LEGAL NEWS

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FROM LABOUR LAW JOURNAL – LABOUR LAW NOTES

APRIL 2014

EMPLOYMENT AND LABOUR LAW

Disciplinary Authority – Chief Vigilance Officer – Advice of – Whether vigilance manual of Respondent bank permits Disciplinary Authority to seek second stage advice from Chief Vigilance Officer (CVO) – Whether communication of CVO can be called piece of advice and whether Disciplinary Authority applied his own mind while imposing punishment, without being compelled by advice of CVO – Held, vigilance Commission's function purely advisory, not appellate authority – Disciplinary Authority sought for second stage advice for deciding punishment even prior to final show cause notice – Even opinion tentatively reached by Disciplinary Authority altered at behest of CVO – Clear abdication of quasi-judicial power on part of Disciplinary Authority – Nowhere in record that alleged misconduct of Petitioner classified as vigilance grade case or offence – Elaborate procedure under vigilance manual grossly ignored – Direction of CVO never sounded as any piece of advice – Statutory regulations with regard to CVO's interference violated – Decision of Disciplinary authority vitiated by considerations extraneous to evidence and merits – Total abdication of powers of Disciplinary Authority, who acted simply on dictates of CVO. *[V. Ravichandra v. Indian bank]*

(DAMA SESHADRI NAIDU, J.)
2014-II-LLJ-149 (AP)

INDUSTRIAL DISPUTE

Exparte proceedings – Finality of Award – Industrial Disputes Act, 1947, Sections 11 and 17(2) – Tamil Nadu Industrial Dispute Rules, 1958, Rule 48 – Industrial dispute arose when 2nd Respondent/workman discharged from service by Petitioner/management without charge sheet or enquiry – Conciliation failed and dispute referred to labour Court – Labour Court did not pass award on merits, but held that management was set ex-parte and claim of workman proved – management alleged that filing petition to recall ex-parte award did not serve purpose, since award of labour Court already came into force – Writ petition – Whether writ petition can be filed bypassing Rule 48 read with Section 11 – Held, mere absence of workman or Union does not absolve Labour court or Tribunal from proceeding with reference and making award – Labour Court or Tribunal to proceed with industrial dispute and pass award on merits based on material available on record – If ex-parte award passed, matter can be reopened and industrial dispute can be restored, if application filed before award comes into force – If award comes into force, Tribunal or labour Court becomes functus officio – Management should have invoked Rule 48 within time frame – Management approached Writ Court

directly – No petition can be filed bypassing Rule 48 read with Section 11 – Award of Labour Court became final in terms of Section 17(2) – Even though plea of management that dismissal for default was not an award is accepted, industrial dispute remanded and labour Court directed to decide matter – Petition allowed. *[Management, Janakiram Mills Ltd. v. Presiding Officer, Labour Court]*

(S. VAIDYANATHAN, J.)
2014-II-LLJ-213 (Mad)

Wages Pending Proceedings

Industrial Disputes Act, 1947, Sections 17B, 33 and 33A – Applicant/workman was appointed by Petitioner Company – Industrial dispute raised by Applicant/workman demanding regularization - Dispute referred to Tribunal – During pendency of reference, Applicant/workman was transferred – Being aggrieved, complaint lodged under Section 33A alleging transfer is in violation of Section 33 – Notwithstanding complaint, Petitioner Company issued charge sheet for alleged wilful absence, resulting in termination of service – Tribunal set aside order of transfer and dismissal and ordered reinstatement with full backwages – Petitioner Company challenged award by writ application – During pendency, Applicant/workman filed application under Section 17B for full wages pending proceedings – Petitioner Company alleged that application under Section 17B not maintainable – Whether Application under Section 17B is maintainable on ground that order passed under Section 33 and 33A is not award – Held, if complaint under Section 33A is that employee dismissed or discharged in breach of Section 33, complaints is in nature of dispute and Tribunal certainly within power to order reinstatement – Section 17B is attracted where award directing reinstatements of any workman and employer challenges award – Workman entitled to relief under Section 17B where Labour Court found dismissal of workman illegal and directed reinstatement – Court not required to go into merits but only to find out whether it is award and if award directing reinstatement, then automatically Section 17B applies – Application filed by Applicant/workman under Section 17B maintainable – Applicant/workman entitled to full wages till disposal of writ application. *[Bharat Coking Coal Ltd. v. Presiding Officer]*

(SOUMEN SEN, J.)
2014-II-LLJ-207 (Cal)

INTERPRETATION OF STATUTES

Benefit – Industrial Disputes Act, 1947, Section 33C(2) – "Benefit' includes advantage or profit which naturally includes monetary advantage or monetary profit – Word benefit comprehends all kinds of benefits whether monetary or not monetary which workman entitled to in accordance with law – Word "benefit" would include benefit expressed or otherwise in terms of money which require computation – Word "benefit" in Section 33C(2) is of wide amplitude so as to bring within its sweep interim relief which has been determined in terms of Section 15(2)(b). *[Mita Sen v. State of West Bengal]*

(SOUMEN SEN, J.)
2014-II-LLJ-242 (Cal)

RETRENCHMENT

Termination – Industrial Disputes Act, 1947, Sections 2 (oo)(bb) and 25-F – Petitioner workman of 2nd Respondent management appointed as electrician on part time basis – Removal of workman was with immediate effect for alleged absence from service – Termination justified by labour Court – Workman sought quashing of award and prayed for reinstatement with full back wages – Whether removal of workman legal - Whether termination of workman amounts to retrenchment – Held, workman remained in continuous employment for 240 days preceding the date of termination – Workman was neither given notice nor retrenchment compensation nor indicted in departmental enquiry for termination – Plea of management that services of workman were no more required is misfounded – Allegation that workman absent due to engagement in running of canteen of other bank located in premises of management, also not substantiated with adequate evidences – Management cannot adopt policy of hire and fire merely because workman was part time employee – Non-compliance of provisions of Section 25-F sufficient to label termination of services of workman to be against law – Termination of workman amount to retrenchment – Petition allowed. *[Ved Parkash v. Presiding Officer, Industrial Tribunal-cum-Labour Court]*

(DR. BHARAT BHUSHAN PARSOON, J.)
2014-II-LLJ-31 (P&H)

TERMINATION

Validity of – Industrial Disputes Act, Section 25-F – Appellants employees of Food Corporation of India (FCT) were working on causal basis and their services were dispensed with after certain time – Appellants raised industrial dispute alleging wrongful termination – Proceedings culminated and two awards passed by Tribunal – Termination of Appellants held to be illegal in both awards and they were directed to be reinstated with back wages – FCI filed writ petitions challenging awards, same dismissed – On appeal, Division Bench set-aside orders of Single Judge and Tribunal and held termination valid – Appeals – Whether termination of Appellants legal – Held, Appellants worked for more than 240 days continuously preceding their termination – Appellants were not given notice or pay in lieu of notice and retrenchment compensation at the time of their termination – Mandatory pre-condition of retrenchment in paying dues in accordance with Section 25-F was not complied with, same sufficient to render termination as illegal – Division Bench order set aside, award of Tribunal restored – Appeals partly allowed. *[Hari Nandan Prasad v. Employer I/R to Mangmt of FCI]*

(A.K. SIKRI, J.) 2014-II-LLJ-54 (SC)

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

Sections 4 & 10 – Industrial Disputes Act, 1947 (14 of 1947) – Dispute regarding genuineness of Contract – Applicable Legislation – Held, no machinery under 1970 Act, to adjudicate issue of genuineness of Contract – Industrial Tribunal alone competent to determine issue whether Contract between Principal Employer and Contractor is genuine or not – Issue of absorption of Writ Petitioner/Contract Labourers directed to be referred to Industrial Tribunal for adjudication.

Asish Dey Chowdhury v. State of West Bengal
(Cal.) (Soumen Sen, J.) 2014 (2) LLN 117

INDUSTRIAL DISPUTES ACT, 1947 (14 OF 1947)

Section 10

Reference of dispute by Appropriate Government to industrial Tribunal – Validity of – Issue, whether contracts entered into by Employer were sham and bogus and to deprive Workmen of their benefits – After failure of Conciliation proceedings matter referred by appropriate Government to Industrial Tribunal – Order of Reference reflecting points of dispute – Held, terms of reference have to be construed liberally and not technically – As Appropriate Government, in instant case, prima facie satisfied with regard to existence of dispute, Order of Reference made, held, valid – Writ Petition challenging same, dismissed.

ICICI Bank Ltd. v. Union of India (DB) (Bom.) (M.S. Sonak, J.) 2014 (2) LLN 88

Section 25-F

Reinstatement – Petitioner, who worked continuously for 4 years in Government Primary School, was removed from service by Verbal Orders – Award of Labour Court, declaring termination bad in law granting Back Wages but not reinstatement – Writ Petition challenging Award of Labour Court – Whether Labour Court justified in denying reinstatement – Held, once termination of services of Workman found to be illegal and in violation of mandatory provisions of Section 25-F, normal rule is reinstatement with continuity of service – Labour Court committed serious error while denying relief of reinstatement with continuity of service to Petitioner-Workman – Impugned Award cannot be sustained – Petition allowed.

Vijender Singh v. Presiding Officer, Industrial Tribunal-Cum-Labour Court (P & H) (Rameshwar Singh Malik, J.) 2014 (2) LLN 247

PUNISHMENT

Whether in violation of Principles of Natural Justice – Show Cause Notice issued to petitioner apecifying allegations against him – Explanation submitted by Petitioner to said Notice – Punishment inflicted on Petitioner stating that reply of Petitioner was not satisfactory – However, no reasons assigned by Disciplinary Authority for arriving of conclusion – Moreover, punishment of stoppage of increment inflicted on Petitioner, without conducting any enquiry – In such circumstances, held, Order of Punishment passed in violation of Principles of Natural Justice – Order set aside – Writ Petition allowed – *Service Law.* **Solanki, P.S. v. State of M.P. (MP) (Sujoy Paul, J.)**

2014 (2) LLN 203

MAY - 2014

DISCIPLINARY PROCEEDINGS

Seizure witness – Disciplinary authority – Competency of – Whether Cheif Superintendent/Seizure witness competent to act as disciplinary authority of Petitioner and pass punishment order – Held, statement of Chief Superintendent/Seizure witness and seizure list was weighed with enquiry committee to hold workman guilty – Chief Superintendent/Seizure witness acted as disciplinary

authority in passing punishment – Chief Superintendent appointed himself as one-man enquiry committee to conduct domestic enquiry against workman – Appointment of one-man enquiry committee, enquiry itself and order of punishment stand vitiated and become void for violation of principles of natural justice – Chief Superintendent not competent to act as disciplinary authority of Petitioner and passed punishment order. *[Ejaz Alam Siddique v. Presiding Officer, Industrial Tribunal]*

(B.K. NAYAK, J.) 2014-II-LLJ-351 (Ori)

ENQUIRY

Non-supply of documents – Removal from service – Industrial Disputes Act, 1947, Section 33 (2)(b) – Departmental Proceeding initiated against Petitioner on charges of abscondance from working spot and theft – Inquiry Officer exonerated Petitioner from charge of abscondance from duty and confirmed charge of theft – Based on inquiry report, disciplinary authority passed order of removal of Petitioner from service – Employer filed application under Section 33 (2)(b) for approval of removal order – Petitioner alleged inquiry not conducted in accordance with principles of natural justice – Tribunal held, order of removal from service does not suffer from infirmity – Whether non-supply of list of witness and material documents to Petitioner before initiation of enquiry is in violation of principles of natural justice – Held, enquiry report itself stated that Petitioner took plea that he was forcibly made to sign on blank papers – Two Officers have become witnesses to seizure and their statements along with seizure list accepted by enquiry committee in finding guilt of workman – Workman should have been supplied with copy of seizure list and statements of seizure witnesses before conducting enquiry – Tribunal not right in observint that non-supply of documents to workman does not prejudiced his case – Petitioner-workman has been prejudiced and domestic enquiry against him stood vitiated for non-supply of list of witnesses and material documents – Impugned order passed by Tribunal and punishment order of disciplinary authority quashed – Writ petition allowed. *[Ejaz Alam Siddique v. Presiding Officer, Industrial Tribunal]*

(B.K. NAYAK, J.) 2014-II-LLJ-351 (Ori)

GRATUITY

Recovery of loss – Deduction – Payment of Gratuity Act, Section 4(6)(a) – 3rd Respondent/Employee charge sheeted for acts of misconduct – Pending enquiry, 3rd Respondent retired from service on superannuation – Order passed for recovery of loss caused to Petitioner, same deducted from gratuity payable to 3rd Respondent – Controlling Authority held that there is no provision for recovery on account of loss caused to Petitioner due to negligence on part of 3rd Respondent – Also held that issuance of charge sheet and imposing penalty illegal, same confirmed by Appellate Authority – Writ petition – Whether recovery of loss caused to Petitioner can be deducted from gratuity payable to superannuated employee – Held, mere assessment of loss and entitlement of employer to recover loss from employee, would not attract Section 4(6)(a), unless services of employee terminated – 3rd Respondent not terminated for any act, willful omission or negligence causing loss to Petitioner's property – Petitioner not entitled to recover from gratuity payable to 3rd

Respondent – Writ petition dismissed. *[Western Coalfields Ltd. v. Regional Labour Commissioner (Central)]*

Grounds of Dicision

Loss caused to property of the employer cannot be recovered from gratuity payable to the employee, if the employee ceases to be in service on account of his attaining the age of superannuation.

(R.K. DESHPANDE, J.)
2014-II-LLJ-503 (Bom)

TERMINATION OF SERVICE

Incorrect Birth Certificate – Indian Evidence Act, 1872, Section 35 – Whether school leaving certificate or birth certificate issued by Competent Authority will prevail, when there is dispute in date of birth between those certificates – Held, Respondent should have accepted birth certificate issued by Municipal Corporation as conclusive proof of age, same being an entry in public record as per Section 35 and benefit of same cannot be denied to Appellant – Date of birth of Appellant in school leaving certificate is improbable, as Appellant's elder brother was born on same year with 5 months diference as per his School Leaving Certificate – 5 months' difference between birth of Appellant and his elder brother not possible – School Leaving Certificate cannot be relied upon by Respondent – Date of birth mentioned in LIC insurance policy on basis of which premium paid by Respondent on behalf of Appellant was as per certificate issued by Corporation – Respondent should have relied on birth certificate issued by Corporation, as same was issued on Court's order – Grave miscarriage of justice committed against Appellant, as Respondent prematurely terminated services of Appellant by taking his date of birth as per school leaving certificate, which is contrary to facts and evidence on record. *[Iswarlal Mohanlal Thakkar v. Paschim Gujarat Vij Company Ltd.]*

(V. GOPALA GOWDA, J.) 2014-II-LLJ-513 (SC)

DOCTRINE OF PROSPECTIVE OVERRULING

Application of – Governmental Order providing that Senior Assistants and Senior Stenographers working in Subordinate offices of Labour Department would be eligible for appointment by transfer to post of Assistant Labour Officer – Said Governmental Order struck down by Tribunal in Petitions filed by aggrieved Employees – However, Tribunal only struck down Governmental Order prospectively and held that promotions already effected before Order of Tribunal not to be effected – High Court in Writ Petition struck down Order of Tribunal on ground that Doctrine of Prospective Overruling can only be applied by Apex Court – Thus, instant Civil Appeals – Held, when Government refuses to create superannuary posts for Petitioners, who were promoted on basis of Governmental Order, reversion of Petitioners to have cascading effect on both Petitioners and persons not party to Petition – Held, Governmental Order rightly declared as ultra vires to Presidential Order but promotions granted on basis of same, not to be affected – Appeals allowed – *Service Law – Promotions.*

Madhava Reddy, K. V. Government of A.P. (SC) (T.S. Thakur, J.)
2014 (2) LLN 290

The 'Doctrine of Prospective Overruling' was, observed by this Court as a Rule of Judicial Craftsmanship laced with pragmatism and judicial statesmanship as a useful tool to bring about smooth transition of the operation of law without unduly affecting the rights of the people, who acted upon the law that operated prior to the date of the Judgement overruling the previous law.

HIGH COURT AND SUPREME COURT JUDGES (SALARIES AND CONDITIONS OF SERVICE) AMENDMENT ACT, 2005 (46 OF 2005)

Section 13-A – pension and Retirement benefits – Pension for Judges elevated from Bar on retirement – Whether High Court Judges appointed from Bar under Article 217(2)(b) of Constitution, on retirement are entitled for an addition of 10 years to their service for purpose of their Pension – Held, experience and knowledge gained by a successful lawyer at Bar cannot be considered less vis-a-vis experience gained by Judicial Officer – If service of Judicial Officer is counted for fixation of Pension, no valid reason as to why experience at Bar cannot be treated as equivalent – Fixation of higher Pension to Judges drawn from Subordinate Judiciary who served for shorter period in contra-distinction to Judges drawn from Bar who served for longer period with less Pension is highly discriminatory and breach of Article 14 of Constitution – Classification itself is unreasonable without any legally acceptable nexus with object sought to be achieved – When persons holding Constitutional office retire from service, making discrimination in fixation of their Pensions depending upon source from which they were appointed is in breach of Articles 14 & 16(1) of Constitution – Petitioner's claim for Pensionary benefits, ten years practice as an Advocate be added as a qualifying service for Judges elevated from Bar acceptable – Reliefs are to be reckoned from 01.04.2004, date of insertion of Section 13-A by High Court and Supreme Court Judges (Salaries and Conditions of Service) Amendment Act, 2005 – Directions issued.

Ramakrishnam Raju, P. V. Union of India
(SC) (P. Sathasivam, C.J.I.)
2014 (2) LLN 317

VOLUNTARY RETIREMENT SCHEME

Application for retirement by Respondent-Employee under scheme floated by Appellant-Employer – Withdrawal of Application before final decision by Appellant-Employer – Non-acceptance of Application for withdrawal by Appellant-Employer and made Respondent-Employee to retire – Direction of High Court to reinstate Employee with full Back Wages challenged – Appeal – Appeal allowed with a direction to Appellant-Employer to pay 20% back-wages from date Employer ceased to discharge his duties till date of his reinstatement in service – Appeal partly allowed.

M.D. Orissa S.H.W Coop Sty. Ltd. v. Satyanarayan Pattnaik
(SC) (Anil R. Dave, J.)
2014 (2) LLN 316

JUNE – 2014

EMPLOYMENT AND LABOUR LAW

Legality of Tribunal Award – Jurisdiction of Writ Court – Constitution of India, 1950, Article 226 – Respondent/workman found guilty of gross misconduct of engaging in trade and business outside scope of duties – Respondent dismissed from services of Petitioner/bank, same confirmed on appeal – Dispute referred to Tribunal for adjudication – Tribunal held that domestic inquiry against Respondent violated principles of natural justice and directed that Management be allowed to lead evidence to justify its action – After examination of evidences, Tribunal directed Petitioner to reinstate Respondent with back wages and continuity of service – Petitioner/Bank filed writ petition – Award directing reinstatement with back wages quashed and matter remanded back to Tribunal – Tribunal quashed order terminating Respondent and directed Petitioner to reinstate Respondent with back wages and continuity of service – Bank again challenged Tribunal order by Writ petition – Whether there is illegality or perversity in Tribunal award, by which termination of Respondent quashed with a direction of reinstatement with full back wages and continuity of service to call for interference under Article 226 of Constitution – Held, findings of Tribunal can be interfered only, when such findings are perverse or made in absence of evidence – Decision in Anoop Sharma v. Executive Engineer, Public Health Division applied – Perusal of evidence on record does not show that there is perversity in findings recorded by Tribunal that charge against Respondent is not proved – After appreciating evidence in proper perspective, findings recorded by Tribunal cannot be unacceptable to call for interference under Article 226 of Constitution – Petition dismissed. *[Syndicate Bank v. Vinod Kumar Amin]*

(G.S. KULKARNI, J.)
2014-II-LLJ-548 (Bom)

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