

This edition of the JSA Employment Newsletter discusses the 'useless formality' theory as an exception to due process in conducting disciplinary proceedings. We also discuss some recent regulatory updates and judicial precedents across several employment legislations.

## **Exception to due process in conducting disciplinary proceedings: 'useless formality' theory**

In the context of workforce discipline and sanctions, several judicial precedents have established that disciplinary proceedings should be conducted in accordance with the principles of natural justice. As envisioned under Article 14 and Article 21 of the Constitution of India ("**Indian Constitution**") and upheld by Indian courts from time to time, the principles of natural justice propound, *inter alia*, that every individual must be granted a reasonable opportunity to be heard before any disciplinary sanction is levied against them. Consequently, decision making authorities are required to adopt a fair and just process prior to issuing disciplinary sanctions against an employee, which includes providing the accused with an opportunity to be heard and to defend themselves. Due process is aimed at ensuring fairness, transparency and integrity while handling complaints of alleged misconduct, in the interest of preventing consequences such as unfair penalization, discrimination and arbitrariness. In certain instances, however, an accused may admit guilt to the alleged misconduct, leaving disciplinary proceedings seemingly redundant and merely a formality. In other words, when there is a voluntary admission of guilt and the outcome of a proceeding is almost certain, the necessity to adopt due process throughout such proceedings becomes what is commonly known as a 'useless formality'.

Indian courts have generally upheld the 'useless formality' theory as an exception to the principles of natural justice, applicable only in exceptional cases of admitted and undisputed facts<sup>1</sup>. Discussing the 'useless formality' theory, the *Supreme Court in M C Mehta v. Union of India*<sup>2</sup> held that "if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the court need not issue a writ merely because there is violation of principles of natural justice." In a similar vein, the Supreme Court in *M/s. Escorts Farms (Ramgarh) Ltd. v. Commissioner, Kumaon Division, Nainital, U.P. & Ors.*<sup>3</sup>, observed that "*rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits*". As such, the 'useless formality' theory revolves around the idea that in cases where there are admitted or undisputed facts, procedures and formalities may lose their relevance or serve no meaningful purpose, since the outcome may be no different in the absence thereof.

<sup>1</sup> *Shifa-ur Rhehman v. State of NCT of Delhi*, WP (CRL) 1347/2020

<sup>2</sup> WP (C) 4677/1985 (SC)

<sup>3</sup> CA 1584 of 1998 (SC)

In the context of disciplinary proceedings for misconduct, Indian courts have consistently held that inquiry may not be necessary where an accused admits their guilt. In *Central Bank of India v. Karunamoy Banerjee*<sup>4</sup>, the Supreme Court noted that “if the workman admits his guilt, to insist upon the management to let in evidence about the allegations, will, in our opinion, only be an empty formality”. Similarly, in *Instrumentation Ltd. v. P.O. Labour Court*<sup>5</sup>, the court held that “where the facts are admitted and those are sufficient to make out a case of misconduct, etc., any further departmental inquiry would have been an empty formality”. In the recent case of *Kuldeep Singh v. Shiromani Gurudwara Parbhandhak Committee*<sup>6</sup>, the court noted that “once the delinquent employee admits his guilt, he cannot be allowed to turn back and plead violation of principles of natural justice”.

Having said the above, courts have time and again cautioned that the ‘useless formality’ theory “is an exception and must not be readily resorted in all cases”<sup>7</sup>. The Supreme Court in *Jagdish Prasad Saxena v. State of Madhya Pradesh*<sup>8</sup> noted that in the absence of clear and unambiguous admission of guilt by an employee, failure to hold formal inquiry would constitute a serious infirmity in the order of punishment passed by the decision making authority. Employers must also be mindful of instances where there is an admission of guilt, and subsequent withdrawal of such admission. In such circumstances, it may become important to establish relevant facts of misconduct by way of inquiry conducted in accordance with due process, to avoid potential challenges. It also becomes imperative for employers to tread with caution while handling complaints of alleged misconduct on a case to case basis, striking a balance between efficiency and fairness.

## Regulatory Updates

### Notification of sector specific accessibility standards under the Rights of Persons with Disabilities Rules, 2017

The Ministry of Social Justice and Empowerment, Department of Empowerment of Persons with Disabilities, Government of India *vide* notifications dated May 10, 2023, July 13, 2023, July 18, 2023 and July 21, 2023, amended the Rights of Persons with Disabilities Rules, 2017, notifying the below sector specific accessibility standards to be complied with, by (all) establishments:

- a) *For sports sector*: ‘Guidelines on Accessible Sports Complex and Residential Facilities for Sports Persons with Disabilities’, published by the Ministry of Youth Affairs and Sports (Department of Sports), Government of India *vide* notification dated October 13, 2022; can be accessed [here](#).
- b) *For culture sector (monuments/sites, museums, libraries)*: ‘Culture Sector Specific Harmonised Accessibility Standards/guidelines’, published by the Ministry of Culture, Government of India *vide* notification dated January 18, 2023; can be accessed [here](#).
- c) *For information and communication technology-based products and services*: ‘Indian standards IS 17802 (Part 1), 2021’ and ‘IS 17802 (Part 2), 2022’, published by the Bureau of Indian Standards *vide* notifications dated December 24, 2021 and May 4, 2022, respectively; and can be accessed through their website [here](#).
- d) *For civil aviation sector*: ‘Accessibility Standards and Guidelines for Civil Aviation’, published by the Ministry of Civil Aviation, Government of India *vide* notification dated January 9, 2023; can be accessed [here](#).

<sup>4</sup> AIR 1968 SC 266

<sup>5</sup> 1988 II LLJ 492 (Andhra Pradesh HC)

<sup>6</sup> CWP No.27281 of 2017 (Punjab and Haryana HC)

<sup>7</sup> *Shifa-ur Rehman v. State of NCT of Delhi*, WP (CRL) 1347/2020

<sup>8</sup> AIR 1961 SC 1970

## Establishments in Punjab permitted to remain open on all 365 (three hundred sixty five) days of the year

In continuation of its earlier notification dated June 8, 2022<sup>9</sup>, the Department of Labour, Government of Punjab, *vide* notification dated June 8, 2023 extended permission to all establishments under the Punjab Shops and Commercial Establishments Act, 1958 to remain open on all days of the year, for a further period of 1 (one) year, *i.e.*, up to May 31, 2024, subject to certain conditions. Some key conditions include: (a) a minimum of 1 (one) day weekly holiday to all employees; (b) display in advance of holidays timetable for each month in the establishment; (c) compliance with provisions on intervals of rest (1 (one) hour of rest after every 5 (five) hours of continuous work), limits on working hours (9 (nine) hours in a day, 48 (forty eight) hours in a week), and spread over of total hours (11 (eleven) hours in a day); (d) provision of adequate security arrangements for employees and visitors for establishments remaining open after 10:00 PM; and (e) compliance with other measures as prescribed to ensure the safety of women working in night shifts.

## Exemption of certain classes of persons from payment of tax under the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976

The Government of Karnataka, *vide* notification dated July 13, 2023 exempted certain classes of persons from payment of tax under the Karnataka Tax on Professions, Trades, Callings and Employments Act, 1976, with effect from the date of publication of the said notification in the state gazette, *i.e.*, July 13, 2023.

Exempted categories of persons include: (a) owners of transport vehicles (other than autorickshaws) not exceeding 2 (two) in number, run on their own or through others under permits granted; (b) holders of permits of 2 (two) or less taxies or 3 (three) wheeler goods/passenger vehicles; (c) persons who are physically challenged having total permanent disability of not less than 40% of both upper and lower extremity deformities subject to production of a certificate obtained from the head of orthopaedic department of government civil hospital in the state; (d) individual person having single child and who has undergone sterilisation operation, subject to production of a certificate from the district surgeon, government of civil hospital, for having undergone such surgery; (e) ex-servicemen other than those salary or wage earners whose salary or wage or both, as the case may be, for a month is INR 25,000 (Indian Rupees twenty five thousand) and above; (f) persons who are blind and deaf other than those salary or wage earners whose salary or wage or both, as the case may be, for a month is INR 25,000 (Indian Rupees twenty five thousand only) and above; (g) foreign technicians employed in the state, provided their appointments are approved by the government for the purpose of exemptions from payment of income tax, subject to a maximum of 2 (two) years from the date of their joining duty; (h) charitable and philanthropic hospitals; or nursing homes, situated in places below the taluk level in all districts of the state, except Bengaluru, Ramanagara, and Bengaluru Rural districts; (i) directors of companies registered in Karnataka and nominated by financing agencies owned or controlled by the state government or by other statutory bodies; (j) combatant and civilian non-combatant members of the armed forces governed under prescribed legislations; (k) institutes teaching Kannada or English shorthand or typewriting; (l) persons running educational institutions, tutorial colleges, excluding professional and technical educational institutions; (m) central para-military forces (CPMF) personnel; and (n) persons running educational institutions in respect of their branches teaching classes up to twelfth standard or pre-university education.

## Modification in requirement to display notice of shift schedule and weekly holidays of workers in shops and establishments in Maharashtra

The Industries, Energy and Labour Department, Government of Maharashtra, *vide* notification dated June 27, 2023, amended the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Rules, 2018, to allow establishments to display notice of shift schedule and weekly holidays of workers engaged in shifts on

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<sup>9</sup> To read more, click [here](#)

either the website of the establishment, **or** at a conspicuous place of the premises of the establishment on the notice board. This in modification of the erstwhile requirement display of such schedule on **both** the website **and** notice board of the establishment.

## Factories in Andhra Pradesh to comply with prescribed safety measures for work in “confined spaces”

The Labour Factories Boilers & Insurance Medical Services Department, Government of Andhra Pradesh, *vide* notification dated July 7, 2023 issued detailed guidelines/instructions applicable to factories in Andhra Pradesh to prescribe safety measures to be adopted by occupiers and managers of factories with respect to workers required to work in “confined spaces”. Some key compliances for factories under the said guidelines include, *inter alia*, (a) identification of confined spaces, and nature of hazards that are encountered in such spaces, both normally and abnormally in the prescribed manner; (b) adoption of “work permit system” in the prescribed manner for entry of workers into confined spaces; and (c) conducting hazard assessment of confined spaces and making necessary forced ventilation and other arrangements as detailed under the guidelines to render confined spaces safe for work.

## Aadhar authentication requirement for labour schemes in Chhattisgarh

The Department of Labour, Government of Chhattisgarh, *vide* 3 (three) notifications dated June 30, 2023 notified that individuals desirous of obtaining worker registrations and benefits under schemes to be implemented by the (a) Chhattisgarh Building and Other Construction Workers Welfare Board; (b) Chhattisgarh Labour Welfare Fund Board; and (c) Chhattisgarh Unorganised Workers State Social Security Board, will be expected to furnish proof of possession of Aadhar, or undergo Aadhar authentication. It has advised individuals to get themselves enrolled for Aadhar at the nearest enrolment centre available in their area in case they are not already enrolled.

## Revision in rate of labour welfare fund contribution in Haryana

The Haryana Labour Welfare Board, Government of Haryana, *vide* notification dated July 27, 2023, increased the upper limit of contribution payable by each employee to the labour welfare fund under the Punjab Labour Welfare Fund Act, 1965 (“LWA”) to INR 31 (Indian Rupees thirty one) from the earlier INR 25 (Indian Rupees twenty five) with effect from January 1, 2023. As such, each employee under the LWA is required to contribute to the Haryana Labour Fund an amount equal to 0.2% of their salary or wages or any remuneration, subject to a limit of INR 31 (Indian Rupees thirty one), and each employer in respect of such employee is required to contribute to the Haryana Labour Welfare Fund, an amount equivalent to twice the amount contributed by such employee.

## Case Law Ratios

### Internal committee has jurisdiction to initiate inquiry under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“POSH Act”) against respondent employed with another employer

In *Dr. Sohail Malik v. Union of India*<sup>10</sup>, the Delhi High Court relying on rules of purposive interpretation upheld the applicability of the POSH Act where complaints of sexual harassment are instituted against respondents employed with different employer(s). The court further held that an internal committee duly constituted under the POSH Act is not foreclosed from inquiring into complaints of sexual harassment instituted against persons outside of the “disciplinary control” of the complainant’s employer, and that it may forward its inquiry report to the respondent’s employer for further action. For a detailed overview of this case, please click [here](#).

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<sup>10</sup> WP (C) 8624/2023 (Delhi HC)

## Unauthorised absence from service of an employee to be proved as wilful by employer

In *Dr. S.C. Asthana v. State of U.P. Through Principal Secy. Medi. And Hel. And Another*<sup>11</sup>, the Allahabad High Court held that the burden of proving unauthorised absence as ‘wilful’ rests with the disciplinary authority, and that in the absence of such finding, unauthorised absence does not amount to misconduct. In the present case, the court considering the plea filed by an employee facing disciplinary action for being absent from duties during a foreign assignment in Nigeria, noted that absence from duty without any application or prior permission may amount to unauthorised absence, but such absence may not always be wilful, and may be because of compelling circumstances and as such, may not amount to misconduct.

## Employer cannot deny employment or promotion solely based on HIV positive status of employee

In *XYZ v. Union of India Thru. Secy. Ministry of Home Affairs New Delhi and Others*<sup>12</sup>, the Allahabad High Court held that an individual who is otherwise fit, cannot be denied employment or promotion solely based on their HIV status. Noting that protection against discrimination is a fundamental right guaranteed to citizens of India, the court emphasised that such denial of employment or promotion is discriminatory and would violate principles of equality, right to non-discrimination, and the right to life as enshrined in Articles 14, 16, and 21 of the Indian Constitution. The court quashed all directions and orders that denied or deprived the appellant the right to occupy promotional posts by virtue of his HIV positive status and declared that the appellant would be entitled to full benefits of promotions as extended otherwise.

## Maternity leave an inherent right of every woman employee and cannot be denied on technical grounds

In *Swornolata Dash v. State of Odisha and Ors.*<sup>13</sup>, the Orissa High Court held that maternity leave cannot be compared or equated with any other leave, as it is an inherent right of every woman employee which cannot be denied on technical grounds. Here, the petitioner was denied maternity leave on grounds that legislations governing the school (an ‘aided educational institution’ under the Orissa Education Act, 1969) where the petitioner was employed, did not recognize maternity leave entitlement and were silent on the same. The court noted that denial of maternity leave to a woman employee would be “*an assault on her dignity as an individual*” and deprive her of her fundamental right to life with dignity as guaranteed under Article 21 of the Indian Constitution. The court also noted that its observations “*would be equally applicable to whom the Act does not apply*”

## Assessment of dominant nature of duties and responsibilities of an employee necessary to determine whether employee is a ‘workman’ under the Industrial Disputes Act, 1947 (“IDA”)

In *Abott India Limited v. Dipak*<sup>14</sup>, the Bombay High Court held that an employee who is appointed as a “Therapy Business Manager”, with the job profile of business development by deployment of marketing strategies cannot be classified as a ‘workman’ under the IDA. The court noted that the employee was not employed to do any “*manual, unskilled, technical, operational, clerical or supervisory work*”, and that the dominant nature of one’s duties need to fall within one of the stipulated categories to be classified as a ‘workman’ under the IDA.

<sup>11</sup> WA 2000264/2022 (Allahabad HC)

<sup>12</sup> Special Appeal Defective No. 430/2023 (Allahabad HC)

<sup>13</sup> WP (C) 620/2015 (Orissa HC)

<sup>14</sup> WP 2101/2023 (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.

**This Newsletter has been prepared by:**



**Gerald Manoharan**  
Partner



**Sonakshi Das**  
Principal Associate



**Sandhya Swaminathan**  
Associate



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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9 Ranked Practices

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11 winning Deals in  
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For more details, please contact [km@jsalaw.com](mailto:km@jsalaw.com)

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