



JSA Newsletter Employment Law

February and March 2024

This edition of the JSA Employment Newsletter provides a brief roundup of some key regulatory developments through amendments, notifications, orders and other updates in the employment space in India. We also discuss some recent judicial precedents across several employment legislations.

Regulatory Updates

Notification of Kannada Language Comprehensive Development (Amendment) Act, 2024 (“KLCD Amendment Act”)

The Department of Parliamentary Affairs and Legislation Secretariat *vide* notification dated February 26, 2024, notified the KLCD Amendment Act which amends section 7 and section 17 of the Kannada Language Comprehensive Development Act, 2022. Notably, section 17 of the KLCD Amendment Act mandates commercial, industrial, and business entities, among others, functioning with approval and sanction of the government or local authorities, to ensure that their name board displays 60% in Kannada language, and that Kannada should be displayed in the upper half of the name board.

Labour Commissioner, Assam directs retrospective application of revised rate of variable dearness allowance (“VDA”)

The Office of the Labour Commissioner, Assam *vide* notification dated February 8, 2024, prescribed rates at which VDA is to be computed for certain categories of workmen, which are not covered under the Minimum Wages Act, 1948 (“**MW Act**”) and where workmen employed by contractors do not perform same or similar nature of work as done by workers directly employed by principal employers. Notably, the notification focuses on the following workmen categories: (a) highly skilled / account or equivalent to accountant, (b) skilled (industrial training institute (“**ITI**”) certificate holder or equivalent/clerical), (c) skilled (other than ITI certificate holder), (d) semi-skilled and (e) unskilled workman. The revised VDA rates are based on calculations by the Director of Economics and Statistics, Assam, which will retrospectively apply from July 1, 2023 for a period of 6 (six) months, i.e. till December 31, 2023.

Union Government issues notification mandating beneficiaries of various schemes to furnish proof of possession of aadhaar number or undergo aadhaar authentication

The Department of Empowerment of Persons with Disabilities (Divyangjan) *vide* notification dated February 29, 2024, mandated beneficiaries of various schemes offered by Government of India, to furnish proof of possession of aadhaar number or undergo aadhaar authentication. It clarified that the use of aadhaar as an identity document for delivery of services or benefits or subsidies simplifies the government delivery processes, brings in transparency and efficiency,

and enables beneficiaries to get their entitlements directly in a convenient and seamless manner by obviating the need to produce multiple documents to prove one's identity.

State government of Gujarat notifies aadhaar as a crucial identity document for multiple schemes

The Labour, Skill Development and Employment Department, State Government of Gujarat *vide* multiple notifications dated February 5, 2024, emphasised on utilization of aadhaar as a crucial identity document for the following schemes:

1. The ***Mukhyamantri Bhagyalaxmi Bond Scheme*** which aims to provide a bond of INR 25,000 (Indian Rupees twenty-five thousand) in the name of first girl child (of age up to 1 (one) year) of registered building and other construction workers. Such bond will mature upon the girl child attaining 18 (eighteen) years of age. The notification mandates that children desiring to avail benefits under the scheme must provide proof of possessing aadhaar number or undergo aadhaar authentication.
2. The ***Educational Assistance Scheme*** which provides educational assistance ranging from INR 1,800 (Indian Rupees one thousand eight hundred) to INR 2,00,000 (Indian Rupees two lakh) to registered building and other construction workers for up to 2 (two) children aged between 5 (five) to 30 (thirty) years, annually. The notification mandates individuals availing benefits to furnish proof of possessing aadhaar number or undergo aadhaar authentication.
3. The ***Special Coaching Class Scheme*** which provides coaching to children aged 15 (fifteen) to 35 (thirty-five) of registered building and other construction workers to prepare for competitive exams like UPSC/GPSC, chartered accountants, among others. The notification mandates individuals desiring to avail of the benefits under the scheme to furnish proof of possessing aadhaar number or undergo aadhaar authentication.

State government of Haryana prescribes conditions for factories seeking exemption on employing women during night shift

For ensuring women's safety and security, the Governor of Haryana *vide* gazette notification dated March 14, 2024, prescribed conditions for factories seeking exemption in employing women during night shift, *i.e.* between 7 PM to 6 AM. Any such exemption sought by a factory under the Factories Act, 1948 would be valid only for 1 (one) year from the notification issuance date.

Guidelines outlined in the notification focus on preventing sexual harassment of women at workplace, particularly in factories, stressing on the importance of compliance with the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, and other relevant laws. Notably, among others, the notification emphasised on establishing internal committees, displaying policies, providing safety measures like lighting and CCTV cameras, ensuring transportation facilities, employing women security guards, and offering medical facilities during night shifts. The notification also emphasizes on following labour laws, addressing grievances, conducting awareness programs, and reporting incidents to the concerned authorities.

State government of Maharashtra revises contribution rate under the Maharashtra Labour Welfare Fund Act, 1953 ("MLWF Act")

The state government of Maharashtra pursuant to article 348 (3) of the Constitution of India, notified the Maharashtra Labour Welfare Fund (Amendment) Act, 2024 amending section 6BB of the MLWF Act. Earlier the said sub-section provided that the amount of contribution payable every 6 (six) months in respect of every employee and an employer for each such employee, should be INR 6 (Indian Rupees six) if the employee draws wages up to and inclusive of INR 3,000 (Indian Rupees three thousand) per mensem and INR 12 (Indian Rupees twelve) if an employee draws wages exceeding INR 3,000 (Indian Rupees three thousand) per mensem. After the notified amendment, the state

government has implemented a straight jacket formula where for an employee whose name appears in the register of an establishment as on June 30 and December 31, respectively, the payment should be at the rate of INR 25 (Indian Rupees twenty-five) flat.

State government of Kerala notifies competent authority for requesting for “high support” for a person with disability under the Rights of Persons with Disabilities Act, 2016 (“RPWD Act”)

In exercise of powers conferred under section 38(1) of RPWD Act read with rule 14A(1) of the Rights of Persons with Disabilities Rules, 2017, Government of Kerala *vide* notification dated March 11, 2024 notified the competent authority for requesting for “high support” for a person with disability under RPWD Act. Any person with benchmark disability, who considers himself to be in need of high support, or any person or organisation on his or her behalf, may apply to an authority, to be notified by the appropriate government, requesting to provide high support. The state governments or union territory administrations are required to notify the authority to whom a person with benchmark disability can apply for high support requirement under section 38(1) of the RPWD Act. Accordingly, the state government of Kerala notified that the ‘Joint Director, Social Justice Department’ will be the authority for receiving applications and certifying the needs of high support and its nature for the purpose of the RPWD Act.

State government of Manipur notifies the Manipur Labour Laws (Exemption from Renewal of Registration and License by Establishment) Act, 2024 (“Exemption Act”)

The state government of Manipur notified the Exemption Act *vide* gazette notification dated March 15, 2024. As per section 4 of the Exemption Act, employers of establishments to which acts enlisted in the first schedule (“**Scheduled Acts**”) applies are not required to renew registration of their establishment as previously granted under the Scheduled Acts. This exemption is subject to a self-certification to be submitted by the establishment in the form specified in the second schedule of the Exemption Act before the month end of January every year or 30 (thirty) days of completion of relevant work, business or operation.

ESIC notifies commencement date for extension of medical benefits under the Odisha Employees' State Insurance (Medical Benefit) Rules, 1958

In accordance with authority granted by section 46(2) of the ESIC Act, in conjunction with regulation 95-A of the Employees' State Insurance (General) Regulations, 1950, the Director General of ESIC *vide* notification dated March 7, 2024, has designated March 1, 2024 as the commencement date for extension of medical benefits outlined in regulation 95-A of the said regulations and the Odisha Employees' State Insurance (Medical Benefit) Rules, 1958 to families of insured individuals residing in all regions of Nayagarh and Nabrangpur districts in Odisha.

State government of West Bengal provides additional website for professional tax

The Directorate of Commercial Taxes, Kolkata *vide* order dated January 25, 2024 stated that in addition to the website mentioned in the West Bengal State Tax on Professions, Trades, Callings, and Employments Rules, 1979, www.wbprofessiontax.gov.in is now officially recognized as another designated website.

Case Law Ratios

Termination of woman officer solely on the ground of marriage is manifestly arbitrary

In *Union of India and Others v. Ex. Lt. Selina John*¹ on February 14, 2024, the Hon'ble Supreme Court of India criticized the dismissal of a female nursing officer from the military nursing service ("MNS") based solely on her marriage, as a clear instance of gender bias and unfair treatment. The petitioner, a nursing officer promoted to Lieutenant in the MNS, was discharged from her duties upon marrying an army officer. The termination, which occurred without prior notification or a chance to present a defense, cited marriage as the grounds for dismissal, citing Army Instruction No. 6 of 1977. However, the Hon'ble Supreme Court observed such regulations as unjustly targeting female nursing officers, deeming them arbitrary and in violation of fundamental rights.

Disciplinary proceedings against retired employees not allowed unless empowered by statute

In *Mahendra Nath Sharma v. State of UP and Others*² on January 9, 2024, the Hon'ble Allahabad High Court held that employers are not permitted to initiate or sustain disciplinary actions against retired employees unless explicitly sanctioned by law. The court emphasised that any disciplinary control over retired employees must stem from statutory regulations and cannot be exercised otherwise. It highlighted that disciplinary authority typically ends upon an employee's retirement, and any extension of this authority post-retirement must be outlined in the relevant statutory provisions governing the employee's terms of service. As the petitioner's corporation's regulations lacked such provisions, the court invalidated the punitive measures and dismissed the petitioner's appeal.

Pregnant woman's right to join service upheld

In *Misha Upadhyay v. State of Uttarakhand and Others*³ on February 23, 2024, the Hon'ble Uttarakhand High Court re-affirmed that a woman cannot be refused employment solely on basis of pregnancy. This ruling came in response to a case where a 13 (thirteen)-week pregnant woman, selected as a nursing officer, was denied employment despite receiving an appointment letter, citing temporary unfit based on a medical certificate. The court criticized such denial as gender discrimination and a violation of constitutional rights. The court highlighted that a woman who joins service and later becomes pregnant is entitled to maternity leave. The court directed the authorities to permit the petitioner to join immediately, overturning the previous order that prevented her from starting her job. The said ruling sets a precedent in ensuring that pregnancy should not be a barrier to women's employment opportunities, emphasizing the importance of upholding gender equality in the workplace.

¹ Civil Appeal No. 1990 of 2019

² Writ - A No. - 4338 of 2019

³ Writ Petition (S/S) No. 241 of 2024

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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