



EMPLOYMENT AND LABOUR NEWSLETTER

I. NOTIFICATIONS

1. Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 notified in the official gazette: Government of Rajasthan

On 14 September 2023, Rajasthan Platform Based Gig Workers (Registration and Welfare) Act, 2023 ("**Rajasthan Gig Workers Act**") was notified in the official gazette, making Rajasthan the first Indian state to enact legislation aimed at regulating platform-based gig workers.

The Rajasthan Gig Workers Act applies to aggregators and primary employers engaging gig workers, offering social security and benefits to this workforce, and also mandates registration of gig workers, aggregators, and employers, with a unique ID for workers. Furthermore, it establishes the Rajasthan Platform Based Gig Workers Welfare Board to oversee registration, welfare cess collection, and social security schemes for gig workers. It enforces penalties for violations and sets a precedent for recognizing gig workers' rights and benefits, inspiring other states, such as Karnataka to issue government order that provides social security as life cover and accidental insurance for the gig workers in the state.

2. Factories in Punjab exempted from certain provisions of the Factories Act, 1948 ("Factories Act") relating to working hours: Government of Punjab

Vide a notification dated 20 September 2023, the Punjab Government has exempted factories in Punjab from certain provisions with regards to working hours of adults including Section 51, 52, 54, and 56 of the Factories Act, subject to the following conditions:

- The total number of work hours in any day shall not exceed 12 hours, and the total number of work hours in a week (including overtime) shall not exceed 60;
- The spread-over, which is inclusive of intervals for rest, must not exceed 13 hours in any given day;
- No worker shall be allowed to work overtime for more than 7 consecutive days, and the total overtime hours within a quarter shall not exceed 115 hours;
- Proper maintenance of a logbook to record overtime hours worked is required to be maintained; and
- Overtime wages must be disbursed in compliance with applicable labor laws.
- Any lapse in any of the abovementioned conditions or the applicable labour laws and rules will result in taking away the overtime facility from such defaulters.

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II. CASE LAWS

1. Long-term contractual employment does not create a vested legal right for regularization: Supreme Court of India

Case: Ganesh Digamber Jambhrunkar & ORS v. The State of Maharashtra & ORS, Petition(s) for Special Leave to Appeal (C) No. 2543/2023

The Supreme Court has held that merely by working for a long period of time on a contractual basis, no vested legal right to be absorbed as regular employees.

The ruling renews the controversy on the ethics of keeping labourers on contractual basis for long periods, thus denying them various employment benefits.

2. Nothing in the Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”) confers jurisdiction on the Local Complaints Committee (“LCC”) to adjudicate upon the legality of the constitution or pass directions against the Internal Complaints Committee (“ICC”): Calcutta High Court

Case: Sukalyan Haldar v. State of West Bengal and Ors., W.P.A. NO. 18829 of 2023

The Calcutta High Court granted interim relief to the Petitioner by directing his reinstatement as he was terminated on the basis of a complaint of sexual harassment made against him by a female colleague for allegedly referring to her as "*faltu meye*" and by holding that the comment "*faltu meye*" can be used in various contexts. Also, the High Court held that the POSH Act does not confer any jurisdiction on the LCC to adjudicate upon the propriety and the legality of the constitution of the ICC and / or pass directions on the institution to take steps regarding the constitution of the ICC.

The sexual harassment complaint was filed against the Petitioner for allegedly making a remark, "*faltu meye*" with the ICC of St. Stephens School, Dum Dum ("**institution**"). However, the LCC assumed jurisdiction on the pretext that the ICC was not properly constituted. The LCC held the Petitioner guilty of sexual harassment wherein the remark was construed to be a lewd remark and passed an order of termination of the Petitioner from the services of the institution. The LCC additionally issued directions to the ICC of the institution for improper constitution of the ICC.

On the merits, the Court observed that the LCC did not discuss the context of the alleged remark "*faltu meye*" at all and observed that "*the expression “faltu meye” can be used in various contexts. The backdrop of the usage would lend color and texture to the comment, thus making it necessary for the adjudicatory authority to explore the antecedents and backdrop of such usage.*"

Furthermore, with regard to the question pertaining to the LCC's directions to the Respondent regarding the alleged improper formation of the ICC, the Court held that such directions were passed patently without jurisdiction. The POSH Act prescribes penalty for non-compliance with the provisions of the said Act wherein Section 26(1)(a) contemplates the employer's failure to constitute an ICC which attracts punishment with a fine which may extend to Rs. 50,000 (fifty thousand rupees).

The High Court further iterated that "*nothing in the Act confers jurisdiction on the LCC to adjudicate upon the propriety and legality of the constitution of the IC and/or pass directions on the institutions to take steps regarding the constitution of the ICC. At best, the LCC or any concerned person or employee of the institution may approach the appropriate authorities for imposition of penalty under Section 26 to enforce the mandate of the statute.*"

3. Employees of private establishments will be entitled to five festival holidays a year by choosing to avail them only with respect to festivals that fall on weekdays and not those falling on weekly holidays such as Sundays: Madras High Court

Case: Maiva Pharma Employees Union vs Joint Director And Others, Writ Petition No. 2247 Of 2023

The Madras High Court held that employees of private establishments will be entitled to 5 festival holidays a year by choosing to avail them only with respect to festivals which fall on weekdays and not those falling on weekly holidays such as Sundays, by observing that the employees could not be robbed of their right to enjoy all the 5 festival holidays just because the employer conveniently chooses to offer such holidays for festivals that fall on a Sunday.

In this case, the Petitioners filed a writ petition against the announcement of 5 festival holidays out of which 3 holidays coincided with Sundays. The Court observed that it made no sense to declare a Sunday as a festival holiday for an industrial establishment in which it was already a weekly holiday and the term ‘holiday’ by itself clearly signified that it could be declared only on a working day.

“A weekly holiday cannot once again be declared as a holiday under any name, be it a festival holiday or special holiday. Exception to the same can be drawn only in respect of four national holidays,” the Court observed, and insisted that consultations be held between the employer and the employees before finalizing the festival holidays as the Tamil Nadu Industrial Establishments (National, festival and special holidays) Act, 1958 rightly envisages a consultation with the employees before finalizing the holidays for a particular year. Such a consultation had not taken place in the case of the writ petitioner union.

III. Akasa Air battle – Pilots’ depart without serving notice period

The Bombay High Court in the case of *SNV Aviation Private Limited vs Captain Gareema Kumar & Ors, W.P.(C) 12193/2023 & CM APPL. 47884/2023* recently held that SNV Aviation Private Limited known by its brand name Akasa Air (“**company / Akasa Air**”) can proceed with its suit in Mumbai filed against 5 pilots who had exited the company without serving the contractual 6-month notice period. The Court observed that a part of the cause of action (“**COA**”) arose within the jurisdiction of the Bombay High Court since the resignations were conditionally accepted by Akasa Air in Mumbai.

The suit was filed by Akasa Air against 6 (six) pilots who had resigned from the company without serving the 6-month notice period as stipulated in their respective employment agreements. Akasa Air has presently sought a compensation of Rs. 21 crores as damages to the company’s reputation as well as Rs. 18 lakhs for breach of contract. Further, an interim prayer to direct the pilots to serve their 6-month notice period has been prayed for.

The Counsel on behalf of the pilots had denied the jurisdiction of the Bombay High Court stating that the place from where the resignation is transmitted ought to be the place where the alleged breach in the contract occurred.

The resignation clause of the employment agreements stipulated that when the pilot resigns, the pilot has to continue his service till notice period of 6 (six) months is completed. However, the company has the right to waive off the notice period entirely or partly and to require the pilot to make payment in lieu of notice period waiver. Further, if pilot fails to serve the entire notice period, the company can recover payment for remainder of the notice period.

The Bombay High Court, while dealing with the jurisdictional issue, observed that the resignation isn’t complete once the pilot sends the resignation letter as the company has to take a call on the resignation i.e. to either refuse or accept or conditionally accept or accept on a future date, and thus held that part of the COA arose where the company exercised its discretion to conditionally accept the resignations, i.e., Mumbai and therefore allowed Akasa Air to proceed in Mumbai against the said pilots.

The present dispute has been listed for consideration of interim reliefs on 18 October 2023.

Directorate General of Civil Aviation’s (“DGCA”) role in the Akasa Air dispute:

Parallely, in the case of *SNV Aviation Private Limited & Anr v Directorate General of Civil Aviation & Anr, W.P.(C) 12193/2023 & CM APPL. 47884/2023* (same dispute between Akasa Air and its pilots), the Delhi High Court has also ruled in favour of Akasa Air by granting DGCA the authority to take action against the pilots in the event of a contract breach. It was further observed that in case of non-adherence of the contract, the Civil Aviation Rules, 2017 (“**CA Rules**”) become operative and therefore

the DGCA can act according to the said CA Rules to the extent of breach of the contract.

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