

AIBEA's

LEGAL NEWS

Q – 4 Oct. – Dec. 2022

ALL INDIA BANK EMPLOYEES' ASSOCIATION

LEGAL NEWS
From AIBEA

BULLETIN Q - 4
Oct. – Dec. 2022

OCTOBER

COMPASSIONATE APPOINTMENT

Course of Employment – Petitioner's application before Respondent 2 for providing appointment to her son on compassionate ground rejected, hence this petition – Whether, Petitioner's son entitled for appointment on compassionate ground – *Held*, husband of Petitioner while he was riding his two wheeler was hit by unidentified vehicle, fell down and sustained injuries and while he was taken to hospital for treatment, he died – It was case of accident and not case of 'violence' and more-so, at time of accident, husband of Petitioner was not performing his official duty, there was no reason to draw factual inference for purpose of considering case of Petitioner for compassionate appointment – There must be actual performance of official duty and at time of actual performance of official duty, if employee died due to violence, terrorism, robbery or dacoity, then alone Scheme of Compassionate Appointment was to be provided – In all other cases, bank provided alternative relief of payment of *ex-gratia* lump sum amount *in lieu* of compassionate appointment – Petitioner has to submit application for alternative relief of payment of *ex-gratia* lump sum amount *in lieu* of compassionate appointment – Petition disposed of. [*R. Kalaivani v. State Bank of India*]

(S.M. SUBRAMANIAM, J.)
2022-IV-LLJ-82 (Mad)
LNINDORD 2022 MAD 2465

DISCIPLINARY ENQUIRY

Compulsory Retirement – Appellant-bank's and Respondent-employee's writ petitions before High Court dismissed affirming order of Central Government Industrial Tribunal (CGIT) modifying punishment of dismissal to compulsory retirement, hence this appeal – Whether, judgment of High Court justified – *Held*, in terms of structuring judgments, it would be beneficial for Courts to structure them in manner such that Issue, Rule, Application and conclusion (IRAC) are easily identifiable – IRAC method generally followed for analyzing cases and structuring submissions could also benefit judgments when it complemented by recording facts and submissions – Issue refers to question of law that Court was deciding – Rule refers to portion of judgment which distils submissions of counsel on applicable law and doctrine for issue identified – This rule is applied to facts of case in which issue has arisen – Analysis recording reasoning of Court forms Application section – It is always useful for court to summarize and lay out Conclusion on basis of its determination of application of rule to issue along with decision vis-à-vis specific facts – This allows members of bar and judges relying upon case in future, to concisely understand holding of case – Judgment of High Court of set aside, and matter remitted back to file of High Court for being considered afresh – Appeal allowed. [*SBI v. Ajay Kumar Sood*]

(DR. DHANANJAYA Y CHANDRACHUD,)
2022-IV-LLJ-1 (SC)
LNIND 2022 SC 557

DISCIPLINARY PROCEEDINGS

Illegal Gratification – Bihar Government Servants (Classification, Control & Appeal) Rules, 2005 – Petitioner served with charge memo of accepting illegal gratification from Complainant and ancillary charges – Enquiry officer submitted enquiry report that charges could not be proved – Disciplinary authority thereafter passed impugned order of punishment dismissing Petitioner from service which was affirmed by appellate authority, hence this application – Whether order of disciplinary authority, sustainable – *Held*, in second show cause notice, there was no basis or no reasons assigned for differing with findings of enquiring officer – No material as contemplated under Rules referred to in order – Second show cause notice issued to Petitioner was in gross violation of procedure prescribed – Order of punishment did not take into consideration any material or evidence, based on which Petitioner had been visited with extreme consequence of dismissal – Petitioner's detailed and elaborate appeal rejected by cryptic order, which did not show any consideration of various issues raised in elaborate appeal – Findings were baseless and render nugatory entire opportunity of appeal granted to Petitioner under Rules – Order was unsustainable for non-assigning of reasons and shows total non-application of mind – Application allowed. [*Hargun Prasad Singh v. State of Bihar*]

(MADHURESH PRASAD, J.)
2022-IV-LLJ-39 (Pat)
LNIND 2022 PAT 2400

DISMISSAL

Availability of Statutory Remedy – Industrial Disputes Act – Petitioner-employee appointed as Messenger in Respondent Bank on compassionate ground dismissed from service, hence this petition – Whether, dismissal of Petitioner on basis of disciplinary proceedings, justified – *Held*, Petitioner was workman and service conditions were governed under 12(3) settlement of Act – Petitioner had to approach Central Industrial Tribunal for effective adjudication of disputed issues between parties – In view of fact that Petitioner not exhausted statutory remedy under Act, she was at liberty to approach Central Industrial Tribunal for purpose of adjudication of disputed issues and redress her grievances in manner known to law – Petition dismissed. [*T. Selvi v. DGM (B&O), SBI*]

(S.M. SUBRAMANIAM, J.)
2022-IV-LLJ-88 (Mad)
LNINDORD 2022 MAD 2495

Enquiry – Industrial Disputes Act, 1947, Sections 10 and 33(2)(b) - Respondent no.2 application before Tribunal under Section 33(2)(b) of Act allowed confirming decision taken by Respondent no.2 for removal of deceased husband of Petitioner from service, hence this petition – Whether, Tribunal exceeded its jurisdiction while passing impugned order – *Held*, Tribunal exceeded its jurisdiction while passing impugned order – Tribunal ought not to have examined veracity of domestic enquiry conducted by Respondent Management – Proposed action was not result of any victimization against workman – Respondents acted in usual course of their business and conducted domestic enquiry – After conclusion of said enquiry, punishment imposed on deceased workman – As no victimization against workman, Application filed by Respondent Management under Section 33(2)(b) of Act was rightly allowed by Tribunal – Proceeding under Section 33(2)(b) of Act was not substitute for industrial dispute referred for adjudication under Section 10 of Act – It was for this reason only that decision on application under Section 33(2)(b) of Act did not close right of workman to raise industrial dispute under Section 10 of Act – Impugned order of Tribunal upheld to extent that approval is accorded to Respondent Management under Section 33(2)(b) of Act for proceeding against workman – Findings of Tribunal with respect to legality of domestic enquiry conducted by Respondent Management set aside – Petition disposed of. [*Birmati v. Presiding Officer, IT-II*]

(GAURANG KANTH, J.)
2022-IV-LLJ-91 (Del)
LNIND 2022 DEL 2323

DOMESTIC ENQUIRY

Fair Manner – Petitioner management challenged impugned order whereby preliminary issue was decided in favour of Respondent-workman and against Petitioner holding that domestic enquiry was not conducted in just and fair manner, hence this petition – Whether, domestic enquiry was conducted in just and fair manner – *Held*, there would be no justification for any party to stall final adjudication of dispute by Labour Court by questioning its decision which was preliminary issue and same could be agitated even after final award – It would be legitimate for High Court to refuse to intervene at this stage – Petitioner management, instead of producing evidence before Labour Court filed writ petition and obtained *ex-parte* stay causing delay of more than 6 years – No reason to interfere with order of Labour Court at this stage – Petitioner should be at liberty to prove charges against Respondent before Labour Court in accordance with law – Labour Court has already granted opportunity to Petitioner to lead evidence – Because some of witnesses of Petitioner were expressing their inability to appear for any reasons, Petitioner could not be absolved of their duty to prove charges against Respondent – Petition dismissed. [*Bennett Coleman and Co. Ltd v. Ira Jha*]

(DINESH KUMAR SHARMA, J.)
2022-IV-LLJ-68 (Del)
LNIND 2022 DEL 2136

EMPLOYMENT

Contract Labourer – Industrial Disputes Act, 1947, Section 2A(2) – Respondents-workmen application under Section 2A(2) of Act before Industrial Tribunal for reinstatement and absorption of labours appointed through contractors, allowed – Appellants and Respondents petitions before Single Judge disposed of, hence these appeals – Whether, there was any valid contract between Respondent and Appellant for employing contract labour and in absence of valid contract between agency and Appellant or valid licence of contractor what will be the consequence – *Held*, finding of tribunal that Respondent agency did not have valid contract with Appellant for employing contract labour acceptable in eye of law – No provision that services of workmen, *qua* principal employer, stand terminated on contract labour becoming invalid and abolished – Contractor employed by Appellant had not valid licence – Appellant failed to establish that they were employing contract labour through licensed Contractors – Relationship of Appellant and Applicant remains that of employer and workmen and this must be so as no provision which states that employment comes to end on there being no valid contract – Contract between agency and Appellant was not genuine but mere camouflage – Contract labour would have to be treated as employees of principal employer – Appeals dismissed. [*NBSTC v. Sanjoy Kundu*]

(BIVAS PATTANAYAK, J.)
2022-IV-LLJ-124 (Cal)
LNIND 2022 CAL 1386

Reinstatement – Industrial Disputes Act, 1947 – Industrial Disputes (Central) Rules, 1957 – Whether, order passed by Industrial Tribunal attained finality – *Held*, at first instance nothing shown of Appellant's absence from taking part in adjudication proceedings was unavoidable and was not due lack of *bona fide* – Summons duly served upon all opposite parties – Scheme of Act and rules make it obvious that even though party placed *ex parte*, tribunal must pronounce on dispute and record its findings with respect to matter – On consideration of evidence of witness, exhibited documents submitted on behalf of Applicants, tribunal passed *ex parte* order – In spite of due service of summons Appellant did not contest case – No perversity or infirmity in *ex parte* order passed by tribunal – In absence of any unreasonableness or arbitrariness of tribunal to conclude proceeding *ex parte*, it could not be said to bad in law – Judgment passed by Single Judge upheld. [*NBSTC v. Sanjoy Kundu*]

(BIVAS PATTANAYAK, J.)
2022-IV-LLJ-124 (Cal)
LNIND 2022 CAL 1386

Reinstatement – Industrial Disputes Act, 1947, Section 2(oo)(bb) – Labour Court by impugned order held that termination to be illegal and ordered that Respondent-workmen entitled to reinstatement in service on daily wage basis, from date of their termination, hence this petition – Whether, Respondents entitled to reinstatement in service – *Held*, Labour Court rightly concluded that case does not fall within purview of Section 2(oo)(bb) of Act – No perversity in award of Labour Court – Labour Court considered entire evidence on record and not passed Award on any material which was not available on record or extraneous – Petitioner-management failed to point out any material so as to set aside findings of Labour Court on Issue Nos. 1,2 and 3 – No material on record that any worker junior to Respondents were retained at cost of Respondents – Even if order of termination found to be illegal on account of non-payment of retrenchment compensation, it did not necessarily result in reinstatement of workmen in service – Taking into account manner and method of appointment, nature of employment and length of service, Respondents awarded compensation of certain sum – Petition disposed of. [*Management of GGSIPU v. Lokesh Kumar*]

(DINESH KUMAR SHARMA, J.)
2022-IV-LLJ-103 (Del)
LNIND 2022 DEL 2310

Reinstatement with Back Wages – Industrial Disputes Act, Section 25 – Petitioner-Management challenged award of labour Court directing reinstatement of Respondent-workman with 50% of back wages, hence this petition – Whether, award of labour Court directing reinstatement of Respondent with 50% of back wages, justified – *Held*, no explanation came forth on behalf of management as to why and under what manner enquiry officer did not hold *ex parte* enquiry, when workman intentionally abstained from joining enquiry – Management could have examined witness and evidence to hold *ex parte* enquiry – In absence of same, reinstatement was inevitable, for it was violation of provision of Section 25 of Act – Award of Labour Court to extent of ordering reinstatement perfectly justified, and did not warrant any interference – As far as back wages are concerned, there was candid statement of management that workman gainfully employed and no single suggestion or word put in cross-examination – Even workman in entire examination in chief did not utter word that he was not gainfully employed – Management discharged *onus* by stating in examination in chief and also examined doctor that treatment for child was available in specified place – This aspect was not appreciated by labour court while awarding back wages to extent of 50% - Award of labour court modified, it should be construed to be reinstatement with no back wages. [*MD. Sree Gokulam Chit v. Jauaraman*]

(AMIT RAWAL, J.)
2022-IV-LLJ-43 (Ker) LNIND 2022 KER 3

ENQUIRY

Maintainability of Petition – Industrial Disputes Act, 1947 – Disciplinary authority passed detailed speaking order imposing punishment of 'dismissal without notice' on Respondent-workman – Tribunal held that Petitioner management failed to prove the charges in the enquiry proceedings and in the enquiry report against Respondent therefore, enquiry conducted against Respondent was held to be vitiated, hence this petition – Whether, Petitioner could challenge decision of Labour Court regarding preliminary issue after final decision of case through appropriate Court proceedings – *Held*, non-examination of enquiry officer 'or any other official who was associated with enquiry proceedings' which was held to be fatal by Tribunal so far as proving enquiry report and its proceedings – Act was piece of beneficial legislation meant to protect interest of workman – Duty of Court was to interpret provisions of Act in manner that it fulfills its object and purpose – Court was also required to strike balance while conducting proceedings for resolving dispute between employer and workman – Procedure which was favourable of workman and weaker of two should be adopted – It would also be open to Petitioner to challenge decision of Labour Court regarding preliminary issue after final decision of case through appropriate Court proceedings – Petition dismissed. [*Indian Bank V. Praveen Kumar*]

(DINESH KUMAR SHARMA, J.)
2022-IV-LLJ-142 (Del) LNIND 2022 DEL 2142

GRATUITY

Grant of Interest for Delay – Payment of Gratuity Act, 1972, Section 4(6)(a) – Respondent 1-employee petition before writ Court partly allowed confirming order passed by Controlling Authority directing Petitioner-employer to pay certain amount towards gratuity to Respondent 1 along with interest for delayed period at rate of 10% per annum, hence this petition – Whether, Respondent nos. 2 and 3 were justified in holding in favour of Respondent No. 1 on question of entitlement towards payment of gratuity under provisions of Act – *Held*, no material on record to indicate as to what steps Petitioner-employer had taken for recovery of amounts from those individuals and after having taken any such steps, as to what was extent of financial loss really caused to Petitioner – Unless such exercise was carried out by Petitioner and on basis of such material, proper show cause notice was issued to Respondent 1, power under Section 4(6)(a) of Act could not have been invoked to forfeit gratuity of Respondent 1 – Respondent 1 already suffered punishment of compulsory retirement on basis of five out of six charges being proved in departmental enquiry and therefore, reliance placed on contents of enquiry report for invoking Section 4(6)(a) of Act on the part of Petitioner was not justified – No ground raised challenging basis of calculation undertaken by Controlling Authority while holding that Respondent 1 was entitled to payment of gratuity of certain sum with interest at rate of 10% per annum towards delayed payment – Petition dismissed. [*CMD, Bank of Maharashtra v. Kishore*]

(MANISH PITALE, J.)
2022-V-LLJ-201 (Bom)
LNIND 2022 NGP 170

Pensionary Benefits – Civil Services Regularization and Retirement Benefit Rules, 1961 – Payment of Gratuity Act, Section 7(3A) – Petitioner, challenged action of Respondents by which benefits accruing from regularization partially extended and non-inclusion of period of services, for purposes of determination of retiral benefits to Petitioner, hence this petition – Whether, period of services rendered by employee in work-charge establishment till regularization of his services could be taken into consideration, for purposes of payment of pension and gratuity and other retiral benefits – *Held*, period of services rendered by employee in work-charge establishment, till regularization of his services, would be period, which ought to have been taken into consideration, for purposes of determination of retiral benefits to Petitioner, in accordance with Rules – Entire period would be treated to be service rendered in continuity, for purposes of payment of pension and gratuity and other retiral benefits – Respondent 4 and 5 directed to re-determine pensionary benefits, and gratuity amount payable to Petitioner including its arrears and statutory interest, which would be payable on it under Section 7(3A) of Act – Petition allowed. [*Ganga Prasad v. State of Uttarakhand*]

(SHARAD KUMAR SHARMA, J.)
2022-IV-LLJ-174 (Uttar)
LNIND 2022 UTTAR 5

LIEN ON PERMANENT POST

Amendment of Writ Petition – Petitioner-employee seeking amendment of writ petition to challenge resolution passed by Governing Body of All India Institute of Medical Sciences holding that no lien would be granted to any employee, hence this application – Whether, Petitioner had right to maintain his lien on permanent post – *Held*, legal *plea* sought to be urged by Petitioner by way of amendment was not tenable in law – Fundamental Rule 13 proceeds on basis that where Government servant "has acquired lien on post", in that eventuality, he shall retain his lien on that post in circumstances enumerated in Clauses (a) to (e) of Fundamental Rule 13 – Said Rule did not state that employee, who has got employment in another organization was entitled, as matter of right, to retain his lien in parent organization – No corresponding obligation cast on parent organization to grant lien to employee who wishes to take up employment with

another organization – No vested right to Petitioner to seek lien on his post which he was presently holding – Application and Petition dismissed. [*Deepjyoti Kalita v. Union of India]*

(SRI VIPIN SANGHI, CJ.)
2022-IV-LLJ-153 (Uttar)
LNIND 2022 UTTAR 4

MISCONDUCT

Compulsory Retirement – Labour Court by impugned award set aside punishment of compulsory retirement imposed on Respondent-workman holding that workman was held to be deemed in service entitled to 80% back wages, hence this petition – Whether, workman guilty of misconduct, entitled to reinstatement in service, along with back wages and other consequential benefits – *Held*, workman filed manipulated documents with Petitioner Bank but sought to shift blame upon third party to escape consequences – Workman cannot escape consequences of filing such documents simply by stating that said acts of forgery were committed by agent of bank – Criminal case against said third party has also been closed – Labour Court has proceeded on the basis that because permission was not sought for availing loan from Bank, the same could not constitute misconduct – Use of a bank's seal unauthorizedly was matter of enormous gravity which could not be simply brushed aside – Forging signatures of colleagues or even turning blind eye to such forgery by third party and reaping benefits from same was impermissible – Finding of Labour Court that acts and omissions committed by workman would not constitute grave misconduct and would attract penalty was *erroneous* and untenable – Punishment of compulsory retirement imposed by Petitioner-Bank, justified – Impugned order passed by Labour Court set aside – Workman would be entitled to only such benefits as per order passed by Disciplinary Authority awarding compulsory retirement – Petition allowed. [*CM, Punjab and Sind Bank v. Paramjit Singh Nanda*]

(PRATHIBA M. SINGH, J.)
2022-IV-LLJ-13 (Del) LNIND 2022 DEL 2471

PENSION

Applicability of Scheme – Maharashtra Civil Services (Pension) Rules, 1982 – Maharashtra Civil Services (Commutation of Pension) Rules, 1984 – Petitioner challenged Contributory Pension Scheme of Government requiring employee to contribute prescribed percentage of salary on monthly basis and government also contributes prescribed percentage towards pension fund, hence these petitions – Whether, teachers appointed in aided schools on part-time basis prior to specified date and approved as full-time teachers after specified date entitled to be governed by pension scheme under Rules, 1982 or they would be governed by Defined Contributory Pension Scheme introduced by State Government *vide* Government Resolution – *Held*, schools where Petitioners were appointed initially on part-time basis were in receipt of 100% grant-in-aid – Right from dates of their initial appointments on part-time basis, salary of Petitioners were being borne by State Government and not by Management – Dates of Petitioners' appointment in service on part time basis would become his date of entry in service for purpose of applicability of particular pension scheme – Petitioners entitled to be governed under old pension scheme under provisions of Rules, 1982 and Rules, 1984 and general provident fund by treating their dates of appointments on part-time basis as dates of entry into service – Only 50% of service rendered by Petitioners on part-time basis would be counted towards qualifying service for pension – Petitioners would be entitled to get consequential benefits – Petitions allowed. [*Anil Popat Chobhe v. State of MH*]

(SANDEEP V. MARNE, J.)
2022-IV-LLJ-228 (Bom)
LNIND 2022 AUG 184

RECRUITMENT

Maintainability of Petitions – Administrative Tribunals Act, 1985, Section 14 – Petitioners challenged action of State Government in publishing notification and Government Resolution allowing candidates belonging to Socially and Educationally Backward Category (SEBC) to change reservation category to Economically Weaker Section (EWS) Category thereby impinging upon their chances of being selected and appointed on post of Talathi, hence these petitions – Whether, Petitions liable to be dismissed as not maintainable – *Held*, there exist no exceptional circumstances – No averment about availability of alternate remedy and reason why same was not resorted – Petitions directly filed before this Court in respect of recruitment to post of Talathi in State service were not maintainable – Action of State Government in allowing SEBC category candidates to change their reservation category to EWS category, unwarranted – Present petitions ought not to have been filed directly before this Court – When these petitions were filed, specified decision was not available and therefore, availability of subsequent decision deciding similar question of law could not be reason to make exception to well settled law preventing Petitioners from filing petitions directly before Court – In every matter, there was bound to be some question of law being decided by other Courts – Jurisdiction of Court could not be determined on basis of similar issue being decided by another Court – Petitions were not maintainable – Petitions dismissed. [*Chaitali Jitendra Katariya v. State of Maharashtra*]

(SANDEEP V. MARNE, J.)
2022-IV-LLJ-213 (Bom)
LNIND 2022 AUG 202

RETIREMENT BENEFIT

Extension of Service – Maharashtra Civil Service (Pension) Rules, 1982, Rule 10(1) – Extension of service granted to Petitioner on post of Stenographer (Higher Grade) resulted in situation that he started drawing lesser pay than what he drew as Personal Assistant – Petitioner's petition and appeal on account of non-finalization of his retiral benefits was disposed of and rejected, hence this petition – Whether, Petitioner entitled to pension on date of attaining age of superannuation – *Held*, period during which Petitioner worked as Stenographer (Higher Grade) by way of extension in service was wholly irrelevant for purpose of determining his pensionable pay – Petitioner become entitled to pension on date of attaining age of superannuation – Any service that Petitioner rendered thereafter, in whatever capacity, becomes wholly irrelevant for purpose of application of provisions of Rules – On attaining age of 58 years, Petitioner stood retired from service by operation of Rule 10(1) of Rules – Service of Petitioner after attaining age of superannuation would not count for pension – Average emoluments drawn by Petitioner 10 months prior to specified date would alone become basis for determining his pensionable pay – No justification for treating certain sum drawn by Petitioner while working on post of Stenographer (Higher Grade) during extended period as his pensionable pay – Petitioner stood superannuated from post of Personal Assistant and his pension would have to be fixed accordingly – Consequential benefits arising out of re-determination of pensionable pay be paid to Petitioner within certain period – Petition allowed. [*Chandrakant Govardhan Berad v. State Of MH*]

(SANDEEP V. MARNE, J.)
2022-IV-LLJ-222 (Bom)
LNIND 2022 AUG 201

SURCHARGE PROCEEDINGS

Liability – Tribunal by impugned order confirmed liability fastened on Petitioners in surcharge proceedings initiated against them along with a couple of others on allegation of financial loss caused to Bank owing to negligence of Petitioners, hence these revisions – Whether, liability could be fastened on Petitioners or on estate of

deceased – *Held*, fraud occurred during early days of switch over to computerization – For fastening liability on Petitioners in surcharge proceedings, it was not sufficient to prove that staff were negligent, but must project circumstances from which Tribunal may reasonably infer that it was willful negligence – Loss or deficiency of assets of Co-operative Society must be direct consequence of such acts or omission constituting willful negligence – No case that Petitioners including the dead one had misappropriated funds of society – Liability could not be fastened on revision Petitioners or on estate of deceased – Judgment of Tribunal and proceedings of Respondent 2, set aside – Revision allowed. [*M.Pushpanathan v.Dharmapuri Co-op Town Bank*]

(N. SESHASAYEE, J.)
2022-IV-LLJ-29 (Mad)
LNINDORD 2022 MAD 1686

TERMINATION

Payment of Renewal Commission – Life Insurance Corporation of India (Agents Regulations, 1972, Regulation No.16(1)(b) – Petitioner challenged order passed by Respondent Corporation rejecting his request for payment of renewal commission along with arrears in respect of policies proposed during agency period, hence this petition – Whether, Petitioner would be entitled to renew commission or not after his termination – *Held*, allegation of fraud against Petitioner has not been legally substantiated – Petitioner was under statutory obligation to verify date of birth of birth of proponent – For said negligence, Petitioner already suffered order of termination and lost his career – Without proving fraud just by chanting word 'fraud' in show cause notice and incorporation of same in termination order would not prove that Petitioner committed fraud in proposing policy of one person – Respondent Corporation failed to prove that Petitioner committed fraud – When termination was on ground other than fraud, as per Regulation No.19(1) of Regulations, Petitioner entitled to commission on premium received in respect of business secured by him while he was agent – Order of Respondents forfeiting renewal commission of Petitioner, set aside – Petition allowed. [*V.S. Balasubramania Pillai v. L.I.C. Zonal Manager*]

(R. VIJAYAKUMAR, J.)
2022-IV-LLJ-76 (Mad)
LNINDORD 2022 BMM 1099

TRANSFER ORDER

Opportunity of Hearing – Respondent 1 *vide* proceedings transferred Petitioner-employee from specified place to another on administrative ground, hence this petition – Whether, impugned transfer order was outcome of arbitrary exercise of power with *malafide* intention, liable to be quashed – *Held*, transfer order based on complaint made by a colleague against Petitioner – Without providing opportunity of hearing to Petitioner, impugned transfer order passed which amounts to punitive in nature – Petitioner not aware of allegation, hence, open to Petitioner to proceed with enquiry proceedings in accordance with law, by following circular issued by Government – Impugned transfer order, set aside – Petition allowed. [*I.C.Manohar Yadav v. Director of Agriculture*]

(D.KRISHNAKUMAR, J.)
2022-IV-LLJ-60 (Mad)
LNINDORD 2022 MAD 2215

TRANSFER

Denial to join duty – Respondent-employee was transferred to specific place but Respondent did not join duty – Petitioner-Management passed order against Respondent – On industrial dispute raised by Respondent, Labour Court held that non-employment of Respondent, not justified and he is entitled to relief of reinstatement, hence this petition – Whether, transfer order transferring Respondent to specific place and Respondent having failed to join duty at that place would amount to non-employment as held by Labour Court – *Held*, Respondent transferred to specific place due to administrative reasons but he did not join duty – Respondent did not challenge transfer order issued by

Director, instead, he requested to permit him to join duty at another specified place – As per employment clause, Respondent had agreed for transfer to any of the branches of Petitioner's company throughout country – No dismissal order issued by Petitioner and only transfer order issued to Respondent – Labour Court erred in holding that non-employment of Respondent was not justified and he is entitled to relief of reinstatement in service with back wages, continuity of service and all other attendant benefits – Award passed by Labour Court was error apparent on face of record, hence set aside – Petition allowed. [*Management, Uttam Roadways Ltd v. P.B. Padmanabhan*]

(J.SATHYA NARAYANA PRASAD, J.)
2022-IV-LLJ-54 (Mad)
LNINDORD 2022 MAD 2202

NOVEMBER

COMPASSIONATE APPOINTMENT

Casual Worker – Petitioner-Appellant's petition before Single Judge dismissed rejecting his claim for appointment on compassionate grounds on the ground that he was not regular employee rather casual worker, hence this appeal – Whether, husband of Petitioner was under regular establishment or was working in capacity of casual worker – *Held*, if gratuity was being paid in favour of deceased employee, it could not be construed that husband of Petitioner was under regular establishment – If husband of Petitioner was being paid pension under Coal Mines Provident Fund Scheme, that also does not confer any regular status to husband of Petitioner – Appointment of husband of Petitioner also discloses nature of appointment of piece rated worker (Wagon Loader) – Husband of Petitioner was not under regular establishment of Central Coalfields Limited management – Single Judge considered said aspect of matter and dealing with documents, if refused to pass positive direction in favour of Petitioner, it could not be said to suffer from error – Appeal dismissed. [*Kunti Devi v. Central Coal Field Ltd*]

(SUJIT NARAYAN PRASAD, J.)
2022-IV-LLJ-367 (Jhar)

Disbursement of *Ex-gratia* Amount – Application for compassionate appointment by Petitioner/Appellant, rejected – *Ex gratia* amount to be paid to Petitioner was refused by Bank on ground that total monthly income of family of deceased employee arrived at was more than 60% of last drawn gross salary – On petitions filed by Petitioner, Single Judge directed to release *ex-gratia* amount in favour of Petitioner, however, denied the appointment on compassionate ground, hence, these appeals by Petitioner and Bank – Whether, Appellant entitled for appointment on compassionate ground, and also for *ex-gratia* amount – *Held*, in scheme no provision to provide appointment on compassionate ground, therefore, no question to provide appointment on compassionate ground in absence of provision under scheme – Finding recorded by single Judge holding decision of Bank rejecting claim of Petitioner on basis of amount disbursed by way of terminal benefit to be incorrect – Single Judge failed to appreciate fact that claim which was rejected was based upon scheme which would only be said to be applicable in facts of given case, taking into consideration, date of death of deceased employee, but applying subsequent scheme which has come on specified date, cannot be made applicable with retrospective effect – When Appellant Bank formulated scheme which contains basis of calculation of monthly income including their Provident Fund under Terminal Benefit, same would have binding effect – *Ex-gratia* may be granted, if monthly income of family from all sources was less than 60% of last drawn salary of employee – Appeal by Bank, allowed – Appeal by Petitioner, dismissed. [*Central Bank of India v. Marni Devi*]

(SUJIT NARAYAN PRASAD, J.)
2022-IV-LLJ-355 (Jhar)

Permanent Employee – Petitioner's application before Respondent for grant of compassionate appointment rejected, hence these petitions – Whether, permanent employee on establishment of Zilla Parishad, who was paid from self-generated funds-income of Zilla Parishad eligible for application of compassionate appointment scheme – *Held*, Respondent erred in rejecting case of Petitioners for compassionate appointment solely on ground that salary of deceased employee was being paid through self-generated funds-income of Zilla Parishad – Even employees who were being paid initially from self-generated funds-income of Zilla Parishad and later on conferred permanent status and brought on permanent establishment of Zilla Parishad were also required to be treated as covered in scheme for compassionate Appointment – Respondent directed to consider cases of Petitioner for compassionate appointments on their own merits – Petitions allowed. [*Amol v. State of Maharashtra*]

(SANDEEP V. MARNE, J.)
2022-IV-LLJ-423 (Bom)

DELAY IN GRATUITY

Writ Jurisdiction – Payment of Gratuity Act, Section 7 – Constitution of India, 1950, Article 226 – Single Bench rejected prayer of Appellants/Petitioners for issuance of writ of *mandamus* upon Respondents, directing payment of interest on delayed payment of gratuity, hence this appeal – Whether Petitioners had right to invoke writ jurisdiction of this Court for payment of interest of delayed payment of gratuity – *Held*, Section 7(3) of Act provides that employer shall arrange to pay amount of Gratuity within 30 days from the date it becomes payable to person to whom Gratuity was payable – Appellants were therefore entitled to receive their Gratuity amounts within thirty days from date of their superannuation/retirement – Petitioners were not disentitled to receive their Gratuity amounts due to any misconduct, act of violence against management or disorderly behavior in place of their employment or, for any conviction in any criminal case – Controlling Authority under Act had not considered question of entitlement to payment of Gratuity and interest thereon to Appellants, therefore, statutory mechanism set up under Act was not invoked – Act of Respondents of non-payment of Gratuity without assigning any reason was arbitrary and under such situation, Appellants had right to invoke writ jurisdiction of this Court for their relief – Exceptional circumstances made out by Appellants to invoke writ jurisdiction by way of efficacious remedy to be paid their interest upon gratuity which was statutorily permissible and delayed without reason – Single Bench erred in not exercising jurisdiction by relegating Petitioners to statutory authority – Simple interest of 7% per annum granted to Petitioners over gratuity amounts from date of their retirement till date when payments were actually made – Impugned judgment and order passed by Single Bench, set aside – Appeal allowed. [*Mihir Kumar Das v. State of WB*]

(ANANDA KUMAR MUKHERJEE, J.)
2022-IV-LLJ-315 (Cal)

EMPLOYMENT

Employer-Employee Relationship – Industrial Disputes Act, 1947, Section 10 – Petitioners Union challenged orders passed by Government of India declining to make reference under Section 10 of Act on ground that there did not exist employer-employee relation between disputant workers and management, hence this petition – Whether, Respondent-Government justified in declining to refer disputes for adjudication – *Held*, Section 10 of Act, though gives power to appropriate Government to form opinion whether any industrial dispute exists or apprehended but in doing so, it may not go into question on merits of case – Action of Ministry of Labour and Employment, to decline to make reference on ground that there did not exist any relationship of employer-employee, was taking away power of Labour Court-Tribunal – Question as to relationship of employee was matter to be adjudicated by industrial adjudicator on basis of evidence placed before it by parties – Respondent Union of Indi-Management would get sufficient opportunity to lead evidence before industrial adjudicator for adjudication on this question and other attendant issues – Respondent directed to make reference of

disputes to Labour Court in accordance with law within certain period – Petition disposed of. [*Rakcon Contract v. Union of India*]

(DINESH KUMAR SHARMA, J.) 2022-IV-LLJ-443 (Del)

Regularization of Service – Industrial Tribunal by impugned order held that Petitioner-workman not entitled to relief of regularization of services and answered reference in favour of Management, hence this petition – Whether, Petitioner entitled to relief of regularization of services – *Held*, Petitioner was discharging his function under NRL as Peon-cum-Messenger and his services, not regularized for not meeting qualification of matriculate – No appointment letter exhibited or even produced by workman before Tribunal – Though certain documents were proved, none of said documents would show that Management recognized Petitioner as one of its employees – Petitioner was contract labour from specified year under Contractor – Though Management could not produce Recruitment Rules in Tribunal to substantiate *plea* regarding requirement of Matriculation for regularization of services, petitioner had failed to discharge his initial burden – Management filed affidavit stating that required qualification for post of Peon-cum-Messenger was Matriculation – No case made out requiring interference with award of Industrial Tribunal – Petition dismissed. [*Goda Dhar Das v. Numaligarh Refinery Ltd*]

(SANJAY KUMAR MEDHI, J.)
2022-IV-LLJ-305 (Gau)

Regularization of Service – Petitioner-employees challenged communication issued by State Government refusing to regularize services of Petitioners on posts of Junior Engineers and Agriculture Officers, hence these petitions – Whether, services of Petitioners could be regularized on posts of Junior Engineers and Agriculture Officers – *Held*, posts were to be filled in on temporary basis for period of two years and Petitioners applied for said posts – Petitioners were selected on temporary basis initially for period of two years which was further extended for period of 5 years – On completion of their tenure no further extension was granted by State and these appointments were automatically terminated on final day – Petitioners could not also be directed to be regularized on permanent post, even if available with State, as they have been originally selected on temporary posts – No policy decision of State to regularize services of Petitioners on permanent posts – *Erroneous* regularization and reinstatement of other could not be basis of *parity* – Benefit of *Parity* could not be granted to Petitioners – Petitions dismissed. [*Sharad v. State of Maharashtra*]

(ARUN R. PEDNEKER, J.)
2022-IV-LLJ-437 (Bom)

ILLEGAL TERMINATION

Compensation – Constitution of India, 1950, Article 226 – Respondent-employee's industrial dispute referred before Tribunal allowed directing Petitioner-bank to pay certain sum to Respondent as lumpsum compensation for illegal termination of his service, hence this petition – Whether Tribunal justified in paying lumpsum amount of compensation to Respondent instead of reinstating him into service – *Held*, jurisdiction of Court while entertaining petition under Article 226 of constitution was wide but has to be exercised with great circumspection – Law provides no appeal against order of Labour Court-Tribunal and order of Labour Court-Tribunal could only be challenged by way of writ – Legislature in its wisdom not provided any forum of appeal so as to give opportunity to person challenging order for seeking re-appreciation of its evidence – Trial Court duly appreciated evidence – Writ Court could not displace order of Tribunal only because it could take different opinion on basis of record – No illegality and perversity in order of Tribunal – Petition dismissed. [*Union Bank of India v. Shri Mohd. Tasleem*]

(DINESH KUMAR SHARMA, J.)
2022-IV-LLJ-325 (Del) LNIND 2022 DEL 2127

PART TIME LABOUR

Benefit of Schemes – Maharashtra Civil Services (Pension) Rules, 1982, Rule 30 and 57 – Secondary Schools Code, 2015, Rule 70.4 – Petitioners challenged order passed by Respondent 2 holding that pension scheme or provident fund scheme was not applicable to part time librarians, hence these petitions – Whether, part time librarians entitled to benefit of pension and other pensionary benefits – *Held*, part time services rendered by Petitioners would not become qualifying service for pension within meaning of Rule 3 of Rules – Part-time employees were not entitled to pension – Placement in pay scales-pay bands by State Government would not bring part-time librarians within ambit of Pension Scheme or Provident Fund Scheme – There was specific exclusion of part-time employees from both schemes by virtue of provisions of Rule 70.4 of Code and Rule 57 of Rules – These specific provisions denying benefit of pension scheme to part-time employees could not be overlooked – Benefit, which has been denied by rules, could not be bestowed upon Petitioners by way of judicial decision – Part-time librarians, who continue to work on post of part-time librarians till their retirement, were not entitled to benefit of Pension Scheme or Provident Fund Scheme – Petitions dismissed. [*Vijaysingh Ramsingh Patil v. State of MH*]

(SANDEEP V. MARNE, J.)
2022-IV-LLJ-429 (Bom)
LNIND 2022 AUG 182

PENSION

Counting of Probationary Service Period – Petitioner challenged action of Respondent 4 bank in refusing her pension, by excluding probationary period of service rendered by her, and directing Respondent to sanction pensionary benefits along with interest at rate of 18%, hence this petition – Whether, period of probationary service rendered by Petitioner would count for qualifying service to receive pension – *Held*, although probationers considered to be substantively appointed in service only upon confirmation and thereby secures status and right to post, for counting his length of service, all incidents of such status immediately attracted – In determining seniority, period of service rendered by probationer would not be ignored – No Rules governing terms and conditions of service of Petitioner that for purpose of counting seniority or her length of service or for determination of qualifying service for entitlement to pension, period of probationary service was required to be excluded – Action of Respondent 4 bank in depriving Petitioner of pension to be wholly illegal and arbitrary – Impugned communications, by which Petitioner was informed of her disentitlement to pension, stand quashed – Respondent 4 and its officers directed to make available requisite *quantum* of pension, both arrears and current, in accordance with law as early as possible – Arrears shall be paid together with interest at rate of 6% per annum – Petition allowed. [*Sameedha Suhas D.v. Chairman, Shri Dinesh Kumar*]

(DIPANKAR DATTA, C.J.)
2022-IV-LLJ-391 (Bom)
LNIND 2022 BOM 414

RETIREMENT BENEFITS

Recovery of Excess Payment – Respondents had recovered specific sum from retirement benefits of Petitioner in the name of excess payment made towards his salary, hence this petition – Whether, order of recovery passed by Respondents, justified and whether Petitioner entitled for refund of amount recovered – *Held*, salary paid to Petitioner by Respondents several years back even by mistake, cannot be recovered beyond reasonable period of time – Recovery in such circumstances may be issued only if there was alleged malpractice or misrepresentation on the part of employee – No misrepresentation on part of Petitioner – Revision of scale of pay effected in specified year and Petitioner was continuously receiving salary as per revised scale of pay – In respect of retired employees, excess amount if any paid long back, could not be recovered – Original order of recovery, quashed – Respondents directed to repay

recovered amount to Petitioner – Petition allowed. [*V. Prakash Naidu v. State of Tamil Nadu*]

(S.M. SUBRAMANIAM, J.)
2022-IV-LLJ-312 (Mad)

RETROSPECTIVE REGULARIZATION

Absorbed Employees – Industrial Disputes Act, 1947, Section 33-C(2) – Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, Section 3 – Petitioner challenged order of Labour Court granting relief of retrospective regularization from date on which Respondent 1/Employee completed 480 days of service with all consequential monetary benefits, hence these petitions – Whether, order of Labour Court granting relief of retrospective regularization, sustainable – *Held*, Petitioner was State and services of employees working in Petitioner-Board governed by its own Service Regulations – When Special service Rules in force governing service conditions of employees of Board, general Statutes and Rules would not be applicable – Provisions of Act 1981, was not applicable in respect of employees working with Petitioner – Respondent 1 not raised any dispute for adjudication and disputed issues were not adjudicated – In absence of any such adjudication and crystallization of rights of parties, petition under Section 33-C(2) of Act 1947, would not be maintainable – Labour court *erroneously* assumed jurisdiction by entertaining petition filed under Section 33-C(2) of Act 1947 and granted benefit of retrospective regularization by invoking Section 3 of Act 1981 – Benefit of regularization granted to temporary employees itself was concession extended and they were not entitled for retrospective regularization that too with monetary benefits – Orders of Labour Court, quashed – Petitions allowed. [*Managing Director, TWAD v. V. Murugaiyan*]

(S.M. SUBRAMANIAM, J.)
2022-IV-LLJ-469 (Mad)

SELECTION PROCESS

Non-Compliance of Rules – Pune Municipal Corporation (staffing pattern and classification of service) Rules 2014, Rule 3(2) – Maharashtra Municipal Corporation Act, 1949, Section 54 – Petitioner sought for setting aside order to the extent that it wrongly showed Respondent nos.3 and 4 who were ranked below Petitioner in provisional list were placed above Petitioner in final list, hence this petition – Whether selection process followed by Corporation was in accordance with Rules, and withstands test of non-arbitrariness – *Held*, no exercise carried out by Corporation to determine equivalence of post of Medical Officers Group-A under State and that of Ayurvedic Medical Officer (AMO) under Corporation – Simply cutting and copy-pasting evaluation system adopted by Government to present selection of AMO, without any application of mind, to be regarded as instance of non-application of mind and arbitrary – Respondent Nos. 3 and 4 did not mention anything about their experience with private institution in application form – When provisional merit list published, Petitioner was higher in merit than Respondent nos. 3 and 4 – On basis of certificates produced after publication of provisional merit list, resulted in Respondent Nos. 3 and 4 securing more marks than Petitioner on basis of their experience in private institutions – Such course adopted by Selection Committee was contrary to terms of advertisement – Selection process to post of AMO, apart from being contrary to Rules, also against principles of fair-play and justice – Selection process pertaining to recruitment to post of AMO, SC category (General) including appointment of Respondent nos. 3 and 4, quashed – Petition allowed. [*Padmavir Bhagwanrao Thorat v. Pune Municipal Corp.*]

(M.S. KARNIK, J.)
2022-IV-LLJ-373 (Bom)

Viva Voce Test – Constitution of India, 1950, Article 14 – Petition filed by Petitioner to set aside appointment order of Respondent no.6 for post of Peon as Respondent no.2 had issued appointment order without there being any recommendation from Departmental Selection Committee – Whether, it was permissible

for Respondent 1 to fill post by adopting selection process, which involved assessment of candidates on hundred percent viva voce test – *Held*, procedure adopted by Selection Committee was contrary to Rules and Regulations and therefore violative of Article 14 of Constitution as far as allocating marks and conducting oral interview in spite of fact that such practice had been done away by Government – Petitioner was one of members of Selection Committee along with Respondent 3 and 4, hence it was duty of Petitioner to adhere to Rules and Regulations from time of issuing advertisement – Respondent 6, though accepted offer, did not join post of 'Peon' – Appointment order issued by Respondent 2 and memorandum issued by Respondent needs to be quashed as contrary to Rules and Regulations – Respondent 1 directed to formulate procedure to be adopted by Selection Committee which could be formulated on basis of settled prepositions of law and also by considering necessary Rules, Regulations and Office Memorandums issued by Government to avoid any arbitrariness in selection process – Petition allowed. [*Village Panchayat of Quelossim, v. State of Goa*]

(BHARAT P. DESHPANDE, J.)
2022-IV-LLJ-453 (Bom)
LNIND 2022 GOA 334

SENIORITY LIST

Constitutionality of Rule – Absorption Rules, 2002, Rules 6 and 6(2) – Respondent's claim petition before Tribunal allowed setting aside seniority list, and to direct State and its authorities to re-draw seniority list afresh on basis of date of substantive appointment of persons in parent department for determining *inter se* seniority of persons who joined Secretariat services under Rules, hence these petitions – Whether, impugned judgment and directions issued by Tribunal, justified – *Held*, Rule 6 of Rules upheld, and there was good justification for it – Tribunal misdirected itself by not appreciating that it was called upon to interpret Rule 6(2) of Rules – It should have realized that it was not relevant how Rule had been applied in case of peons, and two wrongs do not make right – Tribunal failed to read, and interpret Rule 6(2) of Rules, and proceeded to allow claim petition by holding that for fixation of *inter se* seniority, pay scales could not be criteria, and date of substantive appointment in parent department, should be criteria for considering their *inter se* seniority – This interpretation was contrary to plain language of Rules 6 of Rules, could not be sustained – Impugned judgment and directions issued by Tribunal set aside – Petitions allowed. [*Trilok Chandra T. v. State of Uttarakhnd*]

(SRI VIPIN SANGHI, C.J.)
2022-IV-LLJ-329 (Uttar)

SUSPENSION

Subsistence Allowance – Uttar Pradesh State Transport Corporation Employees (Other Than Officers) Service Regulations 1981, Regulation 63(4) – Petitioner challenged impugned order passed by Appellate Authority-Respondent 1 by modifying principal order of punishment, limiting it to withholding of subsistence allowance, hence this petition – Whether, punishment of withholding of subsistence allowance during suspension period could be imposed – *Held*, subsistence allowance during suspension period, one it was not included in description of penalty provided under Regulation 63 of Regulations, would not fall to be within parameters of any of classes of punishments, as described under Regulation 63 of Regulations – Once amount was not disbursed to employee, and after disbursement which could have been recovered under Regulation 63(4) of Regulations, it would not include within aspect of withholdment – Impugned order passed by Appellate Authority by modifying principal order of punishment, limiting it to withholding of subsistence allowance would be bad in eyes of law – Impugned order quashed to that extent – Respondents directed to remit withheld subsistence allowance to Petitioner – Petitioner 2 could not be granted notional promotion – Petition partly allowed. [*H.N. Srivastava v. G.M., Uttarakhand*]

(SHARAD KUMAR SHARMA, J.)
2022-IV-LLJ-339 (Uttar)

Violation of Principles of natural justice – Respondent 4-employee's appeal before Minister allowed setting aside order of termination passed by Enquiry Officer and confirmed by Respondent 3, hence this petition – Whether, order of termination was rightly set aside – *Held*, except charge of misappropriation , none of other charges were so serious as to entail punishment of dismissal from service – Respondent 4 did not obtain prior permission for withdrawing amount – Even if it held that charge of withdrawing amount without permission proved, punishment of termination was grossly disproportionate – So far as alleged misconduct is concerned, Respondent 4 was already penalized by directing him to pay amount of fine – For same misconduct, Respondent 4 could not be punished twice – When Petitioner availed services of Lawyer as Enquiry Officer, it was in-comprehensible as to why services of Lawyer were denied to Respondent 4 – When charges are serious, engagement of Lawyer for representing *delinquent* becomes absolutely essential – Principles of natural justice were violated, which vitiates enquiry – Rules did not provide that outsider could be appointed as Enquiry Officer – Appointment of Enquiry Officer was itself against Rules and therefore, enquiry on this ground also gets vitiated – Minister committed no error in passing impugned order – Petition dismissed. [*APMC, Chalisgaon v. State of MH*]

(M.G. SEWLIKAR, J.)
2022-IV-LLJ-414 (Bom)
LNIND 2022 AUG 203

UNORGANIZED SECTOR

Outsourced employees – Minimum Wages Act, 1948 – Petitioner claiming itself to be registered union of unorganized sector and alleging non-adherence of Government Order issued from time to time in matter of procurement of manpower through outsourcing, filed petition claiming various reliefs – Whether directions to be issued to State and its instrumentalities with regard to Government Orders – *Held*, State and its instrumentalities shall strictly adhere to and comply with Government Orders – In light of relevant factors, which include elevation of minimum wages, coupled with benefits, which would be admissible from time to time, to outsourced employee, Government Orders be amended/modified from time to time – State being model employer must make endeavor to issue appropriate Government Orders containing working conditions and maintaining uniformity in payment of remuneration/honorarium in other department throughout State – Modification/amendment made in Government Orders should be uploaded on website so as to make it accessible to general public making them aware about rights and privileges so conferred upon them – Petition partly allowed. [*Sanyukt Swasthya v. State of U.P.*]

(VIKAS BUDHWAR, J.)
2022-IV-LLJ-275 (All)

DECEMBER

BENEFITS

Pension – Petitioner sought for quashing impugned letters and for directions against Respondent 4 to forward her proposal for pensionary benefits to higher authority, Respondent 2, hence this petition – Whether, Petitioner entitled for pensionary benefits – *Held*, name of Petitioner being dependent was not entered in service record of her deceased husband and after sad demise of her husband, she submitted application with Respondent 4 on basis of compromise decree – Respondent 4 issued letter and intimated that unless there being declaration of Petitioner right as wife of retired employee her proposal for family pension would not be forwarded – Though the Petitioner obtained legal heir certificate by competent Court and produced with Respondent 4 but again Respondent 4 failed to consider said legal heir certificate and declined to forward proposal of Petitioner for pensionary benefits to competent authority – Letters issued by Respondent 4 required to be quashed – Respondent 4 directed to

forward proposal of Petitioner in respect of her entitlement of pensionary benefits to Respondent 2 – Petition allowed. [*Bharti v. State of Maharashtra*]

(Y.G. KHOBRAGADE, J.)
2022-IV-LLJ-692 (Bom)

Revision of Pay – Defendant's appeal before appellate Court dismissed confirming order of Trial Court decreeing Plaintiff's suit for recovery of sum together with interest and costs, hence this appeal – Whether, revised salary structure addressed to certain individuals could be construed as general revision of pay by Appellant and Respondent would be entitled to benefit of pay to specific individuals by claiming retrospective effect though not being in employment on actual date of revision – *Held*, it was not general revision of pay but specific offer to named individual about revision of pay and *quantum* to which he was entitled to – Respondent could not take advantage of this revision of pay – Respondent could not take advantage and claim that revision of pay should be given retrospective effect even if he was not in employment – Respondent resigned voluntarily and decided not to have any relationship with Appellants - Respondent could not be permitted to come back to Appellants, seeking benefits which he had given up on his resignation – Both Courts below wrongly appreciated facts of case – Judgments of both Courts below set aside – Appeal allowed. [*SPIC Ltd v. N. Baskar*]

(C.V. KARTHIKEYAN, J.)
2022-IV-LLJ-571 (Mad)
LNIND 2022 MAD 3549

COMPASSIONATE APPOINTMENT

Grant of Back wages – Petitioner-employee sought for directing Respondent no. 2 to confirm her appointment on compassionate ground and for grant of back wages, hence this petition – Whether, Petitioner appointed on compassionate basis – *Held*, impugned letter was appointment order appointing Petitioner on compassionate basis – Procedure adopted by Respondent no. 2 in keeping Petitioner's appointment on hold was completely arbitrary and unreasonable – Respondent no. 2 not at all justified in contending that Petitioner was not entitled to be appointed on compassionate ground – Having appointed Petitioner on compassionate basis, depriving her of benefits of such order of appointment without following due process of law would be regarded as illegal and arbitrary – Respondent no. 2 to act on appointment order and post Petitioner suitably with effect from specified date but without continuity of service and back wages – Petition allowed. [*Durga Ramesh Berdia v. State of Maharashtra*]

(M.S. KARNIK, J.)
2022-IV-LLJ-515 (Bom)
LNIND 2022 BOM 468

CONFERMENT OF PERMANENT STATUS

Maintainability of Petition – Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 – 1st Respondent issued summons as an authority under Act – Objection of Petitioner-Company that Respondent-workmen were never in role of employment of Petitioner and therefore, petition under Act not maintainable, was rejected, hence these petitions – Whether, 1st Respondent had jurisdiction to decide issues in absence of any adjudication and crystallization of rights of workmen – *Held*, direct employment of Respondent workmen by Petitioner Company had not been established through an acceptable evidence – There was no adjudication to that effect before 1st Respondent nor any findings were made available – In the absence of any such documents or finding, courts could not form an opinion that Respondent workmen were directly appointed by Petitioner Company or engaged by licensed contractor with whom Petitioner Company entered into contracts for execution of work – Complete adjudication of disputed facts were eminent for purpose of granting benefit under Act – No adjudication with reference to appointment or engagement of Respondent in Petitioner Company directly and therefore, order passed by 1st

Respondent granting benefit of Act was in violation of established principles – 1st Respondent had no jurisdiction to adjudicate disputed issues with reference to rights of employees and such rights crystallized by approaching appropriate forum with reference to documents and evidence made available – Respondent workmen were at liberty to approach competent forum for adjudication and crystallization of their rights for purpose of redressal of their grievances – Impugned order passed by 1st Respondent, quashed – Petitions allowed. [*ABI Showatech (1) Ltd v. Joint Director*]

(S.M. SUBRAMANIAM, J.)
2022-IV-LLJ-604 (Mad)

DECIPLINARY ACTION

Reinstatement with Back Wages- Labour Court granted reinstatement with 50% back wages to Petitioner/Worker – Petition filed by Petitioner for grant of full back wages with continuity in service and Respondent/Employer filed petition to set aside award of Labour court – Whether, award passed by Labour Court, sustainable – *Held*, even under gravest of provocation, no employee could be allowed to use abusive language or assault his superior – Courts could not allow employees to break discipline with impunity – Labour Court by condoning an act of physical violence had undermined discipline in organization – Labour Court should not have exercised its authority to interfere with punishment of dismissal – Substituting order of dismissal in such case by granting reinstatement with 50% back wages, was wholly disproportionate to gravity of misconduct and was unsupportable and unsustainable – Award passed by Labour Court, set aside – Petition by Respondent/Employer, allowed – Petition by Petitioner/Worker, dismissed. [*Harish Chander v. D.T.C.*]

(GAURANG KANTH, J.)
2022-IV-LLJ-521 (Del)

DISMISSAL

Domestic enquiry – Petitioner-Bank challenged judgment passed by Industrial Tribunal upholding order of Labour Court setting aside penalty of dismissal from service imposed on Respondent-employee, hence this petition – Whether, evidence recorded in domestic enquiry or one adduced before labour Court would prevail for determining correctness of punishment order – *Held*, order passed by labour Court would indicate that it had proceeded to take into consideration only evidence which was produced before it and had completely ignored evidence which was recorded in domestic enquiry – This was correct course of action adopted by labour court – Evidence of witnesses adduced before labour court did not prove charge leveled against Respondent, hence, their depositions recorded in domestic enquiry were required to be discarded – This was case of 'no evidence' and finding of guilt recorded against Respondent in domestic enquiry suffers from vice of perversity – Labour Court rightly concluded that charge leveled against Respondent could not be proved and rightly set aside order of dismissal from service imposed on him – Order of labour Court in awarding full back wages and continuity in service in favour of Respondent could not be found fault with – Petition dismissed. [*Jalna District, CCB Ltd v. Manik*]

(SANDEEP V. MARNE, J.)
2022-IV-LLJ-680 (Bom)

Reinstatement – Industrial Disputes Act, 1947, Section 11(A) – 2nd Respondent-employee dismissed from service for protesting against transfer order – On industrial dispute raised by 2nd Respondent, Labour Court directed reinstatement of 2nd Respondent with pay at next lowest stage in scale of pay from specified date onwards, hence this petition – Whether, award of Labour Court, sustainable – *Held*, 2nd Respondent without any permission or approval from competent authorities, sat inside office premises beyond office hours, which amounted to illegal protest, which was misconduct – No justification for manner of protest made by 2nd Respondent by sitting inside office premises beyond office hours in order to cause inconvenience to Higher Officials of

Petitioner Bank – 2nd Respondent had not committed any act of violence or vandalisation or grave offence or act of misbehavior with officials or otherwise – Punishment of removal from service was harsh, excessive and disproportionate – No infirmity in respect of modification of punishment by Industrial Tribunal by invoking powers conferred under Section 11(A) of Act – Petitioners not established any acceptable ground for purpose of interfering with award, hence, award of Labour Court, confirmed – 2nd Respondent not entitled for any back wages as principles of 'no work no pay' would be applicable – 2nd Respondent entitled for continuity of service – Petitioner Management was at liberty to transfer 2nd Respondent – Petition disposed of. [*DGM (B&O) v. Presiding Officer, CGIT-cum-LC*]

(S.M. SUBRAMANIAM, J.)
2022-IV-LLJ-590 (Mad)

ELECTION DUTY

Panchayat Election – Representation of People's Act, 1951, Section 159 – Uttarakhand Panchayat Raj Act, 2016, Section 131 – Petitioner-Employees' Union sought for quashing impugned communication issued by Respondents whereby, services of employees of Bank had been sought to be utilized for purpose of conduct of three Tier election, hence this petition – Whether services of employees could be utilized for conduct of Panchayat elections – *Held*, scope of exercising of powers for deriving services of staff of certain authorities, for conduct of election work on directions of Chief Election Officer or State Election Commission, had been sub-classified under sub-section 2 of Section 159 of Act 1951 – Authorities from whom services could be derived, had been given under sub-section 2, which apart from including local body, in its sub-clause IV of sub-section 2 of Section 159, includes institution concerned or any undertaking which was established or was under a central, provisional or State Act or which was controlled or financed wholly or substantially by funds which were provided by State or Centre, would be an authority for purposes of sub-section (1) of section 159 – Bank herein would fall to be an authority within ambit of sub-section IV of sub-section 2 of Section 159, hence, could not be exempted for rendering services for election work, which has been authorized to be taken under sub-section 1 of section 159 – Impugned order passed by District Election Officer for purposes of deriving services of employees of bank, was within its domain of exercise of powers under provisions of Act 1951 which has to be harmoniously construed with constitutional mandate, as well as provisions of Section 131 of Act 2016 – Petition dismissed. [*PNB Employees Union v. State Election Commission*]

(SHARAD KUMAR SHARMA, J.)
2022-IV-LLJ-628 (Uttar)

EMPLOYMENT

Abandonment of Service – Tribunal by impugned order decided terms of reference in favour of Respondent-Workman and directed Petitioner-Management to reinstate Respondent without any back wages, hence this Petition – Whether, Respondent abandoned his service or his services terminated illegally and unjustifiably by Petitioner Management – *Held*, burden is on Respondent to prove that Assistant Engineer (Electrical) did not allow him to join duty – No material on record to substantiate said fact – Petitioner Management ready and willing to take Respondent on duty – Respondent was not ready to join back service – Respondent failed to prove that he was prevented by Assistant Engineer (Electrical) from joining back on duty, natural conclusion was that Respondent abandoned work of Petitioner – Unexplained delay of 3 years on the part of Respondent in approaching for reinstatement also persuades to think that Respondent abandoned service of Petitioner/Management – Tribunal also accepted the fact that Respondent was not interested in job with Petitioner – Because Petitioner failed to issue letters to Respondent, illegal termination of Respondent could not be imputed to Petitioner – Respondent abandoned service of Petitioner – Impugned award, set aside – Petition allowed. [*D.D.A. v. Ram Mehar*]

(GAURANG KANTH, J.)
2022-IV-LLJ-536 (Del)
LNIND 2022 DEL 2475

Compassionate appointment – Petitioner's application seeking compassionate appointment rejected, hence this petition – Whether, Petitioner entitled for appointment on compassionate basis – *Held*, considering guidelines, financial condition of Petitioner was un-disputedly precarious – Family unable to earn amount which is equivalent to total emoluments of Group 'C' employee of lowest rank – If total income of family less than total emoluments of Group 'C' employee of lowest rank, Petitioner would be entitled for compassionate appointment – Petitioner became legally entitled to pray for compassionate appointment and he had made his application after 41 days – Respondent 2 and 3 directed to enlist Petitioner in list of eligible candidates and depending upon educational qualifications of Petitioner *vis-à-vis* available posts, he would be considered for appointment on compassionate basis – Petition partly allowed. [*Vivek v. State of Maharashtra*]

(RAVINDRA V. GHUGE, J.)
2022-IV-LLJ-696 (Bom)

Compassionate Appointment – Petitioner's petition before High Court dismissed and confirmed order passed by Tribunal directing to appoint Respondent-employee on compassionate ground, hence this appeal – Whether, Tribunal and high Court committed error in directing Appellants to appoint Respondent on compassionate ground – *Held*, appointment of Respondent now on compassionate ground should be contrary to object and purpose of appointment on compassionate ground – Respondent could not be said to be dependent on deceased employee, *i.e.*, her mother – Even otherwise, Respondent mother should not be entitled to appointment on compassionate ground after number of years from death of deceased employee – Tribunal and High Court committed error in directing Appellants to appoint Respondent on compassionate ground – Judgment passed by Tribunal confirmed by High Court directing Appellants to consider case of Respondent for appointment on compassionate ground after number of years, unsustainable and set aside – Appeal allowed. [*State of MH v. Madhuri Maruti Vidhate*]

(M.R. SHAH, J.)
2022-IV-LLJ-481 (SC)

Reinstatement – Petitioner-employer seeking quashing of award made by Labour Court, directing reinstatement of Respondent no.3-workman to post of Cane Assistant-Worker or any equivalent post from first day of crushing season and from date of reinstatement, workman was to be paid due wages and all benefits, hence these petitions – Whether, award made by Labour Court, justified – *Held*, intimation allegedly sent to workman regarding date of commencement of crushing season of Unit was filed on behalf of Unit in list of documents filed by it and newspapers cutting for start of crushing season was listed – Newspapers in which intimation published was never filed in original – Notice of intimation of commencement of crushing season to workman, *prima facie*, not proved – Despite aforesaid evidence being on record, Labour Court not recorded any finding on same – Subsequent intimation sent by letter to workman referred by Labour Court to be extreme punishment, without recording any finding as to validity of that letter – Labour Court failed to advert itself to validity of service of alleged notice and newspaper publications that were filed on behalf of Unit which were basis of issuance of letter – Impugned award made by Labour Court was arbitrary and same was quashed – Matter remitted to Labour Court to pass fresh award and to answer reference on merits on basis of material on record – Petitions disposed of. [*Upper Doab Sugar Mills v. State of U.P.*]

(JAYANT BANERJI, J.)
2022-IV-LLJ-492 (All)

PENSION BENEFIT

Denial – Pension Regulations of Kolhapur Municipal Corporation, Regulation 7 – Employee's complaint before Industrial Court for direction to Municipal Corporation to consider services rendered by him on daily wages for purpose of benefit of pension dismissed, hence this petition – Whether services of complainant on daily wages for specified period to be considered as service for purpose of pension – *Held*, employee worked almost for 17 years on daily wages - In continuity to working on daily wages, employee worked as ward boy – Employee held permanent lien on post of ward boy till his retirement – Twin conditions of Regulation 7 of Regulations stand satisfied – It was not equitable to deprive employee who worked almost for 17 years on daily wages, benefit of Regulation 7 of Regulations, for counting half of continuous service rendered by him on daily wages, for purpose of pension – Language of Regulation 7 of Regulations was plain and unambiguous – Impugned order passed by Industrial Court, set aside – Complaint before Industrial Court deserves to be allowed – Corporation directed to grant benefit of half of continuous service rendered by Petitioner on daily wages for purpose of pension in terms of Regulation 7 of Regulations – Petition allowed. [*Vitthal P.K. v. Kolhapur Municipal Corp.*]

(M.S. KARNIK, J.)
2022-IV-LLJ-672 (Bom)

PROMOTION

Merit cum Seniority – Petitioner serving as Assistant Teacher in Government Primary School sought for quashing impugned order issued by District Education Officer, and directing Respondents to consider his case for promotion to post of Head Master, Primary School, hence this petition – Whether, Petitioner entitled for promotion to post of Head Master, Primary School – *Held*, no charge sheet issued to Petitioner, therefore, it cannot be said that disciplinary enquiry initiated or pending against him – Criteria for promotion was seniority subject to rejection of unfit, therefore a senior teacher could only be passed over, if he found to be unfit for promotion – Material brought on record was not sufficient for holding Petitioner unfit for promotion – Denial of promotion to Petitioner, on the grounds mentioned in impugned order not sustainable in eyes of law – Impugned order, quashed – Petition allowed. [*Veer Singh Yadav v. State of Uttarakhand*]

(MANOJ KUMAR TIWARI, J.)
2022-IV-LLJ-657 (Uttar)

REINSTATEMENT

Denial of back wages – Petitioner-employee's petition before Labour Court allowed for reinstatement and continuity of service but award of back wages was denied, hence this petition – Whether, Petitioner entitled for award of full back wages for period of his non-employment – *Held*, in case Labour Court intends to withheld back wages, it ought to have rendered specific finding for such denial – Labour Court recorded statements made by witnesses, whereby they had expressed willingness to offer employment to Petitioner and thereby, awarded for reinstatement with continuity of service – For denial of back wages, no finding rendered – Petitioner would be entitled for award of full back wages for period of his non-employment – Impugned award passed by 1st Respondent, insofar as it denies back wages, quashed – 2nd Respondent directed to disburse back wages at specified rate – All other findings rendered by Labour Court in impugned award should remain intact – Petition allowed. [*D. Rajendran v. Presiding Officer*]

(M.S. RAMESH, J.)
2022-IV-LLJ-587 (Mad)

RESIGNATION

Refund of Amount *in lieu* of Notice – Petitioner's petition before Single Judge for refund of amount deposited by him *in lieu* of notice dismissed, hence this appeal – Whether, Petitioner entitled for refund of amount deposited by him *in lieu* of notice period – *Held*, once employer was having right to terminate probationer without issuing any notice or without granting any salary *in lieu* of notice, same made applicable in case

probationer wants to leave job – Single Judge erred in law and on facts in treating probationer and regular employee at *par* in matter of resignation – Petitioner selected for some other post and he was required to join other establishment, he was left with no other choice but to tender his resignation with request to relieve him – Petitioner did make request to waive notice period-payment of salary *in lieu* of notice period and mentioned that if his request not accepted by Department, he should be relieved – In those circumstances Petitioner willing to pay 2 months' salary *in lieu* of 2 months' notice period – Petitioner was forced to submit such letter as he was not relieved by Department – Principle of *estoppel* raised by Respondents would not help them in any manner – Order passed by Single Judge deserves to be set aside – Petitioner entitled for refund of amount deposited by him *in lieu* of notice period within certain period – Appeal allowed. [*Paras Khuttan v. Gail India Ltd*]

(SATISH CHANDRA SHARMA, C.J.)
2022-IV-LLJ-544 (Del)
LNIND 2022 DEL 2505

RETIREMENT BENEFITS

Grant of interest – Petitioner-employee sought to quash order passed by Respondent imposing recovery, and to direct Respondent to disburse retirement benefits of Petitioner together with interest at rate of 12% per annum from the date of retirement till date of disbursement, hence these petitions – Whether, impugned order passed by Respondent without jurisdiction and authority liable to be quashed – *Held*, exhausting Appellate Remedy may not be strictly required – Employer-employee relationship ceased to exist – Terminal benefits already settled in favour of Petitioner – Petitioner entitled for interest for belated settlement of terminal benefits – Respondents directed to calculate period, for which, Petitioner entitled for interest as per Rules and settle interest as applicable within certain period – Impugned order passed by Respondent without jurisdiction and authority, quashed – Petitions allowed. [*P. Veerapandiyan v. Madras Fertilizers Ltd*]

(S.M. SUBRAMANIAM, J.)
2022-IV-LLJ-621 (Mad)