



LEGAL NEWS

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OCTOBER – NOVEMBER – DECEMBER, 2012

FROM LABOUR LAW JOURNAL

OCTOBER, 2012

Compulsory Retirement

Legality of – Charge memo issued to appellant for forging and stealing Branch Pay Order – Enquiry – Guilt proved – Criminal case filed – Case not proved – beyond doubt – Criminal Court acquitted appellant – Show cause notice issued during pendency of criminal case – Disciplinary Authority imposed penalty of compulsory retirement – Punishment confirmed by appellate authority – Industrial dispute raised – No evidence available other than confession made to police in criminal case – Tribunal by its award confirmed punishment relying upon confession – Appeal – Held, respondent directed to reinstate appellant with full back wages – Impugned award set aside. *[G.R. Swamy v.P.O.]*

Grounds of Decision

Confession by accused in custody of police not to be proved against him. No confession made by any person in custody of police unless made in presence of Magistrate, shall be proved as against such person.

(K. CHANDRU, J.)
2012-IV-LLJ-134 (Mad)

Dismissal

Of employee from service – For remaining absent from duty after expiry of leave – Order, under appeal, interfering with punishment and substituting it with stoppage of two increment with cumulative effect, held, not sustainable – Matter remitted to disciplinary authority with direction to reinstate employee without back wages and to pass fresh order imposing minor punishment. *[Rajasthan Tourism Development Corporation Ltd. v. Jai Raj Singh Chauhan]*

Grounds Decision

Having regard to gravity of misconduct of employee concerned, it was held interference with punishment of dismissal by the High Court was not sustainable and the matter remitted to disciplinary authority to pass fresh orders imposing minor punishment, even while reinstating the employee without back wages.

(G.S. SINGHVI & A.K. GANGULY, JJ.)
2012-IV-LLJ-1 (SC)

Double Jeopardy

Punishment of employee with dismissal on same set of acts of misconduct for which she was earlier punished with suspension for four days – Employee could not be punished twice for same misconduct – Award of Labour Court in favour of employer set aside and reinstatement of employee with back wages and benefits granted as relief [*Anil Dogra v. Secretary (Labour)*]

Grounds of Decision

An employee cannot be punished twice on the same set of allegations of misconduct.

(P.K. BHASIN, J.)
2012-IV-LLJ-7 (Del)

DISMISSAL

Of bank employee from service – No evidence produced by Bank to prove employee acted with ulterior motive – Points not considered by appellate authority – Direction to consider matter afresh, issued. [*Anil Kumar Sinha v. RM, Central Bank of India*]

Grounds of Decision

No evidence in support of the charges against employee was produced. Matter was directed to be considered afresh.

(S.N. HUSSAIN, J.)
2012-IV-LLJ-269 (Pat)

Dismissal

From service – Bank employee, failed to pay dues of Credit Card – Disciplinary action taken on ground of misconduct for default of payment against employee and dismissed from service – Validity of – Held, causing delay in making payment of the bills by a card holder- employee cannot be regarded as misconduct under the Service Rules of the appellant bank – Appeal disposed of. [*Bank of India v. Central Government Industrial Tribunal*]

(PRANAB KUMAR CHATTOPADHYAY, J.)
2012-IV-LLJ-97 (Cal)

Industrial Disputes Act (14 of 1947)

Sec, 33-C(2)

Pre requisite for application under Section was applicant should be 'workman' and be working in 'industry' – As applicant here was not workman, order allowing his application set aside on ground of lack of jurisdiction. [*Management, Gordon Woodroffe Ltd. v. Presiding Officer, Principal Labour Court*]

Grounds of Decision

Prerequisite for application under Section 33-C(2) of Industrial Disputes Act, 1947 is that the applicant should be a 'workman' under Section 2(s) working in 'industry' under Section 2(j) of Industrial Disputes Act.

(K. CHANDRU, J.)
2012-IV-LLJ-11 (Mad)

PAYMENT OF GRATUITY ACT (39 of 1972)

Sec. 4(6)

Forfeiture of gratuity – Forfeiture held not sustainable because no order forfeiting gratuity was passed with notice to employee, despite his dismissal from service for commission of offence involving moral turpitude. *[Dhanlakshmi Bank Ltd. v. Ramachandran]*

Grounds of Decision

Forfeiture of gratuity on ground of termination of service of employee for act constituting offence involving moral turpitude cannot be sustained if no order of forfeiture was passed with notice to employee, under Section 4(6) of Payment of Gratuity Act, 1972.

(P.N. RAVINDRAN, J.)
2012-IV-LLJ-235 (Ker)

REGULARISATION OF SERVICE

Scheme for regularisation – Petitioners were duly selected – No regular appointment given – Instead, they were engaged as casual workers for performing jobs of permanent staff – Appointment denied – Validity of – Held – Scheme to be implemented, act of regularisation of service as one time measure, to be undertaken – Writ Petition allowed. *[Alok Kumar Kar v. Chairman-cum-MD, Indian Airlines Ltd.]*

Grounds of Decision

- I. Reasonableness and non-arbitrariness is part of Constitution. It follows that Government must act in a reasonable and non-arbitrary manner, otherwise Constitution would be violated.*
- II. Smaller Bench decision cannot override a larger Bench decision of the Court.*

(TAPEN SEN, J.)
2012-IV-LLJ-114 (Cal)

Termination of Service

Of workman – For unauthorised absence – Termination, held, was rightly treated by Industrial Tribunal as shockingly disproportionate – Its award directing reinstatement of workman without back wages, held, was just and proper. *[Union of India v. D.J. Pujar]*

Grounds of Decision

Termination of service of a workman for unauthorised absence who had 18 years of unblemished record of service and who had given sufficient reason for the absence was held shockingly disproportionate and order for his reinstatement without back wages was proper.

(ANOOP V. MOHTA, J.)
2012-IV-LLJ-86 (Bom)

LABOUR LAW NOTES – OCTOBER - 2012

Article 226

Power of Judicial Review – Disciplinary proceedings – Order of punishment to be interfered with by Writ Court only when it is vitiated due to violation of statutory provisions or where it is passed in violation of Principles of natural Justice – Finding of fact recorded in Departmental enquiries not to be disturbed unless same are not based on any evidence or are perverse – Penalty or punishment would also be reviewed only if it is impermissible or shocks conscience of Court – Thus, order of removal of service passed against Bus Driver, who was responsible for accident causing death of one and injury to other 23, not interfered with.

Shankaraiah, R. v. The Managing Director, APSRTC (DB) (G. Rohini, J.)
2012 (4) LLN 572 (AP)

PAYMENT OF GRATUITY ACT, 1972 (39 OF 1972)

Section 4(2)

Monthly wages to be determined first for purpose of calculating total amount of gratuity payable – Employee rendering service for 35 years, 6 months and 3 days – Length of service to be counted as 36 years for all practical purposes – Bank failing to calculate gratuity as per Regulations governing it – Order of Single Judge ordering payment of gratuity as prescribed under relevant Regulations, justified – State Bank of Hyderabad (Payment of Gratuity to Employees) Regulations, 1960, Regulation 5.

State Bank of Hyderabad v. The Regional Labour Commissioner (Central) (DB) (Ghulam Mohammed, J.)
2012 (4) LLN 589 (AP)

TERMINATION OF SERVICE

Probationer – Non-extension of Probation – Effect – Whether there is deemed confirmation or deemed extension of probation ? – Held, when Rule does not prescribe maximum period of extension of probation, Employee continues to be in probation unless such person is confirmed to post to which he/she is appointed as Probationer – **There is no deemed confirmation merely on account of failure of Employer to extend period of probation** – Rather there is presumption of deemed extension of probation of Employee – Case law discussed – But where Rules provide for maximum period of probation and no order of confirmation is passed and if Employee is allowed to continue then consequences are different – Employee concerned would either attain status of Employee being eligible for confirmation or he actually attains status of confirmed Employee – No strait-jacket formula can be laid, it will depend on relevant Rules applicable to that service – Khazia

2012 (4) LLN 686 (DB) (Delhi)

FROM LABOUR LAW JOURNAL

NOVEMBER, 2012

ABSORPTION

Of persons appointed as daily wagers, as sweepers, helpers etc. –

Termination of their service, held, illegal and direction for absorption, issued. *[Aeronautical Development Agency v. V. Nanjamma]*

Grounds of Decision

Termination of service of daily wage employees, whose engagement was not contrary to rules and there was no back-door entry or bribery, was held legal and direction for their absorption was upheld as proper.

(VIKRAMAJIT SEN, CJ.)
2012-IV-LLJ-504 (Kant)

ALTERNATIVE EMPLOYMENT

Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (1 of 1996) – Section 47 – Retiring workman (driver) on medical grounds as per Regulations of employer held, was contrary to Act – Acceptance by workman of monetary benefit in lieu of alternative employment could not defeat his rights – Direction to give alternative, suitable post to him under Section 47, issued. *[G.Darshan v. Depot Manager, APSRTC]*

Grounds of Decision

Offer of additional monetary benefit in lieu of alternative employment to workman suffering disability could not justify retirement of employee on medical grounds as such a procedure was not contemplated under the Regulations or under Section 47 of Persons with Disabilities Act, 1995.

(B. CHANDRA KUMAR, J.)
2012-IV-LLJ-485 (AP)

Relief

In case of illegal termination of workman's service – Workman had put in more than three years of service – Denial of relief of reinstatement to him on ground of passage of ten years in litigation, held, not proper – Reinstatement of Workman with 50% back wages, ordered. *[Hari Krishan v. Management of Northern Scales Company]*

Grounds of Decision

Relief of reinstatement with back wages cannot be denied to workman without reason and it is no reason that litigation over illegal termination extended to ten years, and the delay could not be attributed to workman.

(P.K. BHASIN, J.)
2012-IV-LLJ-433 (Del)

**BANKING COMPANIES (ACQUISITION AND TRANSFER OF UNDERTAKING)
ACT, 1969 (5 OF 1970)
Sec, 19(2)**

Power to amend rules (regarding pension among others), held, could not be exercised arbitrarily – Depriving employee of right to pension on ground of Bank being required to pay gratuity, held, was something than which nothing more arbitrary could be conceived of. *[Shapoor M. Mehta v. Allahabad Bank]*

Grounds of Decision

Stopping payment of pension by Bank for the reason that it was required to pay gratuity under Payment of Gratuity Act, 1972, was held to be in patent violation of law and Article 14 of Constitution of India, 1950.

**(DR. D.Y. CHADRACHUD & A.A. SAYED, JJ.)
2012-IV-LLJ-429 (Bom)**

BI-PARTITE SETTLEMENT, 1966

Clauses 19(3)(c), 19(3)(d), 19(5) and 19(6)

Acquittal of bank employee by appellate Court – Proceeding under Clause 19(3)(d) and termination of service, held, was proper and employee was entitled only to subsistence allowance on basis of his deemed suspension during period of departmental proceedings. *[Sushila Tiwary v. Allahabad Bank]*

Grounds of Decision

A bank employee acquitted in appellate criminal proceedings is liable to be proceeded against under Clause 19(3)(d) of Bipartite Settlement. 1966

**(S.J. MUKHOPADHAYA, J.)
2012-IV-LLJ-289 (SC)**

DISMISSAL

Of Bank employee from service – Employee punished earlier with reduction of rank from Manager to post of Head Clerk – His subsequent dismissal for same misconduct based upon conviction by criminal Court, held, arbitrary and unsustainable, especially in view of acquittal by appellate criminal Courts – Denial of back wages due from date of dismissal, and grant thereof from date five years later, held, not justified. *[M.K. Surendrababu v. Industrial Tribunal, Palakkad]*

Grounds of Decision

A second punishment of dismissal of Bank employee from service based on criminal Court conviction later followed by acquittal by appellate Courts was held arbitrary and unsustainable.

**(S. SIRI JAGAN, J.)
2012-IV-LLJ-313 (Ker)**

INDUSTRIAL DISPUTES ACT (14 of 1947)

Sec, 2(j) and 2(s)

Meaning of 'industry' and 'workman' – Registered society running orphanage, held, was not 'industry', as there was neither organised cooperation between employer and employee nor production or distribution of goods services – Person employed in it held, not 'workman' – Award of Labour Court granting relief to workman, held, could not be sustained and was set aside. *[President, Kathiyawad Nirashrit Balashram v. D.J. Chauhan]*

Grounds of Decision

A registered society running on orphanage cannot be held to be 'industry' under Section 2(j) of Industrial Disputes Act, 1947, considering the activity was engaged in.

(RAVI. R. TRIPATHI, J.)
2012-IV-LLJ-550 (Guj)

Sec, 2(oo)

Termination of service of workman who were engaged for years as trainee, probationer etc, - Management neither pleaded nor let in evidence to show performance of workman was not satisfactory – Held, it was illegal retrenchment, and workman entitled to reinstatement with back wages. *[Mgmt. of Sundaram Fasteners Ltd v. P.O.]*

Grounds of Decision

Termination of service of workman engaged for years as trainee etc., was held illegal retrenchment under Section 2(oo) of Industrial Disputes Act, 1947, besides being not in compliance with Section 25-N Thereof as well as contrary to Section 3 of Tamil Nadu Act 46 of 1981.

(K. CHANDRU, J.)
2012-IV-LLJ-405 (Mad)

Sec. 25-F

Striking off name of employee from rolls, albeit for absence without leave, held, was retrenchment, and illegal for non-compliance of Section 25-F – Habitual absence, held, could not be justified under Clause 8(1) of Certified Standing Orders. *[Sudhir Singh v. BHEL]*

Grounds of Decision

- I. Termination of service for habitual absence of employee from duty without leave would be retrenchment under Section 25-F of Industrial Disputes Act, 1947 and illegal if said section was not complied with in the termination.*

- II. Plea of alternative remedy cannot succeed if the writ petition had been kept pending for years and the point involved was covered by settled law and did not call for decision on disputed questions of fact.*

(TARUN AGARWALA, J.)
2012-IV-LLJ-586 (Uttar)

Secs. 33(2)(b) and 33-A

In case no application for approval of dismissal of workman was made by employer, complaint of workman under Section 33-A would call for deciding only whether there was compliance of Section 33(2)(b) and not whether dismissal of workman was good or bad on merits. *[Tops Security Ltd. v. Subhash Chander Jha]*

Grounds of Decision

In a complaint of workman under Section 33-A of Industrial Disputes Act, 1947, the Labour Court is not required to consider the merits of dismissal of workman, but only whether employer had complied with Section 33(2)(b) of the Act or not.

(BADAR DURREZ AHMED, J.)
2012-IV-LLJ-542 (Del)

PAYMENT OF GRATUITY ACT (39 of 1972)

Secs. 4(6) and 14 – Punjab Financial Corporation (Payment of Gratuity) Employees Regulations, 1964 – Clause 5 – Forfeiture of gratuity on basis of Regulations providing for withholding of gratuity to employee who was dismissed from service – Gratuity Act having overriding effect, forfeiture under Clause 5 of Regulations, held, not valid. *[Haryana Financial Corporation v. D.R. Sharma]*

Grounds of Decision

Gratuity Act, 1972 has overriding effect (Section 14) and dismissal of employee without proof of loss to employer could not be a ground for forfeiture of gratuity (Section 4(6)), although so provided service Regulation of an establishment.

(K. KANNAN, J.)
2012-IV-LLJ-426 (P&H)

Sec. 4(6)(b)

Forfeiture of gratuity – Order forfeiting it not communicated to employee until lapse of five years when he had filed application for it – Moreover, employee was only discharged and such discharge did not bar payment of superannuation benefits – Challenge to orders to pay gratuity, held, could not be sustained. *[State Bank of Travancore v. Assistant Labour Commissioner (Central)]*

Grounds of Decision

Forfeiture of gratuity under Section 4(6)(b) of Gratuity Act, 1972 cannot be sustained, if the order of forfeiture was not communicated to employee and punishment of his discharge from service did not bar superannuation benefits.

(S. SIRI JAGAN, J.)
2012-IV-LLJ-580 (Ker)

CORPORATION BANK OFFICER EMPLOYEES' (DISCIPLINE AND APPEAL) REGULATIONS, 1982

Rule 19 – Order of dismissal passed against Petitioner by General Manager of Bank – Petitioner loosing right to Appeal under Rule 19 before General Manager – Petitioner, thus prejudiced in his right to avail remedy of Appeal – Order passed by General Manager, held, in violation of Principles of Natural Justice – Principles of Natural Justice.

Shantharam, P.R. v. The Executive Director, Corporation Bank
(Vinod K.Sharma, J.)
2012 (5) LLN 445 (MAD)

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Section 11-A

Power of Labour Court to alter punishment – Workman dismissed from service, on account of misconduct which was not grave – Labour Court ought to have examined issue by applying Principle of Proportionality – Matter remitted back to Labour Court to decide issue afresh in context of Principle of Proportionality.

Joseph Solomon v. Presiding Officer, Labour Court, U.P., Dehradun
(Sunil Hali, J.)
2012 (5) LLN 96 (ALL)

LABOUR LAW

Equal Treatment Claims – Issue of limitation – Relevance of – Litigation of stale claims, potentially significant injustice – Delay impoverishes evidence available to determine claim, prolongs uncertainty, impedes definitive settlement of parties' mutual affairs and consumes scarce judicial resources in dealing with claims that should have been brought long ago or not at all – Characteristics of job to change radically with economic upheaval, industrial rationalisation or technological advance – Equal treatment claims by nature to affect large classes of Employees and may have financial implications on Employer – Said claims, held, would be disruptive if they arise out of position of ex-Employees, who left long ago.

Birmingham City Council v. Abdulla (SC) (UK) (Lord Wilson)
2012 (5) LLN 1

MISCONDUCT

Labour Law – Misconduct by Workman, whether grave ? – Allegation against Workman that he addressed Officer as dog for not allowing him to enter factory premises after 8.09 a.m. – Act of Workman, held, on account of being provoked by act of Officer in not permitting him to enter workplace – Act of Workman neither pre-meditated nor motivated by ill-will – Said act, held, would not constitute grave misconduct.

Joseph Solomon v. Presiding Officer, Labour Court, U.P., Dehradun
(Sunil Hali, J.)
2012 (5) LLN 96 (ALL)

SERVICE LAW

Departmental Enquiry – Role of Enquiry Officer – Fairness in Enquiry – Principle of Natural Justice – Examination of Delinquent during Enquiry – Procedure to be followed – Enquiry Officer adopted strange procedure of putting questions to delinquent employed to hold delinquent Employee guilty by placing reliance on such statement of evidence – Department should take steps first to lead evidence against delinquent charged, and give an opportunity to him to cross-examine witness of Employer – Procedure followed by Enquiry Officer is grossly in violation of Principles of Natural Justice.

Tamil Nadu Housing Board v. R.Chakrapani (DB)
(D. Murugesan, J.)
2012 (5) LLN 363 (MAD)

FROM LABOUR LAW JOURNAL

DECEMBER, 2012

Bank Service

No Work, No Pay – Principle of – Bank employees' claim for salary during period between termination of service and reinstatement following conviction and acquittal respectively by criminal Court, held was not sustainable, although said period could be counted for continuity of service and terminal benefits. *[Ashok Kumar Sharma v. ZM, Punjab National Bank]*

Grounds of Decision

Denial of salary to bank employee during the period he was out of employment between conviction and acquittal by criminal Court was held justified.

(K.KANNAN, J.)
2012-IV-LLJ-809 (P&H)

CONSTITUTIONAL LAW-WRIT JURISDICTION

Constitution of India (1950), Article 226 – Jurisdiction Court – Question as to whether writ Court has jurisdiction to re-examine facts – Held, writ Court cannot reappraise evidence – In exercising judicial review under Article 226, Court can only examine legality and / or propriety of decision making process, cannot examine correctness of decision – Court cannot sit in appeal over factual decision taken by Director of School Education. *[Swadesh Kumar Gayen v. State of West Bengal]*

(INDIRA BANERJEE, J.)
2012-IV-LLJ-839 (Cal)

INDUSTRIAL DISPUTE

Industrial Disputes Act (14 of 1947) – Section 17-B – Application under – Held it could not be rejected on ground of delay or contested on ground of merits of employer's challenge to award of Industrial adjudicator. *[GAIL India Ltd. v. Tarkeshwar Prasad Kharawar]*

Grounds of Decision

While considering application of workman under Section 17-B of Industrial Disputes Act, 1947, neither delay in filing the application nor the merits of employer's challenge to the award would be relevant.

(P.K.BHASIN, J.)
2012-IV-LLJ-664 (Del)

Interim Relief

Industrial dispute raised by workmen regarding their non-regularisation by employer – During pendency of reference proceedings before Tribunal, respondents / workmen filed an application for interim relief – Interim relief granted by Tribunal by directing maintenance of status quo – Writ petition – Question as to whether Tribunal has power to pass an order of interim injunction – Held, Industrial Court has no power to grant interim injunction during pendency of adjudication proceedings in respect of any industrial dispute – Industrial adjudicator has no power to pass interim orders of injunction – Impugned order of Tribunal set aside – Writ petition allowed. *[Indian Oil Corporation Ltd. v. UOI]*

(P.K. BHASIN, J.)
2012-IV-LLJ-856 (Del)

Jurisdiction

Industrial Disputes Act (14 of 1947) – Section 11-A – In respect of punishments other than dismissal or discharge Labour Court, held, had no power to substitute decision of management with its own, except in cases of want of good faith, victimizations or unfair labour practice. *[Allahabad Bank v. Presiding Officer]*

Grounds of Decision

Under Section 11-A of Industrial Disputes Act, 1947, Labour Court has no power to interfere with punishment in cases other than dismissal or discharge of workman, except in cases of want of good faith, victimization, or violation of natural justice principles.

(SUNIL HALI, J.)
2012-IV-LLJ-617 (All)

PROMOTION

Industrial Disputes Act (14 of 1947) – Sections 2(k) and 2-A – Issue relating to promotion of employee, held, would not be industrial dispute, and could not be raised by individual workman, as such issue could not be considered to be in respect of non-employment. *[T.M. Ramamoorthy v. Union of India]*

Grounds of Decision

Section 2(k) of Industrial Disputes Act, 1947 is not ultra vires or unconstitutional. Workman cannot raise denial of promotion as dispute under Section 2-A of the Act.

(K. CHANDRU, J.)
2012-IV-LLJ-700 (Mad)

LABOUR LAW NOTES – DECEMBER - 2012

SERVICE LAW

Disciplinary proceedings – Delay in issuance of Charge Memo – Charge Memo served on delinquent officer after eight months after suspension order was served – Moreover, delay of three to four years in issuance of Charge Memo – Contention of Employer that irregularities were found only during Audit Inspection and after they were pointed out in Audit Report, action was taken – Held, Audit Inspection has to be conducted periodically every year and not once in three four years – Thus, factum of delay in issuance in Charge Memo not justified.

Ragupathy, K. v. The Director of School Education
(K.N.Basha, J.)
2012 (5) LLN 761 (MAD)

Minor Misconduct – Employee obtaining Housing Loan from Employer Corporation charged with using house so constructed for commercial purpose – Order of Disciplinary Authority directing reduction in pay of Employee, set aside – Matter remanded back for fresh consideration.

Chairman, LIC of India v. A. Masilamani
(Dr. B.S. Chauhan, J.)
2012 (5) LLN 551 (SC)

Probationer – Termination of Service – Principles governing – Probationer, held, has no right to hold post and his service can be terminated at any time during or at end of period of probation on account of general suitability for post held by him – Action of Competent Authority would not be punitive if decision of termination of service of Probationer is as a result of inquiry conducted – However, if termination is on account of allegation of misconduct, decision of Competent Authority could be nullified on violation of Principle of Natural Justice.

State Bank of India v. Palak Modi
(G.S.Singhvi, J.)
2012 (5) LLN 513 (SC)

Unauthorised absence – Writ Petitioner, Police Constable charged with unauthorised absenteeism – Explanation offered by Petitioner that he was unwell – No positive finding of Disciplinary Authority, Appellate Authority or Tribunal that contention of Petitioner that he was unwell, was false – Held, mere absence from duty without Application would be unauthorised absence but would not *ipso facto* become willful unauthorised absence – Punishment of dismissal from service set aside and punishment of compulsory retirement imposed on Petitioner.

Dilip Mukherjee v. State of West Bengal (DB)
(Subhro Kamal Mukherjee, J.)
2012 (5) LLN 645 (CAL)