Ratio Decidendi Series – Edition II

As part of the JSA employment ratio decidendi series, we will explore ratios established by Indian courts under key labour statutes and provide an insight into the evolving landscape of Indian employment laws.

In this second edition, we discuss key principles laid down by various courts under the Employees Provident Funds and Miscellaneous Provisions Act, 1952 ("**EPF Act**") and Contract Labour (Regulation and Abolition) Act, 1970 ("**CLRA Act**"). This edition also offers a brief overview of regulatory developments in the Indian employment space for the month of March and April 2025, released through amendments, notifications and orders.

PART A: Employees Provident Funds and Miscellaneous Provisions Act, 1952

Allowances paid universally, ordinarily and necessarily to all employees in a particular category would be included as part of basic wages; held, special allowances to be included in basic wages for Employee Provident Fund ("EPF") calculation

In ***Regional Provident Fund Commissioner (II), West Bengal and Ors. vs. Vivekananda Vidyamandir and Ors.***[1], the Supreme Court of India ("**SC**") affirmed that 'special allowances' paid by an establishment to its employees would fall within the definition of 'basic wages' as defined under Section 2(b)(ii) read with Section 6 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ("**EPF Act**"). Employees' Provident Fund Organisation ("**EPFO**") (appellants in this case) argued that special allowances were camouflaged dearness allowance and as such, would be liable for deduction as part of basic wages under the EPF Act. The SC, while clarifying the definition of basic wages stated that allowances paid *universally, ordinarily, and necessarily* to all employees in a particular category or grade would qualify as part of basic wages, unless the employer can prove that the allowances were linked to an incentive for greater output or were not paid universally. It further held that in addition to basic wage, dearness allowance and retaining allowance (*defined as "the allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working, for retaining the employee's services under the EPF Act"*) paid to employees must be included in the calculation of EPF contributions if they form part of the salary structure.

[1] AIR 2019 SC 1240 (decided on February 28, 2019)

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House rent allowance, however, is excluded from the ambit of basic wages.

Imposition of 100% damages as penalty under the EPF Act is not mandatory; held, it may vary based on circumstances of the case

In ***Central Board of Trustees vs. Bake N Joy Hot Bakery***[2], the Kerala High Court ("**Kerala HC**") while agreeing with previous rulings of the SC held that Section 14B (*Power to recover damages*) of the EPF Act does not mandate imposition of 100% damages as penalty on an employer in case of non-compliance *vis-à-vis* contributions made under the EPF Act. Petitioners filed a writ petition contesting an order issued by the Industrial Tribunal-Cum-Labour Court ("**Tribunal**"), whereby, the damages were reduced from 100% to 50% without offering any just cause. Kerala HC upheld the Tribunal's decision, noting that the reduction was justified based on the circumstances of the case. Kerala HC, while relying on previous SC rulings, held that imposition of 100% penalty is not to be mandatorily imposed and that the existence of *mens rea* is not a necessary ingredient for levy of damages.

Distinction among international workers based on nationality is discriminatory; held, certain provisions regulating the provident fund contributions for international workers in an establishment deemed unconstitutional

In ***Stone Hill Education Foundation vs. Union of India and Ors.***[3], the Karnataka High Court ("**Karnataka HC**") struck down Paragraph 83 of the Employees' Provident Fund Scheme, 1952 ("**EPF Scheme**"), and Paragraph 43A of the Employees' Pension Scheme, 1995 (*Provisions for international workers*), ruling them unconstitutional, arbitrary, and being violative of Article 14 (*Equality before law*) of the Constitution of India ("**Constitution**"). Petitioner's grievance was that the international workers were covered within the ambit of both, EPF Act as well as EPF Scheme, irrespective of salary drawn by them. As such, EPF contributions were mandated from international workers irrespective of salary drawn, unlike domestic employees, who were exempt from the applicability if they drew more than INR 15,000 (Indian Rupees fifteen thousand) per month as salary. Petitioner also stated that this violated Article 14 of the Constitution by creating an unfair financial burden on employers and international workers, who often have short-term assignments in India. Union of India/respondents' defence was that these provisions were necessary to align India's EPF framework with global Social Security Agreements ("**SSA**"). Karnataka HC opined that Paragraph 83 of the EPF Scheme was arbitrarily and unreasonably enacted, and that the same is violation of Article 14 of the Constitution. It further noted that Paragraph 83 of the EPF Scheme was intended to protect Indian employees going abroad to work from being subjected to SSA. However, the EPF Act and EPF Scheme provided that an Indian employee working in a SSA country was to contribute EPF on meagre INR 15,000 (Indian Rupees fifteen thousand) per month, whereas a foreign national from a non-SSA country working in India was required to contribute EPF in India on the entire salary, even though these categories of employees fell within the ambit of international workers. Such a distinction among international workers based on nationality was held to be discriminatory.

Resignation from directorship immaterial; held, authorised signatory would be held liable for EPF dues if such person exercises financial control

In ***Yash Pal Ashok vs. Regional Provident Fund Commissioner-1 and Ors.***[4], the Delhi High Court ("**Delhi HC**") held that a company's authorised signatory can be held liable for provident fund dues if they exercised financial control, even after resigning as a director. The petitioner, Yash Pal Ashok, was a former director of YPA Hospitality Private Limited. An inquiry under Section 7A (*Determination of moneys due from employers*) of the EPF Act held that the company defaulted on provident fund payments between January 2012 and March 2016. The Assistant Provident Fund Commissioner imposed INR 56,63,000 (Indian Rupees fifty-six lakh sixty-three thousand) as EPF dues on the company and INR 27,500 (Indian Rupees

[2] 2024 LLR 301 (decided on January 1, 2024)
[3] Writ Petition Number 18486 of 2012 (decided on April 25, 2024)
[4] 2024 LLR 800 (decided on April 30, 2024)

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twenty-seven thousand five hundred) penalty on the petitioner. Delhi HC dismissed the petition and held that: (a) mere resignation as a director does not absolve liability if financial control was still exercised over company's transactions; (b) a person who continues to act as an authorised signatory can be treated as an employer under EPF Act; (c) recovery officer was justified in attaching the petitioner's bank account since the petitioner failed to prove complete separation from company finances; and (d) lifting the corporate veil was necessary to determine actual control over an establishment's financial affairs. The Delhi HC reinforced that resignation as a director does not automatically remove EPF liability and held that since the ultimate control over the affairs of the company vested with the petitioner, he could be held accountable in the present instance.

Personnel performing same functions and having responsibilities as that of regular employees should be treated as employees; held, they should be provided with similar EPF coverage

In ***Malabar Dazzle India Private Limited vs. Employees' Provident Fund Appellate Tribunal and Ors.***[5], Kerala HC ruled that if trainees perform the same functions and have responsibilities as regular employees, they should be treated as employees under Section 2(f) (*Employee*) of the EPF Act. In this case, the petitioner had enrolled its employees under the EPF Act and remitted contributions for such employees but excluded individuals categorised as 'trainees' from this coverage. These trainees included drivers, attendants, electricians, receptionists, and accountants. EPFO initiated an inquiry under Section 7A (*Determination of money due from employers*) of the EPF Act for non-payment of contributions for these trainees between July 2007 and September 2011. Petitioner argued that trainees were governed by certified standing orders and did not qualify as 'employees' under the EPF Act. Kerala HC rejected this argument, noting that standing orders were not certified at the relevant time. Further, Kerala HC found that the trainees were performing work equivalent to regular employees, making them eligible for coverage under the EPF Act. Accordingly, Kerala HC held that the petitioner was liable to remit provident fund contributions for the trainees, thereby extending all statutory benefits under the EPF Act to such workers.

Part B: Contract Labour (Regulation & Abolition) Act, 1970

Scope of CLRA Act extends to work undertaken in an off-site construction as well; held, contractors producing a defined result through labour in such off-site construction would fall within CLRA Act's ambit

In ***Gammon India Limited and Ors. vs. Union of India***[6], the SC clarified the scope of applicability of CLRA Act. The petitioners, who were engaged in construction work, while challenging several provisions of and the validity of CLRA Act, contended that they did not qualify as 'contractors' under the CLRA Act since their activities were carried out off-site and did not relate directly to the establishment's core business. They further contended that the provisions of CLRA Act are unconstitutional and unreasonable because of impracticability of implementation and that the requirement of provision of canteens, rest rooms, urinals, etc., were an enormous expenditure on the contractor. Rejecting this, the SC held that the term '*work of the establishment*'[7] is to be interpreted broadly, and includes off-site activities undertaken for the benefit of the principal employer, such as construction of buildings or infrastructure as necessary for business expansion. It further observed that, a principal employer employs the contractor to produce a specified result, and as such, work performed by contract labourers employed by such contractors qualifies as '*work of the establishment*' under CLRA Act and the petitioners would be construed to be 'contractors' under CLRA Act. With regard to the unreasonableness of provisions of CLRA Act *vis-à-vis* the requirement of provision of canteens, rest rooms, urinals, etc., the SC clarified that CLRA Act is a social welfare legislation and provision of such amenities are required for dignity of human labour.

[5] 2025 LLR 103 (decided on October 15, 2024)
[6] (1974)1SCC 596
[7] Section 2(b) of CLRA Act states that "*a workman shall be deemed to be employed as 'contract labour' in or in connection with 'the work of an establishment', when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer*".

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Contracts where workers are shown as contractor employees but are controlled by principal employer are deemed sham; held, the Industrial Court's order of regularisation cannot be faulted

In ***Godrej & Boyce Manufacturing Company Limited vs. Engineering Workers Association and Ors.***[8], the Bombay High Court ("**Bombay HC**") upheld the Industrial Tribunal's finding that certain long-term workers hired through contractors were, in effect, direct employees of the principal employer, and that the contractual arrangements were a sham to evade statutory obligations. Bombay HC noted that the work performed by these workers were regular, perennial, and integrated with the core functions of the petitioner/principal employer. Despite petitioner's assertion that the contractors controlled the workmen, evidence such as issuance of employee state insurance corporation cards in the petitioner's name, inter-office memos recommending wages, and petitioner-authorised gate passes showed that the petitioner exercised primary control over the contract workers. It further noted that true employer-employee relationship must be discerned by lifting the veil of contractual arrangements, especially where there is economic dependence and integration with the principal employer's business. Further, even if the contractor pays wages, the real control and supervision by the principal employer establishes direct employment.

Employment relationship cannot be denied by interposing contractors; held, economic control and functional integration determine employment relationship

In ***Hussainbhai, Calicut vs. The Alath Factory Thezhilali Union and Ors.***[9], the SC, while examining whether the workers were engaged by independent contractors or by principal employer, held that the real nature of employment cannot be disguised through contractual intermediaries. Petitioner, who is the owner of the factory, contended that the factory had no direct employment relationship with the workers as they were hired by separate contractors. The SC clarified that in labour matters, what matters is the economic reality of the relationship, and not the formal structure. It held that if the work performed is directly connected to and supports the operations of the principal employer's business, and the workers are economically dependent on the principal employer, the law will treat them as direct employees, irrespective of intermediary arrangements. Therefore, it was established that functional integration and economic dependence rather than contractual formality are determinative of an employment relationship under the law.

Regularisation permissible only in case of presence of employer-employee relationship; held, proof of control and supervision is essential to establish employer-employee relationship

In ***Jatin Rajkonwar and Ors. vs. Union of India and Ors.***[10], the Gauhati High Court ("**Gauhati HC**") while dismissing the claim of workers seeking regularisation with Oil and Natural Gas Corporation ("**ONGC**") held that employer-employee relationship must be established through clear and substantive evidence. The petitioners alleged they were initially directly employed by ONGC and later shifted under a contractor only in name, claiming the contract was a sham. However, Gauhati HC found no evidence of ONGC appointing or directly supervising the workers and noted that wages were paid by the contractor and no ONGC-issued appointment letters were produced. Therefore, mere procedural irregularities in contract arrangements do not suffice to grant regularisation and the same has to be proved through factual indicators such as control, supervision, payment, etc.

[8] Writ Petition No. 3188 of 2017
[9] (1978) 4 SCC 257
[10] W.P. (C) 3871/2020

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Regulatory updates

Government of Tripura introduces equal opportunity policy for persons with disabilities

The Government of Tripura, *vide* notification[11] dated March 3, 2025, introduced the equal opportunity policy for persons with disabilities working in factories and boilers organisation. It aims to provide persons with disabilities the necessary support and facilities for effectively performing their duties. The policy aims to enhance accessibility within workplace and in this regard requires factories and boilers organisations to ensure availability of wheelchairs, specialised furniture, wider doorways, ramps and accessible toilets. Preference in transfers, posting, allotment of residential accommodation, etc., will be given to an employee with benchmark disabilities as per guidelines issued by the Government of Tripura, from time to time. A grievance redressal officer is required to be appointed at the organisational level to address complaints related to discrimination in employment, and a liaison officer will be designated to manage the recruitment of persons with disabilities and ensure the provision of necessary facilities.

Government of Haryana increases contribution limit under the Labour Welfare Fund Act, 1965

The Government of Haryana, *vide* notification[12] dated March 7, 2025, announced an increase in the contribution limit under Section 9A (*Contribution to fund by employers and employees*) of the Labour Welfare Fund Act, 1965. Effective from January 1, 2025, employees are to contribute 0.2% of their salary or wages, capped at INR 34 (Indian Rupees thirty-four) per month (as opposed to previous cap of INR 31 (Indian Rupees thirty-one)) per month, and employers are to contribute twice the amount contributed by employees. The contribution limit is indexed annually to the consumer price index, starting from January 1 each year. This adjustment reflects the Haryana Government's effort to align contribution limits with inflation and ensure consistency with cost-of-living changes.

Karnataka revises monthly profession tax rates effective April 1, 2025

The Government of Karnataka, *vide* notification[13] dated April 15, 2025, enacted the Karnataka Tax on Profession, Trades, Callings and Employments (Amendment) Act, 2025 ("**Amendment Act**") effective April 1, 2025, to revise the profession tax rates under the Karnataka Tax on Profession, Trades, Callings and Employments Act, 1976. As per the Amendment Act, the monthly profession tax for individuals under serial number 1 of the Schedule (i.e., salary/wage earners) which was previously INR 200 (Indian Rupees two hundred) per month for employees earning a monthly salary of INR 25,000 (Indian Rupees twenty-five thousand) and above ("**PT Employees**"), has now been revised to INR 200 (Indian Rupees two hundred) per month for PT Employees for all months except for the month of February, during which the monthly profession tax of INR 300 (Indian Rupees three hundred) is payable.

Notification regarding employment of women during night shift under Factories Act in Kerala

The Government of Kerala, *vide* notification[14] dated March 27, 2025, stated that the permissible working hours for women in certain classes of factories (such as food and beverage, garment manufacturing, electronics, healthcare-related industries, etc.) would be from 6:00 a.m. to 10:00 p.m. The permissible working hours is subject to specific conditions such as: (a) no woman should be employed between 10:00 p.m. to 5:00 a.m.; (b) separate dormitory accommodation to be provided; (c) free transport with security for those working beyond 7:00 p.m. to be provided; (d) approved work period notices to be displayed; (e) shift rotations to be planned in such a manner to ensure that the intervening weekly holidays are duly availed by the workers.

[11] No. F. 2(199)-FB/ESTT/99/March 3, 2025.
[12] HLWB/REV/2025/1306-1530.
[13] DPAL 08 Shasana 2025.
[14] G.O.(P)No.19/2025/LBR.

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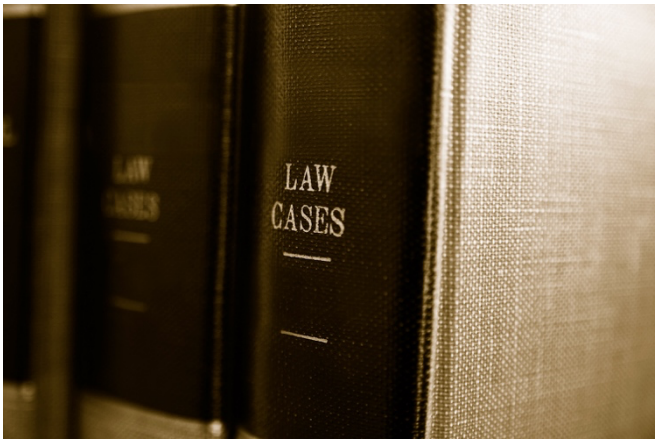
EPFO removes the requirement for cheque/passbook image upload and employer approval for bank account seeding

EPFO, *vide* circular[15] dated April 3, 2025, removed the requirement for members to upload an image of a cancelled cheque leaf or attested bank passbook while filing online claims, provided the bank account seeded with the Universal Account Number ("**UAN**") is validated by the concerned bank or National Payments Corporation of India ("**NPCI**"). The circular further dispensed with the requirement of employer approval for bank account seeding. All pending requests for bank 'know your customer' seeding at the employer level will now be auto-approved following verification by the bank/NPCI. The move aims to streamline and expedite the online claim settlement process and reduce rejections.

Telangana introduces draft bill for the welfare and protection of gig and platform workers

The Telangana Government has unveiled a draft bill aimed at protecting gig and platform workers. Once enacted, the Telangana Gig and Platform Workers (Registration, Social Security, and Welfare) Act, 2025, will extend social security and employment-related entitlements to gig and platform workers, who have long been excluded from traditional labour protections, while recognising them as a distinct category of workforce. To shape a more equitable future of work in the state, the bill aims to establish a dedicated welfare board, mandates the registration of gig & platform workers to avail benefits under the law, and introduces a mechanism for grievance redressal.

For a detailed analysis, please refer to the JSA Prism of May 7, 2025.



Case law ratios

SC rules on forfeiture of gratuity for proven misconduct involving moral turpitude

In ***Western Coal Fields vs. Manohar Govinda Fulzele***[16], the SC held that an employer can forfeit gratuity for proven misconduct involving moral turpitude, and conviction in a criminal proceeding would not be necessary. The SC clarified that under Section 4(6)(b)(ii) (*Forfeiture*) of the Payment of Gratuity Act, 1972 ("**Gratuity Act**"), a departmental enquiry proving the misconduct is sufficient *vis-à-vis* forfeiture. In this case, an employee secured employment by furnishing fraudulent birth certificate. Following a departmental enquiry, the employer terminated the employee and forfeited gratuity. The employee challenged the termination by placing reliance on the SC's ruling in *Union Bank of India vs. CG Ajay Babu*[17], which held that gratuity forfeiture involving moral turpitude requires criminal conviction. The SC held that conviction in criminal proceeding is not mandatory for forfeiture of gratuity, if the underlying misconduct involving moral turpitude is established through a departmental enquiry.

Karnataka HC directs regularisation of long-term daily wage workers

In ***Indiramma vs. State of Karnataka***[18], the Karnataka HC overturned the labour court's ruling and ordered regularisation of workers who had served as cooks, helpers, and watchmen in Morarji Desai Residential School Hostels (run by the Karnataka State

[15] No. WSU/Issues of BKG/E-19885/2024-25/16.
[16] 2025 SCC Online SC 345 (decided on February 17, 2025)
[17] (2018) 9 SCC 529
[18] 2025: KHC-K:1533 (decided on March 7, 2025)

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Government) for over 20 (twenty) years. Petitioners had sought for regularisation arguing that they had been working continuously for decades in essential roles. The labour court rejected their claim citing *State of Karnataka vs. Umadevi*[19] ("**Umadevi Judgement**"), which restricted regularisation of employees appointed without proper recruitment procedures. Karnataka HC overruled this decision holding that: (a) since the workers rendered services for over 20 (twenty) years and continued to discharge duties, their employment should be regularised; and (b) the Karnataka State Government's practice of hiring long-term workers as daily wage employees and then outsourcing their roles is exploitative and contrary to constitutional principles.

Recovery of excess payments from retired employees arising out of incorrect interpretation of a rule/order by the employer is not tenable

In ***Jogeswar Sahoo and Ors. vs. The District Judge, Cuttack and Ors.***[20], the SC held that the recovery of excess amounts paid to employees after their retirement is unjustified when such payments were not received through any misrepresentation, fraud, or fault on the part of the employees. In this case, employees were granted financial benefits due to an administrative interpretation, which was later found to be erroneous. However, these benefits were extended while the appellants were in service, and the recovery orders were issued subsequent to their retirement, without affording them an opportunity to be heard. Emphasising the principle of fairness and highlighting that the recovery in such cases would result in disproportionate hardship, the SC concluded that retired employees, particularly those in ministerial or non-gazetted posts, should not be burdened with repayments arising from errors committed by the employer. The recovery orders were accordingly set aside.

Non-inclusion of Sundays and paid holidays in assessing 240 (two hundred and forty) days of service vitiates award; matter remanded for fresh consideration

In ***Lal Chand Jindal vs. Regional Manager, Bank of Baroda***[21], the Rajasthan High Court ("**Rajasthan HC**") held that the Central Industrial Tribunal erred in rejecting the workman's claim on the ground that he had not completed 240 (two hundred and forty) days of service in the preceding calendar year. The Central Industrial Tribunal had determined that the petitioner had worked only 227 (two hundred and twenty-seven) days, based on a service certificate, but failed to consider Sundays and other paid holidays in calculating continuous service. Relying on Section 25-B(2) (*Definition of continuous service*) of the Industrial Disputes Act, 1947, and the SC's decision in *Workmen of American Express International Banking Corporation vs. Management (AIR 1986 SC 458)*, the Rajasthan HC reiterated that paid weekly offs and holidays must be included while determining continuous service. It also found that the Tribunal's omission to apply this legal principle rendered the award unsustainable. Accordingly, the impugned award was quashed and the matter remanded to the Tribunal for fresh adjudication.

[19] (2006) 4 SCC 1
[20] 2025 SCC OnLine SC 724
[21] S.B. Civil Writ Petition No. 1334/2015

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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.

This Newsletter has been prepared by:

Gerald Manoharan
Partner

Sonakshi Das
Partner

Prerana Damaraju
Senior Associate

Ananya Sharma
Associate

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