



JSA Newsletter Employment Law

January 2023

This edition of the JSA Employment Newsletter provides a brief roundup of some key regulatory developments (through amendments, notifications, orders and other updates) in the labour and employment sector in India. Important employment updates from the Union Budget 2023 are also touched upon. We also discuss some recent interesting judicial precedents spread across several employment legislations.

Regulatory Updates

Deadline for remittance of contributions under the Karnataka Labour Welfare Fund Act, 1965

The Karnataka Labour Welfare Board Bangalore, Government of Karnataka, *vide* press note dated January 16, 2023, mandated *inter alia*, factories and commercial establishments employing 50 (fifty) and more workers, and covered under the Karnataka Labour Welfare Fund Act, 1965 (“**KLWF Act**”) to remit compulsory contributions in accordance with the KLWF Act, on or before January 31, 2023. It also clarifies that factories and establishments covered under the KLWF Act are liable to make a contribution of INR 60 (Indian Rupees sixty) per employee (i.e., a contribution of INR 20 (Indian Rupees twenty) from each employee and INR 40 (Indian Rupees forty) from the employer), which can also be paid through their online portal available at www.klwb.karnataka.gov.in. A delay in payment of contributions is liable to attract penal interest at a rate of 12% for the first 3 (three) months, and thereafter, at a rate of 18% on the amount due. Failure to pay contribution will attract initiation of legal proceedings by officers of the Labour Department, Karnataka and inspection by Welfare Commissioner.

Launch of integrated online services portal, ‘Silpasathi’, in West Bengal

The Labour Department, Government of West Bengal *vide* notification dated December 27, 2022, notified integration of 13 (thirteen) services under the Labour Department, Government of West Bengal through a single end to end ‘State Single Window Portal’ available at www.silpasathi.wb.gov.in. These services include, *inter alia*, procurement and renewal of licenses and registrations under the Factories Act, 1948, Boilers Act, 1923, Contract Labour (Regulation and Abolition) Act, 1970 (“**CLRA Act**”), Shops and Establishments Act, 1963, *etc.*, with effect from January 1, 2023.

Launch of an integrated portal for compliances under the Employees Provident Funds and Miscellaneous Provisions Act, 1952

The Office of Commissioner (Labour), Government of NCT of Delhi *vide* advisory dated December 28, 2022 advised principal employers and their contractors governed under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (“**EPF Act**”) (irrespective of being covered under the CLRA Act or otherwise), to register

themselves on the Employee's Provident Fund Organisation's unified portal available at <https://unifiedportal-emp.epfindia.gov.in/epfo/> to help principal employers regularly monitor contractor compliances including remittances made by contractors. The advisory applies to, *inter alia*, principal employers operating and outsourcing manpower in private sector, whether as a partnership firm, private or public limited companies, international companies having offices in India, or subsidiaries of international companies.

Mandatory usage of online application portal for approval and renewal of factory licenses in Puducherry

The Office of the Chief Inspector of Factories and Boilers, Government of Puducherry *vide* order dated January 12, 2023 (effective immediately), mandated that applications for approval and renewal of licenses under the CLRA Act for factories situated in Puducherry, Mahe and Yanam regions must be made exclusively through the online portal accessible through the website of the Labour Department of Puducherry.

Units/factories in SEEPZ-Special Economic Zone, Maharashtra employing 50 (fifty) or more female workers to mandatorily provide creche facilities

The Office of the Development Commissioner, SEEPZ-Special Economic Zone, Maharashtra *vide* circular dated January 12, 2023 has directed units/factories engaging more than 50 (fifty) female workers to mandatorily provide creche facilities to their female employees, and further directed units/factories unable to provide such creche facility to avail common creche facility provided by the SEEPZ-Special Economic Zone authority by payment of fees as prescribed.

Exemptions granted to new industrial units in Madhya Pradesh

The Government of Madhya Pradesh, *vide* notification dated January 27, 2023 in the state gazette, promulgated an ordinance titled 'Madhya Pradesh Udyogon Ki Sthapna Evam Parichalan Ka Saralikiran Adhyadesh, 2023', permitting new industrial units (i.e., undertakings engaged in manufacturing, processing or both, or providing services) in Madhya Pradesh to be exempted from certain compliances in relation to establishing and operationalising of such unit for a period of 3 (three) years from the date of grant of such exemption. The ordinance is yet to be notified. Eligible industrial units and specific compliances for which such exemptions are to be granted are yet to be notified by the Government of Madhya Pradesh.

Union Budget 2023 – Labour and Employment Highlights

- Enhanced tax exemption on leave encashment. The limit of tax exemption on leave encashment on retirement of non-government salaried employees has been proposed to be increased to INR 25,00,000 (Indian Rupees twenty five lakh) from the earlier limit of INR 3,00,000 (Indian Rupees three lakh) in view of scaling up in government salaries.
- Computation of accommodation perquisite by employers. It has been proposed to enable prescription of a uniform methodology for computation of the value of perquisite with respect to accommodation provided by employers to their employees.

Case Law Ratios

Written cross-examination may be facilitated during internal committee proceedings

In *Vimalkant Bhanuprasad Shrimali v. IDMC Limited*,¹ the Gujarat High Court while upholding a termination order issued against the petitioner taking into account the petitioner's sexual misconduct in his previous employment, held

¹ Special Civil Application No. 16219/2020 (Gujarat HC)

that the procedural aspects of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 would prevail over the 'Conduct, Discipline and Appeal Rules, 2019'. The court further reiterated that written cross-examination can be facilitated during internal committee inquiry proceedings instituted against employees alleged of sexual misconduct, if conducting such cross-examination verbally and in-person would put the witnesses and complainant under stress and in an awkward position.

Maternity benefits cannot be denied on technicalities

In *Tamil Nadu State Transport Corporation (Coimbatore) Limited v. B Rajeshwari*,² the Madras High Court directed the Tamil Nadu State Transport Corporation to pay maternity benefits to a temporary employee who applied for maternity leave during her training period. It held that benefits under welfare legislations such as the Maternity Benefits Act, 1961 cannot be denied merely on the basis of technicalities. It further held that female workers working on a casual basis or on a daily wage basis are entitled to maternity benefits, and that female employees cannot be compelled to undertake hard labour at the time of advanced pregnancy.

Standard of proof in departmental disciplinary proceedings is mere preponderance of probabilities

In *Indian Overseas Bank v. Om Prakash*,³ the Supreme Court held that subject to principles of natural justice being complied with in the course of disciplinary inquiry instituted against an employee, the standard of proof required to establish a clear case against such employee would be mere preponderance of probabilities, and not proof of charges beyond reasonable doubt as in the case of criminal proceedings.

Maternity leave period of a female employee to be taken into account for declaration of completion of probationary period

In *C Selvi v. Director of Government Examination and others*,⁴ the Madras High Court held that the maternity leave period, availed during probationary period by a female employee, must be considered for the declaration of completion of probationary period for the purpose of determining eligibility and grant of promotion to such female employee.

Employees' State Insurance Act, 1948 applicability to establishments and factories irrespective of number of employees falling below prescribed threshold

In *ESI Corporation v. Radhika Theatre*,⁵ the Supreme Court has held that the Employees' State Insurance Act, 1948 ("ESI Act") being a social welfare legislation, any interpretation which would lean in favour of the beneficiary should be given. It further held that the ESI Act will apply retrospectively to all establishments (including establishments established prior to the insertion of Section 1(6) of the ESI Act, i.e., prior to October 10, 1989) notwithstanding the fact that the number of employees engaged by the establishment falls below the threshold prescribed by the ESI Act. Prior to the insertion of Section 1(6) of the ESI Act, the ESI Act was applicable solely to establishments and factories engaging more than 20 (twenty) employees.

Child adopted by widow after death of government-employee husband not entitled to family pension under the Central Civil Services (Pension) Rules, 2021

In *Shri Ram Shridhar Chimurkar v. Union of India*,⁶ the Supreme Court held that persons who were not dependants of a government-employee at the time of his death will not be entitled family pension under the Central Civil Services

² WA. No. 1692/2022 (Madras HC)

³ CA No. 267/2022 (SC)

⁴ WP 19426/2016 (Madras HC)

⁵ C.A. No. 312/2023, SLP(C) No. 12520/2022 (SC)

⁶ SLP (C) No. 21876/2017

(Pension) Rules, 2021. It further clarified that the word “adoption” under the said rules in the context of grant of family pension, must be restricted to an adoption made by a government servant during his/her lifetime and must not be extended to a case of adoption made by a surviving spouse of the government servant after his/her death.

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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17 Practices and
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16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



11 Practices and
39 Ranked Partners
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