



## EMPLOYMENT AND LABOUR NEWSLETTER

### I. NOTIFICATIONS

#### IN THIS ISSUE:

**1. Proposed Bill: Adding Menstrual Leave to the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) Act, 2017: Maharashtra Legislative Assembly**

- Notifications
- Case Laws

The Maharashtra Legislative Assembly has introduced the Maharashtra Shops and Establishment (Regulation of Employment and Conditions of Service) (Amendment) Bill, 2023 which proposes to include a provision to entitle every female employee working in an establishment in Maharashtra to paid leave during the period of menstruation. The proposed Bill is unclear regarding the manner in which the leave shall be provided / calculated.

**2. Draft Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) (Second Amendment) Rules, 2023 (“Draft MSE Rules”): Government of Maharashtra**

Vide notification dated 2 August 2023, the Maharashtra Government notified Draft MSE Rules to further amend the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Rules, 2018 which aims to modify various forms within the said Rules by incorporating a new obligation: the inclusion of details concerning the insurance certificate and a copy of the same pertaining to the relevant establishment. The Draft MSE Rules remain open for comments.

**3. Karnataka exempts certain classes of individuals from payment of professional tax: Government of Karnataka**

Vide gazette notification dated 13 July 2023, the Karnataka Government has granted tax exemption under the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 to specific classes of individuals. This relief encompasses individuals engaged in any professions, trades, callings, and employment, who are physically challenged with a total permanent disability of at least 40% in both upper and lower extremities. A valid medical certificate must be furnished to qualify for this exemption.

**4. Andhra Pradesh notifies safety guidelines to prevent accidents in factories concerning working in confined spaces: Government of Andhra Pradesh**

Vide gazette notification dated 7 July 2023, the Government of Andhra Pradesh has noted that while production-related operations in a factory fall under routine industrial activities, maintenance related activities including working in a confined space would fall under the category of non-routine industrial activities. The notification further highlights that certain maintenance tasks carry the potential for causing accidents, particularly due to the suspension of safety measures within a factory during maintenance periods.

It has been reiterated that the Factories Act, 1948 along with the Andhra Pradesh Factories Rules, 1950 impose a responsibility on the factory's occupier and manager to ensure the safety of workers engaged in activities within 'confined spaces'. Consequently, a range of guidelines has been issued to prevent accidents in factories, including defining confined spaces, hazard identification through a work permit system, fitness checks for personnel, risk assessments, pre-entry testing, and provision of protective equipment.

## **II. CASE LAWS**

### **1. Employer cannot override Industrial Employment (Standing Orders) Act to curtail employees' rights: Supreme Court of India**

*Case: Bharatiya Kamgar Karmachari Mahasangh v. Jet Airways Limited [Civil Appeal Number 4404 of 2023]*

The Supreme Court has reiterated that workmen and employers cannot enter into a contract that would override a statutory contract per the certified standing orders.

In this case, the court deliberated whether a private agreement between parties would take precedence over certified standing orders. The workers, hired on a fixed-term basis, had signed a settlement with the company, forfeiting their claim to permanent status in exchange for specified benefits. Despite completing 240 days of work and seeking permanent employment with benefits, the workers' services were terminated. The standing orders, under Bombay Industrial Employment (Standing Orders) Rules, 1959, dictate that 240 days of uninterrupted service warrant permanent employment. Thereafter, the workers, whose services were concluded by the company, raised a dispute before the Central Government Industrial Tribunal ("CGIT") seeking permanency in the company with all consequential benefits, for the reason that the nature of their work was permanent, and the workers had completed 240 days in the company. The CGIT dismissed their claim, citing expiry of their fixed-term contract with the company.

When the matter reached the Supreme Court, the company argued that the settlement negated the workers' claim under the standing orders. The Supreme Court ruled that standing orders exclusively govern workmen's service conditions in industrial establishments, forming a contractual framework by holding that "*the standing order implies a contract between the employer and the workmen. Therefore, the employer and workmen cannot enter into a contract overriding the statutory contract embodied in the certified standing orders.*" The court emphasized that IESO Act being a beneficial legislation provides that any agreement/contract/settlement wherein the rights of the employees are waived off would not override the certified standing orders.

### **2. Maternity Benefits must be granted even if period of benefit goes beyond term of contractual employment: Supreme Court of India**

*Case: Dr. Kavita Yadav v. Secy, Ministry of Health and Family Welfare, Civil Appeal No(S). 5010/2023*

The Supreme Court has ruled that maternity benefits must extend beyond the term of contractual employment, requiring employers to provide these benefits as outlined in Sections 5 and 8 of the Maternity Benefits Act, 1961 ("**Maternity Benefit Act**"), even after the contractual employment period concludes. This decision stemmed from an appeal against a Delhi High Court ruling that limited maternity benefits to an 11-day period based on contract expiration. The appellant argued eligibility for full benefits under Section 5(2) due to fulfilling prerequisites, while the respondent contended that benefits should be confined to the contractual period. The Supreme Court rejected the latter's stance, highlighting the Maternity Benefit Act's provision for benefit extension post-employment and emphasizing entitlement to medical benefits under Section 5. This landmark ruling safeguards women's maternity rights beyond contractual terms, setting a progressive precedent.

### **3. Madras High Court directed Tamil Nadu Police to reinstate inspector who took 'unauthorised' paternity leave: High Court of Madras**

*Case: B. Saravanan v. Deputy Inspector General of Police, W.P.(MD). No.19561 of 2023*

The Madras High Court emphasized the requirement to recognize paternity leave as a basic human right for both pre-natal and post-natal children while directing the Tamil Nadu Police to reinstate an inspector who was penalised for availing 'unauthorised' leave to take care of his wife undergoing IVF and his new born child born through the IVF method. The Court observed that *“it is high time for policy makers to recognise right to paternity leave/parental leave to the biological/adoptive parents, as the basic human right of the respective pre-natal/post natal child.”*

The Court further noted that paternity leave is not provided in various states in India, including Tamil Nadu, and called for legislation to this end.

The Court held that *“The role of both the mother and father during the prenatal care and post-natal care days gains importance from the perspective of the child’s right to survive... The right to protection of life guaranteed to every child by Articles 21 and 15(3) of the Constitution of India, culminates in the fundamental human right of the biological parents/adopting parents seeking maternity/paternity/parental leave. Thus, the action of the respondents cancelling and refusing paternity leave to the petitioner would amount to violation of Article 21 of the Constitution of India.”*

#### **4. Person accused of sexual harassment cannot review appraisal report of the complainant: High Court of Calcutta**

Case: *Anjali Kumari v. Yamuna Kumar Chaubey, CPAN 24 of 2023 in Writ Petition Application 1935 of 2022*

The Calcutta High Court has recently held that the actions of an accused under the Prevention of Sexual Harassment in the Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”), in being party to an appraisal report of the complainant thereunder, “vitiates and makes a mockery of the entire process.

In this case, the petitioner accused the respondent of sexual harassment at work and asserted that the accused allegedly took part in a performance appraisal of the complainant while her case against him was still pending in the High Court. The respondent argued that the appraisal report was reviewed by another office colleague and that he was not the sole decision-maker.

However, the Court dismissed the respondent’s above argument and held that no individual who has been accused of sexual harassment can partake in the performance review of the complainant. As a result, the task must be entrusted to a different individual in all circumstances. The Court observed that the very action of participation of the accused in the appraisal process contradicts the idea of the POSH Act and that the rules framed under the POSH Act clearly state that the internal complaints committee has the power to restrain the respondent from reporting on the work performance of the complainant.

#### **5. Employees have the right to vent against management, charge memo quashed against bank employee who mocked higher authorities on WhatsApp group: High Court of Madras**

Case: *A. Lakshminarayanan v. The Assistant General Manager – HRM/ Disciplinary Authority, Tamil Nadu Grama Bank, W.P(MD) No. 9754 of 2023 and WMP(MD) No. 8689 of 2023.*

The Madras High Court has upheld the employee’s right to criticize the management by dismissing a charge memo against an employee of Tamil Nadu Grama Bank for sharing critical messages on WhatsApp. The Court observed that *“there is something called “right to vent”. Every employee or a member of an organization will have some issue or the other with the management. To nurture a sense of grievance is quite natural. It is in the interest of the organization that the complaints find expression and ventilation. It will have a cathartic effect. If in the process, the image of the organization is affected, then the management can step in but not till then.”*

The petitioner, an office assistant at the Tamil Nadu Grama Bank, as a trade union activist and bank workers' union office-bearer, faced disciplinary measures for his critical WhatsApp post. He filed a petition with the Madurai bench of the High Court. The Court highlighted the bank's issuance of a 2019

circular to regulate employee conduct on social media and raised concerns about potential privacy infringements due to advanced technology like Pegasus (that provides access to private conversations). The Court while observing that *"Courts may dread such scenario, but then would still firmly say that charges cannot be framed on the strength of information gleaned through such means"*, held that the content exchanged on end-to-end encrypted platforms must adhere to legal boundaries.

After reviewing the petitioner's WhatsApp messages, the Court determined that they did not violate the bank's conduct rules and highlighted that all kinds of personal criticisms exchanged in casual environments would not have attracted attention had they occurred for instance, over a cup of tea outside a shop (i.e. outside the workplace premises). The court maintained that *"merely because the same exchange took place among a group of employees on a virtual platform with restricted access, it cannot make a difference."*

### **6. Holding a woman's hand, and threatening her without the intention to outrage her modesty is not an offence under section 354 IPC: High Court of Kerala**

*Case: State Represented by the S.I. of Police, Binanipuram v. Anoop, the accused, Calender Case No. 116/15*

The Kerala High Court noted the act of holding a woman's hands and threatening her without any lustful intention does not constitute the offence of outraging the modesty of a woman under Section 354 of the Indian Penal Code ("**IPC**") and held that *"the culpable intention to outrage the modesty of the victim is to be proved. Mere holding PW1's hand and threatened her that he would kill her will not attract offence under Section 354 of IPC."*

The incident took place in 2013 wherein the woman had gone to a temple to pray. The accused grabbed her hand and threatened to kill her. She filed a criminal complaint against him accusing him of committing offences under Section 354 (assault or criminal force to a woman with intent to outrage her modesty) and Section 506(1) (criminal Intimidation) of the IPC.

While holding that the man had no intention of outraging her modesty, the Court held, *"There is absolutely nothing on record to show that the accused uttered any indecent words or had any intention to use the victim to satisfy his lust."* Thus, the Court quashed the charges under Section 354 against the accused. However, the Court noted that the accused is liable to be convicted under Section 506(1) for threatening to kill her with an intent to cause harm.

This judgment sets a precedent that underlines the importance of establishing intent to sexually harass a women, emphasizing the need for clear evidence of inappropriate motives to categorize an act as a sexual offence within the framework of POSH regulations.

### **Disclaimer**

This newsletter has been written for the general interest of our clients and professional colleagues and is subject to change. This newsletter is not to be construed as any form of solicitation. It is not intended to be exhaustive or a substitute for legal advice. We cannot assume legal liability for any errors or omissions. Specific advice must be sought before taking any action pursuant to this newsletter. For further clarification and details on the above, you may write to [labourteam@almtlegal.com](mailto:labourteam@almtlegal.com).

### **Contact Information**

#### **Mumbai**

ALMT Legal, Advocates & Solicitors  
1104A Raheja Chambers  
Free Press Journal Marg Nariman Point  
Mumbai 400021  
Tel: + 91 9152510000 / + 91 40510000  
Email: [labourteam@almtlegal.com](mailto:labourteam@almtlegal.com)