



cyril amarchand mangaldas
ahead of the curve

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This issue of *The Employment Quarterly* covers key Central- and State-level legislative updates, such as notification/circulars pertaining to the proposed Bill on the prevention of sexual harassment law that seeks to increase the period of limitation for filing complaints and eliminate the conciliation mechanism, the proposed Bill on maternity benefits for woman in the unorganised sector, implementation of the agreement on social security between India and Brazil, conditions for engagement of women in factories during night shift in the states of Haryana and Uttar Pradesh, and the declaration of holidays on account of Lok Sabha election.

Besides legislative updates, this edition also delves into the key developments in labour laws brought forth by various judicial pronouncements. We have analysed key decisions of various High Courts in matters pertaining to the permissibility of an employer in rejecting the status of “protected workman” under the Industrial Disputes Act, 1947, if such a workman is facing disciplinary charges, calculation of gratuity payable in case of an employee transfer within the same management, maternity benefits being granted to women engaged on contractual basis for a period beyond the tenure, among others.

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.

Regards,
Cyril Shroff

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LEGISLATIVE UPDATES

I. Key Central Legislative Updates

A. Proposed amendments to the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act)

A private member bill to amend the POSH Act, called the Sexual Harassment of Woman at Workplace (Prevention, Prohibition and Redressal) Amendment Bill, 2024 (**POSH Amendment**) was introduced in the Rajya Sabha on February 02, 2024. The POSH Amendment proposes the following amendments:

i. Increase in limitation period for filing of complaint:

Currently, the POSH Act stipulates a limitation period of 3 (three) months for filing complaints, which can be extended by 3 (three) months if the Internal Committee or Local Committee (as the case may be) is satisfied that the circumstances prevented the woman from filing a complaint within the said period. However, the POSH Amendment proposes to extend this limitation period for filing complaints to 1 (one) year, which the Internal Committee or Local Committee (as the case may be) can extend without any cap on the time period if it is satisfied that there existed circumstances preventing the woman from filing the complaint within the limitation period.

ii. Omission of provision on conciliation mechanism:

Currently, the POSH Act provides the aggrieved woman with the option of settling the complaint through a conciliation process. However, the POSH Amendment proposes the deletion of the provision on the conciliation mechanism. Based on the statement of objects and reason in the POSH Amendment, this deletion is proposed since its continued retention could lead to a possibility of, among other things, influencing, coercing, pressuring, or intimidating the woman complainant.

By way of information, this bill was introduced post the introduction of the bill “Sexual Harassment at Workplace (Prevention, Prohibition and Redressal) Amendment Act, 2022”, which, among other things, also proposed certain changes to the current timeline for filing a complaint under the POSH Act.

B. Bill on maternity benefit for woman in the unorganised sector

The Maternity Benefit for Woman in the Unorganised Sector Bill, 2023 (**MB Bill**) was introduced in the Rajya Sabha on February 02, 2024, to provide maternity benefits to women in the unorganised sector. Some key aspects of the MB Bill are set out below:

i. Entitlement to maternity benefit: The MB Bill proposes to provide maternity benefits to woman, whether employed or self-employed, who are provided wages at any workplace and also meet the following criteria:

- a. they are engaged in any physical or other labour contributing to the economy including but not limited to engagement in subsidiary status activity, seasonal economic activity, informal establishments, and self-employed roles such as tailoring, processing agricultural produce, livestock care, and domestic labour;
- b. they have worked for not less than 30 (thirty) days in the 12 (twelve) months immediately preceding the date of their expected delivery; and
- c. they are registered under the MB Bill.

The appropriate government will make the payment of the maternity benefit during their period of absence, calculating it based on the woman’s average daily wage.

ii. Maternity Benefit Fund: The responsibility for the payment of the maternity benefit has been conferred on the appropriate government. However, a liability has been cast upon companies incorporated under the Companies Act, 2013, and engaged in the provision of healthcare and pharmaceutical goods and services to contribute to the maternity benefit fund (to be constituted for implementing the provisions of the MB Bill). A contribution of 1 (one) per cent of the average net profits is to be made by the relevant companies that fulfil any of the following conditions in the preceding financial year:

- a. has a net worth of more than INR 500,00,00,000 (Indian Rupees Five Hundred Crores Only); or
- b. turnover of more than INR 1000,00,00,000 (Indian Rupees One Thousand Crores Only); or
- c. net profit of more than INR 5,00,00,000 (Indian Rupees Five Crores Only).

C. Employees' Provident Fund Organisation (EPFO) provides clarifications on the requirement to file joint request to the EPFO

The EPFO issued a circular on January 30, 2024, providing certain clarifications on submitting a joint request under Paragraph 26(6) of the Employees' Provident Funds Scheme, 1952 (**EPF Scheme**). As per Paragraph 26(6) of the EPF Scheme, for an employee to make a contribution on a pay more than the statutory wage ceiling of INR 15,000 (Indian Rupees Fifteen Thousand Only) per month, the employer and the employee must make a joint request to the EPFO. Accordingly, a form for the joint request and permission, has now been finalised and provided with this circular. The circular clarifies the following:

- i. The format provided under this circular is to be filed and processed digitally for all new cases prospectively.
- ii. In cases where the employees had already contributed on a pay more than the statutory limit, and the employer had also paid administrative charges on such contribution, but left employment or died till October 31, 2023, it is deemed that such cases had been allowed.
- iii. All existing members already making contributions on a pay more than the statutory limit and the employers also paying administrative charges on such contributions will not be required to file their joint requests in the given format immediately.

D. Agreement on social security between Republic of India and Federation of Brazil comes into effect

The Social Security Agreement entered between the Federative Republic of Brazil and Republic of India (**SSA**) came into effect from January 01, 2024, *vide* a notification by the Government of India dated November 07, 2023. Under the SSA, among other things, the workers deputed by their employers to work in the other country



on short-term assignments are exempt from making social security contributions in that country, up to a period of 36 (thirty-six) months.

II. Key State Legislative Updates

A. Gujarat government exempts establishments engaged in IT/ITeS and financial services from the provisions of working hours

The Gujarat government, *vide* a notification dated February 5, 2024, exempted establishments engaged in information technology, information-technology-enabled services (**IT/ITeS**) and financial services from the applicability of Sections 12 and 14 (relating to working hours including interval of rest and spread-over) under the Gujarat Shops and Establishments (Regulation of Employment and Conditions of Service) Act, 2019 (**Gujarat Shops Act**), subject to fulfilment of other provisions under the Gujarat Shops Act. This exemption will be in effect for 2 (two) years from the date of the notification.

The exempted provisions regarding work hours as per the Gujarat Shops Act are as follows:

- i. No worker can be made to work for more than 9 (nine) hours in any day and 48 (forty-eight) hours in a week.
- ii. The spread-over of a worker cannot exceed 10.5 (ten and half) hours in any day, and in case a worker is entrusted with intermittent nature of work or urgent work, the spread-over cannot exceed 12 (twelve) hours.

- iii. No worker can be compelled to work continuously for more than 5 (five) hours, unless given a break of not less than half an hour.

B. Mandatory inclusion of Kannada language in 60 per cent of the upper half of name boards

The Kannada Language Comprehensive Development (Amendment) Act, 2024 (**2024 Amendment**) (issued through a notification dated February 26, 2024) has brought in certain changes to the Kannada Language Comprehensive Development Act, 2022, on the usage of Kannada in name boards for commercial, industrial, business undertaking, hospitals, etc., in Karnataka.

Prior to the 2024 Amendment, the requirement was to display the text in Kannada on the upper half portion of name boards and in any other language on the lower half. However, the 2024 Amendment specifies that Kannada should occupy 60 (sixty) per cent of the text on the name boards and in the upper half of the name board, while any other language may be used for text on the remainder 40 (forty) per cent.

Although the initial date for compliance with the 2024 Amendment was February 29, 2024, it was extended for 2 (two) more weeks (*based on the publicly available information on the handle of the Deputy Chief Minister of Karnataka on X*).

C. Haryana government permits Night Shift work for woman employees engaged in factories

The Factories Act, 1948 (**Factories Act**), prohibits woman employees from working in a factory except between the hours of 7 p.m. and 6 a.m. (such hours referred as “**Night Shift**” and the prohibition referred as “**Night Shift Prohibition**”). However, as per the Factories Act, woman employees may be allowed to work between such hours if the State Government issues a notification in relation to this.

The Haryana government, *vide* a notification dated March 14, 2024, provided a 1 (one) year exemption for employing woman during the Night Shift (by specifically stating that such Night Shift is between 7 p.m. and 6 a.m.), subject to fulfilment of certain conditions.

Some key conditions to be followed for engaging women working during the Night Shift are as follows:

- i. Declaration/consent from each woman worker including security guard, supervisors, shift in-charge or any other woman staff to work during the Night Shift is to be obtained.
- ii. Woman employees are not to be subjected to sexual harassment. The occupier of the factory is to comply with the provisions of the POSH Act (including on constituting an Internal Committee under the statute) or any other law or any other instructions/conditions issued in this regard.
- iii. The occupier is to provide proper lighting and CCTV cameras not only inside the factory, but also the surroundings of the factory and in all places where the woman workers may move out of necessity in the course of their work.
- iv. The occupier or manager is to see that the woman workers are employed in a batch of not less than 10 (ten).
- v. The occupier is to provide transportation facility to woman workers from their residence and back. Security guards (including women security guards), well-trained and responsible drivers, proper communication channels, CCTV camera, and GPS are to be provided in each vehicle.
- vi. In case the driver is employed through outsourcing, the management is to ensure to its satisfaction that the service provider has carried out the collection of bio-data and conduct pre-employment screening of the antecedents of the driver.
- vii. Sufficient woman security guards shall also be provided at the entry as well as exit points of the factory.
- viii. Supervisors or shift-in-charge or other supervisory staff deputed for woman employees working during Night Shift shall be woman.
- ix. The occupier is required to provide appropriate medical facilities by engaging a doctor/female nurse during the Night Shift. When more than 100 (one hundred) woman are employed in the shift, a separate vehicle is to be kept ready to meet any emergency situation such as hospitalisation, whenever there is a case of injury or incidental acts of harassment, etc.

- x. Woman workers working in all shifts are to have a monthly meeting through their representatives with the occupier as grievance day, and the occupier shall try to comply with all just and reasonable grievances.

D. Uttar Pradesh government revises conditions for engaging women in factory during Night Shift

Like the Haryana government, the Uttar Pradesh government in 2022 had issued a notification exempting factories from complying with the Night Shift Prohibition (i.e., women workers can be permitted to work between 7 p.m. and 6 a.m.) subject to the fulfilment of certain conditions. Further to this notification, the Uttar Pradesh government issued a notification on February 19, 2024 (**2024 UP Notification**), making certain modifications and additions to the 2022 notification.

The updated conditions provided under the 2024 UP Notification are as follows:

- i. Factory premises and the transportation used for women workers in the Night Shift should have CCTV cameras. The transportation used for women workers should be traceable via GPS technology.
- ii. Not less than 3 (three) woman workers are to be employed in the factory premises/department during the Night Shift. This is a change from the earlier requirement of having at least 4 (four) women workers during the Night Shift.
- iii. Employers will be given a notice in case of violation of any condition prescribed for woman working during the Night Shift and 7 (seven) days will be provided to rectify the same. As per the earlier mechanism, a violation would result in the cancellation of the permission to engage women during Night Shift.
- iv. Employers are to submit a monthly report electronically or otherwise to the regional Inspector of Factories about the details of woman engaged during Night Shift and submit an express report of any incident of sexual harassment.

E. Rajasthan government allows conditional employment of woman at night in shops and commercial establishments

The Rajasthan Shops and Commercial Establishments Act, 1958 (**Rajasthan Shops Act**), prohibits an employer



to require or allow a woman to work in an establishment during night, i.e., a period of at least 12 (twelve) consecutive hours, including the period between 10 p.m. and 6 a.m. (**Night**). However, the Rajasthan government, vide a notification dated March 19, 2024, provided a 3-(three)-year exemption from this prohibition to shops and establishments, subject to fulfilment of certain conditions. In case of establishments where the employer is a woman and all employees therein are women, the period of exemption provided is 4 (four) years. Night under the Rajasthan Shops Act is defined to be at least 12 (twelve) consecutive hours, including the period between 10 p.m. and 6 a.m.

If any shop or commercial establishment violates the following conditions, the exemption will automatically become void, and the employer will be subject to legal action under the applicable laws.

Some key conditions for woman working at Night are as follows:

- i. The employer will permit employment at Night only after obtaining the consent of the woman employee.
- ii. The employer is required to issue appointment letters and photo identity cards to all woman employees.
- iii. The employer will be responsible for the complete safety of the woman employees working at Night. The employer is also required to provide safe transport arrangements for the woman employees to travel from home to the workplace and back at Night.

- iv. The employer is required to provide separate restrooms and lockers for the luggage of the woman employees at the workplace.
- v. No pregnant woman will be called to work at Night during the period of 3 (three) months before her expected delivery date and 3 (three) months after giving birth to the child.
- vi. The employer is required to ensure arrangements to prevent possible acts or incidents of sexual harassment at the workplace.

F. Karnataka government notifies and brings into effect the Karnataka Compulsory Gratuity Insurance Rules, 2024

On January 10, 2024, the Karnataka government notified and brought into effect the Karnataka Compulsory Gratuity Insurance Rules, 2024 (**Gratuity Insurance Rules**), under Section 4-A of the Payment of Gratuity Act, 1972 (**Gratuity Act**). Employers covered under the Gratuity Act are required to obtain a valid insurance policy from the Life Insurance Corporation of India or any other insurance company specified under the Gratuity Act to cover their liability to pay gratuity to all eligible employees.

Please refer to our alert for further details on this: [Client-Alert-Notification-of-Compulsory-Gratuity-Insurance_1302.pdf \(cyrilshroff.com\)](#).

G. State Governments declare a holiday for the Lok Sabha elections

The State Governments in different states have issued notifications for the declaration of paid holidays because of the upcoming Lok Sabha elections. Accordingly, the holiday requirements under certain key states for the month of May 2024 are as follows:

S. No.	State Government	Polling date
1	Maharashtra	May 07, 2024; May 13, 2024; May 20, 2024 – as per the voter’s respective constituency. In exceptional situations, where a paid holiday cannot be given, at least 2 (two) hours leave shall be given. However, requisite permission from the collector and district election officer will have to be obtained in this case.
2	Andhra Pradesh	May 13, 2024
3	Telangana	May 13, 2024
4	Karnataka	May 07, 2024
5	NCT of Delhi (also provides a paid holiday to residents in the State of Uttar Pradesh who are working in different establishments in the State of Uttar Pradesh)	May 07, 2024; May 13, 2024 – as per the voter’s respective constituency.

JUDICIAL UPDATES

I. Karnataka High Court (Karnataka HC)

A. Employee availing benefits under a voluntary retirement scheme cannot subsequently claim to be a workman under the Industrial Disputes Act, 1947 (IDA)

In *Triveni Turbine Limited v. Government of Karnataka and others* (WP No. 18857/2022), the Karnataka HC held that once an employee opts for voluntary retirement and avails the benefits under a voluntary retirement scheme, the employee cannot claim to be a “workman” under the IDA. The Karnataka HC was assessing if whether an order of reference made by the government under Section 10(1) of the IDA (i.e., reference of disputes by the appropriate government to boards, courts or tribunals) could be considered an industrial dispute when the employees have retired voluntarily and accepted the benefits of a voluntary retirement scheme floated by the employer, and whether such employees could be treated as workmen under the IDA.

The Karnataka HC held that the order of reference was made without application of mind. The Karnataka HC noted that the definition of “workman” under Section 2(s) of the IDA only includes those persons presently employed, dismissed, discharged, or retrenched from service. The Karnataka HC relied on judicial precedents, which held that an employee who voluntarily tenders resignation pursuant to a voluntary retirement scheme could not be treated as a “workman” under Section 2(s) of the IDA. The Karnataka HC held that once a workman had opted for voluntary retirement and availed all the benefits under the voluntary retirement scheme, such a workman could not thereafter contend/dispute that the voluntary retirement was obtained by force or undue influence. It further held that the employer–employee relationship ends once the employee receives the retirement benefits. Accordingly, the Karnataka HC quashed the order of reference by the government.

B. Employer has some discretion to reject the status of “protected workman” under the IDA of a workman facing disciplinary charges

In *M/S Armstrong Design and Acmite India Manufacturing Private Limited v. Assistant Labour Commissioner* (WP No. 1049/2024), a company filed a petition against an order passed by the Assistant

Labour Commissioner, which had recognised a worker against whom disciplinary proceedings were pending, as a “protected workman” under the IDA based on the application made by the employee union. The Assistant Labour Commissioner accepted the contention on the grounds that the workman was neither facing serious charges nor was convicted by a trial court. During the pendency of certain proceedings under the IDA, protected workmen are granted certain privileges – e.g., the employer cannot discharge or punish such workmen without the express written permission of the statutory authorities before which the proceedings are pending. However, the Karnataka HC allowed the company’s writ petition and set aside the Assistant Labour Commissioner’s decision, noting that conferring the status of “protected workmen” to workmen facing disciplinary action would encourage misconduct among other workmen. It also relied on other judicial precedents to highlight that the recognition of protected workmen is not automatic and that the employer has a certain amount of discretion to deny this status, even if the charges against the workman are minor.

II. Bombay High Court (Bombay HC)

A. Gratuity to be calculated on last drawn salary at the time of final cessation of service, where an employee is transferred among entities under the same management with continuity of service

In *Terna Polytechnic v. Shri Ravi Bhadrappa Randale* (Writ Petition No. 11864 of 2019), the Respondent employee had rendered services for 2 (two) different organisations under the same management, in 2 (two) consecutive periods without any gap in service. Upon a claim for gratuity amounts after cessation of employment from the second organisation, the Appellate Authority (after multiple appeals) under the Gratuity Act had directed payment of gratuity by both institutions cumulatively basis the last drawn salary of the employee with the second organisation, covering the service period at both organisations. This order, among other things, was challenged by the Petitioner organisations in the present petition.

The Bombay HC relied on the definition of “continuous services” under Section 2A of the Gratuity Act and

held (in favour of the Respondent) that in the absence of a new recruitment process with the second institution and any gap between the 2 (two) periods of employment, the tenure with both institutions were interconnected and continuous in nature. The Bombay HC held that there was nothing on record to show the employee's termination/cessation of services from the first institution because of his resignation from service; therefore, the employee was not freshly recruited by the second institution, which was operated by the same management as the first institution.

Accordingly, the Bombay HC held that the gratuity amount should be calculated in respect of the employee's entire period of services based on the last drawn wages at the second institution.

B. Accumulated losses can be a ground for closure of business despite potential unemployment of workers on account of such closure

In *General Motors Employees Union v. General Motors India Private Limited (Writ Petition No. 7992 of 2023)*, the Respondent company had first filed its application for the closure of its plant in November 2020 after accumulating losses to the tune of over INR 8,500 crores (Indian Rupees Eight Thousand Five Hundred Crores Only) approximately, which was rejected at the first instance. Thereafter, the company filed a second closure application during pendency of reference before the industrial tribunal, and the award that was eventually passed permitted closure of the Talegaon plant in June 2023. The present petition filed is by the Petitioner employee's union of the Respondent company challenging the said closure.

Among other contentions deliberated on, the Bombay HC agreed with the Respondent company's primary submission that it cannot be forced to continue its operations despite continuous accumulated losses. In this respect, the Bombay HC considered that the company had accumulated losses despite making profits in 2 (two) specific financial years in the last 11 (eleven) financial years that were assessed. The Bombay HC also relied on judicial precedents that upheld the fundamental right of a company to close down the business if it suffers continuous losses. The Bombay HC further clarified that the possible unemployment of



workers cannot be a ground to compel the company to run its business and refuse closure.

The Bombay HC upheld the order passed by the Industrial Tribunal allowing the Respondent company to close its Talegaon plant and dismissed the present writ petition filed by the Petitioner union.

III. Kerala High Court (Kerala HC)

A. Section 14(B) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act), does not mandate invariably imposing 100 per cent damages on an employer as penalty

In *Central Board of Trustees v. Bake n Joy Hot Bakery and others (WP (C) No. 35163 of 2019)*, the Kerala HC held that Section 14(B) of the EPF Act does not mandate imposing 100 (one hundred) per cent damages on the employer as penalty.

The Kerala HC was deciding a writ petition filed by the Central Board of Trustees, challenging an order of the Industrial Tribunal cum Labour Court, Ernakulam, which had reduced the penalty imposed on the employer to 50 (fifty) per cent from 100 (one hundred) per cent under Section 14(B) of the EPF Act. While reducing the quantum of damages, the Industrial Tribunal had considered the circumstances that led to the non-compliance – i.e., the proceedings in which the coverage of the establishment under the EPF Act was determined had not been properly

prosecuted by the late husband of the proprietor on account of his illness. The appeal filed against those proceedings was also dismissed for non-prosecution.

The Kerala HC relied on the Supreme Court judgments of *Employees' State Insurance Corporation v. HMT Ltd and Another* ((2008) 3 SCC 35) and *McLeod Russel India Limited v Regional Provident Fund Commissioner, Jalpaiguri and Others* ((2014) 15 SCC 263), which held that an automatic imposition of damages at 100 (one hundred) per cent was not possible without *mens rea* or *actus reus* and a conscious and wilful disregard of obligations under the EPF Act. The Kerala HC also referred to the recent Supreme Court decision in *Horticulture Experiment Station v. Provident Fund Organization* ((2022) 4 SCC 516) (**Horticulture Decision**), which held that *mens rea* or *actus reus* is not an essential element for imposing penalty or damages. However, the Kerala HC held that the Horticulture Decision did not hold that 100 (one hundred) per cent of damages must be invariably imposed; thus, it is not the authority for the proposition that circumstances that led to the default cannot be considered while deciding the quantum of damages to be imposed. Given this, the Kerala HC, upheld the order of the Industrial Tribunal's order on reducing the damages from 100 (one hundred) per cent to 50 (fifty) per cent on account of the circumstances for the non-compliance.

IV. Delhi High Court (Delhi HC)

A. Maternity benefits granted to stenographer employed on contractual basis for a period beyond contracted tenure

In *Government NCT of Delhi through State Consumer Disputes Redressal Commission & others v. Rehmat*

Fatima (2024 SCC OnLine Del 1749), the Delhi government filed a writ petition against the order passed by a single-judge bench of the Delhi HC, which granted maternity and medical benefits to the Respondent, who was appointed as a stenographer on a contractual basis with the Delhi State Consumer Forum (**DSCF**). The contractual period of her engagement was extended several times without any break/notional break, and she had served in her position for over 5 (five) years. However, DSCF denied her request for maternity leave benefits as her contract for service was about to expire.

The Delhi government argued that the woman could be provided maternity benefits only until the term of her contract and not beyond it. However, the single-judge bench rejected this contention upon considering Section 5(2) of the Maternity Benefits Act, 1961 (**MB Act**), which only provides the condition that the woman should have completed 80 (eighty) days of service in the past 12 (twelve) months to be eligible for the benefits under this statute.

The Delhi HC upheld the decision of the single-judge bench and noted that denying maternity benefits solely based on the contract term's expiry would be unjust, particularly so when the Respondent's compliance with the qualifying requirement under the MB Act and the absence of any gross misconduct allegations which could disentitle her from the benefits under the MB Act. Thus, the Delhi HC held that the Respondent was entitled to receive maternity benefits for the full duration of 26 (twenty-six) weeks, as stipulated by the MB Act and imposed a cost of INR 50,000 (Indian Rupees Fifty Thousand Only) on the Appellant DSCF for the misconceived appeal.

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