THE WORKFORCE CHRONICLES

INDIPRISE PROFESSIONAL PARTNERS LLP (A LABOUR LAW EDITION)

Here's what has happened in the last month and what's to come!

LATEST FROM THE SUPREME COURT OF INDIA

- Business of laundry including dry-cleaning covered by 'Manufacturing process' under Factories Act.

LATEST FROM THE HIGH COURTS

- Employee's service cannot be terminated during Maternity Leave: Punjab & Haryana HC.
- Comment regarding length and volume of hair not Sexual Harassment: Bombay High Court.

LATEST FROM THE CENTRAL GOVERNMENT

- Circular regarding allowing employer to view only the members present employment details in EPF: EPFO.

LATEST FROM THE STATE GOVERNMENTS .

- Revised Minimum Wages.
- Notification regarding increase in LWF contribution in Haryana

Word of the month

Badli worker

A badli worker is employed on a temporary basis to cover the absence of a permanent worker. They do not have the right to reinstatement after their temporary employment ends. They are typically paid for the number of days their services are used and do not have a right to daily employment.

LATEST FROM THE SUPREME COURT OF INDIA

Business of laundry including dry-cleaning covered by 'Manufacturing process' under Factories Act

Pursuant to the inspection conducted in the premises of the Respondent wherein the business of Professional Laundry Service was carried on, it was found that the Respondent did not possess factory approved plans as required under Rule 3 of the Goa Factories Rules, 1985 read with Section 6 of the Factories Act. It was further found that the premises were being used as a factory without obtaining a valid factory licence in violation of Rule 4 read with Section 6 and that the Respondent had not submitted any application for registration and grant of licence in violation of Rule 6 read with Section 6. An inspection report was drawn up and the same was furnished by a covering letter.

The report set out that at the time of inspection, there were more than 9 workers employed; that there was no muster roll maintained for month of May 2019; and that the manufacturing process of cleaning and washing of clothes was carried on. The Supreme Court held, "Reverting to the statutory provisions, it is clear on a plain reading of Section 2(k) of the Act of 1948 that 'washing or cleaning' of any article or substance with a view to its delivery is clearly covered by the phrase "manufacturing process" . Where the words of statute are clear, the plain meaning has to be given effect. We have no doubt in our mind that the business of laundry carried on by the respondent involving cleaning and washing of clothes including dry cleaning would be squarely covered by the expression "manufacturing process" . Admittedly, they employed more than 9 workers in the centralized processing unit and also used the aid of power. " [The State of Goa & Anr. v. Namita Tripathi] **Click here to read Judgment.**

To claim employment in any Organization, direct Master-Servant relationship must be established on paper.

The Supreme Court of India has clarified a significant aspect of employment law concerning the establishment of a direct master- servant relationship in cases involving contractual labour. The Court held that for a person to claim employment under an organization, a direct master- servant relationship must be established on paper. [The Joint Secretary, Central Board of Secondary Education & Anr. v. Raj Kumar Mishra & Ors.] **Click here to read Judgment.**

LATEST FROM THE HIGH COURTS

Calcutta High Court upholds Order granting gratuity to 'Badli' worker who served continuously for 37 years.

The first Respondent was engaged in the petitioner's company as a Badli worker in 1978. The first Respondent got his provident fund membership only in the year 1981 and attained the age of superannuation on July 1, 2015, as a Badli. Throughout this period, the first respondent worked as a 'badli' employee i.e. in place of and instead of permanent employees who were absent for any reason whatsoever. On reaching the age of superannuation, the first respondent applied for gratuity before the Controlling Authority for computation as well as direction for payment of gratuity alleging non-payment of gratuity and claimed a sum to the tune of Rs 2,41,452 along with simple interest. It was claimed by the Petitioner that the first respondent had not completed the qualifying service of 5 years continuous service for 240 days, each year, to be eligible for gratuity under the Act. The Controlling Authority passed an order directing the petitioner to pay gratuity for the total period of continuous service for 37 years, amounting to a total of Rs 3,93,120. In the Appeal, the appellate authority upheld the order passed by the Controlling Authority and directed the petitioner to make a payment of the amount of Rs. 1,79,600 i.e., the balance amount in respect of interest. The said order had been challenged in the writ application before the High Court. The Court held that the benefit is under a beneficial legislation and an employee who has admittedly worked for 37 years and has rendered his service towards the work to be carried out by a regular employee will have definitely put in work for the number of days required to make him entitled to such benefits. He was a member of the PF scheme too. "The facts as seen proves that the employee has provided selfless service towards permanent posts and as such has carried out work of a regular employee for the period required each year to entitle him to the said benefits, which led to his employment for 37 years" , it added. [Hooghly Infrastructure Pvt. Ltd. C & C R v. Sk. Alam Ismail & Ors.]

Click here to read Judgement.

Indian army can't be termed as Industry: Jammu & Kashmir & Ladakh High Court.

While imploring the Indian Army to take a compassionate view with regard to the services rendered by the porters, the Jammu and Kashmir and Ladakh High Court has clarified that the predominant duty of the Army is in the character of sovereign function and thus it cannot be termed as "Industry" under Section 2(j) of the Industrial Disputes Act. [General Officer Commanding & Ors. v. Mohd Amin Mir & Ors.]

Click here to read Judgment.

Termination of services of a probationer under rules of employment or in exercise of contractual right is neither dismissal nor removal: Allahabad High Court.

The Petitioner was appointed as an Assistant Teacher on a one-year probation, which was extended for another by a resolution of the Committee of Management. However, before the completion of his extended probation, he was served with a charge sheet. The inquiry committee found all charges against him to be proved and recommended non-extension of his probation, effectively terminating his services. A show cause notice was issued to him, calling for a reply before a final decision.

The High Court noted that the Petitioner was present at the inquiry proceedings and had signed the attendance sheet, refuting his claim that he was not given a proper opportunity to defend himself.

The Court further noted, "As referred above, the petitioner was under probation, therefore, if his work was not satisfactory, the Committee of Management can pass an order not to extend his probation. The allegations have not been specifically denied on the basis of relevant material and statements of witnesses recorded during inquiry including statements."

The Allahabad High Court reiterated that the termination of services of a probationer under the Rules of employment or Contractual Right is neither per se dismissal nor removal. Accordingly, the High Court dismissed the Writ Petition. [Sanjay Kumar Sengar v. State of U.P. & Ors.]

Click here to read Judgment.

State Government cannot take away a part of Pension or Gratuity without any statutory provision to that effect: Orissa High Court.

The Petitioner, a retired Inspector Motor Vehicles in the OTES Cadre, challenged the rejection of his claim for unutilised leave salary, which was denied on the ground of pending vigilance and disciplinary proceedings against him. The authorities relied on Rule-66 of the O.C.S. (Pension) Rules, 1992 (Rules), and a Finance Department Memorandum which stated that leave encashment shall not be sanctioned if a departmental or judicial proceeding is pending at the time of retirement.

The Hon'ble Court held that, "On a careful analysis of the factual background of the present case, further on close scrutiny of the legal provisions governing the field of sanction and disbursement of retiral benefits including cash equivalent of unutilized leave salary, this Court observes that there is no statutory provision either in the shape of an enactment or rules prohibiting payment of such amount to the employee who is found to be involved in a judicial proceeding or a disciplinary proceeding by the time he retires from Government Service. " [Chittaranjan Senapati v. State of Odisha & Anr.]

Click here to read Judgment.

Labour Court's jurisdiction under section 33(C)(2) limited to executing pre-existing rights, not determining new claims: Gujarat HC.

On July 22, 2006, Kartick Besai, the sole breadwinner of his family, passed away, leaving behind his widow and 20-year-old son, Provash. Following the death, the family found themselves in dire financial circumstances, struggling to make ends meet without the support of the deceased.

Despite their eligibility under the compassionate appointment scheme, the family's request for employment consideration remained unaddressed for nearly 16 years. It was only after Provash filed a writ petition that the issue came to light in court. The Airport Authority of India argued that Provash's application for a compassionate appointment was delayed significantly, questioning the family's urgent need for support.

"The concept of delay and laches to deny the relief to a litigant has to be considered contextually after taking into consideration his social and economic background. The scheme was consciously framed to take care of their needs. They are the beneficiaries, " the Court said.

The Court observed, "A person may survive after the death of the bread earner on borrowings or benediction of well-wishers. However, begging or borrowing or living with someone's mercy is not a dignified living. Article 21 of the Constitution of India postulates a person should have a decent and dignified living. Compassionate appointment although is not a vested right, it is a right nonetheless. The authority is obliged to consider such application with utmost promptitude. The sense of immediacy and urgency cannot be shown as a defence when the fault lies with the employer. The bureaucratic process of pushing files from table to table or keeping the application in the file to gather dust as an excuse for delay is clearly unacceptable. The duty to communicate and disclose the reason for denying such benefit is immediate and cannot be unduly postponed and deferred." However, it also stressed that the responsibility for administrative delays lay with the authorities and not with the petitioners. It thus directed AAI to provide Provash with an appointment within four weeks and mandated the release of Rs. 3,51,000 in terminal benefits that had been unjustly withheld, including interest calculations dating back to January 2008. [Airports Authority of India & Ors. v. Provash Besai & Another]

Click here to read Judgement.

Employee's service cannot be terminated during Maternity Leave: Punjab & Haryana HC.

The Punjab & Haryana HC held that, " ... the claims which have been sought in the Application under Section 33 C(2) of the Industrial Disputes Act, 1947, are inclusive of interest and which is impermissible in law, as the Court always has a discretion whether to grant interest or not. " [Deepak Vallabhdas Intwala v. Casby Logistics Private Limited & Ors.]

Click here to read Judgment.

Comment regarding length and volume of hair not Sexual Harassment: Bombay High Court

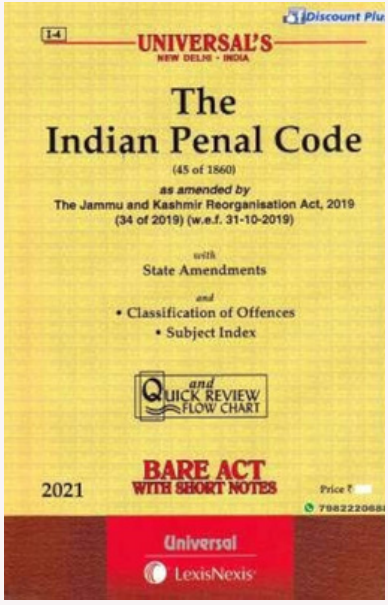
The Court quashed the Order of the Industrial Court which had upheld the findings of an Internal Complaints Committee (ICC) report in a sexual harassment at workplace case. The Court remarked that the report was "clearly vague" as the same was drawn without discussing the evidence on record.

The case arose from a complaint filed under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act). The ICC report cited three broad allegations against the Petitioner, including a remark about a female employee's hair and an inappropriate comment directed at a male colleague in the presence of female employees. The Petitioner challenged the ICC's findings before the Industrial Court which dismissed his appeal.

The High Court held that the first allegation, concerning Petitioner's comment on the colleague's hair and singing a song, did not amount to sexual harassment. "So far as the first incident is concerned, the same relates to passing of comment by the Petitioner with regard to length and volume of the complainant's hair and he singing a song relating to her hair. Considering the nature of comment allegedly made by the Petitioner towards the complainant, it becomes difficult to believe that the same was made with an intent of causing any sexual harassment to the complainant, " it stated.

The Court explained, "She herself never perceived the comment as sexual harassment when the comment was made. The comment was made on 11 June 2022. However, the WhatsApp conversation between the Petitioner and the complainant post 11 June 2022 would indicate that the Petitioner was in fact motivating the complainant with regard to performance of her work and the complainant had expressed gratitude towards the efforts of the Petitioner. Therefore, even if the allegations qua Incident No.1 is accepted as proved, it becomes difficult to hold that the Petitioner has committed any act of sexual harassment. " Accordingly, the High Court set aside the decision of the Member Industrial Court. [Vinod Narayan Kachave v. The Presiding Officer (ICC) & Anr.]

Click here to read Judgement.



LATEST FROM THE CENTRAL GOVERNMENT

Circular regarding allowing employer to view only the members present employment details in EPF: EPFO.

With a view to protect the privacy of the Employee's Provident Fund members from any potential misuse of their past employment details, it has been decided that henceforth only present employment details will be allowed to be viewed by the current employers.

However, to continue the contribution to the Employees Pension Scheme (EPS), 1995 for eligible members who declare their past EPS membership in Form 11, the status of such EPS membership shall still be allowed to be viewed by the present employer at the time of on-boarding an employee. This will ensure the seamless continuation of the EPS membership to all the eligible members even on change of employment.

Click here to read Circular.

LATEST FROM THE STATE GOVERNMENTS

REVISED MINIMUM WAGES:

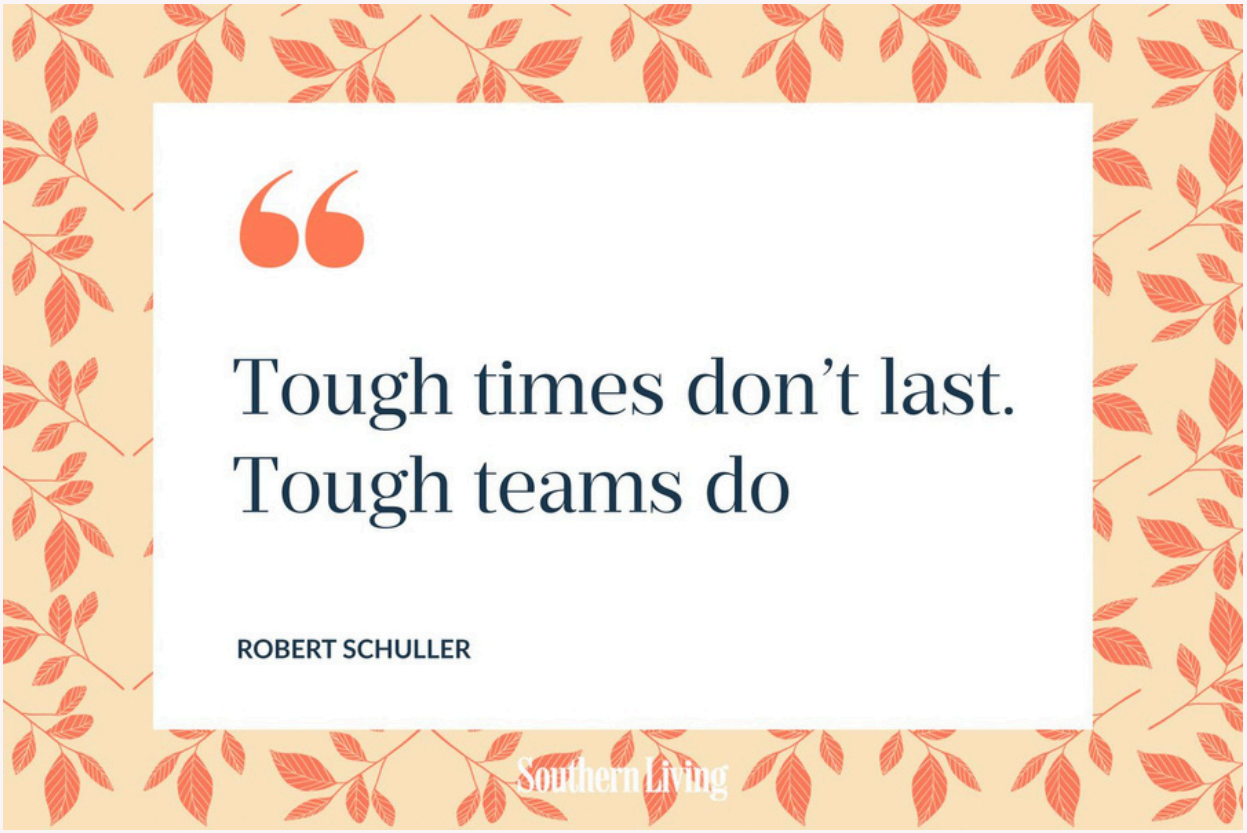
Some states have revised the rates of Minimum wages. Click on the link below for updated rates

S.NO.	STATE	W.E.F	CLICK HERE TO VIEW NOTIFICATION
1	Bihar	01.04.25	**Government Notification**
2	Uttar Pradesh	01.04.25 - 30.09.25	**Government Notification**
3	Assam (Contract Labourers/ Workers)	01.01.25	**Government Notification**
4	Madhya Pradesh	01.04.25 - 30.09.25	**Government Notification**
5	Tamil Nadu (Scheduled Employees)	01.10.24	**Government Notification**

Notification regarding increase of LWF contribution in Haryana.

Under Section 9A of the Haryana Labour Welfare Fund Act, 1965, each employee is required to contribute 0.2% of their salary or wages or any remuneration subject to a limit of rupees thirty- four and each employer in respect of such employee shall contribute twice the amount contributed by such employee every month.

Click here to read notification.



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