



EMPLOYMENT AND LABOUR NEWSLETTER

I. CIRCULARS

1. **The Department of Science and Technology released the Gujarat IT/ ITeS Policy (2022-2027): Government of Gujarat**

The Government of Gujarat has released the Information Technology (“IT”)/ Information Technology-Enabled Services (“ITeS”) Policy 2022-27 (“**Gujarat IT Policy**”) with an objective to enable the stakeholders of the IT/ ITeS sector to create state-of-the-art IT infrastructure in the form of ready to occupy co-working office spaces and for the creation of high-skilled IT human resources in the state of Gujarat. The Government aims to provide impetus to the IT ecosystem by supporting the development of ready to occupy co-working spaces for IT office spaces through Government-facilitated model and Empanelment model.

Some of the significant highlights of the Gujarat IT Policy are as follows:

- Various special incentives and offerings have been introduced for eligible IT/ ITeS units *inter alia* such as incentive for supporting ‘work from home’ for Gujarat-based employees and an Employment Generation Incentive, whereby they will be entitled to a one-time support for every new and unique job created in the State.
- Further, eligible IT/ITeS units can also claim reimbursement on the employer’s contribution under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for a period of 5 years under the Atmanirbhar Gujarat Rojgar Sabhay based on the prescribed criteria therein.
- Applicants claiming incentives from other policies of the Government of Gujarat are not permitted to claim incentives under this IT Policy.

2. **Factories (Karnataka Amendment) Bill, 2023 passed to amend the Factories Act, 1948: Karnataka Assembly**

The Karnataka Legislative Assembly vide notification dated 22 February 2023, passed the Factories (Karnataka Amendment) Bill, 2023 amending various provisions under the Factories Act, 1948 pertaining to daily hours, intervals for rest, spread over, extra wages for overtime, power of government to make exempting orders and restriction on employment of women, thereby enacting Factories (Karnataka Amendment) Act, 2023 (“**Factories Amendment Act**”). One of the significant factors of the Factories Amendment Act is that it allows people who work up to 12 hours a day for four consecutive days to have a three-day break each week.

The Factories Amendment Act now allows the state government to extend daily working hours up to 12 hours, with the worker's written consent, and with a maximum of 48 hours per week. Further, it allows the state government to extend the total number of hours a worker can work without an interval to 6 hours and to increase the spread over up to 12 hours, inclusive of intervals for rest. Additionally, a worker who works overtime for more than the specified hours in a day or week, as specified in the Factories Amendment Act, shall be entitled to wages at twice his ordinary rate of wages.

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The Factories Amendment Act further outlines restrictions on allowing women to work between 7 PM and 6 AM unless certain conditions are followed such as measures to prevent sexual harassment, appropriate working conditions, a complaint redressal mechanism, proper lighting and CCTV coverage, and transportation with security measures. Other restrictions include providing sufficient women security, restrooms, and a minimum of 1/3rd women supervisors during night shifts, and a 12-hour rest period between day and night shifts. The establishment must also obtain the biodata and conduct pre-employment screening of all drivers.

3. Notification under Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017: Government of Maharashtra

The Government of Maharashtra vide notification dated 22 February 2023 has declared Nagar Panchayats constituted under section 341A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and panchayats established / deemed to have been established under the Maharashtra Village Panchayats Act, 1959 to be the local authorities for the purpose of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (“**MSE Act**”).

Further, vide notification dated 22 February 2023, the Government of Maharashtra has declared that the Municipal Corporation of Brihan Mumbai and all other Corporations, Municipal Councils and Nagar Panchayats and village panchayats shall perform the duty of enforcing the provisions of Section 36A of the said MSE Act regarding Name Board to be in Marathi in Devnagari script in the areas within their territorial jurisdiction with effect from 22 February 2023.

II. CASE LAWS

1. Once an employee admits his guilt, he cannot be allowed to plead violation of principles of natural justice or invoke absence of an inquiry at a later stage: Punjab and Haryana High Court

Case: Kuldeep Singh v. Shiromani Gurudwara Parbhandhak Committee; Dharminder Singh v. Shiromani Gurudwara Parbhandhak Committee, CWP No. 27281 of 2017 (O&M); CWP No. 27282 of 2017 (O&M)

The Punjab and Haryana High Court while disposing of two writ petitions filed by terminated employees of the Shiromani Gurudwara Parbhandhak Committee (“**SGPC**”), has ruled that once an employee admits his guilt, he cannot be allowed to turn back and plead violation of principles of natural justice or invoke the absence of an inquiry at a later stage.

In this case, two terminated employees of the SGPC were found with a girl in an objectionable condition in one of the rooms of the Takhat Sri Damdama Sahib Talwandi Sabo Gurdwara, Bathinda. They had allegedly paid to spend a night with her in the Gurdwara, which harmed the feelings of the Sikh religion. The employees were terminated following their admission of guilt through their statements. The employees challenged the termination in the High Court, claiming a violation of procedural law laid down under the Rules framed under the Sikh Gurdwara Act, 1925. However, the High Court ruled in favour of the SGPC, stating that an inquiry was unnecessary as the employees had already admitted their guilt, and there was no violation of natural justice.

2. Employees cannot seek alteration of date of birth towards the fag end of their career: Supreme Court of India

Case: General Manager South Eastern Coalfields Ltd & Ors. vs Avinash Kumar Tiwari, Special Leave to Appeal (C) No(s). 14238/2022

The Supreme Court of India has clarified that “any request for alternation of date of birth in the service records of the petitioner-management cannot be made after a long delay and especially towards the end of the career of an employee...Employees cannot wake up from their slumber after a long time and seek alteration of date of birth towards the fag end of their career.”

3. Failure to communicate an order refusing to grant permission for closure on an incomplete/deficient application would not entail deemed permission under Section 25-O(3) of the Industrial Disputes Act, 1947 (“ID Act”) if the application is defective: Bombay High Court

Case: Harinagar Sugar Mills Ltd. and Ors. v. State of Maharashtra and Ors., Writ Petition Nos. 3447 of 2019, 3397 of 2019

The Bombay High Court has held that the deeming fiction under Section 25-O(3) of the ID Act, which provides for deemed acceptance for closure of an undertaking in case the appropriate government fails to communicate a decision within 60 days of receiving an application for closure, cannot be triggered if the closure application is found to be incomplete or deficient. The appropriate government can reject the application as incomplete or deficient, and the petitioner would have to adopt the remedy of review or reference under Section 25-O(5) of the ID Act.

In this case, the petitioners had submitted closure applications that were found to be defective or deficient. The appropriate government gave them an opportunity to adduce reasons for closure and disclose efforts taken to prevent closure by re-submitting the closure application. However, the petitioners failed to submit fresh applications with complete and cogent reasons as directed by the state government, and only added reasons to the pending applications later. The state government then communicated to the petitioners that they were required to resubmit the applications. The petitioners claimed deemed acceptance under Section 25-O(3) only after the receipt of subsequent communications from the state government.

The Bombay High Court observed that “*the fact that authority was not convinced with the application of the petitioner and had communicated that cogent reasons are not spelt out in the application would be sufficient to conclude that the authority did not grant the application for closure.*”

4. While granting back wages, the length of service of an employee must be taken into account, along with the conduct of the employer: Madhya Pradesh High Court

Case: Executive Director, Environmental Planning and Coordination Organisation (MP) and Anr. v. Presiding Officer, Labour Court, Rewa (MP) and Jagdish Prasad Sahu, Writ Petition No. 3056 of 2001

The Madhya Pradesh High Court has held that while granting back wages, the length of service of an employee must be taken into account, along with the conduct of the employer. It was also observed that, if an order of reinstatement is based on holding the termination illegal and it is also a case of an employee that he was not gainfully employed after termination, then reinstatement should be given with full back wages.

The respondent herein was appointed as a Chowkidar with the Environmental Planning and Coordination Organisation in January 1989. His services were terminated by an oral order in June 1990, without any notice or payment in lieu of notice or retrenchment compensation. The labour court passed an ex-parte award reinstating the respondent in service with full back wages after the petitioners failed to appear before it.

The Madhya Pradesh High Court dismissed the appeal filed by the petitioner (company) by ordering reinstatement of the respondent with full back wages by relying upon the decision of the Supreme Court in the case of *Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*, (2014) 6 SCC 434, and holding that “*if order of reinstatement is based holding the termination illegal and it is also a case of employee that he was not gainfully employed after termination then reinstatement should be given with full back-wages. In the said case, it is also observed by the Supreme Court that the onus is upon the employer to prove that after removal, the employee was gainfully employed. But here in this case, the said burden was not discharged by the petitioners despite the fact that the employee in his statement of claim and the statement recorded before the Presiding Officer stated that after his termination he was unemployed.*”

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