



## EMPLOYMENT AND LABOUR NEWSLETTER

### I. CIRCULARS / NOTIFICATIONS

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#### **1. The Government of India and Australia signed a "Framework Mechanism for the Mutual Recognition of Qualifications": Ministry of Education**

The first ever "Mechanism for the Mutual Recognition of Qualifications" ("**Mechanism**") signed between the governments of India and Australia on 2 March 2023, aims to increase mobility of students and professionals seeking employment between the two countries and minimize barriers to recognition of qualifications. The scope of the Mechanism includes higher education, research, employment, and skill education. Both the Ministry of Education and the Ministry of Skill Development and Entrepreneurship in India will be the implementing authorities, while their counterpart in Australia will be the Department of Education.

The Mechanism commits Australia and India to recognise secondary and post-secondary education qualifications to facilitate access to higher education, and also for general employment purposes such as:

- Australian Qualifications Framework ("**AQF**") bachelor degrees (and other Australian qualifications as listed in the Mechanism) will be deemed comparable to an Indian bachelor degree for seeking admission to master's degree programs; and for purposes of general employment in India.
- Similarly, Indian graduate certificates, graduate diploma qualifications (and other Indian qualifications as listed in the Mechanism) will be deemed comparable for admission to bachelors / master's degree programs in Australia; where appropriate, credit transfer will be granted; and for purposes of general employment.

Vide a set of Frequently Asked Questions released subsequently, it has been clarified that the Mechanism does not cover the recognition of qualifications that lead to employment in occupations that require specialised knowledge and skills such as law and medicine, that are regulated by professional bodies and have registration, licensing, professional membership, or other industry requirements. It also does not cover assessments for migration purposes.

#### **2. Registration of all schools affiliated with Central Board of Secondary Education ("CBSE") under the Employees' Provident Funds And Miscellaneous Provisions Act, 1952 ("EPF Act"): The Employees Provident Fund Organization ("EPFO")**

The EPFO vide notification dated 16 March 2023, directed all EPF Zones and field offices to check on the website link: <https://saras.cbse.gov.in/SARAS/AffiliatedList/ListOfSchdirReport> the coverage status of all CBSE affiliated schools' registration with the EPFO and on the Shram-Suvidha portal, and to confirm that they are in compliance with all applicable laws, including the EPF Act, the Employees' State Insurance Act, 1948, and the labour laws.

### **3. Amendment in the Uttar Pradesh Interstate Migrant Workmen (Regulation of Employment and Condition of Services) Rules, 1983 in the manner of making application for registration of establishment: Uttarakhand Government**

The Uttarakhand Government vide notification dated 27 February 2023, has amended Rule 3 of The Uttarakhand (Uttar Pradesh Interstate Migrant Workmen (Regulation of Employment and Conditions of services) (Amendment) Rules, 2023 ("**UP Migrant Workmen Amendment Rules**") and a summary of the same is as follows:

As per amended Rule 3 of the UP Migrant Workmen Amendment Rules, for making application for registration of establishment, every chief employer is required to upload the application in online format on the official portal of labour department, Government of Uttarakhand along with proof of pre-determined fee plus relevant records as required in the portal, and if the decision on the application / registration is not taken by concerned authority within 20 days from the date of application, then registration would be deemed to be automatically accepted.

Previously, the application was to be made in triplicate in Form I by the principal employer or his duly authorized agent to the registering officer ("**officer**") of the area in which the establishment sought to be registered was located. Furthermore, the application was to be personally delivered to the officer and upon receipt of the said application, the officer after noting the date of receipt of application by him, gave an acknowledgement to the applicant.

Now if the decision is not taken by concerned authority within 20 days from the date of making such application, then registration of establishment would be deemed to be automatically accepted.

## **II. CASE LAWS**

### **1. It is now mandatory to furnish permanent address of the concerned workman in all future and pending labour cases even if the case is being filed through a labour union: Supreme Court of India**

*Case: Creative Garments Ltd. v. Kashiram Verma, Civil Appeal No. 5758 of 2012*

The Supreme Court has held that in all pending and future cases, the parties to a labour dispute shall be required to furnish their permanent address(es), including the permanent address of each workman. The Apex Court took note of practical difficulties which arise in labour disputes, as most cases of the workmen are filed through the labour unions without mentioning their own permanent addresses. Hence, in many cases, notices are served on the Union, and if the Union is not interested in pursuing the case, the affected workman goes unrepresented.

The Supreme Court observed that *"effective relief can be granted to a worker only if the permanent address of the workman is furnished in the pleadings."* There was no representation for the workman in the appeal before the Supreme Court, as what was given was the address of the Union, which did not appear.

While noting that the statutory application forms in all labour laws in relating to filing of cases require the furnishing of the permanent address of the workman, the Supreme Court noted that *"If any party approaches any authority for a relief, the first thing required to be mentioned is his complete address. Mentioning of address of the representative is secondary as someone may like to appear in person."*

In relation to labour law disputes, the following directions were issued by the Supreme Court:

- In future all the cases to be filed and in all the pending cases, the parties shall be required to furnish their permanent address(es).
- Even if the representative of the workman is appearing, he shall furnish permanent address of the workman as well.
- Even in proceedings subsequent to first stage, it shall be mandatory to provide permanent address

- of the party for his service.
- Merely mentioning through Labour Union or authorised representatives, who are sometimes union leaders or legal practitioners, will not be sufficient.
- Service of notice of workman will have to be effected on the permanent address of the workman.

The Court also stated that the four labour codes including the Code on Wages, 2019; the Occupational Safety, Health and Working Conditions Code, 2020; the Industrial Relation Code, 2020; and the Code on Social Security, 2020 are yet to be enforced while remarking that *“With the enforcement of 4 Labour Codes, we are hopeful that in future, when rules are framed, authorities will take care that parties to the dispute furnish their permanent addresses in the cases relating to labour law disputes.”*

## **2. The Maternity Benefit Act 1961 (“Maternity Benefit Act”) permits maternity leave to Women even after child has been born and the same is independent to the grant of child care leave: Allahabad High Court**

*Case: Saroj Kumari v. State Of Uttar Pradesh and Others, Writ Application No. 2211 of 2023*

The Allahabad High Court has held that women are entitled to maternity benefits under the provisions of the Maternity Benefit Act, even after the birth of their child. In the case of legal adoption of a child under 3 (three) months of age, the benefit can be extended as well.

A headmistress of a primary school in Heerapur, Etah district was subject to service conditions governed by the Uttar Pradesh Basic Education (Teachers) Service Rules, 1981. After giving birth to a child on October 15, 2022, the petitioner immediately applied for maternity leave for 180 days, however, the same was rejected by the District Basic Education Officer, Etah (**“District Officer”**). The reason given was that the petitioner was not entitled to maternity leave after childbirth, but was only eligible for child care leave. In this case, the petitioner argued that childcare leave is separate from maternity benefits and serves a different purpose. Therefore, denying the petitioner maternity leave and insisting on childcare leave was unjustified.

The Court, by setting aside the order of the District Officer held that a woman is entitled to maternity leave even after the birth of her child under the Maternity Benefit Act. The Court, by relying upon a judgement of the Supreme Court in the case of Deepika Singh versus Central Administrative Tribunal and others, AIR 2022 SC 4108 observed that *“availability of Child Care Leave to the petitioner or grant of the same cannot dis-entitle the petitioner for grant of maternity benefit. Maternity benefit and Child Care Leave both operate in different fields and are mutually exclusive.”*

## **3. Only after taking into account several factors, fixation of age of retirement at 60 years is reasonable, considering the general improvement in the standard of health and increase in longevity in India: Karnataka High Court**

*Case: Wipro Infrastructure Engineering v. Additional Labour Commissioner, (Administration) & Appellate Authority and Ors., Writ Petition No. 15615 of 2016 (L-RES)*

The Karnataka High Court, after taking into consideration the settled position of law with regards to fixing the retirement age to 60 years, upheld the order of the Appellate Authority which increased the retirement age of the workmen in the Certified Standing Orders (**“CSO”**) of the Petitioner-Company from 58 to 60 years after considering the following factors:

- The nature of work assigned to the employees in the course of their employment by conducting inspections;
  - The nature of the wage structure paid to them;
  - The retirement benefits and other amenities available to them;
  - Character of the climate and where the employees work;
  - Comparison of the wages and retirement age in comparable industries in the same region;
  - Physical and mental health condition of the workmen.
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In this case, the Petitioner-Company had set the retirement age for its employees at 58 years in its CSO. However, a Union representing the workmen filed an application before the Certifying Officer to modify the retirement age to 60 years under the Industrial Employment (Standing Orders) Act, 1964. The Certifying Officer rejected the application, but the Union appealed, and the Appellate Authority allowed the modification, increasing the retirement age to 60 years. The Petitioner-Company filed a writ petition against this decision.

The Karnataka High Court considered the abovementioned factors and reviewed the inspection reports of the Petitioner-Company. The Court found that the Petitioner had not provided any evidence to justify setting the retirement age at 58 and had not shown that retirement benefits would adequately compensate for the hardship that would be caused by retiring at that age. Additionally, the court noted that the manufacturing process was largely automated and not particularly hazardous or physically demanding.

The Court then placed reliance in the case of *British Paints (I) Ltd., v. Its workmen 1996 I LLJ 407 SC* wherein the Supreme Court increased the retirement age from 58 to 60 by holding that “*Considering that there has been a general improvement in the standard of health in this country and also considering that longevity has increased, fixation of age of retirement at 60 years appears to us to be quite reasonable in the present circumstances...But time, in our opinion, has now come considering the improvement in the standard of health and increase in longevity in this country during the last fifty years that the age of retirement should be fixed at a higher level, and we consider that, generally speaking, in the present circumstances, fixing the age of retirement at 60 years would be fair and proper, unless there are special circumstances justifying fixation of a lower age of retirement.*”

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