



JSA Newsletter Employment Law

March 2023

This edition of the JSA Employment Newsletter shares insights on the Apprentices Act, 1961, particularly in light of the on-going scrutiny and compliance requirement by the Board of Apprenticeship Training, Ministry of Education, and provides a brief roundup of some key industry and 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.

Industry development

Establishments directed to engage apprentices in compliance with the Apprentices Act, 1961

Recently, several establishments, including information technology and information technology enabled services (“IT/ITes”) establishments received communications and notices from the Board of Apprenticeship Training (“BOAT”), directing them to comply with the Apprentices Act, 1961 (“**Apprentices Act**”) and Apprenticeship Rules, 1992 (“**Rules**”). In view of this, the National Association of Software and Service Companies (NASSCOM), under the advice of the Ministry of Skill Development and Entrepreneurship, Government of India, also issued advisories requesting its member organisations to register themselves on the apprenticeship portal, <https://apprenticeshipindia.org/> (“**Portal**”) and to engage apprentices in accordance with the Apprentices Act and Rules. These communications/notices and advisories have highlighted the importance of gauging applicability of the Apprentices Act (a) to establishments and engaging apprentices in furthering the Skill India Mission of the Government of India, and (b) in enhancing employment opportunities and the employability of youth in India.

Coverage

The Apprentices Act and Rules provide the legal framework for training apprentices in various trades and industries. Historically, routine compliance checks under the Apprentices Act and Rules were largely limited to manufacturing industries and factories. In the context of IT/ITes establishments, these compliance inspections were infrequent. Contrary to general perception that the Apprentices Act and Rules may not apply to IT/ITes establishments, coverage of the Apprentices Act in fact does extend to all establishments (including IT/ITes establishments) in notified industries, including *inter alia*, data processing, software development and computer consultancy services industries. Pursuant to Rule 7-B of the Rules, all establishments employing 30 (thirty) or more employees are mandatorily required to engage apprentices as per applicable notified bands of the total strength of the workforce of the establishment.

Key compliances

Some key compliances under the Apprentices Act and Rules are summarized below:

1. **Registration:** Establishments covered under the Apprentices Act are required to register themselves on the Portal to engage apprentices and maintain records and registers pertaining to apprentices undergoing apprenticeship training with the establishment.
2. **Apprenticeship program:** Establishments covered under the Apprentices Act are required to adopt an apprenticeship program to ensure engagement of the desired number of apprentices based on the notified bands applicable for such establishment.
3. **Contracts of apprenticeship:** Contracts of apprenticeship between apprentices and employers must be registered and uploaded on the Portal. Apprentices must be engaged for minimum periods as prescribed for each category of apprentice under the Rules, which ranges from 6 (six) months to 3 (three) years.
4. **Payment of stipend:** Apprentices are entitled to a stipend at a rate not less than the prescribed minimum rate. Such minimum rates are notified under the Rules, ranging from INR 5,000 (Indian Rupees five thousand) (for school pass-outs having completed class 5 (five) to class 9 (nine)), to INR 9,000 (Indian Rupees nine thousand) (for graduate apprentices holding a degree in any stream). A Stipend for a particular month is payable on or before the 10th (tenth) day of the following month.
5. **On-the-job training:** Employers are obligated to impart apprentices with training in their trades either by themselves (if qualified), or through persons possessing qualifications as prescribed under the Rules, to enable apprentices to carry out their obligations under their contract of apprenticeship.
6. **Quarterly reporting:** Employers are required to furnish information and returns in relation to ongoing compliances under the Apprentices Act at the end of every quarter of a financial year, through the Portal.

Penalties

Penalties for failure to engage requisite number of apprentices under the Apprentices Act may result in fines INR 500 (Indian Rupees five hundred) per shortfall of apprenticeship month for the first 3 (three) months, and thereafter, extendable up to INR 1,000 (Indian Rupees one thousand) per month, till the prescribed threshold for apprentices is met. For other contraventions of the Apprentices Act, fines may range from INR 1,000 (Indian Rupees one thousand) to INR 3,000 (Indian Rupees three thousand).

Regulatory Updates

Notification of the Karnataka Tax on Profession, Trades, Callings and Employments (Amendment) Act, 2023

The Parliamentary Affairs and Legislation Secretariat, Government of Karnataka, *vide* notification dated March 14, 2023, notified the Karnataka Tax on Profession, Trades, Callings and Employments (Amendment) Act, 2023 (“**Amendment**”), to further amend the Karnataka Tax on Profession, Trades, Callings and Employments Act, 1976 (“**Act**”). The Amendment will be effective from April 1, 2023. Key highlights of the Amendment include:

1. The schedule under the Act bearing rates of tax on professions, trades, callings and employments payable by different classes of person stands substituted. Now, individuals earning INR 25,000 (Indian Rupees twenty five thousand) or more per month (as against the earlier threshold of INR 15,000 (Indian Rupees fifteen thousand) or more per month) are liable to pay professional tax rate of INR 200 (Indian Rupees two hundred) per month. Further, persons including but not limited to (a) individuals registered under the Karnataka Goods and Services Tax Act, 2017; (b) employers covered under the Karnataka Shops and Establishments Act, 1961 employing more than 5 (five) employees; (c) co-operative societies registered the Karnataka Co-operative Societies Act, 1959; (d) companies registered under the Companies Act, 2013; and (e) banking companies registered under the Banking

Regulation Act, 1949 are liable to pay professional tax at the rate of INR 2,500 (Indian Rupees two thousand five hundred) per year.

2. Proprietary concerns are now liable to pay professional tax, by virtue of their deemed inclusion under the definition of term 'person' under the Act.
3. Penalty for tax evasion or escape from assessment as determined by the assessing authority due to wilful non-disclosure of information stands reduced to 100% of the tax payable (as against the earlier 150% of tax payable).
4. Interest rate for default in payment of tax under the Act now stands reduced to 1.5% of tax arrears per month (as against the earlier 2% of the tax arrears per month).
5. Interest rate for default by an employer in deducting professional tax at the time of payment of salary to employees or failure to pay such tax stands increased from 1.25% to 1.5% of the arrears payable.
6. Penalty for non-payment of professional tax by an enrolled person or registered employer within the prescribed time limit, stands reduced to a fixed amount of 10% of the outstanding dues (as against the earlier penalty not exceeding 50% of the dues), irrespective of cause for non-payment.

Introduction of the Maharashtra State Tax on Professions, Trades, Callings and Employments (Bill), 2023

The Maharashtra State Tax on Professions, Trades, Callings and Employments (Amendment) Bill, 2023 ("Bill") introduced in the Maharashtra State Assembly on March 20, 2023, proposes to further amend the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975. Key amendments proposed under the Bill include, *inter alia*, the grant of exemption from payment of professional tax to (a) persons with benchmark disability, and parents or guardians of a child with benchmark disability as defined under the Rights of Persons with Disabilities Act, 2017; and (b) women drawing a salary of up to INR 25,000 (Indian Rupees twenty five thousand) per month (as against the earlier exemption granted to women earning up to INR 10,000 (Indian Rupees ten thousand) per month). The Bill is yet to be passed by the Maharashtra state legislature.

Case Law Ratios

Suppression of information by an employee at the time of application to post not an automatic ground for termination

In *Mahendra Solanki v. The Commissioner of Police*,¹ the Delhi High Court held that the deciding authority, while deciding on a case of suppression of facts by an employee at the time of application to a post, is required to give due weight to the nature of information suppressed, apply objective criteria and consider all facts and circumstances before passing an order of termination, and that mere suppression of information in itself is not a sufficient ground to declare unsuitability for appointment to a post.

Consent to sexual act given as a consequence of fear of termination or misconception of re-employment not free consent

In *Rajkishore Shrivastava v. State of Madhya Pradesh*,² the Madhya Pradesh High Court, deciding on a criminal complaint of rape filed by a complainant against her former employer (respondent), held that consent to engage in sexual acts given by the complainant under fear of termination and misconception of re-employment with the

¹ WP (C) 2219/2023 (Delhi HC)

² M. Cr. C. 38456/2021 (MP HC)

respondent-employer cannot be construed as free consent. The court observed that the respondent-employer being a position to dominate the wishes of the complainant, could not have duly obtained the free consent of the complainant.

Acquittal of an employee faced with criminal prosecution not a ground for automatic entitlement to back wages

In *Rajnikant Motibhai Patel v. Ahmedabad Municipal Corporation*,³ the Gujarat High Court held that an employee terminated from services on account of criminal prosecution is not automatically entitled to grant of back wages, upon subsequent acquittal of such employee. The court further held that the principle of 'no work no pay' would be applicable in such case, in view of the employer being unable to take work from the employee for the period of dismissal.

Due process to be followed for disengagement of contractual employees by government establishments

In *Bichitrananda Barik v. State of Odisha*,⁴ the Orissa High Court held that employers are liable to follow rules and procedure in consonance with principles of natural justice even in matters of disengagement of employees engaged on contract basis (at par with government employees). As such, any action taken against misconduct of an employee, including an employee engaged on contract basis, must be taken up by a competent authority after due enquiry is conducted and fair opportunity is granted to the concerned employee to participate and defend themselves.

Mandatory vaccination requirement impermissible

In *Isha v. State (NCT and Ors.)*,⁵ the Delhi High Court reiterated the position of the Supreme Court in the case of *Jacob Puliyel v. Union of India*,⁶ that COVID-19 vaccination cannot be forced or insisted by an employer upon employees. The court further emphasised that every individual has the right to refuse any medical treatment including vaccination, and that such right to personal autonomy and bodily integrity is protected under Article 21 of the Constitution of India.

³ Special Civil Application 14507/2021 (Gujarat HC)

⁴ WP (C) 10146/2018 (Orissa HC)

⁵ WP (C) 12985/2021 (Delhi HC)

⁶ WP (C) 607/2021 (SC)

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, 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; and (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
24 Ranked Lawyers



16 Practices and
11 Ranked Lawyers



7 Practices and
2 Ranked Lawyers



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