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This edition of the JSA Employment Newsletter discusses the arbitrability of disputes arising out of employment contracts in India and provides a brief roundup of some key industry and regulatory developments in the labour and employment sector in India. We also discuss some recent interesting judicial precedents spread across several employment legislations.

Arbitrability of disputes arising out of employment contracts

The Indian Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”) defines and consolidates the law on domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards. It, however, recognises that “*certain disputes may not be submitted to arbitration*” and that a competent court may set aside arbitral awards passed with respect to matters where the “*subject-matter of the dispute is not capable of settlement by arbitration under the law*”.

The Arbitration Act does not expressly call out the ‘disputes’ which are not arbitrable. This position on arbitrability of disputes in India has evolved through several judicial precedents. A collective reading of the Supreme Court’s decisions in the cases of *Vidya Drolia & Others v. Durga Trading Corporation*¹ and *Booz Allen and Hamilton Inc v. SBI Home Finance Ltd. and Ors.*² indicates that disputes where the cause of action or subject matter thereof, involves or impacts, *inter alia*, third party rights, sovereign or public interest functions and criminal offences, are generally non-arbitrable. Further, disputes in matters governed by statutes expressly prohibiting the choice of arbitration as a method of dispute resolution (or granting exclusive jurisdiction to the court or tribunal as prescribed under the statute) have also been held as non-arbitrable under the Arbitration Act.

That said, arbitration is a popular and preferred method of dispute resolution under employment contracts in India. The choice to arbitrate industrial disputes is provided in the Industrial Disputes Act, 1947 (“**ID Act**”) where parties to an existing or apprehended industrial dispute have the option to refer such industrial dispute to arbitration by way of a written agreement. Unless the subject matter of an employment dispute involves matters of public policy or are otherwise deemed non-arbitrable, the arbitrability of employment disputes where parties to an employment contract have expressly chosen arbitration as their preferred mode for dispute resolution, has often not been challenged. For instance, in *Kingfisher Airlines v. Prithvi Malhotra and Ors.*,³ the Bombay High Court held that matters of employment where an arbitrator’s ability to award reliefs and remedies to a workman under the ID Act are limited by considerations of public policy or are not the same as the remedies and reliefs that can be awarded by courts or

¹ CA 2402/2019 (SC)

² CA 5440/2022 (SC)

³ WP 2585/2012 (Bombay HC)

tribunals constituted under the ID Act, are non-arbitrable and are under the exclusive jurisdiction of courts or tribunals constituted under the ID Act.

Disputes relating to violation of company policies or terms of employment contracts including matters of misconduct or misdemeanour – to the extent not constituting a criminal offence or being a matter of public policy or is otherwise considered non-arbitrable by a competent court, are generally arbitrable.

Recently, the Supreme Court in the case of *N. N. Global Mercantile Pvt. Ltd. v. M/s. Indo Unique Flame Limited and Ors.*⁴ held that unstamped contracts containing arbitration clauses, including an unstamped arbitration agreement, is unenforceable under law. In light of this, it becomes imperative for employers to ensure that employment contracts having arbitration clauses are duly and adequately stamped in order to secure its enforceability and validity under law. For more details on this case, please refer to the [JSA Prism of May 6, 2023](#).

Regulatory Updates

Notification of the Factories (Goa Amendment) Act, 2019

The Factories (Goa Amendment) Act, 2019 (“**Amendment Act**”) was notified *vide* gazette notification dated April 19, 2023, to amend the Factories Act, 1948 as applicable in the State of Goa. Key highlights include:

1. Exemption from statutorily prescribed weekly and daily working hour limits, spread over of working hours and weekly holidays for adult workers, may now be granted through a written order by the Chief Inspector, to factories dealing with an “exceptional press of work”.
2. The limit on weekly working hours and total hours of overtime per quarter have been increased to 72 (seventy two) hours from the earlier 60 (sixty) hours, and 125 (one hundred and twenty five) hours from the earlier 75 (seventy five) hours, respectively.
3. State government may by way of notification permit a factory to employ women in night shifts between 7:00 PM and 6:00 AM and specify conditions relating to their safety.
4. Certain offences as notified under the Fourth Schedule of the Amendment Act (including but not limited to offences for non-provision of facilities such as drinking water, urinal accommodations, washing facilities, canteens and non-maintenance of registers) may be compounded by the Chief Inspector or Inspector before or after institution of prosecution, provided such offence does not lead to an accident resulting in death, serious bodily injury or dangerous occurrence. Fines for offences under the Fourth Schedule of the Amendment Act will be as prescribed by the State Government.
5. Courts may now take cognizance of complaints filed within 6 (six) months of the date on which the alleged commission of offence came to the knowledge of an Inspector, enhanced from the earlier limitation period of 3 (three) months.

Display of name boards in Punjabi language mandated upon establishments in Punjab

The Government of Punjab, *vide* notification dated March 24, 2023, notified the Punjab Shops and Commercial Establishments (First Amendment) Rules, 2023, to amend the Punjab Shops and Commercial Establishments Rules, 1958. Establishments are now mandated to exhibit a name board in Gurmukhi script in Punjabi within a period of 6 (six) months from the date of notification of this amendment. All other languages used in the name board must be below the Punjabi version. Penalty for contravention of this mandate may result in a fine extendable up to INR 1,000 (Indian Rupees one thousand) for the first offence, and INR 2,000 (Indian Rupees two thousand) for every subsequent offence.

⁴ CA 3802-3803/2020 (SC)

Introduction of the Maharashtra Labour Laws (Amendment) Act, 2022

The Government of Maharashtra, *vide* notification dated April 11, 2023 notified the Maharashtra Labour Laws (Amendment) Act, 2022, amending imprisonment and fine related provisions under the Maharashtra Industrial Relations Act, 1947, the Maharashtra Labour Welfare Fund Act, 1953, the Maharashtra Mathadi, Hamal and other Manual Workers (Regulation of Employment and Welfare) Act, 1969, the Maharashtra Private Security Guards (Regulation of Employment and Welfare) Act, 1981, and the Maharashtra Workmen's Minimum House-rent Allowance Act, 1983. Key highlights of the amendment include a reduction of penalties for offences under the said acts, including an omission of imprisonment as a penalty and reduction of earlier prescribed fines in some instances. The amendment also provides for compounding of offences in some instances.

Exemptions granted on opening and closing hours of shops and commercial establishments in Telangana

The Government of Telangana, *vide* notification dated April 4, 2023 now permits shops and establishments under the Telangana Shops and Commercial Establishments Act, 1968 ("**Telangana S&E Act**") to operate on a 24*7 basis, subject to compliance with certain conditions, including, *inter alia*, (a) issuance of identification cards to employees; (b) provision of weekly offs, overtime wages and adherence to prescribed weekly working hours; (c) obtaining consent of women employees to work in night shifts, and provision of adequate safety measures including transportation facilities for women employees; (d) provision of compensatory holidays with wages to employees working on notified national/festival holidays; and (e) payment of an annual fee of INR 10,000 (Indian Rupees ten thousand) under the Telangana S&E Act.

Notification of the Maharashtra State Tax on Professions, Trades, Callings and Employments (Amendment) Act, 2023

The Government of Maharashtra, *vide* notification dated April 6, 2023 notified the Maharashtra State Tax on Professions, Trades, Callings and Employments (Amendment) Act, 2023. Key highlights of the Maharashtra State Tax on Professions, Trades, Callings and Employments (Amendment) Bill, 2023 can be accessed [here](#).

Notification of the Madhya Pradesh Udyogon Ki Sthapna Evam Parichalan Ka Saralikaran Adhiniyam, 2023

The Government of Madhya Pradesh, *vide* notification dated April 6, 2023, notified the Madhya Pradesh Udyogon Ki Sthapna Evam Parichalan Ka Saralikaran Adhiniyam, 2023, repealing the Madhya Pradesh Udyogon Ki Sthapna Evam Parichalan Ka Saralikaran Adhyadesh, 2023 to allow industrial units being set up in notified areas to apply for exemptions in relation to approvals (including licenses, registrations) to be obtained in connection with the establishment or operation of an industrial unit under applicable laws. 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 ("**MPIDCL**") to avail of such exemption, pursuant to which the MPIDCL may issue an acknowledgment certificate to grant the industrial unit exemptions sought. Exemptions granted under an acknowledgement certificate will be effective for a period of 3 (three) years from the date of issuance of acknowledgement certificate.

Aadhar seeding and authentication facilities introduced in the ESIC web-portal

The Employees' State Insurance Corporation, *vide* notification dated April 17, 2023 has announced that Aadhar identification numbers of employees (insured persons) being newly registered on the portal of www.esic.gov.in can now be seeded and authenticated at the time of their registration, using the e-KYC process of UIDAI.

Case Law Ratios

Dismissal on the ground of loss of confidence in employee to be based on an objective set of facts and motivations

In *Rudresha and the Management v. M/s TVS Motor Company*,⁵ the Karnataka High Court upheld the dismissal of an employee on the ground of loss of confidence, arising out of the employee's past instances of gross negligence and insubordination while performing duties. The court observed that labour courts, while evaluating such cases of dismissal must take into consideration whether the action taken by the employer is proportional to the employee's misconduct and based on an objective set of facts and circumstances.

Opportunity to be afforded to employer to establish charges against employee when enquiry order found to be perverse

In the case of *M/s TTK Health Care Limited v. P V Ravi*,⁶ the Karnataka High Court held that when hearing a challenge to a dismissal order instituted by an employee, courts must in the first instance evaluate if the dismissal is pursuant to fair and proper proceedings conducted by the employer. Thereafter, if such enquiry is found to be perverse, prior to evaluating the case on merits to determine reinstatement and consequential benefits to the employee, an opportunity must be afforded to an employer to establish charges against the employee by adducing necessary evidence.

Termination of an employee on the ground of misconduct without initiation of disciplinary proceedings invalid

In *Novartis India Limited v. The Chairman cum Presiding Officer Industrial Tribunal cum Labour Court Vishakhapatnam*,⁷ the Andhra Pradesh High Court held that an order of termination passed against an absconding employee on the ground of misconduct must necessarily be pursuant to findings of misconduct by the deciding authority in disciplinary proceedings duly initiated against the employee. The court further observed that labour courts may order reinstatement of terminated employees in cases of wrongful termination (or termination in non-compliance with the principles of natural justice) by their employers.

Alteration of conditions of service, including retrenchment during pendency of a dispute impermissible without prior permission of authority deciding dispute

In *Sandoz Private Limited v. Bharatiya Kamgar Karmachari*,⁸ the Bombay High Court upheld that a change in condition of service, including retrenchment of employees during the pendency of a dispute between the employer and employee in a matter without seeking prior permission from the authority deciding the dispute is invalid. As such, the court directed the employer to re-employ retrenched employees or to furnish security for their wages during the pendency of the dispute.

⁵ WP 52668/2014 (Karnataka HC)

⁶ WP 29197/2014 (Karnataka HC)

⁷ WP 15696/2009 (Andhra Pradesh HC)

⁸ WP 10475/2022 (Bombay 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, 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
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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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