LEGAL NEWS

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JANUARY – FEBRUARY – MARCH , 2014

FROM LABOUR LAW JOURNAL – LABOUR LAW NOTES

JANUARY, 2014

GRATUITY

Calculation of - Payment of Gratuity Act, 1972 – Petitioner, engaged as Casual Labourer was regularized in service – On retirement, respondent issued calculation sheet in which petitioner's date of entry into service was wrongly mentioned – 2nd Respondent wrongly calculated gratuity payable to petitioner – Tribunal rejected petitioner's application to rectify mistake in calculation on ground that no document produced to substantiate claims – Writ Petition – Whether Tribunal justified in dismissing petitioner's application on ground that no materials placed to show date of entry into regular service – Held, petitioner filed documents of proceedings indicating date of attaining temporary status and regular absorption – Proceedings not considered by Tribunal while rejecting petitioner's application – Tribunal not justified in holding that petitioner did not place any materials to show her date of entry into regular service – Order of Tribunal set aside – Matter remitted to respondents to consider claim of petitioner for payment of balance gratuity amount. *[Prema Balasubramanian v. Union of India]*

(K. RAVICHANDRABABU, J.)
2014-I-LLJ-60 (Mad)

INDUSTRIAL DISPUTE

Absorption – Industrial dispute filed by workman seeking direction to Tamilnadu Water Authority Board to absorb him as permanent employee awarded in favour of workman – Writ Petition filed by workman to implement award of Labour Court – Another writ petition filed by Board to quash impugned award – Whether Board liable to absorb workman and disburse monetary benefit due to him – Held, Board did not produce document to substantiate that workman was never engaged by them – Some similarly placed workers were selectively absorbed – Labour Court, by conducting full-fledged trial and giving deliberate discussion on all aspects rightly proceeded to issue direction in favour of workman – Board, played foul game to deprive poor employee of his right of employment, withholding vital document to

hide actuality – Board to pass immediate orders absorbing Petitioner, disbursing monetary benefit due to him in terms of Award passed by Labour Court – Writ Petition by workman allowed – Writ Petition by board dismissed. *[v. Sathia Jacob v. Managing Director, T.W.A.D. Board]*

(T.RAJA, J.)
2014-I-LLJ-121 (Mad)

Jurisdiction of Tribunal

Industrial Disputes Act, 1947, Section 33-C(2) – Respondent employed with Petitioner, opted for voluntary retirement, relieved from service – Petitioner entered into bipartite settlement applicable to existing and retired employees – Respondent not granted revision of pension – Respondent filed petition under Section 33-C(2) before CGIT/Tribunal – CGIT held that claims not maintainable since it was beyond Section 33-C(2), same cannot be taken for adjudication – Respondent filed two applications, to lead additional evidence and to produce additional documents – CGIT allowed application for production of documents, with certain directions – Petitioner filed writ petition alleging that when application under Sec. 33-C(2) itself not maintainable, Petitioner cannot be asked to produce documents – High Court held grievances raised by Respondent under settlement do not bind her and issued direction to CGIT to examine claim for production of documents by Petitioner – Upon directions, CGIT held reasons given by High Court were based on wrong facts placed by Petitioner and that claim for revision of pension was already provided under Section 33-C(2) – Impugned order of CGIT challenged – Whether CGIT exceeded its jurisdiction in passing impugned order – Held, Respondent did not merely seek to execute or enforce settlement through proceedings under Section 33-C(2), but sought to establish right to relief by raising revision of pension and determination of issue of Petitioner's corresponding liability – Whether Court has been misled or erred in returning its decision can be raised only in appeal before higher forum not before Tribunal – Claim for revision of pension restricted out of settlement, and that it required no further adjudication, but merely required computation, rejected – Tribunal exceeded its jurisdiction, impugned order quashed and set aside – Writ petition disposed of. *[Hong Kong and Shanghai Banking Corp. Ltd. v. Anju Bala Gupta]*

(VIPIN SANGHI, J.)
2014-I-LLJ-63 (Del)

PROVIDENT FUND

Default in contribution – Recovery of damages – Employees' Provident Fund and Miscellaneous Provisions Act, 1952, Sections 14-B and 7-Q – Employees' Provident Fund Scheme, 1952, Para 32A – Respondent/Company defaulted in contribution due to financial crisis – Adjudication officer rejected claim for waiver of penalty or

reduction of penalty – Tribunal remanded matter with direction to consider claim of financial constraints, but adjudication officer rejected claims again – Single judge held that amendment and introduction of sliding scale under Para 32A took away discretion conferred on adjudication officer – Appeal – Whether in imposing penalty under Section 14B, adjudicating officer has discretion to waive or reduce penalty since rates are clearly determined under sliding table in Para 32A of Scheme – Held, financial difficulties could not be mitigating circumstance as per pre-amended Section 14B – Fetter under amended Section 14B and Para 32A provides that penalty imposed cannot at any stage exceed arrears, can be up to rates of damages specified in sliding table – Pre-amended Section 14-B conferred absolute discretion on authorised officer either to impose or not to impose penalty – Amended Section 14B deals only with penal element, compensation aspect taken out and placed of Section 7-Q – After amendment, authorised officer has discretion to impose damages by way of penalty or not to impose it altogether, same to be exercised as per Para 32A of sliding table – Employer may have reasons beyond his control which led to default – Prior and subsequent conduct of employer becomes a significant aspect – Respondent/Company was prompt earlier and same displayed after company came out of financial travails, which was mitigating circumstances in pre-amendment period – Impugned judgment of Single Judge imposing penalty of 25% of damages, satisfied mandate under Section 14B, same also remitted by Respondent/Company – Appeal partly allowed. *[Regional Provident Fund Commissioner v. Harrisons Malayalam Ltd.]*

(K. VINOD CHANDRAN J.)
2014-LLJ-109 (Ker)

REINSTATEMENT

Abandonment of service – Award – Correctness of – Industrial Disputes Act (14 of 1947), Section 25-F – Petitioner stated that 1st Respondent abandoned service – 1st Respondent alleged that Petitioner terminated his service without issuance of show cause notice or conduct of any enquiry and breached Section 25-F – Labour Court directed Petitioner/Employer to reinstate 1st Respondent with 50% back wages writ petition – Whether Labour Court justified in relying upon evidence on record and directing reinstatement of 1st Respondent with back wages – Held, letters relied by Petitioner calling 1st Respondent to resume duty not accepted by Labour Court as there is no evidence that same were received by 1st Respondent – Signatures on register upto specific period admitted by 1st Respondent, but signatures for months beyond denied – No evidence produced by Petitioner that payment of salary between specified years made to 1st Respondent – Labour Court adverted to evidence transpired during and after conciliation proceedings, same indicates that 1st Respondent at every stage attempted to resume duties but was not allowed – No specific provision made in service conditions permitting Petitioner/Employer to treat absence beyond specific period as presumptive of abandonment of service – In absence of specific provision Petitioner is duty bound to serve proper notice upon 1st Respondent to resume duties – Petitioner failed to hold domestic enquiry charging

Respondent with unauthorised absence or misconduct – Findings in impugned award based on evidence on record are not perverse and unreasonable – Writ petition dismissed. *[Ocean Creations v. Manohar Gangaram Kamble]*

(M.S. SONAK, J.)
2014-I-LLJ-240 (Bom)

TRADE UNION

Cancellation of Registration – Notice to management – Whether employer entitled to be heard before union of workmen of such establishment is either registered or certificate of registration of union cancelled – Held, no statutory obligation cast on Registrar to put Management of establishment on notice – Role of employer limited only to provide information to Registrar, who is required to independently arrive at reasonable satisfaction regarding cancellation of registration – Provisions of Act, neither expressly nor impliedly require employer to be heard at time of registration of Trade Union or during process of cancellation of certificate of registration. *[MRF Mazdoor Sangh v. Commissioner of Labour]*

(RAMESH RANGANATHAN, J.)
2014-I-LLJ-149 (AP)

VOLUNTARY RETIREMENT SCHEME

Claim Petition – Whether 2nd Respondent estopped from claiming further amount – Whether 2nd Respondent entitled to maintain claim petition – Held, receipt given to 2nd Respondent does not contain any date – One month after acceptance of VRS, 2nd Respondent asked to sign – Witness revealed that amount under VRS was not paid to 2nd Respondent on date of retirement – Cannot be held that workman estopped from claiming further amount – Dispute pertains to payment of compensation payable under Voluntary Retirement Scheme, 2nd Respondent entitled to maintain claim petition. *[Management of Elgi Equipments Limited v. Presiding Officer]*

(K. KALYANASUNDARAM,J.)
2014-I-LLJ-199 (MAD)

WORDS AND PHRASES

Wages – Term "wages" includes not only actual salary payable to workman but also any other benefit that can be considered to be in terms of money, such as dearness allowance or any other allowance, or any contribution paid towards pension or provident fund or any special expenses entailed on him by nature of his employment. *[Rakesh Kumar v. Shiv Singh]*

(N.K.AGARWAL, J.)
2014-I-LLJ-147 (Chhat)

CONSTITUTION OF INDIA

Article 19 – State Bank of India Officers' Service Rules, Rules 50, 54 & 68 – Charge Memo – Charge Memo issued against Officers of Bank for alleged misconduct that they held demonstration inside Bank's premises – Held, holding of demonstration in peaceful manner is within scope of Article 19 of Constitution – So long as demonstration did not disturb public tranquility and working of Bank, peaceful demonstration held inside Bank's premises by Officers would not amount to misconduct – Relevant Service Rules do not negate right of holding demonstration – Status of demonstrations as Officers of Bank does not make their conduct violative of relevant Rules – Proceedings challenged in Writ Petitions quashed – Order of leaned Single Judge set aside – Writ Appeals allowed.

Thomas Franco Rajendra Dev D. v. The Disciplinary Authority and Circle Development Officer (DB) (Mad.) (Chitra Venkataraman, J.) 2014 (1) LLN 244

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

Section 7 & 12 – Non-registration and non-possessing of Licence – Consequence of – As per decision of Apex Court in SAIL v. NUWW, 2001 (7) SCC 1, non-registration and non-possessing of Licence by Employer only call for prosecution under Sections 23 &24 and would not lead to regularization of Workmen – Order of Tribunal directing regularization of Workmen on ground that Employer had not complied with provisions of Act, erroneous and set aside.

Bharat Coking Coal Ltd. v. Their Workmen by Secretary, Bihar Colliery Kamgar Union (Jhar.) (A.K. Singh, J.) 2014 (1) LLN 168

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Sections 25- F, 25-G, 25-H & 25-N – Retrenchment – Workman engaged on daily wages – Workman along with other daily wagers retrenched in accordance with Section 25-F after payment of Compensation – Daily wagers junior to workman re-engaged in service – Workman not offered any opportunity for offering himself for re-employment – Violation of Section 25-H, established on part of Management – Award of Labour Court passed in favour of Workmen, not interfered with – Writ Petition dismissed.

Baba Balak nath Temple Trust, Deothsidh v. Presiding Officer, Dharamshala, H.P. (HP) (Rajiv Sharma, J.) 2014 (1) LLN 156

Section 33-C(2)

Nature of right that can be enforced under provision – Proceedings under provision, held, are in nature of Execution proceedings – Right sought to be enforced under provision has to be a pre-existing benefit or one flowing from pre-existing right – Labour Court under provision does not have jurisdiction to entertain claim that is not based on any existing right – Moreover, entitlement of Workman is not to be disputed in order to obtain remedy under provision – When entitlement of Workmen has been determined by a Competent Court or Tribunal and same has not been paid, Workmen entitled to approach Labour Court.

Kamala Mills Limited v. Dilip Kumar G. Damani
(Bom.) (M.S. Sonak, J.)
2014 (1) LLN 72

SERVICE LAW

"Basic Wage" – What is – Wages universally, necessarily and ordinarily paid to all Employees across board are "basic wage" – Payment, which is variable and made to Workmen on account of opportunity available to them, would not constitute "basic wage" – Consequently, amount paid as leave encashment and overtime wages would not constitute basic pay and ought not to be included while calculating 15% of Hill Development Allowance – Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), Section 2(b).

Kichha Sugar Co. Ltd. v. Tarai Chini Mill Majdoor Union
(SC) (Chandramauli Kr. Prasad, J.)
2014 (1) LLN 26

Fixation of Pay – Re-employed serviceman – Respondent appointed as Clerk on quota reserved for ex-servicemen – Respondent opting to get his pay fixed in minimum pay scale of Clerk – Respondent receiving Pension for past services rendered in India Army – In such circumstances, higher pay not be fixed for Respondent by considering past services rendered in Army as he was being paid Pension and other benefits for same – Order of Tribunal directing recovery of amount from Respondent in pursuance of higher pay scale, upheld – Order of High Court permitting Respondent to get higher pay scale., erroneous and set aside – Appeal allowed.

U.T. Chandigarh v. Gurcharan Singh
(SC) (Anil R.Dave, J.)
2014 (1) LLN 17

FEBRUARY, 2014

BENEFITS

Retirement benefit – Refixation of pension - Petitioner placed under suspension for involvement in criminal case – Despite six years lapsed since Petitioner placed under suspension, trial could not conclude – Decision by Respondent/Bank to revoke order of suspension and to allow Petitioner to resume duty – Petitioner retired from service – Subsequently after superannuation, Trial Court acquitted Petitioner on benefit of doubt – Petitioner claimed recalculation of retirement benefits and refixation of pension and consequential benefits – Claim rejected – Whether Respondent/bank justified in rejecting prayer for re-fixation of pension and other consequential benefits to Petitioner – Held, various clauses relating to entitlement/non-entitlement become operative only if delinquent employee's service terminated after proper enquiry – No enquiry conducted against Petitioner – Petitioner acquitted by criminal court, albeit on benefit of doubt – When no decision to terminate service on enquiry, no authority to Respondent/Bank to deprive Petitioner of pays and allowances and other benefits – Order impugned set aside – Petitioner be paid entire financial benefits – Petition allowed. *[Thoudam Tombi Singh v. United Bank of India and Others]*

(DIPANKAR DATTA, J.)
2014-I-LLJ-425 (Cal)

Superannuation benefits – Bank of Baroda (Employees) Pension Regulation, 1995, Articles 22(!) – Petitioner imposed with penalty of removal from service with superannuation benefits due otherwise – Request for leave encashment and pensionary benefits declined – Tribunal held action of Petitioner/employer in denying superannuation benefits to workman not justified – High Court upheld order of Tribunal holding Respondent entitled to termination benefits – Whether Respondent to be entitled to superannuation benefits – Held, Article 22(1) of Regulation provides for removal from service and such employee shall not be entitled to pensionary benefits – Employees removed from service as per clause 6(b) of Bipartite Settlement, entitled to superannuation benefits – In case of apparent conflict between two provisions, previsions to be interpreted so that effect given to both – Employees otherwise entitled to superannuation benefits under Regulation, if visited with penalty of removal from service with superannuation benefits, are entitled for benefits – Respondent/employee entitled to superannuation benefits – Appeal dismissed. *[Bank of Baroda v. S.K. Kool (D) Through Lrs. And Another]*

(CHANDRAMAULI KR. PRASAD, J.)
2014-I-LLJ-373 (SC)

INDUSTRIAL DISPUTE

Barred by limitation – Industrial Disputes Act, 1947, Section 33-C(2) – Whether application made under Section 33-C(2) barred by limitation – Held, Courts cannot introduce limitation on ground of fairness of justice, where legislature made no provision for limitation – Section 33-C(2) plain and unambiguous, duty of Labour Court to give effect to said provision without consideration of limitation – In absence of provision for limitation, Labour Court cannot import such consideration in dealing with applications made under Section 33-C(2) – Respondents approached Supreme Court by way of contempt petition seeking implementation of settlement agreement approved by Supreme Court – Delay in filing contempt petition condoned by Supreme Court, liberty granted to Respondents to seek appropriate remedy before appropriate forum – Labour Court exercised its discretion in entertaining application on merits, though there was delay on part of Respondents in approaching it – Cannot interfere with exercise of such discretion and non-suit Respondents on grounds of delay and laches. *[Kamala Mills Limited v. Dilip Kumar G. Damani and Others]*

(M.S. SONAK, J.)
2014-I-LLJ-281 (Bom)

CONTEMPT OF COURTS ACT, 1971 (70 OF 1971)

Power of Course to punish for contempt – Nature of and Exercise of, when warranted, discussed.

The power vested in the High Courts as well as this Court to punish for contempt is a special and rare power available both under the Constitution as well as the Contempt of Courts Act, 1971. It is a drastic power which, if misdirected, could even curb the liberty of the individual charged with commission of contempt. The very nature of the power casts a sacred duty in the Courts to exercise the same with the greatest of care and caution. This is also necessary as, more often than not, adjudication of a contempt plea involves a process of self-determination of the sweep, meaning and effect of the order in respect of which disobedience is alleged. Courts must not, therefore, travel beyond the four corners of the order which is alleged to have been flouted or enter into questions that have not been dealt with or decided in the Judgment or the order Violation of which is alleged. Only such directions, which are explicit in a Judgment or Order or are plainly self evident ought to be taken into account for the purpose of consideration as to whether there has been any disobedience or willful violation of the same. Decided issues cannot ensure that while considering a contempt plea the power available to the Court in other corrective jurisdiction like Review or Appeal is not trenched upon. No order or direction supplemental to what as been already expressed should be issued by the Court, while exercising jurisdiction in the domain of the contempt law: such an exercise is more appropriate in other jurisdictions vested in the Court, as notice above. The above principles would appear to be the cumulative outcome of the

precedents cited at the bar, namely, **Jhareswar Prasad Paul and another v. Tarak Nath Ganguly and others,** 2002 (3) CTC 122 (SC) : 2002 (5) SCC 352: **V.M. Manohar Prasad v. N. Ratnam Raju and another.** 2004 (13) SCC 610: **Bhar Finance Service House Construction Cooperative Society Ltd, v. Gautam Goswami and others, 2008 (5) SCC 339: and Union of India and others v. Subedar Dievassy PV,** 2006 (1) SCC 613.

Sudhir Vasudeva, Chairman & MD., ONGC v. M. George Ravishekaran
(SC) (Ranjan Gogoi, J.)
2014 (1) LLN 296

INDUSTIRAL DISPUTES ACT, 1947 (14 OF 1947)

Section 9-A – Change in Service Conditions vide Policy Decision – Notice, whether to be given to Employees – Held, Courts would not interfere with a Policy decision normally, however. A Policy decision taken in contravention to statutory mandate would be invalid – Employer, Held, cannot absolve itself from notifying change of Service conditions as contemplated in provision, on ground that said change was brought about by Policy decision of Government – Air India Limited, held, bound to give notice of change in Service conditions in prescribed manner to Petitioner-Unions – Union at liberty thereafter to accept same or agitate same before ID Tribunal – Pending resolution of dispute, Workman to receive same benefits as were received by them on date of Petition.

Air India Employees' Union v. Air India Limited (DB)
(Bom.) (M.S.Sanklecha, J.)
2014 (1) LLN 364

Section 10

Reference of dispute – Whether to be made – Service of Petitioner, who served Railways for 5 years terminated without notice – Sustained efforts made by Petitioner, however, Conciliation proceedings between parties failed – Failure Report was sent to Government of India, which refused to make reference on ground that dispute was belated of 22 years – Held, existence of dispute and efforts taken by Petitioner to resolve same not doubted – Petitioner not at fault for delay – In such circumstances, held, provisions of Limitation Act should not be pressed into service to deny relief on merits of dispute – Adjudicatory mechanism under Act aiming to resolve dispute between Management and Worker – Central Government directed to refer dispute to Tribunal within three months – Petition allowed.

Ramratan Prasad v. Union of India
(MP) (K.K. Trivedi, J.)
2014 (1) LLN 488

SERVICE LAW

Disciplinary proceedings – Staying of, in lieu of pending Criminal case - When warranted – Disciplinary proceedings and Criminal proceedings can proceed simultaneously in absence of legal bar to their simultaneity – Disciplinary proceedings cannot be suspended indefinitely or delayed unduly only when charge framed against Employee is serious – Stay of Disciplinary proceedings may be warranted when charge against Employee is grave and involves complicated questions of fact and law, and continuance of proceedings would prejudice their defence before Criminal Court – Courts to draw a balance between expeditious conclusion of Disciplinary proceedings and need of accused for a fair trial – In instant case, charges leveled against Respondents grave, however, same not involving any complicated questions of fact and law – Moreover, Respondents already disclosed their defence before commencement of Departmental Enquiry – However, concurrent Orders of three Courts below granting stay of Diciplinary proceedings - Considering facts and circumstances of case, said Order of stay not vacated straightaway – Trial Court directed to expedite trial and conclude proceedings in any case within one year – If trial not completed within one year, Disciplinary proceedings to be resumed and concluded by Inquiry Officer – Appeals allowed in part – *Indian Penal Code, 1860 (45 of 1860), Sections 143, 147, 323, 324, 356, 427, 504, 506 & 114.*

Stanzen Toyotetsu India P. Ltd v. Girish, V.
(SC) (T.S. Thakur, J.)
2014 (1) LLN 288

TRADE UNIONS ACT, 1926 (16 OF 1926)

Section 10 – Power of Registrar – Scope of - Held, interpretation of provision ought not to be *ultra vires* powers of legislature, leading to excess jurisdiction – While no procedure is prescribed in Act for exercising power of Cancellation of Registration by Registrar, term 'satisfied' used in sub-clauses (b) & (c) of Section 10, held, sufficient guidance for mannor in which power conferred is to be exercised – Satisfaction of Registrar to be founded on grounds specified in Order and power of Cancellation of Registration not to be exercised on his whim or fancy.

MRF Mazdoor Sangh v. The Commissioner of Labour
(AP) (Ramesh Ranganathan, J.)
2014 (1) LLN 322

MARCH, 2014

CODE OF CRIMINAL PROCEDURE, 1973 (2 OF 1974)

Sections 227 & 239 – Acquittal on Benefit of Doubt – Honourable Acquittal - Code does not classify acquittal as honourable acquittal or acquittal on benefit of doubt – Judicial precedents bring out such classifications - Acquitting Accused on ground that there is no sufficient evidence for conviction amounts to honourable acquittal – No stigma gets attached in case of honourable acquittal – Acquittal on benefit of doubt and honourable acquittal are two different concepts and such classification is based on intelligible differentia.

Alex Ponseelan, J. v. The Director General of Police, TamilNadu (LB) (Mad.) (S.Tamilvanan, J.) 2014 (1) LLN 654

Sections 227 & 239

"Discharge and Acquittal – When person is discharged, there is no question of giving benefit of doubt – Benefit of doubt arises only when there is acquittal".

"**Discharged on benefit of doubt" would mean that Accused has not been acquitted honourably after fair trial but discharged pre-trial for want of material – Person discharged from case does not mean that such person is not involved in any Criminal case"**

Alex Ponseelan, J. v. The Director General of Police, TamilNadu (LB) (Mad.) (S. Tamilvanan, J.) 2014 (1) LLN 654

CONSTITUTION OF INDIA
Articles 14, 16 & 21

TamilNadu Special Police Subordinate Service Rules 1978, Rule 14(b), Explanations 1 & 2 – Code of Criminal Procedure, 1973 (2 of 1974), Sections 227 & 239 – Recruitment in Police Service – Reference to Larger Bench – Eligibility Conditions for Appointment – Rule prevailing appointment of person "Involved in Criminal case" – Constitutionality – Explanation to Rule 14(b) (iv) violates Articles 14, 16 &21 and is unconstitutional - **Permitting person, who is honourably acquitted for getting appointment and denying appointment to person, who is discharged, results in violation of Article 14 – Manikandan's case (F.B.) wrongly decided and is to be overruled – Person, who got discharge in Criminal case is on better footing than person honourably acquitted in Criminal case –** When Accused is acquitted on ground that there is no sufficient evidence for conviction or prosecution then if cannot be bar for getting public employment – Classification made by Authority between honourable acquittal and discharge in Criminal case did not satisfy test of intelligible differentia – Full Bench

has not considered constitutionality of impugned Rule on touchstone of Articles 14 & 16 of Constitution of India – Explanation (1) to rule 14(b) (iv) is ultra vires Constitution as it is based on total misconception of legal terms 'Discharge' and 'Acquittal', which abridges fundamental rights guaranteed under Articles 14, 16 & 21 – Judgement of Full Bench need to be overruled – Explanation (2) to Rule 14(b)(iv) is intra vires to Constitution.

Alex Ponseelan, J. v. The Director General of Police, TamilNadu (LB) (Mad.) (S. Tamilvanan,J.) 2014 (1) LLN 654

Article 226

Termination – Unauthorised absenteeism – Desertion of job – "Habitual absenteeism" – Whether prior absenteeism is necessary? – Proportionality of punishment – Whether interference by High Court justified? – In present case, Employee remained absent for 2½ years remained adamant and did not even respond to communications from Employer, while he was unauthorisedly absent – Plea of absence of "habitual absenteeism" is absolutely unacceptable – By remaining absent, Employee has been indiscipline – Doctrine of Proportionality does not even get attracted remotely – Punishment is not shockingly disproportionate – Order of High Court interfering with punishment is totally unwarranted – Appeal allowed.

Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu (SC) (Dipak Misra, J.) 2014(1) LLN 559

DOCTRINE OF FINALITY

Duty of Court to ensure that decisions of Court are not overturned freguently, especially in collateral proceedings – Power of Court to correct an error of review its decision cannot be at cost of Doctrine of Finality – Held, termination of services cannot be reopened, once it has been finally sealed in earlier proceedings.

Union of India v. Major S.P. Sharma (SC) (M.Y. Eqbal. J.) 2014 (1) LLN 576

DOCTRINE OF PLESURE

Army Act, 1950 (46 of 1950), Section 18 - Scope of Judicial Review – Court in exercising such power of review cannot substitute its own conclusions and has certain limitations and should be slow in interfering with such pleasure of President exercising constitutional power – Judicial Review is permissible only when illegality, irrationality and procedural non-compliance are made out.

Union of India v. Major S.P. Sharma (SC) (M.Y. Eqbal. J.) 2014 (1) LLN 576

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Setting aside *ex parte* Award – Limitation of 30 days – Whether Labour Court becomes *functus officio* after 30 days from date of publication of Award – Though it has been held by Apex Court in Sangam Tape Co. v. Hans Raj, 2005 (9) SCC 331 that Labour Court becomes *functus officio* after 30 days from date of publication of Award, in subsequent Judgment in Radhakrishna Mani Trivathi v. L.H. Patel, 2009 (1) LLN 786, it has been held that Labour Court has power to set aside *ex parte* Award – Therefore, this Court is inclined to follow subsequent Judgement – Loss, if any, caused to Respondent can be compensated by way of reasonable cost – Therefore, in interest of justice, Writ Petition allowed and impugned Award set aside subject to Petitioner paying cost of Rs.15,000 to Respondent – Law of Precedents.

Tech. Mahindra Limited v. Ajay Bhagat (Major)
(Kar.) (H. Billappa, J.)
2014 (1) LLN 646

SERVICE LAW

Alteration of Date of Birth – Cannot be allowed at fag end of service – It is trite law that a person must approach Court with clean hands and place documents with authenticity – In absence of any credible material, vague and covert efforts at fag end of career ought not to have been foundation for direction for Medical examination to determine age of Employee for purpose of correcting Service record – Held, claim for alteration of date of birth at fag end of service is not permissible.

Tarapada Dhibar v. Coal India Limited (DB)
(Cal.) (Jaymalya Bagchi. J.)
2014 (1) LLN 620

ALL INDIA BANK EMPLOYEES' ASSOCIATION

Central Office: PRABHAT NIVAS
Singapore Plaza, 164, Linghi Chetty Street, Chennai-600001
Phone: 2535 1522, 6543 1566 & Fax: 2535 8853, 4500 2191
e mail ~ chv.aibea@gmail.com