”*

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