

JSA Newsletter Employment Law

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As discussed briefly in our previous edition, the upcoming Code on Wages, 2019 (“**Wage Code**”) subsumes four central labour legislations, namely, the Payment of Wages Act, 1936, the Minimum Wages Act, 1948 (“**Minimum Wages Act**”), the Payment of Bonus Act, 1965, and the Equal Remuneration Act, 1976.

This edition of the JSA Employment Monthly Newsletter provides a brief overview and comparative analysis of the changes proposed under the Wage Code vis-à-vis the Minimum Wages Act and discusses some of the recent interesting judicial precedents spread across several employment legislations.

Wage Code vis-à-vis the Minimum Wages Act

The Wage Code is spread over 9 Chapters with 69 Sections. Sections 5 to 14 of the Wage Code deal with payment of minimum rate of wages.

Comparative analysis

Summarised below are some of the key differences between the proposed provisions in the Wage Code and the Minimum Wages Act:

Minimum Wages Act and the Wage Code		
Particulars	Minimum Wages Act	Wage Code
Definition of employer and employee	Definitions of the terms ‘employer’ and ‘employee’ are narrow and primarily cover scheduled employment in respect of which minimum rates of wages have been fixed. Only employees working in industries specified under the schedule of the MWA are entitled to minimum wages.	Reference to ‘scheduled employment’ has been omitted from the definition of an ‘employer’. It is now defined to mean any person who employs (directly or indirectly) another person, in his ‘establishment’ (i.e., any place where any industry, trade, business, manufacture, or occupation is carried on and includes Government establishment). The definition now also includes a contractor and legal representative of deceased employer. This expands the coverage of entitlement to minimum wages on employees in all forms of employment.
‘Worker’ vs ‘Employee’	No concept of a worker provided under the Minimum Wages Act.	Wage Code provides separate definitions for a ‘worker’ and ‘employee’. ‘Worker’ is defined as any person employed in any industry to do any

		manual, unskilled, skilled, technical, operational, clerical, or supervisory work for hire or reward, whether the terms of employment be express or implied and also includes working journalists, newspaper employees, sales promotion employees, etc. ¹
Fixation of minimum wages	The Minimum Wages Act only authorised the appropriate government for fixing minimum wages for any scheduled employment if the number of employees for such scheduled employment was more than 1,000 (one thousand) in the whole State.	The threshold of 1,000 (one thousand) workmen for wage fixation by the appropriate government is no longer applicable. The appropriate government is now required to apply a number of stipulated factors ² while fixing the minimum wages under the Wage Code.
Mode of Payment	Minimum wages under the Minimum Wages Act are to be paid by way of cash. It further empowers the appropriate Government to authorize the payment of minimum wages either wholly or partly in kind in particular cases.	Wages under the Wage Code are to be paid in current coin or currency notes or by cheque or by crediting the wages in the bank account of the employee or through electronic modes.
Penalty	Payment of wages less than minimum wages is punishable with imprisonment of a period of up to 6 (six) months or a fine of up to INR 500 (Indian Rupees five hundred) or both.	Payment of wages less than the wages an employee is entitled to under the Wage Code is punishable with a fine of up to INR 50,000 (Indian Rupees fifty thousand).

Distinctive features

In addition to the changes in relation to penalties and inspector cum facilitator profiles discussed earlier, summarised below are some of the distinctive features of the Wage Code vis-à-vis the Minimum Wages Act:

- Revision of minimum wage:** Under the Minimum Wages Act and the Wage Code, the appropriate Government is required to review or revise minimum rates of wages ordinarily at an interval not exceeding 5 (five) years.
- Components of minimum wage:** The components of minimum wages (basic wages with allowance or basic rate of wages with or without the cost-of-living allowance or an all-inclusive rate allowing for the basic rate, the cost of living allowance and the cash value of the concessions) and manner of computation of minimum wages remains the same.
- Concept of floor wage:** The central government will fix a floor wage, taking into account the minimum living standards of workers and geographical areas. Minimum wages decided by the central or state governments must be higher than the floor wage.
- Overtime wages:** Overtime wages must be paid at a rate that is at least twice the normal rate of wages.

¹ Section 5 of the Wage Code provides that no employer shall pay to any employee wages less than the prescribed minimum rate of wages. However, a worker has not been covered within this Section.

² These factors include assessing skills of the workmen (i.e., unskilled, skilled, semi-skilled and highly skilled) and arduousness of work, like temperature or humidity normally difficult to bear, hazardous occupations or processes or underground work.

Case Law Ratios

Civil Court has no jurisdiction in matters under the Industrial Disputes Act, 1947 (“IDA”).

In the case of *Milki Ram v. Himachal Pradesh State Electricity Board*,³ the dispensation of the appellant, a temporary daily wage worker, was challenged in a civil suit where it was asserted that the worker has a right to be regularized after the completion of 240 (two hundred forty) days of continuous service under the IDA. This suit was decreed ordering reinstatement with back wages. On appeal, the High Court of Himachal Pradesh held that a civil court lacks the inherent jurisdiction to entertain a suit structured on the provisions of the IDA. Thus, the decree favouring the plaintiff was held to be null. Such view was upheld subsequently by the Supreme Court.

A daily wager performing work of permanent nature is to be regularized in service.

In *Devendrakumar C. Solanki v. State of Gujarat and Ors.*,⁴ the petitioner had worked for more than 17 (seventeen) years as a part-time sweeper. The High Court of Gujarat directed the appellants to treat workmen as permanent employees after 5 (five) years of their employment as daily wage workmen till they attained the age of superannuation for the purpose of granting them terminal benefits. In another case, *Union Bank of India v. Mujahid Qasim*⁵ the court held that engaging temporary or casual workers for several years with the object of depriving them of benefits payable to permanent workmen amounts to unfair labour practice.

An employee holding a transferable post has no right to be posted at a particular place.

In the case of *Sudin Provat Mallick v. First Industrial Tribunal & Ors.*,⁶ the employee failed to join at the transferred place of posting. The terms of offer of his appointment provided that he could be transferred from one place to another. Examining the above facts and circumstances, the High Court of Calcutta held that the employee has no legal right to be posted at a particular place and that his failure to report and join the transferred place of employment would constitute misconduct.

Dismissal from service is justified when employment is obtained on basis of bogus certificate.

In *Management of Ambur Co-operative Sugar Mills v. A.K. Shanmugam*,⁷ workmen were suspended on the allegation of submission of bogus educational certificate. A domestic enquiry was conducted, and it was found that the charges against the workmen were proved. Based on the proved charges, the workmen were terminated from services of the petitioner’s mill. The High Court of Madras held that the Labour Court’s order to reinstate these workmen under the circumstances was unwarranted and that there is no question of reinstatement once the allegation of bogus certificate is established beyond doubt.

Increment or promotions cannot be claimed by a reinstated employee.

In the case of *Bangalore Metropolitan Transport Corporation v. Shivabasavegowda*,⁸ the employee was removed from the service on the allegations of misconduct and was later reinstated upon the direction of the labour court. In this case, the High Court of Karnataka held that the reinstatement of an employee with continuity in service without back wages would not entitle the employee to claim consequential benefits such as promotions, increments, special wages, etc. during the period when he was out of service or not on duty. The court held that even when continuity of service is directed, it is only for the purposes of pensionary or retirement benefits and not for benefits such as promotions or increments.

³ 2022 LLR 9 (SC)

⁴ 2016 LLR 272 (Gujarat HC)

⁵ 2021 LLR 366 (Delhi HC)

⁶ 2022 LLR 716 (Calcutta HC)

⁷ 2020 LLR 268 (Madras HC)

⁸ 2014 LLR 85 (Karnataka HC)

Employment Practice

JSA has a team of experienced Employment Law specialists who work with clients from a wide range of sectors, to tackle local and cross-border, contentious and non-contentious employment law issues. Our Key areas of advice include (a) Advising on boardroom disputes including issues with directors, both executive and non-executive;(b) Providing support for business restructuring and turnaround transactions, addressing employment and labour aspects of a deal, to minimize associated risks and ensure legal compliance, (c) Providing transaction support with reference to employment law aspects of all corporate finance transactions, including the transfer of undertakings, transfer of accumulated employee benefits of outgoing employees to a new employer, redundancies, and dismissals, (d) Advising on compliance and investigations, including creating Compliance Programs and Policy, Compliance Evaluation Assessment and Procedure Development and providing support for conducting internal investigations into alleged wrongful conduct, (e) Designing, documenting, reviewing, and operating all types of employee benefit plans and arrangements, including incentive, bonus and severance programs, (f) Advising on international employment issues, including immigration, residency, social security benefits, taxation issues, Indian laws applicable to spouses and children of expatriates, and other legal requirements that arise when sending employees to India and recruiting from India, including body shopping situations.

JSA also has significant experience in assisting employers to ensure that they provide focused and proactive counselling to comply with the obligations placed on employees under the prevention of sexual harassment regime in India. We advise and assist clients in cases involving sexual harassment at the workplace, intra-office consensual relationships, including drafting of prevention of sexual harassment (POSH) policies, participating in POSH proceedings, conducting training for employees as well as Internal Complaints Committee members, and acting as external members of POSH Committees.

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14 Practices and
23 Ranked Lawyers



15 Practices and
18 Ranked Lawyers



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2 Ranked Lawyers



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