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SOCIAL SECURITY AND LABOUR LAW

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I INTRODUCTION

IN THE year 2017 there have been significant developments, both legislative and judicial, in the arena of law relating to social security, wages and minimum standards of employment . Thus during this year major amendment took place in the Maternity Benefits Act, 1961,[1] the Employees' Compensation Act,1923[2] and the Payment of Wages Act, 1936.

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1 The Maternity Benefit (Amendment) Act, 2017 has increased the duration of paid maternity leave available for women employees from 12 weeks to 26 weeks out of which eight weeks before the expected date of delivery upto two surviving children.. However, for those women who are expecting after having 2 children, and for adopting /commissioning mothers the duration of the leave shall be 12 weeks. The Amendment Act has also introduced an enabling provision relating to "work from home" which can be exercised after the expiry of 26 weeks' leave period. Depending upon the nature of work, a woman can avail of this provision on such terms that are mutually agreed with the employer. The amended Act further imposes an obligation upon every establishment employing 50 or more employees to provide crèche facility. Further the women employees are permitted to visit the creche 2/4 times during the day.

2 A new s. 17A has been inserted which imposes an obligation upon the employer to inform the employee of his rights to compensation under this Act, in writing as well as through electronic means, in English or Hindi or in the official language of the area of employment, as may be understood by the employee. Further a new s. 18A has been inserted which prescribes penalties for failure to do specified duties which shall be punishable with fine which shall not be less than Rs.50,000/- but it may extend to one lakh rupees. Moreover, s. 30 has been amended which now provides that (1) an appeal shall lie to the High Court from the following orders of a Commissioner, namely:

(a) an order awarding as compensation a lump sum whether by way of redemption of a half-monthly payment or otherwise or disallowing a claim in full or in part for a lump sum; (aa) an order awarding interest or penalty under s. 4A; (b) an order refusing to allow redemption of a half- monthly payment; (c) an order providing for the distribution of compensation among the dependants of a deceased workman, or disallowing any claim of a person alleging himself to be such dependant; (d) an order allowing or disallowing any claim for the amount of an indemnity under the provisions of sub- section (2) of s. 12; or (e) an order refusing to register a

Like legislative development there has also been significant development in judicial sphere. In the year under review a number of Supreme Court and High Court cases have been reported in various important areas of law relating to social security, wages and minimum standard of employment. The Supreme Court cases on social security relate to the Employees' Compensation Act, 1923, Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act, 1948 and wage legislation relate to the Payment of Wages Act, 1936.[3] The High Court cases covers almost every important area of social security, wages and minimum standards of employment. The Courts generally adopted cautious approach to deal with the provisions of social security, wages and minimum standards of employment legislation. Indeed the apex court at times evolved new strategies to deal with various issues on law governing social security, wages and minimum standards of employment. Moreover, in some cases Courts gave beneficial interpretation to the provisions of the Act.

This survey seeks to examine important Judgments of the Supreme Court and High Courts on law relating to social security, wages and minimum standard legislation.

II. EMPLOYEES' COMPENSATION

Employer's Liability for compensation

The Employees' Compensation Act, 1923 (EC Act) imposes an obligation upon the employer to pay compensation for an accident "arising out of and in the course of employment" , which includes occupational diseases. The aforesaid expression has been subject matter of judicial interpretation in a series of decided cases. In the year under review also, the apex court was invited not only to interpret the aforesaid expression but also to determine the scope of employer's liability.

In *Daya Kishan Joshi* v. *Dynemech Systems Pvt Ltd.*[4] the deceased workman (son of the appellant) who was employed as an engineer and his co-worker who was also employed as an engineer/sales executive with respondent on 08.09.2007, on the day of the accident, were deputed to test a filter which was installed a day earlier i.e., on 07.09.2007 at Hero Honda Factory, Dharu Heda, Haryana. Accordingly, both of them went from Delhi and checked the filter installed at Hero Honda Factory in the

memorandum of agreement or registering the same or providing for the registration of the same subject to conditions (b) an order refusing to allow redemption of a half- monthly payment.

3 The Payment of Wages (Amendment) Act, 2017 amended s. 6 to enable the employer in making payment of wages in cash or by cheque or by crediting in the bank account of the employee. The amendment also empowers the appropriate Government to specify the industrial or other establishment, the employer of which shall pay to every person employed in such establishment, the wages only by cheque or by crediting the wages in the bank account. In pursuance to this provision for making of payment only by cheque or by crediting in the bank account of an employee, in respect of industrial or other establishment in the central sphere, a notification was issued on 26,4,2017.

4 (2017) IV LLJ 168 (SC).

afternoon and thereafter started the return journey to Delhi. Both the workers (including the deceased) met with road accident while they were little away from Hero Honda factory. Both of them were taken to the hospital wherein the deceased was declared "brought dead" while his co-worker was discharged after being given first-aid. The appellants then filed an application for compensation under EC Act before the Workmen's Compensation Commissioner. The Commissioner held that accident did not" "arise out of and in the course of employment." On appeal the High Court affirmed the order of the Commissioner. Being aggrieved the appellant filed an appeal before the Supreme Court. A question arose whether the Commissioner, as well as the High Court was justified in holding that the accident did not arise out of and in the course of employment. In order to deal with this issue the court pointed out that the employer's liability for compensation to the employee arises only if the employee has suffered in the accident which arose out of and in the course of employment unders section 3(1) of the EC Act which reads as under :

> If personal injury is caused to an employee by accident arising out of and in the course of his employment, his employer shall be liable to pay compensation in accordance with the provisions of this chapter.

The amount of compensation where the death resulted from the injury shall be quantified in accordance with section 4[5] of the Act.

Interpreting the words 'arising out of' and 'in the course of employment' occurring in section 3(1) the court pointed out that these are in fact two different phrases . The phrase 'in the course of employment' suggests that the injury must be caused during the currency of employment, whereas the expression 'out of employment' conveys the idea that there must be a causal connection between the employment and the injury caused to the workman as a result of the accident.[6] Having explained the two expression the Court pointed out the effect of accident taking place on public road as under:

> When a workman is on the public road or public place or on public transport he is there as any other member of the public and is not there in the course of his employment unless the very nature of his employment makes it necessary for him to be there. In other words, there must be a causal relationship between the accident and the employment. The expression 'out of employment' is not confined to the mere nature of the employment: the expression applies to

5 S. 4(1)(a) of ECA reads thus:
Subject to the provisions of this Act, the amount of compensation shall be as follows, namely: (a) where death results from the injury : An amount equal to fifty per cent. of the monthly wages of the deceased employee multiplied by the relevant factor; or an amount of one lakh and twenty thousand rupees, whichever is more;

6 *Supra* note 4 at 171, para 6. Prima facie, while deciding the issue on hand, there is no material on record to show that the deceased workman had exposed himself to added peril by his own imprudent act.

> employment as such, to its nature, its conditions, its obligations and its incidents. The words "arising out of employment" are understood to mean that during the course of employment, the injury has resulted from some risk incidental to the duties. Unless engaged in the duty owed to the employer, it is reasonable to believe that the workman would not otherwise have suffered.[7]

The Court applied the doctrine of notional extension at both entry and exit by time and space and observed that there may be some reasonable extension in both time and space and a workman may be regarded as in the course of his employment even though he has not reached or has left employer's premises.[8] Further, the presence of the deceased on the road in question was incidental to his employment as a sales engineer. As he had to go to the Hero Honda factory to conduct a filter test, he was merely doing what was required of him as an employee. Thus, his accidental death on the way back after completing his work falls squarely within section 3(1) of the Act.

A perusal of the aforesaid decision reveals that the doctrine of notional extension may be applied in case of accident taking place on public road or on public place or on public transport if the presence of the workman on the road in question was incidental to his employment.

It is submitted that in order to give legislative approval to the judicial response and to meet the outstanding demands of employees and to bring certainty the 2010 – amendment in the Employees' State Insurance Act, 1948 has inserted new section 51E which has extended the scope of "accident arising out of and in the course of employment" to include accident happening while commuting to the place of work and *vice versa*; But no such provision has been inserted in the Workmen's Compensation Act, 1923 (which was replaced by Employees' Compensation Act, 1923) even after 2009 amendment. It is difficult to find any reason for not adopting the same principle when the expression used in both the Acts are 'accident arising out of and in the course of employment'. It is high time that there should be similarity in regard to the scope and coverage of the expression 'accident arising out of and in the course of employment'. And accordingly amend EC Act.

Condonation of delay

Ravi v. *The Manager, Reliance General Insurance Co. Ltd*.[9] the appellant herein met with an accident while on duty. He therefore, filed a case under the Workmen Compensation Act, 1923, (now Employees' Compensation Act) against his employer -respondent No. 1. The Workmen Compensation Commissioner granted compensation in the sum of Rs. 2,01,889/- as against the claim of Rs. 6 lakhs. Being dissatisfied

7 *Id.* at, para7.

8 In India, the courts have recognized the principle of notional extension of time and place for over 60-70 years while determining whether the injury has been caused out of or in the course of the employment of the workman. The Courts have held consistently that the employment does not necessarily end, when the tool down signal is given and when the workman actually leaves his place of work.

9 (2017)14 SCC 853.

with the amount of compensation granted by the Commissioner the appellant filed an appeal before the High Court under section 30 of the Act along with application for condonation of a delay of 145 days wherein it was explained that since the appellant had lost his job due to the accidental injuries suffered by him and was facing financial difficulties, he could not meet his advocate and arrange to file the appeal on time. But the High Court dismissed the application for condonation of delay by holding that the aforesaid ground did not constitute sufficient reason. Thereupon, the appellant filed an appeal before the Supreme Court. The Court depricated the approach of the High Court by observing that it was "very myopic and unreasonable". The Court ruled that " in a case like this, where the appellant has suffered injuries in an accident and was facing financial difficulties because he has even lost his job, the High Court should have condoned the delay of 145 days which was not abnormal and should have entertained the appeal on merits."

Amount of Compensation

Smt. Surekha v. *The Branch Manager, National Insurance Company Ltd.*[10] relates to determination of the amount of compensation. Here, Mr. Anand (the deceased) met with an accident while driving a vehicle belonging to the respondent during the course of his duty. He died during the course of treatment leaving behind his wife, child and aged parents. The appellants (wife, child and parents) claimed compensation before the Commissioner for Workmen's Compensation and Labour Officer, DN-II, Bijapur. The Commissioner while assessing the compensation held that the income of the deceased was at Rs. 4,000/- per month, took 50% of the same, and by adding Rs.5,000/- for funeral expenses quantified the compensation at Rs.3,94,120/- with interest @ 12% per annum from the date of expiry of one month of the award. Aggrieved by the award of compensation of the Commissioner, the appellants filed an appeal before the High Court. The High Court assessed the income of the deceased at Rs.5,500/-. with 50% of the wages at Rs.2,750/- and by applying relevant factor of 197.06, the compensation payable was determined at Rs.5,41,915/-. The Court also held that under section 4(4) of the EC Act, the appellants are entitled to a maximum of Rs.5,000/- incurred towards funeral expenses. Thus, the High Court awarded Rs.5,46,915/- with interest @ 12% per annum from the date of expiry of one month of the date when the amount was due. Being aggrieved the appellant filed an appeal before the Supreme Court. It was contended by the appellant that (i) the Commissioner, as well as the High Court was not justified in deducting 50% of the wages while quantifying compensation. (ii). The income of the deceased should have been assessed at Rs.6,000/- per month. The apex court rejected the contention of the appellant that it is not open for the High Court to deduct 50% of the wages while quantifying the compensation, inasmuch as it is mandatory as per section 4[11] of the EC Act that the

10 2017 LLR 1126.

11 S. 4 , which deals with amount of compensation reads as under :
(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely:- (a) where death results from the injury: An amount equal to fifty per cent of the

amount of compensation should be based on an amount equal to 50% of the monthly wages of the deceased multiplied by relevant factor. But agreeing with the second contention the apex court observed that (i) the deceased was aged 35 years at the time of his death and he had to look after his wife, child and aged parents .(ii) Though the evidence on record clarifies that the deceased was getting Rs.6,000/- per month and Rs. 100/- as daily Bhatta, the High Court without any reason assessed the income of the deceased at Rs.5,500/- per month .(iii) The daily Bhatta earned by the deceased usually would have been spent for his personal purposes. In view of this and also having regard to the totality of factors, including the maintenance of big family the court modified the judgment of High Court and held that the deceased was earning Rs.6,000/- per month. The Court further held that out of the enhanced compensation, a sum of Rs.1,00,000/- shall be deposited in the name of appellant No. 2 Varsha, the daughter of the deceased till she attains the age of majority and the excess amount shall be shared amongst the appellants.

The aforesaid decision shows the concern of the apex court to protect the interest of the family members of deceased including the minor daughter while determining the amount of compensation.

III EMPLOYEES' STATE INSURANCE

The Employees' State Insurance Act, 1948 (ESI Act) is a social legislation enacted to provide benefits to employees in case of sickness, maternity and employment injury and to make a provision for certain other matters in relation thereto. Broadly speaking this is the purpose for which the Corporation has been established under section 3 of the Act. The main source of the Employees' State Insurance Fund is the contributions paid to the Corporation.[12]

In *Employees State Insurance Corporation* v. *Mangalam Publications (India)*[13] a question arose before the Supreme Court as to (i) whether the interim relief paid by the respondent to its employees, during the period from 01.04.1996 to 31.03.2000, is

monthly wages of the deceased *[employee] multiplied by the relevant factor; or 4 an amount of *[one lakh and twenty thousand rupees], whichever is more;

Explanation I- For the purposes of clause (a) and clause (b), "relevant factor", in relation to an employee] means the factor specified in the second column of Schedule IV against the entry in the first column of that Schedule specifying the number of years which are the same as the completed years of the age of the employee] on his last birthday immediately preceding the date on which the compensation fell due.

(4) If the injury of the employee] results in his death, the employer shall, in addition to the compensation under sub-section (1), deposit with the Commissioner a sum of not less than five thousand rupees] for payment of the same to the eldest surviving dependant of the employee] towards the expenditure of the funeral of such employee or where the employee]did not have a dependant or was not living with his dependant at the time of his death to the person who actually incurred such expenditure".

12 *Whirlpool of India Ltd.* v. *Employees' State Insurance Corporation*, (2000) 3 SCC 185.

13 2017 LLR 1121.

to be treated as "wages" as defined under section 2(22) of the ESI Act, and if so, (ii) whether the respondent is liable to pay the ESI contribution? In order to deal with these issues the court referred to the definition of wages under section 2(22) of the ESI Act which reads as follows:

> "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorized leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include-
>
> (a) Any contribution paid by the employer to any pension fund or provident fund, or under this act;
> (b) Any travelling allowance or the value of any travelling concession;
> (c) Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
> (d) Any gratuity payable on discharge.

Explaining the aforesaid definition, the court observed that a plain reading requires that it should be given a construction that benefits the working class. Dealing with the inclusive part and exclusive portion of the definition of "wages" the court observed that section 2(22) makes it amply clear that "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of the employment, expressed or implied, were fulfilled and includes other additional remuneration, if any, paid at intervals not exceeding two months. But added that payments made on certain contingencies under clauses (a) to (d) of section 2(22) of the ESI Act, do not fall within the definition of "wages".

Dealing with the issue whether the interim relief paid to the employees of the respondent falls under "wages" the Court observed that it will definitely not fall within the excluded part of clauses (a) to (d) of section 2(22) of the ESI Act, inasmuch as such payment is not travelling allowance or the value of any travelling concession, contribution paid by the employer to any pension fund or provident fund; sum paid to an employee to defray special expenses entailed on him by the nature of his employment; or any gratuity payable on discharge.

The Court gave four reasons in support of its conclusion, namely interim relief falls under "wages": (i) ESI is a welfare legislation. It has been enacted to protect and safeguard the rights of the working class (ii) The Employees' State Insurance Fund set up under this Act survives primarily on contributions paid to the Employees' State Insurance Corporation (the appellant). All employees insured in accordance with this Act are entitled to benefits under the Act (iii) Generally speaking the literal meaning of statutory provisions cannot be ignored. But in cases where there may be two or more ways to interpret a statutory provision, the spirit of this legislative expression

"wages" has to be given wider meaning[14] (iv) If the definition of "wages" is read in its entirety including the inclusive part as well as the exclusive portion, it appears that inclusive portion is not intended to be limited only of items mentioned therein, particularly, having regard to the objects and reasons for which the ESI Act is enacted.

The court accordingly held that the payment made by way of interim relief to the employees by the respondent comes within the definition of "wages" under section 2(22) of the ESI Act, and hence the respondent is liable to pay ESI contribution.

IV EMPLOYEES' PROVIDENT FUND

Maintainability of a suit in cases covered by EPF Act

In *Central Provident Fund Commissioner, New Delhi* v. *Lala J.R. Education Society*[15] the respondent filed a suit in the civil court under Order VII, Rule 11 CPC after exhausting the remedies available under EPF Act. The appellant opposed the application which was rejected. Thereupon he filed an appeal before the Supreme Court.

According to the appellant, the respondents, having exhausted all the remedies under the EPF Act cannot thereafter file a suit in the Civil Court because it is barred under section 7L(4) of the EPF Act. Dealing with this contention the Supreme Court held that on an application filed under Order VII, Rule 11, CPC, the Civil Court can only see the pleadings in the plaint and not anything else including written statement. The Court then referred to the plaint filed by respondent wherein it was mentioned that the procedure under the EPF Act had not been followed. If that be so, the Supreme Court held that respondent is entitled to file a suit as held in its earlier decision in *Dhulabhai* v. *State of Madhya Pradesh*.[16]

Dealing with the second contention of the appellant that the respondents had suppressed crucial facts in the plaint, which if seen, the suit is only to be dismissed at the threshold the Supreme Court observed that rejection of a plaint on institutional grounds is different from dismissal of a suit at pre-trial stage on the ground of maintainability. The Court added that for dismissal on a preliminary issue, it is entitled to look into the entire documents including those furnished by the defendant.

In view of the above the appeal was dismissed but the court permitted the appellants to raise a preliminary issue on the maintainability of the suit, in which case, before proceeding with the trial, court shall deal with the same in accordance with law.

14 In the definition of "wage" firstly whatever remuneration is paid or payable to an employee under the terms of the contract of the employment, expressed or implied, is "wages". Secondly, whatever payment is made to an employee in respect of any period of authorized leave, lock-out etc. is "wages". Thirdly, other additional remuneration, if any, paid at intervals not exceeding two months is also "wages". Any ambiguous expression, according to us, should be given a beneficent construction in favour of employees by the Court.

15 (2016) 14 SCC 679.

16 (1968) 3 SCR 662.

A perusal of the aforesaid decision reveal that where the EPF authority does not follow the procedure laid down under EPF Act while conducting enquiry, the plaintiffs are entitled to file a suit in the civil court. Further suppression of crucial facts in the plaint is not a valid ground for dismissal of a plaint at the threshold. The Court also clarified that rejection of a plaint on institutional ground is different from dismissal of a suit at pretrial stage.

***Actus reus* under section 14-B**

Assistant Provident Fund Commissioner EPFO v. *The Management of RSL Textiles Pvt. Ltd,*[17] the Supreme Court was called upon to decide the question whether in the absence of a finding regarding *mens rea/actus reus* any action taken under section 14B of the EPF Act can be sustained? In order to deal with this issue the court reiterated its earlier decision in *Mcleod Russel India Limited* v. *Regional Provident Fund Commissioner, Jalpaiguri,*[18] wherein it has been held in paragraph 11 that ".....the presence or absence of *mens rea* and/or *actus reus* would be a determinative factor in imposing damages under section 14-B,[19] as also the quantum thereof since it is not inflexible that 100 per cent of the arrears have to be imposed in all the cases. Alternatively stated, if damages have been imposed under section 14-B, it will be only logical that *mens rea* and/or *actus reus* was prevailing at the relevant time". The Court accordingly affirmed the decision of the High Court which held that in the absence of a finding regarding *mens rea/actus reus* on the part of the employer, action under section 14B of the Employee's Provident Fund and Miscellaneous Provisions Act, 1952 cannot be sustained.

Nature of Proceeding under section 7A of EPF Act

In *Amit Vashistha* v. *Suresh*[20] the Supreme Court was called upon to decide the question as to whether proceeding under section 7A shall be deemed to be a judicial

17 (2017) 3 SCC 110.

18 (2014) 15 SCC 263.

19 S. 14B of the EPF Act which deals with power to recover damages provides -

Where an employer makes default in the payment of any contribution to the Fund the Pension Fund or the Insurance Fund or in the transfer of accumulations required to be transferred by him under sub-section 2 of s. 15 or sub-section 5 of s. 17 or in the payment of any charges payable under any other provision of this Act or of any Scheme or Insurance Scheme or under any of the conditions specified under s. 17, the Central Provident Fund Commissioner or such other officer as may be authorised by the Central Government, by notification in the Official Gazette, in this behalf may recover from the employer by way of penalty such damages, not exceeding the amount of arrears, as may be specified in the Scheme.

Provided that before levying and recovering such damages, the employer shall be given a reasonable opportunity of being heard.

Provided further that the Central Board may reduce or waive the damages levied under this section in relation to an establishment which is a sick industrial company and in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986), subject to such terms and conditions as may be specified in the Scheme.

20 AIR 2017 SC 4469.

proceeding and whether the proceedings had to be before a court to invoke section 195(1)(b)(i) CrPC?

In this case the Provident Fund Commissioner, a public servant, filed a complaint before the Judicial Magistrate First Class under section 228 IPC contending that the respondent had obstructed and interfered with in an adjudication proceeding under section 7A of the EPF Act, with regard to provident fund claims. Further the respondent abused the Presiding Officer, and rushed to assault him, but the complainant was saved by the office staff. The Magistrate convicted the respondent till rising of the Court and imposed fine of Rs.500/- with default stipulation. Being aggrieved the respondent filed an appeal before the Sessions Judge who while maintaining the conviction released him under the Probation of Offenders Act, 1958 on an undertaking of good behavior for a period of one year. Aggrieved, the respondent filed a revision petition before the High Court. The High Court acquitted the respondent of the charge under section 228 of the Indian Penal Code on the ground that the adjudication proceedings under section 7A of EPF Act not being before a court, the complaint itself was not maintainable. Against this order the appellant filed an appeal before the Supreme Court.

It was contended on behalf of the appellant that the High Court erred in holding that the proceedings under section 7A were not judicial proceedings, and that the office of the appellant was not a court, and therefore, the complaint itself was not maintainable under section 195(1)(b)(i) of the Code of Criminal Procedure (CrPC). On the other hand, it was contended by the respondent that the High Court rightly held that the proceedings under section 7A was not before a court and therefore, no complaint could have been filed under section 195(1)(b)(i) of the CrPC as it was applicable only to proceedings before a court. It was also submitted that in any event the complaint could have been filed, if at all, before the appellate tribunal under section 7J of the EPF Act, and not before the magistrate directly.

Dealing with the rival contention of the parties the Supreme Court observed:[21]

> Section 2(i) of the CrPC defines a judicial proceeding to include any proceedings in the course of which evidence is or may be legally taken on oath. This power is indisputably statutorily vested in the authority holding proceedings under section 7A of the Act. The legislature, in its wisdom, considering the seriousness of the adjudicatory process under the said provision, vested it with the nature of a judicial proceeding within the meaning of sections 193 and 228 IPC. If the proceedings under section 7A are deemed to be a judicial proceeding by fiction, it must be carried to its logical conclusion. Therefore, such a judicial proceeding can well be equated for that purpose with a court under section 195(1)(b)(i). Whether the proceedings under section 7A will partake the character of a court or not, is not relevant to the controversy.

21 *Id.* at 1200 para 6.

The Court added:[22]

> There can be little doubt that if a person offers an insult to a public servant sitting in a judicial proceeding, or causes interruption to him while he is so sitting at any stage of the judicial proceeding, the complaint has to proceed from the public servant himself; that is the effect of section l95(1)(b) CrPC.

The apex court accordingly held that the High Court failed to consider the effect of the judicial nature of the proceeding, simply by reference to section 195(1)(b) CrPC to hold that the proceedings did not partake the nature of a court, and therefore, the complaint was not maintainable. The court also rejected the argument that the complaint was required to be filed under section 340 CrPC before the appellate tribunal and not before the magistrate having jurisdiction.

Priority of provident fund dues over debts

In *Employees' Provident Fund Organization* v. *Govt. of Andhra Pradesh*[23] a question arose as to whether the dues towards provident fund under the provisions of the EPF Act would get priority over debts? In this case the appellant questioned the provisions contained in section 12-A(9) of the Andhra Pradesh Co-operative Societies Act, 1964 (the 1964 Act) which reads as under:

The proceeds realised from the transfer of assets or assets and liabilities, in whole or in part, of the society concerned, shall be applied in discharge of the liabilities of such society in the following order of priority, namely:

(i) all expenses incurred for preservation and protection of the assets;

(ii) (a) dues payable to workmen and employees;

(b) debts payable to secured creditors according to their rights and priorities inter se;

(c) dues payable to provident fund or other authorities which are protected under a statute by a charge on the assets;

(iii) debts payable to ordinary creditors;

(iv) share capital contributed by the members of the society:

Provided that the debts specified in each of the categories shall rank equally and be paid in full, but in the event of the amount being insufficient to meet such debts, they shall abate in equal proportions and be paid accordingly:

Provided also that the question of discharging liability with regard to a debt specified in a lower category shall arise only if a surplus fund is left after meeting all the liabilities specified in the immediately higher category.

Interpreting the aforesaid provision the High Court held that the dues payable to workmen and employees would be covered within the provision of section 12A(9)(ii)(a) though the item 'provident fund' is not specifically mentioned in section 12A(9)(ii)(a) but in section 12A(9)(ii)(c) of the 1964 Act.

22 *Id.* at 1201 para 16.

23 2017 LLR 1199.

On appeal the Supreme Court held that in order to harmonize the provisions, the provident fund which is specifically mentioned in section 12A(9)(ii)(c) has been taken to be part of section 12A(9)(ii)(a). Thus, the interpretation made by the High Court is appropriate and there is no other way in which the provisions can be harmonized. Consequently, section 12-A(9)(ii)(c) has to be taken as redundant and such dues has to be taken to be covered under the provisions of section 12-A(9)(ii)(a). The Court added that the item at serial No. 12-A(9)(i) is not a debt as it is expenses incurred for preservation and protection of the assets. Therefore, the dues of the provident fund have to be treated as dues payable to workmen and employees. In view of this the second proviso shall not operate as against such dues. Thus, the provident fund would get priority and is the only permissible mode.

V GRATUITY

Moral Turpitude

Section 4(6)(b) (ii) of the Payment of Gratuity Act, 1972 (PG Act) provides that the gratuity payable to an employee shall be forfeited if the service of such employee has been terminated for any act which constitutes an offence involving moral turpitude, provided such offence is committed by him in the course of his employment.

Jorsingh Govind Vanjari v. *Divisional Controller*[24] the Supreme Court had an opportunity to delineate the scope of the aforesaid section. The Court ruled that in order to deny gratuity to an employee, it is not enough that the alleged misconduct of the employee constitutes an offence involving moral turpitude as per the report of the domestic inquiry. There must be termination on account of the alleged misconduct, which constitutes an offence involving moral turpitude.

Jurisdiction of Lok Ayukta to decide of the claim of gratuity

G. Narayanan Nair v. *State of Kerala*[25] the petitioner after retirement received terminal benefits including gratuity but according to the petitioner respondent bank paid only a part of the gratuity. On complaint the respondent paid some more money allegedly after three years but still some amount was due. However, the petitioner did not make an application for determination of amount due under the PG Act for it seems to have been time barred. However, he filed a petition to Lok Ayukta under the Kerala Lok Ayukta Act, 1999 under which it was not time barred. The Lok Ayukta dismissed the petition. Being aggrieved the appellant filed a writ petition in the Kerala high court. The court formulated following three issues:

Issue no. 1: Does the PG Act, a special Act prevail over the Kerala Lok Ayukta Act, 1999, a general Act?

Issue no. 2: Is there any element of repugnancy between PG Act, a central enactment and the Kerala Lok Ayukta Act, a State enactment?

24 2017 Lab. IC 767.

25 2017 Lab IC 3887.

Issue no. 3: Whether limitation bars the petitioner's application?

Judicial Response

In order to decide issue no 1 the court examined the scope of the PG Act and the Kerala Lok Ayukta Act, 1999 (KLA Act) on redressal mechanism which may be adopted by a retired employee in respect to the payment of gratuity. Thus, PG Act applies to any person (other than apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work, manual or otherwise, or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies. Section 7 of PG Act provides the procedure for determination of gratuity. Section 7 (4)(a) provides that if there is any dispute as to the amount of gratuity payable to the employee or as to the admissibility of any claim of, or in relation to an employee for payment of gratuity, or any person entitled to receive the gratuity, the employer shall deposit to the controlling authority such amount as he admits to be payable by him as gratuity. Section 7 (4)(b) says that where there is any dispute with regard to any matter or matters specified in clause 7(4)(a) mentioned above the employer and employee or any other person raising a dispute may make an application to the controlling authority for deciding the dispute.

On the other hand, KLA Act provides for making enquiries into certain action taken by or on behalf of Government of Kerala or certain public authorities in the State of Kerala regarding appointment, removal, pay, discipline, superannuation relating to public servant, service conditions such as action relating to claims for gratuity, provident fund or any claims which arise on retirement.

In view of above the Court held that remedy may be availed by the petitioner both under PG Act and KLA Act. Therefore, "one Act bars no suitor's access to the other, they co-exist".

On issue no. 2 the Court did not decide the issue in view of the answer to issue no. 1.

On issue no. 3 the Court referred to the provisions of section 8(2)(c) of the KLA Act which mandates that Lok Ayukta shall not investigate any complaint "made after the expiry of five years from the date on which the action complained against is alleged to have taken place". On this basis the Court held that application was made within five years and therefore not barred by limitation.

Having decided the issues, the Court observed:

> Indisputably, both the enactments have provided for elaborate mechanism to aid an aggrieved employee on say, gratuity. True, the Payment of Gratuity Act is a special enactment, whereas the Lok Ayukta Act is a general one, an off-shoot of a beneficial remedial mechanism, viz Alternative Dispute Resolution. But both enactments, potent to their own sphere, have laid down different procedural parameters. It is the party concerned to chose either. It is not unknown or unusual that more than one enactment operates in the same sphere, thereby providing the luxury of choice of a litigant. I may illustratively observe that that an

> injured workman can stake his claim either under Motor Vehicles Act or under the Workmen's Compensation Act subject to limitation in either of those legislation.[26]

The aforesaid decision has failed to take notice of the Supreme Court decision in *Rajan Sandhi* v. *Union of India*[27] wherein it was ruled that a special Act would prevail over general law. Further in the case under review the court left the question whether the central legislation will prevail over State legislation in case of repugnancy, wide open. It is submitted that it is a settled principle that if there is conflict between State legislation and central legislation the Central legislation will prevail in respect to inconsistency. Moreover, the decision has not taken note of the provisions of section 14 of the PG Act which provides that the provisions of this Act would override any other Act, instrument or contract which is inconsistent with the provisions of the Act.

Management of Tengapani Tea Estate v. *Union of India*[28] is another case on payment of gratuity. Here a question arose whether employer was justified in withholding the payment of gratuity under the PG Act owing to the pendency of criminal proceeding against the respondent no.4? In this case respondent no. 4 retired from service on attaining the age of superannuation on 06.10.2003 but his retiral benefits were withheld by the management mainly on two grounds, namely, (i) criminal proceeding seeking vacation of the quarter occupied by the respondent no. 4 was pending where company has a right to recover penal rent and (ii) that respondent no. 4 himself did not come forward to receive the amount despite letter having been issued by the management. Dealing with the first ground for denial of gratuity the High Court observed that keeping in view the scheme of the PG Act "the mere fact that a co-lateral proceeding seeking vacation of quarter occupied by the employee with a claim of recovery of penal rent was pending at the relevant point cannot be said to be a valid ground to withhold the gratuity amount due and payable to employee[29] as per the provisions of the PG Act. As to the second ground the Court observed that even assuming that the respondent No.4 did not turn up to receive the amount of gratuity despite receipt of letters there is no explanation as to why the permission as per proviso to section 7(3A) of the PG Act had not been taken by the employer from the competent authority for delaying the payment of gratuity on the ground that such delay was on account of the fault of the employee.

VI MATERNITY BENEFIT

Mrs. Priyanka Gujarkar Shrivastava v. *Registrar General*[30] the Madhya Pradesh high court was called upon to decide the question as to whether the benefit of maternity

26 *Id.* at 3890 para 25.
27 2010 (10) SCALE 163.
28 2017 Lab IC 4449.
29 *Id.* at 4455 para 18.
30 2017 Lab IC 1646.

leave be given to the women employee who is working on contract basis? In this case the petitioner who was on her family way filed an application seeking benefit of 180 days maternity leave in accordance to the provisions of the Maternity Benefit Act, 1961 (MB Act) as amended till that date as also in view the notification and circular issued by the State Government on 29 February, 1996, implementing the benefit of certain leave rules to temporary and casual employee working in the establishment of the State Government. However, the respondents rejected the same by holding that in view of clause 10 of the terms and conditions of her appointment she is only entitled to 13 days' casual leave and 03 days' optional leave and, therefore, in accordance to the terms and conditions of the maternity benefit cannot be conferred upon her. Subsequently she made a representation to respondent no.1 which was also rejected. Being aggrieved she filed a writ petition before the Madhya Pradesh high court.

It was argued on behalf of the petitioner that merely because of the stipulation contained in clause 10 of the contract of appointment the benefit of the MB Act cannot be denied to the petitioner. Further clause 7 of the contract of appointment the provisions of the Madhya Pradesh Civil Services Conduct Rules, 1965, the Disciplinary and Appeal Rules, 1966 and the General Conditions of Service Rules are made applicable even to a contract employee. Moreover, not only the leave rules are made applicable but the State Government has also notified that a temporary or a casual employee working in the State Government are also entitled to all the leave rules as applicable to the regular employee working in the cadre of the State Government. Accordingly, it was submitted that the provisions of the MB Act the terms of the contract and the notification should be read in totality and in furtherance to the intention of the legislature in enforcing and bringing into force the MB Act and accordingly the benefit should be granted to the petitioner.

On the other hand, it was contended on behalf of respondent that under clause 10 of the terms and conditions of the appointment of the petitioner the MB Act cannot be applied to an establishment like the District & Sessions Court and once the contract of employment contains a specific stipulation with regard to the nature of leave admissible to the petitioner, no mandamus in contravention to the terms and conditions of appointment can be issued by this Court as the same would amount to modifying or adding a condition to the contract of service which is not acceptable to the employer and therefore, this is not permissible by exercising jurisdiction in a petition under article 226 of the Constitution. It was also argued that several statutory rules which are applicable in the State of Madhya Pradesh particularly the leave rules are applicable only to regular employees who fall within the definition of "civil servants" and not to a daily wager a casual employee or a contract employee like the present petitioner.

Dealing with the rival contentions of the parties the Court placed reliance on a judgment of the Supreme Court in *Municipal Corporation of Delhi* v. *Female Workers (Muster Roll)*[31] and observed:

31 AIR 2000 SC 1274.

> If we analyse each and every word and the anxiety expressed by the Supreme Court in the judgment, we have no hesitation in holding that in the case of a woman irrespective of the place where she is working and irrespective of capacity of her appointment, the nature and tenure of her appointment and the duties performed by her, when it comes to granting her the benefit of facilities required to give birth to a child the employer is duty bound under the Constitution to provide her all the benefits and that is why it has been held by the Supreme Court that the benefit of Maternity Benefit Act, 1961 should be conferred to even muster role employees working in the Delhi Municipal Corporation and if the aforesaid principle is applied in the present case, we see no reason as to why the benefit of Maternity Benefit Act should not be given to a woman contractual employee even if she is working in the establishment of the District and Sessions Judge.[32]

The court accordingly held that the petitioner would be entitled to maternity leave at par with a regular employee working in the establishment of the respondents or in any other establishment of the State Government and in rejecting the claim of the petitioner on account of the fact that she was only a contract employee an error has been committed by the respondents which has to be remedied by this court in this petition.

The aforesaid decision is also in conformity with the decision of the Allahabad, Rajasthan, and the Uttarakhand high courts wherein on identical issue they granted maternity leave to women employees appointed on contract basis or on adhoc or temporary basis following the law laid down by the Supreme Court in *Municipal Corporation of Delhi* v. *Female Workers (Muster Roll).*[33] However, in *Dr. Kiran Bajaj* v. *State of Haryana*[34] the Punjab and Haryana high court following the decision of the Supreme Court in *Secretary, State of Karnataka* v. *Uma Devi,*[35] held that she cannot claim parity with the regular employees because giving different treatment to the adhoc/contractual employees than what is given to the regular employees does not offend articles 14 and 16 of the Constitution.

VII PAYMENT OF WAGES

In *State of Punjab* v. *Jaswinder Singh,*[36] the disciplinary proceedings were conducted against the respondent, who was working as a conductor in the, Punjab Roadways. The disciplinary authority, after completion of enquiry, found the respondent guilty and accordingly passed an order imposing punishment of withholding

32 *Id.* at 1649.
33 AIR 2000 SC 1274.
34 2013 LLR 535.
35 2006 (4) SCC 1.
36 (2017) 8 SCC 621.

the increments. Being aggrieved the respondent filed an application before the prescribed authority under section 15(3) of the Payment of Wages Act wherein it was prayed that the appellant be directed to refund the delayed/deducted wages from the salary of the respondent. The Authority under the Payment of Wages Act held that orders dated 24.02.1984, 1.6.1984 and 4.6.1985 passed by the appellant were illegal and *void ab initio*. Against this order an appeal was filed by the appellant before the appellate authority which was dismissed. Being aggrieved the State took up the matter before the High Court by way of civil revision. The High Court held that though the remedy available to the respondent was to file a statutory appeal or to file a civil suit, however, since due procedure was not followed, the orders passed for withholding increments violation of principles of natural justice, have rightly been ignored. Against this order, the appellant filed an appeal before the Supreme Court. It was contended on behalf of the appellant-State that the competent authority under the Payment of Wages Act, 1936, could not have ignored the orders passed in the disciplinary proceedings, which became final without any challenge under the statutory rules or before any competent court. The court found substance in the submission of the appellant and observed:

> The disciplinary proceedings were conducted against the respondent in which orders were passed imposing punishment of withholding the increments. Without challenging the said order in the appropriate forum it was not open to the respondent to file an application before the prescribed authority under the Payment of Wages Act, and the prescribed authority under the Payment of Wages Act has no jurisdiction to direct payment of wages, which has already been withheld in the disciplinary proceedings. The prescribed authority under the Payment of wages Act is not an appellate authority in the disciplinary proceedings and therefore it has no right to sit in appeal and to set aside the order of withholding of increments passed in the disciplinary proceedings.

The Supreme Court also observed that the High Court has not correctly appreciated the issues raised before it. The Court opined that the appropriate remedy available to the respondent was either to file a statutory appeal before the appellate authority or to avail such other remedy in accordance with law, but certainly not to file an application before the prescribed authority under the Payment of Wages Act.

The Court accordingly set aside the judgment of the High Court as well as orders passed by the prescribed authority under the Payment of Wages Act, and the appellate authority.

VIII CONCLUSION

An analysis of the aforesaid decision leads us to the following conclusions.

1. The sensitivity and human approach has been displayed by apex court while considering the appeal against the judgment of the High Court where the High Court

refused to condone the delay of 145 days in filing appeal where such delay was due to accidental injuries and financial problems of the appellant. The apex court felt that such approach of the High court was "myopic and unreasonable".

2. The apex court applied the doctrine of notional extension while deciding the cases under the Employees' Compensation Act, 1923 where accident took place on public road or public place or on public transport and where the workman was returning home after completing the job assigned to him in order to make the employer liable to pay compensation. The apex court has shown its concern to protect the interest of family of the deceased workman (who died in an accident arising out of and in the course of employment) while determining the amount of compensation by taking into account the size of family members and also the minor daughter.

3. The court gave a beneficial interpretation to the term "wages" under the Employees' State Insurance Act. Thus, the court held that where there may be two or more ways to interpret a statutory provision, the spirit of this legislation expression "wages" has to be given wider meaning.

4. The concern of the judiciary to protect the interest of employee is also evident when the court held that if authority does not follow the procedure laid down under the Employees' Provident Funds and Miscellaneous Provisions Act while conducting enquiry, the plaintiff is entitled to file a suit in the civil court. Further suppression of crucial facts in the plaint is not a valid ground for dismissal of a plaint at the threshold. The Court also clarified that rejection of a plaint on institutional ground is different from dismissal of a suit at pretrial stage.

5. The apex court has shown its concern in maintaining discipline in conduct of judicial proceedings under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 when it observed that if a person offers an insult to a public servant sitting in a judicial proceeding, or causes interruption to him while he is so sitting at any stage of the judicial proceeding, the complaint has to proceed from the public servant himself.

6. The Court is equally concerned to protect the interest of women workers when it granted maternity leave to contractual employee. Again the Court while dealing with gratuity has protected the interest of workers when it held that "the mere fact that a co-lateral proceeding seeking vacation of quarter occupied by the employee with a claim of recovery of penal rent was pending at the relevant point it cannot be said to be a valid ground to withhold the gratuity amount due and payable to employee".