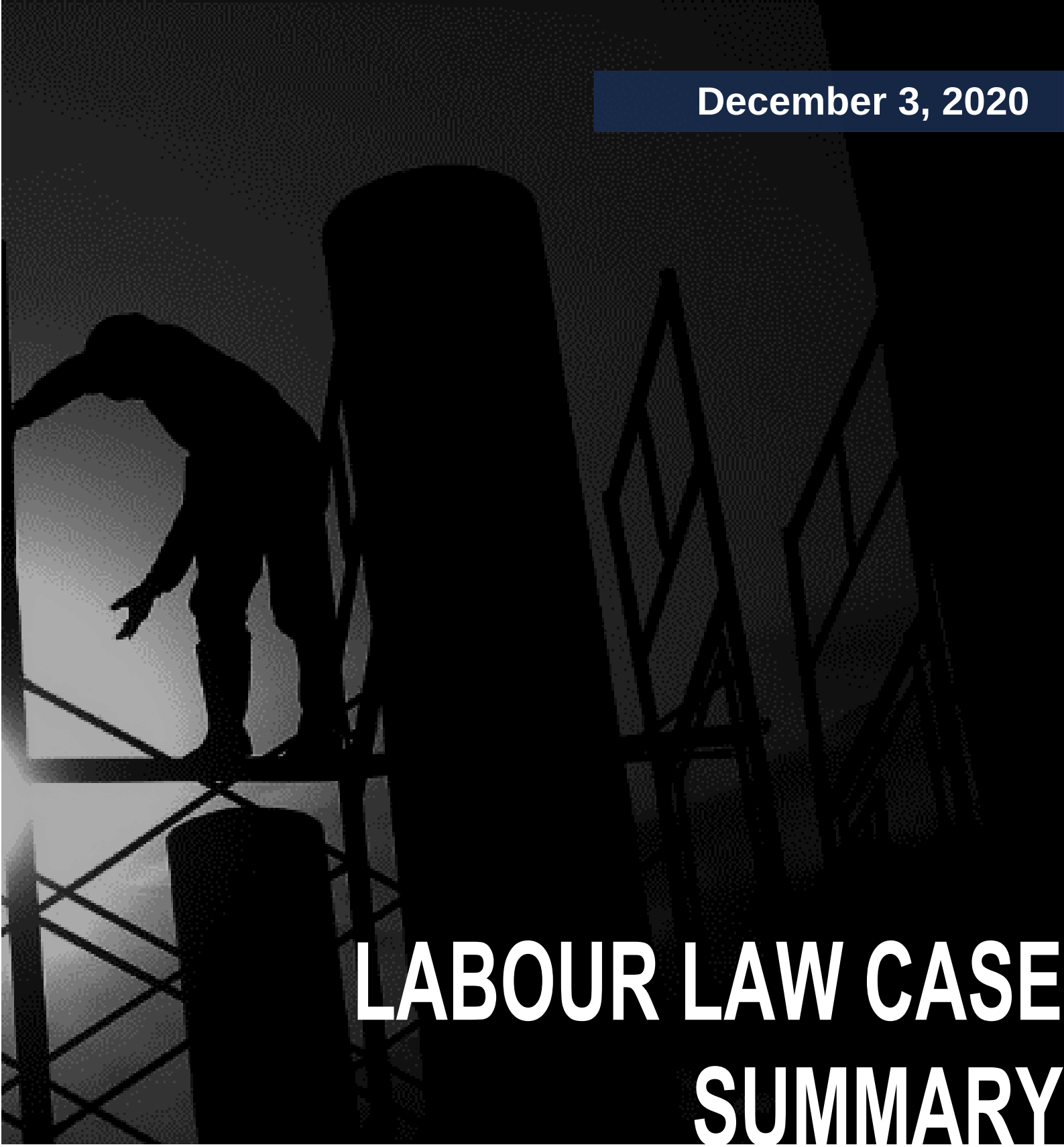
December 3, 2020



LABOUR LAW CASE SUMMARY

HALF-YEARLY UPDATE – PART 1

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SOLICITORS AND ADVOCATES

MUMBAI I DELHI I BENGALURU I KOLKATA I AHMEDABAD

Index

This compilation is the first part of the three-part series through which we seek to provide a brief overview of the recent judicial decisions on labour laws rendered in the period, April, 2020 to September, 2020, by the Supreme Court and various High Courts of India.

For the purposes of the instant part, we shall be covering judicial decisions rendered under the following legislations:

(a) Employee's Compensation Act, 1923 ("**Employee's Compensation Act**");
(b) Employees' State Insurance Act, 1948 ("**ESI Act**");
(c) Employees' Provident Funds and Miscellaneous Provisions Act, 1952 ("**EPF Act**"); and
(d) Payment of Gratuity Act, 1972 ("**Payment of Gratuity Act**").

A. Case Laws under Employee's Compensation Act

1. Whether an assault caused to an employee while he was driving a vehicle on duty can be considered to be an accident arising out of or in course of the employment in terms of Section 3 of the Employee's Compensation Act?

In the matter of the *Branch Manager, SBI General Insurance Company Limited* v. *Sri Dulal Debnath*, [MFA(E/C) NO.05 OF 2019 decided on June 12, 2020], the Tripura High Court, by relying on the definition of 'accident' as provided in the Halsbury's Laws of England, held that an assault can be considered to be an accident, since the assault was an unlooked-for mishap or untoward event which brought about personal injury to the workman.

Further, with respect to the question, as to whether such an accident can be considered as sustained in course of and arising out of his employment, the Tripura High Court, by relying on the Bombay High Court judgment in the case of *Trustees of the Port of Bombay* v. *Yamunabai*, [AIR 1952 Bom 382], answered the question in affirmative, by noting that when the incident of assault on the employee had happened, there was a causal relationship between the accident and the employment i.e. the accident had occurred on account of a risk which is an incident of the employment. Therefore, the incident of assault was held to be an accident arising out of or in course of the employment.

2. Whether *ex-gratia* amount, which is not paid in accordance with the statutory provisions, can be deducted from the compensation awarded under the Employee's Compensation Act?

In the matter of *Nusrat Jahan* v. *The Managing Director*, [Misc. First Appeal bearing No. 200839/2017 (WC), decided on June 25, 2020], the Karnataka High, Court after referring to certain precedents, including a recent judgment of the High Court of Himachal Pradesh in the matter of *State of Himachal Pradesh* v. *Guddi Devi*, [FAO 201 of 2009], held that, any payment made *dehors* of Sections 8 (*Distribution of compensation*), 28 (*Registration of agreements*) and 29 (*Effect of failure to register agreement*) of the Employee's Compensation Act cannot be deducted from the statutory compensation payable under Employee's Compensation Act.

The Karnataka High Court also observed that, in view of Sections 8, 28 and 29 of the Employee's Compensation Act, it was evident that no direct payment made to the deceased workman/ dependents, including any payment in the nature of *ex-gratia* compensation, can be deducted from the compensation awarded except in accordance with procedure stated in the above referred sections which, *inter-alia*, requires any such deposit to be made with the Commissioner directly.

3. Whether the death of an employee caused due to stress from work can be considered to be death of an employee due to injury by accident arising out of and in the course of employment?

In the matter of *Divisional Controller, NEKRTC* v. *Smt. Laxmi*, [Misc. First Appeal No.200122/2018(WC) decided on June 25, 2020], the Single Bench of the Karnataka High Court, while relying on a decision of the Division Bench of the Karnataka High Court in the matter of *National Insurance Company Limited* v. *Smt. Balawwa*, [1993 (2) Karnataka Law Journal 406 (DB)], held that, if a person suffers a heart attack caused due to the stress and strain of the job and dies, it necessarily means that, there has been an injury to the heart and that event, being a mishap not expected or designed, is an accident, and that if a workman suffers heart attack out of and in the course of his employment, then the same amounts to employment injury and the employer is liable to pay compensation under Section 3 (*Employer's liability for compensation*) read with Section 4 (*Amount of compensation*) of the Employee's Compensation Act.

Similarly, in the matter of *United India Insurance Company Limited* v. *Narinder Kour*, [MA No.51/2018 with IA Nos. 1, 2 and 3 of 2018 decided on August 21, 2020], the Jammu and Kashmir High Court, by relying on the decision of its Co-ordinate Bench in the matter of *United India Insurance Company Limited* v. *Inder Jeet Kour*, [MA No.636/2010], held that the word 'accident' is not a technical legal term with a clearly defined meaning. An accident means any unintended and unexpected occurrence which produces hurt or loss. Only because a death has taken place in the course of employment, it will not amount to an accident. The court thus, enumerated the following principles in order to identify if there was an accident: (1) There must be a causal connection between the injury and the accident and the work done in the course of employment. (2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury. (3) If the evidence brought on record establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the facts of each case.

4. **Whether a contract labour, has not been engaged for a work which is in course of or for the purposes of trade or business of the principal employer, is covered under Section 12 of the Employee's Compensation Act?**

   In the matter of the *Manager, Sree Narayana Higher Secondary School* v. *Sumi*, [MFA(ECC).No. 11 OF 2020 decided on June 26, 2020], a Single Bench of the Kerala High Court, while relying on a judgment rendered by a Division Bench of the court in the case of *Mayinkutty C.* v. *Parayil Balan Nair*, [2017 (5) KHC 189], held that Section 12 (*Contracting*) of the Employee's Compensation Act would not be applicable to a contract labour in the event such contract labour has not been engaged for a work which is in course of or for the purposes of trade or business of the principal employer.

5. **When the wage drawn by the employee is below the stipulated wage amount under the Employee's Compensation Act, can the compensation be computed basis such higher stipulated amount?**

   In the matter of *Smt. Sangeeta* v. *Sojar Logistics Private Limited*, [MFA No. 201307/2018 (ECA) decided on June 26, 2020], the Karnataka High Court held that, irrespective of the fact that the claimants themselves have stated that the monthly wage of the deceased was INR 6,000 (Rupees six thousand only), in light of the Central Government's notification No. S.O.1258(E), dated May 31, 2010, which had raised monthly wage of the workman at INR 8,000/- (Rupees eight thousand only) per month and the fact that in the present day, a family cannot be maintained on just meagre amount of INR 6,000/- (Rupees six thousand only) per month, it is just to consider the monthly wage of the employee to be INR 8,000/- (Rupees eight thousand only) per month.

6. **Whether an employee earning more than the wage ceiling stipulated under the Employees' State Insurance Act, 1948 is eligible to claim compensation under Employee's Compensation Act?**

   In the matter of the *S. Palanivel* v. *Deputy Commissioner of Labour, Salem*, [M.A. Nos. 204 of 2020 and 2523 of 2017 decided on July 31, 2020], the Madras High Court held that, an employee, whose wages exceed the ceiling limit specified under the ESI Act making him ineligible to claim compensation under the ESI Act, is entitled to claim compensation under the Employee's Compensation Act.

7. **Whether a disablement suffered by an employee, which does not fall under the category of scheduled injury specified under the Employee's Compensation Act, is entitled to claim compensation in accordance with Section 4(1)(b) of the Employee's Compensation Act?**

In the matter of *National Insurance Company Limited* v. *Dheeraj Singh*, [MA No. 140/2013 decided on August 7, 2020], the Jammu and Kashmir High Court held that, an employee is entitled to claim compensation computed in accordance with Section 4(1)(b) (*Amount of compensation*) of the Employee's Compensation Act, even if the cause for the disablement is not a scheduled injury but comes within the purview of the definition of 'total disablement'.

8. Whether in an appeal filed under Section 30 of the Employee's Compensation Act, submission of cross objections is maintainable?

In the matter of *United India Insurance Company Limited* v. *Narinder Kour,* [MA No. 51/2018 with IA Nos. 1, 2 and 3 of 2018 decided on August 21, 2020], the Jammu and Kashmir High Court, by relying on certain precedents, including the decision of the Himachal Pradesh High Court's in the matter of *Dwarku Devi* v*. Union of India*, [2011 ACJ 2783], held that, in light of the fact that the provisions of Code of Civil Procedure, 1908, particularly, Order 41 Rule 22 were not made applicable to the appeals filed under Section 30 of the Employee's Compensation Act, cross objections in an appeal filed under Section 30 (*Appeals*) of the Employee's Compensation Act are not maintainable.

9. Whether a Commissioner under the Employee's Compensation Act, can award interest at a rate less than the statutory rate prescribed under Section 4-A(3)(a) of the Employee's Compensation Act?

In the matter of *United India Insurance Company Limited* v. *Narinder Kour,* [MA No. 51/2018 with IA Nos. 1, 2 and 3 of 2018 decided on August 21, 2020], the Jammu and Kashmir High Court, while relying on the Jammu and Kashmir High Court's decisions in the matter of *National Insurance Company Limited* v*. Dheeraj Singh*, [MA No.140/2013], and *Ghulam Mohd.* v*. Divisional Manager, SFC Doda*, [MA No.576/2010], held that, under the Employee's Compensation Act, the Commissioner has no discretion to grant interest at a rate less than the minimum statutory interest prescribed under Section 4-A(3)(a) (*Compensation to be paid when due and penalty for default*) of the Employee's Compensation Act.

10. If monthly wage can be fixed in excess of the limit specified under the Employee's Compensation Act?

In the matter of *A. Kamal Basha* v. *Thiru. P. Chandrasekaran,* [C.M.A. No.1651 of 2015 decided on August 24, 2020], the Madras High Court held that, the court has the power to fix the monthly wage above the monthly wage stipulated by the Central Government under the Employee's Compensation Act basis the affidavit submitted by the employer specifying the monthly wage of the employee.

11. What is the actual date for accrual of interest on the compensation arrived at under the Employee's Compensation Act?

In the matter of *A. Kamal Basha* v. *Thiru. P. Chandrasekaran*, [C.M.A. No.1651 of 2015 decided on August 24, 2020], the Madras High Court, by relying on the Supreme Court's decision in the matter of *North East Karnataka Road Transport* v*. Sujatha*, [Civil Appeal No. 7470 of 2009], held that, it is the date of the accident which is required to be taken into consideration and not the date of adjudication of the claim, for calculation of interest on the awarded sum under the Employee's Compensation Act.

The aforesaid decision seems to have overlooked that the employer has thirty days period to pay the compensation and hence, interest, if any, should accrue only post a period of thirty days from the date of accident, as has been held by another co-ordinate bench of Madras High Court in the matter of *Poornam* v. *G. Suresh*, [C.M.A.No.1160 of 2017 decided on August 26, 2020], and Jammu and Kashmir High Court in the following two matters *National Insurance*

Company Limited v. *Dheeraj Singh*, [MA No. 140/2013 decided on August 7, 2020] and *United India Insurance Company Limited* v. *Narinder Kour*, [MA No.51/2018 with IA Nos. 1, 2 and 3 of 2018 decided on August 21, 2020]

12. Is interest payable from the date of accident, in the event the claim is filed beyond the prescribed period of limitation under Section 10 of the Employee's Compensation Act?

In the matter of *United India Insurance Company Limited* v. *Jiyalal*, [First Appeal from Order No. 1212 of 2020 decided on September 1, 2020], the Allahabad High Court held that, when the test of proportionality is applied, it is apparent that that claimant had failed to give any reason for not approaching the tribunal within the prescribed time mentioned under Section 10 (*Notice and claim*) of the Employee's Compensation Act and therefore, cannot be allowed to take advantage of delays of his own making and earn interest on the award amount from the date of the accident.

B. Case Laws under Employees' State Insurance Act

1. Whether a private educational institution can be treated as an '*establishment*' under Section 1(5) of the ESI Act?

In the matter of *All India Private Educational Institutions Association* v. *The State of Tamil Nadu,* [W.P. No. 34236 of 2019 decided on July 29, 2020], the Madras High Court held that "*private educational institutions can be treated as an 'establishment' under Section 1(5) of the ESI Act, and that the term 'otherwise' has been placed in Section 1(5) of the ESI Act to specify that genus of establishments is not restricted to those organisations, which are industrial, commercial or agricultural only, but also includes organisations like educational institutions*".

2. Whether damages can be waived in the event the employer fails to pay the contribution within the prescribed timelines due to delayed enrolment under ESI Act and where such delay in enrolment is not attributable to the employer?

In the matter of *Employees State Insurance Corporation, Regional Office (Tamil Nadu)* v. *M/s. Neyveli Lignite Corporation Limited*, [C.M.A. Nos. 1030, 1033, 1033 and 1035 of 2020 decided on August 12, 2020], the Madras High Court held that, in the event of belated payment of contribution along-with interest was due to delayed enrolment under the ESI Act and where such delay in enrolment is not attributable to the employer, then damages can be waived.

3. Whether a subsequent transferee of a factory or establishment is liable to pay dues and/or damages which have arisen prior to its possession of the factory or establishment?

In the matter of *Premchand Jute and Industries Private Limited* v. *the Employees State Insurance Corporation*, [W.P. No. 1111 of 2011 decided on August 18, 2020], the Calcutta High Court, by interpreting Section 93A (*Liability in case of transfer of establishment*) of the ESI Act, held that both the transferor and the transferee are jointly and severally liable to pay any damages in respect of the period upto the date of transfer of the factory or establishment. It further explained that a subsequent transferee cannot take the defence that, he being a transferee of a factory or establishment is not liable for dues and/ or damages accruing prior to its possession of the factory or establishment.

4. For how long can a factory or an establishment be exempted from the operations of the ESI Act and whether the exemption granted be retrospective in nature?

In the matter of *Indian Coffee Workers Cooperative Society Limited* v. *the Regional Director, Regional Officer, Employees State Insurance Corporation, Pondicherry*, [C.M.A. Nos. 398 and 399 of 2020 decided on September 24, 2020], the Madras High Court held that, the exemptions granted under Section 87 (*Exemption of a factory or establishment or class of factories or establishments*) of the ESI Act (*subject to better benefits*) to a factory or an establishment from the operations of the ESI Act is for a period of 1 (one) year and is subject to renewal.

The Madras High Court thus held that, the exemption granted under Section 87 of the ESI Act shall take effect prospectively only in accordance with Section 91-A (*Exemptions to be either prospective or retrospective*) of the ESI Act.

C. Case Laws under Employees' Provident Funds and Miscellaneous Provisions Act

1. Whether back wages constitute as "basic wages" under the EPF Act, and whether the employer is required to make contributions on such back wages?

In the matter of the *Manager, Wallardie Estate, Harrisons Malayalam Limited* v. *the Regional Provident Fund Commissioner*, [WP(C). No. 40468 of 2018 (G) decided on May 5, 2020], the Kerala High Court, while relying on the Supreme Court's judgment in the case of *Pranitiya Vidhyut Mandal Mazdoor Federation* v. *Rajasthan State Electricity Board*, [1992 (2) CLR 723] and *Changdeo Sugar Mills* v. *Union of India*, [2002 (2) SCC 519] held that, back wages as awarded by the court will constitute as 'basic wages' under the EPF Act.

Further, the High Court while affirming the judgment of the Division Bench of the Kerala High Court in the matter of *K.Y. Varghese* v. *Puthuppady Service Co-Operative Bank Limited*, [W.A. No. 881 of 2007], held that, when the workman was reinstated in service with full benefits including back wages, he should have been deemed to be in service from the date on which he was kept under suspension till the day, on which he was reinstated in service. Applying the principles above, the workman being covered under the EPF Act, the employer becomes liable to remit their share of contribution on the back wages, irrespective of the fact that the employee has not made any contribution for the same.

2. Whether non-executive directors, who are not in charge of the day-to-day activities of the establishment, can be prosecuted for contravention of the provision of the EPF Act?

In the matter of *T.A. Varghese* v. *Ram Bahadur Thakur Limited*, [CRL.A. No. 356 of 2006 decided on June 5, 2020], the Kerala High Court, while relying on Section 14A (*Offences by companies*) of the EPF Act and the Supreme Court's judgment in the matter of *SMS Pharmaceuticals Limited* v. *Neeta Bhalla*, [2005 (4) KLT 209], held that non-executive directors of an establishment cannot be prosecuted, unless there are pleadings and evidence to show that, they were in charge and responsible for the conduct of the business of the company.

3. Whether the provident fund department can proceed against a present occupier of an establishment basis prior dues owed by such establishment?

In the matter of *Manuel Mohandas* v. *the Assistant Provident Fund*, [WP(C). No. 2633 of 2011(D) decided on June 11, 2020], the Kerala High Court held that, in light of Section 14B (*Power to recover damages*) read with Section 17B (*Liability in case of transfer of establishment*) of the EPF Act, the provident fund authority has the right to proceed against the establishment for any dues, without being required to choose the employer from whom the amount is to be recovered. However, the court recognized that a person could not be saddled with any personal liability in respect of the past dues not covered by the lease agreement and held that, if the petitioner is forced to pay for any period which pertained to past dues, the remedy of the petitioner would be to pay and recover it from the person who is actually liable.

4. Whether the provident fund department can determine the liability under Section 7A of the EPF Act for a period of larger duration, where the notice preceding such determination pertained to a shorter period?

In the matter of *Manuel Mohandas* v. *the Assistant Provident Fund*, [WP(C). No. 2633 of 2011(D) decided on June 11, 2020], the Kerala High Court held that, the determination under Section 7A (*Determination of moneys due from employers*) of the EPF Act cannot go beyond

the period which was not mentioned in the demand notice. However, it recognized the authority's power to cover any other period, subject to a fresh notice being issued in this regard.

5. Whether proceedings under Section 7A of the EPF Act are *quasi*-judicial in nature?

In the matter of the *Central Board of Trustees, Employees' Provident Fund Organisation* v. *Sastha Enterprises*, [W.P.(C) No. 17077 of 2015 (H) decided on July 17, 2020], the Kerala High Court held that, the proceedings under Section 7A (*Determination of moneys due from employers*) of the EPF Act are *quasi*-judicial in nature and that a statutory obligation is cast upon the regional provident fund commissioner to conduct a detailed fact finding enquiry to arrive at a conclusion with regard to the liability and obligation of an employer.

6. Is *mens rea* relevant for assessing damages under Section 14B of the EPF??

In the matter of *Loyal Textile Mills Limited* v. *Regional Provident Fund Commissioner*, [W.P.(MD).No.12922 of 2017 decided on July 28, 2020], the Madras High Court held that, the object of levying damages under Section 14B (*Power to recover damages*) of the EPF Act is to penalize the wilful default of an employer in making contribution. Thus, *mens rea* is an essential ingredient for levy of damages under Section 14B of the EPF Act. Therefore, damages cannot be levied in cases where the wilful default of the employer cannot be established, since *mens rea* of the employer cannot be discerned.

Notably, in the matter of *Employees Provident Fund Organisation* v. *Parrison Estates and Industries Private Limited*, [W.P.(C). No. 23922 of 2014(M) decided on July 28, 2020], the Kerala High Court had also held that, *mens rea* is a determinative factor while imposing damages under Section 14B (*Power to recover damages*) of the EPF Act.

7. In the event damages payable under Section 14B of the EPF Act is inclusive of interest chargeable under Section 7Q of the EPF Act, can the provident fund organisation charge additional interest under Section 7Q of the EPF Act?

In the matter of *Employees Provident Fund Organisation* v. *Parrison Estates and Industries Private Limited*, [W.P.(C). No. 23922 of 2014(M) decided on July 28, 2020], the Kerala High Court, while relying upon the Delhi High Court's decision in the matter of *Roma Henny Security Services (P) Limited.* v. *Central Board of Trustees*, [W.P.(C) 831 of 2012)], held that in the event damages payable under Section 14B (*Power to recover damages*) of the EPF Act is inclusive of interest chargeable under Section 7Q (*Interest payable by the employer*) of the EPF Act, the provident fund organisation has no right to charge additional interest under Section 7Q of the EPF Act.

It may be noted that, Supreme Court had, in the case of *Central Board of Trustees vs Roma Henny Security Services* [Civil Appeal No. 6592/2014, order dated February 27, 2019], set aside the full bench decision of the Delhi High Court, relied upon by the Kerala High Court.

8. Whether the authorised officer has discretion to impose damages under Section 14B of the EPF Act or if he is bound by paragraph 32A of the Employees' Provident Funds Scheme, 1952 ("Provident Fund Scheme")?

In the matter of *Employees Provident Fund Organisation* v. *Bpl Telecom Private Limited*, [WP(C). No. 24207 OF 2014(A) decided on September 15, 2020], the Kerala High Court, while relying on the decision of the Division Bench of the Kerala High Court in the matter of *Regional Provident Fund Commissioner* v. *Harrisons Malayalam Limited,* [2013 (3) KLT 790], held that, an officer authorised by the Central Government under Section 14B (*Power to recover damages*) would have the discretion to impose or not to impose damages. However, while determining the question as to whether such authorised officer would have the discretion to

also totally waive off the damages, the court held that in such circumstances, the authorised officer would have to look into the facts and circumstance of each case and decide the total waiver of penalty.

Further, the court also remarked that, it would be far-fetched to state that an officer while having discretion to totally waive the damages cannot at all in a given case, take mitigating circumstances to reduce the damages specified under paragraph 32A (*Recovery of damages for default in payment of any contribution*) of the Provident Fund Scheme.

9. What is the legality of claiming provident fund contribution on special allowance from some establishments basis the judgment of Supreme Court's in the matter of the *Regional Provident Fund Commissioner (II), West Bengal* v. *Vivekananda Vidyamandir*, [Civil Appeal Nos. 6221 of 2011, judgment dated February 28, 2019] in ("*Vivekananda Vidyamandir*")?

The Supreme Court, in the matter of Vivekananda Vidyamandir, while reiterating the principles laid down by the Supreme Court in the matters of *Bridge and Roof (India) Limited* v. *Union of India,* [AIR 1963 SC 1474], and *Manipal Academy of Higher Education* v. *Provident Fund Commissioner*, [(2008) 5 SCC 428], had held that, special allowances which formed part of the employees' basic wages are subject to provident fund contributions.

Relying on the aforesaid, in the matter of *M/s Computer Access Private Limited* v. *The Secretary (L&S), Ministry of Labour & Employment*, [W.P. No. 6191 of 2020 and W.M.P. No. 7273 of 2020 decided on September 21, 2020], the Madras High Court, had re-iterated the same principles as laid down in the earlier judgements (incorrectly referring to *Surya Roshni Limited* v. *Employees Provident Fund*, [C.A. Nos. 3965 of 2013 decided on August 28, 2019], instead of Vivekananda Vidyamandir), whilst rejecting the proposition that the law laid down by Supreme Court was an entirely different proposition of law different from what was earlier holding the field, and the decision can be applied only prospectively.

Finally, the court while relying on the decision of the Supreme Court in the matter of *State of Odisha* v. *Anup Kumar Senapati*, [Civil Appeal No. 7295 of 2019, decided on September 16, 2019] held that, a wrong decision granting benefit to one person does not give a right to claim parity or equality by extending such wrong order to others. Thus, the court held that the relief sought in the writ petition cannot be granted.

The aforesaid principle of special allowance being treated as basic wages, was also applied by the Madras High Court, in the case of *Ford Motor Private Limited* v. *The Central Provident Fund Commissioner*, [W.P. No. 795 of 2020 and W.M.P. No. 958 of 2020 decided on September 21, 2020].

D. Case Laws under the Payment of Gratuity Act, 1972

1. Whether an employer is permitted to withhold gratuity during the pendency of disciplinary proceedings against a superannuated employee?

In the matter of *Chairman-cum-Managing Director, Mahanadi Coalfields Limited* v. *Sri Rabindranath Choubey,* [Civil Appeal No. 9693 of 2013 decided on May 27, 2020], the Supreme Court observed that the provisions of Section 4(6) (*Payment of gratuity*) of the Payment of Gratuity Act, which contains a *non-obstante* clause, provides for recovery or forfeiture of gratuity, where services of employee have been terminated for the reasons prescribed in Section 4(6)(a) and 4(6)(b) of the Payment of Gratuity Act. As the forfeiture is conditional upon the delinquent employee being terminated or dismissed from the services, no forfeiture is possible where the employee is not capable of being dismissed, presumably upon being superannuated. However, the situation is different, where the relevant provisions, such as Rule 34 of the Conduct, Discipline & Appeal Rules, 1978 ("**CDA Rules**") of the company in this case, contain a deeming provision of continuation of employment to enable dismissal from service even post superannuation.

The Supreme Court observed that the Payment of Gratuity Act, makes no provision with respect to departmental inquiries and hence, no fetter is caused upon operation of Rule 34.2 of the CDA Rules providing for a continuation of the inquiry and deemed continuation of the employee in service after the age of superannuation.

After referring to various decisions, the Supreme Court observed that it was apparent under Rule 34.2 of CDA Rules that inquiry could be held in the same manner as if the employee had continued in service and the appropriate major and minor punishment commensurate to guilt can be imposed including dismissal as provided in Rule 27 of the CDA Rules and in case pecuniary loss had been caused, that can also be recovered. Gratuity can be forfeited wholly or partially. Specifically, by relying on the Full Bench decision in the case of *State Bank of India* v. *Ram Lal Bhaskar*, [(2011) 10 SCC 249], the Co-ordinate Bench of Supreme Court ruled that, where the relevant disciplinary rules permit continuation of disciplinary proceeding against a superannuated employee and imposition of penalty of dismissal as if the employee had continued to be in employment:

(i) it is permissible in law for the employer to withhold the payment of gratuity to the employee after retirement from service on account of pendency of the disciplinary proceedings against him; and
(ii) it is permissible for the disciplinary authority to impose penalty of dismissal after the employee stood retired from service.

The Supreme Court has further overruled the Division Bench decision of *Jaswant Singh Gill* v. *Bharat Coking Coal Limited,* [(2007) 1 SCC 663]*,* on the grounds that (a) the order of termination was not questioned, nor the authority under the Payment of Gratuity Act, had jurisdiction to deal with it, (ii) The validity or enforceability and vires of CDA Rules 34.2 and 34.3 were not questioned and (iii) it did not consider the scope of provisions of the Payment of Gratuity Act and provisions of CDA Rule 34.2, provide a legal fiction of an employee deemed to be in service even after superannuation.

2. Whether an employer can withhold gratuity in case of commencement of departmental proceedings as well as judicial proceedings against an employee?

In the matter of *Shoma Sen* v. *State of Maharashtra*, [Writ Petition No. 1857 of 2020 decided on August 28, 2020], the Bombay High Court, Nagpur Bench held that, since no charge-sheet has been drawn up in connection with the departmental proceedings, it cannot be concluded that departmental proceedings has been initiated against the employee. Thus, the employer

was not entitled to withhold the gratuity of such an employee.

Further, the court distinguished the *ratio* laid down by the Supreme Court in the case of *Chairman-cum-Managing Director, Mahanadi Coalfields Limited* v. *Sri Rabindranath Choubey*, [Civil Appeal No. 9693 of 2013], by virtue of the peculiar facts of the instant case. The court thus observed that, the Supreme Court in the aforesaid case was called upon to decide whether gratuity could be withheld because of pendency of disciplinary proceedings, however, the *ratio* of the said case is inapplicable in the instant case since neither departmental proceedings nor judicial proceedings were pending as on date on which the petitioner had retired on superannuation.

3. Whether the determination of appropriate Government has any bearing for determination of the ceiling upto which gratuity is payable under the Payment of Gratuity Act?

In the matter of *Samir Kumar Ghosh* v. *The State of Tripura*, [W.P.(C) No.1091/2017, decided on May 29, 2020], the Tripura High Court, by relying on the decision of its Co-ordinate Bench in the matter of *Bhupati Debnath* v*. State of Tripura*, [W.P.(C) No.1050/2019]*,* held that, when the question pertains to payment of gratuity, the distinction of government being Central or the State Government being an "*appropriate Government"* in relation to different classes of establishments, has no effect, especially pursuant to the amendment by Payment of Gratuity (Amendment) Act, 2018, whereby the power to prescribe such ceiling has been vested in the Central Government, to be exercised by issuing a notification in this regard.

4. Whether gratuity is payable upon resignation by the employee, despite regulation providing otherwise?

In the matter of *B. S. Rawat* v. *Shyam Lal College*, [W.P.(C) 3147/2020, C.M. No. 20958/2020 decided on September 14, 2020], the Delhi High Court while relying on certain precedents including the judgment passed by the Co-ordinate Bench of the Delhi High Court in the matter of *University of Delhi* v. *Ram Prakash*, [2015 SCC Online Del 8634], held that in light of overriding effect of the Payment of Gratuity Act in view of Section 14 (*Act to override other enactments, etc*.) of Payment of Gratuity Act, there could be no dispute that, irrespective of a contrary provision provided in any other enactment or regulation, an employee would be entitled to gratuity even if he had resigned, in terms of Section 4 (*Payment of gratuity*) of Payment of Gratuity Act.

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