



EMPLOYMENT AND LABOUR NEWSLETTER

I. CASE LAWS

1. ESI Act Applicable to BCCI as its activities are commercial in nature: Bombay High Court

Case: The BCCI v. Regional Director Employees State Insurance Corporation and Anr. 2022 SCC OnLine Bom 1368

The Bombay High Court has held that the nature of activities of the Board of Control for Cricket in India (BCCI) are commercial. It upheld the finding of the Employee Insurance Court that the Board was covered under the notification dated 18 September 1978 issued under section 1(5) of the Employee State Insurance Act, 1948 (ESI Act, 1948) by the Maharashtra Government and it falls within the meaning of “shop” as defined under the Mumbai Shops and Establishment Act, which makes BCCI liable for contributing for its employees under the ESI Act, 1948.

The Bombay High Court relied on the ESI Corporation Vs Hyderabad Race Club, 2004 (6) SCC 191, wherein the Supreme Court observed *“the ESI Act being a Social Welfare Legislation intended to benefit as far as possible workers belonging to all categories, one has to be liberal in interpreting the words in such a welfare legislation. The definition of a shop which meant a house or building where goods are sold or purchased has now undergone a great change. The word ‘shop’ occurring in the notification is used in the larger sense than its ordinary meaning. What is now required is a systematic economic or commercial activity and that is sufficient to bring that place within the sphere of a ‘shop’.”*

The Court observed that BCCI is carrying out a business, commercial activity and earning money out of it, which is not only restricted to providing entertainment, but also TV broadcasting rights to TV companies by auction, which is a commercial activity.

2. Writ Plea Alleging Violation of Rights Under Industrial Settlement Maintainable U/Art 226 - Only If Traceable to Common Law: Kerala High Court

Case: Bharat Petroleum Corporation v. Saju A.R. and Others 2022 SCC OnLine Ker 3380

The Kerala High Court held that a writ petition where an employee is seeking the enforcement of

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rights under an industrial settlement, is not maintainable before a High Court if the rights in question can only be traced to the settlement and not to any common or civil law.

The Kerala High Court observed that *"If that right is one that accrues to the employee under the civil law or common law, then it might be open to the High Court to entertain the writ...however, the right alleged to be infringed is one that is created by the labour statute concerned, and the said statute also provides for a forum for its enforcement, then the rule of exclusivity mandates that the employee should be relegated to the forum prescribed by the legislature in its wisdom."*

The Court relied on a judgement Premier Automobiles Ltd v. Kamlekar Shantaram Wadke of Bombay & Ors. (1976) 1 SCC 496, wherein the Apex Court had held that in the context of a right created under an Industrial settlement, the right in favor of the members of the Union arose only under Section 18 of the Industrial Dispute Act and not the general Contracts Law.

3. Order of termination will be the original date and not the date of confirmation of validity

Case: Head-Human Resources, Indusind Bank Limited and Ors. v. The Appellate Authority under Shops and Establishment Act W.A. No. 1468 of 2022

The Court by relying on the decision of the Supreme Court in P.H. Kalyani v. Air France, Calcutta, AIR 1963 SCC 1756 on the adjudication of the validity of a dismissal order by the authority held that, *"if the authority comes to the conclusion about the validity of the order, the dismissal would relate back to the date of the original order, even in a case where inquiry is conducted by the authority for the first time or after holding the inquiry to be unfair."*

II. NOTIFICATIONS / CIRCULARS

Perquisites provided by employer to employee as per contractual agreement will NOT be subjected to GST.

Central Board of Indirect Taxes and Customs via Circular No. 172-04-2022 dated 6 July 2022 has clarified that the perquisites provided by the employer to its employees in terms of contractual agreement entered between the employer and the employee and the services provided by the employees to their employer are not subject to GST.

Schedule III of the Central Goods and Services Tax Act, 2017 (CGST Act) covers those items which can be neither treated as the supply of goods nor be treated as the rendering of services. and are effectively classified or notified to be exempt from the applicability of GST.

The "services by employee to the employer in the course of or in relation to his employment" is a part of Schedule III and hence, GST is not applicable to the same.

Additionally, any perquisites provided by the employer to its employees in terms of contractual agreement are in lieu of the services provided by employee to the employer in relation to his employment.

Therefore, in relation to the above, the perquisites provided by the employer to the employee in terms of contractual agreement entered between the employer and the employee, will not be

subjected to GST when the same are provided in terms of the contract between the employer and employee.

III. NITI AAYOG - GIG & PLATFORM ECONOMY

Niti Aayog, a public policy think-tank of the Government of India that provides policy inputs for the economic development of India, released a report titled “India’s Booming Gig and Platform Economy” a first-of-its kind study offering in-depth analyses and recommendations on India's gig-platform economy, that employed millions of gig platform workers, by estimating their characteristics such as location, age group, education etc.

KEY FINDINGS

- 2020-2021 - 77 Lakh (7.7 million) workers were engaged in the gig economy.
- Gig workforce - expected to expand to 2.35 Crore (23.5 million) workers by 2029-30.
- Presently - 47% of the gig work is in medium skilled jobs, 22% in high skilled and 31% in low skilled.
- Trend - workers in medium skilled is declining and low skilled and high skilled is increasing.

RECOMMENDATIONS FOR STAKEHOLDERS

- Platform India initiatives such as the Startup India initiative be introduced.
- Access to finance for platform workers by means of venture capital funding, loans from banks, funding agencies, FinTech and Platform businesses, unsecured loans.
- Platforms may collaborate with Ministry of Skill Development & Entrepreneurship for upskilling of workers.
- Companies carry out gender sensitization and accessibility awareness programmes for workers and their families, particularly to promote the rights of women and persons with disabilities.
- Extending social security measures to the workers such as paid sick leave, insurance, retirement plans and other benefits.

The report can be accessed here: https://www.niti.gov.in/sites/default/files/2022-06/25th_June_Final_Report_27062022.pdf

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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

