



cyril amarchand mangaldas  
ahead of the curve

# the employment quarterly

July to September, 2021

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Welcome to the Employment Quarterly – our quarterly newsletter on key employment and labour updates.

This issue covers the recent developments in relation to the Labour Codes published by the Government last year, including updates on the draft rules published by various State Governments under the Labour Codes. The key orders, advisories and notifications released by the Central Government and certain State Governments to deal with the spread of COVID-19, and guidelines on the protocols to be followed by the employers in view of the opening of the workplaces. Further, relaxations offered under the Employees' State Insurance Act, 1948 in light of the pandemic, have also been covered.

In addition, this issue also discusses key legislative changes introduced at the Central and State levels, including inter alia extension of Atal Beemit Vyakti Kalyan Yojana, notification of SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, steps taken by various State Governments towards ease of doing business and simplifying compliance requirements, etc. Proposed legislative changes such as draft rules to amend the the Delhi Shops and Establishments Rules, 1954, and tabling of the bill for the Tamil Nadu Shops and Establishments (Amendment) Act, 2021, have also been captured.

Besides legislative updates, this issue also discusses key developments in labour laws brought forth by various judicial pronouncements. We have summarised the key decisions of the Supreme Court of India and of various High Courts, dealing with issues pertaining to inter alia vicarious liability of managers, directors for offences committed by a company, prevention of sexual harassment at the workplace, reinstatement with back wages in cases of non-compliance with retrenchment conditions, etc.

We hope you will find the above to be useful. Please feel free to send any feedback, suggestions or comments to [cam.publications@cyrilshroff.com](mailto:cam.publications@cyrilshroff.com).

Regards,  
Cyril Shroff

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## LEGISLATIVE UPDATES

### I. Key Central Legislative Changes

#### A. Employees' State Insurance Corporation notified the COVID-19 Relief Scheme

The Employees' State Insurance Corporation (**ESIC**), by way of a notification dated August 11, 2021, notified the ESIC COVID-19 Relief scheme (**Scheme**), under Section 19 of the Employees' State Insurance Act, 1948 (**ESI Act**).

This Scheme is a welfare measure for employees covered under the ESI Act, referred to as insured persons (**IP**). It provides that in the case of death of an IP due to COVID-19, the eligible dependant family members of the IP will be paid periodic payments, which will get deposited into their bank accounts directly.

For the purposes of eligibility, to avail the benefits under this Scheme; (A) the deceased IP must have been (i) registered on the ESIC online portal at least 3 (three) months prior to the date of the COVID-19 diagnosis, resulting in their death; (ii) in employment on the date of the diagnosis of COVID-19, and (B) contributions for at least 70 (seventy) days should have been paid or be payable in respect of such IP during a maximum period of 1 (one) year immediately preceding the diagnosis of COVID-19, resulting in death. The notification also enumerates the eligible dependant family members and the same includes (but is not limited to) the spouse of the deceased IP, widowed mother of the deceased IP.

This Scheme shall be effective for a period of 2 (two) years, with effect from March 24, 2020. The payment of the relief amount would be provided as per the manner listed under the Scheme, with a minimum of INR 1,800 (Indian Rupees Eighteen Hundred) guaranteed per month.

#### B. SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021 (New Employee Benefit Regulations) notified

The New Employee Benefit Regulations, which replace the SEBI (Share Based Employee Benefits) Regulations, 2014 (**SEBI Regulations, 2014**), and the SEBI (Issue of Sweat Equity) Regulations, 2002, were notified on August 13, 2021. The New Employee Benefit Regulations govern all share-based employee benefit schemes

dealing in securities, including employee stock options, employee share purchase, stock appreciation rights, general employee benefits, retirement benefits and sweat equity. Further, the schemes would apply to employees who are exclusively working for a company (or exclusively working for a group company of such company).

The New Employee Benefit Regulations have expanded the term "employee" to also include employees who are working on a non-permanent basis, exclusively with a group company or an associate company of a listed company. Accordingly, non-permanent employees would also be eligible to participate in such schemes as opposed to the SEBI Regulations, 2014, which provided that only permanent employees could participate in equity-based schemes of a listed company. Further, for stock options, the minimum vesting period of 1 (one) year is not applicable and for employee stock purchase scheme, the mandatory minimum 1 (one) year lock-in period on shares is not applicable in the event of death of an employee or if the employee suffers any permanent disability. Additionally, options can continue to vest as per the original vesting schedule in case of retirement, subject to the companies' policies (earlier options did not vest post the last date of employment).

Under the New Employee Benefit Regulations, companies may, by special resolution of their shareholders, vary the terms of the schemes offered, if such variation is not prejudicial to the interests of the employees. However, changes to the scheme, to meet the regulatory requirements would not require shareholders' approval.

#### C. Extension of Atal Beemit Vyakti Kalyan Yojana till June 30, 2022

The Atal Beemit Vyakti Kalyan Yojana (**ABVKY**) scheme was introduced by the ESIC on a pilot basis for a period of 2 (two) years in 2018, as a welfare measure to provide cash compensation to certain employees who lost their employment and remained unemployed for a specified period of time. Please refer to our Newsletter for the [April-June 2021](#) quarter for further details.

By way of the latest notification dated August 11, 2021, the ABVKY scheme has now been extended up to June 30, 2022.

## II. KEY STATE LEGISLATIVE CHANGES

### A. Renewal of registration/ licence under various legislations

#### 1. Himachal Pradesh

For ease of doing business in Himachal Pradesh, the Government of Himachal Pradesh vide notification dated July 30, 2021, has established a system whereby once the employers upload their application for renewal of registrations/ licences and pay the required fees online, the said registrations/ licences will be deemed to be automatically renewed under the legislations mentioned below:

- (i) The Factories Act, 1948
- (ii) The Contract Labour (Regulation and Abolition) Act, 1970;
- (iii) The Himachal Pradesh Shops & Commercial Establishment Act, 1969; and
- (iv) The Inter State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, 1979.

#### 2. Andhra Pradesh

Similar to the change brought about in Himachal Pradesh, the Government of Andhra Pradesh, vide a government order dated August 13, 2021, has now established a system whereby upon the submission of self-certification (and payment of fees) online by the employer, the registration under the Andhra Pradesh Shops and Establishments Act, 1988, will be deemed to be automatically renewed.

### B. Amendment to Madhya Pradesh Child Labour (Prohibition and Regulation) Rules, 1993

In relation to the prohibition of employment of children and adolescents, the Government of Madhya Pradesh, vide notification dated August 02, 2021, has amended the Madhya Pradesh Child Labour (Prohibition and Regulation) Rules, 1993 (**1993 Rules**) vide the said notification, primarily, the following key changes have been brought in:



- (i) title of the 1993 Rules has been amended to Madhya Pradesh Child and Adolescent Labour (Prohibition and Regulation) Rules, 1993;
- (ii) the age limit for a person to be considered as a child, has been amended, and now, a person who has not completed the fourteenth year of his age would be considered as a child, as opposed to the earlier requirement of that person having not completed the fifteenth year of his age;
- (iii) the age limit for a person to be considered as an adolescent has been amended. As a consequence, a person who has completed the fourteenth year of his age, but has not completed the eighteenth year of his age would be considered as an adolescent, as opposed to the earlier requirement of that person having completed the fifteenth year of his age and not the eighteenth year of his age.

Further, the said notification also provides for certain exceptional situations wherein a child may be allowed to help (i) their family in the family's enterprise/ where the family is the occupier (i.e. a person who has ultimate control over the affairs of the establishment or a workshop); or (ii) work as an artist, provided certain precautionary actions are undertaken (such as, ensuring that the child is not exposed to any hazardous process, etc).

## C. Labour Department, Delhi permits establishments to maintain mandated records in electronic form

In order to simplify the existing statutorily mandated compliances relating to documentation requirements under certain labour legislations such as the Industrial Disputes Act, 1947, the Minimum Wages Act, 1948, the Government of National Capital Territory of Delhi, vide an order dated July 5, 2021, has introduced a facility for maintenance of statutory registers and records in an electronic form by covered establishments. Further, under the said order, instead of displaying multiple notices as required under each applicable labour legislation, employers may now display a common notice, setting out the prescribed requirements under the applicable legislations (such as minimum rates of wages under the Minimum Wages (Central) Rules, 1950, display of periods and hours of work, holiday and payment of unclaimed wages under the Industrial Employment (Standing Orders) Central Rules, 1946, etc.).

## D. Government of Karnataka amends the working hours for employees covered under the Karnataka Shops and Commercial Establishments Act, 1961

The notification issued under the Karnataka Shops and Commercial Establishments Act, 1961 (**KSEA**), on January 2, 2021, permitted all shops and commercial establishments in Karnataka, employing 10 (ten) or more employees, to operate on a 24x7 basis, subject to certain conditions, one of which was that employees cannot be required to work for more than 8 (eight) hours in a day (**Working Hour Limit**). However, since the KSEA stipulates the maximum daily working hours to be 9 (nine), the Government of Karnataka vide notification dated July 20, 2021, has now modified the Working Hours Limit to 9 (nine) hours, to align the same with the KSEA.

## E. Ministry of Labour and Employment (MoLE) extends applicability of the ESI Act to municipal corporations established under Central/ State Legislations

The MoLE vide notification dated July 28, 2021, has extended the provisions of the ESI Act to municipal

corporations established under central/ state legislations, provided such establishments employ or employed 10 (ten) or more persons on any day of the preceding 12 (twelve) months. The aforesaid notification covers only the notified regions and areas in Delhi, and also covers those employees who are engaged on casual and contractual basis.

## F. Guidelines on statutory bonus issued by the Government of West Bengal

The Government of West Bengal, vide notification dated September 15, 2021, has made an appeal to employers to follow certain guidelines for settling legitimate dues of workers in respect of payment of bonus under the Payment of Bonus Act, 1965 (**Bonus Act**), in view of the Durga Puja festival for the year 2021.

The said notification *inter alia* provides the following:

- (i) All establishments where a bonus was paid in the previous year, should see that the rate of bonus payable this year is not lower than that of last year. However, where there is a dispute, the same may be settled amicably through negotiations;
- (ii) In case an employee is not covered under the Bonus Act, employers should consider payment of an ex-gratia amount to such employee;
- (iii) All employees, whether in casual employment or re-employed after retirement or employed through contractors and have worked for not less than 30 (thirty) days during the year, should be paid a bonus;
- (iv) The employers who are in default towards payment of bonus for the previous years have also been requested to make such payments this year, along with the payment of bonus for the current year.

### III. RELAXATIONS IN RELATION TO COVID-19

In light of the subsisting pandemic and the widespread second wave of COVID-19 in India, the Central and State Governments have taken certain precautionary and containment measures to curb the continuous spread of COVID-19 and have taken steps to speed up the vaccination process. This newsletter aims to cover the key employment law updates that pertain to the captioned matter. Given that the situation is evolving fast, it is advisable to refer to the latest notifications that may be issued in this regard, which are as follows:

#### A. Guidelines/ Relaxations under Central Legislations

By way of an order dated September 28, 2021, the Ministry of Home Affairs has *inter alia* directed that protocols in relation to workplaces, such as work from home, staggered working hours, social distancing, etc., continue to be followed.

#### B. Guidelines/relaxations in Certain Key States

##### 1. Maharashtra

Under the guidelines dated August 11, 2021, issued by the Government of Maharashtra (**Maharashtra Guidelines**), private establishments, where employees and management are fully vaccinated (i.e., they have received two doses of the COVID-19 vaccine), are permitted to work in full capacity. In cases where all employees are not fully vaccinated, such establishments may operate at a lower capacity, i.e., at a maximum of 25% (twenty-five percent) of the total employee strength per shift, though the establishment may be open for 24 (twenty-four) hours, thereby facilitating multiple shifts. Under the Maharashtra Guidelines, employers are required to keep a list of employees in their establishment who have received both the doses of the COVID-19 vaccine and 14 (fourteen) days have lapsed since receiving the second dose of the vaccine, and also to keep hard copies of valid final COVID-19 vaccination certificates, along with photo identity cards of the employees. These records must be maintained and made available to the competent authority in case of verifications on demand.

##### 2. Karnataka

The order of the Government of Karnataka, dated September 24, 2021, sets out broad guidelines for surveillance, containment and caution. In addition, the local municipal authority in Bangalore, i.e., the Bruhat Bengaluru Mahanagara Palike (**BBMP Circular**), casting a duty on employers to ensure 100% (hundred percent) vaccination of their working staff and for employees to maintain proof of vaccination status at the workplace and produce the same when requested. It may be noted that while there is no bar on establishments to operate in full capacity, employers are advised to be mindful of the conditions specified hereinabove.

### IV. STATUS ON LABOUR CODES

The following states have published draft rules under the labour codes, i.e., under the Code on Wages, 2020 (**Wage Code**), the Code on Social Security, 2020 (**Social Security Code**), the Industrial Relations Code, 2020 (**IR Code**), and the Occupational Safety, Health and Working Conditions Code, 2020 (**OSH Code**).

##### 1. Odisha

The Government of Odisha, vide notification dated July 1, 2021, has released draft rules on Odisha Occupational Safety, Health and Working Conditions Rules, 2021 (**Odisha OSH Rules**), under the OSH Code for public comments and objections, if any, for a period of 45 (forty-five) days. It may be noted that it is still in the draft stage and has not been notified. The Odisha OSH Rules will subsume *inter alia* (i) the Odisha Factories Rules, 1950, (ii) the Odisha Contract Labour (Regulation and Abolition) Rules, 1975, (iii) the Odisha Building and Other Construction Workers (Regulation of Employment and Conditions of Services) Rules, 2002, and the extant rules would stand repealed as on the date of notification of the Odisha OSH Rules.

## 2. Himachal Pradesh

The Government of Himachal Pradesh, *vide* notification dated July 07, 2021, released the draft rules on Wages (Himachal Pradesh) Rules, 2021 (**HP Wage Rules**), under the Wage Code for public comments and objections, if any, for a period of 45 (forty-five) days. It may be noted that it is still in the draft stage and has not been notified. The HP Wage Rules aims to subsume *inter alia* (i) Himachal Pradesh Payment of Wages Rules, 1979; (ii) the Himachal Pradesh Payment of Wages (Procedure) Rules, 1979, and the extant rules would stand repealed as on the date of notification of the HP Wage Rules.

## 3. Jharkhand

The Government of Jharkhand, *vide* notification dated July 14, 2021, has released the draft rules on Wages (Jharkhand) Rules, 2021 (**Jharkhand Wage Rules**), under the Wage Code and the Draft Industrial Relations (Jharkhand) Code Rules, 2021 (**Jharkhand IR Rules**), under the IR Code, respectively, for public comments and objections, if any, for a period of 30 (thirty) days. It may be noted that these are still in the draft stage and have not been notified. The Jharkhand Wage Rules proposes to subsume *inter alia* (i) Payment of Wages (Jharkhand) Rules, 1937, (ii) Minimum Wages (Jharkhand) Rules, 1951. The Jharkhand IR Rules proposes to subsume *inter alia* (i) the Industrial Dispute (Jharkhand) Rules, 1961; (ii) the Industrial Employment (Standing Order) Jharkhand Rules, 1947, and the extant rules would stand repealed as on the date of notification of the Jharkhand Wage Rules and Jharkhand IR Rules.

## 4. Rajasthan

The Government of Rajasthan, *vide* notification dated July 19, 2021, has released the draft rules on Wages (Rajasthan) Rules, 2021 (**Rajasthan Wage Rules**), under the Wage Code for public comments and objections, if any, for a period of 45 (forty-five) days. It may be noted that it is still in the draft stage and has not been notified. The Rajasthan Wage Rules aims to subsume *inter alia*: (i) the Rajasthan Payment of Wages Rules, 1961, (ii) the Rajasthan Payment of Wages (Procedure) Rules, 1961, (iii) the Rajasthan Minimum Wages Rules, 1959, and the extant rules



would stand repealed as on the date of notification of the Rajasthan Wage Rules.

## 5. Maharashtra

The Government of Maharashtra, *vide* notification dated September 03, 2021, has released the draft rules on Maharashtra Code on Wages Rules, 2021 (**Maharashtra Wage Rules**), under the Wage Code; and Maharashtra Code on Social Security Rules, 2021 (**Maharashtra Social Security Rules**), under the Social Security Code, respectively, for public comments and objections, if any, for a period of 45 (forty-five) days. It may be noted that these are still in the draft stage and have not been notified. The Maharashtra Wage Rules aims to subsume (i) Maharashtra Minimum Wages Rules, 1963, and (ii) the Maharashtra Payment of Wages Rules, 1963. The Maharashtra Social Security Rules aims to subsume *inter alia* (i) the Maharashtra Maternity Benefit Rules, 1965, and (ii) the Payment of Gratuity (Maharashtra) Rules, 1972, and the extant rules would stand repealed as on the date of notification of the Maharashtra Wage Rules and Maharashtra Social Security Rules.

## 6. Haryana

The Government of Haryana, *vide* notification dated September 16, 2021, has released the draft rules on Social Security Haryana Rules, 2021 (**Haryana Social Security Rules**), under the Social Security Code; the Industrial Relations (Haryana) Rules, 2021 (**Haryana IR Rules**), under the IR Code; the Wages (Haryana) Rules, 2021 (**Haryana Wage Rules**), under the Wage Code,

respectively, for public comments and objections, if any, for a period of 45 (forty-five) days. It may be noted that these are still in the draft stage and have not been notified. The Haryana Social Security Rules aims to subsume *inter alia* the (i) Haryana Payment of Gratuity Rules, 1972, and (ii) the Haryana Maternity Benefit Rules, 1967. The Haryana IR Rules aims to subsume *inter alia* (i) Industrial Disputes (Punjab) Rules, 1958, and (ii) the Industrial Employment (Standing Orders) Rules, 1978. The Haryana Wage Rules aims to subsume *inter alia* (i) Punjab Minimum Wages Rules, 1950, and (ii) the Punjab Payment of Wages Rules, 1937, and the extant rules would stand repealed as on the date of notification of the Haryana Social Security Rules, Haryana IR Rules and Haryana Wage Rules.

## V. PROPOSED STATE LEGISLATIVE CHANGES

### A. Labour Department, Delhi, Publishes Draft Delhi Shops and Establishments (Amendment) Rules, 2021, (2021 Draft Rules)

The Labour Department, Delhi, on September 24, 2021, published the 2021 Draft Rules, which seeks to amend the Delhi Shops and Establishments Rules, 1954 (**1954 Rules**), formulated under the Delhi Shops and Establishments Act, 1954 (**1954 Act**). The 2021 Draft Rules are available for public comments and objections, for a period of 15 (fifteen) days from the date of publication of the notification. The 2021 Draft Rules have majorly transitioned the manner in which employers are required to complete compliances under the 1954 Act and the 1954 Rules, from an offline mode to an online mode. The key proposed amendments are: (i) the occupier must apply for registration through the shops and establishment online portal of the Labour Department within 90 (ninety) days from the commencement of work, (ii) issuance of registration certificate in an online form, (iii) the occupier must notify the chief inspector of any change in the details pertaining to their establishment, online, through the shops and establishment online portal of the Labour Department.

### B. The Legislative Assembly of Tamil Nadu tables Bill to ensure that shops and establishments provide seating facilities for employees

The Government of Tamil Nadu, *vide* a notification dated September 6, 2021, has issued the Tamil Nadu Shops and Establishments (Amendment) Act, 2021, whereby a new section dealing with “seating facilities” has been introduced. It provides that the premises of every establishment shall have suitable seating arrangements for all employees, so that they may take advantage of any opportunity to sit, which may occur in the course of their work and thereby avoid ‘on their toes’ situation throughout the working hours.

## JUDICIAL UPDATES

### Supreme Court of India

#### A. Reinstatement with back wages, not automatic for non-compliance of retrenchment conditions

In the case of **Madhya Bharat Gramin Bank v. Pancham Lal Yadav (2021 LLR 681 Supreme Court)**, the Supreme Court has observed that the violation of Section 25F (retrenchment conditions) of the Industrial Disputes Act, 1947 (**ID Act**), would not automatically result in the reinstatement of the workman with full back wages.

In this case, the workman was a daily wager and his service was terminated by the management of the bank. The workman challenged the termination of his employment by raising an industrial dispute before the Central Government Industrial Tribunal (**CGIT**). The CGIT decided in favour of the bank on the grounds that the workman was not a regular employee and that he was unable to produce any document evidencing that he had continuously worked for more than 240 (two hundred and forty) days in a calendar year at the bank.

The workman subsequently filed a writ petition before Madhya Pradesh High Court, which overturned the verdict of the CGIT and directed reinstatement of the workman with full back wages, on the ground that the CGIT did not consider a vital piece of evidence while concluding that the respondent did not work continuously for 240 (two hundred and forty) days in a calendar year. Later, an appeal was filed by the management of the bank, which was dismissed by the Division Bench. A further appeal was made to the Supreme Court.

Upon consideration of all the issues and facts, the Supreme Court held that non-compliance of conditions under Section 25F of the ID Act by an employer, including non-payment of retrenchment compensation and giving notice to a workman, would not automatically lead to reinstatement with back wages and that compensation *in lieu* of reinstatement would be an appropriate relief. Accordingly, the Supreme Court directed the bank to pay an amount of INR 5,00,000 (Indian Rupees Five Lakh) to the workman.



#### B. Managers, directors cannot be held vicariously liable for offences committed by a company

The Supreme Court in **Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd (Criminal Appeal Nos.1047-1048/2021 Supreme Court)** has held that company officials like chairman, managing director, director, etc., cannot be held vicariously liable under the criminal law for offences committed by the company, unless there are specific allegations and averments against them with respect to their individual role or there are specific provisions imposing vicarious liability on them under the concerned statutes.

In this case, Ravindranatha Bajpe (the **Appellant**) filed a private complaint against thirteen individuals in the Court of the learned Judicial Magistrate, First Class, Mangalore, for offences punishable under the Indian Penal Code. Accused nos. 1 and 6 were companies, while accused nos. 2 to 5 and 7 to 13 were top officers or employees of the company. These crimes pertained to criminal trespass, mischief causing loss to property, criminal conspiracy and criminal intimidation. The Appellant claimed that the accused companies and its officers conspired to trespass his property to lay a pipeline beneath, and in the process, they demolished his compound wall and also cut down his trees.

Upon hearing the matter, the Supreme Court observed that there were no specific allegations regarding the roles attributed to the accused officials, except a bald statement that all of them had connived with each other. It held that merely because respondent nos. 2

to 5 and 7 & 8 were the Chairman/ Managing Director/ Executive Director/ Deputy General Manager/ Planner & Executor of the accused companies, they could not automatically be held to be vicariously liable, unless there were specific allegations and averments against them with respect to their individual roles. It further held that only if there was sufficient evidence of the active role of the officials of the company, along with *mens rea*, could they be made liable along with the company. Further, it noted that vicarious liability of the officials of the company could not be automatically imputed in the absence of any statutory provision to that effect.

### **C. Employee who made false declaration/ suppressed involvement in criminal case not entitled to appointment/ continue in service as a matter of right**

The Supreme Court held that an employee who made false declaration/ suppressed involvement in a criminal case is not entitled to appointment/ continue in service as a matter of right. The Supreme Court observed that such an employee cannot be relied upon in the future and thus the employer could not be forced to continue with such an employee.

In *Rajasthan Rajya Vidyut Prasaran Nigam Limited v. Anil Kanwariya* (CA 5743-5744 of 2021 Supreme Court), the employee of Rajasthan Rajya Vidyut Prasaran Nigam Limited had submitted a declaration during document verification that there were not any criminal cases pending against him and neither had he been convicted by any court of law in any criminal case. However, subsequently the employer discovered that the employee had been previously convicted in a criminal case and thus proceeded to terminate his employment. The Rajasthan High Court allowed the writ petition and quashed the order of termination. Further, it also directed the reinstatement of the employee with all consequential benefits. Thereafter, the employer filed an appeal before the Supreme Court.

The Supreme Court stated that the issue was regarding the credibility and/ or trustworthiness of such an employee, who at the initial stage of employment for a post, had made a false declaration or suppressed a material fact. This would interfere with the trust of the

employer, and thus an employer should not be forced to continue with such an employee. Therefore, the Supreme Court concluded that such an employee could not claim appointment and/ or continue to be in service as a matter of right.

### **Karnataka High Court**

#### **A. Where service rules exist, the employer becomes duty bound to proceed under the service rules and the report of internal committee becomes a fact-finding report**

While examining the provisions under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (**POSH Act**), the Karnataka High Court in the case of *Arabi U. v. The Registrar, Mangalore University, Mangalagangothri and Ors* (Writ Petition Number 15070 of 2020 Karnataka High Court), held that the decision to impose penalty of dismissal without conducting an inquiry, in accordance with the service rules is clearly an act without jurisdiction.

As per the provisions of the POSH Act, except in cases where the service rules exist, if the internal committee arrives at a conclusion that the allegation against the respondent has been proved, it shall recommend to the employer to take any action, including a written apology, warning, reprimand or censure, withholding of promotion, withholding of pay rise or increments, terminating the respondent from service or undergoing a counselling session or carrying out community service.

Referring to the service rules applicable to Mangalore University, the Karnataka High Court noted that since there were no separate disciplinary rules for these allegations, the statutes governing classification, control and appeal rules of employees of Mangalore University would be applicable, which do not provide for any penalty against an employee, except after following the procedure stipulated in such rules. Therefore, the Karnataka High Court held that the decision to impose penalty of dismissal was clearly an act without jurisdiction, as no inquiry, as contemplated under the service rules, was ever initiated against the petitioner. Accordingly, the Karnataka High Court

directed that no penalty can be imposed against the petitioner on the basis of the report submitted by the internal committee, without holding an inquiry under the service rules.

In light of the above, the Karnataka High Court stated that where service rules exist, the report of internal committee becomes a fact-finding report or a preliminary report, with regard to the allegation of sexual harassment and the employer becomes duty bound to proceed under the service rules before imposing any major penalty.

## Calcutta High Court

### A. If the aggrieved woman decides to not pursue and initiate a complaint of sexual harassment, the IC cannot commence any proceedings or recommend the employer to take cognisance

In the case of **Angshuman Kar v. State of West Bengal & Ors. (WPA No. 8081 of 2020 and WPA No. 11995 of 2021)**, the petitioner was a professor in the Department of English and Culture Studies in the University of Burdwan. Based on the recommendations issued by the internal committee of the University, the petitioner was debarred from conducting official activities of the University and a disciplinary proceeding was instituted against him by the University, based on allegations that he had sexually harassed a student over a period of time and thereafter intimidated her so that she did not lodge any complaint against him. Being aggrieved by the same, the petitioner approached the Calcutta High Court by filing a writ petition *inter alia* praying for setting aside the order of debarment issued against him by the University.

The petitioner contended that, as required under the POSH Act, the student did not lodge a formal complaint against him, and thus the initiation of proceedings against him was bad *ab initio*. Further, he stated that the allegations surfaced long after the limitation period under the POSH Act since the student had graduated in 2020.

The Calcutta High Court noted that the report of the internal committee revealed that the proceedings under the POSH Act had been initiated by relying on certain

emails and audio clips submitted by certain student organisations and the students' union. It noted that no formal complaint of sexual harassment, as required under Section 9 of the POSH Act, had been made by the alleged victim to the concerned authorities and the verification of the aforesaid documents/ media was not done by the internal committee. In fact, as the court noted, the student wanted to bury the incident without any intention to proceed with the matter, which was evident from the fact that she had also written to the internal committee, stating that she did not wish to lodge a formal or written complaint about the alleged incident of sexual harassment. All these actions indicate a desire to not press sexual harassment charges. Further, it noted that the time limit under the POSH Act is important to check stale allegation being levelled against persons with a view to harass them, ensure that there is no tampering of the evidence or intimidation of witnesses. The court also considered the disciplinary proceedings against the petitioner to be one without application of mind. It pointed out that the University ought to have formed an independent opinion by checking the corresponding law as to whether it was permissible to initiate proceeding in such a situation. Thus, the court directed that any steps taken by the University on the recommendation of the internal committee needs to be set aside. The Court, however, held that University could proceed against the petitioner based on its service rules, without relying on the recommendations of the internal committee.

## Himachal Pradesh High Court

### A. Non-adherence to national guidelines on crèche in violation of Maternity Benefit Act, 1961

In the case of **Bahra University, Shimla v. Dr Pooja Bhardwaj and Others (CWP Number 2955 of 2019 Himachal Pradesh High Court)**, the respondent claimed her salary for the months of maternity leave and bonus under the Maternity Benefit Act (MBA) in the last month of her scheduled maternity leave were denied, prompting her to file a complaint regarding the same with the local labour authorities. Additionally, when the respondent sought to re-join employment, she was not provided crèche facilities, as required under the MBA. On a complaint filed by the respondent in this

regard, the authorities conducted an inspection and noted that while the appellant did have a creche, it did not conform to the National Minimum Guidelines for Setting Up of Crèche Facilities as framed by the Ministry of Woman and Child Development, Government of India (**Guidelines**). Upon a second inspection, however, the authorities noted that the appellant had met the Guidelines post the first inspection report issued by it.

Taking into consideration the said violations, the Himachal Pradesh High Court emphasised on a woman's entitlement to maternity benefit as provided under the MBA, by directing the payment of salary for the duration of maternity leave as well as maternity bonus. The court also directed that the respondent be reinstated to the post, which she held prior to proceeding for maternity leave and that creche facility be made available to her.

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