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LEGAL NEWS

Q – 2 Apr - May 2024

ALL INDIA BANK EMPLOYEES' ASSOCIATION

LEGAL NEWS
From AIBEA

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APRIL 2024

ALTERING SERVICE CONDITION

Mandamus **-** Industrial Disputes Act 1947, Section 33 – Petition filed by registered Trade Union seeking *mandamus* forbearing Respondents from altering service condition of members of Petitioner Union in violation of Section 33 of Act till disposal of dispute pending before Industrial Tribunal at Chennai – Whether service conditions can be altered by Respondent – *Held*, members of Petitioner Trade Union were being engaged by 2nd Respondent licensee – No records have been placed before Court to establish that any attempt was made by 2nd Respondent to alter service condition or disengage members of Trade Union – Court of considered opinion that, it is only apprehension of Petitioner that they are likely to be disengaged by 2nd Respondent – Petitioner Union does not have any cause of action and alleged cause of action is imaginary – 2nd Respondent has not made any attempts to alter service condition of members of Petitioner Union – Question of issuing *mandamus* forbearing Respondents from altering service condition does not arise – Petition dismissed. [*K. Kasi v. Chairman, V.O. Chidambaranar Port Trust*]

(R. VIJAYAKUMAR, J.)
2024-II-LLJ-203 (Mad)
LNINDORD 2023 BMM 2182

DENIAL OF BENEFITS

Government Order – Appellants-employees sought relief to extend benefit as per Government Order – Lower court rejected *Plea* made by Appellants – Whether, impugned Government Order denying benefits to Appellants and similarly placed persons were unlawful – *Held*, Appellants working in various departments other than Finance department could not earn promotion on *par* with their juniors in the Finance Department because of want of vacancy –

Their pay stepped up on *par* with their juniors who earned promotion – Second promotion given to juniors of Finance Department got benefit – Benefit extended under Government Order to those who were in service on date or it's issuance – Appellants retired prior to issuance of Government Order – Belated issuance of Government Order could not take away accrued right of *parity* of pay along with their juniors for which certainly Appellants were entitled – Impugned Government Order denying benefits to them unlawful – Appeals allowed. [*L.T.A. Peter v. State of Tamil Nadu*]

(R. SURESH KUMAR, J.)
2024-II-LLJ-12 (Mad)
LNIND 2023 MAD 6264

DISMISSAL

Quantum of Punishment – U.P. Industrial Disputes Act, 1947 (U.P Act), Section 6 (2-A) – Industrial Disputes Act, 1947 (I.D Act), Section 11-A – Petitioner-workman dismissed from service as he refused to perform work given by employer – Labour Court reduced *quantum* of punishment from dismissal to stoppage of increments of two annual increments and 20% backwages, hence these petitions – Whether, Tribunal justified in reducing *quantum* of punishment from dismissal to stoppage of increments of salary – *Held*, on three occasions Petitioner-workman refused to perform the work – Section 11-A of I.D Act gives power to Tribunal to give appropriate relief in case of discharge or dismissal of workman – As per Section 6 (2-A) of U.P Act, power not unbridled but subject to recording of satisfaction – Both Central and State Act provided power to Labour Court to interfere with punishment of discharge or dismissal subject to recording reasons – Fair Domestic inquiry conducted giving opportunity to workman – No subjective satisfaction recorded by Tribunal about punishment of dismissal disproportionate to charges levelled – Impugned order, set aside – Petition filed by employer, allowed – Petition filed by workman, dismissed. [*Toofani Yadav v. State of U.P.*]

(ROHIT RANJAN AGARWAL, J.)
2024-II-LLJ-166 (All)

ENHANCEMENT OF AGE OF SUPERANNUATION

Post of Service – Age of 62 years fixed for Petitioner-Director for superannuation by Respondent-College – Petitioner sought to enhance it to 65 years – Whether, impugned orders passed by Respondents fixing age of superannuation at 62 years liable to be quashed – *Held*, High Court does not exercise powers of an appellate authority – *Certiorari* issued for correcting errors of jurisdiction exercised by inferior Courts for violating principles of natural justice and for acting illegally – Status of Director could not be meant to fall within definition of Teacher – Benefits extended to Associate Professor could not mean that same must be extended to

Director – Demarcation of two separate cadres adduced from reasoning stated by Expert Committee – Though petitioner promoted pay scale increased yet substantive post remained that of Director – Director could not be brought within ambit to enhanced from 62 years – Impugned order does not call for interference – Petition dismissed. [*Dr. Sheela Kumari. S v. University of Delhi*]

(CHANDRA DHARI SINGH, J.)
2024-II-LLJ-128 (Del)
LNIND 2024 DEL 421

FORFEITURE OF GRATUITY

Dismissal of employee – Payment of Gratuity Act, 1972, Section 14 – Rural Banks Act, 1976 – Madhya Bihar Gramin Bank (Officers and Employees) Service Regulations, 2010, Clause 72 – Controlling Authority allowed application of 4th Respondent, holding that he was entitled to get amount of gratuity as calculated by him for entire period of his service which was confirmed by Appellate Authority, hence this petition by Bank – Whether case of Petitioner shall be dealt with under Act 1972 or regulation framed by Board of Directors of Bank under Act 1976 – *Held*, Regulations, 2010 framed by Board of Directors of Bank empowers Board of Directors to make regulation in consultation with sponsor bank with previous sanction of Central Government – These regulations were brought in force after its gazette publication – Section 14 of Act 1972, has overriding effect, if anything found inconsistent therewith in any enactment or any instrument or control – Controlling authority failed in taking note of regulation 45 which deals with provisions contemplating disciplinary proceeding after retirement – Controlling authority exceeded his jurisdiction by observing that post superannuation, dismissal was travesty of justice and abuse of power – Appellate order was cryptic and entirely based upon order of controlling authority without application of independent mind and meeting points raised by Petitioner/Bank – Impugned order passed by Controlling Authority as well as order passed by Appellate Authority, set aside – Petition allowed. [*Chairman, Madhya Bihar Gramin Bank v. Union of India*]

(HARISH KUMAR, J.)
2024-II-LLJ-79 (Pat)

INDUSTRIAL DISPUTE

Jurisdiction – Industrial Disputes Act, 1947 – Demand notice served by Petitioner against order of relieving him from service was rejected for want of jurisdiction after *suo moto* reviewing earlier order, hence this petition – Whether Labour Court in whose jurisdiction Head Office was situated had jurisdiction to decide dispute – *Held*, efforts were made for conciliation/amicable settlement of dispute – 1st Respondent had already proceeded under provisions of Act for attempting amicable settlement – On failure of conciliation proceedings,

parties were advised to approach Labour Court – Nothing found in support of issuance of impugned memo, as to what made 1st Respondent to wake up suddenly within period of ten days and issue was again taken up on *suo moto* basis by giving opinion regarding its jurisdiction – Dispute of Petitioner-workman was with Company, managed and controlled by its head office, through its Managing Director – None of Respondents were in position to answer or even deny that order of relieving Petitioner from service had not been passed after due application of mind at office of 1st Respondent – For more than two decades, Petitioner worked in office of 1st/3rd Respondent and it was only for purpose of work or some other reason that he was transferred to Branch office/Regional office in another State – Demand notice clearly states that relieving letter was issued from head office and said letter was handed over to Petitioner-workmen at Regional Office – Meaning thereby, as per demand notice, order had been passed at head office and it was communicated to Petitioner at his working place – Labour Court where head office was located had jurisdiction to decide dispute – Impugned order, set aside – Petition allowed. [*Upinder Kumar Singla v. Assistant, LC-Cum-CO*]

(SANJAY VASHISTH, J.)
2024-II-LLJ-93 (PNH)
LNIND 2024 PNH 2

INTERIM PROTECTION

Restraining Employer – Respondent sought interim protection from Industrial Court – By impugned order Industrial Court restrained Petitioners from terminating or transfer services of Respondents without following due process of law – Whether, Industrial Court justified in issuing interim order restraining Petitioners from termination and transfer of Respondents – *Held*, merely because Respondents have initiated litigation Industrial Court granted protection – No material produced by Respondents to demonstrate eminent threat of termination or transfer was given by Petitioners to any Respondents – In absence of such eminent threat no cause for Respondents to seek interim relief – Petitioners being employer of Respondents have inherent right to take disciplinary action against its employees if any misconduct committed – Order passed by Industrial Court putting *embargo* on inherent rights of employer to take disciplinary action not justified – Impugned order indefensible – Petition allowed. [*Indian Express (P) Ltd v. Dinesh Rane*]

(SANDEEP V. MARNE, J.)
2024-II-LLJ-116 (Bom)
LNIND 2024 BOM 91

PUNISHMENT

Non Reasoned Order – Petitioner-workman fraudulently claimed Leave Travel Concession and submitted false bills for claiming particular amount – Punishment order was passed whereby special allowance of Petitioner was withdrawn – Tribunal rejected claim of workman – Whether, a non speaking order passed by disciplinary authority bereft of any reasoning could be sustained – *Held*, impugned order silent with regard to merits of the case and charges levelled against the Petitioner – Either of parties to *lis* had right of appeal – Brief reasoning would suffice to meet ends of justice – Courts vested with discretionary powers to be exercised judiciously – Losing litigant had right to challenge order if it was adverse to him – Every order determining rights of parties ought not to be recorded without supportive reasons but should be supported by reason briefly stated – Absence of reasoning impermissible in judicial pronouncement – In absence of reasons difficult to conclude any application of mind by Tribunal – No power vested in appellate authority to itself visit entire inquiry proceedings – Appellate authority exceeded its jurisdiction – Order of Tribunal, illegal and arbitrary inasmuch as disciplinary proceedings culminated in the order of punishment – Punishment order, set aside – Petition allowed. [*Allahabad Bank Staff Assn. v. Presiding Officer*]

(ALOK MATHUR, J.)
2024-II-LLJ-153 (All)

REINSTATEMENT

Full back wages – Single Judge affirmed Labour Court's award for grant of relief of reinstatement with full back wages, hence this appeal – Whether Single Judge justified in affirming award of Labour Court for grant of full back wages – *Held*, it was established that workman was illegally terminated – Inquiry was vitiated, as it was conducted without providing opportunity of hearing – Labour Court took around Seventeen years in deciding Reference and it was not known before Court as to who was at fault and whether delay in deciding Reference was attributed to employer – In absence of all these information and in view of findings returned by Labour Court, it was case of victimization of workman – In case of termination of employment, though award of backwages was not automatic with award of reinstatement, but in case fault was found on part of employer, 100% wages could be provided – No one could take benefit of its own wrong – No good ground to challenge findings returned by Labour Court and affirmed by Single Judge – Appeal dismissed. [*Cargo Motors Ltd v. Kritikant Shivajirav Jadav*]

(SUNITA AGARWAL, CJ.)
2024-II-LLJ-74 (Guj)
LNINDORD 2023 GUJ 1

SUSPENSION

Non-payment of Subsistence Allowance – Industrial Employment (Standing Orders) Act, 1946, Section 10(A) – Petitioner's claim for seeking subsistence allowance denied by Respondent-Company on ground that suspended employee did not attend factory premises to mark his attendance during his suspension – Whether, act of Respondent was in consonance with provisions of Section 10(A) of Act – *Held*, clear from Section 10(A) of Act that Respondent – Company could not insist on customary practice followed by Company to prevail upon existing statutory provisions of law – Customary practice could not be equated as provision under any law – Once found that customary practice in clear conflict with Section 10(A) of Act, claim of employee being entitled to subsistence allowance could not be permitted to be defeated on basis of customary practice – Condition directly relating to entitlement of subsistence allowance must be within parameters of Section 10(A) of Act – Impugned award, quashed – Petition allowed. [*Hindustan Level Employees Union v. Hindustan Unilever Ltd*]

(MILIND N. JADHAV, J.)
2024-II-LLJ-180 (Bom)
LNIND 2024 BOM 6

MAY

APPOINTMENT

Residential Rights – Petition filed challenging appointment of Respondent no.3 to the post of Village Panchayat Secretary and also to direct Respondents to consider him for said post – Whether, appointment of Respondent no.3, justified – *Held*, while sponsoring individuals registered with employment exchange person registered earlier should not be bypassed for person registered later – Both Petitioner and Respondent no.3 sponsored – Married woman though ordinarily lives at her husband's place could not be presumed to have disowned her residential rights at her parents' house – Respondent no.3 not stranger to her natal family – Residential choice of woman at her natal home should not be viewed through patriarchal prism – Documents filed by Respondent no.3 were genuine – Petition dismissed. [*G. Mayakannan v. District Collector*]

(R.N, MANJULA, J.)
2024-II-LLJ-470 (Mad)

APPROPRIATE GOVERNMENT

Autonomous bodies – Industrial Disputes Act, 1947, Section 2(a) – Industrial Court held that complaint filed by Workers Union challenging termination of its active Secretary was maintainable as appropriate government for petitioner/memorial Centre was State Government, hence these petitions – Whether appropriate government for Petitioner was Central Government or State Government- *Held*, though Memorial Centre was not 'under control' of Government of India, Central Government exercises control over Centre – Centre was not completely free from control of Central Government – It receives grants from Central Government, most of its operations were carried out from grants received from Central Government – Its accounts were audited by Comptroller and Auditor General of India – Several decisions *qua* its operations as well as service conditions of employees were taken by Central Government – There was heavy presence of officials of Central Government on Governing Council of Centre – Central Government exercises control over Centre, therefore Centre would be covered by provisions of amended definition of term 'appropriate government' under Section 2(a)(i) as it satisfies conditions of 'autonomous bodies controlled by Central Government' – Or is used between two words "owned" and "controlled", therefore, it was not necessary to enquire whether Centre was 'owned' by Central Government – Even if it was 'controlled' by Central Government, it would satisfy test for determination of Central Government as its appropriate Government – Appropriate Government for Centre in light of amended definition would be Central Government – impugned orders passed by Industrial Court unsustainable – Petitions allowed. [*TMC v. Tata Memorial Hospital Workers Union*]

(SANDEEP V. MARNE, J.)
2024-II-LLJ-311 (Bom)
LNIND 2024 BOM 216

AWARD OF TRIBUNAL

Judicial review – Constitution of India, 1950, Article 226 – High Court directed wages revisions pertaining to workmen working in two units of employer and worker union's petition for review of said judgment was dismissed, hence these appeals – Whether High Court had travelled beyond its jurisdiction in appreciating facts and in that process substituted finding of Tribunal with its own finding on facts – *Held*, though High Court ought not to reappreciate evidence and substitute its own finding for that of Tribunal, it would not be beyond jurisdiction of High Court in its power of judicial review to altogether eschew such process – High Court reappreciated evidence led before Tribunal in identifying comparable concerns for applying industry-cum-region test – Employer had emphasised that High Court ignored negative financial

status of company on ground that losses made by it was miniscule – Where employer seriously contested use of units concerned as comparable ones, and highlighted its difficult financial position, proper course would have been to remit matter to Industrial Tribunal rather than entering into these factual question independently in exercise of writ jurisdiction – This exercise would have required leading of evidence before Industrial Tribunal – Employer's witness had given his deposition in detail on financial position of company – Proper analysis of employer's evidence in that regard not found in judgment impugned – Treatment of overtime wages in computing allowances admissible to them also ought to be re-examined – Judgment of High Court and Tribunal's award set aside and Tribunal to re-examine cases of respective parties afresh – Appeals disposed of. [*VVF Ltd. Employees Union v. VVF India Limited*]

(ANIRUDDHA BOSE, J.)
2024-II-LLJ-241 (SC)
LNIND 2024 SC 168

COMPULSORY RETIREMENT

Unauthorized absence – 3rd Respondent/Central Administrative Tribunal confirmed award of compulsory retirement against Petitioner for unauthorized absence, hence this petition – Whether reasons given by Petitioner were considered by 2nd Respondent – Whether past conduct could have been taken into account while awarding punishment – Whether punishment accorded was proportionate to charge framed – *Held*, it was for competent authority to decide whether explanation given by *delinquent* was satisfactory, and if such explanation was not satisfactory, it was open for Department to conduct enquiry to examine truth behind explanation/reasons – It was not for this court to substitute its views for view of Competent authority on whether explanation was satisfactory or not – Respondents had arrived at conclusion and satisfied themselves, based on relevant materials – Petitioner had not made out ground for lack of application of mind in passing impugned orders – Petitioner was put on notice, at stage of framing of charges, about *factum* of his past absence also being considered – Petitioner had noted about observations regarding his previous conduct, and explained same – Based on conclusion in enquiry report, 2nd and 1st Respondents had also taken this into consideration – 3rd Respondent had made it clear that reference to past conduct was only to decide penalty, and not to arrive at finding of fact – Punishment awarded to Petitioner was neither disproportionate nor something which shocks conscience of this Court – Petitioner had been given penalties on two earlier occasions – Petitioner had been habitual in taking unauthorized leave, which suffers from serious indiscipline – 2nd Respondent, in passing order, had taken into consideration fact of Petitioner's period of service and pecuniary position in concluding on ground of pension and
gratuity – No illegality or irregularity, in impugned order passed by 3rd Respondent – Petition dismissed. [*S. Harikrishnan v. Union of India*]

(N. SENTHILKUMAR, J.)
2024-II-LLJ-421 (Mad)
LNINDORD 2024 MAD 192

DEPARTMENTAL ENQUIRY

Right to education – Constitution of India, 1950, Articles 21, 41 and 226 – Petitioner was qualified doctor and in service of Government as Medical Officer – Petitioner's application for obtaining No objection Certificate (NOC), to pursue post-graduation course, as in-service candidate rejected on ground that departmental enquiry was pending against him, hence this petition – Whether right of in-service candidate to pursue post-graduation in medicine, could be taken away by denying 'no objection', merely for reason of pendency of departmental enquiry – *Held*, State could not have policy, rule or regulation which would adversely affect citizen's pursuit to education which he intends to achieve, much less of those who were in employment, as right to education recognized to be fact of right to liberty under Article 21 – Article 41 mandates State to secure right to education, as one of directive principles of State policy – In-service candidate achieving higher education would ultimately enure to public benefit – Impugned decision of Respondent rejecting NOC to Petitioner was arbitrary as also discriminatory – Petitioner could not indefinitely suffer on account of departmental enquiry pending against him – Pending criminal case initiated by his former wife, could not take away or extinguish Petitioner's aspiration to achieve higher education/qualification – Such proceedings take long years to attain finality, in view of hierarchy of appeals being provided both in departmental proceedings or in criminal proceedings – It would be harsh and unreasonable to prohibit Petitioner to pursue his post-graduation till such proceedings attain finality – Respondents directed to grant NOC to Petitioner to undertake post-graduation course – Petition allowed. [*Kailash Kashinathrao Pawar v. State of Maharashtra*]

(G.S. KULKARNI, J.)
2024-II-LLJ-300 (Bom)
LNIND 2024 BOM 275

Validity – Industrial Tribunal held that dismissal of Respondent/workman was illegal and directed reinstatement with continuity of service and backwages, hence this petition by Petitioner/Bank – Whether findings of Industrial Tribunal that inquiry was conducted in gross violation, justified – *Held*, sole reliance by inquiry officer was based on evidence produced by police authority (investigating officer) during criminal trial – No efforts made by inquiry officer to cross-examine witness and to prove correctness of documents produced by investigating agency – In departmental proceedings, on every hearing Respondent appeared and denied charges despite that no witnesses were examined by inquiry officer – Inquiry officer failed in proving

charges particularly when entire set of evidence was identical to evidence led before trial Court – This was not case where some irrelevant material or some extraneous evidence had been considered by Tribunal – Tribunal rightly held that inquiry officer failed in establishing that it was duty of Respondent for issuance of cheque book to customer, particularly, when Complainant did not come forward as witness – Tribunal after examining evidence on record held that consideration of evidence by inquiry officer confirmed by appellate authority was *erroneous* and passed reasoned order – No error found in award of Tribunal – Award of Tribunal confirmed on aspect of reinstatement with continuity of service – Award of Tribunal quashed and set aside only in respect of 25% backwages – Petition partly allowed. [*Regional Head, Bank of Baroda v. Jivabhai S Parmar*]

(MAUNA M. BHATT, J.)
2024-II-LLJ-388 (Guj)
LNIND 2024 GUJ 2

DISMISSAL

Modification of Punishment – Industrial Disputes Act, 1947, Section 11 A – Respondent No. 2-employee dismissed from service by order of disciplinary authority for misconduct – Tribunal modified punishment of dismissal to that of compulsory retirement – Whether, Tribunal justified under Section 11 A of Act of 1947 in modifying punishment of dismissal to that of compulsory retirement – *Held*, as per *proviso* to Section 11 A of Act, Tribunal while modifying order of dismissal only on basis of material on record and no external aid could be taken – Employee of bank required to take all possible steps to protect the interests of bank – Misconduct on part of Respondent No. 2 was greater having caused loss to bank – Punishment awarded not shockingly disproportionate to offence which required interference by Tribunal under Section 11 A of Act – Tribunal not justified in modifying punishment – Impugned award set aside – Petition allowed. [*RM, Central Bank of India v. Presiding Officer*]

(ROHIT RANJAN AGARWAL, J.)
2024-II-LLJ-329 (All)
LNINDORD 2024 ALL 174

INDUSTRIAL DISPUTE

Reference – Industrial Disputes Act, 1947, Section 10 – Appropriate government held that dispute raised by Petitioners-workmen alleging unfair labour practice was not fit for adjudication by Industrial Tribunal, hence this petition – Whether appropriate government's refusal to refer Petitioner's dispute to industrial adjudicator was in violation of statutory

provisions and settled principles of law – *Held*, dispute was whether Petitioners-workmen engaged by Respondent hospital through various contractors under different agreements was tactic to conceal relationship of employer and employee – Question involved in dispute was to determine nature of contractual relationship among parties and to decide if same was sham one, created to conceal relationship among parties and to prevent any consequential benefits as given regular employees – Appropriate government while considering whether or not to refer dispute for adjudication wrongly attempted to adjudicate this very dispute which obviously was not within its domain – Impugned order was illegal and against settled principles of law as there was error apparent on face of record – Impugned order, set aside and 1st Respondent directed to refer instant dispute to appropriate forum under Act for adjudication in accordance with law – Petition allowed. [*Hemant Kumar v. Government of India*]

(CHANDRA DHARI SINGH, J.)
2024-II-LLJ-358 (Del)
LNIND 2024 DEL 1381

INQUIRY PROCEEDINGS

Opportunity of hearing – Export Inspection Agency Employees (Classification, Control and Appeal) Rules, 1978, Rule 11 – Disciplinary Authority passed order of penalty of reduction in rank against Petitioner which was affirmed by Appellate Authority, hence this petition – Whether impugned orders of Disciplinary Authority and Appellate Authority, sustainable – *Held*, as per Rule 11(2), such person/Inquiry Officer must be servant of public and not person who 'was' a servant of public – Inquiry Officer who was appointed, being retired officer of Respondent, did not fulfill criteria of 'public servant' and said appointment was violative of Rule 11(2) – Petitioner had submitted his written Statement of Defence and specifically sought opportunity for personal hearing – No opportunity of personal hearing was ever granted to Petitioner, thereby violating Rule 11(4) – Petitioner did protest against appointment of Inquiry Officer; bias of Inquiry Officer; as also some issues regarding recording of statement of witnesses, however bias or *de facto* prejudice as such was not clear from records – Since *de facto* prejudice had not been established clearly, inquiry proceedings till stage of Inquiry Report were not vitiated – Impugned orders of Disciplinary Authority and Appellate Authority, quashed and set aside – Respondent directed to afford proper and justifiable opportunity to Petitioner of personal hearing before Disciplinary Authority at stage of consideration of Statement of Defence – Petition partly allowed. [*Parveen Kumar v. Export Inspection Council*]

(TUSHAR RAO GEDELA, J.)
2024-II-LLJ-342 (Del)

PENSION

Qualifying service – Tamil Nadu Pension Rules 1978, Rule 11 – Appeals filed by State challenging order of Single Judge, directing them to consider representation of employees, who had worked in non-provincialised service, consolidated pay, honorarium or daily wages and/or absorbed into regular service after cut-off date on basis of Government Order (G.O) in question – Division Bench made this reference on ground that earlier order of Full Bench of this Court in *Government of Tamil Nadu, rep. by Secretary to Government, Public Works Department, Secretariat, Chennai-600 009 and Others v. R Kaliyamoorthy* on said issue would require re-consideration of grounds that it failed to take into account G.O. and was contrary to law laid down by Supreme Court in *Prem Singh v. State of Uttar Pradesh and Others* – Whether judgment of Full Bench needs reconsideration – *Held*, in case of *Prem Singh,* provision under challenge was not *part materia* to provision which was subject-matter of consideration before this Court – Rule 11(4)(iii) provides for calculating services rendered in non-provincialised service, consolidated pay, honorarium or daily wages basis only if said employee was absorbed in regular service before cut-off date without break – Said provision had been considered by Full Bench of this Court – Government Order referred to in order under reference did not state anywhere with regard to grievance of Petitioner/Appellants – Judgment of Apex Court on basis of which matter was referred to Full Bench also would not be applicable – This Court could not apply principle of reading down in particular manner, as constitutionality of said Rule was not challenged – In absence of challenge to constitutionality of relevant Rule, judgment of Full Bench needs no reconsideration – Reference answered. [*State of Tamil Nadu v. P. Arunachalam*]

(SANJAY V. GANGAPURWALA, CJ.)
2024-II-LLJ-251 (Mad)
LNINDORD 2024 MAD 652

REGULARISATION

Temporary employees – Government issued Order that restricted operation of earlier Government Order (G.O) to regularization of certain categories of temporary employees only – This led to rejections of requests for regularization which led to filing of petitions – Several orders passed by Single Judge as well as Division Benches relating to interpretation of G.O. and scope of said G.O, hence this reference – Whether G.O. in question would be applied retrospectively, so as to take away vested rights that had accrued to employees in terms of earlier G.O – *Held*, if it was shown that appointment was made to anyone of 86 categories of posts enumerated in Tamil Nadu Basic Service immaterial of fact that whether such appointment was part-time or full-time, employee would be entitled to benefit of regularization *dehors* G.O. – If it was shown that nature of employment was temporary and requirement would cease to exist after particular time, like those appointments that were made under various welfare

schemes, it would then be open to Government to engage temporary employees or part-time employees – Benefit of regularization would depend on nature of job and fact that whether post falls within any one of 86 categories mentioned in Special Rules for Tamil Nadu Basic Service – Reference answered. [*M. Sivappa v. State of Tamilnadu*]

(R. SUBRAMANIAN, J.)
2024-II-LLJ-257 (Mad) LNINDORD 2024 MAD 411

RIGHT TO EMPLOYMENT

Mis-Joinder of Party – Industrial disputes raised by employees who were denied job in new company because of closure of previous company – Labour Court directed Petitioner/New Company to be impleaded as party, hence these petitions – Whether, Labour Court justified in directing Petitioner to be impleaded as party – *Held*, Petitioner being separate entity though run by same persons who ran previous company does not mean that properties and liabilities have been *mutatis mutandis* transferred to Petitioner – Petitioner had no obligation to take back workmen of erstwhile companies – Though some erstwhile employees of other companies had been taken back, it could not be treated that, it is right of those employees to seek such employment in new company – Impugned order amounted to mis-joinder of unnecessary parties – Impugned orders, set aside – Petitions allowed. [*International Trading Company v. Presiding Officer*]

(R. SURESH KUMAR, J.)
2024-II-LLJ-442 (Mad) LNINDORD 2024 MAD 551

TERMINATION FROM SERVICE

Retrenchment – Industrial Disputes Act, 1947, Sections 2(oo) Clause (bb) & 25F – Respondent No. 1-workman terminated from service for abandonment of his services – Tribunal held that termination from service was illegal and directed Petitioner to reinstate him – Whether, Tribunal justified in directing reinstatement – *Held*, Respondent No. 1 was appointed on contract basis – Though other persons appointed along with Respondent No. 1 were adjusted in Petitioner Corporation, only he was left out – Respondent No. 1 repeatedly made representations to Petitioner-Corporation for issuing orders of his posting – Respondent No. 1 had not voluntarily abandoned his services – Section 2(oo) Clause (bb) of Act applicable to whole of India – Though no specific order of termination issued but conduct of Corporation in not allowing him to be posted amounted to retrenchment – Petitioner not fulfilled requirement of Section 25F of Act while putting end to services of Respondent No. 1 – Tribunal rightly directed reinstatement – Petition dismissed. [*MD, JK Handicrafts v. AGA Syed Mustafa*]

(SANJAY DHAR, J.)
2024-II-LLJ-473 (JNK) LNIND 2023 JNK 5

TERMINATION OF SERVICE

Employer-Employee Relationship – Services of Workman terminated by Contractor – Labour Court setting aside termination directed employer to reinstate him with continuity and 50% backwages – Whether, award passed by Labour Court, justified – *Held*, framing of issue about existence of employer-employee relationship warranted on account of denial of such relationship by Hotel – Such issue incidental to issue of termination reinstatement and backwages – Labour Court not travel beyond scope of reference – Workman continued in service without break – Initial appointment was by Hotel and not by Contractor – Clear from show cause notices supervision and control over activities of Workman by hotel – Non-registration of contract or absence of license with Contractor – Services of workman terminated by mere issuance of show cause notice without holding disciplinary enquiry – Employer-employee relationship between hotel and workman existed – Services wrongfully terminated – Workman directed to be reinstated by Labour Court with entitlement to full backwages – Petitions disposed of. [*Chalet Hotels Ltd v. Bhikan Laxman Deokar*]

(SANDEEP V. MARNE, J.)
2024-II-LLJ-432 (Bom)

TERMINATION

Compensation – Industrial Disputes Act, Section 25(F) – Labour Court passed award holding retrenchment of workman as illegal and awarded lumpsum compensation, hence these applications by Employer/Senior Post Master and legal heirs of workman – Whether findings of Labour Court that there was violation of Section 25(F), *erroneous* – Whether non-grant of reinstatement with continuity of service, justified – *Held*, workman was appointed in one of office of Postal Department which was Central Government Department in place of one employee, who was on leave for specified period – Order of appointment specifically referred that after that period, services stand terminated – When order of appointment was for specified period, continuity of service and completion of 240 days in one year would not create any right of reinstatement with continuity of service and back wages, particularly when no letter/communication was addressed to workman after his appointment – Even workman had not requested to issue fresh order – When workman was appointed with office of Central Government Department, without following due process of recruitment for specified period and when there was no continuity of service by separate order, by working for further sometime would not entitle workman for reinstatement with continuity of service – Findings of Labour Court that there was violation of Section 25(F) was *erroneous* – Compensation awarded by Labour Court of Thirty Thousand was too meager and therefore not interfered with – Findings

that termination was in breach of Section 25(F) was *erroneous* and therefore, award of Labour Court quashed and set-aside – Application filed by Senior Post Master allowed – Application by legal heirs of workman rejected. [*Senior Post Master v. Harun H. Saiyad*]

(MAUNA M. BHATT, J.)
2024-II-LLJ-414 (Guj)
LNIND 2024 GUJ 1

TRANSFER ORDER

Transfer Policy – Petitioner sought to quash his transfer order – Whether, Petitioner could be directed to be retained in his home sector quashing his transfer order – *Held*, transfer policy must be read as whole – Operating portion of transfer policy subject to availability of vacancies – After filing of petition, transfer order modified – Posting given to adjoining of his home sector – Clause of transfer policy could not be used isolation to restrict any transfer order – The order of transfer is, ordinarily, not to be interfered with as transfer is an inevitable incidence of service – Petition disposed of. [*Ali Mohammed v. DG, CISF*]

(MANOJ JAIN, J.)
2024-II-LLJ-409 (Del)
LNIND 2024 DEL 1164

JUNE

CASUAL LABOURER

Wages – In claim Petition filed by workman, tribunal directed Petitioner to pay same amount of wages which was paid to regular employees and also directed reinstatement of workman who were terminated illegally – Whether, Tribunal justified in directing Petitioner to pay same wages to workman which was being paid to regular employee – *Held*, workmen involved in task of plantation in the forest and distribution of forest produce – Such exercise being systematic activity they have been working for long continuously – They could not be said daily or casual employees engaged only intermittently – No infirmity found in impugned order – Petition dismissed. [*Prabhagiya Nideshak Van v. Van. Evam Sangik Vanki*]

(ALOK MATHUR, J.)
2024-II-LLJ-671 (ALL)
LNINDORD 2024 LUCK 33

CLAIM FOR GRATUITY

Burden of Proof – Payment of Gratuity Act, 1972, Section 2A – Claim for gratuity made by Petitioner disallowed by Appellate authority – Whether, Controlling Authority erred in disallowing claim for gratuity for period of suspension of work and gratuity for period after superannuation when Petitioner worked – *Held,* burden of proof to produce evidence to show that Petitioner was in continuous service for period of suspension of work when Petitioner alleged to be Badli worker – In absence of primary *onus* being discharged Controlling Authority right in rejecting Petitioner's claim – Petitioner entitled for gratuity for period after superannuation when Petitioner worked – Employer-Respondent no.4 required to produce evidence to show that Petitioner was not in continuous service as provided under Section 2A of Act – No stipulation that person after having attained age of superannuation not entitled to receive gratuity – Matter remanded back to Appellate Authority – Petition disposed of. [*Sk. Ekbal v. State of West Bengal*]

(ARINDAM MUKHERJEE, J.)
2024-II-LLJ-618 (Cal)
LNINDORD 2024 CAL 1

DISMISSAL

Acquittal from Criminal Proceedings – Appellant terminated from service by Disciplinary Authority and same confirmed by Appellate Authority – Single Judge found no infirmity in order of Disciplinary Authority – Whether dismissal of Appellant from service pursuant to departmental enquiry after acquittal in criminal proceedings, justified – *Held*, no alteration found in Appellant's marksheet – No reference to statement of PW-5 in enquiry – Inference drawn about proof of charges by ignoring material evidence thus court in judicial review could interfere – As no manipulation in marksheet, Appellant could not be penalized – Appellant acquitted after noticing that prosecution has miserably failed to prove charge – Charge against Appellant was not just not proved even stood disproved – Impugned order untenable thus set aside – Appellant directed to be reinstated – Appeal allowed. [*Ram Lal v. State of Rajasthan*)

(K.V. VISWANATHAN, J.)
2024-II-LLJ-521 (SC)

Enquiry – Labour Court rejected application filed by employer to permit them to conduct enquiry and to prove the charges before Tribunal on ground that no enquiry was conducted before removal of Respondent – Whether, Labour Court justified in rejecting application filed by employer to permit them to conduct enquiry – *Held*, even at subsequent

stages, employer has right to seek prayer for conducting enquiry by adducing evidence to prove its action of discharge/dismissal – Impugned order nowhere discussed any such right of employer to prove its action even before the Tribunal – Application has been rejected simply on the ground that the matter or reference made by the Government in respect of termination of Party No.1 and since no enquiry was held and in absence of any charge sheet, there is no question of proving the charges leveled in the present proceedings – Such order cannot be sustained – Impugned order, set aside – Petition allowed. [*Ekvira Nagri Pat-Sanstha Maryadit v. Sandeep Marotrao Pande*]

(BHARAT P. DESHPANDE, J.)
2024-II-LLJ-642 (Bom)
LNIND 2024 NGP 36

Unauthorized Absence – Plaintiff-Respondent dismissed from service for unauthorized absence by Defendant No.3-punishing authority – Trial Court decreed suit in favour of Plaintiff and same confirmed by Lower Appellate Court, hence this appeal – Whether, Courts below erred in law in interfering with order of punishment – *Held*, Plaintiff had worked only for two months before abstaining from duty – With such length of service plaintiff does not get any right of pension – Absence from duty for such long days while undergoing basic training shows lack of discipline – Plaintiff not entitled to pension – Courts below erred in interfering with order of punishment – Act of absence from duty for long days by member of disciplined force, gravest act of misconduct – Punishment so awarded not disproportionate – impugned Judgment, set aside – appeal allowed. [*State of Punjab v. Ex. Constable Amarjit Singh*]

(NAMIT KUMAR, J.)
2024-II-LLJ-655 (PNH)
LNIND 2024 PNH 3

MISCONDUCT

Proportionality of Punishment – Industrial Disputes Act, Section 11A – Labour Court passed award directing Petitioner/Company to reinstate 1st Respondent/workman with continuity and without backwages, hence this petition – Whether award of Labour Court directing reinstatement with continuity liable to be interfered – *Held*, when charges of serious nature were not proved, punishment awarded by Petitioner Company was rightly held to be disproportionate – Labour Court, correctly invoked Section 11 A – Upon *de-novo* inquiry, three charges were held to be proved – Charges refer to leaving place without prior permission, not obeying superiors order and loss caused to Company – All three charges were not of serious nature, when no reference was made, particularly, in relation to amount of loss caused to

Company – Award of Labour Court being appropriate, no interference called for with regard to reinstatement with continuity – Inquiry was held to be valid – Labour Court only interfered with regard to *quantum* of punishment being disproportionate to misconduct and therefore, no interference was required with regard to payment of wages – Award of Labour Court directing reinstatement with continuity confirmed – Award of Labour Court, confirmed – Rule discharged. [*Executive Engineer v. Patel Rasikbhai Rangabhai*]

(MAUNA M. BHATT, J.)
2024-II-LLJ-628 (Guj)
LNIND 2024 GUJ 7

PAYMENT OF BONUS

Ceiling Limit – Payment of Bonus Act, 1965, Sections 2 (13), 12 & 213 – Payment of Bonus (Amendment) Act (Act 6/2016) – Minimum Wages Act, 1948 – Petitioners were aggrieved by amendment to Sections 2 (13) and 12 of Act by which celling limit increased and for calculating bonus, wage or minimum wage as fixed whichever is higher – Whether, increase in ceiling limit and introduction of minimum wages also as criterion for payment of a bonus justified – *Held*, amendment Act created sub-classification among class of employees with no intelligible differentia – Act 1965 meant to share profits with employees within wage ceiling under Section 213 of the Act – Minimum wages fixed for class of workmen to give them protection as social welfare measure – Different rates of bonus minimum or maximum not prescribed – It is for legislature to provide criteria for calculation of bonuses – Classification *per se* between employees in scheduled employment receiving minimum wages not forbidden being reasonable – Workmen poorer among poor governed under Act 1948 – Parliament competent to enact legislations retrospectively – Petitions dismissed. [*Employer's Federation of Southern India v. Govt. of India*]

(D. BHARATHA CHAKRAVARTHY, J.)
2024-II-LLJ-530 (Mad)
LNINDORD 2024 MAD 1125

PAYMENT OF GRATUITY

Break of Service – Payment of Gratuity Act, 1972, Sections 2A & 4(1) – Order of Controlling Authority refusing payment of gratuity overturned by Appellate Authority holding Respondent no. 4-employee entitled to gratuity – Whether, Appellate Authority rightly held that Respondent no. 4 entitled to gratuity – *Held*, Respondent no. 4 met with accident at factory premises ultimately became disabled for which necessary certificate had been issued – Register of leave produced by Petitioner-employer incomplete – Non-rendering of uninterrupted service

due to such accident would not amount to break of service – As per Section 2A and 4(1) with first *proviso*, no infirmity in order of Appellate Authority – Petition dismissed. [*Dalhousie Jute Company v. State of West Bengal*]

(ARINDAM MUKHERJEE, J.)
2024-II-LLJ-611 (Cal)
LNINDORD 2024 CAL 2

Prospective effect of Law – Payment of Gratuity Act, 1972, Sections 4(3) & 4(5) – Petitioner, association of retired employees, alleged that there was discrimination in payment of gratuity on retirement of its members, hence this petition – Whether, member of Petitioner Association entitled to get benefit of Amendment to Section 4(3) of Act increasing the ceiling limit – *Held*, members of Petitioner Association retired before date of implementation of said amendment – Respondent No. 1 entered cogent reasons to reject prayer of Petitioner – Extending better terms of gratuity is matter to be decided by employer – Respondent No. 1 had no authority to order Respondent No. 3 to extend better benefits of gratuity – Petitioner members paid gratuity as per law prevailing as on dates of their respective retirements – Petitioner's demand for retrospective implementation of Amendment Act not supported by legal ground – As per Section 4(5) of Act, Respondent No. 3 could not be compelled to give better benefits of gratuity to its employees – No reliefs could be granted – Petition dismissed. [*Kmml Retired Officers Assoc. v. State of Kerala*]

(M.A. ABDUL HAKHIM, J.)
2024-II-LLJ-624 (Ker)
LNIND 2024 KER 2

PENSION

Past services – Constitution of India, 1950, Article 300-A – Respondents filed petitions for their regularization from date of joining in service as daily wages employee or, in alternative, counting of their past services for pensionary benefits given to other similarly situated persons – Writ Court referred to orders passed in previous proceedings between parties and held that Respondent's past services shall be counted for pensionary benefits, hence these appeals – Whether Writ Court justified in holding that Respondents' past services shall be counted for pensionary benefits – *Held*, orders passed by writ Court in previous proceedngs had attained finality and were binding on University – Very fact that University granted age relaxation to Respondents recognized past services rendered by them and, therefore, they were entitled for counting of their past services for pension – No stipulation in appointment letter restricting benefit of past services – Pension is not bounty or charity, it is earned by employee on account of meritorious past services – By laying challenge to writ Court's order, appellant-University was

trying to rob Respondents of constitutional right under Article 300-A of Constitution – Appeals dismissed. [*Birsa Agri. Univ. v. State of Jharkhand*]

(SHREE CHANDRASHEKHAR, A.C.J.)
2024-II-LLJ-564 (Jhar)
LNIND 2024 JHAR 37809

Qualifying service – Period of service put in by husband of Petitioner prior to his regularization under policy of Government Resolution was not considered for purpose of pension and other retiral benefits, hence this petition – Whether period prior to date of regularization was required to be counted for purpose of pension and other retiral benefits – *Held*, period prior to date of regularization where employee had had put –in 240 days for period of ten years was required to be counted for purpose of pension and other retiral benefits – Period put-in by husband of Petitioner prior to date where he had put-in 240 days in each year shall be counted alongwith total length of service put-in by husband of petitioner and whereas all dues including pensionary dues and other terminal dues shall be paid to Petitioner, if Petitioner was so entitled – Appropriate computation and consequent grant of benefits shall be carried out by Respondents within period of eight weeks from date of receipt of this order – In case directions were not complied with certain, then Petitioner shall be entitled to claim interest on arrears from date of entitlement – Petition allowed. [*Naran Devashi Meheshwari v. State of Gujarat*]

(NIKHIL S. KARIEL, J.)
2024-II-LLJ-607 (Guj)
LNINDORD 2024 GUJ 1

PROMOTION

Illegal Supersession – Petitioners sought to challenge final gradation list by which they were removed resulting in illegal supersession by their juniors – Whether, final gradation list passed by Respondents arbitrary – *Held*, Petitioners as holders of supernumerary post, are not to be considered as part of ex cadre post – Supernumerary post categorized as permanent position – Petitioners could not be treated to be outside sanctioned strength of such promotional posts – in absence of arbitrariness Courts abstain from intervening in matters within purview of policy – Entire period of officiation to be counted for seniority – Petitioners holding posts from long ought to be considered as senior to promote – Individuals accorded senior ranking in gradation list surpassing rightful standing of Petitioners – Gradation list, quashed – Petition allowed. [*Prasenjit Ray v. Kolkata Municipal Corporation*]

(RAJARSHI BHARADWAJ, J.
2024-II-LLJ-647 (Cal)
LNIND 2024 CAL 439

RECRUITMENT

Cancellation of Appointment – Tamil Nadu Co-operative Societies Rules, 1988, Rules 63 and 149(5) – Appointment order of Petitioner cancelled by Respondent no. 3 alleging irregularities in recruitment process – Whether, Respondent no. 3 justified in cancelling appointment order of Petitioner – *Held*, when a post deleted from cadre strength, Union ought to have immediately stopped the recruitment process for said post – Appointment order issued to Petitioner for a non-existing vacancy – Rules 63 and 149 (5 of Rules, 1988 clearly reveal that candidate near relative of Officer could not be appointed in the service of such Society – Petitioner appointed to service of Society in which her father was paid employee at relevant time – Remitting matter for not providing opportunity to Petitioner would be empty formality – Petition dismissed. [*S. Keerthana v. Commissioner of Milk Production*]

(R. VIJAYAKUMAR, J.)
2024-II-LLJ-662 (Mad)
LNINDORD 2024 BMM 110

REGULARIZATION

Validity of Reference – Industrial Disputes Act, 1947, Sections 2A, 2(k) & 10 (1) – Respondent No. 2 submitted petition to Labour Commissioner expressing grievances about his employment – Respondent No. 1 referred dispute to Tribunal, hence this petition assailing the legality and correctness of the order of reference – Whether an individual workman seeking regularization can raise an industrial dispute as defined under Section 2(k) of Act – *Held*, in order to give jurisdiction to the appropriate government to refer the dispute to the Tribunal/Labour Court, it was essential for workman to show that his individual dispute for regularization was sponsored or espoused by the union of the workman – If workman wants to raise dispute with regard to regularization, that can only be done by union, which can raise a dispute on behalf of the workman – Impugned reference set aside – Petition allowed. [*Tata Advanced System v. Secretary, Dept. of Labour*]

(K.S. HEMALEKHA, J.)
2024-II-LLJ-667 (Kant)
LNINDORD 2024 KANT 2

SUPERANNUATION

Correction of date of Birth – Registration of Birth and Deaths Act, 1969, Section 13(3) – Maharashtra Registration of Births and Death Rules, 2000 – Communication issued by Respondent No. 1 intimating Petitioner for superannuation – Whether, Judgment passed by Magistrate directing to correct date of birth of Petitioner had binding effect – *Held*, in

proceedings under Section 13(3) of Act, employer not been made party – Petitioner well aware that only employer would be interested in contesting claim for change of date of birth from whom benefit of change of date of birth to be obtained – Direction passed by Magistrate without verification – Section 13(3) of Act mandated order thereunder could only be passed after verification of correctness of birth or death – Scheme of Section 13 of Act indicates nature of enquiry to be made for delay and for verifying the birth or death – Rules 2000, not indicated procedure required to be adopted by Magistrate considering application under Section 13(3) of Act – Impugned direction could not be said to be decision *in rem* to bind one and all – Respondent Nos. 1 and 4 could not be held bound by such perception – Petition dismissed. [*Dr. Mohan v. Principal, Shri Ayurved Mahavidyalaya*]

(AVINASH G. GHAROTE, J.)
2024-II-LLJ-570 (Bom)
LNIND 2024 NGP 29

SUSPENSION FROM SERVICE

Compliance of Statute – Maharashtra Public Universities Act, 2016, Section 11(14) Clauses (d), (e) and (f) – Uniform Statute No. 4 of 2023, Clause 3 (1)(f) – Respondent No. 2 by impugned order suspended Petitioner from post of Vice Chancellor of University, hence this petition – Whether, suspension of Petitioner in consonance with Uniform Statute – *Held*, on the date of issuance of suspension order, the Uniform Statute No. 4 of 2023 was in force – Action was initiated by Respondent No. 2 on reference by State Government – It is mandated under the Uniform Statute, to conduct preliminary enquiry to ascertain whether there is a substance in the case of initiation of any action for removal of the Vice Chancellor – Admittedly, no preliminary enquiry was conducted in this case – Where statute provides for thing to be done in particular manner it must be done in that manner – For no reason the enquiry conducted by the Government can be equated with the preliminary enquiry prescribed under the Uniform Statute to ascertain whether there is any substance in the case of initiating any action for removal of the Vice-Chancellor – No compliance of clause 3 (1)(f) of Uniform Statute – Impugned order, set aside – Petition allowed. [*Subhash Chudhary v. State of Maharashtra*]

(ANIL S. KILOR, J.)
2024-II-LLJ-552 (Bom)
LNIND 2024 NGP 37

TERMINATION

Abandonment of work – Reference seeking reinstatement with continuity of service and backwages denied by Labour Court, hence this petition by workman – Whether award of Labour Court in reference liable to be interfered – *Held,* two appointment orders read with communications of Respondent Company indicates that appointment of Petitioner-workman as

Helper and calling him to join work as Helper in Fixing department – Reluctance on part of Petitioner to join another department was evident from his cross examination – Reason for his reluctance was spelt stating that he was machine operator – Cross examination indicates service of letters of company to him and no reply to same – Before conciliation officer company had showed its willingness to take him as Helper in Fixing Department – It was clear that workman abandoned work because he was asked to work with fixing department of Respondent – He was reluctant to join another department where he was asked to work – Award of Labour Court in reference did not call for any interference – Petition disposed of. [*Kiranbhai Harkishandas Patel v. Meet Chetans P Ltd*]

(MAUNA M. BHATT, J.)
2024-II-LLJ-614 (Guj)
LNINDORD 2024 GUJ 6

Appeal against enhancement of compensation – Petitioner-Respondent was terminated from service – Labour court awarded lump sum compensation instead of reinstatement – On Appeal, Single Judge enhanced such amount, hence this appeal – Whether, Single Judge justified in enhancing compensation to Respondent-workman – *Held*, termination held to be bad in law – For daily wages labourer no useful purpose would be served in reinstating when monetary compensation could be given – Workman nearing age of superannuation – Considering gap between dates of appointment and termination, grant of lump sum compensation could not be faulted with – Considering service length of workman, amount of compensation given was justified – Appeal dismissed. [*Range Forest Officer v. Virjibjai Ranchhodbhai*]

(PRANAV TRIVEDI, J.)
2024-II-LLJ-547 (Guj)
LNINDORD 2024 GUJ 3

Back Wages – Respondent-employee imposed penalty of compulsory retirement from service for unauthorized absence – Single Judge found that absence was unintentional and directed that Respondent be reinstated in service – Whether, Single Judge justified in granting 50% back wages – *Held*, if Court finds that employer had acted in violation of statutory provisions or employee victimized then direction to pay back wages, justified – In case of wrongful termination of service wrong doer being employer no justification to give premium to employer of his wrong doing by reliving him of burden to pay employee his dues – Directions of Single Judge to restrict amount of back wages to 50% could not be faulted – Appeal dismissed. [*Director General R.P.F. v. Diwan Singh*]

(BIREN VAISHNAV, J.)
2024-II-LLJ-596 (Guj)

Delay and laches – Industrial Disputes Act, Sections 25-B, 25-F, 25-G and 25-H – Tribunal passed award directing Petitioner-Department to reinstate Respondent-workman with continuity and seniority, hence this petition – Whether petition filed on behalf of Petitioner liable to be allowed – *Held*, Respondent-workman proved on record that delay and laches, if any, was on account of conduct of Petitioner and Respondent could not be made to suffer for same – Respondent approached Tribunal within six months of his termination, wherein interim order came to be passed, thereby directing Petitioner to re-engage Respondent, subject to availability of fund/work and subject to his seniority – Once such order was passed, it was duty of Petitioner to call upon Respondent to come and join his duties, especially when it stood proved that funds and works were available with Department – *Plea* that Respondent was repeatedly requested to join not substantiated by documentary evidence – Single persons junior to Respondent were allowed to work, funds and works were available, but yet services of Respondent were not regularized – After disposal of application, neither any call letter nor any notice was ever issued by Petitioner – Since at no point of time Petitioner, specifically called upon Respondent to resume service, there was no occasion for him to resume service for period of six years and thereafter he was compelled to raise dispute under Act – Filing of application after his being disengaged, establishes that at no point of time, Respondent abandoned job, rather his services were illegally terminated by Petitioner-Department without following due procedure of law as prescribed under Section 25-B, 25-F, 25-G and 25-H – No force in petition filed on behalf of Petitioner – Petition disposed of. [*State of H.P. v. Prakash Chand*]

(SANDEEP SHARMA, J.)
2024-II-LLJ-634 (HP)

WORDS AND PHRASES

Misconduct – Any wrongful act or any act of *delinquency* would be misconduct if it is subversive of discipline. [*State of Punjab v. Ex. Constable Amarjit singh*]

(NAMIT KUMAR, J.)
2024-II-LLJ-655 (PNH)
LNIND 2024 PNH 3

WORKMAN

Role of Manager – Industrial Disputes Act, 1947, Section 2(s) – Labour Court rejected reference and held that Respondent was performing role of Manager and thus was not "workman" within meaning of Section 2(s) – Petition challenging Award partly allowed by Single

Judge holding Respondent to be "workman" and remanding matter to Labour Court and appeal against same dismissed by Division bench, hence this appeal – Whether Respondent would or would not come within definitional stipulation of "workman" as laid out under Section 2(s) – *Held*, Appointment Letter taken note of by Labour Court, reveal that Respondent's appointment was as "Senior Manager (B2) – Sales" in Company – Even prior to joining Appellant-Company, Respondent, had worked in managerial capacity in another organization – Records show that Respondent performed supervisory role over managers and was the Assessing Manager of his team – After adducing evidence led by both sides, Labour Court *vide* detailed order and discussion, held Respondent not to be covered under "workman" as per Section 2(s) – Single Judge had not appreciated discussion by Labour Court and available evidence in their true perspective – Mere absence of power to appoint, dismiss or hold disciplinary inquiries against other employees, would not and could not be sole criterion to determine issue – Holding otherwise would lead to incongruous consequence, as same would, illustratively, mean that, employees in high-ranking positions but without powers to appoint, dismiss or hold disciplinary enquiry would be included under umbrella of "workman" under Section 2(s) – Respondent was not "workman" and thus reference to Labour Court under Act, would not be maintainable – Appeal allowed. [*Bharti Airtel Ltd v. A.S. Raghavendra*]

(AHSANUDDIN AMANULLAH, J.)
2024-II-LLJ-504 (SC)
LNIND 2024 SC 144