



LEGAL NEWS

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FROM LABOUR LAW JOURNAL – LABOUR LAW NOTES

APRIL, 2016

BENEFITS

Disappearance of Employee – Terminal Benefits – Tamil Nadu Pension Rules, 1978, Rule 49A – Indian Evidence Act, 1872, Section 108 – Respondent's husband/Conductor disappeared while in service – After making enquiries, Respondent lodged complaint – FIR registered and eventually, report filed that he was not traceable. Meantime, Appellants/Corporation dismissed Respondent's husband from service after issuance of charge memo – Respondent filed appeal on ground that her husband was not traceable and sought reconsideration of dismissal order of her husband, but there was no response – Respondent filed earlier writ petition, same disposed of with direction to consider Respondent's representations, but no orders passed – Respondent filed another writ petition challenging dismissal order of her husband and seeking direction to grant consequential benefits, same allowed – appeal – Whether dismissal order against Respondent's husband valid – Whether Respondent entitled to her husband's terminal benefits – **Held**, there is danger in presuming that date from which person went missing could be taken to be date of death – If it is taken, many claims that could be made by his legal heirs would become barred by time, despite fact that very presumption of death could be missed only after seven years from date on which he was last heard of – Unless period of seven years expires from date of his missing, very occasion for raising of presumption does not arise – Judge not correct in thinking that Respondent's husband should be presumed to be dead from date, when he went missing – Dismissal order passed in disciplinary proceedings taken *ex parte* and reason for non-appearance of Respondent's husband is *factum* of his missing – Once it is established that Respondent's husband was not heard of for seven years, it was impossible for him to participate in enquiry – Punishment by itself cannot stand unless presumption under Section 108 of Act 1872 rebutted by employer – As per Rule 49A of Rules 1978, Respondent entitled to terminal benefits subjected to conditions – Benefits granted are in tune with benefits that would flow out of presumption under Section 108 of Act 1872 – Only correction that is required in impugned order is that date of death cannot be fixed as date when Respondent's husband went missing, but same does not

alter outcome of writ petition or appeal – Appeal dismissed. [*Managing Director v. E. Tamilarasi*]

(V. RAMASUBRAMANIAN, J.)
2016-II-LLJ-116 (Mad)
LNIND 2015 BMM 704

EMPLOYMENT

Temporary Employment – Workman – The Industrial Disputes Act, 1947 – Sections 2(s) and 25-F – Whether a person employed on temporary basis is workman under section 2(s) of Act, 1947 – **Held**, Section 2(s) of Act, 1947 includes all categories of workman such as casual labourers, temporary labourers etc. – Employees appointed contrary to rules are also workmen under section 2(s) of Act, 1947 – Termination of even such employees without complying with provisions of section 25-F is void abinitio – Respondent Workman would also come under Section 2(s) of Act, 1947 [*Commissioner v. K. Sampath*]

(D. HARIPARANTHAMAN, J.)
2016-II-LLJ-9 (Mad)
LNINDORD 2014 MAD 30

INDUSTRIAL DISPUTE

Dispute – Assistance of Legal Practitioner – Industrial Disputes Act, 1947 (Act 1947) – Section 36(4) – Petitioner filed application before Labour Court to represent dispute by legal practitioner – Labour Court dismissed application filed by Petitioner – Earlier writ petitions with same prayer dismissed – Petition challenging findings of Labour Court – Whether Labour Court was right in holding that Petitioner not entitled to seek permission for assistance of legal practitioner – **Held**, as per section 36(4) of Act, 1947 no party to dispute entitled to be represented by legal practitioner without consent of other parties to proceedings – Second Respondent/Workman refused to give consent for engaging legal practitioner to represent case of Petitioner – Labour Court rightly held that Petitioner not entitled to represent their case by legal practitioner – No infirmity in impugned order – Since Petitioner repeatedly approached this Court with same prayer, present writ petition hit by principles of res judicata – Petition dismissed. [*NHRDF v. Presiding Officer*]

(T. RAJA, J.)
2016-II-LLJ-148 (Mad)
LNINDORD 2015 BMM 2221

REINSTATEMENT

Continuity of Service – Industrial Disputes Act, 1947, Section 25F – Services of 1st Respondent/part-time Sweeper terminated, same referred for adjudication – Industrial Tribunal- cum-Labour Court ordered reinstatement of 1st Respondent with continuity of service and other consequential benefits, but without back-wages –

Petition – Whether award passed by Industrial Tribunal- cum-Labour Court for reinstatement of 1st Respondent justified **Held**, evidence on record shows that 1st Respondent appointed as part-time Sweeper and he was never issued charge-sheet nor inquiry conducted against him and no retrenchment compensation paid to him – 1st Respondent completed more than 240 days of service and no written notice issued qua termination of his services – Services of 1st Respondent terminated without complying with mandatory provisions of Section 25F – Petitioners did not establish before Industrial Tribunal- cum-Labour Court that no post available of part-time Sweeper or work was not available or 1st Respondent was not appointed as per Rules – Industrial Tribunal-cum-Labour Court rightly ordered reinstatement of 1st Respondent with continuity of service and other consequential benefits, but without back-wages – Relief of back-wages denied to 1st Respondent and he was only ordered to be reinstated in service with continuity of service and other consequential benefits – Award passed by Industrial Tribunal-cum-Labour Court is just and legal – Petition dismissed. [*Block Education Officer v. Krishan Kumar*]

(MS. SABINA, J.)
2016-II-LLJ-158 (P&H)
LNIND 2016 PNH 280

TERMINATION

Contract Labourer – The Industrial Disputes Act, 1947 – Section 25F – The Contract Labour (Regulation and Abolition) Act, 1970 – Section 7(2) – Petitioner Management terminated services of Respondent/Workmen and contended that Workmen employed by Contractor and there was no direct employment – In Industrial Dispute, Labour Court awarded reinstatement with continuity of service and 50% back-wages to Workman – Petitions – Whether award passed by Labour Court that Workmen were in direct employment with Management warrants interference – Whether award of reinstatement and other benefits justified – **Held**, in pleadings before Labour Court Management made no mention about contract agencies – Management had option to examine management of agencies before Labour Court as witnesses of Petitioner to prove that Workmen were employees of contractor and not of Management – New matter cannot be considered for first time in writ proceedings – Total employment cumulative strength mentioned in certificate issued under section 7(2) of Act, 1970 comes to nine hundred labour which appears to be total manpower strength of Petitioner-company – Integral business of Petitioner company cannot be easily seen as outsourced – Evidence produced concludes that Workmen were in direct relationship with Management – Management failed to prove its case against Workmen by failing to produce best evidence – Mandatory compliances under Act, 1947 including principle of 240 days and Section 25F are to read in favour of Workmen – Reinstatement and other benefits of award granted to Workmen justified – Petitions dismissed. [*HMM Couches Ltd. v. P.O., Labour Court, Ambala*]

(RAJIV NARAIN RAINA, J.)
2016-II-LLJ-26 (P&H)
LNIND 2015 PNH 22125

CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974)

Section 320 – Tamil Nadu Civil Servants (Discipliner And Appeal) Rules, 1955 – Negotiable Instruments Act, 1881 (26 of 1881), Section 13 & 147 – Dismissal from Service for conviction in Criminal case – Moral Turpitude – Nature and Scope – Conviction of Government Servant for offences under Section 138 of N.I. Act – Employee filed Appeal and settled dispute and Appellate Court compounded offences – Offence committed under Section 138 of N.I. Act cannot be regarded as offence involving moral turpitude – Appellate Court compounded offences and acquitted Employee – Order of Dismissal liable to be set aside. ***Manjula, L. v. State of Tamil Nadu, rep. by the Secretary to Government, Home (Courts) Department, Chennai (DB) (Mad.) (V.M. Velumani, J.)***

2016 (2) LLN 220

DISCIPLINARY PROCEEDINGS

Enquiry Officer concluded enquiry and held that no charge was proved – Disciplinary Authority has three options viz. (a) Accept such finding and drop further action; (b) Differ with Enquiry Officer and come to different conclusion and issue Notice to delinquent to show cause as to why different view should not be taken; (c) Set aside findings of Enquiry Officer and Order de novo Enquiry – Disciplinary Authority kept findings of Enquiry Officer in cold storage for four years and directed Enquiry Officer to examine certain Witnesses and accept certain documents – Such course is contrary to law. ***State of Tamil Nadu, rep. by its Secretary, Department of School Education, Chennai v. Dr. A.S. Radhakrishnan, The Chief Educational Officer, Kanyakumari District (DB) (Mad.) (V. Ramasubramanian, J.)***

2016 (2) LLN 215

EMPLOYEES' STATE INSURANCE ACT, 1948 (34 OF 1948)

Sections 2(9), 39 & 42 – Casual Employees – Whether covered by Definition of 'Employee' - Definition of 'Employee' very wide and includes every person, who works for wages – Aim of Act to ensure extension of benefits of Act to Employees – **Held**, definition of 'Employee' in Section 2(9) wide enough to include 'Casual Employees' within its purview – Moreover, Section 39 also contemplates that an Employee, who is employed for part of wages, is also covered for contribution – Section 42 dealing with payment of Contribution also does not prescribe any particular period of work for availing benefit of said provision – Consequently, held, that Casual Employees covered by definition of Employees under Section 2(9). ***Royal Western India Turf Club Ltd. v. E.S.I Corporation (SC) (Arun Mishra, J.)***

2016 (2) LLN 3

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Reference of Dispute – When warranted – **Held**, Government not to order every dispute received by them – Though Government cannot determine merits of a case and

decline reference, but, Government ought to decide first existence of a dispute before referring same for adjudication – Court in such matters, can interfere only when it finds that refusal of Government to refer dispute is unjustified or based on irrelevant factors – Blanket direction of High Court to Government to refer dispute, held, against scheme of Act – Order of High Court being erroneous, set aside – Appeal allowed. ***Rahman Industries Pvt. Ltd. v. State of U.P. (SC) (Kurian Joseph, J.)***

2016 (2) LLN 22

Sections 2(s), 25F & 25G – Reinstatement – Respondent-Workman engaged with Petitioner-Management as Daily Wages was terminated from service – Claim of Respondent-Workman that Petitioner-Management engaged in Unfair Labour Practice by terminating him despite he completing 240 days of continuous service – Award of Labour Court directing to reinstate Respondent-Workman challenged – Once Respondent-Workman established that he has been in continuous service with Petitioner-Management for 240 days, he acquires status of 'Workman' under Section 2(s) – Petitioner-Management ought to have either regularized Respondent-Workman or to have followed due procedure instead of indulging in Unfair Labour Practice – No merit in Petition and there is no illegality or perversity in impugned Award – Petition dismissed. ***Municipal Corporation of Delhi v. Ram Milan (Del.) (I.S. Mehta, J.)***

2016 (2) LLN 96

SERVICE LAW

Branch Manager of a Bank applied for Voluntary Retirement on 16.11.2000 – Cutoff date for Bank to complete formalities was 30.12.2000. Bank charge-sheeted Appellant on 02.03.2001 with respect to certain misconducts – Contention that Bank is deemed to have accepted VRS on 30.12.2000 and cannot proceed with charges, untenable – There is no deeming provision in Scheme to mean that Bank has accepted VRS automatically – After Appellant was charge-sheeted, he admitted same and punishment followed – Thereafter Bank accepted his VRS on 19.6.2001 – No ground available to interfere with Punishment Order – Punishment awarded is just and proper – Appeal dismissed. ***Surjeet Singh Bhamra V. Bank of India (SC) (Abhay Manohar Sapre, J.)***

2016 (2) LLN 12

MAY, 2016

CONTRACT LABOUR

Regularization of Contract Labourers – Validity of Contract – Industrial Disputes Act, 1947 (Act 1947), Sections 2(s), 10(1) and 17B – Contract Labour (Regulation & Abolition) Act, 1970 (Act 1970), Sections 10 and 21(2) – Contract Labour (R & A) Central Rules, 1971 (Rules 1971), Rule 25(2)(v)(a) – Dispute related to workers employed on contract basis at Airport under Category of Group A, B and C, same went up to Apex Court – After long legal battle, dispute referred to Tribunal – Tribunal held

that contracts between Petitioner and contractors were sham and bogus and that workmen in reference to be treated as Petitioner's permanent employees – Tribunal directed petitioner to treat those workers as Petitioner's permanent employees and to pay wages and consequential benefits at par with other permanent employees from date of reference – Present writ petition – Whether impugned award passed by Tribunal can be sustained – Whether concerned employees worked on contract or were employees of Petitioner – Whether contracts in question were sham and bogus – **Held**, burden to prove contract being sham and bogus was on 1st Respondent – Group A and B employees worked through contractors before they were continued under supervision of Petitioner by Court's orders – Contractors engaged after calling for tenders through advertisements – No evidence to show that those contracts were sham and bogus – Main allegation was of noncompliance with stipulations under Act 1970 and profit margin for one of the contracts was low, same cannot lead to conclusion that contracts were sham and bogus – After Apex Court passed interim orders, workers continued under supervision of Petitioner and same cannot lead to conclusion that contracts were sham and bogus – Group C workers employed primarily through contractors – Contractors paid wages to those workers and work supervised by their supervisors – Nothing shown that contractors had no role to play – 1st Respondent failed to discharge its burden that contracts in respect of Group A, B and C workers were sham and bogus – Even after contract declared as sham and bogus, neither there can be automatic absorption in public service nor complete denial of claim of absorption and permanency – Industrial Adjudicator will have to balance competing rights and in given case, Industrial Adjudicator is not powerless to grant affirmative relief – Impugned award cannot be sustained, same quashed and set aside – Petition allowed. [*Airports Authority of India v. Indian Airport Employees' Union*]

(N.M. JAMDAR, J.)
2016-II-LLJ-431 (Bom)
LNIND 2016 BOM 142

DISCIPLINARY PROCEEDINGS

Violation of Principles of natural Justice – Petitioner was working as "Daftari" with Respondent Bank – Charge sheet served upon Petitioner for unauthorisedly accepting money and not depositing same in complainant's account – Petitioner denied allegations – Upon enquiry, Disciplinary Authority held Petitioner guilty of charges and imposed penalty of compulsory retirement with superannuation benefits – Appellate authority dismissed appeal filed against order of Disciplinary Authority – Petition – Whether orders passed by Disciplinary Authority and Appellate Authority is in violation of principles of natural justice – **Held**, enquiry report not supplied to delinquent officer – Enquiry report is a material adverse to delinquent officer, explanation regarding enquiry report must be called for – Disciplinary Authority after receiving objections given by delinquent officer is required to deal with issues raised – Disciplinary Authority has not considered any objection raise by delinquent officer in relation to findings of enquiry officer and Disciplinary Authority – Disciplinary Authority should have formed opinion after examining discussing available evidence – Order of Disciplinary Authority lacks

reasons to support findings arrived and same is result of mechanical exercise of powers and non-application of mind – Only material supplied was crux of enquiry report and that does not contain reason for arriving at conclusion about commission of misconduct – In absence of proper material, difficult for Petitioner to defend himself – Appellate Authority should have examined all relevant arguments advanced in appeal – Appellate Authority must have satisfied himself as to why penalty chosen is adequate or not – Order passed by Appellate Authority not speaking and reasoned order – Violation of principles of natural justice is apparent – Orders passed by disciplinary Authority and Appellate Authority quashed – Petitioner entitled to reinstatement in service Petition allowed. [*Joga Ram Panwar v. State Bank of Bikaner and Jaipur*]

(GOVIND MATHUR, J.)
2016-II-LLJ-335 (Raj)
LNINDORD 2016 RAJ 997

LABOUR COURT

Industrial Dispute – Jurisdiction of civil court – The Industrial Disputes Act, 1947 – Sections 2(a), 2(k) and 10 – The Life Insurance Corporation Act, 1956 – Section 48 – Appellant, working as Stenographer, with Respondent Corporation was held guilty of charges and charge-sheeted – Punishment of reduction in basis pay by two stages permanently in time scale of Stenographer imposed on Appellant – Appellant raised industrial dispute under section 10 of Act, 1947 – Respondent Corporation challenged reference in writ petition – Single Judge allowed writ application filed by Respondent Corporation and held that dispute raised by Appellant/Workman not industrial dispute under section 10 of Act, 1947 – Aggrieved, Appellant filed present appeal – Whether Industrial Dispute raised by Appellant, an employee of Respondent Corporation is referable dispute to Industrial Tribunal-cum-Labour Court – **Held**, conditions of service of workman governed by rules framed under Act, 1956 – Jurisdiction of Civil Court or Industrial Tribunal under Act, 1947 not barred other expressly or implied by amended Act, 1956 – No bar for workman to seek redressal from Industrial Tribunal – Workman can invoke jurisdiction of Labour Court since right has been created in favour of Workman in terms of Sections 2(k) and 2(a) of Act, 1947 – Section 48 of Act, 1956 confers power on Central Government to make rules including rules relating to terms and conditions of service of employees and agents of Corporation – Power to fix terms and conditions of employees cannot oust jurisdiction of Civil Court – No adjudication machinery provided under Act, 1956 – Civil Court has jurisdiction to entertain disputes regarding wrongful termination or wrongful action by Respondent Corporation – Applicability of Act, 1947 cannot be barred by rule making authority – Order of Single Judge not sustainable – Appeal allowed. [*A.K. Ojha v. Life Insurance Corporation of India*]

(HEMANT GUPTA, J.)
2016-II-LLJ-492 (Pat)
LNIND 2016 PAT 713

TERMINATION

Mandatory Provisions – The Industrial Disputes Act, 1947 (Act, 1947) – Section 25 F – Respondents engaged as daily wagers by Petitioners – Services of Respondents terminated without compliance of mandatory provisions of section 25 F of Act, 1947 – Labour Court held that termination of Respondents was in violation of provisions of Act, 1947 – Challenging award of Labour Court, Petitioner filed present petition – Whether labour Court justified in holding that termination of Respondents without complying provisions of Act 1947 illegal – **Held**, Respondents rendered 240 days of work in each of the calendar years of their respective service under Petitioners – Before disengaging Respondents from service, Petitioners should mandatorily comply with section 25 F of Act, 1947 – Petitioners statutorily obligated to serve one month notice to Respondents prior to termination – Petitioner mandatorily should pay retrenchment compensation in lieu thereof – Omission of compliance of mandatory provision under section 25 F of Act, 1947 before terminating services of Respondents amounts to gross and flagrant violation of mandate of law – Industrial undertaking did not face closure but only acquired new identity, same does not amount to closure – Industrial undertaking does not face closure on its objectives and goals standing transferred for theirs being achieved by its acquiring a new identity – Disengagement of Respondents unnecessary – No error in impugned awards passed by Industrial Tribunal – Impugned awards maintained and affirmed – Petitions dismissed. [*State of H.P. v. Jeet Ram*]

(SURESHWAR THAKUR, J.)
2016-II-LLJ-426 (HP)
LNIND 2015 HP 3317

PRACTICE AND PROCEDURE

Writ Proceedings – Significance of Pleadings – Scope of Relief – Granting relief beyond scope of Writ Petition – Writ Petitioners not challenged appointments made by State under State & Subordinate Rules – Learned Single Judge set aside appointments – Court should decide Petitions on points raised in Petition and if in rare case, Court can consider any additional point by issuing Notice on additional points to affected parties – Relief granted by Single Judge is not passed on pleadings made in Writ Petition. ***Dr. P. Chinna Maruthupandy v. Vanitha (DB) (Mad.) (R. Sudhakar, J.)***

2016 (2) LLN 495

REFERENCE

Petitioner appointed as Grama Sevika on Contractual basis was terminated from service – Award of Labour Court dismissing Reference on ground that Petitioner's services were Contractual in nature and she had no subsisting right to post – Whether Labour Court justified in dismissing reference – Award of Labour Court suffers from fundamental flaw of law both on point of applicability of Section 2(oo)(bb) and applicability of ratio of Secretary State of Karnataka v. Uma Devi, 2006 (3) LLN 78 (SC) – Ratio of Uma Devi does not apply when defence of Management was not that appointment was illegal – Award of Labour Court not maintainable – Fallacious

reasoning adopted led to denial of relief altogether and miscarriage of justice – Petition allowed – Award set aside – Termination. ***Sudha Rani v. The Presiding Officer (P & H) (Rajiv Narain Raina, J.)***

2016 (2) LLN 551

SERVICE LAW

Disciplinary proceedings – Whether delinquent is entitled to have any person as he wishes, to be appointed as his Defence Assistant – It is settled law that delinquent has no vested or absolute right to claim assistance of his choice in Disciplinary proceedings, **unless Rules/Regulations provide for same** – Delinquent is bound by Statutes/Regulations and therefore, Petitioner cannot complain of violation of natural Justice in this regard – Mandamus cannot be issued against Statutory Rules – Therefore, Order of Disciplinary Authority declining Petitioner, Defense Assistant of his choice, requires no interference – Writ Petition dismissed – Constitution of India, Article 226 – Writ of mandamus – When would not lie. ***Joy Aich v. Chairman & Managing Director, Container Corporation of India, New Delhi (Mad.) (K. Kalyanasundaram, J.)***

2016 (2) LLN 521

TRANSFER

Posting – Distinction – Appellant was transferred from Kilpauk Medical College, Chennai to Madras Medical College, Chennai – Appellant challenged Order of Transfer on ground of mala fides – Transfer involves displacement of Employee and his family from one place to other place – Placing Appellant from one Medical College to other Medical College in same city is mere posting and not transfer – Order of Posting was not issued in violation of Rules and Regulations – Appellant had not substantiated allegation of mala fides by adducing proper materials – Order of Transfer, held not liable to be interfered with – Service Law. ***Loganathan v. The Government of Tamil Nadu, rep. by its Secretary to Government, Health & Family Welfare Department, Fort St. George, Chennai-600 009 (DB) (Mad.) (Satish K. Agnihotri, J.)***

2016 (2) LLN 515

JUNE, 2016

INDUSTRIAL DISPUTE

Reference of Industrial Dispute – Rejection of – Industrial Disputes Act, 1947 (Act 1947), Section 2(k) – Trade Union Act, 1926 (Act 1926), Section 14 – Contract Labour (Regulation and Abolition) Act, 1970 (Act 1970) – Societies Registration Act, 1975 (Act 1975) – Appellant/Association raised dispute under Section 2(k) of Act 1947, but 1st Respondent declined to refer same – Appellant's writ petition to quash order passed by 1st Respondent declining to refer dispute and for direction to refer dispute to appropriate Tribunal was dismissed – Appeal – Whether 1st Respondent justified in

declining to refer dispute raised under Section 2(k) of Act 1947 by Appellant for adjudicate – **Held**, when there is reference of dispute with regard to contract system that it is sham and nominal, Industrial Adjudicator empowered to adjudicate such dispute – If Tribunal/Labour Court concludes that contract labour system is camouflage, it can direct Principal employer to regularize them in service – If there is genuine contract system, Tribunal/Labour Court will have to ask employees to approach Authority under Act 1970 for abolition of contract labour – By way of earlier writ petition, Appellant sought for abolition of contract labour – Single Judge directed Authority concerned to consider Appellant’s representation in light of provisions of Act 1970 – When Appellant admitted in earlier writ petition that their employees were contract labourers, they cannot take different stand after many years in seeking regularization of service – Section 14 of Act 1926 excludes Associations registered under Act 1975 – Appellant cannot raise issue pertaining to labour before Writ Court – Even assuming that writ petition maintainable dehors provisions of Act, 1975, which is not canvassed before Single Judge, only registered Union under Act 1926 empowered to file writ petition – Appeal dismissed. [*Rajiv Gandhi ONGC (Con) W.W. Assn. v. Government of India*]

(S. VAIDYANATHAN, J.)
2016-II-LLJ-644 (Mad)
LNIND 2016 MAD 613

PUNISHMENT

Enhancement of Punishment – Power of Appellate Authority – After inquiry, Respondent/workman imposed with punishment of withholding of increments for alleged misconduct – On appeal, Appellate Authority enhanced punishment to put Respondent specific step below in pay-scale – Being aggrieved, workman raised industrial dispute to Tribunal – Tribunal held that Appellate Authority had no power to enhance punishment imposed by Disciplinary Authority – Present special civil application by Transport Corporation – Whether Appellate Authority had power to enhance punishment imposed by Disciplinary Authority – **Held**, order passed by Appellate Authority shows that looking to past record and misconduct committed by delinquent, Appellate Authority justified in exercising punishment to put workman specific stage below in basic pay – Also, shows that there were defaults committed by workman in past and different punishments imposed – In view of facts on record, when show cause notice issued by Appellate Authority, it was proposed to dismiss delinquent, but Appellate Authority enhanced punishment to put workman specific stages below in pay-scale after giving opportunity to delinquent – Appellate Authority justified in enhancing punishment – Impugned judgment and award passed by Tribunal cannot be sustained, same quashed and set aside – Order passed by Appellate Authority restored – Appeal allowed. [*Divisional Controller GSRTC v. Yusufbhai Ibrahimbhai Hafeji Conductor*]

(M.R. SHAH, J.)
2016-II-LLJ-695 (Guj)
LNIND 2016 GUJ 1021

TERMINATION

Contract Employee – The Industrial Disputes Act, 1947 (Act, 1947) – Sections 2(s), 25F and 29 – The Rajasthan Act 34 of 1958 (Act, 1958) - Section 3 – Respondent Workman engaged on daily wages basic in Guest House of Appellant University/Employer – Services of Respondent Workman was dispensed with – In Industrial dispute, Labour Court concluded that Respondent workman worked for 240 days in preceding calendar year and that there was violation of section 25F of Act, 1947 – Labour Court awarded reinstatement with continuity of service and 50% back wages to Respondent Workman – In writ petition, Single Judge confirmed award to Labour Court – Appeal – Whether Single Judge justified in confirming award passed by Labour Court reinstating Respondent Workman – **Held**, definition of workman under section 2 (s) of Act, 1947 as existing in section 3 of State Amendment Act, 1958 includes person engaged through contractor – Appellant University being principal employer under obligation to comply with mandatory requirement of section 25F of Act, 1947 – Appellant University not complied with award of Labour Court despite initiating proceedings under section 29 of Act, 1947 – Appellant University directed to comply with award passed by Labour Court – No merit in appeal – Appeal dismissed. [*Maheshi Dayanand Saraswati v. Labour Court*]

(AJAY RASTOGI, J.)
2016-II-LLJ-535 (Raj)
LNINDORD 2016 RAJ 364

BACK WAGES

Appeal against impugned Order of Division Bench, while upholding Judgment of Single Judge in setting aside Order of Termination passed by Respondent-Bank, ordering reinstatement of Appellant with all consequential benefits, continuity of service but setting aside Order of Single Judge directing Respondent-Bank to pay full Back Wages – Whether High Court justified in setting aside Order of Single Judge granting full Back Wages – **Held**, during period of non-employment, Appellant did not contribute his labour to Respondent-Bank while at same time he was not responsible for such unjustified non-employment, so deprivation of 25% Back Wages will meet ends of justice – Respondent-Bank directed to pay 75% Back Wages, ***Rattan Singh Sandhu v. Punjab & Sind Bank (SC) (F. M. Ibrahim Kalifulla & S.A. Bobde, JJ.)***

2016 (2) LLN 561

DISMISSAL

Respondent-Workman dismissed from service on charges of unauthorised absence and demand and acceptance of illegal gratification – Award of Labour Court upholding penalty of Dismissal from service – Order of Single Judge directing Management to pay Subsistence Allowance for entire period from date of Dismissal up

to date of Superannuation treating entire period as duty period with consequential benefits of continuity of service – Appeals – Once Labour Court set aside Domestic Enquiry as not fair and proper but came to its own conclusion on basis of further evidence led before it – Finding so reached cannot be interfered with under Article 226 – Single Judge, without even recording a finding that Labour Court findings were perverse, independently came to conclusion that charges were not proved – Appeal filed by Appellant-Management assailing Order of Single Judge allowed – Order of Single Judge set aside – Award of Labour Court restored. ***The Chief Executive Officer, Perambalur Sugar Mills Limited, Perambalur District v. The Labour Court, Tiruchirapalli (DB) (Mad.) (V. Ramasubramanian, J.)***

2016 (2) LLN 766

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Section 17-B – Payment of Full Wages – When warranted – Provision, a Social Welfare Legislation entered into enactment by way of Amendment in 1982 – Aim of provision is to ameliorate hardship of Workman, who has been deprived of benefits of reinstatement during protracted litigation – Three ingredients necessary for complying for availing benefit under provision, viz. (i) reinstatement of Workman by Labour Court, (ii) Employer preferring a proceeding against Award in High Court or Apex Court, (iii) Workman not to be employed in any Establishment during said period – **Held**, upon fulfillment of said contingencies, Workman automatically entitled to last drawn Wages from Employer – In instant case, Award of Reinstatement passed in favour of Workman/Applicant – Writ Petition challenging same filed by Opposite Party – Application under Section 17-B filed by Workman for payment of full Wages – Application resisted by Opposite Party on ground that Workman was never employed with their Establishment – Single Judge directed Workman to file proof of employment – **Held**, all pre-requisites of Section 17-B satisfied by Workman in instant case – For disposal of an Application under Section 17-B, validity of Award of Labour Court or stand of Employer that Workman was never employed by them, held, extraneous consideration – Order of Single Judge directing Workman to file proof of employment before granting relief under Section 17-B, held, erroneous – Writ Petitions directed to pay Applicant/Workman full Waged last drawn by him month by month from date of filing of present Writ Petition – Application allowed. ***Sukumar Adak v. Business Horican (P) Limited (Cal.) (Sumbudidha Chakrabarti, J.)***

2016 (2) LLN 646

PAYMENT OF GRATUITY ACT, 1972 (39 OF 1972)

Section 4(6)(h)(ii) – Forfeiture of Gratuity – Whether Petitioners justified in forfeiting amount of Gratuity payable to Respondent on ground of his Dismissal from service without his conviction by jurisdictional Criminal Court for offence involving moral turpitude – Disciplinary Authority inflicted penalty of Dismissal to Respondent herein from service for his proven misconduct – Thereafter no prosecution was launched on

behalf of Petitioner-Bank before jurisdictional Criminal Court for Respondent's proven misconduct holding it to be Criminal offence and Respondent was not convicted by Criminal Court for offence involving moral turpitude – Conviction of terminated Employee for commission of offence involving moral turpitude by him in course of his employment is imperative condition precedent for forfeiting amount of Gratuity payable – Order of Controlling Authority directing payment of Gratuity to Respondent as affirmed by Appellate Authority reaffirmed – Petition dismissed. ***The General Manager, UCO Bank v. Jitendra Kumar Shrivastava (Chht.) (Sanjay K. Agrawal, J.)***

2016 (2) LLN 654

Section 7(3-A) – Interest on Gratuity – Whether Employer is liable to pay interest on delayed payment of Gratuity when Gratuity was held up pending Disciplinary proceedings against an Employee – An Employer holding up Gratuity pending Disciplinary proceedings, which ultimately ended up in exonerating Employee always hold amount with risk of paying Interest thereon – Order of Controlling Authority and Appellate Authority holding that Petitioner is entitled to Interest on withheld Gratuity amount, upheld. ***Chittaranjan Ghosh v. UCO Bank (Cal.) (I.P. Mukerji, J.)***

2016 (2) LLN 643

SERVICE LAW

Dismissal – Order of Dismissal – Consequence of – An Order of Dismissal would amount to Termination only when same has been communicated to all parties concerned – When Order is not communicated, there are chances of Authority changing their mind and modifying Order – In instant case, Teacher/Appellant working for 25 years not issued with any Termination Order – High Court in impugned Order merely assumed that service of Teacher were terminated and deprived her legitimate claim – **Held**, services of a Teacher working for 25 years cannot be presumed to be terminated without communication of any such Order – Order of High Court erroneous and set aside – Appellant entitled to continue in service as also to all arrears of Salary in accordance with law. ***Dulu Devi v. State of Assam (SC) (M.V. Eqbal, J.)***

2016 (2) LLN 573



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