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SOCIAL SECURITY AND LABOUR LAW

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I INTRODUCTION

IN 2023, the Supreme Court and high courts made several significant rulings regarding social security and minimum employment standards. Numerous cases concerning social security, wages, and employment standards were reported, reflecting important legal developments in these areas. The Supreme Court decisions on social security relate to the Maternity Benefits Act, Employees' Compensation Act, 1923, Employees' Provident Funds and the Miscellaneous Provisions Act, 1952, Employees' State Insurance Act, 1948, Payment of Gratuity Act, 1972, and Factories Act, 1948. The high court's cases have covered almost every important area of social security, wages and minimum standards of employment. Broadly speaking courts gave beneficial interpretation to the provisions of the law relating to social security, wages and minimum standards of employment. This survey offers to review important judgments of the Supreme Court on law relating to social security and minimum standard of employment.

II MATERNITY BENEFITS

Maternity leave for daily wagers

In *State of H.P.* v. *Sita Devi*[1] the respondent had been engaged on daily wage basis over two decades of service.in the year 1996, respondent was carrying a child in her womb, which she delivered on May 30, 1996 and after availing maternity leave *w.e.f.* June 1, 1996 to August 31, 1996 *i.e.,* only three months, the respondent assumed duties and it is only on account of pregnancy and subsequent delivery that the respondent could only put in 156 days as against the minimum requirement of 240 days in a year. On these facts the tribunal held that the ailment of the applicant forced her to be away from her work. Her period of maternity leave would be deemed to be continuous service in view of the provisions of section 25(B) (1) of the Industrial Dispute Act. Aggrieved by this order the State filed a writ petition before the High Court of Himachal Pradesh. The court held that woman employee

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1 CWP No. 647 of 2020 decided on June 12, 23 (H.P. High Court).

at the time of advance pregnancy could not have been compelled to undertake hard labour, as it would have been detrimental to not only to her health and safety but also to the child health, safety, and growth. The court having held that the claim of maternity leave is founded on the grounds of fair play and social justice observed:[2]

> In law, there is no difference between a female regular employee and a contractual employee or ad-hoc employee because a female employee whether regular, temporary, or ad-hoc, is a female for all intents and purposes and she has a matrimonial home, matrimonial life, and after conception, she has to undergo the entire maternity period, same treatment, pains, and other difficulties which a regular employee has to undergo. Thus, there is no occasion for making discrimination and if, less period of maternity leave is granted to a contractual employee, it will amount to discrimination, in terms of Article 14 of the Constitution of India.

The court ruled that the maternity leave is a fundamental human right of the respondent, which could not have been denied. Therefore, the action of the petitioner is violative of Articles 21 and 39(d) of the Constitution of India.

Maternity benefits-If available beyond the duration of employment

Maternity care and benefits for women workers form an integral part of social security. The Maternity Benefit Act, 1961 (MB Act) aims to provide all the facilities to a working woman in a dignified manner, so that she may overcome the state of motherhood honourably, peacefully, undeterred by the fear of being victimized for forced absence during the pre- or post-natal period.

A three judge bench of the Supreme Court in *Kavita Yadav* v. *The Secretary, Ministry of Health and Family Welfare Department*[3] *the Supreme Court ruled* that once the female employee appointed on contract fulfilled the eligibility criteria specified in the MB Act she would be eligible for full maternity benefits, even if such benefits exceed the term of contract.

In this case an employee, Kavita, was appointed as Senior Resident (Pathology) in Janakpuri super specialty Hospital *w.e.f.* June 12, 2014 for one year, *"extendable on yearly basis up to a maximum of three years.*" The employee's service was extended on annual basis twice. Prior to expiry of the last term of one year *i.e.,* before 11 June 2017, the employee became pregnant. On May 24, 2017, the employee applied for maternity leave commencing from June 1, 2017, under the MB Act. On June 9, 2017, her employer informed her that since her contractual term is ending on June 11, 2017, she could avail only 11 days of maternity benefits and no further extension of contractual employment was permissible under the applicable rules. Thereupon the appellant filed an appeal before the Central Administrative Tribunal, New Delhi and on dismissal filed a writ petition before the High Court of Delhi. The High Court of Delhi observed that the purpose of MB

2 *Id.*,para 8.

3 *2023 Live Law (SC)701.*

Act is not to extend the period of contract, to enable her to avail maternity benefits under the MB Act. Against this order the appellant filed an appeal before the Supreme Court. The Supreme was called upon to decide whether maternity benefits under the MB Act *would apply to a lady employee appointed on contract if the period for which she claims such benefits overshoots the contractual period.*

The Supreme Court held that once an employee is entitled to maternity benefits under section 5(2) of the MB Act (*i.e.,* completed 80 days of employment), "*such benefits can travel beyond the term of employment also. It is not co--terminus with the employment tenure.*"[4] The court also held the provisions of the MB Act do not lead to an interpretation that the maternity benefits cannot survive or go beyond the duration of employment of the applicant thereof.[5]

The court ruled that a combined reading of sections 5 ,12, and 27 of MB Act "would lead to the conclusion that once the appellant fulfilled the entitlement criteria specified in section 5(2) of MB Act, she would be eligible for full maternity benefits even if such benefits exceed the duration of her contract. Any attempt to enforce the contract duration term within such period by the employer would constitute "discharge" and attract the embargo specified in section 12(2)(a) of MB Act. The law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the 1961 Act."

The aforesaid decision requires a careful scrutiny.

i. The reliance placed on section 27 of MB Act by the Supreme Court is not tenable because there is nothing in section 27 to suggest that a woman would be entitled to such benefit when her contract of employment comes to end.

ii. A perusal of the two decisions[6] relied upon by the Court only suggest that daily wagers and employees on contract employment are entitled to maternity benefit if she fulfils qualifying period of service but no principle

4 *Id*., para 6 of the judgment.

5 Our independent analysis of the provisions of the 1961 Act does not lead to an interpretation that the maternity benefits cannot survive or go beyond the duration of employment of the applicant thereof. The expression employed in the legislation is maternity benefits [in S. 2(h)] and not leave. S. 5(2) of the statute, which we have quoted above, stipulates the conditions on the fulfilment of which such benefits would accrue. S. 5(3) lays down the maximum period for which such benefits could be granted. The last proviso to S. 5(3) makes the benefits applicable even in a case where the applicant woman dies after delivery of the child, for the entire period she would have been otherwise entitled to. Further, there is an embargo on the employer from dismissing or discharging a woman who absents herself from work in accordance with the provisions of the Act during her absence. This embargo has been imposed under S. 12(2)(a) of the Act. The expression "discharge" is of wide import, and it would include "discharge on conclusion of the contractual period". Further, by virtue of operation of s. 27, the Act overrides any agreement or contract of service found inconsistent with the 1961 Act. [Para 9}.

6 The court relied upon the decisions in *Municipal Corporation of Delhi* v. *Female Workers (Muster Roll)* [(2000) 3 SCC 224] and *Deepika Singh* v. *Central Administrative Tribunal* [(2022) 7 SCR 557] hold that s. 27 of the MBA, *"gives overriding effect to the statute on any award, agreement or contract of service."*

was laid down to the effect that their tenure be notionally extended so far as application of maternity benefits under the MB Act was concerned.

iii. The observation of the apex court that the word "discharge" under section 12(2)(a) includes even "discharge on conclusion of contract period" potentially extends to cover cases where term of contract had expired and the woman had not even started availing maternity benefits provided, she has fulfilled qualifying period and makes an application to claim maternity benefit any time during pregnancy.

iv. It is difficult to support the observation of the Court that any attempt to enforce the contract duration term "within such period" - at any time during her pregnancy if she fulfils the eligible criteria for availing maternity benefits (i.e. completes 80 days of employment as mentioned in section 12 (2) (a) by the employer would constitute "discharge"and attract the embargo specified in Section 12(2)(a) of MB Act. Further the law creates a fiction in such a case by treating her to be in employment for the sole purpose of availing maternity benefits under the MB Act.

III EMPLOYEES' COMPENSATION

Section 4(1)(b) of the Employees Compensation Act ,1923 (EC Act), provides:

(1) Subject to the provisions of this Act, the amount of compensation shall be as follows, namely: -

(b) where permanent total disablement results from the injury an amount equal to sixty percent of the monthly wages of the injured employee multiplied by the relevant factor; or an amount of one lakh and forty thousand rupees, whichever is more:

Provided that the Central Government may, by notification in the official gazette, from time to time, enhance the amount of compensation mentioned in clauses *(a)* and *(b)*

Explanation I provides that for the purposes of clauses *(a)* and *(b)*, "relevant factor", in relation to 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.

Section 2 (l) of the EC Act defines "total disablement" to mean such disablement, whether of a temporary or permanent nature, as incapacitates an employee for all work which he was capable of performing at the time of the accident resulting in such disablement...

In the year under review in *Indra Bai* v. *Oriental Insurance Company Ltd.,*[7] the Supreme Court was called upon to delineate the contour of the aforesaid definition. In this case the appellant was employed as loading and unloading

7 LiveLaw 2023 (SC) 543: 2023 INSC 624.

labourer with Simplex Concrete Company, respondent no. 2, owner of the truck which was insured with R-1. While appellant was loading poles/pillars on the said truck along with other labourers, the chain pulley broke and the poles fell on her, resulting in severe injuries to her left hand; she was admitted to the hospital for a period exceeding 10 days and due to the injuries sustained in that accident, her left hand has become completely ineffective because of no movement in the fingers of her left hand on account of nerve damage. The commissioner upon consideration of the evidence on record found the appellant rendered permanently unfit to do labour work, which she was doing at the time of the accident. Accordingly, appellant's permanent disability was assessed as total. On appeal the high court did not disturb the finding of the Commissioner with regard to the entitlement of the appellant for compensation as also with regard to her age and monthly wages. However, the high court assessed her permanent disability as 40% and thereby reduced the compensation awarded.

On appeal the Supreme Court observed that in the light of its earlier decisions and the definition of the term "total disablement" as provided by clause (l) of sub-section (1) of section 2 of the Act, it is the functional disability and not just the physical disability which is the determining factor in assessing whether the claimant (*i.e.,* workman) has incurred total disablement. Thus, if the disablement incurred in an accident incapacitates a workman for all work which he was capable of performing at the time of the accident resulting in such disablement, the disablement would be taken as total for the purposes of award of compensation under section 4(1)(b) of the Act regardless of the injury sustained being not one as specified in Part I of Schedule I of the Act. The proviso to clause (l) of sub-section (1) of section 2 of the Act does not dilute the import of the substantive clause. Rather, it adds to it by specifying categories wherein it shall be deemed that there is permanent total disablement**.**

IV PAYMENT OF GRATUITY

Jyotirmay Ray v. *The Field General Manager Punjab National Bank*,[8] decided an extremely important issue whether an employee, on compulsory retirement entitled to claim gratuity under the Payment of Gratuity Act, 1965 (PG Act)? In this case the appellant, a senior manager was charge-sheeted and on submission of reply by him a departmental enquiry was conducted and the enquiry report was submitted to the disciplinary authority who found him guilty and, penalty of compulsory retirement was inflicted. The appeal filed by the the appellant was also dismissed by appellate authority. The appellant was denied the benefit of leave encashment, employer's contribution of provident fund, gratuity, and pension by the Punjab National Bank (hereinafter referred to as the "Bank"). On rejection of his representation by the competent authorities, the appellant filed a writ petition before the high court but did not challenge the order of compulsory retirement and only claimed the terminal benefits *i.e.,* leave encashment, employer's contribution of provident fund, gratuity, and pension. In the meantime, the review filed by the

8 Civil Appeal No. 6611 of 2015, 2023 Latest Caselaw 848 SC.

appellant before the appellate authority was also dismissed on January 06, 2011, which was contested by the Bank, taking the plea that due to irregularities in granting loans and cash credit facilities, loss was caused to the Bank. During pendency of the writ petition, the Board of Directors of the Bank *vide* resolution dated December 20, 2010 refused to give employer's contribution of provident fund to the tune of Rs. 8,80,085/- to the appellant. The single judge of the high court allowed the said writ petition in part and directed the Bank to release the employer's contribution of the provident fund as well as gratuity with interest @ 8.5% p.a. and leave encashment in terms of Regulation 38 of the Punjab National Bank (Officers') Service Regulations, 1979 (1979 Regulations). The court made it clear that the dues be calculated from the date of compulsory retirement and be released within a period of eight weeks from the date of communication. The single judge, however, denied the benefit of pension because the appellant was not an in-service candidate when the scheme for shifting to the pension regime became operational. Thereupon the bank filed special appeal before the Division Bench which allowed the same in part maintaining the order of grant of leave encashment, but set aside the grant of provident fund (Bank's contribution) and gratuity on the pretext that by an act of the appellant, loss has been caused to the Bank. Against this order an appeal was filed before the Supreme Court. The court was called upon to decide whether the denial of employer's contribution of provident fund and non-payment of gratuity to appellant because of the order of compulsory retirement, as directed by the impugned order, is justified or not?

Response of the Supreme Court on denial of employer's contribution of provident fund

The court observed that (i) the contribution of Bank to provident fund was forfeited as per resolution dated December 20, 2010 of the Board of Directors based on the communication dated November 19, 2010 as referred by the learned Single Judge. The said resolution refers that the Bank has suffered a loss of Rs. 77.59 lakhs by an act of the appellant for which the penalty of compulsory retirement has been directed. However, the recommendations were made for appropriation of the Bank's contribution of provident fund to the tune of Rs. 8,80,085/- and it was withheld from the provident fund account of the appellant. (ii) By filing this appeal, the appellant has averred and produced the report of the internal auditor dated July 27, 2009 but the said report was of the prior date, from the date of issuance of the chargesheet. (iii) The resolution of the Board of Directors is subsequent to the order of penalty of compulsory retirement. Thus, prior to the chargesheet as per report of the internal auditor, loss has not been reported to the Bank, (iv) The unilateral report cannot be relied upon by the Board of Directors to deny the benefit of payment of employer's contribution of provident fund., The learned Single Judge was right in observing that the Board of Directors has not afforded an opportunity to the appellant on the issue of causing loss or damage to the Bank, prior to the passing of the resolution of appropriation of the contribution of the Bank from the provident fund account of the appellant. (v) In the absence of

any allegation in the chargesheet about the quantifiable amount of loss, the argument as advanced by respondents is bereft of any merit.

The court accordingly held that the findings recorded by single judge with regard to payment of Bank's contribution of provident fund is equitable, just, and is liable to be upheld, setting aside the findings of the division bench.

Response of the Supreme Court on denial of payment of gratuity

In order to decide the issue relating to entitlement of payment of gratuity to the appellant the court referred to the provisions of the Bank Regulation 46[9] of Chapter IX of 1979 which deals with gratuity and said that an officer of the Bank shall be eligible for gratuity on retirement; death; disablement rendering him unfit as certified by an approved medical officer; resignation after completion of 10 years of continuous service or termination of service after completion of 10 years except in a case if such termination is by way of punishment.

Lacunae in Bank Regulation and the Payment of Gratuity Act

Having referred to the provisions of the regulation the court pointed out that the regulations are silent on the contingency as to what would happen if an officer is met with a penalty of compulsory retirement.[10] Further under subsection (6) of Section 4[11] gratuity can be withheld to an employee on his termination. Moreover, forfeiture of gratuity may be directed to the extent of damage or loss so caused or destruction of property belonging to employer. In twin situations where the termination is due to riotous or disorderly conduct or involvement of the employee in a criminal case involving moral turpitude, the gratuity shall be wholly forfeited. But the Payment of Gratuity Act is silent on the aspect of forfeiture in case of compulsory retirement. Therefore, the Division Bench erred in reversing the judgment of the single judge.

In order to fill the gap left by the legislature in the Payment of Gratuity Act it is proposed that section 46 (6) of PG Act be amended to specifically include provisions relating to forfeiture of gratuity in case of compulsory retirement.

9 46.(1) Every officer shall be eligible for gratuity on: a) retirement b) death c) disablement rendering him unfit for further service as certified by a medical officer approved by the Bank d) resignation after completing ten years of continuous service; or e) termination of service in any other way except by way of punishment after completion of 10 years of service.

10 *Emphasis added.*

11 The relevant portion has been reproduced as under:

(6) Notwithstanding anything contained in subsection (1)-

(a) the gratuity of an employee, whose services have been terminated for any act, wilful 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 shall be wholly 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.

V EMPLOYEES' PROVIDENT FUND

In *Assistant Provident Fund Commissioner* v. *G4s Security Solutions (India) Ltd.*,[12] it was contended by the appellant that for the purposes of determining the basic wage under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act), reference must be made to the definition of the expression 'minimum rate of wages' under Section 4 of the Minimum Wages Act, 1948. The Supreme Court rejected the contention by observing that once the EPF Act contains a specific provision defining the words 'basic wage' under section 2(b), then there was no occasion for the appellant to expect the court to have travelled to the Minimum Wages Act, 1948, to give it a different connotation or an expansive one, as sought to be urged. The court added that clearly, that was not the intention of the legislature.

In *Regional P.F. Commissioner* v. *Mater Dei Institution*[13], the High Court of Bombay held that the principal employer is under a legal obligation to maintain complete records in respect of workmen engaged through contractors. In *Gemini Distilleries Hyd. Pvt. Ltd.* v. *The Employees Provident Fund Organisation*,[14] the High Court of Telangana held non-production of documents in possession of the employer will justify adverse inference against him. In *Regional Provident Fund Commissioner* v. *Employees' Provident Fund Appellate Tribunal, New Delhi*,[15] the High Court of Madras held that Principal/Vice Principal, not drawing any wages, are not employees under the EPF Act.

V FACTORIES ACT, 1948

In *Security Printing &Minting Corporation of India Ltd. Etc.* v. *Vijay D. Kasbe*.[16] the Supreme Court was called upon to decide the question as to whether persons employed as supervisors are entitled to over time allowance in terms of Section 59(1) of the Factories Act, 1948 Act?

Factual matrix

In this case the respondents, filed a writ petition in the High Court of Bombay claiming overtime allowance at the rate admissible to factory workers. The high court transferred the petition to the Central Administrative Tribunal. The tribunal dismissed the case along with other applications directly filed before it on the ground that it had no jurisdiction to deal with a claim relating to overtime allowance arising under the Factories Act, 1948. Against this order a writ petition was filed in the High Court of Bombay. During the pendency of the writ petitions, one more group of supervisory employees filed an application in the Central Administrative Tribunal claiming the same reliefs which was also dismissed. Thereupon a writ petition was filed before the High Court of Bombay which was remanded to the Central Administrative Tribunal. In the meantime, the Corporation had come into

12 (2023)Live Law (SC) 722.
13 2023 LLR 1256 (Bom. HC).
14 2023 LLR 166 (Tel. HC).
15 2023 LLR 179 (Mad. HC).
16 2023 Latest Caselaw 345 SC.

existence in 2006. By a common order dated June 9, 2010, the Central Administrative Tribunal held that the applicants therein were entitled to double over time allowance in terms of Section 59(1) of the Factories Act, 1948. After holding so, the tribunal confined the relief, only to a period of two years prior to the filing of the respective original applications, insofar as arrears were concerned. Against this order Union of India and the corporation filed writ petitions before the High Court Bombay which were dismissed. Against this order the corporation filed an appeal before the Supreme Court. The issue was, whether persons employed as supervisors are entitled or not, to Double Over Time Allowance in terms of Section 59(1)[17] of the Factories Act,1948?

Response of the Supreme Court

In order to deal with the aforesaid issue, the court identified that there are three different categories of employment, if not more, in the country. They are: (i) employment which is statutorily protected under labour welfare legislations, so as to prevent exploitation and unfair labour practices; (ii) employment which falls outside the purview of the labour welfare legislations and hence, governed solely by the terms of the contract; and (iii) employment of persons to civil posts or in the civil services of the Union or the State. Having made these categorizations the court observed that any court or tribunal adjudicating a dispute relating to conditions of service of an employee, should keep in mind the different parameters applicable to these three different categories of employment.

Dealing with persons in public service who are holders of civil posts or in the civil services of the Union or the State the court observed that unlike those employed in factories and industrial establishments are required to place themselves at the disposal of the government all the time. The court then referred to the provisions of Rule 11 of the Fundamental Rules which reads as under:

> Unless in any case it be otherwise distinctly provided, the whole time of a Government servant is at the disposal of the Government which pays him, and he may be employed in any manner required by proper authority, without claim for additional remuneration, whether the services required of him are such as would ordinarily be remunerated from general revenues, from a local fund or from the funds of a Body incorporated or not, which is wholly or substantially owned or controlled by the Government.

Interpreting the aforesaid provisions the court held that there was actually no scope for the respondents to seek payment of double over time allowance. The court added that no benefit can be claimed by anyone dehors the statutory rules. Having laid down the aforesaid principle the court pointed out that the Central Administrative Tribunal completely lost sight of those Rules, and the distinction between employment in a factory and employment in government service, despite

17 S. 59. Extra wages for overtime. (1) Where a worker works in a factory for more than nine hours in any day or for more than forty-eight hours in any week, he shall, in respect of overtime work, be entitled to wages at the rate of twice his ordinary rate of wages.

the Union of India raising this as a specific issue in paragraph 12 of the counter filed before the Central Administrative Tribunal.

The court added:

> …27. Persons who are not holders of civil posts nor in the civil services of the State but who are governed only by the (Factories Act,)1948 Act, may be made to work for six days in a week with certain limitations as to weekly hours under Section 51, weekly holidays under Section 52, daily hours under Section 54, etc. Workers covered by Factories Act do not enjoy the benefit of automatic wage revision through periodic Pay Commissions like those in Government service. Persons holding civil posts or in the civil services of the State enjoy certain privileges and hence, the claim made by the respondents ought to have been tested by the Tribunal and the High Court, in the proper perspective to see whether it is an attempt to get the best of both the worlds.

In *Hemant Madhusudan Nerurkar* v. *State of Jharkhand*[18] the High Court of Jharkhand was called to take cognizance against the occupier of the factory for allegedly committing an offence in terms of Section 92 of the Factories Act for violation of Rule 55(A)(2) of the Bihar (now Jharkhand) Factories Rules, 1950.

In the instant case when Jagdish, a worker employed in the factory, was greasing of outer bearing of down quarter thin slab caster roll, someone switched on the machine from the control room and thereupon the machine started while greasing was being carried which resulted in serious injury to his left leg causing fracture. Thereupon a complaint was filed by the factory inspector in the court of chief judicial magistrate, Jamshedpur in connection with the aforesaid accident arraying the petitioners, an occupier of the factory as accused with a prayer to take cognizance against them for allegedly committing an offence under section 92 of the Factories Act for violation of rule 55(A)(2) of the Bihar (now Jharkhand) Factories Rules, 1950. Thereupon the petitioners filed a criminal miscellaneous petition in the High Court of Jharkhand for quashing of the entire criminal proceedings initiated against them in this connection including the order taking cognizance taken by the Judicial Magistrate, 1st Class, Jamshedpur.

Response of the High Court of Jharkhand

The high court observed:

> …15. On perusal of the complaint, it transpires that there is no material on record to prima facie suggest that the Occupier or Manager are in any manner responsible for the unfortunate accident. Sections 97 and 111 was not looked into by the Inspector, as admitted in the complaint itself that the workman concern has gone up upon the machine. No case was made out against the petitioners in terms of the Factories Act, 1948. Further in the judgment rendered in the case

18 Cr.M.P. No. 810 of 2013 with I.A. No. 2623 of 2019 decided on Aug. 23, 2021.

> of *J.K. Industries Ltd*. [19], Hon'ble Supreme Court has rightly come to the conclusion that *mens rea* is not the necessity in invoking the provisions of Factories Act. In that case the Hon'ble Supreme Court was examining the certain Sections of the Factories Act, which are not under challenge in this case**.**

The court added that there was no specific violation of any provision of the Act or the Rules in the complaint and in absence of such illegal act or omission to fasten the occupier and manager on the strength of the alleged contravention of the general duties would be a dangerous proposition of law. Further the provisions of sections 97 (offence by the workers) and 111 (obligations of workers) were ignored by the inspector of the factories while submitting the report and at the time of filing the complaint.

Dealing with cognizance order the high court observed that the cognizance was taken in a format, in which, the magistrate has filled up only the sections and names of the persons and cognizance has been taken which suggest that the magistrate had not considered the facts and he in a mechanical way took cognizance *vide* order dated October 31, 2012 by way of filling up vacant lines. In view of above the High Court of Jharkhand quashed the entire criminal proceedings initiated against the petitioners including the order taking cognizance dated October 31, 2012, passed by the judicial magistrate, 1st Class, Jamshedpur.

It was submitted that the High Court of Jharkhand did not consider the effect of the provisions of section 22 (1) of the Factories Act which seeks to regulate work on or near machinery in motion. Further the court laid too much emphasis on specific violation of any provision of the Act or the Rules.

VI MINIMUM WAGE

Powers of the appropriate government to correct clerical or arithmetical mistakes.

Section 10 of the Minimum Wages Act empowers the appropriate government by notification to correct clerical or arithmetical mistakes in any order fixing or revising minimum rates of wages under this Act, or errors arising therein from any accidental slip or omission. Every such notification shall, as soon as may be after it is issued, be placed before the Advisory Board for information.

In this case the State of Goa issued a notification dated May 23-24, 2016 in exercise of the powers conferred by clause (b) of sub-section (1) of section 3 read with clause (i) of sub-section (1) of Section 4 and sub- section (2) of Section 5 of the Minimum Wages Act, 1948 determining the minimum rates of wages payable to the various categories of the employees employed in various trades in the Scheduled Employment, which included the basic rates of wages plus special allowance. Thereafter, the state government issued the impugned Errata Notification under which it corrected the earlier notification dated May 23-24, 2016. The validity of this notification was challenged before the high court. The high court held that

19 (1996) 6 SCC 665.

that there was a mistake while issuing the first notification dated May 23-24, 2016 in which by mistake instead of clause (iii), clause (i) was mentioned. Against this order an appeal was filed before the Supreme Court. The court observed that a conscious decision was taken by the state government after consultation with the Minimum Wage Advisory Board and thereafter the minimum wages were revised and determined in exercise of power under Section 4(1)(i). Therefore, it cannot be said that there was any arithmetical and/or clerical mistakes, which could have been corrected in exercise of powers under Section 10 of the Act, 1948. The court added that assuming that the State was having the power to amend, vary, or rescind the notification in exercise of powers under Section 21 of the General Clauses Act, in that case also, when the earlier notification dated May 23-24, 2016 was issued after following the due procedure as required under sections 4 and 5 of the Act, 1948, the same procedure ought to have been followed even while varying and/or modifying the notification. Hence, the notification dated May 23-24, 2016 could not have been modified by such an Errata Notification which was issued in purported exercise of section 10 of the Act, 1948. The court accordingly held that the Errata Notification dated July 14, 2016 was wholly without jurisdiction and contrary to the relevant provisions of the Minimum Wages Act, 1948.

Effect of non-display of notice

Rule 22 of the Minimum Wages (Central) Rules, 1950 deals with publicity to the minimum wages fixed under the Minimum Wages Act. It provides those notices in 1 (Form IX-A) containing the minimum rates of wages fixed together with 2 (abstracts of) the Act, the rules made thereunder and the name and address of the Inspector shall be displayed in English and in a language understood by the majority of the workers in the employment at the main entrances to the establishment and at its office and shall be maintained in a clean and legible condition.

Such notices shall also be displayed on the noticeboards of all sub-divisional and district offices. The scope of the aforesaid provisions was examined in *Pinaki Das* v. *The State of Jharkhand.*[20] In this case on inspection of Tatanagar Railway Station of South Eastern Railway, Tatanagar, District Singhbhum (E), Jharkhand it was found that the accused person failed to display the notice showing the extract of the Minimum Wages Act and Rules in Hindi and English at the workplace which was violative of Rule 22. Accordingly, on the basis of prosecution report, the cognizance was taken. This order was challenged before the High Court mainly on two grounds, namely, (i) there has been delay of six months between the time when the inspection was conducted and the time when the complaint was filed before the court (ii) The cognizance was taken only against this petitioner and not against the company which is in violation to the specific provision of section 22-C of the Minimum Wages Act. Dealing with the issue whether the order taking cognizance only against this petitioner and one another chairman of the company without the

20 2023 LLR 1307 (Jhar. HC).

cognizance being taken against the company, is sustainable in the eye of law or not, the court observed:

> The criminal jurisprudence envisages both direct and vicarious liability for an act which is an offence under the penal provision. In case of direct liability of an accused, on the basis of facts as disclosed in a particular case, there may not be a requirement of impleading the Company as an accused along with the person who is sought to be proceeded. However, requirement of impleading the Company arises when the accused is vicariously held liable for the acts of the Company.

Applying the aforesaid principle in this case, the court found that there is no direct allegation against this petitioner that he was personally liable for not displaying the notice of the Act and Rule in Hindi and English at the work spot. In fact, this allegation is directed against company and the petitioner has been proceeded against as he held the position of head of Eastern Region. Thus, this is a case where vicarious liability is sought to be imputed on the basis of averments made in the complaint petition. Under the circumstance, the provision of Section 22-C of the Minimum Wages Act will be applicable and it was necessary for the trial court to have taken cognizance against the company and without such cognizance, there is infirmity in the order of cognizance. The court according set aside the order of court below.

VII PERMANENT ADDRESSES IN PLEADINGS: A MANDATORY REQUIREMENT

In *Creative Garments Ltd* v. *Kashiram Verma,*[21] the Supreme Court *deprecated* the tendency of workers and employees involved in labour disputes to provide merely the address of labour unions or authorised representatives because *effective relief can be granted to a worker only if the permanent address of the workman is furnished in the pleadings. The court, therefore ruled that in future all the cases to be filed and in all the pending cases, the parties shall be required to furnish their permanent address(es).*

In this case the petitioner filed an appeal before the Supreme Court against an order of the division bench of the High Court of Bombay, in 2010. In its orders, the court upheld the verdicts of a single judge of a labour court directing reinstatement of the respondent with full back-wages with effect from December 1997. The Supreme Court noted that after the high court order, the appellant had sent various communications by registered post to the respondent to convey the order to reinstate him but to no avail. Further, the workman had not reported back for duty to date, even after an assurance from his counsel to the high court in 2007. The court noted that he must have been gainfully employed after leaving the job in question. Therefore, the appeal was allowed and the labour court's award was set aside because t*he appeal cannot be kept pending as the conduct of the*

21 AIR 2023 SC 1542.

respondent itself establishes that he is no more interested in employment what to talk of back-wages.

In support of its conclusion the court referred to the provisions of section 15(2) and section 16 of the Payment of Wages Act, 1936, wherein it has been provided that if an application is filed by an individual, there is a specific requirement of furnishing permanent address of the applicant as per Form-A. If an application is to be filed by a group of persons all the applicants are required to furnish their addresses as per Form-B annexed to Payment of Wages (Procedure) Rules 1937. Likewise, under the Employees' Compensation Act 1923, when an application is filed by a workman for compensation, he is required to furnish his residential address while filing an application in Form-F[22] In cases of compensation for fatal accident, a workman is required to furnish his permanent address on Form-A[23] appended with Workman Compensation Rules ,1924. Further under the Industrial Disputes Act, 1947, for initiating the proceedings under the Act, mentioning of addresses of the parties to the disputes is required as contained in Forms-I, J, and K appended with Industrial Dispute (Central) Rules, 1957. Again under section 20(2) of Minimum Wages Act, 1948, if an applicant files an application for payment of wages, he is required to mention his residential address as contained in Form-VI framed under the aforesaid Act. Likewise, under Payment of Gratuity Act 1972, when an employee makes an application for payment of gratuity, he is required to mention full address as per Form-I[24] appended with Payment of Gratuity (Central) Rules 1972.

In view of above, the court observed that if any party approaches any authority for a relief, the first thing required to be mentioned is his complete address. Mentioning of address of the representative is secondary as someone may like to appear in person. Even in Civil Procedure Code, 1908, Order VI Rule 14A provides that in every pleading, the parties are required to furnish their complete addresses and if there is any change it is also required to be informed. The directions were also issued in anticipation of the fact that the executive would soon enforce the four pending labour codes, which have consolidated several labour welfare legislations, namely: (i) Code on Wages, 2019; (ii) Occupational Safety, Health and Working Conditions Code, 2020; (iii) Industrial Relation Code, 2020; (iv) Code on Social Security, 2020. The court felt that, *"With the enforcement of four Labour Codes, we are hopeful that in future, when rules are framed, authorities will take care that parties to the dispute furnish their permanent addresses in the cases relating to labour law disputes".*

VIII EMPLOYEES STATE INSURANCE ACT, 1948

In The *Regional Director* v. *Endocrinology and Immunology Lab*[25] the Supreme Court was called upon to decide the date from which the respondent

22 See Rule 20.

23 See Rule 6(1)).

24 See Rule 7(1))

25 2023 Latest Caselaw 597 SC.

establishment, which was carrying on the business of a pathological laboratory, would be covered under the Employees State Insurance Act, 1948 (ESI Act).

In this case on inspection of the premises of the respondent's establishment which was carrying on the business of a pathological laboratory the Inspector found that 19 employees were working in the establishment. A show cause notice was, therefore, issued to the respondent. Thereupon, the respondent challenged coverage of the establishment by filing an application under sections 75 and 77 of the ESI Act before the Employees' Insurance Court. The court declared that the establishment of the respondent is a 'shop' as per section 1(5) of the ESI Act and the provisions of the ESI Act would extend to the respondent *w.e.f.* November 22, 2002. A review application filed by the respondent before the E.S.I. Court, was dismissed. Aggrieved by the order the respondent filed an appeal before the high court which was allowed. Against this order the E.S.I. Corporation filed an appeal before the Supreme Court.The main issue for determination before the Supreme Court was from which date the respondent establishment, which was carrying on the business of a pathological laboratory, would be covered under the ESI Act. In order to answer the court referred to the provisions of (i) Section 1(4)[26], (ii) Section 1(5)[27], (iii) definition of factory as defined under Section 2(12)[28] and, (iv) "manufacturing process" has been defined in Section 14 (AA) of the Act to give it a meaning as assigned to it in the Factories Act, 1948.[29] The court held that that the

26 S. 1 (4) provides that the Act shall apply to all factories (including factories belonging to the Government) other than seasonal factories. Proviso to the aforesaid section provides that this subsection does not apply to the factory or establishment belonging to or under the control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided for under the Act.

27 S.1(5)of the ESI Act provides that the appropriate government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government, can extend the provisions of the Act by issuing a notification in the official gazette, to any other establishment or class of establishments.

28 The term "factory" has been defined under s. 2(12) of the Act. The same as existed at the relevant time, included any premises and part thereof in which manufacturing process is being carried on with or without the aid of power. The only difference being that the number of persons required to be working in the establishment with the aid of power was 10 or more whereas in cases without the aid power, the number required was 20 or more. It did not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

29 The same is defined under Section 2(k) of the Factories Act, 1948 which is reproduced herein below:

2(k) defines "manufacturing process" to mean any process for -

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage or any other substance; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding; or

(v) constructing, reconstructing, repairing, refitting, finishing, or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage.

establishment of the respondent was not covered under the provisions of Section 1(4) of the ESI Act as it will not fall within the definition of a "factory", since no manufacturing process is carried on therein.

The court rejected the contention of the appellant that the respondent establishment should be deemed to be covered in terms of the Notification issued on May 27, 1976 read with the circular dated November 22, 2002 issued by the corporation and observed that admittedly the case of the corporation itself that the term "shop" as such has not been defined under the ESI Act. The court added that even as per the understanding of the corporation, pathological laboratories were not covered under the Act prior to the date in question. Further, fact remains that there is a notification issued on September 6, 2007 by the Government of Kerala covering medical institutions including pathological laboratories from that date. The aforesaid notification was issued in consultation with the corporation and with the approval of the Central Government. Thus, if the pathological laboratories were already covered under the Act, as is sought to be urged by the corporation, there was no occasion to issue such a notification. This fact clearly establishes that even as per the understanding of the corporation, pathological laboratories were not covered under the Act prior to that date.

J.P. Lights India v. *Regional Director E.S.I. Corporation, Bangalore*,[30] is another case on ESI Act. In the instant case the appellant-firm approached the ESI Court, by filing applications under Section 75 of the Employees State Insurance Act, 1948, assailing the notices of recovery and orders passed by the respondent-corporation, taking a plea that it had never employed more than eleven employees and was not using power and, therefore, the provisions of the ESI Act were not applicable to it. The ESI Court rejected the contention of the appellant-firm to the effect that it was not manufacturing any goods with the aid of power and, therefore, was not a factory as contemplated under the ESI Act, was turned down. The court also rejected another plea with regard to employing ten or more persons at a given point of time in the preceding 12 months, during which manufacturing process was carried out by the aid of power. Aggrieved by the said dismissal order, the appellant preferred an appeal before the high court, wherein the following two substantial questions of law were formulated, namely, (i) Whether the appellant would not come within the definition of Factory as defined under section 2(12) of the ESI Act? (ii). Whether the appellant business being carried on with the aid of power as defined under section 2(15)(C) would not be applicable or not?" Both the questions of law have been answered against the appellant and in favour of the respondent-corporation. Being aggrieved the appellant filed an appeal before the Supreme Court. The Supreme Court held that the appellant-firm is an establishment that has been using electrical energy for the sale and repair of electrical goods at its premises by using "power" as has been defined under section 2(15)(C) of the ESI Act, which again takes us back to the Factories Act, 1948, where the definition of "power" has been spelt out in section 2(g) and the

30 2023 LLR 949 (SC).

meaning ascribed to the said word is electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency. In view of this the court did not find any infirmity in the impugned judgment for interference.

IX CONCLUSIONS

An analysis of the aforesaid decisions leads us to the following conclusions:

i. The apex apex in *State of H.P.* v. *Sita Devi*[31] court made a significant contribution when it ruled that in law, there is no difference between a female regular employee and a contractual employee/ ad-hoc employee because a female employee whether regular, temporary or ad hoc, is a female for all intents and purposes and she has a matrimonial home, matrimonial life, and after conception, she has to undergo the entire maternity period, same treatment, pains and other difficulties which a regular employee has to undergo. Thus, there is no occasion for making discrimination and if, less period of maternity leave is granted to a contractual employee, it will amount to discrimination, in terms of the Constitution of India.[32] The court further observed that that the maternity leave is a fundamental human right of the respondent, which could not have been denied.

ii. The ruling of the Supreme Court in *Kavita Yadav* v. *The Secretary, Ministry of Health and Family Welfare Department*[33] that once an employee is entitled to maternity benefits under section 5(2) of the MB Act (i.e. completed 80 days of employment), *"such benefits can travel beyond the term of employment also. It is not co--terminus with the employment tenure*"[34] no doubt widens the scope of maternity benefit but at the same time it has shaken the foundation of the contract labour system. Further it has made clause (bb) of section 2 (oo)[35] of the Industrial Disputes Act, 1947 (ID Act) a useless appendage, where a woman is a "workman "under ID Act.

31 *Supra* note 1.

32 *Id*.,para 8.

33 *Supra* note 3.

34 *Id*.,Para 6 of the judgment.

35 2 [(oo) defines "retrenchment" to mean the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf.

[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein.

iii. The apex court[36] gave a beneficial interpretation in regard to payment of compensation under the Employees' Compensation Act, 1923 (EC Act) by holding that that where the accident took place prior to the amendment made in EC Act in 2009 providing for higher amount the compensation it should be calculated with reference to the date of the accident along with interest payable as per settled law, but added that if the amount calculated is less than the amount prescribed as on the date of the award of the tribunal the claimant will be entitled to higher of the two amounts.

iv. While dealing the rights of employees to get provident fund contribution and gratuity on compulsory retirement the apex court in *Jyotirmay Ray* v. *The Field General Manager Punjab National Bank*[37] allowed them to avail the benefit the regulations are silent on the contingency as to what would happen if an officer is met with a penalty of compulsory retirement and the Payment of Gratuity Act is silent on the aspect of forfeiture in case of compulsory retirement. In order to fill the gap left by the legislature in the Payment of Gratuity Act it is proposed that section 46 (6) of PG Act be amended to specifically include provisions relating to forfeiture of gratuity in case of compulsory retirement.

v. While dealing with employees' provident fund minimum wage the apex court.[38] Courts adopted cautious approach to deal when it rejected the contention of the employer that once the EPF Act contains a specific provision defining the words 'basic wage' under section 2(b), then there was no occasion for the appellant to expect the Court to have travelled to the Minimum Wages Act, 1948, to give it a different connotation or an expansive one and an amendment to the contrary made with retrospective effect is not only violative article 14, but also of article 21 of the Constitution.

vi. Like provident funds the apex court also made a significant contribution on the Employees' State Insurance Act 1948 (EC Act) when it clarified that the liability of the employer to pay the compensation under the 4-A of the EC Act arises from the date of accident and not from the date of the order passed by the Commissioner. Further the liability to pay the interest on the amount of compensation due and payable would be under Section 4A(3)(a) and the penalty would be leviable under Section 4A(3)(b) of EC Act.

vii. Another notable decision relates to Factories Act ,1948, in *Security Printing & Minting Corporation of India Ltd. Etc.* v. *Vijay D. Kasbe etc.*[39] the apex court clarified that persons who are not holders of civil posts nor in the civil services of the state but who are governed only by the (Factories Act,) 1948 Act, may be made to work for six days in a week with certain limitations

36 *K. Sivaraman* v. *P. Sathishkumar, supra* note 5.

37 *Supra* note 8.

38 *Assistant Provident Fund Commissioner* v. *G4s Security Solutions (India) Ltd.,* 2023) Live Law (SC) 722.

39 *Supra* note 16.

as to weekly hours under Section 51, weekly holidays under Section 52, daily hours under section 54, *etc*. Workers covered by Factories Act,1948 do not enjoy the benefit of automatic wage revision through periodic Pay Commissions like those in government service. Persons holding civil posts or in the civil services of the State enjoy certain privileges and hence, the claim made by the respondents ought to have been tested by the Tribunal and the High Court, in the proper perspective to see whether it is an attempt to get the best of both the worlds.

viii. The Supreme Court in *Creative Garments Ltd v. Kashiram Verma,*[40] *deprecated* the tendency of workers and employees involved in labour disputes to provide merely the address of labour unions or authorised representatives because "*effective relief can be granted to a worker only if the permanent address of the workman is furnished in the pleadings .The Court, therefore ruled that in future all the cases to be filed and in all the pending cases, the parties shall be required to furnish their permanent address(es)".*

40 *Supra* note 39.