June 2023

This edition of the JSA Employment Newsletter discusses the judicial principle of 'no work no pay' and some recent judicial precedents across several employment legislations. This edition also carries a brief note on India's 'Unified Shram Suvidha Portal'. This portal was introduced by the Government of India to simplify and centralise labour law related services and compliances.

'No work, no pay' principle

In India, the widely recognised judicial principle of 'no work no pay' deals with the question of whether an employee is entitled to wages for the duration of no services rendered, in instances of voluntary and unauthorised absence and for no reasons attributable to the employer.

This principle finds its genesis in several Indian legislations including, *inter alia*, the Industrial Disputes Act, 1947 ("**IDA**") and the Payment of Wages Act, 1936 ("**PWA**"). The term 'wages' under the IDA and the PWA (as also incorporated in several shops and commercial establishments legislations) includes, *inter alia*, remuneration payable "*in respect of employment*" or "*of work done in such employment*"[1]. Further, the PWA provides an employer with the authority to make deductions to wages payable to an employee "*on account of the absence of an employed person from the place or places where, by the terms of his employment, he is required to work*"[2]. As such, it is inferable that an employee's right to wages largely emanates from actual work done during employment, in the absence of which, an employer may have the right to make deductions from wages payable to an employee.

Several Indian courts have applied the principle of 'no work no pay' to determine an employee's entitlement to wages and even back wages, in cases of wrongful dismissal. Notably, in *Rajendra Sharma v. State of Chhattisgarh*[3], the Chhattisgarh High Court observed that the principle of 'no work no pay' is based on a "*fundamental concept in a law of contract of employment*" and that "*wages and salary are paid by the employer in consideration of work/service rendered by an employee*".

Further, courts have upheld that unauthorised absence from work, and/or non-performance of services by an employee could attract applicability of the 'no work no pay' principle. In *Chief Regional Manager, United India Insurance Company Limited v. Siraj Uddin Khan*[4], the Supreme Court upheld that no individual could claim wages for the "*period that he has remained absent without leave or without justification*", and that the principle of 'no work no pay' can be applied when an employee is "*not kept away from work*" by any order of the employer. Further, in *Vikram Tamaskar v. Steel Authority of India Limited*,[5] the Madhya Pradesh High Court upheld the deduction of wages by an employer where

[1] Section 2 (rr), Industrial Disputes Act, 1947; Section 2(vi), Payment of Wages Act, 1936.
[2] Section 7, Payment of Wages Act, 1936.
[3] WP (S) 788/2012 (Chhattisgarh HC)
[4] CA 5390/2019 (SC)
[5] (1982) 1ILLJ 84 MP (Madhya Pradesh HC)

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employees did not work despite being physically present at their respective workplace, and that non-performance of work by employees is a violation of contractual duty owed to the employer. The court observed that "*there is a breach of the contract of employment whenever the employee absents himself from work without just cause or excuse or leaves his employment without just cause or excuse before the expiration of the agreed term*" and that "*performance of duty by the employee being a condition precedent for mining remuneration, the remuneration does not become due if there is a substantial breach of the contract on the part of the employee*".

Having said that, courts have also consistently held that 'no work no pay' principle cannot be accepted as a "*rule of thumb*",[6] and that its applicability will have to be determined on a case-to-case basis, taking into consideration facts and circumstances of each case. In *Commissioner, Karnataka Housing Board v. C. Muddaiah*,[7] the Supreme Court noted that in cases where it is found that an employee was willing to work but was illegally and unlawfully not allowed to do so, he will be entitled to all benefits "*as if he had worked*". This position has been reiterated in *Shobha Ram Raturi v. Haryana Vidyut Prasaran Nigam Limited*,[8] wherein the Supreme Court held that where an employer has restrained the employee from working, the employer cannot plead 'no work no pay'. As such, the principle of 'no work no pay' could apply mostly in instances where employees have voluntarily and unauthorisedly absented themselves from work. Absence on account of statutory leaves or employer-sanctioned paid leaves are also a general exception to this principle.

Reinforcing the reciprocal contractual relationship between an employee and employer, the principle of 'no work no pay' has played a pivotal role in discouraging unauthorised absenteeism, disobedience, and non-performance of work by employees, and in minimising disruption to business operations. Having said that, reasonability must be adopted in application of this principle, including taking into consideration relevant facts and circumstances surrounding an employee's failure to perform services during employment. Since withholding of payments and deductions to wages may be seen as an imposition of punishment for non-performance of work, any such withholding or deduction must necessarily be preceded by due process, providing an employee with a reasonable opportunity to be heard.

Case Law Ratios

Workman not estopped from challenging retrenchment order even after acceptance of retrenchment compensation

In ***Indian Tourism Development Corporation Ltd. v. Fayaz Ahmad Sheikh***,[9] the Jammu & Kashmir & Ladakh High Court held that a workman retains the right to challenge a retrenchment order even after acceptance of retrenchment compensation, in cases of an employer's failure to fulfil statutory obligations under Section 25-F of the IDA. The court noted that payment of retrenchment compensation equivalent to 15 (fifteen) days' average pay for every year of completed year of continuous service or any part thereof in excess is a condition precedent to retrenchment of a workman.

Maternity leave is a fundamental human right and cannot be denied

In ***State of Himachal Pradesh v. Sita Devi***,[10] the Himachal Pradesh High Court held that denial of maternity benefits to any woman, regardless of the status of her employment, would amount to a violation of the constitutional principles. The court observed that the object of maternity leave is to protect the dignity of motherhood, and intends to achieve social justice to women, motherhood and childhood, and that entitlement to maternity leave is a fundamental human right.

[6] *State of Kerala & Ors. v. E. K. Bhaskaran Pillai*, (2007) 6 SCC 524 (SC)
[7] 2007 7 SCC 689 (SC)
[8] (2016) 16 SCC 663 (SC)
[9] LPA 163/2022 (Jammu & Kashmir & Ladakh HC)
[10] C.W.P No. 647/2020 (Himachal Pradesh HC)

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Imposition of punishment of dismissal from service for use of abusive language may be grossly disproportionate

In ***S. Raja v. M/s. Hindustan Unilever Ltd.***[11], the Madras High Court set aside an order of dismissal passed against a workman for use of abusive language against his superiors in the factory premises, noting that the same may not be a "*serious one*" for imposition of the "*capital punishment*" of dismissal from service. The court held that punishment awarded for misconduct must not be grossly disproportionate and must take into consideration circumstances and previous records/antecedents of the workman.

Disciplinary proceedings need not be initiated for dismissal of probationer on the ground of unsatisfactory behaviour or performance unless dismissal is stigmatic

In ***Gramin Yuvak Vikas Shikshan Mandal Kinhi Naik v. Shivnarayan Datta Raut***,[12] the Bombay High Court held that an objective assessment of a probationer's performance during probation to establish unsatisfactory behaviour or performance is sufficient ground for dismissal of a probationer. In the present context, the court observed that probationers have no indefeasible right to continue in service until confirmed, and initiation of disciplinary proceedings or communication of adverse remarks in records maintained by the employer for dismissal will not be required, unless dismissal of a probationer is innocuous or stigmatic.

Reinstatement not an automatic remedy in all cases of illegal dismissal from service

In ***Shri Vikas Kumar v. South Delhi Municipal Corporation***,[13] the Delhi High Court considering, *inter alia*, the nature of employment and length of service of an employee ordered monetary compensation in lieu of reinstatement as remedy for illegal dismissal from service by an employer. The court noted that reinstatement with back wages is not an automatic remedy, and may not be appropriate in any given fact situation even though termination of an employee may be in contravention of prescribed procedure. In the present case, the court noted that reinstation may be "*inexpedient and improper*", considering *inter alia*, that the employee was employed for a short period, and was arrested and acquitted in a murder case, and that considerable time of 13 (thirteen) years had lapsed from the cessation of employment.

Did you know?

The Ministry of Labour and Employment, Government of India has developed the 'Unified Shram Suvidha Portal' web-portal (https://shramsuvidha.gov.in), to provide for a single point of contact between employers, employees and enforcement agencies, with an objective to simplify compliances and inspections under various Indian labour laws. Presently operating on a pilot basis, the portal facilitates registration of establishments (all units covered under Indian labour laws, including factories and commercial establishments) under certain central labour laws, including the Employee Provident Funds And Miscellaneous Provision's Act, 1952; Employees' State Insurance Act, 1948; Contract Labour (Regulation and Abolition) Act, 1970; Building and Other Construction Workers Act, 1996; and Inter-State Migrant Workmen Act, 1979, and also facilitates filing of annual returns and maintenance of common registers under a few central labour legislations. Through integration of employer codes issued by separate labour enforcement agencies, registering establishments are provided with a 'Unique Labour Identification Number' (LIN) under the portal. This portal aims to consolidate all other central and state-level labour law compliances, in due course. The introduction of this portal has been seen as a welcome step in the right direction ahead of the implementation of the new labour codes in India.

[11] WA 1835/2021 (Madras HC)
[12] WP 5998/2019 (Bombay HC)
[13] WP (C) 8692/2018 (Delhi HC)

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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
IFLR1000 APAC Rankings 2022

Banking & Finance Team of the Year

Fintech Team of the Year

Restructuring & Insolvency Team of the Year

Among Top 7 Best Overall Law Firms in India and
9 Ranked Practices

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11 winning Deals in
IBLJ Deals of the Year

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10 A List Lawyers in
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