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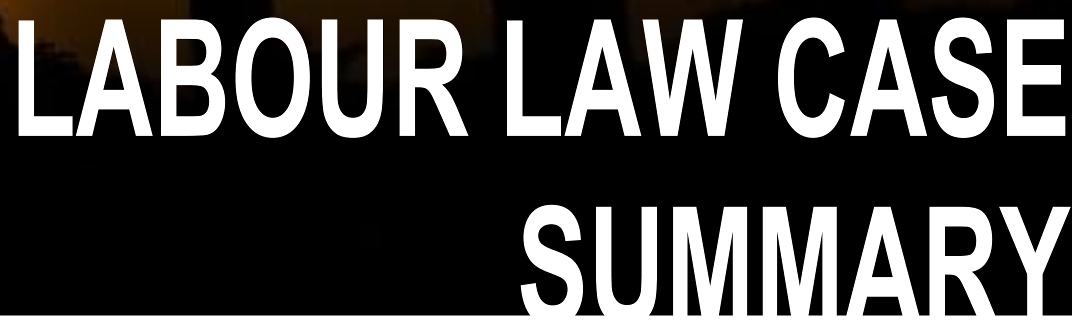

LABOUR LAW CASE SUMMARY

HALF-YEARLY UPDATE – PART 2

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SOLICITORS AND ADVOCATES

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In the first part of this three-part series (available here), we had provided a brief overview of the recent judicial decisions rendered in the period, April, 2020 to September, 2020, by the Supreme Court and various High Courts of India on the following legislations:

(a) Employee's Compensation Act, 1923;
(b) Employees' State Insurance Act, 1948;
(c) Employees' Provident Funds and Miscellaneous Provisions Act, 1952; and
(d) Payment of Gratuity Act, 1972.

For the purposes of the instant part, we seek to summarise the judicial decisions rendered under the following legislations:

(a) The Industrial Disputes Act, 1947;
(b) Minimum Wages Act, 1948;
(c) Contract Labour (Regulation and Abolition) Act, 1970; and
(d) Trade Unions Act, 1926.

A. Case Laws under Industrial Disputes Act, 1947 ("ID Act")

1. Can a 'co-ordinator' be considered as a 'supervisor' under Section 2(s) of the ID Act and what rule is required to be applied to determine whether an employee is a 'workman' under Section 2(s) of the ID Act?

In the matter of *Tata Refractories Limited., Jamshedpur* v. *Presiding Officer, Labour Court, Jamshedpur*, [W.P.(L) No. 2341 of 2001 decided on May 19, 2020], the Jharkhand High Court, while relying on the Supreme Court's decision in the matter of *National Engineering Industries Limited* v. *Shri Kishan Bhageria*, [1988 Supp (1) SSC 82], held that, where the various works of the workman identified as 'co-ordinator' were only performed on the orders of the employer, and who had no independent authority to take any decision which would have bound the employer in any way, such person would not qualify as a 'supervisor' and is to be excluded from the definition of a 'workman'.

Further, in the matter of the *Management, Sree Annapoorna Sree Gowrishankar Hotel Private Limited* v. *The Presiding Officer, Labour Court, Coimbatore*, [W.P. No. 7733 of 2018 and W.M.P. No. 9091 of 2018 decided on July 28, 2020], the Madras High Court while relying upon the Supreme Court's decision in the matter of *S.K. Maini* v. *Carona Sahu Company Limited*, [(1994) 3 SCC 510], held that, in order to determine whether an employee is a 'workman' or not under Section 2(s) (*Workman*) of the ID Act, the principal nature of work performed by the employee concerned needs to be ascertained.

2. Can the labour court or tribunal reject a reference of a dispute when there has been a delay in raising the dispute by the workman?

In the matter of *Lakhamshi Govindji Haria School* v. *Kirit Bhupatbhai Bhatt*, [R/Special Civil Application No. 4848 of 2017 decided on May 29, 2020], the Gujarat High Court while relying upon the Supreme Court's judgments in the matter of *Bharat Sanchar Nigam Limited* v. *Bhurumal*, [(2014 (7) SCC 177], *Prabhakar* v. *Joint Director, Sericulture Department*, [2015 (15) SCC 1] and *Deputy Executive Engineer* v. *Kuberbhai Kanjibhai*, [2019 (4) SCC 307], held that, reference of a dispute cannot be rejected only on the grounds of delay by the labour court or tribunal and other aspects, such as, whether the dispute still exists or not, also needs to be considered by the labour court.

The aforesaid principle was also upheld by the Himachal Pradesh High Court, in the case of *Beli Ram* v. *Executive Engineer, Irrigation and Public Health*, [C.W.P. No. 3447 of 2020 decided on September 22, 2020].

3. Whether the labour court or tribunal, when adjudicating a matter, can go beyond the scope of its reference under the ID Act?

In the matter of *Solan District Co-operative (Marketing & Consumer) Federation Limited* v. *Ram Lal*, [C.W.P. No. 1107 of 2019 decided on July 31, 2020] and the *General Manager* v. *Tej Singh,* [C.W.P. No. 658 of 2017 decided on September 17, 2020], the Himachal Pradesh High Court, while relying upon the Supreme Court's decision in the matter of *Oshiar Prasad* v. *Employers in Relation to Management of Sudamdih Coal Washery of M/s. Bharat Coking Coal Limited, Dhanbad,* [(2015) 4 SCC 71], held that, the labour court or the tribunal while answering the reference, has to confine its inquiry to the question referred to and cannot travel beyond the terms of reference.

4. **In the event of illegal termination from service, is it mandatory that a daily-rated employee needs to be reinstated instead of a lump sum compensation, and in the event a daily-rated employee is reinstated, whether such reinstatement shall be with or without payment of back wages?**

In the matter of *Dilip Kumar Sharma* v. *Assistant General Manager, UCO Bank*, [W.P. No. 2805/2016 decided on May 8, 2020], a Single Bench of the Madhya Pradesh High Court, while relying upon the decision of its Division Bench in the matter of *Project Officer I.C.D.S., Narsinghpur* v. *Mohanlal Kumhar (Prajapati)*, [W.A. No. 11/2017], held that, there cannot be a straightjacket formula which prescribes that a daily-rated employee needs to be only reinstated along-with back wages or without back wages instead of a lump sum compensation and the same, needs to be decided on a case to case basis.

The Court, in the instant case, upheld the order of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur that payment of compensation in lieu of reinstatement was just and proper to the petitioner who was only a daily-rated employee.

Further, in the matter of *Tata Refractories Limited, Jamshedpur* v. *Presiding Officer, Labour Court, Jamshedpur*, [W.P.(L) No. 2341 of 2001 decided on May 19, 2020], the Jharkhand High Court, while relying on the guidelines issued by the Supreme Court in the case of *Rajasthan State Road Transport Corporation, Jaipur* v. *Phool Chand (Dead) Through LRs.*, [Civil Appeal No. 1756 of 2019, decided on September 20, 2018] and *Deepali Gundu Surwase* v. *Kranti Junior Adhyapak Mahavidyalaya,* [(2013) 10 SCC 324], held that, where no plea was made by the workman before the court claiming reinstatement with back wages, the workman shall only be reinstated with continuity of service.

Furthermore, in the matter of *Lakhamshi Govindji Haria School* v. *Kirit Bhupatbhai Bhatt*, [R/Special Civil Application No. 4848 of 2017 decided on May 29, 2020], the Gujarat High Court held that, considering there was a delay in raising a dispute by the workman, an award of a lumpsum compensation was justified, instead of granting reinstatement with continuity of service and back wages.

5. **Whether the management is entitled to adduce evidence in support of the order of dismissal before the labour tribunal?**

In the matter of *P. N. Surendran Nair* v. *the Chairman/ Managing Director, Bharat Petroleum Corporation Limited*, [W.A. No. 756 of 2020 decided on August 12, 2020], the Kerala High Court, while relying on the Supreme Court's decision in the matter of *Bharat Forge Company Limited* v. *A.B. Zodge*, [(1996) 4 SCC 374] and *John D'souza* v. *Karnataka State Road Transport Corporation,* [(2019) IV LLJ 513 SC], held that, the management is entitled to adduce evidence in support of the order of dismissal before the labour tribunal.

6. **In the event of a conflict between the National Coal Wage Agreement ("NCWA") and a settlement arrived under Section 12(3) of the ID Act, will the provisions of the ID Act, prevail?**

In the matter of *Ramdeni Rajamouli* v. *the Singareni Collieries Company Limited*, [W.P. No. 42417 of 2018 decided on May 19, 2020], the Telangana High Court, held that, in the event of a conflict between the NCWA and a settlement arrived under Section 12(3) (*Duties of conciliation officers*) of the ID Act on the issue of providing alternate employment to an employee, the memorandum of settlement shall prevail.

7. **Whether a civil court can adjudicate questions pertaining to a settlement arrived under Section 12(3) of the ID Act?**

In the matter of *Royal Enfield Employees Union* v. *the Government of Tamil Nadu*, [W.A. No.

504 of 2020 decided on July 13, 2020], the Madras High Court while relying on the Supreme Court's Full Bench decision in the matter of *Rajasthan State Road Transport Corporation* v. *Krishna Kant*, [(1995) 5 SCC 75], held that, civil court's jurisdiction was excluded to adjudicate on questions pertaining to a settlement arrived under Section 12(3) (*Duties of conciliation officers*) of the ID Act.

8. Can a settlement arrived at under Section 12(3) of the ID Act be in contravention of the provisions of Chapters VA and VB of the ID Act?

In the matter of *Tisco Sukinda Chromite Mines Contractor Workers Union* v. *Union of India*, [W.P.(C) No. 15872 of 2020 decided on July 14, 2020], the Orissa High Court, while relying on the Supreme Court's judgment in the matter of *Oswal Agro Furane Limited* v. *Oswal Agro Furnace Workers Union*, [AIR 2005 SC 1555], held that, a settlement, even though it is binding on all workmen as per Section 18(3) (*Persons on whom settlements and awards are binding*) of the ID Act, cannot be entered into in contravention of the provisions of Chapters VA (*Lay-off and retrenchment*) and VB (*Special provisions relating to lay-off, retrenchment and closure in certain establishments*) of the ID Act.

9. In the event a workman is alleged to have abandoned the service, can compliance under Section 25F of the ID Act be dispensed with?

In the matter of the *Tamil Nadu Industrial Co-operative Bank* v. *R. Alex Sues*, [W.A. No. 216 of 2020 decided on August 4, 2020], the Madras High Court, held that, even when a workman is alleged to have abandoned the service, compliance under Section 25F (*Conditions precedent to retrenchment of workmen*) of the ID Act cannot be dispensed with.

10. Is it mandatory for the industrial tribunal or the labour court to determine violations of Section 25G of the ID Act and Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 ("ID Rules"), in order to determine whether Section 25H of the ID Act have been violated?

In the matter of the *Manager, State Bank of Bikaner and Jaipur* v. *the Presiding Officer, Central Government Industrial Tribunal*, [Writ (C) No. 4682 of 2011, decided on May 12, 2020], the Allahabad High Court while adjudicating upon the aforementioned matters, held that, pre-determination of compliance by the employer with the provisions of Section 25G (*Procedure for retrenchment*) of the ID Act and Rules 77 (*Maintenance of seniority list of workmen*) and 78 (*Re-employment of retrenched workmen*) of the ID Rules were imperative before a finding with regard to the violations under Section 25H (*Re-employment of retrenched workmen*) of the ID Act, could be arrived at by the industrial tribunal or the labour court.

11. Is it mandatory to conduct a departmental enquiry prior to terminating the services of a workman on the ground of '*loss of confidence*'?

In the matter of *Tata Refractories Limited, Jamshedpur* v. *Presiding Officer, Labour Court, Jamshedpur*, [W.P.(L) No. 2341 of 2001 decided on May 19, 2020], the Jharkhand High Court while relying on the Supreme Court's decision in the matter of *Chandu Lal* v. *the Management of M/s. Pan American World Airways Inc.*, [(1985) 2 SCC 727], held that, "*loss of confidence of an employer over the employee attaches a stigma to the career of the employee and if such loss of confidence leads to termination of the services of an employee it should unerringly be preceded by a domestic enquiry in which the delinquent employee also participates*".

12. Is it mandatory to entertain a review application preferred against the appropriate government's decision of closure of an undertaking in terms of Section 25-O of the ID Act?

In the matter of *Tisco Sukinda Chromite Mines Contractor Workers Union* v. *Union of India*,

[W.P.(C) No. 15872 of 2020 decided on July 14, 2020], the Orissa High Court while relying on the Supreme Court's judgment in the matter of *Orissa Textile and Steel Limited* v. *State of Orissa*, [AIR 2002 SC 708], held that, the word '*may*' used in Section 25-O(5) (*Procedure for closing down an undertaking*) of the ID Act would necessarily mean and be interpreted as '*shall*' and that, in the event, an application seeking review of the order passed by the appropriate government is filed, the appropriate government would be mandatorily required to review such an order.

13. Does terminating the services of workmen by labelling them as 'trainees' after initially engaging them for a fixed period, amount to unfair labour practice?

In the matter of the *Management of M/s. Recipharm Pharma Services Private Limited* v. *G. Vasanthkumar*, [W.P. No. 1481/2020 (L-TER) decided on May 8, 2020], the Karnataka High Court held that, terminating services of workmen by labelling them as trainees and depriving them of their rightful privileges and benefits would amount to unfair labour practice.

The Court also noted that designation of an employee is not of importance and it is the real nature of the duties being performed by the employee which would decide as to whether an employee is a workman under the ID Act.

14. Whether a statutory right can be enforced directly under Section 33(C)(2) of the ID Act without any adjudication?

In the matter of *Madhya Pradesh Audyogik Vikas Nigam, Indore* v. *Shyamlal s/o Shri Babulal*, [Misc. Petition No. 2694/2019 decided on July 31, 2020], the Madhya Pradesh High Court held that, for a statutory right to be enforced under Section 33(C)(2) (*Recovery of money due from an employer*) of the ID Act, there needs to be a proper adjudication.

The aforesaid principle was also upheld by the Punjab and Haryana High Court, in the case of *Seema* v. *Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak*, [C.W.P. No. 11042 of 2019 (O&M) decided on August 4, 2020].

15. What is the nature of enquiry under Section 33(2)(b) of the ID Act?

In the matter of *P. N. Surendran Nair* v. *the Chairman/ Managing Director, Bharat Petroleum Corporation Limited*, [W.A. No. 756 of 2020 decided on August 12, 2020], the Kerala High Court, while relying on the Supreme Court's decision in the matter of *Bharat Iron Works* v. *Bhagubhai Balubhai Patel*, [(1976) 1 SCC 518], held that, the nature of enquiry under Section 33(2)(b) (*Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings*) of the ID Act is a two-fold approach.

The court explained that in a case, where there is no defect in procedure in the course of a domestic enquiry into the charges for misconduct against an employee, the tribunal can interfere with an order of dismissal on one or other of the following conditions:

(a) if there is no legal evidence recorded in the domestic enquiry against the concerned employee with reference to the charge or if no reasonable person can arrive at a conclusion of guilt on the charge levelled against such employee on the evidence recorded against him in the domestic enquiry. The court stated that, this is what is known as a perverse finding; or
(b) even if there is some legal evidence in the domestic enquiry but there is no *prima facie* case of guilt made out against the concerned employee charged for the offence even on the basis that the evidence so recorded is reliable. In such a scenario, the case may overlap to some extent with the second part of the condition (a) above. The court stated that, a *prima facie* case is not, as in a criminal case, a case proved to the hilt; and, in the same case i.e., where there is no failure of the principles of natural justice in the course

of domestic enquiry, if the tribunal finds that dismissal of an employee is by way of victimisation or unfair labour practice, the tribunal will then have complete jurisdiction to interfere with the order of dismissal passed in the domestic enquiry. In such an event, the fact that there is no violation of the principles of natural justice in the course of the domestic enquiry will absolutely lose its importance or efficiency.

16. What steps are required to be taken by an employee to claim back wages and to deny the same by an employer before the adjudicating authority or the court?

In the matter of *Solan District Co-operative (Marketing & Consumer) Federation Limited* v. *Ram Lal*, [C.W.P. No. 1107 and 2754 of 2019 decided on July 31, 2020], the Himachal Pradesh High Court, while relying on the Supreme Court's decision in the matter of *Jayantibhai Raojibhai Patel* v. *Municipal Council, Narkhed,* [Civil Appeal No. 6188 of 2019, decided on August 21, 2019], held that, in order to claim back wages, an employee or workman whose services have been terminated, needs to prove that, he was not gainfully employed or was employed on lesser wages and in the event the employer wants to avoid payment of back wages, the employer needs to prove by presenting cogent evidence that, the employee or workman was gainfully employed and was getting wages equal to the wages he/ she was drawing prior to his/ her termination of service.

17. Whether a writ petition is maintainable wherein alternative remedy under the ID Act is available?

In the matter of *PTI Employees Union* v. *Press Trust of India Limited*, [W.P.(C) 10596/2018 decided on September 18, 2020], the Delhi High Court held that, a writ petition is maintainable even when an alternative remedy under the ID Act is available, only if, there exits, '*exceptional circumstances*' for entertaining the same.

The Court further held that there were no '*exceptional circumstances*' made out in the instant matter and that the retrenched employees are bound by the statutory remedy available to them under the ID Act.

B. Case Laws under the Minimum Wages Act, 1948 ("MW Act")

1. Can there be different rates of minimum wages for different localities in the same State?

In the matter of *Private Hospital and Nursing Homes Association* v. *the Secretary, Labour Department, Government of Karnataka*, [W.A. No. 1611/2019, decided on April 13, 2020], the Karnataka High Court, while relying on the Supreme Court's decision in the matter of *Bhikusa Yamasa Kshatriya* v. *Sangamner Akola Taluka Bidi Kamgar Union*, [AIR 1963 SC 806], held that, different rates of minimum wages can be fixed for different localities in the same State, since, the same depends on the prevailing economic conditions and the cost of living of that place.

2. Can recourse to power under Section 21 of the General Clauses Act, 1897 ("GC Act") be taken even when the provisions of the MW Act confer a similar power?

In the matter of *Private Hospital and Nursing Homes Association* v. *the Secretary, Labour Department, Government of Karnataka*, [W.A. No. 1611/2019, decided on April 13, 2020], the Karnataka High Court held that when the provisions of the MW Act confer a power similar to the power under Section 21 (*Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws*) of the GC Act, recourse to power under Section 21 of the GC Act could not be taken.

3. Whether the fixation of wages under the MW Act is a legislative function?

In the matter of *Private Hospital and Nursing Homes Association* v. *the Secretary, Labour Department, Government of Karnataka*, [W.A. No. 1611/2019, decided on April 13, 2020], the Karnataka High Court, while relying on its Co-ordinate Bench in the matter of *Mangalore Ganesh Beedi* v. *State of Karnataka*, [2003 SCC Online Kar. 40], held that the power of fixation of wages by the appropriate Government is neither a quasi-judicial function nor administrative function but a legislative function.

4. Whether the concerned Government can opt for Section 5(1)(a) of the MW Act for few industries and of Section 5(1)(b) of the MW Act for other industries?

In the matter of *Private Hospital and Nursing Homes Association* v. *the Secretary, Labour Department, Government of Karnataka*, [W.A. No. 1611/2019, decided on April 13, 2020], the Karnataka High Court held that since the statute itself confers a choice of options, the concerned Government can opt for Section 5(1)(a) (*Procedure for fixing and revising minimum wages*) of the MW Act for few industries and Section 5(1)(b) of the MW Act for other industries.

5. Can a court interfere in respect of a notification fixing the minimum wages?

In the matter of *Private Hospital and Nursing Homes Association* v. *the Secretary, Labour Department, Government of Karnataka*, [W.A. No. 1611/2019, decided on April 13, 2020], the Karnataka High Court, while relying on its Co-ordinate Bench in the matter of *Mangalore Ganesh Beedi* v. *State of Karnataka*, [2003 SCC Online Kar. 40], held that a court can interfere in respect of a notification fixing the minimum wages only where the fixation of such minimum wages by the appropriate Government is *ultra vires* the MW Act.

6. Whether the rates fixed under the MW Act are applicable to prisoners?

In the matter of *Kartick Paul* v. *the State of West Bengal,* [W.P. No. 1181(W) of 2020 decided on June 11, 2020], the Calcutta High Court held that, the rates fixed under the MW Act, cannot *per se* be applicable to prison services, since the MW Act being a general statute operating

in the field of fixation of minimum wages cannot override a specific law on the field of fixation of reasonable wages for prisoners.

7. Whether a claim for wages earned in relation to overtime is maintainable under the Payment of Wages Act, 1936 ("PW Act") or the MW Act?

In the matter of *Ziqitza Health Care Limited* v. *Rakesh Singh*, [WA 329/2020 decided on May 29, 2020], the Madhya Pradesh High Court while placing reliance on the Supreme Court's decision in the matter of *Steel Authority of India Limited.* v. *Jaggu,* [AIR 2019 SC 3601], held that, a claim for overtime can only be raised under Section 14 (*Overtime*) of the MW Act and is not maintainable under the PW Act.

C. Case Laws under the Contract Labour (Regulation and Abolition) Act, 1970

1. **Can a labour court or a writ court decide on a matter as to whether a contract labour can be abolished or not?**

   In the matter of *Their Workmen represented by Surendra Rai, Area Secretary, Rastriya Colliery Mazdoor Sangh* v. *Employer in relation to the management of Sudamdih Colliery of M/s. Bharat Coking Coal Limited*, [C. Rev. No. 85 of 2012 decided on April 7, 2020], the Jharkhand High Court, while relying on the Supreme Courts' decisions in the cases of *Mukand Limited* v. *Mukand Staff and Officers*, [(2004) 10 SCC 460] and *SAIL* v. *Union of India*, [(2006) 12 SCC 233], held that, neither the labour court nor the writ court has the jurisdiction to decide on a matter as to whether a contract labour can be abolished or not and only the appropriate government has the necessary jurisdiction to decide the same.

2. **Whether a workman who performs work other than the type of work specified in the contract license will be a direct employee of the principal employer?**

   In the matter of *Voith Paper Fabrics India Limited* v. *Presiding Officer, Industrial Tribunal-cum-Labour Court-II, Faridabad*, [C.W.P. No.13349 (O&M) of 2013 decided on August 7, 2020], a Single Bench of the Punjab and Haryana High Court, by relying on its Co-ordinate Bench decision in the matter of *M/s. JCB India Limited* v. *Omi Singh*, [Civil W.P. No. 20605 of 2015, decided on October 28, 2015], held that, wherein it has been established that a workman, if employed for performing a particular job, for which the contractor employed for providing labour, does not perform such work, then the contract labourer is deemed to be a direct employee of the principal employer. Further, considering the fact that, the contract was not genuine, the court held that, the workman would be considered a direct employee of the principal employer and stated that, the workman can be deemed to be originally employed by the principal employer and continued as such, till his services were terminated.

D. Case Laws under Trade Unions Act, 1926

1. Can the management of a company be compelled to negotiate with retired employees and/ or outsiders who have been appointed as office bearers of a trade union?

In the matter of *Gujarat State Transport Workers Federation* v. *Gujarat State Road Transport Corporation,* [R/Special C.A. No. 18289 of 2019, decided on June 30, 2020], the Gujarat High Court by relying on the Supreme Court's decision in the matter of *State Bank of India Staff Association* v. *State Bank of India*, [(1996) 4 SCC 378], held that, even though a trade union can appoint a retired employee and/ or outsider as its office bearer, the management of a company is not under an obligation to negotiate with such retired employee and/ or outsider.

This compilation has been prepared by Arka Majumdar (Partner), Avin Sarkar (Associate) and Juhi Roy (Associate).

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