

AIBEA's

LEGAL NEWS

Q - 1, 2, 3, 4 - 2021

ALL INDIA BANK EMPLOYEES' ASSOCIATION

LEGAL NEWS
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FROM LABOUR LAW JOURNAL – LABOUR LAW NOTES

LEGAL NEWS

JANUARY – 2021

DENIAL OF PENSION

Qualifying service Period – Tamil Nadu Pension Rules, 1978, Rule 43(2) – Petitioner absorbed in Corporation as regular employee denied of pension as per order passed by Respondent no. 1 – Whether, Petitioner was eligible for pension having completed qualifying years of service of 10 years – *Held*, Petitioner having not been put on notice with regard to leave availed by him on loss of pay – No action taken for such leave – It could not be put to detriment of Petitioner to deduct said portion – Applying Rule 43(2) of Pension Rules fraction of three months to be treated as one half year total qualifying service of Petitioner works out to 10 years – Respondents ought to have placed materials wage settlement paid to Petitioner – Court declined to deduct period from service of Petitioner on daily wage basis – Part of non-qualifying service not explained by Respondents – No delay on part of Petitioner in approaching Court – Respondent directed to pay pension of Petitioner – Petition allowed. [*M. Govindaraj v. State of Tamil Nadu*]

(M. DHANDAPANI, J.)
2021-I-LLJ-213 (Mad)
LNINDORD 2020 MAD 162

DISMISSAL

Compulsory Retirement – Constitution of India 1950, Article 226 – Disciplinary authority based on enquiry report, imposed punishment of dismissal from service on Petitioner 1 and Petitioner 2 inflicted with punishment of compulsory retirement from service – Petitioner's appeal before appellate authority dismissed confirming orders of punishment, hence these petitions – Whether, order passed by disciplinary authority as confirmed by appellate authority, justified – *Held*, charges framed pointing out discrepancies of Petitioners in discharge of their duties, which resulted in

violation of procedural norms prescribed with regard to grant of loans – Term consequent loss, used by enquiry officer in assessing loss to bank would take within its fold – Consequent loss coined by appellate authority could not be said to be fresh finding warranting grant of opportunity to Petitioners to put forth their case – Delinquency alleged against Petitioners stood proved and Petitioners have not placed any materials to substantiate their case and in absence of same, punishment imposed on them – Enquiry officer, had given finding as to guilt of Petitioner, which accepted by disciplinary authority on independent application of mind and confirmed by appellate authority on basis of materials available before him – Independent application of mind exhibited in all orders passed by concerned authorities and all orders were speaking orders – Technical pleas raised by Petitioner could not be gone into by Court under Article 226 of Constitution – Court, sitting in judicial review, not required to go through entire materials – Order passed by disciplinary authority as confirmed by appellate authority did not warrant any interference at hands of Court – Delinquency committed by Petitioners resulted in grave monetary loss to Respondents, which had not been recovered till date – Punishment imposed on Petitioners also just and reasonable considering nature of delinquency, no sympathy could flow from Court for such act – Punishment imposed on Petitioners was in no way shocking conscience of Court or disproportionate to delinquency, and no need to interfere with same – Petitions dismissed. [*M. Rajagopal v. State Bank of India*]

(M. DHANDAPANI, J.)

2021-I-LLJ-169 (Mad) LNINDORD 2020 MAD 153

Protected Workman – Industrial Disputes Act, 1947, Section 33 – Petitioner, President of Worker's Union protested proposal for closure of project and consequently, said proposal for closure of Project was turned down by Appropriate Government – Due to such protest of Petitioner to proposal of closure, Management bore grudge on Petitioner and issued dismissal notice – Petition filed to assail notice of dismissal and further prays for direction for extending all consequential financial and service benefits in his favour retrospectively – Whether Petitioner being President of Trade Union and a Protected Workman could not have been dismissed from service without written permission of Central Government Industrial Tribunal (CGIT) under Section 33(3) of Act – *Held*, evident that enquiry proceedings were concluded without participation of Petitioner and without supplying documents – Petitioner demanded make out a case for remand and *de novo* enquiry, however to lapse of time, this court did not think it appropriate to do so at this belated stage – This Court on finding prima facie case in favour of Petitioner, stayed operation of order of dismissal passed against Petitioner and simultaneously directed that Petitioner shall continue to remain under suspension and during pendency of writ petition he shall be entitled to subsistence allowance – Petitioner, who was 45 years old at that time while

continuing under suspension, as such on attaining age of superannuation might have recently retired from service in 2019 – Instead of either directing de novo inquiry or directing reinstatement of Petitioner with full back wages, appropriate to set aside notice of order of dismissal but with a direction to pay to Petitioner a lump sum compensation – Petition allowed. [*Nishith Ranjan Mallick v. Deputy General Manager*]

(K.R. MOHAPATRA, J.)
2021-I-LLJ-86 (Ori) LNIND 2020 ORI 13

EMPLOYMENT

Permanent Absorption – Tamil Nadu Water Supply and Drainage Board Act, 1970 – Respondents-workmen engaged as Contract Labourers defended their case before Inspector of Labour – Inspector of Labour confirmed permanent status to these contract labourers without even considering nature of employment and terms and conditions of Board with Contractors, hence these petitions – Whether, Respondents entitled for permanent absorption in Tamil Nadu Water Supply and drainage Board (TWAD Board) service or not – *Held*, TWAD Board being State Government under Act and service regulations – Said Act and Rules alone to be construed as special laws, as far as appointments, regularizations and permanent absorptions of employees of Board were concerned – Recruitments, regularizations or permanent absorptions to be made strictly in consonance with service regulations of TWAD Board – Inspectors of Labour routinely and mechanically passing orders conferring permanent status without following legal principles settled by Apex Court of India – Casual labourers-daily wage rated employees engaged by Government Departments have no right of permanent absorption – Terms and conditions of such services also known to these casual labourers – Accepting all such terms and conditions, they work as casual labourers-daily wage rated employees – *Modus Operandi* being adopted by these casual laborers for securing permanent appointment in Government Organizations was in violation of Constitution of Scheme of appointments and Recruitment Rules and could never be approved by High Court – All appointments, permanent absorptions to be made strictly in accordance with Rules in force – Equality clause enunciated could not be diluted at any costs – Inspector of Labour had not considered any of these issues – Labour Officer simply verified fact whether Respondents have completed 480 days of service or not, then, passed order, granting permanent status – If such order allowed to be implemented, then consequences would be disastrous – Impugned order passed by Inspectors of Labour liable to be quashed – Petitions allowed. [*Executive Engineer v. Inspector of Labours*]

(S.M. SUBRAMANIAM, J.)
2021-I-LLJ-143 (Mad)
LNINDORD 2020 BMM 50

REMOVAL

Deficiency in service – Second Respondent/Sales woman had not attended domestic enquiry for charges of deficiency of stock, therefore, Petitioner society found Second Respondent guilty of charges and inflicted punishment of removal of service – On industrial dispute raised by Second Respondent, First Respondent-Labour Court interfered with punishment and ordered reinstatement of Second Respondent without any backwages, with continuity of service – Whether there is any justification on part of First Respondent in interfering with punishment of dismissal of service inflicted against Second Respondent – *Held,* Labour Court has come to conclusion that, punishment awarded against Second Respondent was disproportionate because Rs.4,000/- which was equivalent to stock deficiency found in fair price shop which was under control of Second respondent has been paid back – Labour Court without having any evidence in their support, has come to said conclusion based on which, punishment has been interfered with – No hesitation to hold that, it is an erroneous finding, hence award passed by Labourt Court is unsustainable – Petition allowed. [*Management, Tenispet PACS V. Presiding Officer*]

(R. SURESH KUMAR, J.)
2021-I-LLJ-73 (Mad)
LNINDORD 2020 MAD 149

RETIREMENT BENEFITS

Liability if Loss – Petitioner suspended from service for non-recovery of loan amount – Petitioner allowed to retire on superannuation by Respondent no. 2 without disbursing retirement benefits – Appeal preferred by Petitioner dismissed by Respondent no. 1 – Whether, Petitioner was entitled to his retirement benefits as liability for loss could not be solely fastened on him – *Held,* disciplinary proceedings pending against original Petitioner – Respondents ought to conduct inspection when discrepancy noticed – Loss caused to society could be avoided by Respondents – Lapse led to loss to society could not be fastened only on Petitioner – Due sought to be recovered from Petitioner not stand test of judicial scrutiny – Petitioner directed to be paid retirement benefits – Petition disposed of. [*G. Ramalingam v. Joint Registrar*]

(M. DHANDAPANI, J.)
2021-I-LLJ-217 (Mad)
LNINDORD 2020 MAD 173

FEBRUARY

ACCIDENT IN COURSE OF EMPLOYMENT

Alternative Employment – Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, Section 47(1) – Petitioner-employee suffered from disability by accident occurred while on duty – Petitioner sought for alternative employment with pay protection – Representation submitted by petitioner rejected by Respondent holding that Act was not applicable to case of Petitioner – Whether, Respondents erred in denying pay protection and continuity of service to Petitioner who suffered disability for accident in course of employment – *Held*, according to Section 47(1) of Act duty of employer to provide alternative employment to employee who acquired disability during his service – Respondents ought not to refuse to provide alternative employment by rejecting Petitioner's representation – Left open to Respondents to decide about back-wages – Respondents failed to do their legal obligation – Order passed by Respondents not challenged by Petitioner – Petitioner called by Respondents to appear before them – Petitioner sustained 65% disability – Petitioner could not challenge rejection order as he faced difficulties physically and financially – Act of Petitioner not challenging rejection order for nine years could not be taken serious note of – Respondents provided alternative employment to Petitioner belatedly – Backwages could not be denied – Impugned orders set aside – Respondents directed to regularize service of Petitioner and provide pay protection – Petition allowed. [*D. Jaisankar v. TNSTCL*]

(J. NISHA BANU, J.)
2021-I-LLJ-365 (MAD)
LNINDORD 2020 BMM 55

BACK WAGES

Non-compliance with Rule – Petitioner-Management sought for quashing award passed by Labour Court holding that Respondent-workman entitled for full back wages along with all consequential benefits, hence this petition – Whether, award passed by Labour Court liable to be set aside – *Held*, Labour Court failed to consider Rule-8(b)(iii) of Standing Orders of Management, wherein it stipulated that age of workman as recorded with Company at time of his employment should not thereafter be questioned by him – Age of workman mentioned twice as (45 years), i.e. in his 1st appointment and also in second appointment, which was duly signed and accepted by workman – Workman precluded to raise dispute after accepting same, at fag end of his service career and that also after retirement – Reliance of workman on medical certificate was of no help to him, as same was fitness certificate and not assessment of age – Age mentioned in medical fitness

certificate could not be real age of workman – Workman was in habit of mentioning different date of birth in different documents of service records – Not single chit of paper or any document produced by workman to show that his actual date of birth was specified date and management changed date of birth – In absence of any document produced before Court below, Court could not come to conclusion that date of birth relied upon by workman could be said to be gospel truth – Reference made after eight years of dispute, was itself stale claim as dispute was not in existence after retirement – Award passed by Labour Court liable to be quashed – Petitioner-management directed to pay retiral dues of workman, in accordance with law – Petition allowed. [*Managing Director v. Their workman*]

(S.N. PATHAK, J.)
2021-ILLJ-403 (Jhar)
LNIND 2021 JHAR 1

COMPASSIONATE APPOINTMENT

Reduction of Rank – Maharashtra Zilla Parishads District Services (Discipline and Appeal) Rules, 1964 – After acquiring higher qualification Petitioner who appointed on compassionate ground promoted in group 'C' cadre – Realizing mistake Respondent No.3 cancelled, his appointment in group 'C' holding it to be contrary to Government Resolution – Appeal preferred by Petitioner under Rule 14 of Rules dismissed by Commissioner – Whether, having once appointed in group 'C' cadre against permanent vacancy there was no reason for reverting Petitioner to Group 'D' cadre – *Held*, as per Government Resolution compassionate appointee having requisite educational qualification could be absorbed to group 'C' cadre – Petitioner for not holding requisite qualification at time of his initial appointment could not claim benefit of Government Resolution – Petitioner having been appointed on compassionate ground was concession and not right – Vast difference in pay scale in different posts in group 'C' cadre – Appointing Petitioner to post group 'C' cadre not proper – Petitioner not entitled to claim appointment to group 'C' cadre – Though no error found in impugned order but in interest of justice impugned order set aside – Petition allowed. [*Bhalchandra v. State of Maharashtra*]

(MANGESH S. PATIL, J.)
2021-I-LLJ-309 (Bom)
LNIND 2020 AUG 107

DISMISSAL

Maintainability of Petition – Tamil Nadu Shops and Establishments Act, Section 41 (2) – Madras Shops and Establishments Act 1947, Sections 4(1)(a)and 5 – Constitution of India 1950, Articles 12 and 226 – Appellant-Petitioner appointed as Probationary Officer in Respondent-Bank dismissed from service by Disciplinary Authority – Appellant's appeal before Appellate

Authority dismissed confirming order passed by Disciplinary Authority – Appellant petition before Single Judge as against Respondent-Bank dismissed on reasoning that writ petition was not maintainable, hence this appeal – Whether, writ petition was maintainable – *Held*, even prior to date of superannuation, service of Respondent 2 extended for two years and he was continuously in service – Petitioner having effective alternative remedy under Section 41 (2) of Tamil Nadu Shops and Establishments Act, and on that ground also, writ petition was not maintainable – In exercise of powers conferred by Section 5 of Act 1947, Governor applies all provisions of said Act to class of persons mentioned in Section 4(1)(a) of Act, 1947 – Respondent-Bank would not come within fold of Article 12 of Constitution to enable Appellant to maintain writ petition before this Court – When Respondent-Bank could not be equated or considered as instrumentalities of Government, writ petition as against Respondent-writ Petitioner not maintainable – Respondent-Bank was private bank and it was not amenable jurisdiction of this Court under Article 226 of Constitution – Writ petition was not maintainable – Impugned order of Single Judge deserves to be confirmed – Appeal dismissed. [*B. Anitha v. General Manager-HRD*]

(R. SUBBIAH, J.)
2021-I-LLJ-334 (Mad)
LNIND 2020 MAD 3819

GRATUITY

Deduction of Amount – Payment of Gratuity Act, 1972, Sections 4(5), 5 and 14 Claim under Section 7(4) of Act made by Respondent no. 3-employee for gratuity granted by Respondent no. 1 – Appeal preferred by Petitioner-employer rejected by Respondent no. 2 – Whether, Respondent no. 3 entitled to differential amount of gratuity as lesser amount paid to him by Petitioner under scheme – *Held*, no application of Section 4(5) of Act – Amount of gratuity offered by Petitioner to Respondent no. 3 under Death cum Retirement Gratuity (DCRG) Scheme was lesser than Respondent no. 3 lawfully entitled under Act – Applying Section 14, it is clear that Petitioner made payment under DCRG scheme it would not absolve liability of Petitioner to pay gratuity in accordance with provisions of Act – Establishment of Petitioner not obtained exemption under Section 5 of Act – Employees must receive gratuity and pensionary benefits not less favourable than benefits conferred under Act – Amount of gratuity which Respondent no. 3 entitled, must be determined in accordance with provisions of Act – Petitioner liable to pay differential amount of gratuity due to Respondent no. 3 after deducting amount already paid under DCRG scheme – No infirmity suffered by impugned orders – Petition dismissed. [*DM. Tamil Nadu Tea Plantation v. Controlling Authority*]

(P.D. AUDIKESAVALU, J.)
2021-I-LLJ-396 (Mad)
LNINDORD 2020 MAD 197

PUNISHMENT

Stoppage of Increment – writ petition filed to call for records in pursuant to order passed by second respondent, to pay increment along with accrued increment and to conduct departmental enquiry – Petitioner imposed with punishment of three increments cut without considering Petitioner's reply to show cause notice and without conducting any enquiry – Whether, proceedings imposing punishment of stoppage of three annual increments with cumulative effect, sustained in law – *Held*, second Respondent not furnished copies of complaint and other documents which requested – No departmental enquiry conducted and Petitioner was not given any opportunity to put forth defence to charges – Proceedings passed in violation of principles of natural justice – Proceedings liable to be quashed – Proceedings quashed – Second Respondent directed to pay all consequential benefits to Petitioner within period of four weeks – Petition allowed. [*T.K. Palanisamy v. Managing Director, TNSTCL*]

(P. VELMURUGAN, J.)
2021-I-LLJ-283 (Mad)
LNINDORD 2020 MAD 174

STOPPAGE OF INCREMENT

Non-application of Mind – Petitioner-workmen while working as Junior Assistant in RTO office, issued with 17(b) charge by Deputy Transport Commissioner – Respondent 2 imposed punishment of stoppage of next increment for period of two years without cumulative effect vide his impugned order on Petitioner – Petitioner appeal before Respondent 1 dismissed, hence this petition – Whether, impugned orders passed by Respondent 1 and 2 liable to be quashed – *Held*, charges leveled against Petitioner and six others and no specific charge against each person – Charges were generalized – Enquiry officer appointed and enquiry officer gave finding that delinquents have not committed irregularities with dishonest motive – When charges general in nature and when enquiry officer had given his findings commonly, there could not be different punishment for different persons – Petitioner had been on medical leave for a month and on date of his joining, inspection conducted and therefore, Petitioner could not be attributed against charges leveled against all delinquents – Earlier enquiry officer's report was defective, and appellate authority ought to have remitted matter of Petitioner also, but instead, had treated case of Petitioner as that of revision and without any independent application of mind, ordered punishment – While ordering punishment, even Petitioner's leave for month had not been taken into consideration, which shows that impugned orders passed in total non-application of mind – Inordinate delay in disposing of appeal had also not been explained – There Could not be different punishment, and no interference with impugned orders

– Impugned punishment order passed in proceedings and consequential rejection of appeal by Respondent 1 liable to be quashed – Respondents directed to re-fix seniority of Petitioner in post of Assistant and promote him notionally with all service and monetary benefits – Such exercise should be completed within certain period – Petition allowed. [*G.Kumar v. State of Tamil Nadu*]

(J. NISHA BANU, J.)
2021-I-LLJ-370 (Mad)
LNINDORD 2020 BMM 54

TERMINATION

Sustainability of Charge – Industrial Dispute Act, 1947, Sections 11A and 33(2)(b) – On basis of report of enquiry officer Petitioner-employee dismissed from service for unauthorized absence and assaulting another employee by Respondent – Approval Petition filed by Respondent-management allowed by Labour Court – Whether, Lower Court erred in terminating service of Petitioner by ignoring evidences adduced him – *Held*, Enquiry Officer failed to take note of clinching evidences filed by Petitioner – Co-technician deposed to have seen Petitioner beaten by another employee – Enquiry Officer refused to give credence to Petitioner's side evidence – Enquiry conducted by Enquiry Officer not justifiable therefore liable to be rejected – Labour Court erred in holding enquiry conducted in fair manner – Labour Court had limited role in deciding Petition under Section 33(2)(b) of Act which must be treated only as summary proceeding – No need not go into all aspects of evidence adduced by both sides as required under Section 11A of Act – Evidence in favour of Petitioner purposely omitted to be taken into account by Enquiry Officer – Charges framed against Petitioner for unauthorized absence proved – Enquiry Officer's Report relating to third charge unsustainable as enquiry not properly conducted – Since major charge not proved punishment of dismissal of service could not be said as proportionate punishment – Respondent management directed to inflict lesser punishment – Impugned order set aside – Petition ordered. [*M. Ganesan v. Management of Hyundai Motor India Ltd*]

(R. SURESH KUMAR, J.)
2021-I-LLJ-344 (Mad)
LNINDORD 2020 MAD 205

MARCH

CONTINUOUS ENGAGEMENT

Minimum Wages – Petitioners sought for issuance of writ of *Mandamus* directing Respondents 1 to 3 to permit them to continue as Nominal Muster Roll employees (NMR employees) and to pay minimum pay scale applicable to basic servant, hence this petition – Whether, Petitioners entitled to be continuously engaged as NMRs pursuant to G.O., and should be paid minimum wages – *Held*, irregular entry into Government job even at level of NMR employee, with long term plan to grab Government job, as Government regularizing NMR employees, who have worked continuously for more than 10 years – After particular point of time, many numbers of NMRs claimed to have been engaged only through Contractors and their wages also had been paid only through Contractors and not directly by PWD – No records available in PWD, these NMRs had not been directly engaged by them, only on basis of certificate issued by individual private Contractors, PWD department come forward to identify that those people were also NMR employees of PWD – In G.Os. itself, Government stated that no NMRs should be engaged by PWD except site mentioned at Item No.1 – In view of self-cap put in by PWD, no more NMRs would be engaged directly or indirectly by PWD except specified places – G.Os., and import of G.Os., namely, 137 and 233 could be accepted – In respect of 3407 NMR employees, now identified for equal pay, their services should not be regularized, unless they complete continuous direct engagement of NMRs through PWD for satisfactory period of ten years – Out of 20 Petitioners, except Petitioner nos. 2, 15 and 19, others not entitled to seek for any relief – Insofar as the other 17 Petitioners, prayer sought for by them rejected – In respect of Petitioner nos.2, 15 and 19, engaged directly as NMR employees for more than five years and ten years, their candidature could be considered by Respondents PWD for continuous engagement – Petition disposed of. [*P. Pandiaraja v. State of Tamil Nadu*]

(R. SURESH KUMAR, J.)
2021-I-LLJ-675 (Mad)
LNINDORD 2020 BMM 65

CONTRACTUAL EMPLOYEES

Termination – Petitioners-employees engaged by Respondent no.3, for rendering multiple task services at Contractor-Hospital issued orders of termination terminating services of said employees with immediate effect, hence this petition – Whether, orders issued by contractor hospital terminating services of employees, justified – *Held*, during pandemic when there were contractual employees who have experience of working at hospital, said employees ought to have been accommodated before taking on further

contractual employees – Petitioners who were working for several years in hospital, that hospital should have ensured that old employees working ought to have been given preference over new contractual employees – Old contractor continuing to render services to hospital even today and hence termination of employees did not appear to be justified at all – Workmen, if terminated, would be completely rendered jobless and Contractor willing to accommodate Workmen, Hospital directed to approve employment of Petitioners under Contractor Respondent no. 3, on same terms and conditions which were operating prior to specified year – Petitioners should report to duty from specified date – Salary for specified month should be disbursed for proportionate period – From specified month, entire salary should be paid to Petitioners and their services should be taken by Contractor-Hospital on same terms and conditions which were operating prior to specified years – Workmen should ensure that they should render their services diligently in whatever role ascribed to them by Contractor-hospital – Petition disposed of. [*Ant Ram v. Union of India*]

(PRATHIBA M. SINGH, J.)
2021-I-LLJ-531 (Del)
LNIND 2020 DEL 2439

DOMESTIC ENQUIRY

Fresh evidence – Labour Court finding that domestic enquiry was faulty, passed award answering Reference in favour of workman, hence this petition – Whether employer ought to have been given opportunity to lead fresh evidence after arriving at finding that domestic enquiry was faulty – *Held*, when 1st Issue was being decided and after Labour Court found that domestic enquiry was faulty, it wrongly proceeded to look into various evidence available and erroneously proceeded to arrive at various conclusions *vis-a-vis* charges – This exercise not to have been undertaken by Labour Court while deciding 1st Issue – After having held that domestic enquiry was erroneous, separate opportunity ought to have been given to employer as also to employee to lead their evidence – Thereafter it should have concluded if charges were proved or not – Award set aside so far as it holds that charges were proved – Matter shall be placed before Labour Court and employer as also workman shall be allowed to lead fresh evidence in pursuance of charges – Petition allowed. [*U.P.S.R.T. v. Presiding Officer Labour Court*]

(SIDDHARTHA VERMA, J.)
2021-I-LLJ-573 (All)
LNINDORD 2020 ALL 31

PENSIONARY BENEFIT

Grant of Leave Encashment and Gratuity Amount – Petitioners sought to declare that action on part of Respondents in not making full payment of pensionary benefits to him by counting his entire length of service from date of joining till date of retirement as illegal, and to declare that he is entitled to gratuity amount including benefit of leave encashment standing in his account – Whether, action on part of Respondents in not making payment of pensionary benefits to Petitioner illegal, and Petitioner entitled to all other retiral benefits including benefit of leave encashment – *Held*, entire past services of daily-wager which was continuous, liable to be reckoned for purpose of pensionary benefits and for purpose of granting pension – Held Petitioner entitled to all other retirement benefits including leave encashment and difference of gratuity – Total amount payable towards pension to be calculated, arrears arising thereby and other retirement benefits, should be paid to Petitioner within certain period – Prayer made in petition deserve to be granted – Action on part of Respondents in not making payment of pensionary benefits to Petitioner by reckoning entire length of service from date of initial joining of Petitioner, illegal – Respondents directed to fix pension of Petitioner by counting his services from date of his initial joining until date of retirement – All other retirement benefits should be paid including leave encashment benefit and same should be paid to Petitioner within certain period – If amounts not paid within stipulated time, it directed that due amount should carry interest at rate of 8% from date of filling of petition – Petition allowed. [*Vasava Jayantibhai Revabhai v. State of Gujarat*]

(S.H. VORA, J.)
2021-I-LLJ-520 (Guj)
LNINDU 2020 GUJ 3

APRIL

AWARD OF LABOUR COURT

Arrears of wages – Industrial Disputes Act, 1947, Section 17B – Application on behalf of Respondent/workman under Section 17B in petition filed by Petitioner/Corporation assailing award of Labour Court – Whether workman entitled to relief under section 17B – *Held*, there was award, passed by labour court, in favour of workman, directing his reinstatement – Award assailed by Petitioner – Workman by way of present application, supported by affidavit, stated that he was not gainfully employed – Act is social welfare legislation which empowers Court to give succor to workmen till their disputes are, finally, adjudicated upon by taking recourse to Section 17B – Succor, which legislation envisages, is wages which allow workman to lead dignified – Merely because workman, on ad hoc basis, earns through garbage collection could not

be reason to deprive him of relief under Section 17B – Petitioner directed to pay workman, full last drawn wages, or applicable minimum wages, which ever was higher – Application disposed of. [*North Delhi Municipal Corp v. Satish*]

(RAJIV SHAKDHER, J.)
2021-II-LLJ-162 (Del)
LNIND 2021 DEL 280

CLAIM PETITION

Jurisdiction of Labour Court – Industrial Disputes Act, 1947, Section 33(C)(2) – Labour Court partly allowed application filed by Respondent/employee under section 33(C)(2) claiming difference of his pay scale between two grades, hence this petition by employer – Whether claim of Respondent under section 33(C)(2) maintainable before Labour Court – *Held*, issue framed by Labour Court as regards maintainability of proceedings – Labour Court did not consider record and disputed issues raised before it and concluded that as there were long term agreements between employees and petitioner industry, application filed by applicant under 33(C)(2) was maintainable – Labour Court completely ignored disputed questions – Scope of section 33 (C)(2) was not to entertain disputed issues as raised by Respondent and exercise jurisdiction as if it was dealing with industrial dispute under section 2(k) of Act referred to tribunal – Petitioner was Central Government undertaking and appropriate Government would be Central Government – Applicant had approached Labour Court under section 33(C)(2), which remedy was not available to him – Judgment delivered without jurisdiction would be *non-est* and unsustainable – Labour Court completely ignored above aspects and casually concluded that it had jurisdiction – Impugned judgment of Labour Court quashed and set aside – Respondent permitted to approach Assistant Commissioner, Labour by raising dispute under section 2(k) so that he could raise stated issues before appropriate authority/conciliation officer – Petition allowed. [*Director v. Sadashiv Sittidin Gupta*]

(RAVINDRA V. GHUGE, J.)
2021-II-LLJ-32 (Bom)
LNIND 2020 NGP 156

COMPASSIONATE APPOINTMENT

Extension of Benefit – Petitioner challenged order passed by Respondent-District Collector rejecting application for appointment on compassionate ground, and for direction to Respondent to provide compassionate ground appointment to Petitioner considering qualifications, hence this petition – Whether, impugned order passed by Respondent liable to be quashed – *Held*, interpretation of respective G.Os., given by Respondent through impugned order, detrimental to intention of Government – One legal heir of deceased Government servant, though got job, he was not looking after family of deceased Government servant – This position accepted by

Respondent – Import of Paragraph no.3 of G.O.Ms.No. 155 and Clause 4 of another G.O.Ms.No. 18 should be put in with purposing interpretation, where, Government thought it fit to extend benefit of compassionate appointment to other legal heir of deceased Government servant, even though already legal heir of deceased Government servant was in permanent job – Situation now prevail in family of Petitioner could very well be fit in Paragraph no.3 of G.O.Ms.No. 155 or under clause 4 of another G.O.Ms.No. 18 – Negative interpretation sought to be given by Respondent through impugned order for those clauses of respective G.Os., denying request of Petitioner for consideration of request of compassionate appointment, could not be accepted – Reasons cited by Respondent in impugned order, unsustainable – impugned order passed by Respondent liable to be quashed – Respondent directed to reconsider application for grant of job suitable to educational and other qualification of Petitioner – Petition allowed. [*K.Ilayarani v. District Collector*]

(R.SURESH KUMAR, J.)
2021-II-LLJ-46 (Mad)
LNINDORD 2020 BMM 72

Time Limit – Appellant application seeking compassionate appointment rejected on ground that application seeking appointment should be submitted within three years from date of death of Government servant – Appellant filed second application which was again rejected on same ground – Single Judge dismissed petition that application was filed belatedly, hence, present appeal – Whether, impugned order of single Judge justified – *Held*, Appellant's second application was entertained by Respondents and he was assigned with waiting list – Appellant legitimately expected that he will be given appointment under compassionate grounds – Not now open to Respondents to turn around and say that Appellant had submitted his application belatedly – Reason that Appellant submitted his application belatedly, was not assigned when they have chosen to entertain his second application and allot waiting list number – No legal impediment for Respondents to consider Appellant's application for compassionate appointment, on merits – Impugned order passed by Single Judge set aside – Appeal allowed. [*R.Kothandan v. State of Tamil Nadu*]

(R. SUBBIAH, J.)
2021-II-LLJ-134 (Mad)
LNIND 2021 MAD 417

DISCIPLINARY PROCEEDINGS

Stoppage of Increments – Petitioner-employee working in Respondent 3 college – On initiation of disciplinary proceedings punishment of stoppage of two increments with cumulative effect was imposed - challenging said order Petitioner preferred appeal – Said punishment confirmed by Respondent 1 in proceedings – Impugned order passed after lapse of long years stating that

punishment of cutting increment not recovered, and said punishment proposed to be recovered in specified year, hence this petition – Whether, impugned recovery order passed by Respondent 3 liable to be quashed – *Held*, no notice or opportunity provided to Petitioner to defend case in view of fact that action taken after lapse of long years from date of passing of appellate order in disciplinary proceedings – Increment already paid long back to Petitioner, and he was receiving increment continuously after punishment inflicted in specified year – Authorities were not vigilant in executing orders within reasonable period of time and therefore, after lapse of long years, said orders passed in specified year could not be ground to impose recovery – Any orders passed must be within reasonable period of time – Though time limit prescribed, reasonableness in imposing punishment was to be adopted – Increment already sanctioned and being paid to Petitioner for several years and therefore, impugned recovery order was unsustainable – Impugned order passed by Respondent 3 liable to be quashed – Petition allowed. [*Sheriff v. Director of Collegiate Education*]

(S.M. SUBRAMANIAM, J.)
2021-II-LLJ-85 (Mad)
LNINDORD 2020 BMM 64

DISMISSAL

Adequacy of Punishment – Charges framed against Respondents working as Salesman with Appellants, regarding mixing water with liquor bottles – Two charges proved and other two were not proved and Disciplinary authority dismissed Respondent – Whether, punishment imposed against Respondent was adequate in regards to charges proved – *Held*, Charges 3 and 4 are to effect that Respondent mixed water with liquor bottles – No charge of misappropriation – It may be case of dereliction of duty – Explanation given by Respondent that when bottles were taken, they were not sealed – Respondent suspected whether same bottles were supplied for test and requested them to furnish Lab Report and that he was not responsible for same – Explanation given by Respondent not considered in right perspective – In any case, proved charges would not warrant punishment of dismissal – Respondent entitled for reinstatement and not entitled for any back wages from date of suspension till reinstatement – Appeal disposed of. [*Managing Director, TASMAC v. S. Sathishkumar*]

(M.M. SUNDRESH, J.)
2021-II-LLJ-37 (Mad)
LNIND 2021 BMM 26

Enquiry – Respondent 2-employee dismissed from service raised industrial dispute before Labour Court – Labour Court by preliminary award held that enquiry conducted by Petitioner-management was not fair and proper, hence these petitions – Whether, preliminary awards passed by Labour

Court lliable to be set aside – *Held*, prosecutor should not be judged – No embargo in law in respect of person who issued show cause notice to act as Presenting Officer – Opportunity was given to workman and principles of natural justice followed in providing all required information – Finding that person issued show cause notice should not have acted as Presenting Officer and it violates Principles of natural justice is mis-founded and unsustainable – Show cause notice clearly says that certain complaints received by company and based on same, charges framed – Documents sought for by Respondent 2 furnished to him, and he was allowed to peruse documents, which includes Standing Orders – Respondent 2 appeared for enquiry, and he would not sign in proceedings – This aspect of matter was not discussed anywhere in preliminary award – Enquiry conducted on specified date and acknowledgement made by Respondent 2 for receiving reply given by Enquiry Officer with regard to procedure of conducting enquiry, clearly proves factum of presence on date of enquiry – Principles of natural justice could not be put in strait-jacket formula – Employee who was not willing to participate in enquiry would be doing so at his own risk and estopped from raising any grievance of non-compliance of principles of natural justice – Enquiry proceedings would be held in Tamil – Opportunity would be given to Respondent 2 to peruse documents of management before marking, and he would be given opportunity to cross examine witnesses, and to produce documents and mark on his side – When Labour Court failed to hold that recording of enquiry proceedings and report of Enquiry Officer was not biased and *mala fide*, preliminary award could not be sustained – Finding of Labour Court liable to be set aside, and matter remanded back for deciding issue afresh, in accordance with law – Petitions allowed. [*Management v. Presiding Officer*]

(M. GOVINDARAJ, J.)
2021-II-LLJ-78 (Mad)
LNINDORD 2021 MAD 15

Principles of Natural Justice – Respondent-employee joined service as cashier-clerk in Appellant bank dismissed from service on ground of misconduct – Respondent's departmental appeal before appellate authority dismissed – Respondent's writ petition before Single Judge of High Court, allowed – Appellant's appeal before Division Bench of High Court dismissed upholding order passed by Single Judge, hence these appeals – Whether, enquiry held by competent authority and rules of natural justice complied with, and findings based on some evidence and authority had jurisdiction to reach finding of fact or conclusion – *Held*, finding of guilt recorded by disciplinary authority in reference to charge no. 1 could not be held to be justified in holding Respondent guilty – If order of dismissal based on findings of charge no. 1 alone, it would have been possible for court to declare order of dismissal, illegal – Finding of guilt being recorded by Enquiry Officer in his

report in reference to charges nos.2-7 and confirmed by disciplinary-appellate authority was not liable to be interfered – Those findings established guilt of grave delinquency which was apparent error being committed by High Court while interfering with order of penalty of dismissal inflicted upon Respondent – Even after charges which have been proved, justify imposition of penalty, Court might not exercise its power of judicial review – Order passed by disciplinary-appellate authority was speaking order passed with application of mind – Disciplinary authority had taken note of record of enquiry, and after affording reasonable opportunity of hearing and meeting out written objections raised by delinquent, expressed its brief reasons in upholding finding of guilt and penalty of dismissal – High court committed apparent error in setting aside order of dismissal of Respondent confirmed in departmental appeal – Impugned judgment of High Court liable to be set aside – Appeals allowed. [*Deputy General Manager v. Ajai Kumar Srivastava*]

(AJAY RASTOGI, J.)
2021-II-LLJ-87 (SC)
LNIND 2021 SC 5

EMPLOYMENT

Reinstatement – Respondent-employee while working as Clerk in Appellant school terminated from services – Labour Court vide Award answered reference against Respondent – Respondent petition before Single Judge of High Court allowed directing reinstatement of Respondent, hence this appeal – Whether, judgment of High Court liable to be set aside – *Held*, full opportunity was given to Appellant and Respondent to lead evidence, both oral and documentary, to substantiate their respective case – High Court had not even adverted to said evidence, and disposed of Writ Petition on sole ground that School had not conducted disciplinary enquiry before discharging Respondent from service – School led sufficient evidence before Labour Court to prove that Respondent had abandoned her service, and moved to another District – Record of School reveals that Respondent was not in employment of School – Initial employment of Respondent as teacher from specified year was itself invalid, as she was only inter-mediate, and did not have B. Ed. Degree – Respondent failed to prove that she had worked for 240 days during the year preceding her alleged termination – Respondent only made bald averment in her affidavit of evidence filed before Labour Court – It was open to Respondent to have called for records of School i.e. Attendance Register and Accounts, to prove her continuous employment – Respondent failed to produce any evidence to substantiate her case – Letter from Block Development Officer acknowledges that Respondent was on leave when Government took over School, and started receiving grants in aid – Block Development Officer's recommendation to Chief Education Officer, to act in compliance with order passed by Labour Court could not be relied on, as Award was set aside by High Court – School established that Respondent abandoned her service in specified

year, and had never reported back for work – Judgment of High Court liable to be set aside – Award passed by labour Court deserves to be restored – Appeal allowed. [*State of Uttarakhand v. Sureshwati*]

(INDU MALHOTRA, J.)
2021-II-LLJ-1 (SC)
LNIND 2021 SC 23

PROMOTION

Requisite Qualifications – Petitioner no. 1 appointed on post of peon by Petitioner no.2 society school management – On school having received grant, second Respondent Education Officer accorded approval to appointment of first Petitioner as peon and promoted to post of junior clerk – Proposal by Petitioner no.3 seeking approval to said appointment/promotion rejected by 2nd Respondent, hence present petition – Whether, proposal by Petitioner no.3 seeking approval to Petitioner no.1 appointment/promotion rejected by 2nd Respondent – *Held*, Petitioner no.1 appointed as lower grade staff – Pursuant to promotion of employee serving as junior clerk to senior clerk, post of junior clerk rendered vacant – Considering first Petitioner's seniority, he was promoted to post of junior clerk – Petitioner no.1 passed his B.A. examination and also Marathi and English typewriting examinations – Petitioner no.1 also passed MS-CIT course – Petitioner no.1 possesses requisite qualifications for post of junior clerk as prescribed under M.E.P.S. Rules, 1981 – Post has been filled up as per item '3' of Rules – Respondent no.2 directed to pass appropriate orders on proposal submitted for approval of first petitioner's appointment/promotion as junior clerk – Petition allowed. [*Sangramsinh Bhausaheb Ghule v. State of Maharashtra*]

(ABHAY AHUJA, J.)
2021-II-LLJ-236 (Bom)
LNIND 2021 AUG 22

RETRENCHMENT

Continuous service – U.P Industrial Disputes Act, 1947, Sections 2(g), 2(k) and 6-N – Tribunal passed award holding that 1st Opposite party/workman's termination from service amounted to retrenchment which was done without following procedure indicated in Section 6-N, hence this petition by employer/Irrigation Department of State – Whether Petitioner's termination from service amounted to retrenchment – *Held*, Irrigation Department of Government would come within term of 'Industry' as defined in Section 2(k) – Weekends and gazetted holidays on which workman was unable to render service not on account of his own fault would be counted for continuous service of 240 days in calendar year as defined under Section 2(g) – Conclusion drawn by Labour Court for including weekends and other gazette holidays in 240 days was correct since larger meaning of 'continuous service' to be given to do complete justice to beneficial provision of Section 6-N – 1st Opposite

party deemed to be workman employed in Industry and was in continuous service for not less than one year under Petitioner/employer was retrenched by very same employer – Compliance of provisions of Section 6-N was mandatory prior to his retrenchment – Petition dismissed. [*State of U.P. v. Mohd. Rais*]

(MANISH MATHUR, J.)
2021-II-LLJ-16 (All)
LNINDORD 2020 LUCK 8

SUSPENSION

Unending period – Respondent passed suspension order against Petitioner on basis that criminal case filed against Petitioner – Petitioner sought to challenge impugned suspension order as no further progress made in criminal case – Respondents after considering review of suspension order rejected same – Whether, impugned order of Respondent for not reviewing prolonged suspension of Petitioner sustainable – *Held*, nature of offence alleged against Petitioner in criminal case not come under purview of Vigilance and Anticorruption – Unless and until accused tried and found guilty, Law will presume accused an innocent – Petitioner was employee of Respondent and placed under prolonged suspension, getting subsistence allowance every month – If employee kept under prolonged suspension, without showing any progress, either in departmental proceedings or in criminal case, in a tainted atmosphere, would be social stigma to employee – No employee can be placed under suspension for unending period – Suspension cannot be reviewed in view of guidelines given by Government may not applied to facts and circumstances of Petitioner's case – Impugned order of Respondent for not reviewing prolonged suspension of Petitioner cannot be sustained – Matter remitted back to Respondent – Petition disposed of. [*C. Tamil Selvan v. Executive Officer*]

(R. SURESH KUMAR, J.)
2021-II-LLJ-64 (Mad)
LNINDORD 2020 BMM 76

TEMPORARY MISAPPROPRIATION

Stoppage of increment – Department enquiry conducted against Petitioner's employee on charge of misappropriation and punishment of stoppage of next increment for period of five years with cumulative effect was imposed – Labour Court passed award reducing and modifying punishment to extent of removing cumulative effect – Whether, Labour Court justified in modifying punishment regarding temporary misappropriation – *Held*, employee of Petitioner's worked as Assessor in Kanyakumari Electricity Distribution Circle – Nature of job of individual is to collect Electricity Charges – Same was not deposited and it is alleged that to be misappropriated – Labour

Court award, reveals that said amount was subsequently paid by employers – High Court should not interfere with reasons in award – No justified reason for Labour Court to modify punishment – Temporary misappropriation was established before Disciplinary Authority as well as Labour Court – Lenient view taken by Labour Court unreasonable – Order of Labour Court liable to be interfered – Petition allowed. [*SE. v. Secretary, TN Min Kazhaga Kannakkayar*]

(M. DHANDAPANI, J.)
2021-II-LLJ-131 (Mad)
LNINDORD 2021 BMM 2

WAGES

Subsistence Allowance – Tamil Nadu Village Panchayat Secretaries (Conditions and Service) Rules 2013, Rule 17(4) – Petitioner sought for quashing impugned order issued by Respondent 3, and to direct Respondent to pay subsistence allowance to Petitioner for period of his suspension, hence this petition – Whether, impugned order passed by Respondent 3 liable to be quashed and Petitioner entitled for subsistence allowance – *Held*, first reason cited in impugned order bad in law, and mechanically put in by Respondent 3 without application of his mind and without verifying records – Rule 17(4) of Rules made it clear that during period of suspension, person holding post eligible for subsistence allowance of 50% of last pay and allowances drawn – Without seeing import of Rule, mechanically Respondent 3 had given reasons, in impugned order and rejected claim of Petitioner for subsistence allowance – Respondent 3 was also Government servant-employee, and if he placed under suspension, whether he would survive for years together without subsistence allowance – Government employee or officials, in whose favour some administrative powers are vested with under law, must be very cautious and careful in dealing with issue come before them for disposal – Respondent 3 mechanically passed impugned order and cited two reasons, which were not in existence or against factual matrix – Said two reasons cited by Respondent 3 for passing impugned order, liable to be rejected and impugned order liable to be quashed – Respondent 3 directed to reconsider issue, verify records, apply his mind and take decision, by thus suitable order could be passed sanctioning subsistence allowance payable to Petitioner from date of suspension till date it is revoked – Petition ordered. [*N. Radhakrishnan v. District Collector-cum-Inspector*]

(R. SURESH KUMAR, J.)
2021-II-LLJ-51 (Mad)
LNINDORD 2020 BMM 71

WORKMEN

Jurisdiction – Industrial Dispute Act, 1947, Sections 2A(2) and 2(s) – Industrial dispute raised by Petitioner after giving voluntary resignation – Labour Court rejected claim made by Petitioner-employee – Whether, Labour Court erred in deciding case of Petitioner on merit – *Held*, Labour Court concluded that Petitioner was not workman under Section 2(s) of the Act – Labour Court lost jurisdiction after deciding Petitioner not entitled to file Petition before it – Petition filed by Petitioner ought to be rejected by Labour Court – Matter must be left for deciding before appropriate forum – Labour Court erred in going into merits of case by exercising its jurisdiction under Section 2A(2) of Act – Salary drawn by Petitioner was above limit of Rs. 10,000/- as prescribed under the Act – Labour Court rightly concluded that Petitioner was not workman – Impugned Award set aside – Petition allowed. [*P. Venkatesh v. East-Wind Foot Ware Company Ltd*]

(R. SURESH KUMAR, J.)
2021-II-LLJ-121 (Mad)
LNINDORD 2020 MAD 209

MAY

COMPASSIONATE APPOINTMENT

Immediate Succour – Respondent requested Appellants to appoint her son in place of his father who was missing, which was rejected – Challenging same Respondent filed petition before High Court which was allowed, hence this appeal – Whether, reasons given by Appellant-employer for denying compassionate appointment to Respondent's son justified – *Held,* whole object of granting compassionate appointment is to enable family to tide over sudden crisis which arises due to death of sole breadwinner – Reasons given by employer for denying compassionate appointment to Respondent's son not justified – No bar in National Coal Wage Agreement for appointment of son of an employee who has suffered civil death – Because Respondent is working, her son cannot be denied compassionate appointment – Application for compassionate appointment of son filed by Respondent more than 10 years after Respondent's husband had gone missing – Object of compassionate appointment is for providing immediate succour to family of deceased employee – Respondent's son not entitled for compassionate appointment after passage of long period of time – Judgment of High Court set aside – Appeal allowed. [*Central Coalfields Limited v. Parden Oraon*]

(L.NAGESWARA RAO, J.)
2021-II-LLJ-241 (SC)
LNINDU 2021 SC 27

DEPARTMENTAL INQUIRY

Engagement of Legal Practitioner – Petitioner-employee appointed on compassionate basis as Peon after demise of her father – Petitioner while working as Clerk suspended from job – Show cause notice issued to Petitioner with regard to omission and commission resulting in misappropriation of cash – Petitioner's request to allow her to be represented in enquiry proceedings through Legal Practitioner rejected by Disciplinary Authority, hence this petition – Whether, Petitioner entitled to engage Legal Practitioner-Lawyer to defend her in departmental inquiry initiated against her as per charge-sheet – *Held*, allegation of misappropriation or involving enormous sum would not make charges framed against employee complicated, which require assistance of Advocate – Employee could not be allowed to be represented by Lawyer by holding, number of documents and amount involved were not relevant factors for purpose of deciding as to whether employee be granted permission to engage Lawyer – Charged employee had to only explain factual position with reference to documents sought to be relied upon against him and Lawyer would not be in position to assist employee in this regard – Petitioner had to explain factual position with regard to documents sought to be relied on against Petitioner – Petitioner had not stated how Legal Practitioner would be in better position to assist her – Petitioner posted in specified place, and during her posting she was dealing with public in furtherance of her duties – Both EO/PO have no qualifications in Law and have never conducted any enquiry as EO/PO – Respondent Bank justified in rejecting request of Petitioner for engagement of Legal Practitioner-Lawyer – Petition dismissed. [*Biswasri Mukherjee v. Punjab and Sind Bank*]

(V. KAMESWAR RAO, J.)
2021-II-LLJ-250 (DEL)
LNIND 2021 DEL 233

DISMISSAL

Misconduct – Petitioner-workman dismissed from service by Respondent-management after issuing charge-sheet for theft, fraud and dishonesty – After dismissal, Petitioner raised dispute before Labour Court – Tribunal held that dismissal of Petitioner-workman by management is not harsh – Whether, dismissal of Petitioner-workman was justified – *Held*, disciplinary authority and Tribunal have held that charges leveled against Petitioner had been proved – Tribunal in appropriate cases, interfere with punishment of dismissal, even if proven offence relates to dishonest conduct of employee – There cannot be any hard and fast Rule that once misconduct of theft is proved, dismissal will be automatic – If Court finds that reasoning of Tribunal is not proper, while imposing punishment, it should quash decision and remit it to Industrial Tribunal/Labour Court – Allegations leveled against Petitioner not serious in nature that warrant dismissal from service – Petitioner

has rendered 25 years of long and unblemished service and his service record was clean – Petitioner was victimized by Management and was dismissed from service – Matter remitted back to Respondent-Management for taking fresh decision – Petition disposed of. [*G.C. Patnayak v. Telco Ltd*]

(S.N. PATHAK, J.)
2021-II-LLJ396 (Jhar)
LNIND 2020 JHAR 8

EMPLOYMENT

Permanent Absorption – Constitution of India 1950, Article 226 – Respondent's petition before Court below allowed directing Appellant 1 to consider regularization of service of Respondent 2-employee on notional basis without any monetary benefit but by taking pensionary benefit, hence this petition – Whether, Respondent 2 entitled to be absorbed in permanent post of Corporation – *Held*, appointments made without following due process or rules relating thereof did not confer any right on appointees – Courts could not direct their absorption, regularization or re-engagement – High Court in exercise of jurisdiction under Article 226 of Constitution should not issue directions for absorption, regularization or permanent continuance – Temporary employee or casual wage worker continued for time beyond term of his appointment, he would not be entitled to be absorbed in regular service or made permanent – When person enters temporary employment and engagement not based on proper selection, he was aware of consequences of appointment being temporary or contractual in nature – Right for invocation of Doctrine of Legitimate Expectation for permanent post could not arise – Initial appointment of Respondent 2 was on contractual basis and not against any sanctioned post – Terms of employment under contract, provides for sudden termination of Respondent 2 without assigning any reason – Such appointment of Respondent 2 could not be termed as appointment through selection process – Impugned order passed by Court below liable to be set aside – Appeal allowed. [*CSTC v. Bimal Chandra Roy*]

(ANIRUDDHA ROY, J.)
2021-II-LLJ-334 (Cal)
LNIND 2021 CAL 285

Reinstatement with Back Wages – Industrial Disputes Act, 1947, Section 17B – Labour Court found that dismissal of Respondent-worker pursuant to disciplinary proceedings, not justifiable – Labour Court directed reinstatement of worker in service with entire back-wages – Appellant appeal before Single Judge dismissed affirming Labour Court order, hence this appeal – Whether, dismissal of worker justifiable, and worker entitled to full back-wages after order of reinstatement – *Held*, none of charges leveled against worker survives – Permissive occupation of property was also held to be not in connection with employment – Dispute with respect to property and its occupation could not

lead to allegations of misconduct – Management raised civil dispute against worker with respect to property and initiated disciplinary proceedings on charges which held to be unsustainable – Entitlement of workmen for entire back-wages could be denied – When reinstatement ordered by Court or Tribunal and employer challenged said proceedings, Section 17B of Act requires employer to pay workman, last drawn full wages, if workman not employed elsewhere – No affidavit filed by worker prior to her date of superannuation declaring that she was not in any alternative employment - Management directed to pay to worker entire back-wages from date of dismissal till date of award of Labour Court – Worker should not be entitled to any back-wages from date of award till date of her superannuation – Worker should be entitled to retirement benefits on basis of notional fixation of last pay drawn in interregnum between date of award and date of superannuation – Appeal partly allowed. [*Manager, Arrapetta Estate v. Suseela*]

(K.VINOD CHANDRAN, J.)
2021-II-LLJ-430 (Ker)
LNIND 2020KER 992

RE-INSTATEMENT

Full Back Wages – Employee worked as Clerk in employer Society – Employee sought to rejoin duty after leave on medical grounds – Employer Society sought medical certificate certifying mental soundness of employee, as condition to re-join duty – Two days later after re-joining duty employee was suspended from service after leveled charge-sheet – Order interfered with and directed reinstatement with back wages and all benefits – Whether, reinstatement of employee with back wages and all benefits justified in facts and circumstances of case – *Held*, conscious attempt on part of employer to keep employee away from service – Attempt of employee to rejoin duty after leave was sought to be thwarted – Charges leveled are either vague or baseless – Employer did not have case that, employee was gainfully employed elsewhere – No reason to interfere with award for payment of full back wages – Petitions disposed of. [*KKSSL v. Komalavally Narayanan*]

(SATHISH NINAN, J.)
2021-II-LLJ-417 (Ker)
LNIND 2020 KER 991

SUSPENSION

Violation of Rules – Municipal Corporation of Brihan Mumbai Service (Conduct) Rules, 1999, Rules 3, 8 and 11 – Respondent no. 1 suspended Petitioner on account of his having violated Rules 3, 8 and 11 of Rules, 1999, hence present petition – Whether, impugned order of Respondent no. 1 by which Petitioner suspended sustainable – *Held*, apparent from Rules, 1999 and in particular Rule 11 that there has been evidence given by Corporation

employee in judicial inquiry, previous sanction of Competent Authority not required – Petitioner being Corporation employee did not require previous sanction of Respondent – No violation of Rule 11 by Petitioner – As per Rule 3 duty of Corporation employee to maintain integrity and devotion to duty – Petitioner has shown integrity and devotion to duty – Rule 8 of Rules, 1999 inapplicable in present case as it is titled joining of association by Corporation employee – No such joining of association by Petitioner – After issuance of impugned order no attempt on part of Respondent – Corporation to serve charge-sheet on Petitioner – Impugned order which extends beyond three months cannot be allowed to remain in operation – Suspension order set aside – Petition disposed of. [*Kiran Ramesh Waghela v. Municipal Corp*]

(R.I. CHAGLA, J.)
2021-II-LLJ-320 (Bom)
LNIND 2021 BOM 100

TERMINATION

Breach of Provision – Industrial Dispute Act, 1947, Section 25F – Petitioner was permanent employee of Respondent Trust and her services were arbitrarily terminated – Petitioner's industrial dispute registered as reference rejected by Labour Court, hence this petition – Whether, impugned award passed by Labour Court liable to be set aside – *Held*, workman not pleaded anything regarding facts that after termination of her service, other workmen engaged by employer – Workman examined herself and her husband to substantiate their stand that without due process of law service of workman terminated – Employer had not examined anyone on its behalf, and not produced any documentary evidence – Pleadings of employer not supported by any oral or documentary evidence – Employer was not providing workman any documents like pay slip, attendance sheet or anything – No other evidence on part of employer – Workman led evidence in from of oral evidence – Employer committed breach of Section 25F of Act – Observation made by Labour Court in impugned award was on misreading of evidence – In case of breach of Section 25F of Act, instead of granting reinstatement and back wages lump sum compensation could be awarded to workman – Granting of relief of reinstatement after long span, no useful purpose would be served – It deems fit to order grant of compensation of certain *sum in lieu* of reinstatement – Impugned award passed by Labour Court in reference liable to be set aside – Petition disposed of. [*Jasodaben Ramanbhai Parmar v. STC Trust*]

(A.P. THAKER, J.)
2021-II-LLJ-469 (Guj)
LNINDU 2021 GUJ 1

WAGES

Fixation of Pay – Appellant Bank challenged judgment of Single Judge, directing fixation, hence this appeal – Whether, impugned judgment passed by Single Judge liable to be set aside – *Held*, Single Judge rightly held that IBA guidelines could not override instructions of Government of India – Error occurred, insofar as IBA guidelines give better benefit to Petitioners than that available to them as per guidelines – Ex-servicemen permitted to draw their pension in addition to pay on re-employment – There could be no reduction of pension entitlement – While making such fixation last pay drawn had to be protected, but plus pension drawn did not exceed minimum of scale of pay of General Manager – Pay fixation to be done as per guidelines by protecting Pay plus D.A. drawn by individual at time of release from Armed Forces – Insofar as ex-servicemen were concerned, benefit enabled by permitting them to draw pay in re-employed establishment as also pension due to them, subject to specified condition – Petitioners pay fixed at maximum of scale of Clerical cadre, with D.A. of specified sum – Last pay drawn by Petitioner 1 and re-employed pay was less than that – Bank obliged to pay amounts to Petitioners were disbursed last in Indian Navy – Ex-serviceman re-employed having been enabled pension too, limit had to be looked at by adding aggregate of pay on re-employment added to pension – Circular issued on basis of IBA guidelines, grants better benefits than another guidelines, for Ex-servicemen – Impugned judgment passed by Single Judge liable to be set aside – Appeal allowed. [*Punjab National Bank v. Mukund. K. Pai*]

(K. VINOD CHANDRAN, J.)
2021-II-LLJ-462 (Ker)
LNIND 2020 KER 993

JUNE

BACK WAGES

Winding up – Industrial Disputes Act, 1947, Section 33C(2) – Companies Act, 1956, Sections 456, 457 (C) and 546 – Petitioner retrenched from service – Industrial Tribunal passed award and ordered re-instatement – Petitioner wrote to company for his back wages, and also for allowing him to join pursuant to reinstatement order – Petitioner had filed application for quantification of claim under Section 33C(2) of Act, 1947 – First Labour Court rejected said application, hence, this appeal – Whether, in facts and circumstances of case order passed by First Labour Court sustainable – *Held*, Labour Court's reliance on Sections 456, 457 (C) and 546 of Act, 1956 is result of total non-application of mind – Right of Petitioner to get back wages and to get re-employment from date of reinstatement, director of company cannot take shelter under cover of winding up of company which happened 7 years after order – No mistake on part of Petitioner to file application under Section

33C(2) of Act 1947 before Labour Court – Final order passed by First Labour Court set aside – Labour Court directed to decide application under Section 33C(2) – Appeal allowed. [*Balaram Banerjee v. Gladestone Lyall & Co. Ltd*]

(ABHIJIT GANGOPADHYAY, J.)
2021-II-LLJ-588 (Cal)
LNIND 2021 CAL 369

COMPULSORY RETIREMENT

Violation of Natural Justice – Petitioner after being selected in due process appointed as Clerk in Syndicate Bank –Disciplinary authority passed order of compulsory retirement of Petitioner from service of Bank *vide* impugned order – Appeal against same dismissed, hence present petition – Whether, in facts and circumstances of case order of disciplinary authority of compulsory retirement sustainable – *Held*, enquiry being concluded on contest of Petitioner – Charge-sheeted employee did not produce any evidence either oral or documentary to substantiate his case except making oral submission that he is innocent and charges leveled against him are false – Petitioner requested Management to give him 15 days time to submit his written statement – Enquiry Officer instead of providing last opportunity of defence to delinquent acted in haste – Proceeding of Enquiry Officer closed with examination of only one witness – Charge-sheeted witnesses being Clerk in Bank Establishment, they were not competent enough to face disciplinary proceeding against mighty Management – Being model employer, disciplinary authority could have realized this aspect and provided opportunity to Petitioner to defend his case through proper assistance – Taking into consideration charges leveled and manner of conducting enquiry, there is violation of natural justice – Enquiry proceeding rather has been concluded taking due advantage of incompetency and innocence of person of rank of Clerk in Bank – Not only enquiry report but order of disciplinary authority not sustainable – Petition allowed. [*Madhusudan Mallick v. General Manager*]

(BISWANATH RATH, J.)
2021-II-LLJ-613 (Ori)
LNIND 2020 ORI 17

DISMISSAL

Full Back Wages – Respondent-Workman requested Management-petitioner for special loan for visiting his ailing father – Respondent-Workman dismissed from service for committed misconduct by obtaining special loan under false ground – Aggrieved by same, Respondent-workman raised industrial dispute – Tribunal directed to reinstate Respondent-workman into services along with full back wages and consequential benefits – Whether, Labour Court justified in reinstatement of Respondent-workman with full back wages and consequential benefits – *Held*, as and when order of termination is

set aside, workman is entitled for back wages – As far as quantum is concerned, it depends on judicial discretion taken into consideration nature of charges against employee – In present case neither of parties pleaded or adduced any evidence to prove material facts required for award of back wages – *Onus* lies on employee to prove and plead whether he was gainfully employed or not but employer also cannot be given a clean chit – This Court modify award of Tribunal to extent only that Respondent-workman entitled for 50% of total backwages – Petition disposed of. [*Tin Plate Company v. T.V.R. Raju*]

(S.N. PATHAK, J.)
2021-II-LLJ-538 (Jhar)
LNIND 2020 JHAR 9

Misconduct – Respondent-workman working as Watchman-cum-peon in Respondent school dismissed from service on ground of misconduct – Labour Court while setting aside dismissal order directed Petitioner to pay 25% back wages to Respondent and also directed to pay him all retiral benefits including pension, hence this petition – Whether, impugned award passed by Labour Court deserves to be modified – *Held*, contrary view taken by Labour Court while granting relief to workman – Labour Court had limited jurisdiction to interfere with decision of management arrived at in departmental inquiry against workman – Employer after holding departmental inquiry, found workman guilty and passed order of dismissal – There must be some cogent reasons and evidence on record to suggest that punishment imposed upon workman by employer not in consonance with disciplinary rules – Workman not raised point of victimization even in his statement of claim – Observations made by Labour Court in impugned award regarding victimization was afterthought defence put up by workman – Workman gainfully employed during interim period – Award of granting retrial benefit to workman found to be just and legal – Order directing to pay 25% back wages not sustainable in eyes of law – Punishment imposed by employer upon workman regarding his dismissal from service was harsh one – Workman already superannuated, there was no question of granting him reinstatement – Impugned award passed by Labour Court, modified to extent that workman be paid retiral benefits by treating period of his dismissal till his superannuation as notional service without any back wages – Petition disposed of. [*Baroda High School v. Babubhai Chhaganbhai parmar*]

(A.P. THAKER, J.)
2021-II-LLJ-546 (Guj)
LNIND 2021 GUJ 3

Violation of Provision – APSRTC Employees (C.C. and A) Regulations 1967, Regulations 9 – Constitution of India 1950, Articles 14 and 21 – Petitioner sought for declaring that proceedings dismissing from service arbitrary, and

contrary to Regulations, and in violation of Articles 14 and 21 of Constitution and set-aside same and directed Respondents to reinstate him into service with all consequential benefits, hence this petition – Whether, Respondents imposed major penalty without applying its mind and committed grave error in passing impugned order – *Held*, every conviction should not result in dismissal or removal – Authority had to consider entire conduct of employee, gravity of misconduct and could impose lesser penalty of deferment of increments if conviction not connected to duties – Sentence imposed against Petitioner not in connection with discharge of his duties, but in connection with non-payment of maintenance amount – Misconduct, would not fall within Regulation 9(1)(a) or 9(1)(2) of Regulations, to impose major penalty of dismissal or removal – Sentence of imprisonment might attract Regulation 9(3), but not Regulation 9(1) or (2) of Regulations, and major penalty should not be imposed for such conduct – Respondents imposed major penalty without applying its mind and committed grave error in passing impugned order – Impugned order set aside while permitting Respondents to impose appropriate punishment taking in to consideration gravity of alleged misconduct, as per clause 9(3) of Regulations, after affording reasonable opportunity to Petitioner – Respondents directed to reinstate Petitioner into service with immediate effect – Petition allowed. [*CH Srinivasa Rao v. APSRTC*]

(M. SATYANARAYANA MURTHY, J.)
2021-II-LLJ-580 (AP)
LNINDORD 2021 AP 1

EMPLOYMENT

Reinstatement with Back Wages – Industrial Disputes Act 1947, Sections 2(A) and 25-T – Petitioner-workman working as Conductor with Appellant, he stopped from attending work – Petitioner's Industrial Dispute under Section 2(A) of Act raised before Labour Court for reinstatement and for payment of back-wages was dismissed – Petitioner's petition before Single Judge allowed, hence this appeal – Whether, Petitioner worked for 240 days in preceding 12 months from specified year, and order of Single Judge directing reinstatement of Petitioner with continuity of service and back-wages liable to be set aside – *Held*, though it stated that Petitioner did work for required number of days in specified year, same not substantiated by any document – Petitioner had not worked for more than 240 days prior to his date of termination – Single Judge, on erroneous interpretation of number of decisions, allowed petition directing reinstatement with continuity of service and payment of back-wages – Petitioner could not be classified as permanent workman and his appointment could not be confirmed – Petitioner could not be allowed to state that action of Management in terminating him amounts to unfair labour practice under Section 25-T of Act – Petitioner himself sought for muster roll and wage register – Adverse inference drawn by Single Judge for non-production of said

muster roll and wage register was not correct – Order of Single Judge allowing writ petition and directing reinstatement of Petitioner with continuity of service and back wages liable to be set aside – Appeal allowed. [*Management, TNSTC v. R. Sabapathy*]

(PUSHPA SATHYANARAYANA, J.)
2021-II-LLJ-561 (Mad)
LNIND 2021 BMM 445

MAINTAINABILITY OF APPLICATION

Recalling of Dismissal Order – Industrial Disputes Act, 1947, Section 33C(2) – Respondent 3-employee filed applications under Section 33C(2) of Act for quantification of his monetary claim – Appellant-employer application before Labour Court allowed holding that application under Section 33C(2) of Act not maintainable as employee did not join his service – Respondent's 3 recalling application before Labour Court allowed whereby dismissal order recalled, hence this application – Whether, impugned order passed by Labour Court liable to be set aside – *Held*, award was in favour of Respondent 3 could not be used by employee time and again and by filing consecutive applications under Section 33C(2) of Act without even referring to any document for any effort to join service – No such thing was there in pleading for recalling order – Preponderance of evidence would remain absent in support of Respondent 3 about which no whisper of reference of document in pleading of recalling application – No reinstating was definitely continuous wrong on part of employer – There must be sincere effort on part of person on whom wrong being perpetrated while filing consecutive applications under Section 33C(2) of Act – Employee would lie low for years and would come after long time with computation case under Section 33C(2) of Act, could not be allowed – Initial unsuccessful attempt to join service by employee could not be used as ground for filing second application after first application without existence of any document – Respondent 3 could not be allowed to take advantage of consecutive applications under Section 33C(2) of Act – Impugned order passed by Labour Court liable to be set aside – Application allowed.[*Precious Carrying Corp. Ltd v. State of W.B.*]

(ABHIJIT GANGOPADHYAY, J.)
2021-II-LLJ-644 (Cal)
LNIND 2021 CAL 401

PROMOTION

Grant of Back Wages – Petitioner sought for his promotion to post of Judicial Assistant with effect from specified date, hence this petition – Whether, Petitioner entitled to promotion with all consequential benefits – *Held*, promotion order reveals that persons have been promoted till specified year – Vacancies available for promoting Petitioner on specified date – In

normal course, on issuance of charge-sheet, recommendation of DPC kept in sealed cover, but promotion in this case being retrospective – DoP&T issued instructions with regard to manner in which cases of Officers, against whom disciplinary proceedings pending, need to be dealt with when they were due for promotion – In eventuality none of three conditions testified in Para 2 of OM exist then DPC would assess suitability of Officer and promote him, if found fit; otherwise, proceedings should be kept in sealed cover – None of three conditions attracted in case of Petitioner as, he was not under suspension and no any departmental charge-sheet issued and no prosecution for criminal charge pending – Even subsequent OM issued by DoP&T reiterates position in terms of first OM – DPC proceedings would not have been put in sealed cover and Petitioner would have been promoted – Petitioner should be entitled to promotion to post of Judicial Assistant with effect from specified date with all consequential benefits with 50% back wages – Petition allowed. [*Inderjeet Dabas v. District and Sessions Judge*]

(V. KAMESWAR RAO, J.)
2021-II-LLJ-649 (Del)
LNIND 2021 DEL 874

TERMINATION

Reinstatement – Petitioner/Company appointed Second Respondent as Building Management System Operator and deputed to one of client's premises – Second Respondent did not report for duty and raised industrial dispute for illegal termination – Labour Court ordered reinstatement with back wages and continuity of service – Management issued letter directing Second Respondent to report to duty but Second Respondent failed to report for duty – Petitioner preferred petition challenging award passed by Labour Court – Whether, in fact and circumstances of case order of Labour Court to direct reinstatement of Second Respondent justified – *Held*, Petitioner-Management has produced attendance register and wage register to show that Second Respondent did not report to work – No evidence on side of Second Respondent to show that he actually reported for work, but he was refused permission to join duty – Labour Court made observation that Management might have terminated services of Second Respondent – If statement of Management was false and misleading, employee must have raised his objections and sent reply that he was ready to join but not permitted to work – In absence of any complaint by Second Respondent, it cannot be said that he was terminated from service – Considering plight of young Graduate of Engineering, Present Court gives one more opportunity to Second Respondent to join duty – Petition partly allowed. [*Management, CISSPL v. Presiding Officer I*]

(M. GOVINDARAJ, J.)
2021-II-LLJ-518 (Mad)
LNINDORD 2021 MAD 35

VALIDITY OF ENQUIRY

Re-instatement – Labour Court directed first party management to reinstate second party workman in service with full back wages and held that domestic enquiry conducted against second party workman not valid hence, present petition filed to challenge award passed by Labour Court – Whether, in facts and circumstances of case award passed by Labour Court to reinstate second party workman in service with full back wages sustainable – *Held*, Law is well settled that before proceeding with domestic enquiry against delinquent, he must be informed clearly, precisely and accurately charges leveled against him – If charges are not precise and definite, delinquent employee would not be able to understand those charges and defend himself effectively – Labour court rightly held in impugned order that Enquiry Officer followed wrong procedure by asking second party workman to produce his witness – It was duty of management first to prove allegations made against second party workman by leading evidence, thereafter second party workman would have been asked to produce his witnesses and documents – No specific mention of date and time of alleged occurrence in charge memo – Second party workman now aged about 56 years – Considering nature of his employment, his age, passage of 25 years since date of termination, direction of reinstatement in service not sustainable – Petition disposed of. [*Emami Paper Mills Ltd v. Presiding Officer*]

(S.K. SAHOO, J.)
2021-II-LLJ-595 (Ori)
LNIND 2020 ORI 15

JULY

APPOINTMENT

Consideration of Candidature – Petitioner-workmen sought for directing Respondents 2 and 3 to consider their claim for appointment to post of Technician-III, hence this petition – Whether, candidature of Petitioners for appointment on post of 33 Technicians could be considered – *Held*, 166 candidates from select list found ineligible and they were disqualified – Some candidates from select list refused to join post – There were 215 posts still lying vacant to complete recruitment of 947 posts of Technician-III – All 9 selected candidates issued with appointment order from specified category have not joined their posts of Technician-III – Selected 24 candidates issued with appointment order from general category have not joined their posts of Technician-III – As such 24+9=33 selected candidates seem to have not joined their respective posts of Technician-III – Those 33 posts were not filled in by Respondent 2 and 3 – No impediment for Respondent 2 and 3 to fill up those 33 posts from waiting list candidates as per seniority and merit and as per

reservation policy – There might not be any difficulty for Respondent 2 and 3 make such exercise when 33 candidates duly appointed refused to join their posts as per their own document – Respondents-authorities could not take undue advantage of their long process and resultantly say that waiting list was now invalid – Petitioners approached Court before one year of expiry of wait list and sought directions – As such there was no technical hurdle – Respondent 2 and 3 should consider candidature of Petitioners for appointment on post of 33 Technicians if they found eligible for said post – Petition disposed of. [*Angad Dnyanoba Shitale v. State of Maharashtra*]

(SHRIKANT D. KULKARNI, J.)
2021-III-LLJ-38 (Bom)
LNIND 2021 AUG 48

CONTRACT EMPLOYMENT

Conferment of Permanent Status – Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act 1981, Section 3 – Respondents 2 to 6-employees petition before Respondent 1-appellate authority under Section 3 of Act allowed granting permanent status in favour of them – Both Petitioner Corporation and Respondents challenged order passed by Respondent 1, hence these petitions – Whether, order passed Respondent 7 entered into agreement only for deck cleaning and they have obtained contract for marine workshop – Private Respondents clearly established that they were employees of Petitioner Corporation – If award was not irrational or *perverse*, High Court should not interfere with reasons in award – Contract between Petitioner Corporation and Clean Care Service Centre was not registered – Clean Care Service Centre not complied with tender conditions during subsisting period, they were terminated from specified date – Private Respondents continuously employed, and during that period, Petitioner Corporation had not marked any document to establish that private Respondents worked under contractor – For said period, without marking any document, claim of Petitioner Corporation that private Respondents were not direct employees not sustainable one – Based on records produced by Petitioner Corporation, Respondent 1 rightly held that private Respondents continuously worked for 480 days in Petitioner Corporation and granted permanent status in favour of them – No error in order passed by Respondent 1 – Petition filed by Petitioner Corporation dismissed – Petition filed by private Respondents allowed. [*Poompuhar Shipping Corp. v. Inspector of Factories*]

(M.DHANDAPANI, J.)
2021-III-LLJ-142 (Mad)
LNINDORD 2021 BMM 104

CONTRACT LABOURER

Grant of Wages – Contract Labour (Regulation and Abolition) Act 1970, Section 21(4) – Petitioners were members of Respondent 7 union, working under contractor and principal employer being Bharat Sanchar Nigam Limited (BSNL) for long period of time but of late they have not been paid their salary-wages – Petitioners prayed that in terms of Section 21(4) of Act principal employer should pay salary-wages of contract labours, hence these petitions – Whether, Respondent 2 and 4 could be directed to clear entire dues in respect of salaries-wages of Petitioners – *Held, Respondent 9 and 10 i.e.* contractors under whom Petitioners work had not submitted invoice-bill for specified months – Salaries-wages of Petitioners were due and that BSNL was principal employer within meaning of Section 21(4) of Act – Salary required to be paid to labourers who worked under principal employer as contractors' employees – Petitioners who were working under contractors required to be paid as per Act by principal employer – Contractors did not come to Court claiming contractual amount – Petitioners were contract labourers covered by Section 21(4) of Act – Payment of wages essentially matter comes within meaning of service conditions – Respondent authority suppressed origin of appeal – Petitioner (contractor) was proprietorship concern who claimed payment of outstanding service bills from principal employer – Matter originated in writ Court by proprietorship farm, contractor, and not by contract labourers, and this was unusual unfair practice on part of Respondent – Contract labourers have raised their claim which was legal right recognized in Section 21(4) of Act – Respondent 2 and 4 directed to clear entire dues in respect of salaries-wages of Petitioners within certain period – Application allowed. [*Kartick Chandra Mahish v. Union of India*]

(ABHIJIT GANGOPADHYAY, J.)
2021-III-LLJ-185 (Cal)
LNIND 2021 CAL 429

DISMISSAL

Abatement of Disciplinary Proceeding – Bihar Government Servants (Classification, Control and Appeal) Rules 2005, Rule 24(1) – Petitioner's deceased husband caught red-handed by Vigilance-sleuths while accepting bribe money, dismissed from services – Petitioner's deceased husband appeal under Rule 24(1) of Rules before Divisional Commissioner dismissed on sole ground of death of Appellant, hence this petition – Whether, appeal against order of dismissal should abate in event of Appellant death on ground of absence of any provision for substitution – *Held*, death of delinquent employee takes place in midst of disciplinary proceeding (departmental enquiry), that would result into abatement of disciplinary proceeding – If death takes place after departmental enquiry concluded and matter posted for final orders before disciplinary authority, disciplinary proceeding should not abate –

Disciplinary authority might pass final orders in accordance with law, if proceeding completed at all other stages – In case death takes place after passing of final order in disciplinary proceeding, heirs and legal representatives of deceased government servant might file appeal against order of disciplinary authority – If appeal preferred by Government servant against order of disciplinary authority and during pendency of appeal Government servant dies, legal heirs should be allowed to pursue appeal – Order passed by Divisional Commissioner liable to be quashed – Matter remitted back to appellate authority with direction to allow Petitioner to pursue appeal before him. [*Bibha Devi v. State of Bihar*]

(CHAKRADHARI SHARAN SINGH, J.)
2021-III-LLJ-47 (Pat)
LNINDU 2020 PAT 139

EMPLOYMENT

Compassionate Appointment – Petitioner challenged Respondent 1 and 2 order giving appointment to Petitioner as O.A. at fag end of her superannuation age and directing Respondents to issue orders of appointment on compassionate ground to Petitioner's son - hence this petition – Whether, impugned order passed by Respondent 1 and 2 giving appointment to Petitioner as O.A. at fag end of her superannuation quashed, and Petitioner's son could be considered for compassionate appointment – *Held*, though such application made by widow of deceased employee well within time, same was delayed for several years, for which, no acceptable reason had been given – Respondents thought it fit to take application from son of Petitioner in view of fact that Petitioner already reached 52 years and therefore, to consider one of family member of deceased employee, they wanted application from Petitioner's son – Respondent Board could not go back once again and make appointment only in favour of Petitioner knowing well that Petitioner already reached superannuation age – Said move on part of Respondents in giving such appointment to Petitioner only for six months to serve by Petitioner, would not serve purpose of bailing out family – Delay caused in this regard, not attributable to Petitioner or his son, but only on Respondents – Said impugned order would not stand in legal scrutiny – Impugned order insofar as appointment made in respect of Petitioner and consequential order giving posting to Petitioner liable to be quashed – Respondents directed to consider request of Petitioner made in this regard, and should make endeavor to give compassionate appointment to Petitioner's son within certain period – Petition disposed of. [*C. Kamalakshi v. MD. TWAD Board*]

(R. SURESH KUMAR, J.)
2021-III-LLJ-218 (Mad)
LNINDORD 2021 MAD 281

Regularization of Service – Constitution of India 1950, Article 14 – One of members of Respondent 2-employee raised Industrial Dispute demanding regularization of service of Appellant with consequential direction to absorb him in its services with effect from date of demand with consequential monetary benefits from such date of absorption – Labour Court by impugned Award directed Appellant Air India to absorb concerned employee – Appellant petition before Single Judge dismissed, hence this appeal – Whether, impugned order passed by Courts below liable to be set aside – *Held*, candidates, who secured 53 marks alone considered to be eligible for personal interview so far as SC/ST/OBC category concerned – Employee secured only 35 marks out of 150 which was far below 53 marks, namely, 35% - This factual aspect overlooked by Labour Court, and also Single Judge of this Court – Said employee already taken up employment in one another by leaving Appellant service – Employee seeking regularization of his service should continue in said service on date of his request for regularization to be considered – When said employee made claim petition before Labour Court, he was in service of Appellant – During pendency of Claim Petition, said employee left service of Appellant and when writ petition filed by Appellant challenging award, he was not in service and even today also, he was not in service of Appellant – Court could not grant benefit of regularization as said employee was not in service – There could not be case for regularization without there being employee-employer relationship and concept of regularization linked with Article 14 of Constitution – Impugned Award passed by Labour Court, which was confirmed by Single Judge liable to be set aside – Appeal allowed. [*DGM (H.R.D.) v. Presiding Officer, CGIT-cum-LC*]

(T. RAJA, J.)
2021-III-LLJ-168 (Mad)
LNIND 2021 MAD 1684

AUGUST

APPOINTMENT

Jurisdiction – Petitioner sought for directing Respondents 3 and 4 to permit Petitioner to join duty as Noon Meal Organiser as per order of Respondent 1, hence this petition – Whether, District Collector was competent authority to appoint Noon Meal Organisers – *Held*, Respondent 2 forwarded names of qualified persons to Respondent 3 for selection – Respondent 3 selected 5 names including Petitioner and one another – Respondent 2 forwarded names to District Collector – After perusal of names submitted by Respondent 2, District Collector appointed Petitioner as Noon Meal Organiser in Respondent 3 School – Without challenging said order of appointment, Respondent 3 did not permit Petitioner to join duty as Noon Meal Organiser, which was contrary to selection process and in under disobedience of orders of

Respondent 1 – Respondent 3 directed to permit Petitioner to join duty as Noon Meal Organiser in Respondent 3 School – Petition allowed. [*R. Parameshwari v. District Collector*]

(M. DHANDAPANI, J.)
2021-III-LLJ-367 (Mad)
LNINDORD 2021 BMM 171

APPRENTICE

Gratuity – Payment of Gratuity Act, 1972, Section 2(e) – Appellants-employees continued as apprentices for periods as long as even six years, alleged that Section 2 (e) of Act excludes apprentices from definition of employee – Writ Court restricted period of apprenticeship to two years from initial date of joining and modified orders passed by appropriate authority by disallowing gratuity for relevant two years, hence this appeal – Whether, initial appointments of Appellants in Corporation was as apprentice, and impugned orders liable to be set aside – *Held*, orders impugned modifying orders of payment passed by statutory authority founded on no material, same could not be sustained – Writ Court should be very slow in re-appreciating facts or upsetting order passed on facts without cogent material – Employer only alleged certain things by way of affidavit without any documentary proof in support thereof – In such circumstances, Writ Court ought to have exercised self-restraint and allowed factual considerations evident from order of appropriate authority to prevail – impugned orders liable to be set aside – Orders passed by appropriate authority indicating quantum of gratuity to be paid to each Appellant stand revived – Appeal allowed. [*C. Muthupandian v. TN Civil Supples Corpn*]

(SANJIB BANERJEE, C.J.)
2021-III-LLJ-352 (Mad)
LNIND 2021 BMM 950

BENEFITS

Pension – Industrial Dispute Act, 1947, Section 17-B – Workman petition before Labour Court directing Management to pay pension under Rules with 12% interest, dismissed, and petition to compute wages and other monetary benefits payable to him, allowed – Both Workman and Management challenged impugned order passed by Labour Court, hence these appeals – Whether, older passed by Labour Court liable to be quashed – *Held*, no justifiable reason given by Management for abruptly stopping payment of wages under Section 17-B of Act from specified date – Award of Labour Court granting reinstatement with continuity of service having become final, workman entitled to be reinstated with continuity of service – All benefits should be computed by taking note of full length service and pension to be accordingly fixed – Order impugned in writ petition filed by workman, was outcome of wrong understanding of facts and misconception – Management

had glossed over important portion of relief granted by Labour Court *i.e.* relief on continuity of service while ordering reinstatement – This order having attained finality, Management could not escape from rigor of such order – Workman entitled to be reinstated notionally and entire length of service should be reckoned and his pay and allowance should be fixed at appropriate stages – No challenge to order passed by Labour Court questioning quantum, because both Management and workman accepted calculation – Impugned order quashed and Management directed to grant pension to workman in light of award of reinstatement and continuity of service – Prayer for grant of interest on arrears payable rejected – Order passed by Labour Court confirmed and wages computed should be paid – Appeal filed by workman allowed, and that of filed by Management dismissed. [*K. Palanivelu v. Management of TNSTCL*]

(T.S. SIVAGNANAM, J.)

2021-III-LLJ-391 (Mad) LNIND 2021 BMM 832

EMPLOYMENT

Continuity of Service – Respondent 1 appointed as Salesman in Petitioner society suspended from services, raised Industrial Dispute – Labour Court set aside dismissal order and granted continuity of service for purposes of calculation of terminal benefits and turned down reinstatement and back-wages, hence this petition – Whether, punishment imposed by Management disproportionate, and Respondent 1 entitled for reinstatement by setting aside order of dismissal – *Held*, in order to establish case of Petitioner management documents were marked and on behalf of Respondent 1, only one document marked and no witness examined on both sides – Insofar as punishment awarded to Respondent 1 for *delinquency*, it was always within domain of Appointing Authority to decide on punishment to be imposed on delinquent, which should be proportionate to act of *delinquent* – Labour Court arrived at categorical conclusion that though charge of tampering of old bill book against Respondent 1 was only established, misappropriation of funds not established – Labour Court modified punishment on humanitarian grounds by considering fact that Respondent 1 involved in such act for first time and reached age of superannuation – Respondent 1 involved in misappropriation by corrupt motive for illegal monetary and personal gains by tampering and utilizing old bill books – When tampering of old bill books established, as to how Labour Court held that monetary loss not established – For disproving case of Petitioner management, Respondent 1 marked only acquittal order of criminal case – Acquittal would not *expunge* irregularities committed in employment – Award of Trial Court *perverse* and liable to be interfered with – Award passed by Respondent 2 liable to be set aside – Petition allowed. [*Co-optex Sales Empprium v. M. Shamsudeen*]

(M. DHANDAPANI, J.)

2021-III-LLJ-287 (Mad) LNIND 2021 MAD 1877

INDUSTRIAL DISPUTE

Withdrawal of Reference – Industrial Disputes Act, 1947 – Petitioner employed as field worker by Respondent terminated from services – Conciliation proceedings having failed, Labour Commissioner referred dispute for adjudication to labour Court – Petitioner application for withdrawal of reference before labour Court rejected hence this petition – Whether, impugned award deals with merits of industrial dispute – *Held*, Labour Court, having observed that Petitioner's wished to withdraw reference, he should not be permitted to file fresh case on same cause of action as matter decided on merits – Petitioner's application was rejected, Labour Court could not have foreclosed remedy available to Petitioner to seek fresh reference or correction of reference – Petitioner had not moved appropriate authority for carrying out corrections in reference, gap between date, when matter came up and not decided – Labour Court could have stood over matter or permitted Petitioner to withdraw case with liberty to take recourse to appropriate remedy under Act – Appropriate authority would not entertained *plea* for making fresh reference unless case pending before Labour court was withdrawn – Concerned forum bring about industrial peace and end disputes by fixing, terms and conditions of reinstatement or by meting out lesser punishment – Adjudicatory authorities acting under Act were not bound by technical rules of procedure – Labour Court's *obduracy* in not permitting Petitioner to withdraw reference was unsustainable in law – Impugned award passed by Labour Court liable to be set aside – Petition allowed. [*Rakesh v. J.M.J. Signage*]

(RAJIV SHAKDHER, J.)
2021-III-LLJ-338 (Del)
LNIND 2021 DEL 852

PART-TIME EMPLOYEES

Benefit of Settlement – Industrial Disputes Act 1947, Section 18(1) – Single Judge reversed award passed by Respondent 2-Labour Court holding that part-time Safai Karmacharies were not eligible for benefit of Settlement reached under Section 18(1) of Act, hence this appeal – Whether, Appellant union case covered by settlement, and part-time Safai Karmacharies eligible for benefit of Settlement reached under Section 18(1) of Act – *Held*, employees worked only as casual part-time Safai Karmacharies, not covered under settlement – This aspect rightly appreciated by Single Judge – Those part-time Safai Karmachari employees regularized from specified year and they were all paid wages as per settlement in scale of pay depending upon work – Said part-time Safai Karmachari employees could not compete with regular Safai Karmacharies, because they are governed by Awards and Settlements made under provisions of Act – Said employees not entitled to benefit of Settlement to claim arrears before their respective date of absorption, as Clause referred to therein would not apply to them – When specific *plea* taken by Respondent

1 bank that those casual part-time Safai Karmacharies paid wages as applicable to regular part-time Safai Karmacharies only after their absorption in regular service, it was not even denied by Appellant union – Reasoning's given by Single Judge to reverse award that settlement excluded casual workers, and extending arrears to those workmen would amount to second benefit, were in order – Settlement did not cover casual part-time Safai Karmacharies – Appeal dismissed. [*Gen. Sec., CBI Staff Union v. Reg. Manager, CBI*]

(T. RAJA, J.)
2021-III-LLJ-355 (Mad)
LNIND 2021 MAD 1703

TERMINATION

Principles of Natural Justice – Petitioner appointed on post of Semi-Skilled Mechanist challenged order of termination passed by Respondent 3, and commanding Respondents to reinstate him in service with full back wages and all consequential benefits, hence this petition – Whether, Petitioner could be re-deligated on availability of alternative remedy to raise industrial dispute, and absence of Petitioner was just and with reasonable cause – *Held*, writ petition entertained and *vide* order direction issued to Respondent department for consideration of application of Petitioner and to pass appropriate order – It would not be appropriate to re-deligate Petitioner to avail alternative remedy at this stage – Information furnished to Respondent department in regard to confinement in jail of Petitioner – Circumstances compelled Petitioner for absence from duties and reason for absence from duties appears to be just and having reasonable cause – Respondents could not be permitted to raise that absence of Petitioner from duties was deliberate and willful – Respondents would have taken care of, act in regard to absence of Petitioner from duties – Respondents while taking action against Petitioner in termination of service would have provided opportunity of hearing, by following principles of natural justice – Due to absence from duties, Petitioner services terminated without following principles of natural justice – Order of termination could not be held to be just and valid – Due to non-adopting of procedure of principles of natural justice, impugned order could not be termed to treat Petitioner in service and to ensure all consequential benefits admissible to his post – Petition allowed. [*Rajendra Kumar Jain v. Scooters India Ltd*]

(IRSHAD ALI, J.)
2021-III-LLJ-257 (All)
LNINDORD 2021 LUCK 450

SEPTEMBER

DISMISSAL

Procedure non-complied – Tamil Nadu Cooperative Societies Act 1983, Section 153 – Second Respondents imposed punishment of dismissal from service on Petitioner which was confirmed by First Respondent – On remand, first Respondent rejected Petitioner's case and confirmed earlier order of dismissal, hence present appeal – Whether, impugned order by which first Respondent rejecting Petitioner's case and confirming earlier order of dismissal sustainable – *Held*, first respondent directed to reconsider Petitioner's case in the light of the earlier order – No reference to earlier order, totally in violation of direction of this court – First Respondent chosen to mechanically reject Petitioner's case by citing general grounds that in cases of charges of irregularities of stock deficit, raising bogus bill – No reference to any of facts of case of findings of enquiry officer so as to enable revisional authority to establish correctness of punishment order – Order which is not in conformity with procedure contemplated under Section 153 cannot be sustained – Impugned order quashed – Appeal allowed. [*C. Devadoss v. Additional Registrar*]

(M.S. RAMESH, J.)
2021-III-LLJ-608 (Mad)
LNINDORD 2021 MAD 451

EMPLOYMENT

Regularization of Service – Appellant university engaged daily wagers-Respondents at different agricultural research centers raised industrial dispute seeking regularization of their services – Tribunal directed Appellant to regularize services of all daily-rated labourers who have completed 10 years of service with pay and allowances along with other benefits of permanent Class IV employees – Appellant's writ petition before High Court partly allowed, and Letter of Patent Appeal filed by management dismissed, hence these appeals – Whether, Respondents were entitled for regularization of their services – *Held*, Court approved proposed scheme of State and directed regularization of all those daily wagers who were eligible in accordance with scheme phase-wise – Right to be regularized in accordance with scheme continues till all eligible daily-wagers were absorbed – Creation of additional posts for absorption staggered by Court permitting Appellant and State to implement scheme phase-wise – Judgment of Court in specified case inter parties had become final and binding on university – No ambiguity in directions given by this Court in specified case that obligation on part of university to implement scheme by regularizing all eligible daily wagers continued – Division Bench of High Court had taken note of discriminatory approach of university in conferring benefit of regularization to some and not to all those daily wagers who were eligible – No

error in Judgment of High Court which warrants interference by Court – Eligible daily wagers in accordance with scheme eagerly awaiting regularization – Right of Respondents for regularization correctly recognized by High Court – Appeals dismissed. [*Vice Chancellor, AAU v. Kanubhai Nanubhai Vaghela*]

(L. NAGESWARA RAO, J.)
2021-III-LLJ-465 (SC)
LNINDU 2021 SC 36

GRATUITY

Deductions – Tamil Nadu Co-operative Societies Act 1983, Section 48 – Payment of Gratuity Act 1972, Section 13 – Respondent 3 petition before Writ Court allowed issuing direction for payment of certain sum together with interest at 10% interest from date of demise of employee, till date of payment to Respondent 3, hence this appeal – Whether, Appellant society entitled to recover loan amount from gratuity payable to deceased employee – *Held*, in terms of Section 48 of Act 1983, deductions were permissible to be made from salary, wages and gratuity of employee of society – Bylaw 65(15)(12) empowers Appellant society to recover dues payable to Appellant society and loan dues payable by employee pursuant to agreement executed by them from retirement gratuity of employee – Bylaws of Appellant society were special rules and same would prevail over Act 1972, because society registered under provisions of Act, 1983 – Finding of Writ Court by referring to Section 13 of Act, 1972 could not be made applicable to recovery effected by Appellant society from gratuity payable to employee – Order passed by Writ Court liable to be set aside – Appellant society directed to issue notice to Respondent 3, afford opportunity of personal hearing, and computation should be calculated as ordered by Labour Court – Appeal allowed. [*Karur Town-Co-op Bank v. Presiding Officer*]

(T.S. SIVAGNANAM, J.)
2021-III-LLJ-487 (Mad)
LNIND 2021 BMM 841

Rate of Interest – Payment of Gratuity Act, 1972, Section 7(3) – Controlling Authority directed to settle Gratuity amount of Appellant – Single Bench restricted payment of interest on belated payment of gratuity amount from date of order passed by Controlling Authority – Whether, Single Bench justified in restricting payment of interest on belated payment of gratuity amount from date of order passed by Controlling Authority – *Held*, objections raised by Respondent could not be ground to escape payment of amount under Section 7(3) of Act – Writ Court ought not to have restricted payment of interest from date of order passed by Controlling Authority – Other employees made no claim for Gratuity, for which Appellant could not be denied Gratuity – Appellant obtained order from Controlling Authority – Order passed by Controlling Authority attained finality for not challenging it by Respondent –

Gratuity was not bounty but amount to employee in recognition of past services becomes payable on employees retired – Respondent was bound to pay interest at admissible rate – Respondent bound to pay interest to Appellant from date when gratuity amount ought to be settled – Rough calculation made to fix claim of Appellant – Appellant entitled to simple interest on amount payable at rate of 18% p.a – Appeal allowed. [*M. Balasubramanian v. Executive Officer*]

(T.S. SIVAGNANAM, J.)
2021-III-LLJ-578 (Mad)
LNIND 2021 BMM 917

MISCONDUCT

Maternity Benefits – Industrial Disputes Act, 1947, Section 33C(2) – Provident Fund Act, 1925 – Deceased employee suspended from service from Petitioner-Bank for misappropriation of fund – Recovery applications preferred by Respondent-wife of deceased employee – Labour Court ordered to pay all benefits – Whether, Labour Court justified in directing to pay medical bill, subsistence allowance, leave encashment and entire provident fund amount to Respondent – *Held*, before any inquiry could be concluded deceased employee died – Entitlement of encashment of privilege leave created by Bipartite Settlement – Suspended employees eligible for full medical reimbursement – No right available with Bank to deduct entire amount from provident fund account of employee – Employee was suspended not dismissed from service – Employee died during pendency of inquiry – Deduction of entire amount from provident fund by Bank not inconsonance with its own regulations – Right accrued in favour of nominee of deceased to get provident fund amount of deceased at time of his death subject to deduction of outstanding amount due to Bank – Such amount could not be exceeded at all contribution of Bank – Right to get medical reimbursement, subsistence allowance, leave encashment and provident fund amount crystalized in favour of deceased employee as per Bank's regulation and Bipartite Settlement – No bar of filing recovery application under Section 33C(2) of Act, 1947 – Labour Court had jurisdiction to entertain same – Respondent entitled to get medical bill plus salary of suspension period and amount of leave salary – Interest awarded by Labour Court reduced – As per Bank Regulations and Act, 1925 employer could deduct outstanding amount upto its contribution – Respondent entitled to get provident fund amount after deduction by Bank – Impugned order modified – Petitions partly allowed. [*Chief Manager v. Purnima A. Andharia*]

(A.P. THAKER, J.)
2021-III-LLJ-502 (Guj)
LNIND 2021 GUJ 4

REINSTATEMENT WITH CONTINUITY OF SERVICE

Grant of Back Wages and Benefits – Industrial Disputes Act, 1947, Sections 25-F, 25-G and 25-H – Labour Court granted relief of reinstatement along with continuity of service with 25% back wages holding that there was breach of Sections 25-F, 25-G and 25-H of Act and Respondent- workman worked for more than 298 days during specified period, hence this petition – Whether, impugned judgment passed by Labour Court deserves to be confirmed – *Held*, Petitioner not raised any issue that there was no relationship of employer-employee and also raised no defence that it was not industry – Both these points raised for first time in petition – Version of Petitioner that workman had not worked for 240 days in any calendar year was contrary to its own record – No notice pay or retrenchment compensation given to workman – Many workmen retained and joined duty later in point of time as compared to Respondent – Respondent juniors were continued in service – There was breach of provisions of Sections 25-F, 25-G and 25-H of Act, no question of granting lump sum compensation to workman – Labour Court considered every aspect in its proper perspective – While granting 25% back wages, Labour Court considered fact that workman were three brothers and by doing labour work they were maintaining their families – No error committed by Labour Court in passing impugned award granting 25% back wages with continuity of service and all consequential benefits – Impugned judgment passed by Labour Court deserves to be confirmed – Petition dismissed. [*State of Gujarat v. Ramanbhai Budhabhai Thakor*]

(A.P. THAKER, J.)
2021-III-LLJ-650 (Guj)
LNIND 2021 GUJ 9

TERMINATION

Reinstatement – Respondent was terminated from service by Appellant no. 1 – Single Bench quashing order of termination directed reinstatement, hence appeal filed by appellants – Whether, Writ Court justified in directing reinstatement of Respondent by quashing order of termination – *Held*, Respondent was contract employee – No notice required for terminating contract employment – Serious charge imputed on Respondent – Unless enquiry conducted termination order could not have been passed – No enquiry conducted by Appellants – Order of termination could not be sustained – Procedure of framing of charges need not be adopted on account of long lapse of time – Matter need not be remanded back to Appellants for fresh consideration – Order of termination quashed – Respondent being contract staff reinstatement with continuity of service could not be directed – Order

passed by Writ Court quashing order of termination of contract confirmed – Direction issued for reinstatement with continuity of service set aside – Appellant directed to reinstate Respondent on contract basis – Appeal partly allowed. [*Dir. Of Medical and Rural Health Svcs v. T. Blessie*]

(T.S. SIVAGNANAM, J.)
2021-III-LLJ-583 (Mad)
LNIND 2021 BMM 933

OCTOBER

COMPASSIONATE APPOINTMENT

Eligibility – Petitioner sought for directing Respondent to reconsider his claim for compassionate appointment, hence this petition – Whether, communication and office order liable to be quashed, and Petitioner eligible for compassionate appointment – *Held*, Respondent Bank would be justified in assessing financial status of family of employee, only for granting financial aid in nature of lump-sum *ex-gratia* amount – If family had other source of income and had sufficient funds available, Respondent can take stand that payment of lump-sum *ex-gratia* amount was not necessary – Whether, family was indigent or not, could not be basis for refusing compassionate appointment to candidate – Ex-employee of Respondent (father of Petitioner) was less than 55 years of age when Permanent Medical Board approved that he was medically incapacitated and could not be continued in service – Petitioner sought compassionate appointment and had not opted for payment of lump-sum *ex-gratia* amount – Appointment on compassionate ground to eligible candidate could not be refused only because financial background of family might be good – Petitioner claim was not rejected because he was in Bank earlier – Communication and office order liable to be quashed, and Petitioner eligible for compassionate appointment – Petition partly allowed. [*Nitin v. Central Bank of India*]

(RAVINDRA V. GHUGE, J.)
2021-III-LLJ-89 (Bom)
LNIND 2021 AUG 81

DISMISSAL

Unauthorized Absence – Second Respondent dismissed Petitioner from service on ground of unauthorized absence – Whether, dismissal from service proportionate to leveled charges – *Held*, though Petitioner had admitted his absence, enquiry officer ought to have considered explanation before conclusion of charges – Regulations of Respondent Corporation indicates that merely because procedure for imposing major punishment followed in disciplinary procedure, same need not end in inflicting major punishment –

Enquiry officer not given due weightage to medical evidence produced by Petitioner for his absence – Major punishment of dismissal from service not proportionate to leveled charges – Petition allowed. [*E. Kandasamy v. Tamil Nadu Civil Supplies Corp.*]

(M.S. RAMESH, J.)
2021-III-LLJ-30 (Mad)
LNINDORD 2021 MAD 437

EMPLOYMENT

Reinstatement – Petitioner's Industrial Dispute raised before Labour Court-Respondent 1 for reinstatement, dismissed – Petitioner sought for quashing Labour Court order, and also for directing Respondent 2 to reinstate him in service, with full back wages, continuity of service and all other attendant service benefits, hence this petition – Whether, award passed by Labour Court, justified – *Held*, once there was bogus certificate produced, it was unfair on part of employee to take *plea* of discrimination – No perversity in Award of Labour Court holding that certificate produced by Petitioner was forged one – By any means, action of Management in appointing other similarly situated persons could not be condoned – Officials-Appointing Authorities, could not be let go scot-free and action must be initiated against them for major misconduct – Before initiating action and dismissing Petitioner from service, they must be transferred to non-sensitive post and place, and their dereliction should be entered into Service Register – Before depriving gratuity, opportunity should be given to person concerned, on failure to give opportunity, persons involved in act of moral turpitude, etc., should not be allowed to succeed to get benefits – Petition dismissed. [*V. Srinivasan v. Presiding Officer*]

(S. VAIDYANATHAN, J.)
2021-III-LLJ-110 (Mad)
LNINDORD 2021 MAD 661

PERMANENT STATUS

Absorption – Industrial Disputes Act, 1947, Section 2(k) – Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 – Petitioners have raised dispute to get absorption/conferment of permanent status in 5th Respondent/Tamil Nadu Pollution Control Board under Section 2(k) of Act, 1947 – 3rd Respondent held that employees need to approach Authority under Conferment of Permanent Status Act, hence present petition – Whether, issue regarding absorption/conferment of permanent status could be decided by Authority under Conferment of Permanent Status Act only – *Held*, When there are two forums open to employees, it is for them to choose one forum – In present case workmen decided to seek relief invoking provisions of Act, 1947 – If Contract is genuine, Labour Court or

Tribunal can direct Government to take decision with regard to abolition of contract labour – When Petitioners raised dispute, conciliation Officer, empowered to conciliate and submit a Report, in case of failure of conciliation, so that, Government can take decision about reference of issue to appropriate Tribunal/Labour Court – Petitioners not sought relief under Conferment of Permanent Status Act – Labour Court has powers to look into provisions of Conferment of Permanent Status Act, when dispute is taken up for permanent adjudication – 3rd Respondent directed to conciliate Industrial Dispute once it is re-presented before him – Petition allowed. [*P. Maruthairaj v. Government of TN*]

(S. VAIDYANATHAN, J.)
2021-III-LLJ-20 (Mad)
LNINDORD 2021 MAD 444

REINSTATEMENT

Jurisdiction – Industrial Dispute Act 1947, Sections 12(3) and 33-C(2) – Appellants-employees raised industrial dispute stating that suspension of operation of Respondent company was illegal – Tribunal, by its award held that suspension of operation was illegal and workmen entitled to get reinstatement together with wages and other attendant benefits from date on which management gave notice for suspending its operation – Single judge held that Labour Court was not competent to exercise jurisdiction under Section 33-C(2) of Act to arrogate to itself functions of Industrial Tribunal, and reversed order passed by Labour Court, hence this appeal – Whether, order passed by Single Judge, justified – *Held*, Labour Court messed up without knowing basic issue that in application filed under Section 33-C(2) of Act, it could not go into question whether workman entitled to any benefit and that workmen must have pre-existing right to benefits which could be computed in terms of money – Award passed by Industrial Tribunal withdrawn by workmen in settlement reached under Section 12(3) of Act – No any pre-existing right available – Labour Court could not arrogate to itself functions of Industrial Tribunal and entertain claim made by workmen – Labour Court had no jurisdiction to adjudicate claim made by workmen under Section 33-C(2) of Act in undetermined claim – No reason to interfere with well-reasoned order passed by Single Judge, and same was confirmed – Appeal dismissed. [*V. Sugumaran v. M.D. Pentafour Products Ltd*]

(T. RAJA, J.)
2021-III-LLJ-42 (Mad)
LNIND 2012 MAD 2048

REPRESENTATION BY LEGAL PRACTITIONER

Consent of Workman – Counsel appearing for Petitioner-Management not permitted to represent his client before Tribunal and request for cross-examination rejected – Whether, Tribunal justified in closing evidence of workmen without affording Petitioner opportunity to cross-examine – *Held*, legal practitioner could represent management before Labour Court when litigation expenses for workman to engage advocate paid by management – Advocate earlier appearing for Management subsequently replaced – Consent for Management to be represented by Advocate appears initially – Consent of workman necessary when Management wishes to be represented by legal practitioner – Approach of Labour Court fallacious – Labour Court need to adjourn matter to enable Management to put forward its case – Incumbent upon Labour Court to find out implied consent of workman for Management – Impugned order not sustainable – Impugned order set aside – Petition allowed. [*A and B Fashions Pvt. Ltd v. Ramesh Kumar*]

(PRATHIBA M. SINGH, J.)
2021-III-LLJ-159 (Del)
LNIND 2021 DEL 1539

RETIREMENT

Reduction of Age – Industrial Disputes Act, 1947, Section 2-A – Age of retirement of employees reduced by Respondent-employer from 60 to 58 years – Petitioner-employee sought declaration with regard to age of retirement – Whether, action of Respondent-Management in reducing age of retirement from 60 years to 58 years was justified – *Held*, in case of statutory violation Writ maintainable against private body or other statutory body – Petition held as maintainable to decide issue on merits – Petitioner entitled to raise Industrial Dispute through Union – Issue need to be decided by appropriate Industrial Tribunal or Labour Court – Old Rule subsequently modified restricting age of retirement at 58 – In case no Union open to Petitioner to raise dispute under amended Section 2-A of Act, 1947 – Service of Petitioner disengaged – Individual entitled to raise question about non employment – In exceptional cases Court empowered to refer dispute directly to appropriate Tribunal – Petitioner directed to be paid terminal benefits upto age of 58 years including gratuity – No impediment for Respondent to recover amount paid beyond 58 years from Petitioner – Amount could be recovered from Provident Fund payable or gratuity – Petition dismissed. [*M. Thangam v. Government of India*]

(S. VAIDYANATHAN, J.)
2021-IV-LLJ-55 (Mad)
LNINDORD 2021 MAD 511

NOVEMBER

CASUAL LABOURER

Regularization of Services – Employment Exchanges (Compulsory Notification of Vacancies) Act, 1959, Section 3(1) – Employee working as Casual Labourer sought for regularization in service – Tribunal directed Bank to regularize services of employee – Whether, Tribunal justified in directing Bank to regularize services of Employee – *Held*, as per Section 3(1) of Act not applied in relation to vacancies in employment to do unskilled office work – Consultation with Employment Exchange in respect of post less than that of Sweeper was discretionary – Bank could not give go-by to Settlements as it has got legal sanctity – Employee discharged entire burden – Bank failed to produce document in support of their contention – Withholding evidence in possession forced Authority to draw adverse inference against Bank – Could not be contended that it was back door entry – Bank trying to deprive employee's livelihood which amounted to deprivation of right to life – Bank directed to regularize services of Employee – Petition dismissed. [*GM. Indian Bank v. Presiding Officer*]

(S. VAIDYANATHAN, J.)

2021-IV-LLJ-418 (Mad) LNINDORD 2021 MAD 804

COMPASSIONATE APPOINTMENT

Dependent – Karnataka Civil Services (Appointment on Compassionate Grounds) Rules 1996, Rules 2 and 3 – Application for compassionate appointment filed by Respondent rejected by authority – Petition filed by Respondent dismissed by Tribunal on ground that there was no provision for compassionate appointment ground for divorced daughter – High Court by quashing Tribunal order granted compassionate appointment – Whether, High Court erred in directing Appellants to consider application of Respondent for grant of compassionate appointment – *Held*, High Court gone beyond Rules 2 and 3 of Rules – Unmarried and widowed daughter could be said to be dependent of deceased Government servant – Rules 2 and 3 of Rules not included divorced daughter eligible for compassionate appointment – Norms prevailing on date of application was basis of consideration of claim for compassionate appointment – Marriage of Respondent subsisted on date of death of deceased – Chronology of dates suggested that for purpose of getting appointment of compassionate ground decree of divorce by mutual consent obtained – At time when deceased employee died Respondent being married daughter was not dependent under Rule 2 of Rules – Respondent was not eligible for compassionate appointment – Impugned order set aside – Appeal allowed. [*Director of Treasuries v. V. Somyashree*]

(M.R. SHAH, J.)

2021-IV-LLJ-286 (SC) LNIND 2021 SC 305

DISMISS FROM SERVICE

Proving of Charge – Industrial Disputes Act, 1947 – Employee dismissed from service for misconduct by Disciplinary Authority – Appellate Authority confirmed punishment of dismissal – Tribunal converted punishment of dismissal into Compulsory Retirement – Whether, action of Management of Bank in imposing punishment of dismissal from service of employee was justified – *Held*, Employee was under judicial custody – Enquiry Officer refused to provide him opportunity to cross examine of witnesses – Violation of principles of natural justice – Domestic enquiry was defective – *Plea* of adducing additional evidence negatived by Court – Enquiry report could be marked as Exhibit – Employee neither granted permission to lead any evidence nor *Plea* raised by Management to let additional evidence – No avenue for Management to lead additional evidence – When there was no evidence on the side of the Bank, no punishment could be imposed on Employee – When charges were not proved, question of imposing punishment does not arise – Bank directed to extend monetary benefits due to Employee – Petition filed by Bank dismissed and Petition filed by Employee allowed. [*G.M. State Bank of India v. CGIT-cum-LC*]

(S. VAIDYANATHAN, J.)
2021-IV-LLJ-424 (Mad)
LNINDORD 2021 MAD 739

DISMISSAL FROM SERVICE

Criminal Conviction – Petitioner dismissed from service based on order of conviction in criminal case – Order of dismissal challenged by Petitioner rejected in Respondent no. 2 – Whether, order of dismissal passed against Petitioner could be set aside – *Held*, Petitioner's representation could not be ignored having regard to order passed in earlier direction of Court – Petitioner entitled to pursue his remedy after order of conviction set aside – Petitioner not terminated based on misconduct – Petitioner's entitlement to receive pension benefits was not issue – Petitioner was not in service from date of dismissal – Petitioner attained age of superannuation – Respondents were not at fault – Order of dismissal was valid – Petitioner not entitled to claim back wages from date of dismissal till age of superannuation – Impugned order quashed – Petition allowed. [*K. Balasekaran v. Presiding Officer*]

(S.S. SUNDAR, J.)
2021-IV-LLJ-293 (Mad)
LNINDORD 2021 BMM 249

DISMISSAL

Grant of Wages – Industrial Dispute Act 1947, Section 17(B) – Appellant-employee employed in Technical Division of Respondent 1 Transport Corporation dismissed from service on ground of misconduct – Respondent 1 Management petition before Special Deputy Commissioner of Labour seeking approval of order of dismissal, dismissed – Appellant's petition before Single Judge seeking wages under Section 17(B) of Act dismissed, hence this appeal – Whether, impugned order of Single Judge liable to be set aside – *Held*, when Appellant was not employed during specified period, and also paid wages under Section 17(B) of Act, appeal filed before Court seeking back wages for period of non-employment, unjustified – Respondent 2 rightly found that only minor allegation made against Appellant – Once prayer for granting approval to order of dismissal refused, nothing more required to be done by employee – Employee deemed to have continued in service entitling him to all benefits available – Impugned order of Single Judge depriving Appellant of back wages was without any justification, and same was liable to be set aside – Respondent 1 directed to pay back wages for said period to Appellant within certain period. [*K. Senthil Raja v. General Manager, TNSTCL*]

(T. RAJA, J.)
2021-IV-LLJ-227 (Mad)
LNIND 2021 MAD 2719

Misconduct – Petitioner's petition, and revision before Respondent 1 dismissed confirming order of Respondent 2 Society dismissing him from services of ground of misconduct, hence this petition – Whether, order passed by Respondent 1 and 2, justified – *Held*, Petitioner was given fair opportunity at every stage of departmental proceedings – Petitioner voluntarily abstained from participating in enquiry for unknown reasons and having opted not to appear before Enquiry Officer – Petitioner could not expect Enquiry Officer on his own to supply all documents, supplied by management – Petitioner, involved directly in misappropriating huge sums from Respondent 2 Society – Enquiry proceedings commenced and completed without giving any room for any irregularity or illegality – Findings of Enquiry Officer well grounded, no reason to differ from Enquiry Officer, when Petitioner did not participate in enquiry – Respondent 2 applied his mind apart from considering all materials and documents – Order of Respondent 1 supported by reasons and no perversity pointed out in order – No irregularity or illegality in order of Respondent 1 and 2 – Petition dismissed. [*P. Seetha v. Joint Regr. Of Coop. Societies*]

(S.S. SUNDAR, J.)
2021-IV-LLJ-300 (Mad)
LNINDORD 2021 BMM 196

EMPLOYMENT

Compassionate Appointment – Petitioner sought for quashing proceedings of Respondent 2 and direct Respondents to accommodate him on compassionate ground in any suitable vacancy according to her qualification, hence this petition – Whether, Petitioner entitled for appointment on compassionate ground in any suitable vacancy according to her qualification – *Held*, Respondents failed to honour their commitment and informed Petitioner that recruitment for entry-level post stopped – This posture of Respondents Port Trust was in violation of solemn undertaking under Merger Agreement – Letter issued by Respondents Port Trust also contrary to letter and spirit of Merger Agreement – Because Petitioner appointed by erstwhile Labour Board Canteen on compassionate grounds did not mean that Petitioner was not entitled to protection of her employment after said entity stood merged with Respondent Port Trust – Respondents should have confirmed appointment in terms of clause 21 of Merger Agreement – Policy decision of Respondents to stop recruitment of entry-level post was not binding on Petitioner – Petitioner also could not be forced to accept lump-sum amount based on lower salary paid to her on temporary basis, because some of other employees accepted such offer – Respondents directed to confirm appointment of Petitioner by rehabilitating him in anyone of its Department within certain period – Petition allowed. [*R. Nirmala v. Chairman, Chennai Port Trust*]

(C. SARAVANAN, J.)
2021-IV-LLJ-353 (Mad)
LNINDORD 2021 MAD 710

Regularization of Service – Tamil Nadu Co-operative Societies Act, 1983, Section 153 – Petitioner request before Respondent 3 for regularization of her services, rejected – Revision filed against said order under Section 153 of Act also rejected and same was confirmed by Respondent 1 in G.O, hence this petition – Whether, impugned order passed by Respondent 3 and 4 and G.O. of Respondent 1 liable to be quashed – *Held*, Petitioner's services regularized with effect from specified date, as per proceedings of Respondent 4 – Division Bench of this Court, issued certain guidelines with regard to regularization of irregular appointees in light of G.O. – In this background, Respondent 3 misconstrued Petitioner case by applying G.O. to her case – G.O. would not apply to Petitioner case, as her services were already regularized – All proceedings initiated by Respondents, treating Petitioner as irregular appointee and giving effect to her service as Junior Assistant from specified date, not sustainable – Impugned order passed by Respondent 3 and 4 and G.O. of Respondent 1 liable to be quashed – Respondent 1 directed to issue

appropriate orders, regularizing services of Petitioner as Assistant with effect from specified date and extend all service and monetary benefits – Petition allowed. [*P. Vijayalakshmi v. State of Tamil Nadu*]

(M.S. RAMESH, J.)
2021-IV-LLJ-240 (Mad)
LNINDORD 2021 MAD 646

Reinstatement – Petitioner sought for quashing impugned orders of terminating his services, and directing Respondents to reinstate him in service, hence this petition – Whether, Petitioners would be entitled for reinstatement and back wages – *Held*, compassionate appointment scheme annexed to Circular made applicable to Bank, and Government of India granted approval to said scheme – After compassionate appointment scheme made applicable to Respondent Bank, it granted coverage to such dependent family members, whose sole bread earner died while in service on or after specified date – Impugned orders issued by authority of Respondent Bank without applying mind to Coverage Clause – It goes without saying that Bank did not alter Coverage Clause – Petitioners were rightly appointed – Petitioners would not be entitled for back wages from date they have been deployed in same Bank through outsourcing agency till they reinstated in employment – Respondents Bank should reinstate Petitioner within certain period – Petition allowed. [*Archana v. Maharashtra Gramin Bank*]

(RAVINDRA V. GHUGE, J.)
2021-IV-LLJ-349 (Bom)
LNIND 2021 AUG 99

RE-EMPLOYMENT

Quashing of Proceedings – Industrial Disputes Act, 1947, Section 18(1) – Private Respondents raised disputes before Labour Officer, claiming re-employment under Specified Unit – Petitioner sought for forbearing Labour Court from adjudicating disputes raised by Respondents, hence these petitions – Whether, proceedings in industrial disputes on file of Labour Court liable to be quashed – *Held*, age of these individual workers-Respondents have now attained, could not be feasible age for management of specified unit to re-employ them – These individual workmen settled through settlement under Section 18(1) of Act and have also acted on terms of settlement, by receiving compensation- *ex-gratia* and tendered their individual resignations – No *prima facie* material produced before Court or Labour Court to substantiate that these individual workmen coerced to receive compensation – When specified Unit commenced their operations, dispute raised by Union to seek for re-employment for their members, also rejected by Labour Officer – There did not seem to be any employer-employee relationship between specified Unit and these individual workmen – No effective orders could be passed in dispute

raised by workers – It would be justifiable to modify prayers sought for by Petitioners – Proceedings in industrial disputes on file of Labour Court liable to be quashed – Petitions allowed. [*Mgmt. of Funskool (I) Ltd v. Presiding Officer*]

(M.S. RAMESH, J.)
2021-IV-LLJ-270 (Mad)
LNINDORD 2021 MAD 667

REGULARIZATION

Right of Contractual Employees – Petitioners-contract employees sought for regularization in service – Whether, Service of Petitioners could be regularized inspite of being contractual employees – *Held*, Petitioners were contractual employees – No permanent right could be claimed unless orders passed by Labour Courts – Clear from notice inviting tender (NIT) Petitioners not replaced – No inherent right of Petitioners to claim Contractor ought not to be changed – Respondents ensured Petitioner would be continued – Interest of Petitioners adequately safeguarded – Directions issued – Petitions disposed of. [*Parshashan Vikas Vibhag v. Dept of Social Welfare*]

(PRATHIBA M. SINGH, J.)
2021-IV-LLJ-249 (Del)
LNIND 2021 DEL 1510

REINSTATEMENT

Grant of Remuneration – Industrial Disputes Act, 1947, Section 17B – Respondent-employee alleged that although relief of reinstatement granted in favour of him stayed by Court, as per Section 17B of Act he is entitled to monthly remuneration, hence this application – Whether, Respondent entitled to remuneration under Section 17B of Act – *Held*, Respondent did not make any attempt to disclose to Court that he runs newspaper – RNI registration also establishes same beyond any pale of doubt – Purpose of Section 17B of Act, was to support destitute employees who did not have any alternate source of income for purpose of running their livelihood – Although amount of remuneration had not been ascertained, no reason for Court to assume that remuneration being earned by virtue of self-employment was not adequate – Respondent, would not fall in said category, and his conduct disentitles him to relief under Section 17B of Act – Ingredients for relief under Section 17B of Act were not made out in case – Application dismissed. [*NNS Online Pvt. Ltd v. GNCTD*]

(PRATHIBA M. SINGH, J.)
2021-IV-LLJ-363 (Del)
LNIND 2021 DEL 1716

SUSPENSION

Arrears of Salary – Service of Petitioner-employee reinstated after suspension – Respondent no. 2 rejecting representation of Petitioner held period of suspension to be treated as leave without salary – Whether, Petitioner entitled to get salary for period he did not work – *Held*, no disciplinary proceedings initiated by Respondents despite verdict of criminal court – Petitioner suspended due to pendency of criminal complaint against him – Suspension order in contemplation of disciplinary proceedings or pendency of criminal proceedings was legitimate unless quashed as unwarranted – Order of suspension invalid when no proceedings initiated departmentally after placing employee under suspension – Petitioner could not be denied salary for period when forced to be away from work by Respondents – Petitioner entitled to get salary for period during suspension in enquiry – Clear from judgment of criminal Court it was not honourable acquittal – No evidence or allegations of *mala fides* – Deduction ought to be made in salary during suspension period – Petition disposed of. [*R. Swaminathan v. District Collector*]

(S.S. SUNDAR, J.)
2021-IV-LLJ-245 (Mad)
LNINDORD 2021 MAD 664

Subsistence Allowance – Tamil Nadu Payment of Subsistence Allowance Act, 1981, Section 3 – Petitioner issued charge memo to Respondent 3 for alleged misconduct of misappropriation and unauthorized absence, and placed him under suspension – Respondent's 3 application before Respondent 2 for getting subsistence allowance for period of suspension by invoking provisions of Act, allowed – Petitioner's appeal before Respondent 1 dismissed, hence this petition – Whether, Respondent 3 entitled to full subsistence allowance, and impugned order passed by Court below, sustainable – *Held*, Respondent 3 was guilty of grave charge of misappropriation – Though several grounds raised, Petitioner had not come forward to explain under what circumstances issuance of charge memo, delayed – No prompt action was taken against Respondent 3 to recover amount – Respondent 3 was only employee of Petitioner Society – No direct evidence except communications – Considering scope of Section 3 of Act, employee was not entitled to subsistence allowance – Respondent 3 committed serious irregularity by misappropriating huge amount from Petitioner Society, and money misappropriated by him was not recovered – Respondent 3 entitled to sum calculated at 50% of wages – Direction of Respondent 1 modified by directing Petitioner to pay 50% of wages for entire period of suspension – Petition partly allowed. [*Thirubuvanam Silk Handloom v. DC of Labour*]

(S.S. SUNDAR, J.)
2021-IV-LLJ-232 (Mad) LNINDORD 2021 BMM 202

TERMINATION FROM SERVICE

Jurisdiction – Petitioner terminated from service by Respondent No. 5 for misconduct – Whether, dismissal order passed against Petitioner could be set aside – *Held*, when as Respondent No. 6 held to be person he had no *locus standi* – Respondent No. 6 not competent to exercise powers and functions of Correspondent of school – Impugned order passed by Respondent no. 5 set aside – Petitioner already been re-instated – Petitioner entitled to continuity of services as order of termination was *void* since issued by person without jurisdiction – Legal obligation of management of school to pay monetary benefits to Petitioner for his non-employment – Open to Petitioner to work out his remedy in separate proceedings – Petition allowed. [*V. Puduraja v. State of Tamil Nadu*]

(S.S. SUNDAR, J.)
2021-IV-LLJ-296 (Mad)
LNINDORD 2021 BMM 250

TERMINATION

Grant of Back Wages – Single Judge partly allowed petition and set aside order passed by Labour Court upholding order of termination of employee from service and remanded matter back to Labour Court – Both Appellant and Respondent challenged order of remand passed by Single Judge, hence these appeals – Whether, termination order was stigmatic, and Appellant would be entitled to get back wages – *Held*, order of termination could not be said to be stigmatic – Appellant, was granted opportunity to make use of opportunity by extending her probation due to unsatisfactory performance and absenteeism from duty – Appellant did not make use of opportunity – Single Judge and Presiding Officer of Labour Court rightly rejected prayer for back-wages made by Appellant – During extended period of probation for 12 months Appellant attended her duty for three days only – As termination held to be legal, Appellant would not be entitled to get back-wages – Appellant failed to establish that due to serious illness she could not attend duty – Finding of Single Judge rejecting prayer for back-wages did not warrant interference – Order passed by Single Judge required to be set aside, and that of passed by Labour Court, restored – Appeal filed by Respondent-Management allowed, and that of filed by Appellant dismissed. [*Mgmt. of Manganese Ore (I) Ltd v. Naseem Ahmad*]

(G.A. SANAP, J.)
2021-IV-LLJ-337 (Bom) LNIND 2021 NGP 105

Principles of Natural Justice – Constitution of India 1950, Articles 14 and 21 Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – Rights of Persons with Disabilities Act, 2016 – Petitioner challenged Respondent 3 order terminating him from services,

hence this petition – Whether, impugned order violates principles of natural justice, and Petitioner fulfills eligibility criteria as per terms and conditions of advertisement – *Held*, terminating services of employee by public authority like Respondent without affording any opportunity would be violative of Articles 14 and 21 of Constitution and also contrary to principles of natural justice – Grave prejudice caused to Petitioner – Petitioner suffering from 100% disability of hearing impairment – Authorities have adopted very hyper-technical approach and completely ignored object to be achieved under Act,1995 and Act 2016 – Qualification set out in advertisement would not apply to Petitioner – Petitioner appointed on basis of his 100% disability and marks obtained by him in 10th standard examination, question of any misrepresentation or practicing fraud did not arise – Impugned termination order liable to be set aside – Respondents directed to restore services of Petitioner in post of Labour with continuity of service and all consequential benefits, including arrears of salary – Petition allowed. [*Dharmendra Ravipratap Singh v. Municipal Corp. Mumbai*]

(MADHAV J. JAMDAR, J.)
2021-IV-LLJ-313 (Bom)
LNIND 2021 BOM 288

Working Days – Industrial Disputes Act, 1947, Sections 25-B 25-F and 25-H – The Tamil Nadu Industrial Dispute Rules, 1958, Rule 63 – The Motor Transport Workers Act, 1961 – Petitioner terminated from service – Claim for appointment of Petitioner rejected by Respondents – Labour Court dismissed dispute – Whether, Labour Court justified in disapproving claim of Petitioner though he actually worked for 240 days in 12 calendar months preceding date of termination – *Held*, Section 25-F of Act, 1947 deals with payment of compensation to retrenched workers – Petitioner worked for 126 days which was treated to be double duty for 252 days in 12 calendar month for which employee was paid – When employer recruits fresh candidates after period of two years no need for to comply with Section 25-H of Act, 1947 read with Rule 63 of Rules – Failing in interview would not take away rights already accrued – When employee had been in continuous service he deemed to be in service though violation of Section 25-F of Act, 1947 – Petitioner worked for 16 hours a day – He was given rest on next day not due to fault of employee – Rest day counted as work day – As per Section 25-B of Act working beyond 8 hours must be treated as second day – Utter violation of Section 25-F of Act, 1947 – Petitioner deemed to be in service – Labour Court failed to look into evidence placed before it – Impugned Award set aside – Provisions of Act, 1961 violated which stipulated workman not permitted to work for more than ten hours in a day – Respondent directed to permit Petitioner to report for work – Petition allowed. [*R. Bharanidaran v. Managing Director, TNSTC*]

(S. VAIDYANATHAN, J.)
2021-IV-LLJ-434 (Mad) LNINDORD 2021 MAD 736

UNFAIR LABOUR PRACTICE

Maintainability of Complaint – Maharashtra Industrial Relations Act, 1946 – Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 – Contract Labour (Regulation and Abolition) Act, 1970 – Petitioner's application before Industrial Court seeking dismissal of complaint of unfair labour practice within meaning of Item 9 of Schedule IV of Act, 1971, and also application seeking permission to urge additional grounds rejected, hence this petition – Whether, contractual employees could file complaint seeking to exercise their rights and said complaint was maintainable under Act 1971 – *Held*, for enforcing rights available under Act, 1946 complaint could not be filed under Act, 1971 – Industrial Court misread relevant provisions of Act, 1946 and Act, 1971 and Act, 1970 while concluding that it had jurisdiction to entertain complaint – Industrial Court ignored that complaint of unfair labour practice was maintainable only if there was admitted employer and employee relationship between parties – Industrial Court erred in not considering fact that Respondent 2, not being employer, no relief could be claimed and granted against him – Decision to decide status of workmen as valid voters, was within domain of Respondent 16, and could not be covered under Item 9 of Schedule IV of Act, 1971 – Complaint filed under Act, 1971 by contractual employees for exercising their rights under Act, 1946 was not maintainable and Industrial Court had not jurisdiction to entertain it – Petition allowed. [*Mahindra and Mahindra Ltd v. Satish*]

(N.B. SURYAWANSHI, J.)
2021-IV-LLJ-409 (Bom)
LNIND 2021 NGP 103

WAGES

Subsistence Allowance – Tamil Nadu Payment of Subsistence Allowance Act, 1981 – Petitioner's appeal before Respondent 3 dismissed confirming Respondent 2 order directing him to pay certain sum towards subsistence allowance to Respondent 1-employee, hence this petition – Whether, impugned order of Respondent 3 confirming order of Respondent 2 liable to be quashed – *Held*, conclusions reached by original authority and appellate authority were *perverse* – When Act did not contemplate payment of subsistence allowance beyond period of suspension, Petitioner had been given benefit of Act – Order clearly indicates that period of suspension should be treated as period of leave on loss of pay – Said order became final and no appeal preferred by Respondent 1 – Respondent 1 did not produce any papers to prove that Petitioner prevented physically after final order was passed – Not even representation submitted by Respondent 1 about any incident by which he was prevented from joining duty – Respondent 1 was not entitled to subsistence allowance for period which was beyond scope of Act – Impugned order of Respondent 3 confirming order of Respondent 2 was illegal, and liable

to be quashed – Respondent 1 was not entitled to claim anything more than amount calculated up to period of final order – Petition allowed. [*Agricultural Co-op. Bank v. V. Palanisamy*]

(S.S. SUNDAR, J.)
2021-IV-LLJ-265 (Mad)
LNINDORD 2021 BMM 223

DECEMBER

COMPASSIONATE APPOINTMENT

Status of Employee – UP Dependents of Dying in Harness Rules 1974, Rule 2 (a) – Petitioner's representation for appointment on compassionate ground rejected on ground that though services of Petitioner's father regularized on specified date, but pursuant to it, he never gave his joining, hence this petition – Whether, father of Petitioner was government servant as defined under Rule 2 (a) of Rules – *Held*, Petitioner's father regularized, and he was working in Tubewell division, where he was allotted posting after regularization – Petitioner's father continued working in same division till he died – Petitioner's father was getting same salary, which was admissible to regular employee – Nothing was, required to be done on his part – If there was any fault in not making entry in service record, it might be attributed to those officers, who were in-charge to that office – Status of Petitioner had to be considered as regular employee when he died for this reason also – Impugned order deserves to be quashed, and Respondent 5 directed to pass fresh order for appointment of Petitioner under Rules – Petition allowed. [*Mahesh Nath v. State of Uttarakhand*]

(RAVINDRA MAITHANI, J.)
2021-IV-LLJ-550 (Uttar)
LNIND 2021 UTTAR 5

DISMISSAL

Violation of Principles of Natural Justice – Labour Court by impugned award confirmed dismissal order issued by Respondents 3 to 5 against Petitioner-workman, hence this petition – Whether, order passed by below authorities liable to be set aside – *Held*, order of Appellate Authority and Revisional Authority were cryptic without assigning any valid reasons, that too, without considering grounds raised in appeal and revision by Petitioner – Non-consideration of grounds raised by Petitioner would amount to non-application of mind and thereby violative of principles of natural justice and arbitrary exercise of power – Procedure adopted in the enquiry without examining all witnesses and without providing ample opportunity to *delinquent* was farce and would not fall within meaning of fresh and full fledged enquiry – Such

enquiry was contrary to directions of Tribunal and well settled procedures – Entire enquiry stands vitiated for want of adherence to directions and principles of natural justice – Tribunal was also carried away by so-called admission recorded by Enquiry Officer and Disciplinary Authority – Award was also without application of mind and finding based on no evidence and therefore, not sustainable in law – Order passed by below authorities liable to be set aside and Petitioner entitled to reinstatement and consequentially to all attendant and monetary benefits – Petition allowed. [*D. Emarose v. GM, Southern Railway*]

(M. GOVINDARAJ, J.)
2021-IV-LLJ-585 (Mad)
LNINDORD 2021 MAD 879

EMPLOYMENT

Compassionate Appointment – Petitioner sought for quashing impugned proceedings of Respondent 3 and directing Respondents to consider appointment of Petitioner under compassionate grounds with all attendant benefits within stipulated time, hence this petition – Whether, impugned order passed by Respondent 3 liable to be quashed – *Held*, application made by legal heirs of deceased within three years after attaining majority, maintainable – Widow of late employee made application within three years form date of death of employee – Son of late employee made application seeking for compassionate appointment, within three years from date on which he became major, such application was maintainable – Petitioner son would be entitled for consideration for compassionate appointment – Reasons assigned in impugned order unsustainable – Impugned order passed by Respondent 3 liable to be quashed – Respondent 1 called upon to reconsider Petitioner's application for compassionate appointment and pass necessary orders for grant of appointment on compassionate grounds –Petition allowed. [*D. Ashok Kumar v. District Collector*]

(M.S. RAMESH, J.)
2021-IV-LLJ-472 (Mad)
LNINDORD 2021 MAD 970

Compassionate Appointment – Uttar Pradesh Recruitment of Dependants of Government Servants Dying in Harness Rules 1974, Rule 5 – Petitioner's petition before Single Judge to appoint him on compassionate ground dismissed on ground of delay and laches affirming Respondent 3 order, hence this appeal – Whether, impugned orders passed by below authorities liable to be set aside – *Held*, even after Petitioner made representation, Principal did not forward said representation to State Government for granting relaxation under *proviso* to Rules – Impugned order passed without considering beneficial nature of Rule 5 of Rule – Single Judge dismissed petition, ostensibly, on

ground that it was hit by delay and laches – Considering fact that even after rejection of case, Petitioner had again sought appointment on compassionate ground, it could not be concluded that he had been lax in pursuing his remedies – Impugned orders passed by below authorities liable to be set aside – Secretary, directed to decide Petitioner representation within certain period by giving opportunity of personal hearing – Appeal allowed. [*Tushar Kumar v. Govt. of Uttarakhand*]

(RAGHVENDRA SINGH CHAUHAN C.J.)
2021-IV-LLJ-546 (UttAR)
LNIND 2021 UTTAR 4

REGULARIZATION

Temporary employees – High Court by impugned order modified judgment passed by Tribunal and directed Appellants to revisit whole issue, complete exercise to reformulate their regularization-absorption policy and take decision to sanction posts in phased manner, hence these appeals – Whether, impugned judgment passed by High Court liable to be set aside – *Held*, Appellant Department came out with regularization policy, did not apply to part-time workers who did not work on sanctioned post – Regularization could be only as per regularization policy declared by State Government and nobody could claim regularization as matter of right *dehors* regularization policy – In absence of any sanctioned post and considering fact that Respondents were serving as contingent paid part-time Safai Karamcharies, they were not entitled for benefit of regularization under regularization policy – Impugned judgment passed by High Court and, directions contained in paragraphs 22 and 23 set aside – Setting aside directions issued in terms of paragraph 23 in impugned judgment should not affect case of Respondents, and they should be entitled to reliefs as per paragraph 23 of judgment passed by High Court – Appeals allowed. [*Union of India v. Ilmo Devi*]

(M.R. SHAH, J.)
2021-IV-LLJ-449 (SC)
LNIND 2021 SC 391

TERMINATION FROM SERVICE

Misappropriation – Indian Evidence Act, 1872 – Employee was dismissed from service for misappropriation – Tribunal directed him to be reinstated – Whether, Tribunal justified in directing reinstatement of employee – *Held*, clear from recordings of CCTV footage that Employee taken money from counting machine – Act, 1872 not applied to Labour laws in its entirety – Labour Court having exclusive rights to set aside order of discharge and direct reinstatement of workman – By applying principle of preponderance of probability established that employee committed misconduct – Tribunal could

not expect authorities to consider *plea* of reinstatement though Employee got favourable order from criminal Court – Employee who was found to be indulged in misappropriation of public fund must be shown doors – No time limit prescribed for disposing of appeal – Impugned order set aside – Petition allowed. [*RM. State Bank of india v. PO, CGIT-cum-LCs*]

(S. VAIDYANATHAN, J.)
2021-IV-LLJ-483 (Mad)
LNINDORD 2021 MAD 753

WAGES

Delay – Industrial Disputes Act 1947, Section 17B – Respondent-Workman seeking payment of wages under Section 17B of Act, hence this petition – Whether, there was any undue delay by Respondent in filing application under Section 17B of Act, and from which date wages granted to Respondent – *Held*, entitlement for wages would be from date of filing of Affidavit by workman – Respondent was not gainfully employed in any establishment from date of impugned Award till date – No undue delay on behalf of Respondent in approaching Court under Section 17B of Act – Last drawn wages or minimum wages, whichever was higher, should be paid to Respondent within certain period – Monthly payments should be made to Respondent, till disposal of this petition – Application disposed of. [*South Delhi Municipal Corp. v. Surender*]

(PRATHIBA M. SINGH, J.)
2021-IV-LLJ-497 (Del)
LNIND 2021 DEL 1718