AIBEA's

LEGAL NEWS

BULLETIN NO. 2019 : Q 2

APRIL, MAY, JUNE, 2019

ALL INDIA BANK EMPLOYEES' ASSOCIATION

Central Office: PRABHAT NIVAS

Singapore Plaza, 164, Linghi Chetty Street, Chennai-600001
Phone: 2535 1522 Fax: 2535 8853, 4500 2191
e mail ~ chv.aibea@gmail.com

FROM LABOUR LAW JOURNAL – LABOUR LAW NOTES

APRIL

CONTRACT LABOUR

Regularization – Petition filed by Contract Labourers, employed by 1st Respondent, seeking regularization of their services – Whether Petitioners entitled for regularization of their services by 1st Respondent in accordance with law – **Held**, Petitioners had been rendering services 365 days in year from date they commenced rendering services – Some of their batch mates had been absorbed in services of company and were regularized – Respondent's company had envisaged policy to absorb such of those employed as casual labourers and term contract labourers who had completed more than 240 days of attendance – Not case of Respondents that Petitioners were not qualified to be appointed or absorbed nor that contract labourers were back door entrants – Their services had been engaged, to execute services of perennial nature and further, Petitioners were under direct employment of 1st Respondent for almost 3 years – 1st Respondent shall absorb Petitioners, who at time of their initial appointment were not disqualified to be appointed – Petitions partly allowed. [*Peer Bhaktar v. Hindustan Aeronautics Ltd.*]

(G. NARENDAR, J.)
2019-II-LLJ-227 (Kant)
LNINDORD 2018 KANT 10062

DISCIPLINARY ACTION

Compliance with Provision – Industrial Disputes Act, 1947, Section 33 – Petition filed seeking for issuance of writ, to forbear Respondent no.2 from taking any disciplinary action against members of Petitioner-Union or altering service conditions in violation of Section 33 of Act, till disposal of conciliation proceedings in disputes pending before Respondent no.1 – Whether, court could give directions as sought for by Petitioner, when dispute pending before Respondent no.1 – **Held**, under guise of seeking relief, Petitioner trying to stall entire

proceedings – Once dispute pending, employer had to comply with Section 33 of Act and it is for employer to decide as to how provisions should be followed and would be taking risk of not following provisions – Court could not give directions like one sought for in Petition – If such prayer allowed, no employer would be allowed to proceed with departmental proceedings against employee – Everyone would approach Conciliation Officer stating that employer would have to comply with provisions of Section 33 of Act – In case of any illegality, open to Petitioner to proceed in accordance with law – Petition dismissed [*Garment and Fashion Workers Union v. Asst. Commr. Of Labour*]

(S. VAIDYANATHAN, J.)
2019-II-LLJ-157 (Mad)
LNINDORD 2018 MAD 12909

MINIMUM WAGES

Temporary Employees – Appeals filed against High Court judgment by which judgment of learned Single Judge denying relief of minimum pay-scale to Appellants was affirmed – Whether, Appellants were entitled to draw wages at minimum of pay scales as regular employees – **Held**, unable to uphold view of High Court that Appellants were not entitled to be paid minimum of pay scales – Temporary employees were entitled to minimum of pay scales as long as they continue in service – Appellants were entitled to be paid minimum of pay scales applicable to regular employees working on same posts – No adjudication on rights of Appellants relating to regularization of their services – Appeals allowed. [*Sabha Shanker Dube v. Divisional Forest Officer*]

(L. NAGESWARA RAO, J.)
2019-II-LLJ-63 (SC)
LNINDU 2018 SC 265

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Sections 17-B, 25-B & 25-F – Termination – Daily Wagers – Payment of Full Wages during pendency of proceedings – 'Continuous Service' – Conditions

precedent to Retrenchment of Workmen – Petitioner appointed as Daily Wager in 1983 and terminated in 1995 – Raised Industrial Dispute – Matter escalated to High Court – High Court found Award vague on point whether Petitioner worked for 240 days in a Calendar year and remanded matter to Labour Court to decide only on this aspect – Labour Court passed impugned Order denying Reinstatement and in lieu of that Wages paid to Petitioner under Section 17-B in a sum of Rs.2,19,468 converted into Compensation – Order challenged by Petitioner on ground that Labour Court has travelled beyond terms of remand – **Held**, no case of Department that appointment of Petitioner was not as per Recruitment Rules and Labour Court fell into error in isolating case of Petitioner on touchstone of Public employment and dubbing Petitioner of what is called back door entry – State has not even called in question fresh Award – Labour Court overlooked fact that his predecessor awarded Reinstatement with 40% Back Wages and misconstrued remand directions, which is impermissible – Labour Court was tasked only to clarify whether Petitioner completed 240 days of continuous service in 12 Calendar months preceding date of Termination – Impugned Award has to be to be read restricted to that findings only – Writ Petition allowed – Impugned Award dated 20.4.2009 upheld on findings of completion of 240 days – Remaining part set aside holding relief granted by previous Award dated 16.12.2003 as just and fair – Amount already paid under Section 17-B not to be counted towards 40% Back Wages *Prem Bahadur v. Presiding Officer, Industrial Tribunal-cum-Labour Court, Jalandhar* (P.& H)

(RAJIV NARAIN RAINA, J.)
2019 (2) LLN 267

MISCONDUCT

Removal from Service – Gainful employment during period of removal – Effect of – Reinstatement with benefits – Respondents working with present Appellants – Charge-sheeted for respective misconduct and removed from service – Raised Industrial Disputes – Labour Court directed Reinstatement with Back Wages and withholding of two increments without cumulative effect respectively – Order of Labour Court assailed by Workmen before High Court –

High Court held that Petitioner entitled to Back Wages from removal till Reinstatement and other Workman entitled to increments for entire period – On challenge, **Held**, Termination from service of Workmen by Employer held to be unjustified by Single Judge in both cases – Given facts that both Petitioner were regular Employees and length of their service was not meager – As establishment/APSRTC failed to adduce evidence to prove that either of them was gainfully employed after termination, there was no mitigating circumstances warranting reduction in payment of full Wages – Common Order passed by Single Judge warranted no interference either on facts or law – Appeals being devoid of merits dismissed – *Service Law. Depot Manager, APSRTC v. Suresh Babu* (DB) (Hyd.)

(SANJAY KUMAR, J.)
2019 (2) LLN 177

NATIONALIZED BANKS (MANAGEMENT AND MISCELLANEOUS PROVISIONS) SCHEME, 1970

Chapter II, Schedule III, Clause 3(2)(iii) – Constitution of Board of Directors - Disqualification of Workman/Employee for being nominated as Director – Procedure relating to nomination of Director out of Officer/employee category – Management of Respondent-Bank called upon Appellants to furnish panel of three Workers/Employees for nomination as 'Workman Director' – Appellants sent three names – Secretary, by Letter dated 10.10.2009, informed that as all Workers have less than three years of residual service, hence, their nomination was declined – Appellants were requested to furnish fresh panel accordingly – Instead of furnishing fresh panel, Appellant agitated matter before Central Government to reconsider which was declined – Aggrieved, Appellants filed Writ Petition in High Court, Goa Bench, which was dismissed – On challenge, held, Workers, whose names were recommended by Appellants, have retired long back – Relief no longer survives – Contention that disqualification for Workers/Employees only provided in Clause 3(2)(iii) of Scheme is discriminatory and violates Article 14, not tenable – Both categories of Employees are different – It is for legislature to decide qualification/disqualification for various categories

of Employees – There is distinction between Workers, who are governed under Industrial Disputes Act and Officers governed by separate Service Rules – Article 14 applies *inter se two* equals and not inter se un-equals – Reliance placed on principle under Article 14 is wholly misplaced – Contention of Appellant that once Employee is nominated to Board, no distinction should be made between them, has no merit – Directors consist of persons from different fields – There cannot be uniform qualification for such persons – Qualification/disqualification has to be prior to nomination and not afterwards – There is no ground to interfere with reasoning and conclusion arrived at by High Court – Appeal dismissed. *Fed. Of Bank of India Staff Unions v. Union of India (UoI)* (SC)

(ABHAY MANOHAR SAPRE, J.)
2019 (2) LLN 14

TERMINATION

Reference - Representation by Advocates – Petitioner terminated from service – Raised Industrial Dispute – Petitioner raised objection to appearance of Respondent through Advocate – Labour Court rejected objection of Petitioner – On challenge, held, expression 'Officer' in Section 36(2)(a) includes not only Officers of Association who are on its Pay Roll, but also its Office-bearers, who control affairs of Association – Alleged Individuals are neither on Pay Roll or under control of Management or controlling its affairs as Office-bearers or Executive Committee Members – Legal Advisor of an Association having no role to play in Management cannot be treated as Office-bearer – Alleged person not qualified to act as Officer of Association within meaning of Section 36(2)(a) – Labour Court erred in matter of law and jurisdiction in allowing alleged individual as representatives of Respondent, which is unsustainable – Rule made absolute by quashing and setting aside Order of Labour Court – *Industrial Disputes Act, 1947 (14 of 1947), Sections 10, 36(2)(a) & 36(4), Praggna Pujara v. J.P. Morgan Services India Pvt. Ltd.* (Bom.)

(S.C. GUPTE, J.)
2019 (2) LLN 96

MAY

AWARD OF LSBOUR COURT

Judicial review – Respondent/workman, employed with Petitioner/management dismissed from service on proof of charges that he assaulted his superior – On reference, Labour Court passed award in favour of workman, hence this petition – Whether award of Labour Court in favour of workman, sustainable – **Held**, there was enough evidence to sustain charge framed against Respondent – Fairness of domestic enquiry was not challenged before Labour Court, therefore, only question that it should have posed to itself was whether there was some evidence in support of charges bit Labour Court went beyond this statutory mandate and acted as Appellate Tribunal – Labour Court exceeded jurisdiction conferred on it – There was sufficient material to indicate that Mill Management had lost its confidence in workman and that it would not be conducive to maintenance of industrial peace, if workman was reinstated – Management directed to pay compensation to Respondent towards full and final settlement of all his dues – Petition allowed. [*Manager Madura Coats Private Limited v. J. Anton Subash*]

(G.R. SWAMINATHAN, J.)
2019-II-LLJ-309 (Mad)
LNINDORD 2019 BMM 716

DISMISSAL

Arrest – Petitioner/Employee arrested by Police Authorities stating that FIR registered against him and later, he was dismissed from service – Labour and Industrial Court rejected Petitioner's application for Interim Relief – Whether, Petitioner could be dismissed when no criminal case was decided and offence proved against him – **Held**, Petitioner chased robbers and on account of same, bag containing money dropped by robbers on road and they fled – Such act would not amount to misconduct, committed on premises of establishment – No role of employer in proving charge of theft leveled by State against civilian – No employer could proceed against employee for incident unconnected with

establishment or its premise, alleging that employer was brought to disrepute, unless employer prove that employee committed offence – Petitioner exonerated from charges – Petition allowed. [*Sachin Charlus Mirpagar v. Divisional Controller, M.S.R.T.C.*]

(RAVINDRA V. GHUGE, J.)
2019-II-LLJ-476 (Bom)
LNIND 2019 AUG 93

DISMISSAL FOR MISCONDUCT

Leading of evidence – Industrial Disputes Act, 1947, Section 33(2)(b) – Respondent-Management sought approval of Industrial Tribunal under Section 33(2)(b) of Act for dismissal of Petitioner-Workman on charges of misconduct – Tribunal, while holding that domestic enquiry conducted by Respondent was not fair and proper, posted matter for evidence on merits – Application filed by Petitioner to dismiss Respondent's application on ground that Respondents had not made request to Tribunal for allowing them to adduce evidence, was dismissed and Respondent was allowed to lead evidence on merits, hence this petition – Whether Respondent could be allowed to adduce evidence, to substantiate charges leveled against Petitioner without filing application to seek such permission – **Held**, Management had not made request in writing, at any stage seeking permission of Tribunal to lead evidence to prove charges leveled against workman, if Tribunal were to hold that domestic enquiry conducted by Management was not fair and proper – Even if Counsel for Management, before Tribunal had made oral request, it could not be treated as prayer made by Management in writing – Charges leveled against workman would not in any case attract punishment of dismissal – Impugned order passed by Tribunal set aside – Petition allowed. [*M.Shanthikumar v. Management of BEML Ltd.*]

(R. DEVDAS, J.)
2019-II-LLJ-299 (Kant)
LNINDORD 2019 KANT 691

HELPER TRAINEE

Pay scale – Members of Petitioner Union were directly recruited as helpers but instead of appointing them in regular time scale of pay, they were appointed as Helper Trainees on consolidated wages, hence this petition – Whether Respondent justified in appointing members of Petitioner Union as Helper Trainees initially for period of two years – **Held**, no materials brought on record on behalf of Respondent Board to reveal that any training was imparted to employees – In absence of such materials, terming initial appointment of employees as Helper Trainee could not stand test of judicial scrutiny – Initial Period of two years of appointment and consolidated wages paid was counted for purpose of promotion to next higher grade – Services of employees could not have different character, one for purpose of promotion and another for purpose of fixation of pay scale and allowances – Merely terming employee as trainee could not result automatically in denying regular benefits as applicable to other regular and similarly placed employees – Petition allowed. [*T.N.E.B. Thozhilalar Aykkia Sangam v. T.N.E.B*]

(V. PARTHIBAN, J.V. PARTHIBAN)
2019-II-LLJ-357 (Mad)
LNINDORD 2019 MAD 1539

CONTRACT LABOUR (REGULATION AND ABOLITION) ACT, 1970 (37 OF 1970)

U.P. Industrial Disputes Act, 1947 (28 of 1947) – Notification, dated 24.4.1990 – Contract Labour – Sham Contract – Workmen of Contractor, whether Workmen of Appellant – 'Employer', definition of – Respondents working with Appellants – Upon termination, raised Industrial Dispute – Labour Court ordered their Reinstatement without Back Wages – Review dismissed by Labour Court – Award challenged by way of Writ Petition, which was dismissed resulting into filing of SLP, which was disposed of with direction to file Review in High Court – High Court dismissed Review Petition resulting into present Appeal – **Held**, Appellants are exempted from Notification dated 24.4.1990 – Despite this, Labour Court applied Notification, which is perverse – Labour Court based its findings on direct relationship between parties only on basis of Gate Passes being

issued by Appellants and on a concession made by Appellant's Representative – Gate Passes were issued for security purpose – Findings that extended definition of 'Employer' contained in Act would apply automatically is perverse – Evidence must be led to show that work performed by Contract Labour is a work, which is ordinarily part of Appellant-BHEL – Labour Court arrived at conclusion, which no reasonable person could possibly arrive at – BHEL denied having engaged Workmen – From this, to conclude that transaction seem to be 'Sham' is wholly incorrect – Judgment relied upon by Counsel for Respondent have no application to facts of present case – Admittedly, there is no Appointment Letter or Wage-slip from BHEL, or Provident Fund Number – No Wages paid by Appellant-BHEL – Impugned Judgments of High Court and Labour Court set aside – Appeal allowed. *Bharat Heavy Electricals Ltd. v. Mahendra Prasad Jakhmola* (SC)

(R.F. NARIMAN, J.)
2019 (2) LLN 324

DISMISSAL

Misconduct – Respondent working as Bus Conductor with Petitioner-Corporation – Issued Charge-sheet and dismissed after Enquiry – Raised Industrial Dispute – Labour Court directed Reinstatement of Respondent with continuity of service with other benefits except Back Wages – Petitioner challenged Award before High Court – Writ Petition ultimately dismissed – Respondent reinstated without granting any benefits – Respondent moved Application for recovery of money under Section 33(c) (2) of I.D. Act which was allowed – On challenge, ***held***, once Employee is prevented by Employer from joining duties, he would be entitled to get benefit of said period – It would be injustice to deprive Respondent of benefits under Award, which has been upheld by Court – No merit in contention that as there is no pre-determined amount towards Wages for period in question, Labour Court could not have entertained Application – No perversity or infirmity in impugned Order – Writ Petition dismissed – Registry directed to release amount deposited by Petitioner in favour of Respondent – Petitioner directed to pay remaining amount to Respondent

within six weeks – *Service Law – Industrial Disputes Act, 1947, Section 33-C(2). Delhi Transport Corporation v. Shri Satnarain* (Del.)

(REKHA PALLI, J.)
2019 (2) LLN 410

PAYMENT OF GRATUITY ACT, 1972 (39 OF 1972)

Section 4(6)(b)(ii) – Indian Bank Officers' Service Regulations, 1979 – Moral Turpitude – Forfeiture of Gratuity – Justification of – Respondent working with Petitioner – Charge-sheeted for acts of fraud and forgery – Removed from service after enquiry – Departmental Appeal and Review also dismissed – Gratuity forfeited after Show Cause Notice – Application filed before Controlling Authority which was rejected – On Appeal, Appellate Authority allowed Appeal and directed payment of Rs.9,48,628 with interest at 10% till payment – On Challenge by Bank, ***held***, services of Respondent terminated on 30.7.2010 – It was obligatory for Petitioner to communicate decision denying payment of Gratuity on or before 30.8.2010 which they did not do till 15.6.2012 – Respondent sent three Letters requesting payment of Gratuity, which was not responded – No reason assigned by Petitioner for delay in communication – Appellate Authority under Act justified in holding that there was after thought on part of Petitioner – Petitioner having failed to comply with provisions of Act and Rules, not entitled to any relief – Petitioner not disputed calculation of amount of Gratuity – Petitioner have not placed on record any material that alleged acts of Respondent constitute moral turpitude and it caused loss to Bank – As held in *Union Bank of India v. C.G. Ajay Babu*, 2018 (4) LLN I (SC), it is for Court to decide whether offence has been committed and not for Bank – Bank has not set Criminal law in motion by filing FIR or Complaint that misconduct leading to dismissal is offence involving moral turpitude – Petition dismissed – Petitioners directed to pay Gratuity as decided by Appellate Authority expeditiously. *Chairman & Managing Director, Indian Bank, Corporate Office, Chennai v. M.D. Chandrashekar* (Kar.)

(L. NARAYANA SWAMY, A.C.J.
2019 (2) LLN 471

JUNE

CODE OF CIVIL PROCEDURE, 1908 (15 OF 1908)

Section 60, Proviso to – Payment of Gratuity Act, 1972 (39 of 1972), Section 13 – Attachment of Gratuity in execution of Decree or Order of Court – Recovery of amount from terminal dues – Whether sustainable – Petitioner superannuated from Respondent-Company – Retirement dues assessed at Rs.18,47,456 – Afterwards, Respondent informed Petitioner that revised dues as Rs.10,07,325 – Amount of Rs.7,25,710 as recovery as per direction of Audit Department – No reply given to representation of Petitioner – On challenge, **held**, while Employer ordinarily would have right to recover excess payment made to Employee, Courts have negated such rights in cases, where exercise of such power would result in gross injustice, inequity and unfairness – It is not case of Respondent that Petitioner induced Respondent to make payment by making any Representation or practicing fraud – At time of Retirement of Petitioner, no recovery could be made of alleged over payment – Section 13 of Act provides that no Gratuity payable to Employee under Section 5 shall be liable to attachment in execution of Decree or Order of any Court – Proviso to Section 60, CPC protects gratuity – If Gratuity cannot be touched even by way of execution of a Decree, same cannot be touched unilaterally by Employer without adjudication by competent forum – Such acts of Respondent-Company cannot be sustained and set aside – Respondent directed to refund amount with Interest @ 8% p.a. within 8 weeks – Writ Petition disposed of. *Aloke Kumar Sarkar v. National Insurance Co. Ltd.* (Cal.)

(ARIJIT BANERJEE, J.)
2019 (2) LLN 637

PAYMENT OF GRATUITY ACT, 1972 (39 OF 1972)

Section 4(6)(b) – Forfeiture of Gratuity – Misconduct involving moral turpitude – Appellant charge-sheeted for misconduct and awarded punishment of Compulsory Retirement after Enquiry – His Gratuity also forfeited – Appeal

rejected by Appellate Authority under Act – Writ Petition filed by Appellant also dismissed – On challenge, **held**, mere possibility of Employee having committed act constituting an offence involving moral turpitude not sufficient to attract provisions for forfeiture of Gratuity – Supreme Court held in *Union Bank of India v. C.G. Ajay Babu,* 2018 (4) LLN 1 (SC) that forfeiture of Gratuity is permissible only if Termination is for misconduct which constitute offence involving moral turpitude and Employee is convicted by Court of law – Decision of Respondent forfeiting entire Gratuity could not have been taken before determination by a Court of law that acts committed by Employee constituted offence involving moral turpitude – Single Judge erred in holding that Appellant had remedy against Forfeiture under Act where there is none – Impugned Order of forfeiture set aside – It is open to Respondents to initiate action under Act on determination by Court for acts committed by Appellant which constitute offence involving moral turpitude – Gratuity amount be released to Appellant within four weeks. *Rajiv Saxena v. Chief General Manager* (DB) (Del.)

(DR. S. MURALIDHAR & SANJEEV NARULA, JJ.)
2019 (2) LLN 643