



FROM LABOUR LAW JOURNAL – LABOUR LAW NOTES

APRIL

PROMOTION

Reservation for SC/ST Candidates –Constitution of India, 1950, Article 335 – Recruitment Rules (Rules), Rule-8 – 1st Petitioner is Trade Union – 2nd 3rd Petitioners are members of 1st Petitioner and employees of 1st Respondent – 2nd Respondent undertook special recruitment drive to fill up backlog of reserved quota/vacancies in promotion as well as direct recruitment – Rule-8 of Rules provided for concession/relaxations to be provided for Scheduled Castes and Scheduled Tribes, Ex-Servicemen and other special categories of persons in accordance with orders passed by Central Government from time to time – 1st Respondent declared result and department did not apply relaxed standard though candidates belonged to Scheduled Castes and Scheduled Tribes categories (SC/ST) – After enforcement of amendment to Article 335 of Constitution of India, Central Government issued office memorandum deciding to restore relaxation/concession with immediate effect in matter of promotion for candidates belonging to SC/ST prescribing Lower Qualifying marks, lesser standards of evaluation – Petitioners approached Central Administration Tribunal with application that they are entitled for benefits of relaxation – Tribunal dismissed application stating that since result of examination was declared prior to date of issuance of office memorandum, Petitioners are not entitled to claim benefits – Petitioners filed writ petition – Whether order passed by Tribunal erroneous – **Held**, office memorandum issued post constitutional amendment also restored benefits/concessions/relaxations prevailing prior to it and does not confer any new benefit – View taken by Tribunal that decision of Union Government granting relaxation in favour of Scheduled Castes and Scheduled Tribes categories candidates in matter of promotion would apply after issuance of office memorandum is unsustainable – Since Supreme Court declared office memorandum to be illegal and even otherwise looking to language applied in memorandum, view taken by Central Administrative Tribunal that decision of granting relaxation would defeat and frustrate public policies in matter of reservation – Petition allowed. [*Mahanagar Telephone Nigam Ltd. v. Mahanagar Telephone Nigam Ltd.*]

REGULARIZATION OF SERVICE

Discrimination – Petitioner was worker under Electricity Board – By Exit.P5 order, Board regularized certain contractual employees in its service along with some employment exchange candidates – Those regularized employees were junior to Petitioner – Being aggrieved, Petitioner filed present petition claiming regularization of service – Whether Petitioner was also entitled for regularization – **Held**, earlier dispute was raised by persons engaged as petty contractions by Board – Industrial Tribunal held that there exists employer-workman relationship between Board and said persons – This was challenged by Board in writ petition – This Court did not interfere with finding of tribunal – This Court, in that case, held that they were engaged by Board as contract workers – It was observed that if those contract workers were entitled for absorption on account of their engagement after termination of project, they were free to take up their claim for regularization appropriate manner before appropriate authority – Ext.P5 shows that some of workmen, who were engaged on contract basis, were ordered to be regularized pursuant to direction of this Court in petition – This Court directed Board to consider regularization – If anyone of contract workers was regularized, who was junior to Petitioner, there was discrimination among similarly situated employees – Petitioner raised claim before Board – In light of Ext.P5, Petitioner shall also be considered for regularization – In light of earlier award status of Petitioner was that of 'contractual employee' – Therefore, Petitioner's status had to be considered for purpose of regularization as that of contractual worker – Board could not treat her as worker engaged in contract for service – Petition disposed of. [*K.L. Rukmini v. Kerala State Electricity Board*]

(A. MUHAMED MUSTAQUE, J.)
2017-II-LLJ-13 (Ker)
LNIND 2016 KER 29816

RETIREMENT BENEFITS

Withholding of – Unblemished Service – Bihar Pension Rules, 1950, Rules 27, 43 and 139 – Petitioner who was appointed as peon in school retired on attaining age of superannuation – State denied payment of pension and part of gratuity of Petitioner because of institution of criminal case against him – Being aggrieved, Petitioner filed this petition – Whether action of Respondents in withholding pension and part of gratuity in case of Petitioner was wholly illegal, arbitrary and without jurisdiction **Held**, no departmental proceeding was initiated against Petitioner while he was in service – He had never ever been held guilty of grave misconduct either in departmental or judicial proceeding – He had not been held guilty of causing loss to Government by misconduct or negligence during his service or after retirement – No prosecution sanctioned by competent authority against Petitioner – In absence of pre-requisites for withholding or withdrawing pension or part of it, Respondents could not have invoked jurisdiction to withhold pension or part of gratuity of the Petitioner under Rule 43(b) or (c) – No adverse entry in service book of Petitioner while he was in service – His entire service was unblemished – No stretch of imagination, it can be argued that service of Petitioner was not thoroughly satisfactory or there was proof of grave misconduct on his part while in service – Neither pension sanctioning authority nor State Government

could have exercised revisional power and reduced pension of Petitioner under Rule 139 – Pension of Petitioner could not have been withheld – On same reasoning even gratuity or any part of it could not have been recovered or withheld by Respondents – Action of Respondents in withholding pension and part of gratuity in case of Petitioner was illegal, arbitrary and without jurisdiction – Petition allowed. [*Shivjee Mahto v. State of Bihar*]

(ASHWANI KUMAR SINGH, J.)
2017-II-LLJ-164 (Pat)
LNIND 2017 PAT 441

RETRENCHMENT

Statutory Procedure – Industrial Disputes Act, 1947 (Act 1947), Section 25 F – Appellant was retrenched by Employer and he approached Labour Court – Labour Court directed reinstatement of Appellant – Respondents preferred writ and Court set aside order of Labour Court – Appellant preferred appeal – Whether order setting aside reinstatement of Appellant, sustainable – **Held, Section 25 F of Act 1947 provides that no workman who was in continuous service for not less than one year shall be retrenched by Employer unless 'workman' has been given one month's notice in writing or 'workman' has been paid in lieu of such notice – Statute provides that entitlement to retrenchment compensation or notice and compensation vests in 'workman' alone** – If Statute prescribes procedure for act to be done, if can be done only in manner prescribed and other modes of performance are necessarily forbidden – If foundational and primary facts necessary to be brought on record by Respondent was withheld and no reasonable explanation was offered, it is difficult to arrive at positive conclusion regarding retrenchment compensation paid to Appellant received through his Father – Since Respondents adopted non-statutory procedure for discharge of statutory duties and failed to convince Court, order under appeal based on application of principle of fraud is not sustainable – Whether there was fraud practiced by Father and Son duo or by father alone is matter for further investigation – Order under appeal set aside – Appeal allowed. [*Banwari Ltd. v. Chief Engineer Irrigation Department*]

(NAVIN SINGH, CJ.)
2017-II-LLJ-140 (Raj)
LNINDORD 2017 RAJ 1826

WORKMENS COMPENSATION

Condonation of delay – Appellant met with accident while on duty – Appellant filed case against Respondent No. 1 Employer – Commissioner granted compensation as against original claim – Appellant filed appeal challenging order that compensation awarded was not adequate – There was delay of 145 days in filing this appeal – Application for condonation of delay was filed that he was facing financial difficulties and he could not meet his advocate and arrange to file appeal on time – High Court dismissed application for condonation of delay – Being aggrieved, Appellant filed this appeal – Whether High Court should have entertained appeal on merits - **Held**, approach of High Court was very myopic and unreasonable – Appellant suffered injuries in accident and faced financial difficulties because he even lost his job – In case like

this, High Court should have condoned delay of 145 days which was not abnormal and should have entertained appeal on merits – Impugned order set aside – Case remitted back to High Court to decide same on merits – Appeal disposed of. [*Ravi v. Manager, Reliance General Induramce Co Ltd.*]

(A.K. SIKRI, J. AND R.K. AGRAWAL, J.)
2017-II-LLJ-102 (SC)
LNINDORD 2017 SC 3447

CONSTITUTION OF INDIA

Article 226 – Temporary Employees – Mandamus to Employer to absorb them in Permanent service – Whether can be issued – **Held**, Temporary Employees not entitled to Writ of Mandamus to direct Employer to make them permanent in service – Mandamus can be issued only when aggrieved party has legal right to relief claimed – Temporary Employees having no such right, not entitled to a Writ of Mandamus. *Jitendra Pratap Singh v. State of U.P.* (DB) (All.)

(SHEO KUMAR SINGH-I, J.)
2017 (2) LLN 48

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Section 33-C(2) – Labour Law – Industrial Dispute – Proceedings before Tribunal – Failure to plead necessary issues – Consequence of – Application under Section 33-C(2) made by Workman seeking computation of alleged money due on account of Pension – In Written Statement filed by Management, Management only raised issue of length of service of Workman – Relevant issues like non-joinder of necessary parties, lack of liability of Company, entitlement of Workmen, held, not pleaded by Management – Raising of issues at time of argument or before Writ Court, held, of no consequence – Attempt of Petitioner to lead evidence on issues which were not raised in pleading, held, would only prejudice Opposite Party – Stand of Petitioner, rightly rejected by Labour Court – Writ Petition dismissed, *Sinclairs Hotels Ltd. v. State of West Bengal* (Cal.)

(SAMBUDDHA CHAKRABARTI, J.)
2017 (2) LLN 126

LABOUR LAW

VRS Scheme *vis-à-vis* Settlement – Applicability of – Employer-Employees Relationship – Whether existed between parties – Workmen opted for VRS Scheme and were relieved on 30.9.2010 – Employer-Employee relationship snapped from 30.9.2010 – Same Workmen claiming benefit under Settlement dated 24.2.2011 which revised the Wage structure from 1.10.2010 – **Held**, Workmen were not Workmen under Employer on 1.10.2010 - Claim made by Workman, unsustainable as no Employer-Employee relationship existed between parties on said date. *The General Manager, Sri Bharathi Mills, Puducherry v. N. Karthikeyan* (DB) (Mad.)

(NOOTY RAMAMOHANA RAO, J.)
2017 (2) LLN 261

SERVICE LAW

Dismissal – Order of – Validity of – Employee submitted forged Certificate to prove that he had passed certain examination to claim additional Monetary benefit – Established in Enquiry that Certificate submitted was forged – Order of Dismissal passed against Employee – High Court ordered Reinstatement – **Held**, when it was clearly established that Certificate was forged, re-appreciation of evidence and modification of punishment by High Court, unwarranted – Order of High Court, set aside – Appeal allowed. *The Management of State Bank of India v. Smita Sharad* (SC)

(KURIAN JOSEPH, J.)
2017 (2) LLN 1

MAY

COMPASSIONATE APPOINTMENT

Civil Death of Employee – Husband of 1st Petitioner was appointed in service of Respondent/Company – Husband of 1st Petitioner went missing from his office quarters and after search made by 1st Petitioner, his whereabouts could not be known – Departmental proceeding was initiated against husband of 1st Petitioner and he was dismissed from service – 1st Petitioner obtained judgment and decree passed by Civil Court of competent jurisdiction holding that her husband met civil death on account of he being missing for seven years – 1st Petitioner approached Respondent to release arrears of wages, P.F., Gratuity of her husband – 1st Petitioner also requested of 2nd Petitioner for employment on compassionate ground – Respondent informed 1st Petitioner that she is not entitled for employment as her husband was dismissed from service of Respondent – 1st Petitioner filed writ petition – Whether termination of 1st Petitioner's husband is to be set aside – Whether 2nd Petitioner is entitled for employment on compassionate grounds – **Held**, compassionate appointment is exception to general rule and appointment in public offices should be made on the basis of competent merits – Petitioner applied within time from date of expiration of seven years from date of death – Permissible period of one-and-half year reckoned for purpose of making application for compassionate appointment by dependents of deceased – Fact that departmental proceeding leading to termination of 1st Petitioner's husband would have no meaning in eyes of law once declaration was made on civil death of employer by competent Court – Dismissal of 1st Petitioner's husband from service cannot be sustained – Rejection of claim of compassionate appointment on ground of termination cannot be sustained in eyes of law – Petition allowed. [Rama Bai v. Bharat Coking Coal Limited]

(DR. S. N. PATHAK, J.)
2017-II-LLJ-426 (Jhar)
LNIND 2017 JHAR 387

DISMISSAL

Modification of Punishment – Forged Mark Sheet – 1st Respondent initially worked as Kalasion daily wages in Appellant/Board – She was temporarily appointed as Masalji – At that time, her qualification was SSLC (failed) – Later site submitted certificate to Appellant as if she passed in SSLC Examination and requested Board to

make necessary entries in her service register – She was promoted as Junior Assistant and further promoted as Assistant – On verge of her retirement, she was placed under suspension on ground that she submitted forged SSLC mark sheet – Departmental enquiry was initiated – Punishment of removal from service imposed on 1st Respondent – Statutory appeal preferred by her before 2nd Respondent rejected – 1st Respondent filed writ petition challenging orders of Appellant and 2nd Respondent – Single Judge partly allowed writ petition and modified punishment of dismissal from service to one of reversion to post of Masalji/Office Assistant – Being aggrieved, present appeal filed – Whether Single Judge rightly modified punishment of dismissal from service to one of reversion to post of Masalji – **Held**, criminal case initiated against 1st Respondent ended in acquittal – In said case, Magistrate observed that there was no evidence to show that forged document was produced by 1st Respondent – No iota of evidence to show that 1st Respondent knowingly submitted false mark sheet – That apart, Criminal Court acquitted 1st Respondent – Single Judge rightly modified punishment of dismissal from service to one of reversion to post of Masalji – No illegality or impropriety found in order passed by Single Judge – Order passed by Single Judge confirmed – Appeal dismissed [*Tamilnadu Khadi and Village Industries Board v. Sugirtha*]

(HULUVADI G. RAMESH, ACJ.)
2017-II-LLJ-495 (Mad)
LNIND 2017 MAD 1251

INDUSTRIAL DISPUTE

Appearance through Advocate – Industrial Disputes Act, Section 36(4) – Petitioner workman raised demand and reference was made to Labour Court – Petitioner made application under Section 36(4) and it was dismissed – Petitioner challenged order dismissing said application by present petition – Whether order of dismissal passed by Labour Court, sustainable – **Held**, Section 36(4) provides for representation of party in proceedings pending before Labour Court or Industrial Tribunal by legal practitioner with consent of opposite party and leave of Labour Court, Tribunal or National Tribunal – Respondent when served with notice in Reference Petition had put in appearance through Advocate before Labour Court – Neither Petitioner nor Labour Court objected to appearance in this manner in pending reference petition – When reference petition remanded by this Court for fresh disposal in accordance with law, Respondent/Management cannot be relegated to stage – Pleadings are complete and case after its remand shall proceed further from that stage onwards – Petition dismissed. [*Harbans Singh v. Alembic Ltd.*]

(DHARAM CHAND CHAUDHARY. J.)
2017-II-LLJ-418 (HP)
LNIND 2017 HP 171

REGULARIZATION OF SERVICE

Similar Benefits – Petitioners were appointed as daily wage labourers on different dates – State issued policy as per which those daily wages who completed three years of service and were in service were to be regularized – Services of juniors to Petitioners regularized, but Petitioners ignored and terminated – 1st Petitioner raised industrial dispute – Labour Court set aside termination order, directed reinstatement with

continuity of service and half back wages – Petitioners filed writ seeking regularization of their services from date on which services of their junior were regularized – Whether Petitioners entitled for regularization of services – **Held**, if after comparing same persons Petitioners have been treated as seniors by Labour Court and that Award has become final, department cannot say that persons are not juniors to Petitioners – Claim of Petitioners rests on jurisprudential premise that benefit which has been granted to their juniors cannot be denied to them and even if no policy had been framed claim of Petitioners would still be alive – Petition allowed. [*Pawan Kumar v. State of Haryana*]

(AJAY TEWARI, J.)
2017-II-LLJ-318 (P&H)
LNIND 2017 PNH 384

APPOINTMENT

Retrenched Employee – Industrial Dispute Rule, 1957, Rules 16, 42 and 43 – Appellant/Petitioner/helper engaged on daily wages – Petitioner retrenched without notice of retrenchment and juniors to Petitioner retained – Petitioner was not given opportunity even if work was available - Petitioner approached Labour Court and claim dismissed – Petitioner filed writ petition seeking reinstatement and benefit of scheme formulated by Court in another case – Single judge dismissed petition, aggrieved Petitioner filed present petition – Whether order passed by Single judge, sustainable – **Held**, Rule 43 requires that intimation of vacancies shall be sent to retrenched workmen who are eligible to be considered – It is mandatory provision and compliance of same should be made – When mandatory provision is made for sending intimation of vacancy to retrenched employee then it was incumbent upon Respondent/opposite party to communicate Petitioner – Rule 43(2) provides that unless there are good reasons, employer shall re-employ retrenched workmen in order of their seniority as shown in list maintained under Rule 42 – Compliance of Rule 43 has not been made by Respondent – No notice was served upon Petitioner offering him re-employment, juniors of Petitioner were re-employed which is against the spirit of Rules – Judgment passed by Single judge is liable to be set-aside – Petition allowed. [*Mata Prasad v. U.P. State Bridge Corporation Limited*]

(ANIL KUMAR SRIVASTAVA-II, J.)
2017-II-LLJ-459 (All)
LNIND 2017 LUCK 25

SUSPENSION

Charge Memo – Constitution of India, 1950 (Constitution), Article 226 – Petitioner is driver employed by Respondent – On incident day, Driver ran over deceased – Preliminary enquiry conducted and report submitted – Depot Manager issued two proceedings – In one proceeding, Petitioner was placed under suspension – In second proceeding, charge was framed against Petitioner – Challenging order of suspension and framing charges, writ petition is filed – Whether Court can interfere in disciplinary proceedings at stage of charge memo – Whether suspension from service is justified – **Held**, at preliminary stage, (Court is asked to go into merits of allegations and record finding – In exercise of power of judicial review under Article 226 of

Constitution, Court cannot undertake such exercise – Evaluation of evidence is prerogative of disciplinary authority – Writ Court cannot undertake such exercise even after disciplinary proceedings are concluded – Jurisdiction of Writ Court under Article 226 of Constitution is very limited in disciplinary proceedings matters – At preliminary stage, Court cannot undertake exercise of evaluation of evidence – Initial report would point out that accident was not caused due to negligence of Petitioner – In light of earlier preliminary reports and report, suspension was unwarranted – No scope for employee to tamper record – In light of allegation made, *prima facie*, it cannot be said that by continuity Petitioner in service, he could cause mischief or hinder progress of enquiry – It is made more as administrative routine – Facts of case do not warrant suspension of employee – No application of mind – Power to place employee under suspension exercised in arbitrary manner – Challenge to charge memo is rejected – Order of suspension set aside – Petition partly allowed. [G. Govindu v. Telangana State Road Transport Corporation]

(P. NAVEEN RAO, J.)
2017-II-LLJ-465 (AP)
LNINDORD 2017 AP 41

Discriminatory Treatment – Petitioner was working as conductor in Respondent/Corporation – Petitioner was placed under suspension, alleging that he indulged in cash and ticket irregularities – Being aggrieved, Petitioner filed present writ petition – Whether suspension of Petitioner amounted to arbitrary exercise of power and meeting out discriminatory treatment – **Held**, suspension order was on ground that fare was not collected from student passenger – It was not case of collection of fare and not issuing ticket to passenger – In case of another conductor, on same allegation he was not placed under suspension though disciplinary action was initiated against him – It was stated that another conductor had better past record and that irregularity was noticed within 3 stages as against 7 stages in case of Petitioner – It was not denied that allegation against both employees was same – Past misconduct could not be ground to treat differently two similarly situated persons on question of suspension on similar misconduct – If such conduct was not viewed as grave misconduct to one employee, it could not become grave to another employee, merely because he had past misconduct – Past misconduct may be relevant at time of imposing punishment – Past misconduct was not allegation in charge memo – This amounts to arbitrary exercise of power and meeting out discriminatory treatment – Suspension was wholly unwarranted – There was no scope for employee to tamper record – Prima facie, it could not be said that by continuing Petitioner in service, he could cause mischief or hinder progress of enquiry – It was made more as administrative routine – There was not application of mind – Power to place employee under suspension was exercised in arbitrary manner – Order of suspension set aside – Petition allowed. [G. Shashi Kumar v. Telangana State Road Transport Corporation]

(P. NAVEEN RAO, J.)
2017-II-LLJ-477 (AP)
LNINDORD 2017 AP 74

TERMINATION

Principles of Natural Justice – Petitioner/casual wage employee in Hospital was brought into regular establishment on temporary basis by way of appointment based on circular issued by Directorate of Health Services – Respondents terminated Petitioner's appointment on grounds that it was illegal/forged – Being aggrieved, Petitioner filed petition – Whether termination was bad in law since case of Petitioner was not case of fresh appointment, rather it was case of regularization in light of departmental circular which had approval of Directorate – **Held**, issue was whether or not his regularization on post, by virtue of his continuation as daily wage employee in terms of own circular of Health Department satisfied procedure – Order of termination did not discuss foundations nor gives reasons – Even when High Court granted liberty to Respondents to examine case of employees, each case had to be considered on its own merits – Manifestly case of Petitioner was not case of fresh appointment rather case of regularization on post – It had to be considered whether or not his regularization was in tune with circular and in backdrop of decisions and correspondences – Neither copy of enquiry report provided to Petitioner nor Petitioner afforded opportunity to defend his regularization – Counter affidavit also did not answer these issues – Order suffers violation of principles of natural justice – Termination order in so far as it relates to Petitioner quashed and set aside – Petitioner stood reinstated – Petition allowed. [*Satya Narayan Mandal v. State of Bihar through the Secretary*]

(JYOTI SARAN, J.)
2017-II-LLJ-375 (Pat)
LNIND 2017 PAT 577

TRADE UNION

Registration of – Maintainability of Appeal – Trade Union Act (Act), Sections 4,5,8,9,10 and 11 – Constitution of India, 1950, Article 226 – Application for registration submitted by newly formed 2nd Respondent/Union claiming membership strength in Petitioner/company – Eventually certificate was granted to 2nd Respondent – Appeal filed by Petitioner dismissed – Being aggrieved, present petition filed by employer – Whether appeal of Petitioner under Act was maintainable – **Held**, none of provisions of Act contemplated role of employer in process of registration and cancellation – Even appeal under Section 11 of Act could be made by person aggrieved by refusal of registration or withdrawal or cancellation of registration and not on grant of registration – No appeal lies against grant of registration – Industrial dispute could be raised by employer and workmen or employees – More often it was employees or workmen who was found to be raising industrial dispute – Industrial dispute at hands of employer were rarely noticed, same would mean that employee or workman was by and large in need of support of union for espousing their grievances – Allowing employer to question existence of registration of union might result into leverage to employer to interfere in individual affairs on union – Already existing union did not make grievance against registration of 2nd Respondent union – Employer could not make grievance against registration of another union – Powers under Article 226 of Constitution not exercised – Appeal of Petitioner under Act not maintainable and was rightly dismissed – For

cancellation of certificate of registration of trade union, none except aggrieved union would have *locusstandi* – Petition dismissed. [*Videocon Industries Ltd. v. V.V. Pandya*]

(G.R. UDHWANI, J.)
2017-II-LLJ-414 (Guj)
LNIND 2017 GUJ 947

WAGES

Settlement – Industrial Disputes Act, 1947, Sections 18 (1) and 33-C (2) – Labour Court allowed petition filed by Respondent/workman under Section 33-C (2) granting wages with simple interest during period of special leave or closure of unit – Appellant/Management challenged award before High Court – High Court refused to interfere with award – Being aggrieved, Management filed present appeal – Whether relief granted by Labour Court and affirmed by High Court could not have been granted under Section 33-C (2) in view of settlement by and between Management and representative Union of workmen – **Held**, all other workmen got benefit in terms of settlement – Respondent was lone employee who was granted higher benefits to terms of order of Labour Court as affirmed by High Court – Settlement by and between Management and representatives Union of workmen construed to be one under Section 18(1), same would bind Respondent – Respondent in his evidence did not deny that representative Union which was party to settlement did not represent his cause – Mere statement in evidence of workman that he was not member of specific union would not suffice – If Memorandum of Understanding/Settlement was part of revival scheme approved by Board for Industrial and Financial Reconstruction, same would also be binding on workmen – Labour Court as well as High Court was not justified in passing impugned order – Instead of full wages with simple interest, Respondent would be entitled to 25% of wages as per settlement from date of special leave till date of reporting back to duty – Workman should be paid interest at rate of 9% per annum on said amount – Appeal allowed. [*Kanpur Fert, and Cement Ltd v. State of U.P.*]

(RANIAN GOGOI, J. AND NAVIN SINHA, J.)
2017-II-LLJ-457 (SC)
LNINDORD 2017 SC 5972

CONSTITUTION OF INDIA

Articles 14 & 16 – Seniority – Karnataka Determination of Seniority of the Government Servants Promoted on the Basis of Reservation (To the Posts in the Civil Service of the State) Act, 2002 (10 of 2002), Sections 3 & 4 – Validity of Act – In determination of Seniority of Government servants belonging to Scheduled Castes and Scheduled Tribes promoted under Reservation Policy – Plea of Appellants that grant of consequential Seniority to Candidates promoted by way of Reservation affected efficiency of administration and was violative of Articles 14 & 16 – Whether impugned Act is consistent with Articles 14 & 16 of Constitution – Fact that no proportionate representation in Promotional posts for population of SCs & STs is not by itself enough to grant consequential Seniority to promotees, who otherwise are junior and thereby denying Seniority to those, who are given Promotion later on account of Reservation

Policy – State should place material on record disclosing compelling necessity for exercise of such power and decision including study that overall efficiency is not compromised - High Court committed error in observing that Petitioners should plead and prove that overall efficiency was adversely affected by giving consequential Seniority to juniors on account of Reservation – Plea that persons promoted at same time allowed to retain their Seniority in Lower cadre is untenable and ignore fact that a senior person may be promoted later and not at same time on account of Roster Point Reservation – In absence of exercise under Article 16 (4-A), it is the 'Catch up' Rule which is fully applicable – Impugned Judgment set aside declaring provisions of impugned Act to extent of doing away with 'Catch up' Rule and providing for consequential Seniority under Sections 3 & 4 to persons belonging to SCs STs on Promotion against roster points to be *ultra vires* Articles 14 & 16 of Constitution – Appeals allowed. *Pavitra, B.K. v. Unions of India (UoI) (SC)*

(A.K. GOEL, J.)
2017 (2) LLN 273

Article 21 – Service Law – Pension – Adequacy of – Determination of – Adequacy of Pension, held, difficult to determine by judicial verdict unless Pension is grossly inadequate, unconscionable, irrational – Determination of Pension dependant on various factors and a matter of Executive Policy calling for little intervention by Judicial Courts – Pension of Rs.13,000 to Rs.21,000, held, would not be inadequate so as to affect right to life of individuals under Article 21. *Federation of Retired LIC Class-1 Officers v. UoI (DB) (Del.)*

(SANJIV KHANNA, J.)
2017 (2) LLN 346

Article 226 – Industrial Dispute Act, 1947 (14 of 1947), Section 10(1) – Reference of dispute to Tribunal Labour Court – Challenge to Order of 1st Respondent refusing to refer dispute to Labour Court – Act of Government to refer dispute is Administrative in nature which is subject to Judicial Review – Government cannot delve into merits of dispute – If it goes into said issue, it amounts to exercising Quasi-Judicial power, which is not sustainable – Case-law discussed – In present case, Government has refused to refer dispute on ground that there exists no Employer-Employee relationship – Same is unsustainable as it is for Labour Court to decide whether there exists Employer-Employee relationship – Thus, impugned Order of Government refusing to refer dispute is unsustainable – At same time unless extraordinary circumstances exist, Court would not straightaway direct Government to refer dispute to Labour Court – It is for concerned Authority to consider as to whether dispute can be said to be stale based on fact of case – Writ Petition allowed. *Kantibhai G. Patel v. Government of India (Guj.)*

(SONIA GOKANI, J.)
2017 (2) LLN 413

DISCIPLINARY PROCEEDINGS

Principles of Natural Justice – Whether violated – Petitioner, Deputy General Manager of Bank suspended from service after Disciplinary Enquiry – No Charge Memo issued to delinquent – Report of Enquiry Officer not served upon Petitioner and Witnesses not examined in his presence nor he given any chance to cross-examine them – Service Punishment of Suspension form service, held, awarded to Petitioner without following Principles of Natural Justice – Enter Proceedings from their initiation, set aside – Petitioner reinstated in service – Writ Petition allowed – Service Law. *Kadapa District Cooperative Central Bank Ltd. v. P.V. Siva Prasad* (Hyd.)

(M.S. RAMACHANDRA RAO, J.)
2017 (2) LLN 459

Section 11(3) – Power of Industrial to order recall of Witness for cross-examination – Tribunal enjoys same power as are vested with Civil Court, hence it has power to recall Witness – *Karan Chand Thapar & Brothers (Pvt.) Ltd. v. Workmen of North Chirimiri Colliery*, 1968 (2) LLJ 261 followed – Though Tribunal was right in stating that power to recall must be sparingly used, it erred in holding that Advocate's mistake can never be ground for recalling Witness – In preset case, Writ Petitioner wants to cross-examine Respondent on question of Authority of Respondent to take action against Employee, which is bono fide reason to recall – Tribunal erred in dismissing Petition – Hence, impugned Order set aside – Writ Petition allowed. *Remio A. Rodrigues v. Goa Glass Fibre Ltd.* (Bom.)

(M.S. SONAK, J.)
2017 (2) LLN 306

Section 25F – Retrenchment – Payment of Retrenchment Compensation to some other person on behalf of Employee – Whether sustainable – Act is very clear to fact that both Notice and Compensation had to be made with 'Workman' alone – When Statute prescribes particular thing to be done in particular way, it has to be done in that manner alone – In present case, act of Management in allegedly paying Compensation to Appellant's father cannot be accepted – That apart Management has not let in any evidence to prove payment to Appellant's father – Single Judge wrongly applied Principle on Non-Traverse to present case – Principle of Non-Traverse would not apply to case, where facts are in serious dispute – Since Respondent/Management alleges fraud being played by Appellant and his father, taking into account fact that it is a Public Sector undertaking, liberty granted to Management to conduct Enquiry on said aspect – Therefore, Order of Single Judge set aside – Writ Appeal allowed. *Banwari Lal, Jaipur v. Chief Engineer, Irrigation Department, Jaipur* (DB) (Raj.)

(NAVIN SINHA, C.J.)
2017 (2) LLN 542

PAYMENT OF GRATUITY ACT, 1972 (39 OF 1972)

Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952) – Industrial Disputes Act, 1947 (14 of 1947), Section 18(1) – Settlement – Workman terminated from Service – Labour Court awarded Reinstatement, continuity of service

and full Back Wages – Management filed Writ Petition – It was dismissed – During Writ Appeal matter was compromised – Workman received a particular amount as full and final Settlement – Appeal was withdrawn as settled – Workman made a claim for Gratuity and for Provident Fund – Authorities allowed claim – In Writ Petition, Order was set aside – Writ Appeal filed – Settlement between parties indicate that Workman had received Settlement amount in lieu of all benefits and gave an undertaking not to lodge any other claim – Workman not entitled to make claim for Gratuity and Provident Fund – Writ Appeal by Workman dismissed. *Devadasan, M. v. The Management Southern Railways Ltd. (DB) (Mad.)*

(M. SATHYANARAYANAN, J.)
2017 (2) LLN 518

SENIORITY

Validity of Act – In determination of Seniority of Government servants belonging to Scheduled Castes and Scheduled Tribes promoted under Reservation Policy – Plea of Appellants that grant of consequential Seniority to Candidates promoted by way of Reservation affected efficiency of administration and was violative of Articles 14 & 16 – Whether impugned Act is consistent with Articles 14 & 16 of Constitution – Fact that no proportionate representation in Promotional posts for population of SC & STs is not by itself enough to grant consequential seniority to promotes, who otherwise are junior and thereby denying Seniority to those, who are given Promotion later on account of Reservation Policy – State should place material on record disclosing compelling necessity for exercise of such power and decision including study that overall efficiency is not compromised – High Court committed error in observing that Petitioners should plead and prove that overall efficiency was adversely affected by giving consequential Seniority to juniors on account of Reservation – Plea that persons promoted at same time allowed to retain their Seniority in Lower cadre is untenable and ignores fact that a senior person may be promoted later and not at same time on account of Roster Point Reservation – In absence of exercise under Article 16(4-A), it is the 'Catch up' Rule which is fully applicable – Impugned Judgment set aside declaring provisions of impugned Act to extent of doing away with 'Catch up' Rule and providing for consequential Seniority under Sections 3 & 4 to persons belonging to SCs & STs on Promotion against roster points to be ultra vires Articles 14 & 16 of Constitution – Appeals allowed – Karnataka Determination of Seniority of the Government Servants Promoted on the Basis of Reservation (To the Posts in the Civil Services of the State) Act, 2002 (10 of 2002), Sections 3 & 4 – Constitution of India Articles 14 & 16. *Pavitra, B.K. v. Union of India (UoI) (SC)*

(A.K. GOEL, J.) 2017 (2) LLN 273

JUNE

BACK WAGES

Payment of – Duration of Litigation – Industrial Disputes Act, 1947 – Petitioner's services terminated by Respondent/Bank – Labour Court passed award reinstating Petitioner to service but declined payment of back wages – Petitioner joined services and filed petition seeking back wages – Whether award of Labour Court declining

payment of back wages, sustainable – **Held**, Labour Court could not have held reference to be “highly belated” and that too by six years without entering into debate on effect of duration of litigation in petition filed by workman – That part of award is not judicial reasoning to sustain financial loss – If it is exercise of discretion, then there is no back up evidence of assigning reasons for denial except mere *ipse dixit* – Reason of delay of six years was not germane to consideration nor was relevant in moulding relief and same is held to be untenable – Labour Court failed to apply its mind and address itself to this important issue while declining right to payment of back wages when continuity granted in wake of reinstatement – Labour Court failed to record proper reasons for denial of back wages and award is not sustainable to extent it denies back wages altogether and that too for wrong reason of delay – Labour Court skipped over period spent in High Court for no fault of Petitioner – Petitioner entitled for back wages for period between award and date of joining in implementation of award which attained finality – Petition partly allowed. [*Kuldeep Singh v. Presiding Officer*]

(RAJIV NARAIN RAINA, J.)
2017-II-LLJ-747 (P&H)
LNIND 2017 PNH 1549

DISCIPLINARY PROCEEDINGS

Validity of – Framing of Issues – Petitioner, sub-staff in Bank was placed under suspension on ground that Bank were going to initiate departmental action against him – Enquiry Officer was appointed and he by his report held that charges were proved – Bank dismissed Petitioner from service – Internal appeal filed by Petitioner rejected – Industrial dispute raised by Petitioner challenging domestic enquiry proceedings – Labour Court by impugned award held that dismissal of Petitioner was justified – Being aggrieved, Petition filed by Petitioner against award of Labour Court – Whether Labour Court framed proper issues – **Held**, when Petitioner took specific plea in Claim Statement, assailing domestic enquiry proceedings, it was incumbent on Labour Court to have framed preliminary issue as to validity of domestic enquiry proceedings – In event of Labour Court holding from domestic enquiry records that same was not properly conducted, employer would have opportunity to adduce evidence – No finding given by Labour Court about validity of domestic enquiry proceedings – Impugned award set aside – Matter remanded back to Labour Court for fresh disposed in accordance with law, after framing preliminary and other issues – Petition allowed. [*B. Anandan v. Presiding Officer*]

(P.N. PRAKASH, J.)
2017-II-LLJ-700 (Mad) **LNINDORD 2017 MAD 145**

Validity of Enquiry – 1st Respondent/Workman, employed as driver with Petitioner was charged for negligent driving and Departmental inquiry initiated against him – Report of Divisional Manager or Depot Manager was given weightage by disciplinary authority wherein they stated that drivers of both sides were negligent – Penal orders passed by Authorities – It was challenged by 1st Respondent before Tribunal – Tribunal by impugned award substituted penal order by penalty of stoppage of two increments with future effect and directed Petitioner to pay differential amount – Aggrieved, Petitioner filed present writ petition – Whether departmental inquiry be

impeached on ground that authority had no material to justify its initiation – **Held**, purpose of departmental inquiry was to fix responsibility of erring delinquent – Disciplinary authority should be able to show tangible cogent material on which it proposes to rest charge against delinquent – Similarly, if there were two versions; one justifying dissuading from departmental inquiry and other mere bald version, disciplinary authority would not be justified in persuading itself to hold departmental inquiry while ignoring contrary weighty version – Only material for initiation of departmental inquiry in instant case were bald statements of Depot Manager/Divisional Manager without there being *Prima Facie* material justifying such claim – Such claim was contrary to weighty version of workman which received complete corroboration from independent passenger justifying dissuasion from holding inquiry – Six passengers lost their life and 11 passengers were injured in accident – Disciplinary authority was swayed away by said sole fact without analyzing other relevant facts objectively before deciding to hold inquiry against Respondent – No reason to interfere with impugned judgment and award – Petition dismissed. [*Gujarat State Road Transport Corporation v. Devshibhai K. Mehta*]

(G.R. UDHWANI, J.)
2017-II-LLJ-733 (Guj) LNIND 2017 GUJ 1130

PENSION

Computation of – Qualifying Service – Railway Services (Pension) Rules, 1993 (Rules 1993), Rules 20 and 31 – Respondents, initially appointed as casual labour, were granted temporary status after few years and subsequently regularized against regular posts – Respondents raised grievance before Tribunal for giving full service benefit for period during which they were working, having temporary status – Tribunal allowed application – Petition filed by Appellants/Union of India and Railway Authorities before High Court was dismissed – Aggrieved, Appellants filed present appeal – Whether entire services of casual worker after obtaining temporary status till his regular absorption was entitled to be reckoned for pensionary benefit or only 50 per cent period of such service could be reckoned for pensionary benefit – **Held**, Rule 20 of Rules 1993 provides that qualifying service shall commence from date employee takes charge of post to which he was first appointed either substantively or in officiating or temporary capacity – When casual labour was granted temporary status, grant of status confers various privileges – One of the benefits was also to make him eligible to count only half of services rendered by him after attaining temporary status – Grant of temporary status of casual labour not akin to appointment against post – Such contingency not covered by Rule 20 of Rules 1993 – Same was expressly covered by Rule 31 of Rules 1993 which provides for 'half service paid from contingencies shall be taken into account for calculating pensionary benefits on absorption in regular employment subject to certain conditions enumerated there in' – Rule 31 of Rules 1993 was applicable while computing eligible services for calculating pensionary benefits on granting of temporary status – Casual labour granted temporary status could reckon half of services for pensionary benefits as per Rule 31 of Rules 1993 – Appeals allowed. [*Union of India v. Rakesh Kumar*]

(ASHOK BHUSHAN, J.)
2017-II-LLJ-686 (SC) LNIND 2017 SC 142

DISMISSAL

Bank dismissed a Peon for concealing his involvement in a Criminal case at time of his appointment – Challenged – Single Judge set aside Dismissal and directed Bank to hold Enquiry in view of Judgment of Apex Court reported in *Avtar Singh v. Union of India*. 2016 (8) SCC 471 – Writ Appeal filed – Fact that Employee had suppressed a material fact at time of employer, if case is reconsidered by Bank keeping Dismissal Order intact – If Bank decides in favour of Employee, reinstatement will follow – Respondent cannot be allowed to work as Employee till such time – Order of Single Judge set aside to that extent and Bank directed to proceed with Enquiry within a month time. *State Bank of Travancore v. K.P. Kiran Kumar, Kozhikode* (DB) (Ker.)

(MOHAN M. SHANTANAGOUNDAR), C.J.)
2017 (2) LLN 728

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Section 2-A(2) – Removal from Service – Modification by Revisional Authority – Dispute under provision – Maintainability of – Order of Removal passed against Petitioner – Revisional Authority upheld Disciplinary action against Petitioner but modified punishment and directed appointment of Petitioner as fresh Driver – Order of Removal was staring at Petitioner even after he was granted fresh appointment – Industrial Dispute raised by Petitioner rejected by Labour Court on account of subsequent Orders of Revisional Authority – **Held**, Workman in normal course can seek redressal from Labour Court only after Reference is made by Government – However, in cases of Removal/Dismissal from service as per Section 2-A(2), Workman can invoke jurisdiction of Labour Court directly – In instant case, subsequent Order of Revisional Authority arising out of original Order of Disciplinary Authority – Workman aggrieved by Order of Revisional Authority, held, entitled to raise dispute directly before Labour Court – Petitioner, held, can claim Service benefits from earlier service only when Order of Removal is set aside – Order of Labour Court rejecting dispute of Petitioner erroneous and set aside – Industrial Dispute restored to file of Labour Court – Writ Petition allowed. *Purnachandra Rao, P. v. Labour Court, Guntar* (Hyd.)

(P. NAVEEN RAO, J.)
2017 (2) LLN 712

Section 10 – Reference to Tribunal – Certain number of Workmen were charge-sheeted for various acts of misconduct – Conciliation proceedings were initiated and Government referred dispute for adjudication before Industrial Tribunal – Workmen were suspended pending Enquiry – Order of Reference was questioned in Writ Petition – Contention of Management that there is no dispute to make a Reference to Tribunal and Suspension is not covered under Second or Third Schedule, not tenable – Power to suspend Workmen can be abused or misused by Management – Suspension of Workmen in contemplation of Disciplinary proceedings must also be held to be an Industrial Dispute referable to Industrial Tribunal though Suspension is not specifically mentioned in Third Schedule – If Union of Workmen raises a dispute regarding such Suspension, it would be a matter covered by Third Schedule and referable for adjudication – Reference to Tribunal, proper – Writ Petition disposed of with a direction

to Tribunal to dispose of Reference within six months. *Peerless Inn v. Fourth Industrial Tribunal* (Cal.)

(ARIJIT BANERJEE, J.)
2017 (2) LLN 654

SERVICE LAW

Regularisation – Applicable Government Order – **Held**, when applicable G.O.Ms. No 71, dated 5.5.1998 warranted Regularisation of Workers from date of their initial appointment, subsequent G.O.Ms. No.166, dated 31.12.2014 cannot be applied retrospectively to modify rights already accrued to Workers by charging date of Regularisation to a later date. *Secretary to Government, Municipal Administration and Water Supply Department, Fort St. George, Chennai and others v. V. Marisamy* (FB) (Mad.)

(R. MAHADEVAN, J.)
2017 (2) LLN 744

Retirement – Private Management – Direction to retire after age of 55 – Whether valid – Services of Petitioner extended after age of 55 with condition that he will be liable to be retired anytime thereafter – Retirement Order issued to Petitioner on ground that his services were no longer within 'expectation of Management' – **Held**, subjective satisfaction as to entitlement of private Employer and Order issued to Petitioner, not stigmatic in nature – Moreover when Service conditions stipulated Retirement at age of 55, Retirement Order issued at age of 57, not invalid – Writ Petition dismissed. *Devender Mohan v. The Presiding Officer, Labour Court* (P & H)

(RAJIV NARAIN RAINA, J.)
2017 (2) LLN 786

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