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Monthly Newsletter
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INDIPRISE PROFESSIONAL PARTNERS LLP (A LABOUR LAW EDITION)

Here's what has happened in the last month!

LATEST FROM THE SUPREME COURT OF INDIA

- Restrictive covenant prescribing minimum employment term not unreasonable.
- Employee has no Fundamental Right regarding age at which he would retire.

LATEST FROM THE HIGH COURTS

- Once employee testifies under oath, burden of proof shifts to employer to disprove claims: Delhi High Court.
- Denying a woman Child Care Leave offends her Fundamental Right to Life & Motherhood: Chhattisgarh High Court.

LATEST FROM THE CENTRAL GOVERNMENT

- Circular on declaration of rate of interest for the employment EPF Members Account for the Year 2024- 25: EPFO.

LATEST FROM THE STATE GOVERNMENTS

- Revised Minimum Wages

commodum ex injuria sua nemo habere debet

A legal maxim derived from the principle of good faith which means that "no man ought to derive any benefit of his own wrong" It essentially means that no one should be allowed to profit or gain an advantage due to their own wrongful actions or mistakes. It's a core principle of fairness and justice, ensuring that those who cause harm or violate the law should not be rewarded for their actions

Restrictive covenant prescribing minimum employment term not unreasonable.

In 1999, the respondent had joined the appellant bank as a Probationary Assistant Manager. His service was confirmed in 2001. In 2006, the bank issued a recruitment notification for the appointment of 349 officers in different grades. The respondent applied for the post of Senior Manager-Cost Accountant and was selected for the said post. He was issued an appointment letter containing Clause 11(k) which reads as "You are required to serve the Bank for a minimum period of 3 years from the date of joining the bank and should execute an indemnity bond for rs. 2.00 lakhs. The said amount has to be paid by you in case you resign from the services of the bank before completion of stipulated minimum period of 3 years. For this purpose, you have to bring a blank nonjudicial stamp paper pf Rs. 100/- procured in the State of your posting." Accepting the condition, the respondent also executed an indemnity bond in terms of the clause. In 2009 i.e. before completion of three years from his date of joining, the respondent tendered resignation to join another Bank, namely, IDBI. His resignation was accepted, and the respondent, under protest, paid the sum of Rs 2 lakh to the appellant bank. The Respondent then filed a writ petition before the High Court praying for quashing of clause 9 (w) of the recruitment notification and clause 11 (k) of the appointment letter alleging the same were in violation of Articles 14 and 19(1) (g) of the Constitution and Sections 23 and 27 of the Indian Contract Act. This Petition was allowed and upheld by a Division Bench. Aggrieved thereby, the appellant approached the Apex Court. The Bench, at the outset, explained that Section 27 of the Contract Act provides that every agreement which restrains a person from exercising a lawful profession, trade or business of any kind is to that extent void. A sole exception is carved out in the proviso with regard to the sale of the goodwill of a business, in which case the seller may be restrained from carrying on similar business within a reasonable local limit. "In view of these authoritative pronouncements, it can be safely concluded that law is well settled that a restrictive covenant operating during the subsistence of an employment contract does not put a clog on the freedom of a contracting party to trade or employment", the Bench said. Referring to the clause in question, the Bench said, "A plain reading of clause 11 (k) shows restraint was imposed on the respondent to work for a minimum term i.e. three years and in default to pay liquidated damages of Rs. 2 Lakhs. The clause sought to impose a restriction on the respondent's option to resign and thereby perpetuated the employment contract for a specified term. The object of the restrictive covenant was in furtherance of the employment contract and not to restrain future employment. Hence, it cannot be said to be violative of Section 27 of the Contract Act." Expounding on the legal principles relating to interpretation of standard form employment contracts, the Bench explained, "The onus to prove that a restrictive covenant in an employment contract is not in restraint of lawful employment or is not opposed to public policy, is on the covenantee i.e. the employer and not on the employee." On the issue of imposition of liquidated damages to the tune of Rs 2 Lakh in the event of premature resignation, the Bench said, "The appellant-bank is a public sector undertaking and cannot resort to private or ad-hoc appointments through private contracts. An untimely resignation would require the Bank to undertake a prolix and expensive recruitment process involving open advertisement, fair competitive procedure lest the appointment falls foul of the constitutional mandate under Articles 14 & 16." Thus, allowing the appeal, the Bench held, "...we are of the view the restrictive covenant in clause 11(k) of the appointment letter does not amount to restraint of trade nor is it opposed to public policy." [Vijaya Bank & Anr. v. Prashant B Narnaware]

Click here to read Judgement.

No cap on number of children to claim Maternity Leave Benefit.

The Supreme Court held that there is no ceiling or cap on the number of children to claim maternity leave benefit under Maternity Benefit Act. The Court allowed an appeal filed by woman government employee from Tamil Nadu who sought maternity leave benefit for her first child from second marriage even though she had two children from previous marriage. The Bench observed, "The object of having two child norm as part of the measures to control population growth in the country and the object of providing maternity benefit to women employees including maternity leave in circumstances such as in the present case are not mutually exclusive. The two must be harmonized in a purposive and rationale manner to achieve the social objective." The Court held that Article 21 of the Constitution includes the right to reproductive autonomy, and that maternity leave is a facet of this right. The Court noted, "Life under Article 21 means life in its fullest sense; all that which makes life more meaningful, worth living like a human being... Right to life also includes the right to health." Referring to Fundamental Rule 101(a), the Court observed that maternity leave is available to government employees with "less than two surviving children." The Court held, "Two surviving children must mean children in lawful custody of the mother... A semantic construct of the expression 'having surviving children' must mean that the woman government employee seeking maternity benefit should have custody of the children." It held, "There is no ceiling or cap on the number of children to claim maternity benefit... Only thing is that in case of a woman employee having two or more than two surviving children seeking maternity leave, period of the benefit is reduced." Accordingly, the impugned order was set aside and the State was directed to grant maternity leave and release the benefits due within two months. [K. Umadevi v. Government of Tamil Nadu & Ors.]

Click here to read Judgement

Employee has no Fundamental Right regarding age at which he would retire.

The Supreme Court has observed that an employee has no fundamental right as regards to the age at which he would retire. The Apex Court has also reaffirmed that termination on account of reaching the age of superannuation does not amount to his removal from service within the meaning of Article 311(2) of the Constitution of India. The two appeals arose from a writ petition filed by the appellant for declaring the retirement order, seeking to retire the appellant at the age of 58, as null and void in view of the Office Memorandum (OM) issued in 2013. [Kashmiri Lal Sharma v. Himachal Pradesh State Electricity Board Ltd. & Anr.]

Click here to read Judgment

LATEST FROM THE HIGH COURTS

Pensionable service to be counted from date of reinstatement of employee irrespective of whether he worked or not: Jharkhand High Court.

The Court was considering an Appeal against the judgment whereby the Writ Petition filed by the Respondents was allowed and the Appellants were asked to fix the pension of the Respondent No.1. The Respondent No. 1 was appointed in Barora Area of M/s BCCL, however, he along with other workmen were retrenched with effect from December 19, 1983 which led to raising of an industrial dispute by the sponsoring Union. The Central Government Industrial Tribunal eventually directed the management of BCCL to reinstate the Respondent No. 1 and other workmen in service with effect from December 22, 1983 and pay them back wages. The award of reinstatement passed by the CGIT was upheld by the Supreme Court of India. The management of BCCL entered into a settlement with the concerned Union and accordingly M/s BCCL reinstated the Respondent No. 1 with effect from the date of award dated February 21, 1992. The service of Respondent No. 1 was confirmed with effect from February 01, 2015 on the post of General Mazdoor (Surface) Category-1 and as per the pension scheme, the Appellants deducted some amount from the monthly salary of the Respondent No.1 towards contribution of pension. The Respondent No. 1 retired from service on June 30, 2016 and he was paid Gratuity and Provident Fund amount, however Pension was not paid to him. The Respondent No. 1

filed Writ Petition with a prayer to release his pension from the date of retirement from service as well as for payment of arrear of pension with interest @ 10% per annum which was allowed. The Court, at the outset, rejected the contention of the Counsel for the Appellant and held that pensionable service will be counted from the date of reinstatement of the employee irrespective of the fact that he started working from that day onwards or not. So far as non-deposit of the contribution towards pension was concerned, the Court observed that it was due to the own fault of the Appellants, the Respondent No.1 could not complete ten years of pensionable service. "……the award was passed on 21.02.1992 directing the management to reinstate the respondent no. 1 and other retrenched workmen in service

w.e.f. 22.12.1983, however the management complied the said award only on 12.07.2014 by permitting the respondent no.1 to join the post of General Mazdoor (Surface) Category-I. Thus, due to the own fault of the appellants, the respondent no. 1 could not complete ten years of pensionable service. There is a well-known maxim “commodum ex injuria sua nemo habere debet” which means that no one should get benefit of its own wrongdoing," the Court observed. It stressed that since the Appellants themselves were at fault in not permitting the Respondent No. 1 to join within a reasonable period after passing of award, they cannot be allowed to take benefit of their own fault. The Appeal was accordingly dismissed. [M/s. Bharat Coking Coal Ltd. vs. Kailash Chandra Mukherjee]

Click here to read Judgment.

Once employee testifies under oath, burden of proof shifts to employer to disprove claims: Delhi High Court.

The Court was considering a Petition against an award whereby the Respondent was held to be in continuous employment of the Management and, resultantly, she was awarded compensation of ₹70,000/-. The Bench held, "....Burden of proof, in any enquiry or trial, keeps on shifting and the moment the averments made in the claim petition were deposed on oath by the respondent in her evidence, it was for the Management to have rebutted and disproved the same." Respondent had raised industrial dispute because she was aggrieved by the alleged illegal termination of her services. She averred that she was working as Safai Karamchari with the Management since May, 2007 and that her last-drawn monthly salary was ₹5,500/-. According to her, Management had not provided her with any facility, including various allowances like HRA, Transport Allowance, leaves etc. and despite persistent request made in this regard and despite assurance given by Management, needful was not done. She claimed therein that salary paid to her was less than the minimum wages prescribed by Delhi Government and when she raised objection in this regard with the Management, getting annoyed the Management, instead, terminated her services on April 24, 2015. The Management did not examine any witness and after perusal of the pleadings and the evidence, the Labour Court awarded a lump sum compensation of ₹70,000/- to her with direction to pay the same within one month from the date of publication of Award. It was also contended that initial onus was on the Respondent to prove that she was in continuous employment of 240 days, prior to the alleged date of her termination. Since she failed to discharge her such initial onus and there was nothing to indicate that she was working under the Management since May, 2007, the claim should have, rather, was dismissed. The Court, at the outset, noted that the Respondent has made clear and specific averments regarding her appointment in her Statement of Claim and reiterated her stand in her examination-in-chief. "....Her deposition is, virtually, uncontroverted and unchallenged. The sketchy crossexamination done by the Management goes on to indicate that the Management does not dispute the claim and averments made by her," the Court noted. It pointed out that while the Management insists that there was no privity of contract and that sanitation contract have been given to M/s ACME Enterprises, who left the services abruptly, no details of such contract have been placed on record. "According to the Management, even otherwise, respondent was not even employed by such outsourced agency and that her name did not figure in the list provided to them. However, again, Management faltered as no such list was produced or proved during the trial. Interestingly, the Management itself admitted that after M/s ACME Enterprises left the services, midway, it hired certain workers as daily-wagers. Once they claim so, it was imperative for them to have placed on record, the details of all such daily-wagers whom they allegedly employed. Nothing of that kind was done by them and, therefore, they cannot be heard saying that respondent failed to discharge her onus," the Court observed. The Petition was accordingly dismissed. [Deen Dayal Upadhyay Hospital vs. Sangeeta]

Click here to read Judgment.

Denying a woman Child Care Leave offends her Fundamental Right to Life & Motherhood: Chhattisgarh High Court.

In the instant case, an Assistant Administrative Officer (Petitioner) at IIM Raipur was denied Child Adoption Leave by the employer. The Petitioner had adopted a twoday-old infant girl and subsequently applied for 180 days of Child Adoption Leave. The IIM denied her request, citing the absence of such a provision in its HR policy. Instead, they granted her 60 days of commuted leave, the maximum allowed under the Institute's policy for female staff adopting a child less than one year old. The High Court held, “Female Officers/employees of the Indian Institute of Management are entitled for Child Adoption Leave as per Rule 43-B of the Central Civil Services (Leave) Rules 1972, as the HR Policy of IIM, Raipur, is silent on this aspect.” The Bench clarified that there is no distinction between the natural, biological, surrogate or commissioning/ adoption mother’s fundamental right to life and motherhood under Article 21 of the Constitution. The Single Bench held, ““Maternity/child adoption/child care leave cannot be compared or equated with any other leave as it is the inherent right of every women employee which cannot be simply denied on technical grounds. If a women is denied maternity leave, it offends her fundamental right to life guaranteed under Article 12 of the Constitution. Every child has a right to love and be loved and to grow up in an atmosphere of love and affection and of moral and material security and this is possible only if the child is brought up in a family. The most congenial environment would, of course, be that of the family of his biological parents.” The Bench further stated, “Motherhood never ends on the birth of the child and a commissioning/adoption mother cannot be refused paid maternity leave. A woman cannot be discriminated, as far as maternity benefits are concerned, only on the ground that she has obtained the baby through surrogacy/adoption. A newly born child cannot be left at the mercy of others as it needs rearing and that is the most crucial period during which the child requires care and attention of mother.” Accordingly, the High Court allowed the Appeal. [Lata Goyal v. The Union Of India & Anr.]

Click here to read Judgment

LATEST FROM THE CENTRAL GOVERNMENT

Circular on declaration of rate of interest for the employment EPF Members Account for the Year 2024-25: EPFO.

The Ministry of Labour and Employment, Government of India, has conveyed the approval of the Central Government under Para 60(1) of the Employees' Provident Fund Scheme, 1952 to credit interest @ 8.25% for the year 2024-25 to the account of each member of the EPF Scheme as per the provisions under Para 60 of EPF Scheme 1952.

Click here to read Circular.

LATEST FROM THE STATE GOVERNMENTS

REVISED MINIMUM WAGES

Some states have revised the rates of Minimum wages. Click on the link below for updated rates.

S. NO.	STATE	W.E.F.	CLICK HERE TO VIEW NOTIFICATION
1	Odisha (Schedule Employees)	01.04.2025	Government Notification
2	Manipur (Schedule Employees)	12.03.2025	Government Notification
3	Tripura (Schedule Employees)	01.04.2025	Government Notification
4	Dadar & Nagar Haveli and Daman & Due	01.04.2025	Government Notification

Extension notification on permitting all shops and establishments to keep open for 24x7 on all days of the year for further period of 3 years w.e.f 05th June 2025.

The Governor of Tamil Nadu has exempted all shops & establishments, employing 10 or more persons, from the provisions of sub-section (1) of section 7 and sub-section (1) of Section 13 of the Tamil Nadu Shops & Establishments Act, 1947 and permits to keep open for 24*7 on all days of the year, for a period of three years with effect from 05.06.2025, unless it is revoked subject to certain conditions.

Click here to read notification

Thank you for reading!