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SOCIAL SECURITY LAW

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I INTRODUCTION

IN THE year 2018 there have been significant developments, both legislative and judicial, in the arena of law relating to social security, wages and minimum standards of employment.The Payment of Gratuity (Amendment) Act, 2018 received the assent of the President on 28 March 2018 and then been notified on 29 March 2018. According to the notification the Central Government has specified that the amount of gratuity payable to an employee shall not exceed Rs. 20 lakhs. Further, for the purposes of calculation of continuous service for the payment of gratuity to employees who are on maternity leave, the total period of maternity leave shall not exceed 26 (twenty-six) weeks.

Another legislative development relates to fixed-term employment. In the year under review the Ministry of Labour and Employment, Government of India *vide* notification dated March 16, 2018 permitted fixed-term employment in all sectors by the Industrial Employment (Standing Orders) Central (Amendment) Rules, 2018 ("IESO Amended Rules). Prior to this notification the Industrial Employment (Standing Orders) Amended Rules allowed hiring on the basis of a fixed-term contract only for the apparel manufacturing sector. But in 2018 the IESO Amended Rules has extended hiring by fixed-term employment in all sectors. The IESO Amended Rules are applicable with prospective effect. Further the employer of an industrial establishment shall not convert the posts of the permanent workmen existing in his industrial establishment to fixed-term employment. The fixed-term workers will be eligible for all statutory benefits available to a permanent worker in proportion to the period of service rendered by them. Moreover the working conditions such as working hours, wages, allowances, and other statutory benefits of a fixed-term employee would be on par with those of the permanent workmen. Further, no fixed term workman is entitled to any termination notice or pay in lieu thereof due to non-renewal of contract. But in order to safeguard the interest of temporary workmen against arbitrary dismissals the rule provides that their services shall not be terminated as a punishment unless he has been given an opportunity to explain the charges of misconduct alleged against him.

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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 decisions on social security relates to the Employees' Compensation Act,1923, Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and Employees' State Insurance Act,1948, Payment of Gratuity Act,1972 and wage legislation such as the relate to the Minimum Wages Act ,1948 and Equal Remuneration Act,1976. The high courts have given decisions in 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

In *Smt. Tebha Bai* v. *Raj Kumar Keshwani*[1] Shankar Pradhan the deceased (husband of Tebha Bai- appellant no.1) was in the employment of the father of respondent number 1-3, who owned a truck as a driver which was registered in his name, to drive of a truck on a monthly salary of Rs.2000/-. The deceased aged 50 years while driving the said Truck from Raipur to Nagpur metwith an accident and died on the spot. The offending truck on the date of accident was insured with the insurance company (respondent no.4). Thereupon the appellants being the legal representatives of the deceased filed a claim petition under section 166 of the Motor Vehicle Act, 1988 before Motor Accidents Claims Tribunal MACT, Bhandara (Maharashtra) on December 22, 1989 seeking compensation for the death of their deceased ,the only bread earner. The appellants prosecuted their claim petition till July 2, 2005 and thereafter, as advised, they withdrew the claim petition on July 2, 2005 with liberty to file an application before the Commissioner, Workman Compensation at Raipur (CH) under the Workman Compensation Act (now the Employees' Compensation Act,1923 for claiming compensation against the respondents. The appellants accordingly filed an application before the Commissioner, Workman Compensation (Labour Court, Raipur against the respondents and claimed compensation for the death of Shankar Pradhan. It was, *inter alia*, contended that the offending truck on the date of accident was insured with the insurance company (respondent no.4) and,therefore, the respondents are jointly and severally liable to pay the compensation to the appellants keeping in view the provisions of the Workmen Compensation Act. However the commissioner for workmen compensation (labour court), rejected the claim of the appellants , *inter alia*, on the ground that the deceased was not in the employment of respondent no.1 and that he did not die in an accident

1 2018(9) SCALE 48.

while he was on duty. On appeal the High Court of Chhattisgarh, Bilaspur dismissed the appeal. Against this order the appellant filed an appeal before the Supreme Court. The court found that there was neither any contradiction in her examination -in- chief nor in her cross- examination and the evidence was throughout consistent. The court also found that the policy issued by the insurance company (respondent no. 4) was in force at the time of accident. The court observed that there is no reason why the appellants would file a case on false grounds. The court remarked that the appellants having lost their only bread earner at the time when appellant nos. 2 and 3 were minors and for compensation they had to run from pillar to post for almost 29 years and that the appellants are still fighting to get some reasonable compensation for the death of their bread earner. The court accordingly awarded a lump sum of Rs.1 lakh (Rs. 1,00,000/-) to the appellants payable by the respondents jointly and severally.

III EMPLOYEES' PROVIDENT FUNDS

Non-applicability of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 to certain establishments.

The Employees' Provident Funds and Miscellaneous Provisions Act,1952 (EPF Act) is not applicable (a) to any establishment registered under the Co-operative Societies Act, 1912 or any other law in any state relating to cooperative societies employing less than 50 persons and working without the aid of power; or (b) to any other establishment belonging to or under the control of the Central Government or a state government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the state government governing such benefits; or (c) to any other establishment set up under any central, provincial or state Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act such benefits. However, the Central Government may keeping in view the financial position of any class of establishments or other circumstances of the case and subject to such conditions as may be prescribed exempt whether prospectively or retrospectively, by notification and also class of establishments from the operation of this Act for such period as may be specified in the notification. (section 16).

Yashwan Gramin Shikshan Sansthan Sanstha v. *Assistant Provident Fund Commissioner*[2] is a leading case on non-applicability of EPF Act establishments belonging to state government. In this case the appellant was running 29 schools/ colleges and was receiving 100% grant in aid from the state government in respect of 28 schools/colleges. The employees working in the said schools of the appellant were employed with the permission and approval of the state government and are governed by the state Contributory Provident Fund Scheme (CPF Scheme). The entire process of appointment was strictly monitored by the state government. Further, the appellant were submitting pay bills of its employees to the education department which directly deposited the salaries of such employees into their bank accounts. At the relevant

2 2018 TaxPub (CL)0824 (SC) decided on Mar. 9, 2017.

time, the appellant had employed around 1151 employees who were covered by the Contributory Provident Fund Scheme framed by the state government for the employees of the private schools (except the 16 part-time employees who were not doing full time load of work). The appellant had engaged those 16 part-time employees with the permission and approval of the state government. On these facts a question arose whether the provisions of EPF Act would apply to part time employees in the schools/ colleges of the appellant, whose service conditions are governed by the provision of the state Act and state rules? The Supreme Court answered the question in negative and observed:[3]

> Once an establishment is covered under any one of the excepted category under section 16 of the Central Act, the officials empowered by the Central Act will have no authority to proceed against such establishment; and more so on the ground that a miniscule number of employees (16 part-time employees) working in the establishment were not eligible for the benefits under the state contributory provident fund scheme.

The court accordingly held that initiation of action of recovery by the official(s) of respondent no.1 against the establishment of the appellant, which was otherwise exempted from application of the provisions of the central Act is wholly without authority of law.

Central Board Of Trustees v. *Indore Composite Pvt. Ltd*.[4] emphasized the need to apply judicial mind to the factual and legal controversy involved in the case by way of discussion, appreciation, reasoning and categorical findings on the issues in the light of legal principles applicable to the case. The only question, which arose before the apex court in this appeal was whether the division bench of the high court was justified in dismissing the appellant's writ petition. After setting out the facts, the division bench proceeded to disposed of the writ petition with the following observations in its concluding paragraph which read as under:

> On due consideration of the aforesaid on thebasis of the fresh documents and affidavit for taking additional documents on record, we cannot direct the establishment to pay damages for the period from March 2006- April 2010 when all these objections were nottaken before the learned Tribunal.
>
> Considering the aforesaid, we are of the viewthat the order passed by the learned Tribunal is just and proper and no case for interference with the impugned order is warranted. The writ petition filed by the petitioner has no merit and is accordingly dismissed.

On appeal the Supreme Court remanded the case to the division bench of the high court to decide it on merit because the bench dismissed the writ petition cursorily without dealing with any of the issues arising in the case as also the arguments urged by the parties in support of their case. The court also remarked that there was

3 *Id*., para 26.

4 2018(9) SCALE 199.

no application of judicial mind to the factual and legal controversy involved in the appeal. Further the writ petition was dismissed without any discussion, appreciation, reasoning and categorical findings on the issues

The court reiterated that it has emphasized time and again the need to pass reasoned order in every case which must contain the narration of (i) the bare facts of the case of the parties to the lis, (ii) the issues arising in the case, (iii) the submissions urged by the parties, (iv) the legal principles applicable to the issues involved and (v) the reasons in support of the findings on all the issues arising in the case . However , the apex court pointed out that the division bench failed to keep in mind these principles while disposing of the writ petition. Thus such order caused prejudice to the parties because it deprived them to know the reasons as to why one party has won and other has lost.

IV PENSION

The Employees' Provident Funds Act, 1952, when originally enacted did not contain any provision for pension. But in 1995 section 6A, was inserted by an amendment in the EPF Act *w.e.f.* November 16, 1995 which provided that the Employees' Pension Scheme should be framed for payment of pension to retiring employees. The corpus of the pension fund was *inter alia* consisted of deposit of 8.33% of the employer's contribution under section 6 of the Act. The pension scheme which was framed to give effect to the provisions of section 6A contains, *inter alia*, clause 11, which deals with determination of pensionable salary. Under clause 11(3) of the pension scheme, the maximum pensionable salary was limited to Rs. 5,000, which was subsequently enhanced to Rs. 6,500 per month *w.e.f.* October 8, 2001.Later in the pension scheme a proviso was added to clause 11(3) *w.e.f.* March 16, 1996 permitting an option to the employer and an employee for contribution on salary exceeding Rs. 5,000 or Rs. 6,500 (*October* 8, 2001) per month. But 8.33% of such contribution on full salary was required to be remitted to the pension fund.

R.C.Gupta v. *Regional Provident Fund Commissioner*[5] is an epoch- making judgment on determination of pensionable salary. Here the Supreme Court was called upon to determine the scope of pensionable salary under proviso to section 11(3) of the Employees' Provident Funds and Miscellaneous Provisions Act,1952 and exercise of option under paragraph 26 of the Provident Fund Scheme.

Factual matrix

The facts of the case are as follows: The appellant-employees on their retirement in the year 2005 pleaded before the authority under the Employees Provident Funds And Miscellaneous Act,1952 that that the proviso brought in by the amendment of 1996 was not within their knowledge and, therefore, they may be given the benefit thereof, particularly, when the employer's contribution under the Act has been on actual salary and not on the basis of ceiling limit of either Rs. 5,000 or 6,500 per month.. The EPF authority, however rejected the contention on the ground that the proviso visualized a cut-off date for exercise of option, namely, the date of

5 (2018) 14 SCC 809.

commencement of Scheme or from the date the salary exceeded the ceiling amount of Rs. 5,000 or 6,500 per month, as may be. As the request of the appellant-employees was subsequent to either of the said dates, the same could not be acceded to by the authority. The authority, therefore, limited the pension amount to the prescribed limits. Against this order the employees filed a writ petition before the high court which was allowed by the single judge. Thereupon the Employees Provident Fund Authority filed an appeal before the division bench which reversed the order of the single judge. Being aggrieved the employees filed an appeal before the Supreme Court. Let us examine the response of the Supreme Court under the following heads.

Scope of pensionable salary under proviso to section 11(3) of the Employees' Provident Funds and Miscellaneous Provisions Act,1952

In order to determine the scope of pensionable salary under proviso to section 11(3) and exercise of option under paragraph 26 of the provident fund scheme the Supreme Court first referred to the clause 11(3) of the pension scheme which is as follows, "The maximum pensionable salary shall be limited to [rupees six thousand and five hundred/ Rs. 6,500] per month.

Provided that if at the option of the employer and employee, contribution paid on salary exceeding [rupees six thousand and five hundred/Rs. 6,500] per month from the date of commencement of this Scheme or from the date salary exceeds [rupees six thousand and five hundred/Rs. 6,500 whichever is later, and 8.33 per cent share of the employers thereof is remitted into the Pension Fund, pensionable salary shall be based on such higher salary."

Interpreting the aforesaid proviso to clause 11(3) the court observed that the reference to the date of commencement of the scheme or the date on which the salary exceeds the ceiling limit are dates from which the option exercised are to be reckoned with for calculation of pensionable salary. The said dates the court observed, are not cut-off dates to determine the eligibility of the employer-employee to indicate their option under the proviso to clause 11(3) of the pension scheme.

Reliance on Supreme Court decision in a similar matter

The apex court then took note of a judgment rendered by the Supreme Court[6] in a similar matter coming from the High Court of Kerala,[7] wherein the Special Leave Petition (C) No. 7074 of 2014 filed by the regional provident fund commissioner was rejected by this court by order dated March 31, 2016. In view of this the court felt that a beneficial scheme, ought not to be allowed to be defeated by reference to a cut-off date, particularly, in a situation where (as in the present case) the employer had deposited 12% of the actual salary and not 12% of the ceiling limit of Rs. 5,000 or Rs. 6,500 per month, as the case may be.

Paragraph 26(6) of the Employees' Provident Funds Scheme and it effect

The court then dealt with the another contention made on behalf of the provident fund commissioner that the appellant- employees had already exercised their option under paragraph 26(6) of the Employees' Provident Funds Scheme which is as follows:

6 *Regional Provident Fund Commissioner* v. *A Majeed Kunju,* 2016 SCC Online SC1744.

7 *Union of India* v. *A Majeed Kunju,* writ appeal no. 11135 of 2012 dated Mar. 5, 2013.

> Notwithstanding anything contained in this paragraph, an officer not below the rank of an Assistant Provident Fund Commissioner may, on the joint request in writing, of any employee of a factory or other establishment to which this Scheme applies and his employer, enrol such employee as a member or allow him to contribute more than [six thousand five hundred rupees] of his pay per month if he is already a member of the fund and thereupon such employee shall be entitled to the benefits and shall be subject to the conditions of the fund, provided that the employer gives an undertaking in writing that he shall pay the administrative charges payable and shall comply with all statutory provisions in respect of such employee].

Dealing with the aforesaid provision the court pointed out:[8]

> We do not see how exercise of option under paragraph 26 of the Provident Fund Scheme can be construed to stop the employee from exercising a similar option under paragraph 11(3). If both the employer and the employee opt for deposit against the actual salary and not the ceiling amount, exercise of option under paragraph 26 of the Provident Scheme is inevitable. Exercise of the option under paragraph 26(6) is a necessary precursor to the exercise of option under clause 11(3). Exercise of such option, therefore, would not foreclose the exercise of a further option under Clause 11(3) of the Pension Scheme unless the circumstances warranting such foreclosure are clearly indicated.

The court added that, "in a situation where the deposit of the employer's share at 12% has been on the actual salary and not the ceiling amount, we do not .see how the Provident Fund Commissioner could have been aggrieved to file the L.P.A. before the Division Bench of the High Court."

Response to the concern shown by the provident fund commissioner

Dealing with the concern shown by the Provident Fund Commissioner the court suggested that all that he is required to do in the case is an adjustment of accounts which in turn would have benefitted some of the employees. The court, therefore, permitted the Provident Fund Commissioner to seek a. return of all such amounts that the concerned employees may have taken or withdrawn from their provident fund account before granting them the benefit of the proviso to clause 11(3) of the pension scheme. Once such a return is made in whichever cases such return is due, consequential benefits in terms of this order will be granted to the said employees.

A perusal of the aforesaid judgment reveals that employees covered under the EPF Act will now be eligible for a higher pension. However it is not clear if this ruling will apply prospectively or retrospectively. Further it is also not clear whether this ruling would be equally applicable to those who have worked in the un exempted establishments. However the judgement has been criticized for not taking cognizance of the fact whether the EPFO will be able to bear the additional burden associated with higher pension contributions.

8 *Ibid.*

V EMPLOYEES' STATE INSURANCE

In *Employees State Insurance Corporation* v. *Mangalam Publications (India) Ltd*[9] the apex court was called upon to decide the question whether the interim relief paid by the respondent to its employees from April 1, 1996 to March 31, 2000 should be treated as "wages" as defined under section 2(22) of the ESI Act, and if so, whether the respondent is liable to pay the ESI contribution?

In this case the respondent filed a petition under section 75 of the ESI Act, before the Employees Insurance Court, Kerala relying upon the office memorandum dated August 19, 1998 and a clarification given in letter dated December 20, 1996 by the Indian Newspaper Society. The said petition was opposed by the appellant contending that the office memorandum dated August 19, 1998 was not applicable to the respondent and that the clarification given by the Indian Newspaper Society had no legal validity because (i) ESI Act cannot be superseded by the office memorandum issued by the department.(ii)under section 2(22) of the ESI Act, all remuneration is wages except those mentioned in clauses (a) to (d) of section 2(22) of the ESI Act and (iii) interim relief does not come within the excluded parts of clauses (a) to (d). However the ESI Court dismissed the application filed by the respondent by holding that the interim relief paid by the respondent to the employees was "wages" as defined under section 2(22) of the ESI Act, and hence the respondent was liable to pay contribution for the interim relief paid. Being aggrieved the respondent filed an appeal before the High Court of Kerala under section 82 of the ESI Act, challenging the order passed by the ESI Court on October 13, 2003. The high court held that the amount paid as interim relief cannot be treated as "wages" or "part of wages" and can only be treated as "ex-gratia payment". Against this order an appeal was filed before the Supreme Court. A question arose whether the interim relief paid by the respondent to its employees, during the period from April 1, 1996 to March 31, 2000, is to be treated as "wages" as defined under section 2(22) of the ESI Act, and if so, whether the respondent is liable to pay the ESI contribution? In order to deal with the question the Court referred to provisions of section 2 (22) of the Employees' State Insurance Act, 1948 which defines "wages" as follows:[10]

> "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-
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> (a) Any contribution paid by the employer to any pension fund or provident fund, or under this act;
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> (b)Any travelling allowance or the value of any travelling concession;
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> (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."

9 (2018) 11 SCC 438.

10 *Id.,* para 7.

Interpreting the aforesaid provision the court observed 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 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". But the interim relief paid to the employees of the respondent in the matter on hand 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.

Justifying the aforesaid view the court observed that; (i) The inclusive part and the exclusive portion in the definition clearly indicate that the expression "wages" has been given a very wide meaning. (ii)The inclusive part of the definition read with exclusive part in the definition clearly shows that the inclusive portion it not intended to be limited only to the items mentioned therein. Taking into consideration the excluding part in the definition and reading the definition as a whole the inclusive part is only illustrative and tends to express the wide meaning and import of the word 'wages' used in the Employees' State Insurance Act. (iii) the Employees' State Insurance Act is a piece of social welfare legislation enacted for the benefit of the employees and, therefore, it has to be construed in such a manner so that it will serve its purpose and objects.

The court accordingly held that the payment made by way of interim relief to the employees by the respondent for the period from April 1, 1996 to March 31, 2000 comes within the definition of "wages", as contained in section 2(22) of the ESI Act, and hence the respondent is liable to pay ESI contribution.

E.S.I. Corporation v. *Hindustan Milkfood Manufacturers Ltd.*,[11] certain workmen were working in the establishment of the employer for more than ten years. The payment was made to them on piece rate basis. On these facts the Employees Insurance Court, Patiala held that respondents were employees of the appellant within the meaning of section 2(9) of the ESI Act because the employer had made payment for the work which was done. But on appeal the high court reversed this order. On appeal the Supreme Court rejected the contention of the employer that the employees did not fall within the definition of section 2(9) of the ESI Act as payment was made on piece rate basis. The Court held that the mode of payment made by the employer is covered under definition of wages in section 2(22) of the Act and therefore, the findings recorded by the high court cannot be said to be in accordance with law.

In *M/S. Nagarjuna Health Care* v. *Employees State Insurance*[12] the High Court of Hyderabad was called upon to decide three issues, namely; (i) Whether manufacturing process that is carried out in the premises of the appellant, a diagnostic

11 (2018)15 SCC 91.

12 2018 Lab. I.C. 2794 (HC Hyderabad).

laboratory which is merely collecting blood and other samples which are being analyzed by the doctors hired the establishment? (ii) How the method the inspection note should be prepared? (iii) Whether the claim in this case is barred by limitation? Let us turn to examine the response of the high court.

Response to issue no.1

The court held that a pathological laboratory that carries on tests on blood, urine, stools *etc.* is not a factory because no manufacturing process is carrying out in a medical and pathological laboratory. The court added that in order to bring such a pathological laboratory within the definition of a factory, there should be clear evidence of collecting and drawing blood samples for its further use which was lacking in this case.

Response to issue no.2

The court held that an inspection note prepared by an inspector should contain the names, fathers name, designation, length of service, emoluments and the signature or the thumb impression of the employee. Once such a list is prepared the signature of the proprietor/manager or the person in-charge of the establishment should be obtained at the end of the list and a copy should be furnished to the establishment immediately. If persons other than the employees are present at the time of inspection, their names and addresses along with the signatures of two persons should also be taken. This court added that unless and until the inspection note contains such details, it cannot be said to be a valid document because it is the basis or origin for all actions. Thus it should contain details like the name; age; designation/possible service details of the employee and also the signature or a thumb impression of the employees. The same should be counter- signed by a responsible person from the side of the establishment also.

Response to issue no. 3:

This court relied upon this judgment of the Supreme Court in *Rukhmabai* v. *Laxminarayan* [13] wherein it was held that there can be no right to sue until there is an accrual of the right asserted in the suit and its infringement, or at least a clear and unequivocal threat to infringe that right, by the defendant against whom the suit is instituted. Applying this principle in this case the court held that the claim was filed within time.

In *Surjit Kaur* v. *Employees State Insurance Corporation*[14] the death of Surjit Singh, an employee had taken place in the premises of employer Universal Carbon (India) on July 2, 2007. Further the deceased was taken to the hospital by the co-employee. But the employer had marked him absent for the entire month of July,2007.The trial court relying upon the evidence held that death of the employee took place during the course of employment. This order was, however, set aside by the high court on the ground that the attendance register indicated the Surjit Singh was absent on July 2, 2007. On appeal the Supreme Court pointed out that the observation made by the trial court in its judgment was absolutely correct but the high

13 AIR 1960 SC 335.

14 (2018)12 SCC 788.

court failed to consider that death of the employee took place in the premises of the employer and also that the deceased was taken from the factory premises to the hospital by the co-workers. The court remarked that employer was fully aware that the employee died in the factory premises on July 2, 2007. Having said so the court concluded that marking the employee absent for the entire month was uncalled for. Indeed it was a case of marking absence on July 2, 2007 in attendance register by the employer in order to avoid its liability. The apex court accordingly set aside the order of the high court and restored the decision of the trial court.

VI GRATUITY

In *Netram Sahu* v. *State of Chhattisgarh* [15] the appellant was appointed as daily wager on April 1, 1986 by the Water Resources Department of the State of Chhattisgarh. Subsequently, by order dated May 6, 2008 his services were regularized on work charge establishment to the post of Pump Operator. After attaining the age of superannuation, the appellant retired on July 30, 2011. However, he was not paid the gratuity amount by the state which, according to him, was payable to him after his retirement. The appellant actually rendered the total service for a period of 25 years three moths, *i.e.,* from April 1, 1986 to July 30, 2011 to the state, out of which 22 years as daily wagers. His services were regularized by the state by order dated May 6, 2008, *i.e.,* prior to the appellant attained the age of superannuation. On these facts a question arose as to whether the appellant can be considered to have rendered qualified service, *i.e.,* "continuous service" under section 2(e) read with section 2A of the Payment of Gratuity Act, 1972 so as to make him eligible to claim gratuity, as provided under the said Act from the state. It was contended on behalf of respondent-State that the appellant was not eligible to claim the gratuity amount because out of the total period of 25 years of his service, he worked for 22 years as daily wager and only three years as regular employee. In view of this it was contended that the appellant could not said to have worked continuously for a period of five years in order to become eligible to claim gratuity under the Payment of Gratuity Act, 1972. The apex court rejected the contention of the respondent on the following grounds; (i) The appellant has actually rendered the service for a period of five years (ii) The state actually regularized his service by passing order dated May 6, 2008. (iii) Having regularized the services, the appellant became entitled to claim benefit for counting the period of 22 years regardless of the post and the capacity on which he worked for 22 years (iv) Neither any provision under the Payment of Gratuity Act, 1972 was brought before the court which disentitle the appellant from claiming the gratuity nor any provision was brought which prohibits the appellant from taking benefit of his long and continuous period of 22 years of service,which he rendered prior to calculating his continuous service of five years. Having said so the Supreme Court observed: [16]

> ...[O]nce the State regularized the services of the appellant while he was in State services, the appellant became entitled to count his total period of service for claiming the gratuity amount subject to his proving

15 2018 Lab. IC 1732.

16 *Id.*, para 16.

> continuous service of 5 years as specified under Section 2A of the Act which, in this case, the appellant had duly proved.

The court added: [17]

> In the circumstances appearing the case, it would be the travesty of justice, if the appellant is denied his legitimate claim of gratuity despite rendering "continuous service" for a period of 25 years which even, according to the State, were regularized. The question as to from which date such services were regularized was of no significance for calculating the total length of service for claiming gratuity amount once the services were regularized by the State.

The court remarked: [18]

> Having regularized the services of the appellant, the state had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Act. It being a welfare legislation meant for the benefit of the employees, who serve their employer for a long time, it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the Court to get his genuine claim.

Forfeiture of gratuity

In *Union Bank of India* v. *C.G. Ajay Babu*[19] the Supreme Court was called upon to decide a question as to whether forfeiture of gratuity under the Payment of Gratuity Act, 1972 is automatic on dismissal from service. In this case disciplinary proceedings were initiated against the respondent employee while he was serving as a branch manager of the appellant-bank on the following charges; "(i) Failure to take all steps to ensure and protect the interest of the bank (ii) Failure to discharge his duties with utmost devotion, diligence, honesty and integrity (iii) Doing acts unbecoming of an officer employee. On the charges being duly established the respondent was dismissed from service on June 3, 2004. In the meanwhile, the appellant-bank issued a show-cause notice to the respondent-employee to the effect as to why the gratuity should not be forfeited on account of proved misconduct involving moral turpitude. His explanation was rejected and the gratuity was forfeited by order dated April 20, 2004. Aggrieved by these orders the respondent-employee challenged the order of the dismissal and forfeiture before the high court. The single judge even though did not interfere with the order of dismissal but held that the respondent was entitled to gratuity as there was no financial loss caused to the bank. The court also held that as per the bipartite settlement, forfeiture of gratuity is permissible only in case the misconduct leading to the dismissal which has caused financial loss to the bank and that too only to that extent only. On the intra-court appeal, the division bench of the high court while dismissing the appeal took the view that section 4(6)(a) and (b) have to be read together and only if there is any loss to the Bank on account of the misconduct, then alone, the forfeiture is permissible to the extent of loss. Against this order the appellant

17 *Id.,* para17.

18 *Id.* , para 18.

19 2018 (9) SCALE 622.

filed an appeal before the Supreme Court. It was contended on behalf of the appellant-bank that sub- section (5) of section 4, "while providing for better terms of gratuity under any award or agreement or contract", deals only with the quantum of the gratuity and not with the entitlement under any award or agreement or contract as such. The court rejected this contention and observed that (i) the statute provides for better terms of gratuity under any award or agreement or contract which means all terms of the contract and (ii) The choice is between the award or agreement or contract and the statute, but not partially of either.

The court then proceeded to examine whether forfeiture of gratuity was permissible under the Payment of Gratuity Act, 1972 .The court after referring the provisions contained in section 4[20] of the Payment of Gratuity Act, 1972 observed that there is a subtle distinction between sub-section (5) and sub- section (6). The former is a non-obstante clause of the entire section 4 whereas the latter is only in respect of sub-section (1). In other words, sub-section (5) has an overriding effect on all other sub-sections under section 4 of the Act. Thus, notwithstanding anything contained under section 4 of the Act, an employee is entitled to receive better terms of gratuity under any award or agreement or contract with the employer.

Coming to the facts of the case the court pointed out that, as noted by the single judge of the high court, there is a bipartite settlement dated August 19, 1966 prevailing

20 Payment of Gratuity Act, 1972, s. 4: which deals with payment of gratuity reads as follows:
(1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years,-
(a) on his superannuation, or
(b) on his retirement or resignation, or
(c) on his death or disablement due to accident or disease:
Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:
Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.
Explanation .- For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.
(5) Nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.
(6) Notwithstanding anything contained in sub-section (1),-
(a) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer shall be forfeited to the extent of the damage or loss so caused;
(b) the gratuity payable to an employee may be wholly or partially forfeited-
(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

in the bank and the clause dealing with the forfeiture of gratuity reads as follows, clause 12.2, "There will be no forfeiture of gratuity for dismissal on account of misconduct except in cases where such misconduct causes financial loss to the bank and in that case to that extent only."

The apex court observed that clause (a) of sub-section (6) of section 4 of the Act speaks of termination of service of an employee for any act, wilful omission or negligence causing any damage. However, the amount liable to be forfeited would be only to the extent of damage or loss caused. The disciplinary authority has not quantified the loss or damage. It was not found that the damages or loss caused to respondent 1 was more than the amount of gratuity payable to the appellant. Further clause (b) of subsection (6) of section 4 of the Act also provides for forfeiture of the whole amount of gratuity or part in the event his services had been terminated for his riotous or disorderly conduct or any other act of violence on his part or if he has been convicted for an offence involving moral turpitude. Conditions laid down therein are also not satisfied."

Applying the aforesaid principle the court held that since there was no conviction of the respondent for the misconduct which according to the bank is an offence involving moral turpitude there is no justification for the forfeiture of gratuity. The court further held that the Payment of Gratuity Act, 1972 must prevail over the Rules on Payment of Gratuity framed by the employer as held by the Supreme Court in *Jaswant Singh Gill* v. *Bharat Coking Coal Limited.*[21] The court accordingly held that the appellant cannot take recourse to its own Rules, ignoring the Act, for denying gratuity. Thus, forfeiture of gratuity is not automatic on dismissal from service; it is subject to sub-sections (5) and (6) of section 4 of The Payment of Gratuity Act, 1972.

VII MINIMUM WAGES

Section 5 of the Minimum Wages Act, 1948 provides the procedure for fixing and revising minimum wages. Two methods are enumerated therein. It is the discretion of the State to adopt any one of them. The first method for which we are concerned here is that the appropriate government shall appoint as many committees or sub-committees as it considers necessary to hold enquiries and advise it in respect of the fixation or revision of minimum rates of wages. Section 9 of the Minimum Wages Act, 1948 provides that such committees, sub-committees, and the advisory board shall consist of persons to be nominated by the appropriate government representing:

(i) employers in the scheduled employment;
(ii) employees in the scheduled employment who shall be equal in number and
(iii) independent persons not exceeding one-third of its total members; one of such independent persons shall be appointed as Chairman by the appropriate government.

The aforesaid section raises a question whether a person nominated to represent the employer must be employer himself ? This issue was raised before the Supreme Court in *Kerala Private Hospital Association* v. *State of Kerala.*[22] The court answered

21 (2007) 1 SCC 663.
22 (2018)1SCC 98.

the question in negative and observed that a person, who is nominated to represent the interest of his employer, need not necessarily be the employer himself. Dealing with the validity of nomination of Head of Human Resources Department in their respective organizations the court observed that if his employee is nominated to represent his employer's interest, such nomination is in accordance with the requirement of section 9 of the Act. Justifying the nomination of employee as employer's representative the court observed: [23]

> A representation by way of nomination is a well accepted phenomenon. A fortiori, an employee while in employment of his employer, when nominated as his employer's representative in the Committee then such employee, who is well –versed with the working of his organisation and the subject, is regarded as a competent person (nominee) to represent the interest of his master (employer). No fault can thus be found in such nomination when made by the State while constituting the Committee. It is more so when we find that the employer did not object to such nomination made by the State of their employee in the Committee.

The court added that such nominee once nominated would defend his employer's interest and not individual interest as an employee in the committee. In other words, a nominee in such a case does not participate in his individual capacity as an employee in the committee but participates as a representative of his employers. Further there exists a nexus between the persons who are nominated and for whom they are nominated. Moreover the employees who are nominated are working as head of human resources department in their respective organizations are well-versed in the subject in question by virtue of the posts held by them in their respective employment. The court also remarked that the notification fixing minimum wage should not be lightly, interfered under article 226 of the Constitution on the ground of some irregularity in the constitution of the committee.

VIII EQUAL PAY FOR EQUAL WORK

Sabha Shanker Dube v. *Divisional Forest Officer*[24] the appellants, daily rated workers employed in Group 'D' posts in the Forest Department in the State of Uttar Pradesh filed a writ petition before the High Court of Allahabad seeking regularization of their services, the minimum of the pay scales available to their counterparts working on regular posts and treating them as being in continued service while condoning the breaks in their service. The single judge of the high court even though held that regularization of daily wagers would be considered in accordance with the relevant rules by condoning the breaks in service if it is less than three months but refused to issue a direction for regularization. He also rejected the claim of the appellants regarding the minimum of the pay scales by holding that such a direction cannot be granted under article 226 of the Constitution of India. The single judge accordingly dismiss the petitions. The appeal filed against this order was also dismissed by a

23 *Id*. at 203.

24 JT 2018(11) SC 90.

Division Bench of the High Court of Allahabad. Being aggrieved the appellant filed an appeal before the Supreme Court. In order to decide the appeal the Court relied upon the decision in *State of Punjab* v. *Jagjit Singh* [25] wherein the issue as to whether temporary employees (daily wage employees, ad hoc appointees, employees appointed on casual basis, contractual employees and likewise) are entitled to the minimum of the regular pay scales on account of their performing the same duties which are discharged by those engaged on regular basis against the sanctioned posts. After considering several judgments the apex court held that temporary employees are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post. In view of the judgment in *Jagjit Singh* case the court declined to uphold the view of the high court that the appellants-herein are not entitled to be paid the minimum of the pay sales. The court, however, did not express any opinion on the contention of the state government that the appellants are not entitled to the reliefs as they are not working on Group 'D' posts and that some of them worked for short periods in projects.

IX CONCLUSION

An analysis of the aforesaid decisions leads us to the following conclusions, *Firstly*, the most significant pronouncement of apex court in the arena of social security law in the year under review relates to determination of pensions.[26] The Court gave beneficial interpretation to the proviso to clause 11(3) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 when it observed, that the reference to the date of commencement of the Scheme or the date on which the salary exceeds the ceiling limit are dates from which the option exercised are to be reckoned with for calculation of pensionable salary. The said dates, the court observed, are not cut-off dates to determine the eligibility of the employer-employee to indicate their option under the proviso to clause 11(3) of the pension scheme.

Another important case[27] relates to payment of compensation under the Employees' Compensation Act, 1923. Here the apex court displayed human approach while dealing with an appeal against the decision of the high court arising under the Employees' Compensation Act, 1923. On examination of evidence the court did not find any contradiction. In view of this it concluded that there is no reason why the appellants would file a case on false grounds. The court noted that the appellants having lost their bread earner at the time when appellants were minors and for compensation they had to run from pillar to post for almost 29 years that the appellants are still fighting to get some reasonable compensation for the death of their bread earner.

Further in[28] the apex court while dealing with the case under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 emphasized the need to pass a reasoned order. The court suggested that every case must contain: (i) the narration

25 (2017)1 SCC 148.

26 *R.C.Gupta* v. *Regional Provident Fund Commissioner* (2018) 14 SCC 809.

27 *Tebha Bai* v *Raj Kumar Keshwani* 2018(9) SCALE 48.

28 *Central Board of Trustees* v. *Indore Composite Pvt. Ltd*., 2018(9) SCALE 99.

of the bare facts of the case of the parties to the *lis*, (ii) the issues arising in the case, (iii) the submissions urged by the parties, (iv) the legal principles applicable to the issues involved and the reasons in support of the findings on all the issues arising in the case. Also the court has given a beneficial interpretation to the term "wages" by holding that the payment made by way of interim relief to the employees comes within the definition of "wages" as contained in section 2(22) of the Employees' State Insurance Act, 1948.[29]

The apex court[30] is equally concerned to protect the interest of workmen when it ruled that having regularized the services of the appellant, the state had no justifiable reason to deny the benefit of gratuity to the appellant which was his statutory right under the Payment of Gratuity Act, 1972. This is all the more so because Payment of Gratuity Act is a welfare legislation meant for the benefit of the employees, who serve their employer for a long time. Thus it is the duty of the State to voluntarily pay the gratuity amount to the appellant rather than to force the employee to approach the court to get his genuine claim. Also the apex court[31] clarifies that forfeiture of gratuity is not automatic on dismissal from service; it is subject to sub-sections (5) and (6) of section 4 of the Payment of Gratuity Act, 1972. And while dealing with minimum wage the apex court[32] ruled that the notification fixing minimum wage should not be lightly, interfered under article 226 of the Constitution on the ground of some irregularity in the constitution of the committee took place. And lastly while dealing with application of the principles of equal pay for equal work the apex court protected the interest of temporary employees when it held that they are entitled to draw wages at the minimum of the pay scales which are applicable to the regular employees holding the same post.

29 *E.S.I. Corporation* v. *Hindustan Milkfood Manufacturers Ltd.,* (2018) 15 SCC 91.

30 *Netram Sahu* v. *State of Chhattisgarh* (2018) 5 SCC 430.

31 *Union of India* v. *C.J. Ajay Babu* 2018 (9) SCALE 622.

32 *Supra* note 20.