



FROM LABOUR LAW JOURNAL – LABOUR LAW NOTES

JANUARY

BACK WAGES

Continuity of Service – Petitioner/workman subjected to disciplinary proceedings by issuing charge memo and imposed with penalty of termination from service, same was subject matter before Industrial Tribunal – Industrial Tribunal held that as Petitioner would retire in normal course, he cannot be reinstated, but compensation only up to that date can be awarded and proceeded to pass award/Annexure P-1 of specific back wages from date of demand notice – But, Petitioner sought for direction to modify award in not granting relief of continuity of service – Whether award of specific back wages passed by Industrial Tribunal sustainable – **Held**, reasoning behind award is incorrect for reasons that Petitioner had service beyond specific period – Petitioner would have been reinstated with certain back wages – Merely Petitioner retired prior to passing of award, it cannot be restricted to only alleged back wages from date of demand notice till his retirement – When Tribunal concluded that termination order bad, irrespective of whether Petitioner or employee would be in service as on date of passing award, he is entitled for consequential benefits from date of termination till date of retirement or till award passed – If termination order is set aside or quashed, original position of employee would restore – Denial of continuity of service to deceased employee is contrary to law – Labour Court erred in not granting continuity of service, but only granted alleged back wages for specific period – For purpose of continuity of service towards grant of retiral benefits, same required to be counted – Award passed by Labour Court modified to extent that deceased employee entitled to continuity of service

only for granting retiral benefits – In view of modification of award only to extent that deceased employee entitled to continuity of service – Respondents directed to court service from date of termination till date of retirement for retiral benefits and release retiral benefits along with interest – Petition partly allowed. [*Nanti Devi v. Presiding Officer*]

(P.B. BAJANTHRI, J.)
2017-I-LLJ-221 (P&H)
LNIND 2016 PNH 12367

DISMISSAL

Illegal Dismissal – Non-furnishing of Second Show Cause Notice – Reference made before Labour Court against illegal dismissal of Petitioner/workman was answered against Workman – Workman filed present petition alleging that due to non-furnishing of second show cause notice, order of dismissal will be vitiated – Whether dismissal order vitiated due to non-furnishing of second show cause notice – **Held**, merely on account of non-furnishing of second show cause notice before inflicting major punishment, order of dismissal won't be vitiated unless delinquent employee showed as to how he was prejudiced by such act – Court nowhere found that Petitioner had taken point as to how he was prejudiced by non-supply of copy of second show cause notice – Order of dismissal cannot be said to be vitiated in eye of law on said ground – There was no error of jurisdiction and also there was no perversity in finding – No infirmity in order passed by Tribunal, as such there was no need of interference – Petition dismissed. [*Hadibanthu Mallik v. Presiding Officer*]

(SUJIT NARAYAN PRASAD, J.)
2017-I-LLJ-38 (Ori)
LNIND 2016 ORI 494

INDUSTIRAL DISPUTE

Compromise Settlement – Entitlement of Further Claim – Industrial Disputes Act, 1947 (Act 1947), Section 2A(2) – Appellant workman and management entered into compromise as against order of reinstatement – No positive response obtained when Appellant approached Management for settlement of Employee Provident Fund and Gratuity – Appellant’s claim allowed on approaching Controlling Authority – Order of Controlling Authority set aside on appeal – Writ Petitions filed by Appellant for claim of benefits were dismissed and hence appeals preferred – Whether Appellant entitled for further claim of benefits after accepting full and final amount pursuant to compromise settlement – **Held**, appellant having entered into a compromise and agreed for a settlement, cannot make a further claim resailing from the compromise – Appellate authority rightly took note of receipt of amount to effect that workman on his own volition, without reserving his right to make any further claim accepted amount towards claim for gratuity – Appellant without any compulsion or coercion received amount in full quit in respect of claims and it was not open to him to raise further claim and it was not open to him to raise further claim towards gratuity and provident fund – Reasons assigned by Judge in dismissing writ petitions can’t be said to be perverse or error apparent on face of record – Orders passed in writ petitions confirmed – Appeals dismissed. [*M. Devasdasan v. Management, Southern Railways Ltd.*]

(M. SATHYANARAYANAN, J.)

2017-I-LLJ-95 (Mad) LNIND 2016 BMM 612

PENSION

Employee’s Pension – Bank Employee’s Pension Regulations 1995 – Petitioner, who retired after many years of unblemished service with 1st Respondent, was deprived of benefits of pension under Bipartite Settlement/Joint Note for reason that Petitioner did not refund loan that he got, same challenged – Whether Petitioner entitled to benefits of pension under Bipartite Settlement/Join Note – **Held**, casual approach adopted by concerned officers of 1st Respondent in denying legitimate entitlement of

pension to Petitioner, when pension option of Petitioner accepted – Petitioner could not immediately arrange for funds to be refunded and he also submitted detailed representation of various personal difficulties – Concerned Officers of 1st Respondent ought to have been more compassionate, alive and sensitive to such issues, when they were made aware of same – *Bona fides* of Petitioner are not questioned by 1st Respondent – Facts on record show that Petitioner deposited specific sum in recovery account of 1st Respondent – Concerned Officers of 1st Respondent cannot deny pension on petty ground – Further, 1st Respondent is not correct in asserting that petition delayed or barred by laches – Impugned letters rejecting Petitioner's entitlement to pension quashed and set aside – Petitioner entitled for pension under acceptance letter issued by 1st Respondent subject to condition that Petitioner deposits amount in question with 1st Respondent – 1st Respondent directed to grant pension to Petitioner with retrospective effect – Petition allowed. [*Ramesh Gajanan Nigudkar v. Bank of Baroda*]

(G.S. KULKARNI, J.)

2017-I-LLJ-179 (Bom) LNIND 2016 BOM 409

PERMANENT EMPLOYEES

Entitlement to Increments – Madhya Pradesh Industrial Environment (Standing Order) Rules, 1963 (Rules 1963) – Constitution of India (Constitution), Article 14 – Petitioners were engaged by State as daily wagers and had continued for long time – In terms of Rules 1963, Petitioners became entitled to be classified as 'permanent employees' – Dissatisfied with pay scale, Petitioners before Court for benefit of salary given to regular employees – Whether Petitioners are entitled to increments as given to regular employees on annual basis – Whether 'permanent' employees' are same as employees appointed on 'regular' basis or their services stand regularized – **Held**, 'permanent employee' has right to receive pay in graded pay-scale – At same time, 'permanent employee' would be getting only minimum of said pay-scale with no increments – It is only regularization in service which would entail grant of increments etc. in pay-scale – Court does not find any substance in contentions raised by

Petitioners in contempt petitions – Court conscious of fact that in some cases, on earlier occasions, State Government while fixing pay scale, granted increments as well – If some persons are given benefit wrongly, it cannot form basis of claiming same relief – Trite that right to equality under Article 14 is not in negative terms – Petitions dismissed. [*Ram Naresh Rawad v. Sri Ashwini Roy*]

(A.K. SIKRI, J.)

2017-I-LLJ-1 (SC) LNIND 2016 SC 626

REGULARIZATION OF SERVICE

Compensation – Dispute relates to eighty eight workmen who had worked as ‘Tyndals’ at colliery of First Respondent – On Reference, Tribunal directed management to form panel of concerned workmen in accordance with seniority and absorb or regularize them either in work of Tyndal or in any suitable category – On Petition filed by First Respondent, High Court modified award by directing that as and when the management intends to employ regular workmen, it shall grant preference to the workmen governed by Award – Worker’s Union filed writ petition seeking implementation of High Court order – While disposing of Petition, statement of management was recorded that if and when posts were advertised, workmen would be entitled to apply - Rejection of Review Petition led to filing or present proceedings – Whether workmen can be granted relief of regularization - **Held**, workmen belong to skilled category of Tyndals which are comprised in category IV – Having due regard to this position appropriate to direct that First Respondent shall in full and final settlement of all the claims and outstanding of eighty eight workmen concerned deposit amount per workman before Central Government Industrial Tribunal – Amount shall be disbursed to workmen concerned subject to due verification of their identity by Industrial Tribunal – Amount shall be in full and final satisfaction of all claims, demands and outstandings payable to workmen – Appeal allowed. [*Rashtriya Colliery Mazdoor Sangh v. Employers in Relation*]

(DR. D.Y. CHANDRACHUD, J.)

2017-I-LLJ-157 (SC) LNIND 2016 SC 560

RETRENCHMENT

Re-engagement – Industrial Disputes Act, 1947 (Act 1947), Sections 25F, G and H – Respondent Workman retrenched after complying with provisions of Section 25F of Act – On Claim petition filed by Respondent challenging retrenchment, Labour Court set aside retrenchment order and directed him to be re-engaged – Petition against Labour court award – Whether award passed by Labour Court in directing Respondent to be re-engaged justified **Held**, Respondent was neither re-engaged till date not was given opportunity for re-employment whereas his juniors were engaged – Court below rightly held that petitioners had not complied with provisions of Section 25(H) – Nothing on record that before engaging freshers, opportunity of re-employment was afforded to Respondent – Impugned award does not suffer from any perversity and passed in accordance with proved facts and law – Petition dismissed. [*State of Himachal Pradesh v. Shri Ashok Kumar*]

(CHANDER BHUSAN BAROWALIA, J.)

2017-I-LLJ-214 (HP) LNIND 2016 HP 2545

TERMINATION

Reinstatement – Workman demanded management to provide coffin to bury slain worker/Union leader's dead body – On refusal to provide same, enraged workmen sought Manager's appointment and went into his bungalow asking for coffin – Management described it as act of trespass and misconduct – Eight workmen were terminated after holding domestic enquiry – Whether impugned judgment and order of Labour Court and Single Judge in reinstating dismissed workmen justified – **Held**, Single Judge had not committed any error in concurring with decision as to reinstatement of concerned workmen on perusal of materials available on record – Union leader was brutally murdered on the previous day – Rank and file were agitated thereby but they wanted merely a coffin for their slain co-worker which was denied by management – Management didn't act with due sympathy to poor workmen – No reason found to interfere with impugned

judgment and order of Labour Court and Single Judge – Appeal dismissed.
[Management of Mornoi Tea Estate v. State of Assam]

(N. CHAUDHURY, J.)

2017-I-LLJ-231 (Gau) LNIND 2016 GAU 466

TRANSFER

Transfer Order – Maintainability of Writ Petition – Industrial Disputes Act, 1947 (Act 1947), Sections 10 and 33(2) – Constitution of India, 1950, Article 226 – Office bearer of Appellant/Petitioner/Union transferred by Respondent Management – Industrial dispute raised before Labour Officer and conciliation notice issued – Petition filed as there was infraction of Section 33(2) of Act 1947 since transfer effected pending conciliation – Being aggrieved on dismissal of petition, appeal filed with allegation that petition is maintainable as transfer effected pending conciliation – Whether writ petition filed against transfer order maintainable – **Held**, transfers of employees effected were personal to them and do not involve any public duties – For making out a statutory violation, fact-finding was necessary and employees have to seek recourse to Section 10 of Act 1947 – Apprehension of delay in adjudication by forums created under Act 1947 cannot be ground to invoke Writ jurisdiction – Writ jurisdiction could be invoked only when action involved public duty – Transfer effected do not involve any public duty and involve disputed questions of fact and they should be resolved only before forums under Act 1947 – Petition filed under Article 226 of Constitution against transfer order is not maintainable – Appeal dismissed.
[Larsen and Toubro Employees Union v. Labour Officer (Conciliation)]

(S. MANIKUMAR, J.)

2017-I-LLJ-82 (Mad)LNIND 2016 MAD 2429

CANARA BANK (EMPLOYEES’) PENSION REGULATIONS, 1995

Regulation 49 – Code of Civil Procedure, 1908 (5 of 1908), Section 60(1) – Attachment of Pension – Appellant, an Employee of Bank, obtained Educational Loan for his son – He signed Loan documents as co-obligant –

Loan dues not paid – Appellant retired from service – Bank deducted certain amount from his Pension Account – Appellant filed Writ Petition questioning same – Writ petition dismissed – Writ Appeal filed – Contention of Appellant that he is only a co-obligant and deductions from Pension Account after it being credited to Savings Account is not permitted, cannot merit acceptance – Bank is entitled to recover dues either from loanee or co-obligant – Furthermore, Pension Regulation permits Bank to deduct loan of an Employee – Appellant having accepted Regulation cannot now contend that Bank has no power under CPC to deduct from his Savings Account – Regulation has overriding effect than CPC – Moreover, Appellant has suppressed about previous Loan while obtaining Second Loan – Appellant is not entitled for equity – Appeal dismissed – Order of Single Judge confirmed. *Kamalakkannan, B. v. The Managing Director, Canara Bank, Canara Bank Buildings, Bangalore* (DB) (Mad.)

(P. KALAIYARASAN, J.)

2017 (1) LLN 203

COMPASSIONATE APPOINTMENT

Petitioner's father working as a Clerk in Respondent-Bank died in harness – Claim of Petitioner for Compassionate appointment was rejected on ground that deceased Employee has only a short period of service and also family was not in indigent circumstances as family received Terminal benefits – Whether Respondent-Bank justified in rejecting claim of Petitioner for appointment – **Held**, Respondent-Bank rejected Application of Petitioner for Compassionate employment on totally unreasonable and arbitrary grounds – A Nationalized Bank which is a State under Article 12 of Constitution of India unjustifiably denied Petitioner of an eligible post of 14 long years for which he should be compensated – Directions issued to Respondent-Bank to consider Petitioner's appointment on Compassionate grounds and also to pay Costs – Petition allowed. *Ajithkumar, G.K. Kollam v. Canara Bank, rep. by its Managing Director & Chief Executive Officer, Bengaluru* (Ker.)

(V. CHITAMBARESH, J.)

2017 (1) LLN 164

PAYMENT OF GRATUITY ACT, 1972 (39 OF 1972)

Section 14 – On account of pendency of Criminal proceedings, Respondent-Employee not paid Gratuity after his superannuation – Order of Controlling Authority to pay Gratuity to Respondent-Employee challenged – Payment of Gratuity is a Social Security measure to help Workman after retirement which is a Social obligation by as Employer towards his Employee – Superior status has been vested in provisions of Gratuity Act vis-à-vis any other enactment inconsistent therewith – Respondent-Employee has attained age of Superannuation after putting more than 39 years of service – Departmental proceedings concluded by awarding punishment hence, no Departmental proceedings were pending against Respondent-Employee – No infirmity or illegality in impugned Orders – Directions issued. *Bank of Baroda v. The Appellate Authority* (All.)

(DR. DEVENDRA KUMAR ARORA, J.)

2017 (1) LLN 39

SEXUAL HARASSMENT OF WOMEN AT WORK PLACE (PREVENTION, PROHIBITION AND REDRESSAL) ACT, 2013 (14 OF 2013)

Section 13(3) – Challenge to Order of Disciplinary Authority on ground or exonerating Delinquent Employee was contrary to settled law in *Apparel Export Promotion Council v. A.K. Chopra*, 1999 SCC (L&S) 405 – Question of maintainability, due to availability of alternate remedy before CAT – **Held**, it is not an effective one, since R3 is set to retire by 30th May 2016 and it is unlikely that Petition would be disposed of by CAT by said date – Bar of remedy is a self-imposed restraint and not a Constitutional bar – Finding of Sexual harassment Committee on vague and general grounds, without any discussion – Order passed is against mandate of law enunciated by Supreme Court in *Medha Kotwal Lele v. Union of India*, 2012 (2) CWC 960 (SC) – Impugned Order set aside – Writ Petition allowed. *Sarita Verma v. New Delhi Manicipal Corporation* (Del.)

(MANMOHAN, J.)

2017 (1) LLN 125

FEBRUARY

DISCIPLINARY PROCEEDINGS

Termination from Service – Respondent/Corporation terminated services of Petitioner for producing fake degree certificate at time of his appointment – Labour Court confirmed termination order – Being aggrieved, petition filed with allegation that Respondent should have resorted to disciplinary proceedings under statutory provisions, as Petitioner was permanent employee – Whether termination of Petitioner from service justified, when Respondent did not resort to disciplinary proceedings under statutory provision – **Held**, Petitioner is permanent employee and if employee of corporation commits misconduct, he would be subjected to disciplinary proceedings under statutory Rules – To determine that degree certificate of Petitioner is fake, matter required to be examined in disciplinary proceedings by adducing evidence from author of certificate – Validity of Certificate could be determined only by University in question, same can be made only in disciplinary proceedings by calling concerned record and examination and cross examination of author of documents – As long as certificate is not cancelled by competent authority, Petitioner entitled to benefit out of said certificate – By merely holding preliminary inquiry behind back of Petitioner and concluding that degree Certificate is fake is untenable – Termination order and award of Labour Court set aside – Respondents directed to reinstate Petitioner and pay monetary benefits for intervening period from date of termination till reinstatement into service – Respondents are at liberty to proceed with inquiry as per law and such inquiry proceedings shall be completed in accordance with law – Petition allowed. [*Kulbir Singh v. Punjab State Power Corporation Limited*]

(P.B. BAJANTHRI, J.)

2017-I-LLJ-336 (P&H)

LNIND 2016 PNH 12659

DISMISSAL

Concealment of Material Information – 1st Respondent/Bank called for applications for post of Peon/Hamal and Appellant/Petitioner/part-time House Keeper of 1st Respondent/Bank applied for said post declaring that he passed 68th Standard – 1st Respondent found discrepancy that Appellant had initially declared that he passed only 5th Standard, and issued charge memo to submit his explanation for concealment of material information – Being not satisfied with his explanation, Disciplinary Authority imposed punishment of dismissal of Appellant from service – Petition filed by Appellant against his punishment was dismissed – Aggrieved by Single Judge order, Appellant filed present appeal to set aside said order and to secure employment in Bank – Whether punishment of dismissal of Appellant from service is disproportionate to charges leveled against him – **Held**, when Company prescribes specific qualification for appointment to specific post, candidate applying for said post must adhere to conditions – Only if candidate falls within prescribed qualification, he is eligible for post called-for – Knowing that post of part-time House Keeper requires 8th Standard fail, Appellant concealed his 8th Standard pass and applied for same declaring that he passed only 5th Standard and produced transfer certificate to that effect – Granting benefit to Appellant would be violative of doctrine of equality – Suppression of fact is gross misconduct especially in service matters – Appellant did not avail appellate remedy which is not bar even for raising industrial dispute, as Appellate Authority will not differ from finding of Disciplinary Authority – Act of 1st Respondent justified – Appeal dismissed. *[P. Sudalaimuthu v. Union Bank of India]*

(S. VAIDYANATHAN, J.)

2017-I-LLJ-387 (Mad) LNIND 2016 MAD 3734

DISMISSAL FROM SERVICE

Declining for approval – Industrial Disputes Act, 1947, Sections 17B and 33(2)(b) – Appellant filed application under Section 33(2)(b) for approval of dismissal of service of 2nd Respondent/Workman but 1st

Respondent/Joint Commissioner of Labour declined to grant approval – On petition filed, writ court held that no error found in findings of 1st Respondent – Being aggrieved, appeal filed – Whether 1st Respondent justified in declining to grant approval for dismissal of 2nd Respondent – **Held**, 2nd Respondent already attained superannuation – Show cause notice was not produced to substantiate that 2nd Respondent was given opportunity to offer his explanation on past misconduct – Orders of Adjudicating Authority and Writ Court show that there was violation of principles of natural justice, same is not interfered – Record of proceedings shows that pending writ petition, directions issued to pay wages under Section 17B and writ petition disposed of directing reinstatement with specific back wages from specific period till date of reinstatement, but Appellant preferred present appeal – As order made by Writ Court already sustained, Appellant directed to take note of aforesaid orders and disburse differential amount representing specific back wages to 2nd Respondent – Appeal dismissed. *[T.N.S.T. Corporation (Villupuram) Ltd. v. Joint Commissioner of Labour]*

(S. MANIKUMAR, J.)

2017-I-LLJ-501 (Mad)

LNIND 2016 MAD 2972

INDUSTRIAL DISPUTE

Pendency of Conciliation Proceeding – Status of Service Conditions – Industrial Disputes Act, 1947 (Act 1947), Section 33 – Constitution of India, 1950, Article 227 – Petitioner / Trade union approached Labour Court under Section 33 of Act 1947 for interim relief of continuance of contract of service its members / Meter Readers on premise that there should not be change in service conditions, as dispute regarding their regularization pending before Conciliation Officer – Labour Court held that protection under Section 33 of Act 1947 cannot be acceded to members of Petitioner, as there was no terms and conditions of Meter Readers provided for and no evidence regarding employer and employee relationship between Petitioner and Respondents / establishments – Being aggrieved, present writ petition filed –

Whether protection under Section 33 of Act 1947 can be acceded to members of Petitioner – **Held**, there is no final adjudication upon dispute regarding claim for regularization as on date – Dispute is at primitive stage pending conciliation before Conciliation Officer – No document on record either demonstrating post of Meter Readers in establishments against which members of Petitioner worked or no terms and conditions of Meter Readers provided for – Though members of Petitioner do their work on contract basis on fixed remuneration over years, protection under Section 33 of Act 1947 cannot be acceded to them, as they are not employees of Respondents – Petitioner is at liberty to approach Respondents for continuance/extension of contract of work as per requirements – Petition dismissed. [*M.P. B.M.R.K. Sangh v. State Advisory Contract Labour Board*]

(SUBODH ABHYANKAR, J.)
2017-I-LLJ-333 (MP)
LNIND 2016 MP 8864

SERVICE CONDITIONS

Pendency of Proceedings – Industrial Dispute Act. 1947, Sections 33 and 33A – Retrenchment notice issued to specific workers pertaining to identified jobs in which contract labour abolished, same referred – Pending matter, settlement arrived at in between Management and Union to give benefit as per direction passed by Supreme Court, but restricted only to certain contract labourers – Tribunal passed award after taking settlement into consideration – Workers filed application for direction to take them back in regular employment like other workers who got benefit as per Supreme Court direction, same rejected with direction to workers to work out their remedies under relevant labour enactments – Pursuant to said direction, demand raised before appropriate Government, same referred – Case registered to see legality and propriety of action of Management in retrenching workers – Some of retrenched workmen made application to restore case, but same rejected for reason that Tribunal has no power to review its own order – Retrenched workers also filed application under Section 33A – Tribunal held that there is contravention of Section 33A, but did not pass order of reinstatement on ground that writ petition for

absorption subjudged before present Court – Being aggrieved, both Management and workers filed present writ – Whether application filed under Section 33A maintainable – **Held**, except retrenchment notice, no order issued for retrenchment – Application under Section 33A is not maintainable, as it was after failure of conciliation proceeding and before reference made by appropriate Government – If application of workmen allowed by way of application filed under Section 33A, it will answer reference before its adjudication in original reference or will become infructuous – Provision of Section 33 or 33A contains provision not to alter service condition of workmen during pendency of conciliation proceeding or dispute pending for its adjudication – In present case, Section 33A application filed after reference made and on that ground also, application under Section 33A not maintainable – When Supreme Court refused to entertain application of workmen giving liberty to work out their remedy under labour enactments and if that application allowed granting ante-status to workmen, it will amount to overreaching Supreme Court direction – Tribunal did not pass award in its right perspective – Tribunal award is not sustainable, same quashed – Petitions disposed of. [*Management of Steel Authority of India Ltd. v. Presiding Officer*]

(SUJIT NARAYAN PRASAD, J.)

2017-I-LLJ-480 (Ori)

LNIND 2016 ORI 804

Entitlement to Gratuity – Appellant raised industrial dispute against termination from service – Labour Court set aside dismissal order and noticing that Appellant had already crossed date of superannuation, ordered that from date of termination to date of superannuation, Appellant entitled to service benefits except backwages – On appeal, High Court held that Appellant not entitled to gratuity but one-time compensation – Whether Appellant is entitled to gratuity in view of his termination being wrongful – **Held**, High Court wrong in holding that Labour Court did not follow procedure – Seen from award that management had not sought for opportunity for leading evidence – Despite granting opportunity, no evidence was adduced after Labour Court held that findings of inquiry officer perverse

– Labour Court found that termination was unjustified on basis of perverse finding entered by inquiry officer – No attempt on part of management before Labour Court to establish otherwise – High Court itself has granted compensation since Court felt that termination was unjustified and since reinstatement was not possible on account of superannuation – In order to deny gratuity to employee, it is not enough that alleged misconduct of employee constitutes offence involving moral turpitude as per report of domestic inquiry – There must be termination on account of alleged misconduct, which constitutes offence involving moral turpitude – Judgment of High Court cannot be sustained – Appellant entitled to gratuity in respect of his continuous service from his original appointment till date of superannuation – Appeal allowed. [*Jorsingh Govind Vanjari v. Divisional Controller Maharashtra*]

(KURIAN JOSEPH, J.)

2017-I-LLJ-258 (SC) LNIND 2016 SC 587

TERMINATION

Reinstatement – Grant of Compensation – Industrial Disputes Act, 1947 (Act 1947), Section 25F – Appellant/Workman terminated from employment in violation of Section 25F of Act 1947 – Labour Court by order award gave relief of reinstatement without back wages to Appellant/Workman – High Court modified relief granted by awarding compensation – Whether order passed by High Court in awarding compensation to Appellant/Workman justified – **Held**, for termination in breach of Section 25F of Act 1947, reinstatement need not be necessarily followed and compensation may be appropriate measure of relief – Appellant/Workman had been in employment since Management implemented Labour Court’s order – Court was of view that Appellant being reinstated ought not to be disturbed – Order of High Court set aside and Labour Court’s award restored – Appeal allowed. [*Gaukaran Yadav v. State of Chhattisgarh*]

(RANJAN GOGOL, J. AND L. NAGESWARA RAO, J.)

2017-I-LLJ-257 (SC)

LNINDORD 2017 SC 207

Reinstatement – Industrial Disputes Act, 1947 (Act 1947), Sections 2-A and 25(F) – On termination from services, Petitioner raised Demand Notice under Section 2-A of Act 1947 – Central Government Industrial Tribunal-cum-Labour Court passed award against Petitioner – Whether Petitioner/Workman ought to be reinstated with all consequential benefits and back wages and is Petitioner entitled to protection under Section 25(F) of Act 1947 – **Held**, Petitioner (workman) has completed 240 days in calendar year – Petitioner was entitled for benefits as provided under Section 25(F) of Act 1947 – Factor admittedly not taken into consideration Order passed by Central Government Industrial Tribunal-cum-Labour Court is quashed and set-aside – Respondents will re-instate Petitioner, as daily rated Mazdoor with all consequential benefits except the back wages – Petition allowed. [*Pawan Kumar v. District Manager Deptt. of Telecom*]

(CHANDER BHUSAN BAROWALIA, J.)

2017-I-LLJ-507 (HP)

LNIND 2016 HP 2159

Suppression of Facts – Petitioner engaged for labour work by new branch of Bank – Branch Manager noticed that Petitioner does not fulfill necessary qualification and discontinued his services – Petitioner submitted application for appointing him in vacancy – Branch Manager noticed Petitioner had produced two passed certificate for 6th and 4th class – Respondent Bank after noticing suppression of facts by Petitioner discontinued services of Petitioner – Petitioner approached Tribunal-cum-Labour Court – Court declined to grant relief to Petitioner – Whether Petitioner has worked from period claimed and whether on production of two certificates by Petitioner, his services can be dispensed – **Held**, new branch of Bank commenced its operation in 2004 – Prior to that Petitioner's services were engaged as Labourer – Evidence that Petitioner has worked for more than 240 days – Respondent-Bank never advertised for post and pursuant to any advertisement, the Petitioner has not submitted his application so as to contend that Petitioner has produced 6th class and 4th class certificate for employment – Respondent-Bank's contention that petitioner has suppressed facts relating to educational qualification is incorrect – Even for temporary

employees in public officer like Bank some preliminary inquiry is necessary before discontinuing such persons services – Supreme Court held that temporary employees are entitled to know reasons on their termination – Tribunal-cum-Labour Court order set aside – Respondents directed to reinstate Petitioner with continuity of service and 50% back wages – Petition allowed. [*Ajit Kumar v. Presiding Officer*]

(P.B. BAJANTHRI, J.)
2017-I-LLJ-353 (P&H)
LNIND 2016 PNH 12648

ADMINISTRATIVE TRIBUNALS ACT, 1985 (13 OF 1985)

Sections 3(q), 14 & 28 – Service matter – Bar of jurisdiction of Civil Courts Petitioner claiming Pension through deceased Employee as his legally wedded wife – Serious dispute over status of Petitioner as wife of deceased, unresolved – **Held**, relief claimed by Petitioner pertaining to Pension, which comes within definition of “Service matter” in Section 3(q) – Section 28 bars jurisdiction of all Court except Supreme Court in case of ‘Service matters’ – Petitioner ought to have approached Tribunal and Civil Suit filed by Petitioner, held, barred under Section 28 – Order of District Court allowing Suit, quashed – Order of Trial Court rejecting Suit, restored. *Rebati Mondal v. Usha Mondal* (Cal.)

(HARISH TANDON, J.)
2017 (1) LLN 379

CODE OF CIVIL PROCEDURE, 1908 (5 OF 1908)

Section 114 & Order 47, Rule 1 – Tamil Nadu Cooperative Societies Act, 1983 (T.N. Act 30 of 1983), Section 180 – Tamil Nadu Cooperative Societies Rules, 1988, Rule 149 – Industrial Disputes Act, 1947 (14 of 1947), Section 18(3) – Settlement – As per Rule 149 (as it stood in 1988), no power vested with Society to fix Time Scale of pay to any post – But it clearly spelt out classification, qualification and mode of recruitment – As per

1995 Amendment to Rule 149, it was stated that Society concerned shall take into account nature of business, financial position, etc. and it also provided that Society shall from Special Bye-laws covering conditions of Service with prior approval of Registrar of Cooperative Societies – But by 2002 Amendment, Rule 149 was amended whereby prior approval of Government was mandated in place of Registrar – Thereafter once again in 2007, Rule 149 was amended whereby prior approval of Registrar was once again reinserted – Division Bench in Tamil Nadu Vatta Kooturavu Veetu Vasathi Sangangallin Anaithu Paniyalargal Madya Sangam’s case after construing relevant provisions had categorically held that Committee for formulating structure of Cooperative Societies and G.O. Ms. Nos. 289 & 186 are only in furtherance of objectives of State Government and finally held that there was no scope for interference with Order of Registrar cancelling Settlement reached by individual Society under ID Act – Said judgment is binding precedent and same cannot be termed as obiter dicta – Division Bench in Judgment, sought to be reviewed, by typographical error had used word “with prior approval of State Government” instead of “prior approval of Registrar” – Same cannot be ground for Review of entire judgment – Only when there is error apparent on face of record, Review jurisdiction can be exercised – Case-law discussed – Mere typographical mistake would not give rise to cause for reviewing Judgment – Therefore, Judgment of Division Bench holding that when there is no proper Bye-law framed under Rule 149 with prior approval of Competent Authority, it is open to Government to make prescription of Scale of Pay to be paid in favour of such Employees and Staff is perfectly valid and requires no Review or interference – Taking into account facts of case, inadvertent mistake committed at Para 10 of Judgment shall stand rectified as “prior approval of Registrar of Cooperative Societies” – Review Application disposed of. *Janakiram, B. v. State of Tamil Nadu, rep. by its Secretary to Government, Chennai* (DB) (Mad.)

(S. MANIKUMAR, J.)
2017 (1) LLN 461

CONSTITUTION OF INDIA

Article 226 - Punishment by Disciplinary Authority – Interference by High Court – Whether warranted – Penalty of Dismissal of service imposed upon by R1 altered to stoppage of increment for a period of three years by High Court – Established that Enquiry conducted against R1 was in accordance with law and R1 admitted dereliction of duty – Penalty imposed on R1 not excessive or disproportionate to misconduct committed by him – In such circumstances, interference by High Court unwarranted – Quantum and nature of punishment, held, prerogative of Disciplinary Authority – Judicial Review only permissible when punishment is so disproportionate that it shocks judicial conscience – High Court at most, could have remanded matter to Labour Court – Modification of punishment by High Court, uncalled for and set aside – Appeal allowed. *Chief Executive Officer, Krishna District Cooperative Central Bank Ltd. v. K. Hanumantha Rao* (SC)

(A.K. SIKRI, J.)

2017 (1) LLN 283

LABOUR LAW

Award – Adverse Inference – Whether justified – Workmen claimed that they worked for 240 days – Employer could not produce any documentary evidence, in spite of opportunity given by Tribunal – Documents summoned by Tribunal, not produced by Employer – **Held**, no proof led in by Employer to discredit claim of Workman – Advance Inference drawn by Tribunal against Employer, justified – Order of Reinstatement of Workman with full Wages, not interfered with – Writ Petition dismissed. *Universal Cables Ltd. v. Presiding Officer, Industrial Tribunal* (All.)

(ANJANI KUMAR MISHRA, J.)

2017 (1) LLN 321

PAYMENT OF GRATUITY ACT, 1972 (39 OF 1972)

Section 7(4) & 4(6) – Pendency of Disciplinary proceedings – Withholding of Gratuity – Whether warranted – Application filed by Respondent claiming Gratuity of Rs.10 lakha allowed by Controlling Authority

– Challenge by Petitioner on ground that Gratuity ought to have been withheld as Disciplinary proceedings were pending against Petitioner – **Held**, decision of Controlling Authority in accordance with law laid down in *Jaswant Singh Gill v. Jeevaratnam*, AIR 1996 SC 1951 – Decision not warranting any interference – Petition filed by Management dismissed. *General Manager (Region), Food Corporation of India v. Ramdayal Meena* (MP)

(SANJAY YADAV, J.)

2017 (1) LLN 455

SERVICE LAW

Disciplinary Proceedings – Charge Memo – Supply of Documents – Failure to supply documents relied in Charge Memorandum – Observance of Principles of Natural Justice – Disciplinary Authority permitted perusal of documents and declined to supply – Privileged documents – Documents relied in Charge Memo does not qualify to be privileged documents – Purpose of providing document is to enable delinquent to submit comprehensive reply to charge – Permission to peruse voluminous documents would not serve purpose – Direction issued to supply documents. *Jaffar Sait, M.S. Ramnad District v. Union of India, New Delhi* (DB) (Mad.)

(K.K. SASIDHARAN & V. PARTHIBAN, JJ.)

2017 (1) LLN 507

Gratuity & Pension – Withholding of – Whether justified – Order withholding Gratuity and Pension of Employee passed on basis of charges leveled in first Enquiry Report which had already been charged – **Held**, Authorities ought not to have relied upon said Enquiry Report in fresh Enquiry for holding Appellant guilty of charge and awarding punishment of withholding of Pension and Gratuity – Moreover, neither any Pecuniary loss to State nor was there any grave misconduct on part of Appellant warranting said punishment – Order of Authorities, confirmed by High Court, set aside – Appeal allowed. *Bindeshwari chaudhary v. State of Bihar* (SC)

(PARAFULLA C. PANT, J.) 2017 (1) LLN 289

Temporary Employees – Theory of Legitimate Expectation – Casual/Temporary employees aware of consequences of their Temporary appointment – Such Employees cannot legitimately expect to be given Permanent posts nor can State make such a promise. *Vijay Prakash Pradhan v. State of U.P. through the Prin, Secy., P.W.D., Lko* (All.)

(SHEO KUMAR SINGH-I, J.)
2017 (1) LLN 294

MARCH

DISMISSAL FROM SERVICE

Validity – of Enquiry – Industrial Employment (Standing Orders) Act, 1946 (Act), Order 25(4) – Petitioner / Workman made reference with regard to his dismissal alleging that enquiry and findings of Enquiry Officer to be not fair and proper – Labour Court held that enquiry conducted against Petitioner / workman is fair proper and findings of Enquiry Officer are not perverse – Whether Respondent / Management can issue charge sheet cum enquiry notice without considering explanation of employee – Whether Enquiry Officer could be appointment and enquiry could be commenced on same day without proper intimation to delinquent – Whether enquiry is vitiated on account of noncompliance of principles of natural justice – Whether findings of Enquiry Officer perverse – **Held**, Order 25(4) under Schedule I of Act mandates that charge sheet must set forth circumstances appearing against workman against whom enquiry is to be held requiring his explanation – Conduct of Respondent indicates that it was determined to conduct enquiry, before issuing charge sheet – Appointment letter of Enquiry Officer indicates that he was served with said order on same day and he was called upon to conduct enquiry on same day – Enquiry Officer cannot reject application of workman as it is within domain of Management – Enquiry Officer dealt with application by himself and closed enquiry from moment Petitioner left enquiry hall in protest – Substantive right of Petitioner in participating in enquiry and reasonable opportunity of defence infringed – Enquiry vitiated for non-adherence to principles of natural justice – Enquiry

Officer merely reproduced examination in chief of witness and did not analyze evidence by drawing specific conclusion – Enquiry conducted by Respondent / Management is vitiated and findings of Enquiry Officer are perverse – Petition allowed. [*Vinod Pralhadrao Farkade v. Ceekay Daikin Limited*]

(RAVINDRA V. GHUGE, J.)
2017-I-LLJ-562 (Bom) LNIND 2017 AUG 20

ENCASHMENT AMOUNTS

Computation – Jurisdiction of Labour Court – Industrial Tribunals Act, 1947 (Act 1947), Section 33 C(2) – Respondent workman filed application under Section 33 C(2) of Act 1947 for grant of bonus and leave encashment against Petitioner Organization – Petitioner claimed that Respondent’s right on said two counts had never been determined in accordance with law and hence computation of amounts recoverable thereunder could not be done by Labour Court under Section 33 C(2) of Act 1947 – Petition filed against Labour Court order of payment of small amount to Respondent on account of bonus and leave encashment – Whether Labour Court had jurisdiction under Section 33 C(2) of Act to entertain Respondent’s application for grant of bonus and leave encashment – **Held**, section 33 C(2) of Act 1947 indicates that jurisdiction of Labour Court was limited to computing amounts under heads to which workman was entitled – It could not adjudicate rights as to any particular substantive entitlement in first instance – Claim for bonus and leave encashment agitated by Respondent was disputed and at no point of time had been adjudicated by Competent Court nor was it part of Respondent’s terms of employment – Labour Court did not leave jurisdiction in proceedings under Section 33 C(2) of Act to address question of Respondent’s entitlement to bonus and leave encashment – Impugned order quashed and set aside – Petition allowed. [*Secretary v. Presiding Officer*]

(ALOK AHARMA, J.)
2017-I-LLJ-670 (Raj)
LNINDORD 2016 RAJ 15104

CONSTITUTION OF INDIA

Article 226 – Industrial Disputes Act 1947 (14 of 1947), Section 33(2) – Writ of Certiorari – Office-bearer of Employees' Union transferred – Order challenged in writ Petition – Appellant-Union contended that – Conciliation proceeding is pending and without approval of Conciliation Officer, transfer cannot be effected – Single Judge dismissed Writ Petition holding that same is not maintainable against a Private Company – Challenged in Appeal – Order of Single Judge, proper – Writ Appeal dismissed – Case-law referred. *Larsen & Toubro Employees' Union v. The Labour Officer (Conciliation), Office of the Labour Officer (Conciliation), Government of Pudhucherry, Pudhucherry* (DB) (Mad.)

(S. MANIKUMAR, J.)
2017 (1) LLN 763

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Section 25-B – Termination – Validity of – Compensation – Whether to be granted – Petitioner, who worked for 240 days, terminated from service in contravention to Section 25-B – Nonetheless, no relief granted to Petitioner by Labour Court on ground that he had abandoned job – **Held**, no action taken by Employer against Petitioner for abandoning job – As Petitioner had completed only 3 years in service, Reinstatement not warranted – Compensation of Rs.1,50,000 granted to Petitioner – Writ Petition disposed of. *Satbir Singh v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat* (P & H)

(P.B.BAJANTHRI, J.)
2017 (1) LLN 795

PROMOTION

Attendend/Monetary benefits, whether to be granted from date of Notional Promotion or from date of actual date of assuming charge in Promoted post – 'No Work, No Pay' – Pendency of Criminal proceedings – Respondent was not promoted owing to pendency of Criminal proceedings –

Subsequently on direction by Tribunal, he was notionally promoted and increments were also sanctioned – Subsequently on acquittal from Criminal proceedings, Monetary benefits were sanctioned from date on which Respondent actually assumed charge in Promoted post – Said Order passed by Appellant is perfectly valid as during relevant period, Respondent had not worked in Promoted post – Principle of 'No Work, No Pay' applies – Case law discussed – Fact remains that Respondent's promotion was deferred only on account of pendency of Criminal proceedings – Therefore, deferment of promotion cannot also be held as improper – Consequently, Order of Appellant-Department sanctioning Monetary benefits from date when Respondent actually assumed charge in Promoted post is perfectly valid – Single Judge failed to consider law laid down by Apex Court – Hence, impugned Order of Single Judge set aside – Appeal allowed – Service Law. *The Superintendent of Police, Dindigul District, Dindigul v. Muthu, SSI (Head Constable 739), Dindigul Town South Police Station* (DB) (Mad.)

(N. AUTHINATHAN, J.)

2017 (1) LLN 772

SERVICE LAW

Charge Memo – Vagueness of – Determination of – Vagueness of Charge Memo not to be determined from facts and law but from perception of charge-sheeted Employee – Employees, who were aware of charges leveled against them and had given detailed Representations to concerned Authorities, cannot challenge Charge Memo on ground of same being vague. *Manju, A. v. Union of India, owning Southern Railway* (DB) (Mad.)

(V. PARTHIBAN, J.)

2017 (1) LLN778

Existing Employees – Ouster of, by prescribing higher qualifications – Permissibility of – Employees appointed under a Scheme sought to be deprived of their employment by imposing higher qualifications than possessed by them – State, held, as model Employer cannot defeat legitimate expectation of 2000 Employees working for more than six years in

hope of becoming Permanent Employees one day – State, in instant case, seeking to replace one set of Outsourced Employees through another set – State, held, cannot adopt a Hire & Fire Policy and replace existing Employees in guise of prescribing higher qualification – Appellants. Working under State for several years entitled to continue on their posts as temporary Employees – State not restrained from appointing other personnel with higher qualification, but same should be without disturbing employment of Appellants. *Gangikuntal Sridhar v. The State of Andhra Pradesh* (DB) (Hyd.)

(C.V. NAGARJUNA REDDY, J.)
2017 (1) LLN 687

SENIORITY

Claim of Petitioner, who was working as Senior Bailiff, was temporarily promoted as Junior Assistant on 90.6.2008 – Subsequently, candidates from Tamil Nadu Public Service Commission (TNPSC) were appointed as Junior Assistants – Petitioner and similarly placed others were reverted as Senior Bailiff – On date of appointment of TNPSC candidates, Petitioner was working as Senior Bailiff – Subsequently, Petitioner was re-promoted as Junior Assistant on 10.9.2009 – Petitioner contending that Seniority has been overlooked – Question whether Temporary Promotion as Junior Assistant would confer any right of Seniority over direct recruits – Petitioner was temporarily promoted as Junior Assistant – Order of Promotion of Petitioner mentioned that it is only Temporary – Once TNPSC has selected and sponsored names to be appointed on regular basis, Petitioner was revered – Temporary Promotion will not confer any right of Seniority on Petitioner – For all practical purposes her seniority in category of Junior Assistant can be reckoned only from 10.9.2009 – Candidates sponsored by TNPSC were appointed earlier in point of time – No exception need to be drawn to impugned Prder – Writ Petition dismissed – Service Law. *Sakunthala Devi, A. v. The Registrar General High Court of Judicature at Madras, High Court Buildings, Chennai* (DB) (Mad.)

(NOOTY RAMAMOHANA RAO, J.)
2017 (1) LLN 743

TERMINATION

Validity of – Compensation – Whether to be granted – Petitioner, who worked for 240 days, terminated from service in contravention to Section 25-B – Nonetheless, no relief granted to Petitioner by Labor Court on ground that he had abandoned job – **Held**, no action taken by Employer against Petitioner for abandoning job – As Petitioner had completed only 3 years in service, Reinstatement not warranted – Compensation of Rs.1,50,000 granted to Petitioner – Writ Petition disposed of – Industrial Disputes Act, 1947 (14 of 1947), Section 25-B. *B. Sabir Singh v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat* (P & H)

(P.B. BANJANTHRI, J.)
2017 (1) LLN795



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