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01.
REGULATORY UPDATES

Telangana exempts establishments from several compliances across labour laws

By way of an order dated 15 February 2021, the Government of Telangana has granted exemption to establishments located in the state from the application of certain provisions under different labour laws for the purpose of minimizing the burden of regulatory compliance. The conditions, if any, subject to which some of these exemptions will be available have also been set out in the order. Note that the exemptions in the order largely pertain to procedural compliances.

Some of the important exemptions include:

a) display of an abstract of the statute and the rules made thereunder, as required under the Maternity Benefit Act, 1961 and the Minimum Wages Act, 1948;

b) manner of making payment of maternity benefits as set out under Rule 5 of the Telangana Maternity Benefit Rules, 1966 (provided the requisite payment has been made to the eligible woman);

c) display of rates of wages in a department as required under the model standing orders;

d) display of notice of periods and hours of work as well as weekly holidays as required under the model standing orders, so long as the workmen are informed of the same in advance;

e) display of notice of minimum wages and dates of payment of wages as required under the Telangana Minimum Wages Rules, 1960; and

f) giving a written notice specifying the amount of gratuity to the controlling authority as required under the Telangana Payment of Gratuity Rules, 1972.

Tamil Nadu issues crèche rules under maternity benefit law

The Government of Tamil Nadu has, with effect from 13 January 2021, introduced crèche rules under the Tamil Nadu Maternity Benefit Rules, 1967. The crèche will be required to be maintained by every employer having 50 or more employees.

Following are some notable crèche related provisions as mandated by the state government:

a) Number and location of crèches: The rules require that there must be one crèche for every 30 children who are below the age of 6 years. Such crèche must be located within 500 meters from the main entrance of the establishment.

b) Staffing: As per the rules, the employer must appoint one woman teacher cum warden and one woman crèche attendant. Further, there should be one woman ayah per 10-15 children at the crèche.

c) Medical examination: The rules mandate a monthly medical examination of children at the crèche by a qualified medical practitioner.

d) Other facilities: Some other provisions that must be made available by the employer at the crèche include nearby washrooms, suitable furniture, drinking water facility, etc. The crèche must remain open 24x7 in the event there are employees working in shifts.

e) Record keeping: The employer will be required to maintain a register setting out details of the children attending the crèche along with a register of complaints for any grievances in relation to the provision of crèche in the establishment.

02.
CASE UPDATES

Termination on the ground of medical condition and performance issues is one for reasonable cause: Madras High Court

In the case of *Tata Consultancy Services Limited v J Crossley and Others* (Writ Petition no. 27881 of 2005), the Madras High Court examined the concept of 'reasonable cause' in cases of termination simpliciter as envisaged under the Tamil Nadu Shops and Establishments Act, 1947. It is important to note that the said statute requires even a simple case of termination (i.e., termination not on account of employee's misconduct) to be backed by a reasonable cause. Such cause could be employer's financial constraints, employee's performance issues, redundancy of the relevant position or role in the organisation, etc.

In the present case, the employee was suffering from a mental ailment and his behaviour with his colleagues was not amicable. Further, the employer had been maintaining weekly status reports in respect of the said employee that demonstrated deficiencies in the employee's performance. These issues which were also apprised to the employee, but there was no improvement.

The court took note of the above and opined that the reasonable cause requirement was met in the instant case. On the question regarding non-disclosure of the reasonable cause in the order of termination, the court referred to the judicial precedents noting that even a verbal termination of employment effectuated for reasonable cause but without disclosure of the order is possible and that in such cases, the competent authority should independently evaluate the termination on merits and not on technicalities.

Bombay High Court frowns upon the practice of engaging temporary employees for perennial work and long duration

In the case of *Sunil Prahlad Khomane v Bajaj Auto Limited* (Writ Petition no. 4502 of 2006)], the Bombay High Court frowned upon the practice of engaging temporary employees for long duration and on perennial jobs.

In this case, the employer had hired several temporary workmen, and the practice that had developed over time was that these workmen would work in the organisation for 7 months and would then be dismissed from services for 7 months, during which period another set of temporary workmen would take their place. This practice of termination and re-engagement continued for years together, and the work in question was perennial in nature.

It was argued by the dismissed temporary workmen that this practice amounted to unfair labour practice. In the alternative, they submitted that such termination was bad in law as it was actually in the nature of retrenchment and should have been preceded by compliance with Section 25F of the Industrial Disputes Act, 1947 (IDA).

The employer, on the other hand, took recourse to Section 2(oo) of the IDA, which defines 'retrenchment' but also provides that termination on account of non-renewal of an expired contract of employment would not be considered as 'retrenchment'.

The court, however, did not accept the employer's argument as, in the present case, there was absence of temporary nature of work which would have justified the employer's claim for exception from the application of retrenchment related provisions. It observed that:

"*for any termination to be within clause (bb), that is to say, to be claimed as a result of non-renewal of an expired contract of employment or as a result of termination under a specific contractual stipulation, the contract of employment should be based on a business exigency and not a regular rotational pattern involving periodical artificial breaks to the same set of workmen over a long period of time.*"

Madras High Court re-emphasizes on the existence of mens rea for imposition of damages under Employee State Insurance Act, 1948 (ESI Act)

In the case of *ESIC v HE Abdul Azeez* (CMA no. 4156 of 2019), the Madras High Court has reiterated the judicial position that damages for delay in contributions under the ESI Act should be

imposed only where there is a *mala fide* intention or deliberate attempt on the part of the employer to avoid contributions. The court noted that in the present case, the employer had adequately explained that it had taken over the establishment as a transferee in the year 2000 and was not aware at the time regarding the default in the contributions. Further, the court noted, when the recovery notice was issued to the employer in 2001, the employer made the requisite contributions. Therefore, according to the court, the imposition of damages in the instant case was not justified.

It may be noted that under the ESI Act, the employer and the entity to whom the establishment is transferred by way of sale or any other manner whatsoever are jointly and severally liable to pay the contribution and other sums due from the employer in respect of the period up to the date of the transfer (although the liability of the purchaser is limited to the value of the assets obtained by it pursuant to such transfer). This calls for thorough due diligence on the part of the transferee as regards timely deposit of contributions under the ESI Act.

03.
INDUSTRY INSIGHTS

India Inc looks forward to a hybrid working model

As per recent reports and our knowledge regarding emerging work practices, several organisations either have rolled out or are in the process of floating policies that envisage a hybrid working model. This means that companies are giving an option to employees to work from office if the work requires, for instance, team collaboration or if the employees feel more productive by stepping out of their homes.

Organisations have begun to realise that a complete remote working scenario may not work well for them, either because of the nature of certain roles or because several employees are now facing a burnout due to inability to maintain a proper distinction between their work life and their personal life. Founder and Chief Executive Officer at Zoom, Mr Eric Yuan, observed that "*down the road, employee or employer are going to make a decision; either two or three days a week in the office, or two or three days at home*".

We understand that this practice may continue even beyond the COVID-19 pandemic phase, for remote working has shown its positive side, too. Of course, the surge in the number of COVID-19 positive cases and the ongoing vaccination drive will play an important role in determining the percentage of workforce for whom work from office will be available at a given point in time.

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We hope the e-Bulletin enables you to assess internal practices and procedures in view of recent legal developments and emerging industry trends in the employment and labour law and practice landscape.

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For any queries in relation to the e-Bulletin or the workforce related issues occasioned by COVID-19 outbreak, please email to us at elbebulletin@khaitanco.com.

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