



## EMPLOYMENT AND LABOUR NEWSLETTER

### I. CIRCULAR

#### **1. ESIC directs employers to exercise strict control and vigil over usage of login credentials while registering employees on portal for reasons of misuse of benefits payable to insured persons**

The Employees' State Insurance Corporation ("ESIC") via circular dated 25 October 2022 has directed all employers to exercise control and vigil over the usage of their login credentials while registering employees on the ESI portal and to also make sure that while registering employees, the data that is being fed is based on supporting documentation.

While scrutinizing the records of employers and the employee database attached to the employers, the ESIC found that the bank account numbers of many employees were tagged to single common bank account number. This paves way for misuse of the insurance benefits and the ESIC suspects that HR personnel / external consultants who have been assigned with the task of employee registration on the portal using the firms login credentials, are misappropriating, and siphoning off the benefits payable, into their accounts. Accordingly, the circular was issued to ensure that each employee should have a unique bank account number.

#### **2. Women Workers can now be employed In Night Shifts in Factories in Andhra Pradesh**

The High Court of Andhra Pradesh has struck down Section 66(1)(b) of the Factories Act, 1948 ("Factories Act"), which prohibited women to work in any factory except between the hours of 6 AM and 7 PM.

In pursuance of the order of the High Court, the Government of Andhra Pradesh on 25 October 2022 issued a notification ("**Notification dated 25 October 2022**") enabling women workers in factories to work during night hours i.e. from 7 PM until 6 AM. This Notification dated 25 October 2022 made Andhra Pradesh join Maharashtra, Karnataka, Uttar Pradesh, Haryana, Assam, and Himachal Pradesh who have issued a similar notification and have listed out certain conditions for employers to comply with, with respect to health, safety and security of women workers.

The Notification dated 25 October 2022 lists down the following health and safety measures for the management of the factories in Andhra Pradesh to comply with inter alia including consent of the woman worker, provision of adequate transport and safety measures, etc.

#### **3. Government of Telangana now allows women employees to work in night shifts in the Shops and Establishments in Telangana**

As per Section 23 of the Telangana Shops and Establishments Act 1988 ("**Telangana S&E Act**"), no woman employee is required / allowed to work in any establishment before 6 AM and after 8:30 PM. The

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Government of Telangana has, vide its notification dated 13 October 2022 ("**Notification dated 13 October 2022**"), exempted all Establishments in the State from the provisions of Section 23 of Telangana S&E Act by allowing women employees to work in night shifts between 8.30 PM and 6 AM under Ease of Doing Business.

It is important to note that this exemption may be revoked at any time without any prior notice.

The Notification dated 13 October 2022 *inter alia* lays down the various conditions that employers of Telangana's shops and establishments need to comply with while employing women employees in night shifts which include consent of the women employee, free of cost transportation with security and GPS tracking, rotational basis, etc.

#### **4. Gujarat provides Employees' Provident Fund reimbursement through its newly launched "Aatmanirbhar Gujarat Schemes" to MSMEs and mega and heavy industries**

The Gujarat Government has released Aatmanirbhar Gujarat Schemes 2022 for Assistance to Industries for all micro, small and medium enterprises ("**MSMEs**") and large industries, wherein among other benefits, the MSMEs registered with the Employee Provident Fund Organisation shall be able to claim reimbursement of employer's contribution under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 for their new employees working in Gujarat for a period of 10 years. Certain large industrial undertakings and eligible mega industrial units shall also be able to claim reimbursement from the Gujarat Government.

The reimbursement of employer's contribution shall be made subject to the following conditions:

- a. 100% of the employer's contribution is to be made, and
- b. The employee should make EPF contributions of Rs 1,800 or 12% on the basic salary and the dearness allowance, whichever is lower.

## **II. CASE LAWS**

### **1. Merely the non-supply of documents cannot be a ground to set aside the order of the disciplinary authority if there was no prejudice caused to the delinquent employee: Supreme Court**

*Case: State of Punjab vs Nachhattar Singh, CIVIL APPEAL NO. 7257 OF 2022*

The Supreme Court in this case has set aside an order passed by the Punjab and Haryana High Court by observing the mere non-supply of documents cannot be a ground to set aside the disciplinary proceedings, if there is no prejudice caused to such delinquent employee against whom the disciplinary proceedings have been initiated.

In this case, the High Court allowed the second appeal preferred by the delinquent employee and set aside the punishment imposed by the disciplinary authority on the grounds that some documents were not supplied to the delinquent. However, the Supreme Court by allowing the appeal, laid down that "*Mere non-supply of the documents which may not have resulted in any prejudice caused to the employee, the order passed by the disciplinary authority cannot be set aside.*"

### **2. Appeal under the POSH Act is not maintainable in absence of any recommendation made by the internal committee: Delhi High Court**

*Case: Lakhwinder P Singh v IIHMR and Others, Writ Petition Civil 844/2017*

The Delhi High Court on a joint reading of Section 13 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 ("**POSH Act**") (provisions related to inquiry report) and Section 18 (provisions related to appeal) of the POSH Act, that deal with provisions relating to inquiry report and appeal against such inquiry report, held that an appeal can be filed only if the allegation against

the employee has not been proved or if the Internal Committee (“IC”) arrives at the conclusion that the allegations have been proved and recommends disciplinary action.

In this case, the Delhi High Court was approached by a former employee of the respondent company for quashing of the report of the IC constituted by the employer under the POSH Act. While the IC had conducted an inquiry and held that the former employee cannot be cleared from the charges of sexual harassment (leaving an inconclusive finding in this regard), the termination order by the management did not mention any recommendation made by the IC.

Consequently, as there were no recommendations made by the IC, the Court held that there was no right to prefer an appeal. Accordingly, the court held that an appeal under Section 18 of the POSH Act is not sustainable in absence of any recommendation made by the IC under Section 13 of the POSH Act. The termination did not seem to be an outcome of any recommendation made by the IC.

### **3. The gratuity of bank employees' cannot be adjusted against their outstanding loans: Karnataka High Court**

*Case: M/S Canara Bank V. M Shantha Kumari, Writ Petition No. 11463 Of 2020*

The Karnataka High Court has reiterated the principle that the gratuity amount payable to a bank employee cannot be adjusted by the bank with his outstanding loan amount thereby dismissing a petition filed by the Canara Bank questioning the order of Appellate Authority which had set aside the order of the Controlling Authority permitting adjustment of gratuity towards outstanding home loans of the employee.

The bench said, *"Home loan is governed by the agreement of loan. It is for the Bank to act in terms of the said agreement and exercise all rights under the said agreement as against the debtor. The Bank could not have adjusted the same from and out of gratuity amount, which are protected under Section 7 of The Payment of Gratuity Act, 1972."*

The bench remarked that both the Payment of Gratuity Act, 1972 (“**Gratuity Act**”) and the Code of Civil Procedure, 1908 give gratuity payments special treatment. Insofar as it is made abundantly clear that the gratuity amounts cannot be attached or subject to any garnishee orders, gratuities have received special protection and treatment.

### **4. Forfeiture of gratuity is not automatic on dismissal from service – a show cause notice to affected party is mandatory: Karnataka HC**

*Case: Siyaram Basanti v Chhattisgarh Rajya Gramin Bank & Ors. WPS No. 503 of 2020*

The Chhattisgarh High Court has held that in terms of Gratuity Act, gratuity cannot be forfeited automatically on dismissal from service, a show cause notice to the affected party is a must.

In this case, the petitioner was dismissed after 33 years of service in Gramin Bank, after departmental enquiry for misconduct. He sought release of his provident fund amount, gratuity amount and leave encashment. While the Bank admitted that Petitioner is entitled to get provident fund subject to submission of form before the appropriate office, it refused to release gratuity and leave encashment by citing the Regulation 72 of Chhattisgarh Rajya Gramin Bank (Officers and Employees) Service Regulation, 2013 (“**2013 Regulation**”) which states that if an employees’ service is terminated by way of punishment, he is not entitled to get gratuity.

The High Court by agreeing to the Petitioner contention that that there shall be no forfeiture of gratuity on dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank, and in this case, there was no financial loss, held that that the forfeiture/denial of petitioner's gratuity under 2013 Regulation would not be permissible in law.

It then noted that Gratuity Act provides complete mechanism which relates to gratuity. Even the 2013 Regulation prescribes that eligibility of an employee for payment of gratuity is governed as per the

provisions of Gratuity Act.

*"It is apparent that forfeiture of gratuity is not automatic on dismissal from service and it is subject to Section 5(6) of the Act of 1972. From the return and document annexed with the return it is quite vivid that before taking decision not to release gratuity show cause notice has also not been issued to the petitioner which is also violation of Section 4(6)(a) of Payment of Gratuity Act."*

## **Industry Insights and Trends**

### **1. Rise in sexual harassment complaints as work from office resumes**

As per an article published by the [Economic Times](#), it has been revealed that there is a 20% increase in the number of sexual harassment complaints received by the Nifty50 companies who have resumed work from office, therefore mandating a physical presence in FY2022 as compared to the previous fiscal year. However, the number of reported cases continues to be lower compared with the pre-pandemic times.

The increase in the number of harassment complaints is attributed to increase in physical presence in offices, while other relate the rise in complaints to the convenience of reporting cases in a physical workplace as opposed to a virtual workplace setting.

It is essential that employers who have resumed or are beginning to resume, ensure that:

- employees have received, read, and have a sound understanding of sexual harassment and related policies;
- conduct regular refresher training for employees in relation to anti-discrimination and sexual harassment; and
- the workplace is regularly monitored to safeguard employee compliance with policies.

## **Disclaimer**

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