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Welcome to the sixth edition of the e-Bulletin (Volume VI) brought to you by the Employment Labour and Benefits (ELB) practice group of Khaitan & Co. This e-Bulletin covers regulatory developments (including those relating to the upcoming labour codes), case law updates and insights into industry practices that impact businesses from a sector agnostic standpoint.

01.

LABOUR CODES: STORY SO FAR

In this section, we help you in understanding the developments that have taken thus far on the implementation of the 4 labour codes on wages, social security, industrial relations, and occupational safety, health and working conditions, which received the Presidential assent between the years 2019 and 2020.

Broadly speaking, the labour codes, which aim to consolidate and consequently replace 29 Central labour laws, are yet to be brought into force, barring provisions relating to (a) employees' pension fund, (b) Central Advisory Board on minimum wages, and (c) identification of workers and beneficiaries through Aadhaar number for social security benefits. Moreover, even if the codes are fully brought into effect, the same would require issuance of rules, schemes, and notifications of the relevant governments so as to have a comprehensive revised compliance regime.

Under the labour codes, the 'appropriate government' for an establishment can be the Central Government or the state government, depending on the nature of its operations or the existence of multi-state operations. Such appropriate government has the power to *inter alia* issue rules detailing some of the substantive aspects broadly set out under the codes and also prescribing procedural compliances such as filings, maintenance of registers, etc. In the last one year, several key industrialised states such as Haryana, Delhi, Maharashtra, Gujarat, Andhra Pradesh, Telangana, Tamil Nadu, and Karnataka released draft rules under some or all of the labour codes for public consultation. Among the industrialised states, notably, West Bengal is yet to release their draft rules under any of the codes.

Recently, the Ministry of Labour and Employment, as a way ahead, has planned to conduct training workshops for state government labour officials in the coming months. These workshops are proposed to facilitate the nationwide rollout of the new labour codes, ensuring readiness and addressing potential legal challenges. Additionally, the Central Government has urged the state of West Bengal to expedite the drafting of rules under the four labour codes, highlighting the benefits for all societal sections, including women and migrant workers.

02.

REGULATORY UPDATES

In this section, we bring to your attention, important regulatory developments in the form of notifications, orders, bills, amendments, etc. witnessed in the past one month in the context of employment and labour laws.

Telangana exempts information technology enabled services (ITES) and information technology (IT) establishments from certain provisions of the Telangana S&E Act

As per a notification dated 7 June 2024, published in the Official Gazette, the Government of Telangana has introduced exemptions under the Telangana Shops and Establishments Act, 1988 (Telangana S&E Act), effective for a period of 4 years from 30 May 2024, applicable to ITES and IT establishments operating in Telangana.

Through this notification, the applicability of Sections 15 (opening and closing hours of establishment), 16 (to the extent it deals with daily working hours), 21 (special provisions for employment of young persons), 23 (special provisions for employment of women), and 31 (other holidays) on all ITES and IT establishments has been suspended during the operation of the above-mentioned exemption period. However, this exemption is subject to the employer ensuring compliance with the stipulated weekly working hours, maintaining adequate safety measures for women working in the night shifts, providing employees with weekly and compensatory offs, etc.

Major revisions in the social security regime for employees' provident fund contributions: Revised rates of damages on arrears and other changes

By way of multiple notifications dated 14 June 2024 and 15 June 2024, significant changes have been introduced to the social security regime concerning the employees' provident fund contributions, by the Ministry of Labour and Employment in the Official Gazette. These notifications announce revisions in the rate of damages on arrears in contributions under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (EPF Act) read with the relevant schemes, effective from 15 June 2024, such that (a) the rate of damages under the Employees' Provident Funds Scheme, 1952 has been revised to 1% of arrears per month, and (b) the rate of damages under the Employees' Pension Scheme, 1995 and the Employees' Deposit Linked Insurance Scheme, 1976 has also been standardized to a uniform rate of 1% of arrears per month.

We have made a detailed analysis of these revisions to the EPF Act and the relevant schemes in our ERGO dated 17 June 2024, available here.

Maharashtra revises its labour welfare fund contributions rates

By way of public notice, the Government of Maharashtra in continuation of the notification dated 18 March 2024, has announced a revision of the labour welfare fund contribution rates, effective from June 2024. Previously, such contribution rates stood at INR 6 and INR 12 for employees earning salaries up to and above INR 3,000 respectively, to be payable every 6 months. Likewise, for employers, such rates existed at INR 18 and INR 36 respectively. By way of this amendment, employees are required to contribute INR 25, while employers must contribute INR 75, resulting in a total contribution of INR 100, to be payable every 6 months.

Advisory on gender equality in civil aviation issued by the Director General of Civil Aviation

A general advisory circular dated 19 June 2024, issued by the Office of the Director General of Civil Aviation, outlines guidelines for promoting gender equality in the civil aviation sector. This circular is applicable to all Indian operators engaged in scheduled and non-scheduled air transport services, both domestic and international, for the carriage of passengers, as well as all airport operators within Indian territory. The advisory includes provisions for promoting women's representation in the aviation workforce, implementing leadership and mentorship programs, addressing stereotypes and biases, and fostering work-life balance. Additionally, it mandates the adoption of policies and practices aimed at gender equality.

Stakeholders are required to adopt a zero-tolerance policy towards sexual harassment in the workplace, monitor gender ratios, and ensure equal representation during recruitment. The advisory emphasizes the need to consistently adapt strategies to eliminate gender biases, provide secure and safe travel arrangements for women, promote incentives and retention of female employees, and formulate women-centric policies. Further, it encourages young women to pursue education and careers in the aviation sector, advocates for leadership and mentorship programs to encourage women in key managerial positions and showcase various gender-positive initiatives and best practices on the employer's websites and social media platforms.

EPFO's directive on timelines for inquiries under Sections 7Q and 14B of the EPF Act

By way of a notification dated 21 June 2024, the EPFO has directed the authorities to close the initiated inquiries under Section 7Q (interest payable by the employer on the amount due under the EPF Act) and 14B (recovery of damages from the employer on default in the payment of contributions under the EPF Act) by 31 August 2024. For inquiries that have not been initiated, initiation must occur by 31 July 2024, and these inquiries should be concluded within the subsequent 3 months. Furthermore, cases under Sections 7Q and 14B where the dues exceed INR 50,00,000 should be given priority in terms of initiation and disposal.

03.

CASE UPDATES

In this section, we share important judicial decisions rendered in the past one month from an employment and labour law standpoint.

Private educational institutions in Kerala were not covered under the Maternity Act prior to 6 March 2020: Kerala High Court

In the case of Chairman, PSM College of Dental Sciences & Research v Reshma Vinod and Others [Writ Petition (Civil) Number 13201 of 2018], the Kerala High Court held that private educational institutions, prior to the issuance of the notification by the Government of Kerala dated 6 March 2020, did not fall within the ambit of establishments governed under the Maternity Benefit Act, 1961 (Maternity Act). The decision arose from a petition filed by Dental College & Research Centre when it was confronted with allegations pertaining to the non-disbursement of maternity benefits under the Maternity Act. The petitioner contended that educational institutions, including theirs, did not fall within the ambit of establishments governed by the Maternity Act.

The Government of Kerala, by notification dated 6 March 2020, had extended the provisions of the Maternity Act to private educational institutions, including unaided schools and teachers, within the state of Kerala. The court considered the aforementioned notification and granted relief in favour of the petitioner, holding that the Maternity Act was not applicable to private educational institutions prior to 6 March 2020.

Findings of IC in sexual harassment cases are definitive: Madras High Court

In the case of Samuel Tennyson v The Principal & Secretary, Madras Christian College and Others [Writ Appeal Number 2962 of 2019 and Writ Petition Number 5140 of 2020], the Madras High Court held that the findings and report of the internal committee (IC) should not be regarded as merely a preliminary investigation or an inquiry leading to disciplinary action, but rather as a definitive finding / report in an inquiry into allegations of sexual harassment at workplace.

This decision arose from a petition filed by the appellant, an assistant professor in the zoology department, against whom proceedings were initiated under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH Act). The appellant contended that his dismissal by the employer was solely based on the IC's report, without any independent disciplinary proceedings. He argued that issuing a major punishment like dismissal without proper disciplinary proceedings violated established principles of service jurisprudence.

The court, while dismissing the appellant's petition, held that the disciplinary authority is bound by the findings provided by the IC. The IC is a fact-finding inquiry authority and the report given by the IC is held to be a report of an inquiry authority based on which a disciplinary action by the respondent employer can be initiated. Additionally, the court emphasized that accepting the appellant's argument would result in victims of sexual harassment at workplace being forced to substantiate their case again before another authority, causing them further embarrassment. Accordingly, the court dismissed the petitions.

Gratuity must be calculated on the last wages drawn, regardless of any deputation: Kerala High Court

In the case of S Kamaladharan v The Managing Director [Writ Petition (Civil) Number 35362 of 2019], the Kerala High Court clarified that Section 4 of the Payment of Gratuity Act, 1972 (Gratuity Act), stipulates that gratuity must be disbursed to an employee based on the rate of wages last drawn, immediately before the termination of employment of the employee, payable after completion of a continuous service of 5 years. The pertinent monthly salary for gratuity computation is the one immediately preceding termination, regardless of any deputation service of the employee. Separate calculations for gratuity pertaining to parent employer service and deputation service are impermissible. Once the total gratuity is determined by the parent employer, contributions can be sought from employers where deputation occurred.

In this case, the dispute was with respect to the payment of gratuity by all the employers of the petitioner, to whom he has rendered services. The petitioner in the present case had retired in 2014 after completing 22 years of service. During his service, he was deputed to work with two additional employers by the parent employer (1994 to 1997 and 1998 to 2003 with first additional employer, and 2009 to 2014, with the second additional employer). It was contended by the first additional employer that the employee's gratuity contribution from their end should be calculated on the last drawn monthly salary of INR 5,309 which he received while working on the deputed service for the second employer (which was many years prior to his retirement in 2014).

However, the court while rejecting this contention held that the gratuity should be

calculated using the monthly salary of INR 27,991 which was the actual last drawn salary of the petitioner prior to his retirement. Additionally, the court noted that the Gratuity Act does not contain separate provisions for calculating gratuity for parent employers and for employers under whom the employees are deputed for services. Therefore, in such cases, it is mandatory to calculate the gratuity payable to the employee based on the last drawn monthly salary immediately before retirement. Any deviation from this would result in a deficit in the total gratuity payable to such an employee, thereby violating the provisions of the Gratuity Act.

In cases of continuing sexual offences under the POSH Act, the limitation for filing a complaint is not applicable: Madras High Court

In the case of R Mohanakrishnan v The Deputy Inspector General of Police and Others [Writ Petition Number 10707 of 2024 and Writ Miscellaneous Petition Numbers 11796 and 11797 of 2024], the Madras High Court ruled that in cases involving severe allegations such as rape or continuous molestation or harassment, the misconduct is considered ongoing. Each day until the issue is addressed or brought to the attention of the appropriate authority constitutes a new cause of action.

This judgment arose from a petition filed by the appellant, who contended that the complaint against him was time-barred as Section 9 of the POSH Act clearly sets out that any complaint under the POSH Act needs to be instituted within 3 months from the date of cause of action (extendable by another 3 months). The court, while rejecting the appellant's submissions, held that the present case was not an isolated incident of misconduct. Instead, it involved serious allegations that caused significant mental trauma and stress to the victim. The court further noted that the victim's inability to endure, withstand and suppress these experiences indicated a situation of continuous sexual harassment. Consequently, the court interpreted the limitation provision in Section 9 of the POSH Act with respect to the seriousness of the allegations and determined that the complaint in the present case is not barred by limitations and is not violative of Section 9 of the POSH Act.

Workman in continuous service for 480 days to be made permanent as per the Tamil Nadu Industrial Establishments (Conferment of Permanent Status of Workmen) Act, 1981 (Tamil Nadu Industrial Establishments Act 1981): Supreme Court

In the case of Tamil Nadu Medical Services Corporation Limited v Tamil Nadu Medical Services Corporation Employees Welfare Union and Another [Civil Appeal Numbers 6511 and 6512 of 2024], the Supreme Court held that as per the Tamil Nadu Industrial Establishments Act 1981, Tamil Nadu Medical Services Corporation (Corporation) could not deny permanent status to workmen who have worked consecutively for more than 480 days within 24 calendar months. Further, the court concluded that the Corporation falls within the purview of the Tamil Nadu Industrial Establishments Act 1981, as it fulfils both the requirements for the applicability of the said legislation i.e., (a) the Corporation falls under the definition of a "commercial establishment" as defined in Section 2(3) of the Tamil Nadu Shops and Establishments Act, 1947 (S&E Act), and (b) that the workman having completed uninterrupted continuous service of 480 days within 24 months.

The dispute arose from a civil appeal filed by the Corporation, which contended that its employees did not qualify as "workmen" because the Corporation did not fall under the definition of a "commercial establishment" per Section 2(3) of the said S&E Act. Consequently, under Section 3 of the Tamil Nadu Industrial Establishments Act 1981, workers would not be eligible for conferment of permanent status. The court clarified that for any establishment to be considered commercial, it must be established that its activities are aimed at making a monetary gain. Therefore, the court held that the Corporation was covered within the definition of "commercial establishment" and thereby, would be required to confer permanent status to workmen who had worked for more than 480 days within 24 calendar months, as stipulated under provisions of the Tamil Nadu Industrial Establishments Act 1981.

Definitions of 'wages' under the MW Act cannot be used to calculate bonus paid under the Bonus Act: Delhi High Court

In the case of Group 4 Securities Guarding Limited (Group 4 Securities) v Secretary Labour, Government of National Capital Territory of Delhi and Others [Writ Petition (Civil) Number 576 of 2004 and Civil Miscellaneous In Civil Writs Number 62022 of 2023], the Delhi High Court ruled that the definition of 'wages' under the Minimum Wages

Act, 1948 (MW Act) cannot be used to calculate statutory bonus paid to the employees under the Payment of Bonus Act, 1965 (Bonus Act). A complaint was filed against the petitioner regarding the non-payment of bonuses to its workmen. Consequently, the industrial tribunal ruled in favour of the employees, directing Group 4 Securities to consider minimum wages, as defined by the state government of Delhi, for the purpose of computing bonuses. The petitioner had challenged this ruling in the current petition.

The court held that courts are not expected to refer to other legislations when the interpretation of a particular term has been provided in the parent / primary legislation. The definitions of 'wages' under the MW Act and the Bonus Act have independent meanings and cannot be used interchangeably. The definition of 'wages' under the Bonus Act has a narrow meaning, thereby excluding all allowances from its purview and limiting the definition to a sum of basic salary plus dearness allowance, whereas the definition of 'wages' under the MW Act is broader and does not have such strict exclusions, as it also includes house rent allowance, among other components. Therefore, the court determined that for the purpose of paying bonuses to employees, the definition of 'wages' as provided in the MW Act cannot be applied, as this would undermine the purpose of the respective legislation.

04.

INDUSTRY INSIGHTS

In this section, we delve into interesting human resources related practices and / or initiatives as well as industry trends across various sectors in the past one month.

India Inc. enhancing employee retention and attraction through comprehensive benefits

According to an article in the Economic Times, Indian organizations have recognized that attracting and retaining talented employees requires more than just competitive salaries. Consequently, various companies across India are offering benefits such as flexible working hours, organizational support for employees' self-development, and health insurance for immediate family members. The Global Benefits Attitudes Survey indicates that 76% of employees consider the quality and quantity of benefits provided by their employer as significant factors when deciding to continue with their current employer or when considering new employment opportunities with similar salary packages.

Employers are implementing innovative policies, including special allowances tailored to the needs of the young workforce, health checkups, health insurance for LGBTQIA+ live-in partners and customized transportation facilities. Providing such benefits addresses the current needs of the workforce, helps retain talented employees for longer periods, and serves as an effective strategy for attracting new talent.

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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