



## JSA Newsletter Employment Law

February 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. We also discuss some recent interesting judicial precedents spread across several employment legislations.

### Regulatory Updates

#### Introduction of the Factories (Karnataka Amendment) Bill, 2023 in Karnataka

The Karnataka Legislative Assembly *vide* notification dated February 22, 2023 introduced the Factories (Karnataka Amendment) Bill, 2023 (yet to be passed). The bill proposes changes to working conditions of factory workers, including *inter alia*, to (a) increase daily hours of work (inclusive of rest intervals) from 9 (nine) hours to 12 (twelve) hours subject to a maximum of 48 (forty-eight) hours a week; (b) increase the period of work without a rest interval from 5 (five) hours to 6 (six) hours; (c) provide overtime wages at twice the rate of normal wages for workers working for more than 9 (nine) hours a day and 48 (forty-eight) hours a week in a 6 (six) day work week; 10 (ten) hours a day and 48 (forty-eight) hours in a 5 (five) day work week; and 11.5 (eleven point five) hours for a day or work on paid holidays; and (d) enable employment of women on overtime work, with prescriptions to secure safety and health of women workers working in night shifts, subject to obtaining their written consent.

#### Issues with Silpasathi portal; Certificate of enlistment now to be obtained through e-district portal in West Bengal

The Urban Development & Municipal Affairs Department, Government of West Bengal, *vide* notification dated February 1, 2023, notified that the service of obtaining Certificate of Enlistment (Trade License) (earlier routed exclusively through the Silpasathi portal) can now be exclusively availed on the e-district portal with effect from February 2, 2023. This change comes consequent to issues faced by citizens in accessing the Silpasathi portal for these services, launched only in the previous month.

#### Notification of Himachal Pradesh Building and Other Construction Workers (Regulation of Employment and Conditions of Service) First Amendment Rules, 2023 ("HP Rules")

The Department of Labour and Employment, Government of Himachal Pradesh *vide* notification dated February 8, 2023, amended Rule 266(3) of the Himachal Pradesh Building and Other Construction Workers (Regulation of

Employment and Conditions of Service) Rules, 2008 in relation to registration of building and construction workers as members of the Himachal Pradesh Building and Other Construction Workers Welfare Fund (“**Fund**”).

Key highlights of the HP Rules include *inter alia*, that an applicant for membership in the Fund must have worked in building and other construction related works for at least 90 (ninety) days in the immediately preceding 12 (twelve) months and that such application must accompany: (a) a certificate, or wage slip or copy of muster roll or attendance register duly verified by the jurisdictional authorised officer containing the applicant’s particulars, service term, employer’s particulars, nature of work and whether any cess has been paid for the work executed; or (where the above documents are not available); and (b) a certificate issued either by the executive officer of the urban local bodies, secretary of the nagar panchayat, respective councilor/ member of ward sabha in the municipal corporation area, or panchayat secretary of the gram panchayat containing the required information.

## Introduction of time limits for grant of registration and licenses to employers of inter-state migrant workmen and contract labourers in Gujarat

The Labour, Skill Development and Employment Department, Government of Gujarat *vide* notification dated February 20, 2023, notified (a) Inter-State Migrant Workmen (Regulation of Employment and Condition of Service) (Gujarat) (Amendment) Rules, 2023; and (b) Contract Labour (Regulation and Abolition) (Gujarat) (Amendment) Rules, 2023, setting out a maximum time limit of 45 (forty-five) days for processing and issuance of licenses and registrations by authorities to employers/establishments engaging inter-state migrant workmen and/or contract labourers under the respective legislations. Failure by authorities to process licenses and registrations within prescribed timelines will be deemed as approvals accorded to the registration and/or licence applied for.

## Notification of local authorities under the Maharashtra Shops and Establishments Act, 2017

The Industries, Energy and Labour Department, Government of Maharashtra *vide* notification dated February 22, 2023 notified ‘nagar panchayats’ constituted under the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, and ‘panchayats’ established or deemed to have been established under the Maharashtra Village Panchayats Act, 1959 to be local authorities for the purpose of the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 (“**Maharashtra S&E Act**”).

Further, with effect from February 22, 2023, the Municipal Corporation of Brihan Mumbai, all other municipal corporations, municipal councils, nagar panchayats and village panchayats, are required to enforce provisions in the Maharashtra S&E Act relating to display of name boards in Marathi by shops and establishments falling within their territorial jurisdiction.

## Ordinance promulgated to provide for approval and inspection related exemptions for industrial units set up in notified areas in Madhya Pradesh

The Governor of Madhya Pradesh *vide* gazette notification dated January 27, 2023 promulgated the Madhya Pradesh Udyogon Ki Sthapna Evam Parichalan Ka Saralikiran Adhyadesh, 2023 (“**Ordinance**”) to provide for certain exemptions to industrial units being set up in notified areas, by issuance of acknowledgment certificates. Persons intending to set up an industrial unit in a notified area are required to furnish their interest to the Madhya Pradesh Industrial Development Corporation Limited and apply for an exemption. Any exemption granted will be effective for 3 (three) years from date of issuance of an acknowledgement certificate under the Ordinance. This Ordinance will have an overriding effect over all state laws on the subject matter for the time period it is in force.

## Conditions prescribed for employment of women in notified establishments in Haryana

The Labour Department, Government of Haryana *vide* notification dated February 21, 2023 laid down certain conditions for employment of women during night shifts, i.e., from 8:00 PM to 6:00 AM in IT, ITes, banking establishments, 3 (three) star or above hotels, 100% export oriented establishments, logistics and warehousing establishments in Haryana, subject to their written consent.

Some key conditions, *inter alia*, include: (a) filing of an application seeking permission for employment of women during night shifts with the labour commissioner or chief inspector of shops of Haryana, 1 (one) month prior to commencement of the period for which such permission is sought; (b) compliance with provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 and rules thereunder (“**POSH Act**”); (c) provision of sufficient safety guards and lighting inside and surrounding the shop/establishment; (d) provision of transportation facility to and from residence of the woman employee, and installation of CCTV cameras in vehicles used for such transportation; (e) employer to submit a declaration that they have obtained consent from each women employee to work during night shift; (f) provision of separate canteen facilities, emergency vehicles for emergent situations and a grievance redressal mechanism; and (g) submission of an annual report with the labour commissioner of Haryana with details of employees employed during night shifts.

## Case Law Ratios

### Re-examination of complaints relating to sexual harassment for reason of improper constitution of internal committee cannot be directed after lapse of considerable time

In *P v. Union of India and Ors.*,<sup>1</sup> the Delhi High Court (“**Delhi HC**”) rejected the direction of a company’s management to re-examine a complaint of sexual harassment. The Delhi HC observed that considerable time had lapsed since the earlier adjudication of the complaint, and that parties to a complaint must not be subject to the harassment of having to reappear for fresh inquiry proceedings for errors of the company’s management in duly constituting an internal committee under the POSH Act. The Delhi HC further emphasised on the need for such complaints to be adjudicated by institutions with utmost care, and in a timely manner.

### Employees terminated on the ground of self-admitted misconduct cannot challenge termination for non-holding of inquiry proceedings

In *Kuldeep Singh v. Shiromani Gurudwara Parbhandhak Committee*,<sup>2</sup> the Punjab and Haryana High Court held that an employee, once having admitted to his misconduct or guilt, cannot invoke the non-observance of principles of natural justice or absence of inquiry proceedings at a later stage to challenge his termination for misconduct. The court observed that there is no need to conduct inquiry proceedings where guilt or misconduct is self-admitted by a delinquent employee.

### Request for alteration of date of birth of an employee towards end of tenure cannot be entertained

In *General Manager South Eastern Coalfields v. Avinash Kumar Tiwari*,<sup>3</sup> the Supreme Court of India rejecting the

<sup>1</sup> WP (C) 14403/2022 (Delhi HC).

<sup>2</sup> CWP No. 27281/2017 (Punjab and Haryana HC).

<sup>3</sup> SLP (C) 14328/2022 (SC).

plea of an employee seeking alteration of his date of birth for the purpose of computing his superannuation, held that such request cannot be made after a long delay, especially towards the end of the career of the employee.

## Conduct of the employee and length of service to be considered while granting back wages

In *Executive Director, Environmental Planning and Coordination Organisation (MP) v. Presiding Officer, Labour Court*<sup>4</sup> the Madhya Pradesh High Court held that courts, while granting back wages in the case of reinstatement of an employee, must take into consideration the length of service of such employee, and also take note of whether such employee failed to be gainfully employed elsewhere, subsequent to his/her termination. The court observed that grant of back wages is not a natural consequence of reinstatement into services of an employee.

## Order of punishment based solely on documentary evidence without examination of witnesses, invalid

In *Commissioner, Navodaya Vidyalaya Samiti v. Damodar Singh Gunawat*,<sup>5</sup> the Rajasthan High Court set aside an employee's termination for misconduct on the ground that the termination was ordered without affording an opportunity to the employee to rebut the documentary evidence taken on record. The court observed that validity of documentary evidence taken on record must be proved by examining appropriate witnesses, failing which an order of punishment passed relying on such documentary evidence cannot be sustained even if the contents of the documents are admitted to, by the employee in question.

### 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.

<sup>4</sup> WP 3056/2001 (Madhya Pradesh HC)

<sup>5</sup> WP (C) 4233/2022 (Rajasthan HC)

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14 Practices and  
23 Ranked Lawyers



15 Practices and  
18 Ranked Lawyers



7 Practices and  
2 Ranked Lawyers



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