



JSA Newsletter Employment Law

May 2023

This edition of the JSA Employment Newsletter discusses employment bonds 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.

Employment bonds in India

The question that has often been asked is whether employment bonds are legally enforceable in India. An employment bond is primarily executed as a deterrent against early termination of employment by employees after having undergone dedicated training for a specific process or job at the cost of the employer and having received adequate compensation as any other employee would have during this period. Employee attrition is an industry wide issue with employers having suffered significant costs on recruitment, background verification, onboarding and training. In this context, an employment bond largely helps in setting expectations with employees and also the consequences of breaching the bond which typically expects the employee to pay the amount specified in the bond, with a view to compensate the employer for costs incurred and loss suffered on account of the employee's premature employment termination.

Enforceability of these bonds has often been challenged as being contrary to public policy as discussed under the Indian Contract Act, 1872. However, the position of law on validity of employment bonds has evolved over time, through various judicial precedents.

In *Toshniwal Brothers (P) Ltd. vs Eswarprasad*,¹ the Madras High Court held that where an employee is a beneficiary of special favour or concession or training at the cost and expense wholly or in part of the employer, the employer is entitled to recover damages (being a genuine pre-estimate of losses) arising out of breach of the employee's undertaking to remain in service for the duration as mutually agreed to between the parties. Further, in *Sicpa India Limited v. Shri Manas Pratim Deb*,² the Delhi High Court awarded compensation for losses incurred by the employer on account of the employee's resignation from services in breach of his service period commitment under an employment bond, after having been imparted with certain training.

The courts have typically determined compensation amounts payable to employers by computing actual loss incurred on account of breach of employment bond by the employee, taking into consideration various factors, including an employee's period of service and the extent of restrictive stipulations in the employment bond. In *Fateh Chand v. Balkishan Das*,³ the Supreme Court of India ("**Supreme Court**") held that if actual loss incurred by an employer on

¹ 1997 LLR 500 (Madras HC)

² 2011 SCC Del 4805 (Delhi HC)

³ AIR 1963 SC 1405 (SC)

breach of employment bond can be computed, such amount can be awarded to the employer as compensation, and that damages stipulated in the employment bond must only be treated as an upper cap or limit.

In summary, legal validity of an employment bond could be contingent on various factors including reasonableness and proportionality of restrictions and damages stipulated in the employment bond. From an enforceability perspective, such restrictions should be fair, reasonable, and proportionate to the loss. Due consideration may be accorded to factors including, *inter alia*, the nature of training and development activities undertaken by an employer and actual investments made by the employer in undertaking such training and development for the employee, to ensure reasonableness and proportionality while determining the period for which the employee is obligated to provide continuous service to the employer, and damages stipulated for breach of such service period commitment by the employee.

Regulatory Updates

Extension of time granted for filing of professional tax returns in Karnataka and West Bengal

The Government of Karnataka, *vide* order dated May 6, 2023, passed the Karnataka Tax on Professions, Trades, Callings and Employments (Removal of Difficulties) Order, 2023. Taking into consideration technical glitches on the professional tax web-portal, the due dates for (a) submission of monthly statement by employers (showcasing amount of professional tax deducted from employees' salaries for the month) for April 2023; and (b) payment of professional tax and filing of annual returns for the financial year 2023-24, by persons enrolled under the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976 were extended till 31 May 2023.

The Government of West Bengal, *vide* order dated May 30, 2023, has extended the time for filing of returns under the West Bengal State Tax on Professions, Trades and Callings and Employments Act, 1979, for the year ending March 31, 2023, in electronic form till June 15, 2023. The last date for furnishing paper form of the said returns has been notified as June 22, 2023.

Notification of certain provisions under the Social Security Code, 2020

The Ministry of Labour and Employment, Government of India, *vide* notification dated May 3, 2023, has appointed May 3, 2023 as the effective date of certain provisions of the Code on Social Security, 2020 ("**SS Code**") relating to the employees' pension scheme, to, *inter alia*, (a) empower the Central Government to frame a pension scheme; and (b) to integrate the Employees' Pension Scheme, 1995 ("**EPS 1995**") with the SS Code, and repeal corresponding provisions pertaining to EPS 1995 under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The EPS 1995 continues to remain in force for a period of 1 (one) year from the said effective date, to the extent consistent with the SS Code.

Shops and establishments in Telangana permitted to remain open on all 365 days of the year for a further period of 3 (three) years

The Government of Telangana, *vide* order dated May 15, 2023, has permitted shops and establishments under the Telangana Shops and Establishments Act, 1988 to remain open on all 365 (three hundred and sixty five) days of the year, subject to conditions stated therein, including, *inter alia*, (a) adherence to prescribed working hour limits of 8 (eight) hours per day, and 48 (forty eight) hours per week; (b) maintenance of separate records of overtime in the wages register, in respect of employees working beyond normal working hours; (c) provision of weekly holiday to every employee on a rotation basis and exhibition of weekly holiday list at the main entrance of the establishment; (d) working hours being maintained between 9:00 AM to 11:00 PM; (e) provision of transportation arrangements for women employees working beyond 8:30 PM, and display of notice to this effect in Telugu and English at the main entrance of the establishment indicating availability of transport; (f) furnishing of appointment letters of employees with the jurisdictional inspector, and maintenance of records of acknowledgement of such inspector at the establishment; and (g) maintenance of visit book along with a copy of the exemption notification for verification by inspector. The said order is valid for a period of 3 (three) years commencing from June 16, 2022.

Extension of closing hours of shops and commercial establishments in Himachal Pradesh

The Government of Himachal Pradesh, *vide* notification dated May 20, 2023, has extended the closing hours of shops and commercial establishments under the Himachal Pradesh Shops and Commercial Establishments Act, 1969, from 9:00 PM to 11:00 PM with immediate effect from the date of the notification, till July 31, 2023.

Notification of Andhra Pradesh Rights of Persons with Disabilities Rules, 2023

The Government of Andhra Pradesh, *vide* notification dated April 24, 2023, notified the Andhra Pradesh Rights of Persons with Disabilities Rules, 2023 which provides, *inter alia*, specifications relating to limited guardianship, health and medical treatment, appointment of nodal officer in the district education office, non-discrimination in employment and appointment of grievance redressal officer. Pursuant to Section 21 of the Rights of Persons with Disabilities Act, 2016, every establishment is required to notify an equal opportunity policy in the manner as prescribed and register a copy of the said policy with the jurisdictional state commissioner as appointed under the said rules.

Case Law Ratios

Settlement entered into during the course of conciliation proceedings binding on parties

In *Karnataka General Labour Union v. Government of India and Ors.*,⁴ the Karnataka High Court held that employers and workmen, when parties to a conciliation proceeding, must adhere to undertakings given by them during such proceedings, whether interim or otherwise. The court observed that even interim agreements arrived at conciliation proceedings must be complied with, failing which conciliation proceedings would be rendered a mere formality without any scope of resolution of industrial disputes.

Submission of forged/fabricated documents to employer a valid ground for dismissal of employee

In *Kiran Thakur v. Resident Commissioner Bihar Bhavan*⁵, the Delhi High Court upholding the dismissal of an employee found guilty of submission of forged school passing certificate to her employer, observed that when such charge of submitting forged document stands proved, the punishment of dismissal from service cannot be faulted with, and that the question of whether such forged document is material, or had any bearing on the employee's employment need not be considered.

Internal Committee (IC) proceedings to comply with principles of natural justice

In *Aureliano Fernandes v. State of Goa and Ors.*⁶ the Supreme Court taking note of procedural irregularities in IC proceedings instituted against the appellant, including, *inter alia*, failure of IC to provide the appellant with sufficient time to prepare his defence, ordered fresh IC proceedings to be instituted against the appellant. The court observed that principles of natural justice had been severely compromised, and passed a slew of directions to strengthen the implementation and enforcement of the POSH Act. For a detailed analysis, please refer to the [JSA Prism of May 31, 2023](#).

Dismissal order founded on allegations to be preceded by departmental inquiry

In *Nina Lath Gupta v. Union of India*⁷ the Delhi High Court held that an order of dismissal from service when stigmatic and punitive, *i.e.*, being founded on allegations, and not a discharge simpliciter, has to be preceded by a departmental inquiry affording the employee an employee to defend allegations made against them. The court noted that in the absence thereof, the order of dismissal will be violative of the principles of natural justice, and liable to be set aside.

⁴ WP 9465/2022 (Karnataka HC)

⁵ WP (C) 1668/2014 (Delhi HC)

⁶ CA 2482/2014 (SC)

⁷ WP (C) 10385/2021 (Delhi HC)

The court observed that such an order of dismissal can have severe consequences for the employee, including inevitably marring his/her future prospects of employment.

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



11 Practices and
39 Ranked Partners
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of the Year

Fintech Team of the Year

Restructuring & Insolvency
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9 Ranked Practices

11 winning Deals in
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10 A List Lawyers in
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