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**ALL INDIA BANK EMPLOYEES' ASSOCIATION**

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# FROM LABOUR LAW JOURNAL – LABOUR LAW NOTES

JANUARY 2019

## COMPASSIONATE APPOINTMENT

**Relaxation of Rules** – Petitioner’s father passed away while in service leaving behind Petitioner, his mother and married elder sister – Petitioner submitted application seeking compassionate appointment – Government passed order stating that in presence of eligible female legal heirs in family, application submitted by next below legal heir could not be entertained – Grant of relaxation of Ruled declined, hence this petition – Whether rejection of case of Petitioner for grant of relaxation was in accordance with terms and conditions of Scheme – **Held**, relaxation could never be claimed as matter of right, more specifically in respect of special scheme like compassionate appointment – Clarified that no such relaxation proposals could be send by authorities in all such similar cases – Scheme of compassionate appointment to be implemented strictly by following terms and conditions of scheme – Rejection of case of Petitioner for grant of relaxation was in accordance with terms and conditions of scheme and no infirmity as such – in event of receiving any application from first female legal heir of deceased employee, same shall be considered by authorities in accordance with law – Impugned order confirmed – Petition dismissed. [*V. Vijayaraghavan v. State of Tamil Nadu*]

(S.M. SUBRAMANIAM, J.)

2019-I-LLJ-71 (Mad)

LNINDORD 2018 MAD 9867

## DISCIPLINARY PROCEEDINGS

**Stoppage of increments** – Disciplinary authority of Appellant/Corporation ordered stoppage of four annual increments with cumulative effect against Respondent / workman – On reference, Labour Court set aside punishment

imposed upon workman – Petition filed by Appellant assailing award dismissed, hence this appeal – Whether report submitted by Inquiry Officer perverse and setting aside order of punishment, justified – **Held**, in report furnished by Inquiry Officer, he barely referred to alleged incident, charges leveled against workman, and narration as to proceedings in inquiry – Inquiry Officer failed to analyse evidence led by parties so as to demonstrate that conclusion reached or recorded by him was natural and necessary consequence thereof – Inquiry report in quasi-judicial inquiry must show reasons for conclusion arrived at and could not be *ipse dixit* of Inquiry Officer and had to be speaking order in sense that conclusion was supported by reasons – Appellant could not refer to anything on record to show, if conclusions arrived at by Labour Court as also Single Judge were either contrary to record or suffered from any material illegality – No reason to interfere with impugned order – Appeal dismissed. [*Secretary, Department of Transport v. Presiding Officer*]

**(KRISHNA MURARI, CJ. AND ARUN PALLI, J.)**

**2019-I-LLJ-176 (P&H)**

**LNIND 2018 PNH 16797**

### **EXPARTE AWARD**

Reinstatement with backwages – Industrial Dispute, Act, 1947, Section 25F – Code of Civil Procedure, 1908, Order 9 Rule 13 – Labour Court passed exparte award holding termination of Respondent / workman to be illegal and directed reinstatement with entire backwages – Medical College through its counsel filed application for setting aside award before publication of award – Application dismissed by Labour Court, hence this petition – Whether Labour Court was justified in rejecting application for setting aside exparte award – Whether award of reinstatement with backwages justified - **Held**, Labour Court on merits rejected application under Order 9 Rule 13 of Code – As Management chose to remain absent, Labour Court justified in proceeding ex parte and later on in rejecting application for setting aside ex parte award – Workman had continuously worked for more than fifteen years without any break – Workman abruptly and for no rhyme or reasons terminated from service without following

procedure laid down under Section 25F of Act – Award of reinstatement could not be faulted with – Workman led evidence that she was unemployed after her termination, which remained uncontroverted – Labour Court was well within its jurisdiction and justified in directing full backwages – Petition dismissed. [*V.R.H.M.C. & Hospital v. Smt. Geeta Batham*]

**(SANJAY YADAW, J.)**

**2019-I-LLJ-4 (MP) LNIND 2018 MP 9938**

## **INDUSTRIAL DISPUTE**

Change in Service Conditions – Industrial Disputes Act, 1947 (Act 1947), Sections 9-A and 17 – Airports Authority India, Act, 1994 (Act 1994), Sections 18(7) and 43 – Airports Authority India (General Conditions of Service and Remuneration of Employees) Regulations, 2003 (Regulations) – Petitioner / Airport authority brought condition of compulsory pre-mature retirement – On reference, Labour Court held that as no notice was given in terms of Section 9-A of Act 1947, change in service conditions not legally binding on workmen – Notification issued by Ministry of Labour and Employment in terms of Section 17 of Act 1947 by which award received by Central Government – Petition filed to set aside award and notification – Whether award passed by Labour Court and notification issued by Central Government, sustainable – **Held**, no notice given in terms of Section 9-A of Act 1947 – Change in service conditions by incorporation of terms of compulsory retirement of employees was illegal and not legally binding on workmen read with Section 18(7) of Act 1994 – By Regulations, fundamental change in service condition of employees of Petitioner, without compliance of Section 9A of Act 1947 and where fundamental changes affecting rights and duties of employees are concerned and affected, non-compliance of Section 43 of Act 1994 cannot be overlooked – Requisite mandatory procedure of checks and balance incorporated under Section 43 of Act 1994 had not been complied with by Petitioner – Petition dismissed. [*Airports Authority of India v. Indian Airports Kamgar Union*]

**(MS. ANU MALHOTRA, J.)**

**2019-I-LLJ-37 (Del) LNIND 2018 DEL 4963**

## **PAYMENT OF GRATUITY**

**Entitlement** – Payment of Gratuity Act, 1972 (Act 1972), Section 2A – Industrial Disputes Act, 1947 (Act 1947) – 1<sup>st</sup> Respondent / daily wager was held entitled to Gratuity for certain period by Controlling Authority and confirmed by Appellate Authority, hence this petition by Management – Whether 1<sup>st</sup> Respondent entitled to and had rightly been granted benefit of Act 1972 – **Held**, compensation payable to workman as result of his retrenchment under Act 1947 Act could neither be set off nor adjusted against amount of Gratuity which he was entitled to be paid for satisfactory service rendered by him – These were two independent and separate claims and award or grant of benefit under one Act did not deprive employee from benefit under other Act – Not case of Petitioner that Respondent did not fall within ambit of Act 1972 or that Petitioner had adopted any other Welfare Scheme which was more beneficial than provisions of Act 1972 – In absence thereof, 1<sup>st</sup> Respondent was entitled to and rightly been granted benefit of Act 1972 – 1<sup>st</sup> Respondent remained in service and actually served Petitioner till his claim for regularization was turned down – Service rendered by 1<sup>st</sup> Respondent falls within four corners of Section 2A of Act 1972 which defines ‘Continuous Service’ – Petition dismissed. [*Chief Engineer v. Souju Ram*]

**(SURYA KANT, CJ.)**

**2019-I-LLJ-196 (HP)**

**LNIND 2018 HP 2179**

## **PROTECTED WORKMEN**

**Departmental Enquiry** – Industrial Disputes Act, 1947 (Act), Section 33(3) – Industrial Disputes (Karnataka) Rules, 1957 (Rules), Rule 62 – 2<sup>nd</sup> Respondent / Trade union submitted letter to Petitioner / management requesting it to recognize five of its Office bearers as protected workmen – 2<sup>nd</sup> Respondent filed petition for declaring five persons as protected workmen under Section 33(3) of Act – Commissioner declared five workmen as “Protected Workmen”, hence this petition – Whether status of Protected workmen could be denied on ground that

workman was facing departmental Inquiry and/or criminal trial, or not – **Held**, if workman was facing charges even for minor offences, he could be denied special status of being protected workman – Trade Union leaders were meant to be role model for rest of workforce – Those who break law, or commit misconduct could not expect to be given privilege and protection of being declared “protected workmen” – Not necessary that conviction should be recorded against workman before he could be denied special status of being “protected workman” – Three office bearers were facing both departmental enquiry and criminal trial – Commissioner unjustified in declaring them as protected workmen – As far as case of other two, it was unclear whether their dismissal from service was brought to notice of Commissioner – Part of impugned order whereby three persons had been declared as “protected workmen” set aside – With regard to declaring other two as protected workmen, case remanded to Commissioner to re-decide case on basis of evidence produced by both parties – Petition partly allowed. [*Wonderla Holidays Limited v. Assistant Labour Commissioner*]

**(RAGHVENDRA S. CHAUHAN, J.)**

**2019-I-LLJ-57 (Kant)**

**LNINDORD 2018 KANT 8553**

## **REINSTATEMENT**

**Disability During Service** – Persons with Disabilities (Equal Opportunities, Protection of Right and Full Participation) Act, 1995, Section 47(1) – Respondent no.2 by order discharged Petitioner from service on ground that Petitioner suffered from color blindness – Labour Court directed Respondent no.2 to provide employment to Petitioner as fresh entrant after settling account of earlier service and declined reinstatement in suitable alternative employment with continuity of service – Petitioner sought for reinstatement in service and suitable alternative employment as per Section 47(1) with continuity of service – Whether, Labour Court erred in declining reinstatement and holding that Petitioner only entitled to get alternative employment as fresh entrant – **Held**, as per Section 47(1) of Act, when employee after acquiring disability is found not suitable for post, such person could be shifted to some other post with same pay scale and service

benefits – Labour Court erred in directing reinstatement of Petitioner only as fresh entrant and in declining reinstatement in suitable alternative employment – Respondent no.2 directed to reinstate Petitioner in service in suitable alternative employment as per Section 47(1) of Act, with continuity of service, attendant benefits and back wages – Petition allowed. [*K. Karuppasamy v. Presiding Officer*]

**(MS. J. NISHA BANU, J.)**

**2019-I-LLJ-244 (Mad)**

**LNINDORD 2018 BMM 6708**

## **SERVICE LAW**

**Termination** – Principles of Natural Justice – Respondent no.3 terminated Petitioner from service, hence this petition – Whether, termination of Petitioner was in violation of principles of natural justice – **Held**, where inquiry initiated with view to inflict major penalty, department must prove charges by adducing evidence by holding oral inquiry – Neither witness examined by department nor any one examined to prove documents relied on in oral inquiry – Even if employee preferred not to participate in enquiry, department had to establish charges against employee by adducing oral and documentary evidence – Nothing to show that any oral enquiry was held in which charges were proved by giving evidence – Alleged enquiry and removal of Petitioner based thereon is illegal and in utter violation of principles of natural justice – Impugned order passed by Respondent no.3 set aside – Petition allowed. [*Chandra Shekhar v. Joint Director of Education*]

**(SUDHIR AGARWAL, J.)**

**2019-I-LLJ-219 (All) LNINDORD 2018 ALL 4387**

## **VOLUNTARY RETIREMENT SCHEME**

**Wage revision** – Industrial Disputes Act, 1947 – Members of Appellant / Welfare Association retired from service on Voluntary Retirement Scheme [VRS] announced by 2<sup>nd</sup> Respondent / Management – As per MOU signed between Management and Trade Unions they were entitled to wage revision which were given to existing employee – No wage revision had been granted to Welfare

Association – On challenge, Single Judge denied wage revision to members of Welfare Association, hence this appeal – Whether members of Appellant Association entitled for wage revision which were given to existing employees as per MOU – **Held**, clause of MOU would reveal that Agreement was subject to specific approval of Department of Government of India and comes into effect only after signing Memorandum of Settlement under Act, before State Labour Authorities - In absence of any settlement under Act, relief of *mandamus* as prayed for by Association by invoking special original jurisdiction of this court, not maintainable – No error apparent on face of record or infirmity in impugned order passed by Single Judge – Appeal dismissed. [*VR [HPF] Senior Citizens Welfare Association v. Secretary, UOI*]

(M. SATHYANARAYANAN, J.)

2019-I-LLJ-188 (Mad) LNIND 2018 MAD 6836

## DISMISSAL

**Back Wages** – Industrial Disputes Act, 1947, Section 25-F – On dispute raised by Respondent/Union for dismissal of workmen, Labour Court held dismissal in contravention of Section 25-F and awarded full back wages to workmen – On appeal, High Court confirmed award, hence this appeal – Whether Labour Courts justified in awarding full back wages to workmen, setting aside their dismissal order holding it to be in contravention of Section 25-F – **Held**, workman has no right to claim back wages from his employer as of right only because Court set aside his dismissal order and directed reinstatement in service – Necessary for workman to prove with aid of evidence that after his dismissal from service, he was not gainfully employed and had no earning to maintain himself and his family – Employer entitled to prove against employee that he was gainfully employed during relevant period – Initial burden is on employee – In interest of justice, workmen awarded 50% of total back wages – Order modified – Appeal partly allowed. [*Management of Regional Chief Engineer v. Their Workmen*]

(ABHAY MANOHAR SAPRE, J.)

2018-IV-LLJ-513 (SC) LNIND 2018 SC 478



## INDUSTRIAL DISPUTE

Jurisdiction – Industrial Disputes Act, 1947, Sections 2-A(2) and 10(I)(d) Disciplinary authority of Petitioner/Bank dismissed 3<sup>rd</sup> Respondent from service on charge of defrauding Bank and same confirmed by Appellate Authority – On reference, Tribunal set aside orders of Disciplinary and Appellate authorities and directed reinstatement in service, hence this petition – Whether workman could directly approach Tribunal Court or Labour Court constituted by State Government by virtue of third proviso to Sections 10(I)(d) and 2-A(2) of Act in respect of industrial dispute in relation to which Central Government was appropriate Government – **Held**, workman could not directly approach Labour Court/Tribunal constituted by State Government by virtue of third proviso to Section 10(I)(d) and 2-A(2) of Act in respect of industrial dispute in relation to which Central Government was appropriate Government – Provision prescribed under Section 2-A(2) of Act could not be interpreted to mean that it gives discretion to workman engaged in Public Sector Bank to approach directly to industrial Tribunal or Labour Court constituted by State Government – In case of employee of Bank, appropriate Labour Court/Tribunal would be Tribunal/Court constituted by Central Government – Tribunal which interfered with dismissal order of 3<sup>rd</sup> Respondent from Bank service itself had no jurisdiction – Petition allowed. [*State Bank of India v. Union of India*]

**(ASHWANI KUMAR SINGH, J.)**

**2018-IV-LLJ-516 (Pat) LNIND 2018 PAT 3844**

## REGULARIZATION

Recruitment rules – Petitioners were temporary employees in 2<sup>nd</sup> Respondent University wherein most of them had completed ten years of service – University initiated steps to recruit new employees from open market, hence these petitions challenging recruitment notification issued by University – Whether Petitioners entitled for regularization in permanent sanctioned posts in time scale of pay – **Held**, some of the Petitioners were not qualified and further, less number of sanctioned posts were available in University – Initial

appointments made would not have any implications in respect of conducting fresh recruitment by University by following procedures contemplated under statutes – Petitioners were at liberty to participate in process of selection by submitting their respective applications – If they were selected in accordance with procedures contemplated then they could be appointed on regular basis in sanctioned posts – Question of granting regular absorption did not arise – Initial appointments of Petitioners were not made in accordance with procedures contemplated and as per rules – Courts should not issue direction for regularization of service of employee which would be violative of constitutional scheme – Back door entries, appointments contrary to constitutional scheme and/or appointment of ineligible candidates could not be regularized – Petitions disposed of. [*C. Pushpa v. State of Tamil Nadu*]

(S.M. SUBRAMANIAM, J.)

2018-IV-LLJ-557 (Mad) LNINDORD 2018 MAD 10059

#### TERMINATION

Liability of Employer – Industrial Disputes Act, 1947, Sections 2(oo) (bb) and 25 F – Division bench held that Section 25 F shall not be attracted in case of termination of daily wage worker in view of Section 2(oo) of Clause (bb) and employer is not required to serve notice and pay compensation, hence this reference – Whether provisions of Section 25 F would be applicable, in case of daily wager – **Held, no absolute proposition of law that in case of termination of daily-wager, provision of Section 25 F shall not be applicable** – Employer has to satisfy on leading evidence, to bring case within ambit of Section 2(oo)(bb) that workman was employee in scheme of temporary duration and that employment was on contract and not as daily-wager simpliciter – Employment came to end with termination of scheme and consistently with terms of contract – Workman ought to have been apprised or made aware of terms of employer at commencement of employment – Reference answered accordingly. [*Rajendra Prasad Singh v. State of Bihar*]

(MUKESH R. SHAH, CJ)

2018-IV-LLJ-722 (Pat) (FB) LNIND 2018 PAT 2864

## COMPASSIONATE APPOINTMENT

Illegitimate Children – Entitlement – Policy of Railways that Compassionate Appointment cannot be granted to children born from Second Marriage – Constitutionality – Reasonable classification – Reasonable nexus – Intelligible differentia – Arbitrariness – Purpose of appointment is to prevent destitution and penury in family of deceased employee – Hindu Marriage Act treats child of void marriage as legitimate – Children born from marriage entered into while earlier marriage is subsisting, are legitimate – Policy of Employer excluding child from seeking benefit of Compassionate Appointment is inconsistent with Article 14 – Condition imposed in Circular denying appointment disproportionate to object sought to be achieved – Denying appointment to children born through Second Marriage is deeply offensive to their dignity and is offensive to Constitutional guarantee against discrimination – Restriction imposed in Circular regarding entitlement of child born through void marriages is arbitrary and *ultra vires* – Ratio laid down by Calcutta High Court in *Namitha Goldar* approved and decision of Madras High Court in *M. Muthuraj* stands overruled – *Constitution of India, Articles 14 & 16 – Service Law, Union of India v. V.R. Tripathi* (SC)

(DR. D.Y. CHANDRA CHUD, J.)

2019 (1) LLN 20

## CONSTITUTION OF INDIA

**Article 227** – Service Law – Termination – Reinstatement – Revisional Jurisdiction – Case of Respondent that he was employed as Driver by Petitioner from year 2003 – He worked for more than 240 days in each year – Respondent's services terminated suddenly by Petitioner on 16.9.2008 – Respondent raised Industrial Dispute challenging his Termination – Filed I.A. seeking directions to Petitioners to produce Salary and Bonus payment Vouchers maintained by Petitioners – Labour Court allowed I.A. directing Petitioner to produce Vouchers – Aggrieved by Orders, Petitioner filed Revision under Article 227 of Constitution – **Held**, as per decision of Apex Court in *Ahmedabad Mfg. and Callico Ptg. Co. Ltd. v.*

*Ramtahel Ramanand*, 1972 AIR SC 1598, Revision under Article 227 is maintainable – Labour Court wrongly presumed that Petitioners are in possession of Vouchers, which is contrary to pleadings and evidence let in by Petitioner before Labour Court – Instant case is a fit case to exercise power under Article 227 as Labour Court has passed a non-executable Order, which is a nullity – Labour Court ought to have dismissed I.A. – Impugned Order set aside – Revision Petition allowed – Order passed in Revision will not impair Respondent’s rights if and when any other appropriate Application is filed against Petitioner in accordance with law. *Management Toll (India) Logistics (P) Ltd. Chennai v. G. Baskar* (Mad.)

**(ABDUL QUDDHOSE, J.)**

**2019 (1) LLN 227**

**Section 2-A - & 10(1)(d)** – Industrial Dispute – Reference to Tribunal – Bipartite Settlement – Clause 19.6(e) – Misconduct – Discharge from Service – Proportionality of punishment – Non-representation by Respondent-Bank – Petitioner discharged from Bank’s service as per Clause 19.6(e) of BPS for misconduct of fraud committed by him – Order of Discharge challenged on ground that punishment was dis-proportionate – **Held**, Bank choosing to go unrepresented presumed to admit its non-application of mind in matter – Bank termination goes to root of matter wiping out Order of Suspension – Petitioner entitled to relief only in terms of Compensation – Petitioner entitled to interest @ 6% p.a till date of payment, which must be paid on or before 31<sup>st</sup> January 2019 – Aggregate Salary, Petitioner could have earned for period comes to Rs.32,58,924,57 – Bank directed to pay Rs.10 Lakhs as Compensation for Salary loss along with PF dues by 31<sup>st</sup> January 2019, failing which aggregate amount to carry Commercial Compound rate of Interest from 1<sup>st</sup> February 2019 till payment – Writ Petition disposed of accordingly. *Dulal Chandra Santra v. Union of India* (Cal.)

**(ARINDAM SINHA, J.)**

**2019 (1) LLN 86**

## **PAYMENT OF BONUS ACT, 1965 (21 OF 1965)**

**Section 32(v)(b) & (c)** – Entitlement to Bonus – Non-applicability to certain classes of Employees – Appellants are running Hospital – Second Respondent-Union raised Industrial Dispute over non-payment of Bonus to Employees – Labour Court passed Award directing Management to pay Bonus to its Workers for period 2012-2013 in accordance with law – Appellant-Management filed Writ Petition challenging Award and prayed for Stay of all further proceedings pursuant to said Award – Single Judge passed conditional Order of Stay directing payment of 50% Bonus to eligible Employees – Aggrieved by conditional Order, Management filed present Appeal – **Held**, grounds raised by Appellant as to competence of Union to raise Industrial Dispute and whether Appellant is exempted from provisions of Act are to be decided by Writ Court – Industrial Court has recorded findings that Management has paid certain sum as ex gratia, not Bonus – Award is under challenge and pending – Industrial Court did not quantify Bonus either in terms of money or percentage as per Act – In impugned Order also, there is no quantification – Court is inclined to modify conditional Stay Order by directing Appellant to pay Rs.1,000 to each Workman concerned under impugned Award – Same shall be without prejudice to rights of parties before Labour Court – Conditional Order modified and Appeal disposed accordingly. *Managing Director, Vinayaka Missions Medical College and Hospital v. Presiding Officer, Puducherry* (DB) (Mad.)

**(M. SATHYANARAYANAN, J.)**

**2019 (1) LLN 224**

## **SERVICE LAW**

Contractual Employment – Regularization/Absorption – Employer-Employee relationship – Regularization of some Employees – Petitioners working with Respondent-Company under various Labour Contractors from 1974 to 1997 – Respondents discriminated against Petitioners in absorption against regular vacancies – On challenge, held, objection of inordinate delay in filing Writ Petition is misconceived – Contention that there is no Employer-Employee relationship not acceptable as Annexure ‘A’ dated 4.1.1988 states about absorption of

persons, who worked for more than 240 days – Also Respondents have paid them as Principal Employer as evident from Bank Statement of Accounts – No reasonable classification to distinguish between same classes of Casual Labour to deny regularization – Appointment of some Workers, who continued year after year prove that Service Contracts are a sham – No case of Respondents that Petitioners are not qualified to be absorbed or are back door entrants – No explanation as to why Petitioners have been discriminated – Contention of Respondent that Company has a policy to employ Workmen on permanent basis in core areas only, not acceptable – Petitioners were under direct employment of Respondent as established by Respondent's own documents – writ Petitions allowed – First Respondent directed to absorb Petitioners provided, Petitioners, at initial appointment not disqualified for appointment – Petitioner entitled for all Service benefits – First Respondent to comply with directions within three months – Writ Petitions and pending I.As. disposed of. *Peer Bhaktar v. Hindustan Aeronautics Ltd., Bangalore* (Kar.)

(G. NARENDRA, J.)

2019 (1) LLN 193

FEBRUARY

## PENSION

**Temporary Service** – Syndicate Bank (Employees) Pension Regulations, 1995 – Petitioner retired from service and aggrieved by denial of pension reckoning his temporary service towards qualifying service, filed petition – Whether, considering service period of Petitioner, Respondent could be directed to consider matter of entitlement of his pension – **Held**, Petitioner engaged on temporary basis till his permanent appointment – Regulations not provided for pension to temporary employee – As Petitioner was working for many years as temporary worker till permanent appointment, Respondents to consider temporary service rendered by Petitioner along with regular service on permanent appointment, to enable him to draw pension – Ex-gratia pension admissible to those who retire from service under Government with shortage of

minimum qualifying service reckoning their provisional service along with regular service – Petitioner directed to submit representation before Respondent no. 1 – Respondent no. 1 directed to consider his request taking lenient view – Petition disposed of. [*K. Parameswaran v. Syndicate Bank*]

**(MS. P.V. ASHA, J.)**  
**2019-I-LLJ-417 (Ker)**  
**LNIND 2018 KER 28780**

### **CENTRAL GOVERNMENT HEALTH SCHEME (CGHS)**

Treatment in non-empanelled Hospital – Denial of Medical reimbursement – Justification of – Petitioner, a retired Government Employee, covered by CGHS – Underwent emergency Cardiac treatment at non-empanelled Hospital – Submitted Bills for Rs.13,84,440 – Sanctioned only Rs.5,84,885 on ground that Hospital not on panel and implant of CRT-D was not required – Various representations of Petitioner to higher Authorities declined – On challenge, held, Central Government Employees, during service or after Retirement is entitled to get benefit of Medical facility and no fetters can be placed on his rights – Reimbursement cannot be denied only on ground that said Hospital is not included in Government Order – Official of CGHS have denied full Medical reimbursement by taking very inhuman approach – Authorities are required to be more responsive and cannot in a mechanical manner deprive an Employee his legitimate reimbursement – Law does not require prior permission of Authorities, where survival of a person is prime consideration – Treatment of Petitioner in a non-empanelled Hospital was genuine because there was no other option left with him – Respondents directed to pay balance amount to Petitioner – Concerned Ministry directed to devise a Committee for redressal of grievance of Retired Pensioners and ensure timely and hassle free disposal of claims within 7 days – Writ Petition disposed of. *Shiva Kant Jha v. Union of India (Uol)* (SC)

**(R.K. AGARWAL, J.)**  
**2019 (1) LLN 303**

## **INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)**

**Sections 2(oo)(bb) & 25-F** – Retrenchment – Conditions Precedent to Retrenchment – Applicability of Section 25-F in case of Daily Wagers – Appellants, Daily Wagers, terminated from service – Raised Industrial Dispute – Reference decided in their favour – Reinstated in service – Their service again dispensed with – Order challenged before High Court which was allowed – Challenge to Order before Division Bench by Respondents – Division Bench held that Section 25-F not attracted in view of Section 2(oo)(bb) – Matter referred to Full Bench – View taken by Division Bench that Employer terminating employment of Daily Wager is not required to follow provisions of Section 25-F and not required to serve Notice or pay Compensation, **held**, not acceptable – There is no absolute proposition of law that in case of termination of Daily Wager, provisions of Section 25-F shall not apply – It depends upon facts of each case and nature of employment and period of employment as observed by Apex Court in *SM Nilajkar and others v. Telecom District Manager*, 2003 (2) LLN 1134 (SC) – Burden to prove ingredients of sub-clause (bb) of Section 2(oo) shall be on Employer that (i) Workman was Employee in a project or scheme of temporary duration (ii) Employment was on Contract which shall come to end on expiry of same or project (iii) Employment came to end simultaneously with termination of scheme or project (iv) Workman ought to have been apprised of terms of Employer at commencement of employment - Reference answered accordingly, *Rajendra Prasad Singh v. State of Bihar* (FB) (Pat.)

**(MUKESH R. SHAH, C.J.)**

**2019 (1) LLN 478**

**Section 2(s), 2(s)(iv) & 17-B** – Constitution of India, Article 226 – Workman – Definition of – Payment of full wages during pendency of proceedings – Jurisdiction of Labour Court – Writ jurisdiction of High Courts – Applicant 3<sup>rd</sup> Respondent appointed as Hostel Supervisor on consolidated pay of Rs.8,000 p.m. – Terminated on account of misconduct – Raised Industrial Dispute – Management contented that Applicant not a Workman as per Act – Labour Court held Applicant to be a Workman – Management challenged Award by way of W.P



No.6956 2017 on ground that Applicant not being a Workman, Labour Court had no jurisdiction to entertain reference – Applicant filed present I.A. seeking benefit of section 17-B that he is entitled in full wages last drawn by him – **Held**, benefit of Section 17-B can be denied only if any condition mentioned in case of *Bharat Singh v. Management*, 1986 (2) SCC 614, is not fulfilled or if there is any perversity or patent illegality and lack of jurisdiction with reference to conditions – It is only in rarest of rare cases that High Court can decline to pass Order under Section 17-B – Grant of relief under Section 17-B should be rule and refusing relief an exception – Any Order passed to deny benefit would amount to nullify effect of beneficial provisions under Section – There is specific finding of Labour Court that Applicant is a Workman and case not covered under Section 2(s)(iv) as he is drawing less than Rs.10,000 – Issues like lack of jurisdiction or that Applicant mainly doing Supervisory job can be decided at final hearing stage and not while dealing present Application – *Prime Facie view* sustaining Award ought to be preferred, otherwise beneficial legislation would be negated – No extraordinary case made out to deny relief sought by Applicant – Management directed to grant Applicant full wages with admissible allowances – Interim Order staying Award of Labour Court modified – Application allowed. *Jayanta Saikia v. Purbanchal Education Welfare Society (PEWS)* (Gau.)

**(N.KOTISWAR SINGH, J.)**

**2019 (1) LLN 392**

## **INDUSTRIAL LAW**

Relationship of Employer and Employee – Employment of Security Guards through Contractor – Maintainability of Reference – Security Guards employed by Respondent through Contractor – Raised Industrial Dispute claiming absorption – Labour Court held that Contract is a sham and granted benefit of Regularization and ordered payment of arrears of Wages – On challenge, **held**, Order of Labour Court conclusively established that Workmen are Employees of Management and there is relationship of Master and Servant – Labour Court justified in holding that in view of non-existence of any Contract, Workers continued to render services to Petitioner, became Workmen of second party and Petitioner, in turn will be

Principal Employer of Workmen – Once Petitioner failed to establish that appointment of Workmen was through Contractor only, that status cannot be changed even if it is subsequently established that Workmen continued with Contractor unless it is further established that Workmen surrendered their rights – A ward of Labour Court does not suffer from any irregularity or illegality calling for interference – Writ Petition dismissed. *Bosch Limited, Naganathapura Plant v. Labour through Karnataka Rakshak and General Workers' Union* (Kae.)

**(L. NARAYANA SWAMY, J.)**

**2019 (1) LLN 417**

### **MISCONDUCT**

Recovery of loss from Gratuity and Leave Encashment – Forfeiture of Gratuity – Recovery of loss from Gratuity amount – Whether sustainable – Petitioner charged for reckless financing and awarded punishment of recovery of Rs.9,52,772 from amount of Gratuity and Leave Encashment as part of Pecuniary loss caused to Bank – On challenge, **held**, right from issuance of Charge Memo uptill Order of Punishment, alleged loss caused to Bank has neither been alleged nor quantified in entire proceedings – Even in Punishment Order, total loss not quantified – Recovery sought to be made without any basis whatsoever – In absence of any allegation and finding in respect of quantification of loss, Order of Recovery unsustainable as being arbitrary and without conducting any Enquiry alleging quantum of loss – Order directing recovery quashed – Petitioner entitled to consequential relief in terms of payment of Retiral dues along with Statutory Interest as permissible in law – Writ Petition allowed – *Utter Bihar Gramin Bank (Officers & Employees) Service Regulations, 2010, Regulation 39(I)(a)(iv) – Payment of Gratuity Act, 1972 (39 of 1972), Section 4 r/w 14, Ajaay Kumar Verma v. Uttar Bihar Gramin Bank* (Pat.)

**(MADHURESH PRASAD, J.)**

**2019 (1) LLN 474**

### **SERVICE LAW**

Submission of – Caste Certificate – Charge-sheet – Termination – Power of Judicial Review of Writ Courts – 1<sup>st</sup> Respondent appointed with Appellant –

Services of 1<sup>st</sup> Respondent regularized by Appellant – After about a decade, charge-sheeted for submission of false Cast Certificate – After holding Enquiry, 1<sup>st</sup> Respondent terminated from service – 1<sup>st</sup> Respondent raised Industrial Dispute – Labour Court held that charges not proved by cogent evidence and ordered Reinstatement without Back Wages – Appeal by present Appellant before Industrial Court dismissed – On challenge, **held**, standard of proof required in Departmental Enquiries, there has to be cogent evidence led by proper Witnesses – Industrial Court has given speaking order upholding Order of Labour Court – It is settled legal position that unless findings of Labour Court is perverse or contrary to evidence, should not be interfered with – High Court, in exercise of powers of Judicial Review would not be sitting as an Appellate Court – Scope of scrutiny of High Court would be to extent of decision making process initiated by two courts below and not decision itself – Courts below having given concurrent findings, no case made out by Petitioner for interfering with said Orders – Writ Petition devoid of merits, dismissed. *Steel Authority of India Ltd. v. Saravan Kumar* (Chh.)

(P. SAM KOSHY, J.)

2019 (1) LLN 362

MARCH

## CONTRACT LABOUR

Employer-Employee Relationship – Industrial Disputes Act, 1947 Respondent-Union on behalf of workmen employed through contractor in Petitioner establishment sought for absorption – Labour Court held that contract was sham and granted benefit of regularization and payment of arrears of wages in favour of workmen, hence this petition – Whether, Labour Court rightly held that there was relationship of employer and employee between Petitioner company and workmen engaged by contractor who raised dispute – **Held**, no contract agreement produced by Petitioner to substantiate that Respondent workmen were appointed through contractors – Documents did not establish fact of contract labour – Petitioner did not dispute original registers maintained by them where name of workmen appeared – No appointment orders were issued to

Respondent workmen by Petitioner – Labour Court rightly opined that there was relationship of master and servant in between Petitioner and Respondent workmen – Evidence which adduced of contractors and documents to establish that Respondent workmen were employees of contractors was an afterthought attempt by Petitioner, which could have been as well produced at time of trial on preliminary issues – Respondent workmen entitled for relief of regularization and payment of arrears – Petition dismissed. [*Bosch Limited v. Labour Through K.R. & G.W. Union*]

**(L. NARAYANA SWAMY, J.)**

**2019-I-LLJ-754 (Kant) LNINDORD 2019 KANT 194**

Wagers – Contract Labour (Regulation and Abolition) Central Rules, 1971, Rule 25(2)(v)(a) and (b) – Contract Labour (Regulation and Abolition) Act, 1970, Section 10(l) – Minimum Wages Act, 1948 (Act 1948) – Pleas of Respondent no.4- Union for providing of same wages and other conditions of service as that of directly employed workmen by principal employer, allowed by Labour Commissioner, hence this petition – Whether, members of Respondent-union could be said to be contract labourers eligible for benefits of Act 1970 read with Rules 1971 – Whether Deputy Chief Labour Commissioner had jurisdiction to examine the issue of genuineness of claim of members of the applicant union – **Held**, Act 1970 did not provide for total abolition of contract labour but for abolition in certain circumstances and for regulation in certain establishments – Rule 25(2)(i) to (iv) of Rule 1971 provided condition of every licence and that rates of wages of contract worker not to be less than rates prescribed under Act 1948 – Prohibition notification issued under Section 10(1) of Act 1970 did not provide for automatic absorption of contract labours – When contract found to be genuine, contractor and principal employer both would have to ensure compliance of Act 1970 and working conditions of contract labour would be regulated under Act 1970 – Commissioner not empowered to make enquiry so as to hold workers entitled for benefit of Rule 25(2) (v) of Rules 1971 – There was no subsisting licenced contractors – Contractors under whom, workers claimed their engagement, were not party to this nor were represented before Commissioner –

Industrial Adjudicators required to make enquiry to “lift the veil” – Petitions disposed of. [*General Manager Food Corporation of India v. Union of India*]

**(MS. SUNITA AGARWAL, J.)**

**2019-I-LLJ-676 (All) LNINDORD 2018 ALL 4618**

## **DEPOSIT COLLECTORS**

Incentive Remuneration – As per original agreement, 3% incentive remuneration agreed upon, between Tiny Deposit Collectors and Bank, however, said incentive not paid to Tiny Deposit Collectors – On reference, Tribunal held that Tiny Deposit Collectors entitled to receive incentive remuneration at 2% and same confirmed by High Court and Supreme Court hence this petition – Whether, Respondents can be directed to forbear from recovering amount of 1% incentive remuneration paid from date of Tribunal award – **Held**, rights of parties decided with reference to date of implementation of award by Respondent Bank – Said 2% incentive remuneration paid to all Tiny Deposit Collectors and disputed 1% withheld by Respondent Bank – Petitioner not established any acceptable reason for purpose of grant of 3% incentive remuneration – Question of recovery did not arise at all, in view of fact that 1% disputed incentive remuneration, not disbursed to these Tiny Deposit Collectors – No direction issued to Respondent Bank to pay 1% excess incentive remuneration, more than remuneration at 2% already confirmed by Supreme Court – Petition dismissed. [*Indian Bank Employees Union v. Indian Bank*]

**(S.M. SUBRAMANIAM, J.)**

**2019-I-LLJ-640 (Mad)**

**LNINDORD 2018 MAD 12008**

## **REFERENCE**

Cross-examination of Witness – Industrial Disputes Act, 1947 (Act), Section 11A – Code of Civil Procedure, 1908 (CPC), Section 151 – Petitioner, dismissed from service and matter referred to Labour Court – By impugned order, right of Petitioner to cross-examine witness closed – Application filed by Petitioner under Section 151 of CPC read with Section 11 A of Act seeking recall of impugned order

and permission to cross-examine witness rejected by Labour Court, hence this petition – Whether, Labour Court right in declining permission to cross-examine witness – **Held**, impugned order recorded that no cross-examination carried out despite opportunity being granted, however, Petitioner always willing to cross-examine witness – If Petitioner granted short accommodation, cross-examination would have taken place on same day – Right of cross-examination vital for workman to defend himself against evidence tendered by witnesses produced against him, hence, court ought not to prejudice workman by closing this right in undue haste – Matter remanded back to Labour Court to proceed with matter from stage of cross-examination of witnesses – Petitioner would not be granted more than two opportunities for cross-examining witnesses – Petition allowed. [Mahesh kumar sharma v. Sahara India Pariwar]

(MS. REKHA PALLI, J.)

2019-I-LLJ-744 (Del) LNIND 2019 DEL 67

## TERMINATION

Enquiry Proceedings – Services of Petitioner/Employee terminated by Committee of Management – Respondent no. 2 set aside termination order but substituted penalty with stoppage of salary increment and bonus, hence petition by Petitioner and Management – Whether, order of termination of service of Petitioner liable to be set aside as enquiry proceedings held against Petitioner was illegal – **Held**, no documents in support of charges nor details of evidence to establish charges against Petitioner – Enquiry proceedings were *ex-parte* to Petitioner in violation of principles of natural justice – Illegal procedure adopted by Committee of Management in conduct of enquiry, compounded by failure of Committee to consider objection raised by Petitioner – Importance of evidences documentary and oral on which charges of misconduct rest were required to be furnished to delinquent employee prior to conduct of enquiry proceedings – Failure to provide such documents vitiate disciplinary proceedings – Prior intimation of date, time and place of enquiry to delinquent official was imperative procedural requirement – Order of Respondent no.2 upheld – Respondent authorities directed to reinstate Petitioner in service with all consequential

benefits – Petition by employee allowed – Petition filed by management dismissed. [*Rajiv Kumar Gupta v. State of U.P.*]

(AJAY BHANOT, J.)

2019-I-LLJ-691 (All) LNINDORD 2018 ALL 4641

### COMPASSIONATE APPOINTMENT

Policy decision – Denial of, when one dependent given benefit – When valid – Compassionate Appointment granted purely on humanitarian grounds to provide some source of livelihood to family so that both ends meet – **Held**, when one dependent of deceased is ‘gainfully employed’, benefit of Compassionate Appointment would not be available to other dependents irrespective of fact that employed dependent lives together or separately from other dependants – Term ‘dependant’ to include all siblings of Applicant – Fact that concerned employment provides sustenance and can maintain other dependants, to be looked at ‘objectively’ and not ‘subjectively’ – Argument that employed dependant not providing for other dependants, outside of judicial scrutiny – However, Applicant would be eligible for Compassionate Appointment, when income of employed dependant is not sufficient to maintain other dependants – Policy decision of Government to that effect, upheld – LPA dismissed – *Service Law. Niraj Kumar Malick v. State of Bihar* (FB) (Pat.)

(RAJEEV RANJAN PRASAD, J.)

2019 (1) LLN 772

### CONSTITUTION OF INDIA

**Article 136** – Industrial Disputes Act, 1947 (14 of 1947), Sections 10 & 17-B – U.P. Industrial Disputes Act, 1947 (28 of 1947), Section 6-N – Workmen, whether worked for one year – Finding of Fact – Interference by Apex Court – Termination Order passed against Appellant challenged successfully before Tribunal and Reinstatement ordered – Order of Tribunal, however, reversed by High Court – Finding of High Court that Appellant did not work continuously for one year, challenged herein – **Held**, Apex Court under Article 136 cannot re-examine entire evidence de novo for determination of fact – Finding of High Court

based on proper examination of factual matrix – Direction of High Court that amount awarded to Appellant under Section 17-B not to be recovered even though Termination Order restored upheld – Appeal dismissed. *Dilip Mani Dubey v. SIEL Ltd.* (SC)

**(ABHAY MANOHAR SABRE, J.) 2019 (1) LLN 559**

### **INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)**

**Sections 25-B & 25-F** – Continuous Service – Conditions Precedent to Retrenchment of Workmen – Right to regular appointment – Respondent working as Temporary Part-Time Employees with Petitioner for different duration – Denied regularization – Industrial Dispute raised – Tribunal decided Reference in favour of Respondents – Award challenged before High Court, dismissed – On challenge, held, issue before Tribunal was not ‘Unfair Labour Practice’, but it was right to get regular appointment – Inference of Unfair Labour Practice made by Tribunal will stand confined to limited extent and scope for moulding relief and it is not to cast any stigma upon Appellant Bank – It is settled law that High Court is not a Court of Appeal in respect of Awards passed by Labour Courts/Tribunal – Tribunal has spared Bank from making payment of Back Wages – Observation made by learned Single Judge that it is beyond powers of High Court to re-appreciate fact and evidence to overturn findings, in turn, declining interference, is perfectly within four walls of law and is not assailable under any circumstances – Appeal fails and dismissed. *Canara Bank v. D.S. Mohini* (DB) (Ker.)

**(P.R. RAMACHANDRA MENON, J.)**

**2019 (1) LLN 714**

**Sections 25-F, 25-G & 25-N** – Condition precedent to Retrenchment of Workmen – Procedure for Retrenchment – Respondent engaged as Daily Rated Mazdoor on Temporary basis – Her services terminated – Industrial Dispute raised – Industrial Tribunal directed Reinstatement of Respondent – On challenge, **held**, relief of Reinstatement should not be granted automatically even if it is lawful – Tribunal has erred in law as well as fact in appreciating decisions cited on behalf of Respondent for Reinstatement – Compensation of Rs.1,00,000 would sub



serve purpose of justice which be paid within three months failing which amount shall carry interest at 9% p.a. – Petitioner shall be at liberty to engage Respondent as Daily Wager – Impugned Order set aside – Writ Petition allowed in part – Contempt Petition filed by Respondent rendered infructuous and dismissed.  
*Executive Engineer v. K. Vasantha* (Cal.)

**(SHIVAKANT PRASAD, J.)**

**2019 (1) LLN 616**

## **MISCONDUCT**

Punishment of Compulsory Retirement – Justification of – Respondent-Delinquent working as Clerk with Petitioner-Bank charge-sheeted for misconduct – After Departmental Enquiry, punishment of Compulsory Retirement awarded – Departmental Appeal also dismissed – Industrial Dispute raised – Central Government Industrial Tribunal [CGIT] answered reference in favour of Respondent – In view of having retired, relief of full Back Wages with consequential benefits granted – On challenge, held, Order of CGIT dated 1.5.2015 holding Departmental Inquiry as vitiated not challenged by Petitioner – In absence of that challenge, Petitioner not allowed to rely on evidence led during inquiry – There is no error in order of CGIT to that extent – Once inquiry held vitiated, Tribunal is vested with jurisdiction to determine both guilt and punishment – Upon such evidence, Tribunal found that charges not proved and rightly did not consider awarding punishment – Passing of Vouchers by mistake not admission of guilt - It does not appear sound to remit matter to Tribunal to pass appropriate Order – Delinquent never pleaded that he was not gainfully employed – Award requires modification – It is just to modify Award to extent that Respondent be entitled to 50% of Back Wages with other Retiral benefits for which purpose he may be treated to have been reinstated – Petitioner directed to pay dues within three months – Writ Petition partly allowed – *Service Law. Assistant General Manager, Punjab National Bank v. Union of India* (All.)

**(SOUMITRA DAYAL SINGH, J.)**

**2019 (1) LLN 562**

## SERVICE LAW

Dismissal from Service – Service benefits – Withdrawal of – Whether justified – Petitioner removed from service on account of misconduct – Gratuity payable to Petitioner withdrawn on account of his dismissal based on misconduct – **Held**, amount of forfeiture of Gratuity to be restricted to amount of financial loss caused to Bank – Bank directed to release Gratuity in favour of Petitioner after deducting financial loss caused by him – Provident Fund and Pension also to be paid after completion of due formalities under Act and Scheme – Writ Petition disposed of with said direction – Employees’ Provident Funds and Miscellaneous Provision Act, 1952 (19 of 1952) – Employees’ Pension Scheme, 1955. *Shibatosh Dutta v. Uttar Bihar Gramine Bank (Pat.)*

(ABSANUDDIN AMANULLAH, J.)  
2019 (1) LLN 792

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