cyril amarchand mangaldas
ahead of the curve

the employment quarterly

January to March, 2022

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Legislative Updates

Judicial Updates

Welcome to the Employment Quarterly – our quarterly newsletter on key employment and labour updates for the January-March 2022 period.

This issue covers key legislative updates at the Central and State levels, such as notification of the Haryana State Employment of Local Candidates Act, 2021, and rules thereunder; clarification on coverage of NEEM trainees under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act); employment-related incentives under the new Information Technology (IT)/ Information Technology-Enabled Services (ITeS) Policy 2022-27, published by the Government of Gujarat; and amendments to the Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017.

Additionally, this issue provides an update on the recent draft rules under the Labour Codes, published by various State Governments, and also includes an overview[1] of key orders, letters and advisories released by the Central Government and certain State Governments in response to rising COVID cases.

Besides legislative updates, this issue also focusses on key developments in labour laws, brought forth by various judicial pronouncements. We have analysed key decisions of the Supreme Court and the various High Courts, *inter alia*, dealing with issues pertaining to requirement of *mens rea* for imposition of damages under the EPF Act, validity of retrospective withdrawal of employee benefits, domestic enquiries being conducted based on vague charges, grant of maternity benefits to ad-hoc employees beyond the period of employment, etc.

We hope you will find this edition of the newsletter to be useful. Please feel free to send any feedback, suggestions or comments to cam.publications@cyrilshroff.com.

Regards,
Cyril Shroff

Managing Partner
Cyril Amarchand Mangaldas

India's leading law firm

[1] Please note the COVID-19 updates have been captured for the period from January 1, 2022 up to April 25, 2022.

LEGISLATIVE UPDATES

I. Key Central Legislative Updates

A. Employee Provident Fund Organisation ("EPFO") declares that trainees engaged under the National Employability Enhancement Mission ("NEEM") are to be considered as employees under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("EPF Act")

The EPFO has issued a circular dated February 24, 2022 (**Circular**), clarifying that trainees engaged under the All India Council for Technical Education [National Employability Enhancement Mission (NEEM)] Regulations, 2017 (**NEEM Regulations**), are not exempted from the definition of "employee" under Section 2(f) of the EPF Act. This would mean that provident fund contributions would be payable in respect of trainees engaged by employers under the NEEM Regulations. The Circular also states that Regulation 15.2 of the NEEM Regulations, which provides that the remuneration/ stipend paid to NEEM trainees will not attract any statutory deductions or payments i.e., the contributions made under the EPF Act or the Employees' State Insurance Act, 1948, etc., is ultra vires the EPF Act.

It is pertinent to note that the EPFO had previously issued an internal communication on February 12, 2019, directing the Additional Central Provident Fund Commissioner, Pune, to take action as prescribed under the EPF Act to treat NEEM trainees as employees under the EPF Act. However, there was still some ambiguity on whether NEEM trainees were required to be covered under the EPF Act. The Circular has now removed all ambiguity, by clarifying that NEEM trainees will be covered under the EPF Act.

The Circular also states that the previous circular issued by the EPFO on October 12, 2015, which sets out the criteria to distinguish between student trainees and employees as defined under the EPF Act would continue to apply as regards trainees generally, and the question of whether an individual was an employee or a trainee would have to be determined on a case to case basis.

B. Central Government relaxes procedures regulating training of apprentices

The Ministry of External Affairs, on its website, published an update, stating that the Central Government has relaxed certain procedures applicable to apprentice training in India, to incentivise companies to implement large-scale apprenticeship programmes.

In India, the Apprentices Act, 1961 (**Apprentices Act**), together with the schemes formulated to encourage training of apprentices (including the National Apprenticeship Promotion Scheme (**NAPS**)), regulate the training of apprentices in establishments and industries covered under the Apprentices Act.

The key relaxation to the apprentice training procedures seeks to ensure seamless financial support to establishments, by simplifying the process for establishments claiming reimbursement from the Government (the Government of India, under the NAPS, reimburses establishments undertaking apprenticeship programmes). In this regard, establishments are no longer required to upload proof of stipend payment on the apprenticeship portal if the payment is done through a payment gateway. Also, earlier, establishments would not receive stipend reimbursements in the last quarter (as per a clause in NAPS), until an apprentice appeared for assessment. This clause has now been removed.

II. Key State Legislative Updates

A. Developments in relation to the Haryana State Employment of Local Candidates Act, 2020 ("Local Candidates Act")

The Government of Haryana, by way of a notification dated January 10, 2022, published the Haryana State Employment of Local Candidates Rules, 2021 (**Local Candidates Rules**), under the Local Candidates Act, which along with the Local Candidates Act came into force on January 15, 2022. Further, the Labour

Department in Haryana on January 13, 2022, designated a portal on which employers and employees are required to register themselves in accordance with the Local Candidates Act, read with the Local Candidates Rules.

The Local Candidates Rules define a 'domiciled person' to mean a bona fide resident of Haryana, satisfying the conditions specified by the state government from time to time and having Parivar Pehchan Patra (PPP) issued under the Haryana Parivar Pehchan Act, 2021.

The Local Candidates Rules provide for the following key matters: (i) every employer shall compulsorily register all employees who receive gross monthly salary or wages of not more than INR 30,000 (Indian Rupees Thirty Thousand), on the designated portal i.e., https://local.hrylabour.gov.in; (ii) every employer shall furnish a quarterly report, with respect to the local candidates employed during the previous quarter, by the 20th (twentieth) of the following quarter, on the designated portal in the prescribed form; and (iii) every employer shall maintain records and make available for inspection to the competent authority, as the case may be, in digital form, *inter alia* (a) the number of employees (regular, temporary, contractual, casual, and fixed term employees) as on the last date of every quarter, (b) the occupational/ post-wise details of employees as on the last date of every quarter, and (c) the number of local candidates recruited/ appointed during every quarter.

Additionally, the Haryana Government had also issued a circular on January 17, 2022, under the Local Candidates Act, granting deemed exemption to certain employers from the applicability of the Local Candidates Act, including the following categories:

i. Employers who have established new start-ups and new information technology and information technology enabled services (**IT / ITeS**) within a period of 2 (two) years after the commencement of the Local Candidates Act. Such employers have been exempted for a period of 2 (two) years from the date of commencement of work or business or manufacturing process;

ii. Employers providing short-term employment, the total duration of which is less than 45 (forty-five) days; and

iii. Vacancies that are being filled up through promotion or transfer or by absorption of surplus staff of any unit of the same employer in Haryana.

Please also note that the Local Candidates Act has been challenged before the Punjab and Haryana High Court (**P&H High Court**). Updates in this regard are set out in the Judicial Updates section on Page 9.

B. Gujarat government releases the Information Technology (IT) / Information Technology-Enabled Services (ITeS) Policy 2022-27 ("Gujarat IT Policy")

The Government of Gujarat, on February 07, 2022, released the Gujarat IT Policy, which shall be in force until March 31, 2027, or until the declaration of a new or revised policy, whichever is earlier. The said policy introduces various employment-related incentives for IT/ ITeS units, such as:

i. Employment Generation Incentive (**EGI**): Eligible IT/ ITeS units i.e., new units (as defined under the Gujarat IT Policy), employing a minimum of 10 (ten) employees on its payroll, or an expansion unit (as defined under the Gujarat IT Policy), employing a minimum of 15 (fifteen) employees on its payroll after expansion (**Eligible Units**), are entitled to a one-time support for every new and unique job created in the State of Gujarat. Employers shall be eligible for 50% (fifty percent) of 1 (one) months' cost to company, up to INR 50,000 (Indian Rupees Fifty Thousand) in case of male employees and INR 60,000 (Indian Rupees Sixty Thousand) in case of female employees, for each new

local employee hired and retained for a minimum of 1 (one) year. It is pertinent to note that the EGI is tied to each individual employee and can be claimed only once for each employee, i.e., if an Eligible Unit avails assistance under the EGI for an employee and the same employee moves to another Eligible Unit (that is a different employer whose unit is an Eligible Unit under the Gujarat IT Policy), the second Eligible Unit will not be permitted to avail assistance under the EGI for that employee.

ii. Atmanirbhar Gujarat Rojgar Sahay: Eligible Units are entitled to claim up to 100% (one hundred percent) reimbursement on employer's contribution under the EPF Act in case of each of their female employees, and up to 75% (seventy-five percent) in case of each of their male employees covered under the EPF Act for a period of 5 (five) years. The reimbursement per employee will be capped at 12% (twelve percent) of the employee's basic salary, dearness allowance and retaining allowance.

It is also important to note that the Gujarat IT Policy provides that the State Government will support Eligible Units whose Gujarat-based employees are currently working from home in Gujarat. The Eligible Units can receive the above 2 (two) incentives for the aforementioned employees in the manner prescribed under the Gujarat IT Policy. This implies that employees of Eligible Units working in Gujarat, whether from office or remotely, will be covered under and in accordance with the Gujarat IT Policy.

C. Punjab Government formulates a scheme under the Punjab Shops and Commercial Establishment Act, 1958 ("PSEA") for exempting establishments from the provision specifying conditions of employment of women

The Punjab Government, vide notification dated March 03, 2022, formulated a scheme under the PSEA, in supersession of the notification dated October 14, 2014, for granting an exemption to establishments from adhering to the provisions of Section 30 of the PSEA (**Exemption Notification**).

Section 30 provides that no woman shall be required to or allowed to work in any establishment (except establishments engaged in the treatment of the sick, infirm, destitute or the mentally unfit) during the night. In 2015, Section 30 was amended to provide that the Government by way of a notification may allow women to work at night in an establishment, on such conditions as it may deem fit. The Exemption Notification has been issued in this context and states that exemption will be given on a case by case basis, on receipt of applications from establishments on prescribed terms and conditions, such as:

i. The total number of hours of work of an employee in the establishment shall not exceed 9 (nine) hours on any 1 (one) day and 48 (forty-eight) hours in a week;

ii. The spread over, inclusive of interval for rest in the establishment, shall not exceed 12 (hours) hours on any 1 (one) day;

iii. The total number of hours of overtime work shall not exceed 50 (fifty) in any 1 (one) quarter and the person employed for over time shall be paid remuneration at double the rate of normal wages payable to her calculated by the hour;

iv. Management is required to provide adequate security and proper transport facilities to women workers, including women employees of contractors during evening/ night shifts;

v. Management will ensure that there is an annual self-defence workshop/ training for women employees;

vi. ln the night shift, a minimum of 5 (five) women employees shall be employed; and

vii. The establishment will be required to abide by the provisions of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

D. Amendment to the Andhra Pradesh Factories Rules, 1950 ("AP Factory Rules")

The State of Andhra Pradesh notified the Andhra Pradesh Factories (Amendment) Rules on March 02, 2022 (**Amendment Rules**). Some of the key amendments are set out below:

i. An application for a factory licence may be made online on the single desk portal, set up by the Government of

Andhra Pradesh, as opposed to the earlier process of having to submit the same through personal delivery or post;

ii. An occupier can download the duplicate copy of a lost/ destroyed licence online, provided that such a licence was issued electronically. This option did not exist earlier;

iii. Occupiers are now required to intimate any change of name, change in the particulars of the maximum horsepower installed or maximum number of persons employed, online to the concerned inspector within 15 (fifteen) days of the change (previously occupiers were provided with 30 (thirty) days' time). Prior to the Amendment Rules, there was no provision enabling such online intimation under the AP Factory Rules;

iv. Application for transfer of a licence pursuant to a transfer of a factory may be made online as opposed to by post or personal delivery. Further, the timeline prescribed for authorities to refuse the transfer of licences has been reduced to 7 (seven) days from existing 30 (days); and

v. A manager of a factory is required to file an integrated annual return online on the single desk portal or any online portal as may be notified by the Government of Andhra Pradesh before April 30 of the year subsequent to the year to which the return relates. Previously, the return was required to be filed by January 31 and there was no provision for the filing to be made online.

Do note that the Amendment Rules have also amended certain provisions of the AP Factory Rules, relating to powers of inspectors, welfare facilities to be given to employees (such as those relating to canteen facilities, provision of drinking water), etc.

E. Amendment to Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2017 ("MSEA")

The Maharashtra Shops and Establishments (Regulation of Employment and Conditions of Service) (Amendment) Act, 2022, was brought into force vide notification dated March 17, 2022, which made the following key changes to the MSEA:

i. The name board of every establishment is now required to be in Marathi. The name board may also be in any other language in addition to Marathi, provided that the lettering in Marathi is written at the beginning of the name board and the font size of the same is not smaller than the font size of the letters in any other language; and

ii. The employer of an establishment is required to furnish to every worker an identity card, with details such as name of the employer, and name and age of the worker. Previously, such identity cards were required to contain Aadhaar numbers of the workers as well. This is no longer a requirement.

F. Karnataka clarifies rates of contribution towards labour welfare fund

The Karnataka Labour Welfare Board issued a press note dated January 14, 2022, through which it clarified that all establishments covered under the Karnataka Labour Welfare Fund Act, 1965, have to deposit employer's and employee's shares of labour welfare fund contributions at the rate of INR 40 (Indian Rupees Forty) and INR 20 (Indian Rupees Twenty), respectively. It may be noted that the Karnataka Labour Welfare Fund (Amendment) Act, 2017 (which had increased the labour welfare fund contribution rates to INR 40 (Indian Rupees Forty), and INR 20 (Indian Rupees Twenty) for employers and employees, respectively) was repealed in 2020. This had led to confusion as to whether the older rates of contributions had been restored. The recent press

note was issued in this context, clarifying the rates of contributions.

G. Himachal Pradesh government increases the applicability threshold of Contract Labour (Regulation and Abolition) Act, 1970 ("CLRA") to 30 (thirty) employees

The Government of Himachal Pradesh had promulgated an ordinance, the Contract Labour (Regulation and Abolition) Himachal Pradesh Amendment Ordinance, 2020, on July 9, 2020 (**Ordinance**), by way of which the threshold of applicability of the CLRA in Himachal Pradesh was increased and made applicable to principal employers and contractors who engaged/ employed 30 (thirty) or more persons (previously it was 20 (twenty) or more persons).

On February 02, 2022, the Himachal Pradesh Government notified the Contract Labour (Regulation and Abolition) Himachal Pradesh Amendment Act, 2020, which repealed the Ordinance, but retained the increased applicability threshold and made this change effective retrospectively i.e., from the date on which the Ordinance was promulgated.

III. Status of Labour Codes

A. Rules released under the Industrial Relations Code, 2020 ("IR Code"), by various states

During the period between December 01, 2021 and March 31, 2022, the draft rules under the IR Code were released by the Governments of Maharashtra, Chandigarh and Puducherry and were open to the public for objections and suggestions.

B. Rules released under the Occupational Safety, Health and Working Conditions Code, 2020 ("OSH Code"), by various states

During the period between January 01, 2022 and March 31, 2022, the draft rules under the OSH Code were released by the Governments of Gujarat and Telangana and were open to the public for objections and suggestions.

C. Rules released under the Code on Wages, 2020 ("Wage Code"), by various states

During the period between December 01, 2021 and March 31, 2022, the draft rules under the Wage Code were released by the Governments of Gujarat, Chandigarh and Sikkim and were open to the public for objections and suggestions.

D. Rules released under the Code on Social Security, 2020 ("SS Code"), by various states

During the period between December 01, 2021 and March 31, 2022, the draft rules under the SS Code were released by the Governments of Chandigarh, Andaman and Nicobar, Puducherry and Telangana and were open to the public for objections and suggestions.

IV. Covid Updates[1]

In view of the significant decline in the number of COVID-19 cases across the country up to March 2022, the Central Government and the State Governments had issued circulars and orders, lifting various restrictions pertaining to the pandemic. However, due to the rising number of COVID-19 cases in April, a few State Governments have reinstated the earlier restrictions, which were imposed to curb the spread of COVID-19. The key updates in this regard are set out below:

A. Home Secretary removes COVID-19 restrictions

The Home Secretary vide letter dated March 22, 2022, stated that in view of the overall improvement in the COVID-19 situation in the country and the preparedness of the Government to deal with the pandemic, the Ministry of Home Affairs (**MHA**) would no longer issue any orders with containment measures under the Disaster Management Act, 2005 (**DM Act**), after the MHA order dated February 25, 2022, lapses (this order lapsed on March 31, 2022). Further, the letter also directed chief secretaries of individual states/ union territories to consider discontinuing restrictions introduced to curb the spread of COVID-19. However, the said letter clarifies that the guidelines issued by

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the Ministry of Health and Family Welfare to contain COVID-19, such as those relating to the use of face mask and hand hygiene, will continue to guide the overall national response to the pandemic.

B. Maharashtra Government lifts COVID-19 restrictions

The Government of Maharashtra vide order dated March 31, 2022, withdrew all restrictions related to COVID-19, in view of the reduced number of COVID-19 cases, imposed under the DM Act, with effect from April 1, 2022. All individual disaster management authorities in the State were also directed to withdraw all restrictions imposed for the containment of COVID-19.

However, vide the said order, citizens, establishments, and organisations have been advised to continue to follow COVID-19 appropriate behaviour, including wearing of masks and maintaining social distancing.

C. Delhi Government reinstates the requirement to wear face masks

On April 01, 2022, the Government of Delhi had decriminalised non-wearing of face masks in public places (including workplaces) in view of the drop in the number of COVID-19 cases. It also took into consideration the fact that the majority of the population was vaccinated. However, in view of the increasing cases in the latter half of April, the Delhi Government vide order dated April 22, 2022, reinstated the requirement

to wear masks in public places. Failure to wear a mask in a public place is now punishable with a fine of INR 500 (Indian Rupees Five Hundred).

D. Karnataka Government on COVID-19 restrictions

The Government of Karnataka vide order dated April 25, 2022, has made wearing masks in public places (including workplaces and in vehicles) compulsory. Further, individuals are required to maintain social distancing of at least 2 (two) feet in all public places. The order has also made spitting in public places punishable with fine, as may be prescribed by the local authorities.

JUDICIAL UPDATES

I. Supreme Court ("SC")

A. Mens rea or actus reus is not an essential element for imposing civil penalty/ damages.

In ***Horticulture Experiment Station Gonikoppal, Coorg v. Regional Provident Fund Organization 2022 SCC OnLine SC 223***, the SC upheld the order of the Karnataka High Court (**Karnataka HC**) for recovery of damages in proceedings initiated under Section 14B of the EPF Act.

The brief facts of the case are that the appellant failed to comply with the provisions of the EPF Act during the 1975-1988 period, due to which proceedings were initiated under Section 7-A of the EPF Act. Based on these proceedings, the arrears in provident fund contributions were determined by the competent authority, which were paid by the appellant. Subsequently, the PF authorities directed the appellant establishment to pay damages as assessed under Section 14-B of the EPF Act. This decision was challenged and came up for hearing before the Karnataka HC, which held that once a default in payment of contributions is admitted, the employer is obligated to pay damages under Section 14-B of the EPF Act. This point of contention formed the subject matter of the appeal before the Supreme Court.

Section 14-B of the EPF Act confers the power on provident fund authorities to recover damages by way of penalty, at the prescribed rates, not exceeding the amount of arrears, where an employer makes default in the payment of contributions, after being provided a reasonable opportunity of being heard. The language under Section 14-B indicates that this is a discretionary power (and damages are not to be automatically levied), and this position had previously been accepted by courts as well, with one of the key elements that has to be demonstrated for imposition of damages under Section 14-B being *mens rea*.

However, it was argued by the respondent(s) in this case that *mens rea* is not an essential element for imposition of damages under Section 14-B of the EPF Act, and that the same may be imposed for a mere contravention of the legislation.

In this context, upon examining various judicial precedents and similar provisions in other legislations, the SC held that *mens rea* (i.e., guilty intention) or *actus reus* (i.e., guilty act) is not an essential element for imposing penalty/ damages under Section 14-B of the EPF Act and that penalty is attracted as soon as there is a contravention of a statutory obligation. The SC upheld the decision of the Karnataka HC and stated: "***... we are of the considered view that any default or delay in the payment of EPF contribution by the employer under the Act is a sine qua non (i.e. essential condition) for imposition of levy of damages under Section 14B of the Act 1952, and mens rea or actus reus is not an essential element for imposing penalty/ damages for breach of civil obligations/ liabilities***.".

B. Retrospective amendments taking away benefits already available to the employee under existing rules would be violative of Articles 14, 16 and 21 of the Constitution.

In ***Punjab State Cooperative Agricultural Development Bank Ltd. v. Registrar, Cooperative Societies 2022 SCC Online SC 28***, the issue was regarding a bank pension scheme that was introduced by the appellant bank, which it sought to withdraw retrospectively.

The SC dismissed the appeals holding that the rights of employees who availed the benefits of pension stood vested and accrued to them. It further held that any amendment to the contrary, which has been made with retrospective operation to take away the right accrued to such retired employees under the existing rules, is violative of Article 14 and Article 21 of the Constitution.

The SC also drew a distinction between the concept of legitimate expectation and a vested/ accrued right of employees. It held that if a person while entering into service, has a legitimate expectation that as per the then existing scheme of rules, he may be considered for promotion after certain years of qualifying service

or with the age of retirement, which is being prescribed under the scheme of rules, **but at a later stage, if there is any amendment made either in the scheme of promotion or the age of superannuation, it may alter other conditions of service, such scheme of rules operates in futuro**. But at the same time, if the employee who had already been promoted or fixed in a particular pay scale, **if that is being taken away by the impugned scheme of rules retrospectively, then that certainly will take away the vested/ accrued right of the incumbent, which may not be permissible and may be violative of Article 14 and 16 of the Constitution**. The SC also held that the serving employees have no locus to question the impugned judgment, which allowed the prospective operation of the amendment.

Significantly, the Court also rejected the defence of financial distress raised by the appellant bank to justify the impugned amendment and held that non-availability of financial resources would not be a defence available to the bank in taking away the vested rights accrued to the employees.

C. State of Haryana directed not to take coercive steps against employer's *vis `a vis* Local Candidates Act, 2020.

The constitutional validity of the Local Candidates Act, 2020, was challenged before the P&H High Court. The said High Court stayed the implementation of the Local Candidates Act, 2020, by way of an interim order. The State of Haryana filed a special leave petition before the SC, challenging the interim order of the P&H High Court.

The SC set aside the impugned order of the said High Court since sufficient reasons had not been given by the P&H High Court in support of its decision to stay the legislation. The SC did not go into the merits of the matter and directed the P&H High Court to decide the writ petition expeditiously. In the interim, the SC directed the State of Haryana not to take any coercive steps against employers. As of date, the judgment has been reserved by the P&H High Court, but is expected to be pronounced soon.

II. Madhya Pradesh High Court

A. Unless the acquittal in criminal trial is honourable/ clean, the employer has enough discretion to find a candidate to be unfit for employment.

In ***Vinod Kumar v. Union of India (Ministry of Defence) (Misc. Petition No. 503 of 2022)***, the High Court reiterated the well-settled principle that unless the acquittal in criminal trial is honourable and clean, the employer has enough discretion, but within the bounds of reasonableness, to find a candidate to be unfit for employment. The said High Court also analysed the judgment of acquittal in the matter and opined that the judgment of acquittal was not honourable and clean, but it was based more on benefit of doubt and refused to interfere with the order of termination passed in the matter.

III. Jharkhand High Court

A. No protest by a delinquent servant for charges being vague doesn't save the enquiry from being vitiated.

In ***Ranjit Kumar v State of Jharkhand (W.P. (S) No. 6197 of 2012)***, the petitioner challenged the order of termination issued pursuant to a departmental proceeding that found him guilty of dereliction of duty and insubordination. The charges that were framed against the petitioner included alleged unauthorised leave for 2 (two) days, habitual drinking, and frequently

threatening superior officers under the influence of alcohol. The High Court held these charges to be vague and unsubstantiated.

It held that even in a domestic enquiry, the charges must be clear, definite, and specific as it would be difficult for any delinquent to meet the vague charges. The High Court opined that even if the delinquent does not take the defence or make a protest that the charges are vague, that by itself would not save the enquiry from being vitiated because there must be fair play in action, particularly, in respect of an order involving adverse or penal consequences.

Consequently, the impugned order of termination was quashed and set aside, and the petitioner was directed to be reinstated in service and the matter was remitted back to the respondent authority to pass a fresh order only on the quantum of punishment for unauthorised absence from duty.

IV. Gujarat High Court

A. Employee cannot be terminated without full departmental inquiry.

In ***Dineshbhai Dhudabhai Patel v State of Gujarat (R/Spl CA No. 11518 of 2020)***, a writ petition was filed before the Gujarat High Court challenging the order terminating the services of the petitioner. Petitioner was working as a Junior Clerk (Administration) of the respondent Panchayat. A complaint was filed alleging that the petitioner had accepted a bribe, pursuant to which an order terminating the services of the petitioner was passed. The respondent counsel contended that the petitioner was caught red-handed accepting the bribe and he was terminated from services pursuant to his appointment order, which clearly stipulated that on account of any misconduct, the services of the petitioner can be terminated.

Relying upon its earlier decisions, the Gujarat High Court reiterated that if initiation of action is based on unsatisfactory work, gross negligence, or indiscipline, it becomes stigmatic and such termination can be done only after a full-scale departmental enquiry is held. The said High Court accordingly quashed the order of termination and directed that the petitioner be reinstated. The said High Court also clarified that in the event the services of the petitioner were to be terminated, the same shall be done only in accordance with law and after holding an appropriate inquiry.

V. Delhi High Court

A. Grant of Maternity Benefits to Ad-hoc Employee Beyond the Employment Period

In ***Dr. Baba Saheb Ambedkar Hospital, Govt. of NCT of Delhi & Anr. Vs. Dr. Krati Mehrotra (W.P. (C) 1278/2020 & CM NO. 4405/2020)***, the issue which arose for consideration before the Delhi High Court was whether an *ad hoc* employee is entitled to maternity benefit for a period that spills beyond the tenure of the contract.

The respondent employee, who was appointed as senior resident on an ad-hoc basis in the petitioner's hospital, was denied maternity benefit during her pregnancy, which extended beyond the period of her employment with the petitioner.

The Delhi High Court analysed the Maternity Benefit Act, 1961 (**MB Act**), and held that there are only two limiting factors for maternity benefits, firstly, the female employee should have worked in an establishment of her employer for a minimum period of 80 (eighty) days in 12 (twelve) months immediately preceding the date of her expected delivery and secondly, the maximum period for which a female employee can avail maternity leave benefit cannot exceed 26 (twenty-six) weeks, of which, not more than 8 (eight) weeks shall precede the date of her expected delivery. Therefore, the Delhi High Court noted that linking the tenure of employment, in this case, of a contractual employee, with the period for which maternity benefits can be availed by a woman employee, is not an aspect that is permitted under the MB Act. Thus, the said High Court ruled that as long as conception occurs during the tenure of the employment, the female employee should be entitled to maternity benefits under the MB Act, and observed that: "***The benefit granted to the respondent under Section 5 of the 1961 Act should have full play, in our view, once the prerequisites contained therein are fulfilled by the claimant i.e., the woman-employee***."

VI. Calcutta High Court

A. Perceived Unfairness of 'Hire & Fire' Policy Substantially Diluted if Sufficient Notice is given to the Employee to respond to the Charges

In ***Dr. Kausik Paul v. Seacom Skills University and Others WPA 13266 of 2021***, the petitioner filed a writ petition seeking an order for cancellation of a letter by which the petitioner was asked to discontinue his services as an Assistant Professor.

The petitioner was issued a letter by the Vice Chancellor of the University, as part of his performance evaluation, which alleged that the petitioner had failed to fulfil certain responsibilities. The petitioner was given seven days to respond to the issues raised in the letter and was further informed that the University will, thereafter, decide whether the petitioner's service is required or not. The petitioner did not respond to the same, post which the impugned letter of discontinuation was issued.

The Calcutta High Court held that "***...the letter of discontinuation cannot be seen as a bolt from the blue, so to speak or said to have completely caught the petitioner unawares since the petitioner was put on notice of his less than satisfactory performance by the letter dated June 11, 2021, from the Vice-Chancellor.***" The said High Court also noted that the letter contained particulars of inadequacy of the petitioner's performance and gave an opportunity to the petitioner to respond to the contents of the same, however, the petitioner had failed to respond to the same.

The petitioner also sought an order declaring a clause in the appointment letter, which enabled the management to terminate services without any notice in case of misconduct and violation of University rules, to be illegal and null and void. In this relation, the said High Court held that the perceived unfairness of a "hire and fire" policy or a clause of summary dismissal is substantially diluted where sufficient notice is given to the employee to respond to the charges made against the employee. The said High Court further observed that courts usually intervene and rectify a situation where a clear breach of the rules of natural justice is established on fact or where the notice of termination is opaque and indecipherable in failing to disclose reasons for the sudden dismissal.

Dismissing the writ petition, the Calcutta High Court observed that the chain of correspondence established that adequate notice was given to the petitioner before the impugned letter of discontinuation was issued.

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ahead of the curve

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