

AIBEA's

LEGAL NEWS

Q – 3 July – Sept. 2023

ALL INDIA BANK EMPLOYEES' ASSOCIATION

LEGAL NEWS
From AIBEA

BULLETIN Q – 3
July - Sept 2023

JULY

BENEFITS

Encashment of Unearned leave – Industrial Disputes Act, 1947, Sections, 2-A, 10, and 33(C)(2), 33(C)(5) – Labour Court, held that employees had accrued right to demand wages in terms of settlement, by-laws and Government Orders – On petition, Single Judge held that employees were not entitled to get benefits in view of incomplete amendments and that there was delay of more than 3 years in making claim, hence this appeal – Whether, Order of Single Judge holding that there was no pre-existing right for claim of encashment of unearned leave on private affairs, could be sustained – *Held*, once benefits have been extended to employees retrospectively, there existed pre-existing right and that application under Section 33(C)(2) of Act, was maintainable – Benefits that have already been accrued cannot be taken away unilaterally – In light of Clause No. 1 in settlement, employer had treated all persons in bank as workmen for purpose of settlement – Once by-law was registered, right had been accrued, employees were entitled to demand amount as per settlement as it became pre-existing right – Finding of Single Judge that there was no pre-existing right for claim of encashment of unearned leave on private affairs, could not be correct – Order of Single Judge, set aside – Appeal allowed. [*R. Swaminathan v. Central Co-op Bank Ltd*]

(S. VAIDYANATHAN, J.)
2023-III-LLJ-179 (Mad)

DEPARTMENTAL ENQUIRY

Request for Legal Practitioner – Pondicherry University (Control and Appeal) Rules, Rule 9(8) – Appellant/petitioner faced with grave charges, for which, enquiry initiated – Appellant's request for availing assistance of legal practitioner, rejected on ground that in terms of sub-clause (8) of Rule 9, permission to engage Lawyer was a bar and same confirmed by Writ court, hence this appeal – Whether, order of rejection of request for availing assistance of legal practitioner in departmental enquiry, sustainable – *Held*, Appellant had no personal bias or official bias against Enquiry Officer – Ordinance Rules did not have any provision for appointment of Enquiry Officer and outsider – No prejudice/bias against Enquiry Officer and that charges framed

against Appellant were not grave in nature, hence there was no requirement for trained mind to defend employee in enquiry – It was for Department to decide what kind of punishment had to be imposed in enquiry proceedings, but it did not help to defend Petitioner in enquiry – Impugned order passed by Single Judge, confirmed – Appeal dismissed. [*A.P. Mourougane v. Pondicherry University*]

(S. VAIDYANATHAN, J.)
2023-III-LLJ-163 (Mad)
LNIND 2022 MAD 5588

DEPUTATION

Reference – Respondent-workman challenged order of deputation through petition which was dismissed – Respondent-workman, thereafter, filed suit challenging order of deputation, however, during pendency of suit, Respondent approached State Government for referring dispute to Labour Court – Labour Court by award directed for reinstatement of Respondent with 40% back wages and also awarded an amount of Rs.2000/- as expenses, hence this petition – Whether, reference made to Labour Court using term "termination" in place of transfer-deputation order could sustain award made by Labour Court awarding reinstatement with back wages to extent of 40% to Respondent – *Held*, order sending Respondent on deputation was challenged through writ petition and by filing original suit before same reached Labour Court through reference – Reference order out places word "deputation" by "termination" which on record was not available – Interpretation afforded by Respondent counsel that non joining at transferred place by workman amounted to termination cannot be accepted – Labour Court while making award had in part held deputation order to be bad and thereafter proceeded to hold that order terminating services was illegal and same was set aside was against material on record – Reference was totally non-existent and only workman was sent on deputation and Labour Court acting on said reference had gone beyond terms of reference and made award – Award made by Labour Court, quashed – Petition allowed. [*Triveni Engineering v. State of U.P.*]

(ROHIT RANJAN AGARWAL, J.)
2023-III-LLJ-64 (All)

DISMISSAL FROM SERVICE

Rejection of Approval – Industrial Disputes Act, 1947, Section 33-2(b) – Tamil Nadu Industrial Disputes Rule, 1958, Rule 64 – 2nd Respondent/employee-workman was dismissed from service and as an industrial dispute was pending, Management filed application, seeking approval of action – Approval application rejected as there was delay of eight days in filing application which was confirmed by Single Judge, hence this appeal – Whether, Appellant had complied with *proviso* to Section 33(2)(b) of Act and Rule 64(2) while seeking approval of dismissal order – *Held*, there was delay of eight days in serving order of dismissal on employee – Rule 64(2) of Rule categorically state that employer will have to make application simultaneously – Appellant-Corporation failed to comply with mandatory provisions of Section 33(2)(b) of Act, coupled with Rule 64 of Rules – If Approval Petition was rejected, then employee was deemed to be in service as if there was no dismissal order in eye of law, thus, order passed by

employer was *non-est* in eye of law – Appeal dismissed. [*Management, TNSTCL v. Asst. Commissioner of Labour*]

(S. VAIDYANATHAN, J.)
2023-III-LLJ-167 (Mad)
LNIND 2022 MAD 5796

EMPLOYMENT

Permanent Status – Industrial Disputes Act, Clause 10, Schedule V – Authority allowed claim of Workmen for permanent status – On petition, Single Judge confirmed order of authority and conferred permanent status, hence this appeal – Whether, order of Single Judge, conferring permanent status, sustainable – *Held*, employees have been working for years together and continuing them without conferring permanent status, was unfair labour practice in terms of Clause 10 of Schedule V to Act – Three employees shall be granted permanent status in terms of order of Authority as some employees died and some did not report for work – Persons who have died during pendency of proceedings, their legal heirs would be entitled to monetary benefits – Other employees who have not reported for work and attained permanent status, were concerned, it was open to them to raise appropriate industrial dispute – Order of Authority insofar as employees who have died and were on Rolls, concerned, shall be implemented – Appeal disposed of. [*Management, TNCSC v. P.S. Thangamani*]

(S. VAIDYANATHAN, J.)
2023-III-LLJ-174 (Mad)
LNIND 2023 MAD 1163

EMPLOYMENT

Regularization of Service – Petitioner-employees sought to direct Respondents to regularize their services with effect from date of completion of ten years of service as daily wage employees, hence this petition – Whether, services of Petitioners could be regularized including other service benefits and continuity of service – *Held*, Petitioners continuously engaged for 10 years – Government Order (G.O.) directed that services of daily wage employees in all Government department who had rendered 10 years' service as on specified date be regularized by appointing them in same scale of pay of post in accordance with service conditions prescribed for post concerned – Those who have completed 10 years' service in daily wage category as on specified date would be entitled to get benefits arising out of said G.O. – Impugned order denying benefit to Petitioners to regularize their services on completion of 10 years of service, set aside – Respondents directed to pass necessary orders to regularize services of Petitioners and further, other service benefits including continuity of service for purpose of calculating their pension on superannuation be extended to Petitioners – Petition disposed of. [*B. Rajendran v. Agri. Production Commissioner*]

(R. SURESH KUMAR, J.)
2023-III-LLJ-38 (Mad)

Reinstatement – Petitioner-workman appointed as Clerk-Cum-Cashier with Respondent-bank dismissed from service – Labour Court *vide* award dismissed claim of Petitioner for reinstatement in service, hence this petition – Whether, award passed had an infirmity which so requires interference of Court – *Held*, charges against Petitioner were duly proved by Respondent bank – Tribunal had passed detailed order after considering all material and evidence on record before it – Petitioner had only raised disputed questions of facts which were examined by Tribunal as fact-finding Court – Tribunal and before that departmental authorities *i.e.,* disciplinary authority and appellate authority have all concluded that Petitioner misconducted herself and was not reliable person to be kept in employment of bank – No material to interfere with order of Tribunal, however, *quantum* of punishment modified to extent of substituting punishment of removal from service to that of compulsory retirement – Petition allowed. [*Sneh Aggarwal v. Punjab National Bank*]

(DINESH KUMAR SHARMA, J.)
2023-III-LLJ-72 (Del)

GRATUITY

Applicability of Act – Payment of Gratuity Act, 1972, Section 4(5) – Tamil Nadu Co-operative Societies Act, Sections 153 and 154 – Appellant employed with Respondent-District Central Co-operative Bank, claimed gratuity in terms of Gratuity Act and filed application before Controlling Authority and same was granted – On petition Single Judge, held that Societies Act alone will govern matter, hence this appeal – Whether, Payment of Gratuity Act would be applicable to employees of Co-operative Society – *Held*, employees cannot be prevented from approaching authority under provisions of Gratuity Act – When there were two forums available to employee, he was entitled to choose forum which was beneficial to him – Provisions of Societies Act, and Gratuity Act, applicable to Co-operative Society – No evidence before authority concerned to show that Management was giving better benefits than what had been provided for under Gratuity Act to drive employees to get relief invoking Section 153 or Section 154 of Societies Act – Employees cannot be precluded from approaching authority claiming gratuity when Gratuity Act, gives better benefit than one provided under Scheme – Impugned order of Single Judge, set aside and order of Controlling Authority, restored – Appeal allowed. [*P. Dhandapani v. Central Co-op Bank Ltd*]

(S. VAIDYANATHAN, J.)
2023-III-LLJ-158 (Mad)
LNIND 2022 MAD 5794

Applicability of Act – Payment of Gratuity Act, 1972, Section 4(5) – Tamil Nadu Co-operative Societies Act, Sections 153 and 154 – Gratuity not paid to Appellants – Claim granted by Controlling Authority and confirmed by Appellate authority – Single Judge held that under Sections 153 and 154 of Act, aggrieved persons had remedy before appropriate forum and not under Act 1972 – Whether, Single Judge justified in holding that Act 1972 would not be applicable to employees of Co-operative Society –

Held, if an employee had attained age of superannuation on completion of sufficient years of service, he was an employee under Act – When two forums available, an employee was entitled to choose forum which was beneficial to him – Both Acts applicable to Co-operative Society – No evidence to show Management gave better benefits as provided under Act 1972 to drive employees to get relief invoking Act – Though Act 1972 was a general Act and Act was a special enactment, it does not mean that employees were precluded from approaching authority claiming gratuity when Act 1972 gave better benefit than one provided under Scheme – Impugned order, set aside – Order of Controlling Authority, restored – Appeal allowed. [*N. Ponmudi v. Central Co-operative Bank Ltd*]

(S. VAIDYANATHAN, J.)
20233-III-LLJ-153 (Mad)
LNIND 2022 MAD 5795

INDUSTRIAL DISPUTE

Termination – Industrial dispute raised by Petitioner-Workman with respect to non-regularisation, denial of equal pay for equal work, and termination of service, dismissed, hence this petition – Whether, services of Petitioner have been terminated illegally by Respondent-management and Petitioner entitled to wages as admissible to regular employees for his muster roll employment period – *Held*, vigilance enquiry was never concluded – Petitioner was removed on basis of an allegation subject to further enquiry, however, there was no final enquiry report that held Petitioner guilty of alleged forgery – Allegation against Petitioner was that signature of Commissioner of MCD appearing on his application for appointment, was forged, however, Respondent failed to conclude vigilance enquiry, in this regard – Guilt of Petitioner was not proved – Respondent failed to substantiate allegations against Petitioner, hence, termination of services of Petitioner was without any valid reason – Petitioner was in employment with Respondent only for short duration – Even if Petitioner's termination held to be illegal, reinstatement in service could not be termed as proper remedy – Petitioner could be awarded compensation *in lieu* of reinstatement – Impugned Award, set aside – Petition partly allowed. [*Bhola Thakur v. MCD*]

(GAURANG KANTH, J.)
2023-III-LLJ-56 (Del)

PENSION SCHEME

Entitlement – Petition filed to direct Respondents to bring Petitioners under old pension scheme prevailed prior to implementation of contributory pension scheme and transfer pension contribution collected already from Petitioner to old pension scheme – Whether, Petitioners should be given benefit of old Pension Scheme on basis that selection process commenced much before specified date and delay in completing process was not attributable to Petitioners – *Held*, language in order quite clear that old

Pension Scheme will not apply to Government servants appointed on or after specified date – For beneficial pension scheme, wider interpretation must be given to benefit large section of employees – Court should not adopt strict interpretation and thereby deprive employee of beneficial Pension Scheme – Process of selection started with issuance of notification, nearly 11 months before new Pension Scheme was brought into force – Petitioners would have had benefit of scheme, if selection process had been completed with speed – There was delay in completing selection process and it is nobody's case that delay attributable to Petitioners – Respondents to consider representations made by Petitioners – Petitions allowed. [*S. Sudhakar v. Government of Tamil Nadu*]

(N. ANAND VENKATESH, J.)
2023-III-LLJ-113 (Mad)
LNINDORD 2023 MAD 184

RETRENCHMENT

Direction for Reinstatement – Industrial Disputes Act, 1947, Section 25-F – Respondents retrenched by Appellant-Corporation of ground of closure of establishment – Tribunal directed Appellant-Corporation to reinstate Respondents and same confirmed by Writ Court, hence this appeal – Whether, order of reinstatement of retrenched workmen, sustainable – *Held*, trite law that when manner of doing particular act prescribed under Statute then act must be done in that manner only – Retrenchment amount was paid to Respondents in utter disregard of Section 25-F of Act 1947 and, therefore, once employer had not followed statutory obligation, then acceptance of retrenchment amount would not be an *estoppel* for workmen to challenge order of retrenchment – Where termination found to be illegal on account of unfair labour practice then reinstatement must be rule – Appeal dismissed [*India Tourism Dev. Corp. v. Fayaz Ahmad Sheikh*]

(RAJNESH OSWAL, J.)
2023-III-LLJ-93 (JNK)
LNIND 2023 JNK 1

TERMINATION OF SERVICE

Violation of Provision – Industrial Disputes Act, 1947, Sections 2(j), 25F – Labour Court held termination of workmen as illegal and granted compensation, hence, these petitions by workman and Management – Whether, workman entitlement for reinstatement – Whether Management is an industry under Section 2(j) of Act and award of compensation, sustainable – *Held*, termination was illegal for violation of Section 25F of Act – Settled principle of law that if termination held illegal, relief of reinstatement would not automatically follow – Compensation *in lieu* of reinstatement granted to workman, enhanced, in interest of justice – Consultative services and research publication offered by management could be classified as production of services intended to satisfy human needs, hence, Management was an industry under

Section 2(j) of Act and provisions of said legislation were applicable – Petition filed by Management, dismissed – Petition filed by workman, partly allowed. [*National Institute of Immunology v. Vinod Kumar Gupta*]

(GAURANG KANTH, J.)
2023-III-LLJ-223 (Del)
LNIND 2023 DEL 2567

Disproportionate Punishment – Industrial Disputes Act, 1947, Section 11-A – Appellant-Workman terminated from service by Management for misconduct – Labour Court directed reinstatement with 50% back wages – Single Judge allowed Petition filed by Management and held that award of Labour Court was not in consonance with legal principles – Whether, Single Judge justified in setting aside impugned award considering gravity of misconduct – *Held*, usage of abusive words and showing threat posture not to be construed grave so as to impose capital punishment of dismissal from service – No one could expect better words from low-level employee – Labour Court empowered to interfere with punishment, if it was found that punishment was grossly disproportionate and power exercised by Labour Court under Section 11-A of Act could not be curtailed by any Court, unless finding of Labour Court was *perverse* – Simple absolvation of charges would not make Workman realize about his misconduct, hence award of Labour Court, modified – Management directed to reinstate Workman with no back-wages – Order of Single Judge interfered with – Appeal partly allowed. [*S. Raja v. Hindustan Unilever Ltd*]

(S. VAIDYANATHAN, J.)
2023-III-LLJ-206 (Mad)

AUGUST

CESSATION OF EMPLOYMENT

Industrial Dispute – Industrial Disputes Act, 1947, Sections 2-A, 2(k) and 33 – Industrial dispute raised by Petitioners-Business Correspondents for cessation of their engagement – Conciliation officer directed to maintain status quo – Single Judge held Section 33 of Act attracted – Whether, Conciliation Officer could be directed to conciliate and submit failure report – *Held*, by raising dispute after notice Petitioner could not say non-compliance of Section 33(1)(a) of Act – No industrial dispute pending while issuing notice of termination – Single Judge rightly held that issue has got to be adjudicated by Industrial Tribunal – No proof to show statutory violation – Individuals collectively could raise dispute – Powers of Civil Court different from powers of Industrial Adjudicator – As Petitioners sought for regularization, dispute fell under Section 2(k) of Act – Duty of Conciliation Officer to conciliate and submit failure report –

Industrial Adjudicator could decide issue under Section 2-A of Act – Appeals disposed of. [*General Manager, TNGB v. Vangi Vaniga Sangam*]

(S. VAIDYANATHAN, J.)
2023-III-LLJ-433 (Mad)
LNIND 2023 MAD 2035

DEPARTMENTAL PROCEEDINGS

Quashing of Chargesheet – Odisha Civil Service (Pension) Rules, 1992, Rule 7 – Departmental proceedings initiated against Petitioner pursuant to a chargesheet, hence this petition – Whether, departmental proceedings initiated against Petitioner could be quashed – *Held*, as per Rule 7 of Rules, 1992, officer/employee, who stood retired from service, inquiry indeed could be initiated against him/her, provided sanction was obtained from Government and must be during period of 4 years before such institution and explanation added to the scheme of Rules made it clear that proceedings shall be deemed to be instituted on date of which statement of charges were issued to Government servant/pensioner, as case may be – Petitioner stood retired from service on 31.07.2021 and chargesheet was served on 11/16.10.2021 and this was for period when Petitioner served as a Registrar from 28.06.2012 to 03.10.2015, and that it is in disputedly beyond period of four years of such in – Chargesheet and departmental proceedings against Petitioner, quashed – Petitioner entitled to all retiral benefits – Petition allowed. [*Suchismita Misra v. High Court of Orissa*]

(AJAY RASTOGI, J. AND BELA M. TRIVEDI, J.)
2023-III-LLJ-241 (SC)
LNINDORD 2023 SC 31

DISCHARGE FROM SERVICE

Reinstatement – Labour Court held that punishment of discharge imposed by Disciplinary Authority and Appellate Authority on Respondent No. 2/Workman was illegal and hence, Respondent No. 2 was entitled to reinstatement in service with Petitioner/Bank, hence this petition – Whether, Disciplinary Authority acted arbitrarily to impose punishment of discharge from service on Respondent No. 2 – *Held*, exercise of discretion in imposition of punishment by Disciplinary Authority or Appellate Authority was dependent on host of factors such as gravity of misconduct, past conduct, nature of duties assigned to *delinquent*, responsibility of position that *delinquent* holds, previous penalty, if any, and discipline required to be maintained in department or establishment he worked – Disciplinary Authority did not take into consideration any of aforesaid factors before discharging Respondent No. 2, hence, punishment imposed was illegal and bad in law – No interference in impugned order – Petition dismissed. [*State Bank of India v. Presiding Officer*]

(GAURANG KANTH, J.)
2023-III-LLJ-258 (Del)
LNIND 2023 DEL 2628

DISCIPLINARY PROCEEDINGS

Imposition of Penalty – Disciplinary Authority imposed major penalty of withholding five annual increments on Respondent no. 1 – In intra-court appeal, order of Single Judge was reversed and punishment imposed was set aside, hence this appeal – Whether, due process was followed by Court while setting aside punishment order – *Held*, during course of inquiry, fair opportunity of hearing afforded to Respondent no. 1 at every stage – Judgment of High Court show that matter was dealt with in manner as if it was first stage of case – Inquiry was conducted and report was prepared, which was clearly not scope in judicial review – High Court proceeded to reappreciate entire evidence as if conviction in criminal trial was being re-examined by next high court – When changed form of quotation contained signature of Respondent no. 1, it clearly established involvement in tampering of document – Appeal allowed. [*Indian Oil Corporation v. Ajit Kumar Singh*]

(RAJESH BINDAL, J.)
2023-III-LLJ-244 (SC)
LNIND 2023 SC 410

Retiral Benefits – Tamil Nadu Cements Corporation Limited Service Rules, Rule 2.22(b) – Disciplinary proceedings were initiated against Appellant – Petition filed by Appellant against disciplinary proceedings, dismissed by Single Judge, hence this appeal – Whether, disciplinary proceedings initiated against Appellant, sustainable and whether Appellant entitled for retiral benefits – *Held*, when employee continued under suspension beyond period of six months then he would be entitled for subsistence allowance – Not paying subsistence allowance to Appellant was incorrect in law – Private business by family member could not be said to be prohibited under Rule – Considering lapse of time of more than 10 years after retirement when Appellant was left without even payment of subsistence allowance lawfully due to him, continuation of disciplinary proceedings against him, especially, when no charge was made out as per Conduct Rules, Single Judge ought to have allowed petition – Respondents directed to permit Appellant to retire from service and pay all retiral benefits – Appeal allowed. [*T. Retnapandian v. TN Cements Corp. Ltd*]

(J. NISHA BANU, J. AND D. BHARATHACHAKRAVARTHY, J.)
2023-III-LLJ-452 (Mad)
LNIND 2023 MAD 2062

PAYMENT OF BONUS

Exemption – Payment of Bonus Act, 1965, Section 32(v)(c) - Employees Union sought bonus for workman – Tribunal held that management exempted from payment of bonus being institution established not for purposes of profit – Single Judge set aside impugned award passed by Tribunal, hence this appeal – Whether, Appellant was exempted from payment of bonus under Section 32(v) of Act – *Held*, Appellant-Hospital

did not ran on charitable purposes – No free treatment given to patient by Appellant – No document produced to establish that management was entitled to exemption under Section 32(v)(c) of Act – Earning of profit necessarily entail responsibility of sharing some part of such profit with employees – Hospital was running on basis of income received from patients – Impugned Award of Tribunal, not sustainable – Appellant not entitled for exemption under Section 32(v)(c) of Act and therefore, liable to pay bonus to its employees – Appeal dismissed. [*Batra Hospital v. Batra Hospital Employees Union*]

(SUDHIR KUMAR JAIN, J.)
2023-III-LLJ-273 (Del)
LNIND 2023 DEL 2432

REGULARIZATION

Daily Wager – Respondent-employees sought for regularization of their service – Appellant no. 1 rejected request of regularization – Single Judge granted benefits of regularization to Respondents, hence this appeal – Whether, Single Judge justified in granting benefits of regularization to Respondents – *Held*, Respondents were employed as daily wages employees on temporary basis and not against any sanctioned posts – Government orders issued to create temporary supernumerary posts – Respondents appointed on daily wages could not claim benefits under Government order – Supernumerary post created within organization not part of normal hierarchy – No mandate to panchayat unions to create posts periodically – Due to insufficient funds, posts were not extended – Respondents having not completed 10 years of service not entitled for regularization – Impugned order, set aside – Appeal allowed. [*State of Tamil Nadu v. J. Manikandan*]

(D. KRISHNAKUMAR, J.)
2023-III-LLJ-470 (Mad)
LNIND 2023 MAD 2041

REINSTATEMENT

Full Back-Wages – Labour Court, held that removal of 2nd Respondent-workman from service by Petitioner-Management was illegal and directed reinstatement of 2nd Respondent with full back-wages, hence this petition – Whether, reinstatement in service of 2nd Respondent with full back-wages, sustainable – *Held*, finding given by Labour Court could not be said to be *perverse* and illegal for reason that same was based upon statement of 2nd Respondent recorded before Labour Court – No rebuttal as Petitioners failed to avail opportunity of cross-examination and to produce any evidence in their support, therefore, Labour Court accepted material whatever produced by 2nd Respondent before it – 2nd Respondent had stated that after removal from service, he remained unemployed – In absence of any dispute raised by Petitioners, there was no reason with Labour Court to disbelieve statement of 2nd Respondent – Petitioners being employer failed to discharge their burden to prove that 2nd Respondent was gainfully

employed after his termination – Under such circumstances, no illegality in impugned award passed by Labour Court to grant full back-wages to 2nd Respondent – No jurisdictional error in impugned award – Petition dismissed. [*Executive Director v. Presiding Officer*]

(SANJAY DWIVEDI, J.)
2023-III-LLJ-249 (MP)

TERMINATION

Employer-Employee relationship – Industrial Disputes Act, 1947, Sections 2A, 2k – Service of Appellant-workman terminated by Respondent-company – Tribunal directed re-instatement – Trial Judge set aside order passed by Tribunal – Whether, Trial Judge erred in setting aside findings of Tribunal – *Held*, no documents produced by company to show Appellant engaged through drivers agency – When vehicle owned by business undertaking for official work it was presumed that driver was employee of such undertaking unless contrary was proved – No administrative order empowering officers to appoint drivers of their choice – Although no appointment letter was issued but that could not negate claim of Appellant as employee of company – Not unnatural salaries paid by managerial persons – Trial Judge erred in setting aside findings of Tribunal salaries paid by managerial persons – Trial Judge erred in setting aside findings of Tribunal – Impugned order, set aside – Award passed by Tribunal, restored – Appeal allowed. [*Upendra Choudhury v. J.K. Industries Ltd*]

(BISWAROOP CHOWDHURY, J.)
2023-III-LLJ-328 (Cal)

Employer-Employee relationship – Whether, award of Tribunal was *perverse* – *Held*, evidence correctly evaluated by Tribunal – Appellant employee of company – Company failed to discharge its burden of proof – Conclusion reached by tribunal far from *perverse* – Writ court not right in coming to different conclusion – Impugned judgment, set aside – Order of Tribunal upheld. [*Upendra Choudhury v. J.K. Industries Ltd*]

(I.P. MUKERJI, J.)
2023-III-LLJ-328 (Cal)

Submission of Forged Documents – Petitioner terminated from service for procuring state government job in fraudulent manner and also indulging in act of misconduct, hence this petition – Whether, termination order of Petitioner sustainable – *Held*, Petitioner had put up totally false case before Court that she did not participate in departmental proceedings or that she was unaware of any departmental proceedings – Documents clearly show that Petitioner was fully aware of departmental proceedings against her and that she fully participated – Proceedings clearly record presence of

during departmental proceedings – Findings by Enquiry Officer show that Petitioner failed to prove that certificate of passing Class 8th, was genuine document – Petitioner submitted forged document in support of her educational qualification at time of seeking compassionate appointment – Petition dismissed. [*Kiran Thakur v. Resident Commissioner* Bihar Bhavan]

(MINI PUSHKARNA, J.)
2023-III-LLJ-410 (Del)
LNIND 2023 DEL 2081

SEPTEMBER

BENEFITS

Leave Encashment – Entitlement – Maharashtra Non-Agricultural Universities and Affiliated Colleges Standard Codes (Terms and Conditions of Service of Non-Teaching Employees) Rules, 1984, Rule 39 – Respondent 4-Assistant commissioner of social welfare issued order directing that amount paid to Petitioner towards leave encashment, be recovered on premise that Petitioner was not entitled to benefit of leave encashment – Whether, Petitioner entitled to benefit of leave encashment in view of Rule 39 of Rules – *Held*, emphasize of State Government that previous judgment of High Court was restricted to relief of pension and gratuity and excludes leave encashment, was misconceived – High Court had no occasion to consider grievance which was not raised, and which indeed did not exist – Right to receive leave encashment benefit flows from Rule 39 of Rules – Petitioners had no reason or occasion to invite High Court to make any observation as regards leave encashment, which right stood crystallized by statutory service conditions – Submission of State Government that in view of exclusion of leave encashment from Government Resolution, Petitioner was not entitled to relief was founded on pathetic misconception of law – Petitioner and similarly situated employees entitled to benefit of leave encashment in view of Rule 39 of Rules – Impugned order, set aside – Petition allowed. [*Pramod v. State of Maharashtra*]

(ROHIT B. DEO, J.)
2023-III-LLJ-523 (Bom)
LNIND 2023 NGP 121

INDUSTRIAL DISPUTE

Settlement – Industrial Disputes Act, 1947 – Sections 2A(2) and 2(k) – Settlement arrived between Union on which Petitioner was member and Respondent no. 3/Employer on mutual agreement – Industrial dispute raised by Petitioner-individual workmen closed by Respondent no. 2, hence this petition – Whether, Respondent no. 2 could close industrial dispute without submission of failure report and whether settlement arrived by parties reached finality – *Held*, Union, to which Petitioners were members, along with other 2 minority Unions entered into settlement and so long as Petitioners did not dispute power of office bearers to enter into settlement, the

Settlement which has been entered into between Union and Respondent no. 3 would squarely stand attracted – Petitioners, could not try to wriggle out of issue by importing something into clause of settlement that without majority approval of General Body, the Settlement could not be acted upon – Recognized Union, which has the majority, had entered into Settlement with Respondent no. 3 and, therefore, individual workmen had no right to raise any industrial dispute by invoking provision of Section 2A(2) of Act – Petition dismissed. [*Sivaraj. S. v. State of Tamil Nadu*]

(M. DHANDAPANI, J.)
2023-III-LLJ-580 (Mad)
LNINDORD 2023 MAD 1803

RESERVATION FOR PROMOTION

Rights of Person with Disability – Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995, Section 2(i) and Chapter VI Section 33 clauses (i) to (iii) – Respondent no. 1-person with disability who sought for relaxation denied promotion – Petition filed by Respondent no. 1 allowed by High Court – Whether, High Court justified in holding that Appellant had to apply reservation in promotion for persons with disabilities in respect of Group 'A' and Group 'B' posts – *Held*, mere absence of express mandate requiring reservation in promotion for persons with disabilities could not be construed as not obliging to keep reserved vacancies on promotional posts under Chapter VI clauses (i) to (iii) of section 33 of Act 1995 – Because employee suffering from disability defined in section 2(i) of Act, 1995 not to be denied promotion – Persons with disabilities not to be denied protection of rights in public employment – Duty of Court was not to legislate but to interpret the law – Respondent no. 1 had statutorily conferred right to claim reservation in promotional appointment under Act, 1995 – High Court did not mandatorily direct grant of promotion – Appellants directed to grant promotion to Respondent no. 1 – Appeals disposed of. [*Reserve Bank of India v. A.K. Nair*]

(DIPANKAR DATTA, J.)
2023-III-LLJ-481 (SC)
LNINDORD 2023 SC 32

RESERVATIONS IN PROMOTIONS

Public Service – Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 – Constitution of India, 1950, Article 16(4-A) – Whether reservations in promotions for any class of citizens other than those covered by Article 16 (4-A) of Constitution, permissible – *Held*, persons with disabilities need to be accommodated in public service – Reasonable accommodation ought not to open gates for demands by those benefitting for reservation in promotional vacancies in public services. [*Reserve Bank of India v. A.K. Nair*]

(S. RAVINDRA BHAT, J.)
2023-III-LLJ-481 (SC)
LNINDORD 2023 SC 32

RETIRAL BENEFITS

Withheld for departmental action – General Insurance (Employees) Pensions Scheme, 1995, Rule 45 – On the day of superannuation, Petitioner was issued show cause notice as to why departmental action should not be initiated against him for not submitting Caste Validity Certificate – Whether, issuance of show cause notice amounts to initiation of enquiry and whether Petitioner entitled for pensionary benefits – *Held*, mere issuance of show cause notice not amounted to initiation of departmental enquiry – As per Rule 45 of Scheme Gratuity could be withheld when departmental proceedings were pending against employee on date of retirement – There is no departmental or judicial proceedings pending against Petitioner, therefore, question of payment of provisional pension and withholding of benefits did not arise – Not case of Respondents that at time of entry in service, Petitioner played any fraud or obtained a certificate by playing fraud – No departmental proceedings were held against Petitioner prior to his superannuation on basis of which he could be deprived of his pensionary benefits – When Petitioner was not placed on supernumerary post, there was no justification in withholding retiral benefits – Petitioner entitled for relief of grant of retirement benefits – Petition allowed. [*Narendra K. Kumbhare v. Union of India*]

(VRUSHALI V. JOSHI, J.)
2023-III-LLJ-597 (Bom)
LNIND 2023 NGP 197

TERMINATION

Approval by Tribunal – Industrial Dispute Act, 1947, Section 10 and 33(2)(b) – Appellant-Corporation terminated service of workman for misconduct – Labour Court set aside order of termination and same confirmed by Appellate courts, hence this appeal – Whether, Labour Court justified in setting aside order of termination which was approved by Tribunal – *Held*, once order of termination was approved by Industrial Tribunal and management was permitted to lead evidence and prove misconduct before Court and thereafter on appreciation of evidence order of termination was approved, thereafter fresh reference under Section10 of Act challenging order of termination was not permissible – Order passed by Industrial Tribunal which as such was a higher forum than Labour Court had attained finality – Though aforesaid fact was pointed out before High Court, High Court had not at all considered and/or appreciated same – Judgment and award passed by Labour Court confirmed by High Court, unsustainable – Appeal allowed. [*Rajasthan SRTC v. Bharat Singh Jhala*]

(M.R. SHAH, J.)
2023-III-LLJ-519 (SC)

Casual Labours – Casual Labour (Grant of Temporary Status and Regularization) Scheme of the Department of Telecommunications, 1989 – Industrial Disputes Act, 1947, Section 17-B – Respondents-casual labours terminated from service by Petitioners – Tribunal allowed petition filed by Respondents and granted relief, hence these petitions – Whether, Petitioners justified in terminating services of Respondents – *Held*, casual workers engaged by Department to meet short-term requirements of project – Seniority list prepared based on date of joining – Valid divisional seniority list prepared by Petitioners – Retrenchment compensation, given – Though Respondents were entitled for benefit under scheme, Petitioners were not restrained from terminating services under Act – Clear from conduct of Respondents that Respondents were not interested in working with Petitioners – Petitions allowed. [*Divisional Engineer Telecom v. Munshi Prasad*]

(GAURANG KANTH, J.)
2023-III-LLJ-540 (Del)
LNIND 2023 DEL 3011

Implementation of Award – Industrial Disputes Act, 1947, Section 25F – Tribunal passed award in 1997 holding that action of Management in retrenching services of Workmen was not justified and directed Management to reinstate them and regularize their services from 1990 and to pay them 75% of their back wages and same confirmed by Single Judge – In year 2020, Division Bench disposed of appeal by setting aside order of Judge declining to interfere with award in so far as it directed regularization of services, but left untouched direction to pay 75% of back wages – Appeal filed by Workmen aggrieved by denial of regularization of their services, while Management in appeal against direction of reinstatement and payment of 75% of back wages – Whether Workmen entitled for regularization of services – Whether Management could be permitted a volte-face at later stage – *Held*, Management had not only reinstated Workmen but absorbed them in regular service – Management voluntarily chose to implement award in its totality despite conditional interim protection afforded to it – No evidence of Management that it sought for expeditious disposal of petition after complying award – Having allowed workmen to put in regular service to its own benefit for over two decades could not challenge award – Impugned order of Division Bench, set aside – Appeal filed by Management, dismissed – Appeal filed by Workmen, allowed. [*Workmen JS (Welfare)* v. *Food Corporation of India*]

(SANJAY KUMAR, J.)
2023-III-LLJ-512 (SC)
LNIND 2023 SC 435

Suppression of Information – Petitioner appointed as peon on compassionate ground was terminated on ground of suppressing information of being accused in criminal matters – Whether, employer justified in terminating services of Petitioner on ground that pendency of prosecution was suppressed – *Held*, while process of selection was initiated pursuant to employment notice, no criminal case was either instituted or pending against employee when he applied pursuant to employment notice – Employee

filled in attestation form at later stage and failed to disclose that he was prosecuted and honourably acquitted – Employer directed to reconsider issue afresh consistent with observations of Supreme Court judgment – Order of termination, set aside – Employee shall not be entitled to reinstatement or any other relief till employer has fresh look at matter – Petition partly allowed. [*Buddheshwar v. MHEB Distribution Company*]

(ROHIT B. DEO, J.)
2023-III-LLJ-567 (Bom) LNIND 2023 NGP 101

Unfair Labour Practices – Industrial Disputes Act, 1947, 5th Schedule Clause 10 – Service of Petitioner-temporary worker terminated by Respondent – Adjudication case filed by Petitioner dismissed by Tribunal, hence this petition – Whether, termination of service of Petitioner amounted to unfair labour practices done by Respondent – *Held*, reference made by Assistant Labour Commissioner found without jurisdiction – Mere pendency of petition not validate such reference – Tribunal could not adjudicate issues of salaries of employees who were not workmen under Act – Dispute arising out of termination of individual workman treated as industrial dispute – Petitioner not employed for period of 12 months – Issue of unfair labour practices was beyond scope of reference – Petitioner failed to establish case of unfair labour practices as nature of appointment not covered by Clause 10 of 5th Schedule of Act – Action of Respondent not amounted to unfair labour practices – No error in impugned judgment – Petition dismissed. [*Dinesh Pal Singh v. Presiding Officer*]

(KSHITU SHAILENDRA, J.)
2023-III-LLJ-551 (All)
LNINDORD 2023 ALL 399