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LEGAL NEWS

Q – 3 July - Sept. 2024

ALL INDIA BANK EMPLOYEES' ASSOCIATION

LEGAL NEWS
From AIBEA

BULLETIN Q – 3
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JULY

COMMUNAL RESERVATION

Selection Notification – Constitution of India, 1950, Article 226 – Single Judge allowed petition filed by 1st Respondent/Petitioner challenging non-inclusion of her name and inclusion of names of 3rd and 4th Respondents in provisional select list issued by Appellant Board for post of PG Assistant, hence this appeal – Whether order of Single Judge directing Appellant to take steps for issuance of appointment order to 1st Respondent, justified – *Held*, 1st Respondent belong to Scheduled Caste community and she uploaded community certificate with name of her husband along with application and she also produced community certificate with name of her father at time of certificate verification – Appellant had not disputed either veracity or authenticity of certificate produced by 1st Respondent and their objection was only to limited extent of submission of such certificate not along with application, as stipulated in notification –Such objection had no legs to stand, for 1st Respondent had not acquired particular caste only from date of issuance of such certificate, and such certificate merely recognized status of 1st Respondent already acquired by birth – Terms and conditions of selection notification had to be scrupulously adhered to by candidates – In exercise of power under Article 226, writ court could not re-write, modify or vary terms and conditions imposed by selection authority – Judge did not impose any condition other than one imposed by Appellant in selection notification – Judge, after having found that 1st Respondent, though not uploaded along with application, produced community certificate with name of her parent at time of certificate verification, held that merely on technicalities, candidate, who was otherwise eligible and qualified for appointment, could not be ousted from purview of selection – Judge rightly allowed petition, by directing Appellant to take steps for issuance of appointment order to 1st Respondent – Appeal dismissed. [*Teachers Recruitment Board v. T. Sumithra*]

(R. MAHADEVAN, J.)
2024-III-LLJ-64 (Mad)
LNIND 2024 MAD 2354

COMPASSIONATE APPOINTMENT

Minor at time of application – Tamil Nadu Civil Services (Appointment on Compassionate Grounds) Rules, 2023, Rule 6 – Application seeking compassionate appointment rejected on ground that on date when application was made, Respondent/Petitioner was minor – On challenge thereto, Writ Court interfered with order of rejection, and gave direction to consider application, hence this appeal – Whether order of Single Judge to consider application of Respondent for compassionate appointment, sustainable – *Held*, in Rule 6 under heading age limit, maximum age had been prescribed, whereas

insofar as minimum age was concerned, Rule-making authority had made sub-Rule (2) of Rule (6), where they had stated that there shall be no minimum age limit for applicant on date of application for appointment, provided that, appointment shall not be provided unless applicant completes eighteen years of age – Intention of Rule-making authority was clear, unambiguous and explicit to state that under no circumstances compassionate appointment should be denied to family which was in penurious circumstances where for want of attaining majority of legal heir or dependent of deceased employees family, if compassionate appointment could not be given immediately, employer could consider such application and grant same or extend benefit of compassionate appointment to such dependent or legal heir of deceased employee of family on his attaining majority – When this intention of Government had been made very clear under Rule and Rule had also been given to force with effect from certain date, thereafter, if consideration was made in later date, Rule should have been applied – Had it been applied, application filed on behalf of Respondent ought not to have been rejected by employer – Order of Judge giving direction to consider application for extending benefit of compassionate appointment to Respondent was flawless and hence, sustained – Appeal disposed of. [*State of Tamil Nadu v. C. Arnold*]

(R. SURESH KUMAR, J.)
2024-III-LLJ-76 (Mad)
LNIND 2024 BMM 1038

DAILY WAGER

Claim for permanency – Industrial Disputes Act, Section 25B – Petitioners, who were working as daily wagers since numbers of years were not accorded benefits of specific Government Resolution by Respondents, hence these petitions – Whether Petitioners entitled for benefits under Government Resolution – *Held*, no decision by Respondents where fact of Petitioners being entitled for benefits under Government Resolution, had been considered by Respondents authorities – Grievance of Petitioners could be assuaged at this stage if the Respondents were directed to decide representation which would be preferred by Petitioners individually – Apex court had clarified that upon employee, who had originally been appointed on daily-wages, completing specific number of years, more particularly same being in consonance with Section 25B, then employee was entitled to be granted benefits of permanency – Upon attaining status of permanency, employee who was born in department as daily-wager was entitled to be treated at par with employees, who had been appointed on regular/permanent basis by way of direct selection – Each of Petitioners to prefer individual representation before Respondents concerned – Respondents shall take appropriate decision strictly in accordance with law and taking into consideration law laid down by Apex Court as well as this Court – Petition disposed of. [*Manilal Manglaji Zariya v. State of Gujarat*]

(NIKHIL S. KARIEL, J.)
2024-III-LLJ-105 (Guj)
LNINDORD 2024 GUJ 2

DISMISSAL

Adjudication of Right – Industrial Disputes Act, 1947, Sections 33C(2) & 33(2)(b) – Respondent-workman who was dismissed from service filed an application under Section 33C(2) of Act – Labour Court directed Petitioner-Corporation to pay amount of wages – Whether, workman could file application under Section 33C(2) of Act in absence of challenge of dismissal order or in absence of application filed by Corporation seeking approval of dismissal order under Section 33(2)(b) of Act – *Held*, on date of filing of application under Section 33C(2) of Act there was no relationship of employer and employee between parties – Section 33C(2) of Act clearly envisages prior adjudication or recognition by

employer of claim of workman to be paid wages – As there was no adjudication of right of Petitioner's claim and mere non approval in terms of Section 33(2)(b) of Act not give right to workman to file such application – Labour Court not only awarded wages but also awarded interest – Application filed under Section 33C(2) of Act, not maintainable – Impugned order, set aside – Petition allowed. [*Management of NWKRTC v. Manjunath*]

(SHIVASHANKAR AMARANNAVAR, J.)
2024-III-LLJ-190 (Kant)
LNINDORD 2024 DHRWD 1

Approval – Industrial Disputes Act, 1947, Sections 2-A(2), 2-A(3) and 33(2)(b) – Respondent dismissed from service by disciplinary authority for unauthorized absence – Tribunal set aside dismissal order directed Petitioner-Corporation to reinstate Respondent-workman – Whether, non-compliance of Section 33(2)(b) of Act by Corporation before placing order of dismissal would render order of dismissal *void* – *Held*, Industrial Dispute relating to charter of Demands pending on date of dismissal of Respondent – Petitioner ought to have obtained approval of Tribunal for dismissal of workman in compliance of Section 33(2)(b) of Act – As such approval not sought order of dismissal of workman *void* and *non-est* – No limitation provided for filing complaint under Section 33-A of Act – Limitation provided under Section 2-A(3) of Act was with regard to filing of application by workman under Section 2-A(2) of Act – No limitation for referring dispute – Tribunal justified in passing impugned order – Petition dismissed. [*Divisional Controller v. Vasant B. Jogi*]

(SHIVASHANKAR AMARANNAVAR, J.)
2024-III-LLJ-149 (Kant)
LNINDORD 2024 DHRWD 2

EMPLOYER-EMPLOYEE RELATIONSHIP

Regularization of service – Contract Labour (Regulation and Abolition) Act, 1970, Section 2 (j) – Industrial dispute raised by Petitioner-workmen for regularization of his service – Tribunal held that Petitioners not entitled for such relief – Whether, Tribunal rightly decided claim of workmen by not regularizing their service – *Held*, no documentary evidence to show workmen were in direct employment of Association – *Onus* to prove lies on party setting up *Plea* regarding existence of employer-employee relationship – No existence of employer-employee relationship between parties – Workmen not entitled to be regularized with Association – To invoke writ jurisdiction required to prove Court below acted illegally – Respondent no. 1-management not industry as per Section 2(j) of Act since its dominant function not include providing commercial activities rather workmen deployed merely to provide personal services through contractor – No illegality in impugned award – Petition dismissed. [*Kanchanjunga Bldg. Emp. Union v. Kanchanjunga Flat Owners*]

(CHANDRA DHARI SINGH, J.)
2024-III-LLJ-199 (Del)
LNIND 2024 DEL 1829

INDUSTRIAL DISPUTE

Promotion – Industrial Disputes Act, 1947, Sections 2(k) and 2-A – Award passed by Labour Court where issue of promotion was raised in reference, hence this petition – Whether matter of promotion and seniority could have been adjudicated between two employees by Labour Court under Section 2(k) of Act – *Held*, Section 2(k) covers dispute or difference between workmen and workmen

having its larger implication between employers and workmen – Disputes not covered by Section 2(k) or Section 2-A could be determined by Civil Court or by Arbitration but disputes relating to rights or obligations created under Act could be adjudicated only by Forums created by Act – Matter of promotion and seniority could have been adjudicated between two employees by Labour Court under Section 2(k) as it was industrial dispute under Section 2(k) – Petition dismissed. [*Managing Director v. M.P. State Forest Development Corp.*]

(VIVEK AGARWAL, J.)
2024-III-LLJ-196 (MP)

PERMANENT STATUS

Industrial establishment – Tamil Nadu Shops and Establishments Act, 1947, Section 2(6) – Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981, Sections 2(3)(e) and 7 – Inspector of Labour accepted claim of 53 workmen for conferment of permanent status in Corporation – Petitions filed by Corporation challenging order of Inspector of Labour for conferment of permanent status, and by workmen seeking employment in Corporation – Single Judge held Act would apply to Corporation and directed Corporation to provide employment to Respondents which was confirmed by Division Bench, hence these appeals – Whether Act would apply to parties – Whether by way of impugned judgment, suggestion to institute 'Industrial Disputes Claim' questioning non-employment was sustainable – *Held*, for any establishment to be commercial, it had to be establishment that activities undertaken by it were for making monetary again – Uncontroverted paragraph in affidavit filed by Corporation records actual turnover which establishes, the commercial element was not absent – Construction work, which Corporation, carries out, was for non-governmental bodies such as firms, companies, and individuals – Section 7 of Act 1981 implies that Act shall not apply to those workmen engaged in construction of buildings or other construction work – Construction work – Construction to be undertaken by Corporation, was only one of many activities to be undertaken by it – To take all workers out of purview of Act 1981, like members of Respondent union, who were not ones undertaking construction was unwarranted – Both requirements of establishment being covered under definition of industrial establishment and that of employee having uninterruptedly continued in service for 480 days or more for 24 months, had been met – Act would apply to parties to present dispute – Order of Inspector of Labour was passed under Act – Since High Court concluded that Act would apply, no reason for it to disturb finding of Inspector of Labour – Appeal by Corporation, dismissed – Appeal by Respondent, allowed. [*TNMSCL v. TNMSC Employees Welfare Union*]

(SANJAY KAROL, J.)
2024-III-LLJ-52 (SC)
LNIND 2024 SC 242

SEXUAL HARASSMENT

Enquiry Report – Tamil Nadu Civil Services (Discipline And Appeal) Rules, Rule 17 (b) – Limitation Act, 1963, Section 9 – Respondent no. 3-Committee by enquiry report recommended that incident of sexual harassment committed by Petitioner-employee and disciplinary action should be taken – Whether, impugned enquiry report liable to be quashed as complaint is beyond 6 months and hence, violative of Section 9 of Act – Whether impugned report liable to be quashed for violation of principles of natural justice – *Held*, in cases of serious allegations such as rape or continuous molestation or harassment, the same would be a continuing misconduct and every day until the situation is redressed or brought to the notice of the appropriate authority would give rise to a fresh cause of action – The

purpose of the provision of Limitation in Section 9 has to be understood in this context – Petitioner cannot rely upon hyper-technicalities – Complaint is not barred by limitation and as such is not violating of Section 9 of the Act – Though the committee may be right in not exposing the victims directly to the *delinquent,* at least, the cross examination should be done based on the questions that are prepared by the Petitioner – Such questions depending on the nature of the witness should be permitted to be put before the witnesses directly by the *delinquent* – The absence of such an exercise would not comply with the opportunity of hearing – Impugned enquiry report would stand partially vitiated for the flaw of not providing the Petitioner an opportunity to cross-examine the witnesses – Impugned enquiry report, set aside – Petition allowed. [*R. Mohanakrishnan v. Deputy Inspector General of Police*]

(D. BHARATHA CHAKRAVARTHY, J.)
2024-III-LLJ-87 (Mad)

TERMINATION

Reinstatement – Respondent-workman terminated from service – Industrial Tribunal directed Appellant-bank to reinstate workman – High Court dismissed petition filed by Appellant holding unexplained delay and latches in pursuing proceedings – Whether, Writ Court justified in dismissing petition filed by Appellant – *Held*, maintainability never challenged – Tribunal being creation of statute could not examine validity of Reference – Decision to refer dispute was administrative function – No disciplinary action taken by Employer Bank against alleged unauthorized absence – Employer duty bound to follow principle of natural justice before dispensing with service of employee – Employer did not settle final account of employee – Reasons well elaborated in impugned order – Nature of duties performed by him was permanent – Appellant Bank had no case – Appellant-Bank committed delay and latches – Appeal dismissed. [*Uttar Bihar Gramin Bank v. Ramu Mochi*]

(DEEPAK ROSHAN, J.)
2024-III-LLJ-173 (Jhar)
LNIND 2024 JHAR 37484

Workman – Industrial Disputes Act, 1947, Section 2(s) – Applicant raised dispute challenging order of termination – Labour Court held that applicant was workman under Section 2(s) of Act and directed management to pay compensation *in lieu* of reinstatement, hence these petitions – Whether Applicant entitled for reinstatement – Whether, Labour erred in holding Applicant as workman considering nature of duty – *Held*, applicant discharged her duties in supervisory and managerial role – Nature of work performed by the Applicant at no stretch of imagination could be said to be as envisaged under Section 2(s) of Act – As Applicant was not workman under Section 2(s) of Act, Labour Court was not justified in holding that the Applicant is entitled for compensation *in lieu* of reinstatement, continuity of service, full backwages and all other consequential benefits – Impugned order, set aside – Petition filed by management, allowed – Petition filed by applicant, dismissed. [*N. Bhuvaneshwari v. M/S. Ambuthirtha Power Ltd*]

(K.S. HEMALEKHA, J.)
2024-III-LLJ-185 (Kant)
LNINDORD 2024 KANT 4

Workman – Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, Section 3(5) – Industrial Disputes Act, 1947, Section 2(s) – Complaint filed by Petitioner challenging his termination dismissed by Labour Court holding that Petitioner was not 'workman' or 'employee' and same was upheld by Industrial Court, hence this petition – Whether order passed by Industrial Court, sustainable – *Held*, Industrial Court analysed evidence of witness of 1st Respondent/Company who deposed that Petitioner's job was to analyse nature of job, issues concerned, problems faced by customer and assign same to team members working under him according to their expertise for resolution of same – Petitioner got all works done through his team members and in process assist and guide them also – Petitioner was required to follow up escalated queries and issues relevant to work flow production monitoring which was supervisory function – Witness deposed that role of IT Analyst was supervisory nature work and could not be deemed to be merely administrative or clerical – Petitioner was involved in handing financial matters of his team members – Actual work of Petitioner was to synchronize with his team members work assigned to him as Module leader in project – As project incharge, he was entrusted with responsibility of supervisor having managerial and administrative functions – Petitioner evaluated appraisal performance of his team members – Petitioner could not say that he was working as mere workman in order to go under umbrella of definition of workman under Act 1947 – Petitioner was delegated powers to take business decisions with Bank and/or any of its clients – Analysis done by Industrial Court was accurate and no fault found in judgment of Labour Court which was based upon cogent and reasoned findings – Judgment and order passed by Industrial Court sustained and confirmed – Petition dismissed. [*Rohit Dembiwal v. TCS Ltd*]

(MILIND N. JADHAV, J.)
2024-III-LLJ-218 (Bom) LNIND 2024 BOM 4

WORKMAN

Nature of Work – Industrial Disputes Act, 1947, Section 2(s) – Respondent raised Charter of Demands seeking increase in wages, benefits and emoluments for workmen – Tribunal held that persons enlisted to the statement of claim were workmen within Section 2(s) of Act – Whether, Tribunal justified in holding that such Respondents were workman – *Held*, Respondent-employees performing supervisory or managerial duties – Supervisor means person who watch over work of his subordinates – Managerial functions require person to control work of others – No material to show that they have to keep watch over work of their subordinate employees – No material to show that employees were working under them – Tribunal rightly held employees were workmen under Section 2(s) of Act – Respondent-employees were doing manual work, therefore, are covered in one of the categories of Section 2(s) of Act – No reason to interfere with impugned order – Petition dismissed. [*Godrej and Boyce v. Shivkranti Kamgar Sanghatana*]

(AMIT BORKAR, J.)
2024-III-LLJ-210 (Bom)
LNIND 2024 BOM 254

Project Engineer – Industrial Disputes Act, 1947, Section 2(s) and 10 – Respondent after resignation sought for reemployment – Labour Court held Respondent as workman and directed reinstatement, hence this petition – Whether the nature of duties performed by the Respondent would come within the purview of definition of workman under Section 2(s) of the Act – *Held*, Respondent working in managerial position in Petitioner-company – Person given post of project leader could not be implied that he was doing clerical, manual or technical work to come under purview of Section 2(s) of

Act – Imparting and taking decisions was main work of Respondent – Work assigned to Respondent would not come under Section 2(s) of Act – Labour Court had no jurisdiction to order reinstatement – Petition allowed. [*MPHASIS Limited v. Ashok S. Narayanpur*]

(K.S. HEMALEKHA, J.)
2024-III-LLJ-235 (Kant)
LNINDORD 2024 KANT 3

AUGUST

DEATH IN COURSE OF EMPLOYMENT

Quantification of Compensation – Minimum Wages Act, 1948 – Application for claim filed by dependants of deceased-driver who died during course of employment - Commissioner granted compensation, hence this appeal – Whether, workman died in the course of employment as he was neither driving the vehicle nor the vehicle was in motion – *Held,* fact that deceased at time of accident was attending to the works in mechanic shop at instance of Opposite Party no. 1 qualifies to be termed as in the course of employment – No other reason for deceased to go to such shop to verify progress of repairs of tipper – Once employer deposed about salary particulars, not open for insurance company to insist for quantification of compensation as per wages fixed under Act – Appeal dismissed. [*National Insurance Company Ltd v. G. Sivamma*]

(NYAPATHY VIJAY, J.)
2024-III-LLJ-477 (AP)

DENIAL OF PENSIONARY BENEFIT

Regularization of Service – Petitioner-employee, appointed on daily wage basis filed petition to regularize his services from the date of his initial appointment and to sanction all retirement benefits, pension, and family pension together with monetary benefits and disburse all the arrears along with interest – Whether, service of Petitioner could be regularized to sanction all retirement benefits – *Held,* when Petitioner was regularly appointed in the said post and when he had been granted three in-situ promotions upon completion of 10, 20 and 30 years of service by conferring Selection Grade, Special Grade and Super Grade and when he was further promoted to the post of Office Assistant and the Petitioner having put in almost 32 years of service and having retired, now the respondents can neither plead nor contend that he is not a regular servant – Petitioner entitled to count 50% of temporary services for purposes of pension – Block Development Officer directed to regularize services of Petitioner – Petition allowed. [*T. Murugesan v. Secretary to Government*]

(D. BHARATHA CHAKRAVARTHY, J.)
2024-III-LLJ-366 (Mad)

DISMISSAL

Misconduct – Petitioner dismissed from service for misconduct by Respondent no. 5 and same conformed by Respondent no. 4 – Whether, punishment imposed on Petitioner disproportionate – *Held*, carrying some amount of money was minor misconduct – Though Petitioner insisted on eight hours, he

completed duty of 12 hours – When employees having genuine grievances that could not be termed as misconduct – Absence from Parade without prior permission not grave misconduct warranting punishment of dismissal from service – Punishment of dismissal from service grossly disproportionate to delinquencies complained – Petitioner raised his voice whenever he has been directed to perform extra duty, not being sanctioned Casual Leave where reason genuine – Impugned order, set aside – Matter remitted back to Revisionary Authority – Petition disposed of. [*Shyam Singh v. Union of India*]

(D. BHARATHA CHAKRAVARTHY, J.)
2024-III-LLJ-302 (Mad)

Principle of Natural Justice – Rajasthan Civil Services (Classification, Control & Appeal) Rules, 1958, Rule 16(10) – Constitution of India, 1950, Article 14 – Petitioner dismissed from service by Respondent-department for conviction of Petition in criminal case – Whether, Petitioner entitled for reinstatement after his conviction order was set aside – *Held*, Respondents failed to show that they ever served show cause notice to Petitioner as required under Rule 16(10) of Rules – Respondents passed penalty order in gross violation of principle of natural justice – Petitioner for avoiding his arrest in criminal case absented from duty – Another co-accused reinstated in service – Approach of Respondents hits Article 14 of Constitution which speaks of parity and equality - Petitioner who is a government servant and exonerated of charges would be entitled to service benefits – Penalty order, set aside – Respondents directed to reinstate Petitioner – Petition allowed. [*Rajesh Kumar v. State of Rajasthan*]

(GANESH RAM MEENA, J.)
2024-III-LLJ-293 Raj)

Reinstatement – Industrial Disputes Act, 1947, Section 11A – Labour Court held that Petitioner was not justified in dismissing service of Respondent no. 2 and directed that Respondent no. 2 was entitled for reinstatement and the period from date of dismissal till his reinstatement was directed be treated as leave without pay and should count towards the length of service, hence this petition – Whether, award passed by Labour Court, sustainable – *Held*, as per Section 11 A of Act, 1947 when workman was dismissed, Labour Court could adjudicate and if satisfied that dismissal was not justified could direct reinstatement – Respondent no. 2 besides giving some explanation against charge had not cross-examined witnesses of Management – Labour Court having adjudicated matter by allowing parties to lead their evidence ought to have considered the dispute on merit its entirety instead of confining itself on the issue of violation of principles of natural justice – Matter remanded back to Labour Court – Impugned award, set aside – Petition disposed of. [*Kotalgoorie Tea Estate v. State of Assam*]

(NELSON SAILO, J.)
2024-III-LLJ-428 (Gau)

MINOR PUNISHMENT

Delay in show-cause notice – Tamil Nadu Government Servants' Conduct Rules, 1973, Rules 7(1) and 7(1)(b) – Disciplinary proceedings initiated against Petitioner with regard to acquisition of property – There was a huge unexplained delay of more than 11 years in initiating Disciplinary proceedings, hence this petition – Whether, impugned order of proposing minor punishment passed against Petitioner could be quashed – *Held*, Petitioner made an application and permission granted before purchase of property – Unexplained delay for almost 11 years – Considering lapse in time in giving show-cause notice, the Petitioner would not be able to muster all evidence to prove circumstances before Respondent – When

delay results in prejudice and charge was not serious one, then it is a case for interference – Impugned order, quashed – Petition allowed. [*S. Ramakrishnan v. Registrar of Cooperative Societies*]

((D. BHARATHA CHAKRAVARTHY, J.)
2024-III-LLJ-363 (Mad)

PAYMENT OF WAGES

Jurisdiction – Contract Labour (Regulation and Abolition) Act, 1970, Sections 2(1)(i), 2(1)(c) and 27 – Industrial Disputes Act, 1947, Section 12(5) – Minimum Wages Act, 1948 – Respondent no. 1 entrusted with job of providing housekeeping facility at Petitioner's factory – Respondent no. 3 directed Petitioner to pay minimum wages to workers of Respondent-Trade Union employed by Respondent no. 1 on its failure to pay – Whether, Regional Labour Commissioner had jurisdiction to direct principal employer to pay differential wages payable to an employee of contractor – *Held*, scheme of Section 12 of Act, 1947 provides that Regional Labour Commissioner had no power to decide dispute on his own – Respondent need to submit report on failure of conciliation before appropriate Government to follow procedure under Section 12(5) of Act 1947 – Respondent no. 3 not appropriate authority under Act 1948 – Sections 2(1)(c) and 2(1)(i) of Act 1970 provides that person who supplies contract labour for any work at establishment would not come within definition of contractor – Complaint under Section 27 of Act 1970 ought to be filed – Respondent no. 3 exceeded his powers in directing principal employer to pay differential wages – Impugned order, unsustainable – Petitioner not bound by provisions of Act 1970 – Petition allowed. [*HLL Life Care Ltd v. Sapthazeal Private Ltd*]

(S. EASWARAN, J.)
2024-III-LLJ-437 (Ker)

PENDENCY OF DISPUTE

Compulsory retirement – Industrial Disputes Act, 1947, Sections 2(j), 31 and 33-A – Respondent/workman filed petition under Section 33-A alleging that Petitioner did not seek permission of Tribunal before compulsorily retiring him during pendency of industrial dispute challenging his continuous suspension – Tribunal held Petitioner was industry and conduct of Petitioner was punishable under Section 31 and directed Petitioner to reinstate Respondent, hence this petition – Whether impugned order passed by Labour Court merits intervention of this Court – *Held*, Petitioner being research institute working in field of homeopathy for Government of India, was working with cooperation of employer-employee in systematic way and for betterment of homeopathy department of country, hence it fell within ambit of "Industry" under Act – Tribunal correctly held that Petitioner was industry as per Act – Tribunal correctly held that as per Section 33, industry could not alter service conditions of workman unless same did not cause prejudice to workman or alteration in their working condition was done on grounds of misconduct which did not pertain to industrial dispute – Respondent was compulsorily retired despite fact that industrial dispute was pending adjudication before Tribunal, therefore, Petitioner acted in contravention of Section 33 and was duly liable to be punished under Section 31 – Tribunal rightly held that Respondent workman shall be reinstated along with back wages – Award passed by Tribunal, upheld – Petition dismissed. [*Central Council of Homeopathy v. Vijay Singh*]

(CHANDRA DHARI SINGH, J.)
2024-III-LLJ-443 (Del)
LNINDORD 2024 DEL 58825

PENSIONARY BENEFITS

Denial of Leave Encashment – Railway Claims Tribunal Rules, 1989, Rules 6(1)(i) & 8(2) – Petitioner, a retired judge, was appointed as the Chairman of the Railway Claims Tribunal, where he served until the age of 65 years – Respondent no. 2 / Railway Board rejected Petitioner's request for payment of pension and leave encashment – Whether, Respondents justified in denying Petitioner's claim for payment of pension and leave encashment – *Held*, as per Rule 8(2) of Rules, person already drawing pension, is appointed as Chairman and the combined pension exceeds ceiling limit of Rs. 4,80,000/- per annum then he is not entitled to additional pension for services rendered as Chairman – No legal right to claim pension beyond specified cap – Denial of pension in strict compliance with Rules – As per Rule 6(1)(i) of Rules, Petitioner having served as chairman entitled to leave encashment independently of leave encashment received upon retirement as High Court Judge – Petition partly allowed. [*Justice B. Padmaraj (Retired) v. Union of India*]

(SACHIN SHANKAR MAGADUM, J.)
2024-III-LLJ-358 (Kant)
LNINDORD 2024 KANT 6

REJECTION OF CANDIDATURE

Qualification – Tamil Nadu Government Servants (Conditions of Service) Act, 2016 – Respondents did not consider Petitioner's Post-Graduate qualification and rejected his candidature in selection process – Whether, Petitioner's Post-Graduate qualification ought to be considered by Respondents in selection process – *Held*, on date of notification, Petitioner possessed Post-Graduate degree of two years duration – Petitioner without uploading said degree uploaded another Post-Graduate degree of one year – Respondents ought to have selected Petitioner in the post of Typist – As per Act 2016, Petitioner's M.L.I.S degree was valid – Purpose of rule to eliminate candidates possessing direct Post-Graduate without even basic qualifications – Approach adopted by Respondent, incorrect – Petitioner directed to be accommodated in subsequent vacancy – Petition allowed. [*K. Paranthaman v. Secretary, TNPSC*]

(D. BHARATHA CHAKRAVARTHY, J.)
2024-III-LLJ-350 (Mad)
LNINDORD 2024 MAD 1513

SELECTION PROCESS

Termination from Service – First information reports lodged against Petitioners-Assistant Teachers alleging that they colluded for manipulation in selection process – Whether, Petitioners could be entitled for service benefits – *Held*, no material produced by State to show that either Petitioners were suspended from services or charge sheets were issued to them or services of Petitioners were terminated – No material to show that approval granted by District Basic Education Officer for appointment of Petitioners has been recalled – No departmental action has been taken against erring officers of State – No disciplinary inquiry initiated against Petitioners – Petitioners only made scape goat leaving aside role of erring officers – Since appointment and approval order still in force, Petitioners deemed to be in service – Respondents directed to allow all service benefits to Petitioners – Petition allowed. [*Sanjay Kumar Singh v. District Basic Education Officer*]

(PIYUSH AGRAWAL, J.)
2024-III-LLJ-398 (All)
LNINDORD 2024 ALL 469

SUSPENSION

Gross misconduct – Petitioner sought to challenge suspension order – Whether, suspension of Petitioner could be quashed being not misconduct – *Held*, if there was a Principal, he is given the option to choose his Deputy, the Vice Principal who would assist him in his duties – Such Vice-Principal should be Senior Faculty, not necessarily senior most – When a representation is sent to the appropriate authority and not in the media/press, again whether the same is misconduct or not is debatable – No charges of gross misconduct – Order of suspension, quashed – Petition allowed (W.P. No. 15846 of 2024) [*Dr. K. Thamizharasan v. Secretary to Govt. of TN*]

(D. BHARATHA CHAKRAVARTHY, J.)
2024-III-LLJ-241 (Mad)
LNINDORD 2024 MAD 1752

Misconduct – Petitioner suspended from service for gross misconduct – Whether suspension order, sustainable – *Held*, non-attending of invigilation duty especially when allotted would be misconduct – Charges was gross misconduct – College committee had powers to suspend Petitioner – Petition dismissed (W.P. No. 15966 of 2024) [*Dr. K. Thamizharasan v. Secretary to Govt. of TN*]

(D. BHARATHA CHAKRAVARTHY, J.)
2024-III-LLJ-241 (Mad)
LNINDORD 2024 MAD 1752

TERMINATION

Compensation – Industrial Disputes Act, 1947, Section 25(F) – Labour Court held termination of services of workman was in contravention of Section 25(F) of Act and ordered for reinstatement but without backwages, hence these petitions by Management and workman – Whether, Management had illegally terminated workman – *Held*, services terminated arbitrarily and without caring law under Act which protect rights of workman – Age of workman being 70 years could be reason for not paying back wages as he had attained age of superannuation – Due to stay of operation of impugned award workman was never reinstated in service – Management directed to pay lump-sum compensation to workman as workman had worked in office of Management for about 11 months and the dispute being more than two decades old – Petitions disposed of. [*Secretary to Govt. of Punjab v. Mohan Singh*]

(SANJAY VASHISTH, J.)
2024-III-LLJ-462 (PNH)

Illegal Retrenchment – Industrial Disputes Act, 1947, Section 25-F – Tribunal held that termination of services of work-lady by Management was illegal and ordered her to be reinstated in service – Whether, Tribunal rightly held termination of Respondent No. 2-work-lady was in violation of Section 25-F of Act – *Held*, for proving resignation letter and its acceptance no witness examined – Work-lady being illiterate no question of her knowing content of resignation letter its acceptance – After illegal retrenchment demand notice addressed to Management without delay – Once *plea* of resignation taken by Management it is required to be proved strictly – Being not satisfied with *plea* taken in defence by Management no reason for this Court to doubt view taken by Labour Court – Termination of services of work-lady was in violation of Section 25-F of Act 1947 – Management directed to pay lump sum amount

of compensation to work-lady towards all her claims – Petition dismissed. [*Creative Edge Men's Wear v. Presiding Officer*]

(SANJAY VASHISTH, J.)
2024-III-LLJ-472 (PNH)
LNIND 2024 PNH 4

TRANSFER ORDER

Malafide **Order** – Interim order passed by Industrial Court temporarily restraining Petitioner No. 1 to give effect to promotional transfer order issued in respect of Respondent – Whether, transfer order issued in favour of Respondent, justified – *Held,* under contract of employment, Respondent bears transfer liability – Retirement of employee cited as reason for Respondent's posting at transferred unit – *Prima facie* case of existence of exigency for transfer of Respondent on promotion made out – Allegation of malafides in issuance of transfer order must establish by person who alleges it – No malafides pleaded in complaint filed by Respondent – No specific allegations of existence of personal bias – Industrial Court ought not to have interfered in impugned transfer order – Employer could decide as to fit candidate for promotion – Respondent could not insist unless his senior promoted he continued on old post – Transfer being incidence of service, Industrial Court could not routinely interfere – Impugned order, set aside – Petition allowed. [*Indian Express (P) Ltd v. Ganesh Gopinath Rane*]

(SANDEEP V. MARNE, J.)
2024-III-LLJ-274 (Bom)
LNIND 2024 BOM 533

SEPTEMBER

AWARD

Scope of interference - Constitution of India, 1950, Articles 226 and 227 – Industrial Disputes Act, 1947, Section 33A – Respondents filed application under Section 33A of Act stating that Petitioner/management terminated their fixed term employment contracts during pendency of dispute without obtaining permission or approval of Tribunal – Tribunal passed award reinstating workmen along with backwages, hence this petition – Whether award passed by Tribunal requires interference under Articles 226/227 of Constitution or not – *Held*, scope of intervention of Court in award passed by Labour Courts/Industrial Tribunals under its writ jurisdiction is very limited and same could only be done if Court below had erred in law – Tribunal adjudicated complaint filed by Respondents on aspect of alleged illegal termination – While dealing with various issues, Tribunal held that Petitioner entity violated Section 33 of Act and therefore, termination could not be held to be legal in eyes of law – Petitioner, at this stage, could not be permitted to take view contradictory to view taken by it before Tribunal – Tribunal had provided detailed discussion in impugned award which was based on testimony and evidence presented before it – Reasoning in impugned award shows that same was in accordance with law and there was no infirmity in arriving at said finding – Contention of Petitioner that Tribunal erred in adjudicating issue of maintainability of complaint, espousal and violation of conditions for dismissal did not hold any ground – Petitioner failed to make out case to show that Tribunal had acted in

arbitrary manner or in contravention to law – This Court did not find any error or illegality in impugned award passed by Industrial Tribunal – Award upheld – Petition dismissed. [*Deutsche Lufthansa AG v. Nayan Pahwa*]

(CHANDRA DHARI SINGH, J.)
2024-III-LLJ-569 (Del)

DISCIPLINARY PROCEEDINGS

Illegal gratification – Charge memorandum issued against Petitioner for accepting illegal gratification from Complainant – In second report Enquiry authority held charges as proved against Petitioner – Whether, when finding of enquiry officer was partly in favour of Petitioner in first enquiry, was he entitled to second show cause notice before submitting revised report – *Held*, open for any enquiry authority to hold charge as partly proved – Disciplinary authority could not once again redirect enquiry authority to come up with different finding – When confusion in report and clarification needed that could never be done behind back of *delinquent* officer without affording him opportunity – Proceedings happened behind back of Petitioner, hence vitiated – Impugned report and second show cause notice, set aside – Disciplinary authority directed to apply mind on enquiry report afresh – Petition allowed. [*N. Senthil Kumar v. Secretary*]

(D. BHARATHA CHAKRAVARTHY, J.)
2024-III-LLJ-497 (Mad)

DISMISSAL

Exceed of Jurisdiction – The Industrial Disputes Act, 1947, Section 33(2)(b) – Respondent no. 1 dismissed from service for misconduct of misappropriation by Petitioner-Management – Whether, Management justified in dismissing service of Respondent – *Held*, Authority wrongly attempted to re-appreciate evidence of Enquiry Officer like Appellate Authority – Authority could not re-appreciate evidence while exercising jurisdiction under Section 33(2)(b) of Act – Authority exceeded jurisdiction – Findings recorded by Authority in contravention to Section 33(2)(b) of Act – Impugned order, set aside – Petition allowed. [*Management, TNSTC v. M. Jayashankar*]

(C. KUMARAPPAN, J.)
2024-III-LLJ-564 (Mad)
LNINDORD 2024 MAD 1821

RECRUITMENT PROCESS

Age Relaxation – Petitioner participated in recruitment process, however, his candidature was rejected for being over-aged – Whether, Petitioner was entitled to age relaxation – *Held*, Petitioner over-aged by only 19 days as per notification – First condition for availing age relaxation satisfied as Petitioner working on contractual basis – As per second condition, Petitioner sought one-time measure for participation in first regular selection process for post for which he qualified – Petitioner entitled to age relaxation – As only 19 days prayed for age relaxation it could straightway be granted – Government order intended to give effect to recommendation of oversight committee – Impugned order, quashed – Respondent directed to grant age relaxation to Petitioner – Petition disposed of. [*Dr. S. Kumaraguru v. Registrar, NIT*]

(D. BHARATHA CHAKRAVARTHY, J.)
2024-III-LLJ-505 (mad)
LNINDORD 2024 MAD 1728

REGULARISATION

Transfer of Post – Petitioners engaged as artisans in their respective crafts namely Carpentry and Blacksmith – Petitioners were granted permanent employment in the cadre of Helper Grade II Carpentry, however, by impugned order they were deputed to hold the post of some other cadre – Petitioners could not man the said cadre, hence this petition – Whether, order of transfer of posting of Petitioner to other cadre, sustainable – *Held*, the Petitioners having been conferred permanency in a particular post were entitled to continue to the said post especially considering the fact that the Petitioners were all Carpenters/craftsmen/artisans and the do not have a formal school education – If the Respondents were not in a position to allocate carpentry work to the Petitioners in Chennai, they can be transferred along with their posts to those Carpentry units, so that they can be employed as Helper Grade II Carpentry – Impugned order, quashed – Petition allowed. [*T. Devaraj v. TN Khadi and Village Industries Board*]

(D. BHARATHA CHAKRAVARTHY, J.)
2024-III-LLJ-502 (Mad)
LNINDORD 2024 MAD 1760

REGULARIZATION OF SERVICES

Contractual Appointment – Petitioner's request for regularization rejected by Respondent-University and she was directed to employ herself through University approved Outsourcing Agency – Whether, Petitioner entitled for regularization of her services – *Held*, Research being important works of any University can never be manned by staff through outsourcing agency – Every other staff treated as regular employees though their initial appointment on contract basis – Petitioner occupied regular post in permanent department of Respondent no. 2-University – Funding agency ordered that Petitioner's services be regularized yet for no reason, Respondent no. 2 has not regularized services of Petitioner – Respondents directed to regularize services of Petitioner – Petition allowed. [*T. Priya v. Secretary to Government*]

(D. BHARATHA CHAKRAVARTHY, J.)
2024-III-LLJ-522 (Mad)
LNIND 2024 MAD 4369

REGULARIZATION

Contract workers – Contract Labour (Regulation and Abolition) Act, 1970, Section 7- Labour Court passed impugned order in favour of Respondents/workers who were outsourced by agencies to Petitioners, holding that Respondents were employees of management of 1st Petitioner and entitled to regularization from date of their appointment, hence this petition – Whether impugned order passed by Labour Court merits intervention of this Court – *Held*, 1st to 3rd Respondents/workers were under supervision of Petitioners, and same was supported by testimony of workmen and documentary evidence like relieving and joining certificates, transfer/posting documents, ID cards, and experience certificates issued by 1st Petitioner – Testimony of 1st Petitioner's witness, MW-1, revealed that 1st Petitioner never obtained license under Section 7, and it issued memos and managed leave applications – Despite changing three contractors, same workmen remained employed – 1st Petitioner exercised direct control over workers by managing all aspects of their employment, therefore, contract between contractors and workers were sham and bogus – Tribunal correctly held that Petitioners failed to prove that workmen were not direct employees of 1st Petitioner – Award did not suffer from any illegality and merits no interference of writ Court – Tribunal rightly held that workers were entitled for regularization

from initial date of their joining – Petitioner's witness admitted that workmen were qualified to be appointed at position of Lower Division Clerks and work they were doing were of perennial nature – Workers were selected by proper procedure – Petition was not fit case for interference under extraordinary writ jurisdiction of this Court – Petition dismissed. [*Director, CGHS v. Shri Ram Chander*]

(CHANDRA DHARI SINGH, J.)
2024-III-LLJ-612 (Del)

TERMINATION OF SERVICE

Suppression of Factual Information – Single Judge set aside order of termination of services of Respondent and Appellants were directed to reinstate Respondent in service – Division Bench upheld order of Single Judge, hence this appeal – Whether, Appellants justified in terminating services of Respondent on ground of suppression of factual information – *Held*, Respondent required to furnish relevant factual information in Verification Roll - All incidents relating to registration of FIR, detention of Respondent occurred much before filling up Verification Roll – Not case of clean acquittal but case of paucity of evidence that led to acquittal of Respondent – Respondent had complete knowledge of criminal cases – He willfully withheld material information from Appellants – Respondent does not deserve any latitude – Disciplinary proceedings conducted in a fair manner – Impugned judgment, quashed – Appeal allowed. [*Union of India v. Shishu Pal*]

(HIMA KOHLI, J.)
2024-III-LLJ-481 (SC)
LNIND 2024 SC 308