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LEGAL NEWS

Q – 4 Oct. – Dec. 2023

ALL INDIA BANK EMPLOYEES' ASSOCIATION

LEGAL NEWS
From AIBEA

BULLETIN Q – 4
Oct. – Dec. 2023

OCTOBER

COMPASSIONATE APPOINTMENT

Grant of – In suit for seeking declaration, Trial Judge decreed suit and directed Respondent to be appointed on compassionate grounds – High Court restored judgment and decree of Trial Court, hence, this appeal – Whether, High Court justified in restoring judgment and decree of Trial Court – *Held*, appointment of candidate on compassionate basis does not create any vested right – Respondent filed suit for declaration and mandatory injunction seeking appointment on compassionate basis which was decreed by Trial Court and upheld and affirmed by High Court – Court find that monthly income so arrived was not less than 60% of total emoluments and thus, case of Respondent could not be considered on compassionate basis on that score – High Court ought to have taken into consideration factual details rather than just referring to judgments in answering questions of law – Appeal allowed. [*Bank of Baroda v. Baljit Singh*]

(B.V. NAGARATHNA, J. AND MANOJ MISRA, J.)
2023-IV-LLJ-48 (SC)
LNIND 2023 SC 434

PENSIONARY BENEFITS

Consideration of part-time service – Grievance of Petitioners was that their part time services from initial appointment till their appointment of regular post has not been taken into account for pensionary benefit – Whether, order of Division Bench holding that employees absorbed prior to April, 2003 entitled to count 50% of their part

time service for pensioner benefit, justified – *Held*, Petitioners originally appointed as part time Panchayat Clerks before their appointment of Junior Assistants – There was no service rules framed for Panchayat Clerks at relevant point of time – When nature of work not disputed merely on basis of nomenclature showing them as Part Time Panchayat Clerks, it cannot be said that they have not done any work as regular Panchayat Clerk – Though Nomenclature of post shown as "Part Time Panchayat Clerk", Respondent No. 3 admitted that nature of work similar to full time Panchayat Clerk – Since there were no service rules at relevant point of time, Petitioners entitled to benefit – Petitions allowed. [*M. Manickam v. Government of Tamilnadu*]

(N. SATHISH KUMAR, J.)
2023-IV-LLJ-219 (Mad)
LNINDORD 2023 MAD 1837

REJECTION OF CANDIDATURE

Involvement in Criminal Case – Selection in service of Petitioner rejected by Respondent no. 3 for involvement in criminal case, hence this petition – Whether, Petitioner entitled to be appointed – *Held*, Petitioner while he was a student participated in protest organized by fellow students against NEET examination – Right to protest for a common cause is a fundamental right which was available to each and every citizen of this country and for the purpose of participating in said protest, crime number came to be filed – Petitioner was neither acquitted on benefit of doubt or hostility of complainant, but crime which was registered as against him in an earlier stage never culminated in filing of a charge-sheet and it was closed on basis of High Court order, where High Court had already held that it was only a protest and could not have any criminal implication – Petitioner had no criminal implication in particular crime – Impugned order, quashed – Respondents directed to issue appointment order – Petition allowed. [*Arunkanth v. TNUSRB*]

(L. VICTORIA GOWRI, J.)
2023-IV-LLJ-176 (Mad)
LNINDORD 2023 BMM 952

TERMINATION

Gram Rozgar Sahayak – Petitioner engagement as Gram Rozar Sahayak was terminated, hence this petition – Whether Petitioner entitled to be subjected to a

regular departmental enquiry before terminating his services as, admittedly, order of his termination was stigmatic in nature – *Held*, petitioner was not working as regular employee against a civil post but was engaged on temporary basis on consolidated wages for one year and his engagement was continued after expiry of initial period of one year and, therefore, the safeguards available to an employee appointed on a civil post were not available to Petitioner – Termination of Petitioner from his services had been effected in accordance with conditions of his engagement after following principles of natural justice and after considering his reply to show cause notice in the light of final report of enquiry – That the petitioner was entitled to a full-fledged regular enquiry with a right to participate in said enquiry, was misconceived having regard to nature of engagement of Petitioner – Petition dismissed. [*Abid Ahmad Ganai v. UT of J&K*]

(SANJAY DHAR, J.)
2023-IV-LLJ-113 (JNK)
LNIND 2023 JNK 2

TRANSFER OF SERVICE

Redeployment –Industrial Disputes Act, 1947, Sections 9A and 25-O – Office Memorandum issued for merger of Presses where Petitioners were employees – Prayer of Petitioners sought for stay of transfer, rejected by Tribunal, hence these petitions – Whether Respondents could have merged Presses redeploying members of Petitioner associations – *Held*, policy decision taken by Government based on change of technology and financial implications could not be interfered unless illegality shown – With developments printing work in Presses, declined – As per Section 9A of Act no notice of change required to be given to Petitioner Associations – Employees whose date of retirement much after be accommodated – Petitioners employment was secure – Mandate of Section 25-O of Act applicable when closure of establishment leading to retrenchment of its employees – Petitions dismissed. [*Government of India v. Central Administrative Tribuna*l]

(V. KAMESWAR RAO, J.)
2023-IV-LLJ-147 (Del)
LNIND 2023 DEL 3495

NOVEMBER

ACCIDENT IN COURSE OF EMPLOYMENT

Employer Employee Relationship – Workmen Compensation Act, 1923, Section 30 – Appellants claimed compensation for death of deceased due to accident while in course of employment – Commissioner directed Respondent-Insurance company to pay compensation in favour of legal representatives of deceased employee – First Appellate Court set aside order of Commissioner, hence this appeal – Whether, order of High Court, sustainable – *Held*, circumstances pointed out to the employment of the deceased with the employer company – Keeping in with the principles of the legislation being intended for social welfare and protection of employees, the Commissioner being the last authority on facts and the scope of an appeal under the said Act being limited only to substantial questions of law, no perversity could be demonstrated from the order of the Commissioner – High Court order, set aside – Order of Commissioner, restored – Appeal allowed. [*Fulmati Dhramdev v. New India Assurance*]

(SANJAY KAROL, J.)
2023-IV-LLJ-302 (SC)
LNIND 2023 SC 561

COMPASSIONATE ALLOWANCE

Entitlement – Tamil Nadu Pension Rules,1978, Rule 40(1) – Petitioner's request for compassionate allowance was rejected, hence this petition – Whether, Petitioner entitled for compassionate allowance under Rule 40 of Rules – *Held*, husband of Petitioner expired in 2009 during pendency of appeal filed against his dismissal order – Petitioner couldn't get any family pension and other benefits in view of fact that her husband was dismissed from service – Indigent condition of Petitioner and her children and financial problems ought to have been taken into consideration by 2nd Respondent while rejecting request – 2nd Respondent failed to consider all such aspects – Impugned order passed mechanically and was illegal and arbitrary – Petition allowed. [*D. Amutha v. Director General of Police*]

(BATTU DEVANAND, J.)
2023-IV-LLJ-475 (Mad)
LNINDORD 2023 BMM 1184

COMPULSORY RETIREMENT

Quashing of Order- Single Judge allowed all consequential benefits in favour of Petitioner/Respondent and quashed compulsory retiring order, hence this appeal – Whether, practice followed by Government in directing compulsory retirement of Petitioner pursuant to registration of FIR completely unwarranted – *Held*, power to retire compulsory government servant in terms of service rules is absolute, provided authority concerned forms bona fide opinion that compulsory retirement is in public interest – Order of Compulsory retirement cannot be based on sole basis of recommendations of committee which has to be considered by competent authority – Merely because committee has made recommendations for retirement of Petitioner, he cannot be compulsorily retired – Mere involvement in criminal case would constitute relevant material for compulsory retirement or not would also depend upon circumstances of each case – Reputation of Petitioner cannot be termed as doubtful, as projected, nor could his conduct be determined only on spoken words in absence of any material on record – Court do not see any reason to interfere with judgment of Single Judge – Appeal dismissed. [*State of J & K v. Rajinder Kumar*]

(TASHI RABSTAN, J.)
2023-IV-LLJ-407 (JNK)

CONTINUITY OF SERVICE

Rejection of Approval – Maharashtra Employees Of Private Schools (Conditions of Service) Regulation Act, 1977, Section 5(2A) – Petitioner no. 1 applied for approval for continuity of services, however, said application was rejected by Education Officer – Whether, Education Officer justified in rejecting approval for continuity of services of Petitioner no. 1 after completion of probation period – *Held*, provision of Government Resolution misinterpreted by Education Officer – As per Section 5(2A) of Act, Petitioner no. 1 deemed to have been appointed and confirmed as teacher after successful completion of probation period – Approval of continuity of service sought by Management and service of Petitioner found to be satisfactory – Once Education officer approved appointment, approval for continuity could not be withheld – Having successfully completed probation period refusal to grant approval was grave travesty of justice – Impugned order, set aside – Education Officer directed to grant approval – Petition allowed. [*Dinesh Sudam Patil v. State of Maharashtra*]

(NEELA GOKHALE, J.)
2023-IV-LLJ-348 (Bom)
LNIND 2023 BOM 456

DENIAL

Denial of Appointment – The Department of Posts (Postal Assistants and Sorting Assistants) Recruitment Rules, 1990 – High Court upheld orders of Tribunal reasoning that no amendment in 1990 Rules had been effected and that denial of appointment to 3rd Respondent based solely on letter unwarranted, hence this appeal – Whether, 3rd Respondent entitled to appointment – *Held*, stage of declaration of ineligibility seems to turn tide in favour of 3rd Respondent – Decision to treat 3rd Respondent as ineligible was based on certificate, however, certificate produced in support of claim, 3rd Respondent qualified relevant examination – Contents of letter clearly suggestive of general direction given to addressee Postmasters General – Highly improper for Appellant to reject candidature outright in absence of proper appreciation of certificate – 3rd Respondent, discriminated against and arbitrarily deprived of fruit of selection – 3rd Respondent shall be offered appointment, initially on probation – Appeal disposed of. [*Union of India v. Uzair Imran*]

(DIPANKAR DATTA, J.)
2023-IV-LLJ-241 (SC)
LNIND 2023 SC 623

DISMISSAL

Overstay of Leave – The Army Act, 1950, Sections 39,72,73&120 – Appellant was dismissed from service for overstay of leave – Appeal preferred by Appellant against dismissal, was dismissed by Respondent No. 2, hence this appeal – Whether, Appellant rightly dismissed from service for taking unauthorized leave – *Held*, when request for further extension of leave turned down by Respondents, Appellant ought to have reported to duty – No document placed by Appellant to prove illness of his wife – Appellant failed to cross-examine prosecution witnesses – Appellant had habit of remaining absent without leave on earlier occasions – Such indiscipline on part of member of Armed Forces could not be countenanced – As per section 39 of Act, punishment of dismissal treated as lesser punishment – Section 120 of Act not applicable to aid of Appellant for insisting that District Court Martial or Summary General Court Martial ought to have been convened when Summary Court Martial could try – No infirmity in impugned judgment – No leniency deserved by Appellant – Appeal dismissed. [*Ex Sepoy Madam Prasad v. Union of India*]

(HIMA KOHLI, J.)
2023-IV-LLJ-338 (SC)

DUTY PERIOD

Maternity Leave – Tamil Nadu Government Servants (Conditions of Service) Act, 2016 – Tamil Nadu Revenue Subordinate Service Rules – Petitioner claims for restoration of her seniority on ground that her period of maternity leave during probation period should be treated as duty period - Whether, maternity leave can be treated as duty period – *Held*, Rules makes it clear that maternity leave does not come within ambit of duty – Whether continuous period of duty is prescribed as probation in Service Rules, leave taken by probationer constitutes break in continuity of probation – Any leave which does not fall within ambit of duty as defined under Act or under Leave Rules, those leave should be excluded while calculating period of probation – Petitioner cannot seek total exemption from probation – Merely because benefit is extended in form of maternity leave, one cannot take advantage to seek exemption from undergoing mandatory period of probation – Unless Government amends necessary rules treating maternity leave as on duty period, Court cannot give any positive directions – Petitions dismissed. [*S. Nagajothi v. State of Tamil Nadu*]

(N. SATHISH KUMAR, J.)
2023-IV-LLJ-389 (Mad)

MATERNITY LEAVE

Rejection of Application – The Tamil Nadu Government Fundamental Rules, Rule 101(a) – The Maternity Benefit Act, 1961 Section 2 – Representation filed by Petitioner for maternity leave rejected by Respondent no. 2 – Whether, Petitioner entitled to maternity leave benefit for third child – Whether Maternity Benefit Act, 1961 apply to Government Employees – *Held*, as per Rule 101 (a) of Rules such benefit was available to married women only upon two surviving children – When the State had taken a policy decision that the Fundamental Rules were applicable to Government servants, the Petitioner could not claim any benefit under Act, which is not applicable to the Government servants – When state policy and Fundamental Rules restricted maternity leave for third child, the Petitioner could not seek maternity leave on the basis of Act – Impugned order, sustained – Petition dismissed. [*Tmt. M. Nithya v. Head Master*]

(N. SATHISH KUMAR, J.)
2023-IV-LLJ-382 (Mad)
LNINDORD 2023 MAD 2054

MISCONDUCT

Quashing of Charge – Constitution of India, 1950, Article 19(1) (a) – Charge memo issued to Petitioner for misconduct – Whether, impugned charge memo could be quashed – *Held*, Article 19(1) (a) of Constitution applies to Petitioner – Members of WhatsApp group merely discussing among them matters of common interest could not be target of attack – Message posted by Petitioner not attracted Conduct Rules laid down by management – Such opinion not expressed publicly but shared among members of private WhatsApp group – Bank's interest not affected – Act committed by Petitioner not amounted to misconduct – Impugned charge memo, quashed – Petition allowed. [*A. Lakshminarayanan v. Assistant General Manager*]

(G.R. SWAMINATHAN, J.)
2023-IV-LLJ-441 (Mad)
LNINDORD 2023 BMM 968

NON-PRODUCTION OF ORIGINAL DOCUMENTS

Grant of Relief – Bihar Civil Service (Judicial Branch) (Recruitment), Rules 1955 – Candidature of Appellants rejected by official Respondents on account of non-furnishing of original character certificates (in case of 2 Appellants) and law degree (in case of 3 Appellant) – Whether rejection of candidatures of Appellants due to non-production of original certificate at time of interview by Bihar Public Service Commission (BPSC), justified – *held*, from Rules it can be perceived that candidate must be of good character so as to satisfy BPSC – Rules makes it clear that production of original certificates at time of interview not mandatory but directory – Even going by advertisement, certificates of educational qualification and other required documents on date of submission the online application form must be necessarily possessed but its production is not mandatory – Since proof were available and true photocopies were on record, Appellant's candidature could not be rejected merely because original was not produced – Two appellants cannot be discriminated by not granting relief merely because of non-availability of vacancies in 30th Examination – Appeals allowed. [*Sweety Kumari v. State of Bihar*]

(J.K. MAHESHWARI, J.)
2023-IV-LLJ-266 (SC)

PENSION SCHEME

Implementation of Order – Constitution of India, 1950 Article 14 – Petitioners-employee were denied benefit of Old Pension Scheme by Respondents – Whether, Respondents could be directed to count past service of Petitioners to grant benefit of Old Pension Scheme in pursuant to earlier order – *Held*, Government Order directed to approve appointment of teachers on completion of training – Respondents ought to send teachers before cut off date – Earlier order already implemented – Denying similar relief to Petitioners was discrimination under Article 14 of Constitution – Delay on part of Respondents in sending Petitioners to Training, hence, they could not take a stand that only from date of regularization, the service would be counted – Respondents directed to count past service of Petitioners to admit them in Old Pension Scheme – Petitions allowed. [*V. Murali v. State of Tamil Nadu*]

(N. SATHISH KUMAR, J.)
2023-IV-LLJ-354 (Mad)
LNINDORD 2023 MAD 2461

PROMOTION

Punishment of Black Mark- Director General of Police imposed punishment of black mark on Petitioner thereby promotion given to him pushed back – Whether, punishment of black mark could be sustained as it affected promotion of Petitioner – *Held*, as per Police Standing Orders punishment of Black Mark effected only for period of six months from the date of commission of offence – Black mark being minor punishment and an exception to general rule – Petitioner's punishment to be in force for six months from date of commission of offence – Promotion could not be effected – Relief of refix promotion as originally fixed by Respondent no. 3, restored – Liberty given to represent again – Petition allowed. [*P. Thamburaj v. State of Tamil Nadu*]

(C.V. KARTHIKEYAN, J.)
2023-IV-LLJ-433 (Mad)

PROVISIONAL PENSION

Suspension – Petition filed to call for entire records connected with impugned order and directing Respondents to pay provisional pension to Petitioner – Petitioner was placed under suspension on ground of issuing False Transfer Certificate – Whether, Petitioner entitled to provisional pension till disposal of CBI case – *Held*, Petitioner's suspension revoked and suspension cannot be extended for period not more than four

months – Petitioner was paid Provident Fund and Special Provident Fund – No provision to retain teachers after their superannuation on grounds of contemplation of charges – School management cannot be blamed for relieving Petitioner after reaching age of superannuation, subject to outcome of CBI case – Respondents directed to pay provisional pension to Petitioner till conclusion of CBI case – Petition allowed. [*R. Gunasekaran v. Accountant General*]

(J. SATHYA NARAYANA PRASAD, J.)
2023-IV-LLJ-467 (Mad)
LNINDORD 2023 MAD 2219

REINSTATEMENT

Continuation of Service – First Respondent directed Petitioner to reinstate 2nd Respondent in both petitions, with continuity of service and all other attendant benefits, hence these petitions – Whether, reinstatement could be ordered – *Held*, workmen were engaged by contractor and they received salary only from third respondent – The third respondent only terminated them from service, therefore, the workmen were required to raise regular industrial dispute under Section 2(k) of the Act before Industrial Tribunal instead of raising dispute before first respondent under Section 2(A)(2) of Act, since the workmen wanted direct employment from Petitioner – There is a difference between an individual dispute which is deemed to be an industrial dispute under Section 2A of Act, on the one hand, an industrial dispute espoused by the union in terms of Section 2(l) of Act – An individual dispute which is deemed to an industrial dispute under Section 2(A) of Act, concerns discharge, dismissal, retrenchment or termination, where an industrial dispute under Section 2(l) of the ID Act, covers a wider field – Workmen ought to have raised industrial dispute under Section 2(k) of Act – Petitions allowed. [*Management of HPCL v. Presiding Officer*]

(G.K. ILANTHIRAIYAN, J.)
2023-IV-LLJ-454 (Mad)

Punishment – Petition filed to call for records of 1st Respondent in connection with impugned order and direct Respondents to reinstate Petitioner into service with all consequential service – Whether, Petitioner entitled to all benefits – *Held*, memorandum clearly indicates that punishment of 'dismissal/removal from service' or 'compulsory retirement' should not be imposed on delinquent for charges of desertion – Charge of unauthorized absence cannot be left unnoticed, particularly when it is brought to notice

of Court that Petitioner earlier indulged in instances of unauthorized absence – Punishment imposed on Petitioner disproportionate to charge and order passed by 1st Respondent quashed – Court directs Respondents to pass appropriate orders to reinstate Petitioner from date of his original punishment – Petition allowed. [*G. Parthiban v. Deputy Commissioner of Police*]

(SATHYA NARAYANA PRASAD, J.)
2023-IV-LLJ-460 (Mad)

SUSPENSION FROM SERVICE

Principle of Natural Justice – Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, Sections 4 and 13 – Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Rules, 2013, Rule 7 – Petitioner suspended from service by Respondents for misconduct on basis of report of Internal Committee – Whether, orders of Respondent could be sustained though constitution of Internal Complaint Committee, invalid – *Held*, junior Presiding Officer appointed ignoring Senior level employee – Constitution of Internal Committee against mandatory provisions contained in Section 4 of Act – Enquiry need to be conducted in accordance with principle of natural justice – Complaint not contained allegations of sexual abuse against Petitioner – Manner in which proceedings culminated violated scheme of Act 14 of 2023 in Act – When Petitioner alleged vindictive action suspension order must be based on final report as contemplated under Section 13 of Act – Merely on basis of preliminary enquiry conducted against mandatory procedure impugned orders could not be sustained – Respondents directed to constitute Internal Committee as per Section 4 of Act to proceed to enquire following procedure under Rule 7 of Rules – Petition allowed. [*Manimekalan v. Registrar, Bharathiar University*]

(N. SATHISH KUMAR, J.)
2023-IV-LLJ-361 (Mad)
LNINDORE 2023 MAD 2462

TERMINATION

Reinstatement – Appellant challenged termination order with prayer for reinstatement in service on post of Junior Engineer with all consequential benefits – Whether, Appellant entitled to be reinstated – *Held*, when order of termination from service was quashed by writ Court, Appellant had not attained age of superannuation –

Order of termination from service under Service Code has been quashed as being passed without affording opportunity to Appellant – After setting aside order of termination from service, government employee shall be reinstated in service and put under suspension for purposes of holding departmental enquiry – Court hold that on setting-aside of termination order, Appellant shall be deemed to be reinstated in service on that day. [*Shiwraj Bhushan v. State of Jharkhand*]

(SHREE CHANDRASHEKHAR, J.)
2023-IV-LLJ-412 (Jhar)

UNAUTHORISED ABSENCE

Rejection of Pensionary Benefit – Respondent no. 4 accepted resignation Petitioner but Respondent no. 2 rejected claim of for pension benefits for unauthorized absence – Whether, Respondents justified in counting long absence of Petitioner to dis-entitle her from seeking pension – *Held*, decision taken by Respondents not to initiate disciplinary action clear case of dereliction of duty on their part – No reason to treat her case as special case – Principles of natural justice required employee ought to be put on notice before adverse order taken against her – Respondents could not withhold pension after having condoned days of absence – Respondents failed to take necessary action against Petitioner When in service – No documents shown about rejection of leave applications – Denial of taking into consideration particular days of service into pension, set aside – No notice issued by Respondents prior to taking such decision – Letters impugned, set aside – Petition allowed. [*V. Indira Nawads v. State Bank of India*]

(C.V. KARTHIKEYAN, J.)
2023-IV-LLJ-419 (Mad)
LNINDORD 2023 MAD 2079

DECEMBER

DEPARTMENTAL INQUIRY

Questions to Witnesses – Whether, Central Complaints Committee could have put questions to witnesses in departmental inquiry – *Held*, where 'Presenting Officer' has been appointed by Disciplinary Authority, such Officer shall present case in support

of articles of charge – Neither any statutory bar nor any logic to restrict power of complaints committee to put questions to witnesses only to context enumerated in provision – High Court was not correct in taking view that proceedings stood vitiated because Central Complaints Committee put questions to prosecution witnesses. [*Union of India v. Dilip Paul*]

(J.B. PARDIWALA, J.)
2023-IV-LLJ-481 (SC)

EVIDENCE

Civil – Rule of 'No Evidence' – Whether, Central Complaints Committee based its findings on conjectures and surmises and case on hand was of "no evidence" – *Held*, rule of "no evidence" is attracted not only in case where there is complete lack of evidence, but also in cases where evidence, is not capable of having any probative value – Perusal of findings indicate that present case is not case of "no evidence" – Some evidence indicate or rather substantiate allegations of sexual harassment levelled by complainant – In respect to allegations related to Respondent making unsolicited phone calls to complainant, no evidence of the call recordings was produced yet Central Complaints Committee accepted allegations as true – Therefore its findings could be said to be based on conjectures and surmises which in opinion of Court is not correct. [*Union of India v. Dilip Paul*]

(J.B. PARDIWALA, J.)
2023-IV-LLJ-481 (SC)

EX-PARTE AWARD

Sustainability – *Ex-parte* award passed against Petitioner – Labour Court held that it had no jurisdiction to set aside such award after its publication in official gazette – Whether, *Ex-parte* award passed against Petitioner could be set aside – *Held*, after expiry of thirty days of pronouncement of award and its publication in official gazette, Industrial Adjudicator not denuded of its jurisdiction to entertain application to set aside *ex-parte* award – Application to set aside such award not adjudicated on merit – Impugned order, set aside – Matter remitted to Labour Court – Petition allowed. [*Pradeep Kumar Bisoi v. Presiding Officer*]

(K.R. MOHAPATRA, J. AND R.K. PATTANAIK, J.)
2023-IV-LLJ-625 (Ori)

PERIOD OF SERVICE

Grant of Terminal benefits – Industrial Dispute Act, 1947 – Award passed by first respondent declaring that action of Petitioners' corporation in superannuating the second Respondent in all writ petitions was illegal and unjustified and deemed to be continuing in service till they attained their respective age of 60 and said period deemed to be "period of service" for purpose of granting terminal benefits, hence these petitions – Whether, 2nd Respondent can continue in service till they attain their respective age of 60 for the purpose of granting terminal benefits – *Held*, age of retirement not mentioned in Schedule IV of Act – Chennai Port Trust reduced age of superannuation from 60 to 58 and Petitioners' corporation also followed it, since same was made by Chennai Port Trust as per notification – Port Trust amended regulations and increased age of retirement as 60 years – Workmen filed claim application only after period of three years and eight months from date of their retirement – Finding of first Respondent perverse and cannot be sustained – Petitions allowed. [*Senior Regional Manager v. Presiding Officer*]

(G.K. ILANTHIRAIYAN, J.)
2023-IV-LLJ-629 (Mad)

STAY IN DEPARTMENTAL PROCEEDINGS

Criminal Proceeding – Disciplinary proceedings initiated against Respondent with issuance of Memorandum for issuing fake challan – Division Bench upheld order of Single Judge and confirmed setting aside of disciplinary proceedings, hence, present appeal – Whether, clause of Memorandum of Settlement creates bar on departmental proceedings continuing when person subjected thereto is being tried before criminal court for offences of same origin – *Held*, if prosecution commences later in point of time to disciplinary proceedings, latter shall be stayed, but not indefinitely – Such proceedings to be stayed only for reasonable period of time – Filing writ petition challenging action was belated attempt only to forestall its implementation – Completion of trial must be construed as completion "within the reasonable time frame" – Completion of trial concerning crime registered in year 1996 was nowhere nearing completion – Departmental proceeding pending criminal trial would not warrant automatic stay unless complicated question of law is involved – Clause 4 of MoS does not envisage complete standstill of departmental proceedings as result the pendency of criminal proceedings – Nature of proceedings being wholly separate and distinct, acquittal in criminal proceedings does not entitle *delinquent* employee for any benefit in departmental proceedings. – Appeal allowed. [*State Bank of India v. P. Zadenga*]

(SANJAY KAROL, J.)
2023-IV-LLJ-585 (SC) LNIND 2023 SC 606

TERMINATION OF SERVICE

Cause of Action – Labour Court dismissed claim petition of Appellant on ground that Delhi Courts have no territorial jurisdiction to entertain claim of the Appellant since the situs of employment of Appellant had shifted from Delhi to Chennai as Appellant had joined the office at Chennai upon his transfer – Single Judge confirmed order of Labour court, hence this appeal – Whether, as cause of action arose in place of posting claim of Appellant rightly dismissed – *Held*, the appellant was employed in Chennai when his services were terminated – The termination order was also issued in Chennai, thus the cause of action for challenging the termination order arose entirely in Chennai – Merely because respondents have a full-fledged office in Delhi or that appellant was posted in Delhi immediately before his transfer to Chennai, would not confer territorial jurisdiction on Delhi Courts – No infirmity in found in impugned order – Appeal dismissed. [*J. Balaji v. Hindu New Delhi*]

(MINI PUSHKARNA, J.)
2023-IV-LLJ-634 (Del)
LNIND 2023 DEL 4229

TERMINATION

Reinstatement – Industrial Disputes Act, 1947, Section 33(2)(b) – Workmen terminated from service – Labour Court directed Management to reinstate them into service with benefits – Petitions preferred by Management partly allowed by Single Judge – Whether, Workmen could be directed reinstatement with all benefits – *Held*, workmen made to suffer by making them to stay away from work despite lapses on part of Management for approval required under Section 33(2)(b) of Act – Requirement of Section 33(2)(b) of Act not complied with – Order of Single Judge in depriving backwages to Workmen had no legs to stand thus set aside – Workmen entitled to wages for entire period as if there was no order of dismissal – Workmen entitled to all benefits as per award – Management directed to pay gratuity – Appeals filed by Workmen partly allowed – Appeals filed by Management dismissed. [*T.K. Srinivasan v. Presiding Officer*]

(S. VAIDYANATHAN, J.)
2023-IV-LLJ-604 (Mad)
LNIND 2023 MAD 4547

VALIDITY OF PROVISION

Representation by Advocate – Industrial Disputes Act, 1947 – Constitutional validity of provisions of Act challenged by Appellant – Whether provisions of Act 1947, dealing with the aspects of representation by either of the parties through a specific lawyer and limitation put thereon, needs to be re-looked – *Held*, matter could not be reviewed from point of view of legal practitioner but from aspect of employer and workmen who were principal contestants in industrial dispute – No ground to revisit well settled position of law which prevailed long – Constitutional challenge need to be examined within narrow compass – Appeal disposed of. [*Thyssen Krupp Ind. Ltd v. Suresh Maruti Chougule*]

(SANJAY KISHAN KAUL, J, C.T. RAVIKUMAR, J. AND SUDHANSHU DULIA, J.)
2023-IV-LLJ-553 (SC)
LNINDORD 2023 SC 63