



JSA Newsletter Employment Law

September 2024

This edition of the JSA Employment Newsletter explores the legal position surrounding anonymous complaints of sexual harassment under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (“**POSH Act**”) and the rules thereunder and the obligation of an Internal Committee (“**IC**”) in such cases. The newsletter also provides a brief roundup of latest key regulatory developments in the Indian employment space for the months of July and August 2024, released through amendments, notifications and orders. We also discuss some recent judicial precedents across several employment legislations.

Handling anonymous complaints of sexual harassment under the POSH Act

The POSH Act stands as a significant legislative shield against sexual harassment of women at workplaces. It sets out a prescriptive redressal mechanism for complaint resolution. This includes *inter alia*: (a) mandatory formation of an IC (or, ‘local committee’, as the case maybe) to handle complaints of sexual harassment¹ and timelines for filing and resolution of complaints; (b) an IC’s responsibility to conduct fair and impartial investigations; and (c) obligation to maintain confidentiality throughout the investigation process, to safeguard privacy of both the complainant and the respondent.

In the Indian organisational context, in addition to adoption of the mandatory prevention of sexual harassment at workplace policy under the POSH Act, companies adopt several other policies from a good governance and misconduct reporting perspective, which includes policies on whistleblowing, ‘bystander intervention’, anonymous ‘tip’ policies and the like. Very often, members of the management and even the IC find themselves in conflicting situations where a complaint of sexual harassment is routed to them anonymously – and more so, through reporting mechanisms under the above policies, from members and colleagues within the organisation and in some cases, even outside. In such cases, the following questions are often debated on: (a) Can an IC act on an anonymous complaint of sexual harassment? and (b) What would be their responsibility or recommended way forward in such cases?

Does the POSH Act set limitations on ‘anonymous’ complaints?

The POSH Act does not expressly call out the requirement that written complaints of sexual harassment cannot or should not be ‘anonymous’. Under Section 9 of the POSH Act, an ‘aggrieved woman’ can file a ‘written complaint’ of sexual harassment with the IC, ‘within prescribed periods’. The notable prescriptions here are that complaints to an IC must be filed by an ‘aggrieved woman’ and ‘in writing’. Where an ‘aggrieved woman’ is unable to file a ‘written complaint’, the POSH Act allows other persons to file such complaints on behalf of the aggrieved woman, provided she has consented to it.

¹ For the purposes of this newsletter, the focus on complaint resolution mechanism is limited to that of an IC only (and not *vis-à-vis* a ‘local committee’).

Interestingly, adopting a strict interpretation of the statute, an aggrieved woman could still file a complaint of sexual harassment in writing, satisfying the above requirements while choosing to remain anonymous. However, through judicial precedents, the position on this ambiguity is well settled under law that written complaints of sexual harassment cannot be anonymous, i.e., identity of an aggrieved woman cannot be held back, and that an IC cannot act on a complaint raised on anonymity. In the case of *Manjeet Singh vs. Indraprastha Gas Limited*,² the Delhi High Court (“**Delhi HC**”) had set aside conclusions drawn by an IC on grounds that the complaint received was anonymous. It was noted that anonymous complaints cannot be acknowledged or acted upon unless submitted in writing. To investigate an incidence of alleged sexual harassment based on anonymity could present challenges for the IC. This approach is seen as contrary to the principles of natural justice, which are fundamental to internal investigations and disciplinary procedures. This applies to investigations under the POSH Act as well. Indian courts have time and again re-affirmed the significance of principles of natural justice to ensure a safer workplace and to maintain transparency in processes under the POSH Act.

One of the more important reasons for disallowing cognisance of anonymous complaints is that the law, while seeking to protect women from sexual harassment at workplace, also seeks to protect the respondent from frivolity of complaints. Judicial precedents have established that due process must be followed when investigating sexual harassment cases under the POSH Act. This includes providing the respondent with a reasonable opportunity of being heard, cross-examining witnesses and offering rebuttals against the allegations raised.

In case of an anonymous complaint, a respondent may not be in a position to address the above and hence, the necessity to present the respondent with full facts and circumstances of the case and specifics of allegations, including details of the aggrieved woman. Further, investigating anonymous complaints under the POSH Act, while undermining principles of natural justice, could also result in several other challenges including increased number of frivolous complaints and complaints from parties unrelated to the actual alleged incidence. Several recent cases including *Vineeth V.V. vs. Kerala State Electricity Board and Ors*³ and *Aureliano Fernandes vs. State of Goa and Ors*⁴ have also established the need for an IC to investigate matters of sexual harassment in line with principles of natural justice and to offer respondents with reasonable opportunity to defend their case.

Depending on the gravity of complaint, the IC or management may not be in a position to completely disregard the allegations or complaint solely on grounds that the complainant chose to conceal their identity. Some of the recommended way forward for members of management and IC in such situations could be to request and encourage the anonymous complainant to come forward and make full and adequate disclosures, and to have the aggrieved woman make a complaint in writing to the IC (and if complaint is being filed on behalf of the aggrieved woman, seek her consent in doing so). Management may also initiate fact-finding exercises to assess if there is any merit to the allegations which warrants disciplinary measures. Unless of course there is an official written complaint of sexual harassment following the above measures, the IC is likely to be limited in its duties and powers to act on such anonymous complaints under the POSH Act.

Regulatory Updates

The Government of Tamil Nadu issued amendments to the Tamil Nadu Shops and Establishments Rules, 1948

The Government of Tamil Nadu, *vide* notification dated July 2, 2024, issued amendments to the Tamil Nadu Shops and Establishments Rules, 1948. These amendments lay down *inter alia* the process and relevant forms required for application and registration of eligible establishments, amendments to the registration certificate and intimation requirements for existing establishments. Interestingly, for amendments to existing registration certificates, fresh registration certificates will be issued online by the concerned inspector in Form Z within 24 (twenty-four) hours from the time of making the application.

² 236 (2017) DLT 396

³ (WP (C) No. 9331 of 2024)

⁴ (Civil Appeal No. 2482 of 2014)

The Government of Assam issued rules for regulating private placement agencies for recruitment of workers

The Government of Assam, *vide* notification dated July 2, 2024, issued the Assam Private Placement Agencies for Recruitment of Workers (Regulation) Rules, 2024, under Section 15(1) of the Assam Private Placement Agencies for Recruitment of Workers (Regulation) Act, 2019. These rules are designed to regulate private placement agencies involved in the recruitment process within the State, with the primary objective to protect the general public and workers by ensuring accountability and transparency in hiring process. The rules mandate applicable agencies to submit extensive supporting documents, including character references and background checks on their principals, in order to obtain a license. Applications would be reviewed by the superintendent of police and the controlling authority, who will assess the agency's history and evaluate any potential threats to public order or national security.

The Government of Haryana issued notification regarding monthly deposit of labour welfare fund

The Government of Haryana, *vide* notification dated July 9, 2024, announced that contributions to the labour welfare fund under the Punjab Labour Welfare Fund Act, 1965 (as amended in the State of Haryana) must be deposited on a monthly basis *via* established online portal. Similar to the procedures for employee provident fund and employee state insurance contributions, labour welfare fund contributions will be deposited online on a monthly basis.

The Employees Provident Fund Organisation launched a promotion campaign for adoption of facial authentication technology for digital life certificate submission

The Employees Provident Fund Organisation (“**EPFO**”), *vide* notification dated July 11, 2024, launched a targeted campaign to increase the usage of facial authentication technology for Digital Life Certificate (“**DLC**”) submission. This initiative demonstrates EPFO’s dedication to using technology to facilitate effective pension disbursement and provide pensioners with simple, convenient DLC submission options.

EPFO issued format essential for third-party audits in exempted establishments

EPFO, *vide* circular dated July 11, 2024, issued a notification to all zonal and/or regional offices highlighting the finalised format of Form RM-6, essential for third-party audits as per the Standard Operating Procedure (“**SOP**”) for the management and regulation of exempted establishments issued *vide* notification dated October 10, 2023. Form RM-6 is a critical tool in the audit process, providing comprehensive information about the financial status and management practices of these establishments. Auditors are required to verify the accuracy of financial statements and ensure compliance with provident fund regulations. The audit report must also include detailed information on the establishment’s financial records, ownership structure, trustee board composition and adherence to legal amendments that benefit employees.

The Government of India presented Budget 2024-2025 placing significant focus on employment opportunities and skill development

On July 23, 2024, the Hon’ble Finance Minister, Ms. Nirmala Sitaraman, presented the Budget 2024-2025 (“**Budget**”) for the financial year 2024-2025. The Budget for the first time has placed significant focus on employment-linked incentives and skill development. It envisages an allocation of INR 2 lakh crore (Indian Rupees two lakh crore) for employment, skilling and education.

The Government of India is tasked with implementing the following 5 (five) major schemes aimed at providing financial support to new employees and offering various incentives to employers to hire more employees, based on their enrolment with the EPFO: (a) provide 1 (one) month’s wage as subsidy in 3 (three) instalments, with a maximum of INR 15,000 (Indian Rupees fifteen thousand) for freshers (with a salary less than INR 1,00,000 (Indian Rupees one

lakh)), irrespective of the sector; (b) offer fixed rate incentives to both employees and employer with respect to their EPFO contribution during the first 4 (four) years of work in manufacturing sector; (c) provide eligible employers with a reimbursement of up to INR 3,000 (Indian Rupees three thousand) per month for EPFO contributions for each additional employee hired over the next 2 (two) years; (d) upgrade 1,000 (one thousand) industrial training institutes to meet the industry skill needs; and (e) offer internship opportunities at 500 (five hundred) top Indian companies with a monthly allowance of INR 5,000 (Indian Rupees five thousand) during the internship tenure, and a one-time assistance of INR 6,000 (Indian Rupees six thousand) to support their needs. In addition to the employment-linked schemes, the Government of India has further promised: (a) to revamp the Shram Suvidha and Samadhan portal to enhance ease of compliance for industry and trade; (b) a comprehensive integration of the e-shram portal with other portals to facilitate a one-stop solution; and (c) to set up women's hostels and creches to facilitate higher participation of women in workforce.

EPFO issued new SOP for handling transaction-less and inoperative accounts

EPFO, *vide* notification dated August 2, 2024, updated its procedures for managing transaction-less and inoperative accounts. The new SOP announced focuses on the generation of Universal Account Number ("UAN"), Know Your Customer ("KYC") seeding, and account unblocking. For transaction-less accounts, UAN generation and linking will require physical verification at field offices or NAN 2.0 camps, with appointments available through the EPFiGMS portal and home visits for disabled members. KYC seeding will follow distinct protocols based on the status of establishment. The unblocking process will involve thorough verification, including potential crowdsourcing to ensure accuracy and prevent fraud, enhancing overall security and service efficiency.

The Government of Kerala issued Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Kerala Rules, 2024

The Government of Kerala, *vide* notification dated August 6, 2024, issued the Building and Other Construction Workers' (Regulation of Employment and Conditions of Service) Kerala Rules, 2024, amending the existing 1998 rules. The amendment introduces a new proviso to Rule 284 (2), stating: '*Provided that, if a beneficiary commits default in the payment of contribution for more than three years, the membership shall not be resumed.*' This change clarifies that beneficiaries who fail to pay contributions for over 3 (three) years will not have their membership reinstated.

The Government of Madhya Pradesh introduced Madhya Pradesh Private Security Agencies (Regulation) Rules, 2024

The Government of Madhya Pradesh, *vide* notification dated August 7, 2024, issued the Madhya Pradesh Private Security Agencies (Regulation) Rules, 2024, replacing the Madhya Pradesh Private Security Agencies Rules, 2012. These new rules come into effect on the same day and aim to update and enhance the regulatory framework governing private security agencies in the State. The new rules aim to streamline the registration, operation and compliance requirements for these agencies, enhancing oversight and standards within the sector. They mandate specific requirements for licensing, operational procedures, training and equipment. The rules also introduce stringent inspection and enforcement measures, including penalties for non-compliance, to ensure higher professionalism and accountability within the private security sector. Existing agencies are given a timeframe to align with these new rules.

The Government of Kerala enhances and streamlines factory inspection protocols in Kerala

The Government of Kerala, *vide* notification dated August 12, 2024, introduced amendments to the existing notification under the Factories Act, 1948, to improve transparency, accountability, and simplicity in factory inspections. Key changes include redefined jurisdictional powers for Inspectors of Factories and Boilers: Grade I Inspectors will now

oversee all factories within their areas and serve as controlling officers for Grade II Inspectors, who will in turn supervise additional inspectors in their jurisdictions. Additionally, same inspector is prohibited from conducting consecutive inspections of the same factory. These updates are part of the centralised inspection system under the business reform action plan, reflecting the government's commitment to enhancing governance and ease of doing business in the State.

The Government of Rajasthan launched new online dashboard for enhanced transparency and efficiency in compliance with Business Reforms Action Plan 2024

The Government of Rajasthan, *vide* office order dated August 14, 2024, launched a new online dashboard to enhance ease of doing business, in line with the Business Reforms Action Plan 2024 reforms. Accessible *via* the department's website, the dashboard provides real-time or regularly updated information on the status of applications and compliance inspections, including details on processing times, fees and the workload. It covers key labour regulations including the Contract Labour (Regulation and Abolition) Act, 1970, aiming to improve transparency and efficiency.

The Government of Puducherry introduces draft Puducherry Transgender Persons (Protection of Rights) Rules, 2024

On August 20, 2024, the Government of Puducherry formalised the Puducherry Transgender Persons (Protection of Rights) Rules, 2024, to support transgenders. The new rules establish the process for obtaining a certificate of identity crucial for legal gender recognition. Applicants must submit Form I to the District Magistrate in person, by post, or online at socwel.pon@nic.in, along with an affidavit confirming their gender identity. Those with prior legal recognition of gender may choose to apply for a new certificate. The District Magistrate will issue the certificate of identity within 30 (thirty) days, enabling updates to official documents and issuance of a transgender identity card.

National Pension System Contributions *via* Bharat Bill Payment System

On August 28, 2024, the Pension Fund Regulatory and Development Authority announced a new facility allowing National Pension System contributions through the Bharat Bill Payment System ("**BBPS**"). This addition aims to simplify the contribution process, enabling payments *via* various applications like BHIM and PhonePe. Trail commissions will be applicable to points of presence for contributions made through BBPS under the 'All-Citizen Model', with charges displayed and collected upfront. Initially, BBPS will handle lump sum contributions settled on a T+1 basis, with refunds for failed transactions processed within 5 (five) working days. Systematic investment plan mandates *via* BBPS will be introduced in the future.

The Ministry of Commerce and Industry issues circular in relation to minimum wages applicable to workers/employees in SEEPZ (Electronics) and Gems and Jewellery sectors

On August 30, 2024, the Deputy Development Commissioner, *vide* circular no./LAB/22/2024, specified the minimum wages including basic wage, special allowance, HRA (5%) applicable to skilled, semi-skilled and unskilled workers in gems and jewellery units and shops and establishment and SEEPZ (Electronics). The special allowance is revised twice in a year by the labour department under the Government of Maharashtra. All units are to ensure that no employee is deprived of the minimum wages at any point of time. The zone administration will be regularly verifying the records and registers to ensure payment of minimum wages by employers, by obtaining photocopies of payment register for specified period.

Case law ratios

The Supreme Court of India upholds disciplinary removal, clarifies need for engagement with employee representations but with limited high court intervention

In the *State of Rajasthan and Ors vs. Bhupendra Singh*,⁵ on August 8, 2024, the Supreme Court of India (“**Supreme Court**”) upheld the removal of an employee from service, clarifying that once the disciplinary authority accepts the findings of an inquiry officer, it need not provide elaborate reasons for the punishment. The Supreme Court emphasised that while disciplinary authorities should address employee representations when imposing major penalties, High Courts should only intervene in disciplinary decisions if the findings are based on no evidence or are clearly perverse. The Supreme Court found that the Rajasthan High Court’s decision to overturn the removal order was unsustainable, as it improperly reappraised evidence. Consequently, the Supreme Court restored the removal order but ruled that the employee’s payments should not be recovered due to his age and retirement status.

Supreme Court rules against retrospective pay scale reductions and recovery orders by the State Government

In *Jagdish Prasad Singh vs. State of Bihar and Ors*,⁶ on August 8, 2024, the Supreme Court ruled that the State Government cannot retroactively reduce an employee’s pay scale or recover excess payments made, deeming such actions ‘grossly illegal and arbitrary’. The Supreme Court quashed the government’s order to reduce the appellant’s pay scale and recover excess amounts, noting that such measures have severe consequences and should not be applied retrospectively, especially after a significant time lapse. The Supreme Court highlighted that no departmental action can be taken against an employee after their retirement, and any such action not preceded by a show cause notice violates principles of natural justice. The Supreme Court emphasised that recovery of excess payments is permissible only if detected within a short period, not after many years. Consequently, the Supreme Court ordered restoration of the appellant’s pay scale and pension, including applicable interest.

Supreme Court orders continuation of service for employee, limits back wages to 50%, and reviews true grounds for termination

In *Swati Priyadarshini vs. The State of Madhya Pradesh and Ors*,⁷ on August 22, 2024, the Supreme Court reaffirmed that the form of a termination order is not the final factor; instead, courts can investigate the underlying reasons for an employee’s dismissal. In a case involving a woman appointed as an assistant project coordinator under the Sarv Shiksha Abhiyan, the Supreme Court directed her reinstatement with back wages limited to 50% after finding that her contract was terminated due to alleged misconduct related to her reporting on a hostel’s conditions. The Supreme Court overturned the Madhya Pradesh High Court’s Division Bench decision, restoring the Single Judge’s ruling but with modifications. The Supreme Court barred the respondents from taking further action against the appellant related to the past issues but allowed future action in accordance with law.

Lock-in period provision in an employment agreement during the term of employment is valid and does not infringe the fundamental rights of an employee; disputes on lock-in period are arbitrable under the Arbitration and Conciliation Act, 1996

In *Lily Packers Private Limited vs. Vaishnavi Vijay Umak and Ors*⁸ (“**Lily Case**”), a Single Judge of the Delhi HC adjudicated on (a) the validity of the lock-in period provision in the employment agreement(s) of the respondent

⁵ [2024] 8 S.C.R. 154

⁶ [2024] 8 S.C.R. 377

⁷ MANU/SC/0916/2024

⁸ Arbitration Petition 1210/2023

employees with the petitioner company; and (b) whether the dispute on lock-in period was arbitrable under the Arbitration and Conciliation Act, 1996. The Delhi HC held that the lock-in period as a restrictive covenant in the employment agreements was valid, enforceable during the term of employment and did not infringe the fundamental rights of the employees under the Constitution of India. It also held that the dispute on lock-in period was arbitrable.

The Lily Case validates the enforceability of lock-in period and gives employers the legal sanction to incorporate such negative covenants in the employment agreements provided that these covenants are operative during the period of employment.

For a detailed analysis, please refer to the [JSA Prism of August 14, 2024](#).

Karnataka High Court upheld that unauthorised absence of a workman from industrial employment attracts disciplinary inquiry proceedings for an act of misconduct

In ***G. Ramesh vs. Karnataka State Seeds Corporation Limited***,⁹ the Karnataka High Court upheld the dismissal of an employee who had been absent for over 900 (nine hundred) days without prior permission. The Court observed that such prolonged absence without leave constitutes misconduct in industrial employment and warrants disciplinary action. The petitioner argued that his extended absence was due to a health issue but failed to provide any medical documentation to support this claim. The respondent contended that no leave application or medical documents were submitted to justify the absence. The Court in this case observed that '*An employee is under an obligation not to absent himself from work without worthy cause during the time at which he is required to be at work. Absence without leave is misconduct in industrial employment warranting disciplinary punishment.*'

Punjab & Haryana High Court upheld that transfer of workman from one place to another without any material documents supporting the need of such transfer cannot be considered as a fair decision

In ***Pappu Giri vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat***,¹⁰ the Punjab & Haryana High Court ruled that transferring a workman from one workplace to another without valid justification is unfair. In this case, the petitioner workman was employed as a 'clipper' with the respondent management at a wage of INR 3,640 (Indian Rupees three thousand six hundred and forty) per month. On raising the issue of over time payment, the workman along with other 28 (twenty-eight) workers, was transferred from Panipat to Dadra and Nagar Haveli. However, the appointment letter did not mention any provision for transfer. The workman was not permitted to work at his previous location because he did not join the new location. The Court observed that the employer's decision to transfer the workman was not justifiable in the absence of any supporting documentation, such as a resolution passed by the management or an affidavit explaining the necessity of transfer. The respondent management's argument was insufficient because there was no explicit or implied clause in the appointment letter allowing for such transfers in the event of the establishment of a new unit or factory at a different location.

⁹ 2024: DHC: 5115

¹⁰ 2024 LLR 748

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 minimise 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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