

AIBEA's

LEGAL NEWS

Q – 3 / 2022

ALL INDIA BANK EMPLOYEES' ASSOCIATION

LEGAL NEWS
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JULY

BENEFITS

Post Retirement Medical Benefit – Industrial Disputes Act, 1947, Section 2(s) – Petitioner-employee sought for quashing notification to the extent of withdrawal of post Retirement Medical Benefit of employees who have less than 15 years of service, hence these petitions – Whether, notification to the extent of withdrawing post-retirement Medical Benefit of employees, who have less than 15 years of service, could be quashed – *Held*, impact of notification was to deny benefits of provisions of post-retirement medical benefit scheme to group of employees – As parties were governed by settlement, only method of depriving terms of settlement to parties was by either bringing settlement to an end or by entering into a fresh settlement – If employer refuses to implement benefit of settlement to limited group of persons, remedy available to such persons was to challenge refusal, and not by raising industrial dispute – By virtue of provisions of Act, settlement could not be brought to end during its subsistence, completely or in part by unilateral notification issued by party to settlement – Notification to the extent that it denies benefit of clause 42 to Petitioners not completed 15 years, quashed – Employer directed to continue to give effect to post-retirement medical benefit scheme to Petitioners, without any distinction regarding period of service and strictly in accordance with long term settlement – Petitions allowed. [*Saju A.R. v. Union of India*]

(SUNIL THOMAS, J.)
2022-III-LLJ-165 (Ker)
LNIND 2022 KER 1

CONTRACT LABOUR

Continuation of service – Industrial Disputes Act, 1947, Section 33 – Appellant filed petition challenging notification prohibiting employment of contract labour in woks of handling of import and export containers in establishment/Inland Container Depot (ICD) – Respondent/Workmen filed petition praying for restraint on Appellant from terminating their services during pendency of industrial dispute – In interim applications filed by workmen, Single Judge directed Appellant to continue services of workmen who were on rolls of earlier contractor of Appellant, and continue to deploy them at ICD through contractor of its choice, on same terms and conditions, till such time final decision was reached in pending proceedings, hence these appeals – Whether Single Judge justified in granting relief to workmen in Impugned Order – *Held,* it would be for Tribunal to render decision, upon evidence, on issue to whether Respondents/workmen were employees of Appellant or contractor – Stage for applying or invoking Section 33 not yet arrived – Applications of workmen required adjudication of disputed questions of fact for determining whether claim of workmen that they were employees of Appellant was correct or not – It could not have been so determined in summary manner – Unless such determination was made, Section 33 could not have been invoked – Single Judge committed error in placing reliance on Section 33 in granting relief to workmen in Impugned Order – Impugned Judgment of Single Judge, set aside – Appeals disposed of. [*Central Warehousing Corp. v. Govt. of India*]

(NAVIN CHAWLA, J.)
2022-III-LLJ-139 (Del)
LNIND 2022 DEL 1376

DISMISSAL FROM SERVICE

Disqualification – Constitution of India, 1950, Article 226 – Uttar Pradesh Government Servant (Discipline and Appeal), Rules, 1999, Rule 3-B – Petitioner, wife of dismissed employee filed petition challenging Rule 3-B-(iv) as *ultra-vires* of Article 309 read with 311 of Constitution – Whether Petitioner had *locus standi* to institute and maintain proceeding under Article 226 of Constitution – Whether insertion of Rule 3-B-(iv) of Rules in so far as it provides for disqualification for future employment in case of dismissal, *ultra-virus* – *Held*, present case did not come within parameters of Public Law Litigation and issue sought to be raised by Petitioner was not on any public importance – Present case was proceedings relating to Public Interest Litigation in service matters which was not maintainable – Petitioner happens to be wife of employee, dismissed from service and employee had preferred departmental appeal which was pending – Present proceeding was collateral proceedings to obtain benefit indirectly which could not be granted by this Court directly when dismissal order had not been challenged by aggrieved party being dismissed employee itself – *Proviso* to Article 309 of Constitution confers source of framing of Rules and rightly Rules had been framed – Article 311 of Constitution guarantees certain protection to person holding civil post either in Union or State – Petitioner could not question wisdom of employer to include or exclude penalty but Constitutional guarantee so bestowed under Article 311 of Constitution remains alive with respect to necessary safeguard that employer or officer working under Union or State could not be dismissed or removed by authority below appointing authority or without affording reasonable opportunity in this regard – Attachment of disqualification of future employment could not be said to be *ultra vires*, arbitrary or discriminatory – Petition not maintainable – Petition dismissed. [*Poonam Rani v. State of U.P.*]

(VIKAS BUDHWAR, J.)
2022-III-LLJ-200 (All)
LNINDORD 2022 ALL 2

DISMISSAL

Unauthorised Absence – Respondent 3-disciplinary authority passed impugned orders dismissing Petitioner-employee from service – Petitioner's appeal and revision before Appellate Authority and revisional Authority dismissed, hence this petition – Whether, punishment of removal from service disproportionate, excessive and harsh on applying doctrine of proportionality – *Held*, unauthorized absence was due to medical condition of Petitioner – Disciplinary authority proceeded on basis that Petitioner has not let in any evidence to show that he was suffering from medical condition – Appellate and Revisional Authority proceeded to affirm order of disciplinary authority by stating that no new evidence or grounds raised – Appellate and Revisional Authority passed orders in perfunctory manner – Order of dismissal was excessive, unduly harsh and shocks conscience – Punishment of removal of service may be modified to re-instatement without payment of back wages but with continuity of service – Petition disposed of. [*P. Ganesh Prasad v. State of Tamil Nadu*]

(MOHAMMED SHAFFIQ, J.)
2022-III-LLJ-86 (Mad)
LNINDORD 2022 MAD 1115

EMPLOYEE'S STATE INSURANCE (ESI)

Contract workmen – Employee's State Insurance Act, Sections 2, 38 and 45 – ESI Court dismissed petitions filed by Appellant/Establishment challenging orders passed by Respondent under Section 45(A), hence these appeals – Whether four security guards could be treated as employees as defined under Section 2(9)(iii) in order to appreciate establishment within coverage of Act – Whether four security guards whose contributions to ESI was already been done through their immediate employer namely, security services, could be treated as employees of Appellant for sake of contribution – *Held*, it naturally follows from object of Act that four security guards had to be treated as employees of Appellant – Once they were so treated, number of coverable employees of Appellant would stand increased from eighteen to twenty two thereby making Act applicable to Appellant – Unscrupulous employer who wants to avoid coming within net of Act would take on their rolls employees who would be coverable under Act just short of mandatory number and engage services of contractor

to do other works that are intrinsically related to main/core work of establishment – By doing so employees who fall within cover of Act of such establishments are deprived of benefit – It was to overcome such devious methods that Section 2(a)(iii) defined employee to include contract workmen – Four security guards fell within definition of word 'employee' and had to be treated as employees of Appellant – Circular of ESI provides that where employee of Immediate Employer was independently covered, contribution could not be claimed from Principal Employer – Appellant could not be called upon to pay contribution for four security guards already covered under their immediate employer – Appeals partly allowed. [*Sales Service Company v. Deputy Director*]

(P.T. ASHA, J.)
2022-III-LLJ-129 (Mad)
LNIND 2022 MAD 2315

EMPLOYMENT

Compassionate Appointment – Petition before Single Judge for appointment on compassionate ground, dismissed, hence this appeal – Whether, Appellant entitled for compassionate appointment – *Held*, *dehors* payment of terminal benefits due to father of Appellant, Respondent Trust also granted compensation of certain sum *in lieu* of compassionate appointment and Appellant also accepted same, initially – By accepting compensation granted by Respondent Trust, Appellant has given up job on compassionate ground – Appellant, not entitled for compassionate appointment – No reason to interfere with order of Single Judge – Appeal dismissed. [*S. Kumar v. Chairman, Chennai Port Trust*]

(S. VAIDYANATHAN, J.)
2022-III-LLJ-119 (Mad)
LNIND 2022 MAD 2188

Conferment of Permanent Status – Petitioner-employee sought for directing Respondent LIC to confer permanent status of employment on him and to grant all such benefits, as applicable and eligible for permanent employee of Respondent, hence this petition – Whether, Petitioner could claim *parity* with those Class IV employees who have been absorbed in terms of absorption scheme referred to in order passed by Supreme Court in specified case – *Held*, scheme for absorption was applicable to all eligible employees as one-time measure and those referred to in Supreme Court's order hence, question of claiming *parity* does not arise – Scheme applicable only to those who were eligible and no one else – Petitioner neither covered by scheme nor covered by any directions passed by Supreme Court – All appointments ought to be made on touchstone of equality of opportunity and having regard to such exposition of law, not open to grant any relief on *plea* that Petitioner was similarly situated as employees who were absorbed in accordance with scheme – As Petitioner not covered by scheme, not open to direct Respondent LIC to frame scheme for regularization of Petitioner – Petitioner's appointment was not in consonance with recruitment Rules, question of granting him permanent status did not arise – Petition dismissed. [*Pramod V. Bhatre v. LIC of India*]

(M.S. KARNIK, J.)
2022-III-LLJ-59 (Bom)
LNIND 2022 BOM 208

Transfer – Petitioner-employee challenged order transferring employees in different Zones serving at Bank from one place to another, and also challenged order directing Petitioner to be relieved from his present place of posting, hence this petition – Whether, impugned transfer order liable to be quashed – *Held*, no good reason to implement transfer policy *i.e.,* 'Rotational Transfer' ignoring para 1.2. of same policy – Petitioner's wife had 100% disability but still had confidence in back of her mind that her husband residing as specified place would look-after her in critical situation – If Petitioner compelled to submit his joining at another specified place, wife of Petitioner will suffer irreparable loss – No post available in specified Region and Petitioner not permitted to serve anywhere at specified Region – Transfer is an exigency/incidence of service and no course interfered with transfer orders but if such transfer may be

avoided for any specific compelling reason and that reason is unavoidable, the Competent Authority being model employer should consider such condition sympathetically – Impugned order of transfer of Petitioner, quashed – Petition allowed. [*Neeraj Chatturvedi v. Central Bank of India*]

(RAJESH SINGH CHAUHAN, J.)
2022-III-LLJ-194 (All)
LNINDORD 2022 LUCK 1

GRATUITY

Grant of Simple Interest – Payment of Gratuity Act, 1972, Section 2(e) – Respondent-bank's appeal before Appellate Authority dismissed affirming order passed by Controlling Authority computing gratuity payable to Appellant-employee at certain sum which includes simple interest at rate of 10% on total amount of gratuity – Respondent-bank's petition before Single Bench allowed setting aside order passed by authorities under Act, hence this appeal – Whether, order passed by Single Bench, justified – *Held*, Controlling Authority under provisions of Act has taken note of factual matrix and interpreted in manner in which service condition of Appellant has been couched and thereafter computed *quantum* of gratuity payable – Order passed by Controlling Authority was tested for its correctness by appellate authority and after re-examining fact appellate authority by order has affirmed order – Rule of reservation has been adopted by Respondent bank, Appellant has been subjected to medical examination, his antecedents have been verified, non-compete agreement has been directed to be executed and Appellant was placed under probation for period of six months – Employee, was initially employed on temporary basis and placed under probation and upon successful completion he was absorbed into service – By placing Appellant under probation, for purpose of considering Appellant as employee as defined under Section 2(e) of Act, bank has treated him as employee – Orders passed by Controlling Authority as affirmed by Appellate Authority restored and Appellant should be entitled to withdraw entire amount of gratuity together with interest – Appeal allowed. [*Sri Ravi Shankar Malani v. SBI*]

(T.S. SIVAGNANAM,, J.)
2022-III-LLJ-12 (Cal)
LNIND 2022 CAL 477

PRELIMINARY ENQUIRY

Principles of natural justice – Labour Court while deciding preliminary issue held that enquiry conducted by Respondent/employer against Petitioner was legal, fair and proper and findings of enquiry officer were not *perverse,* hence this petition – Whether enquiry conducted by Respondent/employer was fair and reasonable – *Held*, basis and elementary principles in regard to fairness of procedure to be followed in enquiry proceedings, namely requirement of *delinquent* employee to be issued clear and unambiguous charge sheet and fair opportunity to be given to *delinquent* employee/Petitioner of opportunity of cross examining management witnesses, by due adherence to principles of natural justice was overlooked by Presiding Officer, in passing impugned order – No application of mind to basis essentials which would go to root of adjudication of issue being decided by Labour Court by impugned order – About ten management witnesses made statements before enquiry officer behind back of Petitioner – Petitioner not given opportunity to cross examine these witnesses whose statements had been recorded or as made before enquiry officer – Enquiry officer's report which took into consideration such evidence recorded behind back of Petitioner, would be no enquiry report in eyes of law and could not have been acted upon by Disciplinary Authority in imposing any punishment – Enquiry officer caused serious prejudice to Petitioner – Presiding Officer of Labour Court acted contrary to all reasonable judicial norms – Impugned order passed by Labour Court quashed and set aside – Petition allowed with cost. [*Tanaji Shankar A. v. Maharashtra Rojya D.S.*]

(G.S. KULKARNI, J.)
2022-III-LLJ-173 (Bom)
LNIND 2022 BOM 272

PROVIDENT FUND

Recovery of Money – Petitioner-Appellants' petitions before writ Court dismissed on ground of maintainability as Central Board of Trustees, Employee's Provident Fund organization could not be treated to be aggrieved over orders passed by Tribunal reducing damages payable by employer by certain percentage, hence these appeals – Whether, writ petitions filed by Appellants maintainable and department was estopped from challenging order of Tribunal – *Held*, power of recovery rests with Central Board and Central Board was empowered to delegate such power which delegates have exercised and dues have been determined and recovery proceedings have been initiated – Regional Provident Fund Commissioner in his individual capacity could not prefer writ application against order passed by Tribunal and this would not prevent competent authority to prefer appeals-writ petitions against said order – Central Board could maintain challenge against order of Tribunal – Appellant was "organization" and to describe themselves as Employees Provident Fund Organization could not be faulted – Observations made by Single Bench in this regard needs to be completely eschewed – Petitions at instance of Central Board of Trustees of Employees' Provident Fund represented by 'Regional Provident Fund Commissioner – Assistant Provident Fund Commissioner' maintainable and also their petitions filed as delegate of Central Board, maintainable – Appeals allowed. [*Central Board of Trustees v. Reg, E.P.F.A.T.*]

(T.S. SIVAGNANAM, J.)
2022-III-LLJ-93 (Cal)
LNIND 2022 CAL 587

RECOVERY FROM RETIREMENT BENEFITS

Alternative Remedy – Tamil Nadu Co-operative Societies Act, Sections 78, 79, 152 and 153 – Appellant-Petitioner's petition before Trial Judge directing Respondents to pay retirement benefits with 12% interest rejected, hence this appeal – Whether, Single Judge justified in directing Appellant to avail remedy available under Section 153 of Act, and it was permissible for Society to recover from retirement benefits in nature of Provident Fund/Gratuity, monies due to Society pursuant to Surcharge Proceedings completed prior to retirement of employee – *Held*, Appellant has already exhausted his statutory remedy under Section 152 of Act by challenging Surcharge proceedings before Tribunal – Revision under Section 153 of Act may not apply to Surcharge proceedings – Remedy under Section 153 of Act is only against "proceedings" under Act – Present case was one relating to recovery by way of surcharge proceedings due to loss suffered by Society consequent to loans turning sticky and irrecoverable due to inaction of Appellant – Construction placed on scope of *embargo* contained in Section 78 and 79 of Act by earlier Co-ordinate Benches may produce results that was unintended rather which ought to be avoided and may thus require reconsideration – *Embargo* against attachment was not intended to operate against Provident Fund-Gratuity Fund "due to employee" – Matter placed before Chief Justice for appropriate directions. [*M. Ravikumar v. Reg. of Co-op Societies*]

(S. VAIDYANATHAN, J. AND MOHAMMED SHAFFIQ, J.)
2022-III-LLJ-33 (Mad)
LNIND 2022 MAD 1859

REJECTION OF CANDIDATURE

Suppression of Material Fact – Juvenile Justice (Care and Protection of Children) Act, 2000 – Respondent 3, by impugned order rejected candidature of Petitioner-employee for selection on post of Lower Division Clerk (LCD) on ground of suppression of material fact of his involvement in criminal case, hence this petition – Whether, impugned order passed by Respondent 3 rejecting candidature of Petitioner-employee on ground of suppression of material fact of his involvement in criminal case, illegal and arbitrary – *Held*, Petitioner was juvenile as declared by Board at time when FIR lodged against him, therefore, his case was to be dealt, taking into consideration provisions of Act – It also denudes child of protection sought by Act – It was not expected from

Petitioner to disclose details of criminal prosecution faced as juvenile – Petitioner acquitted in criminal case and case so lodged against him was trivial in nature and should not be viewed as disqualification for entry in Government service Impugned order passed by Respondent 3 set aside and *mandamus* issued to Respondents to issue appointment letter to petitioner, in accordance with law – Petition allowed. [*Abhishek Kumar Yadav v. Union of India*]

(MS. MANJU RANI CHAUHAN, J.)
2022-III-LLJ-229 (All)
LNINDORD 2022 ALL 3

SUSPENSION

Stoppage of Increment – Petitioner-employee challenged impugned order of Respondent 3 imposing punishment of stoppage of one increment without cumulative effect, and period of suspension treated as Earned Leave at Petitioner's credit and balance period of suspension treated as leave on loss of pay, hence this petition – Whether, impugned order of Respondent 3 liable to be quashed – *Held*, Petitioner acted with ill mind and it only shows less efficiency of Petitioner and same would not amount to misconduct – Charges 1, 2 and 3 could not be construed as misconduct and as far as charge no.4 is concerned, enquiry report states it was not proved – Punishment of stoppage of increment for one year without cumulative effect and regularization of suspension period liable to be interfered – Resolution in Board Meeting could not be taken into consideration and only service rules would prevail over same – Impugned order quashed for want of jurisdiction – Respondents directed to regularize suspension order as duty period, and to pay all consequential monetary benefits to Petitioner – Petition allowed. [*P. Muraleetharan v. Chairman, TNCCL*]

(S. SRIMATHY, J.)
2022-III-LLJ-122 (Mad)
LNINDORD 2022 BMM 675

TRANSFER

Misconduct – Central Civil Services (Conduct) Rules, 1964, Rules 3(c), 12.3, 12.4 – Petitioner-employee's appeal before appellate authority dismissed confirming transfer order passed by disciplinary authority – Reviewing authority resolved to decline review of appellate order and confirmed transfer order passed by disciplinary authority, hence this petition – Whether, impugned order of transfer passed by below authorities liable to be set aside – *Held*, writ Court did not re-appreciate and re-analyze evidence unless it could be shown that findings were *perverse* – Member-Secretary of Internal Complaints Committee (ICC) did not participate in further proceedings except as witness for complainant – Having not participated in deliberations leading to submission of report by ICC holding that complaint of sexual harassment made by complainant had substance, unsustainable – Upon complaint of sexual harassment within meaning of Rule 3(c) of Rules, inquiry as far as practicable in accordance with procedure laid down in these Rules – Disciplinary authority of Petitioner ought to have treated report of ICC as preliminary – fact finding report and ought to have initiated disciplinary proceedings by drawing up charge-sheet under Rule 12.3 of Rules and, thereafter, proceed in manner as required by Rule 12.4 of Rules and sub-rules following it – Impugned orders liable to be set aside – Petition allowed. [*Laxman B. Panmand v. NPCIL*]

(DIPANKAR DATTA, CJ.)
2022-III-LLJ-17 (Bom)
LNIND 2022 BOM 219

WAGES

Deduction – Industrial Disputes Act, 1947, Sections 22,22 (1) and 24 – Petitioner sought for directing Respondent 3 not to deduct 8 days wage cut from salary payable to members of Petitioner Trade Union, hence this petition – Whether, writ of *Mandamus* Could be issued refraining Respondent 3 from deducting 8 days wages from salary payable to members of Petitioner Trade Union – *Held*, strike notice was issued in conformity with provision under Section 22(1) of Act – Standing Orders could not be in derogation to provision of Act – But Clause 44 of Personnel Manual of management did

not refer to nature of strike or whether such proposed strike was in violation of Sections 22 or 24 of Act – Issue was as to whether strike was legal or illegal was matter that requires adjudication and therefore claiming that proposed strike was illegal strike and thereby invoking Clause 44 of Personnel Manual of management, was impermissible in view of non-applicability of Clause – Proposed action of Respondent 3 not in conformity with Clause 44 of Personnel Manual of management – Writ of *Mandamus* issued refraining Respondent 3 from deducting 8 days wages, pursuant to their proposals – Petition allowed. [*CITU NLC Labour v. Govt of India*]

(M.S. RAMESH, J.)
2022-III-LLJ-51 (Mad)
LNINDORD 2022 MAD 1126

AUGUST

DISCIPLINARY ENQUIRY

Burden of proof – Petitioner, employed in bank was dismissed from service by 2nd Respondent on ground that he had produced fake educational qualification certificate, which was confirmed in appeal, hence this petition – Whether dismissal order liable to be set aside – *Held*, it was prerogative right of administration of school to officiate anybody as Headmaster in absence of regular Headmaster – It was not known whether person in question who had issued certificate was given any Assistant Headmaster post because there was no post called Assistant Headmaster in School Education Department – Senior most Teacher would be assigned to officiate as Headmaster in-charge in absence of regular Headmaster – Person in question was working as Secondary Grade Teacher and he might be senior most Teacher – These facts could not be scrutinized in depth and benefit of doubt ought to be conferred to Petitioner – Petitioner had served in Bank for more than twenty two years in post of Sweeper, at this stage Petitioner could not be dismissed from service – Conclusion that Petitioner had studied in said school based on subsequent letter issued by headmaster wherein it confirm that villagers had said that Petitioner had studied and based on that submissions, headmaster stated that Petitioner had studied in said school – Impugned order of dismissal, set aside – Respondents directed to reinstate Petitioner with continuity of service – Petition disposed of. [*Rajasekaran v. Appellate Authority, IOB*]

(S. SRIMATHY, J.)
2022-III-LLJ-366 (Mad)
LNINDORD 2022 BMM 751

DISCIPLINARY PROCEEDINGS

Suspension – Petitioner-employee challenged proceedings of Respondent 2 insofar as it relates to punishment of freezing of pay, treating period of suspension as penalty and recovery, and to direct Respondent to regularize period of suspension as 'duty' for all purposes and disburse all consequential monetary benefits besides revising pensionary benefits, hence this petition – Whether, acquittal in criminal proceedings would debar disciplinary authority from initiating or continuing with disciplinary proceedings, and whether delay would be ground to set aside disciplinary proceedings – *Held*, disciplinary *vis-à-vis* criminal proceedings were independent of each other and acquittal in criminal proceedings would not debar employer from proceeding with disciplinary action – Disciplinary proceedings could not be quashed only on ground of delay in initiating of disciplinary proceedings or in conclusion of disciplinary proceedings, when charges were serious and involves integrity of *delinquent* – Delay both in regard to initiation and conclusion of disciplinary proceedings satisfactorily explained – Petition dismissed. [*C. Subbarayan v. Director of RDPR*]

(MOHAMMED SHAFFIQ, J.)
2022-III-LLJ-439 (Mad)
LNINDORD 2022 MAD 1545

DISMISSAL

Imposition of Conditions – Industrial Disputes Act, 1947 (ID Act, 1947), Section 17B – Tamil Nadu Shops and Establishments Act, 1947 (TSE Act, 1947) – Appellate authority entered into issue of validity of dismissal order of Respondent 2 and without providing an opportunity to Appellant to lead evidence to prove charges, held that order of dismissal was illegal – On petition filed by Appellant, Single Judge held that lump sum amount and last drawn salary to be paid to Respondent 2, hence this appeal – Whether, order of Single Judge to extent of directions to pay lump sum amount and also to pay last drawn salary, sustainable – *Held*, when issue about validity of dismissal order adjudicated by authority, dismissal would relate back to date of original order, even in case where inquiry conducted by authority for first time or after holding inquiry to be unfair – Order of termination would not take effect from date of its confirmation by authority, but it would relate back to original date of order of termination – Single Judge awarded lump sum amount which could not be without adjudication of issue about validity of order of dismissal – Direction to pay last wage drawn was also not legally sustainable – Section 17B of ID Act, 1947 would be applicable only to writ petition filed to challenge award of Labour Court and not to proceedings before authority under TSE Act, 1947 – Order of Single Judge to extent of directions, set aside – Appellate authority directed to expedite matter – Appeal disposed of. [*Head-HR, Indusind Bank v. Appellate Authority*]

(MUNISHWAR NATH BHANDARI, C.J.)
2022-III-LLJ-454 (Mad) LNIND 2022 MAD 2734

EMPLOYMENT

Regularization of Service – Petitioner-employees sought for directing Respondents to regularize their services and appointments on regular basis with retrospective effect, and to extend all pensionary or terminal benefits under Old Pension Scheme (OPS), hence this petition – Whether, Petitioners could be treated as regular employees and entitled to all pensionary and terminal benefits under Old Pension Scheme – *Held*, Government conveyed to Respondent-Board its approval for filling up existing posts of Lower Division Clerks (LDCs), but, Respondent-Board delayed actual regularization, and not filled posts as permitted by Government – Reason assigned for delay was stated as "administrative exigencies" but without specifying what exigencies were – Petitioners were not covered under OPS, and deprived of availing of benefits under New Pension Scheme – Respondents decision in treating services of Petitioners and their appointments on regular basis from 2010 only, illegal – Respondents directed to treat Petitioners as regular employees from 2004 onwards, and that they were entitled to all pensionary and terminal benefits, under OPS from 2004 – Petition allowed. [*Sandhya Kanekar v. State of Goa*]

(R.N. LADDHA, J.)
2022-III-LLJ-468 (Bom) LNIND 2022 GOA 252

Reinstatement – Petitioner-employee sought for quashing order of Respondents 2 and 3 and to direct Respondent to reinstate him in service with all consequential benefits, hence this petition – Whether, Petitioner could be reinstated in service, together with full back wages and all other consequential service and monetary benefits – *Held*, basis of charges that Petitioner absconded from duty stands negative in view of admission of Assistant Manager that he was responsible for stopping Petitioner from attending duty – Findings of Enquiry Officer in holding charges against Petitioner for having absconded from duty, cannot be accepted – Enquiry Officer exceeded his authority in correlating *delinquency* of third party's liability on Petitioner, for which he was not charged – In view of admission of Assistant Manager, inquiry report holding charges proved and consequential punishment, could not be sustained – Impugned orders passed by Respondent 2 and 3, quashed – Respondent 3 directed to reinstate Petitioner back in service, together with full back wages and all other consequential service and monetary benefits – Petition allowed. [*C. Muthu v. MD. TCMPF Ltd*]

(M.S. RAMESH, J.)
2022-III-LLJ-420 (Mad) LNINDORD 2022 MAD 1591

Termination – Respondent 2 repatriated Petitioner-employee to his parent department, and also relieved him from post of Project Officer, hence this petition – Whether, repatriation of Petitioner without notice-show cause in midst of contract was arbitrary exercise of power, and Petitioner entitled to reinstatement for remaining period of contract – *Held*, termination-repatriation of Petitioner was arbitrary for want of notice passed in midst of term of contract – Appointment of Petitioner was temporary and could be repatriated on notice – It was open to Respondent 2 to put Petitioner to notice-enquiry or terminate deputation, and-or, decline further renewal of contract – Respondent 2 choose not to renew contract of appointment and drop idea of enquiry which was as per terms and condition of contract of appointment, instead, paid salary for remaining period of contract as they did not put Petitioner to notice before repatriating Petitioner during subsistence of contract – Respondent 2 assigned reasons, for repatriating Petitioner and not renewing contract of appointment – Decision rests on foundation based on performance, conduct and disutility of Petitioner – Decision of Respondent 2 to repatriate Petitioner could not be said to be arbitrary – Petition dismissed. [*Vimal Kumar Mishra v. State of UP*]

(SUNEET KUMAR, J.)
2022-III-LLJ-274 (All)
LNINDORD 2022 LUCK 2

ENQUIRY REPORT

Application of mind – Petitioner, Senior Manager of Bank was dismissed from service which was confirmed by appellate authority, hence this petition challenging charge-sheet, enquiry report, order of dismissal and order of appellate authority – Whether findings of enquiry officer in enquiry report and decision taken by authorities based on enquiry report liable to be set aside – *Held*, findings of enquiry officer on three charges appear to be *perverse* and *erroneous* – Enquiry officer required to arrive at findings on charges levelled against Petitioner which demonstrates application of mind of enquiry officer and based on reasoning which forms bridge in between allegation of disciplinary authority and findings arrived at by enquiry officer – Enquiry officer failed to establish bridge of reasoning in between such allegations and findings which went against Petitioner – Respondent authority recorded finding that was unsupported by evidence – Appellate authority instead of recording its own reasons independently appreciating matter on record simply reproduced findings of disciplinary authority – Enquiry officer, disciplinary authority and Appellate authority had faltered in discharge of their duties resulting in miscarriage of justice warranting interference of this court in decision making process as well decision taken by authorities based on such *erroneous* findings of enquiry officer – Report of enquiry officer, order of dismissal and order of appellate authority set-aside – Respondent bank directed to reinstate petitioner with 50% back-wages from date of his dismissal from service till date of reinstatement – Petition allowed. [*Avik Kumar Sinharay v. Punjab National Bank*]

(SAUGATA BHATTACHARYYA, J.)
2022-III-LLJ-257 (Cal)
LNIND 2022 CAL 785

EXCESS RECOVERY FROM RETIRAL BENEFITS

Grant of Interest – ROPA, 2009 – Petitioner's employee prayer for payment of interest on 60% of gratuity and leave salary, due arrears in terms of ROPA, and refund of deducted amount in connection with purported over payment rejected, hence this petition – Whether, Petitioner entitled for payment of interest on 60% of gratuity and leave salary, due arrears in terms of ROPA, and refund of deducted amount – *Held*, if there was delay in payment of retiral dues to former employee which had taken place for no fault of latter, reasonable sum should be paid to former employee by way of interest – Such interest should also be paid on 60% due arrears that was paid to Petitioner pursuant to direction of Division Bench – Deduction of amount from retiral benefits of former employee after superannuation, could not be done after retirement of employee – Alleged over payment made purportedly owing to wrong fixation of pay for new post and purported mistake was corrected after Petitioner's retirement – Sum of money wrongfully deducted from Retiral benefits of Petitioner after his retirement, should be

refunded to with interest – Impugned order passed by Managing Director of Respondent Corporation, modified – Respondent corporation shall pay interest at rate of 7% per annum on 60% of retiral financial benefits, and also refund sum deducted from retiral benefits of Petitioner – Petition disposed of. [*Paresh Nath Samanta v. State of West Bengal*]

(JAY SENGUPTA, J.)
2022-III-LLJ-464 (Cal)
LNIND 2022 CAL 818

INDUSTRY

Retrenchment – Industrial Disputes Act, 1947, Sections 2(j) and 25F – Atomic Energy Act, 1962 – Tribunal passed order holding that Petitioner would fall within meaning of "Industry" in terms of Section 2(j) of Act, hence these petitions – Whether Petitioner would constitute "Industry" within meaning of Section 2(j) of Act, and thus Petitioner ought to comply with Section 25F of Act, while retrenching 1st Respondent – *Held*, Act 1962, imposes restrictions and prohibitions with regard to development, control and use of Atomic Energy – Statutory regulations or even prohibitions in force not an indicator that restricted/prohibited activity/functions discharged were sovereign in nature – Need for statutory restriction or prohibition was in view of fact that it was not inherently inalienable which militate against concept of Sovereign Function which must pass muster of inalienability – Private participation was not prohibited would show that activity/function of Petitioner would not qualify as "Sovereign function" as it fails test of inalienability – Petitioner's research was being utilized for commercial purposes and researchers of Petitioner's unit work in collaboration with other Institution's students would show that Petitioner would fall within meaning of "Industry" under Act 1947 – Research studies by Petitioners were being used by Nuclear power stations to enhance efficiency and quality of electricity generated and said electricity was in turn sold to consumers – Research work had commercial value – Petitioner would constitute "Industry" within meaning of Section 2(j) of Act 1947 – Order of Tribunal affirmed – Petitions dismissed. [*Scientific Officer v. P. Sukumar*]

(MOHAMMED SHAFFIQ, J.)
2022-III-LLJ-372 (Mad)
LNINDORD 2022 MAD 1418

MISCONDUCT

Stoppage of Increment – Petitioner-employee appeal before Respondent 1 partly allowed confirming proceedings of Respondent 2, and modifying punishment as stoppage of increment without cumulative effect, hence this petition – Whether, punishment as stoppage of increment without cumulative effect imposed on Petitioner, legal – *Held*, name of Petitioner was deleted from First Information Report and charge sheet was filed before Judicial Magistrate – Even Enquiry Officer reported that charge nos. 2, 3 and 4 not proved and charge no. 1 which was relating to negligence was alone proved – Second charge of shortage was not proved against Petitioner – Disciplinary Authority held that charges 1 and 2 proved, without any proper evidence – Punishment was, illegal – Petitioner was on verge of retirement – Impugned order passed by Respondent 1 confirming proceedings of Respondent 2, set aside – Respondents directed to implement order and disburse all monetary benefits as applicable to Petitioner within certain period – Petition allowed. [*K. Kathiresan v. State of Tamil Nadu*]

(S. SRIMATHY, J.)
2022-III-LLJ-430 (Mad)
LNINDORD 2022 BMM 776

PERMANENT EMPLOYMENT

Grant of Benefits – Industrial Disputes Act, 1947, Section 25-FF – Petitioners sought for directing Respondent nos. 1 and 2 to declare that Petitioners were permanent employees of Zilla Parishad and comply agreement and pay regular and family pension and other consequential benefits and also pay arrears of 6th Pay Commission including time bound pay scale as per G.R., hence these petitions – Whether, Petitioners were

permanent employees of Zilla Parishad and entitled for regular and family pension and other consequential benefits – *Held*, Section 25-FF under Chapter V-A of Act, permits transfer of management – Workers did not have any say in transfer of management agreement, between management and new management – Scheme of law was well settled, transfer of employees to new management by maintaining their service conditions, was not considered to be adversarial to workers – In agreement between Petitioner and Respondent, union of Petitioners also involved and they also signed said agreement – Considering length of services of these Petitioners, Zilla Parishad should issue orders of granting permanency to them, depending upon vacancies available with deemed dates, since regularization could not be made in absence of permanent posts – Petitions partly allowed. [*Shivaji v. State of Maharashtra*]

(RAVINDRA V. GHUGE, J.)
2022-III-LLJ-471 (Bom)
LNIND 2022 AUG 145

Higher Educational Qualification – Respondent 2-Employee's industrial dispute before Labour Court allowed directing Petitioner-Corporation to confer all promotions based on higher educational qualification and to disburse all monetary benefits, hence this petition – Whether, Respondent 2 who acquired higher qualification, could be entitled to promotion – *Held*, promotion could be granted based on available vacancy and merits of eligible candidates – If there were more number of candidates, seniority would be considered – Labour Court erred in stating that Respondent 2 acquired higher qualification, hence entitled to promotion – Promotion was within domain of employer and Respondent 2 raised industrial dispute belatedly and higher qualification alone was not qualification for granting promotion – Award of Labour Court set aside – Petition allowed. [*TNCSCL v. Presiding Officer*]

(S. SRIMATHY, J.)
2022-III-LLJ-387 (Mad)
LNINDORD 2022 BMM 765

Reservation – Constitution of India, 1950, Article 16 – Assam Scheduled Caste and Scheduled Tribes (Reservation in Services and Posts) Act, 1978, Section 5A – Petitions challenging Official Memorandum (O.M.) and clauses in it which deals with reservation in promotion and consequential seniority between General Category and reserved category incumbents – Whether by issuing impugned OM, state had not followed mandate of reported decisions – Whether Clauses of O.M. was violative of Section 5A of Act 1978 – Whether reservation policy framed by earlier O.M. was holding field or same had been impliedly repealed by impugned O.M. – *Held*, Policy of state in providing reservation in promotion with consequential seniority was discernable from Section 5 read with earlier O.M. – Earlier O.M shall hold field till such policy was expressly repealed by State – Impugned O.M. was notified laying procedure for collection of quantifiable data on Backwardness and inadequacy of representation and determining efficiency in administration – Given dicta of reported decision, impugned O.M. could not sustain so far, same relates to collection of data on backwardness – Determination of cadre as unit for collection of quantifiable data laid down in impugned OM conforms to mandate of reported decisions – Procedure laid down for determining efficiency in administration not being arbitrary and not based on extraneous consideration, same was upheld – Article 16(4B) of Constitution and Section 5A of Act permits carrying forward vacancies and therefore, policy of carrying forward provided in impugned O.M. was upheld – State was at liberty to implement its policy of giving reservation in promotion with consequential seniority, provide for reservation in promotion without consequential seniority or at liberty not to provide any reservation in promotion – While implementing/adopting/changing such policy, due process of law need to be followed – Impugned Office Memorandum interfered to extent as indicated herein above – Petitions disposed of. [*Bhagwan Pator v. State of Assam*]

(ARUN DEV CHOUDHURY, J.)
2022-III-LLJ-286 (Gau)
LNIND 2022 GAU 1

Terminal Benefits – Industrial Disputes Act, 1947, Section 18(1) – Petitioner-employee sought for directing Respondents to promote him as Junior Engineer on *par* with his Junior and from date on which he was given promotion with all monetary and consequential benefits together with interest, hence this petition – Whether, Petitioner entitled for promotion – *Held*, averment of theft by Petitioner and his reinstatement as being based on settlement under Section 18(1) of Act, was only meant to cause prejudice for it was clearly contrary to order of Tribunal wherein it has been recorded that the allegation of theft had not been proved – Order of Tribunal remaining unchallenged, attained finality and it was not permissible to Respondent to plead contrary – Various charges of misconduct were completely vague without any details – It may not be permissible to make good order by raising fresh grounds in counter – Submissions in counter filed long years after filing of writ petition and after Petitioner attained superannuation, was vague – Petitioner granted notional promotion with continuity of service only for purpose of terminal benefits without back wages from date on which his juniors were promoted – Petition disposed of. [*Dayanithi v. TNSTCL (Villupuram)*

(MOHAMMED SHAFFIQ, J.)
2022-III-LLJ-396 (Mad)
LNINDORD 2022 MAD 1612

PROVIDENT FUND

Interest for delay in Pensionary benefits – Allahabad Bank (Employees') Pension Regulations, 1995, Regulation 3(9) – Petitioner-employee alleged that he was deprived of enjoying pensioners benefits for specified period and for such belated payment he was entitled to interest on said amount, hence this petition – Whether, Petitioner liable to pay simple interest at rate of 6% on amount of bank's contribution to provident fund including interest accrued thereon in terms of Regulation 3(9) of Regulations – *Held*, amount of bank's contribution to provident fund including interest accrued thereon was not paid to employee before period stipulated in Regulation 3(9) of Regulation – Petitioner while exercising his option authorized trustees of provident fund of bank to transfer entire contribution of bank to provident fund including interest accrued thereon – Such authorization, though made prior to period specified in sub-regulation, was subsisting during said period and was not withdrawn by Petitioner during tenure of his service – Petitioner liable to pay interest @ 6% on bank's contribution to provident fund including interest accrued thereon only for specified period and not for the period as indicated by Bank – Bank was not justified in debiting amount of interest on employee's share of contributory provident fund – Petition allowed. [*Sri Manoranjan Ari v. Allahabad Bank*]

(HIRANMAY BHATTACHARYYA, J.)
2022-III-LLJ-424 (Cal)
LNIND 2022 CAL 742

REINSTATEMENT

Continuity of service – Labour Court directed Respondents to reinstate Petitioner without back wages and without continuity of service – Petitioner sent representation to 1st Respondent seeking to regularize Petitioner's service in terms of award passed by Labour Court, as confirmed by this Court – 2nd Respondent passed impugned order appointing Petitioner as driver with effect from date which was four months later from date of award as fresh entrant on daily wage basis and regularized his service in post of Driver with effect from later date, hence this petition – Whether 2nd Respondent justified in granting reinstatement of Petitioner as fresh entrant – *Held*, phrase "continuity of service" means that service of affected employee was treated as unbroken – Phrase "without continuity of service" means that service of affected employee was treated as broken – Phrase "without continuity of service" would mean only fresh entrant even though Labour Court had not used word 'fresh entrant' – If Petitioner was regularized after 240 days he would be entitled to pension – Petitioner entitled to be regularized after 240 days from date of reinstatement with consequential benefits – Petition disposed of. [*P. Ravi v. Tamil Nadu State Transport Corp.*]

(S. SRIMATHY, J.)
2022-III-LLJ-392 (Mad) LNINDORD 2022 BMM 762

RETRENCHMENT

Closure of business – Respondent terminated services of Petitioner on ground of retrenchment due to closure of medical store – Reference of dispute raised by Petitioner dismissed by Labour Court, hence this application – Whether retrenchment of Petitioner in accordance with law – *Held*, Respondent brought on record that as per its Managing Committee's resolution, medical store was closed, its stock was sold and only store premises with fixed furniture therein was rented out to third person, who would run medical store at his own cost and expenses while giving fixed rent to Respondent – After retrenchment of Petitioner, no person had been appointed as Pharmacist by Respondent – Evidence and documents on record reveal that business of medical store had been closed down by Respondent – Petitioner has been retrenched in accordance with law after payment of all retrenchment compensation and other terminal benefits duly accepted by Petitioner – No infirmity in judgment and award passed by Labour Court – Application dismissed. [*Rajnibhai R.P. v. Gandhinagar Jilla SKVSL*]

(ANIRUDDHA P. MAYEE, J.)
2022-III-LLJ-252 (Guj)
LNINDU 2022 GUJ 4

TERMINATION

Maintainability of Petition – Factories Act, 1948 – Tamil Nadu Shops and Establishments Act, 1947 – Respondent 2-employee challenged order of termination and approached Respondent 1 authority under Act, 1947 – Respondent 1-Authority dismissed preliminary objection raised by Petitioner-Management regarding maintainability of petition, hence these petitions – Whether, preliminary objection raised by Petitioner regarding maintainability of petition under provisions of Act 1947, justified – *Held*, preliminary objection was raised by Management regarding maintainability of petition under provisions of Act, 1947 – Petitioner Establishment was factory under Act 1948 and Respondent 2 was working in factory premises – Factory registered under Act 1948 was exempted from provisions of Act 1947 – Order passed by Respondent 1 was not in consonance with provisions of Act, 1947 – Impugned order passed by Respondent 1, quashed – Petitions allowed. [*Management, HMIL v. D.C. of Labour*]

(S.M. SUBRAMANIAM, J.)
2022-III-LLJ-402 (Mad)
LNINDORD 2022 MAD 1472

Outsourced employee – Industrial Disputes Act, 1947, Section 25-F – Constitution of India, 1950, Articles, 14 and 16 – Respondent, working as outsourced Laboratory Technician in establishment of Petitioner was terminated from service – Respondent raised industrial dispute – Labour Court passed award holding that termination of Respondent was in violation of Section 25-F and directed her reinstatement with continuity of service and backwages, hence this petition – Whether Labour Court justified in granting relief sought by Respondent in industrial dispute – *Held*, Respondent's engagement through private agency without extending invitation to all qualified persons to apply for post at relevant point of time was not in consonance with mandate of Articles 14 and 16 of Constitution – Services of Respondent in establishment of Petitioner had been terminated for valid reasons pursuant to Government Order on account of illegal manner in which she had been hired through private agency – Labour Court was not justified in granting relief sought by her in industrial dispute – Impugned award passed by Labour Court, set aside – Petition disposed of. [*Director, KIPM v. T. Viji*]

(P.D. AUDIKESAVALU, J.)
2022-III-LLJ-407 (Mad)
LNINDORD 2022 MAD 1430

SEPTEMBER

ALTERNATIVE EMPLOYMENT

Redesignation of Post – Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 – Petitioner-employee sought for directing Respondents to redesignate his post commensurate with his qualification, hence this petition – Whether, Petitioner entitled for some other alternate post equivalent to post of driver – *Held*, though Petitioner declared to be unfit for post of Driver and be protected with pay by giving alternative employment, it was lower cadre than post he was holding before acquiring disability – No Government establishment should reduce in rank of employee, who acquires disability during his service, Petitioner should be provided with equal alterative employment – Petitioner also referred to similarly placed persons being provided with alternative equal employment in Health Department and Municipal Administration – Providing alternate employment of lower cadre post would be contrary to provisions and objects towards which Act was enacted – Impugned order, set aside – Respondent 1 directed to provide some other alternate post equivalent to post of driver to Petitioner – Petition allowed. [*D. Anbalagan v. State of Tamil Nadu*]

(B. PUGALENDHI, J.)
2022-III-LLJ-540 (Mad) LNINDORD 2022 BMM 940

COMPASSIONATE APPOINTMENT

Minor Son – 2nd Petitioner/widow's application for providing appointment to her son/1st Petitioner on compassionate ground dismissed, hence this petition – Whether, essential criteria of being considered for appointment on compassionate ground stands satisfied and authority could proceed with application made by mother in favour of minor son – *Held*, essential criteria of being considered for appointment on compassionate ground stands satisfied – No delay on part of widow in making application – Government circular relied upon by State Respondents did not specify as to whether heir of deceased would be eligible to apply on attaining majority – Joint Secretary missed appreciating fact that no application by widow for providing appointment to her and no scope to offer appointment to her only on basis of report of three-member enquiry committee – Said authority failed to appreciate that Commissioner forwarded proposal for appointment of son along with all enclosed documents in support of such appointment – Said recommendation ought not to be brushed aside by mis-appreciating facts of case and proper application of mind – Gross injustice would be caused if candidature of son was rejected at late stage allegedly on account of procedural lapse – Impugned orders, set aside – Joint Secretary directed to proceed with recommendation made in favour of 1st Petitioner and to offer appointment to him as and when his turn comes – Petition disposed of. [*Animesh Das v. State of WB*]

(AMRITA SINHA, J.)
2022-III-LLJ-498 (Cal) LNIND 2022 CAL 867

Seniority list – Appellant was not given appointment on compassionate ground despite application submitted by him – Petition filed by Appellant challenging same dismissed as not maintainable after lapse of twenty two years from date of death of deceased employee, hence this appeal – Whether order of Single Judge denying employment on compassionate ground to Appellant, justified – *Held*, appointment on compassionate ground was permissible and every such application should be considered based on scheme framed by Government or found in service rules – As per scheme of Government, Respondents had come forward with definite case that Appellant was eligible and his appointment would be only in accordance with seniority list – Appellant would be getting appointment on compassionate ground within reasonable time based on seniority list maintained in office of District Collector – It was unfair to deny him employment on compassionate ground citing pendency and inability of Respondents to consider application of Appellant for long time – Order of Single Judge, unsustainable – Appeal allowed. [*T. Veerabagu v. Secretary to Government*]

(S.S. SUNDAR, J.)
2022-III-LLJ-570 (Mad)
LNIND 2022 BMM 1370

COMPULSORY RETIREMENT

Commission for Scheduled Castes – Constitution of India, 1950, Articles 226 and 338 – Petitioner initiated disciplinary action against 2nd Respondent which culminated into action of compulsory retirement from services – Proceedings filed against such disciplinary action rejected – 2nd Respondent filed review petition before 1st Respondent/Commission alleging injustice and harassment in service – 1st Respondent observed that injustice incurred upon Scheduled Caste employee and punishment of compulsorily retirement was draconian in nature and recommended authority concerned to re-investigate whole matter, hence this petition – Whether order passed by 1st Respondent was with jurisdiction – *Held*, 1st Respondent Commission had no jurisdiction to interfere with decision already taken by employer against 2nd Respondent after following procedure and granting compulsory retirement which action had been upheld in various proceedings filed by 2nd Respondent and had attained finality – 1st Respondent Commission could not act as appellate authority against order passed by employer taking disciplinary action against employee by employer – It was within powers of employer to take disciplinary action against employee and once having exercised such powers by employer and such action having been upheld in all proceedings filed by employee, such employee could not file such application before 1st Respondent Commission to interfere with action initiated by employer in accordance with service conditions and in accordance with law – 1st Respondent Commission had totally acted without jurisdiction and in teeth of Article 338 (5) (b) of Constitution – Proceedings initiated by 2nd Respondent itself were totally without jurisdiction – Order passed by 1st Respondent was totally without jurisdiction and deserves to be quashed and set aside – Petition allowed on terms. [*Union of India v. NCSC*]

(R.D. DHANUKA, J.)
2022-III-LLJ-600 (Bom)
LNIND 2022 BOM 377

DE-PROMOTION

Educational Qualification – Petition filed by Appellant to forbear Respondents from de-promoting them on ground that pre-foundation course was not equivalent to SSLC, dismissed by Single Judge, hence this appeal – Whether, Appellants who had passed pre-foundation course after cutoff date, eligible to be considered for promotion – *Held*, when Appellants had joined course, no prohibition or declaration that pre-foundation course was invalid – On ground of legitimate expectation, Appellants entitled to be considered for promotion – Mischief of invalidity of pre-foundation course was eradicated in phased manner – Cut-off date, was date of issuance of Government Order – Appellants were conferred promotion and they worked for more than five years in promoted post – At this stage, Appellants could not be de-promoted and based on equity, Appellants ought to be allowed to continue in promoted post – Respondents directed to confer promotion to all Appellants – Impugned orders of de-promotion, set aside – Appeals allowed. [*P. Thavam v. State of Tamilnadu*]

(S. SRIMATHY, J.)
2022-III-LLJ-487 (Mad)
LNIND 2022 BMM 1299

DUAL BENEFITS

Family and Freedom Fighter's Pension – Petitioner sought for quashing order of Respondents 2 and 3 and to direct Respondents to grant family pension to Petitioner arising out of same State Government civil service of Petitioner's deceased mother, in addition to Freedom Fighter Pension, hence this petition – Whether, Petitioner entitled for family pension, in addition to Freedom Fighter's Pension – *Held*, pension received by Petitioner in respect of freedom fighters pension could not be brought under meaning of income – Pension received by Petitioner arising out of Freedom Fighters Pension, could not be taken as income for grant of family pension – No denial of grant of dual pension to pensioner in said government order – Vide this government order, government ordered for sanction of dual family pension to those families of Ex-Servicemen, who have been re-employed in civil *(i.e.,)* State Government Service and earned pension out of re-

employment before introduction of Contributory Pension Scheme – Reasons assigned by Respondents to deny family pension to Petitioner, unsustainable – Impugned order passed by Respondents set aside – Respondents directed to grant family pension to Petitioner arising out of state government civil service of Petitioner's deceased mother in addition to freedom fighters pension – Petition allowed. [*S. Jeevalakshmi v. Principal A.G.*]

(B. PUGALENDHI, J.)
2022-III-LLJ-534 (Mad)
LNINDORD 2022 BMM 935

EMPLOYMENT

Compassionate Appointment – Uttar Pradesh Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974, Rule 5 – Appellant-employee's application for being appointed under Rule 5 of Rules dismissed, hence this appeal – Whether, Appellant entitled for compassionate appointment to post of Sweeper – *Held*, father of Appellant was working as Sweeper borne in Class-IV post – Words "suitable employment" in Rule 5 of Rules must be understood with reference to post held by deceased employee – Superior qualification held by dependent could not determine scope of words "suitable employment" – Annexure P-1 does not represent statutory Rules – Court should not be persuaded to take different view as things stand – Whole purport of scheme of compassionate appointment was to reach immediate relief to bereaved family – In such circumstances, meaning placed on words "suitable employment" bearing in mind post held by deceased employee could not be said to be unreasonable or incorrect view – Bearing in mind date of death of employee, claim of Appellant may not be said to be afflicted with such delay as should deprive him and family of deceased of relief of Appellant being appointed as Sweeper, right which was given under statutory Rule – Impugned judgment set aside – Respondent 3 directed to appoint Appellant to post of Sweeper – Appeal partly allowed. [*Suneel Kumar v. State of U.P.*]

(K.M. JOSEPH, J. AND HRISHIKESH ROY, J.)
2022-III-LLJ-481 (SC)
LNIND 2022 SC 537

Compensation *in lieu* of Reinstatement – Industrial Disputes Act, Sections 25F, 25G, 25N and 17B – Chhattisgarh Industrial Rules, Rules 76 and 76(A) – Respondent-State petition before Single Judge partly allowed modifying Award of Labour Court by granting compensation to Appellant-workers *in lieu* of reinstatement as full and final settlement of their claim, hence this appeal – Whether, single judge was justified in modifying well-reasoned order of Labour Court by granting compensation to Appellants *in lieu* of reinstatement – *Held*, issue of workman being gainfully employed in any establishment during intervening period was not raised before Labour Commissioner, Labour Court or before Single Judge – There was non-compliance of mandatory requirements under Sections 25F, 25G, 25N and 17-B of Act r/w Rules 76 and 76(A) of Rules by Respondents – No fault could be attributed to Appellants for passage of 13-14 years since their termination – Appellants continued to work under Respondents' department for period of about 8-10 years, principle of "last come, first go" was not followed by Respondents, scope of judicial review with award of Labour Court – Single judge was not justified in modifying well-reasoned order of Labour Court by granting compensation to Appellants *in lieu* of reinstatement as full and final settlement of their claim – Impugned order passed by Single Judge set aside and award passed by Labour Court restored – Appeal allowed. [*Mahesh Ram Thawait v. State of Chhattisgarh*]

(GAUTAM CHOURDIYA, J.)
2022-III-LLJ-678 (Chg)
LNIND 2022 CHG 2

Compensation *in lieu* of Reinstatement – Labour Court by impugned order awarded compensation to each of Petitioners-workmen rather than reinstatement with back wages, hence these petitions – Whether, award of compensation *in lieu* of Reinstatement, legal – *Held*, compensation *in lieu* of reinstatement would be detrimental to Petitioners who have worked for over period of 20 years – Impugned

award passed by Labour Court was *erroneous* to extent of granting compensation – Respondents directed to reinstate workmen in service with continuity of service – Workmen would not be entitled to any back wages as they have given up their claims – After their reinstatement, it would be open for workmen to file representation claiming benefits of Government Resolution – Order reinstating Petitioner workmen should be passed within certain period – Request of quashing and setting aside order of lump-sum compensation and instead grant reinstatement till date of superannuation with continuity of service, granted – 10% back wages forgone by employees with grant of continuity to those employees who have attained age of superannuation – Employees should be paid retirement benefits on strength of modified award – Impugned awards passed by Labour Court, modified – Petitions allowed. [*Gemalbhai Motibhai Solanki v. DEE*]

(BIREN VAISHNAV, J.)
2022-III-LLJ-687 (Guj)
LNIND 2022 GUJ 9

Reinstatement – Industrial Disputes Act, Section 2 (oo) (bb) – Petitioner challenged award of labour Court directing that Respondent-employee be reinstated in service with continuity and with 15% back wages, hence this petition – Whether, award of Labour Court awarding reinstatement, justified – *Held*, Respondent appointed as Community Organizer with Petitioner *vide* order – Respondent appointed on probation for period of one year which can be shortened – Appointment order clearly stated that initial probation was up to specified date – Subsequent orders extending period of probation by order up to specified date – These orders stated that extension of probation was subject to satisfactory work – By order having found performance of Respondent not being satisfactory in accordance with terms of appointment, one month's notice was given – Dues were paid and services of Respondent were put to an end on expiry of probation period – Viewed from definition of "retrenchment" defining Section 2 (oo) (bb) of Act, 'term' excludes termination of service of workman as result of non-renewal of contract of employment or termination on expiry in view of stipulation as contained in order – Award of Labour Court, set aside – Petition allowed. [*Chief Executive v. Vanjibhai Laljibhai*]

(BIREN VAISHNAV, J.)
2022-III-LLJ-619(Guj)
LNIND 2022 GUJ 10

Reinstatement – Petitioner-workmen's challenged awards of Labour Court awarding Compensation of certain sum to Petitioner's rather than reinstatement with back wages, hence these petitions – Whether, Labour Court should have fallen short of awarding reinstatement with or without back wages – *Held*, compensation *in lieu* of reinstatement would be detrimental to Petitioners who have worked for over period of 20 years – Impugned award passed by Labour Court *erroneous* to extent of granting compensation – Respondents directed to reinstate workmen in service with continuity of service – Petitioners would not be entitled to any back wages as they have given up their claims – After their reinstatement, it would be open for Petitioners workmen to file representation claiming benefits of Government Resolution – Order reinstating Petitioner should be passed within certain period – Request of quashing and setting aside order of lump-sum compensation and instead grant reinstatement till date of superannuation with continuity of service, allowed – Back wages forgone by employee with grant of continuity to employee who has attained age of superannuation – Employee shall be paid retirement benefits on strength of modified award – Impugned awards passed by Labour Court, modified – Petitions allowed. [*Rameshbhai Bhathibhai Pagi v. DEE*]

(BIREN VAISHNAV, J.)
2022-III-LLJ-627(Guj)
LNIND 2022 GUJ 11

FIXATION OF PAY

Refund with interest – Petitioner-employee sought for quashing impugned order of Respondent 1 and 2 and to direct Respondents to restore pay fixation and to refund amount recovered from Petitioner's gratuity with interest as per Rules, hence this petition – Whether, order passed by Respondent 1 was in accordance with pay Rules and as per Government order in force – *Held*, no misrepresentation on part of Petitioner – No

show cause notice issued and that apart, impugned orders were passed after retirement of Petitioner – Wrong fixation could be corrected as per proceedings of Principal Accountant General of State – Consequential order in respect of recovery could not be sustained – In event of imposing recovery after retirement, same would cause hardship to Petitioner –Impugned order passed in proceeding stands quashed in respect of recovery alone and fixation as applicable, must be continued and pension as per rules were to be paid to Petitioner – Excess amount of recovery already recovered from Petitioner directed to be repaid to him within certain period – Petition allowed. [*K.P. Rajendran v. Principal Accountant General*]

(S.M. SUBRAMANIAM, J.)
2022-III-LLJ-516 (Mad)
LNINDORD 2022 MAD 1961

INDUSTRIAL DISPUTES

Applicability of Notice – Industrial Disputes Act, 1947, Sections 9-A, 19(2), 22(1)(d), 22(2)(d) and 33 – Petitioner sought for directing that Notice-Order under Section 9-A of Act, for unilateral change in service condition applicable to workman in respect of matters referred in 4th Schedule of Act and also notice-order under Section 19(2) of Act for unilateral modification of settlement applicable to workman in respect of matters regarding exclusion of HRA component from wages for computation of incentives and Over Time Allowance (OTA) *qua* Departmental Workers, hence these petitions – Whether, impugned notice-order under Section 9-A and 19(2) of Act, for unilateral change in service condition applicable to workman – *Held*, notice served slightly deviated from *proforma* E – These notices have already been subject matter of industrial disputes raised before appropriate forum and direction passed that there would be no change in service conditions as provided under Section 33 of Act – Conciliation Officer in orders invited attention to obligations imposed by Section 22(1)(d) of Act for workmen Union and under Sections 22(2)(d) and 33 of Act for employer – Section 33 of Act, provides that during pendency of reconciliation proceedings before Conciliation Officer, conditions of service should remain unchanged – Impugned notice should not be given effect till proceedings concluded by Conciliation Officer – Petitions disposed of. [*FCI Shramik Union v. Food Corp. of India*]

(DINESH KUMAR SHARMA, J.)
2022-III-LLJ-545 (Del)
LNIND 2022 DEL1704

Service Conditions – Industrial Disputes Act, 1947, Section 33 – Petitioner-employee sought for directing Respondent 1 to maintain status quo in service conditions of Petitioner and to continue with his services and not to change service conditions of workman by way of non-renewal of contract during pendency of industrial dispute without following procedure under Section 33 of Act, hence these petitions – Whether, service condition could be changed before industrial disputes were raised – *Held*, no substance in issue raised by Respondent as to maintainability of writ petition – Objection as to equally efficacious remedy also liable to be rejected – No reason to differ with earlier opinions expressed by Court – Judicial discipline also requires that Court could differ from its earlier precedents only if there were supervening circumstances to differ – Respondents not placed any material to show that service condition changed before industrial disputes were raised – *Plea* of Respondent that their names have already been removed, if correct, was *ex facie* illegal and could not be allowed during pendency of industrial disputes before Labor Court – Respondents directed not to alter or change service conditions of Petitioners till pendency of industrial disputes before Labour Court – Petitions disposed of. [*Suresh Chandra S. v. Delhi Cantonment Board*]

(DINESH KUMAR SHARMA, J.)
2022-III-LLJ-635 (Del)
LNIND 2022 DEL 2006

PAYMENT OF FULL WAGES

Gainful employment – Industrial Disputes Act, 1947, Section 17B – Applicant/Respondent/workman filed present application under 17B to direct

Petitioner/Management to pay him his last drawn salary from date of impugned Award till disposal of Petition – Whether workman entitled for full wages last drawn by him from date of Award till pendency of present proceeding – *Held*, Section 17B makes it clear that if award had been passed by Labour Court directing reinstatement of any workman and employer prefers any proceedings against such award in High Court, employer shall be liable to pay such workman during period of pendency of such proceedings in High Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule – Full wages could be denied only if workman had been employed in any establishment during such period – Workman moved application specifically pleading that he had not been gainfully employed during such proceedings and also filed affidavit to this effect – Management had only denied same – No substantial evidence or proof placed on record to show that workman was gainfully employed – Management was only relying upon cancelled cheque to show that he was gainfully employed – Merely by placing such cancelled cheque on record, this Court could not make inference that workman was gainfully employed – Employee pleaded that workman was employed in District Court but no document placed on record to substantiate this *plea* – Award for reinstatement passed by Labour Court in favour of workman and management had challenged same – Workman entitled for full wages last drawn by him from date of Award till pendency of present proceedings – Application allowed. [*Unitas Foods Pvt. Ltd v. Gyanender*]

(DINESH KUMAR SHARMA, J.)
2022-III-LLJ-592 (Del)
LNIND 2022 DEL 1850

PERMANENT STATUS

Conditions – Tamil Nadu Industrial Establishments (Conferment of Permanent Status To Workmen) Act, 1981, Section 3 – Labour Inspector passed common award conferring permanent status on workmen/Respondents, hence this Petitioner/Corporation – Whether Labour Inspector justified in holding that Respondents satisfied condition under Section 3 of Act for conferment of permanent status – *Held*, Table containing days of work by Respondent over fifteen months reveals that workmen had not fulfilled requirement of 480 days of continuous service in 24 calendar months – Order of Labour Court after extracting Table had by leap of imagination proceeded to extend benefit of Permanency under Section 3, on basis of assumptions and hypothesis, which vitiates order and renders same bad in law – Even assuming evidence let in by Respondents to be reflecting correct state of affairs nevertheless it still fell short of meeting out requirement contemplated under Section 3 since none of employees were shown to have completed 480 days in period of 24 calendar months – Impugned order insofar as it places burden on Petitioner Corporation to show that Respondents were not in continuous service for more than 480 days in 24 calendar months was contrary to settled position that burden of complying with condition under Section 3 was on workmen – Labour Court erred in drawing adverse inference against Respondents allegedly for not producing documents overlooking fact that Petitioner had stated and which remained undisputed that documents were lost in fire accident and thereafter during Tsunami – Order of Labour Court suffers from infirmities fatal to validity of same and thus set-aside – Petition allowed. [*Management of TNTDCL v. Labour Officer*]

(MOHAMMED SHAFFIQ, J.)
2022-III-LLJ-579 (Mad)
LNINDORD 2022 MAD 1890

REGULARIZATION

Vacancy notice – Services of Petitioners who were given temporary employment and assigned responsibilities of System Officers and System Assistants in subordinate courts, were terminated – Representation given by Petitioners to High Court seeking absorption in regular Cadre of Court, not considered and fresh vacancy notice issued by High Court for appointments to post of Junior Judicial Assistant (Technical), hence this petition – Whether petition seeking relief of absorption of Petitioners and setting aside of vacancy notice issued by High Court, justified – *Held*, Petitioners joined services fully aware of terms and conditions of their employment in terms of advertisement which was purely on temporary and contractual basis for fixed period – They were fully aware that services

were liable to be terminated without any notice and/or assigning any reason thereof – Appointment letters mentioned that officers so appointed would not have any right to claim regular/continuing service as System Officers in Courts – Petitioners after having taken advantage of such appointment for period of three years could not now claim that their services be regularized disregarding terms of their appointment – Petitioners who were contractual employees in Establishment of District Court could not claim any right to regularization or absorption by Establishment of High Court as two were totally independent and separate Establishments – Vacancy notice issued by High Court for appointment to post of Junior Judicial Assistant (Technical) in High Court thus had no connection with Petitioners, who were engaged on contractual basis and were deployed in subordinate Courts purely on temporary and contractual basis – Petition dismissed. [*Desh Deepak Srivastava v. Delhi High Court*]

(AMIT MAHAJAN, J.)
2022-III-LLJ-573 (Del)
LNIND 2022 DELL 1754

TERMINATION

Abolition of post – Industrial Disputes Act, 1947, Section 25-F – Petitioner's service was terminated by Establishment, stating that his service was no longer required, due to restructuring/reorganization of Establishment – Appeal filed by Petitioner rejected by 1st Respondent, hence this petition – Whether order of 1st Respondent liable to be quashed – *Held*, when particular post was abolished owing to restructuring/reorganization of Establishment, no infirmity on part of Establishment to terminate services of employee holding such post that has become redundant – Respondent Establishment was justified in terminating services of Petitioner, since post had become redundant owing to restructuring of organization – Petitioner had also been suitably compensated in terms of Section 25-F – No infirmities in impugned order of 1st Respondent – Petition dismissed. [*Abey Thomas v. Special DC of Labour*]

(M.S. RAMESH, J.)
2022-III-LLJ-604 (Mad)
LNINDORD 2022 MAD 2045

Appointment by mistake – Services of Petitioner terminated on ground that his appointment to post in question was mistakenly made under female category, hence this petition – Whether order of termination liable to be quashed – *Held*, Respondents could not establish whether wrong entry in Employment exchange had been made at instance of Petitioner or at instance of officials of Employment Exchange – 1st Respondent/Medical Services Recruitment Board conducted process of selection – Even in case, category of Petitioner was mentioned as 'female' instead of 'male', during course of selection and by reading name of Petitioner, Board ought to have taken appropriate steps to identify mistake or otherwise – In order to overcome mistake committed by Employment Exchange and Board, they had cancelled selection and issued order of termination – Petitioner was not at fault and it was fault committed by Selection Board as well as by Employment Exchange, for which Petitioner could not be penalized – Petitioner had served about one year and completed training period and duty certificate was also issued to him – Order impugned passed by 1st Respondent and communication issued by 2nd Respondent quashed – Respondents directed to reinstate Petitioner in service without any backwages – Petition allowed. [*R. Pannerselvam v. MSRB*]

(S.M. SUBRAMANIAM, J.)
2022-III-LLJ-589 (Mad)
LNINDORD 2022 MAD 1962

Domestic enquiry – Central Civil Services (Classification, Control and Appeal) Rules, 1965 – Industrial Tribunal passed award holding that termination of services of workman/2nd Respondent was illegal since Petitioner/Management failed to prove that enquiry conformed to Central Service Rules and directed reinstatement with full back wages and continuity in service, hence this petition by Management – Whether domestic enquiry was vitiated – *Held*, Petitioner Management, on its own free will and volition, had adopted Disciplinary Rules as applicable to Central Government Employees – Central Service Rules would be applicable to 2nd Respondent with regard to disciplinary matters –

Petitioner did not conduct domestic enquiry in accordance with Central Service Rules – Enquiry conducted by Petitioner was illegal, unfair and against principles of natural justice – Petitioner failed to adduce any evidence before Tribunal to prove alleged misconduct against 2nd Respondent – Domestic enquiry conducted by Petitioner stood vitiated – Termination of 2nd Respondent which was based on domestic enquiry was also illegal and not sustainable in law – Domestic enquiry rightly set aside by Industrial Tribunal *vide* impugned Award – Service of 2nd Respondent with Petitioner was not of permanent nature – Engagement of 2nd Respondent was based on fixed term employment – It was always open to Petitioner Management not to extend services of 2nd Respondent for further term – Order of reinstatement with back wages must be eschewed, being inequitable – Sum of Rupees One Lakh only awarded to 2nd Respondent *in lieu* of her reinstatement and back wages as directed by Industrial Tribunal *vide* impugned award – Impugned Award modified – Petition partly allowed. [*Army Welfare Housing Org v. Presiding Officer*]

(GAURANG KANTH, J.)
2022-III-LLJ-549 (Del)
LNIND 2022 DEL 1731

WAGES

Subsistence Allowance – Tamil Nadu Payment of Subsistence Allowance Act, 1981 – Petitioner's appeal before Respondent 1 dismissed confirming order of Respondent 2 directing Petitioner to pay subsistence allowance to Respondent 3-employee even after age of superannuation, hence this petition – Whether, Respondent 3 entitled to subsistence allowance beyond date of superannuation – *Held*, Secretary post was not pensionable service, Respondent 3 was not eligible for subsistence allowance beyond date of superannuation – Respondent 3 drawing more than Rs. 3500/-, would not come under definition of employee – Petitioner society not proved that Respondent 3 doing supervisory work – Both Petitioner and Respondent 3 have not substantiated nature of work – Respondent was drawing specified wages, as per definition, Respondent 1 and 2 was not having jurisdiction – Based on By-law Respondent 3 already granted subsistence allowance – Claim of subsistence allowance under Act, would not arise – As per by-Law Respondent 3 entitled to subsistence allowance until superannuation or retirement and subsistence already paid from date of suspension till superannuation – Three claims from specified dates was beyond provisions of By-law of Petitioner's society – Respondent 3 not entitled to any subsistence allowance beyond date of superannuation – Impugned order set aside – Petition allowed. [*Sec. PA Co-op Bank v. DCL*]

(S. SRIMATHY, J.)
2022-III-LLJ-610 (Mad)
LNINDORD 2022 BMM 1039